



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE TRIAL CHAMBER**SPECIAL TRIBUNAL FOR LEBANON**

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

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

Registrar: Mr David Tolbert, Acting Registrar

Date: 18 August 2020

Original language: English

Classification: Public

THE PROSECUTOR

v.

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

JUDGMENT**Office of the Prosecutor:**

Mr Norman Farrell, Mr Alexander Hugh
Milne & Mr Nigel Povoas

Counsel for Mr Salim Jamil Ayyash:

Mr Emile Aoun, Mr Thomas Hannis &
Mr Chad Mair

**Legal Representatives of
Participating Victims:**

Mr Peter Haynes, Mr Mohammad F. Mattar
& Ms Nada Abdelsater-Abusamra

Counsel for Mr Hassan Habib Merhi:

Mr Mohamed Aouini & Mr Jad Youssef Khalil

Counsel for Mr Hussein Hassan Oneissi:

Mr Vincent Courcelle-Labrousse, Mr Yasser
Hassan & Ms Natalie von Wistinghausen

Counsel for Mr Assad Hassan Sabra:

Mr David Young, Mr Geoffrey Roberts &
Ms Sarah Bafadhel



Table of Contents

Volume I

I. Introduction.....	1
II. The Prosecution’s pleaded case	10
A. The amended consolidated indictment.....	10
B. Issues arising from the Prosecution’s pleadings	17
1. Introduction.....	17
2. Legal standard—notice	17
3. The dates of the alleged conspiracy	19
(a) The Prosecution’s case and pre-trial litigation.....	19
(b) Submissions	22
(c) Findings.....	22
4. Unidentified members of the alleged conspiracy.....	25
(a) The Prosecution’s case and pre-trial litigation.....	25
(b) Submissions	25
(c) Findings.....	26
5. Hezbollah and the political context.....	26
(a) The Prosecution’s case and pre-trial litigation and submissions.....	26
(b) Defence submissions.....	30
(c) Findings.....	32
6. The identity of ‘Mohammed’	36
(a) The Prosecution’s case.....	36
(b) Submissions	37
(c) Findings.....	37
7. Other alleged Prosecution failures to provide notice	38
(a) Submissions	38
(b) Findings.....	39
III. Assessment of evidence	42
A. Introduction.....	42
B. Principle of publicity of the proceedings and of the judgment	53
C. Principles applied by the Trial Chamber in the assessment of evidence	54

1. Presumption of innocence, standard of proof beyond reasonable doubt and the <i>in dubio pro reo</i> principle	54
2. The obligation to provide a reasoned opinion.....	61
3. Final assessment of the evidence—holistic assessment on the totality of the evidence—as distinct from assessment at the time of its admission	63
4. Circumstantial evidence	72
5. Prohibition on basing a conviction solely or decisively on evidence that the Defence had no opportunity to challenge	78
6. Hearsay evidence	79
7. Corroboration.....	81
D. Assessing different forms of evidence	82
1. Witness testimony	83
(a) Live testimony	83
(b) Witness credibility	84
i. Generally.....	84
ii. Witness independence and association with Parties	86
(c) Categories of witnesses.....	91
i. Fact witnesses	92
ii. Expert witnesses.....	93
iii. Witnesses providing non-expert opinion evidence and summary evidence.....	97
iv. Witnesses called on the request of the Legal Representatives of Victims	99
v. Written records of witness evidence without oral testimony	101
2. Documents	103
(a) Authenticity.....	103
(b) Relevance and indicia of reliability.....	104
(c) Business records.....	104
(d) Telecommunications evidence	107
i. Cell site evidence and analysis.....	107
ii. Call data records.....	108
iii. Call sequence tables	109
(e) Derivative evidence.....	110
(f) Exhibits admitted for limited purposes	111
3. Agreed facts or ‘agreements as to evidence’	114
4. Judicial notice	115

IV. Historical and political background to the attack.....	116
A. Introduction.....	116
B. Background, including the Lebanese Civil War	124
C. Mr Hariri’s initial term as prime minister—31 October 1992 to 4 December 1998—and following years.....	129
1. Mr Hariri’s business and media interests	129
2. Syrian involvement in Lebanese political affairs.....	131
3. Mr Hariri’s relationship with Hezbollah	135
4. Israeli withdrawal from Lebanon in 2000.....	139
5. 2000 Election	139
D. Mr Hariri’s final term as prime minister—26 October 2000 to 2004	143
1. Beginnings of an organised opposition to Syrian domination	146
2. International opinion	146
3. Mr Hariri’s shift towards the opposition.....	147
4. Mr Hariri’s relationship with Hezbollah from 2000	147
5. 2001 and 2002: Paris Conferences.....	148
6. April 2003: Cabinet reshuffle	149
7. 17 April 2003: Parliamentary statement on US Syria Accountability Act	151
8. June 2003: Attack on Future TV	152
9. Late December 2003: ‘Damascus Protocol’	153
10. Syrian intelligence role in Lebanese political affairs in 2004.....	157
E. President Lahoud’s mandate extension.....	157
1. Meeting between President Al-Assad and Mr Hariri in Damascus, 26 August 2004	159
2. 28 August 2004: Council of Ministers meeting	164
3. 1 September 2004: Council of Maronite Bishops statement.....	165
4. 2 September 2004: Security Council resolution 1559.....	166
5. 3 September 2004: Parliament vote	169
F. Background to the Bristol Group meetings.....	173
G. First Bristol Group Meeting: 22 September 2004 and aftermath.....	177
H. Security arrangements and concerns in late 2004	179
I. Attack on Marwan Hamade	183
J. Mr Hariri’s resignation as prime minister	189
K. Electoral Law	191

L.	Second Bristol Group meeting: 13 December 2004 and aftermath	193
M.	Political events between the second Bristol Group meeting and the third Bristol Group meeting.....	195
N.	Third Bristol Group meeting: 2 February 2005	205
O.	Political events between the third Bristol Group meeting and the attack	207
P.	The ‘olive oil crisis’	213
Q.	Monthly payments to Mr Ghazaleh from Mr Hariri	214
R.	Warnings to Mr Hariri about his personal security immediately before the attack	217
S.	The Accused’s and Mustafa Amine Badreddine’s alleged associations with Hezbollah.....	221
1.	Evidence on Accused’s and Mr Badreddine’s alleged associations with Hezbollah	221
(a)	General evidence.....	221
(b)	Mustafa Amine Badreddine	223
(c)	Salim Jamil Ayyash	229
(d)	Hassan Habib Merhi.....	231
(e)	Hussein Hassan Oneissi	232
(f)	Assad Hassan Sabra	232
(g)	Conclusion	232
2.	Submissions	233
(a)	Prosecution.....	233
(b)	Defence	235
(c)	Legal Representatives of Victims	237
T.	Summary	238
V.	Participation of victims.....	242
A.	Victims’ role and participation in trials before international, hybrid or internationalised tribunals	242
B.	Who are the Participating Victims?	243
C.	Modes of victims’ participation in the trial.....	247
D.	The principles and criteria the Trial Chamber applied in deciding on the participating victims’ application to present or call evidence and on the appropriate stage of the proceedings for such presentation	251
E.	The victims’ case	256
1.	<i>Viva voce</i> (live) witnesses—six participating victims	259
2.	Professor Dr Rianne Letschert’s evidence	261
3.	Witness statements.....	264

4. A single exhibit containing 175 documents and the 172 facts that the Prosecution, Ayyash and Sabra Defence agreed are uncontested	266
F. The probative value of the evidence presented by and for the participating victims	267
1. The Legal Representatives of Victims' submissions	267
2. Prosecution submissions	272
3. Ayyash Defence submissions.....	273
4. Merhi Defence submissions	273
5. Sabra Defence submissions.....	274
6. Findings.....	274
(a) Scope of the evidence	274
(b) Identifying the victims and recording their harm.....	277
(c) Gravity of the crimes.....	281
(d) Broadening the narrative—the scope of the Trial Chamber's findings	287
G. Participating Victims' expectations—establishing the truth.....	289
1. Legal Representatives of Victims' submissions	289
2. Findings.....	290
H. Repairing the harm—sought recommendations for appropriate forms of reparations.....	294
1. Introduction.....	294
2. Submissions	296
3. Findings.....	299
I. Length of the trial.....	302
J. Participating victims' views and concerns on protective measures and psychological support ...	305
VI. Explosion on 14 February 2005	309
A. Introduction.....	309
B. Before the explosion on Monday 14 February 2005.....	309
C. The explosion and immediate aftermath	318
D. Searching for relatives in the hospitals	324
E. Search and rescue efforts of the Lebanese authorities at the explosion site	327
F. Forensic evidence.....	328
1. Crime scene investigation and recovery of evidence.....	331
(a) Initial surveillance and investigation at the crime scene.....	331
(b) Collection of evidence	344
i. Collection of vehicle parts	344

ii.	Collection of videotaped claim of responsibility by Lebanese authorities	348
(c)	Management of the crime scene and investigation	349
i.	Lebanese officials' investigation of the crime scene	349
ii.	Swiss forensic team investigation of crime scene—March 2005	358
iii.	Dutch forensic team investigation of crime scene—August 2005	359
iv.	Spanish forensic team investigation of crime scene—May to June 2006	362
v.	Submissions	363
vi.	Findings on the management of the crime scene and investigation	364
2.	Forensic analysis of the explosion	367
(a)	High explosives	369
i.	High explosives in general	369
ii.	Were high explosives used in the attack?	370
iii.	Submissions	373
iv.	Findings	373
(b)	Type of high explosives	373
i.	Identifying the type of explosives and RDX generally	373
ii.	Which high explosives were used in the attack?	376
iii.	Submissions	379
iv.	Findings	380
(c)	Quantity, height and shape of the explosives	381
i.	Quantity of explosives	381
a.	Calculating the quantity of explosives generally	382
b.	Calculating the quantity of explosives used in the attack	382
ii.	Height of the explosives	398
a.	Above and below ground explosions generally	398
b.	Was the attack an underground explosion?	399
c.	Was the attack a ground level explosion?	401
d.	Was the attack an above ground explosion?	403
iii.	Shape of the explosives	404
a.	Shapes of explosives generally	404
b.	Shape of explosives used in the attack	405
iv.	Location of the detonation point	406
v.	Findings on the quantity, height and shape of the explosives	407

(d)	Use of Mitsubishi Canter light truck.....	410
i.	Was a Mitsubishi Canter seen near the explosion site before the attack?	411
a.	CCTV systems near the explosion site.....	411
b.	CCTV footage of a white truck.....	413
c.	Identification of the truck in the CCTV footage	417
d.	Evidence from convoy survivors	420
e.	Submissions	420
f.	Findings.....	421
ii.	Recovery of Mitsubishi Canter parts at the crime scene after the attack	423
a.	Finding and identifying Mitsubishi Canter parts	423
b.	Forensic examination of Mitsubishi Canter parts	427
c.	Submissions	427
d.	Findings.....	428
(e)	Triggering system for the explosives	429
i.	Triggering systems in general	429
ii.	Jamming devices	430
a.	Jamming devices in general	431
b.	Jamming devices in the convoy	432
c.	Penetrating a jamming device	436
d.	Were the convoy's jamming devices turned on?	438
e.	Submissions	443
f.	Findings.....	444
(f)	Triggering system used in the attack.....	445
i.	Evidence.....	445
ii.	Submissions	447
iii.	Findings.....	448
3.	Human remains recovery and forensic analysis.....	449
(a)	Recovery of human remains	449
(b)	Forensic analysis of victims' remains	456
i.	DNA analysis of human remains: timeline	458
ii.	Results of DNA analysis: identification of victims.....	459
a.	Remains of Mr Nasser and Mr Al-Arab.....	459
b.	Analysis of other human remains.....	461

iii. Submissions	462
iv. Findings.....	462
(c) Forensic examination of the DNA of the unidentified male and of Mr Abu Adass.....	464
i. DNA analysis of the unidentified male	464
ii. DNA analysis related to Mr Ahmad Abu Adass	469
iii. Submissions	471
iv. Findings.....	473
4. Conclusion	474
G. Victim harm	475
1. Introduction.....	475
2. Direct victims	476
(a) Deceased victims.....	476
(b) Participating victims	477
i. Liliane Khallouf	477
ii. Maria Al-Kasti	478
iii. Victim 16	479
iv. Sanaa El-Sheikh	480
v. Nabih Mhanna.....	481
vi. Wissam Naji.....	481
vii. Rabih Nohra	482
viii. Victim 35	482
ix. Raymond Abou-Chaaya	483
x. Victim 73	484
xi. Victim 30	485
xii. Mahmoud Wazzan	485
xiii. Mohammed Dia.....	486
xiv. Rachid Hammoud	486
xv. Mehi Eldin Meneimneh	488
xvi. Victim 12	488
xvii. Victim 13	488
xviii. Victim 33	489
3. Indirect participating victims	489
(a) Robert Aoun.....	491

(b)	Abdul Hamid Ghalayini's family.....	491
(c)	Saada Hachem Abu Rjeily and Nazih Abu Rjeily	492
(d)	Victim 36	493
(e)	Victim 37	494
(f)	Victim 38	495
(g)	Victims 20, 21 and 22	495
(h)	Victim 27	496
(i)	Victim 26	496
(j)	Victim 78	497
(k)	Haitham Osman's family	497
(l)	Saadeddine Hariri.....	499
(m)	Yasma Fuleihan.....	499
(n)	Talal Nasser's family	499
(o)	Hana Diab Al-Arab	501
(p)	Mohammed Darwiche's family	502
(q)	Victim 58	503
(r)	Ziad Tarraf's family	504
(s)	Mohammed Riad Ghalayini's family.....	505
(t)	Victim 42	506
(u)	Victims 5, 7, 47, 51, 60, 61, 83, and Mr Omar Tarraf	506
4.	Witnesses who are not participating victims.....	506
(a)	Amer Chehadeh.....	506
(b)	Bilal Omar Yamout.....	507
(c)	Witness PRH009	508
(d)	Alia Al-Arab and family	508
(e)	Tarek Soubra	509
5.	Tertiary harm	510
VII.	Reliability of telecommunications evidence	512
A.	Introductory concepts.....	513
1.	Introduction and overview	513
2.	GSM system.....	515
3.	Configuration of individual markets	519
4.	Sending SMS	520

5. Theft or loss of handset or SIM	521
6. Call data used for cell site analysis	522
(a) Call data records.....	523
(b) Format and use of call data records.....	527
(c) Cell site data.....	528
(d) Call sequence tables	531
B. Cellular networks, signal coverage and cell allocation	536
1. Cellular networks and cellular signal coverage	536
(a) Best serving cell and types of cells	536
(b) Coverage prediction	540
(c) Best server coverage prediction	542
(d) Best server coverage measurements and limitations.....	547
2. Cell allocation	549
(a) Exceptional circumstances in cell allocation	553
(b) Anomalies in cell allocation.....	557
C. Alfa network and generation of call data records and cell site data.....	558
1. Introduction.....	558
2. Alfa's network architecture.....	560
3. Call data records and related issues	562
4. Cell site related issues	567
5. Witness 707's clarifications	572
D. Touch network and generation of call data records and cell site data.....	573
1. Introduction.....	573
2. Touch network architecture	574
3. Call data records and related issues	577
4. Cell site related issues	582
5. Clarification of discrepancies.....	586
E. General submissions in relation to Witnesses 705 and 707 and their evidence	586
1. Prosecution.....	586
2. Defence	588
(a) Common Defence submissions	588
(b) Ayyash Defence	591
(c) Merhi Defence.....	593

(d)	Oneissi Defence	594
(e)	Sabra Defence	596
F.	Findings on Witnesses 705 and 707 and their evidence	596
1.	Witnesses 707 and 705 as corporate witnesses and business records	596
2.	Witnesses 707's and 705's substantive evidence.....	602
G.	Call data records and cell site data received from Alfa and Touch.....	605
1.	Summary of evidence.....	605
(a)	CD containing the data for Touch's 2004 coverage maps	606
(b)	CD containing data from Touch between 2005 and 2010.....	607
(c)	Excel spreadsheet with cell tower information for Touch for 2005 and 2007	608
(d)	List of data on 737 Alfa cell sectors (Annexes 14 (2) and 15).....	609
(e)	938 Alfa shape files (Annex 16 (a) (1))	611
(f)	List of cell tower information for Alfa cell sectors based on information from 2007	612
(g)	Two coverage maps of Beirut and Lebanon showing Alfa cell sites in February 2005....	615
(h)	Excel spreadsheet titled 'Security Main' containing basic cell information for Alfa	618
(i)	DVD containing Alfa cell tower information for 2005, 2007 and 2010	620
(j)	Excel spreadsheet 'On Air-Off Air' with information on Alfa cell sites in 2013	622
(k)	Cell ID codes for Alfa.....	623
(l)	CD with Alfa call data records and cell site data	624
(m)	CD containing shape files for three Alfa cell sectors in Tripoli.....	624
(n)	Two spreadsheets with Alfa cell site information.....	625
(o)	Spreadsheet 'CellID' containing details of Alfa cell sectors	626
2.	Submissions on the Alfa and Touch cell site evidence generally	627
(a)	Defence	628
i.	Common submissions	628
ii.	Ayyash Defence	629
iii.	Merhi Defence.....	631
iv.	Oneissi Defence	632
v.	Sabra Defence	636
(b)	Prosecution.....	637
3.	Findings on Alfa's and Touch's call data records and cell site data	639
(a)	Alfa's and Touch's call data records and cell site data as business records	639
(b)	Alfa's call data records and cell site data.....	641

(c)	Accuracy of maps.....	643
(d)	Touch call data records and cell site data.....	644
H.	Electronic presentation of evidence (EPE)	646
1.	Summary of evidence.....	646
2.	Submissions	652
(a)	Prosecution.....	652
(b)	Defence	652
i.	Common submissions	652
ii.	Ayyash Defence	653
iii.	Merhi Defence.....	654
iv.	Oneissi Defence	655
v.	Sabra Defence	657
3.	Findings on the electronic presentation of evidence	658
I.	Elements of cell site analysis	660
1.	Impact of time on cell configuration in Lebanon.....	663
(a)	Summary of evidence.....	663
(b)	Submissions	665
2.	Best server coverage characteristics	666
3.	Impact of propagation anomalies, exceptional circumstances in cell allocation and other factors on cell site analysis	667
(a)	Summary of evidence.....	667
(b)	Submissions	671
4.	Mobiles' locations and movements.....	673
(a)	Summary of evidence.....	673
(b)	Submissions	674
5.	Mr Philips's access to information.....	674
(a)	Summary of evidence.....	674
(b)	Submissions	675
6.	Findings on cell site analysis	678

Volume II

VIII.	Nature and purpose of colour-coded mobile networks and Purple group of mobiles	684
A.	Introduction.....	684

B. Mobile networks in general.....	686
1. Characteristics of a mobile network.....	686
2. Organisational factors	687
(a) Setting up the network	687
(b) Equipment	688
(c) Usage.....	688
(d) Closure of the network.....	689
3. Coverttness factors	690
4. Weighing the factors	692
5. Submissions	692
6. Findings.....	693
C. Green network.....	695
1. Setting up the network	696
2. Equipment	698
3. Usage.....	698
4. Closure of the network.....	705
5. Anonymity	706
6. Submissions	707
7. Findings.....	709
D. Red network	712
1. Setting up the network	713
2. Equipment	715
3. Usage.....	716
4. Closure of the network.....	723
5. Anonymity	725
6. Submissions	727
7. Findings.....	729
E. Blue network.....	730
1. Setting up the network	731
2. Equipment	734
3. Usage.....	735
4. Closure of the network.....	741
5. Anonymity	744

6. Submissions	745
7. Findings.....	746
F. Yellow network.....	748
1. Setting up the network	749
2. Equipment	750
3. Usage.....	751
4. Closure of the network.....	757
5. Anonymity	758
6. Submissions	759
7. Findings.....	761
G. The networks' common mission	763
1. Common characteristics among the networks.....	763
2. The roles of the various networks	772
3. The common mission	775
4. Submissions	777
5. Findings.....	779
H. Purple group of mobiles.....	781
1. Introduction.....	781
2. Evidence.....	783
(a) Purple 231—attributed to Hassan Habib Merhi.....	783
(b) Purple 018—attributed to Assad Hassan Sabra	785
(c) Purple 095—attributed to Hussein Hassan Oneissi	786
(d) Characteristics of the group of Purple mobiles	787
(e) Discovery of Purple mobiles.....	789
3. Submissions	789
4. Findings.....	791
IX. Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine.....	797
A. Single user analysis.....	797
1. Introduction.....	797
2. Mr J. E. Philips's evidence.....	800
(a) Single user analysis.....	800
(b) General cell site techniques for attribution and co-location analysis.....	801
(c) Mr Philips's methodology.....	803

(d)	Mr Philips’s conclusions	808
3.	Mr Andrew Donaldson’s evidence and methodology	812
(a)	Definitions, terminology and step-by-step process	816
(b)	‘Positive indicators’, ‘negative indicators’ and overall assessment	818
(c)	Mr Donaldson’s reporting of results	821
(d)	Weaknesses in the methodology	821
4.	Submissions	822
(a)	Prosecution’s general submissions.....	822
(b)	Defence submissions.....	825
i.	Ayyash Defence	825
ii.	Merhi Defence.....	828
iii.	Oneissi Defence	830
iv.	Sabra Defence	831
5.	The Trial Chamber’s approach to single user analysis	833
(a)	General observations.....	833
(b)	Methodology and Trial Chamber’s approach to evaluating this evidence	835
(c)	Methodology—calculating possible travel times between cells	838
(d)	Mr Philips’s lack of familiarity with Lebanon.....	840
(e)	Mr Philips’s ‘isolation’ from the Prosecution and Mr Donaldson’s credibility	841
(f)	Conclusion—eliminating coincidence	841
B.	Salim Jamil Ayyash	842
1.	Personal mobiles and landlines	845
(a)	Mr Ayyash’s work for the Lebanese Civil Defence.....	845
(b)	Landline 696—Ayyash family residence in Hadath, Beirut	848
i.	Land Registry, telephone and electricity subscription records	848
ii.	Landline 696 as a contact for Mr Ayyash and his family	850
iii.	Contacts of landline 696	851
iv.	Submissions	855
v.	Findings.....	856
(c)	Landline 851—Ayyash family residence in Harouf, Nabatiyeh	857
i.	Land Registry, telephone and electricity subscription records	857
ii.	Landline 851 as a contact for Mr Ayyash and his family	859
iii.	Contacts of landline 851	860

iv. Submissions	862
v. Findings.....	862
(d) Personal mobile 165.....	863
i. Evidence.....	864
a. Bank documents	864
b. Landline application.....	864
c. Passport application	865
d. Hajj participation entry	865
e. Service providers and appointments	865
f. Handset use	866
g. Contact profile.....	867
h. Geographic profile	871
ii. Submissions	875
iii. Findings.....	876
(e) Personal mobile 170.....	879
i. Evidence.....	879
a. Handset—Yellow 669.....	880
b. Toyota Camry accident	880
c. Contact profile.....	880
d. Mr Ayyash’s daughter’s visit to Iran	881
e. Mr Ayyash’s wife’s appointments at a service provider.....	881
f. Geographic profile	882
ii. Submissions	882
iii. Findings.....	883
(f) Personal mobile 935.....	885
i. Evidence.....	885
a. BMW bills of sale and related evidence	885
b. BMW accident of 20 November 2004	887
c. Additional witness evidence regarding mobile 935	897
d. Attribution period.....	898
e. Handset use	899
f. Contact profile.....	901
g. Geographic profile	906

h.	Single user analysis of personal mobiles 170 and 935	908
ii.	Submissions	911
iii.	Findings.....	913
(g)	Personal mobile 091	917
i.	Evidence.....	917
a.	Documents	917
b.	Witness evidence.....	918
c.	Mr Andrew Donaldson’s analysis.....	918
d.	Single user analysis of personal mobiles 170 and 091	925
ii.	Submissions	929
iii.	Findings.....	930
2.	Network mobiles	932
(a)	Yellow 669.....	933
i.	Evidence.....	934
a.	Subscriber details	934
b.	Attribution period.....	934
c.	Handset and SIM card details	936
d.	Contact profile.....	936
e.	Geographic profile	938
f.	Co-location with personal mobile 165	941
g.	Additional analysis carried out by the Trial Chamber	956
ii.	Submissions	961
iii.	Findings.....	962
(b)	Yellow 294.....	968
i.	Evidence.....	968
a.	Subscriber details	968
b.	Attribution period.....	968
c.	Contact profile.....	969
d.	Geographic profile	970
e.	Single user analysis—Yellow 294 and mobile 935	974
ii.	Submissions	980
iii.	Findings.....	981
(c)	Blue 322	982

i.	Evidence.....	983
a.	Subscriber details	983
b.	Attribution period.....	983
c.	Single user analysis.....	983
ii.	Submissions	989
iii.	Findings.....	989
(d)	Blue 233	992
i.	Evidence.....	992
a.	Subscriber details	992
b.	Attribution period.....	992
c.	Contact profile.....	992
d.	Geographic profile	993
e.	Single user analysis.....	995
ii.	Submissions	1003
iii.	Findings.....	1004
(e)	Green 300.....	1007
i.	Evidence.....	1007
a.	Subscriber details	1007
b.	Attribution period and contact profile.....	1008
c.	Geographic profile	1009
d.	Single user analysis.....	1010
ii.	Submissions	1020
iii.	Findings.....	1021
(f)	Red 741	1024
i.	Evidence.....	1025
a.	Subscriber details	1025
b.	Attribution period.....	1025
c.	Contact profile.....	1026
d.	Geographic profile	1026
e.	Single user analysis.....	1026
ii.	Submissions	1062
iii.	Findings.....	1062
(g)	The 2005 Hajj	1064

i.	Evidence.....	1065
a.	Hajj application, passport and travel.....	1065
b.	Exceptions to general Hajj procedures.....	1071
c.	Mr Ayyash’s Hajj application, passport and travel.....	1073
d.	Evidence from the Lebanese Civil Defence.....	1077
e.	The 2004 Hajj	1080
f.	Comparison of mobile telephone activities.....	1081
ii.	Submissions	1091
iii.	Findings.....	1095
(h)	Overall findings.....	1110
C.	Hassan Habib Merhi	1112
1.	Summary of evidence.....	1114
(a)	The Merhi family	1115
(b)	Mr Merhi’s residence	1115
2.	Personal mobile 6091.....	1117
(a)	Attribution period.....	1118
(b)	Documents	1118
i.	Income tax form	1118
ii.	‘Rebuild Lebanon’ claim	1119
iii.	University of Balamand documents	1119
iv.	Medical records.....	1120
(c)	Geographic profile	1121
(d)	Contact profile.....	1122
(e)	Text messages	1130
3.	Purple 231	1130
(a)	Attribution period.....	1131
(b)	Geographic profile	1132
(c)	Contact profile.....	1134
(d)	SMS content.....	1137
(e)	Funeral of Youssef Habib Merhi, 10 March 2004	1138
(f)	Other characteristics—possible ‘Hezbollah cadre’ mobile.....	1138
(g)	Common travel in Lebanon—Purple 231 and mobile 6091	1140
(h)	Beirut International Airport	1141

(i)	Land purchase in Ain Qana.....	1145
(j)	Furniture deliveries	1146
4.	The ‘Grey mobile’	1148
(a)	Subscriber details	1149
(b)	Contact with the Grey mobile	1149
(c)	Contact profile.....	1150
5.	Single user analysis—Purple 231 and the Grey mobile.....	1150
6.	Green 071	1154
(a)	Subscriber details	1154
(b)	Attribution period.....	1155
(c)	Contact profile.....	1156
(d)	Geographic profile	1156
7.	Single user analysis—whether Green 071, Purple 231 and the Grey mobile had a single user	1157
(a)	Green 071 and Purple 231	1160
(b)	Green 071 and the Grey mobile	1165
8.	Submissions	1165
(a)	Prosecution.....	1165
(b)	Merhi Defence.....	1166
9.	Findings.....	1175
(a)	Introduction.....	1175
(b)	Mobile 6091	1176
(c)	The Grey mobile	1178
(d)	Purple 231	1179
(e)	Green 071.....	1183
i.	Possible change in user between Monday 20 and Friday 24 September 2004.....	1184
ii.	Co-location between Green 071 and Purple 231, and Green 071 and the Grey mobile.....	1187
(f)	Conclusion	1196
D.	Hussein Hassan Oneissi—Purple 095	1197
1.	Summary of evidence.....	1198
(a)	Documentary evidence.....	1199
i.	Judicial decision ‘correcting’ the family name to Oneissi from Issa, January 2004.....	1199
ii.	Subscription for Purple 095	1200

iii.	Bank documents	1201
a.	Application to Audi Bank	1201
b.	Application to the Lebanese Canadian Bank	1201
c.	Loan application to Bank Saderat Iran and related evidence	1202
d.	Application to Blom Bank S.A.L.....	1203
iv.	Other documents	1204
(b)	Telecommunications evidence	1206
i.	Handset usage	1206
ii.	SMS content.....	1206
iii.	Contact profile.....	1208
a.	Fatima Darwish—Mr Oneissi’s mother	1208
b.	Ahmad (Ahmed) Hassan Oneissi—Mr Oneissi’s brother.....	1209
c.	Mohammed Kamel Issa—Mr Oneissi’s nephew	1211
d.	Mounir Hassan Issa (Oneissi)—Mr Oneissi’s brother—and related family members.....	1211
e.	Bilal Khayreddine (Kheireddine).....	1213
f.	Jamila Hassan Issa—Mr Oneissi’s sister	1213
g.	Mohammed Hassan Oneissi—Mr Oneissi’s brother.....	1214
h.	Alia Hassan Issa—Mr Oneissi’s sister.....	1215
i.	Mazen Hasan Bachir and Hasan Hussein Bachir—Mr Oneissi’s brother-in-law and father-in-law	1215
j.	Rabih Hassan Bachir—Mr Oneissi’s brother-in-law	1216
k.	Witness 67—Mr Oneissi’s service provider	1217
(c)	Witness 67’s testimony and related evidence	1218
(d)	Geographic profile	1219
i.	Mr Oneissi’s address.....	1219
ii.	Most frequently used cell sectors.....	1220
iii.	Cell activations during Mr Oneissi’s appointments with Witness 67	1223
2.	Submissions	1223
(a)	Prosecution.....	1223
(b)	Oneissi Defence	1225
3.	Findings.....	1228
E.	Assad Hassan Sabra—Purple 018.....	1235
1.	Summary of the evidence.....	1236

(a)	Handset use	1237
(b)	Contact profile.....	1238
(c)	SMS content.....	1244
(d)	Geographic profile	1246
i.	Mr Sabra's residence in 2004 and 2005	1246
ii.	Where Mr Sabra worked	1255
iii.	Mr Sabra's father's residence.....	1256
iv.	Ms Salloum's family residence	1256
v.	Cell activations.....	1257
vi.	Ms Hala Salloum's visit to a service provider	1260
(e)	Shared contact and geographic profiles with mobiles 546 and 657, attributed to Mr Sabra and his wife	1261
i.	Mobile 546	1261
ii.	Mobile 657	1264
2.	How Purple 018 was discovered	1266
3.	Submissions	1267
(a)	Prosecution.....	1267
(b)	Sabra Defence	1269
4.	Findings.....	1274
(a)	The discovery of the Purple mobiles and Mr Wissam Al-Hassan's role	1276
(b)	Mr Assad Salloum as a possible alternate user of Purple 018	1279
(c)	Defence attacks on Mr Donaldson's methodology and reliability	1283
(d)	Attribution of Purple 018 without mobiles 546 and 657.....	1283
(e)	Attribution of mobiles 546 and 657 and effect on attribution of Purple 018	1286
(f)	Single use attribution to Mr Sabra at relevant times in the indictment period.....	1290
i.	Calls to and from Purple 018 between 22 December 2004 and 14 February 2005.....	1292
ii.	Calls to and from Purple 018 between Wednesday 22 December 2004 and Monday 14 February 2005 when Mr Sabra is alleged to have been involved in the false claim of responsibility	1295
(g)	Conclusion	1297
F.	Mustafa Amine Badreddine	1300
1.	The cell site evidence.....	1301
2.	Summary of evidence and findings.....	1302
3.	Mr Badreddine's identity and his alias 'Sami Issa'	1303

(a)	The Lebanese American University.....	1305
(b)	Mustafa Badreddine and Sami Issa’s common birthday	1306
(c)	Leg injury.....	1306
(d)	Precautions.....	1307
(e)	Samino jewellery.....	1309
(f)	Identification of Mustafa Badreddine as Sami Issa.....	1310
i.	Witness identification of Mr Badreddine as Sami Issa	1310
ii.	Condolence ceremonies for Mr Badreddine in Beirut, Damascus and Tehran	1314
iii.	Mr Badreddine was a Hezbollah supporter.....	1315
(g)	Findings.....	1315
4.	Personal mobile telephone number 354	1316
(a)	Summary of evidence.....	1316
i.	Documents	1317
ii.	Witness evidence.....	1317
iii.	Text messages	1318
iv.	Contact profile.....	1319
v.	Geographic profile	1329
(b)	Findings.....	1331
5.	Personal mobile number 663.....	1333
(a)	Summary of the evidence.....	1333
i.	Witness evidence.....	1333
ii.	Contact profile.....	1335
iii.	Geographic profile	1338
iv.	Further basis for attribution of mobile 663	1339
v.	Possible co-location of mobile 663 and mobile 354	1339
(b)	Findings.....	1346
6.	Sequential personal mobile telephone number 944	1347
(a)	Summary of the evidence.....	1347
i.	Contact profile.....	1348
ii.	Geographic profile	1350
iii.	Overall call patterns of mobiles 944, 663 and 354 and possible co-location.....	1351
(b)	Findings.....	1354
7.	Green 023.....	1356

(a)	Summary of the evidence.....	1356
i.	Subscriber details and handset use.....	1356
ii.	Attribution period.....	1357
iii.	Contact profile.....	1358
iv.	Geographic profile	1358
v.	Call and movement patterns.....	1363
(b)	Findings.....	1378

Volume III

X.	Chronology of network mobile activity before Mr Hariri's assassination on Monday 14 February 2005	1383
A.	Summary of findings.....	1383
B.	The Prosecution's allegations of preparatory network surveillance between 11 November 2004 and 14 February 2005	1384
C.	Summary of the evidence.....	1387
1.	Some networks commence activity—Friday 24 September 2004 to Saturday 9 October 2004.....	1388
2.	Surveillance of Mr Hariri and preparations for the attack—Wednesday 20 October 2004 to Sunday 13 February 2005	1389
(a)	Evidence of surveillance generally	1389
(b)	Wednesday 20 October 2004	1391
(c)	Thursday 21 October 2004.....	1400
(d)	Friday 22 October 2004	1400
(e)	Saturday 23 to Sunday 31 October 2004.....	1401
(f)	Monday 1 November 2004	1401
(g)	Tuesday 2 November 2004	1402
(h)	Wednesday 3 to Thursday 4 November 2004	1402
(i)	Friday 5 November 2004	1403
(j)	Saturday 6 November 2004.....	1403
(k)	Monday 8 November 2004	1403
(l)	Tuesday 9 November 2004	1404
(m)	Wednesday 10 November 2004	1404
(n)	Thursday 11 to Wednesday 24 November 2004	1405
(o)	Thursday 25 November 2004.....	1408

(p)	Friday 26 November 2004	1409
(q)	Saturday 27 November to Thursday 16 December 2004	1409
(r)	Friday 17 to Monday 20 December 2004	1409
(s)	Tuesday 21 December 2004.....	1410
(t)	Wednesday 22 to Thursday 23 December 2004	1414
(u)	Friday 24 to Sunday 26 December 2004.....	1416
(v)	Monday 27 December 2004.....	1420
(w)	Tuesday 28 to Wednesday 29 December 2004	1423
(x)	Thursday 30 December 2004	1427
(y)	Friday 31 December 2004.....	1431
(z)	Saturday 1 January 2005	1434
(aa)	Sunday 2 and Monday 3 January 2005	1438
(bb)	Tuesday 4 to Thursday 6 January 2005.....	1438
(cc)	Friday 7 January 2005.....	1440
(dd)	Saturday 8 to Monday 10 January 2005.....	1443
(ee)	Tuesday 11 January 2005.....	1444
(ff)	Friday 14 January 2005.....	1445
(gg)	Monday 17 January 2005.....	1448
(hh)	Tuesday 18 January 2005.....	1448
(ii)	Wednesday 19 January 2005.....	1452
(jj)	Thursday 20 January 2005	1455
(kk)	Friday 21 to Sunday 23 January 2005.....	1459
(ll)	Monday 24 January 2005.....	1460
(mm)	Wednesday 26 January 2005.....	1461
(nn)	Thursday 27 January 2005	1463
(oo)	Friday 28 January 2005.....	1466
(pp)	Saturday 29 January 2005	1470
(qq)	Sunday 30 January 2005	1479
(rr)	Monday 31 January 2005.....	1480
(ss)	Tuesday 1 February 2005.....	1493
(tt)	Wednesday 2 February 2005.....	1493
(uu)	Thursday 3 February 2005	1496
(vv)	Friday 4 February 2005.....	1501

(ww) Monday 7 February 2005	1506
(xx) Tuesday 8 February 2005	1510
(yy) Wednesday 9 February 2005	1521
(zz) Thursday 10 February 2005	1523
(aaa) Friday 11 February 2005	1526
(bbb) Saturday 12 February 2005	1529
3. The day of the attack—Monday 14 February 2005	1538
(a) Mr Hariri's movements	1538
(b) Network activity	1545
D. Submissions	1555
1. Prosecution	1555
2. Defence	1557
E. Findings	1558
1. The networks	1558
2. The surveillance alleged	1561
3. Surveillance in general	1562
4. Mobile surveillance	1563
5. Static surveillance	1569
6. General conclusions on network surveillance of Mr Hariri	1570
7. Role of the Green network	1572
XI. Importation and sale of Mitsubishi Canter	1575
A. Summary of the evidence	1576
1. The Tripoli truck dealership and its importation of a Mitsubishi Canter light truck	1576
(a) The Tripoli dealership	1576
(b) Importation of a Mitsubishi Canter light truck	1578
2. The sale transaction	1579
(a) The day's events	1579
(b) The date of the sale	1581
i. Call data	1582
ii. The dealership's records	1586
iii. Witnesses' evidence	1587
3. Network mobile activity in Tripoli, Tuesday 11 to Tuesday 25 January 2005	1589
B. Submissions	1593

C. Findings.....	1597
XII. Claim of responsibility for the attack on Rafik Hariri	1599
A. Introduction and preliminary issues	1599
1. ‘Associate Purple’ mobiles	1602
2. Rule 158 witnesses.....	1603
3. Mr Ziad Ramadan (Witness PRH103)	1606
B. Making the claim of responsibility for the attack	1609
1. Evidence.....	1610
(a) Call to Reuters at 14:11.....	1610
(b) First call to Al-Jazeera at 14:19	1612
(c) Second call to Al-Jazeera at 15:27	1615
(d) Collection of the videoed claim of responsibility and the letter at 15:53.....	1616
(e) Third call to Al-Jazeera at 17:04.....	1621
(f) Possible fourth call to Al-Jazeera.....	1622
(g) Broadcast of the claim video at 17:30.....	1623
2. Submissions	1627
3. Findings.....	1629
C. Mr Ahmad Abu Adass	1631
1. Evidence.....	1631
2. Submissions	1636
3. Findings.....	1636
D. Selecting Mr Abu Adass—between Friday 22 December 2004 to Friday 7 January 2005	1637
1. Meeting(s) between Mr Abu Adass and ‘Mohammed’ in the Arab University Mosque	1638
(a) Evidence.....	1639
i. Witness 56’s and Mr Ziad Ramadan’s hearsay accounts of what Mr Abu Adass told them	1639
ii. Witness 87’s account of seeing a man sitting with Mr Abu Adass in the mosque	1643
iii. A witness who met ‘Mohammed’ in the Arab University Mosque	1644
(b) Submissions	1647
(c) Findings.....	1650
2. The ‘identification’ of Mr Oneissi as the ‘Mohammed’ who Mr Abu Adass encountered in the mosque	1655
(a) Evidence.....	1657
i. A witness’s descriptions of ‘Mohammed’	1659

ii.	The construction of the photo boards in March 2010	1660
iii.	Witness's review of photo boards in March 2010	1661
iv.	Professor Sporer's evidence.....	1664
a.	The construction of the photo boards.....	1665
b.	The review of the photo boards.....	1666
c.	Factors relevant to assessing the accuracy of an identification decision	1667
(b)	Submissions	1670
(c)	Findings.....	1675
i.	The shift in the Prosecution's case.....	1675
ii.	International case law on identification evidence	1676
iii.	The purported identification of 'Mohammed'	1677
3.	Activity of Mr Merhi's Purple 231, Mr Oneissi's Purple 095 and Mr Sabra's attributed Purple 018, between December 2004 and Friday 7 January 2005	1685
(a)	Evidence.....	1687
i.	Cells relevant to the 'COLA phase'	1687
ii.	Evidence of Prosecution expert Mr Gary Platt	1698
iii.	Before Wednesday 22 December 2004—Alfa records were incomplete before 1 October 2004.....	1709
iv.	Wednesday 22 to Wednesday 29 December 2004	1712
v.	The so-called 'COLA phase'—Wednesday 29 December 2004 to Friday 7 January 2005	1716
(b)	Submissions	1731
(c)	Findings.....	1740
i.	Whether the Prosecution has proved that Mr Oneissi was 'Mohammed'	1740
ii.	Telecommunications evidence linking the Purple mobiles to Ahmad Abu Adass	1745
a.	Mr Oneissi's and Mr Sabra's presence 'near' the mosque around prayer times.....	1747
b.	Whether the communications between the three Purple mobiles were 'exceptional'	1755
E.	Mr Abu Adass's disappearance and surrounding events	1760
1.	Introduction—the Prosecutor's pleaded case against the three Accused	1760
2.	Mr Abu Adass's disappearance on Sunday 16 January 2005	1764
(a)	Introduction.....	1764
(b)	Evidence of mobile activity	1765
i.	Purple mobile activity on Monday 10 January 2005.....	1765

ii. Intensified Green mobile calls and ‘hierarchical’ Green-Purple call flows between Wednesday 12 January and Saturday 15 January 2005	1766
iii. Telephone calls to the Abu Adass landline on Saturday 15 January 2005	1772
iv. Mr Abu Adass’s departure on Sunday 16 January 2005	1774
v. Cessation of Purple mobile activity and increased Green mobile activity on Sunday 16 January 2005	1776
vi. Telephone calls to the Abu Adass home on Monday 17 January 2005	1778
vii. Purple mobile activity on Monday 17 January 2005.....	1780
viii. Reporting Mr Abu Adass missing, Wednesday 19 January 2005	1783
ix. Mr Khaled Taha’s travel on Saturday 15 and Sunday 16 January 2005	1784
(c) Submissions	1786
(d) Findings.....	1793
i. Ahmad Abu Adass’s disappearance on Sunday 16 January 2005	1793
ii. Alternative inferences—Khaled Taha and Bilal Zaaroura.....	1795
iii. Whether Mr Abu Adass was abducted.....	1797
iv. Cell site evidence relating to Mr Merhi’s, Mr Oneissi’s and Mr Sabra’s alleged involvement in Mr Abu Adass’s disappearance.....	1799
F. Preparing the claim of responsibility—Tuesday 18 January 2005 to Sunday 13 February 2005	1806
1. Introduction.....	1806
2. Preparatory events.....	1806
(a) Evidence.....	1806
i. Making the video claiming responsibility.....	1806
ii. Purchase of the telecard number 6162569 on Wednesday 9 or Thursday 10 February 2005	1806
(b) Submissions	1807
(c) Findings.....	1807
3. Mobile activity from Tuesday 18 January to Sunday 13 February 2005	1808
(a) Evidence.....	1808
i. Alleged decline in Purple mobile activity.....	1808
ii. Patterns of Green mobile activity and inactivity.....	1811
iii. Contact between Mr Merhi’s Purple 231 and Mr Ayyash’s personal mobile 091	1812
(b) Submissions	1814
(c) Findings.....	1817

4. Activity of Mr Merhi's Purple 231, Mr Oneissi's Purple 095 and Mr Sabra's attributed Purple 018 on the afternoon of Monday 14 February 2005	1820
(a) Introduction.....	1820
(b) Stability of the networks on Monday 14 February 2005 after the explosion	1821
(c) Evidence.....	1830
i. The morning of Monday 14 February 2005.....	1830
ii. Call to Reuters at 14:11—payphone 1, COLA1 cell.....	1830
iii. First call to Al-Jazeera, at 14:19—payphone 2, TAHAN1 cell	1832
iv. Second call to Al-Jazeera at 15:27—payphone 3, BACHOU2.....	1835
v. Collection of the video and letter	1840
vi. Third call to Al-Jazeera at 17:04—payphone 4, CELTEC1 cell.....	1844
vii. Final Purple mobile activity.....	1850
(d) Submissions	1851
(e) Findings.....	1858
G. Whether the claim of responsibility was false	1871
1. Evidence.....	1873
(a) The claim of responsibility	1873
(b) Evidence about the contents of the claim of responsibility.....	1875
(c) Mr Abu Adass's background and associates.....	1878
2. Submissions	1883
3. Findings.....	1886
H. The non-covert nature of the use of the Purple mobiles	1893
1. Evidence.....	1894
2. Submissions	1897
3. Findings.....	1900
I. Possible involvement of <i>al-Ahbash</i> in Mr Hariri's assassination	1904
1. Evidence.....	1905
2. Submissions	1907
3. Findings.....	1909
J. Conclusion	1910

Volume IV

XIII. Applicable law	1917
-----------------------------------	-------------

A. General legal framework.....	1917
1. Introduction.....	1917
2. The charges against the four Accused.....	1920
3. The Articles of the Lebanese Criminal Code relevant to the charges against the Accused	1921
4. Articles 6 and 7 of the Lebanese law of 1958.....	1925
5. Articles 2 and 3 of the Statute.....	1927
6. The Appeals Chamber’s interlocutory decisions on the applicable law	1940
(a) Background to the decisions	1940
(b) Are these decisions binding on the Trial Chamber?	1941
(c) The Appeals Chamber’s reasoning in interpreting the Special Tribunal’s applicable law	1951
i. Interpretative principles	1951
ii. The Trial Chamber’s observations	1956
iii. Submissions on the interpretation of Articles 2 and 3	1958
7. Conclusion: the Trial Chamber’s approach to interpreting the modes of liability and crimes charged	1962
B. Modes of liability.....	1966
1. Committing an offence – Articles 212 and 213	1967
2. Accomplice liability.....	1973
(a) Lebanese law on accomplice liability—Article 219	1973
i. Introduction: the Lebanese case law	1973
ii. Article 219 generally.....	1974
a. <i>Actus reus</i> and complicity in attempts	1974
b. Agreement with perpetrator and <i>mens rea</i> generally	1976
c. The degree of knowledge of the crime required of an aider and abettor.....	1980
iii. Article 219 (4) specifically	1989
iv. Article 219 (5) specifically	2002
(b) International criminal law principles on aiding and abetting	2005
(c) Conclusion: the law applicable to accomplice liability.....	2013
C. Substantive crimes	2015
1. Terrorist act.....	2015
(a) <i>Actus reus</i>	2015
(b) <i>Mens rea</i>	2022
(c) Conclusion: the elements of a terrorist act.....	2030

2.	Conspiracy aimed at committing a terrorist act	2030
(a)	The Appeals Chamber's interpretation of Article 270	2031
(b)	Sources of principles on conspiracy.....	2034
(c)	Elements 1 to 3 and 5: participants, agreement, aim and intent.....	2039
(d)	Element 4: agreement to commit a terrorist act 'by specific means'	2045
(e)	Conclusion: the elements of conspiracy aimed at committing a terrorist act.....	2054
3.	Intentional homicide	2054
(a)	<i>Actus reus</i>	2056
(b)	<i>Mens rea</i>	2061
(c)	Conclusion: the elements of intentional homicide	2066
4.	Attempted intentional homicide.....	2067
XIV.	Legal findings on elements of the crimes and Individual criminal responsibility	2074
A.	Legal findings on charged crimes (Counts 2-9).....	2074
1.	Committing a terrorist act by means of an explosive device	2074
(a)	The crime	2074
(b)	Aggravating circumstances: deaths and destruction of buildings	2076
2.	Intentional homicide and attempted intentional homicide	2076
(a)	Intentional homicide	2076
(b)	Attempted intentional homicide.....	2077
(c)	Aggravating circumstance: use of explosive materials	2079
B.	Conspiracy to commit a terrorist act (Count 1).....	2079
1.	The crime of conspiring to commit a terrorist act.....	2080
(a)	Findings on the elements of the crime of conspiracy: a brief summary.....	2082
(b)	Charges	2083
(c)	Findings of fact	2085
i.	Political background	2085
ii.	Role of coloured network mobiles	2085
iii.	Attribution of Green network mobiles to Mr Badreddine, Mr Ayyash and Mr Merhi.....	2086
iv.	Surveillance of Mr Hariri.....	2086
v.	'Hierarchical' call flows.....	2089
vi.	Mitsubishi Canter.....	2090
vii.	Explosion on Monday 14 February 2005.....	2091

viii. False claim of responsibility	2092
ix. Disappearance of Ahmad Abu Adass on Sunday 16 January 2005	2093
x. Attribution and activity of Purple mobiles.....	2093
xi. Video of false claim of responsibility	2094
xii. Dissemination of false claim video on Monday 14 February 2005	2094
xiii. Discarding of Purple mobiles after the attack	2095
xiv. Mobile network congestion after the attack on Monday 14 February 2005	2096
2. Who participated in the conspiracy charged?	2097
(a) Prosecution submissions	2098
(b) Defence submissions.....	2106
(c) Legal Representatives of Victims submissions.....	2110
3. Findings on the charged conspiracy to commit a terrorist act.....	2111
(a) The conspiracy generally	2111
(b) A broader conspiracy?	2115
(c) A tighter conspiracy?	2117
(d) Salim Jamil Ayyash and the other core Red mobiles users were conspirators	2121
(e) Whether Hasan Habib Merhi had a role in the conspiracy	2126
(f) Whether Mustafa Amine Badreddine had a role in the conspiracy.....	2136
i. Mustafa Badreddine and Hezbollah	2137
ii. Mr Badreddine's Green network activity.....	2141
iii. Conclusion regarding Mustafa Badreddine's pleaded role in the conspiracy	2157
4. Conclusion	2161
C. Salim Jamil Ayyash	2162
1. Introduction.....	2162
2. Count one—conspiracy aimed at committing a terrorist act	2163
3. Count two—committing a terrorist act by means of an explosive device.....	2163
(a) Surveillance of Mr Hariri before Monday 14 February 2005	2164
(b) Mr Ayyash's mobile activity on Monday 14 February 2005	2166
i. Early morning mobile activity—use of Blue network mobiles.....	2166
ii. Departure of Mr Hariri's convoy for Parliament	2167
iii. Red network mobile activity while Mr Hariri was at the Parliament, after 11:00	2167
iv. Blue network mobile activity while Mr Hariri was at the Parliament, after 11:00	2169
v. Movement of the Mitsubishi Canter towards the crime scene	2170

vi. Mr Ayyash's movement from the Parliament towards the crime scene area—from 11:47	2171
vii. Mr Ayyash's call on Green 300 to Mr Badreddine on Green 023—11:58	2175
viii. Red network mobile activity between 12:04 and Mr Hariri's departure from the Parliament	2176
ix. Mr Hariri's departure from the Parliament—12:49-12:50	2178
(c) Prosecution submissions	2181
(d) Ayyash Defence submissions.....	2181
(e) Findings.....	2182
i. Introduction.....	2182
ii. <i>Actus reus</i> for terrorism.....	2184
iii. <i>Mens rea</i> for committing a terrorist act.....	2190
4. Counts three, four and five—intentional homicide and attempted intentional homicide	2194
(a) Count three—Intentional homicide of Mr Rafik Hariri with premeditation by using explosive materials.....	2196
i. Prosecution submissions	2197
ii. Defence submissions.....	2199
iii. Findings.....	2200
a. <i>Actus reus</i> for co-perpetration	2200
b. <i>Mens rea</i> for intentional homicide	2202
(b) Count four—Intentional homicide (of 21 persons in addition to the intentional homicide of Rafik Hariri) with premeditation by using explosive materials	2204
i. Submissions	2205
ii. Findings.....	2205
(c) Count five—Attempted intentional homicide (of 226 persons in addition to the intentional homicide of Rafik Hariri) with premeditation by using explosive materials	2207
i. Submissions	2208
ii. Findings.....	2208
5. Conclusion	2209
D. Hussein Hassan Oneissi and Assad Hassan Sabra	2210
1. Trial Chamber's findings on the conspiracy charge, count one.....	2211
2. Submissions	2214
3. Findings on individual criminal responsibility	2216
(a) General analysis	2216

(b) Accomplice liability under Articles 219 (4) and (5) of the Lebanese Criminal Code	2221
(c) Conspiracy	2223
E. Hassan Habib Merhi	2224
F. Conclusion	2225
XV. Disposition	2227
XVI. Separate opinion of Judge David Re	2229
A. Introduction.....	2229
B. Whether a court may make a finding on the role of an unindicted co-conspirator, co-perpetrator or accessory	2229
C. The ‘four generals’ and the UN and UNHCR’s public silence—the case of Jamil El-Sayyed	2231
1. Mr El-Sayyed’s testimony in the trial	2236
2. Background to Mr El-Sayyed’s arrest.....	2239
3. Continued detention after the key witness retracted his statement against Mr El-Sayyed.....	2240
4. Special Tribunal’s Pre-Trial Judge’s order to release the four generals	2241
5. Proceedings before the Special Tribunal.....	2242
6. Who bears responsibility?.....	2243
7. What the UN and UNHCR should have done	2247
8. Resolution of the matter	2248
9. Why it is unlikely that Lebanon will compensate Mr El-Sayyed for his unlawful detention	2249
D. Some observations on the Defence Office	2253
1. How the Head of the Defence Office exercised the rights of audience before a chamber.....	2254
(a) Intervention during the Prosecutor’s opening statement in <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i>	2255
(b) Intervention in the litigation concerning the reported death of Mustafa Amine Badreddine	2258
2. Daily appearances in the trial by multiple representatives of the Defence Office	2262
3. Lebanon’s cooperation with the Special Tribunal’s request for assistance from the Defence Office	2264
4. Head of the Defence Office’s intervention when the Trial Chamber sought submissions on the applicable law	2270
5. Conclusion	2273
E. The pre-trial phase	2274
F. Interlocutory decisions on the applicable law	2286

XVII. Declaration by Judge David Re in relation to certain fair trial aspects concerning the Defence of Hassan Habib Merhi.....	2292
A. Introduction.....	2292
B. Relevant legal provisions	2294
1. The right to a fair trial	2294
2. The right to effective legal representation as part of the right to a fair trial	2295
3. The role of the Head of the Defence Office in ensuring effective legal representation	2296
4. The principles of natural justice—actual or apprehended bias by a decision-maker	2299
C. Ms Le Fraper du Hellen’s actions as co-counsel for Mr Merhi at trial	2300
D. Procedural history and submissions	2302
1. Assignment of Ms Le Fraper du Hellen as co-counsel for Mr Merhi	2302
2. The trial of Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra	2303
3. Ms Le Fraper du Hellen’s appointment as Head of the Defence Office	2303
4. Ms Le Fraper du Hellen ceasing to represent Mr Merhi	2304
5. Ms Le Fraper du Hellen’s commencement as the Head of the Defence Office	2306
6. Ms Le Fraper du Hellen’s delegation of some statutory functions to her deputy	2306
7. The Trial Chamber’s correspondence with Ms Le Fraper du Hellen concerning the conflict	2306
8. Trial Chamber’s order for submissions on the conflict of roles, and submissions received... ..	2308
9. Trial Chamber’s instruction to Ms Le Fraper du Hellen on her proposed ‘alternative mechanism’	2310
E. Discussion	2312
1. Ms Le Fraper du Hellen’s conflict of roles and interest.....	2312
2. The continuing duty to monitor the effectiveness of legal representation	2314
3. Procedural irregularities in Ms Le Fraper Du Hellen’s appointment as Head of the Defence Office	2316
(a) Failure to consult the Council of Judge’s on the proposed appointment	2316
(b) Consequences of breaching a mandatory requirement to consult	2317
4. The need for judicial intervention during the proceedings	2321
5. The remedy	2324
6. Possible conflict of roles in STL-18-10, <i>Prosecutor v. Ayyash</i>	2328
F. Head of the Defence Office—and Deputy Head of the Defence Office—disobeying two Trial Chamber orders, sixteen times	2329
XVIII. Separate opinion of Judge Janet Nosworthy	2338
A. Introduction.....	2338

B. The interpretative framework.....	2339
1. Judges' duty to interpret.....	2340
2. Principles of interpretation.....	2340
3. Definition of customary international law	2348
4. Customary international law in domestic courts.....	2355
5. Use of customary international law by international criminal courts and tribunals.....	2361
6. The Appeals Chamber's approach to the interpretation of Articles 2 and 3	2364
C. The crime of terrorism	2371
1. Introduction: the elements of the crime and my approach to its interpretation.....	2371
2. The critical features of the Appeal's Chamber's examination.....	2374
3. The Majority view on recourse to international law and other sources on terrorism.....	2382
4. Recourse to customary international law	2383
5. Proposed interpretation of Article 314.....	2387
D. Accomplice liability and Article 222	2391
1. Interpretation of Article 3 (1) (a) of the Statute	2398
(a) My approach: contextual and teleological interpretation.....	2398
(b) Resort to <i>favor rei</i>	2401
2. Scope of complicity under Lebanese law.....	2405
(a) <i>Actus reus</i> of complicity under Articles 219 (4) and (5)	2405
(b) <i>Actus reus</i> of complicity under Article 219 (1), (2), (3) and (6)	2408
(c) Agreement and <i>mens rea</i> of complicity under Article 219 (1) to (6).....	2408
(d) Relevance of Articles 221 and 222	2410
(e) Conclusions.....	2415
3. Could the Trial Chamber convict an Accused for the lesser offence under Article 222?	2417
(a) The relevant pleaded facts, charges and submissions	2417
(b) The nature of the offence under Article 222: a lesser alternative capable of being included in complicity under Article 219 (5).....	2419
(c) The absence of direct or specific guidance in the Statute, Rules or decisions of the Special Tribunal	2422
(d) Relevant considerations	2424
i. Reclassification is a procedural matter, necessitating reference to both Lebanese and international sources.....	2424
ii. The position in Lebanon	2427
iii. The divergent approaches in international and hybrid criminal fora	2430

(e) Conclusions.....	2435
XIX. Dissenting opinion of Judge Micheline Braidy	2438

Volume V

XX. Annexes	2442
A. ANNEX A: Procedural history	2442
1. Brief background to Special Tribunal's establishment	2442
2. The indictment: submission, confirmation and amendments and challenges to jurisdiction and the form of the indictment.....	2443
(a) The various indictments	2443
(b) Defence challenges to the form of the indictment	2446
(c) Challenges to jurisdiction—challenging the Special Tribunal's legality.....	2447
3. Interlocutory decisions on the applicable law.....	2448
4. Arrest warrants and decision to hold trial <i>in absentia</i>	2449
5. Assignment of counsel and changes of assignment	2453
6. Convening of the Trial Chamber and changes to the bench	2455
7. The pre-trial phase before the Pre-Trial Judge: meetings and conferences, disclosure, pre-trial briefs, and witness and exhibit lists.....	2456
(a) Pre-trial status conferences before the Pre-Trial Judge.....	2456
(b) Prosecution exhibit and witness lists and pre-trial brief	2457
(c) Disclosure issues	2460
(d) Agreements as to evidence.....	2462
i. Before the Pre-Trial Judge	2462
ii. Before the Trial Chamber	2462
(e) Decision on working languages in the case	2463
8. Other pre-trial matters and submission of the case file to the Trial Chamber	2464
9. The commencement of trial and opening statements.....	2466
(a) Further amendment of the Prosecution's witness and exhibit lists	2468
(b) Case management meetings during the trial	2469
10. Applications for orders to the Lebanese government on cooperation and non-compliance.....	2469
(a) Prosecution.....	2470
(b) Sabra Defence	2470
(c) Badreddine Defence.....	2475

11. The separate proceedings against Hassan Habib Merhi and joinder with the <i>Ayyash, Badreddine, Oneissi and Sabra</i> case.....	2476
(a) Indictment, arrest warrants and decision to hold trial in absentia	2477
(b) Assignment of counsel and changes of assignment	2480
(c) Joinder of Merhi and Ayyash and others cases	2481
12. Mustafa Badreddine’s reported death, termination of the proceedings and amending the consolidated indictment	2486
13. The trial proceedings, including the Prosecution’s case and motion for a judgment of acquittal	2489
(a) In-court summaries of evidence admitted under Rules 154, 155 and 156	2489
(b) Amending the directions on the conduct of proceedings to allow mid-trial thematic summaries.....	2490
(c) Amending the decision on the working languages of the case	2492
(d) Disclosure issues	2492
(e) Rule 167 motion for acquittal at the end of the Prosecution case	2493
14. Representation of victims during the trial and the presentation of the victims’ case.....	2495
(a) Decisions on victims’ participation and legal representation.....	2495
(b) Decisions on modalities of victims’ participation.....	2497
(c) Attendance of participating victims in court.....	2498
(d) Presentation of the ‘Victims’ case’	2498
15. Pre-defence conference, disqualification motion and presentation of the Oneissi Defence case	2499
16. One witness called by the Trial Chamber under Rule 165.....	2501
17. Final trial briefs, closing submissions and the end of trial.....	2503
18. Ensuring the publicity of the proceedings.....	2504
B. ANNEX B: Glossary.....	2505
C. ANNEX C: Table of authorities and submissions	2510
1. Special Tribunal for Lebanon instruments	2510
2. Special Tribunal for Lebanon case law and some filings	2510
3. International Criminal Tribunal for the former Yugoslavia case law	2565
4. International Criminal Tribunal for Rwanda case law	2574
5. International Residual Mechanism for Criminal Tribunals case law	2579
6. International Criminal Court case law	2579
7. Permanent Court of International Justice case law	2587

8. International Court of Justice case law	2587
9. Special Court for Sierra Leone case law	2587
10. Extraordinary Chambers in the Courts of Cambodia case law	2588
11. Lebanese case law	2589
12. Human rights courts case law	2594
13. Lebanese instruments	2596
14. International conventions	2596
15. Other sources	2597
D. ANNEX D: List of victims injured as a result of the attack on 14 February 2005	2605
E. ANNEX E: Agreements as to evidence and judicial notice of facts	2616
1. Agreements as to evidence between the Prosecution and the Ayyash, Badreddine, Merhi, Oneissi and Sabra Defence concerning nine general facts.....	2616
2. Agreements as to evidence between the Prosecution, the Sabra Defence and, in part, the Merhi Defence, pertaining to 18 extracts from the UN fact-finding mission (FitzGerald) report and six UNHCR reports to the Security Council.....	2617
3. Agreements as to evidence between the Prosecution and the Ayyash and Sabra Defence pertaining to the participating victims	2622
4. Facts of common knowledge the subject of judicial notice	2634
F. ANNEX F: Analysis regarding Yellow 669	2638

I. INTRODUCTION

1. Just before 13:00 on Monday 14 February 2005, the former prime minister of Lebanon, Mr Rafik Hariri, was travelling in his convoy in Beirut between the Lebanese Parliament and his home, Quraitem Palace. As it approached the St Georges Hotel, near the coast, a massive explosion was detonated. Mr Hariri was killed in the blast. Twenty-one others, including eight members of Mr Hariri's convoy, and innocent bystanders also died. Three of the victims died after the explosion, two on the following day, and the third, the Lebanese MP, Mr Bassel Fuleihan, succumbed after lying in a coma for two months.

2. At least another 226 people were injured, some very seriously. People passing in the street and working in nearby buildings sustained terrible injuries. Many buildings were badly damaged.

3. The explosion was triggered by a suicide bomber in a Mitsubishi Canter—a light tarpaulin covered truck, loaded with more than two tonnes of RDX high-grade explosives—that detonated as Mr Hariri's heavily protected six vehicle convoy passed the St Georges Hotel. The explosives had the equivalent of 2,500 to 3,000 kilograms of TNT. The explosion left a crater in the road that, based on the cone shape, had a diameter of around 11.4 metres with a depth of around 1.9 metres, within a margin of error of several per cent.

4. Mr Hariri and his convoy had been under surveillance for some months before his assassination. Those engaged in the surveillance were communicating in the field using three sets of mobile telephone networks. To distinguish the three networks, the Prosecution labelled them as the Yellow, Blue and Red networks.

5. The Red network was the assassination team. The users of the Blue and Red network mobiles communicated only with each other. Another network, labelled as the Green network, of three mobiles, was alleged to have coordinated and monitored all aspects of the operation targeting Mr Hariri which eventually resulted in his death.

6. In the months before the attack, network mobiles had followed Mr Hariri as he travelled around Lebanon. This included his trips to Beirut Airport, to his villa in Faqra north of Beirut, to his villa at Naameh, south of Beirut, when he visited mosques and churches, when he met

Hezbollah's Secretary-General in south Beirut, when he went to the Parliament and when he had lunch and dinner engagements. The network mobiles were also engaged in static surveillance near Quraitem Palace and along some of the routes he travelled.

7. The aim of this surveillance was to obtain information about Mr Hariri's movements, his security detail, his level of protection and eventually to determine a suitable method to murder him, including finding an appropriate location for the intended attack. Mr Hariri's convoy was equipped with electronic jammers that would have blocked the remote detonation of any explosive. Thus, a vehicular improvised explosive device—in the form of a suicide bomber driving a light truck loaded with explosives that he could safely self-detonate—was chosen for the attack.

8. Shortly after the explosion on the afternoon of Monday 14 February, the Al-Jazeera news network in Beirut received calls claiming responsibility for the attack, and saying that a video with a letter attached was in a nearby tree. Three calls were made, with one menacing call exhorting the immediate broadcast of the video. The callers had also first contacted Reuters. Two of the Accused, Hussein Hassan Oneissi and Assad Hassan Sabra, were alleged to have made these calls and to have observed the collection of the video from the tree.

9. In the video, which Al-Jazeera broadcast later that afternoon, a young Palestinian man, Mr Ahmad Abu Adass, claimed to represent a fundamentalist group called 'Victory and Jihad in Greater Syria' and to have executed a 'resounding martyrdom operation' against Mr Hariri as an agent of the 'infidel Saudi regime'. The attached letter claimed that the suicide operation was carried out by 'the Mujahid, Ahmad Abu-Adass'. The Prosecution termed this as a 'false claim of responsibility' for the attack on Mr Hariri. And indeed it was. The group is fictional and Mr Abu Adass did not kill himself in the explosion; he was not the suicide bomber.

10. Mr Abu Adass, a religious 22 year old, disappeared from his home in Beirut on the morning of Sunday 16 January 2005 and his family has not seen him since. Presumably he is no longer alive. Mr Oneissi and Mr Sabra were alleged to have arranged this by recruiting him at a mosque in Beirut.

11. The successful attack on Mr Hariri was carefully planned and implemented. The six core Red network mobile users were responsible for Mr Hariri's murder on 14 February 2005. The Yellow, Blue and Red network mobile users observed Mr Hariri and his convoy's movements in

the weeks and months before the attack. Some members of the Red network also used Blue and or Yellow network mobiles. On the day of the attack, the Red mobile users observed Mr Hariri's movements at the Parliament and were present there and near the crime scene shortly before the explosion. They also coordinated the Canter's movement towards the convoy. The Red network users made their final calls in the minutes before the attack and these anonymous mobiles were never used again.

12. The false claim of responsibility video was aimed at diverting attention away from the true perpetrators, namely, Salim Jamil Ayyash and his co-conspirators.

13. The four Accused are Salim Jamil Ayyash, who was born on 10 November 1963 in Harouf, Lebanon, Hassan Habib Merhi, born on 12 December 1965 in Beirut, Hussein Hassan Oneissi, who was born in Beirut on 11 February 1974, and Assad Hassan Sabra, also born in Beirut and whose date of birth is 15 October 1976. A fifth and former Accused, Mustafa Amine Badreddine, who was also known as 'Sami Issa'—and is alleged to have been a co-conspirator—was born in Beirut on 6 April 1961. All five, the Prosecutor alleged, are supporters of Hezbollah, a Lebanese political and military organisation.

14. The amended consolidated indictment contains nine counts, alleging crimes committed contrary to the Lebanese Criminal Code. The crimes are of conspiracy to commit a terrorist act by means of an explosive device, committing a terrorist act by means of an explosive device, the intentional homicide of Mr Hariri and of the 21 others, the attempted intentional homicide of the 226 people injured in the blast and of being accomplices to these crimes.

15. The Prosecutor alleged that each of the four Accused and Mr Badreddine participated in the conspiracy. They had the following roles in the attack:

- i. Mustafa Amine Badreddine monitored, and together with Salim Jamil Ayyash, coordinated the surveillance of Mr Hariri in preparation of the attack, including the purchase of the Canter. He also monitored the physical perpetration of the attack, and monitored with Hassan Habib Merhi the coordination of the preparation of the false claim of responsibility;

- ii. Salim Jamil Ayyash, with Mustafa Amine Badreddine, coordinated the surveillance of Mr Hariri in preparation of the attack, including the purchase of the Canter. He communicated with Hassan Habib Merhi in relation to preparations for the attack, including the false claim of responsibility. He coordinated the physical perpetration of the attack and participated in carrying out the surveillance and assassination;
 - iii. Hussein Hassan Oneissi and Assad Hassan Sabra, under Hassan Habib Merhi's coordination, participated in identifying a suitable person to use in a video-taped false claim of responsibility for the attack, namely, Mr Abu Adass. Immediately after the attack, they disseminated statements falsely attributing responsibility for the attack, ensured the delivery of the video and attached letter to Al-Jazeera, and ensured its broadcast. This too was under Mr Merhi's coordination. Mr Oneissi, additionally and again under Mr Merhi's coordination, participated in Mr Abu Adass's disappearance for the purpose of creating a false claim of responsibility; and
 - iv. Hassan Habib Merhi, with Mustafa Amine Badreddine, coordinated the false claim of responsibility and at times was in communication with Assad Hassan Sabra for this purpose. He coordinated Mr Oneissi's and Mr Sabra's activities in identifying and effecting the disappearance of a suitable person, Mr Abu Adass, who would be used in the video. Immediately after the attack, he coordinated their activities in disseminating statements falsely attributing responsibility for the attack, ensuring the delivery of the video and attached letter to Al-Jazeera and ensuring its broadcast.
16. Mr Oneissi and Mr Sabra, according to the Prosecutor, used their personal mobiles to communicate with each other and Mr Merhi in relation to the false claim of responsibility. These three mobiles were termed the 'Purple group' of mobiles. Mr Badreddine, Mr Ayyash and Mr Merhi were alleged to have communicated in a closed three-mobile Green network, in which Mr Ayyash and Mr Merhi used their Green mobiles only to communicate with Mr Badreddine.
17. The Prosecution attempted to prove that they were using their network mobiles based upon the co-location of the network mobiles with their own personal mobiles. In other words, that the personal and network mobiles made calls and travelled in a manner suggesting that they had a single user.

18. The Prosecution presented a vast quantity of documents and telecommunications evidence, including the call data records of the calls made, and cell site evidence of the cell towers activated, in attempting to prove first, that the Accused and Mr Badreddine were using the personal mobiles alleged. Second, that these were co-locating with the network mobiles and, third, that the network mobiles were engaged in Mr Hariri's surveillance and assassination.

19. The Prosecution proved some but not all of these allegations and mobile telephone attributions to the Accused and Mr Badreddine.

20. The evidence has established that Mr Ayyash conspired with unidentified people to commit a terrorist act by means of an explosive device in order to murder Mr Hariri. Mr Ayyash led the assassination team on Monday 14 February 2005. The Prosecution proved that he was using Yellow, Blue, Red and Green network mobiles and that the first three were engaged in surveillance of Mr Hariri between October 2004 and 14 February 2005. It also proved that he was actively involved in the assassination on the day of the attack.

21. There was insufficient evidence to find what role if any Mr Badreddine had in the conspiracy.¹ The evidence consisted solely of the records of activations of his Green network mobile in calls to the other two Green network mobiles. One was used by Mr Ayyash. The other the Prosecution attributed to Mr Merhi.

22. The evidence established that much of the surveillance was directed at targeting Mr Hariri for his possible assassination. However, how much was difficult to discern, given that Mr Hariri was under surveillance by more than one group, including the Lebanese Internal Security Forces. The Trial Chamber has found that the final decision to proceed with the plan and hence to murder Mr Hariri was made only sometime in early February 2005 in the weeks before the attack. The surveillance in the weeks preceding the decision was preliminary to a possible attack.

23. Regarding Mr Merhi's, Mr Oneissi's and Mr Sabra's role in the conspiracy and the false claim of responsibility, the Prosecution did not prove its case beyond reasonable doubt.

¹ Judge Braidy dissented on assessing and making legal findings on the role of Mr Badreddine. *See* chapter XIX 'Dissenting opinion of Judge Micheline Braidy'.

24. The Prosecution alleged that Mr Oneissi, posing as someone called ‘Mohammed’, approached Mr Abu Adass in a mosque for the purpose of finding someone to use in the false claim video. Mr Oneissi and Mr Sabra were also alleged to have been present around the mosque in Beirut over ten days, in late December 2004 and early January 2005, for this purpose. In court, the Prosecution claimed that Mr Oneissi and Mr Sabra participated in abducting Mr Abu Adass from his home on Sunday 16 January 2005. The Prosecution case on each of these allegations, based almost solely on the cell activations of two personal mobiles around the mosque, failed.

25. The evidence that Mr Oneissi was ‘Mohammed’ was unreliable. It was not probative. There was also, ultimately, no reliable evidence connecting the activations of the two personal Purple mobiles around the mosque with Mr Abu Adass or anything that he did.

26. Similarly, there was no evidence connecting either Accused person with Mr Abu Adass’s disappearance and there was no reliable evidence that he was even abducted. Further, the Prosecution did not prove beyond reasonable doubt that Mr Sabra was using his attributed personal Purple mobile. The mobile was jointly used by Mr Sabra and his wife, and there was no reliable evidence establishing that Mr Sabra was the person using it at all relevant pleaded times.

27. In relation to the calls to Reuters and Al-Jazeera on the afternoon of Monday 14 February 2005, the evidence was too weak to connect either Mr Oneissi or Mr Sabra to the calls or the collection of the video from the tree. The cell site evidence was insufficiently reliable in the aftermath of the attack to prove that their attributed mobiles were where they were alleged to be when the calls were made. The Trial Chamber was satisfied beyond reasonable doubt that Mr Oneissi was using his personal Purple mobile, but as noted, could not make the same finding regarding Mr Sabra.

28. Additionally, the evidence did not prove that either Accused joined the conspiracy before the explosion. Nor that even had they made the telephone calls to Reuters and Al-Jazeera as alleged, they knew of the explosion in advance, and that their alleged actions were connected to the attack. Proving their knowledge of this was legally required under the Lebanese Criminal Code.

29. Regarding Mr Merhi, the Prosecution also failed to prove beyond reasonable doubt that he was using his attributed Green mobile, and hence communicating with Mr Badreddine on the false

claim of responsibility. There was also no evidence of his communicating with Mr Ayyash in relation to the false claim of responsibility.

30. Mr Merhi was charged with coordinating the activities of Mr Oneissi and Mr Sabra in preparing the false claim of responsibility. However, as the case against them has failed, the case against Mr Merhi also failed, including his participation in the conspiracy. The Trial Chamber was not satisfied beyond reasonable doubt of their guilt.

31. The evidence against all four Accused was circumstantial. The only direct piece of evidence—and one that the Trial Chamber found too unreliable to use against Mr Oneissi—was evidence that the Prosecutor pleaded identified him as the ‘Mohammed’ who met Mr Abu Adass in the mosque, in attempting to find someone to use in the false claim video.

32. The remainder of the evidence against the four Accused, and of Mr Badreddine’s pleaded role, came from the cell activations of their attributed personal and network mobiles. The Prosecution led evidence connecting these to Mr Hariri’s provable movements and, additionally, in the case of Mr Oneissi and Mr Sabra, to Mr Abu Adass. Ultimately, however, the evidence relating to Mr Abu Adass was insufficiently reliable to use against the Accused.

33. There was no evidence of any of the four Accused or Mr Badreddine meeting, or of the content of any of their mobile telephone conversations. There were no telephone intercepts, relevant text messages or voice mails. There was no reliable evidence of Mr Oneissi or Mr Sabra meeting Mr Abu Adass.

34. To find Mr Ayyash guilty, the Trial Chamber had to connect the activations of his personal and network mobiles with Mr Hariri’s movements and other relevant incidents. It did this by analysing the use of a Red mobile, number 741, on the day of the attack and then working backwards to find that he was using it on that and other relevant days when surveillance occurred. Red 741 co-located with Mr Ayyash’s personal and other network mobiles in such a manner that the only conclusion reasonably available on the totality of the evidence was that he was its user and its user was heavily involved in the attack.

35. The Trial Chamber, as it must in a case based on circumstantial evidence, has exercised any evidentiary doubt in favour of an Accused person. For these reasons, it has acquitted Mr Merhi,

Mr Oneissi and Mr Sabra of all counts charged on the amended consolidated indictment. In Mr Ayyash's case, it has been satisfied that the only inference reasonably available on the evidence is of his guilt beyond reasonable doubt on all counts charged.

36. Seventy-six victims of the attack in total participated at some point in the proceedings, and some testified for the Prosecution and or in a short case presented by their Legal Representatives. This was to give effect to their views and concerns.

37. This judgment has twenty chapters. Some summarise and analyse the different evidentiary themes in the case. These include the forensic evidence relating to the explosion and identification of the victims and the political and historical background to the attack.

38. Separate chapters address the vast telecommunications evidence, the network mobiles and their common mission, the evidence attributing various personal and network mobiles to the Accused and Mr Badreddine and the forensic techniques used to do this. The case of the participating victims and the effect the explosion had on them and their families is the subject of individual chapters. How the Trial Chamber has assessed the evidence, and the applicable law, namely the Lebanese Criminal Code, are also separately addressed.

39. The individual criminal responsibility in respect of each Accused is addressed separately, while a larger chapter analyses the role of each, and Mr Badreddine, in the conspiracy alleged. A detailed chapter also analyses the false claim of responsibility and the alleged roles of Mr Merhi, Mr Oneissi and Mr Sabra. This chapter assesses the evidence and concludes that none bore individual criminal responsibility for either the attack or the false claim of responsibility.

40. Six annexes are appended to the judgment. These include a glossary of commonly used terms, and a table of legal authorities. This table includes judicial decisions and judgments of the Special Tribunal, other international criminal courts and tribunals, and national courts such as Lebanon's, international legal instruments such as human rights law treaties, and publications referenced in the judgment.

41. The agreements as to evidence between the Parties—sometimes known as 'agreed facts'—and facts of which the Trial Chamber has taken judicial notice are also annexed. A list of the names

of those injured in the explosion has its own annex. Dissenting and separate opinions are also appended.

42. Throughout the judgment, the exhibits tendered by the Parties and participating victims are identified by a letter and a unique number. The Prosecution exhibits are identified by ‘exhibit P’ plus a number, for example ‘exhibit P1234’. The exhibits tendered by the Defence are similarly identified: for example, ‘exhibit 1D1234’ (Ayyash), exhibit 2D (Badreddine), exhibit 3D (Merhi), exhibit 4D (Oneissi) and exhibit 5D (Sabra). The participating victims’ exhibits run from ‘exhibit 1V1’ to 1V45.

43. Witnesses are referred to either by their name or by their witness pseudonym number. The use of a pseudonym is the consequence of an order protecting their identity from publication made under Rule 133 (A) of the Special Tribunal’s Rules of Procedure and Evidence. Most protected witnesses are referred to by their Prosecution witness number, for example, ‘Witness PRH123’: ‘PRH’ denotes ‘Prosecution Rafik Hariri’.*

* The Trial Chamber thanks the legal officers who worked with the three Trial Chamber judges on this judgment. They are the five Trial Chamber lawyers, led by its senior legal officer, Ms Judit Tatrai, and legal officers Mr Victor Baiesu, Ms Beatrice Pacini, Ms Kirsten Calhoun and Ms Emma Pountney and former legal officer, Mr Houston Goddard, and its administrative assistant, Ms Deirdre Claassen. It also thanks the lawyers working on temporary contracts for differing periods who assisted, including Ms Tatiana Bachvarova, Ms Jane McCosker, Mr Todd Schneider, Mr Nico Baarlink and Ms Alexandra Popova, and its interns, and Ms Pauline Thomas, and those who did not want their names mentioned here. The Trial Chamber also acknowledges the six-year contribution of its initial senior legal officer, Ms Tonia Gillett.

II. THE PROSECUTION'S PLEADED CASE

A. The amended consolidated indictment

44. The Prosecutor pleads in the amended consolidated indictment that the four Accused, Salim Jamil Ayyash, Hassan Habib Merhi, Hussein Hassan Oneissi and Assad Hassan Sabra, participated in a conspiracy with others including Mustafa Amine Badreddine to commit a terrorist act to assassinate Mr Hariri.

45. Mr Ayyash, Mr Merhi, Mr Badreddine and unidentified others are alleged to have conspired between Thursday 11 November 2004 and the morning of Monday 14 February 2005 to commit a terrorist act by means of an explosive device in order to assassinate Mr Hariri. Mr Oneissi and Mr Sabra are alleged to have entered the conspiracy between Wednesday 22 December 2004 and the morning of Monday 14 February 2005.²

46. The coordination, preparation and execution of the assassination of Mr Hariri was operated and managed through the use of mobile telephone networks and mobiles whose users were allegedly Mr Badreddine, Mr Ayyash, Mr Merhi, Mr Oneissi, Mr Sabra and unknown others.³ The amended consolidated indictment alleges the existence of five interconnected mobile telephone groups, four of which operated as networks—the Red network, the Green network, the Blue network and the Yellow network—and a group of Purple mobiles.⁴

47. The Green network is alleged to have been used exclusively by Mr Badreddine, Mr Ayyash and Mr Merhi, to exchange information regarding all aspects of the conspiracy and to coordinate the acts in furtherance of it.⁵ It is alleged to have been at the apex of the conspiracy, with Mr Badreddine using a mobile in that closed network to call Mr Ayyash and Mr Merhi, and *vice-versa*. The amended consolidated indictment contains a visual graphic of this:⁶

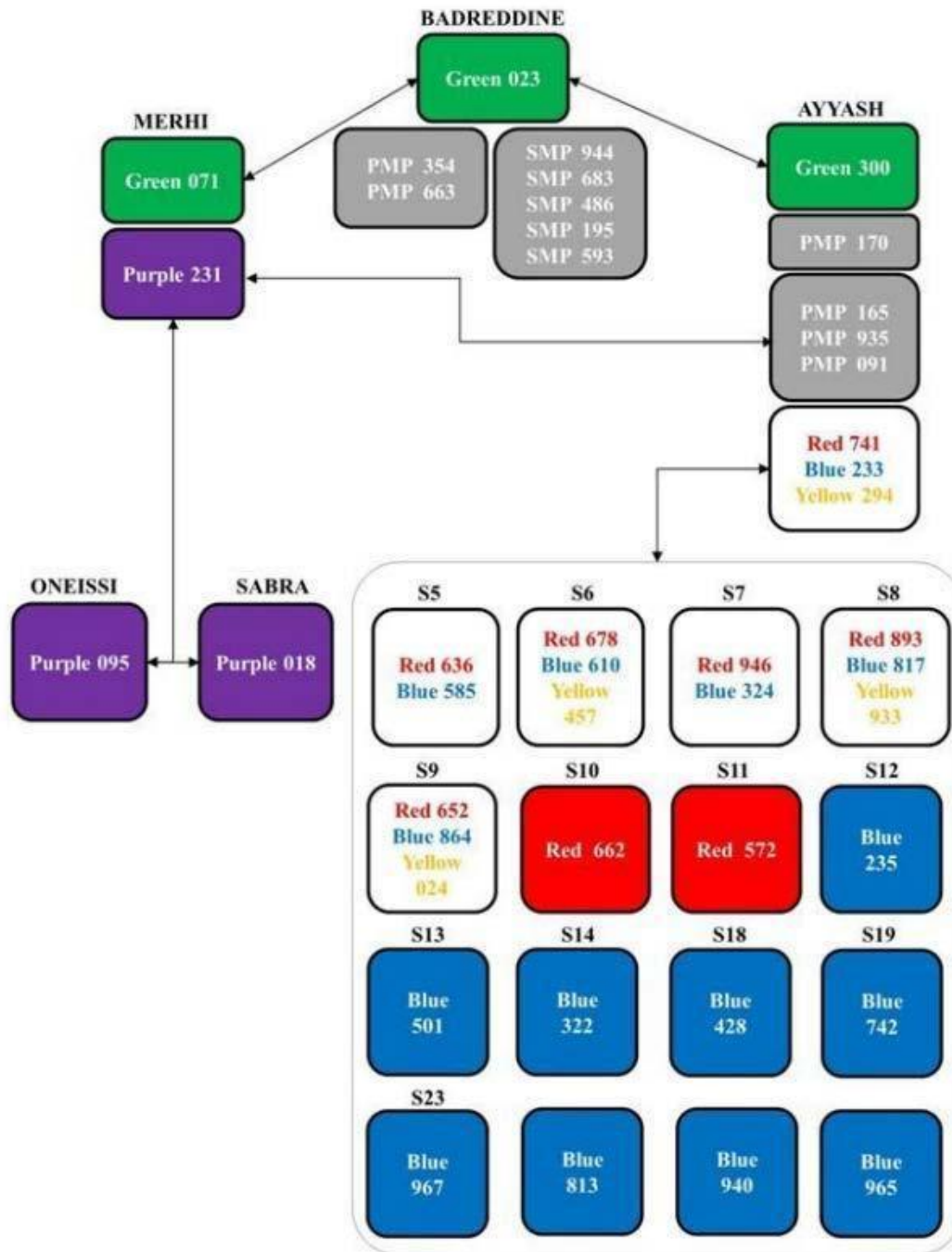
² Amended consolidated indictment, paras 3, 48.

³ Amended consolidated indictment, para. 19.

⁴ Amended consolidated indictment, paras 14-15.

⁵ Amended consolidated indictment, para. 19 (a).

⁶ Amended consolidated indictment, para. 19.



48. The Blue, Red and Yellow networks are alleged to have been used under Mr Ayyash's coordination for the preparation and in the perpetration of the attack.⁷ The Purple group of mobiles

⁷ Amended consolidated indictment, para. 19 (b).

was used for communication between Mr Merhi, Mr Oneissi and Mr Sabra to prepare and then to carry out the false claim of responsibility following the attack.⁸

49. Mr Ayyash, using his personal mobile, was in contact with the purple mobile attributed to Mr Merhi in relation to the preparations for the attack, including making the false claim of responsibility.⁹

50. In the preparatory phase of the attack, Mr Ayyash and others on the Blue, Red and Yellow networks observed and conducted surveillance of Mr Hariri in order to learn the routes and movements of his convoy, including his vehicle's position in the convoy.¹⁰ Surveillance was conducted between 11 November 2004 and 14 February 2005, on at least 15 days. Operating on the Blue, Red and Yellow networks simultaneously, Mr Ayyash and the assassination team determined the most suitable day, location and method for the attack which they then executed on 14 February 2005.¹¹ Between Saturday 1 January 2005 and Monday 14 February 2005, often during the assassination team's activity, Mr Badreddine was in contact with Mr Ayyash on the Green network.¹²

51. As part of the assassination preparations, between Wednesday 22 December 2004 and Monday 17 January 2005, and using the Purple mobiles, Mr Oneissi and Mr Sabra—under Mr Merhi's coordination—were responsible for finding a suitable individual who could be used to make the false claim of responsibility video for the attack against Mr Hariri.¹³ This was conducted with Mr Oneissi falsely presenting himself as 'Mohammed' to Mr Abu Adass, a 22-year-old Palestinian man they found at the Arab University Mosque of Beirut.¹⁴ On Sunday 16 January 2005, Mr Abu Adass left his home to meet Mr Oneissi at about 07:00 and has been missing since.¹⁵

⁸ Amended consolidated indictment, para. 19 (d).

⁹ Amended consolidated indictment, para. 19 (c).

¹⁰ Amended consolidated indictment, paras 20, 22.

¹¹ Amended consolidated indictment, para. 22.

¹² Amended consolidated indictment, para. 24.

¹³ Amended consolidated indictment, paras 23, 48 (c) (i).

¹⁴ Amended consolidated indictment, para. 23.

¹⁵ Amended consolidated indictment, para. 28.

52. On around Monday 17 January 2005,¹⁶ the family of Mr Abu Adass received a call on their landline telephone from the person believed to be ‘Mohammed’ claiming that he and Mr Abu Adass had broken down in a vehicle in Tripoli. Later that same day another call was received where the family was informed that Mr Abu Adass had decided to go on ‘Jihad’ to Iraq and would not be returning home.¹⁷

53. On Tuesday 25 January 2005, two unidentified people giving false names, one of them being the user of a Blue network mobile, purchased a Mitsubishi Canter light truck from a vehicle ‘showroom’ in the *Al-Beddaoui* area of Tripoli.¹⁸ During the purchase negotiations, the user of the Blue network mobile was in contact with Mr Ayyash on the Blue network.¹⁹ This vehicle was later used in the attack on 14 February 2005.²⁰

54. On Monday 14 February 2005, Mr Ayyash and other members of the assassination team frequently communicated with each other on their Blue and later Red network mobiles. They positioned themselves in locations where they were able to track and observe Mr Hariri’s convoy from his residence at Quraitem Palace in Beirut to the Parliament, and thereafter travelling back to his residence, into the area of the St Georges Hotel in Beirut.²¹

55. Between 12:50 and 12:53, several calls were made on the Red network.²² Around that time, the Mitsubishi Canter began moving towards the St Georges Hotel.²³ At 12:55, a large quantity of high explosives concealed in the Mitsubishi Canter was detonated as Mr Hariri’s convoy passed the hotel.²⁴

56. From about 75 minutes after the attack—and coordinated by Mr Merhi—Mr Oneissi or Mr Sabra made four calls to the offices of the Reuters and Al-Jazeera news networks in Beirut. In the first two, to Reuters and Al-Jazeera, either Mr Oneissi or Mr Sabra, claimed that a fictional fundamentalist group called ‘Victory and Jihad in Greater Syria’ had executed the attack. In a third

¹⁶ The Prosecution specified that this occurred on around the *morning* of 17 January 2005; Prosecution’s updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), para. 126.

¹⁷ Amended consolidated indictment, para. 29.

¹⁸ Amended consolidated indictment, para. 32 (c).

¹⁹ Amended consolidated indictment, para. 32 (d).

²⁰ Amended consolidated indictment, para. 32 (c).

²¹ Amended consolidated indictment, para. 39.

²² Amended consolidated indictment, para. 39 (b)-(c).

²³ Amended consolidated indictment, paras 39 (b), 40.

²⁴ Amended consolidated indictment, para. 41.

call, to Al-Jazeera, Mr Sabra gave information to Al-Jazeera on where to find a video tape that had been placed in a tree near Al-Jazeera. In the fourth call, to Al-Jazeera, either Mr Oneissi or Mr Sabra demanded with menace that it broadcast the video, which was done shortly after.²⁵ Before, during and after these calls, Mr Merhi was in contact with Mr Sabra seven times.²⁶

57. Under count 1 of the amended consolidated indictment, the Prosecutor charges Mr Ayyash, Mr Merhi, Mr Oneissi and Mr Sabra with having committed the crime of conspiracy, contrary to the Lebanese Criminal Code, the Lebanese Law of 1958 and Article 3 (1) (a) of the Statute, aimed at committing a terrorist act.²⁷ The Accused concluded or joined an agreement, aimed at committing a terrorist act intended to cause a state of terror by using predetermined means liable to create public danger.²⁸

58. Mr Ayyash is also charged under count 2 with having committed, as a co-perpetrator, a terrorist act by means of an explosive device, also contrary to the Lebanese Criminal Code, the Lebanese Law of 1958 and Article 3 (1) (a) of the Statute.²⁹ He is also charged under count 3 with having committed, as a co-perpetrator, the crime of intentional homicide of Mr Hariri with premeditation by using explosive materials, equivalent to approximately 2,500 kilograms of TNT.³⁰

59. The remaining seven counts are all charged as being contrary to the Lebanese Criminal Code and Article 3 (1) (a) of the Statute.

60. Under counts 4 and 5, Mr Ayyash is charged as a co-perpetrator, with the intentional homicide of 21 other people with premeditation by using explosive materials and with the attempted intentional homicide of 226 people with premeditation by using explosive materials,

²⁵ Amended consolidated indictment, para. 44.

²⁶ Amended consolidated indictment, paras 44-45.

²⁷ Amended consolidated indictment, paras 53-54. The amended consolidated indictment refers to Article 3 (1) (a) of the Statute, Articles 188, 212-213, 270 and 314 of the Lebanese Criminal Code and Articles 6-7 of the Lebanese Law of 1958.

²⁸ Amended consolidated indictment, para. 54 (c).

²⁹ Amended consolidated indictment, paras 55-56. The amended consolidated indictment refers to Article 3 (1) (a) of the Statute, Articles 188, 212-213 and 314 of the Lebanese Criminal Code and Article 6 of the Lebanese Law of 1958.

³⁰ Amended consolidated indictment, paras 57-58. The amended consolidated indictment refers to Article 3 (1) (a) of the Statute and Articles 188, 212-213, 547 and 549 (1) and (7) of the Lebanese Criminal Code.

respectively.³¹ Mr Ayyash either intended to kill the 21 others and injured 226 or foresaw and accepted the risk that death would occur as a result of the detonation.³²

61. Finally, the Prosecutor also charges Mr Merhi, Mr Oneissi and Mr Sabra under count 6 with being accomplices to the commission of the crime of a terrorist act by means of an explosive device.³³ The amended consolidated indictment alleges that they performed acts preparatory to the offence as well as acts aimed at shielding the perpetrators and themselves from justice, by falsely blaming others.³⁴

62. Under count 7, Mr Merhi, Mr Oneissi and Mr Sabra are accused of being accomplices to the commission of the crime of intentional homicide of Mr Hariri with premeditation by using explosive materials.³⁵

63. Mr Merhi, Mr Oneissi and Mr Sabra, under counts 8 and 9, are charged, respectively, as accomplices to the commission of the crime of intentional homicide of the 21 other people with premeditation by using explosive materials and as accomplices to the commission of the crime of attempted intentional homicide of 226 people with premeditation by using explosive materials.³⁶

64. The Prosecution also alleges that the four Accused are supporters of Hezbollah, a Lebanese political and military organisation.³⁷ The Special Tribunal was established to prosecute individuals for the crimes within its jurisdiction.³⁸ While the political context of the alleged crimes is undoubtedly important, the focus of this judgment rests firmly on the individual criminal responsibility of the Accused.

³¹ Amended consolidated indictment, paras 59-62. The amended consolidated indictment refers to Article 3 (1) (a) of the Statute and Articles 188-189, 200-201, 212-213, 547 and 549 (1) and (7) of the Lebanese Criminal Code.

³² Amended consolidated indictment, paras 60 (f)-(g), 62 (e)-(j).

³³ Amended consolidated indictment, paras 63-64. The amended consolidated indictment refers to Article 3 (1) (a) of the Statute, Articles 188, 219 (4) and (5) and 314 of the Lebanese Criminal Code and Article 6 of the Lebanese Law of 1958.

³⁴ Amended consolidated indictment, para. 64 (f).

³⁵ Amended consolidated indictment, paras 65-66. The amended consolidated indictment refers to Article 3 (1) (a) of the Statute and Articles 188, 219 (4) and (5), 547 and 549 (1) and (7) of the Lebanese Criminal Code.

³⁶ Amended consolidated indictment, paras 67-70. The amended consolidated indictment refers to Article 3 (1) (a) of the Statute and Articles 188-189, 200-201, 219 (4) and (5), 547 and 549 (1) and (7) of the Lebanese Criminal Code.

³⁷ Amended consolidated indictment, para. 49.

³⁸ Security Council Resolution 1664; Security Council Resolution 1757; Articles 1 and 3 of the Statute.

65. In conclusion, the charges in this case—as taken from the amended consolidated indictment—are:

SALIM JAMIL AYYASH, HUSSEIN HASSAN ONEISSI, ASSAD HASSAN SABRA, and HASSAN HABIB MERHI *each and together, with:*

Count 1 - **Conspiracy aimed at committing a Terrorist Act;** and

SALIM JAMIL AYYASH *with:*

Count 2 - **Committing a Terrorist Act by means of an explosive device;**

Count 3 - **Intentional Homicide** (of Rafik HARIRI) **with premeditation by using explosive materials;**

Count 4 - **Intentional Homicide** (of 21 persons in addition to the Intentional Homicide of Rafik HARIRI) **with premeditation by using explosive materials;**

Count 5 - **Attempted Intentional Homicide** (of 226 persons in addition to the Intentional Homicide of Rafik HARIRI) **with premeditation by using explosive materials;** and

HUSSEIN HASSAN ONEISSI, ASSAD HASSAN SABRA, and HASSAN HABIB MERHI *each and together, with:*

Count 6 - **Being an Accomplice to the felony of Committing a Terrorist Act by means of an explosive device;**

Count 7 - **Being an Accomplice to the felony of Intentional Homicide** (of Rafik HARIRI) **with premeditation by using explosive materials;**

Count 8 - **Being an Accomplice to the felony of Intentional Homicide** (of 21 persons in addition to the Intentional Homicide of Rafik HARIRI) **with premeditation by using explosive materials;** and

Count 9 - **Being an Accomplice to the felony of Attempted Intentional Homicide** (of 226 persons in addition to the Intentional Homicide of Rafik HARIRI) **with premeditation by using explosive materials.**³⁹

³⁹ Amended consolidated indictment, para. 1.

B. Issues arising from the Prosecution's pleadings

1. Introduction

66. In their final trial briefs and closing submissions, Defence counsel challenge how the Prosecution pleaded its case, arguing serious deficiencies in the notice provided to them. Objections are made to: the pleaded dates of the conspiracy; the non-identification of unnamed members of the conspiracy; the role of Hezbollah; the identity of 'Mohammed'; and various supposedly new allegations about the false claim of responsibility and what is termed the 'East of Airport' activity.

67. In six interlocutory decisions in the pre-trial phase, the Trial Chamber dismissed all Defence challenges to the form of the indictment.⁴⁰ Further, in view of the ultimate result, namely the acquittal of three Accused, Mr Merhi, Mr Oneissi and Mr Sabra—based on the absence of evidence regarding their role in the claim of responsibility—and the Prosecution's abandonment of allegations relating to the so-called 'East of Airport' activity, nothing turns on the Prosecution's alleged notice disclosure violations.

68. However, and although it is not obliged to reconsider its previous decisions,⁴¹ having now heard the evidence supporting the pleaded material facts—namely, those underlying the charges and those facts that are indispensable to a conviction—and as a matter of fairness to the Accused, the Trial Chamber will revisit certain matters.

2. Legal standard—notice

69. Article 16 of the Statute outlines the rights of an accused to a fair trial. Mirroring international human rights instruments,⁴² under Article 16 (4) (a) of the Statute, an accused has the

⁴⁰ First decision on the form of the amended indictment; Second decision on the form of the amended indictment; Decision dismissing certification to appeal the second decision on the form of the amended indictment; Decision on the form of the indictment against Mr Merhi; Decision dismissing a motion alleging defects in the form of the consolidated indictment; Reconsideration decision on defects in the form of the consolidated indictment; Decision dismissing certification to appeal reconsideration decision on defects in the form of the consolidated indictment. *See also* Interim decision on the form of the indictment; Decision on the appeal of the first decision on the form of the amended indictment.

⁴¹ *Renzaho* Trial Judgment, para. 29. A previously litigated alleged deficiency in the indictment was treated as a covert argument for reconsideration. The Trial Chamber 'declined to assess issues that were either adjudicated or should properly have been raised during the pre-trial phase of the proceedings.'

⁴² *See for example*, Article 6 (3) (a) of the European Convention on Human Rights, and Article 14 (3) (a) of the ICCPR (defining the right to a fair trial as the right 'to be informed promptly, and in detail in a language which he understands

right to be ‘informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her.’ Rule 68 (D) elaborates, providing that an indictment must contain ‘the name and particulars of the suspect and a concise statement of the facts of the case and of the crime with which the suspect is charged.’ These rights also appear in the Statutes and Rules of the other international criminal courts and tribunals.⁴³

70. Rule 3 (A), as noted below, specifies that a chamber must apply among other sources ‘international standards on human rights’ and ‘the general principles of international criminal law and procedure’ in interpreting the Rules, in a hierarchical manner.⁴⁴ The case law of the *ad hoc* tribunals assists in interpreting the Statute’s international human rights standards, and the Trial Chamber has previously adopted these principles.⁴⁵

71. To recap, the Prosecution must plead what are often described as the ‘material facts’ underpinning the charges with sufficient detail to inform an accused person clearly of the nature and cause of the charges to allow the preparation of a defence.⁴⁶ When the Prosecution has specific information pertaining to the material facts of its case, it should expressly provide these facts in

of the nature and cause of the accusation against him’). See also Article 8 (2) (b) of the American Convention on Human Rights (defining the right to a fair trial as the right to ‘prior notification in detail to the accused of the charges against him’). The case law of the ECtHR holds that a fair trial requires that indictments include the charges and form of liability alleged. See for example, *Penev* Judgment, para. 44; *Varela* Judgment, para. 42.

⁴³ These provisions are also reflected in identical form in Articles 21 (4), 20 (4) and 17 (4) (a) (respectively) of the Statutes of the ICTY, ICTR and SCSL. Rule 47 (C) of the Rules of Procedure and Evidence of both the ICTY and ICTR is also identical to the Special Tribunal’s Rule 68 (D). The SCSL’s Rule 47 (C) is in substance the same, providing that ‘[t]he indictment shall contain, and be sufficient if it contains, the name and particulars of the suspect, a statement of each specific offence of which the named suspect is charged and a short description of the particulars of the offence. It shall be accompanied by a Prosecutor’s case summary briefly setting out the allegations he proposes to prove in making his case’. Article 58 (2) of the Rome Statute contains a similar formulation, requiring that the application of the Prosecution for the issuance of a warrant of arrest includes ‘a concise statement of the facts which are alleged to constitute those crimes’.

⁴⁴ See also para. 5929. Rule 3 (A) refers ‘in order of precedence’, to the codified principles of interpretation set out in articles 31-33 of the 1969 Vienna Convention on the Law of Treaties, ‘international standards on human rights’, ‘the general principles of international criminal law and procedure’ and ‘as appropriate’ the Lebanese Code of Criminal Procedure.

⁴⁵ First decision on the form of the amended indictment, para. 14; Second decision on the form of the amended indictment, para. 17; Decision on the form of the indictment against Mr Merhi, paras 11-12.

⁴⁶ *Furundžija* Appeal Judgment, paras 61, 147; *Kupreškić and others* Appeal Judgment, para. 88; *Blaškić* Appeal Judgment, para. 209; *Stakić* Appeal Judgment, para. 116; *Simić* Appeal Judgment, para. 20; *Nahimana and others* Appeal Judgment, para. 322.

the indictment.⁴⁷ The materiality of a particular fact cannot be decided in the abstract, but depends on the nature of the Prosecution's case.⁴⁸

72. The Trial Chamber—in applying the principles of international criminal law procedural law—has ruled that the case against an accused person is contained in the combination of the indictment, the pre-trial brief, opening statements, disclosed evidence and any other relevant document providing notice of the case.⁴⁹

73. The Prosecution is not obliged to plead the evidence to be tendered in proof of the pleaded material facts.⁵⁰ 'Facts'—as the factual allegations supporting each legal element of the crime—are distinct from evidence and 'background and other information' that 'does not support the legal elements of the crime charged'.⁵¹ Significantly, the Prosecution cannot omit material aspects of its main allegations in an indictment, aiming—depending on how the evidence unfolds—to mould the case against the accused during the trial.⁵² Failing to include either material facts or sufficient detail of them in an indictment constitutes a material defect in the principal accusatory instrument.⁵³

74. In relatively uncomplicated cases, these defects might be cured, by the Prosecution giving the Defence 'timely, clear and consistent information concerning the factual basis of the charge'.⁵⁴

3. The dates of the alleged conspiracy

(a) The Prosecution's case and pre-trial litigation

75. In the initial indictment, dated 10 June 2011, the Prosecutor pleaded that the conspiracy was formed sometime between 'at least 11 November 2004 and 16 January 2005'.⁵⁵

⁴⁷ *Karemera and Ngirumpatse* Appeal Judgment, para. 370.

⁴⁸ *Kupreškić and others* Appeal Judgement, para. 89; *Blaškić* Appeal Judgement, para. 210.

⁴⁹ T. 7 February 2017, p. 3. *See also* First decision on the form of the amended indictment, para. 64; Second decision on the form of the amended indictment, para. 50; Decision dismissing certification to appeal reconsideration decision on defects in the form of the consolidated indictment, para. 6; T. 12 January 2017, p. 24. The Trial Chamber rejects the Ayyash Defence's assertion, in its final trial brief at para. 20, that a stricter interpretation of notice is required in this case.

⁵⁰ *Ntagerura and others* Appeal Judgment, para. 21; *Nahimana and others* Appeal Judgment, para. 322.

⁵¹ *Lubanga* Appeals Chamber decision on notice for changes to legal characterisation of facts, para. 90, fn. 163.

⁵² *Kupreškić and others* Appeal Judgement, para. 92.

⁵³ *Muhimana* Trial Judgment, para. 452; *Nahimana and others* Appeal Judgment, paras 322-324.

⁵⁴ *Muhimana* Trial Judgment, para. 452.

⁵⁵ Indictment of 10 June 2011, paras 58 (a), 68 (a). On 11 November 2004, two unidentified conspirators, using the Blue mobiles, allegedly carried out the first detected surveillance of Mr Hariri.

Mr Badreddine, Mr Ayyash and other members of the assassination team were ‘early members’ of the conspiracy,⁵⁶ while Mr Oneissi and Mr Sabra joined the conspiracy ‘at the latest’ by between 22 December 2004 and 16 January 2005.⁵⁷

76. The Badreddine, Oneissi and Sabra Defence contested these pleadings in their initial challenge to the form of the indictment.⁵⁸ The Trial Chamber dismissed the challenge, concluding that ‘pleading that an act relating to a conspiracy occurred over a three-month period—in the totality of the circumstances alleged here—is not disproportionate or overly broad’.⁵⁹ It held further that ‘circumstances in which the ... Accused are alleged to have come to participate in the alleged conspiracy are a matter for evidence at trial and need not be pleaded as material facts in an indictment (but should be notified to the Defence in a timely manner before trial).’⁶⁰

77. In their second such challenge to the form of the indictment, Defence counsel used the same arguments in relation to the dates of the conspiracy.⁶¹ The Trial Chamber dismissed the arguments on essentially identical grounds.⁶²

78. In confirming the indictment against Mr Merhi, the Special Tribunal’s Pre-Trial Judge had considered the question of the conspiracy’s timeline.⁶³ He concluded that a *prima facie* case existed because of contact between the Accused ‘for a significant period of time prior to the attack of 14 February 2005’. Additionally, how the Accused acted and interacted suggested that ‘they acted within the framework of a prior agreement aimed at committing the terrorist act of 14 February 2005.’⁶⁴

⁵⁶ Indictment of 10 June 2011, para. 58 (b).

⁵⁷ Indictment of 10 June 2011, para. 58 (c).

⁵⁸ First decision on the form of the amended indictment, paras 32-34.

⁵⁹ First decision on the form of the amended indictment, para. 38.

⁶⁰ First decision on the form of the amended indictment, para. 38.

⁶¹ Second decision on the form of the amended indictment, paras 35-36.

⁶² Second decision on the form of the amended indictment, paras 38-39.

⁶³ The Pre-Trial Judge also considered the Prosecutor’s shift in date choices. He thought that ‘although the materials filed in support of the Indictment of 5 June 2013 can be used to justify *prima facie* the date of the conspiracy aimed at committing a terrorist act decided by the Prosecutor, namely 11 November 2004, they would likewise permit an earlier date to be chosen.’ However, he concluded that ‘as the responsibility for prosecutions lies with the Prosecutor, the Pre-Trial Judge considers that it is not for him to oblige the Prosecutor to reclassify the facts by changing the date he has chosen to an earlier one, insofar as the position adopted by the Prosecutor is not likely to cause prejudice to the suspect,’ Pre-Trial Judge decision on the indictment of 5 June 2013, para. 76.

⁶⁴ Pre-Trial Judge decision on the indictment of 5 June 2013, para. 74 (i), (iii).

79. The Merhi Defence then challenged this indictment, asking the Trial Chamber to specify the date at which he joined the alleged conspiracy.⁶⁵ The Trial Chamber dismissed these arguments on the same basis as the other Defence challenges.⁶⁶

80. On 11 February 2014, and upon the Prosecutor's unopposed application, the Trial Chamber joined Mr Merhi's case to the indictment against the other four Accused.⁶⁷ The consolidated indictment alleged that Mr Ayyash, 'as the assassination team coordinator', Mr Merhi, 'as the coordinator of the false claim of responsibility' and Mr Badreddine, as monitor/coordinator, were 'early members' of the conspiracy.⁶⁸ Mr Oneissi and Mr Sabra joined the conspiracy between Wednesday 22 December 2004 and the morning of Monday 14 February 2005, before the attack.⁶⁹

81. The Merhi Defence then further contested the form of the consolidated indictment, including arguing that 'more specifics are required as to the date and circumstances of the participation in the alleged conspiracy'.⁷⁰ The Trial Chamber dismissed these challenges, as the consolidated indictment was virtually identical to the initial indictment against Mr Merhi.⁷¹

82. The Prosecution's updated pre-trial brief repeated the dates as set out in the consolidated indictment⁷² and clarified that the 'exact dates on which the Accused agreed to or joined the conspiracy are not certain'.⁷³

83. In the amended consolidated indictment, under the heading, 'The Conspiracy', the Prosecutor alleges that Mr Ayyash and Mr Merhi, with Mr Badreddine, agreed to commit a terrorist act between 11 November 2004 and the morning of 14 February 2005.⁷⁴ Mr Oneissi and Mr Sabra, it is alleged, joined the conspiracy between 22 December 2004 and the morning of 14 February 2005.⁷⁵

⁶⁵ Decision on the form of the indictment against Mr Merhi, para. 24.

⁶⁶ Decision on the form of the indictment against Mr Merhi, paras 27-28.

⁶⁷ Decision on joinder; Trial management decision.

⁶⁸ Consolidated indictment, para. 48 (b).

⁶⁹ Consolidated indictment, para. 48 (c).

⁷⁰ Decision dismissing a motion alleging defects in the form of the consolidated indictment, para. 14 (ii).

⁷¹ Decision dismissing a motion alleging defects in the form of the consolidated indictment, para. 15.

⁷² Prosecution's updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), para. 61.

⁷³ Prosecution's updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), para. 60.

⁷⁴ Amended consolidated indictment, para. 48 (a).

⁷⁵ Amended consolidated indictment, para. 48 (c).

84. The Prosecution's final trial brief provides no explicit dates for the conspiracy. It contains a 'chronology', which sets out a number of 'Phases', beginning in August 2004.⁷⁶

(b) Submissions

85. The Merhi Defence argues that while the amended consolidated indictment contends that the conspiracy came into place between Thursday 11 November 2004 and Monday 14 February 2005, in its final trial brief, the Prosecution 'arbitrarily chose a number of dates' and did not clearly state its position as to when the conspirators' wills merged.⁷⁷ The Prosecution's final trial brief suggests that the conspiracy began on 25 August 2004 and no longer mentions the date of 11 November 2004.⁷⁸

86. The Sabra Defence also submits that the Prosecution failed to adequately identify the date when the conspiracy started, or when the Accused joined.⁷⁹

(c) Findings

87. The Prosecution has consistently alleged that the conspiracy came into existence over a particular time period, but has never specified a precise date when it crystallised. Nor does it specify an exact date when each Accused joined the conspiracy. Indeed, in its pre-trial brief, the Prosecution stated that it cannot do so.

88. Two questions arise. The first is whether the Prosecution, in pleading that the alleged conspiracy was formed within a specified period of time, adequately complied with its *legal* pleading obligations. The second is whether—if it is permissible to plead a date range—the dates were clearly and adequately pleaded as a matter of *fact*.

⁷⁶ Prosecution final trial brief, pp 198-334.

⁷⁷ Merhi Defence final trial brief, para. 405. In closing submissions, the Merhi Defence argued that the 'date of the agreement is the date of the commission of the crime, and the Prosecution must prove when the crime took place because it is an important material fact'. The Presiding Judge asked whether the case law went as far as establishing 'a positive obligation to specify with precision the date when an -- that is, a very small date range, or maybe a day, when a conspiracy crystallized as opposed to a date range?' The Merhi Defence agreed that this was its submission, Merhi Defence closing submissions, T. 18 September 2018, p. 95, T. 19 September 2018, pp 16-18, referring to *Nyiramasuhuko and others* Appeal Judgment, para. 473.

⁷⁸ Merhi Defence final trial brief, paras 405-406, 409.

⁷⁹ Sabra Defence final trial brief, paras 437-439.

89. The Trial Chamber has previously accepted and applied international criminal law case law on the legal issue. The information pleaded as material facts must, so far as is possible, include the identity of the victim, the places and the approximate date of those acts and the means by which the offence was committed.⁸⁰ The date of a material incident is considered to be a material fact when it is necessary to inform an accused clearly of the charges, such as to allow them to prepare a defence.⁸¹

90. The precision needed in pleading material dates varies from case to case.⁸² Where the material element of the crime is or should be identifiable to a single day, as with murder for example, that date should generally be pleaded. One ICTR Trial Chamber held that the ‘Prosecution’s obligation to provide particulars in the indictment is at its highest when it seeks to prove that the accused killed or harmed a specific individual.’⁸³

91. The ICTY and ICTR have held that where it is not possible to specify a specific date, a date range may be pleaded,⁸⁴ and ‘a broad date range, in and of itself, does not invalidate a paragraph of an indictment.’⁸⁵ However, circumstances in which a broad pleading is permitted in respect of single-incident crimes are restricted to those where ‘the sheer scale of the alleged crimes makes it impracticable to require a high degree of specificity in such matters as ... the dates for the commission of the crimes.’⁸⁶ Situations include ‘the killing of hundreds of men’,⁸⁷ ‘frequent attacks in the same area’⁸⁸ and recurring abductions.⁸⁹ Further, where pleading a date range is permitted, the variation has been confined to no more than a few days, or weeks, rather than months.⁹⁰

⁸⁰ *Ndindabahizi* Appeal Judgment, para. 16.

⁸¹ *Ndindabahizi* Appeal Judgment, para. 19.

⁸² *Ndindabahizi* Appeal Judgment, para. 20.

⁸³ *Nyiramasuhuko and others* Trial Judgment, para. 100.

⁸⁴ *Brđanin and Talić* decision on form of indictment, para. 22.

⁸⁵ *Rukundo* Appeal Judgment, para. 163; *Bagosora and Nsengiyumva* Appeal Judgment, para. 150.

⁸⁶ *Bagosora and Nsengiyumva* Appeal Judgment, para. 150.

⁸⁷ *Kupreškić and others* Appeal Judgment, para. 90.

⁸⁸ *Ntakirutimana and Ntakirutimana* Trial Judgment, para. 57.

⁸⁹ *Rukundo* Appeal Judgment, paras 162-163.

⁹⁰ *Ndindabahizi* Trial Judgment, para. 34 (a date range of several days was not unreasonable); *Muvunyi* Appeal Judgment, paras 29-30 (no significant variation, when the indictment specified that an event had occurred in early May 1994, and the Prosecutor later argued that the meeting in question had in fact occurred in mid to late May 1994); *Šainović and others* Appeal Judgment, para. 225 (reference to an act beginning on or about 25 March 1999 included acts which occurred around 20 or 21 March 1999); *Krnojelac* decision on form of indictment, para. 42 (a period of April 1992 to August 1993 would *not* be a reasonable period).

92. The pleading obligations for the formation of a conspiracy are, however, not analogous to those relating to crimes occurring on a single day. They are more analogous to the formation of criminal agreements, like joint criminal enterprises. The material element of a conspiracy is not its outcome—here, Mr Hariri’s assassination—but rather the formation of the agreement itself.⁹¹

93. International criminal law case law illustrates that agreements to commit crimes are frequently, indeed most commonly, formed over time. By analogy to a conspiracy, in pleading a joint criminal enterprise, the Prosecutor must specify ‘the time at which *or the period over which* the enterprise is said to have existed’ (emphasis added).⁹² For a conspiracy to commit genocide, “‘a concerted agreement to commit genocide may be inferred from the conduct of the conspirators’” and can be based on circumstantial evidence.’⁹³ The dates during which this agreement came into existence must, however, be clearly identified. Similarly, it is not necessary to identify specific dates—as opposed to date ranges—in which each Accused joined a conspiracy. The ICTY Appeals Chamber held that it is ‘not necessary to establish that joint criminal enterprise members acted in unison in order to reach a conclusion on the existence of the common purpose.’⁹⁴ As the Trial Chamber held previously, the circumstances during which the Accused came to participate in the conspiracy were to be a matter for evidence at trial.⁹⁵

94. The Trial Chamber—consistent with these established international legal principles—finds that it is legally permissible to plead the formation of the conspiracy within a specified date range.

95. As to whether the Prosecution pleaded this *particular* date range with adequate clarity, the amended consolidated indictment clearly states—as did the Prosecution’s pre-trial brief—that the conspiracy began no earlier than 11 November 2004 and no later than 14 February 2005. The Prosecution’s final trial brief, by contrast, does not explicitly set out the dates of the conspiracy. The section entitled ‘The Evolution of the Conspiracy in Context’ contains a chronology of

⁹¹ *Nyiramasuhuko and others* Appeal Judgment, para. 473.

⁹² *Krnojelac* decision on form of second indictment, para. 41; *Simić* Appeal Judgment, para. 22.

⁹³ *Popović and others* Appeal Judgment, para. 544. *See also Nahimana and others* Appeal Judgment, para. 896 (‘the *actus reus* of the crime of conspiracy to commit genocide is a concerted agreement to act for the purpose of committing genocide. While such *actus reus* can be proved by evidence of meetings to plan genocide, it can also be inferred from other evidence. In particular, a concerted agreement to commit genocide may be inferred from the conduct of the conspirators’). *Compare Mpambara* Trial Judgment, para. 13 (distinguishing joint criminal enterprise because ‘unlike conspiracy, no specific agreement to commit the crime need be shown: the common purpose may arise spontaneously and informally’).

⁹⁴ *Dorđević* Appeal Judgment, para. 138.

⁹⁵ Decision on the form of the indictment against Mr Merhi, para. 28.

‘phases’ of the conspiracy, which begins on 25 August 2004. The date of 11 November also appears, as the Defence submissions suggest, to have lost material significance.⁹⁶

96. In the event of any inconsistency or contradiction between the indictment and or the pre-trial brief and the final trial brief, the indictment—as the primary accusatory instrument⁹⁷—prevails. The amended consolidated indictment pleaded the dates during which the conspiracy formed, namely, between 11 November 2004 and 14 February 2005. The Defence of each Accused therefore had the notice required to allow them to prepare a defence at trial against the charges in the amended consolidated indictment. Whether the Prosecution proved its case is a different matter, considered below.

4. Unidentified members of the alleged conspiracy

(a) The Prosecution’s case and pre-trial litigation

97. In each successive indictment, the Prosecutor alleged that a conspiracy came into existence ‘with others as yet unidentified’.⁹⁸ In August 2013, the Sabra Defence claimed that the indictment was defective in not explicitly naming other alleged co-conspirators.⁹⁹ The Trial Chamber dismissed these arguments.¹⁰⁰

98. In its closing submissions, the Prosecution clarified that the conspiracy alleged in the indictment comprises the four Accused, Mr Badreddine and the remaining members of the ‘assassination unit’, namely ‘Subjects’ 5 to 9 or ‘S’ 5 to 9.¹⁰¹

(b) Submissions

99. In its final trial brief, the Sabra Defence argues that the Prosecution was obliged to name, even if not to indict, all known co-conspirators.¹⁰² The Prosecution failed in this regard by naming

⁹⁶ Prosecution final trial brief, paras 472, 679, 681, 908, fn. 1375.

⁹⁷ *Blaškić* Appeal Judgment, para. 220.

⁹⁸ Indictment of 10 June 2011, paras 58, 68 (b); Indictment of 6 February 2013, paras 48 (a), 68 (b); Amended consolidated indictment, para. 48.

⁹⁹ Second decision on the form of the amended indictment, para. 41.

¹⁰⁰ Second decision on the form of the amended indictment, paras 42-43.

¹⁰¹ Prosecution closing submissions, T. 14 September 2018, p. 44. *See also* Amended consolidated indictment, paras 15 (a), 39, 48, 54.

¹⁰² Sabra Defence final trial brief, paras 431, 435-436.

only five co-conspirators, when there were at least 16 mobile users in the network, as alleged in paragraph 18 of the amended consolidated indictment.¹⁰³

(c) Findings

100. The Prosecutor in the amended consolidated indictment, identified the known members of the conspiracy as the four Accused, Mr Badreddine ‘and others as yet unidentified’, including Subjects 5 to 9.¹⁰⁴ As a general principle of pleading in international criminal law, a prosecutor is required to plead the identity of known co-conspirators.¹⁰⁵ However, a prosecutor has ‘no requirement concerning the identification of all individuals’.¹⁰⁶ Nor is an international prosecutor obliged to indict all known co-conspirators.¹⁰⁷ The Trial Chamber therefore, in line with its earlier decisions, still considers that the Prosecution met its pleading obligations and that no notice issue has arisen.

5. Hezbollah and the political context

(a) The Prosecution’s case and pre-trial litigation and submissions

101. The initial confirmed indictment, dated 10 June 2011, pleaded under ‘The Conspiracy’ that the ‘four Accused are supporters of Hezbollah, which is a political and military organisation in Lebanon’.¹⁰⁸ It alleged that Hezbollah’s military wing had the capability to train people to carry out a terrorist attack;¹⁰⁹ Mr Ayyash and Mr Badreddine were related to a senior deceased Hezbollah military commander by marriage;¹¹⁰ and, based on their experience, training and affiliation with Hezbollah, Mr Ayyash and Mr Badreddine had the capability to carry out the attack.¹¹¹

¹⁰³ Sabra Defence final trial brief, para. 432. Its further submissions about specific co-conspirators are set out at para. 6432.

¹⁰⁴ Amended consolidated indictment, paras 15, 48.

¹⁰⁵ *Nahimana* decision ordering the amending of the indictment, para. 19; *Bikindi* decision on temporal jurisdiction and on the form of the indictment, para. 38 (i).

¹⁰⁶ First interlocutory decision on applicable law, para. 195; Second decision on the form of the amended indictment, para. 42.

¹⁰⁷ See for example, Article 11 of the Statute; Article 18 of the ICTY Statute; *Delalić and others (Čelebići)* Appeal Judgment, paras 601-606, 611.

¹⁰⁸ Indictment of 10 June 2011, para. 59.

¹⁰⁹ Indictment of 10 June 2011, para. 59 (a).

¹¹⁰ Indictment of 10 June 2011, para. 59 (a)-(b). A separate diagram in the indictment (p. 14) alleged that Mr Badreddine had control of the Green Network of mobiles.

¹¹¹ Indictment of 10 June 2011, para. 59 (c).

102. The Prosecutor's amended indictment, filed on 6 February 2013, retained only the bare pleading that the four Accused were 'supporters of' Hezbollah.¹¹²

103. In May 2013, the Oneissi and Sabra Defence challenged the amended indictment, seeking clarity regarding this revised pleading.¹¹³ The Trial Chamber held that the matter 'should be properly explored between the Parties before the Trial Chamber's involvement is sought.'¹¹⁴

104. The Prosecution's pre-trial brief then still contained the description of each Accused as 'supporters' of Hezbollah¹¹⁵ and argued that mobiles associated with Mr Badreddine had contacts with members of Hezbollah.¹¹⁶

105. In early November 2014, the Prosecution informed the Trial Chamber that it intended to call Mr Marwan Hamade, a Lebanese politician, cabinet minister and close associate of Mr Hariri, as a witness, and that all Defence counsel were objecting to at least portions of the expected testimony.¹¹⁷ The Defence argued that the evidence was not relevant to an allegation pleaded in the indictment.¹¹⁸

106. On 14 November 2014, the Trial Chamber allowed the Prosecution to call Mr Hamade.¹¹⁹ In a decision delivered in court on 17 November 2014, the Trial Chamber held that Mr Hamade's

¹¹² Indictment of 6 February 2013, para. 43.

¹¹³ First decision on the form of the amended indictment, paras 60-61.

¹¹⁴ First decision on the form of the amended indictment, para. 62. The Trial Chamber also dismissed the Sabra Defence's claim that the amended indictment of 6 February 2013 contained unclear submissions about the leadership of Hezbollah, as the amended indictment did not include any references to the Hezbollah leader.

¹¹⁵ Prosecution's updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), paras 10, 16-18.

¹¹⁶ Prosecution's updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), paras 40, 42, 46 (x).

¹¹⁷ T. 13 November 2014, p. 33, T. 14 November 2014, p. 12.

¹¹⁸ T. 13 November 2014, pp 63-102, T. 14 November 2014, pp 3, 6-12, 14-36.

¹¹⁹ Decision on Mr Hamade's testimony, p. 50; Decision denying request to exclude evidence of Witness PRH038. The themes of evidence as summarised by the Prosecution were: (a) Mr Hariri's deteriorating relationship with Syria, as a consequence of his goal to strengthen the Lebanese autonomy; (b) Syria's corresponding increasing resolve to exert control beyond mere influence over Lebanese internal affairs; (c) growing concerns voiced by the international community regarding external pressures bearing upon the political affairs of Lebanon; (d) the evolution of an effective opposition movement in September 2004, and thereafter, in Lebanon of which Mr Hariri was first a silent and then a more public participant; and (e) Mr Hariri's status as an influential statesman in the Gulf region and beyond. This is detailed below in chapter IV 'Historical and political background to the attack'.

evidence went to support material facts pleaded in the indictment—the surveillance of Mr Hariri—as well as political context.¹²⁰ The Trial Chamber denied certification for appeal.¹²¹

107. Following Mr Badreddine’s reported death in 2016, and on the Trial Chamber’s order, the Prosecutor filed the operative and amended consolidated indictment. The Merhi, Oneissi and Sabra Defence jointly objected to the pleadings and evidence related to Mr Badreddine and again sought amendments relating to Hezbollah.¹²² The Defence requested that the Prosecution ‘state in clear terms its case concerning the motive and capability of Hezbollah in relation to the allegations in the amended consolidated indictment.’¹²³ Defence counsel also argued that the Prosecution impermissibly sought to keep Mr Badreddine’s name in the new indictment so as to associate the Accused with Hezbollah.¹²⁴

108. In approving the now operative indictment—the amended consolidated indictment—the Trial Chamber found that had the Prosecution wished to plead new material facts relating to the role of Hezbollah, it would have sought an amendment to the indictment. Nonetheless, it ordered the Prosecution to file a summary statement of the evidence it wished to lead in relation to the remaining allegation that the Accused were supporters of Hezbollah. The Trial Chamber, at the time, described this allegation as a ‘pleaded material fact’. The order to file a summary statement was not a concession that there was a defect in the Prosecution’s submission. The indictment was not defective. However, in order to further assist the Defence in understanding the Prosecution’s case on that specific issue, the Trial Chamber enjoined the Prosecution to make these clarifications on the record.¹²⁵

109. The Prosecution filed a statement outlining ‘the main categories of evidence’ that relate ‘to the allegation that the Accused are supporters of Hezbollah’.¹²⁶ These were that, first the Green

¹²⁰ Decision denying request to exclude evidence of Witness PRH038, pp 10-11.

¹²¹ Decision on scope of Mr Hamade’s evidence. In denying certification for appeal, the Trial Chamber held, at para. 19, that the question of whether Mr Hamade’s evidence went to a material fact was not a question that could be certified for interlocutory appeal.

¹²² F2668, Response to the Prosecution Submission of the Consolidated Amended Indictment pursuant to the Trial Chamber’s Order of 11 July 2016, 26 July 2016.

¹²³ Decision amending the consolidated indictment, para. 6.

¹²⁴ Decision amending the consolidated indictment, para. 21.

¹²⁵ Decision amending the consolidated indictment, para. 58.

¹²⁶ F2735, Public Redacted Version of Prosecution Summary Statement of Evidence in relation to Paragraph 49 of the Amended Consolidated Indictment, 23 September 2016, paras 2-20.

Network was a Hezbollah network;¹²⁷ second, the Accused were connected through Hezbollah;¹²⁸ third, Mr Badreddine was a senior Hezbollah commander;¹²⁹ and fourth, telephone numbers of Hezbollah officials were connected with mobiles associated with the Accused.¹³⁰

110. In its final trial brief and closing submissions, the Prosecution argues that the associations with Hezbollah established a ‘common bond’ between the Accused and Mr Badreddine, and in Mr Badreddine’s case, he had ‘extensive experience as a military operative at the highest levels in Hezbollah’. Further, the conspiracy ‘had a political purpose’,¹³¹ and the preparation and implementation of the conspiracy was responsive to Lebanese-Syrian tensions.¹³² Additionally, Hezbollah controlled the Green mobile network, which had Mr Badreddine at its apex;¹³³ and, finally, Mr Rustom Ghazaleh, then head of Syrian military intelligence in Lebanon, and Mr Wafik Safa, the head of the central unit for liaison and coordination in Hezbollah, either met or communicated by telephone after key meetings with Mr Hariri.¹³⁴

111. It also submits that surveillance of Mr Hariri when he met Hezbollah’s Secretary-General, Mr Hassan Nasrallah, at a covert Hezbollah location in Haret Hreik, Beirut, on the night of 21 December 2004 ‘indicates’ that Mr Ayyash and Mr Badreddine were ‘tipped-off by Hezbollah Inner Circles’.¹³⁵ In a written question from the Trial Chamber, the Prosecution was asked whether it was asserting that the Syrian President, Mr Bashar Al-Assad, Mr Ghazaleh and Mr Safa were co-conspirators.¹³⁶

¹²⁷ F2735, Public Redacted Version of Prosecution Summary Statement of Evidence in relation to Paragraph 49 of the Amended Consolidated Indictment, 23 September 2016, paras 3-6.

¹²⁸ F2735, Public Redacted Version of Prosecution Summary Statement of Evidence in relation to Paragraph 49 of the Amended Consolidated Indictment, 23 September 2016, paras 7-8, 13-18.

¹²⁹ F2735, Public Redacted Version of Prosecution Summary Statement of Evidence in relation to Paragraph 49 of the Amended Consolidated Indictment, 23 September 2016, paras 9-11.

¹³⁰ F2735, Public Redacted Version of Prosecution Summary Statement of Evidence in relation to Paragraph 49 of the Amended Consolidated Indictment, 23 September 2016, paras 19-20.

¹³¹ Prosecution closing submissions, T. 11 September 2018, p. 35.

¹³² Prosecution final trial brief, paras 24-26, 627-648, 650, 665, 671, 937; Prosecution closing submissions, T. 11 September 2018, pp 27, 35-37.

¹³³ Prosecution final trial brief, paras 6, 22-23, 325-326, 339, 503, 610; Prosecution closing submissions, T. 11 September 2018, p. 24, T. 14 September 2018, pp 5-7.

¹³⁴ Prosecution final trial brief, paras 656-660, 688-693, 696, 697 (3), 705-711, 737-746.

¹³⁵ Prosecution final trial brief, paras 705-711, under the heading, ‘Advance Surveillance of HARIRI’s Visit to NASRALLAH (b) in Haret Hreik’.

¹³⁶ Questions for closing submissions, para. 11 (‘Is the Prosecution now alleging, as stated at paragraph 434 of the Sabra brief, that the Syrian President Mr Bashar Al-Assad, the then Syrian Military Intelligence Chief in Lebanon, Mr Rustom Ghazaleh, and “the head of the central unit for liaison and coordination in Hezbollah”, Mr Wafik Safa, were co-conspirators in the plot to murder Mr Hariri?’ (footnote omitted)).

112. In responding to that and three other Trial Chamber questions together, the Prosecution submitted:

There are a small number of other figures, organizations, or states that feature in the Prosecution narrative, and some of the Defence teams seek to characterize as co-conspirators complicit in the crimes on the Prosecution case. I can make it clear that whilst a number of findings are available to the Trial Chamber at its discretion, the Prosecution does not seek, nor does it need to seek, findings against individuals who do not feature in the indictment. It does not seek findings against states or organizations, nor does the Trial Chamber need to do so to determine guilt.¹³⁷

113. In its final trial brief the Prosecution submitted that although it was ‘not necessary for a conviction, Prosecution evidence demonstrates the links between the Accused and Hezbollah and explains the political context in which the Attack occurred.’¹³⁸ The Prosecution also argues that while it is ‘certainly not a legal requirement to prove motive and it’s not essential to the proof of the crimes, it is this context that provides a compelling explanation for the evolution of the conspiracy’.¹³⁹

(b) Defence submissions

114. The Ayyash Defence submits that the Prosecution changed its case in its final trial brief.¹⁴⁰ In its final trial brief, the Prosecution newly alleges that: Hezbollah gave the Accused resources for the attack;¹⁴¹ the Green network was a Hezbollah network;¹⁴² Mr Ayyash knew about the confidential meeting on 21 December 2004;¹⁴³ and Hezbollah had a ‘non-personal’ motive for killing Mr Hariri.¹⁴⁴ The Prosecution also impermissibly used the evidence of a Prosecution

¹³⁷ Prosecution closing submissions, T. 11 September 2018, pp 26-27.

¹³⁸ Prosecution final trial brief, para. 21.

¹³⁹ Prosecution closing submissions, T. 11 September 2018, pp 27-28, 37.

¹⁴⁰ Ayyash Defence final trial brief, para. 64; Ayyash Defence closing submissions, T. 17 September 2018, pp 14, 19-21, 23.

¹⁴¹ Ayyash Defence final trial brief, para. 65; Ayyash Defence closing submissions, T. 17 September 2018, pp 19, 20-21, 23.

¹⁴² Ayyash Defence final trial brief, para. 69; Ayyash Defence closing submissions, T. 17 September 2018, p. 19.

¹⁴³ Ayyash Defence final trial brief, para. 68.

¹⁴⁴ Ayyash Defence final trial brief, fn. 142; Ayyash Defence closing submissions, T. 17 September 2018, pp 19-20.

investigator, Mr Gary Platt, to show links between the Accused and newly-alleged co-conspirators Mr Safa and Mr Ghazaleh.¹⁴⁵

115. The Merhi Defence argues that while the Prosecution stated that Hezbollah and Syria had no role in the conspiracy, it added new material facts in its final trial brief.¹⁴⁶ The Prosecution newly alleged that the involvement of Syria and Hezbollah explained the motive for the crime and the means used to commit it. The Merhi Defence points to the Prosecution's submissions as to Mr Badreddine's background in Hezbollah, the responsiveness of mobile activity to political events and Mr Ghazaleh's and Mr Safa's involvement.¹⁴⁷

116. The Prosecution also alleged that Syria and Hezbollah ordered the attack and attempted to avoid responsibility for its commission. This, in the Merhi Defence's submission, is a material fact going to the requirement that an accused assented in advance to the means used to carry out the alleged crime.¹⁴⁸ These defects in notice could not be cured, because the Prosecution's opening statement, evidence and submissions were not sufficient,¹⁴⁹ and nor was this information disclosed in a clear, consistent or timely fashion.¹⁵⁰ The Merhi Defence submits that, although it does not have the burden of proving prejudice, it did suffer prejudice and requests the Trial Chamber to render a not guilty verdict. It argues that it was unable to challenge the submissions regarding the calls between the Purple mobiles, or the motivations and resources of Syria and Hezbollah.¹⁵¹

117. The Oneissi Defence argues that Mr Oneissi's alleged links to Hezbollah are irrelevant, and even if proven, do not establish the political context in which the attack occurred, nor demonstrate that the assassination was political, nor prove his individual criminal responsibility.¹⁵²

118. The Sabra Defence argues that while the Prosecution appeared to drop its Hezbollah allegations, it did not do so.¹⁵³ Despite the Trial Chamber's finding that motive was not legally

¹⁴⁵ Ayyash Defence final trial brief, para. 67; Ayyash Defence closing submissions, T. 17 September 2018, pp 19, 119-120.

¹⁴⁶ Merhi Defence final trial brief, paras 38-39, 41, 43-44, 48.

¹⁴⁷ Merhi Defence final trial brief, paras 38, 45-46, annex D, pp 2-3.

¹⁴⁸ Merhi Defence final trial brief, paras 44, 47.

¹⁴⁹ Merhi Defence final trial brief, paras 51-54.

¹⁵⁰ Merhi Defence final trial brief, paras 55-58.

¹⁵¹ Merhi Defence final trial brief, paras 59-65.

¹⁵² Oneissi Defence final trial brief, paras 621-622.

¹⁵³ Sabra Defence final trial brief, paras 445-450.

required,¹⁵⁴ the Prosecution made motive a key factual element of its case—arguing that Hezbollah was directly involved in, and provided operational support to, the attack. The Sabra Defence submits:

We suggest the Chamber needs to know and be able to rely upon the motive to be convinced beyond reasonable doubt of the guilt of Mr. Sabra and the other accused because it needs to assess whether his guilt is the only reasonable inference on the evidence. If the Chamber needs to rely upon this motive, then the Prosecution was obliged to have pleaded it.¹⁵⁵

119. The Sabra Defence also argues that the Prosecution deliberately failed to specify the precise role played by Hezbollah and relied on links between the Accused and Hezbollah to bolster its ‘weak and circumstantial case’.¹⁵⁶

120. Further, the Prosecution makes ‘clear insinuations’ as to the role of unpleaded co-conspirators in the assassination, namely the Syrian President Mr Al-Assad, Mr Ghazaleh and Mr Safa.¹⁵⁷ In failing to properly plead these material allegations, the Prosecution prevented the Defence from being able to address them.¹⁵⁸

(c) Findings

121. The amended consolidated indictment contains, at paragraph 49 under ‘The Conspiracy’, only one allegation concerning Hezbollah, namely that the Accused and Mr Badreddine were Hezbollah supporters. It does not mention Syria, Mr Safa or Mr Ghazaleh. The Prosecution’s final trial brief, by contrast, contains numerous references to Hezbollah and the Syrian regime. These submissions go to the Accused’s Hezbollah connections, Mr Badreddine’s leadership in it, the

¹⁵⁴ The Sabra Defence also argues that motive should be considered to be a legal requirement, Sabra Defence final trial brief, paras 427-429. These arguments are addressed below in paragraphs 6187-6191. The Sabra Defence also argues that the Prosecution’s case on what the motive actually was varies and is unclear, Sabra Defence final trial brief, paras 425-426, 430.

¹⁵⁵ Sabra Defence closing submissions, T. 21 September 2018, pp 13-14 (there counsel further submitted that, ‘The Prosecution needed to implicate Hezbollah, and others such as Ghazaleh, to prove the motive and the capacity of the conspiracy. Both of these were material facts which, again, should have been pleaded in the indictment. Which brings me on to motive. Proof of motive for the assassination of Hariri by the four accused, we submit, is a material fact that needed, clearly, to be pleaded in the indictment. The accused needed to be informed in a clear and timely manner why he was alleged to have conspired to assassinate Mr. Hariri ... And in the light of the nature of this case and the Prosecution’s reliance upon the motive of the assassination to implicate Mr. Sabra, the motive was clearly a material fact which should have been pleaded’).

¹⁵⁶ Sabra Defence final trial brief, paras 450-451.

¹⁵⁷ Sabra Defence final trial brief, paras 433-436; Sabra Defence closing submissions, T. 21 September 2018, p. 13.

¹⁵⁸ Sabra Defence final trial brief, para. 451; Sabra Defence closing submissions, T. 21 September 2018, pp 13-14.

Green network of mobiles and Mr Safa's and Mr Ghazaleh's alleged role in the surveillance of Mr Hariri.

122. After having received and thoroughly reviewed the entirety of the evidence, the Trial Chamber is now of the view that paragraph 49 is not a material fact underlying the elements of any of the offences charged.¹⁵⁹ Accordingly, the Prosecution does not need to prove this factual allegation beyond reasonable doubt; as it is not one that is indispensable to a conviction.¹⁶⁰ The Prosecution, in its final trial brief, also noted that proving a link between the Accused and Hezbollah was not necessary for a conviction, but only explains the context in which the attack on Mr Hariri occurred.¹⁶¹

123. As pleaded in the amended consolidated indictment, therefore, the Prosecution's case does not rely upon Hezbollah's or Syria's involvement. The issue is whether the Prosecution's further submissions on political matters were also *non-material* arguments, which need not be pleaded—or amounted to new *material* facts or allegations—which must be properly pleaded.

124. The Trial Chamber finds that the submissions going to the Accused's associations with Hezbollah, their relationships by virtue of this association and the training that they and Mr Badreddine allegedly received through Hezbollah, fall under the umbrella of non-material allegations that the Accused supported Hezbollah. These submissions are largely identical to the non-material pleadings explaining 'support' for Hezbollah which appeared in the first, but not subsequent versions of the indictment.

125. The Trial Chamber is of the view that the Prosecution should have articulated this aspect of its case theory in better detail in the pre-trial phase before the Pre-Trial Judge so as to give the Defence adequate notice of this aspect of its case. Notwithstanding this, the Defence had notice of the Prosecution's case theory in relation to these submissions, at the very least since receiving the

¹⁵⁹ In its Decision amending the consolidated indictment, para. 58, the Trial Chamber wrote, 'The Prosecution is therefore ordered to file a summary statement of any evidence it wishes to lead in relation to *this pleaded material fact*. This is of course separate from the requirement to plead, in an indictment, any material facts that must be proved' (emphasis added). In its Decision on admission of Mr Al-Hassan's interview, at paras 30, 81, 87, the Trial Chamber also described the pleading as a 'material fact'. However, having now reviewed the totality of the evidence, the Trial Chamber is not of the view that this pleaded fact is one that is indispensable for a conviction. The Trial Chamber may convict an Accused of a count charged without having to be satisfied beyond reasonable doubt of this pleaded fact.

¹⁶⁰ See para. 205.

¹⁶¹ Prosecution final trial brief, para. 21.

Prosecution's statement on Hezbollah in September 2016. In this respect, at least there is nothing new in the Prosecution's final trial brief. But ultimately, given the Trial Chamber's finding on the alleged connection between the four Accused, and Mr Badreddine, with Hezbollah, the Defence has suffered no material procedural prejudice by the Prosecution's late articulation of its case theory on this point.

126. The Trial Chamber also finds that submissions about the broader political context surrounding the attack are not material facts requiring pleading. As motive is not an element of a conspiracy,¹⁶² the Trial Chamber is not required to make findings on any alleged political purpose, although the attack on Mr Hariri was self-evidently political. Appropriate findings on the contextual and background evidence are set out below.¹⁶³ Moreover, on a practical level of determining whether any prejudice has occurred, the Defence has had notice of this aspect of the case since at least November 2014. Defence counsel had the evidence supporting this notice much earlier and hence the ability to mount a defence to it.

127. The argument that Hezbollah controlled the Green mobile network derives from elements of a public statement by Mr Nasrallah and hearsay in a Prosecution interview with Mr Hariri's former Chief of Security, Mr Wissam Al-Hassan, in 2012. The argument was introduced as a 'category of evidence' in the Prosecution's summary statement of evidence in relation to paragraph 49 of the amended consolidated indictment. Again, it is not a material fact that required pleading. Accordingly, there was no deficiency in providing notice to the Accused. It was also contained in the long-disclosed evidence. Moreover, the Trial Chamber, elsewhere in this judgment, has found that the evidence is unreliable hearsay and that it will not use it.¹⁶⁴ In this respect, even if there had been a procedural breach in providing notice of how the evidence was intended to be used, the Defence has suffered no actual prejudice.

128. The Trial Chamber received uncontested evidence of Mr Badreddine's role as a senior Hezbollah commander—at least between 2011 and 2016—and its significance to the case is considered in more detail below.¹⁶⁵ Some of this evidence came to light only after Mr Badreddine's

¹⁶² See paras 6187, 6204.

¹⁶³ See chapter IV 'Historical and political background to the attack'.

¹⁶⁴ See para. 2243.

¹⁶⁵ See paras 6557-6576.

presumed death in May 2016 and the Trial Chamber admitted it into evidence first in relation to determining whether Mr Badreddine was dead, and then in support of the Prosecution's pleading that he was a senior military commander. In that respect, it was admitted as new evidence that had emerged during the trial.

129. Moreover, this evidence does not go to prove a fact underlying a charge that must be pleaded. There is therefore no deficiency in not pleading this fact in the amended consolidated indictment. But even if it required pleading, the Prosecution's summary statement of September 2016, in combination with paragraph 49 of the amended consolidated indictment—in the circumstances of it being admitted as new evidence—would have provided the necessary notice to the Defence of the facts. Additionally, the Oneissi Defence called its own witness, Mr Jamil El-Sayyed, who testified concerning some matters relating to Hezbollah.

130. Regarding the alleged roles of Mr Safa and Mr Ghazaleh, the Prosecution was legally required to plead the identity of any known co-conspirators. The Trial Chamber finds the Prosecution's case on this point to be ambiguous; at least on one reading of the Prosecution's final trial brief, they could be considered to be advanced as co-conspirators.¹⁶⁶ There, the Prosecution argues that Mr Safa was the only common contact between Mr Ghazaleh and Mr Badreddine, and this was 'the channel that would explain the intimate link between key political events opposed to Syrian interests, subsequent contact and meetings between Syrian and Hezbollah officials and the reaction of the covert networks led by Badreddine.' However, the evidence on their possible involvement appears not to have changed during the trial—meaning that the Prosecution always had it—and the Prosecution neither amended any indictment nor updated its pre-trial briefs to include any such allegation.

131. The Prosecution also clarified this in its closing submissions—and in response to questions from the Trial Chamber—and rejected Defence submissions that Mr Ghazaleh and Mr Safa were being characterised as co-conspirators.¹⁶⁷ Trial Chamber had posed the question:

Is the Prosecution now alleging, as stated at paragraph 434 of the Sabra brief, that the Syrian President Mr Bashar Al-Assad, the then Syrian Military Intelligence Chief in

¹⁶⁶ Prosecution final trial brief, para. 746.

¹⁶⁷ Prosecution closing submissions, T. 11 September 2018, pp 26-27.

Lebanon, Mr Rhustom Ghazaleh, and “the head of the central unit for liaison and coordination in Hezbollah”, Mr Wafik Safa, were co-conspirators in the plot to murder Mr Hariri?¹⁶⁸

132. Further, the Prosecution does not seek, nor does the Trial Chamber need to make, any findings on anyone not mentioned in the amended consolidated indictment.¹⁶⁹ The Trial Chamber has therefore not treated them as alleged co-conspirators and will not make any finding on whether they participated in the conspiracy.

6. The identity of ‘Mohammed’

(a) The Prosecution’s case

133. The Prosecution alleges that Mr Abu Adass—the young man who falsely claimed responsibility for the attack—was approached and then lured from his home by a person posing as ‘Mohammed’. The amended consolidated indictment pleads that Mr Oneissi falsely called himself ‘Mohammed’ and was this person.

134. The Prosecution’s final trial brief, however, states that while the Prosecution presented evidence supporting that ‘Mohammed’ was Mr Oneissi, this is ‘in no way dispositive’ of his involvement in the “‘Mohammed” deceit’, the identification of a suitable scapegoat and the preparation of the false claim plot as a whole.¹⁷⁰ In closing submissions, Prosecution counsel argued that there is some evidence that Mr Oneissi was ‘Mohammed’, but the Trial Chamber need not make a finding on this fact:

But this is the important thing ... It’s a fact relating to the acts and conduct of the accused, but it’s not essential to conviction. It’s not something you need to find beyond reasonable doubt. It’s not even something you need to find. What you need to find is the responsibility of Mr Oneissi and Mr Sabra for the overall false claim plot. An important part of that is the Mohammed deceit, and by that I mean the subplot in which someone would appear, pretend to be a Muslim orphan wanting to learn how to pray, and that that would be used to lure

¹⁶⁸ Questions for closing submissions, para. 11 (footnote omitted).

¹⁶⁹ Prosecution closing submissions, T. 11 September 2018, pp 26-27.

¹⁷⁰ Prosecution final trial brief, para. 518. It argues further that Mr Oneissi ‘was intimately involved in multiple aspects of the overall plot, regardless of whether he was the person who interacted personally with Mr Abu Adass.’

somebody ... What you need to consider is the involvement of Mr Sabra and Mr Oneissi in that subplot. And you don't need to find who played which role.¹⁷¹

(b) Submissions

135. The Merhi Defence contends that given the allegations made in the amended consolidated indictment, the Prosecution cannot assert that it is not important to establish that Mr Oneissi was 'Mohammed'.¹⁷² Further, there are no allegations that Mr Merhi coordinated anyone other than Mr Sabra and Mr Oneissi, and Mr Merhi cannot therefore be convicted of complicity.¹⁷³

(c) Findings

136. The Merhi Defence argues that the Prosecution's pleading obligations are not met because it discarded a material element pleaded in the amended consolidated indictment.

137. The Trial Chamber agrees that—for the reasons set out in the 'Claim of responsibility for the attack on Rafik Hariri' chapter¹⁷⁴—Mr Oneissi's identification as 'Mohammed' is a pleaded fact supporting the elements of the offences charged. It is a material fact underpinning Mr Oneissi's criminal responsibility—and also Mr Sabra's and Mr Merhi's—by virtue of their pleaded involvement in making the false claim of responsibility.¹⁷⁵

138. However, the Prosecution has not failed to comply with its pleading obligations. Its final trial brief states, and permissibly as set out below,¹⁷⁶ that it produced evidence demonstrating that Mr Oneissi is 'Mohammed', but that in its view this finding is unnecessary for a conviction. While all material elements of a Prosecution case must be properly pleaded, their proof at trial is a matter of evidence. It was pleaded but not proved; no issue of lack of notice therefore arises.

139. Most importantly, and substantively, however, the Trial Chamber has been unable to find that Mr Oneissi was 'Mohammed'.¹⁷⁷

¹⁷¹ Prosecution closing submissions, T. 14 September 2018, pp 67-70.

¹⁷² Merhi Defence final trial brief, para. 488; Merhi Defence closing submissions, T. 18 September 2018, pp 82-83. *See also* Merhi Defence final trial brief, annex D, p. 1.

¹⁷³ Merhi Defence final trial brief, para. 488; Merhi Defence closing submissions, T. 18 September 2018, pp 82-83.

¹⁷⁴ Chapter XII.

¹⁷⁵ *See* para. 5050.

¹⁷⁶ *See* para. 5052.

¹⁷⁷ *See* paras 5060-5088.

7. Other alleged Prosecution failures to provide notice

(a) Submissions

140. The Ayyash Defence argues that the Prosecution failed to provide notice of allegations about the following: activity by the Blue network mobile, Blue 742, in the Anjar area on 19 January 2005;¹⁷⁸ Subject 6's role in the purchase of the Mitsubishi Canter;¹⁷⁹ and Subject 816's contact with Mr Ayyash's personal mobile number 170 on Sunday 13 and Monday 14 February 2005.¹⁸⁰

141. The Merhi Defence also complains of other supposedly new Prosecution allegations. The first is that the video tape making the false claim of responsibility had already been created by Tuesday 18 January 2005.¹⁸¹ The second is that the pleaded 'Associate Purple' mobiles, numbers 744 and 375, were involved in Mr Abu Adass's abduction, and travelled with Mr Merhi to Anjar, in the Bekaa valley area on Friday 14 January 2005. Specifically, the Trial Chamber impermissibly allowed the Prosecution to expand its case by allowing the Prosecution investigator Mr Platt to give an expert opinion on the Purple mobiles in his testimony.¹⁸²

142. Third, Mr Abu Adass was murdered, as opposed to simply disappearing,¹⁸³ and fourth, there was a period of preparatory activity which took place in the 'East of Airport' area in Beirut, which included the purchase of the Mitsubishi Canter and explosives.¹⁸⁴

143. The Sabra Defence argues that the Prosecution makes submissions for the first time in its final trial brief regarding the alleged murder of Mr Abu Adass, as well as the role of the 'Associate Purple' mobiles in the false claim of responsibility.¹⁸⁵

144. In oral closing submissions, the Prosecution responded that it does not allege that the false claim video tape was made on Tuesday 18 January 2005.¹⁸⁶ Further, while the 'East of Airport'

¹⁷⁸ Ayyash Defence final trial brief, paras 173-176.

¹⁷⁹ Ayyash Defence final trial brief, para. 125.

¹⁸⁰ Ayyash Defence final trial brief, paras 168-172.

¹⁸¹ Merhi Defence final trial brief, para. 518; Merhi Defence closing submissions, T. 18 September 2018, p. 80. *See also* Merhi Defence final trial brief, annex D, p. 1.

¹⁸² Merhi Defence final trial brief, paras 27-35, annex D, pp 1-2.

¹⁸³ Merhi Defence final trial brief, annex D, p. 2.

¹⁸⁴ Merhi Defence final trial brief, para. 441; Merhi Defence closing submissions, T. 18 September 2018, p. 70.

¹⁸⁵ Sabra Defence final trial brief, paras 52-53; Sabra Defence closing submissions, T. 21 September 2018, pp 8-9. The Sabra Defence argues that it repeatedly made requests for notice and clarification, Sabra Defence final trial brief, para. 52.

¹⁸⁶ Prosecution closing submissions, T. 14 September 2018, pp 23-24.

activity is evidence of Blue mobile network covert behaviour, the Prosecution does not seek positive findings on these non-material facts.¹⁸⁷

(b) Findings

145. The Defence points to allegedly new allegations going to the false claim plot and to activity in the ‘East of Airport’ area in Beirut before the attack on Mr Hariri. The Prosecution raised these issues in its final trial brief;¹⁸⁸ they were not in the amended consolidated indictment.

146. The Trial Chamber finds that the date on which the video tape was made, featuring Mr Abu Adass claiming responsibility for Mr Hariri’s death, is evidence going to prove the material fact that the video tape was made as part of the pleaded false claim of responsibility, and is not itself a material fact. Further, the Prosecution does not make Mr Abu Adass’s possible murder after his disappearance part of its case; it simply refers to this as a logical inference, as he has not been sighted by his family since. No notice issue therefore arises on these points.

147. As for the Associate Purple mobiles, following the joinder of Mr Merhi’s case to the case of the other (then) four Accused,¹⁸⁹ the Prosecution, in its opening statement on 18 June 2014, detailed their role. Prosecution lead counsel outlined that seven pre-paid mobiles were ‘mutual contacts’ of the three principal Purple mobiles and of each other, particularly during the period of the luring and abduction of Mr Abu Adass in late December 2004 and mid-January 2005, and the delivery of the false claim of responsibility in the afternoon of 14 February 2005.¹⁹⁰ The Trial Chamber received into evidence call sequence tables of five of these mobiles,¹⁹¹ and heard evidence from Mr Platt of the call activities of two, namely Associate Purple 744—attributed to a relative of Mr Merhi¹⁹²—and Associate Purple 375.

148. In its final trial brief, the Prosecution describes the Associate Purple mobiles 375 and 744 as ‘associated with’ the Purple mobiles, ‘through their contact and call patterns, particularly during

¹⁸⁷ Prosecution closing submissions, T. 14 September 2018, pp 12-14.

¹⁸⁸ Prosecution final trial brief, paras 497, 552, 588, 837, 839, 859, 1047, 1120, fn. 1054.

¹⁸⁹ Decision on joinder; Trial management decision.

¹⁹⁰ Prosecutor’s opening statement regarding Hassan Habib Merhi, T. 18 June 2014, p. 39.

¹⁹¹ Exhibit P1342 (Call sequence table of Associate Purple 744); exhibit P1339 (Call sequence table of Associate Purple 375); exhibit P1361 (Call sequence table of Associate Purple 415); exhibit P1350 (Call sequence table of Associate Purple 251); exhibit P1327 (Call sequence table of Associate Purple 472).

¹⁹² See para. 3450.

the period of Abu Adass's abduction'.¹⁹³ It refers to the following Associate Purple mobile related evidence of: mobile activity as part of the allegedly hierarchical Green-Purple call flows before Mr Abu Adass's disappearance;¹⁹⁴ mobile inactivity during Mr Abu Adass's disappearance;¹⁹⁵ and final calls to Associate Purple mobiles, before the cessation of Purple mobile activity.¹⁹⁶

149. The Trial Chamber finds that the Prosecution's case about the relevance and role of the Associate Purple mobiles is unclear, and has made no findings on them.¹⁹⁷ However, had the Prosecution intended the mobile activity of these users to form a material or essential part of its case, it would have pleaded the necessary factual allegations in the amended consolidated indictment. The Trial Chamber finds that evidence about the Associate Purple mobiles is intended to assist in proving the material element of the Prosecution's case—namely, the involvement of the Purple mobile users in the conspiracy—not any new material fact centred on the Associate Purple mobiles themselves.¹⁹⁸

150. The Prosecution does not seek positive findings on the so-called 'East of Airport' activity, which substantiates that these submissions do not reflect new material facts. During the trial, Prosecution counsel had submitted that the calls related to obtaining or picking up the explosives used in the attack, or something else relating to procuring the materials for the attack.¹⁹⁹ However, no evidence was led to support this assertion. The Trial Chamber thus makes no finding on or in respect of this claim.

151. In relation to the purchase of the Mitsubishi Canter, in the amended consolidated indictment the Prosecutor alleges that Subject 6—who is described in the Prosecution's final trial brief as Mr Ayyash's 'deputy'²⁰⁰—with another unidentified person, was one of its buyers.²⁰¹ In

¹⁹³ Prosecution final trial brief, para. 504.

¹⁹⁴ Prosecution final trial brief, paras 762, 765, 768-769.

¹⁹⁵ Prosecution final trial brief, paras 549-550, 775-776, fns 1129, 1598.

¹⁹⁶ Prosecution final trial brief, paras 1041-1043.

¹⁹⁷ See para. 4810.

¹⁹⁸ See also Decision allowing the Prosecution to recall Mr John Edward Philips, where the Trial Chamber held that no notice issue arose in relation to the submissions about the Grey mobile, despite the fact that it was unattributed in the Amended consolidated indictment. See also Addendum to decision allowing the Prosecution to recall Mr John Edward Philips.

¹⁹⁹ Prosecution submissions, T. 5 September 2016, pp 52-53, T. 16 January 2017, pp 65-67, T. 17 January 2017, pp 50-52.

²⁰⁰ Prosecution final trial brief, paras 722, 846, 966, 975.

²⁰¹ Amended consolidated indictment, para. 32 (c). See also Prosecution closing submissions, T. 11 September 2018, p. 40, T. 14 September 2018, pp 39-41. During Prosecution expert Mr Gary Platt's testimony, Prosecution counsel

its final trial brief, the Prosecution submitted, however, that Subject 6 ‘supervised’ the purchase.²⁰² The Trial Chamber considers that further detail about Subject 6’s role in the alleged purchase is evidence of that person’s alleged involvement and does not reflect a new material fact. The pleaded fact providing notice to the Accused is of Subject 6’s alleged involvement in the purchase. Again, no notice issue arises.

152. As for the submissions relating to Subject 816’s contact with Mr Ayyash’s personal mobile 170 on Sunday 13 and Monday 14 February 2005,²⁰³ the Trial Chamber finds that communications with this non-network mobile are not material to the Prosecution’s case. Further, the Prosecution made no clear submissions on the significance of this mobile contact. The Trial Chamber therefore makes no findings concerning Subject 816’s alleged role in the conspiracy pleaded. There has thus been no breach of the Prosecution’s requirement to provide notice to the Defence here.

stated that the evidence ‘does not identify whether Subject 6 was actually in the showroom or not. It could be consistent either with him being there or actually being nearby and supervising men who were purchasing the vehicle’, T. 21 February 2017, p. 92.

²⁰² Prosecution final trial brief, para. 854 (iii).

²⁰³ Prosecution final trial brief, paras 967-971, 974, 976-978.

III. ASSESSMENT OF EVIDENCE

A. Introduction

153. On 16 January 2014, with the trial's commencement, the Trial Chamber issued directions on the conduct of the proceedings, and, most particularly, to regulate how it would receive evidence.²⁰⁴ This proved to be a daunting task given the dual challenges of the sheer size of the Prosecution's intended witness and exhibit lists and hence evidence, and that the Trial Chamber had become seised of the case only on 25 October 2013. Additionally, on 2 August 2013, the Pre-Trial Judge had set a trial date for 13 January 2014.²⁰⁵

154. The Trial Chamber was also in the process of dealing with an application by the Prosecution—belatedly filed on 18 December 2013 before the Pre-Trial Judge, who referred it to the Trial Chamber two weeks later, on 2 January 2014—to join the indictment against Mr Merhi to that of the other four Accused.²⁰⁶ To state this more explicitly, the Trial Chamber received an application to join the case of a fifth Accused to the existing case against the initial four Accused, a mere two weeks before the scheduled commencement of their trial, which had been in its pre-trial phase for almost two years, since the assignment of Defence counsel on 2 February 2012.

155. One of the Prosecution's exhibit and witness lists against the original four Accused, Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra, filed in May 2013, had contained some 14,737 exhibits and 587 witnesses.²⁰⁷ However, during the pre-trial phase of the proceedings, the Pre-Trial Judge issued five decisions on the witness and exhibit lists. Thus by the start of the trial the intended exhibit list had been reduced to 'only' 8,344 documents and the witness list to 'only' 540 witnesses, of whom 135 were expected to testify live.²⁰⁸

²⁰⁴ Directions on the conduct of the proceedings.

²⁰⁵ Pre-Trial Judge order setting tentative start date of trial proceedings. In a scheduling order on 10 December 2013, the Trial Chamber changed this to Thursday 16 January 2014; Trial Chamber's trial commencement scheduling order.

²⁰⁶ STL-13-04/I/PTJ, *Prosecutor v. Merhi*, F0033, Prosecution Request for Rule 89 (E) Referral of the Matter of Joinder, 18 December 2013; Joinder referral decision.

²⁰⁷ F0939, Prosecution Submission of Consolidated and Updated Rule 91 Exhibit and Witness Lists, 31 May 2013.

²⁰⁸ Presiding Judge's closing remarks, T. 21 September 2018, p. 101.

156. Despite this reduction, this was still an impossibly large number of documents and witnesses confronting the Trial Chamber when it was seised of the case in late October 2013, with the trial scheduled to commence in mid-January 2014.

157. To add to the complexity of the situation—owing to the Prosecutor’s submission of an indictment against Mr Merhi to the Pre-Trial Judge only on 5 June 2013—the *Merhi* indictment presented its own challenges.

158. On 8 January 2014, the Prosecution filed a 695-page exhibit list in its case against Mr Merhi. It contained 6,524 exhibits and 461 witnesses, on a 115-page witness list, of whom 112 were expected to testify live. Most of these witnesses and many exhibits were common to the case against the other four Accused which was to commence on 16 January, but these lists were filed before the Pre-trial Judge, who was then seised of the *Merhi* case. The Trial Chamber did not then have the jurisdiction to make any decisions in respect of the *Merhi* indictment.²⁰⁹

159. After a hearing on 11 February 2014 it joined the two cases that day; this was on the Prosecution’s direct application to the Trial Chamber, filed on 30 December 2013.²¹⁰

160. Given the size of the case and the impossibility of the Trial Chamber familiarising itself with over 100,000 pages of *potential* evidence, including witness statements and associated exhibits and expert reports, between receiving the case in late October 2013 and commencing the trial in mid-January 2014, it made the only practical and just decision it could have made under the Statute and Rules as to how to conduct the case.²¹¹ Namely, it decided to conduct the trial in accordance with Article 20 (2) of the Statute,²¹² and Rule 145 (B) which provides:

²⁰⁹ STL-13-04/I/PTJ, *Prosecutor v. Merhi*, F0052, Prosecution’s Submission Pursuant to the Pre-Trial Judge’s Order of 24 December 2013, 8 January 2014.

²¹⁰ Joint hearing, T. 11 February 2014, pp 91-96; Trial management decision; STL-11-01/PT/TC, *Prosecutor v. Merhi*, F1289, Prosecution Motion for Joinder, 30 December 2013.

²¹¹ Order on the mode of questioning witnesses; *see also* Directions on the conduct of the proceedings, paras 10-15. On 12 August 2013, the Pre-Trial Judge had submitted part of the case file to the Trial Chamber, namely, that containing the exhibits on the Prosecution’s exhibit list. However, there was little that the Trial Chamber could do with this other than start reading. It then had no jurisdiction to make evidentiary decisions and the list was not organised according to any theme. The only thing it could have done was to read over 100,000 pages of uncategorised documents and then afterwards discard or forget about the 70 per cent of them that were never tendered in the trial, meaning that only 30 per cent was potentially relevant; Order on partial transfer of case file to Trial Chamber.

²¹² Article 20 (2) ‘Commencement and conduct of trial proceedings’ provides, ‘Unless otherwise decided by the Trial Chamber in the interests of justice, examination of witnesses shall commence with questions posed by the presiding judge, followed by questions posed by other members of the Trial Chamber, the Prosecutor and the Defence’.

Where the Trial Chamber considers that the file submitted by the Pre-Trial Judge is not such as to enable it to adopt the mode of proceeding envisaged in Article 20 (2) of the Statute, after the opening statements of the Parties and of any victim participating in the proceedings, the witnesses called before the Trial Chamber shall first be examined by the Party that called them, then cross-examined by the other Party, if the other Party elects to exercise its right of cross examination. The witness may also subsequently be re-examined by the calling Party. The Presiding Judge and other members of the Trial Chamber may at any time ask questions.

As a further consideration, Rule 145 (C) provides that:

The Trial Chamber may decide to depart from the modes of proceeding provided for in paragraphs (A) and (B) wherever it considers that this is required by the interests of justice.

161. By this decision, the Trial Chamber permitted the Prosecution to call and question its own witnesses who were then cross-examined by the Defence, and questioned by the Trial Chamber Judges and also occasionally by the Legal Representatives of Victims. The Judges were free to intervene and question any witness during examination by counsel or the Legal Representatives of Victims, as the circumstances of the case demanded, and the Judges exercised this right, regularly during the proceedings.

162. The same applied during the case of the participating victims, and the Defence case brought by the Oneissi Defence. When the Trial Chamber called one witness itself in the trial,²¹³ the judges questioned him first, followed by the Parties. The difference was that the witness's evidence was relevant only to several discrete points and thus quite confined, and moreover he was testifying after the Prosecution's case had closed, meaning that the Trial Chamber by then had the overview of the case and evidence necessary to call and question a witness itself.

163. The Trial Chamber could not have attempted to conduct a trial of this size and complexity with its Presiding Judge first questioning a witness, followed by the judicial questioning of other judges, followed by questioning from the Parties. And, moreover, there was no 'file' or 'dossier' as such—as is the case in criminal law proceedings in some civil law jurisdictions—'submitted by the Pre-Trial Judge' which could have reasonably facilitated such a mode of conducting the

²¹³ Mr Michael Taylor, the Prosecution's former Chief of Investigations.

proceedings.²¹⁴ The case had been investigated not by a judicial officer, but by the Prosecution and assigned Defence counsel.

164. Under Rule 95 (A), the Pre-Trial Judge submits a file to the Trial Chamber, giving it jurisdiction to proceed to hear the case, effecting a transfer of jurisdiction between chambers. The Pre-Trial Judge's file includes: all filings, evidentiary material received, transcripts of status conferences and minutes of meetings held in the performance of his functions, his orders and decisions, correspondence with relevant entities and all other material relevant to the case.

165. The Pre-Trial Judge, under the same Rule, must also compile a detailed report setting out the arguments of the Parties and the participating victims on the facts and the applicable law, points of agreement and disagreement, the probative material produced by the Parties and the participating victims, a summary of his decisions and orders, suggestions as to the number and relevance of Prosecution witnesses and the witnesses that the victims intend to request the Trial Chamber to call on their behalf and issues of fact and law that, in his view, are contentious.²¹⁵

166. The Pre-Trial Judge filed a 68-page report on 25 October 2013 addressing in general terms some of the evidentiary issues identified at the pre-trial stage.²¹⁶ He explained the constraints he faced and therefore why he had thus confined his report:

However, although, pursuant to Rule 91 (I) of the Rules, the briefs must indicate: "(i) in general terms, the nature of the accused's defence; (ii) the matters which the accused disputes in the Prosecutor's pre-trial brief; and (iii) in the case of each matter set out pursuant to paragraph (ii), the reason why the accused disputes it", the Defence Briefs are, in essence, often succinct. In point of fact, the investigations conducted by Counsel for the Defence have generally not ended at the time of submitting their Briefs. Furthermore, those counsel are not required to disclose their overall strategy at that preliminary stage of the

²¹⁴ The absence of a 'file' as such also meant that there was no information about any systematic searches for exculpatory evidence or the parameters of the Defence case. At the time of the Trial Chamber's decision under Rule 145 (B), Defence investigations were ongoing.

²¹⁵ Rule 95 (A) (vii) refers to a detailed report setting out: (a) the arguments of the Parties and the victims participating in the proceedings on the facts and the applicable law; (b) the points of agreement and disagreement; (c) the probative material produced by each Party and by the victims participating in the proceedings; (d) a summary of his decisions and orders; (e) suggestions as to the number and relevance of both the witnesses to be called by the Prosecutor and the witnesses that the victims participating in the proceedings intend to request the Trial Chamber to call; and (f) the issues of fact and law that, in his view, are in contention.

²¹⁶ It did not address the listed issues in (a) to (f) of Rule 95 (A) (vii) above. It was 70 pages in the French original.

proceedings. These factors are therefore some of the limits and constraints confronting the Pre-Trial Judge in his task of assessing the number of witnesses to appear, the relevance of their testimony, the contentious issues of law and fact and, more generally, in the preparation of his Report.

It follows from the above that the Report is an analysis of the case of Ayyash *et al.* conducted by the Pre-Trial Judge and based primarily on the Prosecution's Brief, the Defence Briefs, the LRV Brief, and the evidence presented in support of those briefs as submitted to him. The degree of specificity of that analysis, which is intended to facilitate the holding of a fair and expeditious trial by the Trial Chamber, is therefore determined by those briefs and the evidence.²¹⁷

167. In the notably novel and complex circumstances of this case, and notwithstanding this comprehensive report, the interests of justice weighed heavily against the Trial Chamber employing Article 20 (2) as its chosen method of questioning witnesses for hearings and the conduct of trial proceedings. Further, in considering which questioning procedure under Rules 145 (A) or 145 (B) should be employed, the Trial Chamber was cognizant that it could use Rule 145 (C) if required.

168. To properly question witnesses in court, the judges would have had to have spent a considerable period out of court—at least many months—preparing their questioning. Additionally, before questioning witnesses, as an essential part of pre-court preparation for witness testimony or the presentation of evidence, it is critical to link the witness's statements and all associated exhibits—as part of the proposed evidence—with all other relevant evidence and information. This includes the statements of other witnesses and potentially related documents and exhibits.

169. This is very time consuming and requires an in-depth understanding of at least the part of the case to which the witness is relevant, and preferably a good overview of the entire case. Doing this would have been particularly difficult with expert witnesses and Prosecution in-house witnesses who provided analytical summary evidence of thousands of underlying facts. These were contained in witness statements, interview transcripts, expert reports and miscellaneous documents. In the circumstances described above, and indeed in lengthy and complex international

²¹⁷ Pre-Trial Judge Rule 95 (A) transfer of case file to Trial Chamber, para. 35.

criminal trials, the judges could not have done this. As noted above, the Trial Chamber did this with only one witness, who it called to testify itself after the close of the Prosecution's case.

170. During the Prosecution's case, the Trial Chamber heard evidence from 269 witnesses, 119 of whom gave live testimony in the courtroom or through video-conference link, and it received the evidence of 150 witnesses through their written statements. During the trial, the Trial Chamber also made over 70 decisions relating to the Prosecution's exhibit and witness lists, both of which were eventually significantly reduced from their pre-trial highs.

171. The pre-trial witness list current when the Trial Chamber was seised of the case in October 2013 contained 540 names; yet the Trial Chamber eventually received the evidence of less than half of this number, namely, of 'only' 269.

172. During the Prosecution's case, the Trial Chamber received 3,000 exhibits into evidence, of which the Prosecution tendered 2,487 and the Defence 513.²¹⁸ The 2,487 Prosecution exhibits represent a figure of just under 30 per cent of the more than 8,000 exhibits on the final pre-trial exhibit list.²¹⁹

173. On the Legal Representatives of Victims' application, the Trial Chamber also heard evidence from six victims and a 'victimologist', and received into evidence the statements and associated exhibits of 24 other witnesses.²²⁰ It received 45 exhibits tendered by the Legal Representatives of Victims, totalling 3,033 pages in length.²²¹

174. The Oneissi Defence alone elected to call a Defence case. Its case comprised two live witnesses, written statements from four witnesses and 52 exhibits. Finally, the Trial Chamber called one chamber witness to testify.²²² The total number of exhibits received into evidence at trial was 3,135 with a total of more than 171,000 pages.²²³ At the end of the trial, the transcript—

²¹⁸ When citing, the Trial Chamber generally referred to the page numbers of the English PDF exhibits and where this was not possible—because of multiple documents having been assigned the same exhibit number—to the ERNs.

²¹⁹ The Prosecution's exhibit list also featured numerous additions and substitutions during trial.

²²⁰ Decision on the Legal Representatives' application to call evidence, paras 93-97, disposition.

²²¹ 152 items admitted into evidence, in exhibits 1V1 to 1V45.

²²² The Prosecution's former Chief of Investigations, Mr Michael Taylor; Reconsideration decision regarding Rule 165, disposition; Decision under Rule 165, disposition.

²²³ The total number of pages was 107,558 in English; 43,546 in Arabic; 711 in French; 350 in Spanish; 1,353 in other languages; and 6,751 in multiple languages. For 10,742 pages no language classification was entered in the Special Tribunal's Legal Workflow system.

with all three official languages combined—amounted to more than 93,900 pages.²²⁴ The Trial Chamber received the evidence of 297 witnesses in total.

175. Article 21 (2) of the Statute and Rule 149 (C) and (D) allow a Chamber to admit any relevant evidence which it deems to have probative value, unless its probative value is substantially outweighed by the need to ensure a fair trial.

176. Evidence is relevant if it relates to the facts pleaded in an indictment. As an example, the Trial Chamber—over Defence objections—held that evidence on the political background in Lebanon before Mr Hariri’s death was relevant to give context to other evidence. The Trial Chamber was persuaded at that point in the trial that it could potentially help to explain the wider circumstances leading to Mr Hariri’s assassination, or elucidate any non-private motives for committing the offences charged.²²⁵ This evidence has assisted the Trial Chamber to evaluate some aspects of the charges by providing context to the proven facts.

177. Evidence concerning a matter that is not relevant to the proceedings cannot be admissible, and for evidence to have probative value, that is, to prove a fact, it must have some reliability.²²⁶

178. When admitting evidence, and consistent with the long-standing principles of international criminal law procedural law, the Trial Chamber required the tendering Party to demonstrate that the evidence was relevant and—for the purpose of later assessing its probative value—that it was *prima facie* reliable.²²⁷

179. The tendering Party bears the evidentiary onus. In this respect, the Trial Chamber explicitly held that the Rules do not distinguish between the Prosecution and Defence for the purposes of establishing the relevance and *prima facie* reliability of evidence proposed for admission and that:

no principle of international human rights law or international criminal law distinguishes between the Prosecution and the Defence with respect to the evidentiary onus of

²²⁴ Around 37,000 in English and French each and 19,000 in Arabic.

²²⁵ Order to Defence to provide a summary of facts, paras 9-10; Decision on request to stay proceedings, para. 36; Decision on admission of documents (movements and events), para. 30; Decision on admission of statements (movements and events), para. 13.

²²⁶ See for example, Decision on admissibility of Wikileaks documents, para. 11.

²²⁷ See for example, Decision on admission of documents (Abu Adass), para. 17; Decision on clarification of Oneissi call sequence table decision, para. 3; Sabra Defence fourth bar table decision (Abu Adass recruitment), paras 28-29.

establishing the relevance and probative value of any document they seek to tender into evidence.²²⁸

180. Further, Rule 149 (E) plainly authorises a chamber to ‘request verification of the authenticity of evidence obtained out of court’. In a decision on the admission of evidence, the Trial Chamber explained that this is to ensure that no Party is disadvantaged by having a higher evidentiary onus in introducing evidence than another, and is thus ‘put at a disadvantage when presenting its case’.²²⁹

181. Evidence cannot be probative without having indicia of reliability. In admitting material into evidence, including witness statements, the Trial Chamber followed the inclusionary approach of the Special Tribunal’s Rules to receiving evidence. It emphasised that the concept of a piece of evidence having some probative value is distinct from the weight that it may ultimately give to the evidence.²³⁰ That is, evidence could appear to have some probative value at the stage of admission; however, upon later examination and in the light of other evidence—including challenges from an opposing Party—its weight may be diminished even to the point of having none whatsoever.

182. During the trial, the Defence moved the Trial Chamber to exclude some Prosecution evidence under Rule 149 (D), which is an exclusionary rule. It provides that a chamber may exclude evidence whose probative value is substantially outweighed by the need to ensure a fair trial. This means that a chamber may either not admit the material into evidence in such situations or may reconsider a previous admission decision. The Trial Chamber denied each application.²³¹

183. In its final trial brief and in closing submissions, the Oneissi Defence reiterated its submissions to exclude—that is to remove—evidence from the trial record.²³² Upon judicial questioning during closing submissions, however, counsel for Mr Oneissi conceded that their application to exclude evidence under Rule 149 (D) at that stage of the proceedings was effectively

²²⁸ Sabra Defence fourth bar table decision (Abu Adass recruitment), paras 28-29; Decision denying admission of two call sequence tables, para. 22.

²²⁹ Decision denying admission of two call sequence tables, paras 22, 26.

²³⁰ *See for example*, Decision on admission of documents (Subscriber and user information), paras 65-66.

²³¹ *See for example*, Decision denying request to exclude evidence of Witness PRH038; Clarification decision on exclusion of Mr Platt’s evidence; Decision on opinion evidence (Mr Donaldson), para. 88; Addendum to decision allowing the Prosecution to recall Mr John Edward Philips.

²³² Oneissi Defence final trial brief, paras 43, 49, 53, 239, 265, 312; Oneissi Defence closing submissions, T. 19 September 2018, pp 102, 131-135.

asking the Trial Chamber not to rely on that evidence.²³³ The Trial Chamber accordingly considers it procedurally proper to consider these as submissions urging it not to rely on the evidence, either by giving it no weight or ignoring it, rather than excluding it from the evidentiary record, accompanied if necessary by an explanation as to why.

184. And in any event, it is not willing to ‘remove’, that is, in effect to expunge evidence from the trial record once it is already recorded. The Trial Chamber cannot have portions of the audio or video recording of a court session, and its transcription, wiped from the record as if the words were never uttered.

185. The Trial Chamber, as required by Rule 149 (G), also recorded the reason for each evidentiary ruling, either in written decisions, or when necessary in brief oral decisions delivered in court.²³⁴ Doing so orally in court for each decision on Parties’ applications to admit evidence would have been judicially inefficient by unnecessarily consuming court time. Moreover, many decisions required in-depth out-of-court legal research and thus proper referencing to legal authorities, and considered deliberation by the Trial Chamber.

186. These types of decisions cannot as a matter of practicality be delivered orally in court. And requiring the Parties to make their applications to tender all proposed evidence in court, as opposed to filing properly argued and legally supported written applications, would also have been impractical. Oral arguments on proposed evidence, especially in multi-accused trials, devour court time; this is time much better devoted to witness testimony.

187. The Trial Chamber also noted during the trial that the ‘organisation of the evidence in a long and complex case ... is very, very challenging’.²³⁵ The evidence has accordingly been divided into numerous but sometimes overlapping categories according to evidentiary themes, such as forensics, telecommunications, the political background, the claim of responsibility for the attack and that related to each Accused. Adding to the challenge is the interrelationship between many evidentiary threads such as the voluminous telecommunications evidence, the expert evidence on

²³³ Oneissi Defence closing submissions, T. 19 September 2018, pp 131-135, T. 20 September 2018, p. 121.

²³⁴ Numerous decisions receiving evidence proposed by Parties in court, such as during cross-examination in putting documents to witnesses, were understandably brief, especially where its reception into evidence was not challenged.

²³⁵ In-court summaries decision, para. 18.

closed criminal telecommunication networks, that of cell site analysis and of attribution of mobile telephone usage to the four Accused and Mr Badreddine.

188. When assessing the weight of the evidence in deliberating each charge in the amended consolidated indictment, the Trial Chamber has reassessed each piece of evidence and relied on relevant evidence to the extent that it found it to be credible, reliable and probative in light of the totality of the evidence. The Trial Chamber generally assessed each piece of evidence in the context of all related evidence. Some particular pieces of evidence, however, related to a topic or evidentiary theme so discrete that they could be assessed without requiring substantial comparison with other admitted evidence. An example of this is the evidence connected to the use of photo boards for identification purposes.

189. The evidence received at trial, the facts agreed between the Parties and the facts that the Trial Chamber has judicially noted provide the factual basis of this judgment.

190. The Trial Chamber firmly instructed the Parties not to rely on material that is not in evidence.²³⁶ Consistent with the principles of international human rights law, the Trial Chamber has not relied on material that it has not received into evidence.²³⁷ The Trial Chamber also explained that a cross-examining Party reading portions of a witness statement into the record does not of itself transform the statement into evidence, much less evidence that can be relied upon for its truth, rather than the fact that it was stated or recorded. The witness comments on the document—their admissions or adoptions of the document's content—are the evidence.²³⁸

191. The Trial Chamber also ensured that Parties tendering witness statements into evidence under Rules 155, 156 and 158 prepared and read onto the court record summaries of the content of the statements. The purpose of this exercise was to inform the public of the content of documents that were received into evidence and, by associating the content of a piece of evidence with the

²³⁶ Although it should not have had to; a basic principle of international human rights law is that a court may only decide a case on what is in evidence. Sabra Defence fourth bar table decision (Abu Adass recruitment), para. 42; Sabra Defence second bar table decision (Abu Adass selection), para. 53. The Defence of some Accused nonetheless sought to rely on such material. For example, the Oneissi Defence did so in some submissions concerning the alleged false claim of responsibility for the attack of 14 February 2005. The Trial Chamber has disregarded these submissions. In order to challenge the evidence and to do their own investigations, and to make arguments to a court about this evidence, the Parties must have notice of the material that the court will use in its judgment. *See also* paras 5741, 5762.

²³⁷ *See for example*, *Telfner* Judgment, para. 15; *Edwards* Judgment, para. 98; *Bernard* Judgment, para. 37.

²³⁸ Decision on admission of documents used with a witness by the Oneissi Defence, para. 27.

daily proceedings, to make the transcript easier to follow.²³⁹ These witness summaries are not evidence, and the Trial Chamber has not treated them as such.²⁴⁰

192. The Trial Chamber also permitted the Parties to make what it termed ‘mid-trial summaries’ of the evidence during the case. These were intended to allow the Parties to provide explanatory arguments on the evidentiary themes during the trial and while the evidence was fresh in the Trial Chamber’s mind.²⁴¹

193. The Trial Chamber found that they could aid it, the Parties, the participating victims and the public to understand ‘the voluminous evidence and how some pieces of evidence relate to other pieces and to the evidence as a whole. For this reason, they can promote the overall efficiency of the trial’. These summaries could also clarify how the admitted evidence related to the anticipated evidence and the larger context of the case, and hence to better contextualise the evidence. They were not intended to be submissions, but instead were explanatory rather than argumentative. ‘Mid-trial summaries, it is stressed, have no evidentiary value. No qualitative assessment is made of the evidence.’²⁴²

194. The Prosecution and the Sabra Defence accordingly presented mid-trial summaries several times during the trial.²⁴³ The Trial Chamber has treated them as described immediately above.

²³⁹ The Trial Chamber explained its practice, as ‘The Trial Chamber, since the commencement of the trial, has adopted a practice of first ruling on the admissibility of the documents and witness statements in a written decision. Thereafter, it formally admits them onto the court record in a public hearing, when the moving party reads a short summary of the statement or document—or, where there are many documents, a representative sample. It then allocates exhibit numbers. Relevant parts of the summaries of witness statements or documents are then publicly broadcast. The public policy purpose of this, as at the ICTY, is to allow those following the proceedings—such as the public and the media—to better understand the evidence. It also assists the Trial Chamber, the Parties and Legal Representative of Victims in contextualising the evidence, in summarised form, in the transcript.’ In-court summaries decision, para. 30.

²⁴⁰ *Popović and others* Appeal Judgment, para. 1018, fn. 2947. *See also* Procedural matters, T. 5 November 2015, pp 60-61.

²⁴¹ The Prosecution, the Legal Representative of Victims and the Badreddine, Oneissi and Sabra Defence supported their use, while they were opposed by the Ayyash and Merhi Defence. In-court summaries decision, para. 5.

²⁴² In-court summaries decision, paras 15-16.

²⁴³ The Sabra Defence made mid-trial summaries, T. 9 November 2016, pp 26-50, T. 10 November 2016, pp 1-97, and the Prosecution, T. 4 April 2016, pp 4-30. *See also* F3108, Annex A, Defence Thematic Summary of Information Relevant to the Chamber in Relation to the False Claim of Responsibility, 28 April 2017; Decision allowing Sabra Defence supplement; Decision on admission of documents (Abu Adass), para. 113.

B. Principle of publicity of the proceedings and of the judgment

195. Under Article 16 (2) of the Statute, the Accused have the right to a public hearing. However, this right is ‘subject to measures ordered by the Special Tribunal for the protection of victims and witnesses’.

196. Under Rule 136, all proceedings before a chamber, other than its deliberations, are to be held in public, unless otherwise decided by the chamber after hearing the Parties. The Trial Chamber must balance against this prevailing principle appropriate measures for the privacy and protection of witnesses, under Rule 133 (A), provided that the measures are consistent with the rights of the accused, including the right to a public hearing specified in Article 16 (2) of the Statute.²⁴⁴

197. The Trial Chamber ordered measures to protect the identity of many witnesses—including 46 witnesses who testified in court—due to concerns for their personal safety or that of their families. For these reasons, some witnesses are referred to in this judgment by a pseudonym rather than by their names. Details that might reveal their identities have been omitted.

198. To ensure the effectiveness of the protective measures ordered by the Trial Chamber, several portions of the hearings in court were exceptionally conducted in ‘private’ or ‘closed’ session, which the public could not follow.²⁴⁵ The Trial Chamber endeavoured to minimise these sessions. For the same reasons, the Trial Chamber authorised redactions of the public transcript and recording, either on the application of the Parties, the Legal Representatives of Victims or the Registry, or on its own initiative.

199. Article 23 of the Statute requires a judgment to be delivered in public. The Trial Chamber has included in this judgment as much information as it could without creating security risks to anyone who was granted protective measures.

²⁴⁴ Decision on mode of testimony for Ogero witnesses, para. 5.

²⁴⁵ In private session, those following the proceedings from the public gallery can see but not hear the proceedings. In closed session, they can neither see nor hear the proceedings.

C. Principles applied by the Trial Chamber in the assessment of evidence

200. The following principles of international criminal law procedure have guided the Trial Chamber's assessment of the evidence.

1. Presumption of innocence, standard of proof beyond reasonable doubt and the *in dubio pro reo* principle

201. Article 16 (3) of the Statute, which incorporates the recognised international human rights law principles of Article 14 (2) of the ICCPR, provides as follows:

- (a) The accused shall be presumed innocent until proved guilty according to the provisions of this Statute;
- (b) The onus is on the Prosecutor to prove the guilt of the accused;
- (c) In order to convict the accused, the relevant Chamber must be convinced of the guilt of the accused beyond reasonable doubt.

202. The presumption of innocence is a fundamental principle of international human rights law and international criminal law.²⁴⁶ It obliges the Trial Chamber to treat the Accused as innocent of the crimes charged until entering a verdict of guilty in a judgment. The Trial Chamber does *not*—as is sometimes erroneously said—determine whether the Accused are ‘guilty or innocent’,²⁴⁷ but rather, and consistent with the principles of international human rights law, is only required to determine guilt beyond reasonable doubt.

²⁴⁶ Universal Declaration of Human Rights, Article 11 (1); European Convention on Human Rights, Article 6 (2); American Convention on Human Rights, Article 8 (2); American Declaration of the Rights and Duties of Man, Article 26; *Telfner* Judgment, para. 15; *Murray* Judgment, para. 54; *Cabrera García* Judgment, paras 182-184; *Tibi* Judgment, paras 178, 180, concurring opinion of Judge Garcia-Ramirez, paras 32-33; *Delić* decision on the outcome of proceedings, para. 14; *Fofana* bail appeal decision, para. 37; *Mladić* Appeal decision regarding fair trial and presumption of innocence, para. 25; *Rutaganda* Appeal Judgment, para. 172; *Duch* Appeal Judgment, para. 33.

²⁴⁷ The ICC Appeals Chamber in the *Lubanga* Appeal Judgment, at para. 22, made this error in stating, ‘Similarly, in *Mrkšić and Šljivančanin*, the Appeals Chamber of the ICTY made clear that, in making a determination about the innocence or guilt of the accused, the Trial Chamber is called upon to determine “in respect of each of the counts charged [...] whether it was satisfied beyond reasonable doubt, on the basis of the *totality* of the evidence, that every element of the crime in question charged [...], including each form of liability, has been established”.’ However, *Mrkšić*, at para. 217, said nothing approaching this at all. Rather, at paras 220-221 it referred to the hypotheses consistent with innocence that the Prosecution must negative to prove a circumstantial case beyond reasonable doubt. Further, *Mrkšić* at para. 220 cited the *Tadić* Appeal Judgment, para. 174, as apparent earlier authority for its state, yet that paragraph in *Tadić* was summarising the Prosecution's submissions without explicitly adopting them.

203. As the Accused are presumed innocent, the Defence need not establish their innocence. The Trial Chamber cannot impose on the Accused a reversal of the burden of proof or an onus to rebut evidence called by the Prosecution. The Prosecution must rebut the presumption of innocence and prove the guilt of the Accused ‘beyond reasonable doubt’.²⁴⁸ The ICTY Appeals Chamber in *Mrkšić and Šljivančanin* explained the standard as:

The term “beyond reasonable doubt” connotes that the evidence establishes a particular point and it is beyond dispute that any reasonable alternative is possible. It does not mean that no doubt exists as to the guilt of the accused. The test for establishing proof beyond reasonable doubt is that “the proof must be such as to exclude not every hypothesis or possibility of innocence, but every fair or rational hypothesis which may be derived from the evidence, except that of guilt”. The standard of proof beyond reasonable doubt requires a finder of fact to be satisfied that there is no reasonable explanation of the evidence other than the guilt of the accused.²⁴⁹

204. In evidentiary terms, the principle of *in dubio pro reo* means that any reasonable doubt should be resolved in an Accused person’s favour. It is a corollary to the presumption of innocence and the standard of proof beyond reasonable doubt. It therefore applies to the same categories of factual findings as the standard of proof beyond reasonable doubt.²⁵⁰

205. The Trial Chamber must apply the standard of proof beyond reasonable doubt to factual findings on the elements of the crimes and to the modes of liability charged against the Accused, and to any other factual findings that are indispensable for entering a conviction.²⁵¹ The pleaded

²⁴⁸ *Taylor* Appeal Judgment, para. 200; *Gaddafi and Al-Senussi* disqualification decision, para. 25; *Fofana* bail appeal decision, para. 37; *Kayishema and Ruzindana* Appeal Judgment, para. 107. See also Trial Chamber invitation to Sabra Defence on Pre-Trial Brief.

²⁴⁹ *Mrkšić and Šljivančanin* Appeal Judgment, para. 220 (footnotes omitted), citing *Tadić* Appeal Judgment, paras 174, 183, and *Martić* Appeal Judgment, para. 61; see also *Ngudjolo* dissenting opinion of Judges Trendafilova and Tarfusser, para. 66.

²⁵⁰ *Al Jadeed and Al Khayat* Appeal Judgment, para. 169; *Limaj and others* Appeal Judgment, para. 21; *Renzaho* Appeal Judgment, para. 474; *Galić* Appeal Judgment, para. 77; see also *Barberà and others* Judgment, para. 77; *Tsalkitzis* Judgment, para. 60; *Delić* Trial Judgment, paras 23-24; *Tendam* Judgment, para. 37; *Cleve* Judgment, para. 52; Human Rights Committee General Comment No. 32, para. 30, in particular the statement that ‘The presumption of innocence, which is fundamental to the protection of human rights ... ensures that the accused has the benefit of doubt’. For an example of the application of *in dubio pro reo* in Lebanese courts, see *Journalist Kamel Mroue* Judgment, pp 1-2.

²⁵¹ *Al Jadeed and Al Khayat* Appeal Judgment, paras 96, 126; *Ngudjolo* Appeal Judgment, para. 125; *Taylor* Appeal Judgment, para. 200; *Halilović* Appeal Judgment, paras 125, 129; *Ntagerura and others* Appeal Judgment, paras 174-175.

facts underlying or supporting the counts or charges listed in an indictment are sometimes referred to as ‘material facts’. Or putting it another way, the ‘count or charge is the legal characterisation of the material facts which support that count or charge’.²⁵²

206. As an issue of notice to the Accused, the Prosecution must plead the material facts underpinning the charges in the Prosecution’s case in sufficient detail to allow an accused person to prepare a defence to the charges.²⁵³ Those material facts that are necessary to provide an accused person with notice can be distinguished from the facts that must be proven beyond reasonable doubt before a conviction can be entered.²⁵⁴ Also, a Trial Chamber’s factual findings on which a conviction does not rely should be reasonable.²⁵⁵

207. The ICTR Appeals Chamber has held—and the Trial Chamber accepts its reasoning—that:

At the final stage, the Trial Chamber has to decide whether all of the constitutive elements of the crime and the form of responsibility alleged against the accused have been proven. Even if some of the material facts pleaded in the indictment are not established beyond reasonable doubt, a Chamber might enter a conviction provided that having applied the law to those material facts it accepted beyond reasonable doubt, all the elements of the crime charged and of the mode of responsibility are established by those facts.²⁵⁶

208. The relevance of this is illustrated in the following example. The amended consolidated indictment pleads that Mr Oneissi was the ‘Mohammed’ who allegedly met Mr Abu Adass in the Arab University Mosque in Beirut in January 2005 to find someone to make a false claim of responsibility. This particular pleading provides notice to the four Accused of the Prosecution’s case; it is also a material fact underpinning the charges as it specifies—at least in part—Mr Oneissi’s alleged conduct. On its face it therefore also appears to be a fact that is indispensable

²⁵² *Muvunyi* Appeal decision dismissing interlocutory appeal against denying leave to amend the indictment, para. 19.

²⁵³ *Blaškić* Appeal Judgment, para. 209, and the cases cited including *Kupreškić and others* Appeal Judgment, para. 88; *Krnjelac* Appeal Judgment, para. 131.

²⁵⁴ *Ntagerura and others* Appeal Judgment, para. 174, fn. 356; *Milutinović and others* Trial Judgment, para. 63.

²⁵⁵ *Stakić* Appeal Judgment, para. 219, fn. 470, holding that, ‘With respect to a Trial Chamber’s findings of fact on which the conviction does not rely, the Appeals Chamber will defer to the findings of the Trial Judgement where such findings are reasonable’.

²⁵⁶ *Ntagerura and others* Appeal Judgment, para. 174 (footnote omitted).

for a conviction, and therefore requiring proof beyond reasonable doubt; the Oneissi Defence argues this.²⁵⁷

209. However, as other pleaded material facts might prove the counts charged, proof that Mr Oneissi was ‘Mohammed’ may not be necessary for a conviction. The Prosecution made submissions to this effect in response to the Trial Chamber’s questions during closing submissions.²⁵⁸

210. The Parties, however, disagree on which types of facts the Prosecution must prove beyond reasonable doubt. Relying on judgments including the ICC Appeals Chamber’s in *Lubanga*,²⁵⁹ the Prosecution submits that *only* the facts constituting the elements of the crimes and modes of responsibility charged must be proved beyond reasonable doubt.²⁶⁰ The Prosecution acknowledges that some cases have required proof beyond reasonable doubt of facts that are ‘indispensable for entering a conviction’; but it ‘has not identified any instance where this standard has been applied outside the context of an element of the crime or the mode of responsibility’.²⁶¹

211. The Sabra Defence submits that this standard must be applied to each fact underlying the elements of each crime and form of responsibility, and to facts indispensable for entering a conviction, but also to other facts that must be proven to this standard due to the manner in which the Prosecution pleaded its case in the amended consolidated indictment and at trial.²⁶² In support it cites ICC, ICTY and ICTR cases.²⁶³ Further, the alleged fact that the Accused knew that Mr Hariri was the target of the charged crimes was an example of a pleaded ‘other fact’ that the Prosecution must prove beyond reasonable doubt.²⁶⁴

²⁵⁷ Oneissi Defence closing submissions, T. 20 September 2018, pp 132-133.

²⁵⁸ Questions for closing submissions, para. 3; Prosecution closing submissions, T. 14 September 2018, pp 68-70.

²⁵⁹ *Lubanga* Appeal Judgment, para. 22.

²⁶⁰ Prosecution final trial brief, para. 45, *see also* paras 29, 44, 46; Prosecution closing submissions, T. 11 September 2018, p. 39.

²⁶¹ Prosecution final trial brief, para. 46, fn. 22, citing *Halilović* Appeal Judgment, para. 130; *Milutinović and others* Trial Judgment, para. 63.

²⁶² Sabra Defence final trial brief, para. 5; Sabra Defence closing submissions, T. 21 September 2018, pp 6-7, 68.

²⁶³ Sabra final trial brief, para. 5, fns 6, 8, citing *Ngudjolo* Appeal Judgment, para. 124; *Halilović* Appeal Judgment, para. 129; *Ntagerura and others* Appeal Judgment, para. 175; *Blagojević and Jokić* Appeal Judgment, para. 226.

²⁶⁴ Sabra Defence closing submissions, T. 21 September 2018, p. 7. Counsel for Mr Sabra expressed this submission as relating only to the charges in counts 7 to 9 of the amended consolidated indictment, namely complicity in intentional homicide and attempted intentional homicide. As discussed in paragraphs 6070 and 6076, the Merhi and Oneissi Defence also submitted that accomplices to the crimes charged legally must have known the identity of the target of the alleged operation, namely Mr Hariri.

212. The Ayyash, Merhi and Oneissi Defence accept that the standard of beyond reasonable doubt applies to proving the elements of the charged crimes and modes of criminal liability, and any other facts that are indispensable for entering a conviction.²⁶⁵

213. The Merhi Defence also emphasises that the mental elements of charged crimes—particularly the requisite intent and knowledge—must be proven beyond reasonable doubt,²⁶⁶ as must that person’s identity. Since in this case, the attribution of telephone numbers to the Accused essentially determines their identification, that attribution must be proved beyond reasonable doubt.²⁶⁷ The Oneissi Defence likewise notes that attribution is indispensable for a conviction in this case, therefore requiring proof to this standard.²⁶⁸

214. The Trial Chamber has carefully reviewed the international case law. The ICTY, ICTR, SCSL and ICC recognise that circumstances may exist where a factual finding is indispensable to convicting an accused person, even though it is not directly or strictly required to establish an element of a crime or a mode of liability. A trial chamber must find such facts proved beyond reasonable doubt; for example, the ICTY Appeals Chamber in *Halilović* held:

As the Prosecution itself acknowledges, a trier of fact is called upon to make findings beyond reasonable doubt based on all of the evidence on the trial record – direct or circumstantial – not only on facts which are essential to proving the elements of the crimes and the forms of responsibility. There might be other facts that need to be proven beyond reasonable doubt due to the way in which the case was pleaded in the indictment and presented during trial to the Defence and to the Trial Chamber. All facts underlying the elements of the crime or the form of responsibility alleged as well as all those, which are indispensable for entering a conviction, must be proven beyond reasonable doubt.²⁶⁹

215. The ICC’s first appellate conviction judgment, *Lubanga*, issued in 2014, applied the general principles of the ICTY and ICTR cases, including specifically the *Blagojević and Jokić*,

²⁶⁵ Ayyash Defence final trial brief, para. 10; Merhi Defence final trial brief, paras 67-68; Oneissi Defence closing submissions, T. 20 September 2018, pp 132-133.

²⁶⁶ Merhi Defence final trial brief, paras 78-81. The Trial Chamber considers that some submissions in these paragraphs concern the legal definitions of crimes and modes of criminal responsibility, rather than evidentiary principles. The Trial Chamber deals with those submissions in chapter XIII ‘Applicable law’.

²⁶⁷ Merhi Defence final trial brief, para. 76.

²⁶⁸ Oneissi Defence final trial brief, para. 13; Oneissi Defence closing submissions, T. 20 September 2018, p. 128.

²⁶⁹ *Halilović* Appeal Judgment, para. 129 (footnotes omitted), citing to *Ntagerura and others* Appeal Judgment, para. 174 and *Blagojević and Jokić* Appeal Judgment, para. 226. See also *Taylor* Appeal Judgment, para. 227.

Mrkšić and Šljivančanin, *Dragomir Milošević* and *Ntagerura and others* appeal judgments. Each of these cases explicitly held that a trial chamber may only convict if the Prosecution has proved beyond reasonable doubt any additional fact that is indispensable for a conviction.²⁷⁰ Although *Lubanga* did not refer to this principle it cited to the passage in *Ntagerura and others* that did.²⁷¹ The ICC Appeals Chamber in *Ngudjolo* in 2015 applied the standard,²⁷² as did the *Katanga* and *Ngudjolo* trial judgments.²⁷³ Appeals against trial judgments in the only other two ICC post-trial appellate judgments, *Bemba and others* and *Bemba*, did not mention it.

216. Concerning the Prosecution's submissions contesting the notion of additional facts indispensable for a conviction, no judgment to which it referred rejected this approach. A number of judgments simply have not mentioned it or expressly adopted it.

217. This review of the case law has also revealed that splitting the term 'material facts' into two categories—one for the pleading purpose of providing notice to an Accused, and the other for pleading and proving the facts underlying the elements of the offence charged—can create confusion. The phrase itself is also used inconsistently which can create confusion. It may be preferable to avoid using it.

218. The Trial Chamber is satisfied that the statement from *Halilović* extracted above, and as applied in various ICTY, ICTR, SCSL and ICC trial and appellate judgments, represents the general principles of international criminal law procedural law, and adopts it. Namely, that 'All facts underlying the elements of the crime or the form of responsibility alleged as well as all those, which are indispensable for entering a conviction, must be proven beyond reasonable doubt'. This formulation also circumvents the uncertainty of using the expression 'material facts'.

²⁷⁰ *Mrkšić and Šljivančanin* Appeal Judgment, para. 220; *Blagojević and Jokić* Appeal Judgment, para. 226; *Dragomir Milošević* Appeal Judgment, para. 21; *Ntagerura and others* Appeal Judgment, para. 174.

²⁷¹ Namely, the *Ntagerura and others* Appeal Judgment, which held at para. 174 that at the 'fact-finding stage, the standard of proof beyond a reasonable doubt is applied to establish the facts forming the elements of the crime or the form of responsibility alleged against the accused, as well as with respect to the facts which are indispensable for entering a conviction', *Lubanga* Appeal Judgment, para. 22.

²⁷² Holding, at para. 125, 'Accordingly, the Appeals Chamber considers that the Trial Chamber was correct in its further elaboration of the standard of proof, namely that the elements of the crime and the mode of liability alleged against the accused, as well as the facts which are "indispensable for entering a conviction" must be established beyond reasonable doubt.' *Ngudjolo* Appeal Judgment.

²⁷³ *Katanga* Trial Judgment, para. 69; *Ngudjolo* Trial Judgment, para. 35. The two Accused were tried by the same trial chamber.

219. This approach has the merit of avoiding overly narrow, artificial distinctions between different facts, all of which must exist for the alleged crime or form of participation in it to have occurred. And in any event, no judgment to which the Prosecution referred clearly rejects this approach.

220. The Trial Chamber has found that the Prosecution must prove beyond reasonable doubt that the alleged accomplices, namely, Mr Merhi, Mr Oneissi and Mr Sabra, knew that Mr Hariri was the target of the crimes charged.²⁷⁴ For reasons set out in analysing the applicable law,²⁷⁵ the Trial Chamber considers that this is best characterised as a fact necessary to prove an element of the *mens rea* of a crime charged, rather than an ‘other fact’ that requires proof beyond reasonable doubt, as argued by the Sabra Defence. However, on the proven facts of this case the Trial Chamber has also determined that it would not matter whether the stricter interpretation, urged by the Merhi, Oneissi and Sabra Defence, was required.

221. Apart from this issue, the Parties appear to accept the principles on the application of the standard of proof outlined in paragraphs 201-205 above.²⁷⁶ The Trial Chamber has applied these principles throughout the judgment, even if the precise phrasing set out above is not always used. It has also applied a holistic assessment of the evidence, having considered it in its totality; this is explained below in paragraphs 230-255.

222. The Trial Chamber has considered every crime and charge against each Accused individually, determining for each whether the evidence establishes beyond reasonable doubt all facts indispensable to a conviction. This is consistent with the Trial Chamber’s obligation under Rule 148 (B) to vote separately on each charge contained in an indictment and to make separate findings as to each Accused.

²⁷⁴ Due to a lack of clarity in Lebanese law on this issue, the Trial Chamber has also briefly considered the alternative scenario, namely that such knowledge is not essential. *See* chapter XIII ‘Applicable law’, (B) (2) ‘Accomplice liability’; chapter XIV ‘Legal findings on elements of the crimes and Individual criminal responsibility’.

²⁷⁵ *See* chapter XIII ‘Applicable law’, (B) (2) ‘Accomplice liability’.

²⁷⁶ Prosecution final trial brief, paras 29, 32, 44-47; Prosecution closing submissions, T. 11 September 2018, pp 39, 116-117, T. 14 September 2018, p. 42; Ayyash Defence final trial brief, paras 7, 9; Ayyash Defence closing submissions, T. 17 September 2018, pp 7-9; Merhi Defence final trial brief, paras 67-69, 82 (*see also* paras 70-71); Merhi Defence closing submissions, T. 18 September 2018, pp 13-14, 64; Oneissi Defence final trial brief, paras 9-10; Oneissi Defence closing submissions, T. 19 September 2018, p. 29; Sabra Defence final trial brief, paras 4-7 (*see also* paras 71-72).

2. The obligation to provide a reasoned opinion

223. Article 23 of the Statute provides:

The judgement shall be rendered by a majority of the judges of the Trial Chamber ... It shall be accompanied by a reasoned opinion in writing, to which any separate or dissenting opinions shall be appended.

224. This is a fundamental principle of international human rights law. A reasoned opinion ensures that the accused can exercise their right of appeal,²⁷⁷ and that the Appeals Chamber can carry out its statutory duties, under Article 26 of the Statute, to review an appeal.²⁷⁸ ‘However, the reasoned opinion requirement relates to the Trial Judgement as a whole rather than to each submission made at trial’.²⁷⁹

225. The Trial Chamber only needs to make findings on the facts that are essential to determining the Accused’s criminal responsibility on a particular count. It may rely on the evidence that it finds the most convincing and need not refer to the testimony of every witness or every piece of evidence on the trial record.²⁸⁰ Indeed, in this case, with a trial record containing 3,135 exhibits—totalling 171,011 pages—and the evidence of 297 witnesses with a transcript of more than 90,000 pages in the three official languages, it would be impracticable. Nor is the Trial

²⁷⁷ Article 14 (5) of the International Covenant on Civil and Political Rights guarantees that, ‘Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.’ *See also* Article 2 (1) of the European Convention on Human Rights, ‘Right of appeal in criminal matters’, which provides that ‘Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.’ *See also* Rule 176 (A) stating that ‘An appeal may be lodged on the following grounds: (i) An error on a question of law invalidating the decision; (ii) An error of fact that has occasioned a miscarriage of justice’.

²⁷⁸ Article 26 of the Statute, ‘Appellate proceedings’, provides that the Appeals Chamber shall hear appeals from persons convicted by the Trial Chamber or from the Prosecutor on the grounds of error on a question of law invalidating the decision and or an error of fact that has occasioned a miscarriage of justice. The Appeals Chamber may affirm, reverse or revise the decision taken by the Trial Chamber.

²⁷⁹ *Karera* Appeal Judgment, para. 20, referring to *Limaj and others* Appeal Judgment, para. 81, with further references.

²⁸⁰ *Bemba and others* Appeal Judgment, para. 1540; *Al Jadeed and Al Khayat* Appeal Judgment, paras 57, 76; *Dragomir Milošević* Appeal Judgment, para. 21; *Ntagerura and others* Appeal Judgment, para. 174; *Taylor* Appeal Judgment, paras 246-247; *Perišić* Appeal Judgment, para. 92; *Bizimungu* Appeal Judgment, para. 18; *Sesay and others* Appeal Judgment, para. 39; *Hadžihasanović and Kubura* Appeal Judgment, para. 13; *Kvočka and others* Appeal Judgment, para. 23.

Chamber required to specify every step of its reasoning and to analyse every legal submission. The Trial Chamber need only explain its position on the main issues raised by the Parties.²⁸¹

226. This strikes a balance between, on the one hand, the soundness and transparency of judicial findings and, on the other hand, judicial economy and ensuring that the judgment remains accessible to the public. This is essential in long and technically complex cases.

227. With this in mind, the Trial Chamber has attempted brevity and clarity and to limit its findings and references to those essential to determine whether the Accused are guilty beyond reasonable doubt as charged. In its deliberations, the Trial Chamber has considered all the evidence on the record but has only referred to that most relevant to its findings. As expressed by the ICTY, the Trial Chamber ‘also emphasises that, where an item of evidence is not mentioned in this Judgement, it does not mean that it has not been considered’.²⁸²

228. The final trial submissions of the Parties and Legal Representatives of Victims totalled 1,406 pages and 417,748 words and occupied nine days of court with 1,117 pages of English transcript.²⁸³ In these circumstances in this judgment, the Trial Chamber can only expressly summarise and analyse the necessary portions of these submissions.

229. According to the ICTY, ICTR and ICC Appeals Chambers, a trial chamber is ‘not required to set out in detail why it accepted or rejected a witness’s testimony, or justify its evaluation of testimony in cases where there are discrepancies in the evidence’.²⁸⁴ But it is required to consider this in evaluating the evidence.²⁸⁵ The Trial Chamber accepts and has followed these principles in assessing the evidence.

²⁸¹ *Bemba and others* Appeal Judgment, para. 105; *Nyiramasuhuko and others* Appeal Judgment, para. 105; *Kvočka and others* Appeal Judgment, para. 23; *Kayishema and Ruzindana* Appeal Judgment, para. 165.

²⁸² *Milutinović and others* Trial Judgment, para. 64.

²⁸³ Equalling 1,131 pages of French transcript and 569 pages of Arabic transcript.

²⁸⁴ *Muhimana* Appeal Judgment, para. 176; *Musema* Appeal Judgment, para. 20; *Mrkšić and Šljivančanin* Appeal Judgment, para. 263; *Ngudjolo* Appeal Judgment, para. 170.

²⁸⁵ *Mrkšić and Šljivančanin* Appeal Judgment, para. 263; *Muhimana* Appeal Judgment, para. 58; *Niyitegeka* Appeal Judgment, para. 96.

3. Final assessment of the evidence—holistic assessment on the totality of the evidence—as distinct from assessment at the time of its admission

230. In its deliberations, for each relevant fact, a trial chamber must evaluate and weigh each piece of evidence against other relevant pieces of evidence. The quality of a piece of evidence may not be evident when it is viewed in isolation. Its quality may be augmented or undermined when considered with other relevant evidence, depending on whether it is corroborated or contradicted.²⁸⁶

231. This is distinguished from the Trial Chamber's findings on individual pieces of evidence when admitting them into evidence. These evidential admissibility rulings do not predetermine the final evaluation of the evidence.²⁸⁷ When admitting evidence, the Trial Chamber's assessment of relevance and *prima facie* reliability and probative value concerned only the tendered material's admissibility and not the weight that the Trial Chamber would ultimately attach to each piece of evidence²⁸⁸ when assessing it in light of the totality of the evidence.²⁸⁹

232. A chamber cannot evaluate evidence in a 'piecemeal' fashion.²⁹⁰ This is particularly important in Prosecution cases like the present one that rely heavily upon circumstantial evidence. Recognising this, international criminal courts and tribunals have frequently described a trial

²⁸⁶ *Al Jadeed and Al Khayat* Appeal Judgment, paras 56, 126; *Lubanga* Appeal Judgment, para. 22; *Taylor* Appeal Judgment, para. 235; *Halilović* Appeal Judgment, paras 125, 128; *Ntagerura and others* Appeal Judgment, para. 174; *Musema* Appeal Judgment, para. 134; *Vujin* Appeals Chamber first instance judgment, para. 92; *Kupreškić and others* Appeal Judgment, paras 31, 135, 202, 334. See also *Lubanga* Trial Judgment, para. 94; *Ngudjolo* Trial Judgment, para. 45; *Katanga* Trial Judgment, para. 79; *Bemba* Trial Judgment, paras 225, 227.

²⁸⁷ *Boškoski and Tarčulovski* Appeal Judgment, para. 196; *Boškoski and Tarčulovski* bar table exhibits admission decision, para. 11; *Rutaganda* Appeal Judgment, fn. 63.

²⁸⁸ See for example, Trial Chamber reasons for admission of Touch subscriber notes (Mobile 590), para. 32; Decision denying certification to appeal (Rule 158 admission), para. 23; Decision admitting statements of Witness PRH056 under Rule 158, para. 26; Decision admitting documentary evidence on the Legal Representatives of Victims' application, paras 31, 37, 65, 89; Decision denying Oneissi Defence certification to appeal Rule 158 decision (Witness PRH103), para. 7; Decision on certification to appeal (admission of 485 documents), paras 14-15; Decision on admission of photographs, videos, maps and 3-D models, para. 8; Decision on admission of attribution documents for Mr Oneissi, paras 14-15. See also *Ntahobali and Nyiramasuhuko* Appeal decision regarding admissibility of evidence, para. 15.

²⁸⁹ Decision on admission of Mr Al-Hassan's interview, paras 68-69; Decision on admission of documents (Subscriber and user information), para. 65; Decision on admission of Prosecution's cell site evidence, paras 65, 95, 162; Decision on Prosecution motion to admit Witness PRH705's statements, para. 19; Corrected version of Decision on Prosecution motion to admit Witness PRH707's statements, para. 49; Decision on scope of Mr Hamade's evidence, paras 16, 19-20; Decision denying request to exclude evidence of Witness PRH038, T. 17 November 2014, p. 11; Decision on admission of locations related evidence, para. 35. Final weight is attributed after having received submissions from the Parties. Decision in relation to Rule 125 witness, paras 14, 21.

²⁹⁰ *Halilović* Appeal Judgment, para. 128; *Mrkšić and Šljivančanin* Appeal Judgment, para. 217; *Taylor* Appeal Judgment, para. 235; *Nchamihigo* Appeal Judgment, para. 213; *Karadžić* Appeal Judgment, para. 128.

chamber's duty at the deliberations stage as making an assessment based on 'the totality of the evidence'²⁹¹ or assessing the evidence 'holistically'.²⁹² The terms 'totality' and 'holistic' in this sense are interchangeable.

233. The ICTY, ICTR, IRMCT, SCSL and ICC have adopted these long-standing features of international criminal law trials. ICTY and ICTR case law, for example, provides examples of where the true quality of individual pieces of evidence could only be determined once other relevant evidence was considered, and of its potential importance to a case's outcome. In its first contempt case, the ICTY Appeals Chamber, acting as a first instance trial court,²⁹³ held:

The first such matter of principle is that a tribunal of fact must never look at the evidence of each witness separately, as if it existed in a hermetically sealed compartment; it is the accumulation of *all* the evidence in the case which must be considered. The evidence of one witness, when considered by itself, may appear at first to be of poor quality, but it may gain strength from other evidence in the case. The converse is also true.²⁹⁴

234. In *Kupreškić and others*, the ICTY Appeals Chamber added to this by reiterating 'the importance of such a holistic approach to assessing credibility' and the need to assess 'the credibility of a witness in light of the trial record as a whole'.²⁹⁵ The ICTY consistently applied this standard, important as it is in evaluating evidence in circumstantial cases. As an example, the *Halilović* Appeal Judgment held that:

The task of a trier of fact is that of assessing all the relevant evidence presented with a holistic approach; this is all the more necessary in cases as complex as the ones before the International Tribunal. According to the Statute and the Rules, a trier of fact should render

²⁹¹ *Lubanga* Appeal Judgment, para. 22; *Mrkšić and Šljivančanin* Appeal Judgment, para. 217; *Stakić* Appeal Judgment, paras 55, 346; *Lukić and Lukić* Appeal Judgment, para. 260; *Martić* Appeal Judgment, paras 233-234; (on identification evidence specifically) *Limaj and others* Appeal Judgment, paras 24, 153-154, 275, citing *Limaj and others* Trial Judgment, para. 20; *Karemera and Ngirumpatse* Appeal Judgment, paras 52, 543; *Ngirabatware* Appeal Judgment, para. 86; *Taylor* Appeal Judgment, para. 250.

²⁹² *Lubanga* Appeal Judgment, para. 22; *Taylor* Appeal Judgment, para. 235; *Tolimir* Appeal Judgment, para. 247; *Halilović* Appeal Judgment, para. 128; *Bemba* Trial Judgment, paras 218, 225; (on credibility of witness evidence specifically) *Kupreškić and others* Appeal Judgment, para. 334.

²⁹³ In trying Milan Vujin, the former lead Defence counsel for Duško Tadić.

²⁹⁴ *Vujin* Appeals Chamber first instance judgment, para. 92 (internal footnote to common law authorities omitted). It was adopted by the ICTR in *Musema* Appeal Judgment, para. 134.

²⁹⁵ *Kupreškić and others* Appeal Judgment, para. 334. It specifically emphasised the need to address material inconsistencies between evidence, revealed by a holistic evaluation, before finally determining its credibility, paras 135, 202.

a reasoned opinion on the basis of the entire body of evidence and without applying the standard of proof “beyond reasonable doubt” with a piecemeal approach.²⁹⁶

235. The ICC has also used the ‘holistic’ standard, holding in its first post-conviction appeal judgment in *Lubanga*, in relation to applying the standard of beyond reasonable doubt, that:

In the view of the Appeals Chamber, when determining whether this standard has been met, the Trial Chamber is required to carry out a holistic evaluation and weighing of *all the evidence taken together* in relation to the fact at issue. Indeed, it would be incorrect for a finder of fact to do otherwise. These principles have guided the Appeals Chamber in its review of the Conviction Decision and, more specifically, of the way in which the Trial Chamber assessed the evidence to reach its findings under article 66 (3) of the Statute.²⁹⁷

236. In *Ngudjolo*, the Appeals Chamber by majority confirmed an acquittal at trial.²⁹⁸ The majority, in dismissing the Prosecution’s appeal grounds, including that the Trial Chamber had

²⁹⁶ *Halilović* Appeal Judgment, para. 128. The *Taylor* Appeal Judgment, at para. 235, specifically adopted this.

²⁹⁷ *Lubanga* Appeal Judgment, para. 22, citing to para. 174 of the *Ntagerura and others* Appeal Judgment, which held at paras 174-175:

‘- At the first stage, the Trial Chamber has to assess the credibility of the relevant evidence presented. This cannot be undertaken by a piecemeal approach. Individual items of the evidence, such as the testimony of different witnesses, or documents admitted into evidence, have to be analysed in the light of the entire body of evidence adduced. Thus, even if there are some doubts as to the reliability of the testimony of a certain witness, that testimony may be corroborated by other pieces of evidence leading the Trial Chamber to conclude that the witness is credible. Or, on the other hand, a seemingly convincing testimony may be called into question by other evidence which shows that evidence to lack credibility.

- Only after the analysis of all the relevant evidence, can the Trial Chamber determine whether the evidence upon which the Prosecution relies should be accepted as establishing the existence of the facts alleged, notwithstanding the evidence upon which the Defence relies. At this fact-finding stage, the standard of proof beyond a reasonable doubt is applied to establish the facts forming the elements of the crime or the form of responsibility alleged against the accused, as well as with respect to the facts which are indispensable for entering a conviction.

- At the final stage, the Trial Chamber has to decide whether all of the constitutive elements of the crime and the form of responsibility alleged against the accused have been proven. Even if some of the material facts pleaded in the indictment are not established beyond reasonable doubt, a Chamber might enter a conviction provided that having applied the law to those material facts it accepted beyond reasonable doubt, all the elements of the crime charged and of the mode of responsibility are established by those facts.’

‘The Appeals Chamber recalls that the presumption of innocence requires that each fact on which an accused’s conviction is based must be proved beyond a reasonable doubt. The Appeals Chamber agrees with the Prosecution’s argument that “if facts which are essential to a finding of guilt are still doubtful, notwithstanding the support of other facts, this will produce a doubt in the mind of the Trial Chamber that guilt has been proven beyond a reasonable doubt”. Thus, if one of the links is not proved beyond a reasonable doubt, the chain will not support a conviction.’ (internal footnotes omitted)

²⁹⁸ *Ngudjolo* Appeal Judgment, para. 296. The accused was acquitted at trial of committing war crimes and crimes against humanity in the Democratic Republic of the Congo.

failed to consider the evidence in its totality, did not refer to how a trial chamber was required to assess evidence.

237. Two judges jointly dissented and would have ordered a retrial,²⁹⁹ strongly endorsing the principle that a trial chamber must evaluate evidence holistically.³⁰⁰ Unlike the majority,³⁰¹ they considered that the trial chamber had evaluated the evidence in a fragmentary way, materially affecting its judgment,³⁰² and concluded that a trial chamber:

should adopt a holistic approach, whereby all relevant pieces of evidence are considered together as an entire body, *i.e.* as a system of evidence, and not merely on their own. Only when the trial chamber does not confine its assessment to each individual piece of evidence in isolation will the trier of fact be in a position to make an accurate determination on the merits of the case.³⁰³

238. The next post-conviction judgment, in the *Bemba and others* contempt case, also adopted the *Lubanga* definition.³⁰⁴

239. In *Bemba*, an ICC trial chamber convicted the accused on the basis of command responsibility for the criminal actions of his subordinates.³⁰⁵ He was acquitted on appeal in a three-to-two majority judgment.³⁰⁶ Two judges in the majority wrote a joint separate opinion

²⁹⁹ *Ngudjolo* dissenting opinion of Judges Trendafilova and Tarfusser, paras 1, 3, 70.

³⁰⁰ *Ngudjolo* dissenting opinion of Judges Trendafilova and Tarfusser, paras 33-35, 39, 41.

³⁰¹ *Ngudjolo* Appeal Judgment, paras 167-174.

³⁰² *Ngudjolo* dissenting opinion of Judges Trendafilova and Tarfusser, paras 31-51, 68-70. Judge Tarfusser, as an appellate judge in *Ngudjolo*, thus reached different conclusions on the consequences of a holistic assessment of evidence to his decision as a trial judge in *Gbagbo and Blé Goudé*.

³⁰³ *Ngudjolo* dissenting opinion of Judges Trendafilova and Tarfusser, para. 39.

³⁰⁴ *Bemba and others* Appeal Judgment, para. 1540. Judge Henderson dissented on the issue of whether evidential rulings were required when the evidence is submitted, writing, ‘First, my colleagues repeat the worn argument that Common Law systems approach evidence “atomistically”, whereas Romano-Germanic systems adopt a “holistic” approach. With the greatest of respect for my colleagues and the scholars upon whose views they seem to rely, this is a caricature which fundamentally misrepresents how the Common Law inspired adversarial system works in reality. Indeed, the fact that Common Law judges consider the authenticity, probative value and potential prejudice of each item of evidence individually does not mean that they consider these factors in isolation. Moreover, once the evidence is admitted, its evidentiary weight is assessed ever so “holistically” as in any other legal system’, Separate opinion of Judge Geoffrey Henderson, para. 41.

³⁰⁵ The accused was convicted, under Article 28 (a) of the Rome Statute, of committing war crimes and crimes against humanity committed in the Central African Republic, on the basis of command responsibility, in that he effectively acted as a military commander of the physical perpetrators of the incidents of murder, rape and pillage, *Bemba* Trial Judgment, para. 752.

³⁰⁶ The majority found that a number of the acts were outside the scope of the charges, discontinued those proceedings and acquitted him of the remaining charges, *Bemba* Appeal Judgment.

summarising evidentiary problems in the trial judgment, such as its undue reliance on hearsay³⁰⁷ and the misapplication of the principles concerning circumstantial evidence.³⁰⁸ In further explaining the *Lubanga* holistic approach to assessing evidence (as adopted by the *Bemba and others* appeal) they held:

It may be considered that the above criticisms are overly ‘atomistic’ and that we should have appreciated that the Trial Chamber evaluated the evidence ‘holistically’. If so, and with the greatest of respect, **holistic fact-finding should not be an excuse or a reason for making findings beyond a reasonable doubt on the basis of a collection of weak evidence.** When the Appeals Chamber says that the Trial Chamber must analyse the evidence holistically, all this means is that the evidentiary weight of individual items of evidence should not be determined in isolation, but rather in conjunction with other relevant evidence. It is also true that the credibility and evidentiary weight of specific items of evidence is not determinative. What matters is how strong and convincing the totality of the relevant evidence in relation to a particular fact is. That said, **analysing evidence holistically cannot cure the weakness of individual items of evidence and a number of weak arguments for a proposition do not and cannot ever combine into a strong reason for accepting it.**³⁰⁹

And further:

The Prosecutor’s appeal to the ‘holistic’ approach cannot counteract the absence of clear and convincing evidence.³¹⁰

240. In *Blé Goudé and Gbagbo*, the Trial Chamber by majority granted defence motions at the close of the Prosecution case to acquit the two accused.³¹¹ Writing separately, the three judges

³⁰⁷ Joint separate opinion of Judge Van den Wyngaert and Judge Morrison in *Bemba* Appeal Judgment, paras 8-10.

³⁰⁸ Joint separate opinion of Judge Van den Wyngaert and Judge Morrison in *Bemba* Appeal Judgment, paras 11-13. This issue is further discussed in chapter III ‘Assessment of evidence’, (C) (4) ‘Circumstantial evidence’, below.

³⁰⁹ Joint separate opinion of Judge Van den Wyngaert and Judge Morrison in *Bemba* Appeal Judgment, para. 15, footnotes omitted, emphasis added.

³¹⁰ Joint separate opinion of Judge Van den Wyngaert and Judge Morrison in *Bemba* Appeal Judgment, paras 60, 64, 67.

³¹¹ Of committing crimes against humanity in *Côte d’Ivoire*. Judge Tarfusser agreed with the result and with Judge Henderson’s lengthy and detailed legal and factual findings, although he differed from both Judge Henderson and the dissenting judge, Judge Herrera Carbuccion, on some other issues such as the nature of the decision. *Gbagbo and Blé Goudé* Judge Tarfusser opinion on acquittal decision, paras 1 and following. The acquittal decision is the subject of a Prosecution appeal, with its second ground arguing that the court erred by acquitting ‘without properly articulating and consistently applying a clearly defined standard of proof and/or approach to assessing the sufficiency of evidence’;

each endorsed the holistic approach, saying that they had applied it.³¹² One made a statement similar to the *Bemba* separate opinion on the holistic assessment of evidence, holding:

The Prosecutor has invited the Chamber to conduct a holistic evaluation of the evidence submitted where all the relevant items of evidence are to be considered together as an entire body of evidence and not merely on their own. While I agree that this is appropriate, such an approach is not incompatible with the need for careful scrutiny and rigorous analysis of the individual bits and pieces of evidence and the inferences that the Chamber has been invited to draw therefrom.³¹³

241. The Prosecution has repeatedly stressed, and the Defence of each Accused professes to accept the principle, that in its deliberations, the Trial Chamber must consider the evidence before it ‘holistically’, and not in isolation.³¹⁴ However, the Defence, in effect, submits that the Prosecution stresses this principle because of the weakness of its case and that applying it cannot overcome that weakness.³¹⁵

ICC, *Prosecutor v. Gbagbo and Blé Goudé*, ICC-02/11-01/15, Public redacted version of “Prosecution Document in Support of Appeal”, ICC02/11-01/15-1277-Conf, 15 October 2019, 17 October 2019, IV.

³¹² *Gbagbo and Blé Goudé* Judge Tarfusser opinion on acquittal decision, for example para. 73, ‘I have looked at the evidence in its entirety, taking it all ‘at its highest’ and ‘holistically’; however, I have done so in respect of the evidence tendered as a whole, irrespective of whether such evidence would or should fall under the heading and label of incriminating as opposed to exculpatory; accordingly, I have not excluded the exculpatory evidence and looked at it for what it is, refraining from engaging in twisting and turning it with a view to making it suit the Prosecutor’s theory, or preventing it from puncturing its very substance’. In her dissent, Judge Herrera Carbuccia stated, ‘In applying the relevant test at this stage of the proceedings, I will follow the approach adopted by other tribunals: “[T]he task of a trier of fact is that of assessing all the relevant evidence presented with a holistic approach; this is all the more necessary in cases as complex as the ones before the International Tribunal”.’ *Gbagbo and Blé Goudé* dissenting opinion of Judge Herrera Carbuccia on acquittal decision, para. 5, citing the ICTY *Halilović* Appeal Judgment, para. 128 and the SCSL *Taylor* Appeal Judgment, para. 235.

³¹³ *Gbagbo and Blé Goudé* Judge Henderson reasons for acquittal decision, para. 31, footnotes omitted, *see also*, for example paras 1905, 2038-2039, 2041.

³¹⁴ Prosecution final trial brief, paras 29, 31, 42-43; Prosecution closing submissions, T. 11 September 2018, pp 39-40, 42, 53-55, 87-89, T. 14 September 2018, pp 70-71, T. 21 September 2018, pp 81-89; Ayyash Defence final trial brief, paras 24-25; Ayyash Defence closing submissions, T. 17 September 2018, p. 95; Merhi Defence final trial brief, paras 69, 76; Oneissi Defence final trial brief, paras 3-4; Sabra Defence final trial brief, para. 8.

³¹⁵ Ayyash Defence final trial brief, para. 25; Ayyash Defence closing submissions, T. 17 September 2018, p. 95; Merhi Defence final trial brief, para. 69; *see also* Merhi Defence closing submissions, T. 18 September 2018, p. 86, stating that Prosecution counsel and experts ‘repeated relentlessly’ that we ‘should look at the wholistic picture and all the elements of the puzzle’; Oneissi Defence final trial brief, paras 3-4, 697-698; Oneissi Defence closing submissions, T. 19 September 2018, pp 31-32; *see also* pp 78, 82, 121-122, submitting that the evidence against Mr Oneissi is lacking and, at p. 82, that the Prosecution’s overall ‘method’ and ‘reasoning’ is unacceptable; T. 20 September 2018, pp 129-131; Sabra Defence final trial brief, para. 8; *see also* Sabra Defence closing submissions, T. 21 September 2018, pp 52-53, submitting generally that despite the Prosecution’s claims, the necessary evidence simply ‘does not exist’ and ‘is not there’.

242. The Ayyash, Oneissi and Sabra Defence also submit that the Trial Chamber must consider the quality of each piece of evidence individually. The Ayyash Defence argues that before the Trial Chamber considers the evidence holistically, it must carefully consider each piece of evidence individually to determine whether it is reliable.³¹⁶ It is only after this that the ‘problems’ with the evidence in this case become apparent.³¹⁷

243. In its final trial brief the Oneissi Defence submits that:

Holistic fact-finding should not be an excuse or a reason for making findings beyond a reasonable doubt on the basis of a collection of weak evidence. To analyse evidence holistically means that the evidentiary weight of individual items of evidence should not be determined in isolation, but rather in conjunction with other relevant evidence.

What matters is how strong and convincing the totality of the relevant evidence in relation to a particular fact is. Analysing evidence holistically cannot cure the weakness of individual items of evidence and a number of weak arguments for a proposition do not and cannot ever combine into a strong reason for accepting it.

Even if the Chamber were to adopt a ‘holistic’ approach to the evidence, it does not preclude it from carefully examining and assessing the weight to be afforded to each piece of evidence, in isolation. If the Chamber pulls at the threads, the case against Mr. Oneissi will quickly unravel.³¹⁸

The Oneissi Defence relies upon the *Bemba* joint separate opinion, and also argues that:

Each particular fact must be supported by evidence solid enough for the trier of fact to find it has been proved. The *individual assessment of the weight of each piece of evidence* is a crucial part of this exercise.³¹⁹

³¹⁶ Ayyash Defence closing submissions, T. 17 September 2018, pp 95, 114. *See also* Ayyash Defence final trial brief, para. 24, stating that the Trial Chamber must make an independent assessment of each piece of evidence to determine its weight. The Ayyash Defence did not refer to any authority in those oral closing submissions or that paragraph of its final trial brief, but the next paragraph of its brief consists of quotations from para. 15 of the Joint separate opinion of Judge Van den Wyngaert and Judge Morrison in *Bemba* Appeal Judgment, discussed in paragraphs 261-274.

³¹⁷ Ayyash Defence closing submissions, T. 17 September 2018, p. 95.

³¹⁸ Oneissi Defence final trial brief, paras 3-5, with para. 4 footnoted to Joint separate opinion of Judge Van den Wyngaert and Judge Morrison in *Bemba* Appeal Judgment, para. 15.

³¹⁹ Oneissi Defence final trial brief, para. 7, emphasis added. No legal authority is cited in support of this.

244. The Sabra Defence submits that the ‘holistic evaluation of evidence does not remove the need for an assessment of the quality of all facts, material or otherwise.’³²⁰ In support, it cites *Ntagerura*, which held that the ‘duty of the Trial Chamber to consider all the evidence does not relieve it from the duty to apply the required standard of proof to any particular fact’.³²¹ The Ayyash and Sabra Defence also cited to the same passage of the *Bemba* separate opinion on how the Trial Chamber should approach its final evaluation of the evidence.³²²

245. In examining the evidence supporting the material facts or those otherwise indispensable to a conviction, the Trial Chamber must determine the weight of each piece of evidence holistically, or in the totality of other pieces of evidence relevant to the fact in issue. The Trial Chamber’s duty to determine the weight of a piece of evidence in light of other relevant evidence, whatever the nature of the evidence in the case, is well-accepted in international criminal law.

246. In this respect, the Trial Chamber agrees with the highlighted portion of the *Bemba* separate opinion above at paragraph 239, and the Defence submissions to the extent that it should carefully consider each piece of evidence and that the evidence establishing a particular fact, taken as a whole, must meet the applicable standard to prove that fact.

247. However, the *Bemba* separate opinion appears to go further by suggesting that combining some seemingly weak pieces of circumstantial evidence can *never* collectively strengthen them to the point that together they could prove a material fact beyond reasonable doubt. But it does this without clearly defining what is meant by ‘a collection of weak evidence’ or ‘weak arguments’.³²³

³²⁰ Sabra Defence final trial brief, para. 65. It makes a similar submission in para. 8, footnoted to the *Ntagerura and others* Appeal Judgment, para. 172. See also Sabra Defence closing submissions, T. 21 September 2018, p. 32, where counsel for Mr Sabra similarly argued, ‘In a weak circumstantial case which relates to one single criminal event, no matter how serious, we do submit, Your Honours, that the Prosecution needs *all* of its evidence to be presented, to be subject to challenge, and to come through that challenge with credibility and reliability intact. There is no fact in the indictment where the Prosecution can prove only, say, 60 per cent of its allegations and still obtain a conviction.’ Regarding circumstantial evidence, see chapter III ‘Assessment of evidence’, (C) (4) ‘Circumstantial evidence’, below.

³²¹ *Ntagerura and others* Appeal Judgment, para. 172.

³²² Ayyash Defence final trial brief, para. 25; Sabra Defence final trial brief, para. 8. The Oneissi and Sabra Defence also relied on other parts of this opinion in their submissions on the assessment of circumstantial evidence, summarised in chapter III ‘Assessment of evidence’, (C) (4) ‘Circumstantial evidence’, below.

³²³ *Confer* Dissenting opinion of Judge Monageng and Judge Hofmański in *Bemba* Appeal Judgment, para. 47, stating—regarding one of the grounds of appeal as to whether Mr Bemba was liable as a superior and took all necessary and reasonable measures within his powers to prevent or repress the commission of crimes—that ‘The Majority appears to have considered that, given its modification of the standard of review, it was not required to review the evidentiary record comprehensively and should simply overturn the factual findings of the Trial Chamber in case of

248. It appears that the *Bemba* separate opinion was referring to evidence that the two judges believed was too ‘weak’ to admit into evidence. Such evidence must lack probative value and, at least at the Special Tribunal, would be ineligible for admission into evidence. The *Bemba* conclusion thus appears to have been directed at inadmissible (yet admitted) evidence rather than evaluating pieces of evidence that have varying degrees of probative value, some of which might be ‘weaker’ than others.

249. The Trial Chamber, under Rule 149 (C), can only receive ‘relevant evidence which it deems to have probative value’. This is assessed at the point of admission, and if the evidence has insufficient indicia of reliability it cannot be admitted, as it will lack probative value. The assessment of its weight comes in evaluating it when deliberating on whether the Prosecution has proved its case. Thus, at that stage the Trial Chamber may assess, in combination, a number of pieces of evidence that have varying degrees of probative value.

250. But even if the *Bemba* separate opinion was also referring to admissible evidence, namely, that found to have some probative value at the time of the decision to admit it, the type of evidence it mentions is indisputably at the lowest end of the spectrum when it comes to probative value. The separate opinion specifically lists anonymous hearsay but also mentions a lack of corroboration and an inability to test the evidence in court.³²⁴

251. A case relying on inadmissible evidence, and or evidence with extremely limited probative value, could not result in a conviction. This is because it would be unreasonable, in the face of such cumulative weaknesses, to find that the relevant standard of proof beyond reasonable doubt has been attained.

252. Such evidence is different to that having varying degrees of probative value. In that case, some pieces, individually, could legitimately be described as ‘weaker’ than others. The combination of *these* pieces of evidence, even if they are individually comparatively ‘weaker’ than others, *could potentially*—if examined in their totality—be used to prove a charge. For these reasons, the Trial Chamber understands the *Bemba* separate opinion to be expressing a view on inadmissible evidence that lacks probative value, or on evidence whose reliability is very low,

doubt ... The Majority does not engage in any meaningful way with the factual findings entered by the Trial Chamber, or demonstrate any awareness of the evidence on which these findings were based’.

³²⁴ Joint separate opinion of Judge Van den Wyngaert and Judge Morrison in *Bemba* Appeal Judgment, paras 8-10.

rather than on evaluating a combination of individual pieces of evidence that may have varying degrees of weight. This is explained further below in relation to assessing circumstantial evidence.

253. The Trial Chamber has assessed each piece of evidence in the context of all related evidence. Taking this approach is particularly important in evaluating the Prosecution's telecommunications evidence. The evidence against the four Accused is almost completely circumstantial. It is only from reviewing the relevant facts in their entirety that a chamber can see patterns that *could potentially* emerge from which conclusions could be drawn that they are so striking as to be beyond coincidence. And hence provide proof beyond reasonable doubt of facts indispensable to a conviction.

254. Some particular pieces of evidence in this case, however, are related to a topic or evidentiary theme so discrete that they may be assessed without requiring substantial comparison with other admitted evidence. In other words, there was little or no other relevant evidence to assess. An example of this is the evidence connected to the use of photo boards for identification purposes.³²⁵

255. The Trial Chamber has made findings on the weight of each piece of evidence, based on its determination of relevance, credibility,³²⁶ reliability and probative value. These findings are set out in this judgment, either implicitly or—in case of particularly important and or contested pieces of evidence—explicitly.

4. Circumstantial evidence

256. The Prosecution's case relies heavily on circumstantial evidence. Circumstantial evidence is that of circumstances surrounding an event or an offence from which a relevant fact in issue may be reasonably inferred. The ICTY Appeals Chamber first defined it as follows:

A circumstantial case consists of evidence of a number of different circumstances which, taken in combination, point to the guilt of the accused person because they would usually exist in combination only because the accused did what is alleged against him ... Such a

³²⁵ See chapter XII 'Claim of responsibility for the attack on Rafik Hariri', (D) (2) 'The 'identification' of Mr Oneissi as the 'Mohammed' who Mr Abu Adass encountered in the mosque'.

³²⁶ Credibility is only relevant at this stage of the assessment of the evidence. Decision on admission of documents used with a witness by the Oneissi Defence, paras 14, 62; Decision admitting evidence under Rule 158 (Witness PRH056), para. 47; Decision on admission of Mr Al-Hassan's interview, paras 68-69.

conclusion must be established beyond reasonable doubt. It is not sufficient that it is a reasonable conclusion available from that evidence. It must be the *only* reasonable conclusion available. If there is another conclusion which is also reasonably open from that evidence, and which is consistent with the innocence of the accused, he must be acquitted.³²⁷

257. In its entirety it may comprise a mixture of ‘direct’ evidence and evidence from which a chamber may draw inferences with regard to a particular proven fact. Circumstantial evidence does not have less value than direct evidence, and a chamber may convict solely on circumstantial evidence.³²⁸ However, when the Prosecution relies by inference upon circumstantial evidence to prove the facts constituting the elements of an offence, or those indispensable for a conviction, that inference must be the only reasonable conclusion available from the evidence. If a reasonable inference—other than that put forward by the Prosecution—is available, then those facts are not proven beyond a reasonable doubt. Under the principle of *in dubio pro reo* the Trial Chamber must acquit the Accused.³²⁹ All Parties acknowledge this.³³⁰

258. The Prosecution emphasises,³³¹ and the Ayyash, Merhi and Sabra Defence explicitly accept,³³² that the same standard of proof applies to both direct and circumstantial evidence. This is legally correct. The Prosecution also notes, correctly—as do the Merhi and Sabra Defence—

³²⁷ *Delalić and others (Čelebići)* Appeal Judgment, para. 458.

³²⁸ *Taylor* Appeal Judgment, para. 182; *Fofana and Kondewa* Appeal Judgment, paras 198, 200; *Kupreskić* Appeal Judgment, para. 303 (‘The Appeals Chamber first notes that there is nothing to prevent a conviction being based upon [circumstantial] evidence. Circumstantial evidence can often be sufficient to satisfy a fact finder beyond reasonable doubt.’); *Kordić and Čerkez* Appeal Judgment, para. 834 (rejecting challenge that finding on an element of the crime must have been based on direct evidence).

³²⁹ *Bemba and others* Appeal Judgment, paras 868, 1166, 1386; *Al Jadeed and Al Khayat* Appeal Judgment, fn. 286, paras 104, 167, 169; *Fofana and Kondewa* Appeal Judgment, para. 200; *Ntagerura and others* Appeal Judgment, paras 304, 306; *Delalić and others (Čelebići)* Appeal Judgment, para. 458; *Šešelj* Appeal Judgment, paras 63, 118.

³³⁰ Prosecution final trial brief, paras 29-30, 34-37; Prosecution closing submissions, T. 11 September 2018, p. 42; Ayyash Defence final trial brief, paras 9-12; Ayyash Defence closing submissions, T. 17 September 2018, pp 7-9; Merhi Defence final trial brief, paras 70-71, 73, 77-79; Oneissi Defence final trial brief, paras 8, 555; Oneissi Defence closing submissions, T. 19 September 2018, p. 130, T. 20 September 2018, p. 129; Sabra Defence final trial brief, paras 6, 64; *see also* Sabra Defence closing submissions, T. 21 September 2018, p. 32.

³³¹ Prosecution final trial brief, paras 29, 32.

³³² Ayyash Defence final trial brief, para. 10; Merhi Defence final trial brief, para. 70; Sabra Defence final trial brief, para. 5.

that circumstantial evidence can suffice to establish material facts, even if uncorroborated.³³³ Further, as the ICTY Appeals Chamber held in *Limaj*:

The burden of proof on the Prosecution to establish facts beyond reasonable doubt does not necessarily require the Prosecution to establish that each piece of evidence independently establishes the relevant fact to that standard.³³⁴

259. On the other hand, the Merhi, Oneissi and Sabra Defence point out that according to one ICTY trial chamber, an inference from *any* evidence ‘must be reasonable and narrowly construed’.³³⁵ Consequently, that chamber rejected ‘any inferences based on a series of inferences’.³³⁶ The Defence urges the Trial Chamber to do the same³³⁷ and or, generally, to exercise particular caution in light of the circumstantial nature of the case,³³⁸ when assessing the evidence of all alleged facts, whether they are indispensable to conviction or not.³³⁹

260. The Trial Chamber has carefully considered these submissions and the international principles and case law. Any adverse inference drawn from circumstantial evidence on a fact indispensable to conviction must be the only reasonable conclusion available from the admitted evidence. In assessing the evidence to draw a conclusion on a particular indispensable fact, the Trial Chamber has considered any alternative reasonable conclusion available from the admitted evidence. Consistent with the principles of international human rights law referred to above, it has exercised any doubt in the Accused’s favour.

261. The Sabra and Oneissi Defence also refer to the *Bemba* separate opinion, where it explained that the ICC trial chamber had ‘often failed to adhere to’ the principle that an inference from

³³³ Prosecution final trial brief, paras 30, 33; Prosecution closing submissions, T. 11 September 2018, pp 41-42. The Merhi and Sabra Defence also expressly acknowledged this in their final trial briefs, paras 74 and 69 respectively. Regarding corroboration, *see further* chapter III ‘Assessment of evidence’, (C) (7) ‘Corroboration’, below.

³³⁴ *Limaj and others* Appeal Judgment, para. 24. This was specifically in relation to identification evidence, but it also stands as a general principle.

³³⁵ *Hadžihasanović and Kubura* Trial Judgment, para. 311. Merhi Defence final trial brief, paras 72-73, 589; Oneissi Defence final trial brief, para. 8; Sabra Defence final trial brief, paras 8, 65.

³³⁶ *Hadžihasanović and Kubura* Trial Judgment, para. 311.

³³⁷ Merhi Defence final trial brief, paras 72-73, 589; Oneissi Defence final trial brief, para. 8; Sabra Defence final trial brief, paras 8, 65.

³³⁸ *See for example*, Sabra Defence final trial brief, para. 64; Merhi Defence closing submissions, T. 18 September 2018, p. 95; Oneissi Defence final trial brief, paras 6-8; Oneissi Defence closing submissions, T. 20 September 2018, pp 129-130; Ayyash Defence final trial brief, para. 11.

³³⁹ Oneissi Defence closing submissions, T. 20 September 2018, pp 129-130; Sabra Defence final trial brief, paras 8, 65.

circumstantial evidence must be the only reasonable one available.³⁴⁰ The separate opinion stated that although it is ‘legally correct’ that only material, not subsidiary, facts need be established beyond reasonable doubt:

it does not mean that the quality of the evidence for subsidiary facts is irrelevant from an evidentiary point of view. This is especially true in relation to circumstantial evidence. By definition, drawing inferences from circumstantial evidence only adds uncertainty. Therefore, if the factual basis of the circumstantial evidence is weak, the inferences drawn from it will be even weaker.³⁴¹

262. Relying on this, the Sabra Defence submits that the Trial Chamber must apply the required standard of proof to all necessary facts, and assess the quality of evidence of subsidiary facts, ‘particularly in relation to circumstantial evidence where the factual basis of the circumstantial evidence is weak’.³⁴² The Oneissi Defence also quoted from the paragraph above,³⁴³ and invited the Trial Chamber to ‘apply exactly this approach when assessing the evidence’.³⁴⁴

263. *Bemba* was in part a circumstantial case, and particularly in relation to Mr Bemba’s *mens rea* for the command responsibility allegations. The *Bemba* separate opinion expressed strong concern ‘about the fact that the Trial Chamber relied on a large amount of circumstantial evidence in relation to a number of key findings’.³⁴⁵

264. When considered in the abstract this passage is legally problematic; a court is not legally prohibited from relying on a ‘large amount’—or any amount—of circumstantial evidence for key findings. In cases where the evidence is solely circumstantial, which is of course legally permissible, all key findings will inevitably rest on the inferences flowing from it.

³⁴⁰ Joint separate opinion of Judge Van den Wyngaert and Judge Morrison in *Bemba* Appeal Judgment, para. 11. In one example, the *Bemba* Trial Chamber had listed eight circumstantial factors that it considered cumulatively proved the existence of a policy to attack a civilian population; at paras 12-13, the two Appeals Chamber judges disagreed that there was enough evidence to support this.

³⁴¹ Joint separate opinion of Judge Van den Wyngaert and Judge Morrison in *Bemba* Appeal Judgment, para. 12. The opinion uses the term ‘plausible’ instead of ‘reasonable’, at paras 11, 14-15. They mean the same thing.

³⁴² Sabra Defence final trial brief, para. 8.

³⁴³ Oneissi Defence final trial brief, para. 8; Oneissi Defence closing submissions, T. 20 September 2018, pp 129-130.

³⁴⁴ Oneissi Defence closing submissions, T. 20 September 2018, p. 130.

³⁴⁵ Joint separate opinion of Judge Van den Wyngaert and Judge Morrison in *Bemba* Appeal Judgment, para. 11. This was apart from the passage extracted above concerning the holistic assessment of evidence.

265. Regarding circumstantial reasoning, the separate opinion also stated:

The real question is whether it is logically possible to prove the existence of a forest beyond a reasonable doubt without proving the existence of a sufficient (depending on how one defines a forest) number of trees beyond a reasonable doubt. Whereas trees exist independently of the forest, forests do not exist independently of the trees that constitute it.

We also reject the Trial Chamber's apparent conclusion that weak testimonial evidence can somehow be corroborated by weak documentary evidence, especially if one or both are based on (anonymous) hearsay.³⁴⁶

266. On the last point, the Trial Chamber agrees that anonymous hearsay, which by its nature is inherently unreliable and thus objectively 'weak', can neither strengthen other pieces of 'weak' circumstantial evidence, nor in turn be reinforced by the other evidence.

267. The *Bemba* separate opinion, however, must of course be read in its context. And in this respect the two judges explicitly accepted the fundamental principles outlined above on drawing inferences from circumstantial evidence and the standard of proof applicable to all types of evidence.³⁴⁷ Further, the circumstantial evidence they were analysing, in their view, *was* conspicuously weak, and *did* permit competing reasonable inferences, such as not to prove Mr Bemba's guilt.³⁴⁸ Additionally, they were assessing the circumstantial evidence in a command responsibility case, where proof is often difficult, and an accused person's *mens rea* is often provable only by circumstantial inference. And as noted above, the Trial Chamber is of the view that the *Bemba* separate opinion was directed at inadmissible evidence that had nonetheless been received into evidence by a trial chamber, or evidence with extremely low probative value.

268. However, despite this, the Trial Chamber does not agree—as an absolute legal principle—with the statement from the *Bemba* separate opinion that, by definition 'drawing inferences from

³⁴⁶ Joint separate opinion of Judge Van den Wyngaert and Judge Morrison in *Bemba* Appeal Judgment, paras 60, 64.

³⁴⁷ Joint separate opinion of Judge Van den Wyngaert and Judge Morrison in *Bemba* Appeal Judgment, paras 11-12, 14. They also did so in the majority judgment in that case. *Bemba* Appeal Judgment, para. 42, endorsing *Bemba and others* Appeal Judgment, para. 868.

³⁴⁸ Criticising the trial judgment's 'opacity of the reasoning, the reliance on (anonymous) hearsay evidence and the findings beyond a reasonable doubt based on dubious circumstantial evidence', Joint separate opinion of Judge Van den Wyngaert and Judge Morrison in *Bemba* Appeal Judgment, para. 67.

circumstantial evidence only adds uncertainty. Therefore, if the factual basis of the circumstantial evidence is weak, the inferences drawn from it will be even weaker.’³⁴⁹

269. This may well apply, but whether it does will depend upon the quality of the evidence in the particular case. And that can be determined only after the individual pieces of evidence are viewed in their totality. That is the nature of a case relying upon circumstantial evidence. And as noted above, each piece of evidence received must have some probative value in its own right, to be eligible for admission into evidence.

270. As the ICTY Appeals Chamber in *Delalić*, its first circumstantial case on appeal, held it ‘consists of evidence of a number of different circumstances which, taken in combination, point to the guilt of the accused person because they would usually exist in combination only because the accused did what is alleged’.³⁵⁰ It is the combination of these different pieces of evidence that may prove guilt.

271. The practice of assessing circumstantial evidence in its entirety is more nuanced than simply finding that a chamber cannot convict based upon collating a number of individually ‘weak’ pieces of circumstantial evidence. The nature of circumstantial evidence is that it requires the combination of more than one piece of indirect evidence to reach the standard of proof beyond reasonable doubt of those facts indispensable to a conviction. Virtually inevitably, some pieces of evidence will have less strength than others. But, it is stressed, this is a comparative evaluation and each piece of evidence must be independently assessed as relevant and having some probative value before its admission into evidence.

272. On one hand, the Trial Chamber is acutely aware that evaluating numerous pieces of circumstantial evidence together—some of which are less probative than others—does not *of itself* transform those with less weight into proof beyond reasonable doubt of the fact(s) that they are collectively intended to prove. Putting them all together *will not necessarily* make less probative (or ‘weaker’) facts stronger and provide the necessary inferences to proof beyond reasonable doubt on the ultimate issue.

³⁴⁹ Joint separate opinion of Judge Van den Wyngaert and Judge Morrison in *Bemba* Appeal Judgment, para. 12.

³⁵⁰ *Delalić and others (Čelebići)* Appeal Judgment, para. 458.

273. However, on the other hand, when each circumstantial piece of evidence is viewed in the totality of all the other pieces of evidence, patterns *could* emerge that *could* collectively elevate individual pieces of evidence to a point that mere coincidence cannot explain, to equate to proof beyond reasonable doubt. This *could* occur even where each circumstantial piece of evidence appears insufficient on its face. The Trial Chamber cannot discard this as a possibility, and in this respect, it declines to follow the reasoning of the *Bemba* separate opinion, as outlined above, as an *absolute* principle in assessing circumstantial evidence.

274. The Trial Chamber has therefore assessed each piece of underlying circumstantial evidence both individually and in its totality with all other pieces of relevant evidence to determine whether the Prosecution has proved each material fact beyond reasonable doubt. Where they appear to lack strength the Trial Chamber has scrutinised them with extra caution, both individually and in their totality.

5. Prohibition on basing a conviction solely or decisively on evidence that the Defence had no opportunity to challenge

275. Article 16 (4) (f) of the Statute guarantees that an accused is entitled to examine all evidence to be used during the trial in accordance with the Special Tribunal's Rules.³⁵¹ Rules 155 and 158 allow a chamber to admit evidence without cross-examination. Other rules permit taking depositions at both the pre-trial and trial stages when a potential witness's evidence may otherwise become unavailable, even if the witness cannot appear before the Special Tribunal to give evidence.³⁵²

276. However, a conviction may not rest solely, or in a decisive manner, on evidence that the accused could not test either during the investigation or at trial. Entering a conviction based on this kind of evidence without sufficient corroboration is counter to the principle of fairness in Article 16 (4) (f).³⁵³ The ICTY and IRMCT Appeals Chambers have held that:

³⁵¹ In addition, Rule 69 reiterates this guarantee, by providing that an accused shall enjoy the rights enshrined in Article 16 of the Statute.

³⁵² Rules 123, 157.

³⁵³ *Al Jadeed and Al Khayat* Appeal Judgment, fn. 378, para. 131; *Popović and others* Appeal Judgment, paras 96, 1222, 1226. Decision denying certification to appeal (Rule 158 admission), para. 23; Decision denying certification to appeal of 1 February 2018, para. 20; Decision on admission of Mr Al-Hassan's interview, para. 67; Decision denying certification to appeal (Witness PRH024), para. 35; Corrected decision under Rule 158 (Witness PRH024), para. 42; Trial management decision, para. 93.

a conviction may not rest solely, or in a decisive manner, on the evidence of a witness whom the accused has had no opportunity to examine or to have examined either during the investigation or at trial. This principle applies “to any fact which is indispensable for a conviction”, meaning “the findings that a trier of fact has to reach beyond reasonable doubt”. It is considered to “run counter to the principles of fairness ... to allow a conviction based on evidence of this kind without sufficient corroboration”.³⁵⁴

277. The Defence of each Accused underlines these principles.³⁵⁵ These principles were especially important for the Trial Chamber’s findings concerning Mr Merhi, Mr Oneissi and Mr Sabra. These are set out in assessing their charged criminal responsibility based upon their pleaded involvement in making the alleged false claim of responsibility for Mr Hariri’s assassination.

6. Hearsay evidence

278. Hearsay is evidence of out-of-court statements or assertions of fact, tendered for their truth, given by a witness, maker or declarant, who has no direct knowledge of the facts asserted and who has not witnessed, heard or experienced them personally. That witness’s knowledge of the facts is based solely on what others have said or reported to them or otherwise originates from a third party source extraneous to them.³⁵⁶ There are numerous categories of hearsay evidence, some of which are deemed to have *prima facie* reliability by virtue of their nature, for example, official records such as birth certificates or land registry documents; although the authenticity or reliability of such documents may be challenged or rebutted. Business records prepared in the normal course of a business are another category, as explained below.

³⁵⁴ *Karadžić* Appeal Judgment, para. 449, citing *Popović and others* Appeal Judgment, para. 96 (internal references omitted); *Prlić and others* Appeal Judgment, para. 137; *Martić* Appeal Judgment, para. 192, fn. 486.

³⁵⁵ Ayyash Defence final trial brief, para. 32; Merhi Defence final trial brief, para. 74; Sabra Defence final trial brief, para. 74. The Oneissi Defence did not explicitly state these principles, but implicitly relied on them in submissions throughout its final trial brief and closing submissions, regarding particular untested and or uncorroborated evidence.

³⁵⁶ *Aleksovski* admissibility appeal decision, paras 14-15; *Krajišnik* Trial Judgment, para. 1190; *Al Jadeed and Al Khayat* Appeal Judgment, fn. 374, *see also* fns 394, 415; *Fofana and Kondewa* Appeal Judgment, para. 198; *Galić* appeal decision on admission of written statements, para. 27; *Rutaganda* Appeal Judgment, para. 35. *See also* Black’s Law Dictionary, ‘Hearsay’, defining it as ‘1. Traditionally, testimony that is given by a witness who relates not what he or she knows personally, but what others have said, and that is therefore dependent on the credibility of someone other than the witness. Such testimony is generally inadmissible under the rules of evidence. 2. In federal law, a statement (either a verbal assertion or nonverbal assertive conduct), other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted’.

279. The weight given to hearsay evidence will depend on the circumstances surrounding its making. The mere fact that evidence is hearsay does not *of itself* deprive it of credibility or reliability. A chamber may, but exercising caution, use hearsay evidence to convict an accused person. Relevant factors in assessing its weight or probative value include the source of the information, its precise character and whether it is corroborated by other evidence.³⁵⁷

280. The Trial Chamber admitted some hearsay evidence, for example, that contained in Mr Hassan Nasrallah's speech of 20 May 2016 commemorating the life of the former Accused Mr Badreddine,³⁵⁸ the statements to the Prosecution of the late Mr Wissam Al-Hassan³⁵⁹ and that in Witnesses PRH705's and PRH707's evidence.³⁶⁰

281. Some statements admitted into evidence under Rules 155, 156 and 158 also contained hearsay. The Trial Chamber has considered that evidence in light of the totality of all the other evidence relevant to that evidence,³⁶¹ taking into account that its hearsay nature affects its weight.³⁶² In some instances, the Trial Chamber has assessed the hearsay evidence as having little or no weight, especially where it was not independently corroborated. This is most critical in its assessment of the statements of unavailable witnesses whose statements were admitted under Rule 158, and whose evidence was disputed by the Defence and for which there is no corroboration, such as Mr Ziad Ramadan and Witness PRH056.

282. The Ayyash and Sabra Defence made detailed written submissions on hearsay evidence. They point to a number of specific principles in international criminal case law on this issue,

³⁵⁷ *Al Jadeed and Al Khayat* Appeal Judgment, fn. 374; *Ngudjolo* Appeal Judgment, para. 226; *Lukić and Lukić* Appeal Judgment, para. 577; *Karera* Appeal Judgment, para. 39; *Fofana and Kondewa* Appeal Judgment, para. 198. *See also Taylor* Appeal Judgment, paras 82-91.

³⁵⁸ Decision admitting documents on the death of Mr Badreddine, paras 8, 36; exhibit P1989 (Transcript of video recording for *Al-Manar* TV regarding Mustafa Badreddine's memorial ceremony).

³⁵⁹ Decision on admission of Mr Al-Hassan's interview, paras 65, 69; exhibit P2121 (Interview of Wissam Al-Hassan, 17 June 2012); exhibit P2122 (Interview of Wissam Al-Hassan, 16 June 2012).

³⁶⁰ Decision on call sequence tables of 31 October 2016, paras 77, 80, 83-84; Decision on admission of Witness PRH707's statements and annexes into evidence, paras 155-156; Decision on Prosecution motion to admit Witness PRH705's statements, paras 22-23; Decision on admission of Witness PRH705's statements and annexes into evidence, paras 99-100. *See for example*, exhibit P826 (Witness PRH705's statement of 16 November 2015); exhibit P826.2 (Network architecture and call set-up, annex 3 to Witness PRH705's statement of 16 November 2015); exhibit P818 (Clarification to correct geographical coordinates of 19 Touch cell sectors and correct azimuths for three Touch cell towers in 2004 and 2005, annex 22 (2) to Witness PRH705's statement of 16 November 2015); exhibit P1192 (Statement of Witness PRH707, 11 November 2015); exhibit P1192.11 (Alfa response to request for assistance).

³⁶¹ Decision on admission of Prosecution's cell site evidence, para. 65.

³⁶² Decision on admission of Mr Al-Hassan's interview, para. 65.

including that hearsay evidence must be treated with caution and second-and third-hand hearsay be given limited value or weight.³⁶³ The Trial Chamber has considered and taken into account these submissions in its deliberations, noting however that neither they nor any other Party appears fundamentally to disagree with these general principles.³⁶⁴

7. Corroboration

283. Two sources of evidence corroborate each other when one is compatible with the other regarding the same fact or sequence of linked facts. However, corroboration is neither a condition for nor a guarantee of the reliability of a piece of evidence; it is merely an element that a reasonable trier of fact may consider in assessing the evidence. A trial chamber has the discretion to decide, in light of the circumstances of each case, whether corroboration is necessary, and may rely on credible uncorroborated witness testimony.³⁶⁵ In this respect, the ICTY Appeals Chamber in *Limaj* held:

Corroboration is neither a condition nor a guarantee of reliability of a single piece of evidence. It is an element that a reasonable trier of fact may consider in assessing the evidence. However, the question of whether to consider corroboration or not forms part of its discretion.³⁶⁶

284. This requires an assessment of the reliability and credibility of the evidence. A chamber may accept the testimony of a single witness, even as proof of a fact indispensable to conviction. Thus, an Accused may be convicted on the basis of uncorroborated evidence from a single witness—as long as it could be tested—if that testimony is sufficient to convince a chamber

³⁶³ Ayyash Defence final trial brief, paras 35-36; Sabra Defence final trial brief, paras 102-103.

³⁶⁴ The Oneissi Defence challenged Witness 707's evidence and the pleaded involvement of Mr Oneissi in the 'Mohammed story', specifically, in part on the grounds that it is remote hearsay; Oneissi Defence final trial brief, paras 49-52, 312. This is dealt with in detail in chapter VII 'Reliability of telecommunications evidence', (E) 'General submissions in relation to Witnesses 705 and 707 and their evidence', and (F) 'Findings on Witnesses 705 and 707 and their evidence'; chapter XII 'Claim of responsibility for the attack on Rafik Hariri'.

³⁶⁵ *Al Jadeed and Al Khayat* Appeal Judgment, fn. 167; *Nahimana and others* Appeal Judgment, para. 428; *Limaj and others* Appeal Judgment, para. 203.

³⁶⁶ *Limaj and others* Appeal Judgment, para. 203 (footnotes omitted but referring to *Aleksovski* Appeal Judgment, paras 62-63; *Tadić* Appeal Judgment, para. 65; *Delalić and others (Čelebići)* Appeal Judgment, paras 492, 506; *Gacumbitsi* Appeal Judgment, para. 72; *Semanza* Appeal Judgment, para. 153; and *Kayishema and Ruzindana* Appeal Judgment, paras 154, 229); see also *Mrkšić and Šljivančanin* Appeal Judgment, para. 264; *Ngudjolo* Appeal Judgment, para. 148.

beyond reasonable doubt of the Accused's guilt. The Trial Chamber must, however, assess such evidence with appropriate caution.³⁶⁷

285. In assessing the evidence, the Trial Chamber determined on a case-by-case basis whether it required corroboration, taking into consideration the Parties' submissions on this issue.³⁶⁸ It exercised appropriate caution when relying on uncorroborated evidence. Due to the circumstantial nature of much of the evidence in this case, however, the Trial Chamber generally considered that corroboration was more desirable than in Prosecution cases based on more direct evidence.

286. It has been particularly careful in assessing whether witness statements containing hearsay, that were admitted into evidence under Rule 158 due to the unavailability of witnesses, either internally corroborate each other, or have been corroborated by evidence that the Defence could challenge in cross-examination.

287. Where the Defence has contested that evidence and or where it goes to proof of a fact that is necessary to establish guilt beyond reasonable doubt, and it has not been corroborated by evidence that the Defence could challenge in court, the Trial Chamber has not relied on it. As noted below, examples include much of Witness 56's and Mr Ramadan's evidence. But, conversely, some portions of their untested evidence are uncontroversial and unchallenged. Other parts of their evidence contain direct impressions rather than hearsay. Defence counsel have also relied on certain portions of their evidence.³⁶⁹

D. Assessing different forms of evidence

288. In assessing the evidence, the Trial Chamber has been conscious of the different forms of evidence it has received, namely, witness testimony, documentary evidence, agreed facts and facts which have been judicially noted.

³⁶⁷ *Bemba and others* Appeal Judgment, paras 1084, 1534; *Al Jadeed and Al Khayat* Appeal Judgment, fn. 377; *Sesay and others* Appeal Judgment, para. 221; *Karera* Appeal Judgment, para. 45; *Kordić and Čerkez* Appeal Judgment, paras 274-276.

³⁶⁸ See for example, Ayyash Defence final trial brief, paras 30-32; Merhi Defence final trial brief, para. 74, and more particularly the Parties' submissions on corroboration of particular types of evidence referred to elsewhere in this section.

³⁶⁹ See paras 4816-4818.

1. Witness testimony

289. The Trial Chamber received evidence from witnesses associated with a Party and witnesses called on the request of the Legal Representatives of the Victims. It also ordered, on the Sabra Defence's application, one witness to testify as a Trial Chamber witness under Rule 165.³⁷⁰ Furthermore, it received written records of witness evidence without requiring oral testimony to introduce or explain documents. In every instance, after deciding its relevance, the Trial Chamber has assessed the reliability and credibility of this evidence.

(a) Live testimony

290. During the trial, many witnesses testified live—or '*viva voce*'—before the Trial Chamber under Rule 150. Some testified under Rule 156, which replaces examination-in-chief, at least partially, with the admission into evidence of the witness's statement, after the witness has attested that the statement accurately reflects their declaration and what they would say if examined. The witness must also be available for cross-examination and questioning by the judges.

291. Rule 150 (J) sets out the obligations of cross-examining counsel when questioning a witness called by an opposing Party who can give evidence relevant to the case of the cross-examining counsel. Counsel must put to that witness the nature of the counsel's case that contradicts the witness's evidence. The cross-examining Party does not need to explain every detail of the contradictory evidence it intends to adduce, and is allowed a margin of flexibility, depending on the circumstances. If, however, the Party does not put the nature of its case to the witness, the Trial Chamber may give no probative value to the evidence that contradicts the witness.³⁷¹ During the trial, the Trial Chamber several times drew this rule to the attention of cross-examining Defence counsel.³⁷² This is most relevant to final trial submissions, and the Trial Chamber has ultimately decided, given the result of the case, that recourse to this measure was unnecessary.

³⁷⁰ Mr Michael Taylor, a former Prosecution Chief of Investigations.

³⁷¹ Decision on admission of documents used with a witness by the Oneissi Defence, paras 8, 10; Decision denying certification to appeal (photo boards), para. 26; Decision admitting two photo boards into evidence, paras 29-30, 38.

³⁷² See for example, Marwan Hamade, T. 9 December 2014, pp 65-67; Procedural matters, T. 11 December 2014, pp 4-5; Gary Platt, T. 21 March 2017, p. 64, T. 19 April 2017, pp 23-25; John Edward Philips, T. 20 April 2017, pp 32-33; Procedural matters, T. 25 September 2017, pp 2-3.

292. Fifty-three witnesses testified by video-conference link from outside the courtroom, mainly from the Special Tribunal's Beirut office. The Trial Chamber decided that video-conference technology is sufficiently advanced to allow it to view the witnesses in a manner which permits an adequate assessment of their credibility and reliability. The judges and counsel could follow a witness's testimony with high-definition image quality, and the witness could see the different speakers in the courtroom. Counsel and judges could effectively question the witness. Documents could be tendered and shown electronically to the witness, who could mark them in a manner that allowed them to be electronically captured and saved. The Trial Chamber has therefore not differentiated between testimony received by video-conference link and inside the courtroom when weighing the evidence.³⁷³

(b) Witness credibility

i. Generally

293. Under the general principles of international criminal law, a trial chamber has a broad discretion in assessing the credibility of witness testimony and deciding the appropriate weight to give it. The Trial Chamber as the trier of fact that has heard the evidence is best placed to make this assessment.³⁷⁴

294. The Trial Chamber must consider on a case-by-case basis factors including: the witness's in-court demeanour; their role in the events in question; the plausibility and clarity of the testimony; any contradictions or inconsistencies in successive statements or between the testimony and other evidence; prior examples of false testimony; any motivation to lie; and the witness's responses during cross-examination. Also relevant could be the existence or absence of corroborating evidence, the witness's relationship to an accused and the witness's criminal history.³⁷⁵

³⁷³ Reasons for decision denying reconsideration of video-link ruling, para. 12; Video-link decision, paras 11-12, 21-24, with further references.

³⁷⁴ *Popović and others* Appeal Judgment, paras 131-133, 136-137; *Šainović and others* Appeal Judgment, paras 437, 464; *Nahimana and others* Appeal Judgment, para. 949; *Rutaganda* Appeal Judgment, para. 188.

³⁷⁵ *Ngudjolo* Appeal Judgment, para. 170; *Popović and others* Appeal Judgment, para. 132; *Nchamihigo* Appeal Judgment, para. 47. Regarding inconsistencies, *Popović and others* Appeal Judgment, paras 136-137; *Brima and others* Appeal Judgment, para. 120.

295. The Trial Chamber of course understands and accepts that there is no fool-proof manner of determining whether a witness is being truthful, especially when a witness is testifying with the aid of interpretation. It is not a science. Numerous cultural and linguistic factors, combined with characteristics and circumstances individual to each witness—which are often unknown to a court—complicate the process of attempting to assess witness credibility.

296. Added to this is the time lapse between the events in question and the testimony—or even the taking of witness statements that may be tendered in court—which, unfortunately in international proceedings is often lengthy; memory does not improve over time. Witnesses may also have been interviewed multiple times over some years by different people from varying institutions, such as non-government organisations, fact-finding missions and prosecution, defence and legal representative of victims. Inevitably, versions of events change with the retelling. These factors may adversely affect the reliability and sometimes the credibility of the witness and their evidence.

297. Moreover, testifying in a courtroom for most people is an alien and stressful experience and a witness who is attempting to recollect facts truthfully could give the opposite impression; the converse also applies.

298. Numerous witnesses in international trials will also have experienced traumatic events and some may be suffering from PTSD while testifying. The stress of recalling events may cause anxiety and may impair attention and memory in the courtroom. This too can affect how they are perceived. Testifying in a ‘foreign’ or international setting, especially after international travel to the courtroom—as for some it may be their first international trip—could add to the stress and hence how a witness ‘performs’.

299. The Trial Chamber is acutely aware of the difficulties inherent in attempting to assess the reliability and credibility of witness testimony—especially in an international setting, through interpretation and many years after the attack on Mr Hariri—and has borne these factors in mind in evaluating the evidence of each witness.³⁷⁶

³⁷⁶ See for example, the discussions in *Rutaganda* Appeal Judgment, paras 222-224, 228, 230; *Karempera and Ngirumpatse* Trial Judgment, para. 101; *Akayesu* Trial Judgment, paras 155-156.

300. A chamber may accept parts of a witness's testimony and reject others,³⁷⁷ so long as the two are not inextricably linked.³⁷⁸ Where a trial chamber has some reservations regarding a witness's reliability, it may rely upon the testimony to the extent that it is corroborated by other reliable evidence.³⁷⁹ However, where a chamber has found a witness to be entirely devoid of credibility, it may not rely on any portion of that witness's testimony regardless of whether some portions may be corroborated by other evidence.³⁸⁰ The Trial Chamber did not find the testimony or statement of any witness as falling into this category.

301. The Ayyash and Sabra Defence specifically highlighted some of these principles in their final trial briefs,³⁸¹ and no Party appears fundamentally to contest any of them.

302. In this case, for the most part, there were few explicit challenges to the credibility of Prosecution witnesses; more challenges were made to the reliability of witness recollections and some conclusions or opinions. The Trial Chamber, however, carefully considered the credibility of each witness in determining the weight of their evidence.

ii. Witness independence and association with Parties

303. The Trial Chamber heard testimony from 32 witnesses 'associated' with a Party, namely the Prosecution, including most significantly, Mr Gary Platt, a Prosecution investigator who the Trial Chamber declared to be an expert under Rule 161, and Mr Andrew Donaldson, a Prosecution analyst who provided non-expert analytical evidence. It also received evidence from other Prosecution analysts and investigators, as is customary in international criminal law proceedings, and indeed domestic ones.³⁸²

³⁷⁷ *Kupreškić and others* Appeal Judgment, para. 333; *Ngudjolo* Appeal Judgment, para. 168; *Sesay and others* Appeal Judgment, para. 219.

³⁷⁸ *Ndahimana* Appeal Judgment, para. 183.

³⁷⁹ *Halilović* Appeal Judgment, para. 125; *Ntagerura and others* Appeal Judgment, para. 174; see also *Kupreškić and others* Appeal Judgment, para. 334.

³⁸⁰ *Al Jadeed and Al Khayat* Appeal Judgment, fn. 172; *Ngudjolo* Appeal Judgment, paras 168, 170.

³⁸¹ Ayyash Defence final trial brief, para. 27; Sabra Defence final trial brief, para. 98.

³⁸² The remaining 30 were Mr Matthew Barrington, Ms Nicole Blanch, Mr Christian Carnus, Mr Lachlan Christie, Mr Andrew Fahey, Ms Robyn Fraser, Ms Helen Green (Rule 155 only), Ms Helena Habraken, Mr Timothy Holford, Mr Joseph Jhugroo (Rule 155 only), Mr Timothy Jolly (Rule 155 only), Ms Kei Kamei, Mr Erich Karnberger, Mr Adrian Kirwan (Rule 155 only), Mr Bas van der Laaken, Mr Lorenzo Lanzi, Mr Xavier Laroche (Rule 155 only), Mr Jo van Lierde (Rule 155 only), Mr Alasdair Macleod, Mr Quentin Mugg, Mr Spartak Mkrtchyan, Mr Greg Purser (Rule 155 only), Mr Toby Smith, Mr Elvis Stana, Ms Nadine Stanford (Rule 155 only), Mr Leroy Stockton (Rule 155 only), Mr Michael Taylor, Mr Glen Williams, Ms Christine Youssef (Rule 155 only) and Witness PRH539.

304. In allowing Mr Platt to testify as an expert witness, the Trial Chamber noted that international criminal law procedural law permits a chamber to hear expert evidence from employees of a party to the proceedings.³⁸³ International criminal courts and tribunals have consistently found that the mere fact that a witness is employed or paid by a party—or by an agency related to a party, or otherwise involved in investigating or preparing a party's case—does not of itself disqualify their testimony as an expert witness.³⁸⁴ In general, concerns about an expert witness's independence and impartiality affect the weight of the evidence rather than its admissibility,³⁸⁵ unless for example they undermine its reliability to the point where the evidence loses its probative value.³⁸⁶

305. Consequently, the appropriate way of dealing with an allegation of bias is normally through cross-examining the witness.³⁸⁷ The challenging party may also call its own expert witnesses on

³⁸³ Decision on expertise (Mr Platt), paras 15-16. *See also* Oral decision on Mr Platt's expertise, stating that Mr Platt's employment with the Office of the Prosecutor does not of itself disqualify him from being classified as an expert.

³⁸⁴ *Galić* decision on expert witnesses, p. 3; *Brđanin* decision on expert witness, p. 4; *Martić* decision on transcripts and expert reports, paras 37, 39; *Martić* decision on expert evidence of Reynaud Theunens, pp 3, 5; *Dragomir Milošević* decision on expert evidence of Robert Donia, para. 9; *Boškoski and Tarčulovski* decision on expert evidence, para. 12; *Nahimana and others* Appeal Judgment, para. 282; *Šešelj* decision on expert status of Reynaud Theunens, para. 29; *Popović and others* decision on Mr Butler, para. 27; *Popović and others* Appeal decision on Mr Butler, para. 23; *Stanišić and Simatović* decision on experts Tromp and Nielsen, para. 10; *Perišić* decision on expert reports of Richard Butler, para. 19; *Taylor* decision on proposed expert witness, para. 15; *Đorđević* decision on expert witnesses, para. 7; *Stanišić and Simatović* decision on expert report of Reynaud Theunens and related documents, para. 19; *Tolimir* Appeal Judgment, para. 69; *Nyiramasuhuko and others* Appeal Judgment, para. 424; *Prlić and others* Appeal Judgment, para. 208; Decision on expertise (Mr Platt), para. 15, citing several of these authorities. *See also* *Bemba* decision on joint instruction of expert witnesses, p. 22.

³⁸⁵ *Milošević* oral ruling on evidence of Philip Coö, pp 9965-9966; *Brđanin* decision on expert witness, p. 4; *Milošević* decision on expert evidence of Kosta Čavoški, p. 2; *Dragomir Milošević* decision on expert evidence of Robert Donia, para. 9; *Boškoski and Tarčulovski* decision on expert evidence, paras 8, 12; *Popović and others* decision on Mr Butler, paras 26-27; *Šešelj* decision on expert status of Reynaud Theunens, para. 30; *Stanišić and Simatović* decision on experts Tromp and Nielsen, para. 13; *Perišić* decision on expert evidence of Morten Torkildsen, para. 13; *Perišić* decision on expert reports of Richard Butler, para. 18; *Đorđević* decision on expert witnesses, paras 7, 19; *Šešelj* decision on Andraš Riedlmayer expert report, para. 12; *Stanišić and Simatović* decision on expert report of Reynaud Theunens and related documents, para. 19; *Mladić* decision on Richard Butler, para. 9; *Galić* decision on expert witnesses, p. 3; *Martić* decision on expert evidence of Reynaud Theunens, pp 3, 5; Decision on expertise (Mr Platt), paras 15-16, citing several of these authorities; *Tolimir* Appeal Judgment, paras 62, 69, 72, 76-77, approving the Trial Chamber's approach in cautiously evaluating the evidence of witnesses who had had an association with the Prosecution, but finding that this alone did not render their evidence unreliable, *Tolimir* Trial Judgment, paras 38, 40-41.

³⁸⁶ Decision admitting statements related to Mr Ayyash and Mr Merhi, para. 27; Decision on expertise (Mr Platt), paras 15-16; Oral decision on Mr Platt's expertise.

³⁸⁷ *Brđanin* decision on expert witness, p. 4; *Strugar* decision on expert status of Major General Milovan Zorc, p. 4; *Boškoski and Tarčulovski* decision on expert evidence, para. 8; *Popović and others* decision on Mr Butler, para. 27; *Nahimana and others* Appeal Judgment, para. 199; *Popović and others* Appeal decision on Mr Butler, para. 31; *Đorđević* decision on expert witnesses, paras 7, 13; *Mladić* decision on Richard Butler, para. 9; Decision on expertise (Mr Platt), para. 16. *See also* *Bizimungu* decision on expert witness Dr Alison Des Forges, paras 26-29.

the issue.³⁸⁸ The Trial Chamber reiterates its adoption of these well-established principles.³⁸⁹ Expert witnesses need not be impartial or independent in the sense of having no association with a party; to the contrary, most international criminal law decisions reviewed expressly accept that this is not required.³⁹⁰

306. In permitting Mr Platt to testify as an expert, the Trial Chamber noted that:

Expert witnesses are generally called by the Parties themselves to bolster their case and theory; they are called to support and assist the Parties and therefore ‘are often connected, to a varying degree, with the party ... seek[ing] to call them to testify’ ... impartiality and independence, while important considerations, are not prerequisites for a witness to be a qualified as an expert in international criminal law proceedings.³⁹¹

307. In international criminal law proceedings witnesses have rarely failed to qualify as an expert for an absence of impartiality or independence because of their affiliation to a party. However, a witness’s reliability could be undermined to the point of losing probative value.³⁹² In an extreme example, in *Akayesu*, the Accused unsuccessfully attempted to have a co-Accused, Ferdinand Nahimana, testify as an expert to rebut the scientific theories of a Prosecution expert witness. In rejecting the application, the ICTR Trial Chamber held that his impartiality ‘cannot be assured’.³⁹³

³⁸⁸ *Nahimana and others* Appeal Judgment, para. 199; *Šešelj* decision on expert status of Reynaud Theunens, para. 29; *Mladić* decision on Richard Butler, para. 9; Decision on expertise (Mr Platt), para. 16. See also *Bizimungu* decision on expert witness Dr Alison Des Forges, para. 26.

³⁸⁹ Decision on expertise (Mr Platt), paras 15-16.

³⁹⁰ Decision admitting statements related to Mr Ayyash and Mr Merhi, para. 27; Decision on expertise (Mr Platt), paras 15-16; Oral decision on Mr Platt’s expertise. See also *Šešelj* decision on Andraš Riedlmayer expert report, para. 12 referring to *Akayesu* decision on calling co-accused as an expert; *Nyiramasuhuko and others* Appeal Judgment, paras 424-425.

³⁹¹ Decision on expertise (Mr Platt), para. 16, footnotes omitted, quoting from *Boškoski and Tarčulovski* decision on expert evidence, para. 12, and further citing *Popović and others* decision on Mr Butler, para. 27 and *Popović and others* decision on evidence of General Rupert Smith, p. 4.

³⁹² *Šešelj* decision on Andraš Riedlmayer expert report, para. 12, footnotes omitted. The Trial Chamber discussed, and distinguished, other examples in its Decision on expertise (Mr Platt), paras 14-15. See further *Martić* decision on expert evidence of Reynaud Theunens, p. 4, noting the exclusion of parts of the expert report of a witness, Milisav Sukulić, due in part to his ‘obvious bias’.

³⁹³ *Akayesu* decision on calling co-accused as an expert, p. 2, and further noting that Nahimana had objected and ‘the Tribunal is of the view that there is a fundamental difference between, on the one hand, a witness called to testify about the crimes with which the accused is directly charged and, on the other hand, an expert witness, whose testimony is intended to enlighten the Judges on specific issues of a technical nature, requiring special knowledge in a specific field’. Further, compelling his testimony could violate his rights not to testify against himself, p. 3. On appeal,

308. As another example, ICTY trial chambers in connected cases declined to allow the same prosecution military analyst, although found to be well-qualified to be an expert, to testify as one because of his substantial involvement in the preparation of the Prosecution's case, including interviewing co-accused in the case. He was permitted to testify as a witness of fact.³⁹⁴

309. The Defence of each Accused³⁹⁵ opposed the Prosecution's motion for Mr Platt to testify as an expert, including because of his employment with the Prosecution. They relied on two ICTY decisions.³⁹⁶ In one, *Milutinović*, the trial chamber found that a prosecution investigator was too closely tied to the case to give expert evidence, but it was appropriate and helpful to the trial chamber to give evidence on factual matters, explaining that:

Justice has to not only be done but seen to be done in cases of this nature. And in this particular instance he -- the clear impression is of someone far closer to the case than would be appropriate for an expert who can express opinions on which the Chamber might rely.³⁹⁷

310. The Trial Chamber, however, distinguished both decisions, as the particular witness had been more actively involved than Mr Platt in formulating the Prosecution's case. The Trial Chamber permitted Mr Platt to provide expert opinion evidence, noting that the Defence could challenge his independence and impartiality in cross-examination, and that these issues ultimately went to the weight the Trial Chamber should give to his evidence.³⁹⁸

311. International criminal courts and tribunals may also receive non-expert opinion and summary evidence from witnesses affiliated with a party. This applies equally to non-expert Prosecution,³⁹⁹ and Defence witnesses.

Nahimana was eventually found guilty of incitement to genocide and committing crimes against humanity and sentenced to 30 years imprisonment; *Nahimana and others* Appeal Judgment.

³⁹⁴ See for example, *Milutinović and others* oral decision on evidence of Philip Coö, p. 840; *Milutinović and others* decision denying certification of appeal on Philip Coö, paras 10-11; *Dordević* decision on expert witnesses, paras 18-20. See also *Šešelj* decision on expert status of Reynaud Theunens, para. 31.

³⁹⁵ Including the Badreddine Defence.

³⁹⁶ *Dordević* decision on expert witnesses; *Milutinović and others* oral decision on evidence of Philip Coö.

³⁹⁷ *Milutinović and others* oral decision on evidence of Philip Coö, p. 840.

³⁹⁸ Decision on expertise (Mr Platt). For the area of Mr Platt's expertise as accepted by the Trial Chamber, see para. 331, below.

³⁹⁹ Such as Mr Donaldson, see Decision on opinion evidence (Mr Donaldson), para. 77. On his qualifications to provide non-expert opinion evidence and summary evidence, see paras 339-341, below.

312. In-house analysts and investigators may be permitted to provide summary evidence relating to facts in issue if the underlying evidence is admissible and they do not express views as to the ultimate issue, namely, whether an accused person is guilty.⁴⁰⁰ This long-standing practice promotes judicial economy in appropriate instances and can aid a chamber, and indeed the parties, in understanding the context of different evidentiary themes in long and complex trials.

313. In permitting Mr Donaldson to provide non-expert opinion evidence, the Trial Chamber, in applying international criminal law case law, noted that:

international criminal law procedural law permits a chamber to receive summary evidence from a Party's in-house analysts or investigators. But in what manner and the extent to which it will receive the opinion of a non-expert should be considered on a case by case basis. The case law is clear on the point that an expert cannot testify, or provide an opinion, as to the ultimate issue, namely, the guilt or acquittal of an accused person.⁴⁰¹

314. This applies even where a witness is so 'close' to the party or case that a trial chamber cannot accept them as an expert; they may be allowed to testify as a witness of fact.⁴⁰²

315. The Trial Chamber also emphasised in decisions concerning non-expert evidence that sometimes it would require evidence from Prosecution and Defence employees, for example, to understand and assess the reliability of a piece of derivative evidence that they had prepared. This applied to the methodology employed by Prosecution and Defence employees in producing call sequence tables for admission into evidence.⁴⁰³

⁴⁰⁰ Decision on opinion evidence (Mr Donaldson), paras 73-76, referring to *Slobodan Milošević* Appeal decision on admissibility of evidence; *Popović and others* decision regarding admissibility of Mr Ruez's testimony; *Taylor* decision on proposed expert witness; *Perišić* decision (Mr Randall); *Bemba and others* decision on scope of Witness P-433's testimony. The Trial Chamber has also previously noted, regarding non-expert evidence from investigators generally, that there is no rule in international criminal law procedural law which dictates that the Prosecution is unable to call its own investigators to provide evidence. Decision admitting statements related to Mr Ayyash and Mr Merhi, para. 27.

⁴⁰¹ Decision on opinion evidence (Mr Donaldson), para. 77, footnoted to *Dragomir Milošević* Decision on Defence experts, para. 10; *Stanišić and Simatović* decision on experts Tromp and Nielsen, para. 12.

⁴⁰² See for example, *Milutinović and others* oral decision on evidence of Philip Coe, p. 840; *Milutinović and others* decision denying certification of appeal on Philip Coe, paras 10-11; *Đorđević* decision on expert witnesses, paras 15-20. See also *Šešelj* decision on expert status of Reynaud Theunens, para. 31.

⁴⁰³ See for example, Decision denying admission of two call sequence tables, paras 21-26, 39-41.

316. In their final trial briefs, the Oneissi and Sabra Defence submit that Mr Platt's, Mr Donaldson's and Mr Andrew Fahey's⁴⁰⁴ lack of independence and impartiality taints and thus negatively affects the weight the Trial Chamber should give to their evidence.⁴⁰⁵ The Oneissi Defence argues that the Trial Chamber must 'exercise caution' in evaluating their evidence.⁴⁰⁶ The Sabra Defence submits that in considering the weight of an expert's evidence, the Trial Chamber must assess whether he is 'too close' to the calling party and his involvement in preparing the Prosecution's case. Further, as stated in *Milutinović* (above) the principle that 'justice must not only be done, but must be seen to be done' must guide the Trial Chamber in this.⁴⁰⁷

317. The Trial Chamber has been guided by the legal principles outlined above in its evaluation of the evidence of witnesses who had an 'association' with the Prosecution. A witness's association with a party, both actual and apparent, should be considered in finally evaluating their evidence; this is one of a number of potential considerations in that final holistic evaluation, and it is not necessarily determinative.

318. The Trial Chamber accordingly considered the witnesses' association with the Prosecution when attributing weight to their evidence when assessing it in light of all the other evidence.

(c) Categories of witnesses

319. The categories of witness testimony received by the Trial Chamber—either live or in statement form—may be conveniently divided into witnesses of fact, expert witnesses and witnesses providing non-expert opinion and summary evidence.⁴⁰⁸

⁴⁰⁴ Mr Fahey is a Prosecution analyst who provided non-expert evidence.

⁴⁰⁵ These submissions are addressed at various places in the judgment, namely chapter VII 'Reliability of telecommunications evidence', (H) 'Electronic presentation of evidence (EPE)'; chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles', (B) 'Mobile networks in general'; chapter IX 'Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine', (D) 'Hussein Hassan Oneissi—Purple 095' and (E) 'Assad Hassan Sabra—Purple 018'; and chapter XII 'Claim of responsibility for the attack on Rafik Hariri', (D) (3) (ii) 'Evidence of Prosecution expert Gary Platt'.

⁴⁰⁶ Oneissi Defence final trial brief, paras 19, 94, 161, citing *Tolimir* Trial Judgment, para. 38; *Tolimir* Appeal Judgment, para. 77.

⁴⁰⁷ Sabra Defence final trial brief, para. 88, relying on the ICTY *Milutinović and others*, *Stanišić and Simatović* and *Dorđević* cases.

⁴⁰⁸ Neither the Statute nor the Rules distinguish between these different categories of testimony. Interim decision on exclusion of Mr Donaldson's evidence, para. 15. *See also* Rule 161.

i. Fact witnesses

320. Fact witnesses testify to their knowledge of facts relevant to the case, that is, what they saw or heard or know.

321. A special category of fact witnesses featured prominently in the case. A person relevant to a case can be ‘identified’ either by ‘recognition’ or ‘identification’ witnesses. A witness with sufficient prior knowledge of someone to recognise them at the time of the relevant event is a ‘recognition’ witness, whereas a witness who had not previously seen or known the person is an ‘identification’ witness.

322. A witness’s previous knowledge of, or level of familiarity with, that person—who is normally an accused—is relevant in assessing the strength of the recognition evidence. A chamber should explain why it was satisfied that a witness had some prior knowledge of the person and was therefore able to recognise them.⁴⁰⁹

323. The Trial Chamber received evidence in both categories. For the reasons below,⁴¹⁰ it was not satisfied that there was any positive identification evidence of any Accused by any witness on any material fact. The Trial Chamber was not satisfied of the reliability of the identification process employed by the Prosecution in attempting to identify Mr Oneissi from photo boards and has accordingly disregarded that evidence, as positive identification evidence, in assessing whether Mr Oneissi is guilty of any of the charges.

324. In the other category, recognition evidence, the Trial Chamber received evidence from three witnesses who testified in December 2015 about someone they knew as Sami Issa, whom the Prosecution alleges was Mr Badreddine.⁴¹¹

325. In May 2016, after reports of his death while fighting in Syria, Hezbollah released photographs and videos of him. The Prosecution showed the witnesses some of these photographs and a video; each recognised Mr Issa as Mr Badreddine. Noting that they were recognition witnesses, the Trial Chamber found their statements admissible despite extensive media

⁴⁰⁹ *Popović and others* Appeal Judgment, para. 384; *Lukić and Lukić* Appeal Judgment, paras 118-119. Decision admitting two photo boards into evidence, para. 37.

⁴¹⁰ See chapter XII ‘Claim of responsibility for the attack on Rafik Hariri’, (D) (2) ‘The ‘identification’ of Mr Oneissi as the ‘Mohammed’ who Mr Abu Adass encountered in the mosque’.

⁴¹¹ Witnesses PRH264, PRH306 and PRH416.

dissemination of Mr Badreddine's image. The Trial Chamber for the reasons at paragraphs 4059-4098 below is satisfied beyond reasonable doubt that Mr Issa and Mr Badreddine are the same person.

326. Similarly, another witness recognised from a photograph of Mr Merhi a man the witness had known for many years under a different name. The Trial Chamber held that a photo board was not required for recognition witnesses—who were of course already familiar with the person in question.⁴¹²

ii. Expert witnesses

327. Expert witnesses are those who, by virtue of some specialised knowledge, skill or training, can assist the trier of fact to understand or determine an issue in dispute. An expert report will only be treated as expert evidence insofar as it is based on the expert's specialised knowledge, skills or training. Experts may work alone or with others. They apply their specific expertise to events about which they usually have no first-hand knowledge and consider relevant information before giving opinions and drawing conclusions. These conclusions must stay within the confines of the expert's area of expertise. Statements falling outside an expert's area of expertise should be treated as personal opinions and weighed accordingly. An expert should not offer an opinion on the criminal liability of an accused person.⁴¹³

328. International criminal case law provides that expert witnesses, or the views they reach, must be impartial, neutral, objective and or independent. ICTR chambers have held that expert witnesses 'must be impartial in the case'⁴¹⁴ and must testify 'with the utmost neutrality and with scientific objectivity'.⁴¹⁵ ICC and ICTY chambers have accepted this,⁴¹⁶ and held that experts must

⁴¹² Decision adding a witness and granting protective measures, paras 4, 14 (referring to *Tadić* Trial Judgment, paras 545-546); Decision under Rule 155 (Sami Issa identifications), para. 12; Decision under Rule 155 (Sami Issa), paras 1-2, 9-11.

⁴¹³ Decision on Professor Sporer's evidence, paras 3, 18-19, 21-22; Decision on opinion evidence (Mr Donaldson), fn. 15; Interim decision on exclusion of Mr Donaldson's evidence, paras 16-17; Decision on expertise (Witness PRH620), para. 10; Decision on simultaneous or concurrent testimony of expert witnesses of 23 March 2015, para. 29; Decision on expertise (Professor Ayoub and Dr Mansour), paras 5-6, with further references.

⁴¹⁴ *Akayesu* decision on calling co-accused as an expert, p. 2.

⁴¹⁵ *Gacumbitsi* decision on expert witnesses, para. 8; *Nahimana and others* Appeal Judgment, para. 199; *Nyiramasuhuko and others* Appeal Judgment, para. 424.

⁴¹⁶ *Popović and others* Appeal decision on Mr Butler, para. 20, implicitly accepting that the *Nahimana and others* Appeal Judgment, para. 199, is correct by stating 'the ICTR Appeals Chamber **established that**' before quoting that paragraph (emphasis added); *Šešelj* decision on Andraś Riedlmayer expert report, para. 12. See also *Šešelj* decision

draw their conclusions impartially and independently.⁴¹⁷ ECCC and ICC decisions on specific categories of experts, namely judicially or jointly-appointed experts, also hold that they should be impartial.⁴¹⁸

329. These principles appear to be uncontested,⁴¹⁹ although the Defence of each Accused extensively challenged some expert evidence before its admission and in final trial submissions.⁴²⁰

330. When the Trial Chamber became seised of the case on 25 October 2013 after a lengthy pre-trial phase, the Prosecution's intended witness list contained the names of 68 proposed expert witnesses under Rule 161. However, during the trial itself, the Prosecution moved to admit into evidence the reports of only 20 expert witnesses—less than a third of the original number. The Oneissi Defence also successfully moved to call the evidence of one expert.

331. In determining whether someone was an expert, the Trial Chamber considered their past and current professional experience and training, publications and other relevant information, for example, their *curriculum vitae* or other documents accompanying the report.⁴²¹ The Trial Chamber found that a number of witnesses qualified as experts and admitted into evidence their reports within their respective areas of expertise. These were:⁴²²

on expert status of Reynaud Theunens, para. 29; *Mladić* decision on Richard Butler, para. 9; *Ntaganda* decision on expert witnesses, para. 9.

⁴¹⁷ For example, *Dragomir Milošević* decision on expert evidence of Robert Donia, para. 9, *Stanišić and Simatović* decision on experts Tromp and Nielsen, para. 10, both stating 'An expert is expected to make statements and draw conclusions independently and impartially.' See also *Strugar* Appeal Judgment, para. 58, stating 'When assessing an expert report, a Trial Chamber generally evaluates whether it contains sufficient information as to the sources used in support of its conclusions **and whether those conclusions were drawn independently and impartially**' (emphasis added) and *Martić* decision on expert report of Smilja Avramov, para. 10, asserting regarding experts expressing their opinion on facts established in a case, 'This specific task also implies a certain amount of objectivity and impartiality on the part of an expert.'

⁴¹⁸ See for example, *Ieng Sary* decision on expert evidence, para. 19. The statements about experts' impartiality in those paragraphs concerned an expert that the co-investigating judges had appointed themselves and were evidently based on those judges' own obligation to conduct their investigation impartially; *Lubanga* decision on procedures for instructing expert witnesses, para. 14, expressing general support for parties to ICC proceedings jointly instructing 'a single, impartial and suitably qualified expert' and—applying that decision—*Bemba* decision on procedures for instructing expert witnesses, paras 10-12.

⁴¹⁹ The Sabra Defence, for instance, specifically acknowledged some of them. Sabra Defence final trial brief, para. 83.

⁴²⁰ Notably, that of Mr Philips and Mr Platt. See for example, chapter VII 'Reliability of telecommunications evidence', (I) (5) 'Mr Philips's access to information'; chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles', (B) 'Mobile networks in general'; and chapter IX 'Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine', (A) 'Single user analysis'.

⁴²¹ See for example, Decision on expertise (Professor Ayoub and Dr Mansour), para. 6, with further references.

⁴²² The Trial Chamber also admitted, under Rule 161, two medical reports which are attached to Rule 155 statements of witnesses Mr Nabil Mansour and Mr Haidar Haidar (in evidence as exhibits P275 and P276). Second Rule 155

- Professor Fouad Hussein Ayoub, an expert in forensic odontology, who provided DNA evidence;⁴²³
- Mr Gerhard Geyer, an expert in car mechanics for the limited purposes of identifying Mitsubishi Canter parts and distinguishing them from other vehicles;⁴²⁴
- Mr Bart Hoozeboom, an expert forensic image analyst, seeking to estimate the size of the crater of the 14 February 2005 attack;⁴²⁵
- Dr Issam Mansour, an expert in forensic science, who also provided DNA evidence;⁴²⁶
- Mr John Edward Philips, an expert in telecommunications and cell site analysis, which includes the co-location and dislocation of mobiles, and on the workings of the global system for mobile telecommunication generally as applied to cell site analysis;⁴²⁷
- Mr Gary Platt, an expert in the surveillance of criminal networks and the identification and organisation of covert communication networks. His expertise extends to providing expert opinion evidence on the group of ‘purple phones’. Specifically, his expertise lay in analysing many pieces of evidence, explaining their significance, and identifying covert telecommunication networks and their organisation. To give his expert opinion, Mr Platt had to review call data records and sometimes give a basic analysis of his observations, which did not amount to providing an expert opinion on these records;⁴²⁸

decision, para. 14. Despite referencing Rule 161, the Trial Chamber did not consider the authors of these medical reports as witnesses before the Tribunal.

⁴²³ Decision on expertise (Professor Ayoub and Dr Mansour), paras 7, 9, 11, 14, 17, 28, 31, 33, disposition; Decision on expert reports of 1 July 2014; exhibits P196, P199, P200, P201 and P204.

⁴²⁴ Decision on expertise (Mr Geyer); exhibit P213.

⁴²⁵ Decision on expertise (Mr Geyer and Mr Hoozeboom), paras 13-14, 20, disposition; exhibit P209.

⁴²⁶ Decision on expertise (Professor Ayoub and Dr Mansour), paras 34, 38-40, disposition; Decision on expertise (Dr Mansour). The Trial Chamber also found that Dr Mansour’s expert report’s co-authors—Dr Rosa Assadrian and Mr Amer Fouad Sakr—possessed specialised knowledge within the meaning of Rule 161, Decision on expertise (Professor Ayoub and Dr Mansour), paras 35, 38. Dr Mansour’s reports are exhibits P206 and P207.

⁴²⁷ Decision on opinion evidence (Mr Donaldson), paras 16, 19, 69, 96; Decision on request to strike portions of an expert report, para. 8; Decision on expertise (Mr Philips – GSM); Decision on expertise (Mr Philips – Telecommunications and cell site). *See also* Decision denying exclusion of Mr Philips’s evidence; exhibits P549, P1111-P1117, P1936-P1938, P2120.

⁴²⁸ Decision denying reconsideration of decision on Mr Platt’s area of expertise, paras 3-4; Reasons for decision denying certification to appeal (Mr Platt’s area of expertise), para. 15; Decision on call sequence tables of network mobiles, para. 18; Decision on expertise (Mr Platt), paras 10-11; Oral decision on Mr Platt’s expertise; Decision

- Witness PRH155, a forensic crime-scene investigator;⁴²⁹
- Mr Jan Kuitert, Ms Anick van de Craats and Mr Gerard Murray, forensic experts with a special focus on the investigation of explosives;⁴³⁰
- Mr Konrad Schlatter, a forensic expert with a special focus on examining explosives;⁴³¹
- Witnesses PRH185 and PRH186, experts on the identification of pieces of vehicle engine blocks;⁴³²
- Professor Bibiana Luccioni and Professor Daniel Ambrosini, experts in engineering to analyse the effects of an explosion;⁴³³
- Mr Christophe Champod, an expert in the forensic analysis of human remains;⁴³⁴
- Ms Reza Gerretsen, an expert in forensic anthropology;⁴³⁵
- Witness PRH507, an expert in the functioning and operation of jamming devices;⁴³⁶
- Professor Peter Sommer, an expert in computer and information systems and the storage and security of data including digital evidence;⁴³⁷
- Mr Iskander Sursock, an expert geophysicist;⁴³⁸ and
- Professor Siegfried Ludwig Sporer, an expert in eye-witness identification, called by the Oneissi Defence.⁴³⁹

clarifying Mr Platt's area of expertise. *See also* Decision denying reconsideration of decision on Mr Platt's area of expertise, paras 15, 18; exhibits P796, P796.1 and P1783.

⁴²⁹ Decision on expertise (Witness PRH155), paras 1, 3-4, disposition; exhibit P266.

⁴³⁰ Decision on twelve expert witnesses, paras 15, 18; exhibit P244.

⁴³¹ Decision on twelve expert witnesses, paras 9, 12; exhibit P242.

⁴³² Decision on twelve expert witnesses, paras 55, 58, 61; exhibits P342-P343.

⁴³³ Decision on twelve expert witnesses, paras 64, 67, 70; exhibit P377.

⁴³⁴ Decision on twelve expert witnesses, paras 48, 51; exhibit P318.

⁴³⁵ Decision on twelve expert witnesses, paras 33, 36, 39; exhibits P278-P279.

⁴³⁶ Decision on Witnesses PRH291 and PRH507, paras 10, 12-13, disposition; exhibits P289, P293-P294.

⁴³⁷ Decision on expertise (Mr Sommer); exhibit P591.

⁴³⁸ Decision on twelve expert witnesses, paras 41, 45; exhibit P317.

⁴³⁹ Decision on Professor Sporer's evidence, para. 4, disposition; Siegfried Sporer, T. 14 May 2018, pp 16-17; exhibit 4D450.

332. Of these, the report of one⁴⁴⁰ was admitted into evidence without any objection, and four⁴⁴¹ were not required to testify in court.

333. In assessing the expert reports and testimony, the Trial Chamber has drawn its own conclusions based on all the evidence received at trial, irrespective of an expert witness's personal opinions.⁴⁴² The Trial Chamber considered the professional competence of each in their field of expertise, the material at their disposal, the methodologies used, the sources used to base the expert opinion, challenges to the evidence and the extent to which the findings were consistent with other evidence.⁴⁴³

iii. Witnesses providing non-expert opinion evidence and summary evidence

334. Lay witnesses, who are not recognised as experts, may also provide opinion evidence. They draw conclusions from events they have personally witnessed or from facts with which they are familiar. This evidence's status as lay rather than expert opinion may affect its weight.

335. Lay witnesses may also provide summary evidence, meaning that they may combine numerous pieces of evidence to provide a succinct overview of material relevant to the case. This could include the summary and opinion evidence of an analyst or investigator working for a party. The fact that the evidence constitutes opinion may affect its weight. Whether the lay witnesses' opinions or conclusions are probative—assuming their relevance to the case—will depend on factors such as the witnesses' personal and professional experience and what they witnessed first-hand. Lay witnesses may not provide an opinion on the ultimate issue of whether the Accused are guilty of the crimes charged.⁴⁴⁴

336. As with the experts' evidence, there were extensive challenges to the opinion and summary evidence provided by some lay witnesses in this case. They included challenges to how the Trial

⁴⁴⁰ Exhibit P196 (Dr Ayoub's report on DNA results of samples from crime scene, 24 February 2005).

⁴⁴¹ Mr Sursock, Mr Champod and Witnesses 185 and 186.

⁴⁴² Decision on Professor Sporer's evidence, para. 22.

⁴⁴³ *Mladić* Trial Judgment, para. 5282; *Taylor* Trial Judgment, para. 208; *Lubanga* Trial Judgment, para. 112; *Nyiramasuhuko and others* Trial Judgment, para. 196.

⁴⁴⁴ Decision denying reconsideration of decision on Mr Platt's area of expertise, paras 15, 18; Decision permitting Professor Letschert to provide opinion evidence, para. 17; Decision on opinion evidence (Mr Donaldson), paras 8, 73, 77-78; Interim decision on exclusion of Mr Donaldson's evidence, paras 17-23; Reasons for decision denying certification to appeal (Mr Platt's area of expertise), para. 14.

Chamber applied or should apply these principles.⁴⁴⁵ However, again, no Party seems to seriously contest these principles.

337. A number of non-expert witnesses provided opinion or summary evidence to the Trial Chamber, including Dr Ghazi Ali Youssef, Mr Andrew Donaldson and Professor Rianne Letschert.

338. Dr Youssef was a contemporary political ‘insider’ who was in Mr Hariri’s trusted inner circle of advisers. The Trial Chamber allowed him to provide his interpretation or opinion of the subject matter of a meeting between Mr Hariri, Mr Rustom Ghazaleh and Mr Charles Ayoub on 9 January 2005 at Quraitem Palace—a meeting he did not attend—to assist it in evaluating an audio recording and transcript of the meeting.⁴⁴⁶ The Trial Chamber was of the view that he was ideally placed to assist it in deciphering the meaning of unclear portions of the conversation. It was satisfied that his opinion came from his personal experience and activities.⁴⁴⁷

339. Prosecution analyst Mr Donaldson provided overview summary analytical evidence, including some opinion evidence. For reasons of judicial economy related to the size of some cases, international criminal courts and tribunals have permitted this form of evidence.⁴⁴⁸ Mr Donaldson reviewed the totality of the Prosecution’s case attributing mobile telephone usage to the four Accused and Mr Badreddine and wrote reports on each one, summarising this evidence. He also provided opinions, but the Trial Chamber in a decision permitting him to give this evidence held that he had to provide the basis of his methodology before he could do so.

340. His testimony and reports therefore had to be read with the evidence of Mr Philips, an expert in cell site evidence, who had not been briefed with the Prosecution’s case against the Accused; not even their names. Mr Donaldson reviewed the Prosecution’s evidence on mobile usage attributed to the four Accused and to Mr Badreddine. He thus had an overview of the evidence that Mr Philips did not have. He also had significant experience in analysing cell site

⁴⁴⁵ See for example, Oneissi Defence final trial brief, paras 17-18.

⁴⁴⁶ Exhibits P395 and P395.1.

⁴⁴⁷ Decision on opinion evidence (Mr Youssef).

⁴⁴⁸ *Slobodan Milošević* Appeal decision on admissibility of evidence, paras 17, 21; *Dragomir Milošević* decision on Defence experts, para. 10; *Perišić* decision (Mr Randall), paras 13, 15-16; *Popović and others* decision regarding admissibility of Mr Ruez’s testimony, pp 2-3; *Stanišić and Simatović* decision on experts Tromp and Nielsen, para. 12; *Bemba and others* decision on scope of Witness P-433’s testimony; *Taylor* decision on proposed expert witness, para. 27.

evidence, although without Mr Philips's technical expertise. He also did not have experience analysing the best cell server coverage. His attribution reports on each Accused and Mr Badreddine—containing the sources relied upon—assisted the Trial Chamber in better understanding how to piece together the evidence relating to the attribution of personal and network mobiles.

341. Based on his extensive professional experience, the Trial Chamber was satisfied that Mr Donaldson could provide an opinion on co-location and cell site analysis and hence attribution of mobile telephone usage to the Accused and Mr Badreddine. However, the fact that Mr Donaldson was not an expert in these areas limited the probative value of his opinions. His opinions, to the extent they were found to be probative, were subject to a careful balancing of their weight. In allowing Mr Donaldson to provide some opinion evidence, the Trial Chamber ruled that he was not entitled to categorically conclude that mobiles co-located and hence attribute their use to a single user. Such conclusions were for the Trial Chamber alone to draw.⁴⁴⁹

342. Professor Letschert, despite not being called as an expert under Rule 161,⁴⁵⁰ in reality is an expert in her field. She provided opinion evidence in the participating victims' case. In view of her extensive professional experience and qualifications, the Trial Chamber found that she was qualified to provide lay opinion evidence concerning the victimological profile of the participating victims, their needs, views and concerns, and how access to justice could fulfil those needs. Professor Letschert's report summarises their views and concerns.⁴⁵¹ It gave the Trial Chamber an effective, convenient and judicially economical manner to receive this evidence without affecting the rights of the Accused to a fair trial.⁴⁵²

iv. Witnesses called on the request of the Legal Representatives of Victims

343. Article 17 of the Statute provides:

⁴⁴⁹ Decision on postponement of Mr Donaldson's testimony, paras 20, 24; Decision on opinion evidence (Mr Donaldson), paras 15, 42, 59-62, 68-87, 90-97; Decision on disclosure re Andrew Donaldson's reports, paras 49, 71; Interim decision on exclusion of Mr Donaldson's evidence, paras 28-30.

⁴⁵⁰ Decision permitting Professor Letschert to provide opinion evidence, para. 18.

⁴⁵¹ Exhibit 1V42.

⁴⁵² Decision permitting Professor Letschert to provide opinion evidence, paras 20-23, 28-29, 33-34.

Where the personal interests of the victims are affected, the Special Tribunal shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Pre-Trial Judge or the Chamber and in a manner that is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

344. Under Rule 87 (B), ‘a victim participating in the proceedings may request the Trial Chamber, after hearing the Parties, to call witnesses and to authorise him to tender other evidence’. Similarly, Rule 146 (A) provides: ‘Victims participating in the proceedings may, on notice to the Prosecutor and the Defence, request the Trial Chamber to call witnesses.’ Rule 150 (D) provides: ‘A victim participating in the proceedings may be permitted to give evidence if a Chamber decides that the interests of justice so require.’

345. On the application of the Legal Representatives of Victims, the Trial Chamber heard evidence from six victims and Professor Letschert, and received into evidence 24 witness statements and their associated exhibits, namely documents related to their statements, and other documents concerning the harm suffered by the participating victims; a total of 45 exhibits. This evidence mainly relates to injuries and deaths of victims relevant to the (attempted) homicide charges. To avoid the appearance of having two prosecutors in the proceedings, the Trial Chamber endeavoured to avoid any overlap between this evidence and that led by the Prosecution.⁴⁵³ The Trial Chamber invited submissions on the status of the Legal Representatives of Victims’ evidence, as in how it could be used and the weight that it could be given and carefully considered how it could be used in the judgment.⁴⁵⁴ Some aspects of their evidence, such as portions of victims’ statements concerning the reparations that the victims considered appropriate have no probative value, and the Trial Chamber has not relied on them.⁴⁵⁵

⁴⁵³ Decision on the Legal Representatives’ application to call evidence, paras 35, 72. *See also* chapter V ‘Participation of victims’, (C) ‘Modes of victims’ participation in the trial’ and (F) (6) (a) ‘Scope of the evidence’.

⁴⁵⁴ Order rescheduling final trial briefs and closing submissions, para. 17; Decision admitting documentary evidence on the Legal Representatives of Victims’ application, para. 33; Decision permitting Professor Letschert to provide opinion evidence, para. 33; Decision admitting into evidence statements of participating victims, para. 16; Decision on the Legal Representatives’ application to call evidence, paras 77, 83.

⁴⁵⁵ Decision admitting into evidence statements of participating victims, para. 19. *See also* chapter V ‘Participation of victims’, (H) ‘Repairing the harm—sought recommendations for appropriate forms of reparations’.

v. Written records of witness evidence without oral testimony

346. Rule 155 (A) provides that: ‘Subject to Rule 158, the Trial Chamber may admit in lieu of oral testimony the evidence of a witness in the form of a written statement, or a transcript of evidence which was given by a witness in proceedings before the Tribunal, which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment.’

347. Rule 158 (A) governs the evidence of unavailable witnesses, and provides:

Evidence in the form of a written statement, any other reliable record of what a person has said, written or otherwise expressed, or transcript of a statement by a person who has died, who can no longer with reasonable diligence be traced, or who is for good reason otherwise unavailable to testify orally may be admitted ... if the Trial Chamber:

- (i) is satisfied of the person’s unavailability; and
- (ii) finds that the statement, the record or the transcript is reliable, taking into account how it was made and maintained.

348. Under these two rules, the Trial Chamber admitted into evidence written records of witness evidence—typically in the form of witness statements—without oral testimony. There is no single definition of a witness statement in international criminal law proceedings.

349. A broad definition is ‘an account of a person’s knowledge of a crime, which is recorded through due procedure in the course of an investigation into the crime’. Whether a document is a witness statement is determined on a case-by-case basis, according to the type of testimony the witness will give, the character of the witness, and the content, use, function and source of the document or material itself.⁴⁵⁶

350. When admitting evidence in a witness statement without oral testimony, the Trial Chamber carefully considered the impression stemming from the statement as a whole.⁴⁵⁷ Further, it examined whether any formal indicia of reliability were missing from the statement.⁴⁵⁸

⁴⁵⁶ Sabra Defence seventh bar table decision (Abu Adass and Mohammed), para. 41; Reasons for admission of 22 Sabra Defence documents, para. 84; Sabra Defence sixth bar table decision (Abu Adass fax), para. 13; First Rule 155 decision, para. 15.

⁴⁵⁷ Decision on admission of Mr Al-Hassan’s interview, para. 56.

⁴⁵⁸ Rule 155 compliance decision, para. 28.

351. Specifically, it looked at the circumstances in which the evidence was obtained and recorded, including whether the statement was given under oath; whether it was signed by the witness with an acknowledgement of the truth of its contents; and whether it was given with the assistance of a Registry-approved interpreter. In addition, the Trial Chamber considered other factors, such as whether the evidence related to events about which there was other evidence and whether there were any inconsistencies in the evidence. It also considered the source of the evidence and the lack of testing through cross-examination.⁴⁵⁹ Generally, witness statements admitted into evidence under Rule 158 will be given less weight, especially where an opposing Party has challenged the receipt of the statement into evidence.⁴⁶⁰ The opposing Party has not been able to cross-examine the maker of the statement. In some circumstances, the evidence in a Rule 158 statement may be neither controversial nor contested, in part or in whole, while in other instances it may be contested in its entirety.

352. The Trial Chamber has carefully assessed all Rule 158 statements, which are untested evidence, for their internal consistency, their corroboration by other evidence, especially evidence challenged through cross-examination, and whether they go to the acts and conducts of an Accused. Where the only evidence relating to a contested fact derives solely from a Rule 158 statement, the Trial Chamber did not rely upon it as proof of a fact. This includes circumstances where that contested fact is ‘corroborated’ only by another Rule 158 witness statement. In these circumstances, the Trial Chamber did not use the non-cross-examined assertions of two (or more) contested witnesses to corroborate each other on that contested fact. However, where Rule 158 statements provide evidence of an uncontested fact, the Trial Chamber may use the statements as proof of that fact.

⁴⁵⁹ Decision denying certification to appeal (Rule 158 admission), paras 21, 23; Decision denying certification to appeal of 1 February 2018, paras 20, 25; Decision admitting evidence under Rule 158 (Witness PRH056), para. 51; Decision on admission of Mr Al-Hassan’s interview, para. 86; Decision denying Oneissi Defence certification to appeal Rule 158 decision (Witness PRH103), paras 9-10; Decision denying Sabra Defence certification to appeal Rule 158 decision (Witness PRH103), para. 6; Decision denying Merhi Defence certification to appeal Rule 158 decision (Witness PRH103), para. 7; Decision denying certification to appeal (Witness PRH024), paras 29, 35; Corrected decision under Rule 158 (Witness PRH024), paras 41-42; Rule 158 decision Witness PRH437, paras 15, 18; Rule 158 decision Witness PRH103, paras 33, 44-48, 52; Decision on admission of statements of Witness PRH402 and Witness PRH636, paras 16, 18-19, 23-26; Decision on admission of statements of Witnesses PRH082, PRH041 and PRH459, para. 9. *See also* Decision admitting Hezbollah-related documents, para. 76.

⁴⁶⁰ Decision on admission of Mr Al-Hassan’s interview, para. 86; Rule 158 decision Witness PRH103, para. 36.

2. Documents

353. Rules 149 and 154 permit a chamber to admit relevant evidence in the form of a document or other record, if the probative value of the evidence is not substantially outweighed by the need to ensure a fair trial. After assessing the relevance and probative value of each document, the Trial Chamber received thousands of exhibits into evidence. Many were the subject of written decisions. Some documents were shown to witnesses in court, and their comment was sought, after which they were admitted into evidence. This process may enhance the weight that the Trial Chamber can give to a document.⁴⁶¹

354. Other documents were admitted ‘from the bar table’, meaning that they were not shown to any witness before being tendered. This is a long-standing practice in international criminal law proceedings that promotes judicial economy, particularly in relation to the unopposed admission into evidence of documents. The Trial Chamber may give less weight to such evidence, if, for instance, the creator of a document could not be cross-examined.⁴⁶² However, depending on the circumstances, considerable weight could be given to a document admitted from the bar table. Moreover, the admission into evidence of numerous documents was not challenged by the opposing Party.⁴⁶³

355. Authenticity, relevance and indicia of reliability, business records, telecommunications evidence, derivative evidence and exhibits admitted for limited purposes are relevant here.

(a) Authenticity

356. Authenticity is ‘whether a document is what it professes to be in origin and authorship’ and ‘may be relevant in assessing whether a document is *prima facie* reliable’.⁴⁶⁴ When admitting certain documents into evidence, the Trial Chamber made findings pertaining to their

⁴⁶¹ See for example, Decision admitting Hezbollah-related documents, paras 55-56; Decision denying certification to appeal (admission of Witness PRH707’s evidence), para. 24.

⁴⁶² Decision on admission of documents used with a witness by the Oneissi Defence, para. 40; Corrected decision under Rule 158 (Witness PRH024), para. 42; Decision on admission of attribution documents for Mr Sabra, para. 27.

⁴⁶³ The Ayyash Defence also relevantly submitted that evidence tendered during cross-examination is entitled to as much weight as documents tendered during direct examination or through other methods. Ayyash Defence final trial brief, para. 29 (no authority cited).

⁴⁶⁴ Decision on admission of documents used with a witness by the Oneissi Defence, para. 6; Decision on admissibility of Wikileaks documents, paras 11, 13.

authenticity.⁴⁶⁵ Definitive proof of reliability and authenticity, as opposed to a *prima facie* showing, is not required at the admissibility stage.⁴⁶⁶ Consequently, the Trial Chamber is not bound by those findings on admission.⁴⁶⁷ It may determine, when assessing the weight of a document in light of the totality of the evidence, that the document is not authentic and that no weight can therefore be assigned to it for the purpose of proving the truth of its content.

(b) Relevance and indicia of reliability

357. When determining the admissibility of a document, the Trial Chamber first considered its relevance. If it was irrelevant to the proceedings, it was not further considered for admission into evidence. If considered relevant, even marginally, the Trial Chamber then assessed its probative value. To establish that it had some probative value, the Trial Chamber examined the indicia of reliability to determine whether it was *prima facie* reliable for the purposes of admission into evidence. This included examining any internal inconsistencies;⁴⁶⁸ the source of the document, if known;⁴⁶⁹ the document's temporal alignment with the Prosecution's allegations against the Accused;⁴⁷⁰ and the relationship between the Accused and anyone identified in the documents.⁴⁷¹ Only if satisfied that the document was *prima facie* reliable could it be admitted into evidence. Its weight was only considered in assessing the evidence as a whole during deliberations following the close of the evidence and final trial submissions.

(c) Business records

358. The Prosecution and counsel for the Accused tendered into evidence a number of business records. These are records ordinarily produced in the normal course of business of an organisation

⁴⁶⁵ Decision on admission of attribution documents for Mr Ayyash, Mr Merhi and Mr Sabra, paras 21, 26; Decision on admission of attribution documents for Mr Badreddine, para. 19; Decision admitting Hezbollah-related documents, para. 65; Decision on admission of attribution documents for Mr Oneissi, para. 16; Decision on admission of attribution documents for Mr Sabra, para. 24; Decision on admission of documents (Traffic authority), paras 20-23; Decision on admission of documents (Passport applications), paras 10-12.

⁴⁶⁶ Decision on admission of documents used with a witness by the Oneissi Defence, para. 6; Decision on admissibility of Wikileaks documents, paras 11, 13, referring to *Prlić and others* Appeal decision regarding admission of evidence, paras 33-34. See also *Al Jadeed and Al Khayat* Appeal Judgment, para. 71.

⁴⁶⁷ *Popović and others* Appeal decision on Mr Butler, para. 22; *Rutaganda* Appeal Judgment, fn. 63.

⁴⁶⁸ Reasons for admission of 22 Sabra Defence documents, fn. 161, para. 132.

⁴⁶⁹ Sabra Defence sixth bar table decision (Abu Adass fax), para. 31.

⁴⁷⁰ Decision on admission of evidence of 31 January 2017, para. 19; Decision on admission of attribution documents for Mr Sabra, para. 23; Decision on admission of documents (Traffic authority), para. 20.

⁴⁷¹ Decision on admission of evidence of 31 January 2017, para. 20; Decision on admission of documents (Traffic authority), paras 20-21.

or workplace. Some business records, relevantly here, such as telecommunication call data records, are generated automatically.

359. Everything else being equal, this gives such records a degree of reliability. Faced with copious and diverse business records produced a long time ago by different people working within diverse sections of large organisations, it may be difficult, if not impossible, to find the maker of each record to testify to its creation. Especially in light of the staff turnover that large organisations experience over time.

360. It was therefore necessary to hear evidence from witnesses who could testify to the process of production of business records in general. For instance, corporate Witnesses 705 and 707 testified about the business records of the Lebanese mobile telecommunication companies Touch and Alfa, respectively.

361. The Ayyash, Sabra and Oneissi Defence opposed the classification of these records as business records and counsel for all four Accused challenged the reliability of the telecommunications evidence provided through Witnesses 705 and 707. These submissions are addressed in detail at paragraphs 1831-1862. After considering them, the Trial Chamber has remained of the view that these were Touch's and Alfa's business records and found that Witnesses 705 and 705 were able to testify about them, by virtue of their positions in each company and their lengthy technical expertise in the industry.⁴⁷² Witnesses 705 and 707 also referred to things that they did not have direct personal knowledge of. The Trial Chamber took these factors into consideration when assessing the weight of the business records received into evidence.⁴⁷³

⁴⁷² See chapter VII 'Reliability of telecommunications evidence', (F) 'Findings on Witnesses 705 and 707 and their evidence'.

⁴⁷³ Decision on admission of attribution documents for Mr Ayyash, Mr Merhi and Mr Sabra, paras 23-24; Decision on admission of attribution documents for Mr Merhi, para. 34; Decision on admission of evidence of 31 January 2017, para. 21; Decision denying certification to appeal (admission of Witness PRH707's evidence), para. 24; Decision on admission of Hajj applications, para. 19; Decision on admission of documents (Subscriber records Touch), paras 24, 35-36; Decision on call sequence tables of 31 October 2016, paras 77-87; Decision on admission of Prosecution's cell site evidence, paras 3, 67-70; Decision on admission of Witness PRH707's statements and annexes into evidence, paras 39, 41-43, 45-52, 67, 118, 140, 146, 152, 154-155, 159-160, 172; Decision on admission of Witness PRH705's statements and annexes into evidence, paras 18-20, 22-26, 128; Decision on Prosecution motion to admit Witness PRH705's statements, paras 24, 31; Decision on admission of documents (Subscriber records Alfa), paras 34-37; Corrected version of Decision on Prosecution motion to admit Witness PRH707's statements, paras 53-60, 62, 64-66, 72, 74; Order in relation to Witness PRH707, paras 4-5, 7-11; Decision on five Prosecution motions on call sequence tables and witness statements, paras 77, 99.

362. The Trial Chamber also considered that records produced by a corporation or other entity for an investigation or for the purposes of litigation, such as for use in court, may be treated differently to those extracted from contemporaneous business records or archives.⁴⁷⁴ This could affect their reliability and the weight that can be given to them.

363. The obvious difference between the two categories is that archived business records will generally have been contemporaneously generated for ‘normal’ everyday operational reasons. This will provide them with a *prima facie* degree of reliability as records produced in the normal course of business. Conversely, documents created for specific court use, or in response to an investigation, could potentially have been shaped or even manipulated with the intention to produce a desired result favourable to someone such as the tendering party. This could lessen or even deprive them of probative value. The Trial Chamber carefully considered these factors in assessing any corporate records that it received into evidence.

364. Official governmental records can also be viewed as a form of business record as they are indeed the product of the ‘business’ of government. As explained above in relation to hearsay evidence, they are deemed to have *prima facie* reliability by virtue of their nature as official records: these include birth, death and marriage certificates; family register extracts; identity, immigration, passport and border records; and land, vehicle and business registration documents. Their authenticity or reliability can be challenged or rebutted.

365. Unless the documents were directly challenged, the Trial Chamber after examining each official record, considered them *prima facie* reliable and hence having some probative value by virtue of their official status. The Trial Chamber has carefully assessed any official record where its reliability has been challenged.

⁴⁷⁴ Decision on admission of Prosecution’s cell site evidence, para. 70; Decision on admission of Witness PRH707’s statements and annexes into evidence, paras 49, 51, 168; Decision on admission of Witness PRH705’s statements and annexes into evidence, paras 25, 27; Decision on Prosecution motion to admit Witness PRH705’s statements, para. 24; Corrected version of Decision on Prosecution motion to admit Witness PRH707’s statements, paras 55, 62 (4), 65-66; *see also* para. 1993.

(d) Telecommunications evidence

366. Of central importance to the case is telecommunications evidence, comprising cell site evidence, call data records and call sequence tables. The Trial Chamber's general approach to this evidence is described here.⁴⁷⁵

i. Cell site evidence and analysis

367. Cell site data includes: the date of the production of the data; name of the person producing the data; a record reference; the cell ID; the name of the cell site; full address of the cell site, including postal code; grid co-ordinates of the cell site; sector number or code; number of sectors and azimuths of all sectors; orientation, azimuth and bearing in degrees from north of all sectors; antenna height; and the date on which a particular cell site was first brought into service.⁴⁷⁶

368. The Trial Chamber admitted cell site evidence, based on information obtained from the Lebanese telecommunications providers, Alfa and Touch, on the locations and names of the cell sites, also called cell towers, comprising their mobile telecommunication networks, and various features of the antennae mounted on these cell towers, such as the direction of the antenna—known as the 'azimuth'—and its tilt.

369. The networks are comprised of cells and each is serviced by at least one cell site. Cell site evidence also includes 'predicted best server coverage maps' that were provided to the Prosecution in 'shape files'. These illustrate the surface area over which each cell site is predicted to emit the strongest signal compared with neighbouring cell sites. One cell may be serviced by more than one cell site. The cell site providing coverage will depend on where the mobile is and can be influenced by variables such as the height of the cell tower, the topography of the cell and the presence of buildings and geographical objects, such as hills and water.⁴⁷⁷

⁴⁷⁵ The telecommunications evidence is dealt with extensively in chapter VII 'Reliability of telecommunications evidence'.

⁴⁷⁶ *See for more details* chapter VII 'Reliability of telecommunications evidence'.

⁴⁷⁷ Decision on admission of Prosecution's cell site evidence, paras 6, 21-23, 138.

370. Alfa had no centralised database for this information before 2007, so it used an approximation or ‘reverse engineering’ method to produce the predicted best server coverage maps for the period relevant to the amended consolidated indictment.⁴⁷⁸

371. Cell site analysis is a forensic technique to identify the approximate location of the user of a mobile based on the cell site to which the mobile connects during a call.⁴⁷⁹ It is used forensically to determine whether different mobiles ‘co-locate’, which can be used to prove that a single person to whom one or more mobiles are attributed used one or more co-locating mobile(s).⁴⁸⁰

372. When weighing cell site evidence, the Trial Chamber considered any discrepancies, gaps, anomalies, inaccuracies, weaknesses and or errors within it. It also considered whether the cell site data was original or reconstructed and whether Witnesses 705 and 707 had first or second-hand knowledge of the cell site evidence about which they testified.⁴⁸¹

ii. Call data records

373. Call data records provide information about communications, such as the source and destination telephone numbers, the type of communication (voice call or text message), the date and time of the communication, the duration of the voice call, the IMEI number of the handset relevant to the communications, and the cell towers to which the mobiles connected.⁴⁸²

374. Call data records are the business records of telecommunication companies generated and retained automatically and legally in the normal course of their business.⁴⁸³ A limited number of Alfa’s and Touch’s records were prepared for the purposes of litigation, specifically, by providing them to the UNIIIC, and then the Prosecution for possible use in court. The Trial Chamber and

⁴⁷⁸ See further chapter VII ‘Reliability of telecommunications evidence’, (C) ‘Alfa network and generation of call data records and cell site data’.

⁴⁷⁹ Decision on opinion evidence (Mr Donaldson), fn. 5; Decision on admission of Prosecution’s cell site evidence, paras 4, 10.

⁴⁸⁰ Decision on opinion evidence (Mr Donaldson), paras 20-38, 69, 81.

⁴⁸¹ Decision on admission of Prosecution’s cell site evidence, paras 6-8, 15-16, 22, 72, 74, 76-81, 83-86, 89-90, 97-159, 161; Decision on admission of Witness PRH707’s statements and annexes into evidence, para. 133; Decision to add Witness PRH705 to the Prosecution’s witness list, para. 17; Decision to add Witness PRH707 to the Prosecution’s witness list, para. 13.

⁴⁸² See for example, Decision denying admission of two call sequence tables, fn. 4; Decision on admission of Prosecution’s cell site evidence, para. 3; Decision on five Prosecution motions on call sequence tables and witness statements, para. 2.

⁴⁸³ Decision on admission of Prosecution’s cell site evidence, para. 3; Decision on five Prosecution motions on call sequence tables and witness statements, paras 77, 99.

Defence were briefed on the call data records database in a Rule 53⁴⁸⁴ meeting convened on 26 November 2013.⁴⁸⁵ The Prosecution performed demonstrations of search queries and answered questions from the Trial Chamber and the Defence.

375. The Trial Chamber declined to admit into evidence the raw call data records given that they are voluminous—comprising billions of entries—and unreadable in their raw form.⁴⁸⁶ To be comprehensible, the records must be extracted and converted into a readable format. Receiving the call data records onto the trial record in their raw format would have been a pointless exercise, and moreover, almost all of them would have been irrelevant to the case.

iii. Call sequence tables

376. Instead of receiving billions of incomprehensible call data records in evidence, the Trial Chamber admitted into evidence numerous call sequence tables; this was on the application of both Prosecution and the Defence of all four Accused and Mr Badreddine.⁴⁸⁷

377. These are tables that present chronological sequences of calls relating to a particular, or target, telephone number—mobile or landline—over a specified period. They are extracted from the records of telecommunication operators and combine call data records and cell site information.⁴⁸⁸ The tables make these records accessible and capable of presentation and analysis without altering the data.⁴⁸⁹

378. The Defence did not challenge the Trial Chamber's decision not to admit billions of irrelevant records—which in their original form are simply long strings of numbers and symbols—into evidence. The Ayyash, Badreddine and Merhi Defence, however, argued that the Prosecution did not tender into evidence the call data records from which the call sequence tables were

⁴⁸⁴ Rule 53 provides: 'The Registrar, or Registry staff designated by the Registrar, shall, as appropriate, take minutes of the plenary meetings of the Tribunal and of the proceedings of a Judge or Chamber, other than private deliberations.'

⁴⁸⁵ Order regarding Rule 53 meeting minutes; F3772, Registrar's Submission Pursuant to Rule 48 (C) in Response to the Trial Chamber's Order of 21 June 2019, 11 July 2019.

⁴⁸⁶ Decision denying admission of two call sequence tables, para. 21; Decision admitting single user report (Grey mobile), para. 27; Decision on five Prosecution motions on call sequence tables and witness statements, para. 113.

⁴⁸⁷ The figure appears to be at least 195 exhibits containing call sequence tables, comprising 156 tendered by the Prosecution, and 39 by the Defence: Ayyash Defence four, Badreddine eight, Merhi Defence seven, Oneissi Defence four and the Sabra Defence 16.

⁴⁸⁸ *See for example*, Decision denying admission of two call sequence tables, fn. 3.

⁴⁸⁹ Decision on call sequence tables of 31 October 2016, para. 3; Decision on admission of Prosecution's cell site evidence, para. 12. *See also* Decision on admission of call sequence tables related to Mr Hariri's movements, paras 65, 69.

produced.⁴⁹⁰ Having not admitted the underlying raw call data records in evidence, to allow it to evaluate the *prima facie* reliability of the call sequence tables, the Trial Chamber needed information on how they were created.

379. Consequently, the Trial Chamber required that call sequence tables, when tendered, were accompanied by witness statements or testimony explaining who prepared them and in what manner, to enable it to review the methodology and thus evaluate their *prima facie* reliability and probative value.⁴⁹¹ Their relevance was not in issue. As both Prosecution and Defence were using the same data collected from the Lebanese telecommunication companies and utilised the same methodology in extracting the data into call sequence tables, this applied equally to all Parties.

380. When assessing the weight to give to call sequences tables, the Trial Chamber considered whether they cover multiple subscriber periods, the methodology for choosing the target date ranges and whether the numbers included in the call sequences tables could be attributed to specific people.⁴⁹² The Trial Chamber, having thoroughly reviewed this evidence, does not believe that there was any serious challenge to the reliability of the call sequence tables as extracts from the call data records. Both the Prosecution and counsel for all Accused tendered call sequence tables into evidence—extracted from the same set of call data records that the Lebanese companies had provided to the UNIIIC and the Prosecution.

(e) Derivative evidence

381. The Trial Chamber also admitted into evidence what can be termed ‘derivative evidence’, although there may be some overlap with what is also called ‘demonstrative evidence’. Essentially this is evidence created by a Party from other evidence, such as to allow its analysis or visual presentation in court.

⁴⁹⁰ Decision on five Prosecution motions on call sequence tables and witness statements, paras 50, 73.

⁴⁹¹ Decision denying admission of two call sequence tables, para. 21; Decision on five Prosecution motions on call sequence tables and witness statements, paras 113, 115. *See also* Decision on call sequence tables of 31 October 2016, paras 89-92, 95.

⁴⁹² Reasons for admission of 22 Sabra Defence documents, paras 32, 54; Decision denying certification to appeal decision admitting ten call sequence tables, para. 17. *See also* Decision on admission of documents (Subscriber records Alfa), para. 16.

382. Call sequence tables provide an example: the call data records are the original evidence, but extracting the relevant information and converting it into call sequence tables permitted it to be analysed and understood.⁴⁹³

383. The Trial Chamber also admitted into evidence ‘subscriber notes’. These are derived from the subscriber databases of the Lebanese telecommunication companies. These too were extracts from massive telecommunication databases of millions of records converted into tables of relevant information. The innate reliability of a document or record is not diminished merely because a Party had created it for its own demonstrative purposes in court,⁴⁹⁴ although in assessing its weight the Trial Chamber was mindful of why and by whom it had been created.

(f) Exhibits admitted for limited purposes

384. In exercising its discretion, the Trial Chamber admitted some documents into evidence for a limited purpose,⁴⁹⁵ rather than strictly for the truth of what was asserted in them.⁴⁹⁶ An example

⁴⁹³ Decision denying admission of two call sequence tables, para. 37. Earlier in the proceedings, the Trial Chamber characterised call sequence tables as ‘a form of demonstrative evidence’ (Decision on admission of call sequence tables related to Mr Hariri’s movements, para. 69) and ‘a derivative form of demonstrative evidence’ (Decision on admission of Witness PRH424’s evidence, para. 12). *See also* Decision on call sequence tables of 31 October 2016, para. 95.

⁴⁹⁴ Decision on admission of documents (Subscriber and user information), para. 30; Decision on admission of photographs, videos, maps and 3-D models, para. 10.

⁴⁹⁵ *Al Jadeed and Al Khayat* Appeal Judgment, paras 64, 66, 68-71, 78.

⁴⁹⁶ Decision on admission of Sabra Defence documents of 28 March 2018, paras 25 (exhibit 5D204 admitted to show what information was available to investigators at the time), 59-60 (exhibits 5D151, 5D153, 5D154, 5D155, 5D156, 5D206, 5D208, 5D255, 5D279, 5D285, 5D290, 5D291 and 5D292 admitted to assist the Trial Chamber’s understanding of the transcript and of the Sabra Defence case); Reasons for admission of 22 Sabra Defence documents, paras 97 (exhibit 5D423 admitted to assess the quality of the UNIIIC’s or the Prosecution’s investigation and analysis), 107 (exhibit 5D420 admitted to assess the quality of the Prosecution’s investigation), 123-124 (exhibit 5D426 admitted to show that the possibility of investigating Mr Al-Hassan’s reasons for not being in Mr Hariri’s convoy on 14 February 2005 and related matters were analysed, and in this case, apparently recommended by someone within the UNIIIC), 133 (exhibit 5D404 admitted to assess the diligence of the Prosecution’s investigations); Decision on Prosecution’s clarification request, para. 4 (exhibit 5D251 admitted to assess the Sabra Defence’s line of defence); Sabra Defence sixth bar table decision (Abu Adass fax), paras 28 (exhibit 5D504 admitted to assess the quality of the UNIIIC’s investigation), 35 (exhibit 5D507 admitted to provide context for the ISF investigation and demonstrate that a fax identifying Mr Abu Adass and his associates was sent to the Lebanese investigative authorities after the assassination of Mr Hariri); Sabra Defence fourth bar table decision (Abu Adass recruitment), para. 30 (exhibit 5D497 admitted to show Mr Khaled Taha’s connections to Mr Abu Adass and his involvement in Mr Abu Adass’s alleged recruitment and disappearance); Sabra Defence third bar table decision (Abu Adass recruitment failure), paras 35 (exhibit 5D496 admitted to provide context to the ISF’s investigation into the plot to attack the Italian embassy and possible connections with Mr Hariri’s assassination and Mr Abu Adass’s recruitment), 40 (exhibit 5D495 admitted to provide some contextual information surrounding the attack on the Future TV station and potential connections with individuals involved in the assassination of Mr Hariri and in Mr Abu Adass’s recruitment, and show that the Lebanese judicial and investigating authorities had relevant information on the alleged plot to assassinate Mr Hariri); Sabra Defence second bar table decision (Abu Adass selection), para. 40 (exhibit 5D254 admitted to assess the quality of the UNIIIC investigation); Decision on redactions to Mr Al-Hassan’s interview, para. 26 (exhibits P2121 and P2122

of this was connected with the thrust of part of the Sabra Defence's defence that the Prosecution had failed to properly investigate allegations within its knowledge that individuals, who were not the Accused, were responsible for the attack on Mr Hariri. To that end, the Trial Chamber accepted some documents, or extracts, into evidence as going to prove that the Prosecution had notice of the existence of these allegations, as opposed to the fact that the information in the witness statement or report in which they were contained was in fact accurate. That is, the Prosecution was aware of the substance of the allegations, not that they were necessarily true. This could have been used to prove that it had inquiry notice of a matter, thereby requiring it to act in a certain manner. The Trial Chamber instructed the Parties not to rely, in their submissions, on such evidence for the truth of its content, as opposed to its existence.⁴⁹⁷

385. Other exhibits were admitted not as substantive evidence, but rather for demonstrative purposes.⁴⁹⁸ These included visual aids such as charts, graphs and diagrams prepared by one Party to assist the Trial Chamber—and the other Parties—in visualising, following and hence understanding the evidence, especially in consideration of the length and complexity of the telecommunications evidence presented. The Defence of each Accused challenged various demonstrative evidence tendered by the Prosecution, on different bases, such as that it consisted

admitted to corroborate other evidence connected to paragraph 49 of the amended consolidated indictment); Decision on admission of geographic documents, paras 13-14, 18 (exhibits P547 and P548 admitted to identify relevant locations); Decision allowing amendment of the Prosecution's exhibit list of 20 November 2014, pp 37-38 (exhibit P314—Democratic Gathering Declaration for Freedoms and Protection of the Constitution and the Democratic Regime, 21 September 2004—admitted to reflect the position of the members who supported this declaration and the fact that that position was maintained publicly); Addendum to decision allowing the Prosecution to recall Mr John Edward Philips (exhibit P2120 admitted to rebut a suggestion made by Defence counsel in cross-examining Mr Donaldson).

⁴⁹⁷ Sabra Defence fourth bar table decision (Abu Adass recruitment), para. 42; Sabra Defence second bar table decision (Abu Adass selection), para. 53.

⁴⁹⁸ Decision on admission of documents used with Witness PRH707, para. 19 (exhibits 4D261 and 4D262); Decision on admission of Sabra Defence documents of 28 March 2018, paras 34 (exhibits 5D147 and 5D162), 59 (exhibits 5D151, 5D153, 5D154, 5D155, 5D156, 5D206, 5D208, 5D255, 5D279, 5D285, 5D290, 5D291 and 5D292); Decision on admission of documents used with a witness by the Oneissi Defence, para. 70 (exhibit 4D539); Reasons for admission of 22 Sabra Defence documents, paras 51-52 (exhibit 5D348 admitted to better understand the Defence case), 59 (exhibit 5D356 admitted to assist the Trial Chamber in understanding certain call sequence tables), 70-72 (exhibit 5D355 admitted to make the Sabra Defence's cross-examination of Mr Platt understandable and graphically illustrate the Sabra Defence's submissions); Decision denying admission of two call sequence tables, para. 8 (exhibit 4D364); Sabra Defence sixth bar table decision (Abu Adass fax), para. 40 (exhibit 5D202 admitted to assist in understanding the Sabra Defence case); Sabra Defence second bar table decision (Abu Adass selection), para. 37 (exhibit 5D218 admitted to assist in understanding the Sabra Defence case); Decision on admission of photographs, videos, maps and 3-D models, para. 10 (admitting 3-D models as exhibits P54, P55, P56 and P57); Procedural matters, T. 3 October 2017, p. 54 (exhibits P1780, P1781 and P1782); Decision under Rule 155 (Witness PRH371) (exhibits P1152 and P1153).

wholly or partly of submissions under the guise of demonstrative evidence.⁴⁹⁹ However, both Prosecution and Defence counsel used such evidence as a tool in presenting their evidence in court.

386. Demonstrative evidence also assisted the Trial Chamber, as a finder of fact, in finding context in the facts and strands of evidence. As evidence, it had to be relevant and have probative value, which includes *prima facie* reliability.⁵⁰⁰ The Trial Chamber considered demonstrative evidence with full appreciation for the advantages and limitations of such evidence.⁵⁰¹ Any inconsistencies between the demonstrative evidence and the underlying evidence were taken into account, and if the demonstrative evidence materially differed from the underlying evidence in some respect, the Trial Chamber has not relied on it in that respect.⁵⁰²

387. Some exhibits admitted for demonstrative purposes contained a mixture of demonstrative evidence and what were in reality Party submissions. In some instances they were tantamount to closing submissions. As some flexibility in a large and complex case was needed and the Parties and Trial Chamber could readily distinguish between what was demonstrative and what was argumentative, the Trial Chamber accepted some documents containing this blend. To the extent these exhibits amounted to submissions, the Trial Chamber assessed them in this light, not mistaking submissions for evidence.⁵⁰³

388. The Trial Chamber has extracted information from the Prosecution's 'electronic presentation of evidence' (EPE) in-court software, and from demonstrative evidence—for example individual slides from slide presentations used by the Parties as visual aids in court—in this

⁴⁹⁹ Ayyash Defence final trial brief, paras 33-34; Merhi Defence final trial brief, para. 75.

⁵⁰⁰ Decision on admission of documents used with Witness PRH707, para. 19; Decision on admission of Sabra Defence documents of 28 March 2018, para. 7; Reasons for admission of 22 Sabra Defence documents, paras 51, 70; Decision on demonstrative evidence (Mr Donaldson), paras 1, 4, 10, 12, 14-16; Decision on Prosecution motion to add four documents to its exhibit list, paras 9-10.

⁵⁰¹ Decision on admission of photographs, videos, maps and 3-D models, para. 10.

⁵⁰² Decision on demonstrative evidence (Mr Donaldson), para. 13.

⁵⁰³ Decision on admission of Sabra Defence documents of 28 March 2018, para. 40; Decision on admission of documents used with a witness by the Oneissi Defence, para. 70; Reasons for admission of 22 Sabra Defence documents, paras 52, 59, 72; Sabra Defence sixth bar table decision (Abu Adass fax), para. 40; Sabra Defence second bar table decision (Abu Adass selection), para. 37; Procedural matters, T. 3 October 2017, p. 54; Decision denying certification to appeal decision on Powerpoints. Similarly, mid-trial summaries, which are explanatory rather than argumentative, assist in the understanding of evidence but do not constitute evidence. In-court summaries decision, paras 15-16, 18-20, 24, 38; Decision on periodic in-court summaries. *See also* Decision allowing Sabra Defence supplement, paras 9-11.

judgment. This, too, is for demonstrative purposes only. Every time this is done it is explicitly identified.

3. Agreed facts or ‘agreements as to evidence’

389. Under Rule 122 ‘Agreements as to evidence’, the Parties may agree that an alleged fact ‘is not contested, and, accordingly, a Chamber may consider such alleged fact as being proved, unless the Chamber is of the opinion that a more complete presentation of the alleged facts is required in the interests of justice, in particular the interests of the victims’.

390. During the trial, the Trial Chamber recorded a number of facts as being agreed between the Parties,⁵⁰⁴ or between some of the Parties.⁵⁰⁵ Some facts were proposed by the Legal Representatives of Victims, who are not a Party to the proceedings. Therefore, the essential point was whether the Parties agreed to these facts.⁵⁰⁶ The Trial Chamber did not record any agreed facts based on documents that it found to lack the requisite relevance and probative value for admission into evidence.⁵⁰⁷

391. The Trial Chamber has the discretion to consider agreed facts as being proven without additional evidence, or to require additional evidence in the interests of justice.⁵⁰⁸ The Trial Chamber exercised its discretion to consider the agreed facts as proven between the relevant Parties. It did not rely on any agreed fact to the detriment of a Party that had not agreed to it. Unless otherwise stated, the Trial Chamber accepted the agreements between the Parties. They are listed in this judgment, together with the evidence, or in annex E.

⁵⁰⁴ Second decision on agreed facts (Merhi), disposition; First decision on agreed facts, para. 8, disposition.

⁵⁰⁵ Decision on agreed facts (participating victims) (Ayyash and Sabra), para. 10, disposition (between the Prosecution, the Ayyash Defence and the Sabra Defence); Second decision on agreed facts in UNIIIC reports (Merhi), para. 8, table B (between the Prosecution and the Merhi Defence); First decision on agreed facts in UNIIIC reports (Sabra), para. 5, disposition, table A (between the Prosecution and the Sabra Defence) – *see* correction in Second decision on agreed facts in UNIIIC reports (Merhi), table A.

⁵⁰⁶ Decision on agreed facts (participating victims) (Ayyash and Sabra), paras 7, 14.

⁵⁰⁷ Decision on agreed facts (participating victims) (Ayyash and Sabra), para. 11; Decision admitting documentary evidence on the Legal Representatives of Victims’ application, paras 39-41.

⁵⁰⁸ *Al Jadeed and Al Khayat* Appeal Judgment, fn. 390. *See also* Decision admitting documentary evidence on the Legal Representatives of Victims’ application, paras 38, 44, 78; Decision admitting into evidence statements of participating victims, para. 17; Decision on the Legal Representatives’ application to call evidence, paras 78, 97, 102.

4. Judicial notice

392. Rule 160 (A) provides that ‘The Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof.’ Once the Trial Chamber has taken judicial notice of a fact of common knowledge, Rule 160 (A) implies that such facts cannot be challenged during trial.⁵⁰⁹ The Trial Chamber took judicial notice of several facts of common knowledge.⁵¹⁰ Unless otherwise stated in this judgment, the Trial Chamber treated these facts as unchallenged and listed them where necessary in the judgment.

⁵⁰⁹ Decision on taking judicial notice, para. 9.

⁵¹⁰ Decision on taking judicial notice, para. 28, disposition, table A; T. 19 November 2014, pp 45-47 (exhibit P310.1); T. 17 November 2014, pp 21, 32-34, 56-57 (exhibits P304-P307). Exhibit P307 was admitted only to show the position taken by the US towards Syria and to add context to the allegations made that Mr Hariri had aligned himself with the US in 2003, which may provide some background evidence. Decision on admission of documents (movements and events), para. 8, referring to T. 17 November 2014, p. 57.

IV. HISTORICAL AND POLITICAL BACKGROUND TO THE ATTACK

A. Introduction

393. The Trial Chamber's role as a first instance trial court is neither to write nor correct any version of history that witnesses or parties may have urged upon it. Its role is confined to adjudicating whether any of the four Accused are guilty beyond reasonable doubt of any of the charges against them.⁵¹¹ The attack on Mr Hariri, however, did not occur in a political or historical vacuum and the Trial Chamber cannot ignore the background to the attack as providing a possible motive for it. It does this while noting that motive is not an element of any of the crimes charged in the amended consolidated indictment.

394. The assassination by car bombing of a prominent politician—who had recently resigned as the prime minister and was preparing to contest the next parliamentary elections—was undoubtedly a political act. The Trial Chamber should therefore consider whether political motives may be attributed to any of the Accused, or the former accused and named co-conspirator, Mr Mustafa Amine Badreddine. Another important consideration is that of context. Understanding the political background to the attack is necessary to form an understanding of why Mr Hariri was targeted in this manner, but only insofar as it relates to whether or not any of the Accused on trial are guilty of any of the counts charged. Similarly, completeness requires placing the attack within a wider historical setting.

395. The Trial Chamber, however, is neither a fact-finding institution like the UNHCR or the UN Secretary-General's Fact-Finding mission that preceded it, nor a truth and reconciliation commission.⁵¹² Its statutory role is to determine, based solely on the evidence on the trial record, whether the Accused have been proved guilty beyond reasonable doubt of any crime charged in the amended consolidated indictment. It is not searching for the 'truth' in the manner of, say, a

⁵¹¹ *For example*, T. 5 June 2018, pp 27-28.

⁵¹² In a decision rejecting an application by the Sabra Defence asking the Trial Chamber to take judicial notice of the entire contents of the eleven UNHCR reports and that of the preceding Fact-Finding Mission (the FitzGerald Report) to the UN Secretary-General, the Trial Chamber held that it was 'holding a trial to determine whether Accused persons are guilty as charged in the consolidated indictment; it is not reviewing fact-finding reports or conducting a general inquiry'. Decision on taking judicial notice, para. 24.

truth and reconciliation commission; and, moreover, its powers to order the production of additional evidence are limited.⁵¹³

396. The Trial Chamber should also deal with the Prosecutor's pleaded allegation connecting the four Accused and Mr Badreddine with Hezbollah, which was then a political opponent of Mr Hariri's political party, the Future Movement. Paragraph 49 of the amended consolidated indictment pleads that 'All four Accused, as was Mustafa BADREDDINE, are supporters of Hezbollah, which is a political and military organisation in Lebanon'.

397. In examining this pleading, the Trial Chamber is confining itself to the evidence it received during the trial. A number of the facts noted below were recorded as agreements as to evidence between the Parties.

398. During the trial and following the reported death of Mr Badreddine in May 2016, the Trial Chamber ordered the Prosecution to file particulars in support of this allegation.⁵¹⁴ The Prosecution filed a summary statement of the evidence supporting the pleading, stating the following:⁵¹⁵

- the Green mobile network was a Hezbollah operated network—using a Prosecution interview with Mr Wissam Al-Hassan⁵¹⁶ from June 2012⁵¹⁷ and a press conference held by Mr Hassan Nasrallah, Hezbollah's Secretary-General, in August 2010;⁵¹⁸

⁵¹³ Rule 165 'Power of Chambers to Order Production of Additional Evidence', provides 'After hearing the Parties, the Trial Chamber may, *proprio motu* or at the request of a Party, order either Party or a victim participating in the proceedings to produce additional evidence. It may, after hearing the Parties, *proprio motu* summon witnesses and order their attendance.' The Trial Chamber does not view Rule 165 as permitting it to operate as a truth-finding commission outside the boundaries of a system in which a Prosecutor presents a case against accused persons. Any additional evidence that a Trial Chamber orders produced must have a connection with the cases presented by the Parties.

⁵¹⁴ Decision amending the consolidated indictment, paras 54-58.

⁵¹⁵ F2735, Prosecution Summary Statement of Evidence in relation to paragraph 49 of the Amended Consolidated Indictment, 23 September 2019. A public redacted version was filed on 31 October 2017. An update was filed in F2948, Notice Concerning an Updated Prosecution Summary Statement of Evidence in relation to paragraph 49 of the Amended Consolidated Indictment, 20 January 2017.

⁵¹⁶ Mr Al-Hassan was a former Lebanese ISF officer who resigned from the ISF on 4 February 2005. At the time of Mr Hariri's death he was his head of security. In late July 2005, he returned to the ISF and in early 2006, he became the head of the ISF's Information Branch assigned to lead the investigation into Mr Hariri's death. Decision on admission of Mr Al-Hassan's interview, paras 1-2.

⁵¹⁷ Exhibit P2121 (Interview of Wissam Al-Hassan, 17 June 2012); exhibit P2122 (Interview of Wissam Al-Hassan, 16 June 2012).

⁵¹⁸ Exhibit P2098 (Press conference on 9 August 2010).

- Mr Nasrallah made a speech in August 2011 referring to Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra as ‘four honourable resistance men’;⁵¹⁹
- In a speech in November 2010, Mr Nasrallah stated, of the Special Tribunal, ‘Mistaken is he who believes that we will allow the arrest or detention of any of our mujehdeen. The hand that attempts to reach them will be cut off’;⁵²⁰
- Many witnesses or potential witnesses had refused to attend an interview or follow-up interview with Prosecution investigators, instead referring them to the Hezbollah Security Committee;⁵²¹
- Photographs, articles and videos published after Mr Badreddine’s announced death in May 2016 reveal that he was a Hezbollah member, involved in military operations for over 30 years, and in a leadership position in the organisation; able to access resources, human and logistical to operate his command; was promoted to a position of great seniority in 2008 and his death was publicly commemorated in Lebanon, Syria and Iran;
- Mr Ayyash was selected in December 2003 to escort a Hezbollah MP on the Hajj pilgrimage and was described as a ‘brother’ in a letter from the Office of the Head of the Loyalty to the Resistance Bloc;
- On his death, Mr Merhi’s brother, Mr Youseff Habib Merhi, was proclaimed ‘a martyr’ by Hezbollah, and Mr Nasrallah attended the funeral, the procession of which was led by Hezbollah senior politicians and representatives;
- One witness described Mr Sabra as a Hezbollah supporter when he was younger,⁵²² another that he was connected to Hezbollah⁵²³ and a third that he was a Hezbollah supporter.⁵²⁴ His younger brother, Mr Moussa Hassan Sabra, was recognised as a

⁵¹⁹ Exhibit P2095 (Speech by Hassan Nasrallah on 17 August 2011).

⁵²⁰ Exhibit P2090 (Speech by Hassan Nasrallah on 11 November 2010).

⁵²¹ Exhibit P1136 (Witness statement of Timothy Holford).

⁵²² Exhibit P1149 (Statement of Witness PRH106 dated 15 October 2010), para. 60.

⁵²³ Exhibit P1150 (Interview of Witness PRH069, 19 October 2010), p. 33.

⁵²⁴ Exhibit P2103 (Statement of Abbas Mohammed Alaaeddine), para. 29.

Hezbollah ‘fighter’ at a commemorative ceremony for him, attended by Hezbollah officials;

- The younger brother and nephew of Mr Oneissi, Mr Ahmed Hassan Oneissi and Mr Ali Ahmed Oneissi, were declared ‘martyrs’ by Hezbollah upon their deaths; and
- Certain Hezbollah officials or public representatives were using particular telephone numbers which were in contact with numbers attributed to Mr Merhi, Mr Ayyash or Mr Badreddine.

399. The Trial Chamber has found above that paragraph 49 is not a material fact underpinning criminal responsibility.⁵²⁵ Therefore, the Prosecution does not need to prove this factual allegation beyond reasonable doubt; it is not one that is indispensable to a conviction.⁵²⁶ However, as the Prosecution led evidence supporting its pleading, the Trial Chamber will examine it.

400. Further, in submissions related to Hezbollah, the Prosecution’s final trial brief, under the heading ‘The resources, training, extensive preparation, skill, and experience necessary to execute the Attack is only consistent with the actions of the Accused being led by a sophisticated military actor’, outlines three factors in support of this.

401. These are, relevantly, first, the requirement for ‘sophisticated organisation, planning and financial resources’, second, ‘access to approximately 2 ½ tonnes of military grade high explosives’ and third, ‘a group of highly co-ordinated, organised, disciplined, trusted individuals with the skill, training and experience to, amongst other things: conduct extensive, meticulous and highly co-ordinated covert surveillance of the target’s security and convoy over weeks and months; transport and store the explosives’.⁵²⁷

402. The submission concludes by stating that the ‘existence of all of these features could only be found in a sophisticated, experienced group supported by an unusually well-resourced sponsor’.⁵²⁸ To this must be linked the submission that:

⁵²⁵ See para. 122.

⁵²⁶ Compare para. 205.

⁵²⁷ Prosecution final trial brief, para. 1094.

⁵²⁸ Prosecution final trial brief, para. 1095.

BADREDDINE led the operation at the apex of the Green Network, the covert phone network he used to communicate with AYYASH and MERHI in order to coordinate the actions of separate teams carrying out the preparation and execution of the Attack. The Green Network is acknowledged to be a Hezbollah network, reported to be used by its security apparatus.⁵²⁹

403. The Trial Chamber heard extensive evidence from the Prosecution and the Defence of Mr Oneissi concerning the political and historical background to the attack. During the trial, the Prosecution proposed leading evidence of the political background, including from a Lebanese Druze politician, cabinet minister and Hariri ally, Mr Marwan Hamade, which was strongly opposed by counsel for the then five Accused.

404. The five themes of evidence relevant to this, as summarised by the Prosecution, were:

- Mr Hariri's deteriorating relationship with Syria, as a consequence of his goal to strengthen the Lebanese autonomy;
- Syria's correspondingly increasing resolve to exert control beyond mere influence over Lebanese internal affairs;
- growing concerns voiced by the international community regarding external pressures bearing upon the political affairs of Lebanon;
- the evolution of an effective opposition movement in September 2004, and, thereafter in Lebanon of which Mr Hariri was first a silent and then a more public participant; and
- Mr Hariri's status as an influential statesman in the Gulf region and beyond.⁵³⁰

405. The Defence, on the other hand, argued that the evidence was not relevant to any allegation pleaded in the (then) consolidated indictment.⁵³¹

406. After hearing argument on the point, the Trial Chamber allowed the Prosecution to call evidence of the prevailing political situation in Lebanon at the time, from Mr Hamade who had

⁵²⁹ Prosecution final trial brief, para. 6.

⁵³⁰ Prosecution submissions, T. 11 November 2014, pp 4-6, T. 13 November 2014, pp 35-36.

⁵³¹ Defence submissions, T. 13 November 2014, pp 71-83, 88-92, 94-100, T. 14 November 2014, pp 3, 6-10, 14-36.

himself been the subject of an unsuccessful assassination attempt on 1 October 2004.⁵³² The Trial Chamber held that:

Evidence of the prevailing political situation in Lebanon in 2004 and early 2005 could provide background and give context to much of other evidence adduced by the Prosecution and even by Defence counsel. Mr Hamade, as a close political associate of Mr. Hariri and a Lebanese cabinet minister who was intimately involved in many of the events at the time, is ideally placed to provide some of this evidence. This includes the content of meetings between Mr Hariri and Syrian officials; this could help to explain the wider circumstances leading to Mr. Hariri's assassination. The evidence in general could also be used to explain a non-private motive for the commission of any offence that the Trial Chamber could find proven.⁵³³

407. The Trial Chamber ruled that some of Mr Hamade's evidence would support some material facts pleaded in the amended consolidated indictment—such as evidence of Mr Hariri's movements and meetings between October 2004 and his death, and hence any surveillance of him. The remainder, namely, 'that of the prevailing political situation in Lebanon, including Mr Hariri's deteriorating relationship with the Syrian authorities, provides background evidence that will make some of the evidence more explicable. It may also provide context to the events leading to his assassination.'⁵³⁴

408. Consequently, the Trial Chamber heard evidence from Mr Hamade and other politicians and officials about the events leading to Mr Hariri's assassination. These included:

- Mr Walid Jumblatt, a prominent Lebanese MP who was the leader of the Lebanese Progressive Socialist Party;⁵³⁵

⁵³² Decision denying request to exclude evidence of Witness PRH038. *See also* Pre-Trial Judge decision on jurisdiction over connected cases.

⁵³³ Decision denying request to exclude evidence of Witness PRH038, pp 10-11.

⁵³⁴ Decision denying request to exclude evidence of Witness PRH038, p. 13.

⁵³⁵ Walid Jumblatt, T. 4 May 2015, p. 6. Mr Jumblatt's relationship with Mr Hariri began in the mid-1980s when he came to Lebanon with Prince Bandar Bin Sultan as an envoy of the Saudi King Fahd. They had a 'very firm and strong relationship' and in the years before Mr Hariri's death, they generally met at least once a week on Sundays, until Sunday 13 February 2005. Walid Jumblatt, T. 4 May 2015, p. 56. Mr Jumblatt testified from 4 to 7 May 2015.

- Mr Fouad Siniora, the Minister of Finance in the Hariri governments, and himself prime minister from July 2005 to May 2008;⁵³⁶
- Mr Jamil El-Sayyed, the director of the Lebanese *Sûreté Général* between 1998 and 25 April 2005, who was imprisoned and held without charge by the Lebanese authorities between 30 August 2005 and 29 April 2009, when his release was ordered by the Special Tribunal's Pre-Trial Judge;⁵³⁷
- Mr Marwan Hamade, a minister in Mr Hariri's government;⁵³⁸
- Mr Ghazi El-Youssef, an advisor to Mr Siniora and Mr Hariri;⁵³⁹
- Mr Ghattas El-Khoury, a Lebanese MP from 2000 to 2005;⁵⁴⁰
- Mr Bassem El-Sabeh, a former journalist, and Lebanese MP between 1992 and 2009;⁵⁴¹
- Mr Ghaleb El-Chammaa, a businessperson, friend and associate of Mr Hariri's;⁵⁴²
- Mr Ali Hamade, a journalist;⁵⁴³
- Mr Hani Hammoud, a media advisor to Mr Hariri and editor of the newspaper *Al-Mustaqbal*;⁵⁴⁴
- Mr Faisal Salman, a journalist;⁵⁴⁵

⁵³⁶ Fouad Siniora, T. 23 March 2015, pp 5-6. Mr Siniora testified from 23 to 26 March 2015 and again from 27 to 28 May 2015.

⁵³⁷ Jamil El-Sayyed, T. 5 June 2018, pp 2-3. Mr El-Sayyed testified from 5 to 7 June 2018. *See also* Order regarding the detention of four Generals.

⁵³⁸ Marwan Hamade, T. 17 November 2014, pp 22-24. Mr Hamade testified from 17 to 20 November and 8 to 11 December 2014.

⁵³⁹ Ghazi El-Youssef, T. 10 March 2015, pp 7, 9. Mr El-Youssef testified from 10 to 12 and on 20 March 2015.

⁵⁴⁰ Ghattas El-Khoury, T. 15 January 2015, p. 5. Mr El-Khoury testified on 15, 16, 20 and 21 January 2015.

⁵⁴¹ Bassem El-Sabeh, T. 16 March 2015, pp 5-6, 12-13. Mr El-Sabeh testified from 16 to 19 March 2015.

⁵⁴² Ghaleb Ahmad El-Chammaa, T. 10 February 2015, pp 4-6. Mr El-Chammaa testified from 10 to 12 February 2015 and on 3 March 2015.

⁵⁴³ Mr Ali Hamade is Mr Marwan Hamade's younger brother, and was a journalist for *An-Nahar* newspaper who covered Mr Hariri's activities, Ali Hamade, T. 13 April 2015, pp 3-5. He testified on 13 and 14 April 2015.

⁵⁴⁴ Mr Hani Hammoud, T. 19 May 2015, p. 5. Mr Hammoud testified from 19 to 21 May 2015.

⁵⁴⁵ Mr Salman was a journalist at *As-Safir* between 1974 and 2006 (and its political editor in 2004), and became close to Mr Hariri. Faisal Salman, T. 8 January 2015, pp 8, 14, 30. The visitor's logbook for Quraitem Palace, exhibit P301, records him visiting there 55 times between 27 August 2004 and 13 February 2005. He testified on 8 January 2015.

- Mr Salim Diab a businessman and MP;⁵⁴⁶
- Mr Atef Majdalani, a Lebanese Future Movement MP elected in 2000;⁵⁴⁷ and
- Mr Mustafa Nasser, an adviser to Mr Hariri.⁵⁴⁸

All except Mr El-Sayyed, who appeared as a witness for the Oneissi Defence, were called by the Prosecution.

409. The Sabra Defence, in a mid-trial thematic summary, submitted that Islamic extremists were responsible for Mr Hariri's death. No substantive evidence was presented to support this theory, and it was not pursued at the end of the trial.⁵⁴⁹

410. The evidence also included numerous extracts from the UNIC Beirut Press Review—a daily UN news summary of Lebanese and regional news—and press releases issued by Mr Hariri's *Al-Mustaqbal* newspaper. These press releases were prepared by Mr Hariri's press office at Quraitem Palace and sent to *Al-Mustaqbal* for distribution to other media outlets.⁵⁵⁰

411. The recitation of the evidence and facts below and its analysis is within the confines of the Trial Chamber's decision of 17 November 2014 setting out the parameters for receiving and using this evidence. And, additionally within the bounds of assessing the evidence supporting the pleading in paragraph 49 of the amended consolidated indictment concerning the Hezbollah support of the four Accused and Mr Badreddine.

⁵⁴⁶ Mr Salim Diab is a businessman and politician and a close friend of the Hariri family, who was a Future Movement MP between 1996 and 2000. Salim Diab, T. 22 January 2015, pp 4-7, 13. He testified on 22 and 23 January and 3 February 2015.

⁵⁴⁷ Mr Atef Majdalani is a neurologist who was elected to Parliament in 2000 on Mr Hariri's Future Movement list. Atef Majdalani, T. 28 April 2015, pp 5-7. Mr Majdalani testified from 28 April to 1 May 2015.

⁵⁴⁸ Mustafa Nasser was a journalist who became an adviser to Mr Hariri, serving in that function between 1992 and his assassination. His principal role was to act as a liaison between Mr Hariri and Mr Nasrallah and his assistant, Mr Hussein Khalil. Mustafa Nasser, T. 9 April 2015, pp 6-8. Mr Nasser testified on 9, 10 and 15 April 2015.

⁵⁴⁹ F3108, Annex A, Defence Thematic Summary of Information Relevant to the Chamber in Relation to the False Claim of Responsibility, 28 April 2017. *See also* Decision on admission of documents (Abu Adass).

⁵⁵⁰ Maarouf El-Daouq, T. 12 November 2014, pp 78-84, T. 13 November 2014, pp 9, 14-15. From 1998 to 2004, Mr El-Daouq worked for Mr Hariri as the Head of the Lebanese Press Office for the President of the Council of Ministers. Maarouf El-Daouq, T. 12 November 2014, p. 78.

B. Background, including the Lebanese Civil War

412. The Prosecution's final trial brief states that 'the Accused's political affiliations, coupled with the surrounding political context, assist in understanding the Accused's common interests', and the fact 'that those interests aligned with maintaining the status quo, which HARIRI threatened, is relevant in understanding the timing and motivations behind the Accused's actions'.⁵⁵¹ Further, the attack on Mr Hariri is 'inextricably linked with the question of Syria's continuing hegemony over Lebanon established after the civil war'.⁵⁵²

413. The Trial Chamber received sufficient evidence to be satisfied of Syria's domination—political, military and economic—over Lebanon from at least the Lebanese civil war until the withdrawal of Syrian soldiers from Lebanon in April 2005. Its gist, in essence, was uncontested.

414. The evidence of Syrian influence in Lebanon, however, goes back much further, and the Trial Chamber took judicial notice, under Rule 160, of the following statement in the first UNIIIC report of October 2005:

The Syrian Arab Republic has long had a powerful influence in Lebanon. During the Ottoman Empire, the area that became Lebanon was part of an overall administrative territory governed from Damascus. When the countries were established in the aftermath of the First World War, Lebanon was created from what many Arab nationalists considered to be rightfully part of Syria. Indeed, since the countries became independent, they have never had formal diplomatic relations.⁵⁵³

415. The evidence also is sufficient to establish that the attack on Mr Hariri most likely had some connection with the Syrian presence in Lebanon and tensions between the Syrian government and opponents of its continuing presence. However, the Trial Chamber did not receive evidence that could establish that the leadership of Hezbollah had any direct connection with Mr Hariri's assassination. Nor that the Accused had 'non-private' motives connected with Hezbollah's leadership.

⁵⁵¹ Prosecution final trial brief, para. 26.

⁵⁵² Prosecution final trial brief, para. 627.

⁵⁵³ Judicial notice facts, no. 6.

416. The Lebanese civil war lasted from 1975 to 1990, caused an estimated 120,000 deaths and was largely fought by militias that ‘corresponded to Lebanon’s confessional communities’.⁵⁵⁴ At various times and at the request of the Lebanese Government, Syria and at least ten other countries deployed troops in Lebanon to end the fighting and to stabilise the situation.⁵⁵⁵

417. President Hafez Al-Assad came to power in Syria in 1971 and was president until his death in June 2000 when his son, Mr Bashar Al-Assad, succeeded him.⁵⁵⁶

418. Syria first deployed troops in May 1976, and five months later its deployment was transformed into an Arab Deterrent Force, sanctioned by the League of Arab States. The Trial Chamber took judicial notice of the following:

Syrian troops were invited into Lebanon by Lebanese President Suleiman Franjeh in May 1976 in the early stages of the latter’s civil war. In the Taif Agreement, reached among members of the Lebanese Parliament, that ended the civil war in 1989, inter alia, Lebanon thanked the Syrian Arab Republic for its assistance in deploying its forces in Lebanon. A provision of the agreement called for Lebanon and the Syrian Arab Republic to determine jointly the future redeployment of those forces. A later agreement reached between the two countries in May 1991 regarding cooperation restated that provision. Syrian forces withdrew in May 2005 in compliance with Security Council resolution 1559 (2004).⁵⁵⁷

419. Syrian troops constituted the majority of these troops, and in 2004 the Lebanese Government informed the UN Secretary-General that at one point the Syrian forces in Lebanon had totalled 40,000. The Syrian and Lebanese Governments also informed him that the Syrian soldiers continued to be present in Lebanon ‘by mutual agreement’.⁵⁵⁸

⁵⁵⁴ Exhibit P451 (Report of the UN Secretary-General pursuant to Security Council resolution 1559 (2004)), para. 2.

⁵⁵⁵ Exhibit P451, para. 2 (‘Over the years at various times, France, Italy, the Libyan Arab Jamahiriya, Yemen, Saudi Arabia, the Sudan, the Syrian Arab Republic, the United Arab Emirates, the United Kingdom of Great Britain and Northern Ireland and the United States of America deployed forces in Lebanon at the request of its Government to bring the fighting to an end and to stabilize the situation.’).

⁵⁵⁶ Marwan Hamade, T. 17 November 2014, pp 59-60, 67, T. 18 November 2014, pp 7-8, 56; Fouad Siniora, T. 24 March 2015, p. 68, T. 26 March 2015, p. 36; Jamil El-Sayyed, T. 5 June 2018, p. 56.

⁵⁵⁷ Judicial notice facts, no. 7.

⁵⁵⁸ Exhibit P451, paras 4, 13.

420. Israel carried out frequent military operations in Lebanon during the civil war, including large-scale incursions, and, from June 1982, maintained an extended occupation of southern Lebanon.⁵⁵⁹

421. Hezbollah, a Shia political grouping with a military wing, was formed in the early 1980s, during the war. Mr Hassan Nasrallah has been its Secretary-General since 1992. The UN Secretary-General reported in September 2004 that it was then the ‘most significant remaining armed group’ in the country.⁵⁶⁰ The Lebanese government (Mr Hariri’s) was quoted in the report as referring to it ‘as a “national resistance group” that has as its goal the defence of Lebanon from Israel and the removal of Israeli forces from Lebanese soil, namely, the Shab’a farms’.⁵⁶¹

422. On 22 October 1989, members of the Lebanese Parliament meeting in Taif, Saudi Arabia, agreed to the Lebanese Document of National Accord (Charter of National Reconciliation), known as the Taif Agreement or Taif Accord. Its aim was to end the civil war and provide the basis for a reformed post-war Lebanese Government.⁵⁶² Several countries, including prominently Saudi Arabia, facilitated the agreement.⁵⁶³ Mr Hariri, acting as an emissary of the Saudi royal family, played a crucial role in drafting the agreement and in negotiations between Saudi Arabia, Syria and various Lebanese parties.⁵⁶⁴ Mr Hariri was apparently proud of this role and the Trial Chamber received evidence that in an audio-recorded conversation with the Syrian Deputy Minister for Foreign Affairs on 1 February 2005, he said that ‘I was the one behind the Taif Agreement, and it is my baby.’⁵⁶⁵ The Lebanese Parliament ratified the agreement on 5 November 1989.⁵⁶⁶

⁵⁵⁹ Exhibit P451, paras 2, 5-7.

⁵⁶⁰ Exhibit P451, paras 18-19.

⁵⁶¹ Exhibit P451, para. 19. The UN Secretary-General reported, ‘Lebanon maintains that the Shab’a farms are Lebanese territory, not Syrian. However, in my report of 16 June 2000 (S/2000/590), I had confirmed that Israel had fulfilled as of that date the requirements of Security Council resolutions 425 (1978) and 426 (1978) that it “withdraw forthwith its forces from all Lebanese territory”. The Council endorsed this conclusion in the statement made on behalf of the Council by its President (S/PRST/2000/21), on 18 June 2000.’

⁵⁶² Judicial notice facts, no. 7; exhibit P304 (Taif Agreement).

⁵⁶³ Marwan Hamade, T. 17 November 2014, p. 20; Ghaled Ahmad El-Chammaa, T. 10 February 2015, p. 13, T. 12 February 2015, p. 31; Walid Jumblatt, T. 7 May 2015, pp 15-17, 19.

⁵⁶⁴ Marwan Hamade, T. 17 November 2014, pp 24-25, 62, T. 19 November 2014, pp 22-23; Faisal Salman, T. 8 January 2015, p. 20; Ghaled Ahmad El-Chammaa, T. 10 February 2015, pp 10-11, 14-15; Fouad Siniora, T. 23 March 2015, p. 13; Walid Jumblatt, T. 5 May 2015, p. 13.

⁵⁶⁵ Exhibit P409.1 (Transcript of audio-recorded conversation between Mr Hariri and Mr Walid Moallem, 1 February 2005), p. 8. *See also* Walid Jumblatt, T. 6 May 2015, pp 24-25, 32.

⁵⁶⁶ Exhibit P304, p. 1.

423. The agreement called for the liberation of Lebanon from Israeli occupation and the disbanding of *all* militias,⁵⁶⁷ but envisioned Syria playing a role in Lebanon beyond the civil war. It recognised the ‘special relationship’ between Lebanon and Syria, thanked Syria for its assistance in deploying troops to Lebanon and called on Syrian troops to assist Lebanese forces ‘to reinstate the sovereignty of the Lebanese state’ for up to two years. The Lebanese and Syrian governments were then to jointly determine the redeployment of Syrian troops to the Bekaa area bordering Syria and were to enter a separate agreement as to the ultimate duration of the Syrian presence.⁵⁶⁸

424. The agreement also set out a number of constitutional reforms, including abolishing political sectarianism, mandating the ‘governorate’ as the electoral district and declaring the president the head of state and the prime minister the head of the government.⁵⁶⁹

425. Under the principle of political sectarianism, parliamentary seats are allocated on a formula based upon religious adherence. According to this, the president is a Christian, the prime minister a Sunni Muslim and the parliamentary speaker a Shia Muslim. The Lebanese electoral system is too complicated to summarise here, but its essence is six electoral divisions in which candidates who are identified by their religious confession are elected according to the percentage of votes won. In the 2000 elections at which Mr Hariri was last elected, Beirut, the most populous district of Lebanon, had only three electoral districts.⁵⁷⁰

426. On 22 May 1991, Lebanon and Syria signed the Fraternity, Cooperation and Coordination Treaty (Treaty of Brotherhood, Cooperation and Coordination). While reiterating the Taif Agreement’s provisions regarding the redeployment of Syrian forces and the ultimate duration of their presence in Lebanon, the treaty pronounced the ‘common destiny’ of Lebanon and Syria and sanctioned Syria’s exertion of political influence in Lebanese affairs.⁵⁷¹

427. Notwithstanding the Taif Agreement and the 1991 treaty, Syria maintained its military presence in Lebanon, with the Lebanese Government’s consent, through to the attack on Mr Hariri;

⁵⁶⁷ This included Hezbollah.

⁵⁶⁸ Judicial notice facts, no. 7; exhibit P304, pp 8-10.

⁵⁶⁹ Exhibit P304, pp 1-7.

⁵⁷⁰ Exhibit P304, pp 1-7.

⁵⁷¹ Judicial notice facts, nos 2, 7; exhibit P306 (Treaty of Brotherhood, Cooperation and Coordination between Lebanon Republic and Syrian Arab Republic), p. 1.

and Syrian influence in Lebanese affairs significantly increased.⁵⁷² The Israeli withdrawal envisioned by the Taif Agreement occurred only in May 2000.

428. Mr El-Sayyed, at the relevant time the director-general of the Lebanese *Sûreté Générale*, described the continuing role of Syria at this time as ‘managing political balances in Lebanon’.⁵⁷³

429. The Trial Chamber also received extensive evidence about the influence and role of the Syrian intelligence apparatus in Lebanon in the years preceding Mr Hariri’s death, including in controlling Lebanese political life, such as choosing presidents, prime ministers, cabinet ministers and candidates for parliamentary elections, and in exercising control over how MPs voted in Parliament. The evidence suggested that Syrian intelligence officers stationed in Lebanon were directly responsible for this, and in particular, during the relevant periods, the successive chiefs of Syrian military intelligence in Lebanon, Major-General Ghazi Kanaan and Brigadier-General Rustom Ghazaleh.

430. Until October 2002, Major-General Kanaan was the chief of Syrian military intelligence in Lebanon, stationed at Anjar in the Bekaa valley near the Syrian border. He was succeeded in this post by Brigadier-General Ghazaleh. Until then Mr Ghazaleh had been the chief of the Beirut Section, reporting to Mr Kanaan.⁵⁷⁴

431. The former Lebanese Prime Minister, Mr Fouad Siniora, described Mr Ghazaleh as ‘the face’ of the Syrian security system, and said that Mr El-Sayyed was an important figure on the Lebanese side.⁵⁷⁵ Mr Kanaan, according to Mr El-Sayyed, was a Syrian major-general who served in Lebanon between 1983 and 2003, whose official position was the head of Syrian intelligence in Lebanon.⁵⁷⁶ This accords with the information received from the Syrian government.

432. Other evidence related to the personal and political relationship between the two is interspersed chronologically below.

⁵⁷² Judicial notice facts, no. 2; exhibit P451, para. 13.

⁵⁷³ Jamil El-Sayyed, T. 5 June 2018, p. 33.

⁵⁷⁴ A Syrian Government response, dated 25 April 2006, to a UNIIIC request for assistance specified that Mr Ghazaleh was appointed Chief of Branch Headquarters on 16 October 2002, succeeding Mr Kanaan. Exhibit 5D128 (Response of Syrian Government to UNIIIC request for assistance), p. 5.

⁵⁷⁵ Fouad Siniora, T. 25 March 2015, p. 31. Mr Siniora said that by February 2005, Mr Ghazaleh was the senior figure at the head of military intelligence in Lebanon. Fouad Siniora, T. 25 March 2015, p. 55.

⁵⁷⁶ Jamil El-Sayyed, T. 6 June 2018, p. 5.

C. Mr Hariri's initial term as prime minister—31 October 1992 to 4 December 1998—and following years

433. Mr Hariri 'served as prime minister of Lebanon in five governments from 31 October 1992 to 4 December 1998, and from 26 October 2000 until his resignation on 26 October 2004'.⁵⁷⁷ He 'was a prominent political figure in Lebanon'.⁵⁷⁸

434. The evidence was uncontested that from the end of the civil war in 1990 until Syria withdrew its military from Lebanon in April 2005, Syria had a dominant role in Lebanese political, economic and military affairs. As noted above, this included direct influence over political administrations including cabinet posts and the selection of the prime minister and president. It also had a pervasive intelligence presence in Lebanon. According to Mr El-Sayyed, for example, without Syrian approval 'it would have been impossible for [Mr Hariri] to do what he wanted to do in Lebanon'.⁵⁷⁹ This occurred over the duration of Mr Hariri's five terms as prime minister of Lebanon.

1. Mr Hariri's business and media interests

435. The Trial Chamber received uncontested evidence that Mr Hariri, a Sunni Muslim, was a successful businessperson with numerous political and business connections, most particularly in Saudi Arabia. His business interests included construction and the media. He had a particular role in the reconstruction of Lebanon after the civil war, and especially in Beirut. Witnesses testified that he undertook to rebuild and develop war-torn Lebanon, particularly downtown Beirut, and to implement reforms aimed at facilitating trade and investment.⁵⁸⁰

436. While in his first term as prime minister, Mr Hariri executed a plan to raze and rebuild downtown Beirut—which was extensively damaged in the civil war—through a company, *Solidere*, in which he was a shareholder.⁵⁸¹ In 1994, the Lebanese Parliament ratified a proposal by Mr Hariri and established the company.⁵⁸² According to Mr Siniora, the proposal was that 'the

⁵⁷⁷ Agreed facts, no. (v).

⁵⁷⁸ Agreed facts, no. (vi).

⁵⁷⁹ Jamil El-Sayyed, T. 5 June 2018, p. 35.

⁵⁸⁰ Marwan Hamade, T. 17 November 2014, pp 71-72; Ghaleb Ahmad El-Chammaa, T. 10 February 2015, pp 18-19; Ghazi El-Youssef, T. 10 March 2015, pp 8-9, 41; Fouad Siniora, T. 23 March 2015, pp 27-29, 37.

⁵⁸¹ Salim Diab, T. 22 January 2015, p. 29; Witness PRH256, T. 22 October 2014, p. 83; Ghattas El-Khoury, T. 15 January 2015, p. 31.

⁵⁸² Fouad Siniora, T. 24 March 2015, pp 63-66, T. 26 March 2015, p. 68.

rights owners in that area would become partners and shareholders in Solidere’—meaning the property owners.⁵⁸³ The real estate was expropriated, and the rights owners were given shares in the company—two-thirds of the company went to them, the rest to the investors.⁵⁸⁴ Mr Hariri owned between five and ten per cent of the shares in the company while he also was prime minister.⁵⁸⁵ On 12 September 2004, Mr Hariri received an award from UN-HABITAT in Barcelona for his role in the ‘reconstruction of Lebanon’.⁵⁸⁶

437. This particular reconstruction project was controversial in causing the compulsory relocation of many thousands of residents who lived there. According to Mr Mustafa Nasser—an adviser to Mr Hariri charged with liaising with Hezbollah—some 200,000 to 300,000 people were living in the *Solidere* area, many of whom were Hezbollah supporters who had been displaced by the war in the south of Lebanon. Their relocation required coordination between Hezbollah and Mr Hariri,⁵⁸⁷ including compensating the displaced. Hezbollah helped Mr Hariri in getting these people out of the area so it could be developed. Negotiations about compensation lasted for many years.⁵⁸⁸

438. Prosecution witnesses and Mr El-Sayyed stated that it was understood that Syria gave Mr Hariri its blessing to create *Solidere*.⁵⁸⁹ Mr El-Sayyed was highly critical of this, saying ‘*And with the support of the Syrians, there were also some negative things. For example, the creation of Solidere. It’s a company that controlled the capital, Beirut. It’s the only capital in the world that’s controlled by a private company. Hariri, for example, would not have been able to create that company and to control Beirut as his own private property hadn’t it been for Abdel-Halim Khaddam, who used to summon the Members of Parliament and the opponents and used to tell them that they will never be Members of Parliament again unless they vote for that project ... But*

⁵⁸³ Fouad Siniora, T. 24 March 2015, pp 63-64.

⁵⁸⁴ Fouad Siniora, T. 26 March 2015, pp 64, 66-69. According to Mr Siniora, the shares had equal voting rights, but the price of class A shares could be ten cents higher than that of the class B shares.

⁵⁸⁵ Namely, USD 120 million or 6.66 per cent of its capitalised value of USD 1.8 billion. Fouad Siniora, T. 26 March 2015, p. 69; Salim Diab, T. 22 January 2015, pp 30-31.

⁵⁸⁶ Exhibit P470 (Press release, 13 September 2004), p. 1. *See also* Ghattas El-Khoury, T. 15 January 2015, p. 31.

⁵⁸⁷ Mustafa Nasser, T. 10 April 2015, pp 79-80.

⁵⁸⁸ Exhibit 2D131 (Witness statement of Mustafa Nasser, 12 August 2010), para. 15.

⁵⁸⁹ Fouad Siniora, T. 24 March 2015, pp 66-67; Marwan Hamade, T. 9 December 2014, pp 56-57.

*there were also some bank accounts that were created in their names and stuff like that in order to facilitate the project of Hariri.*⁵⁹⁰

439. According to Prosecution and Defence evidence, at the time Syria was playing a balancing act between supporting Mr Hariri and his project to rebuild Lebanon while also supporting the Lebanese army, which did not share Mr Hariri's economic vision.⁵⁹¹ According to Mr El-Sayyed, *Solidere* was one of many 'personal requests' that Mr Hariri submitted to Syria.⁵⁹²

440. Apart from his construction business interests, while he was the prime minister of Lebanon, Mr Hariri simultaneously also had extensive media interests, which included ownership of Future TV, *Al-Mustaqbal* and *An-Nahar* newspapers⁵⁹³ and a half-share in the ostensibly state-owned *TeleLiban*.⁵⁹⁴

2. Syrian involvement in Lebanese political affairs

441. Mr Mustafa Nasser testified that in the mid-1990s *TeleLiban*—'the State TV' which was half-owned by Mr Hariri and half state-owned but effectively controlled by Mr Hariri when he was the prime minister—interviewed the Jordanian monarch King Hussein.⁵⁹⁵ Mr Ghazaleh, who then was the chief of Syrian intelligence in Beirut, contacted the head of the board of directors, Mr Fouad Naim, and asked for the show to be stopped. Mr Naim informed Mr Hariri, who in turn ordered him to cancel the broadcast. The video was then given to another station, later New TV, which broadcast it. At the time, King Hussein and the Syrians were not on good terms. To Mr Nasser, that was an example of how the Syrians had the final say in all political and media affairs in Lebanon.⁵⁹⁶

442. Another was given by Mr Bassem El-Sabeh, who was elected as an MP in 1992. In 1994, Mr Hariri asked Mr El-Sabeh, a Shia who was close to him, to join his cabinet.⁵⁹⁷ However, this

⁵⁹⁰ Jamil El-Sayyed, T. 5 June 2018, pp 35-36, 77.

⁵⁹¹ Jamil El-Sayyed, T. 5 June 2018, pp 27, 32; Bassem El-Sabeh, T. 16 March 2015, pp 17-18.

⁵⁹² Jamil El-Sayyed, T. 5 June 2018, p. 77.

⁵⁹³ Maarouf El-Daouq, T. 12 November 2014, p. 79; Ghattas El-Khoury, T. 16 January 2015, p. 32; Hani Hammoud, T. 19 May 2015, pp 10, 28; Bassem El-Sabeh, T. 16 March 2015, p. 36.

⁵⁹⁴ Mustafa Nasser, T. 9 April 2015, pp 14-15, 19-20.

⁵⁹⁵ Exhibit 2D131 (Witness statement of Mustafa Nasser, 12 August 2010), paras 11-12; Mustafa Nasser, T. 9 April 2015, pp 14-23.

⁵⁹⁶ Mustafa Nasser, T. 9 April 2015, pp 14-23. In 1994, Mr Hariri had appointed Mr Nasser to the board of the station. Mr Naim told Mr Nasser about Mr Ghazaleh's call.

⁵⁹⁷ Bassem El-Sabeh, T. 16 March 2015, p. 14.

caused a political problem with the Speaker of the Parliament, Mr Nabih Berri, who was also Shia and objected, which delayed the formation of the government. Mr Hariri then asked Mr Kanaan to intervene. Mr Kanaan came to Mr El-Sabeh's house to calm things down and to explain the decision rejecting his nomination as a minister. He explained that he was surprised but unfortunately, 'that was the way adopted to form governments in Lebanon at the time'.⁵⁹⁸

443. During Mr Hariri's first term as prime minister, Mr Elias Hrawi was the Lebanese president. Mr Hrawi's mandate was set to expire in 1995, and the commander of the Lebanese armed forces, General Emile Lahoud, was seen as the likely next president.⁵⁹⁹ This, however, was not to Mr Hariri's liking. That year, Mr Hariri and his allies persuaded Syria—then led by President Hafez Al-Assad—to accede to a constitutional amendment to extend Mr Hrawi's mandate.⁶⁰⁰ This was the first time that a presidential term had been extended.⁶⁰¹ According to both Prosecution and Defence witnesses, Mr Hariri saw Mr Hrawi as more flexible and someone who could possibly stop Mr Lahoud, whose presidency would be considered to equate to Syrian control over Lebanon.⁶⁰²

444. In November 1996, Mr Hariri formed his third government, and, according to Mr Siniora, for the first time, Syria imposed all but a handful of ministers on Mr Hariri.⁶⁰³ Mr Ghazi Kanaan and his representative in Beirut, Mr Rustom Ghazaleh, imposed the cabinet members on Mr Hariri.⁶⁰⁴ Mr Hariri was upset and discussed the issue at length with President Al-Assad, but ultimately accepted the Syrian-dominated government.⁶⁰⁵ As an example of Syrian interference in those elections, Mr Atef Majdalani, a political supporter of Mr Hariri, contested the 1996 elections on Mr Hariri's list, but testified that he lost because the Syrians asked 'one of our allies who was also on my electoral list' to take his name off and replace it with another candidate.⁶⁰⁶

445. At that time, Mr Hariri's relations with President Hafez Al-Assad were described as being up and down, but generally good, or at least acceptable. And according to Mr Nasser, who was

⁵⁹⁸ Bassem El-Sabeh, T. 16 March 2015, pp 14-16.

⁵⁹⁹ Jamil El-Sayyed, T. 5 June 2018, p. 27.

⁶⁰⁰ Ghattas El-Khoury, T. 16 January 2015, p. 25; Jamil El-Sayyed, T. 5 June 2018, pp 27, 31-32, 37.

⁶⁰¹ Jamil El-Sayyed, T. 5 June 2018, p. 31.

⁶⁰² Marwan Hamade, T. 17 November 2014, p. 64; Jamil El-Sayyed, T. 5 June 2018, pp 27, 34.

⁶⁰³ Fouad Siniora, T. 23 March 2015, pp 13-17, 19-20, 55.

⁶⁰⁴ Fouad Siniora, T. 23 March 2015, pp 13-17, 20.

⁶⁰⁵ Fouad Siniora, T. 23 March 2015, pp 16-21.

⁶⁰⁶ Atef Majdalani, T. 29 April 2015, pp 34-35.

then working for Mr Hariri, he did not need any liaison between him and the Syrians and ‘just went directly to them’.⁶⁰⁷ Mr Hariri, according to some, was considered as an unofficial foreign minister of Syria, working to achieve rapprochement between Syria and Europe, and particularly with France, with whom he had good relations.⁶⁰⁸

446. President Hafez Al-Assad was in ill health between 1998 and 2000.⁶⁰⁹ Around this time, his second son, Bashar, started to gain more influence and was given responsibility for what was described as the ‘Lebanon file’.⁶¹⁰ Mr Bashar Al-Assad, according to Mr Hamade, then tried to exert more control in Lebanon.⁶¹¹

447. Mr Hariri was concerned by Mr Bashar Al-Assad’s growing political role. One witness described Mr Hariri’s reaction, who after meeting Mr Bashar Al-Assad in 1999 apparently said, ‘God help Syria. It will be governed by a child.’⁶¹² Mr Walid Jumblatt described meeting Mr Bashar Al-Assad, along with Mr Ghazi Aridi.⁶¹³ The meeting took place at a time when Mr Al-Assad was demonstrating hostility towards Mr Hariri, because Mr Hariri did not obey Syria’s orders.⁶¹⁴

448. Mr Hariri attempted to have Mr Hrawi’s mandate extended at its expiration in 1998, but, according to Mr El-Sayyed, the Syrians were not responsive to this, due to a ‘popular uprising’ in Lebanon in which the people did not want him to continue as president. And ‘because Syria wanted to preserve a kind of balance in Lebanon, it wanted a new president that will support stability and not to extend for a president that will de-stabilise the situation’.⁶¹⁵

⁶⁰⁷ Exhibit 2D131 (Witness statement of Mustafa Nasser, 12 August 2010), para. 13.

⁶⁰⁸ Atef Majdalani, T. 29 April 2015, pp 18, 22; Walid Jumblatt, T. 4 May 2015, p. 52.

⁶⁰⁹ Bassem El-Sabeh, T. 16 March 2015, pp 19, 22.

⁶¹⁰ Marwan Hamade, T. 17 November 2014, p. 60.

⁶¹¹ Marwan Hamade, T. 17 November 2014, pp 63-64.

⁶¹² Bassem El-Sabeh, T. 16 March 2015, pp 19, 21. ‘I got the impression that the meeting went really badly.’ Mr Hariri said ‘my impression is that things will not be comfortable in the future’.

⁶¹³ Walid Jumblatt, T. 4 May 2015, pp 30-32. Mr Ghazi Aridi was the Culture Minister in Mr Hariri’s cabinet and a member of Mr Jumblatt’s Democratic Gathering—he resigned on 7 September 2004 in protest at the extension of President Lahoud’s mandate past its constitutionally set six years, Marwan Hamade, T. 20 November 2014, pp 2-9; Walid Jumblatt, T. 4 May 2015, pp 87, 97-98; exhibit P303, ERNs D0004610-D0004613.

⁶¹⁴ Walid Jumblatt, T. 4 May 2015, pp 30-32, 39, T. 7 May 2015, p. 48.

⁶¹⁵ Jamil El-Sayyed, T. 5 June 2018, p. 37.

449. At the conclusion of President Hrawi's extended mandate, Mr Lahoud was elected president on 24 November 1998,⁶¹⁶ by an overwhelming vote.⁶¹⁷ Mr Hariri was described as feeling compelled to vote for him, because of the mandate extension and because he thought that they could cooperate.⁶¹⁸ Mr Lahoud, according to Mr El-Sayyed, had Syrian support.⁶¹⁹ Due to his role in building the Lebanese army he had popular support as the people 'aspired to the election of Lahoud in the hope that he will turn Lebanon into a state as he managed with building the Lebanese army'.⁶²⁰ Further, the Syrian authorities advised Mr Lahoud to have Mr Hariri as his prime minister, as they were of the view that this 'political wedding' of a military leader and a business leader would lead to more stability in Lebanon.⁶²¹

450. Mr Jumblatt and the former Lebanese Prime Minister, Mr Fouad Siniora, testified of receiving orders from Syria and of pressure from the Lebanese Syrian security apparatus to support Mr Lahoud.⁶²² Mr Jumblatt's parliamentary bloc voted against Mr Lahoud,⁶²³ which, according to Mr Jumblatt, was the beginning of his break with Syria.⁶²⁴

451. Between 1992 and 1998, Mr Hariri, as prime minister, according to Mr Siniora, was subject to external pressure and although he did not 'have a free hand' he was able to launch various large-scale projects in a variety of sectors.⁶²⁵ Mr Hariri and Mr Lahoud had different approaches to governing Lebanon and had a poor personal relationship,⁶²⁶ and Mr Hariri's supporters testified that Mr Lahoud opposed and blocked reforms that Mr Hariri supported.⁶²⁷

⁶¹⁶ Walid Jumblatt, T. 4 May 2015, p. 18; Jamil El-Sayyed, T. 5 June 2018, pp 31, 46.

⁶¹⁷ Walid Jumblatt, T. 4 May 2015, pp 18, 22-23, 62.

⁶¹⁸ Walid Jumblatt, T. 4 May 2015, pp 62-63.

⁶¹⁹ Jamil El-Sayyed, T. 5 June 2018, p. 31.

⁶²⁰ Jamil El-Sayyed, T. 5 June 2018, p. 40. After Mr Lahoud's election, Mr El-Sayyed was promoted from his position as an assistant director of the Lebanese armed forces intelligence that he had held since 1992 to director-general of general security. Its role was 'to collect and gather political, economic and social information for the benefit of the Lebanese state for the benefit of the Lebanese government'. Jamil El-Sayyed, T. 5 June 2018, p. 41.

⁶²¹ Jamil El-Sayyed, T. 5 June 2018, pp 46-47.

⁶²² Walid Jumblatt, T. 4 May 2015, p. 23; Fouad Siniora, T. 26 March 2015, p. 22.

⁶²³ Walid Jumblatt, T. 4 May 2015, pp 18, 20, 23, 25, 62.

⁶²⁴ Walid Jumblatt, T. 4 May 2015, p. 27.

⁶²⁵ Fouad Siniora, T. 23 March 2015, pp 39-40, referring to 'huge building projects in various sectors, electricity, telecommunications, roads, hospitals, schools, the university'.

⁶²⁶ Fouad Siniora, T. 26 March 2015, pp 21-22; Bassem El-Sabeh, T. 16 March 2015, pp 33-36.

⁶²⁷ Fouad Siniora, T. 23 March 2015, pp 29-31, 33-36; Atef Majdalani, T. 28 April 2015, p. 10; Walid Jumblatt, T. 4 May 2015, p. 54.

452. According to several witnesses, between 1996 and 1998, Mr Hariri and his political team were subject to a smear campaign, conducted by the Lebanese/Syrian security and intelligence apparatus.⁶²⁸ A number of politicians—including Mr El-Sabeh, Mr Siniora and Mr Demerjian—were subpoenaed by the Lebanese courts on falsified charges.⁶²⁹ Others, such as Mr Nicolas Saba, the former governor of Beirut, were also arrested.⁶³⁰ Mr El-Sabeh described it as the worst smear campaign in the history of Lebanon.⁶³¹ The lawsuits made Mr Hariri feel ‘threatened’,⁶³² and were an attempt to ‘target’ Mr Hariri.⁶³³ According to Mr Majdalani and Mr Siniora, the vexatious prosecutions were intended to be obstacles in the way of Mr Hariri’s socio-economic policies.⁶³⁴

453. Mr Hariri left the government on 4 December 1998—ten days after Mr Lahoud assumed the presidency—following a dispute with Mr Lahoud and his Syrian backers regarding the constitutional process by which the prime minister was to be selected. Mr Selim El-Hoss was then appointed as the prime minister, holding office until October 2000.⁶³⁵

3. Mr Hariri’s relationship with Hezbollah

454. The Trial Chamber received evidence that Mr Hariri maintained a generally positive working relationship with Hezbollah during his initial term as prime minister. Hezbollah had MPs in the Lebanese Parliament, and, Mr Hariri as prime minister—according to Prosecution and Defence witnesses—considered Hezbollah a legitimate Lebanese political party and worked with its members and its leadership.⁶³⁶ As he had to, Mr Hariri maintained a dialogue with Hezbollah throughout his time in office.⁶³⁷

455. The Trial Chamber heard evidence that Mr Hariri and Mr Nasrallah began meeting in 1992. According to Mr Mustafa Nasser—who coordinated the meetings between Mr Hariri and

⁶²⁸ Marwan Hamade, T. 17 November 2014, p. 73; Bassem El-Sabeh, T. 17 March 2015, pp 73-74; Fouad Siniora, T. 24 March 2015, p. 57; Atef Majdalani, T. 30 April 2015, pp 3-5, 55.

⁶²⁹ Bassem El-Sabeh, T. 17 March 2015, p. 73; Fouad Siniora, T. 25 March 2015, p. 15; Atef Majdalani, T. 29 April 2015, pp 39-40.

⁶³⁰ Bassem El-Sabeh, T. 17 March 2015, p. 73; Atef Majdalani, T. 29 April 2015, p. 39.

⁶³¹ Bassem El-Sabeh, T. 17 March 2015, p. 73.

⁶³² Marwan Hamade, T. 17 November 2014, pp 73-74.

⁶³³ Atef Majdalani, T. 30 April 2015, p. 54.

⁶³⁴ Atef Majdalani, T. 30 April 2015, p. 4; Fouad Siniora, T. 25 March 2015, p. 22.

⁶³⁵ Agreed facts, no. (v); Marwan Hamade, T. 17 November 2014, pp 64-65, 93; Jamil El-Sayyed, T. 5 June 2018, pp 48-53; Fouad Siniora, T. 23 March 2015, p. 34.

⁶³⁶ Mustafa Nasser, T. 10 April 2015, pp 5-7; Atef Majdalani, T. 1 May 2015, p. 11; Jamil El-Sayyed, T. 5 June 2018, pp 99-102.

⁶³⁷ Mustafa Nasser, T. 9 April 2015, p. 11, T. 10 April 2015, pp 13-16, 68-69; Jamil El-Sayyed, T. 5 June 2018, p. 94.

Mr Nasrallah⁶³⁸—the two men first met just before Mr Hariri took office in 1992, and thereafter met frequently from October 1992 onwards.⁶³⁹ Mr Siniora thought that the two men met ‘more than once’ between 1992 and 1998, and then again after 2000.⁶⁴⁰

456. According to Mr Hani Hammoud, a media advisor to Mr Hariri, however, Mr Hariri’s first major ‘phase of dialogue’ with Hezbollah and Mr Nasrallah was after the Israeli withdrawal from Lebanon in 2000.⁶⁴¹ According to Mr Hammoud, following the Israeli withdrawal in 2000, Mr Hariri intended to convince Hezbollah that the purpose of the military resistance had disappeared.⁶⁴² The ‘goal’ at this time was to integrate Hezbollah’s weapons into the Lebanese state.⁶⁴³ Mr Hammoud ‘sensed’ that after the first meeting with Mr Nasrallah, Mr Hariri was comfortable and at ease.⁶⁴⁴

457. Mr El-Sayyed and Mr Siniora testified that Hezbollah did not participate in the government at that time or support Mr Hariri’s candidacy or back him with votes of confidence in Parliament.⁶⁴⁵

458. On 11 September 1993,⁶⁴⁶ Hezbollah held demonstrations under the Airport Bridge in the southern suburbs of Beirut, in relation to the Oslo negotiations on Israel and Palestine.⁶⁴⁷ Mr Hariri decided to prohibit the demonstration. There was confusion at one of the army checkpoints, and an officer gave orders for his soldiers to fire.⁶⁴⁸ Ten to 13 people died,⁶⁴⁹ and another 70 people were injured.⁶⁵⁰

⁶³⁸ Atef Majdalani, T. 1 May 2015, p. 18; Jamil El-Sayyed, T. 5 June 2018, p. 94. Mr El-Chammaa stated that the meetings were arranged/facilitated by a number of people, including Mr Mustafa Nasser and Mr Wissam Al-Hassan. Ghaleb Ahmad El-Chammaa, T. 11 February 2015, p. 76.

⁶³⁹ Mustafa Nasser, T. 9 April 2015, p. 11, T. 10 April 2015, pp 13-14, 68-69; Hani Hammoud, T. 20 May 2015, pp 15-16. Witness PRH045, a journalist, who advised Mr Hariri and was ‘close’ to him, stated that there was no ‘direct’ relationship until the beginning of 2002. Exhibit P1107 (Statement of Witness PRH045, 12 August 2010), para. 26.

⁶⁴⁰ Fouad Siniora, T. 24 March 2015, p. 86.

⁶⁴¹ Hani Hammoud, T. 20 May 2015, p. 14.

⁶⁴² Hani Hammoud, T. 20 May 2015, pp 15-16.

⁶⁴³ Hani Hammoud, T. 20 May 2015, p. 20.

⁶⁴⁴ Hani Hammoud, T. 20 May 2015, pp 20-21.

⁶⁴⁵ Fouad Siniora, T. 27 May 2015, pp 69-70; Jamil El-Sayyed, T. 5 June 2018, pp 91-92.

⁶⁴⁶ Jamil El-Sayyed, T. 6 June 2018, pp 52-53, 55. Mr Nasser stated that this event took place in about 1995 or 1996. Exhibit 2D131 (Witness statement of Mustafa Nasser, 12 August 2010), paras 17-18.

⁶⁴⁷ Exhibit 2D131 (Witness statement of Mustafa Nasser, 12 August 2010), paras 17-18; Jamil El-Sayyed, T. 6 June 2018, p. 53.

⁶⁴⁸ Jamil El-Sayyed, T. 6 June 2018, p. 53.

⁶⁴⁹ Jamil El-Sayyed, T. 6 June 2018, p. 53; exhibit 2D131 (Witness statement of Mustafa Nasser, 12 August 2010), para. 17.

⁶⁵⁰ Jamil El-Sayyed, T. 6 June 2018, p. 53.

459. According to Mr El-Sayyed, the event caused problems for relations between Mr Hariri and Hezbollah, but was resolved at the time.⁶⁵¹ Mr El-Sayyed said that the Lebanese government considered the dead people as martyrs for the purposes of compensation, and treated the wounded—this was the end of the incident.⁶⁵² Mr Nasser stated that Mr Hariri and Hezbollah negotiated for one year regarding compensation to resolve the ‘problem’ of the shooting.⁶⁵³

460. According to Witness PRH045, Mr Hariri received a warning from Hezbollah in or around March 2002. Mr Kanaan had promised Mr Hariri that there would not be any Hezbollah operations in south Lebanon, as Syria would cooperate to reduce tensions and pave the way for economic projects there. However, the President of Hezbollah’s Political Committee, Mr Ibrahim Amin Al-Sayyed⁶⁵⁴ communicated to Mr Hariri that there would be a Hezbollah operation the following week, and there was. This convinced Mr Hariri not to consult further with Mr Kanaan.⁶⁵⁵

461. Another issue was *Solidere*.⁶⁵⁶ As noted above, many people were living in that area in Beirut, including displaced Hezbollah supporters from south Lebanon. Negotiation was required between Hezbollah and the government and Mr Hariri in which Hezbollah convinced them to leave their houses, and compensation was negotiated.⁶⁵⁷

462. Relations between Mr Nasrallah and Mr Hariri were strengthened by Mr Hariri’s sympathetic response to the death of Mr Nasrallah’s young son, Mr Hadi Hassan Nasrallah, in combat with Israel in September 1997.⁶⁵⁸ In Mr Siniora’s view, the loss brought the two men closer together, because Mr Hariri had also lost one of his sons in a car accident.⁶⁵⁹ Mr Hariri told

⁶⁵¹ Jamil El-Sayyed, T. 6 June 2018, p. 52.

⁶⁵² Jamil El-Sayyed, T. 6 June 2018, p. 54.

⁶⁵³ Mustafa Nasser, T. 9 April 2015, pp 27-28, T. 10 April 2015, p. 25.

⁶⁵⁴ Another transliteration of his name is Mr Ibrahim Amin *El-Sayyed*. For example, Hani Hammoud, T. 20 May 2015, p. 8.

⁶⁵⁵ Exhibit P1107 (Statement of Witness PRH045, 12 August 2010), paras 36-40; exhibit P1108 (Statement of Witness PRH045, 19 September 2011), para. 9.

⁶⁵⁶ And also ‘Elissar’, which was the development of the area between Beirut and the airport. Mustafa Nasser, T. 9 April 2015, pp 13, 27.

⁶⁵⁷ Exhibit 2D131 (Witness statement of Mustafa Nasser, 12 August 2010), para. 15; Mustafa Nasser, T. 9 April 2015, pp 12-13, T. 10 April 2015, pp 26, 80.

⁶⁵⁸ Mustafa Nasser, T. 10 April 2015, pp 90-91.

⁶⁵⁹ Fouad Siniora, T. 27 May 2015, pp 72-73.

Mr Nasrallah that he ‘surpassed’ Mr Hariri himself, because Mr Nasrallah had sent his son to be a martyr.⁶⁶⁰

463. When an exchange of prisoners between Israel and Hezbollah began in January 2004, Mr Hariri insisted that Mr Nasrallah’s son’s remains be returned.⁶⁶¹ This gesture ‘deeply affected’ Mr Nasrallah.⁶⁶²



Exhibit 2D138—photograph at Beirut Airport, January 2004, showing Mr Hariri, Mr Nasrallah, Sheik Abdul-Karim Obeid and Mr Mustafa Dirani

464. Other evidence related to the personal and political relationship between the two is interspersed chronologically below.

⁶⁶⁰ Mustafa Nasser, T. 10 April 2015, p. 90.

⁶⁶¹ Mustafa Nasser, T. 10 April 2015, p. 91; Fouad Siniora, T. 27 May 2015, pp 71-72. Mr Nasser stated that Mr Hariri insisted that the remains were the ‘first’ to be returned, while Mr Siniora stated that they were ‘among’ the bodies returned. *See also* exhibit 2D138 (Photograph taken at Beirut airport, January 2004), ERN 1DT2-0581. Mr Hariri is next to Mr Nasrallah in the photograph. Fouad Siniora, T. 27 May 2015, pp 71, 75.

⁶⁶² Mustafa Nasser, T. 10 April 2015, pp 90-91.

4. Israeli withdrawal from Lebanon in 2000

465. In the summer of 2000 Israel withdrew its forces from southern Lebanon and, according to the UN Secretary-General's report, the Lebanese military 'had started to re-establish its authority in the area and was considering deploying its armed forces in southern Lebanon'.⁶⁶³ A dispute over the occupation by Israel of the Shebaa farms, a small, disputed area on the Lebanese-Syrian border continued.⁶⁶⁴

466. However, Lebanese forces did not deploy to southern Lebanon—as envisaged in the Taif Accord—and Hezbollah continued to control southern Lebanon based on the justification that Israel had not withdrawn from the Shebaa farms.⁶⁶⁵ Mr Hariri, however, believed that Lebanese territory should be controlled by the Lebanese army.⁶⁶⁶

467. An opposition group called the 'Qornet-Chehwan Gathering' was established in the Christian area of Beirut following the Israeli withdrawal.⁶⁶⁷ It was named after a Maronite town in the Mount Lebanon district⁶⁶⁸ and was made up of Christian leaders from different parties, who opposed the continued Syrian control over Lebanon.⁶⁶⁹

5. 2000 Election

468. In December 1998, Mr Hariri left office after President Lahoud took power; he turned his attention to the next elections due in 2000.⁶⁷⁰ Before that election, the Lebanese Government had adopted a new electoral law. Several witnesses testified that it was known as the 'Ghazi Kanaan

⁶⁶³ Exhibit P451 (Report of the UN Secretary-General pursuant to Security Council resolution 1559 (2004)), para. 9, referring to notifications from Lebanon and Israel received in mid-2000. Marwan Hamade, T. 17 November 2014, pp 45-46, 74-75.

⁶⁶⁴ Marwan Hamade, T. 17 November 2014, p. 47, T. 19 November 2014, p. 63, T. 9 December 2014, pp 44-45, 52; Walid Jumblatt, T. 4 May 2015, pp 33-34.

⁶⁶⁵ Marwan Hamade, T. 17 November 2014, pp 46, 74-75, T. 8 December 2014, p. 74, T. 9 December 2014, pp 45-46; Atef Majdalani, T. 28 April 2015, pp 16-18, 23-26, T. 1 May 2015, p. 22; Walid Jumblatt, T. 4 May 2015, pp 33-34.

⁶⁶⁶ Atef Majdalani, T. 28 April 2015, pp 16-18.

⁶⁶⁷ Jamil El-Sayyed, T. 7 June 2018, p. 3.

⁶⁶⁸ Faisal Salman, T. 8 January 2015, p. 41.

⁶⁶⁹ Marwan Hamade, T. 20 November 2014, pp 22-23; Ghazi El-Youssef, T. 10 March 2015, p. 62; Jamil El-Sayyed, T. 7 June 2018, pp 3-4.

⁶⁷⁰ Jamil El-Sayyed, T. 5 June 2018, pp 54, 59, 61-62.

law’ because Mr Kanaan, who was then the Syrian military intelligence chief in Lebanon, was allegedly behind it.⁶⁷¹

469. When Mr El-Sayyed was the director-general of the *Sûreté Générale*, President Lahoud had entrusted him ‘to be in dialogue with all the parties to draft a law that would be accepted as much as possible by all parties’. He stated that the law had nothing to do with Mr Kanaan who viewed it as an internal Lebanese matter and said that it only got that name later.⁶⁷² There appears, however, common ground between the Parties that whatever the law was called when it was introduced, in time it became associated with Mr Kanaan, and thus Syrian influence over the Lebanese political process. Mr El-Sayyed himself stated that ‘Ghazi Kanaan did not intervene in shaping the elections law, but he intervened in shaping the electoral alliances between political parties ... Ghazi Kanaan may ask one or that bloc to forge this or that alliance’.⁶⁷³

470. The new law divided Beirut into three districts.⁶⁷⁴ Prosecution witnesses stated that it was widely understood as a gerrymandering attempt to dilute Mr Hariri’s base,⁶⁷⁵ by concentrating his supporters into a minimum number of electoral districts. Mr El-Sayyed said that it was the result of a compromise between Mr Hariri, wanting large districts, and the Christians, wanting small districts, and establishing a balance between these two competing interests.⁶⁷⁶

471. In the 2000 election, Mr Hariri stood as a candidate for election in Beirut. According to his supporters this was due to Syrian pressure, as he was not allowed to form electoral lists in other regions.⁶⁷⁷ Mr Hariri won and his lists took all three Beirut districts in a landslide, gaining 18 of 19 candidates, with Hezbollah getting the remaining post.⁶⁷⁸

472. A cause of great tension in the Hariri bloc in the run-up to the 2000 election was the role that Syria had in ‘selecting’ candidates for the election. This was viewed as interference in the

⁶⁷¹ Salim Diab, T. 22 January 2015, pp 16-18; Ghazi El-Youssef, T. 10 March 2015, pp 17-18, 24, 26-27; Jamil El-Sayyed, T. 5 June 2018, pp 71, 75.

⁶⁷² Jamil El-Sayyed, T. 5 June 2018, pp 65-67, 71, 77.

⁶⁷³ Jamil El-Sayyed, T. 5 June 2018, p. 75.

⁶⁷⁴ Ghattas El-Khoury, T. 16 January 2015, p. 67; Ghazi El-Youssef, T. 10 March 2015, p. 28.

⁶⁷⁵ Ghazi El-Youssef, T. 10 March 2015, pp 17, 24, 28; Atef Majdalani, T. 28 April 2015, p. 8; Fouad Siniora, T. 26 March 2015, pp 11, 15.

⁶⁷⁶ Jamil El-Sayyed, T. 5 June 2018, pp 65-67, 76-78.

⁶⁷⁷ Ghattas El-Khoury, T. 16 January 2015, pp 68-69; Salim Diab, T. 22 January 2015, pp 18-20; Ghazi El-Youssef, T. 10 March 2015, p. 74.

⁶⁷⁸ Marwan Hamade, T. 17 November 2014, p. 64, T. 20 November 2014, p. 13; Ghazi El-Youssef, T. 10 March 2015, pp 17, 24-25, 32, 74; Bassem El-Sabeh, T. 17 March 2015, p. 75.

Lebanese democratic process. The Trial Chamber heard evidence of the role of what were termed ‘Syrian deposits’ in the Lebanese Parliament before the withdrawal of the Syrian military forces in mid-2005. Prosecution witnesses described these as candidates that the Syrian Government imposed on Mr Hariri by insisting that he include them in his electoral list. They were seen as loyal to Syria rather than to Mr Hariri’s Future Movement.⁶⁷⁹

473. According to Mr Hamade, Mr Hariri’s 2000 bloc contained three candidates who were imposed on him by the Syrians. They were called the ‘Syrian submarines’. This was well-known, and Mr Hariri had said that Mr Kanaan had asked him to take them.⁶⁸⁰ Mr Hariri’s view was that taking these three was not a very dear price to pay in exchange for having no disturbances in the elections in Beirut, although he was not happy about accepting them. He accepted them to settle things in the best interests of Lebanon.⁶⁸¹ According to both Mr Hamade and Mr Siniora, Mr Hariri was upset but accepted it as the cost of peace.⁶⁸²

474. Mr Hariri indirectly used these MPs to convey messages to Syria. According to Mr Atef Majdalani, the three ‘deposits’ in Mr Hariri’s bloc were Dr Nasser Kandil, Mr Adnan Arakji and Dr Bassem Yamout. Whenever Mr Hariri wanted to send a message to Syria, he waited for one to come to a bloc meeting and then voiced his opinion, thus sending the message indirectly.⁶⁸³ Sometimes he would be asked about something related to or of interest to Syria, and he would say they would talk about it when ‘Nasser or Bassem or X’ comes. It was clear he was waiting for them because they would convey his opinion to the Syrians.⁶⁸⁴

475. At times, when Mr Hariri had left a meeting and arrived at his office, he would receive a call from a Syrian official asking why he had said whatever he said.⁶⁸⁵ Sometimes after a meeting,

⁶⁷⁹ Ghattas El-Khoury, T. 16 January 2015, pp 68-69; Ghazi El-Youssef, T. 10 March 2015, pp 17, 19-21, 24, 28-29, 31-32, T. 11 March 2015, pp 51, 54-55; Bassem El-Sabeh, T. 18 March 2015, pp 90-91.

⁶⁸⁰ Marwan Hamade, T. 20 November 2014, p. 12.

⁶⁸¹ Marwan Hamade, T. 20 November 2014, pp 12-14; Faisal Salman, T. 8 January 2015, p. 44. Mr Faisal Salman testified that they ‘were dubbed in Beirut the dregs or the deposits, i.e., the not backers of President Hariri entirely but they are protected by the Syrian regime or by political – Syrian political figures’.

⁶⁸² Marwan Hamade, T. 20 November 2014, pp 13-14; Fouad Siniora, T. 23 March 2015, p. 24.

⁶⁸³ Atef Majdalani, T. 28 April 2015, pp 46, 48-49. Mr Hariri did not tell the witness explicitly that this was his strategy—however, Mr Majdalani was present in the bloc meetings and knew how Mr Hariri ‘functioned and how he thought’. Atef Majdalani, T. 28 April 2015, p. 49. According to Mr El-Youssef, there were four Syrian deposits imposed on Mr Hariri in Beirut in the 2000 elections, namely Mr Kandil, Dr Yamout, Mr Arakji and Mr Bechara Merhej. Ghazi El-Youssef, T. 11 March 2015, pp 51, 54.

⁶⁸⁴ Atef Majdalani, T. 28 April 2015, p. 49.

⁶⁸⁵ Atef Majdalani, T. 28 April 2015, p. 49.

he would take Mr Kandil aside to talk, meaning that he wanted to convey a message to Syria.⁶⁸⁶ Mr El-Sabeh, an MP and friend of Mr Hariri's, went as far as to state that it was well-known that Mr Kandil was a deputy of the *Mukhabarat*, the Syrian intelligence service, and that he had played a role in the campaign against Mr Hariri.⁶⁸⁷

476. Mr El-Sayyed, on the other hand, testified that the term 'Syrian deposits' was not used before the attack on Mr Hariri, and moreover 'everyone' put requests to Syria, as this was normal.⁶⁸⁸ Conversely, in return, the Syrians made requests the other way, including to Mr Hariri. This was merely political reciprocity. He suggested that between ten and 15 of the 128 MPs were 'deposits'.⁶⁸⁹ Mr Hariri accepted them but was not forced to.⁶⁹⁰ Mr Salim Diab—who had been appointed as Mr Hariri's campaign manager for the 2005 elections—testified that Mr Hariri himself used the terms 'Syrian gifts' and 'deposits' for the Syrian imposed candidates.⁶⁹¹

477. Mr Faisal Salman, a political commentator, who with other journalists met Mr Hariri in the café *Place de l'Étoile*, just before his death on 14 February 2005, testified that Mr Hariri told them that 'he would run for elections without anyone imposing partners or deposits on him ... but also that Lebanon cannot be governed against Syria'.⁶⁹² This was the first time Mr Salman had ever heard Mr Hariri say that he would have no deposits in his candidates.⁶⁹³ Mr Hariri said that the electoral law under discussion in Parliament was being developed to politically weaken him and his allies—certain Christian political figures, especially Mr Jumblatt. He said that regardless of the electoral law, he and his allies would win the elections.⁶⁹⁴

478. During the parliamentary session on 14 February 2005, Mr Hariri sat with Mr El-Sabeh at the back.⁶⁹⁵ Mr Hariri told him that 'these people' were launching a broad-based campaign against

⁶⁸⁶ Atef Majdalani, T. 28 April 2015, p. 50.

⁶⁸⁷ Bassem El-Sabeh, T. 18 March 2015, pp 90-91.

⁶⁸⁸ Jamil El-Sayyed, T. 5 June 2018, p. 77.

⁶⁸⁹ Jamil El-Sayyed, T. 5 June 2018, p. 78.

⁶⁹⁰ Jamil El-Sayyed, T. 5 June 2018, pp 77-78.

⁶⁹¹ Salim Diab, T. 22 January 2015, p. 37. After his meeting with President Al-Assad in August 2004, Mr Hariri told Mr Diab that 'The gifts that were given to me I will send back', referring to these people but without naming them, Salim Diab, T. 22 January 2015, pp 38-39.

⁶⁹² Faisal Salman, T. 8 January 2015, p. 45.

⁶⁹³ Faisal Salman, T. 8 January 2015, pp 45, 54. Mr Salman knew that this 'was going to cause a problem with the Syrian regime'. And also in particular with President Emile Lahoud.

⁶⁹⁴ Faisal Salman, T. 8 January 2015, pp 37-38.

⁶⁹⁵ Bassem El-Sabeh, T. 17 March 2015, pp 45-46.

‘us’ and thought that ‘we’ were afraid, and suggested that he and Mr El-Sabeh smile widely for the cameras.⁶⁹⁶ According to Mr Majdalani, Mr Hariri spoke during the session about the draft electoral law, mentioned the issues that he had reservations about and then left.⁶⁹⁷

D. Mr Hariri’s final term as prime minister—26 October 2000 to 2004

479. Mr Hariri was re-appointed prime minister on 26 October 2000.⁶⁹⁸ Both Mr Jumblatt and Mr El-Sayyed stated that he was able to form his own government largely free from Syrian pressure.⁶⁹⁹ Consequently, he appointed some ministers, including Mr Siniora, who had been evicted from his previous government.⁷⁰⁰ He appointed three representatives of the Democratic Gathering,⁷⁰¹ which had 18 seats in Parliament,⁷⁰² and was Mr Jumblatt’s Druze group.⁷⁰³ Mr Hariri’s re-appointment was perceived as a blow to Mr Lahoud.⁷⁰⁴ The relationship between Mr Hariri and Mr Lahoud remained tense,⁷⁰⁵ although they seemed more cooperative and understanding of each other.⁷⁰⁶

480. The Trial Chamber heard evidence that from 2000, following the Israeli withdrawal and Mr Bashar Al-Assad’s ascension to power in Syria, there was a perceived increase in the level of Syrian control over Lebanese affairs.⁷⁰⁷ For example, in July 2001, after Mr Hariri had managed to pass a law allowing some extra civil liberties—additional rights in arrest procedures, which had not previously been part of the Lebanese legal system—it was immediately rescinded following threats from the Syrians.⁷⁰⁸

⁶⁹⁶ Bassem El-Sabeh, T. 17 March 2015, p. 46.

⁶⁹⁷ Atef Majdalani, T. 29 April 2015, pp 29-30.

⁶⁹⁸ Agreed facts, no. (v).

⁶⁹⁹ Jamil El-Sayyed, T. 5 June 2018, pp 79, 87; Walid Jumblatt, T. 7 May 2015, p. 51.

⁷⁰⁰ Jamil El-Sayyed, T. 5 June 2018, pp 81-82.

⁷⁰¹ Walid Jumblatt, T. 7 May 2015, p. 51.

⁷⁰² Walid Jumblatt, T. 7 May 2015, p. 50. Mr Hamade testified that the Democratic Group existed after 2000 when ‘we’ won the election and it was enlarged to other groups or parties. Marwan Hamade, T. 20 November 2014, p. 41.

⁷⁰³ Walid Jumblatt, T. 4 May 2015, pp 6-7, T. 7 May 2015, pp 50-51; exhibit P424 (UNIC Beirut press review, 6 September 2004), p. 1.

⁷⁰⁴ Walid Jumblatt, T. 7 May 2015, p. 50.

⁷⁰⁵ Fouad Siniora, T. 23 March 2015, p. 41, T. 27 May 2015, p. 75.

⁷⁰⁶ Jamil El-Sayyed, T. 5 June 2018, pp 82-84.

⁷⁰⁷ Marwan Hamade, T. 17 November 2014, p. 67, T. 18 November 2014, p. 8; Ghazi El-Youssef, T. 10 March 2015, pp 17-18; Fouad Siniora, T. 23 March 2015, pp 25-27.

⁷⁰⁸ Ghazi El-Youssef, T. 10 March 2015, pp 36-39.

481. Mr Siniora testified that Mr Hariri's relationship with President Bashar Al-Assad did not feature the same level of communication or trust as the relationship with his father President Hafez Al-Assad.⁷⁰⁹ Their meetings were uncomfortable.⁷¹⁰ Before, Mr Hariri made frequent cross-border visits to Syria and would meet Mr Ghazi Kanaan—the head of the Syrian intelligence in Lebanon between 1983 and 2002.⁷¹¹

482. After 2000, Mr Hariri appointed Mr Wissam Al-Hassan as his liaison officer with Mr El-Sayyed.⁷¹² According to Mr El-Sayyed, he—Mr El-Sayyed—was always the third person present at meetings between Presidents Lahoud and Bashar Al-Assad.⁷¹³ He received information from President Lahoud and Mr Hariri—through Mr Al-Hassan—regarding matters discussed in Syria.⁷¹⁴

483. According to Mr Jumblatt, Syria viewed Mr Hariri as a source of concern because he was prominent internationally and wanted to build a prosperous and independent Lebanon.⁷¹⁵ A Syrian General, Mohammed Nasif, would sometimes jokingly or indirectly ask who Mr Hariri thought he was. Mr Jumblatt perceived such remarks, coming from a high-ranking Syrian official as a threat and an insult.⁷¹⁶ Mr Siniora thought that the Lebanese and Syrian security systems and regimes were displeased because Mr Hariri represented an open and democratic Lebanon and Mr Hariri's achievements were of concern to Syria.⁷¹⁷

484. The Trial Chamber also received evidence that in May or June 2002, Mr Nasrallah and Mr Hariri were on poor terms. Mr Hariri was planning to build a bridge in the Ouzawi area in Beirut to allow the construction of a highway between Beirut and southern Lebanon. After attempting to impose conditions on the plan, Hezbollah communicated to Mr Hariri that if he

⁷⁰⁹ Fouad Siniora, T. 23 March 2015, p. 52.

⁷¹⁰ Ghaleb Ahmad El-Chammaa, T. 10 February 2015, pp 23-24, 26-27.

⁷¹¹ Ghattas El-Khoury, T. 15 January 2015, p. 59; Fouad Siniora, T. 26 March 2015, p. 36; Jamil El-Sayyed, T. 6 June 2018, pp 5, 24. While both Mr El-Sayyed and Mr El-Khoury said that Mr Kanaan served in Lebanon until the summer or about the end of 2003, according to the Syrian government, Mr Ghazaleh succeeded Mr Kanaan on 16 October 2002. Exhibit 5D128 (Response of Syrian Government to UNIIIC request for assistance), p. 5.

⁷¹² Jamil El-Sayyed, T. 6 June 2018, p. 17.

⁷¹³ Jamil El-Sayyed, T. 6 June 2018, p. 12.

⁷¹⁴ Jamil El-Sayyed, T. 6 June 2018, p. 17.

⁷¹⁵ Walid Jumblatt, T. 4 May 2015, p. 42.

⁷¹⁶ Walid Jumblatt, T. 4 May 2015, pp 46-47.

⁷¹⁷ Fouad Siniora, T. 23 March 2015, pp 44-45.

attended the opening ceremony Mr Nasrallah would attend ‘to face him’.⁷¹⁸ Mr Hariri sent his development adviser, Mr Fadi Fawwaz, in his place, but a Hezbollah MP, Mr Ali Ammar, physically attacked him there.⁷¹⁹

485. In October 2002, Mr Rustom Ghazaleh replaced Mr Kanaan as the Syrian ‘representative’ in Lebanon, making him effectively the head of Syrian intelligence there.⁷²⁰ According to the Syrian government, his tasks as Chief of Branch Headquarters, located in Anjar, were:

to ensure the security of the Syrian Armed Forces operating in Lebanon. The supervision of the functions aimed at controlling the hostile spying activities, in addition to performing a political task through the role played by Syria to help the Lebanese Authorities to consolidate national peace and the unity of the power.⁷²¹

486. Mr Hariri’s principal liaison with Syria was Mr Ghazaleh, who, it was understood, operated with the support of President Al-Assad and controlled political, economic and electoral matters in Lebanon.⁷²² According to Mr El-Chammaa, a friend and associate of Mr Hariri’s, Mr Ghazaleh would deliver threatening messages from President Al-Assad to Mr Hariri, requesting certain courses of action requested specifically by the Syrian president. Mr El-Chammaa, however, was not present at meetings between Mr Hariri and Mr Ghazaleh. Mr El-Chammaa said that Mr Hariri told him this.⁷²³

487. By 2003, Mr Hariri’s tension with Syria had reached the state where he admonished Mr Hamade, one of the drafters of his ministerial statement,⁷²⁴ for proposing a generic line that the Lebanese government should implement all the articles of the Taif Agreement. Mr Hariri told him

⁷¹⁸ Exhibit P1107 (Statement of Witness PRH045, 12 August 2010), paras 41-42.

⁷¹⁹ Exhibit P1107 (Statement of Witness PRH045, 12 August 2010), paras 41-42. According to Mr Mustafa Nasser, Mr Hariri and Mr Ammar were on bad terms because Mr Ammar represented the Dahyieh area in Parliament and he had problems with Mr Hariri’s ‘Elissar’ project. Mustafa Nasser, T. 9 April 2015, pp 30-31.

⁷²⁰ Marwan Hamade, T. 18 November 2014, p. 54; Fouad Siniora, 25 March 2015, p. 69, T. 26 March 2015, p. 36; Walid Jumblatt, T. 4 May 2015, pp 50-51; Jamil El-Sayyed, T. 6 June 2018, pp 4-5.

⁷²¹ Exhibit 5D128, p. 5, specifying the hierarchy and role of Syrian intelligence officials in Lebanon. It stated that Mr Ghazaleh was appointed Chief of Branch Headquarters on 16 October 2002, succeeding Mr Kanaan.

⁷²² Ghazi El-Youssef, T. 10 March 2015, p. 18 (Mr Kanaan was the one ‘who would implement Damascus’s policies’, before being replaced by Mr Ghazaleh—who was then ‘the one who was controlling the political scene, the economic and electoral scenes’); Ghaleb Ahmad El-Chammaa, T. 10 February 2015, p. 23 (Mr Ghazaleh ‘represented’ President Al-Assad’s ‘orders’ and ‘desires’, and ‘was given a free hand and total support by President Bashar Assad’).

⁷²³ Ghaleb Ahmad El-Chammaa, T. 10 February 2015, pp 27-29.

⁷²⁴ The ministerial statement is a government policy document, drafted by the Council of Ministers.

that such a suggestion would be a declaration of war against the Syrian regime that could get them killed.⁷²⁵

1. Beginnings of an organised opposition to Syrian domination

488. The Trial Chamber received consistent evidence that with the Israeli withdrawal in 2000, Lebanon increasingly divided into two camps: those who supported the Syrian presence and the continued presence of Hezbollah as an armed militia within Lebanon, and those who called for the Syrian withdrawal and the disbanding of Hezbollah's militia.⁷²⁶

489. Those who supported the continued presence of Syria and Hezbollah argued that Israel still occupied Lebanon⁷²⁷ through its occupation of the Shebaa farms.⁷²⁸ In 2000, the Maronite Christian Patriarch, Mr Nasrallah Boutros Sfeir, and the Maronite bishops called for Syria's implementation of the Taif Agreement, withdrawal from Lebanon, respect for its sovereignty and for all weapons to be remitted to the Lebanese State.⁷²⁹

490. Mr Jumblatt then publicly called on Syria to withdraw at least to the Bekaa valley, as envisioned by the Taif Agreement.⁷³⁰ In Parliament, a pro-Syrian MP responded by accusing Mr Jumblatt of being an Israeli spy.⁷³¹ In 2001, Patriarch Sfeir and Mr Jumblatt met and reconciled their religious factions, the Maronites and the Druze, who had fought against each other during the Lebanese Civil War.⁷³²

2. International opinion

491. After 2000, the US and some European states made it known that they did not welcome the continued Syrian presence in Lebanon. These states began raising the issue, including France

⁷²⁵ Marwan Hamade, T. 18 November 2014, pp 8-10, 17-23, T. 9 December 2014, p. 56.

⁷²⁶ Marwan Hamade, T. 17 November 2014, pp 46, 76, T. 18 November 2014, p. 19; Faisal Salman, T. 8 January 2015, pp 26-29; Atef Majdalani, T. 28 April 2015, pp 13-14; Walid Jumblatt, T. 4 May 2015, p. 34; Jamil El-Sayyed, T. 5 June 2018, p. 90. As noted above, the opposition Christian dominated Qornet-Chehwan Gathering formed in 2000 after the Israeli withdrawal. *See* para. 467.

⁷²⁷ Faisal Salman, T. 8 January 2015, pp 27-29.

⁷²⁸ Marwan Hamade, T. 17 November 2014, p. 76.

⁷²⁹ Marwan Hamade, T. 17 November 2014, p. 75, T. 8 December 2014, pp 43-44, T. 9 December 2014, p. 45; Faisal Salman, T. 8 January 2015, pp 28-29, 41; Ghattas El-Khoury, T. 15 January 2015, p. 14.

⁷³⁰ Marwan Hamade, T. 17 November 2014, p. 75, T. 8 December 2014, pp 43-44; Walid Jumblatt, T. 4 May 2015, pp 34, 36-37, T. 7 May 2015, pp 17-19.

⁷³¹ Marwan Hamade, T. 17 November 2014, p. 75; Walid Jumblatt, T. 4 May 2015, pp 34-35, 38.

⁷³² Marwan Hamade, T. 17 November 2014, pp 79-80; Walid Jumblatt, T. 4 May 2015, p. 92.

through its President, Jacques Chirac, who did so before the Lebanese Parliament in 2002.⁷³³ Mr Jumblatt, however, testified that Mr Chirac, when addressing the Lebanese Parliament, mentioned that the Syrian presence in Lebanon was a necessity for the time being.⁷³⁴

492. The international opposition to the continued Syrian presence in Lebanon culminated in the passage of Security Council resolution 1559 in September 2004, as described below.

3. Mr Hariri's shift towards the opposition

493. Mr Hariri's relationship with Syria was seen to change after the death of President Hafez Al-Assad, and according to Mr El-Chammaa, Syria was seen to be more aggressive, dominant and provocative.⁷³⁵ Mr Hamade said that Mr Hariri was privately upset by the increasing Syrian influence in Lebanon, but he knew that any public declaration on the subject would result in a rupture with Damascus. This was particularly so from 2003 with the increased tension following the US-led invasion of Iraq.⁷³⁶

4. Mr Hariri's relationship with Hezbollah from 2000

494. Throughout Mr Hariri's second term as prime minister from 2000 to 2004, Hezbollah was generally supportive of President Lahoud.⁷³⁷ Mr Hariri criticised a Hezbollah operation in the Shebaa farms area shortly after the 11 September 2001 attacks in the US, and this criticism created a conflict with Hezbollah.⁷³⁸

495. According to Witness PRH045, Mr Hariri and Hezbollah's direct relationship began in early 2002.⁷³⁹ Mr Nasrallah had mentioned to the witness about telling Mr Hariri that they were 'two mountains' that should not collide so as not to create a large earthquake.⁷⁴⁰ As noted above,

⁷³³ Jamil El-Sayyed, 5 June 2018, p. 104. The Prosecution submitted, upon a query from the Trial Chamber, that Mr Chirac addressed the Lebanese Parliament at a francophone summit on 17 October 2002, Prosecution submissions, T. 5 May 2015, pp 46, 72. The parties agreed that the francophone summit took place between 18 and 20 October 2002. T. 22 October 2014, p. 66. Mr Tarek Soubra, who drove for Mr Hariri's security detail, stated that he was Mr Chirac's chauffeur during the summit. Exhibit P336 (Statement of Tarek Soubra), para. 48 (ERNs 60295674-60295675).

⁷³⁴ Walid Jumblatt, T. 5 May 2015, p. 46.

⁷³⁵ Ghaleb Ahmad El-Chammaa, T. 10 February 2015, pp 19-20, 22.

⁷³⁶ Marwan Hamade, T. 18 November 2014, pp 11-15.

⁷³⁷ Fouad Siniora, T. 27 May 2015, pp 75-76.

⁷³⁸ Exhibit P1107 (Statement of Witness PRH045, 12 August 2010), para. 26.

⁷³⁹ Exhibit P1107 (Statement of Witness PRH045, 12 August 2010), para. 26.

⁷⁴⁰ Exhibit P1107 (Statement of Witness PRH045, 12 August 2010), paras 29-30.

in mid-2002, a Hezbollah MP and an adviser on one of Mr Hariri's development projects were involved in a public confrontation.⁷⁴¹

496. Mr Siniora testified that in late 2003 or early 2004, Mr Hariri told him that he was concerned about his personal security, as he had been informed of several Hezbollah assassination attempts targeting him.⁷⁴²

497. In January 2004, Mr Hariri and Mr Nasrallah appeared together at the Beirut airport to welcome prisoners freed by Israel.⁷⁴³ As discussed above, Mr Siniora also said that as a gesture of respect, which brought the two men closer together, Mr Hariri had been involved in negotiations to recover the body of Mr Nasrallah's son, who had been killed in the conflict with Israel.⁷⁴⁴ Mr El-Sabeh opined that it was well-known by June 2004 that Mr Hariri and Mr Nasrallah were discussing the possibility of political cooperation.⁷⁴⁵

498. According to Mr El-Sayyed, Mr Mustafa Nasser coordinated regular meetings between Mr Nasrallah and Mr Hariri.⁷⁴⁶ He also stated that Hezbollah did not stand to benefit from Mr Hariri's death. This was because a strategic shift occurred after the assassination as efforts were made to disarm Hezbollah in line with Security Council resolution 1559.⁷⁴⁷

5. 2001 and 2002: Paris Conferences

499. In 2001 and 2002, with Lebanon in economic crisis, the French Government sponsored two international conferences, which resulted in Lebanon pledging to implement reforms and foreign states and international organisations pledging upwards of around USD five billion to Lebanon.⁷⁴⁸

⁷⁴¹ Exhibit P1107 (Statement of Witness PRH045, 12 August 2010), paras 41-42; exhibit 2D131 (Witness statement of Mustafa Nasser, 12 August 2010), paras 19-22; Mustafa Nasser, T. 9 April 2015, pp 30-31.

⁷⁴² Fouad Siniora, T. 24 March 2015, pp 24-25.

⁷⁴³ Exhibit 2D138 (Photograph taken at Beirut airport, January 2004), ERN 1DT2-0581; Fouad Siniora, T. 27 May 2015, pp 71-72.

⁷⁴⁴ Fouad Siniora, T. 27 May 2015, pp 72-73.

⁷⁴⁵ Bassem El-Sabeh, T. 17 March 2015, pp 96-97.

⁷⁴⁶ Jamil El-Sayyed, T. 5 June 2018, pp 94, 98.

⁷⁴⁷ Jamil El-Sayyed, T. 5 June 2018, pp 95-96.

⁷⁴⁸ Marwan Hamade, T. 17 November 2014, p. 74; Ghazi El-Youssef, T. 10 March 2015, pp 45-46; Bassem El-Sabeh, T. 17 March 2015, p. 75; Fouad Siniora, T. 23 March 2015, pp 37-38, 42-43. Mr El-Youssef said it was USD 4.4 billion, while Mr Siniora, who had been the Lebanese Finance Minister at the time, said it was USD five billion.

500. President Chirac hosted the conferences at the *Palais Elysée*,⁷⁴⁹ the first in February 2001. At the second Paris Conference in November 2002, Mr Hariri said to his finance minister, Mr Siniora, ‘God help us when we return to Lebanon’, which Mr Siniora interpreted as meaning that people would feel threatened by Mr Hariri’s success in achieving international support, and try to stop it.⁷⁵⁰

501. Following the conferences, there was a smear campaign against Mr Hariri in the pro-Syrian media; Mr Hariri was accused of favouring Muslims and of wanting to Islamise Lebanon.⁷⁵¹ The reform laws were passed after the second Paris Conference, but according to Mr Siniora, they were not implemented,⁷⁵² and after the second Paris Conference, all of Mr Hariri’s vital projects were obstructed.⁷⁵³ These included laws that Mr Hariri introduced between 2002 and 2004 for reforms, which Mr Siniora considered to be essential, to sectors such as power generation, telecommunications and civil aviation.⁷⁵⁴

6. April 2003: Cabinet reshuffle

502. The US and its allies invaded Iraq on 19 March 2003. Following this, in April 2003, Mr Hariri resigned as prime minister, according to witnesses, under pressure from Syria.⁷⁵⁵

503. The Trial Chamber heard hearsay evidence that Mr Ghazaleh personally delivered the message to Mr Hariri that he was expected to resign. Mr El-Youssef explained how Mr Hariri was ‘asked to resign’ during a meeting with Mr Ghazaleh.⁷⁵⁶

504. Mr Hariri was then re-appointed prime minister, but he was only permitted to retain a handful of ministers of his choosing, while the rest were allocated to supporters of Syria.⁷⁵⁷

⁷⁴⁹ Ghazi El-Youssef, T. 10 March 2015, p. 47.

⁷⁵⁰ Fouad Siniora, T. 23 March 2015, pp 43-44.

⁷⁵¹ Bassem El-Sabeh, T. 17 March 2015, pp 75-77; Atef Majdalani, T. 28 April 2015, pp 13-14.

⁷⁵² Fouad Siniora, T. 23 March 2015, p. 38.

⁷⁵³ Fouad Siniora, T. 23 March 2015, p. 53.

⁷⁵⁴ Fouad Siniora, T. 23 March 2015, p. 37.

⁷⁵⁵ Marwan Hamade, T. 17 November 2014, pp 76-78, 92, 94, T. 18 November 2014, p. 6; Ghattas El-Khoury, T. 15 January 2015, pp 82-83, 85.

⁷⁵⁶ Ghazi El-Youssef, T. 10 March 2015, pp 48-50.

⁷⁵⁷ Marwan Hamade, T. 17 November 2014, pp 76-77; Ghazi El-Youssef, T. 10 March 2015, pp 49, 51; Ghattas El-Khoury, T. 15 January 2015, pp 82-83, 85-86, 92; Jamil El-Sayyed, T. 6 June 2018, p. 18. According to Mr El-Youssef there were three, Mr Siniora, Mr Samir El-Jisr and Mr Tabbara, while Mr El-Khoury said that it was Mr Siniora and Mr Jisr.

Mr Bassel Fuleihan was forced to resign as a minister.⁷⁵⁸ Mr Hamade testified that Mr Hariri had told him that Mr Ghazaleh had delivered a message from Mr Al-Assad ‘regarding the component parts of his government’.⁷⁵⁹ According to Mr El-Yousef, Mr Hariri had said that the cabinet was imposed on him by Mr Lahoud and Mr Ghazaleh, that it was their government and not his. Mr Hariri was upset and the witness recalls him saying, ‘This was not my government -- this is not my government; it’s the government of Lahoud and Ghazaleh.’⁷⁶⁰ Mr Hariri was upset, but chose to avoid confrontation with Syria, awaiting and relying on the forthcoming presidential elections.⁷⁶¹ He saw that Syria was reacting to feeling threatened by the American-led invasion of Iraq.⁷⁶²

505. Mr El-Sayyed explained that as a result of American threats to Syria following the Iraqi invasion, the Syrians and President Al-Assad in particular, ‘felt that they should immunise the Syrian scene and the Lebanese scene’. Therefore, the Syrian and Lebanese presidents agreed with Mr Hariri to have a cabinet reshuffle. Mr Hariri and President Lahoud had briefed Mr El-Sayyed with this information. In his government’s policy statement before Parliament, Mr Hariri explained the cabinet reshuffle with the challenges in the region and the unacceptable American invasion of Iraq posing threats to Lebanon.⁷⁶³

506. Mr El-Khoury, who was an MP in Mr Hariri’s government and was seen to be close to him, publicly objected on TV to foreign involvement in the formation of the government and to Mr Hariri not being allowed to appoint ministers of his own choosing.⁷⁶⁴ Immediately after the broadcast, Mr Ghazaleh called Mr El-Khoury and directed insults at both him and Mr Hariri, telling him ‘to bugger off or to fuck off’.⁷⁶⁵ Mr El-Khoury informed Mr Hariri, who asked him to calm the situation and said that ‘we’ would attempt to find a solution.⁷⁶⁶

⁷⁵⁸ Marwan Hamade, T. 17 November 2014, pp 76, 87-88, 91.

⁷⁵⁹ Marwan Hamade, T. 18 November 2014, p. 8.

⁷⁶⁰ Ghazi El-Youssef, T. 10 March 2015, p. 51.

⁷⁶¹ Ghazi El-Youssef, T. 10 March 2015, pp 51-53; Marwan Hamade, T. 17 November 2014, p. 94.

⁷⁶² Marwan Hamade, T. 17 November 2014, p. 94; Ghattas El-Khoury, T. 15 January 2015, pp 82, 84, 92-93, T. 16 January 2015, pp 5-7.

⁷⁶³ Jamil El-Sayyed, T. 6 June 2018, pp 16-18.

⁷⁶⁴ Ghattas El-Khoury, T. 15 January 2015, pp 86-87.

⁷⁶⁵ Ghattas El-Khoury, T. 15 January 2015, pp 86-90, T. 16 January 2015, p. 5.

⁷⁶⁶ Ghattas El-Khoury, T. 15 January 2015, p. 91.

7. 17 April 2003: Parliamentary statement on US Syria Accountability Act

507. In mid-April 2003, while combat operations were continuing in Iraq, the ‘Syria Accountability and Lebanese Sovereignty Restoration Act’ was introduced into the US Congress.⁷⁶⁷ It provided that:

Approximately 20,000 Syrian troops and security personnel occupy much of the sovereign territory of Lebanon exerting undue influence upon its government and undermining its political independence.

Large and increasing numbers of the Lebanese people from across the political spectrum in Lebanon have mounted peaceful and democratic calls for the withdrawal of the Syrian Army from Lebanese soil.

Syria will not allow Lebanon—a sovereign country—to fulfil its obligation in accordance with Security Council Resolution 425 to deploy its troops to southern Lebanon.⁷⁶⁸

508. Mr Hariri responded to this development in the US by issuing a statement to Parliament on 17 April 2003—the date of the formation of his new cabinet—that said:

The government affirms its solidarity with its sister-state Syria in the face of all unfair pressure, accusations and threats against it, including the Syria Accountability Act which ... affects Lebanon as much as it affects Syria, if not more ... The special relations between Lebanon and Syria are a permanent and vital choice determined by heritage, history, geography, brotherhood and common interests. They are not a seasonal wager based on changing circumstances; the government is also determined to deepen these relations both politically and culturally, to develop them economically, and to strengthen them through common projects and the regulation of the exchange of facilities, services and expertise under the Lebanon-Syria Treaty of Brotherhood, Cooperation, and Coordination and its institutions.⁷⁶⁹

⁷⁶⁷ Exhibit 3D126 (extract of the Lebanese Presidency of the Council of Ministers website), p. 3 (ERN 1DT3-0022); exhibit P307 (US Syria Accountability and Lebanese Sovereignty Restoration Act). Its long title is ‘An Act to halt Syrian support for terrorism, end its occupation of Lebanon, and stop its development of weapons of mass destruction, and by so doing hold Syria accountable for the serious international security problems it has caused in the Middle East, and for other purposes’.

⁷⁶⁸ Exhibit P307, p. 2 (sections 2 (7), (10), (13)).

⁷⁶⁹ Exhibit 3D126, pp 1, 3 (ERNs 1DT3-0020, 1DT3-0022).

509. The US Congress eventually passed the act on 12 December 2003.⁷⁷⁰

8. June 2003: Attack on Future TV

510. In June 2003, the Future TV/*Al-Mustaqbal* station in Beirut—owned by Mr Hariri⁷⁷¹—was attacked with missiles.⁷⁷² The attack was late at night and no one was killed,⁷⁷³ but the station was heavily damaged.⁷⁷⁴ For some, Syria was behind the attack⁷⁷⁵ and it was meant as a warning to Mr Hariri.⁷⁷⁶ Mr Hariri shared this interpretation, according to Mr Hammoud,⁷⁷⁷ but was of the view that no Islamic group would kill him.⁷⁷⁸

511. An unknown jihadist group claimed responsibility for the attack,⁷⁷⁹ and the Lebanese investigations—which were headed by the Lebanese military intelligence chief, Brigadier General Raymond Azar, whom witnesses described as politically aligned with President Lahoud and the Syrian government⁷⁸⁰—did not determine who the perpetrators were.⁷⁸¹ Kuwaiti and Lebanese newspapers later reported that a Syrian detained in Iraq confessed that, while serving as a Syrian intelligence officer, he had been ordered to perpetrate the attack.⁷⁸²

⁷⁷⁰ Decision on taking judicial notice (Syria Accountability and Lebanese Sovereignty Act of 2003). *See also* exhibit P532 (UNIC Beirut press review, 18 December 2003), p. 3.

⁷⁷¹ Ali Hamade, T. 13 April 2015, p. 8; Jamil El-Sayyed, T. 6 June 2018, pp 20-21.

⁷⁷² Marwan Hamade, T. 18 November 2014, pp 6-7, 23-24, T. 19 November 2014, p. 20; Bassem El-Sabeh, T. 17 March 2015, p. 87; Ali Hamade, T. 13 April 2015, pp 8, 14, T. 14 April 2015, p. 3; Hani Hammoud, T. 19 May 2015, pp 24-25; Jamil El-Sayyed, T. 6 June 2018, p. 20.

⁷⁷³ Ali Hamade, T. 14 April 2015, pp 2-3.

⁷⁷⁴ Marwan Hamade, T. 18 November 2014, pp 6-7; Ali Hamade, T. 14 April 2015, p. 3; exhibit 5D129 (ISF report, 21 June 2005), pp 4-5, in which Major-General Ashraf Rifi, the ISF's General Chief, reports that a Syrian detainee in Baghdad had confessed to 'firing two rockets at the Future TV building on 15/06/2003'.

⁷⁷⁵ Ali Hamade, T. 13 April 2015, pp 8-10, 13, T. 14 April 2015, pp 7-8.

⁷⁷⁶ Exhibit 4D137 (Witness statement of Hani Hammoud), para. 33; Bassem El-Sabeh, T. 17 March 2015, p. 87; Ali Hamade, T. 13 April 2015, pp 9-10, T. 14 April 2015, p. 8. *See also* exhibit 5D129, pp 4-5.

⁷⁷⁷ Exhibit 4D137 (Witness statement of Hani Hammoud), para. 33; Hani Hammoud, T. 19 May 2015, pp 24-25.

⁷⁷⁸ Exhibit 4D137 (Witness statement of Hani Hammoud), paras 37, 39, 41.

⁷⁷⁹ Exhibit 5D129, pp 4-5; Ali Hamade, T. 14 April 2015, pp 3-4, 6, 9.

⁷⁸⁰ Ali Hamade, T. 14 April 2015, pp 19-24. *See also* exhibit 5D130, which is a report from Mr Azar, dated 24 June 2003, related to the attack on Future TV, referring the case to the Military Court, where he is described as the 'Intelligence Director' of the Lebanese Army Command. Mr Azar, like Mr El-Sayyed, was imprisoned without charge in Lebanon between 30 August 2005 and 29 April 2009, when his release was ordered by the Special Tribunal's Pre-Trial Judge. Order regarding the detention of four Generals.

⁷⁸¹ Jamil El-Sayyed, T. 6 June 2018, pp 20, 22.

⁷⁸² Exhibit 5D129.

9. Late December 2003: ‘Damascus Protocol’

512. The Trial Chamber heard evidence of a meeting between Mr Hariri and President Al-Assad in Damascus in December 2003. The evidence is hearsay as no one who was present at it testified. According to witnesses who heard about it, Mr Hariri met President Al-Assad in the presence of three Syrian intelligence generals, Mr Kanaan, Mr Ghazaleh and Mr Mohammed Khallouf.⁷⁸³ The meeting concerned the relationship between Lebanon and Syria, as well as Syrian concerns with *An-Nahar* newspaper, of which Mr Hariri was a 34.57 per cent shareholder.⁷⁸⁴

513. The Syrians imparted to Mr Hariri several messages and commands, which came to be known as the ‘Damascus Protocol’.⁷⁸⁵ The Syrians accused Mr Hariri of conspiring against the Syrian regime⁷⁸⁶ and informed him that Syria would decide the next president of Lebanon.⁷⁸⁷ They prohibited Mr Hariri from contradicting President Lahoud,⁷⁸⁸ holding public gatherings including at his residence or attending Friday prayers in public places.⁷⁸⁹ According to Mr Jumblatt, Mr Al-Assad told Mr Hariri—referring to Lebanon—‘I am the one who rules here. No one rules other than me’.⁷⁹⁰

514. The Syrians believed that the *An-Nahar* newspaper was inciting the Lebanese to oppose the Syrian regime.⁷⁹¹ They ordered Mr Hariri to sell his shares in the newspaper⁷⁹² and to remove

⁷⁸³ Marwan Hamade, T. 18 November 2014, pp 38-40, 52-54; Ghaleb Ahmad El-Chammaa, T. 10 February 2015, pp 31-33, 38, T. 12 February 2015, pp 33, 35-38; Bassem El-Sabeh, T. 16 March 2015, pp 23-27; Fouad Siniora, T. 23 March 2015, pp 49-51; Walid Jumblatt, T. 4 May 2015, pp 58-59; exhibit 4D137 (Witness statement of Hani Hammoud), para. 23; Hani Hammoud, T. 19 May 2015, pp 26-27. According to exhibit 5D128, the Syrian government described Mr Khallouf as a Staff Brigadier General who was appointed to head the Beirut section of the Syrian military intelligence in Lebanon on 1 November 2002 and remained in the post until 26 April 2005 when the Syrian troops withdrew from Lebanon. Exhibit 5D128, pp 8, 10.

⁷⁸⁴ Exhibit P308 (Agreement of sale of shares, 26 December 2003); Marwan Hamade, T. 18 November 2014, pp 34-36.

⁷⁸⁵ Exhibit 4D137 (Witness statement of Hani Hammoud), para. 27; Hani Hammoud, T. 20 May 2015, pp 32-33.

⁷⁸⁶ Exhibit 4D137 (Witness statement of Hani Hammoud), para. 23; Hani Hammoud, T. 19 May 2015, pp 26-27.

⁷⁸⁷ Ghaleb Ahmad El-Chammaa, T. 10 February 2015, pp 31-32, 34-35, 38-39, T. 12 February 2015, p. 33; Bassem El-Sabeh, T. 16 March 2015, pp 26-27, 31-32.

⁷⁸⁸ Marwan Hamade, T. 18 November 2014, pp 48-49, 55, 59; Hani Hammoud, T. 19 May 2015, pp 28-29.

⁷⁸⁹ Exhibit 4D137 (Witness statement of Hani Hammoud), para. 27; Hani Hammoud, T. 20 May 2015, pp 32-33, T. 21 May 2015, p. 31.

⁷⁹⁰ Walid Jumblatt, T. 4 May 2015, p. 59.

⁷⁹¹ Marwan Hamade, T. 18 November 2014, pp 26, 29-30, 37; Ghaleb Ahmad El-Chammaa, T. 10 February 2015, pp 32, 35; Bassem El-Sabeh, T. 16 March 2015, p. 25; exhibit 4D137 (Witness statement of Hani Hammoud), para. 27; Hani Hammoud, T. 19 May 2015, pp 28-29.

⁷⁹² Marwan Hamade, T. 18 November 2014, pp 27-32, 39-40, 42-43; Ghaleb Ahmad El-Chammaa, T. 10 February 2015, pp 32, 35; Bassem El-Sabeh, T. 16 March 2015, p. 25; Walid Jumblatt, T. 4 May 2015, pp 59-60; Hani Hammoud, T. 19 May 2015, pp 28-29.

his people from the board of directors.⁷⁹³ He was to provide a copy of the shares' sale contract to Mr Ghazaleh.⁷⁹⁴ Mr Hariri told Mr Hamade that President Al-Assad was disturbed by Mr Ghassan Tueini's editorials and Mr Samir Kassir's and Mr Gebran Tueini's 'writings' and considered 'that in the final analysis, Mr Hariri was comforting financially an independent media which was not in the liking of the Syrian government and system.'⁷⁹⁵

515. Mr Hariri described the tone of the meeting to his political collaborators as harsh and admonishing,⁷⁹⁶ and considered as unusual and surprising the presence of the security officials at such a meeting.⁷⁹⁷ Mr Hariri felt that he had been threatened, and he was upset and humiliated.⁷⁹⁸ When he left the meeting, he was so distressed that he hit his head on the front car window and bloodied his nose.⁷⁹⁹ Mr Hamade testified that Mr Hariri and Mr Yahya Al-Arab (also known as Abu Tarek)—who was the supervisor of Mr Hariri's close protection security team⁸⁰⁰—told him about this the same day.⁸⁰¹

516. Mr Hariri believed that President Al-Assad's intention was to bankrupt *An-Nahar*.⁸⁰² He devised a solution to buy time until tensions de-escalated: he would sell his stake in *An-Nahar* to Mr Gebran Tueini, who was the editor-in-chief,⁸⁰³ for USD 18 million to be paid in three instalments—the first due 30 June 2005, after the next elections.⁸⁰⁴ The agreement also stipulated

⁷⁹³ Marwan Hamade, T. 18 November 2014, p. 27.

⁷⁹⁴ Marwan Hamade, T. 18 November 2014, pp 41-42, 56.

⁷⁹⁵ Marwan Hamade, T. 18 November 2014, p. 37.

⁷⁹⁶ Marwan Hamade, T. 18 November 2014, p. 58; Ghaleb Ahmad El-Chammaa, T. 10 February 2015, pp 31-32; Bassem El-Sabeh, T. 16 March 2015, p. 24; Walid Jumblatt, T. 4 May 2015, p. 60.

⁷⁹⁷ Marwan Hamade, T. 18 November 2014, pp 55-56; Ghaleb Ahmad El-Chammaa, T. 10 February 2015, pp 36-37, 39; Bassem El-Sabeh, T. 16 March 2015, pp 24, 27.

⁷⁹⁸ Marwan Hamade, T. 18 November 2014, pp 48, 55; Ghaleb Ahmad El-Chammaa, T. 10 February 2015, pp 32, 38-39, 42, T. 11 February 2015, p. 20; Bassem El-Sabeh, T. 16 March 2015, pp 24, 27-28; Walid Jumblatt, T. 4 May 2015, p. 60; Fouad Siniora, T. 23 March 2015, pp 49-50; exhibit 4D137 (Witness statement of Hani Hammoud), para. 23; Hani Hammoud, T. 19 May 2015, pp 26-27.

⁷⁹⁹ Marwan Hamade, T. 18 November 2014, pp 49-53, 58.

⁸⁰⁰ Witness PRH076, 14 October 2014, p. 12; Witness PRH101, T. 5 October 2016, p. 30. Mr Al-Arab, with Mr Talal Nasser, decided on the composition of Mr Hariri's convoys, exhibit P335 (Zakaria Badawi's witness statement), para. 12. A (ERNs 60295782-60295783); exhibit P336 (Statement of Tarek Soubra), paras 58, 68 (ERNs 60295679-6025680, 60295683). His daughter thought that he was the chief of security. Exhibit P726 (Statement of Alia Al-Arab), para. 9.

⁸⁰¹ Marwan Hamade, T. 18 November 2014, pp 49-51.

⁸⁰² Marwan Hamade, T. 18 November 2014, pp 38, 45.

⁸⁰³ Marwan Hamade, T. 18 November 2014, p. 29.

⁸⁰⁴ Exhibit P308; Marwan Hamade, T. 18 November 2014, pp 32-38, 45-46; Ghaleb Ahmad El-Chammaa, T. 10 February 2015, p. 40.

that its directors, Mr Bassil Yared,⁸⁰⁵ Mr Antoine Andraos⁸⁰⁶ and Mr Aref Mneinmeh would submit their resignations from the board by 2 January 2004.⁸⁰⁷ Mr Hariri sent a message to Mr Ghazaleh that the arrangement was made to allow *An-Nahar* time to find a purchaser.⁸⁰⁸ He believed that President Al-Assad was unhappy with the arrangement.⁸⁰⁹

517. Those close to Mr Hariri considered this incident as a major turning point and the beginning of the rupture between Mr Hariri and the Syrian regime.⁸¹⁰ Mr Hamade considered that it was an attempt to diminish Mr Hariri's influence and power 'and weaken him as well as his allies, his political and media allies' and to undermine a major independent and Christian newspaper that had allies in the Muslim community.⁸¹¹

518. On the other hand, Mr El-Sayyed testified that the meeting did not occur in this manner. Mr El-Sayyed was of the view that by virtue of his position he would have known had the meeting occurred. Mr Wissam Al-Hassan visited him frequently and always communicated what was happening between the Syrians and Mr Hariri, and had this happened, Mr Al-Hassan would have told him as 'he never hid any information' from him.⁸¹²

519. Mr El-Sayyed provided another interpretation of the relationship between *An-Nahar* and Syria. He stated that Mr Gebran Tueini, the co-owner of *An-Nahar*, came to visit him in 2001 or 2002 seeking his assistance to prevent Mr Hariri from increasing his share, which was either 30 or 33 per cent. Mr El-Sayyed intervened and had an unnamed 'friend' provide a cheque for one million US dollars, which prevented Mr Hariri from acquiring the majority of the shares in the

⁸⁰⁵ He is a lawyer who was described as having been close to Mr Hariri. Marwan Hamade, T. 18 November 2014, p. 47. The visitor logbook for Quraitem Palace, dated 2 January 2004 to 14 February 2005, also includes numerous visits by Mr Yared. *See generally*, exhibit P301 (Visitor logbook for Quraitem Palace).

⁸⁰⁶ Mr Andraos was an MP who opposed the Lahoud extension. Marwan Hamade, T. 18 November 2014, p. 47; exhibit P406 (*An-Nahar* article, 4 September 2004), p. 2. Mr El-Sabeh described him as under Mr Hariri's political umbrella (Bassem El-Sabeh, T. 16 March 2015, p. 49) and Mr Marwan Hamade described him as Mr Hariri's close associate (Marwan Hamade, T. 8 December 2014, p. 79). He also participated in the three Bristol Group meetings, Bassem El-Sabeh, T. 16 March 2015, pp 55, 62 on the first and second Bristol Group meetings, respectively; Ghattas El-Khoury, T. 16 January 2015, p. 10, on the third Bristol Group meeting.

⁸⁰⁷ Exhibit P308, p. 6; Marwan Hamade, T. 18 November 2014, pp 46-47.

⁸⁰⁸ Marwan Hamade, T. 18 November 2014, pp 40-42.

⁸⁰⁹ Marwan Hamade, T. 18 November 2014, p. 42; Ghaleb Ahmad El-Chammaa, T. 10 February 2015, pp 40-41.

⁸¹⁰ Marwan Hamade, T. 18 November 2014, p. 48; Ghaleb Ahmad El-Chammaa, T. 10 February 2015, p. 31.

⁸¹¹ Marwan Hamade, T. 18 November 2014, p. 45.

⁸¹² Jamil El-Sayyed, T. 6 June 2018, p. 37.

newspaper. Mr Tueini was an opponent of Syria and Mr El-Sayyed made this strategic intervention in an attempt to contain his animosity towards Syria.⁸¹³

520. In Mr El-Sayyed's view, Syria's interest was served by Mr Hariri remaining as a shareholder, as Mr Hariri was not anti-Syrian and he 'wasn't bothering us by being in *An-Nahar*, but Gebran Tueini was bothering us, so he came to us for help and we helped him', and it would therefore have been a mistake for Mr Hariri to leave the newspaper.⁸¹⁴

521. The Trial Chamber understands the strength of Mr El-Sayyed's argument that because of his powerful position in Lebanese politics that he should have known about the meeting had it occurred in the manner described. It also accepts the logic of his intervention in 2001 or 2002 when Mr Tueini apparently sought his assistance. However, the two events are distinct and separated by a period of maybe two years during which there were a number of political developments that may have altered the Syrian perspective in relation to *An-Nahar*.

522. In addition, Mr Al-Hassan worked for Mr Hariri and the Trial Chamber has received no credible evidence suggesting that Mr Al-Hassan informed Mr El-Sayyed of everything, including such a meeting. Thus, in the Trial Chamber's view, it is equally consistent—despite Mr El-Sayyed's seeming insistence that Mr Al-Hassan told him everything—that Mr Al-Hassan did not, if he was aware of the meeting, inform Mr El-Sayyed about it. And Mr El-Sayyed conceded that Mr Al-Hassan was not obliged to share any other conversation that he did not want to share with him.⁸¹⁵ The mere fact that Mr El-Sayyed was unaware of a meeting does not transform it into a non-event. Further, the Trial Chamber has received the evidence of the agreement for the sale of shares, which corroborates the thrust of the witness testimony.

523. The evidence of those who heard about the meeting is generally consistent and its content matches other evidence about the methodology employed to ensure Lebanon's compliance with Syria's wishes. The Trial Chamber, however, does not have to make any legal or factual findings about whether the meeting occurred in the manner described.

⁸¹³ Jamil El-Sayyed, T. 6 June 2018, pp 27-33.

⁸¹⁴ Jamil El-Sayyed, T. 6 June 2018, p. 34.

⁸¹⁵ Jamil El-Sayyed, T. 6 June 2018, p. 82.

10. Syrian intelligence role in Lebanese political affairs in 2004

524. The Trial Chamber also heard evidence of the role of Syrian intelligence in ‘managing’ Lebanese political affairs, including what could be seen to be micro-managing candidates for Parliament. For example, Mr Atef Majdalani testified that in May 2004, Mr Ghazaleh even attempted to impose an electoral list on Mr Hariri for the Beirut municipal elections and threatened him before the two reached a compromise.⁸¹⁶ Following his discussion with Mr Ghazaleh, Mr Hariri told Mr Majdalani that there would be a strong battle, meaning ‘Hariri versus Ghazaleh’, for the upcoming elections.⁸¹⁷

E. President Lahoud’s mandate extension

525. President Lahoud’s term should have ended in 2004, with no possibility of renewal according to the Lebanese Constitution—a fact that the Trial Chamber took judicial notice of⁸¹⁸—as Article 49 mandates that a presidential term is of six years.⁸¹⁹ The first UNIIIC report stated that ‘during 2004, certain voices in Lebanon suggested amending the Constitution in order to extend the term of Mr Lahoud’. The Lebanese electorate was divided on the issue, and there were debates in the media about the potential extension.⁸²⁰

526. The relationship between Mr Hariri and President Lahoud was very poor throughout this period.⁸²¹ Tensions ran high, and according to Mr El-Sayyed, the Syrian regime repeatedly instructed both men to calm the situation, particularly when Security Council resolution 1559 was under discussion,⁸²² which would have been around August 2004.

⁸¹⁶ Atef Majdalani, T. 28 April 2015, pp 52-54, T. 29 April 2015, p. 6.

⁸¹⁷ Atef Majdalani, T. 29 April 2015, p. 6.

⁸¹⁸ Judicial notice facts, no. 3.

⁸¹⁹ Exhibit P305 (Lebanese Constitution), Article 49 provides relevantly, that ‘The President of the Republic shall be elected by secret ballot and by a two thirds majority of the Chamber of Deputies. After a first ballot, an absolute majority shall be sufficient. The President’s term is six years. He may not be re-elected until six years after the expiration of his last mandate. No one may be elected to the Presidency of the Republic unless he fulfils the conditions of eligibility for the Chamber of Deputies’.

⁸²⁰ Ali Hamade T. 13 April 2015, p. 6; Jamil El-Sayyed, T. 6 June 2018, pp 23, 41.

⁸²¹ Marwan Hamade, T. 18 November 2014, pp 71-72.

⁸²² Jamil El-Sayyed, T. 6 June 2018, pp 23, 41, 43-44.

527. Mr Hariri opposed Mr Lahoud's extension, and—by early summer of 2004—he was optimistic of working with Syria to find a suitable candidate to replace the president.⁸²³ Mr Hariri reached agreements with Mr Jumblatt and Mr Gebran Tueini, a prominent Qornet-Chehwan Gathering member, to oppose the extension.⁸²⁴

528. Mr Hariri publicly stated that he opposed the amendment, including saying in June 2004 that he would cut off his hand rather than sign a decree to extend the mandate.⁸²⁵

529. From 14 July 2004, Future TV aired—with Mr Hariri's approval—a programme featuring potential candidates to replace President Lahoud.⁸²⁶ In early 2004, the journalist Mr Ali Hamade had presented an idea to Mr Hariri for a political program that would convey to the Syrians that Mr Hariri had reactivated his political tools to oppose the extension.⁸²⁷ In Mr Hamade's view, by doing this, Mr Hariri was officially declaring his opposition to the extension. He explained that there were two phases, the first from 14 July until early September 2004, 'during which we invited as many potential candidates to the election'. The idea was to show the public and the Syrians that there were capable people in the Maronite community, political personalities that could become president rather than Mr Lahoud. In the second phase, the program took a different shape and 'became a political fight against Syrian tutelage'.⁸²⁸

530. Likewise in July 2004, Mr Atef Majdalani, an MP allied with Mr Hariri, appeared on Lebanese TV and expressed his opposition to the extension. This prompted pro-Syrian MP Mr Adnan Arakji to visit Mr Hariri and demand an explanation.⁸²⁹

531. According to Mr Siniora, Syria initially appeared open to President Lahoud's replacement as president,⁸³⁰ and President Al-Assad met some potential candidates.⁸³¹ Mr El-Sayyed testified that in mid-2004, President Al-Assad stated publicly that all of the potential replacement

⁸²³ Marwan Hamade, T. 18 November 2014, pp 67-70, 83, T. 19 November 2014, p. 25; Ghazi El-Youssef, T. 10 March 2015, p. 57; Bassem El-Sabeh, T. 16 March 2015, pp 32-33; Ali Hamade, T. 13 April 2015, pp 6, 30; Atef Majdalani, T. 28 April 2015, pp 9, 44; Jamil El-Sayyed, T. 6 June 2018, pp 39, 41, 64.

⁸²⁴ Ali Hamade, T. 13 April 2015, pp 30-34; Walid Jumblatt, T. 4 May 2015, pp 61-63.

⁸²⁵ Marwan Hamade, T. 18 November 2014, p. 73; Ghaleb Ahmad El-Chammaa, T. 10 February 2015, p. 53.

⁸²⁶ Ali Hamade, T. 13 April 2015, pp 5-6, 8-9, 11-12, 14-17.

⁸²⁷ Ali Hamade, T. 13 April 2015, p. 8.

⁸²⁸ Ali Hamade, T. 13 April 2015, p. 12.

⁸²⁹ Atef Majdalani, T. 28 April 2015, pp 28-32.

⁸³⁰ Ghattas El-Khoury, T. 15 January 2015, pp 62-64; Fouad Siniora, T. 23 March 2015, pp 54, 56.

⁸³¹ Ghattas El-Khoury, T. 15 January 2015, pp 60-64.

candidates were friends of Syria.⁸³² However, at some point in 2004—Mr El-Youssef says it was mid-to late-July 2004—it became apparent that Syria would support the mandate extension.⁸³³ According to Mr Majdalani, MP Mr Nasser Kandil—who was known as a ‘Syrian deposit’—told him that President Al-Assad wanted Mr Hariri’s bloc to vote for the extension and that any votes against the extension would be taken as insults to the Syrian regime.⁸³⁴

532. On 22 August 2004, Patriarch Sfeir publicly condemned President Al-Assad’s meddling in Lebanese affairs, warning that ‘amending the constitution in order to pave the ground for the extension or renewal of President Emile Lahoud’s mandate ... would wipe out and eliminate the small democracy that Lebanon still enjoyed’.⁸³⁵ The Qornet-Chehwan Gathering was also outspoken in its opposition to the extension.⁸³⁶

533. On 24 August 2004, President Lahoud formally announced that he was seeking to renew his mandate as president.⁸³⁷ Patriarch Sfeir responded by saying that ‘I will cling to my firm position against amending the constitution and I will keep my voice loud’ and strongly denounced ‘Syria’s interference in the presidential elections’.⁸³⁸ Mr Hani Hammoud testified that Mr Hariri conveyed to him the position of Mr Ghazaleh as having been, ‘Hajj, stop dealing with this. This is a decision issued by President Bashar Assad’.⁸³⁹ This was before the meeting with Mr Al-Assad on 26 August 2004—as described immediately below.

1. Meeting between President Al-Assad and Mr Hariri in Damascus, 26 August 2004

534. On 25 August 2004, Mr Ghazaleh separately met Mr Hariri, Mr Jumblatt⁸⁴⁰ and the Parliamentary Speaker, Mr Nabih Berri—the leader of the Shia Amal Movement—concerning

⁸³² Jamil El-Sayyed, T. 6 June 2018, pp 41-44.

⁸³³ Ghattas El-Khoury, T. 15 January 2015, pp 64-65; Ghazi El-Youssef, T. 10 March 2015, pp 57-58.

⁸³⁴ Atef Majdalani, T. 28 April 2015, p. 32.

⁸³⁵ Exhibit P364 (UNIC Beirut press review, 23 August 2004), p. 6. The press review described the intervention as the Patriarch having ‘detonated a political bomb’.

⁸³⁶ Exhibit P364, p. 6: ‘other opponents of the renewal/extension option were outspoken over the weekend, including the Christian broad-based opposition Qornet-Shahwan Gathering, which met Patriarch Sfeir on Saturday’.

⁸³⁷ Exhibit P532 (UNIC Beirut press review, 25 August 2004), pp 7-8, describing the announcement as a ‘political bomb’ and that Mr Hariri was a ‘staunch opponent of the renewal/extension option’.

⁸³⁸ Exhibit P532, p. 8, reporting the Patriarch’s comments to *An-Nahar*.

⁸³⁹ Hani Hammoud, T. 19 May 2015, pp 31, 35-36. Mr Wissam Al-Hassan had first told him this, then Mr Hariri did.

⁸⁴⁰ Walid Jumblatt, T. 4 May 2015, pp 64, 68-70.

Mr Hariri meeting President Al-Assad the next day in Damascus to discuss Mr Lahoud's mandate extension.⁸⁴¹

535. Mr Ghazaleh went to Mr Jumblatt's house, but Mr Jumblatt told him that he would not approve an extension of Mr Lahoud's term. During the meeting, Mr Ghazaleh asked him 'are you with us or against us?' referring to Syria.⁸⁴² That night, Mr Ghazi Aridi called him and told him that Mr Ghazaleh had cancelled his invitation to the meeting.⁸⁴³ Mr Hariri, however, agreed with Mr Ghazaleh to discuss the matter with President Al-Assad without committing to supporting the extension.⁸⁴⁴ Witnesses testified that Mr Hariri hoped to persuade President Al-Assad to change his mind.⁸⁴⁵

536. Mr Hariri's meeting with Mr Ghazaleh on 25 August 2004 was audio-recorded.⁸⁴⁶ In the meeting, Mr Ghazaleh told Mr Hariri that Mr Al-Assad wanted to see him the following day.⁸⁴⁷ Mr Ghazaleh suggested that Mr Al-Assad could raise the matter of Mr Lahoud's mandate extension.⁸⁴⁸ During the meeting, he repeatedly pushed Mr Hariri to state his position on the mandate extension but Mr Hariri parried these attempts, insisting that he speak to Mr Al-Assad personally about this issue.⁸⁴⁹

537. The following day, 26 August 2004, Mr Hariri drove to Damascus to meet President Al-Assad. The meeting occurred in the presence of Syrian security officials.⁸⁵⁰

⁸⁴¹ Exhibit P301 (Visitor logbook for Quraitem Palace), p. 199; Marwan Hamade, T. 18 November 2014, pp 77-79, 81; Walid Jumblatt, T. 4 May 2015, pp 64, 66, 73-74; Jamil El-Sayyed, T. 6 June 2018, pp 75-77.

⁸⁴² Walid Jumblatt, T. 4 May 2015, pp 64-66, 79.

⁸⁴³ Marwan Hamade, T. 18 November 2014, pp 80-81; Walid Jumblatt, T. 4 May 2015, pp 64-66; Jamil El-Sayyed, T. 6 June 2018, p. 88.

⁸⁴⁴ Marwan Hamade, T. 18 November 2014, pp 79-80; exhibit P422.1, pp 6, 11-12, recording a meeting on 25 August 2004; Walid Jumblatt, T. 4 May 2015, p. 74.

⁸⁴⁵ Marwan Hamade, T. 18 November 2014, p. 87, T. 19 November 2014, pp 4-5; Ghaleb Ahmad El-Chammaa, T. 10 February 2015, p. 53; Ghazi El-Youssef, T. 10 March 2015, pp 58-59; Hani Hammoud, T. 19 May 2015, pp 36-39.

⁸⁴⁶ Exhibit P422.1, pp 6, 11-12. *See also* Prosecution submissions, T. 4 May 2015, pp 80-81, noting that Mr Wissam Al-Hassan had provided it to UNHCR. Mr Jumblatt identified the voices on the tape as Mr Hariri's and Mr Ghazaleh's. Portions of the tape were played in court during Mr Jumblatt's testimony. Walid Jumblatt, T. 4 May 2015, pp 69-81.

⁸⁴⁷ Exhibit P422.1, pp 3-4.

⁸⁴⁸ Exhibit P422.1, p. 6.

⁸⁴⁹ Exhibit P422.1, pp 11-13, 17-18. "[Ghazaleh]: Forget the joking, in your opinion should it be an amendment for one term, or two, regardless. [Hariri]: Twelve, twelve ... [Ghazaleh]: Really now, without joking ... [Hariri]: I swear twelve, we will make it twelve. You will not find someone like him. [Ghazaleh]: (laughs) ... [Hariri]: And you, what do you want? Twelve or eighteen? [Ghazaleh]: No I want either three or five, either three or five. [Hariri]: (laughs)."

⁸⁵⁰ Marwan Hamade, T. 19 November 2014, pp 10-11; exhibit P1107 (Statement of Witness PRH045, 12 August 2010), para. 44; Hani Hammoud, T. 19 May 2015, pp 36-39; Salim Diab, T. 22 January 2015, pp 32-35; Ghazi El-Youssef, T. 10 March 2015, pp 58-59; Ghaleb Ahmad El-Chammaa, T. 10 February 2015, pp 50-51.

538. No one present at the meeting provided evidence to the Trial Chamber. But according to witnesses Mr Hariri spoke to or others they informed, President Al-Assad instructed Mr Hariri to support Mr Lahoud's extension, stating that Syria alone could choose the president of Lebanon.⁸⁵¹ The tone of the meeting was described as harsh.⁸⁵²

539. According to these witnesses, President Al-Assad told Mr Hariri that should Mr Hariri contradict the will of the Syrian regime he would 'break Lebanon over Hariri's head'. Mr Siniora said that he and Mr Fuleihan lunched with Mr Hariri at his Faqra Villa just after his return from Damascus and he told them that Mr Al-Assad had said, 'You are going to approve the extension, otherwise I will break Lebanon over your head'. Mr Siniora described Mr Hariri as looking very distressed, and that 'he was very glum and we could see in his eyes a mixture of anger, suffering, and the feeling of humiliation'.⁸⁵³

540. Mr Siniora said that Mr Hariri had repeatedly said to him that these were the words used by Mr Al-Assad.⁸⁵⁴ Mr Hariri understood this as a threat⁸⁵⁵ and, according to Mr Hamade, one 'extremely dangerous' to both Mr Hariri and Mr Jumblatt.⁸⁵⁶ Mr Hamade testified that Mr Hariri told him that Mr Al-Assad had said, 'I will destroy Lebanon over yours and Walid Jumblatt's head if you believe that you can impose a president of the republic and if you think that you can fulfil the wishes of the United States'.⁸⁵⁷ Mr Diab—Mr Hariri's 2005 election campaign manager—testified that Mr Hariri had told him that Mr Al-Assad 'told him that he would break Lebanon over his head if he did not accept what he has offered him', and that having heard this, Mr Hariri had made the decision to run candidates all over Lebanon in the election.⁸⁵⁸

⁸⁵¹ Marwan Hamade, T. 19 November 2014, pp 4-5, T. 8 December 2014, p. 6; Ghattas El-Khoury, T. 15 January 2015, p. 20; Ghaleb Ahmad El-Chammaa, T. 10 February 2015, pp 52-54; Hani Hammoud, T. 19 May 2015, pp 36-39; Jamil El-Sayyed, T. 6 June 2018, pp 71-72.

⁸⁵² Marwan Hamade, T. 19 November 2014, pp 7-8; Ghattas El-Khoury, T. 15 January 2015, pp 20, 37; Ghaleb Ahmad El-Chammaa, T. 10 February 2015, pp 50, 53-54.

⁸⁵³ Fouad Siniora, T. 23 March 2015, pp 57-58.

⁸⁵⁴ Fouad Siniora, T. 28 May 2015, p. 44.

⁸⁵⁵ Marwan Hamade, T. 19 November 2014, pp 7-8, 14-15, 22-23; Ghaleb Ahmad El-Chammaa, T. 10 February 2015, p. 53; exhibit P1107 (Statement of Witness PRH045, 12 August 2010), para. 44; Hani Hammoud, T. 19 May 2015, pp 36-38, T. 21 May 2015, pp 45-46.

⁸⁵⁶ Marwan Hamade, T. 19 November 2014, pp 7-8, 21. Mr Hariri had told him that Mr Al-Assad had said, 'if you do not abide, we will destroy Lebanon on your head and on Walid's head'.

⁸⁵⁷ Marwan Hamade, T. 19 November 2014, pp 6-7.

⁸⁵⁸ Salim Diab, T. 22 January 2015, pp 32-35.

541. According to those Mr Hariri spoke to, the meeting lasted less than 15 minutes, and Mr Hariri was not permitted to sit and was hardly given an opportunity to respond.⁸⁵⁹ Mr Hariri was upset and humiliated by the meeting,⁸⁶⁰ and afterwards drove to Mr Jumblatt's residence, where he met Mr Jumblatt, Mr El-Aridi, Mr El-Sabeh and Mr Hamade.⁸⁶¹ The group were 'all surprised' by Mr Hariri's appearance.⁸⁶² Mr Hamade testified that Mr Hariri was 'very upset' and 'sweating in the face.'⁸⁶³ Mr Jumblatt described Mr Hariri as having a 'strange' demeanour.⁸⁶⁴

542. Upon hearing of the meeting, Mr Jumblatt advised that Mr Hariri and his bloc should support the extension—while Mr Jumblatt and his bloc continued to oppose it—and then Mr Hariri should resign and leave Lebanon,⁸⁶⁵ as Mr Hariri was at imminent risk.⁸⁶⁶ Mr Hariri then travelled to his residence in Faqra and met Mr Siniora and Mr Fuleihan—as described above—and both advised him to resign.⁸⁶⁷

543. Mr Jumblatt listened to the audio-recording of a meeting between Mr Hariri and the Syrian Deputy Foreign Minister, Mr Walid El-Moallem, of 1 February 2005, in which Mr Hariri described a ten to 15-minute meeting with Mr Al-Assad concerning Mr Lahoud's proposed extension, as 'the worst day of my life'. Mr Jumblatt was of the view that Mr Hariri was referring to that particular meeting.⁸⁶⁸

⁸⁵⁹ Marwan Hamade, T. 19 November 2014, pp 4-5; Ghattas El-Khoury, T. 15 January 2015, pp 36-37; Fouad Siniora, T. 23 March 2015, p. 58; Atef Majdalani, T. 28 April 2015, p. 34; Walid Jumblatt, T. 5 May 2015, p. 29.

⁸⁶⁰ Marwan Hamade, T. 19 November 2014, pp 4, 6; Ghattas El-Khoury, T. 15 January 2015, pp 21, 37; Salim Diab, T. 22 January 2015, p. 32; Ghaleb Ahmad El-Chammaa, T. 10 February 2015, pp 51-52, 56; Hani Hammoud, T. 19 May 2015, pp 36-39.

⁸⁶¹ Marwan Hamade, T. 19 November 2014, pp 3, 28; Bassem El-Sabeh, T. 16 March 2015, pp 37-38; Walid Jumblatt, T. 4 May 2015, p. 82.

⁸⁶² Bassem El-Sabeh, T. 16 March 2015, pp 37-38.

⁸⁶³ Marwan Hamade, T. 19 November 2014, p. 4.

⁸⁶⁴ Walid Jumblatt, T. 4 May 2015, p. 82.

⁸⁶⁵ Marwan Hamade, T. 19 November 2014, pp 8-10, 25-26; Bassem El-Sabeh, T. 16 March 2015, p. 40; Walid Jumblatt, T. 4 May 2015, pp 82-88.

⁸⁶⁶ Marwan Hamade, T. 19 November 2014, pp 8-10, 26-27; Bassem El-Sabeh, T. 16 March 2015, p. 40; Walid Jumblatt, T. 4 May 2015, pp 83-88, T. 5 May 2015, p. 29.

⁸⁶⁷ Marwan Hamade, T. 19 November 2014, pp 21, 23; Ghattas El-Khoury, T. 15 January 2015, pp 20-22; Bassem El-Sabeh, T. 16 March 2015, pp 46-47; Atef Majdalani, T. 30 April 2015, p. 21; Walid Jumblatt, T. 4 May 2015, p. 87.

⁸⁶⁸ Exhibit P409 (Audio-recorded conversation between Mr Hariri and Mr Walid Moallem, 1 February 2005); exhibit P409.1 (Transcript of audio-recorded conversation between Mr Hariri and Mr Walid Moallem, 1 February 2005), ERN 4000843A_Side B_U_EN, p. 1; Walid Jumblatt, T. 6 May 2015, pp 58-62.

544. Mr El-Sayyed, on the other hand, strongly disputed that the meeting occurred in the manner described. When testifying he was adamant that because of his position in Lebanon at the time he would have known about it.⁸⁶⁹ Moreover, Mr Al-Assad would not have behaved in that manner.⁸⁷⁰

545. Mr El-Sayyed was of the view that the meeting did not occur as described above for a number of reasons. These included that he would have known about it, Mr Wissam Al-Hassan would have told him, it was never discussed at the Lebanese or Syrian level, it was not reported in the media at the time and no one ever mentioned it to him, including Mr Jumblatt, Mr Ghazaleh or Mr Hariri's friends.⁸⁷¹ His only knowledge of the meeting was that he knew that it occurred on that day and Mr Ghazaleh had told him before that its purpose was for Mr Al-Assad to ask Mr Hariri to proceed with Mr Lahoud's extension.⁸⁷² Mr El-Sayyed also said that Syrian officers never attended meetings between Mr Al-Assad and other dignitaries and he (Mr Al-Assad) 'would not invite the officers into a meeting and then insult Prime Minister Hariri during that meeting'.⁸⁷³

546. Mr El-Sayyed explained how Mr Hariri used to communicate with the Syrian government through Mr Al-Assad's aides.⁸⁷⁴ Mr El-Sayyed also stated Mr Hariri became 'more open' to liaising with him after Mr Hariri resigned. Mr Hariri used to communicate with him through two 'liaison officers', journalists Mr Mohammed Chukr from *Al Khayat* newspaper and Mr Faisal Salman. Mr Hariri also used to summon Mr El-Sayyed to visit him at home.⁸⁷⁵

547. The Trial Chamber has thus considered Mr El-Sayyed's evidence about his own role in Lebanese politics during Mr Lahoud's presidency, which included regular meetings and contacts with all key political players including the president, Mr Hariri, Mr Jumblatt and Mr Nasrallah, in which he said he discussed 'very important policies relating to the country'.⁸⁷⁶

548. Given Mr El-Sayyed's role at the time, his assertion does have some strength. However, the Trial Chamber has balanced the evidence of those who heard about the meeting from Mr Hariri

⁸⁶⁹ Jamil El-Sayyed, T. 6 June 2018, pp 70-73. Mr El-Sayyed said that 'For sure this did not happen. Otherwise, I would have known about it.'

⁸⁷⁰ Jamil El-Sayyed, T. 6 June 2018, p. 73.

⁸⁷¹ Jamil El-Sayyed, T. 6 June 2018, pp 70-71.

⁸⁷² Jamil El-Sayyed, T. 6 June 2018, pp 76-79.

⁸⁷³ Jamil El-Sayyed, T. 6 June 2018, p. 85.

⁸⁷⁴ Jamil El-Sayyed, T. 5 June 2018, p. 33.

⁸⁷⁵ Jamil El-Sayyed, T. 5 June 2018, p. 54.

⁸⁷⁶ Jamil El-Sayyed, T. 5 June 2018, p. 105.

himself—and immediately afterwards—against Mr El-Sayyed’s negative assertion that he would have had to have known about it and is of the view that this of itself does not displace the positive evidence of what happened at the meeting.

549. Having heard only hearsay evidence about what happened at the meeting, the Trial Chamber cannot make any positive findings about what actually occurred. However, it notes that the accounts that Mr Hariri is said to have given about what happened are consistent with other evidence regarding the role that Syria was then playing in Lebanese internal political and economic affairs. The Trial Chamber is satisfied that the meeting occurred, that its subject matter was Mr Lahoud’s mandate extension and that Mr Al-Assad informed Mr Hariri that he was going to have to accept that this was occurring.

2. 28 August 2004: Council of Ministers meeting

550. Mr Hariri did not support the extension of Mr Lahoud’s mandate. But ultimately, in order to avoid confrontation with Syria, he opted to support and facilitate it.⁸⁷⁷ On 28 August 2004, he initiated the process of amending the Lebanese Constitution to allow this by convening a meeting of his Council of Ministers.⁸⁷⁸

551. At the meeting, Mr Hariri made some perfunctory remarks⁸⁷⁹ during what was a ten-minute session,⁸⁸⁰ and the Council voted to refer the matter to the Lebanese Parliament.⁸⁸¹ The vote was 25 to four with Mr Hamade, Mr Aridi and Mr Farhat—all members of the Democratic Gathering—and Mr Fares Boueiz opposing the extension.⁸⁸² The Foreign Minister, Mr Jean Obeid, was absent, which was understood to be an expression of his opposition, and Mr Siniora arrived very late after being convinced by Mr Hariri to attend as his absence could have been interpreted as Mr Hariri opposing the measure.⁸⁸³

⁸⁷⁷ Marwan Hamade, T. 19 November 2014, pp 35, 80-81; Fouad Siniora, T. 23 March 2015, p. 61; Mustafa Nasser, T. 15 April 2015, pp 58, 60; Walid Jumblatt, T. 5 May 2015, pp 28-29.

⁸⁷⁸ Exhibit P309 (*An-Nahar* article, 29 August 2004), pp 1-2; Ghazi El-Youssef, T. 10 March 2015, p. 60; Fouad Siniora, T. 26 March 2015, p. 28; Jamil El-Sayyed, T. 6 June 2018, p. 66.

⁸⁷⁹ Exhibit P309, p. 3; Marwan Hamade, T. 19 November 2014, pp 35-37.

⁸⁸⁰ Exhibit P309, p. 1; Marwan Hamade, T. 19 November 2014, pp 34-35.

⁸⁸¹ Marwan Hamade, T. 19 November 2014, p. 42.

⁸⁸² Exhibit P309, pp 2-3, which describes Mr Bouiez and Mr Obeid as being absent from the meeting; Marwan Hamade, T. 19 November 2014, pp 36, 39-42.

⁸⁸³ Marwan Hamade, T. 19 November 2014, pp 41-42; Fouad Siniora, T. 23 March 2015, pp 61-63.

552. It was understood that this vote was the result of Syria wanting to keep Mr Lahoud in his post. Mr Hamade and Mr El-Sabeh both described how, a few weeks before the vote, it had become commonly understood in the public eye—through the media—that Syria desired to maintain the Lahoud presidency.⁸⁸⁴ After the adoption of the draft amendment, according to a newspaper article on 29 August 2004, Mr Nasib Lahoud MP accused the Syrian leadership of being responsible for the ‘erroneous choice’, and another MP, Mr Fares Sa’id, described Syrian pressure as ‘disgraceful.’⁸⁸⁵ The UN Secretary-General also reported on 1 October 2004 that:

It was widely contended in Lebanon, and asserted by the co-sponsors of resolution 1559 (2004), that the extension of President Lahoud’s term in office was the result of a direct intervention by the Government of the Syrian Arab Republic. Ten members of the Chamber of Deputies have tabled a motion in the Chamber to abrogate the law extending President Lahoud’s term. Both the Lebanese and Syrian Governments have denied Syrian influence on the extension.⁸⁸⁶

553. According to a number of witnesses, Mr Hariri understood that, if he supported the constitutional amendment to extend Mr Lahoud’s term, Syria would give him a free hand to select several ministers in his government and would pressure Mr Lahoud to be cooperative with him.⁸⁸⁷

554. Following the vote, Mr Hariri travelled to Sardinia, where he fell ill due to hypotension. He also broke his arm and shoulder and was flown to Nice for treatment.⁸⁸⁸

3. 1 September 2004: Council of Maronite Bishops statement

555. On 1 September 2004, the Council of Maronite Bishops, led by Patriarch Sfeir, issued a strong statement in response to the constitutional amendment, accusing Syria of treating Lebanon like a Syrian province.⁸⁸⁹ The statement accused Syria of being responsible for everything that had happened in Lebanon since the Taif Agreement, saying of Syria that:

⁸⁸⁴ Marwan Hamade, T. 19 November 2014, pp 40-41; Bassem El-Sabeh, T. 16 March 2015, p. 45.

⁸⁸⁵ Exhibit P309, p. 4.

⁸⁸⁶ Exhibit P451 (Report of the UN Secretary-General pursuant to Security Council resolution 1559 (2004)), para. 27.

⁸⁸⁷ Ghattas El-Khoury, T. 15 January 2015, pp 75, 81, 93; Fouad Siniora, T. 23 March 2015, pp 63-66, T. 25 March 2015, pp 100-101, T. 26 March 2015, pp 3-4; Hani Hammoud, T. 19 May 2015, pp 61-63.

⁸⁸⁸ Marwan Hamade, T. 19 November 2014, pp 43-44; Fouad Siniora, T. 23 March 2015, pp 66-67, T. 25 March 2015, p. 94.

⁸⁸⁹ Exhibit P364 (UNIC Beirut press review, 2 September 2004), p. 3; Ghattas El-Khoury, T. 15 January 2015, pp 50-52; Bassem El-Sabeh, T. 16 March 2015, p. 46; Walid Jumblatt, T. 4 May 2015, pp 93-94.

it interferes in all Lebanese affairs, be it administration, judiciary, economy and especially politics through its representatives here and collaborators ... It compromises Lebanese interests at international forums, and protects the corrupt ... That is how the culture of bribes, perversion and corruption has flourished in Lebanon, while the Lebanese people are being impoverished and Lebanese youth are emigrating in big numbers.⁸⁹⁰

556. To some, this was viewed as an important turning point in relations between Lebanon and Syria.⁸⁹¹

4. 2 September 2004: Security Council resolution 1559

557. At the same time as the moves to extend President Lahoud's mandate, concurrent speculation was occurring in Lebanon that the UN Security Council was planning to pass a resolution condemning Syrian influence in Lebanon, and particularly in the presidential election.⁸⁹² In August 2004, a draft resolution was circulated and—in letters to the UN Secretary-General and the President of the Security Council dated 30 August 2004 and 1 September 2004—Lebanon and Syria, respectively, opposed the draft. Lebanon submitted that the 'presence of Syrian troops in Lebanon is linked to the Taif Treaty and other bilateral agreements' between Lebanon and Syria.⁸⁹³

558. According to Mr El-Sayyed, on 2 September 2004, Mr Al-Hassan visited him to pass on a message from Mr Hariri that he was prepared to form a government under Mr Lahoud in his extended term in office. Mr El-Sayyed passed the message on to Mr Lahoud and 'we found that this was comfortable, given the objection and the uproar in the country'.⁸⁹⁴

559. On 2 September 2004, the UN Security Council adopted resolution 1559 calling upon 'all remaining foreign forces to withdraw from Lebanon'. It expressed grave concern 'at the continued presence of armed militias in Lebanon, which prevent the Lebanese Government from exercising its full sovereignty over all Lebanese territory'. It called for 'the disbanding and disarmament of all Lebanese and non-Lebanese militias'. It declared 'its support for a free and fair electoral process

⁸⁹⁰ Exhibit P364, pp 3-4.

⁸⁹¹ Bassem El-Sabeh, T. 16 March 2015, p. 46.

⁸⁹² Marwan Hamade, T. 19 November 2014, p. 44; Walid Jumblatt, T. 4 May 2015, pp 91-92, T. 6 May 2015, p. 50.

⁸⁹³ Exhibit P310.2 (Letters dated 30 August 2004 from the Permanent Representative of Lebanon); exhibit P310.3 (Letters dated 1 September 2004 from the Permanent Representative of the Syrian Arab Republic); Marwan Hamade, T. 8 December 2014, pp 45-46.

⁸⁹⁴ Jamil El-Sayyed, T. 6 June 2018, p. 89.

in Lebanon's upcoming presidential elections conducted according to Lebanese constitutional rules devised without foreign interference or influence'.⁸⁹⁵

560. According to the witnesses, it was generally understood that 'foreign interference or influence' referred to Syrian attempts to extend President Lahoud's mandate, that 'foreign forces' referred to Syrian troops and that 'Lebanese and non-Lebanese militias' referred to Hezbollah and Palestinian militias.⁸⁹⁶

561. In addressing the Security Council, the US Permanent Representative to the UN said that Syrian actions over the preceding week had made a 'crude mockery' of the principle of free and fair elections by pressuring and even threatening the Lebanese Parliament to extend Mr Lahoud's mandate. Further, the Security Council had been forced to move quickly in order to issue the resolution prior to the vote in the Lebanese Parliament.⁸⁹⁷ According to Mr Hamade, President Chirac had asked President Al-Assad to postpone the vote in Parliament on Mr Lahoud's extension until the UN Security Council had finalised the resolution.⁸⁹⁸

562. The UN Security Council also resolved to remain actively seized of the matter, and asked the Secretary-General to report on the implementation of the resolution within 30 days.⁸⁹⁹

563. On 1 October 2004, the Secretary-General reported that there had been no discernible change in status since the passage of the resolution and that its requirements had not been met.⁹⁰⁰ He noted that Syrian troops were the only significant foreign forces deployed in Lebanon—according to Syria, their troops in Lebanon numbered 14,000—and that Hezbollah was the most significant armed group and carried out operations independently of Lebanese government control or sanction.⁹⁰¹

⁸⁹⁵ Exhibit P451, para. 10; exhibit P310.1 (UN Security Council resolution 1559 (2004)). *See also* exhibit P310.4 (UN Security Council press release, 2 September 2004), stating that the resolution was passed with nine votes in favour and six abstentions.

⁸⁹⁶ Marwan Hamade, T. 19 November 2014, pp 49, 59, 61-62, 65-66; Ghattas El-Khoury, T. 16 January 2015, p. 46; Ghazi El-Youssef, T. 10 March 2015, pp 77-78; Mustafa Nasser, T. 10 April 2015, pp 35-36; Fouad Siniora, T. 26 March 2015, pp 24-25, T. 27 May 2015, p. 81; Walid Jumblatt, T. 4 May 2015, p. 90, T. 7 May 2015, pp 103-104.

⁸⁹⁷ Exhibit P310.4, pp 2, 5; exhibit P364, p. 1.

⁸⁹⁸ Marwan Hamade, T. 19 November 2014, pp 49-50, 60.

⁸⁹⁹ Exhibit P310.1, p. 2; exhibit P322 (UN Press Release SG/A/897, Secretary-General names Rød-Larsen as Special Envoy, 14 December 2004).

⁹⁰⁰ Exhibit P451, paras 20, 33, 36.

⁹⁰¹ Exhibit P451, paras 12, 16, 19, 23.

564. On 19 October 2004, the President of the Security Council issued a statement noting the Council's 'concern that the requirements set out in resolution 1559 (2004) have not been met'.⁹⁰² On 14 December 2004, the Secretary-General appointed Mr Terje Rød-Larsen as Special Envoy for the implementation of Security Council resolution 1559.⁹⁰³ The Prosecutor, at the Trial Chamber's request, wrote to the United Nations Office of Legal Affairs seeking a waiver of immunity to permit Mr Rød-Larsen to testify in the trial. This was refused.⁹⁰⁴

565. A media campaign, which according to a number of Prosecution witnesses was understood to have been driven by the Syrian regime, then accused Mr Hariri of having been behind resolution 1559 or having failed to use his influence to prevent it from passing.⁹⁰⁵ Mr El-Sayyed, by contrast, disputed that Syria had held that opinion or had made such an accusation against Mr Hariri, stating that 'we cannot lower ourselves by saying that a person, even in the position of Prime Minister Hariri, could really push or work such a resolution in the UN Security Council'.⁹⁰⁶ He agreed that there were daily accusations in the media to that effect and also noted that the Israelis, including their Foreign Minister, Mr Silvan Shalom, had said that the Israelis were behind the resolution.⁹⁰⁷

566. Mr Hariri, according to his associates, shared the resolution's goal of removing Syrian troops and influence from Lebanon. However, he had hoped to achieve this without provoking Syria.⁹⁰⁸ Mr El-Sayyed was of the view that Mr Hariri did not support the resolution.⁹⁰⁹ Mr Hariri's position, which he communicated to Syria and to other states, was that Syrian withdrawal should

⁹⁰² Exhibit P542 (Statement by the President of the UN Security Council, 19 October 2004).

⁹⁰³ Exhibit P322; Marwan Hamade, T. 19 November 2014, p. 68; Ghattas El-Khoury, T. 16 January 2015, p. 46.

⁹⁰⁴ Gary Platt, T. 9 March 2017, pp 106-107; F3203, Prosecution Notification of Response to Inquiry into Waiving of Immunity of Mr. Roed-Larsen, 29 June 2017. Counsel for Mr Oneissi, in their closing submissions, raised the issue of Mr Rød-Larsen's failure to appear as the Oneissi Defence considered him to be 'a main witness' in the trial. However, despite this, counsel had not asked the Trial Chamber to write to the UN asking it to reconsider its decision not to waive the immunity. Oneissi Defence closing submissions, T. 20 September 2018, pp 19-21, 24, 48.

⁹⁰⁵ Marwan Hamade, T. 19 November 2014, pp 61, 66, 68, T. 8 December 2014, pp 42-43, 55-56; Faisal Salman, T. 8 January 2015, pp 39-40; Ghaleb Ahmad El-Chammaa, T. 10 February 2015, p. 49; Bassem El-Sabeh, T. 16 March 2015, p. 59; Hani Hammoud, T. 19 May 2015, pp 57-58.

⁹⁰⁶ Jamil El-Sayyed, T. 6 June 2018, pp 50-51, 56-57.

⁹⁰⁷ Jamil El-Sayyed, T. 6 June 2018, pp 43-46, 56.

⁹⁰⁸ Ghattas El-Khoury, T. 16 January 2015, p. 46, T. 20 January 2015, pp 18-19; Ghazi El-Youssef, T. 10 March 2015, p. 61; Hani Hammoud, T. 19 May 2015, pp 55-57.

⁹⁰⁹ Jamil El-Sayyed, T. 6 June 2018, pp 61-62.

begin with redeployment pursuant to the Taif Agreement and that the disarmament of Hezbollah—an issue that he did not view as urgent—should be negotiated through national dialogue.⁹¹⁰

567. Mr Hariri denied having been behind the resolution, and those close to him believed that he had nothing to do with it.⁹¹¹ The Trial Chamber has seen no evidence that Mr Hariri was associated with it, and to the contrary, it would appear that the passage of the resolution did not coincide with his political interests at the time.

568. There was strong opposition in Lebanon and Syria to the resolution. Both President Al-Assad and Mr Nasrallah, and Syrian and Hezbollah representatives, which included Mr Nasser Kandil, publicly defended the Syrian presence in Lebanon and condemned the resolution.⁹¹² In November 2004, Mr Nasrallah stressed that Hezbollah was committed ‘to standing by Syria and to defending Syria just like Syria has defended us’, and thousands of Hezbollah supporters marched in Beirut to express condemnation of resolution 1559, brandishing pictures of Presidents Al-Assad and Lahoud.⁹¹³

569. Mr El-Sayyed’s conclusion, however, was that ‘in a nutshell ... Hariri’s assassination implemented the resolution’,⁹¹⁴ meaning that its effect was to force Syria to withdraw its troops, in April 2005.

5. 3 September 2004: Parliament vote

570. On 3 September 2004, less than 24 hours after the passage of the UN Security Council resolution, the Lebanese Parliament approved the constitutional amendment extending President

⁹¹⁰ Marwan Hamade, T. 19 November 2014, p. 68, T. 8 December 2014, pp 53, 61; Walid Jumblatt, T. 7 May 2015, p. 106; Fouad Siniora, T. 27 May 2015, p. 80.

⁹¹¹ Marwan Hamade, T. 19 November 2014, p. 66, T. 20 November 2014, p. 10; Faisal Salman, T. 8 January 2015, pp 39-40; Fouad Siniora, T. 26 March 2015, p. 24; Walid Jumblatt, T. 4 May 2015, p. 90, T. 5 May 2015, p. 29.

⁹¹² Exhibit P532 (UNIC Beirut press review, 8 October 2004), p. 2; exhibit P432 (UNIC Beirut press review, 11 October 2004), pp 1-3, 6-7; Walid Jumblatt, T. 5 May 2015, pp 91-92; exhibit P532 (UNIC Beirut press review, 12 November 2004), p. 5; exhibit P532 (UNIC Beirut press review, 1 December 2004) pp 3-4; exhibit P532 (UNIC Beirut press review, 17 January 2005), pp 4, 6; exhibit P532 (UNIC Beirut press review, 8 February 2005), pp 3-4.

⁹¹³ Exhibit P532 (UNIC Beirut press review, 12 November 2004), p. 5; exhibit P532 (UNIC Beirut press review, 1 December 2004), pp 3-4; Walid Jumblatt, T. 5 May 2015, pp 91-92.

⁹¹⁴ Jamil El-Sayyed, T. 6 June 2018, p. 62.

Lahoud's term.⁹¹⁵ Mr Hariri attended the session, voted for the measure⁹¹⁶ and asked his bloc to vote in support of the measure.⁹¹⁷

571. Mr El-Khoury and Mr Majdalani testified that before the vote, Syrian security officers attempted to contact members of Mr Hariri's bloc and threatened their safety should they vote against the amendment.⁹¹⁸ In Parliament, Mr Jumblatt and others spoke against the measure,⁹¹⁹ and 29 members—dubbed the 'list of honour' in some media, and the 'list of shame' by Mr Kandil—voted against it,⁹²⁰ including Mr El-Khoury.⁹²¹ The measure required a two-thirds majority, which it received due to the support of the majority of Mr Hariri's bloc.⁹²²

572. According to the UNIC Beirut press review, the White House then issued a statement condemning Syrian interference in the Parliamentary vote and branding it a direct contradiction of resolution 1559.⁹²³

573. From August/September 2004 until shortly before his death, Mr Hariri engaged in close dialogue with Mr Nasrallah,⁹²⁴ and in that period the two met between ten and 20 times,⁹²⁵ each

⁹¹⁵ Marwan Hamade, T. 19 November 2014, pp 78, 82; Ghattas El-Khoury, T. 15 January 2015, pp 65, 67; Walid Jumblatt, T. 4 May 2015, p. 87; exhibit P424 (UNIC Beirut press review, 6 September 2004), p. 4. On 1 October 2004, the Secretary-General reported that, 'On 3 September 2004, less than 24 hours after resolution 1559 (2004) was adopted, the Chamber of Deputies approved Constitutional Law 585 by a vote of 96 to 29 with three members not present, thereby extending President Lahoud's term by three years. The law stated that "for a one and exceptional time, the mandate of the current President of the Republic will be renewed to three additional years that should end on 23 November 2007".' Exhibit P451, para. 27.

⁹¹⁶ Marwan Hamade, T. 19 November 2014, pp 78, 80; Ghazi El-Youssef, T. 10 March 2015, p. 66; Fouad Siniora, T. 25 March 2015, p. 95.

⁹¹⁷ Marwan Hamade, T. 19 November 2014, p. 79; Ghattas El-Khoury, T. 15 January 2015, p. 39; Atef Majdalani, T. 29 April 2015, p. 25.

⁹¹⁸ Ghattas El-Khoury, T. 15 January 2015, pp 33, 40, 56-57, 73; Atef Majdalani, T. 28 April 2015, pp 32-33, 35-36, 38, 40-41, T. 29 April 2015, p. 25.

⁹¹⁹ Marwan Hamade, T. 19 November 2014, pp 81-82.

⁹²⁰ Marwan Hamade, T. 18 November 2014, p. 75, T. 19 November 2014, p. 82, T. 8 December 2014, p. 6; Bassem El-Sabeh, T. 16 March 2015, p. 47; Walid Jumblatt, T. 4 May 2015, pp 87-88; exhibit P406 (*An-Nahar* article, 4 September 2004), pp 1-2; exhibit P432, pp 6-7, referring to the 'list of shame'. See also exhibit P532 (UNIC Beirut press review, 3 September 2004), p. 2.

⁹²¹ Ghattas El-Khoury, T. 15 January 2015, pp 33, 48, 56, 72; Atef Majdalani, T. 28 April 2015, pp 42-43; Ghazi El-Youssef, T. 10 March 2015, p. 62; exhibit P406, p. 2.

⁹²² Marwan Hamade, T. 18 November 2014, p. 75, T. 19 November 2014, p. 43, T. 8 December 2014, p. 6; Ghattas El-Khoury, T. 15 January 2015, p. 48; Bassem El-Sabeh, T. 16 March 2015, p. 49.

⁹²³ Exhibit P424, p. 2.

⁹²⁴ Bassem El-Sabeh, T. 17 March 2015, p. 97.

⁹²⁵ Mustafa Nasser, T. 9 April 2015, pp 27, 35-40. A UNIC Beirut press release dated 24 September 2004 quoted Mr Jumblatt as stressing that there would be no coexistence with the Lahoud regime and states that Mr Jumblatt said Mr Hariri and Mr Nasrallah were pleading with him to tone down his language, exhibit P430 (UNIC Beirut press release, 24 September 2004), p. 5. In his testimony, however, Mr Jumblatt did not recall a meeting with Mr Nasrallah in this time, Walid Jumblatt, T. 5 May 2015, p. 35.

meeting lasting two to three hours.⁹²⁶ There were also four to five meetings between Mr Hariri and Mr Hussein Khalil—described as Mr Nasrallah’s right-hand man, in charge of political relations with prominent figures and blocs⁹²⁷—without Mr Nasrallah.⁹²⁸ Mr Mustafa Nasser—the journalist who was an advisor to Mr Hariri and intermediary between Mr Hariri and Hezbollah—stated that most ‘negotiations’ were done by himself, and the two men met rarely in person.⁹²⁹

574. According to a press release, on 5 September 2004, after an accident in Sardinia, Mr Hariri received telephone calls from both Mr Nasrallah and Mr Lahoud.⁹³⁰

575. According to Mr Nasser, the meetings between Mr Hariri and Mr Nasrallah always occurred outside Quraitem Palace.⁹³¹ Mr Hariri would go in one car, along with his ‘most trusted security’—usually Mr Al-Arab, and sometimes Mr Al-Hassan. Mr Hariri would drive himself. One of Hezbollah’s security vehicles would meet Mr Hariri at the edge of the ‘security zone’ and lead him to the meeting location. Mr Nasser also explained that most of the time, the meetings would take place in different locations,⁹³² including more than once at Mr Nasser’s home.⁹³³ According to Mr Nasser, only he, Mr Hussein Khalil, Mr Hariri and Mr Nasrallah would be present in the meetings.⁹³⁴ The meetings took place in complete secrecy.⁹³⁵ No notes were taken.⁹³⁶ Most of the meetings would take place at night.⁹³⁷ Mr El-Sayyed, on the other hand, insisted in his testimony that these meetings ‘were not secret meetings’.⁹³⁸

576. According to Mr Soubra, one of Mr Hariri’s close protection officers, the convoy’s composition changed when Mr Hariri was meeting Mr Nasrallah—Mr Nasrallah would send one

⁹²⁶ Mustafa Nasser, T. 10 April 2015, pp 69-70.

⁹²⁷ Mustafa Nasser, T. 9 April 2015, pp 7-8.

⁹²⁸ Mustafa Nasser, T. 9 April 2015, pp 35-40.

⁹²⁹ Exhibit 2D131 (Witness statement of Mustafa Nasser, 12 August 2010), para. 16.

⁹³⁰ Exhibit P303 (Press releases), ERN D0004663.

⁹³¹ Exhibit 2D131 (Witness statement of Mustafa Nasser, 12 August 2010), para. 35. Meetings between Mr Khalil and Mr Hariri took place at the palace because it was easier to manage, from a security perspective, Mustafa Nasser, T. 9 April 2015, p. 38. If speaking on the telephone, Mr Nasser and Mr Hariri would have a coded conversation to arrange a meeting with Mr Khalil. Mustafa Nasser, T. 9 April 2015, pp 43-44.

⁹³² Exhibit 2D131 (Witness statement of Mustafa Nasser, 12 August 2010), para. 36.

⁹³³ Exhibit 2D131 (Witness statement of Mustafa Nasser, 12 August 2010), para. 39.

⁹³⁴ Exhibit 2D131 (Witness statement of Mustafa Nasser, 12 August 2010), para. 38.

⁹³⁵ Fouad Siniora, T. 24 March 2015, p. 78; Atef Majdalani, T. 30 April 2015, pp 12-13.

⁹³⁶ Exhibit 2D131 (Witness statement of Mustafa Nasser, 12 August 2010), para. 38.

⁹³⁷ Exhibit 2D131 (Witness statement of Mustafa Nasser, 12 August 2010), para. 34.

⁹³⁸ Jamil El-Sayyed, T. 5 June 2018, p. 98.

of his cars, and two armoured cars would be used for Mr Hariri, plus two standard Peugeot cars for security.⁹³⁹

577. A number of witnesses stated that meetings between Mr Nasrallah and Mr Hariri increased in frequency over time, in response to political events. Mr Nasser and Mr El-Youssef said that the increase came with the extension of Mr Lahoud's mandate in August to September 2004.⁹⁴⁰ Mr El-Youssef, additionally, stated that it was the attempted assassination of Mr Hamade⁹⁴¹ after 1 October 2004. Mr Salim Diab said that it coincided with Mr Hariri's resignation as prime minister.⁹⁴² Mr Nasser also stated that the meetings became 'far more frequent' in the last six months of Mr Hariri's life.⁹⁴³

578. The overall aim of the meetings was to establish political cooperation with Hezbollah.⁹⁴⁴ A range of topics was covered. According to Mr Hammoud and Mr Siniora, the meetings were at first focused on attempting to block the proposed extension of Mr Lahoud's mandate as president.⁹⁴⁵ When this failed, the dialogue concentrated on the adoption of Security Council resolution 1559 in September 2004.⁹⁴⁶

579. Mr Hariri was convinced that the resolution would lead to the Syrian withdrawal from Lebanon and, according to Mr Hammoud, aimed to convince Mr Nasrallah that this was not a 'catastrophe' for Hezbollah.⁹⁴⁷ Mr Hariri said that in order to respect the Taif Agreement, he would agree to the withdrawal of Syria to the Bekaa area, not all the way out of Lebanon.⁹⁴⁸ Mr El-Khoury, Mr El-Sabeh and Mr Nasser each described how Mr Hariri was hoping for an electoral alliance with Mr Nasrallah.⁹⁴⁹ Mr El-Chammaa, who discussed the meetings with Mr Hariri,

⁹³⁹ Exhibit P336 (Statement of Tarek Soubra), para. 58 (ERN 60295679).

⁹⁴⁰ Ghazi El-Youssef, T. 11 March 2015, pp 36-37; Mustafa Nasser, T. 9 April 2015, pp 27, 35-40.

⁹⁴¹ Ghazi El-Youssef, T. 11 March 2015, p. 37.

⁹⁴² Salim Diab, T. 22 January 2015, pp 73-74, T. 3 February 2015, p. 77.

⁹⁴³ Exhibit 2D131 (Witness statement of Mustafa Nasser, 12 August 2010), para. 23.

⁹⁴⁴ Bassem El-Sabeh, T. 17 March 2015, p. 100; Mustafa Nasser, T. 10 April 2015, pp 31-32.

⁹⁴⁵ Hani Hammoud, T. 20 May 2015, pp 13-14, 16-17; Fouad Siniora, T. 27 May 2015, p. 67.

⁹⁴⁶ Hani Hammoud, T. 20 May 2015, pp 13-14, 16-17.

⁹⁴⁷ Hani Hammoud, T. 20 May 2015, p. 14.

⁹⁴⁸ Exhibit 2D131 (Witness statement of Mustafa Nasser, 12 August 2010), para. 40.

⁹⁴⁹ Ghattas El-Khoury, T. 15 January 2015, p. 55; Bassem El-Sabeh, T. 18 March 2015, pp 57-58; Mustafa Nasser, T. 10 April 2015, p. 46, T. 15 April 2015, pp 57-59.

described their ongoing purpose as an attempt to build a new future for Lebanon and to preserve good relations between Lebanon and Syria.⁹⁵⁰

580. The evidence varied as to discussions about Hezbollah's arms. Mr Jumblatt was certain that the meetings between Mr Hariri and Mr Nasrallah did not include discussion of Hezbollah's weapons, and that Mr Hariri did not want to put the issue of armament on the table.⁹⁵¹ Mr Nasser also stated that Mr Nasrallah's primary concern was the potential disarmament of Hezbollah under the UN Security Council resolution, and that Mr Hariri assured him that Hezbollah would retain its weapons until a peace agreement was reached with Israel. Mr Hariri told Mr Nasrallah that he would have no bargaining chip to negotiate with Israel if the resistance were disarmed.⁹⁵²

581. By contrast, Mr El-Chammaa testified that Mr Hariri had told him that the two were discussing the eventual disarming of Hezbollah in the weeks and months before February 2005.⁹⁵³ Mr Hariri did not consider that the presence of arms in the hands of any party other than the Lebanese security forces was acceptable.⁹⁵⁴

F. Background to the Bristol Group meetings

582. On 4 September 2004, the day after the Parliamentary approval for Mr Lahoud's mandate extension, the Qornet-Chehwan Gathering held an extraordinary meeting at Patriarch Sfeir's summer residence in Diman.⁹⁵⁵ It called for a better balance of power in Lebanon and for Syrian

⁹⁵⁰ Ghaleb Ahmad El-Chammaa, T. 10 February 2015, pp 73, 76.

⁹⁵¹ Walid Jumblatt, T. 6 May 2015, p. 45. Mr Jumblatt said that 'He told Nasrallah: "Your weapons are our weapons." This is what he told us after meeting Mr Nasrallah, because Resolution 1559 contains an article or a point regarding the necessity to disarm all Lebanese and non-Lebanese militias.'

⁹⁵² Exhibit 2D131 (Witness statement of Mustafa Nasser, 12 August 2010), para. 41.

⁹⁵³ Ghaleb Ahmad El-Chammaa, T. 11 February 2015, p. 71. 'Q: You knew in broad terms what Mr Hariri and Sayyed Hassan Nasrallah were talking about because Mr Hariri told you what they were talking about in broad terms? You weren't getting it from another source; you were getting it directly from Mr. Hariri's mouth. Is that correct? A: I can say yes in general; however, I would like to add that I was not following up exactly what was going on between Sayyed Hassan Nasrallah and the late Prime Minister Hariri. He did not mention to anyone, as far as I know, he did not mention to anyone the content, the gist of the conversations that were held and that were ongoing between them. And I cannot know for sure because I would not be able to know unless he told me. I do not ask. I only know what he tells me. What I mentioned previously, I mentioned it and I cannot add anything to it.' Ghaleb Ahmad El-Chammaa, T. 11 February 2015, p. 73.

⁹⁵⁴ Ghaleb Ahmad El-Chammaa, T. 10 February 2015, p. 56.

⁹⁵⁵ Exhibit P423 (Accord of Qornet-Chehwan Gathering, 4 September 2004).

withdrawal⁹⁵⁶ and issued an ‘Accord’ condemning the constitutional amendment to extend the presidential term.⁹⁵⁷

583. Meanwhile, in early September 2004, a broader opposition coalition began meeting at the Hotel Bristol and became known as the Bristol Group or Gathering.⁹⁵⁸ The Bristol Group included a number of groups and individuals⁹⁵⁹ and became wide enough to represent all factions—right and left.⁹⁶⁰ Witnesses testified that the Bristol Group reflected a broader public opposition to Syria,⁹⁶¹ aimed at ‘raising the voice’ against Syria in line with Security Council resolution 1559 and the withdrawal of Syrian troops.⁹⁶²

584. The evidence differed slightly as to the precise start date of the Bristol Group meetings, at least in the sense of when the participants started their discussions—although the evidence is consistent that its first formal meeting was at the Bristol Hotel in Beirut on 22 September 2004. Mr El-Khoury explained that the participants all shared the same view, to put an end to interference in the judiciary and to amend the electoral law in a way that is just and fair to everyone.⁹⁶³ Mr El-Chammaa said the meetings began ‘back then’, meaning when Mr Hariri returned from Damascus in late August 2004.⁹⁶⁴ Mr El-Khoury referred to summer 2004—and says the preparations for the first Bristol meeting started immediately after the vote amending the constitution.⁹⁶⁵

⁹⁵⁶ Marwan Hamade, T. 20 November 2014, pp 22-25.

⁹⁵⁷ Exhibit P423, saying, ‘The Gathering requested the decision makers and authorities of today’s Lebanon to resort to reason, logic and fundamentals and reconsider the grave error which put Lebanon in confrontation with the international law, pushing it into major risks’. *See also* Walid Jumblatt, T. 4 May 2015, pp 93-95.

⁹⁵⁸ Marwan Hamade, T. 20 November 2014, p. 28, T. 8 December 2014, p. 5; Ghaleb Ahmad El-Chammaa, T. 10 February 2015, pp 57-58.

⁹⁵⁹ The evidence, however, differs on the relationship between the Bristol Group and the Qornet-Chehwan Gathering. Mr El-Youssef said that the five or six groups in the Bristol Group included the Qornet-Chehwan Gathering. Ghazi El-Youssef, T. 10 March 2015, p. 62. Mr El-Chammaa stated that the Bristol Gathering remained separate from the Qornet-Chehwan Gathering. Ghaleb Ahmad El-Chammaa, T. 10 February 2015, pp 57-58. Mr El-Sayyed stated that it was the Qornet-Chehwan Gathering itself which expanded and then became the Bristol Group. Jamil El-Sayyed, T. 7 June 2018, pp 3-4. While, Mr El-Khoury said that the Bristol Group came together under the umbrella of the Qornet-Chehwan Gathering. Ghattas El-Khoury, T. 15 January 2015, p. 13. The Trial Chamber is of the view that nothing turns on these differences of recollection or interpretation.

⁹⁶⁰ Ghattas El-Khoury, T. 15 January 2015, p. 74.

⁹⁶¹ Ghaleb Ahmad El-Chammaa, T. 10 February 2015, p. 57. *See also* Bassem El-Sabeh, T. 16 March 2015, p. 54.

⁹⁶² Jamil El-Sayyed, T. 7 June 2018, p. 4. *See also* Walid Jumblatt, T. 4 May 2015, pp 89-90.

⁹⁶³ Ghattas El-Khoury, T. 16 January 2015, p. 20.

⁹⁶⁴ Ghaleb Ahmad El-Chammaa, T. 10 February 2015, pp 56-57.

⁹⁶⁵ Ghattas El-Khoury, T. 15 January 2015, p. 76.

585. A number of Mr Hariri's political advisors joined the Bristol Group.⁹⁶⁶ Mr Walid Jumblatt, who was a friend and political ally of Mr Hariri's, was a 'main figure' in the group.⁹⁶⁷ Another was Mr El-Khoury, Mr Hariri's physician,⁹⁶⁸ who also had a role to play because he was a friend of Mr Jumblatt's.⁹⁶⁹ Mr Fuleihan, an MP, who was also a professor at the American University of Beirut and a close associate of Mr Hariri,⁹⁷⁰ and Future Movement MP Mr Ahmad Fatfat, who was the first Muslim minister to join the opposition coalition, were two others.⁹⁷¹

586. Evidence about Mr Hariri's direct involvement in the early Bristol Group varied. Mr El-Khoury stated that he was 'mandated' by Mr Hariri to develop the coalition, and was entrusted with the coordination with Mr Hariri and Mr Jumblatt.⁹⁷² According to Mr Jumblatt, his and Mr Hariri's shared agenda was 'to enlarge the coalition and to gather the biggest number of Lebanese parties in order to voice our opposition to the extension.'⁹⁷³

587. Mr El-Chamma said that while Mr Hariri 'implicitly' supported the opposition by allowing his close allies to engage in contact with the Bristol Group, he maintained a real hope that he would be able to change the Syrians' position.⁹⁷⁴ Mr El-Sayyed said that he had never heard that Mr Hariri met the group or intended to be a member of it.⁹⁷⁵ Mr El-Youssef also said that while Mr Hariri's heart was with the opposition, he was not able to say so publicly in September 2004.⁹⁷⁶ Mr Hani Hammoud stated that while Mr Hariri had a clear intention to join or create an opposition alliance, he wanted to be represented at the meeting but not attend himself.⁹⁷⁷ Mr El-Sayyed explained that the presence of Mr Hariri's allies in the group was a clear sign that Mr Hariri was not boycotting it,⁹⁷⁸ however, he wanted to take an intermediate position, not going as far as the Bristol Group. He did not, for example, call for the withdrawal of Syrian troops.⁹⁷⁹ Mr Mustafa Nasser also stated

⁹⁶⁶ Marwan Hamade, T. 8 December 2014, p. 5; Jamil El-Sayyed, T. 7 June 2018, pp 5-6.

⁹⁶⁷ Marwan Hamade, T. 8 December 2014, p. 5; Jamil El-Sayyed, T. 7 June 2018, p. 4.

⁹⁶⁸ Jamil El-Sayyed, T. 7 June 2018, p. 4.

⁹⁶⁹ Marwan Hamade, T. 8 December 2014, p. 5; Ghattas El-Khoury, T. 15 January 2015, pp 13-14.

⁹⁷⁰ Jamil El-Sayyed, T. 7 June 2018, p. 5; Marwan Hamade, T. 8 December 2014, p. 5.

⁹⁷¹ Marwan Hamade, T. 8 December 2014, pp 5-6.

⁹⁷² Ghattas El-Khoury, T. 15 January 2015, pp 13-14.

⁹⁷³ Walid Jumblatt, T. 5 May 2015, p. 15.

⁹⁷⁴ Ghaleb Ahmad El-Chammaa, T. 10 February 2015, p. 58.

⁹⁷⁵ Jamil El-Sayyed, T. 7 June 2018, p. 4.

⁹⁷⁶ Ghazi El-Youssef, T. 10 March 2015, p. 63.

⁹⁷⁷ Hani Hammoud, T. 19 May 2015, pp 60, 72.

⁹⁷⁸ Jamil El-Sayyed, T. 7 June 2018, pp 5-6.

⁹⁷⁹ Jamil El-Sayyed, T. 7 June 2018, p. 6.

that the members of the Bristol Group did not share the same political opinions as Mr Hariri.⁹⁸⁰ Mr Hariri was an Arab nationalist who had good relations with Syria, whereas the Bristol Group was absolutely against Syria.⁹⁸¹

588. On 6 and 7 September 2004, four ministers—Mr Marwan Hamade, Mr Ghazi Aridi, Mr Abdullah Farhat⁹⁸² and Mr Fares Boueiz—resigned from Mr Hariri’s government.⁹⁸³ On 12 September 2004, Mr Hariri announced, after having just received the UN award in Barcelona that day, that his government would resign before the end of September.⁹⁸⁴

589. In Mr Hammoud’s view, Mr Hariri had made up his mind to take part in the upcoming elections from a position of opposition in order to break the status quo and to be part of the Bristol Group.⁹⁸⁵

590. During September 2004, Mr Jumblatt became increasingly vocal about Syrian interference in Lebanon. He and Mr Nasib Lahoud—leader of the Democratic Renewal Movement—met on 11 September 2004. Mr Jumblatt opposed Syria’s intervention in respect of the extension, while Mr Lahoud stated that Lebanon’s democracy/sovereignty/liberties must be safeguarded, and urged a timetable for the Syrian withdrawal.⁹⁸⁶ On 13 September 2004, Mr Jumblatt’s Democratic Gathering bloc announced that it was preparing a ‘Ten Point’ document directed, among other issues, at the Syrian interference in Lebanese affairs.⁹⁸⁷ The same day, the US government called

⁹⁸⁰ Mustafa Nasser, T. 10 April 2015, p. 61.

⁹⁸¹ Mustafa Nasser, T. 15 April 2015, pp 108-109.

⁹⁸² According to *An-Nahar*, their three identical resignation letters read, ‘Mr Prime Minister, in keeping with the principled position of the Democratic Gathering in opposition to an extension of the term of office of the President of the Republic, and desiring as we do to respect the Constitution, protect freedom and democracy in Lebanon, prevent the conversion of our political system into a presidential system, and preserve what hope remains of rescuing the country from its crises, we find it impossible to participate in bearing responsibility for the results and impact of what has happened and is happening. Accordingly, we hereby tender to you our resignations from the Government, hoping that you will accept them. We thank you for your confidence and your cooperation with us, and we wish you and Lebanon continued success.’ Exhibit P312 (*An-Nahar* article, 8 September 2004), p. 2.

⁹⁸³ Exhibit P303 (Press releases), ERNs D0004611-D0004612; exhibit P312; Marwan Hamade, T. 20 November 2014, pp 3, 6-9, 11. Mr Hamade resigned only from the Council of Ministers but not from the Council of Deputies, because it was presided over by President Lahoud and it was necessary to show disapproval of the extension.

⁹⁸⁴ Exhibit P470 (Press release, 13 September 2004), pp 1, 10-11; Marwan Hamade, T. 20 November 2014, pp 18-20.

⁹⁸⁵ Hani Hammoud, T. 19 May 2015, pp 76-77.

⁹⁸⁶ Exhibit P425 (UNIC Beirut press review, 13 September 2004), p. 4; Walid Jumblatt, T. 5 May 2015, pp 10-11.

⁹⁸⁷ Exhibit P328 (Press release, 13 September 2004), p. 2.

for a Syrian withdrawal from Lebanon and an end to its interference in Lebanon's internal affairs.⁹⁸⁸

591. On 17 September 2004, Mr Hariri met the French President Mr Jacques Chirac in Paris.⁹⁸⁹

592. Also on 17 September 2004, Mr Jumblatt was quoted as saying that what was happening in Lebanon confirmed that 'Lebanon was transforming into a big prison'.⁹⁹⁰ In a press release on 19 September 2004, Mr Jumblatt announced he was 'in solidarity with the opposition. We either participate in the government together or not'.⁹⁹¹

593. On 21 September 2004, a press conference publicly announced the Bristol Group's 'Democratic Gathering Declaration for Freedoms and the Protection of the Constitution and the Democratic Regime, Beirut, 21 September 2004'.⁹⁹² Mr Hariri was not present—according to Mr Hamade, he, rather than Mr Hariri, read the statement, to not 'blow up' the situation between Lebanon and Syria.⁹⁹³ Mr El-Sabeh, who was then an MP aligned with Mr Hariri, said that the declaration meant that Mr Jumblatt and Mr Hariri would either participate in the government with the opposition or not at all—thus mirroring Mr Jumblatt's earlier statement.⁹⁹⁴

G. First Bristol Group Meeting: 22 September 2004 and aftermath

594. The first Bristol Group meeting took place on 22 September 2004.⁹⁹⁵ Six of Mr Hariri's cabinet ministers participated.⁹⁹⁶ Mr El-Khoury and Mr Fuleihan did not attend,⁹⁹⁷ in Mr El-

⁹⁸⁸ Exhibit P425, p. 1, reporting a statement by the US Assistant Secretary of State for Near Eastern Affairs, after talks with President Al-Assad.

⁹⁸⁹ Exhibit P346 (Logbook of Mr Hariri's trips abroad), p. 4 (ERN 60004132 T).

⁹⁹⁰ Walid Jumblatt, T. 5 May 2015, pp 17-19; exhibit P426 (UNIC Beirut press review, 20 September 2004), p. 4, which reported that 'Druze overlord and chief of the Progressive Socialist Party, Walid Jumblat, over the weekend stepped up the battle against the regime "in defense of Lebanon's freedom" to a point of no return. In an unprecedented harsh attack against the regime of President Emile Lahoud, Jumblat charged that Lebanon was transforming into a big prison where authoritarian and one party rule is being installed, the local press, including Beirut's leading An-Nahar newspaper reported Monday.'

⁹⁹¹ Exhibit P428 (Press release, 19 September 2004), p. 1.

⁹⁹² Marwan Hamade, T. 20 November 2014, pp 38-39; exhibit P314 (Democratic Gathering Declaration for Freedoms and Protection of the Constitution and the Democratic Regime, 21 September 2004).

⁹⁹³ Marwan Hamade, T. 19 November 2014, p. 25.

⁹⁹⁴ Bassem El-Sabeh, T. 16 March 2015, p. 51.

⁹⁹⁵ Ghattas El-Khoury, T. 15 January 2015, pp 74, 76-77; Walid Jumblatt, T. 5 May 2015, pp 20-23; exhibit P427 (UNIC Beirut press review, 23 September 2004), p. 5.

⁹⁹⁶ Bassem El-Sabeh, T. 16 March 2015, pp 50-52.

⁹⁹⁷ Ghattas El-Khoury, T. 15 January 2015, pp 77-78.

Khoury's case, because he was attending a medical conference.⁹⁹⁸ Mr Fatfat also attended, although he did so in his personal capacity. At the time, neither Mr Fatfat's presence, nor Mr El-Khoury's intended attendance, were understood to be a clear sign of Mr Hariri's support for the Bristol Group.⁹⁹⁹ Mr El-Khoury and Mr Hariri knew in advance the identity of the attendees.¹⁰⁰⁰

595. Mr El-Khoury described what was agreed during the first Bristol Group meeting, although he was not present himself, and the source of his knowledge was unclear. He stated that 'we' agreed on a series of topics: the implementation of the Taif Agreement, free elections and calling for President Lahoud to resign. There were two opinions on the Syrian presence. Some called for the implementation of the Taif Agreement, meaning the withdrawal of Syrian forces to the Bekaa and then to the Syrian border. Others said the gradual withdrawal under the Taif Agreement should have already happened and they wanted a full and complete withdrawal of Syrian forces from Lebanon.¹⁰⁰¹

596. Inside the meeting was a prominent banner which read 'Defending the freedoms and protecting the constitution, the preparatory committee'; a publicity video clearly shows this.¹⁰⁰² Mr Jumblatt testified that the banner reflected 'the general slogan of the opposition'.¹⁰⁰³ Mr Jumblatt sat with three allies, Mr Carlos Edde, the head of the National Bloc Party, and Mr Nehmeh Tomeh and Mr Salah Hnein, who were MPs in his coalition.¹⁰⁰⁴

597. Media reporting described it as a 'tumultuous' meeting in which both sides crossed the 'point of no return'.¹⁰⁰⁵ According to Mr Jumblatt, a media article stated that another group, of factions opposed to the Lahoud extension, was scheduled to meet on 23 September 2004, to support the extension and denounce Mr Jumblatt as 'subversive and treacherous'.¹⁰⁰⁶ Mr Jumblatt described this as the opposition 'move', which was the Syrian regime unleashing supporters to attack him.¹⁰⁰⁷ Mr Jumblatt was also quoted as saying that if 'anyone of us leaves this Lebanese-

⁹⁹⁸ Ghattas El-Khoury, T. 15 January 2015, p. 77.

⁹⁹⁹ Ghattas El-Khoury, T. 15 January 2015, p. 78.

¹⁰⁰⁰ Ghattas El-Khoury, T. 15 January 2015, p. 77; Bassem El-Sabeh, T. 16 March 2015, pp 51-52.

¹⁰⁰¹ Ghattas El-Khoury, T. 15 January 2015, pp 77-78.

¹⁰⁰² Bassem El-Sabeh, T. 16 March 2015, pp 52-53; exhibit P365 (Video footage of Bristol Group meetings); Walid Jumblatt, T. 5 May 2015, pp 20-21.

¹⁰⁰³ Walid Jumblatt, T. 5 May 2015, p. 21.

¹⁰⁰⁴ Bassem El-Sabeh, T. 16 March 2015, p. 53; Walid Jumblatt, T. 5 May 2015, pp 21-22. *See also* exhibit P365.

¹⁰⁰⁵ Exhibit P427, p. 5. *See also* Walid Jumblatt, T. 5 May 2015, pp 23-24.

¹⁰⁰⁶ Walid Jumblatt, T. 5 May 2015, p. 26; exhibit P427, p. 5.

¹⁰⁰⁷ Walid Jumblatt, T. 5 May 2015, p. 23.

Arab democratic and diverse consensus, he/she will end; and if Walid Jumblatt leaves this consensus, he will also end.’¹⁰⁰⁸

598. According to an *Al-Mustaqbal* press release, on 24 September 2004, Mr Hariri met Patriarch Sfeir in Bkirki in what was described as a ‘constructive and positive meeting’.¹⁰⁰⁹ On 29 September 2004, he met President Chirac for the second time in a fortnight. According to *Al-Mustaqbal*, they discussed the most recent developments in the region and bilateral relations between Lebanon and France.¹⁰¹⁰

599. The Trial Chamber can conclude from this evidence that Mr Hariri’s political allies attended the Bristol Group meetings with his support. This was contemporaneous with growing concern about the involvement of Syria in Lebanese political affairs. It was clearly a provocative move against Syria, which the evidence suggests was how the Syrians took it.

H. Security arrangements and concerns in late 2004

600. The Trial Chamber heard evidence that Mr Hariri’s security was seen to be at greater risk in the late months of 2004.

601. Mr Siniora testified that Mr Hariri expressed concerns to him about his personal security. For example, in late 2003 to early 2004, Mr Hariri told him, ‘You know, Fouad, we have now -- by now discovered many assassination attempts by Hezbollah targeting me’. He did not know what time Mr Hariri was referring to.¹⁰¹¹

602. In or around November 2004, Mr Salim Diab was told by two members of Mr Hariri’s security detail—Mr Al-Hassan and Mr Al-Arab—that there were concerns about Mr Hariri’s security.¹⁰¹² There were no specific grounds or concrete threats,¹⁰¹³ but due to Mr Hariri’s positions on Security Council resolution 1559 and the Lahoud extension, the team wanted to strengthen Mr Hariri’s protection. Mr Hariri had laughed at these concerns when Mr Al-Hassan and Mr Al-

¹⁰⁰⁸ Walid Jumblatt, T. 5 May 2015, p. 31; exhibit P429 (*An-Nahar* article, 23 September 2004), p. 2.

¹⁰⁰⁹ Exhibit P303 (Press releases), ERN D0004672.

¹⁰¹⁰ Exhibit P303, ERNs D0004690-D0004691.

¹⁰¹¹ Fouad Siniora, T. 24 March 2015, pp 24-25.

¹⁰¹² Exhibit 2D111 (Witness Statement of Salim Diab), para. 4.

¹⁰¹³ Salim Diab, T. 22 January 2015, p. 87, T. 3 February 2015, p. 71.

Arab raised them, and they hoped he might listen to Mr Diab.¹⁰¹⁴ However, the response was similar when Mr Diab did raise it—Mr Hariri said that they—meaning Mr Al-Assad and Mr Lahoud—would not ‘dare to touch him’.¹⁰¹⁵

603. According to Mr El-Youssef, in December 2004, Mr El-Youssef met Mr Ghassan Salameh, advisor to the UN Secretary-General. Mr Salameh asked Mr El-Youssef to tell Mr Hariri to be careful. He said: ‘Let him be very careful. The Syrians want his political assassination or otherwise.’¹⁰¹⁶ The witness then met Mr Hariri and conveyed the threat—Mr Hariri was shocked and called Mr Salameh for a meeting at his house in Paris.¹⁰¹⁷ Mr Salameh told Mr Hariri that the threat was serious—he said that if Mr Hariri returned to Lebanon he should be ready for ‘political assassination’, which, if he resisted, would result in his death. Mr Hariri was shocked, and said that he was what the French and Americans called a ‘red line’, meaning that no one could touch him.¹⁰¹⁸

604. Mr Hariri’s security detail included both ISF police officers and civilian bodyguards.¹⁰¹⁹ When Mr Hariri was still prime minister, his car would be accompanied by a reconnaissance car, 30-40 people and explosive experts.¹⁰²⁰ Sometimes there would be a decoy convoy, without Mr Hariri.¹⁰²¹

605. According to Witness PRH076, Mr Hariri’s personal security detail included three civilian protection vehicles as well as Mr Hariri’s armoured car and an ambulance.¹⁰²² With the exception of Mr Hariri’s vehicle, none of the cars were armoured. However, they were fitted with signal jamming devices.¹⁰²³ ISF vehicles and motorcycles would also form part of the convoy.¹⁰²⁴ According to Mr Amer Chehadeh, a close protection officer and occasional driver for Mr Hariri, there would be an ISF vehicle to match each of civilian convoy cars.¹⁰²⁵ Every convoy that went

¹⁰¹⁴ Exhibit 2D111 (Witness Statement of Salim Diab), para. 5.

¹⁰¹⁵ Salim Diab, T. 22 January 2015, pp 64-66; exhibit 2D111 (Witness Statement of Salim Diab), paras 6-7.

¹⁰¹⁶ Ghazi El-Youssef, T. 10 March 2015, pp 78-79.

¹⁰¹⁷ Ghazi El-Youssef, T. 10 March 2015, p. 79.

¹⁰¹⁸ Ghazi El-Youssef, T. 10 March 2015, p. 80.

¹⁰¹⁹ Witness PRH101, T. 5 October 2016, pp 15-16.

¹⁰²⁰ Witness PRH357, T. 2 June 2015, pp 12-13.

¹⁰²¹ Witness PRH076, T. 14 October 2014, p. 14.

¹⁰²² Witness PRH076, T. 14 October 2014, pp 14-15.

¹⁰²³ Witness PRH076, T. 14 October 2014, p. 16.

¹⁰²⁴ Witness PRH076, T. 14 October 2014, pp 14-15.

¹⁰²⁵ Amer Chehadeh, T. 16 October 2014, pp 5, 7-8.

out would include between 17 and 20 ISF officers.¹⁰²⁶ The ISF personnel would check the convoy routes in advance, using dogs and ‘specific people’.¹⁰²⁷ When Mr Hariri was prime minister, Mr Talal Nasser—who remained team leader for Mr Hariri’s close protection up until his death in the explosion¹⁰²⁸—would decide the route in consultation with the ISF.¹⁰²⁹ The relationship between the ISF and the civilian members of the convoy was ‘excellent’.¹⁰³⁰

606. The Trial Chamber heard evidence that Mr Hariri was sometimes resistant to complying with the security measures. Mr Zakaria Badawi—a driver and civilian bodyguard for Mr Hariri’s family¹⁰³¹—stated that around four months before he died, Mr Hariri cancelled a second armoured vehicle in the convoy. According to the witness, Mr Hariri was considered ‘careless’ when it came to security and was over-confident.¹⁰³² Mr Youssef Al-Ajouz, another driver and security guard for Mr Hariri’s family,¹⁰³³ stated that even before the reduction in staff, Mr Hariri did not like big convoys.¹⁰³⁴

607. After Mr Hariri resigned on 26 October 2004, he initially retained around the 30 to 50 ISF protection officers he had been allocated as prime minister.¹⁰³⁵ However, on 29 November 2005, while Mr Hariri was in Monte Carlo, he was informed by Mr Wissam Al-Hassan that his ISF security detail would be reduced.¹⁰³⁶ Mr Hariri’s close protection staff were reduced from approximately 30 to 50 officers to eight,¹⁰³⁷ which was a ‘drastic’ cut.¹⁰³⁸ Witness PRH357 also

¹⁰²⁶ Amer Chehadeh, T. 16 October 2014, pp 8-9.

¹⁰²⁷ Exhibit P334 (Youssef Al-Ajouz’s witness statement), para. 32.

¹⁰²⁸ Exhibit 1V34 (Roula Nasser’s statement), para. 6; exhibit 1V33 (Kamal Nasser’s statement), para. 6.

¹⁰²⁹ Mohammed Dia, T. 17 October 2014, p. 7.

¹⁰³⁰ Exhibit P335 (Zakaria Badawi’s witness statement), para. 15 (ERN 60295783).

¹⁰³¹ Exhibit P335 (Zakaria Badawi’s witness statement), para. 6 (ERN 60295781).

¹⁰³² Exhibit P335 (Zakaria Badawi’s witness statement), para. 14 (ERN 60295783).

¹⁰³³ Exhibit P334 (Youssef Al-Ajouz’s witness statement), para. 5 (ERN 60300711).

¹⁰³⁴ Exhibit P334 (Youssef Al-Ajouz’s witness statement), para. 23 (ERNS 60300714-60300715).

¹⁰³⁵ Witness PRH101, T. 6 October 2016, pp 79-80.

¹⁰³⁶ Hani Hammoud, T. 19 May 2015, pp 77-79. *See also* exhibit P346 (Logbook of Mr Hariri’s trips abroad), p. 6 (ERN 60004134 T); exhibit P303 (Press releases), ERN D0004845; exhibit P1782 (Narrative overview of telephone activity and relevant events), p. 98.

¹⁰³⁷ Witness PRH009, T. 11 October 2016, pp 50-51, 55; Witness PRH076, T. 14 October 2014, p. 17; Witness PRH149, T. 3 June 2015, pp 81-84; exhibit P339 (Witness PRH314’s statement), para. 6 (ERN 60295568); Witness PRH357, T. 2 June 2015, p. 13. *See also* Hani Hammoud, T. 19 May 2015, pp 77-79 (the ISF officers were reduced to four); Witness PRH101, T. 6 October 2016, pp 79-80 (security detail was reduced to six or seven persons); exhibit P336 (Statement of Tarek Soubra), para. 42 (ERN 60295670) (five or six ISF members, reduced from 50).

¹⁰³⁸ Exhibit P336 (Statement of Tarek Soubra), para. 42 (ERNS 60295672-60295673).

stated that the ISF took away all the explosive experts, as well as the specific ISF vehicles that had been allocated to Mr Hariri.¹⁰³⁹

608. After his security detail was reduced following his resignation, Mr Hariri's usual convoy consisted of 12 civilian bodyguards, including two medical staff, and four ISF police officers.¹⁰⁴⁰ Mr Hariri selected the ISF members he retained following the reduction in his security.¹⁰⁴¹

609. According to Witness PRH149, Mr Hariri was upset by the decision.¹⁰⁴² Mr Hariri had told Mr Hammoud that Mr Lahoud had assured him nothing would change with regard to security.¹⁰⁴³ Further, while General Ali Al-Hajj—the ISF Director General—had ordered the reduction in numbers,¹⁰⁴⁴ Mr Hariri told Mr Hammoud that the decision could not have been taken without orders from Syria or from Mr Lahoud.¹⁰⁴⁵ Mr El-Khoury also stated that he was told by Mr Hariri that he understood the decision as a message that 'they' were targeting him—by which Mr Hariri meant the Syrian/Lebanese security apparatus.¹⁰⁴⁶

610. Several witnesses described how reduction in ISF personnel meant that Mr Hariri's security arrangements became less effective. The decrease in security detail was unusual, according to Mr Majdalani, as other former prime ministers had many more ISF officers for their protection—up to 30 or 40.¹⁰⁴⁷ Witness 149 stated that Mr Hariri's close protection staff was now unable to conduct advance checks—with explosive experts and dogs—for Mr Hariri's transport routes.¹⁰⁴⁸ In Witness 357's view, the changes had a 'big effect' on the security levels of the convoy.¹⁰⁴⁹ Mr Al-Ajouz stated that he does not remember the decoy car being used after the ISF numbers were

¹⁰³⁹ Witness PRH357, T. 2 June 2015, pp 12-13.

¹⁰⁴⁰ Exhibit P339 (Witness PRH314's statement), para. 12 (ERN 60295569).

¹⁰⁴¹ Witness PRH357, T. 2 June 2015, p. 14.

¹⁰⁴² Witness PRH149, T. 3 June 2015, p. 81.

¹⁰⁴³ Hani Hammoud, T. 19 May 2015, pp 77-79.

¹⁰⁴⁴ Hani Hammoud, T. 19 May 2015, p. 78; Atef Majdalani, T. 1 May 2015, p. 2; Witness PRH357, T. 2 June 2015, p. 14; Witness PRH149, T. 3 June 2015, pp 81-84; Witness PRH009, T. 11 October 2016, pp 54-55. *See also* Walid Jumblatt, T. 5 May 2015, p. 80, that in general there 'were orders' to reduce Mr Hariri's personal protection and the guards protecting his residence. Mr Badawi stated that Mr Al-Hajj 'must have' had something to do with the decision. Exhibit P335 (Zakaria Badawi's witness statement), para. 14 (ERN 60295783).

¹⁰⁴⁵ Hani Hammoud, T. 19 May 2015, p. 78. Witness PRH009 did not know whether Mr Al-Hajj took the decision himself, or whether it was imposed upon him. Witness PRH009, T. 11 October 2016, pp 54-55.

¹⁰⁴⁶ Ghattas El-Khoury, T. 16 January 2015, pp 8-9.

¹⁰⁴⁷ Atef Majdalani, T. 29 April 2015, pp 5, 10-11.

¹⁰⁴⁸ Witness PRH149, T. 3 June 2015, pp 85-87. *See also* Witness PRH357, T. 3 June 2015, pp 19-21.

¹⁰⁴⁹ Witness PRH357, T. 3 June 2015, pp 20-21.

reduced,¹⁰⁵⁰ and Mr Soubra also described how there was no longer the potential for counter-surveillance.¹⁰⁵¹

611. According to Mr Diab, however, Mr Hariri had never relied 100 per cent on official security and retained enough private security of his own.¹⁰⁵² Witness 76 also stated that after the decrease in ISF security, Mr Al-Arab—the head of Mr Hariri’s close protection detail¹⁰⁵³—decided to increase the number of civilian bodyguards.¹⁰⁵⁴ Mr Hariri’s resistance to security also continued, even after the cuts. He ‘did not like to be protected that much’, and his civilian convoy had to sometimes take steps to ensure that their protective arrangements were not noticed by him.¹⁰⁵⁵ In fact, both Mr Hariri and Mr Al-Arab tried to reduce the number of cars in the convoy even further.¹⁰⁵⁶ Witness PRH101 said that decoy convoys were never used after Mr Hariri’s resignation at Mr Hariri’s own request, and stated that Mr Hariri ‘didn’t really cooperate’.¹⁰⁵⁷ Mr Mohammed Dia, however, stated that decoy convoys continued to be used.¹⁰⁵⁸ Mr Hariri also ‘used to roll down his window and greet people in the street.’¹⁰⁵⁹

I. Attack on Marwan Hamade

612. The next significant event, chronologically, was an attack against Mr Hariri’s and Mr Jumblatt’s close ally, Mr Marwan Hamade, who had just resigned as the Minister for Trade in Mr Hariri’s government. That Mr Hamade was the subject of an attack in a car bombing is undisputed in this case. Under Rule 122, the Trial Chamber noted the following agreement as to evidence between the Prosecution and Sabra Defence, ‘On 1 October 2004 former Minister Marwan Hamade narrowly escaped death when a bomb exploded next to his car. His guard was killed in the explosion’.¹⁰⁶⁰

¹⁰⁵⁰ Exhibit P334 (Youssef Al-Ajouz’s witness statement), para. 23 (ERNs 60300714-60300715).

¹⁰⁵¹ Exhibit P336 (Statement of Tarek Soubra), paras 42, 48 (ERNs 60295672-60295675).

¹⁰⁵² Salim Diab, T. 22 January 2015, p. 63.

¹⁰⁵³ Witness PRH101, T. 5 October 2016, p. 30.

¹⁰⁵⁴ Witness PRH076, T. 15 October 2014, p. 54.

¹⁰⁵⁵ Exhibit P336 (Statement of Tarek Soubra), para. 42 (ERNs 60295671-60295672).

¹⁰⁵⁶ Exhibit P336 (Statement of Tarek Soubra), para. 78 (ERN 60295687).

¹⁰⁵⁷ Witness PRH101, T. 6 October 2016, pp 52, 84-85.

¹⁰⁵⁸ Mohammed Dia, T. 16 October 2014, pp 11, 75.

¹⁰⁵⁹ Witness PRH009, T. 13 October 2016, p. 10.

¹⁰⁶⁰ Sabra Defence – Prosecution agreements, no. (ii) and correction in Second decision on agreed facts in UNIIIC reports (Merhi).

613. On 5 August 2011, the Pre-Trial Judge determined that the Special Tribunal has jurisdiction over the attack on Mr Hamade under Article 1 of the Statute of the Special Tribunal.¹⁰⁶¹ In recounting evidence about the attack on Mr Hamade, the Trial Chamber is not making any legal or factual findings about it, nor whether it was connected to the attack on Mr Hariri four months later.

614. The Trial Chamber received evidence that on 1 October 2004, Mr Hamade left his home at around 09:00 intending to go to Parliament; he was accompanied by his driver, Mr Osama Abdel-Samad and his bodyguard Mr Ghazi Abou-Karroum.¹⁰⁶² They were in an unarmoured car.¹⁰⁶³ As they left the house, a car parked on the side of the street exploded close to Mr Hamade's car.¹⁰⁶⁴ The first explosion lasted less than a second,¹⁰⁶⁵ followed by another explosion caused by the fuel in the car.¹⁰⁶⁶ Mr Hamade tried to get out of the car, but his leg was broken.¹⁰⁶⁷ He fell and started crawling.¹⁰⁶⁸ Mr Abdel-Samad had broken arms but also managed to get out the car.¹⁰⁶⁹ Mr Abou-Karroum was killed instantly, and, according to Mr Hamade, 'evaporated in the flames'.¹⁰⁷⁰

615. Mr Hamade testified that he suffered a life-threatening injury to the head, many broken ribs and burns to the face, which put him out of action for months.¹⁰⁷¹ He underwent surgery on his eye, skull and leg,¹⁰⁷² and had to return to the hospital with a repeated subdural haemorrhage

¹⁰⁶¹ Pre-Trial Judge order on deferral of case file regarding the attack on Mr Hamade, p. 2, referring to Pre-Trial Judge decision on jurisdiction over connected cases, pp 41-42. On 16 September 2019, the Pre-Trial Judge of the Special Tribunal lifted the confidentiality of the decision confirming an indictment against Mr Ayyash relating to the attacks against Mr Marwan Hamade, Mr Georges Hawi and Mr Elias El-Murr on 1 October 2004, 21 June 2005 and 12 July 2005 respectively. Pre-Trial Judge order lifting confidentiality of indictment against Mr Ayyash in STL-18-10 case and other documents. On the same day, the Pre-Trial Judge filed a public redacted version of the Pre-Trial Judge decision on jurisdiction over connected cases. *See also* Public redacted indictment against Mr Ayyash in the STL-18-10 case.

¹⁰⁶² Marwan Hamade, T. 8 December 2014, pp 21-22.

¹⁰⁶³ Marwan Hamade, T. 8 December 2014, p. 24.

¹⁰⁶⁴ Marwan Hamade, T. 8 December 2014, p. 22; Sabra Defence – Prosecution agreements, no. (ii) and correction in Second decision on agreed facts in UNIIIC reports (Merhi); exhibit P320 (Annotated Version of Zawarib Greater Beirut Atlas, 2005 edition).

¹⁰⁶⁵ Marwan Hamade, T. 9 December 2014, p. 23.

¹⁰⁶⁶ Marwan Hamade, T. 8 December 2014, p. 24.

¹⁰⁶⁷ Marwan Hamade, T. 8 December 2014, p. 26, T. 9 December 2014, p. 23.

¹⁰⁶⁸ Marwan Hamade, T. 9 December 2014, pp 23-24.

¹⁰⁶⁹ Marwan Hamade, T. 8 December 2014, p. 22, T. 9 December 2014, p. 24.

¹⁰⁷⁰ Marwan Hamade, T. 8 December 2014, p. 22, T. 9 December 2014, p. 24; Sabra Defence – Prosecution agreements, no. (ii) and correction in Second decision on agreed facts in UNIIIC reports (Merhi).

¹⁰⁷¹ Marwan Hamade, T. 8 December 2014, pp 22, 26.

¹⁰⁷² Marwan Hamade, T. 9 December 2014, p. 25.

once after the attempt, and a second time in late November.¹⁰⁷³ He then underwent critical surgery in the first week of January 2005 for the head injury.¹⁰⁷⁴ While he was in hospital, Mr Hamade said that he heard from numerous visitors that the attack was an implementation of the threats made in August 2004 by the Syrian leadership against Mr Hariri.¹⁰⁷⁵ Mr Hariri, who visited continuously during Mr Hamade's convalescence,¹⁰⁷⁶ told him that the attempted assassination was 'a clear message specifically to those who opposed the will of President Bashar Al-Assad'.¹⁰⁷⁷ This was also Mr Jumblatt's understanding.¹⁰⁷⁸

616. A number of other witnesses also gave evidence that the attack was viewed as a political message, targeting Mr Hariri and or Mr Jumblatt.¹⁰⁷⁹

617. Mr Ali Hamade, Mr Marwan Hamade's younger brother, was a journalist for *An-Nahar* newspaper who covered Mr Hariri's activities.¹⁰⁸⁰ He stated that Mr Hariri was 'not very far from' Mr Ali Hamade's own understanding that the Syrian military intelligence apparatus was responsible for the attack.¹⁰⁸¹ In Mr El-Khoury's view, it would not have been possible to perpetrate such an attempt without any knowledge from the Lebanese-Syrian security agencies.¹⁰⁸²

¹⁰⁷³ Marwan Hamade, T. 8 December 2014, p. 26.

¹⁰⁷⁴ Marwan Hamade, T. 8 December 2014, pp 26, 64.

¹⁰⁷⁵ Marwan Hamade, T. 8 December 2014, p. 16.

¹⁰⁷⁶ Marwan Hamade, T. 8 December 2014, pp 37-38.

¹⁰⁷⁷ Marwan Hamade, T. 8 December 2014, pp 48-49. Mr El-Chammaa said that Mr Hariri visited Mr Hamade so often as a message to those who had perpetrated the crime. Ghaleb Ahmad El-Chammaa, T. 10 February 2015, p. 60.

¹⁰⁷⁸ Marwan Hamade, T. 8 December 2014, p. 49; Walid Jumblatt, T. 5 May 2015, pp 43-44.

¹⁰⁷⁹ Mr El-Chammaa and Mr El-Sayyed said that Mr Hariri viewed the incident as a harsh political message, sent directly to him and to Mr Jumblatt. Ghaleb Ahmad El-Chammaa, T. 10 February 2015, p. 59; Jamil El-Sayyed, T. 6 June 2018, pp 95-96. Mr Salim Diab testified that it was known in Mr Hariri's circle that the attempted assassination was a message to Mr Hariri. Salim Diab, T. 22 January 2015, pp 65-66. Mr El-Youssef said that Mr Hariri considered the attack to be a message to himself and to Mr Jumblatt, as well as against French policy in the region. Ghazi El-Youssef, T. 10 March 2015, pp 75-77. Mr El-Khoury said that both he and Mr Hariri viewed the attack as a message targeting Mr Hariri and Mr Jumblatt equally. Ghattas El-Khoury, T. 15 January 2015, p. 79, T. 20 January 2015, p. 43. According to Mr El-Sabeh 'everyone' thought that the attack was a message to Mr Hariri and Mr Jumblatt, including Mr Hariri and Mr Jumblatt. Bassem El-Sabeh, T. 16 March 2015, pp 55, 58. Mr Majdalani testified that the 1 October 2004 attack on Mr Hamade was a message addressed to Mr Jumblatt because Mr Hamade was on Mr Jumblatt's list and in Mr Jumblatt's bloc. It was also a message to Mr Hariri because Mr Hamade was very close to Mr Hariri. Atef Majdalani, T. 29 April 2015, pp 6-7. Mr Siniora testified that Mr Hariri considered this attack as a message addressed to him, as did all the others around him. Fouad Siniora, T. 23 March 2015, p. 91.

¹⁰⁸⁰ Ali Hamade, T. 13 April 2015, pp 3-5.

¹⁰⁸¹ Ali Hamade, T. 13 April 2015, p. 83.

¹⁰⁸² Ghattas El-Khoury, T. 20 January 2015, pp 44-45, T. 21 January 2015, p. 15.

618. While on his way to visit Mr Hamade in hospital, Mr Jumblatt said that he received a call from Syrian general Mr Hikmat Chehabi, who was in Paris, telling him to ‘be careful’.¹⁰⁸³ Mr Jumblatt concluded from this that ‘there is an imminent danger that could target me as well’; Mr Chehabi had never used that form of language with Mr Jumblatt before.¹⁰⁸⁴ According to Mr Siniora, Mr Hariri thought the security system was behind the attack, but he did not have evidence to make such accusations. There were political motives behind the attack, including intimidating others. The witness believed this was the motive of the attack.¹⁰⁸⁵

619. According to Mr Hamade, there was no proper investigation of the attack on himself, or those on other political figures.¹⁰⁸⁶ Mr Hamade testified that a few days after the attack someone from a police station, but not ‘an officer’, came and took Mr Hamade’s testimony in the presence of a judge.¹⁰⁸⁷ However, he understood that whenever such an attack occurred—including that on him—Syrian intelligence would come and take all of the files from the Lebanese authorities.¹⁰⁸⁸

620. About ten days after the attack, the then Minister of the Interior, Mr Elias El-Murr, came to the hospital where Mr Hamade was recovering, and told him that he had been following up the investigation until ‘the Syrian intelligence came, took over the file, and took all the evidence and files and reports to the Syrian intelligence headquarters in Anjar’.¹⁰⁸⁹ In November 2004, the head of the Lebanese ISF, Mr Marwan El-Zein, told Mr Hamade that Mr Ghazaleh had called him and told him that the investigation was pointless because ‘we know the perpetrators or either Israel or maybe he made it himself, he was the main perpetrator’ and to reduce the investigation.¹⁰⁹⁰

¹⁰⁸³ Walid Jumblatt, T. 5 May 2015, pp 36-38.

¹⁰⁸⁴ Walid Jumblatt, T. 5 May 2015, p. 38. Mr Hariri had been on very good terms with Mr Chehabi (and Mr Abdel-Halim Khaddam), Bassem El-Sabeh, T. 16 March 2015, p. 17. According to Mr El-Sayyed, Mr Hariri used to communicate with President Hafez Al-Assad through specific aides such as Mr Khaddam and Mr Chehabi, Jamil El-Sayyed, T. 5 June 2018, pp 33, 56-57.

¹⁰⁸⁵ Fouad Siniora, T. 23 March 2015, p. 92.

¹⁰⁸⁶ Marwan Hamade, T. 8 December 2014, pp 29-30. Mr Hamade stated that there was no investigation into other attacks either – listing those on Mr Kamal Jumblatt, Mr Bashir Gemayel, Mr Rene Mouawad, Mr Salim Lawzi, Mr Riad Taha and Mr Qadri (journalists and politicians). However, Mr El-Sayyed stated that the attack on Mr Hamade was the first political assassination attempt in Lebanon in many years, since almost the civil war. Mr El-Sayyed also stated that the army and the ISF investigated the crime scene. Jamil El-Sayyed, T. 6 June 2018, pp 96-97.

¹⁰⁸⁷ Marwan Hamade, T. 8 December 2014, p. 29.

¹⁰⁸⁸ Marwan Hamade, T. 8 December 2014, pp 31-34.

¹⁰⁸⁹ Marwan Hamade, T. 8 December 2014, pp 31-36.

¹⁰⁹⁰ Marwan Hamade, T. 8 December 2014, pp 32, 36-37.

621. Mr El-Murr also told Mr Hamade that Syrian intelligence services took preliminary evidence from the police station.¹⁰⁹¹ Mr Majdalani also said that he had been told by Mr Hamade that the investigation was not serious and that the investigation file disappeared, showing a conspiracy between the Lebanese and Syrian security agencies regarding this matter.¹⁰⁹² On 31 October 2004, Mr Jumblatt made a statement to the media, saying that concrete results from the investigation had not emerged.¹⁰⁹³

622. After the attack, Mr Hariri went to Syria and met Mr Ghazaleh. Mr El-Sabeh believed Mr Ghazaleh had denied any Syrian involvement in the attack.¹⁰⁹⁴ Mr Jumblatt stated that after the attack, the French President, Mr Chirac, told Mr Hariri he had sent an envoy to Mr Al-Assad with a warning.¹⁰⁹⁵ Mr Hariri thought that a ‘very firm and harsh message’ from Mr Chirac to Mr Al-Assad would be enough to stop the threat.¹⁰⁹⁶ Mr Jumblatt warned Mr Hariri that this would not be enough.¹⁰⁹⁷

623. Mr Hamade was not dissuaded from continuing in politics by the assassination attempt, and nor, in his opinion, were Mr Jumblatt or Mr Hariri.¹⁰⁹⁸ Mr El-Sayyed stated that the attack fuelled Mr Jumblatt’s resentment and his subsequent attacks on Syria.¹⁰⁹⁹ He further testified that ‘the conclusion was that it was a Syrian bloody message to Walid Jumblatt’.¹¹⁰⁰ Mr Salim Diab stated that it was ‘known in the circle of Mr Hariri that the ... attempt of assassination of Mr Hamade was a message to Mr Hariri’.¹¹⁰¹ Mr El-Sabeh, who was an MP, believed that many MPs did, however, fear for their safety.¹¹⁰²

624. Ms Alia Arab, the daughter of Mr Al-Arab, the supervisor of Mr Hariri’s close protection team, stated that her father was very nervous after the attempt on Mr Hamade’s life. He seemed very worried, refused to go out and spent even more time than usual with Mr Hariri, and, a few

¹⁰⁹¹ Marwan Hamade, T. 8 December 2014, pp 33-34.

¹⁰⁹² Atef Majdalani, T. 29 April 2015, p. 7.

¹⁰⁹³ Walid Jumblatt, T. 5 May 2015, pp 59-60.

¹⁰⁹⁴ Bassem El-Sabeh, T. 16 March 2015, pp 59-60.

¹⁰⁹⁵ Walid Jumblatt, T. 5 May 2015, pp 42, 44-45.

¹⁰⁹⁶ Walid Jumblatt, T. 5 May 2015, p. 42.

¹⁰⁹⁷ Walid Jumblatt, T. 5 May 2015, pp 43-44.

¹⁰⁹⁸ Marwan Hamade, T. 8 December 2014, pp 68-69.

¹⁰⁹⁹ Jamil El-Sayyed, T. 6 June 2018, p. 96.

¹¹⁰⁰ Jamil El-Sayyed, T. 6 June 2018, p. 97.

¹¹⁰¹ Salim Diab, T. 22 January 2015, pp 66-67.

¹¹⁰² Bassem El-Sabeh, T. 16 March 2015, pp 55-56.

days before his own death (in the attack on Mr Hariri), ‘told my young son not to cry for him if he dies’.¹¹⁰³

625. Following the attempt on Mr Marwan Hamade’s life, Mr Hariri asked Mr Hamade’s brother, Ali, to open up a communication channel with the Syrians through General Mohammed Nasif to President Al-Assad.¹¹⁰⁴ This was because General Nasif was a senior intelligence officer who was very close to the Al-Assad family and Mr Hariri thought that his other channels were conveying distorted messages to Mr Al-Assad.¹¹⁰⁵ On 16 November 2004, Mr Hamade travelled to Damascus and met the general and conveyed Mr Hariri’s message, namely, that the Lebanese and Syrians were allies, and the Syrians should trust the Lebanese ‘and start believing that they do have allies in Lebanon and not people who are subservient to them’.¹¹⁰⁶ And ‘this would benefit them completely if they remove the stranglehold over Lebanon’ and allow the Lebanese institutions to work freely and properly.¹¹⁰⁷

626. Mr Ali Hamade then returned to Beirut and briefed Mr Hariri. He went back to Damascus on 28 November 2004 to meet the general who told him that the Syrians were not opposed to Mr Hariri, but were ‘a bit annoyed by some of his political actions, the way he deals with us’ and that they ‘will try to improve things’ with Mr Hariri, and to pass on a positive message to him.¹¹⁰⁸

627. In mid-December 2004, Mr Ali Hamade made a third visit to General Nasif on Mr Hariri’s request, this time to ask what the position of the Syrian leadership and Mr Al-Assad was towards him.¹¹⁰⁹ This time, however, the general spoke harshly and told Mr Hamade that President Al-Assad considered that Mr Hariri’s messages of support ‘are just mockery’, meaning that he was sending reassuring messages while actually supporting the opposition and participating in its work behind the scenes.¹¹¹⁰

¹¹⁰³ Exhibit P726 (Statement of Alia Al-Arab), paras 9, 19.

¹¹⁰⁴ Ali Hamade, T. 13 April 2015, pp 34-35.

¹¹⁰⁵ Ali Hamade, T. 13 April 2015, pp 34-37.

¹¹⁰⁶ Ali Hamade, T. 13 April 2015, pp 37-40.

¹¹⁰⁷ Ali Hamade, T. 13 April 2015, p. 39.

¹¹⁰⁸ Ali Hamade, T. 13 April 2015, pp 48-50.

¹¹⁰⁹ Ali Hamade, T. 13 April 2015, p. 53.

¹¹¹⁰ Ali Hamade, T. 13 April 2015, pp 54-55.

628. According to Mr Jumblatt, ‘after the attempt on Mr Hamade’s life we reached a conclusion and a conviction that the Syrians were the perpetrators of that attempt.’¹¹¹¹ Mr El-Sayyed also stated that Mr Jumblatt—believing, like Mr Hariri and many others, that the attack was a message from the Syrians—remembered the assassination of Mr Jumblatt’s father Kamal in 1977 and started attacking the Syrians with a stronger voice.¹¹¹² By 4 February 2005, Mr Jumblatt was reported as ‘openly blaming Syria for the assassination of his father’.¹¹¹³ Mr Jumblatt testified that by expressing this sentiment, he ‘was adopting a tone of escalation’ in his confrontation with the Syrian regime.¹¹¹⁴

J. Mr Hariri’s resignation as prime minister

629. On 12 September 2004, as noted above, while in Barcelona, Mr Hariri stated that he and his government would resign before the end of the month.¹¹¹⁵ On 15 September 2004, according to the *An-Nahar* website, Mr Hariri agreed to postpone his resignation until after UN Secretary-General, Mr Kofi Annan, had reported to the UN Security Council on the implementation of resolution 1559.¹¹¹⁶

630. On 19 October 2004, Mr Hariri and over 100 MPs and ministers attended a parliamentary session, at which the main topic of discussion was the timing of the government’s resignation and the consultation process for forming the next government.¹¹¹⁷

631. On the morning of 20 October 2004, Mr Hariri was informed that the issue of the government formation was no longer on the table and he was supposed to resign in the following

¹¹¹¹ Walid Jumblatt, T. 6 May 2015, p. 106.

¹¹¹² Jamil El-Sayyed, T. 6 June 2018, p. 96. Despite his conviction that the Syrians had assassinated his father, around 40 days afterwards, Mr Jumblatt began a working relationship with Syria. Walid Jumblatt, T. 4 May 2015, pp 9-11. In his view, he had ‘no choice’ but to ‘seal a deal ... with those who assassinated Kamal Jumblatt.’ Walid Jumblatt, T. 4 May 2015, pp 10-11.

¹¹¹³ Exhibit P448 (UNIC Beirut press review, 4 February 2005), pp 3-4, reporting that for the first time Mr Jumblatt had openly blamed Syria for this assassination.

¹¹¹⁴ Walid Jumblatt, T. 6 May 2015, p. 106. Mr Jumblatt described as ‘improper’ the removal of a commemorative statue of Mr Kamal Jumblatt from the Lebanese president’s summer palace during Mr Lahoud’s presidency, but did not mean that he did not have ‘very friendly feelings’ towards Mr Lahoud, because Mr Lahoud’s father and his own had been allies. Walid Jumblatt, T. 7 May 2015, pp 84-85.

¹¹¹⁵ Exhibit P470 (Press release, 13 September 2004), pp 1, 10-11; exhibit P328 (Press release, 13 September 2004), p. 1; exhibit P532 (UNIC Beirut press review, 10 September 2004), p. 1. *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), para. 26.

¹¹¹⁶ Exhibit P532 (UNIC Beirut press review, 16 September 2004), p. 4. *See also* exhibit P1782, para. 28.

¹¹¹⁷ P303 (Press releases), ERNs D0004809-D40004810. *See also* exhibit P1782, para. 108.

hours.¹¹¹⁸ According to Mr Hani Hammoud, by then it had become clear to Mr Hariri that he would not be able to set up the kind of government that he wanted.¹¹¹⁹ At the time, according to Mr Marwan Hamade, the Parliament was under Syrian influence and there was an overwhelming pro-Syrian majority. He learned through media reports that ‘parliamentary sources’ told Mr Hariri to resign.¹¹²⁰ Mr Hariri travelled to Baabda Palace, the president’s official residence, at around 14:30 and presented his resignation to President Lahoud.¹¹²¹

632. On 21 October 2004, President Lahoud appointed Mr Omar Karami as Lebanon’s new prime minister.¹¹²² Mr Hariri’s resignation became effective on 26 October 2004, when Mr Karami announced the formation of his new cabinet.¹¹²³ Mr El-Youssef and Mr Jumblatt stated that it was composed of ministers who were Syrian allies and opposed to Mr Hariri.¹¹²⁴

633. According to Mr El-Youssef, Mr Hariri had not resigned earlier because he had been promised that, after the extension of Mr Lahoud’s term, things would get better, but those were empty promises.¹¹²⁵ The main issue that prompted Mr Hariri to resign was Mr Lahoud’s extension because under Mr Lahoud’s presidency it would be impossible to form a cabinet other than one endorsed by the Syrian authorities.¹¹²⁶ According to Mr El-Youssef, Mr Hariri’s goal after resigning was to start working for the next parliamentary elections.¹¹²⁷ The Trial Chamber also recorded as an agreed fact between the Parties that, ‘After his resignation, Mr Rafik Hariri started preparing for parliamentary elections which were due to start in late May 2005’.¹¹²⁸

634. Mr Hammoud also testified that before he resigned in October 2004, Mr Ghazaleh told Mr Hariri that he could choose three ministers in his own government, being himself and two

¹¹¹⁸ Marwan Hamade, T. 8 December 2014, p. 16.

¹¹¹⁹ Hani Hammoud, T. 19 May 2015, p. 61. *See also* Jamil El-Sayyed, T. 6 June 2018, p. 94.

¹¹²⁰ Marwan Hamade, T. 8 December 2014, pp 16-18.

¹¹²¹ Exhibit P452 (Press release, 20 October 2004); Marwan Hamade, T. 8 December 2014, pp 16-17; Ghazi El-Youssef, T. 10 March 2015, p. 70. *See also* exhibit P1782, para. 113.

¹¹²² Ghazi El-Youssef, T. 10 March 2015, pp 64-65; exhibit P1782, para. 123.

¹¹²³ Exhibit P539 (Resignation decree Mr Hariri); exhibit 3D126 (Extract of the Lebanese Presidency of the Council of Ministers website), ERN 1DT3-0020. *See also* exhibit P1782, para. 136.

¹¹²⁴ Ghazi El-Youssef, T. 10 March 2015, p. 65; Walid Jumblatt, T. 5 May 2015, p. 56.

¹¹²⁵ Ghazi El-Youssef, T. 10 March 2015, p. 69.

¹¹²⁶ Ghattas El-Khoury, T. 15 January 2015, p. 94.

¹¹²⁷ Ghazi El-Youssef, T. 10 March 2015, pp 5, 72.

¹¹²⁸ Agreed facts, no. (vii).

others, and the rest would be chosen by the Syrians.¹¹²⁹ Mr Jumblatt was of the view that the government was ‘being formed in the office of Rustom Ghazaleh’.¹¹³⁰

635. On 14 October 2004, Mr Hariri met the US ambassador to Lebanon, Mr Jeffrey Feltman, and expressed his opposition to US Congress members asking President George W. Bush to ‘freeze the assets of Lebanese and Syrian officials as a means to exercise pressure on Lebanon and Syria’.¹¹³¹

K. Electoral Law

636. Lebanese electoral law, as noted above, is complicated and difficult to summarise. Setting electoral boundaries in Lebanon is a highly politicised issue, as it has no independent electoral commission charged with neutrally reviewing and drawing electoral divisions based upon population size or other relevant factors. Rather, the Parliament itself—which is by its nature a political institution—makes this determination. The Trial Chamber heard evidence of how highly politically charged this process was, including active involvement in it by the Syrian authorities.

637. In autumn 2004, Mr Karami’s government submitted a draft electoral law to Parliament.¹¹³² It was known as the ‘Suleiman Frangieh law’, after the then-Minister of the Interior¹¹³³ who was closely allied with Mr Lahoud and Syria.¹¹³⁴ The law was to determine the constituencies, or electoral districts, for the spring 2005 elections.¹¹³⁵

638. The new law returned to smaller districts based on the *caza*¹¹³⁶—a historical Ottoman administrative division. Beirut remained divided into three electoral constituencies as before, but the division changed in the second constituency.¹¹³⁷ The second constituency was a mixed one with voters from various backgrounds—about 35 per cent Sunni, 35 per cent Shia and the rest Christian and Armenian.¹¹³⁸ Under the new law, the Shia were grouped together with Armenian

¹¹²⁹ Hani Hammoud, T. 19 May 2015, p. 63.

¹¹³⁰ Walid Jumblatt, T. 5 May 2015, p. 55.

¹¹³¹ Exhibit P303 (Press releases), ERN D0004730.

¹¹³² Ghazi El-Youssef, T. 11 March 2015, pp 18-19.

¹¹³³ Ghazi El-Youssef, T. 11 March 2015, p. 18; Jamil El-Sayyed, T. 7 June 2018, p. 7.

¹¹³⁴ Walid Jumblatt, T. 6 May 2015, pp 22-23.

¹¹³⁵ Ghazi El-Youssef, T. 11 March 2015, p. 19.

¹¹³⁶ Marwan Hamade, T. 8 December 2014, p. 76. The minister of the interior, Mr Suleiman Frangieh, supported reverting to the law of the 1960s. Jamil El-Sayyed, T. 7 June 2018, p. 7.

¹¹³⁷ Ghazi El-Youssef, T. 11 March 2015, p. 20.

¹¹³⁸ Ghazi El-Youssef, T. 11 March 2015, p. 21.

areas, so Sunnis and Christians were given a smaller number of votes.¹¹³⁹ The number of MPs was increased to nine seats,¹¹⁴⁰ and the second constituency became the biggest constituency in Beirut.¹¹⁴¹ The Taif Agreement on the other hand specified that electoral reform had to be based upon governorates divided between the Christian and Muslim communities, until Parliament passed a law free of sectarian restriction.¹¹⁴²

639. According to Mr Hariri's political supporters, these changes were intended to make Mr Hariri lose the extra seats in the second constituency, and thus curtail his political capacity.¹¹⁴³ Mr El-Youssef testified that the law was developed based on a decision by Mr Ghazaleh and the Lebanese-Syrian security apparatus.¹¹⁴⁴ Mr Jumblatt described Mr Frangieh as 'one of Syria's staunchest allies,' and an ally of Mr Lahoud.¹¹⁴⁵ Mr El-Khoury said that 'we' were targeted by a hostile government campaign.¹¹⁴⁶ On 25 January 2005, the UNIC Beirut press review quoted Mr Hariri as criticising the draft law to *An-Nahar*, saying that constituencies had 'been tailored for political goals' and that he would run in the third rather than the first constituency.¹¹⁴⁷

640. Mr Hariri first rejected the law and then tried to modify it. Mr Jumblatt said that Mr Hariri rejected the draft law outright and said if it was passed, he would resign.¹¹⁴⁸ Mr Hariri threatened that if the bill was adopted by Parliament, he would resign with his bloc from Parliament.¹¹⁴⁹

641. The electoral law was debated in Parliament between 8 and 14 February 2005.¹¹⁵⁰ Mr Hariri, according to his official website, tried to modify the draft law.¹¹⁵¹ However, Mr El-

¹¹³⁹ Ghazi El-Youssef, T. 11 March 2015, p. 22.

¹¹⁴⁰ Ghazi El-Youssef, T. 11 March 2015, pp 20-22.

¹¹⁴¹ Ghazi El-Youssef, T. 11 March 2015, pp 22-23.

¹¹⁴² Exhibit P304 (Taif Agreement), p. 2.

¹¹⁴³ Ghattas El-Khoury, T. 16 January 2015, p. 67; Ghazi El-Youssef, T. 11 March 2015, p. 23; Atef Majdalani, T. 29 April 2015, p. 12; Walid Jumblatt, T. 5 May 2015, p. 63.

¹¹⁴⁴ Ghazi El-Youssef, T. 11 March 2015, p. 25.

¹¹⁴⁵ Walid Jumblatt, T. 6 May 2015, pp 22-23; exhibit P446 (UNIC Beirut press review, 25 January 2005), p. 3.

¹¹⁴⁶ Ghattas El-Khoury, T. 16 January 2015, p. 43.

¹¹⁴⁷ Exhibit P446, p. 3. Mr Hariri stated that the constituencies 'have been tailored for political goals'. See also Walid Jumblatt, T. 6 May 2015, p. 20.

¹¹⁴⁸ Ghazi El-Youssef, T. 11 March 2015, p. 20; Walid Jumblatt, T. 5 May 2015, p. 63, T. 6 May 2015, p. 20.

¹¹⁴⁹ Walid Jumblatt, T. 6 May 2015, p. 22.

¹¹⁵⁰ Marwan Hamade, T. 8 December 2014, pp 75-76.

¹¹⁵¹ Exhibit 5D125 (Press release published on Rafik Hariri's official website, 14 February 2005) ('... Hariri, told Assafir newspaper yesterday (13 February 2005) that he will resume his struggle to amend the draft electoral law submitted by the government, especially with regard to Beirut's districts in order to achieve equilibrium at this level'). See also Ghazi El-Youssef, T. 11 March 2015, p. 20; Ghattas El-Khoury, T. 16 January 2015, p. 52.

Youssef stated that Mr Hariri's efforts in opposing the law were 'pointless'.¹¹⁵² Still, he believed in his capacity to win in Beirut, even in the second constituency.¹¹⁵³ Mr Atef Majdalani thought that Mr Hariri's chances in the second constituency were slim, but stated that Mr Hariri always said that no matter what the electoral law was, he would participate in the elections.¹¹⁵⁴

642. The Trial Chamber also took judicial notice of the following statement in the seventh UNHCR report of March 2007, that:

Negotiations unfolded during that period between Hariri and other individuals, including potential candidates, and intense interest was focused upon the draft electoral law, including the drawing of electoral district boundaries in Lebanon and, in particular, in Beirut.¹¹⁵⁵

L. Second Bristol Group meeting: 13 December 2004 and aftermath

643. On 13 December 2004, the second Bristol Group meeting was held at the Bristol Hotel. Participating was a wide coalition of opposition groups, including for the first time close associates of Mr Hariri's bloc in parliament, among them Mr Ghattas El-Khoury MP. The Bristol Group publicly adopted a joint position supporting the Taif Agreement and rejected continued Syrian interference in and control over Lebanese domestic affairs.¹¹⁵⁶

644. Mr Walid Jumblatt explicitly emphasised his commitment to the historic alliance and his personal and political unity with Mr Hariri on the issue.¹¹⁵⁷ He testified that he stood beside his long-term political opponent, the former Lebanese president and *Kataeb* Party leader, Mr Amine Gemayel—they had been military opponents in the civil war—while the Lebanese national anthem was played, thus symbolising the breadth of the alliance against continued Syrian control.¹¹⁵⁸ During an interview on 14 December 2004, Mr Hariri stated that everybody at the Bristol Group

¹¹⁵² Ghazi El-Youssef, T. 11 March 2015, p. 20.

¹¹⁵³ Ghazi El-Youssef, T. 11 March 2015, pp 20-21.

¹¹⁵⁴ Atef Majdalani, T. 29 April 2015, pp 27-28.

¹¹⁵⁵ Judicial notice facts, no. 9.

¹¹⁵⁶ Exhibit P440 (UNIC Beirut press review, 13 December 2004), p. 2; Faisal Salman, T. 8 January 2015, p. 42; Ghattas El-Khoury, T. 15 January 2015, p. 78, T. 16 January 2015, p. 9; Ghazi El-Youssef, T. 10 March 2015, p. 67. *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), para. 260.

¹¹⁵⁷ Exhibit P441 (UNIC Beirut press review, 14 December 2004), p. 2; Walid Jumblatt, T. 5 May 2015, p. 107. *See also* exhibit P1782, para. 261.

¹¹⁵⁸ Walid Jumblatt, T. 5 May 2015, pp 102-104. *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), para. 261.

meeting was supporting the Taif Agreement and asserted that the parliamentary elections next year would be ‘decisive and essential’.¹¹⁵⁹

645. During the meeting, no consensus emerged on the model for Syrian withdrawal. Some participants approved of UN Security Council resolution 1559 as a basis, while others approved of the Taif Agreement.¹¹⁶⁰ Two Hariri loyalists, Mr El-Khoury and Mr Fatfat, favoured implementing the Taif Agreement with a more moderate, staged withdrawal of Syrian forces to the Bekaa valley as a first step.¹¹⁶¹ According to Mr Jumblatt, they deemed UN Security Council resolution 1559 not suitable for Lebanon, especially when it came to disarming and disbanding the militias as this could not be done without internal agreement.¹¹⁶²

646. The interpretation of the Taif Agreement differed from resolution 1559, which called for Syria’s full and complete withdrawal.¹¹⁶³ Those relying on the Taif Agreement as a basis talked about a gradual withdrawal and then a discussion between Syrian and Lebanese authorities to achieve a full and complete withdrawal. According to Mr Jumblatt, this was Mr Hariri’s clear position.¹¹⁶⁴ Mr El-Khoury testified that by February 2005, Mr Hariri had changed his position and agreed to the total withdrawal of the Syrian forces from Lebanon, which he did not openly declare, as he wanted to leave himself a margin of political manoeuvre.¹¹⁶⁵

647. Mr Hariri did not attend but sent Mr Farid Makari, Mr Fatfat and Mr El-Khoury to the meeting. That was seen as a sign that he was slowly joining it. He did not want to make an abrupt turn in the confrontation with Syria. In Mr Jumblatt and Mr El-Sabeh’s assessment, previous threats from Mr Ghazaleh drove him to join the opposition.¹¹⁶⁶ Mr Hariri followed the activities of the Bristol Group and heard all the details.¹¹⁶⁷ Mr El-Khoury stated that the ‘security apparatus’ accused Mr Hariri of having established the opposition.¹¹⁶⁸

¹¹⁵⁹ Exhibit P303 (Press releases), ERNs D0004868-D0004869, D0004875, D0004879. *See also* exhibit P1782, para. 262.

¹¹⁶⁰ Walid Jumblatt, T. 5 May 2015, p. 102.

¹¹⁶¹ Ghattas El-Khoury, T. 16 January 2015, pp 37, 41-42.

¹¹⁶² Walid Jumblatt, T. 5 May 2015, p. 105.

¹¹⁶³ Walid Jumblatt, T. 5 May 2015, pp 105-106.

¹¹⁶⁴ Walid Jumblatt, T. 5 May 2015, p. 106; Ghattas El-Khoury, T. 16 January 2015, pp 41-42.

¹¹⁶⁵ Ghattas El-Khoury, T. 16 January 2015, pp 41-42.

¹¹⁶⁶ Bassem El-Sabeh, T. 16 March 2015, pp 23-41, 52-54; Walid Jumblatt, T. 5 May 2015, pp 62, 97, 99-100.

¹¹⁶⁷ Bassem El-Sabeh, T. 16 March 2015, pp 68-69. *See also* exhibit P303, ERNs D0004868, D0004875-D0004876.

¹¹⁶⁸ Ghattas El-Khoury, T. 16 January 2015, p. 63.

M. Political events between the second Bristol Group meeting and the third Bristol Group meeting

648. On 21 December 2004, telephone calls occurred between Mr Nasser and Mr Khalil to arrange a meeting between Mr Hariri and Mr Nasrallah.¹¹⁶⁹ The meeting transpired around midnight in Haret Hreik, in the Dahyieh area of Beirut.¹¹⁷⁰ It lasted for around half an hour, and Mr Hariri then returned to Quraitem Palace.¹¹⁷¹ The Trial Chamber received no evidence about the content of this meeting.

649. On 22 December 2004, Mr Hariri met Patriarch Sfeir and discussed the electoral law.¹¹⁷² Patriarch Sfeir was calling for an electoral law based on *cazas*.¹¹⁷³ Afterwards, Mr Hariri spoke to the press and emphasised his support for the Taif Agreement—underlining that if the electoral law were tailored to serve the interests of one side, it would further complicate Lebanon’s problems.¹¹⁷⁴ According to Mr El-Khoury, President Lahoud’s government hoped that this would create a division between Patriarch Sfeir and Mr Hariri, to divide the opposition forces.¹¹⁷⁵ However, while Mr Hariri wanted an electoral law based on the governorate, he thought that national unity was more important, and would accept a law based on the *cazas*.¹¹⁷⁶

650. On Thursday 23 December 2004, an *Al-Mustaqbal* reporter questioned Mr Hariri about alleged statements from ministers in Mr Karami’s government accusing him and Mr Jumblatt of forming an opposition and being a threat to the country. Ministers had allegedly referred to Mr Hariri as the ‘snake’ of Quraitem.¹¹⁷⁷

¹¹⁶⁹ Mustafa Nasser, T. 9 April 2015, pp 49-51, 56-57. *See also* exhibit P413 (*Aide-mémoire* for Mustafa Nasser’s evidence on selected telephone activity 21-22 December 2004 and 9 January 2005), p. 1; exhibit P301 (Visitor logbook for Quraitem Palace), p. 307.

¹¹⁷⁰ Witness PRH101, T. 6 October 2016, pp 28-29, 36-37. *See also* Mustafa Nasser, T. 9 April 2015, pp 32-37, 49-53. With regard to locating the Haret Hreik district in the Dahyieh area, exhibit P1131 (Statement of Andrew Fahey related to Dahyieh), paras 28-30. This exhibit is based on the evidence of three witnesses— Mr Nasser, Mr El-Sabeh and Mr El-Youssef.

¹¹⁷¹ Mustafa Nasser, T. 9 April 2015, pp 52-53.

¹¹⁷² Exhibit P303 (Press releases), ERN D0004907; exhibit P366 (*Al-Mustaqbal* article, 23 December 2004), p. 1 (ERN 60302902); exhibit P352 (photographs of Mr Hariri at Bkirki), ERNs D0119158-D0119204. *See also* Ghattas El-Khoury, T. 16 January 2015, pp 52-53, 57.

¹¹⁷³ Ghattas El-Khoury, T. 16 January 2015, pp 51-52, 57. *See para.* 638.

¹¹⁷⁴ Exhibit P303, ERNs D0004907-D0004908; exhibit P366, p. 2 (ERN 60302903). *See also* Ghattas El-Khoury, T. 16 January 2015, pp 54, 57.

¹¹⁷⁵ Ghattas El-Khoury, T. 16 January 2015, p. 51.

¹¹⁷⁶ Ghattas El-Khoury, T. 16 January 2015, p. 57.

¹¹⁷⁷ Exhibit P366, p. 2 (ERN 60302903).

651. On 24 December 2004, Mr Jumblatt and Mr Aridi met Mr Hariri at Quraitem Palace. After the meeting, Mr Jumblatt stated, in a press release, ‘we wish the next year will see the determination to safeguard freedoms and to come up with an electoral law with a threshold of integrity. We hope that the Services will stop their manoeuvres and involvement in every internal matter, of course we mean here and elsewhere’. By ‘services’, Mr Jumblatt was referring to the ‘Lebanese security agencies, authorities, that are attached and closely co-operating with the Syrian regime’.¹¹⁷⁸

652. Unusually for closely-tied neighbours, Syria and Lebanon did not have diplomatic relations. On 7 January 2005, Mr Jumblatt called for the establishment of diplomatic relations between Lebanon and Syria, saying that ‘the concept that the Lebanese and the Syrians are one people in two states has to be reconsidered’ and that state-to-state relations should be established. He also urged Syria to disband its secret service apparatus in Lebanon.¹¹⁷⁹ In Mr Jumblatt’s view, it was time to achieve normal diplomatic relations between the two countries.¹¹⁸⁰

653. According to Mr Ali Hamade, during a trip to Paris in early January 2005, Mr Hariri received a telephone call from Mr Taha Mikati—brother of former Prime Minister Mr Najib Mikati, who was on good terms with President Al-Assad. After meeting with Mr Mikati in person, Mr Hariri told Mr Hamade that he had come with a message from President Al-Assad, which was that he had no hard feelings towards Mr Hariri and would change Mr Karami’s government to allow Mr Hariri to build a new government.¹¹⁸¹ The witness expressed his doubts about this, and they—he, Mr Hariri and others around them in Paris—discussed whether this was President Al-Assad communicating ‘for real’, or whether it was a manoeuvre.¹¹⁸²

¹¹⁷⁸ Exhibit P442 (Press Release, 24 December 2004); Walid Jumblatt, T. 6 May 2015, pp 3-4.

¹¹⁷⁹ Exhibit P443 (UNIC Beirut press review, 7 January 2005), p. 2.

¹¹⁸⁰ Walid Jumblatt, T. 6 May 2015, pp 5-7. He did not recall discussing this issue with Mr Hariri.

¹¹⁸¹ Ali Hamade, T. 13 April 2015, p. 71.

¹¹⁸² Ali Hamade, T. 13 April 2015, p. 80.

654. On 9 January 2005, Mr Hariri met Mr Ghazaleh and Mr Charles Ayoub, the owner of *Diyar*, a pro-Syrian Lebanese newspaper,¹¹⁸³ at Quraitem Palace.¹¹⁸⁴ The meeting was audio-recorded—yet much of the dialogue was inaudible and not transcribed.¹¹⁸⁵ Mr El-Youssef, Mr El-Khoury and Mr Hammoud did not attend the meeting, but testified about what was expressed in it, as did Mr El-Chammaa, who was told about the meeting by Mr Hariri. According to Mr El-Chammaa, the aim of the meeting was for Mr Ghazaleh to ascertain whether Mr Hariri was determined to go ahead with his plan to run for elections.¹¹⁸⁶ Mr El-Youssef believed that Mr Ghazaleh's purpose was to remind Mr Hariri that he (Mr Hariri) governs with Syrian consent, whereas Mr Hariri intended to make clear that Syrian presence in Lebanon was legitimised by the Taif Agreement.¹¹⁸⁷

655. Mr Hariri began the meeting by stating that the electoral law proposals were based on the Taif Agreement, and informed Mr Ghazaleh that Mr Nasrallah would 'go along with' the law.¹¹⁸⁸ Mr Hariri also said that if Syria promoted a bad law in Lebanon, it would 'pay the price.'¹¹⁸⁹ He told Mr Ghazaleh that if he wanted a majority in Parliament, he would not achieve it if he considered Mr Hariri and Mr Jumblatt to be the opposition.¹¹⁹⁰ Mr Hariri asked Mr Ghazaleh why the attempted assassination of Mr Hamade had not been referred to the Judicial Council—the highest judicial authority in Lebanon, responsible for dealing with crimes threatening national security.¹¹⁹¹ He warned Mr Ghazaleh that if anything else happened to Mr Hamade and the case had not been referred, accusations would be made against the government and or Syria.¹¹⁹²

¹¹⁸³ Mr Ayoub had constant relationships and friendships with the Syrians, Ghaleb Ahmad El-Chammaa, T. 11 February 2015, p. 4. Mr El-Chammaa stated that Mr Ayoub was sometimes given financial assistance by Mr Hariri. He originally stated that he did not think Mr Ayoub was paid large sums, but then recalled, after being shown Mr Ayoub's statement, that Mr Ayoub was paid USD 100,000 per month by Mr Hariri for around ten years. Ghaleb Ahmad El-Chammaa, T. 12 February 2015, pp 69-70.

¹¹⁸⁴ Exhibit P301, p. 322; exhibit P303, ERN D0004921; exhibit P532 (UNIC Beirut press review, 10 January 2005), p. 5. *See also* Mohammed Mneimneh, T. 11 November 2014, p. 55 (confirming that Mr Ghazaleh logged in and out of Quraitem Palace on 9 January 2005).

¹¹⁸⁵ Exhibit P395 (Audio recording of meeting on 9 January 2005); exhibit P395.1 (Transcript of audio recording of meeting on 9 January 2005). *See also* Ghazi El-Youssef, T. 10 March 2015, p. 3, T. 11 March 2015, pp 11, 56-57, 64, 66, 72, 76, 86, 93, 97-100, 103-104.

¹¹⁸⁶ Ghaleb Ahmad El-Chammaa, T. 11 February 2015, p. 3.

¹¹⁸⁷ Ghazi El-Youssef, T. 11 March 2015, pp 113-115.

¹¹⁸⁸ Exhibit P395.1, ERN 40000843D_Side A, p. 4. *See also* Ghazi El-Youssef, T. 11 March 2015, pp 115-116.

¹¹⁸⁹ Exhibit P395.1, ERN 40000843D_Side A, p. 34.

¹¹⁹⁰ Exhibit P395.1, ERN 40000843D_Side A, p. 37.

¹¹⁹¹ Exhibit P395.1, ERN 40000843D_Side A, p. 6. *See also* Ghazi El-Youssef, T. 12 March 2015, p. 71.

¹¹⁹² Exhibit P395.1, ERN 40000843D_Side A, pp 6-9. *See also* Ghazi El-Youssef, T. 12 March 2015, pp 78-79.

656. Mr Hariri told Mr El-Chammaa that he had told Mr Ghazaleh and Mr Ayoub that he would run for elections throughout Lebanon and that they were not happy.¹¹⁹³ In Mr El-Youssef's opinion—having read the audible parts of the transcript of the meeting—Mr Hariri refused any help from the Syrians.¹¹⁹⁴ He told Mr Ghazaleh that there should be coordination, but that a prime minister should govern Lebanon with more freedom and powers.¹¹⁹⁵

657. According to Mr El-Youssef, Mr Hariri's emphasis on the Taif Agreement was intended to show the problems in proposing an electoral law based on districts.¹¹⁹⁶ He thought that Mr Hariri was not telling Mr Ghazaleh the full truth about the elections, because he was planning to run for prime minister and believed that he would be elected.¹¹⁹⁷ Mr El-Youssef thought that Mr Ghazaleh was saying that 'we' would not intervene in the election 'this time', which, according to Mr El-Youssef, meant that the Syrians had interfered every other time.¹¹⁹⁸ In Mr El-Youssef's view, Mr Hariri was not confrontational in the meeting.¹¹⁹⁹ Mr El-Khoury and Mr Hammoud testified that in the meeting, Mr Hariri was informing Mr Ghazaleh that he was going to stand for elections in the Lebanese regions and would not accept the Syrians on his electoral list.¹²⁰⁰ According to Mr El-Khoury, this reflected the outcome of discussions in an earlier meeting, in December 2004.¹²⁰¹

658. After the meeting, according to Mr Nasser, Mr Ghazaleh went straight to Haret Hreik, from where he contacted the Syrian Presidential Palace.¹²⁰² Mr Hariri then visited Mr Jumblatt at his residence and declared that 'our alliance with Mr Walid is strong and unshakeable'.¹²⁰³

¹¹⁹³ Ghaleb Ahmad El-Chammaa, T. 11 February 2015, pp 5-8.

¹¹⁹⁴ Ghazi El-Youssef, T. 12 March 2015, p. 14, referring to exhibit P395.1, ERN 40000843D_Side A, p. 7.

¹¹⁹⁵ Ghazi El-Youssef, T. 11 March 2015, p. 114.

¹¹⁹⁶ Ghazi El-Youssef, T. 12 March 2015, p. 40.

¹¹⁹⁷ Ghazi El-Youssef, T. 12 March 2015, pp 34-35.

¹¹⁹⁸ Ghazi El-Youssef, T. 12 March 2015, p. 44.

¹¹⁹⁹ Ghazi El-Youssef, T. 12 March 2015, p. 32.

¹²⁰⁰ Ghattas El-Khoury, T. 16 January 2015, pp 66-70; Hani Hammoud, T. 19 May 2015, pp 84-85, T. 20 May 2015, p. 11.

¹²⁰¹ Ghattas El-Khoury, T. 16 January 2015, pp 65-66.

¹²⁰² Exhibit P1340 (Call sequence table for mobile ending in 010), p. 367; exhibit P535 (telephone directory of Quraitem Palace Control Room), p. 54; exhibit P1390 (Letter from the Special Syrian Judicial Commission), p. 9; exhibit P1391 (extract from Mr Jamil El-Sayyed's handwritten telephone notebook). *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), paras 508-509, 512.

¹²⁰³ Exhibit P444 (Press release, 10 January 2005), p. 1.

659. The same day, Sunday 9 January 2005, a press release reported that Mr Nasrallah met two members of the Qornet-Chehwan Gathering—Mr Samir Franjeh and Mr Samir Abd al-Malak.¹²⁰⁴ That evening, Mr Hussein Khalil contacted Mr Nasser to arrange a meeting between Mr Hariri and Mr Nasrallah.¹²⁰⁵ They met that night in Mar Michael, in south Beirut, rather than Haret Hreik, where earlier and subsequent meetings took place,¹²⁰⁶ between 18:35 and 20:14, with Mr Nasser there.¹²⁰⁷ Also on 9 January 2005, the Syrian Deputy Foreign Minister, Mr Walid El-Moallem, visited Lebanon.¹²⁰⁸

660. Subsequently, in January 2005, Mr Hariri had another encounter at Quraitem Palace with Mr Ghazaleh. Witness 357—a surviving member of Mr Hariri’s convoy on 14 February 2005—was an ISF officer who had been assigned since 2001 to work with Mr Hariri’s security detail. He described Mr Ghazaleh visiting Quraitem Palace around 15 days before the attack on Mr Hariri accompanied by a convoy of Syrian *Mukhabarat* security. The witness stated that it seemed ‘as if they were coming to kill or kidnap’ Mr Hariri.¹²⁰⁹ The witness heard Mr Ghazaleh tell Mr Hariri that if he made ‘a mistake’, his daughter would be kidnapped.¹²¹⁰ In the witness’s words, ‘They came, they threatened, and they left. They didn’t stay long.’¹²¹¹

661. On 16 January 2005, Mr Jumblatt and Mr Hariri attended the annual dinner of the *Koura* branch ‘of the reform movement, within the Phalangist’, with a press release referring to it as ‘similar to a “Northern Bristol meeting”’. Its attendees included Mr Fatfat, Mr Samir Jisr and the former president Mr Amin Gemayel.¹²¹² Mr Jumblatt described it as a meeting with the same objective of the Bristol meetings, namely, to ‘expand the opposition, make it as wide as possible’ to confront Mr Lahoud’s ‘unconstitutional and illegal extension’ and to implement the Taif

¹²⁰⁴ Exhibit P444, p. 1.

¹²⁰⁵ Mr Mustafa Nasser did not recall the date of 9 January specifically, but telephone and Quraitem Palace logs are consistent with Mr Khalil wanting to meet Mr Hariri, that happening, then Mr Hariri meeting Mr Nasrallah on that date. Mustafa Nasser, T. 9 April 2015, pp 55-57, 59-60; exhibit P413, p. 2.

¹²⁰⁶ Mustafa Nasser, T. 9 April 2015, pp 55-57, 59-60; exhibit P413.

¹²⁰⁷ Mustafa Nasser, T. 9 April 2015, pp 57, 60; exhibit P301, p. 322; exhibit P413, p. 2.

¹²⁰⁸ Hani Hammoud, T. 19 May 2015, pp 88-90.

¹²⁰⁹ Witness PRH357, T. 2 June 2015, pp 20-21.

¹²¹⁰ Witness PRH357, T. 2 June 2015, p. 25.

¹²¹¹ Witness PRH357, T. 2 June 2015, p. 22.

¹²¹² Exhibit P445 (Press release, 16 January 2005).

Agreement. He and Mr Hariri were coordinating their actions but each had their own personal method.¹²¹³

662. That same day, according to a UNIC Beirut press release, Mr Nasrallah gave a speech in which he stated that UN Security Council resolution 1559 ‘is a reflection of Israeli demands’. He observed that Israel was trying ‘through the so-called international community, to accomplish these demands’ as they had failed to achieve them by force during the two-decade occupation of southern Lebanon. Mr Nasrallah also attacked the opposition, describing some of its members as ‘fanatics’.¹²¹⁴

663. On 18 January 2005, Mr Hariri spent the day receiving visitors at Quraitem Palace, including meeting Mr Khalil for around half an hour at 21:00.¹²¹⁵ An hour later Mr Khalil had a 15-minute call with Mr Wafik Safa, the head of the central unit for liaison and coordination in Hezbollah,¹²¹⁶ in south Beirut.¹²¹⁷

664. On Thursday 20 January 2005, in honour of the *Eid al-Adha* religious holiday, Mr Hariri received a large number of well-wishers at Quraitem Palace.¹²¹⁸ Following a previous meeting between Mr Hariri and President Al-Assad in December 2003, during which Mr Hariri was prohibited from organising rallies and having public gatherings near Quraitem Palace, Mr Wissam Al-Hassan told Mr Hammoud that we were ‘going to get beaten because of this’.¹²¹⁹

665. On 25 January 2005, Mr Hariri and Mr Jumblatt criticised the proposed electoral law reform.¹²²⁰

666. According to a UNIC Beirut press review, on Wednesday 26 January 2005, Mr Hariri threatened to resign from Parliament, along with his parliamentary bloc, if the electoral law proposed by the minister of interior, Mr Suleiman Franjeh, was passed.¹²²¹

¹²¹³ Walid Jumblatt, T. 6 May 2015, pp 17-19.

¹²¹⁴ Exhibit P532 (UNIC Beirut press review, 17 January 2005), p. 4.

¹²¹⁵ Exhibit P301, pp 335-337.

¹²¹⁶ Exhibit P2091 (Letter from Judge Said Mirza, Public Prosecutor at the Court of Cassation), p. 1.

¹²¹⁷ See exhibit P1782, para. 642.

¹²¹⁸ Ghattas El-Khoury, T. 16 January 2015, pp 71-74; Hani Hammoud, T. 20 May 2015, pp 34-35.

¹²¹⁹ Hani Hammoud, T. 20 May 2015, pp 32-35.

¹²²⁰ Exhibit P446 (UNIC Beirut press review, 25 January 2005), p. 3; Walid Jumblatt, T. 6 May 2015, pp 19-22.

¹²²¹ P532 (UNIC Beirut press review, 27 January 2005), p. 3.

667. On 29 January 2005, Mr Hariri travelled to his Naameh residence with Mr El-Khoury and Mr Fuleihan and held a meeting with them there. Apart from members of his security detail such as Mr Abu Tarek, no one else was present.¹²²² The purpose of the meeting was to discuss the exclusion of the ‘Syrian deposits’—Syrian-nominated candidates Mr Bassem Yammout, Mr Nasser Kandil and Mr Adnan Arakji—from Mr Hariri’s electoral lists for the May 2005 election.¹²²³ According to Mr Majdalani, the rejection of Syrian deposits did not extend to the Hezbollah representative, who at the time was Mr Mohamed Berjawi.¹²²⁴

668. Mr Hariri told Mr El-Khoury that the Syrians had directly requested that he take the deposits.¹²²⁵ Mr El-Khoury and Mr Fuleihan told Mr Hariri that the opposition did not believe that the Syrian deposits would be excluded.¹²²⁶ Mr El-Khoury described the rejection of the Syrian deposits as another ‘message’ to the opposition—the first message being attendance at the Bristol Group meetings.¹²²⁷ In his view, Mr Hariri was not going to make compromises.¹²²⁸

669. According to Mr El-Khoury, when Mr Hariri returned to Quraitem Palace on 29 January 2005, he arranged appointments with Mr Yammout, Mr Kandil and Mr Arakji, and informed them that they would not appear on his electoral lists.¹²²⁹ According to Mr Majdalani, however, Mr Kandil said that he first learned of Mr Hariri’s decision through the media.¹²³⁰

670. Mr Majdalani testified that Mr Kandil was very upset at not being included on Mr Hariri’s electoral list—as well as not being informed in person of the decision.¹²³¹ In the morning of 4 February 2005, Mr Hariri received Mr Kandil at Quraitem Palace.¹²³² Mr Majdalani was not

¹²²² Ghattas El-Khoury, T. 16 January 2015, p. 77.

¹²²³ Ghattas El-Khoury, T. 16 January 2015, pp 79-83.

¹²²⁴ Atef Majdalani, T. 30 April 2015, p. 17.

¹²²⁵ Ghattas El-Khoury, T. 16 January 2015, p. 86. *See also* exhibit P368 (*An-Nahar* article, 29 January 2005), p. 1 (‘and it seems that the electoral district issue will be a point of contention not only between Hariri and the government, but also between him and Damascus, after a series of mediated contacts between the two sides in recent weeks all failed to bring them to an understanding because of the many divergent offers they exchanged.’).

¹²²⁶ Ghattas El-Khoury, T. 16 January 2015, p. 80.

¹²²⁷ Ghattas El-Khoury, T. 16 January 2015, p. 83.

¹²²⁸ Ghattas El-Khoury, T. 20 January 2015, p. 11.

¹²²⁹ Ghattas El-Khoury, T. 16 January 2015, pp 80, 85-86, T. 20 January 2015, p. 19.

¹²³⁰ Atef Majdalani, T. 28 April 2015, p. 46.

¹²³¹ Atef Majdalani, T. 28 April 2015, pp 46-48, 51.

¹²³² Exhibit P301, p. 369. Mr Kandil is logged as attending between 09:25 and 10:40.

present at the meeting, but understood from Mr Kandil and Mr Hariri that the meeting was intended to allow Mr Hariri to clarify the reasons for this decision.¹²³³

671. A UNIC Beirut press review issued on 29 January 2005 reported that Mr Nasrallah had stated that Israel, not France, had convinced the US to adopt UN Security Council resolution 1559. He accused those who supported the implementation of the resolution, and the disarming of Hezbollah, of taking the country back to the pre-Taif Agreement regime ‘when Lebanon was never protected by its own armed forces or by the international community’.¹²³⁴

672. On 1 February 2005, the Syrian Deputy Minister of Foreign Affairs, Mr Walid El-Moallem, visited Mr Hariri at Quraitem Palace,¹²³⁵ during a two-day official visit to Lebanon. The meeting was audio-recorded and the Trial Chamber received the audio recording and its transcript into evidence.¹²³⁶ Mr Wissam Al-Hassan had given the tape to the UNIIC.¹²³⁷

673. At the beginning, Mr El-Moallem asked: ‘Mr Prime minister, how can we succeed together?’ Mr Hariri replied, ‘Let me tell you, there is something you need to know first, apart from everything else: whatever happens, Syria will remain in my heart.’¹²³⁸ Mr Hariri then went on:

We want a pro-Syrian regime in Lebanon. But, at the same time, Lebanon will not be ruled by Syria forever. This is unacceptable because we have reached a point where we are harming ourselves and Syria in everything.¹²³⁹

...

I have been resisting reports for 4 years now. I gave up because I can no longer resist them. First, there is no communication with you [in plural], nor with Bachar. There is someone here named “Emile Lahoud” who has someone, from your side, working with him here, and has nothing to do but a “cell” focused on Rafic El-Hariri. They send reports. They can send a report about something, now, we did sit together, which is a fact, we sat together.

¹²³³ Atef Majdalani, T. 28 April 2015, p. 51.

¹²³⁴ Exhibit P532 (UNIC Beirut press review, 31 January 2005), p. 6.

¹²³⁵ Bassem El-Sabeh, T. 17 March 2015, p. 12; exhibit P301, p. 365.

¹²³⁶ Exhibit P409 (Audio-recorded conversation between Mr Hariri and Mr Walid Moallem, 1 February 2005); exhibit P409.1 (Transcript of audio-recorded conversation between Mr Hariri and Mr Walid Moallem, 1 February 2005).

¹²³⁷ Prosecution submissions, T. 18 March 2015, pp 36-37.

¹²³⁸ Exhibit P409.1, ERN 40000843A_Side A, p. 2.

¹²³⁹ Exhibit P409.1, ERN 40000843A_Side A, p. 5.

But they turn the facts upside down and draft a dialogue and announce that they are monitoring the El-Hariri residence and recording everything.¹²⁴⁰

...

Things in this country have gone too far and you cannot bring them back to where they used to be by using a cosmetic operation.¹²⁴¹

...

If Bachar doesn't ask me to become Prime Minister, I will not become Prime Minister ... But at the same time, I will become a Prime Minister with full powers ... both countries' interests do not mean that Syria appoints the high and low ranks in this country.¹²⁴²

...

I was not treated as a friend, not even as an acquaintance [by Assad in August 2004]. I was treated like someone to whom you would say: Come here, you are either with us or against us ... Is that so? Is that what you want?!¹²⁴³

...

I am on your side. I will not be against you whatever happens. I may not be with you in the sense of taking your orders. I can no more bear orders ... If it was someone who knows better than me, it's possible, I may accept him to guide me, but should I accept to listen to nonsense from someone whom I don't respect? Why should I take it, tell me why? ... Frankly, three quarters of me is already on the opposition side ... all what I am being informed of is that Syria has written Hariri off.¹²⁴⁴

...

Brother, you are like a father to me. Is there more? Can you be more than that? You may be my father, ok, but I can't accept for you to choose the woman I will marry, what she will wear, name my children, which school they will attend ... you know how there is interference in every small detail in the country.¹²⁴⁵

674. Mr Jumblatt reviewed the tape of the meeting¹²⁴⁶ and testified that Mr Hariri was explaining in these last excerpts that Syria cannot interfere in every detail of internal Lebanese

¹²⁴⁰ Exhibit P409.1, ERN 40000843A_Side A, p. 15.

¹²⁴¹ Exhibit P409.1, ERN 40000843A_Side B, p. 5.

¹²⁴² Exhibit P409.1, ERN 40000843A_Side B, pp 5-6.

¹²⁴³ Exhibit P409.1, ERN 40000843A_Side B, p. 9.

¹²⁴⁴ Exhibit P409.1, ERN 40000843B_Side A, pp 9, 11.

¹²⁴⁵ Exhibit P409.1, ERN 40000843B_Side A, p. 21.

¹²⁴⁶ Mr Jumblatt identified the voices of Mr Hariri and Mr El-Moallem, Walid Jumblatt, T. 6 May 2015, p. 27.

affairs.¹²⁴⁷ Mr Hariri wanted to govern Lebanon independently from Syrian intelligence. Lebanon was Syria's ally but he wanted a certain margin of manoeuvre in the context of government-related matters.¹²⁴⁸

675. In the conversation, Mr Hariri also said to Mr El-Moallem—in reference to the ‘Governorate options’ for electoral redistribution—as specified in ‘II Political Reforms, A. Parliament, 4.’ of the Taif Agreement:¹²⁴⁹

Do you know what this means? This means the implementation of the Taif Agreement ... Your political presence in the country is based on the Taif Agreement, your military presence is based on the Taif Agreement, and the agreements between us are based on the Taif Agreement. So what are you doing here? You are undermining the Taif Agreement which is the basis of your existence here. There are two options today: either you withdraw to El-Beqaa¹²⁵⁰ or implement the 1559 and leave the country. According to the Taif Agreement, you withdraw to El-Beqaa, isn't it? Right. You are nearly there, in El-Beqaa, except for few positions and you will be done. We are defending this option. Walid is still demanding the implementation of the Taif Agreement.¹²⁵¹

676. According to Mr El-Sabeh who learned of the meeting and what occurred at it from Mr Hariri, Mr El-Moallem conveyed the wishes of the Syrian leadership that ‘this period’ should go without any political problems. Mr Hariri responded that he was not in control of ‘this particular situation’. Mr El-Moallem, according to Mr El-Sabeh, said: ‘But you are also responsible. You should shoulder this responsibility.’ The meeting ended with a ‘cool reaction’ and no agreement as to what to do next. Mr El-Sabeh said that this was Mr Hariri's last communication with the Syrian leadership before his death.¹²⁵² Mr El-Sayyed believed that Mr Al-Assad, in dispatching a senior minister such as Mr El-Moallem to meet Mr Hariri, was showing respect, and it was a courteous gesture and not a ‘security message’.¹²⁵³

¹²⁴⁷ Walid Jumblatt, T. 6 May 2015, p. 74.

¹²⁴⁸ Walid Jumblatt, T. 6 May 2015, p. 75.

¹²⁴⁹ Exhibit P304 (Taif Agreement), p. 2.

¹²⁵⁰ The Bekaa valley is a Lebanese valley bordering Syria.

¹²⁵¹ Exhibit P409.1, ERN 40000843B_Side A, p. 1.

¹²⁵² Bassem El-Sabeh, T. 17 March 2015, p. 13.

¹²⁵³ Jamil El-Sayyed, T. 7 June 2018, pp 9-10.

677. A further meeting between Mr Hariri and Mr Nasrallah appears to have taken place a couple of weeks before the assassination, possibly on 1 February 2005.¹²⁵⁴

N. Third Bristol Group meeting: 2 February 2005

678. The following day, Wednesday 2 February 2005, the third Bristol Group meeting occurred. Its participants agreed that there should be an immediate and total withdrawal—as opposed to a staged one for example to the Bekaa valley—of Syrian forces from Lebanese territory.¹²⁵⁵

679. Between the second and third Bristol Group meetings, the Hariri camp had recognised that to succeed in the May 2005 elections a political alliance was needed.¹²⁵⁶ Mr Hariri shifted his position from a staged to a direct and full withdrawal of Syrian troops.¹²⁵⁷ Mr El-Khoury, a close confidant of Mr Hariri, testified that his positions at the Bristol Group meetings on the withdrawal of Syrian troops resulted from discussions with Mr Hariri. Mr El-Khoury, Mr Fuleihan and Mr Fatfat obtained preliminary approval and instructions from Mr Hariri on the Bristol Group draft communiques.¹²⁵⁸

680. Leading up to 2 February 2005, those associated with the Bristol Group did not meet in an official manner or on official visits.¹²⁵⁹ Such meetings had a much lower profile than other meetings Mr Hariri held.¹²⁶⁰ Mr El-Khoury said that there were daily meetings among Bristol Group participants, and there was an attempt to reach local agreements in every region and electoral list.¹²⁶¹

¹²⁵⁴ Exhibit 2D131 (Witness statement of Mustafa Nasser, 12 August 2010), para. 37 (the last meeting between Mr Nasrallah and Mr Hariri may have occurred in the last two weeks of Mr Hariri's life. Like all of the meetings at that time, this meeting would have been about Mr Hariri trying to get Hezbollah's support in the forthcoming election); exhibit P1107 (Statement of Witness PRH045, 12 August 2010), para. 49 (the last meeting took place in January 2005). *See also* Marwan Hamade, T. 9 December 2014, p. 39 (Mr Hariri met Mr Nasrallah a month before the attack).

¹²⁵⁵ Walid Jumblatt, T. 5 May 2015, p. 102, mistakenly stating the date of the third Bristol Group meeting, *see also* p. 33; Ghattas El-Khoury, T. 15 January 2015, p. 78, T. 16 January 2015, pp 37, 65, T. 20 January 2015, pp 18-19; exhibit P407 (*Al-Mustaqbal* article on Bristol meeting), p. 1. *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), para. 830.

¹²⁵⁶ Ghattas El-Khoury, T. 16 January 2015, p. 49, T. 20 January 2015, pp 16-17.

¹²⁵⁷ Ghattas El-Khoury, T. 20 January 2015, pp 18-19.

¹²⁵⁸ Ghattas El-Khoury, T. 16 January 2015, p. 39.

¹²⁵⁹ Ghazi El-Youssef, T. 11 March 2015, pp 33-34.

¹²⁶⁰ Ghazi El-Youssef, T. 11 March 2015, p. 34.

¹²⁶¹ Ghattas El-Khoury, T. 16 January 2015, p. 62.

681. According to Mr Hariri's political supporters, he wanted to send a message of support for the third Bristol Group meeting. And the presence of Mr Fuleihan, Mr El-Khoury and Mr Fatfat at the meeting was a clear message that Mr Hariri had taken an irrevocable position to join the ranks of the opposition.¹²⁶² Mr Fuleihan was considered to be extremely close to Mr Hariri and 'someone who would never oppose the opinion or the will of Premier Hariri'.¹²⁶³ It was no secret that Mr Fuleihan and Mr El-Khoury participated in the meetings in Mr Hariri's name.¹²⁶⁴

682. According to the Bristol Group's statement, released immediately after the meeting:

Today, the Lebanese people agree on refusing the *status quo* and demand a change. The whole country, from South to North, is largely objecting to the government's choices and practices.

The opposition groups reassert that their political battle has two main goals:

First: To end Syrian hegemony in Lebanon, restore sovereignty and restructure national authority on the basis that the Lebanese people are the sole source of power. The opposition also acknowledges the importance of finding an honourable settlement with Syria based on the full withdrawal of the Syrian army from Lebanon pursuant to the Taif Agreement in order to put an end to the serious crisis between the government and the international legitimacy which followed Resolution 1559.

Second: To restore the Lebanese democratic system by dismantling the security apparatus and putting an end to the interference of Syrian intelligence and their Lebanese accessories in public political life.¹²⁶⁵

683. The Bristol Group's call for total withdrawal of Syrian forces was Mr Hariri's 'true position', but he did not declare this position personally because he wanted to leave himself a

¹²⁶² Faisal Salman, T. 8 January 2015, p. 42; Ghattas El-Khoury, T. 16 January 2015, pp 29-30, T. 20 January 2015, pp 20, 55; Atef Majdalani, T. 29 April 2015, pp 14-15; Walid Jumblatt, T. 4 May 2015, pp 95-96, T. 5 May 2015, p. 63. See also exhibit P407, p. 9.

¹²⁶³ Ghattas El-Khoury, T. 16 January 2015, p. 31; Atef Majdalani, T. 29 April 2015, p. 16.

¹²⁶⁴ Faisal Salman, T. 8 January 2015, p. 42; Bassem El-Sabeh, T. 17 March 2015, p. 18; Atef Majdalani, T. 29 April 2015, p. 16; Walid Jumblatt, T. 4 May 2015, pp 95-96, T. 5 May 2015, p. 101.

¹²⁶⁵ Exhibit P407, p. 2.

margin of political manoeuvre.¹²⁶⁶ For the same reason, he did not attend the Bristol Group meetings.¹²⁶⁷

684. Mr El-Sabeh stated that the meeting showed that Mr Hariri was ‘about to move to the opposition, unequivocally’.¹²⁶⁸

O. Political events between the third Bristol Group meeting and the attack

685. On the evening of Friday 4 February 2005—two days after the third Bristol Group meeting—a journalist met Mr Khalil in Dahyieh in southern Beirut. Mr Khalil directed the journalist to tell Mr Hariri that he would be forced to accept the Syrian deposits if he refused to do so voluntarily. Mr Khalil expressed anger that Mr Hariri would defy Syria and threatened to ‘turn the country’ upside down if he handed Lebanon to the ‘Christians’.¹²⁶⁹

686. Following the third Bristol Group meeting, Mr El-Moallem rejected Mr Jumblatt’s call to establish diplomatic relations between Lebanon and Syria. Mr Jumblatt had also refuted Mr El-Moallem’s claim that there was no Syrian interference in Lebanese internal affairs.¹²⁷⁰ Explaining this, Mr Jumblatt said that ‘we’ wanted the joint Lebanese-Syrian intelligence networks to be replaced by independent Lebanese intelligence and security agencies, which could cooperate on an equal footing with their Syrian counterparts.¹²⁷¹ He also openly blamed Syria for the assassination of his father, Kamal, in 1977.¹²⁷² Mr Jumblatt explained that by saying this he was ‘adopting a tone of escalation’ in his confrontation with the Syrian regime.¹²⁷³

687. Mr Hariri had told Mr Jumblatt that he had met Mr Nasrallah on the night of 9 February 2005.¹²⁷⁴ Mr Hariri had reassured Mr Nasrallah that he was opposed to resolution 1559 and that ‘the weapons of the resistance are our weapons’. In other words, as of that date ‘Mr Hariri was still

¹²⁶⁶ Ghattas El-Khoury, T. 16 January 2015, p. 41.

¹²⁶⁷ Ghattas El-Khoury, T. 16 January 2015, pp 30-31, T. 20 January 2015, p. 20.

¹²⁶⁸ Bassem El-Sabeh, T. 17 March 2015, p. 25.

¹²⁶⁹ Exhibit P1107 (Statement of Witness PRH045, 12 August 2010), para. 43.

¹²⁷⁰ Exhibit P447 (UNIC Beirut press review, 3 February 2005), p. 2, stating that ‘Jumblatt refused Mualem’s claim that there was no Syrian interference in internal Lebanese affairs’.

¹²⁷¹ Walid Jumblatt, T. 6 May 2015, pp 101-105.

¹²⁷² Exhibit P448 (UNIC Beirut press review, 4 February 2005), pp 3-4.

¹²⁷³ Walid Jumblatt, T. 6 May 2015, pp 105-106.

¹²⁷⁴ Walid Jumblatt, T. 6 May 2015, p. 51. Mr Jumblatt was told this by Mr Hariri ‘after the meeting’.

actively seeking to reassure the Hezbollah leadership that he was not intending to promote their disarmament pursuant to 1559'. Mr Hariri was constantly conveying a message to Hezbollah through Mr Nasrallah that this issue will only be dealt with on the domestic front.¹²⁷⁵ The Quraitem Palace visitor log shows Mr Mustafa Nasser at the palace late on that night,¹²⁷⁶ but he could not specifically recall if it related to such a meeting, as he visited the palace daily.¹²⁷⁷ Mr Al-Hassan also stated that he thought that he had been present outside this meeting, but that he did not remember anything unusual about it.¹²⁷⁸

688. On 10 February 2005, a friend of Mr El-Youssef's¹²⁷⁹ asked Mr Hariri about his position vis-à-vis the Bristol Group. According to Mr El-Youssef, Mr Hariri responded:

What do you want more than Bassel being there and attending the Bristol meeting? It means I am there. It's not Rafik Hariri who will go to the Bristol. It's the Bristol Group that is coming to Rafik Hariri. So the Bristol Group and myself we are one ... we are discussing today the electoral law, let them do whatever they want. I do not have a problem. Let them decide whatever law they want. I will be running for the elections in Lebanon throughout Lebanon with the opposition. Wait for one month and you will see me on the steps of Bkirki, we will be there hand in hand with Walid Jumblatt, with the patriarch, and we will have joint lists because this is the only way for us to win the elections in order for the Syrians to leave Lebanon. There will be no salvation for Lebanon if the Syrians keep interfering the way they are.¹²⁸⁰

689. Bkirki is the seat of the Maronite patriarchy, which Mr El-Youssef described as the symbol for the Christian opposition against the Syrian presence in Lebanon.¹²⁸¹

¹²⁷⁵ Walid Jumblatt, T. 6 May 2015, pp 51, 111-112.

¹²⁷⁶ Exhibit P301 (Visitor logbook for Quraitem Palace), p. 373, showing Mr Nasser entering at 21:40 to visit 'RBH', i.e. Mr Hariri, but without an exit time.

¹²⁷⁷ Exhibit 2D131 (Witness statement of Mustafa Nasser, 12 August 2010), para. 34 (ERN 60179140).

¹²⁷⁸ Exhibit P2122 (Interview of Wissam Al-Hassan, 16 June 2012), pp 165-166.

¹²⁷⁹ An alumnus of the INSEAD academy, in France. Mr El-Youssef did not give the name of his friend. Mr El-Youssef described himself as a 'regular visitor' to Quraitem Palace but appeared to have more of a coordination/arrangement role as he would go early in the morning and remain there throughout the day. Ghazi El-Youssef, T. 11 March 2015, pp 26-27.

¹²⁸⁰ Ghazi El-Youssef, T. 11 March 2015, pp 27-28.

¹²⁸¹ Ghazi El-Youssef, T. 11 March 2015, p. 29.

690. According to Mr Nasser, Mr Hariri's last meeting with Hezbollah was when he met Mr Hussein Khalil on 11 or 12 February 2005.¹²⁸² The meeting was calm and cordial and lasted about one or two hours.¹²⁸³ Mr Hariri did not feel threatened and was open to dialogue.¹²⁸⁴

691. Mr Hariri told Mr Khalil that he did not want the Syrians to ask him to put candidates on his ballot in Beirut, he wanted to choose the candidates himself. When Mr Khalil advised him to put pro-Syrians on the list, Mr Hariri refused—but said that he would permit Hezbollah two candidates.¹²⁸⁵ Mr Khalil said that this was not enough¹²⁸⁶ and that he would arrange an appointment for Mr Hariri with the Syrian president later that week, in order to discuss the matter further.¹²⁸⁷

692. Mr Nasser described how, on 12 February 2005, Mr Hariri asked him to tell Mr Nasrallah that Mr Chirac and France would prevent Hezbollah from being included in the list of terrorist organisations being prepared by the European Union. Mr Nasser did this by communicating it to Mr Hussein Khalil, who expressed his gratitude. According to Mr Nasser, this showed the good terms and relations between Hezbollah and Mr Hariri at the time.¹²⁸⁸ Also, around this time Mr Hariri promised to arrange top oncological treatment in France for the daughter of a Hezbollah MP who was not on good terms with him, Mr Ammar, and to book accommodation for the family. He was supposed to do so on the day of his death.¹²⁸⁹

693. Witnesses generally described Mr Hariri and Mr Nasrallah as having a positive relationship throughout 2004 and 2005. Mr Nasser said that in the first of their meetings Mr Hariri told Mr Nasrallah that he wanted to be his ally, but Mr Nasrallah said that Hezbollah had heard that Mr Hariri was 'a corrupt American against the weapons of the Resistance'.¹²⁹⁰ Only once Mr Hariri

¹²⁸² Exhibit 2D131 (Witness statement of Mustafa Nasser, 12 August 2010), paras 28-31 (ERNs 60179139-60179140); Mustafa Nasser, T. 9 April 2015, pp 84-90. Mr Nasser was present at the meeting.

¹²⁸³ Mustafa Nasser, T. 15 April 2015, p. 50; exhibit 2D131 (Witness statement of Mustafa Nasser, 12 August 2010), para. 31 (ERN 60179140).

¹²⁸⁴ Mustafa Nasser, T. 15 April 2015, p. 73.

¹²⁸⁵ Exhibit 2D131 (Witness statement of Mustafa Nasser, 12 August 2010), paras 28-31 (ERNs 60179139-60179140).

¹²⁸⁶ Mustafa Nasser, T. 9 April 2015, p. 87.

¹²⁸⁷ Exhibit 2D131 (Witness statement of Mustafa Nasser, 12 August 2010), paras 28-31 (ERNs 60179139-60179140).

¹²⁸⁸ Mustafa Nasser, T. 10 April 2015, pp 92-94.

¹²⁸⁹ Mustafa Nasser, T. 10 April 2015, pp 94-95.

¹²⁹⁰ Exhibit 2D131 (Witness statement of Mustafa Nasser, 12 August 2010), para. 25 (ERN 60179139); exhibit 2D131 (Witness statement of Mustafa Nasser, 13 October 2010), para. 10 (ERN 60185453); Mustafa Nasser, T. 15 April 2015, p. 56; exhibit P2122 (Interview of Wissam Al-Hassan, 16 June 2012), pp 163-164.

had built trust, would Mr Nasrallah convince Hezbollah to be his ally in the forthcoming elections.¹²⁹¹

694. Mr Nasser stated that Mr Hariri and Mr Nasrallah developed a relationship of friendship and respect which continued up to the last minute.¹²⁹² Mr Siniora testified that Mr Hariri and Mr Nasrallah had mutual respect for one another and were honest and frank with one another.¹²⁹³ Mr Hariri, according to Mr Nasser, successfully kept Hezbollah's name off the European Union's list of terrorist organisations which was published on 15 February 2005. Mr Nasrallah was accordingly happy and expressed his gratitude and thanks, which, in Mr Nasser's view, showed the good relations between Mr Hariri and Hezbollah at that time.¹²⁹⁴ In the recorded meeting between Mr Hariri and Mr El-Moallem on 1 February 2005, Mr Hariri told the Syrian deputy minister that he had managed to prevent Hezbollah being listed on the European Union list of terrorist organisations.¹²⁹⁵

695. Mr El-Sayyed stated that the meetings between Mr Nasrallah and Mr Hariri saw 'no problems at all on any issue'.¹²⁹⁶

696. Mr El-Youssef, however, said that he did not believe that Mr Hariri had accomplished any of the goals he had hoped to achieve with Hezbollah in advance of the elections, because if he had, Mr Hariri's allies would have been told.¹²⁹⁷ He also said that, in his view, Mr Hariri was 'not very close' with Hezbollah before the attack,¹²⁹⁸ and that Mr Hariri had told him that the meetings with Mr Nasrallah did not progress the way that he had wanted them to.¹²⁹⁹

¹²⁹¹ Exhibit 2D131 (Witness statement of Mustafa Nasser, 12 August 2010), paras 23-27 (ERNs 60179138-60179139).

¹²⁹² Mustafa Nasser, T. 15 April 2015, p. 56.

¹²⁹³ Fouad Siniora, T. 24 March 2015, p. 86.

¹²⁹⁴ Mustafa Nasser, T. 10 April 2015, pp 92-94.

¹²⁹⁵ Exhibit P409.1 (Transcript of audio-recorded conversation between Mr Hariri and Mr Walid Moallem, 1 February 2005), ERN 40000843B Side A, p. 9, where Mr Hariri said: 'Look at me, what a shame! This very day, today, today, just a little while ago, I learnt that Spain is willing to put Hezbollah on the Terror List. Do you know who is stopping them from doing that? The French! And who is stopping the French? Me. Ok? Up to this day. Why would I stop them? As we are in disagreement and you could use Hezbollah against me, so why do you think I am stopping them? Am I seeking a reward? I am not seeking a reward.'

¹²⁹⁶ Jamil El-Sayyed, T. 6 June 2018, p. 52. Mr El-Sayyed did not personally attend these meetings.

¹²⁹⁷ Ghazi El-Youssef, T. 11 March 2015, pp 38-39.

¹²⁹⁸ Ghazi El-Youssef, T. 20 March 2015, pp 37-38.

¹²⁹⁹ Ghazi El-Youssef, T. 20 March 2015, p. 55.

697. Mr Wissam Al-Hassan stated that meetings between the two used to occur before May 2004 but were spread out and there was sometimes a lack of understanding between the two men. After demonstrations on 5 May 2004, tensions increased with Mr Nabih Berri, and Hezbollah had a positive role in defusing it, so meetings increased to once or twice a month.¹³⁰⁰ Mr Al-Hassan did not attend the meetings but accompanied Mr Hariri to Hezbollah's headquarters and waited outside.¹³⁰¹ The meetings never occurred at Quraitem Palace and Mr Hariri refused to 'welcome or host' Mr Nasrallah there because he did not want to be concerned about his security.¹³⁰² In Mr Al-Hassan's view, relations remained positive until the assassination.¹³⁰³ As noted above, the Trial Chamber received this statement under Rule 158, as a deceased, and therefore unavailable witness, and the Sabra Defence attacked Mr Al-Hassan's credibility, and submitted that his statements had no reliability or weight.¹³⁰⁴ However, his statements on this particular topic are generally consistent with the evidence of other witnesses and the Trial Chamber thus can accept them in this general sense.

698. On 10 February 2005, Mr Hariri and Mr El-Sabeh visited the bishopric of Archbishop Boulos Matar, the Maronite archbishop of Beirut.¹³⁰⁵ Also present at the meeting, unusually, was Dr Daoud El-Sayegh, who was the liaison point between Mr Hariri and the Maronite patriarchy.¹³⁰⁶ According to Mr El-Sabeh, Dr El-Sayegh's presence was unusual because he had been 'blacklisted'—meaning that the Syrian leadership had asked Mr Hariri to side-line him, as an indirect way of preventing Mr Hariri from meeting Patriarch Sfeir.¹³⁰⁷

699. In a statement issued at a press conference straight after the meeting, Mr Hariri said that the visit was intended to 'wish our friends a happy feast'.¹³⁰⁸ In Mr El-Sabeh's opinion, the first purpose of the meeting—which took place one day after the Lebanese feast of St Maron, and on the Islamic New Year's day—was to send a message that 'Lebanon is a country of life in common

¹³⁰⁰ Exhibit P2122 (Interview of Wissam Al-Hassan, 16 June 2012), pp 161-163.

¹³⁰¹ Exhibit P2122 (Interview of Wissam Al-Hassan, 16 June 2012), p. 164.

¹³⁰² Exhibit P2122 (Interview of Wissam Al-Hassan, 16 June 2012), p. 166.

¹³⁰³ Exhibit P2122 (Interview of Wissam Al-Hassan, 16 June 2012), p. 164.

¹³⁰⁴ *See for example*, Sabra Defence final trial brief, paras 172-191, particularly in relation to Mr Al-Hassan's assertion that Mr Nasrallah had told him the Green network mobiles belonged to Hezbollah. *See also* para. 2243.

¹³⁰⁵ Exhibit P408 (Future TV footage of Mr Hariri), pp 81-82; exhibit P303 (Press releases), ERNs D0004977-D0004979.

¹³⁰⁶ Bassem El-Sabeh, T. 17 March 2015, pp 22-23.

¹³⁰⁷ Bassem El-Sabeh, T. 17 March 2015, pp 22-25. Mr El-Sabeh explained that he learned about this from Mr Hariri.

¹³⁰⁸ Exhibit P303, ERNs D0004977-D0004979; Bassem El-Sabeh, T. 17 March 2015, p. 35.

between the Christians and the Muslims’.¹³⁰⁹ In his press statement, Mr Hariri stated that reforms to the electoral law were discussed, and that it was important to make amendments in terms of the electoral division of Beirut.¹³¹⁰

700. According to Mr El-Sabeh, however, while Mr Hariri’s press statement contained points of principle, Mr Hariri had wanted to send ‘very clear political messages’ in the meeting itself.¹³¹¹ Mr El-Sabeh recalled how Mr Hariri told Archbishop Matar that the problem was not with the patient—Lebanon—but rather with the doctor treating the patient—Syria.¹³¹² Mr Hariri also said that there would be no more electoral deposits, and that he would ‘support any law that suits and is convenient to the Maronite patriarchy’.¹³¹³ Mr El-Sabeh described the meeting on 10 February 2005 as heralding a new approach to politics in Lebanon—following which Mr Hariri was using ‘baby steps’ towards joining the opposition.¹³¹⁴

701. On the evening of Sunday 13 February 2005, Mr Hariri met Mr Ghazi Ariri—a minister who had resigned on 11 September 2004—Mr Hamade, Mr Jumblatt and Mr El-Sabeh.¹³¹⁵ Mr El-Sabeh described the meeting as a declaration of the political alliances that Mr Hariri and Mr Jumblatt wanted.¹³¹⁶

702. On the morning of Monday 14 February 2005, Mr Hariri told journalists—including Mr Faisal Salman—‘very clearly’ that he would not allow anyone to impose candidates upon him.¹³¹⁷ This was the first time Mr Salman had heard Mr Hariri say that he would accept no deposits, and Mr Salman believed that the message would cause problems with the Syrians and with Mr Lahoud.¹³¹⁸

¹³⁰⁹ Bassem El-Sabeh, T. 17 March 2015, p. 31.

¹³¹⁰ Exhibit P303, ERNs D0004977-D0004979.

¹³¹¹ Bassem El-Sabeh, T. 17 March 2015, p. 32.

¹³¹² Bassem El-Sabeh, T. 17 March 2015, pp 40-41.

¹³¹³ Bassem El-Sabeh, T. 17 March 2015, p. 41.

¹³¹⁴ Bassem El-Sabeh, T. 17 March 2015, p. 41.

¹³¹⁵ Mr El-Sabeh and Mr Jumblatt both said that the photograph was taken on the evening of 13 February 2005. Bassem El-Sabeh, T. 17 March 2015, pp 38-39; Walid Jumblatt, T. 6 May 2015, pp 112-113. *See also* exhibit P353 (photograph of Mr Hariri’s office in Quraitem Palace).

¹³¹⁶ Bassem El-Sabeh, T. 17 March 2015, pp 41-42.

¹³¹⁷ Faisal Salman, T. 8 January 2015, pp 37-38, 45.

¹³¹⁸ Faisal Salman, T. 8 January 2015, pp 45, 54.

P. The ‘olive oil crisis’

703. The Trial Chamber also heard some evidence about what was termed the ‘olive oil crisis’ that occurred in late 2004 to early 2005. The Beirut Association for Social Development was a privately-funded charitable organisation—with paid members, having the aim of assisting the Lebanese public—but funded by Mr Hariri.¹³¹⁹ Some employees of the Beirut Association for Social Development were also working as volunteers on Mr Hariri’s election campaign.¹³²⁰

704. During Ramadan, Mr Hariri often distributed food to poor people via the association—but without advertising it— as part of his religious duty of *zakat*, or alms.¹³²¹ In October 2004, there was a shortage of olive oil in Lebanon.¹³²² After Ramadan, the association bought a quantity of olive oil and started distributing it to the families as a supplement to the Ramadan food packages that they had already received.¹³²³ Distribution began in the beginning of February 2005.¹³²⁴ Around 50,000 gallons of olive oil were distributed to selected poor Lebanese people.¹³²⁵

705. On Friday 11 February 2005, the Lebanese ‘authorities’ came and arrested four people in charge of distribution, took them in for questioning and seized their computers.¹³²⁶ The allegation was that Mr Hariri was distributing the olive oil to manipulate the upcoming elections.¹³²⁷ The acting Lebanese Prosecutor-General, Ms Rabiha Ammash Kaddoura, threatened to search the association’s premises to find lists of the names of the recipients.¹³²⁸

706. Upon hearing of the arrests, in the presence of Mr Diab and Mr El-Youssef, Mr Hariri deliberately used a landline and asked the Quraitem Palace operator to get General Ali Al-Hajj, the director-general of the ISF, on the line.¹³²⁹ He knew that his landlines were tapped and that

¹³¹⁹ Salim Diab, T. 22 January 2015, pp 51-53; Ghazi El-Youssef, T. 20 March 2015, p. 14.

¹³²⁰ Salim Diab, T. 22 January 2015, pp 50-53.

¹³²¹ Salim Diab, T. 22 January 2015, pp 55-56; Ghattas El-Khoury, T. 20 January 2015, p. 26.

¹³²² Salim Diab, T. 22 January 2015, p. 56.

¹³²³ Salim Diab, T. 22 January 2015, pp 56-57; Ghazi El-Youssef, T. 20 March 2015, p. 15.

¹³²⁴ Salim Diab, T. 22 January 2015, p. 57.

¹³²⁵ Exhibit 2D111 (Witness Statement of Salim Diab), para. 11.

¹³²⁶ Ghattas El-Khoury, T. 20 January 2015, pp 33-34; Ghazi El-Youssef, T. 20 March 2015, pp 14-15, 19-20.

¹³²⁷ Ghazi El-Youssef, T. 20 March 2015, p. 15; exhibit 2D111 (Witness Statement of Salim Diab), para. 11.

¹³²⁸ Exhibit 2D111 (Witness Statement of Salim Diab), para. 11.

¹³²⁹ Ghazi El-Youssef, T. 20 March 2015, pp 15-24. The Trial Chamber took judicial notice of the following: ‘On 14 February 2005, General Ali Al-Hajj was the Head of the ISF. He was promoted to the post in November 2004.’ Judicial notice facts, no. 8.

people were monitoring his communications when he spoke on them.¹³³⁰ Mr Hariri put the call on speakerphone. He reproached Mr Al-Hajj.¹³³¹ Mr Hariri then called General Raymond Azar, the chief of Lebanese military intelligence, asking him why he was arresting people associated with him. This was more than a reproach, as Mr Hariri was directly accusing Mr Azar of involvement in the arrests.¹³³² By this, he was reminding Mr Azar that he would be returning as head of the government and would need to sign off on Mr Azar's next promotion.¹³³³

707. According to Mr El-Youssef, Mr Hariri viewed the arrests as entirely politically motivated.¹³³⁴ He wanted to convey a message to those listening to his calls. The message was that Mr Hariri was serious in the political path he had chosen, that people taking unfair and unjust decisions against him would not prevent him from continuing down this path, namely going into the elections with the opposition.¹³³⁵ Mr El-Youssef had never seen Mr Hariri react in such a way, which reflected his frustration. His attitude showed how determined Mr Hariri was to break his shackles and to end the obstacles put around him by the military intelligence apparatus.¹³³⁶ Mr Hariri believed—by deliberately using tapped lines—that he was speaking directly to Mr Ghazaleh.¹³³⁷ According to Mr El-Khoury, the detainees were released on the night of 12 February 2005.¹³³⁸

Q. Monthly payments to Mr Ghazaleh from Mr Hariri

708. The Trial Chamber also received evidence that Mr Hariri was making regular cash payments to Mr Ghazaleh through intermediaries.¹³³⁹ Mr Hariri's friend and business associate, Mr El-Chammaa, administered these payments.¹³⁴⁰ Mr Ghazaleh had first requested a payment in 1993 during a meeting with Mr El-Chammaa at Mr Ghazaleh's office.¹³⁴¹ The amount was initially

¹³³⁰ Ghazi El-Youssef, T. 20 March 2015, p. 16.

¹³³¹ Ghazi El-Youssef, T. 20 March 2015, pp 18, 20-23.

¹³³² Ghazi El-Youssef, T. 20 March 2015, pp 28-29.

¹³³³ Ghazi El-Youssef, T. 20 March 2015, p. 34.

¹³³⁴ Ghazi El-Youssef, T. 20 March 2015, p. 26.

¹³³⁵ Ghazi El-Youssef, T. 20 March 2015, pp 27-28.

¹³³⁶ Ghazi El-Youssef, T. 20 March 2015, pp 34-35.

¹³³⁷ Ghazi El-Youssef, T. 20 March 2015, pp 58-59.

¹³³⁸ Ghattas El-Khoury, T. 20 January 2015, p. 36.

¹³³⁹ Exhibit P1413 (Witness PRH017's statement), para. 12.

¹³⁴⁰ Ghaleb Ahmad El-Chammaa, T. 11 February 2015, pp 20-21.

¹³⁴¹ Ghaleb Ahmad El-Chammaa, T. 11 February 2015, pp 22-23.

USD 40,000 per month, which increased, in less than a year, to USD 67,000 per month.¹³⁴² Mr El-Chammaa's role was to keep track of the payments and to ensure their timeliness; the money was kept in a safe and he used to ask at least two employees to prepare the amount and put it in envelopes.¹³⁴³

709. Besides these regular payments, Mr Hariri made other payments to Mr Ghazaleh, the biggest of which in one sum was USD 250,000, of which Mr El-Chammaa remembered paying USD 100,000 on one occasion and USD 150,000 on another. Mr Ghazaleh always justified the requests under different pretexts, for example, needing to refurbish or renovate his home, or to buy a new car, but this was unimportant to Mr Hariri. He was paying Mr Ghazaleh to 'preserve the relationship with him' and never refused these requests.¹³⁴⁴

710. These payments were not voluntary, because, as Mr El-Chammaa explained, Mr Hariri believed that if he did not pay 'for sure Rustom Ghazaleh would have placed many obstacles in the face of his career and of course he would have exerted greater pressure on him'.¹³⁴⁵ The fact of the payments was not widely known.¹³⁴⁶ Mr Siniora was aware that Mr Hariri was providing 'periodic assistance', that is 'cash help', to Mr Ghazaleh, but, in his view, this was a form of blackmail as the payments were 'imposed, not volunteered'.¹³⁴⁷

711. The payments were in cash,¹³⁴⁸ at the beginning¹³⁴⁹ or the end of the month.¹³⁵⁰ Mr Al-Arab—whom his daughter, Ms Alia Al-Arab, described as a long-time intermediary between Mr Hariri and Syrian representatives, including Mr Ghazi Kanaan, Mr Ghazaleh and Brigadier General Khallouf—was responsible for taking the payments to Mr Ghazaleh.¹³⁵¹ Ms Al-Arab said 'On occasion my father would deliver presents to Mr Ghazaleh, amongst other people', or asked someone to deliver 'things in big envelopes' in his absence.¹³⁵² The two people who were in charge

¹³⁴² Ghaleb Ahmad El-Chammaa, T. 11 February 2015, pp 23-24, 27-28.

¹³⁴³ Ghaleb Ahmad El-Chammaa, T. 11 February 2015, pp 30-31.

¹³⁴⁴ Ghaleb Ahmad El-Chammaa, T. 11 February 2015, pp 28-29.

¹³⁴⁵ Ghaleb Ahmad El-Chammaa, T. 11 February 2015, p. 67.

¹³⁴⁶ Witness PRH017, T. 30 November 2016, p. 79 (private session).

¹³⁴⁷ Fouad Siniora, T. 24 March 2015, pp 29-33.

¹³⁴⁸ Exhibit P1413 (Witness PRH017's statement), para. 12.

¹³⁴⁹ Ghaleb Ahmad El-Chammaa, T. 11 February 2015, pp 30-31.

¹³⁵⁰ Witness PRH017, T. 30 November 2016, pp 81-83 (private session).

¹³⁵¹ Exhibit P726 (Statement of Alia Al-Arab), paras 10, 17.

¹³⁵² Exhibit P726 (Statement of Alia Al-Arab), para. 14.

of taking money from the safe and putting it into the envelopes would record the payments, but records were not retained.¹³⁵³

712. On Saturday 12 February 2005—two days before the assassination—Mr Ghazaleh called Mr Hariri's office requesting an additional payment, claiming that he had not received the first payment earlier that month.¹³⁵⁴ This was the first time that Mr Ghazaleh had made such a request.¹³⁵⁵ Mr El-Chammaa was certain that the payment had in fact been made, but said that they had 'no choice' but to make the payment.¹³⁵⁶ Witness PRH017 said that Mr Hariri instructed them to make the payment, but was upset by the request.¹³⁵⁷ Unusually, the payment was divided into three portions.¹³⁵⁸ Mr Al-Arab took the money to Mr Ghazaleh on Sunday 13 February 2005, to his headquarters in the Bekaa.¹³⁵⁹ When Mr Al-Arab returned from meeting Mr Ghazaleh, he was in poor spirits, 'a very, very pessimistic mood'. Mr Al-Arab told Mr El-Chammaa what had happened upon his return.¹³⁶⁰

713. Mr Ghazaleh had been very insulting and threatening towards Mr Hariri, causing Mr Al-Arab to fear an attempt on the former prime minister's life.¹³⁶¹ The threats were not described by Mr Al-Arab in detail, but included the allegation of treachery.¹³⁶² Mr Al-Arab appeared to be 'expecting something.'¹³⁶³ Mr El-Chammaa told Mr Hariri what Mr Al-Arab had told him, and that it was 'very upsetting and scary'.¹³⁶⁴

¹³⁵³ Ghaleb Ahmad El-Chammaa, T. 11 February 2015, pp 40-41. He stated that 'every now and then' the records would be destroyed. In cross-examination, Mr El-Chammaa stated that there was a small piece of paper where an amount was recorded, which was destroyed one to four days later. Ghaleb Ahmad El-Chammaa, T. 12 February 2015, p. 52. *See also* Witness PRH017, T. 1 December 2016, p. 5, where the witness explained that there was no record of the payments made because this was something private and added 'We only wrote on small papers the amounts of money we used to pay per week or per day just to be reminded of it in case we were asked about it.'

¹³⁵⁴ Ghaleb Ahmad El-Chammaa, T. 11 February 2015, pp 46, 51-52.

¹³⁵⁵ Ghaleb Ahmad El-Chammaa, T. 11 February 2015, p. 51.

¹³⁵⁶ Ghaleb Ahmad El-Chammaa, T. 11 February 2015, p. 48.

¹³⁵⁷ Witness PRH017, T. 30 November 2016, p. 85 (private session).

¹³⁵⁸ Witness PRH017, T. 1 December 2016, pp 3, 5. Mr El-Chammaa, by contrast, stated that the money was usually put into an envelope or multiple envelopes, and delivered. Ghaleb Ahmad El-Chammaa, T. 11 February 2015, p. 34.

¹³⁵⁹ Ghaleb Ahmad El-Chammaa, T. 11 February 2015, pp 47, 51-52, 55.

¹³⁶⁰ Ghaleb Ahmad El-Chammaa, T. 11 February 2015, pp 50, 56-57.

¹³⁶¹ Ghattas El-Khoury, T. 20 January 2015, pp 46, 48-50; Ghaleb Ahmad El-Chammaa, T. 11 February 2015, pp 56-57; Hani Hammoud, T. 20 May 2015, p. 35, where the witness also refers to threats in general.

¹³⁶² Ghattas El-Khoury, T. 20 January 2015, pp 48-49.

¹³⁶³ Ghaleb Ahmad El-Chammaa, T. 11 February 2015, p. 56.

¹³⁶⁴ Ghaleb Ahmad El-Chammaa, T. 11 February 2015, p. 59.

714. Ms Alia Al-Arab also described her father's reaction after his return from Anjar meeting Mr Ghazaleh, saying 'How could I tell Hariri what happened in Anjar?'¹³⁶⁵

715. This evidence, in the Trial Chamber's view, is sufficient to establish that Mr Ghazaleh had a reason to demand a double payment on the day before Mr Hariri's death, meaning that he had grounds to believe that there would be no more payments from that date onwards.

R. Warnings to Mr Hariri about his personal security immediately before the attack

716. A number of witnesses gave evidence about threats and warnings to Mr Hariri about his security in the early part of 2005.

717. A UNIC Beirut press review dated 7 January 2005 reported that the US Assistant Deputy Secretary of State for Middle East Affairs, Ms Elizabeth Debell, had stated that the US government would 'not be lenient' in the event of any physical harm befalling Lebanese politicians.¹³⁶⁶ According to Mr Hammoud, he and others discussed potential security risks with Mr Hariri in this time—Mr Hariri did not give any credence to the risk, because he thought that it would be 'suicide' to target him.¹³⁶⁷

718. On 10 January 2005, Mr Hariri received Mr Ali Jaber, a journalist and former colleague of Mr Hammoud's at Future TV, at Quraitem Palace.¹³⁶⁸ Mr Jaber had gone to Mr Hammoud to tell him that he had personally met Syrian officials, and that they were 'going mad', and 'talking harshly' about Mr Hariri.¹³⁶⁹ The Syrians were 'paranoid' about resolution 1559—for which they believed Mr Hariri to be responsible—and the US presence in Iraq, and were expecting a military attack.¹³⁷⁰ Mr Hammoud thought that it was serious enough to take Mr Jaber to see Mr Hariri.¹³⁷¹ Mr Hariri, however, did not believe that Syria would act against him.¹³⁷²

¹³⁶⁵ Exhibit P726 (Statement of Alia Al-Arab), para. 32.

¹³⁶⁶ Exhibit P443 (UNIC Beirut press review, 7 January 2005), p. 1.

¹³⁶⁷ Hani Hammoud, T. 19 May 2015, pp 81-82.

¹³⁶⁸ Exhibit P301 (Visitor logbook for Quraitem Palace), p. 324. *See also* Hani Hammoud, T. 19 May 2015, p. 86.

¹³⁶⁹ Exhibit 4D137 (Witness statement of Hani Hammoud), para. 17; Hani Hammoud, T. 19 May 2015, pp 88-89. *See also* Hani Hammoud, T. 19 May 2015, pp 85-87, 90.

¹³⁷⁰ Hani Hammoud, T. 19 May 2015, pp 88-92.

¹³⁷¹ Exhibit 4D137 (Witness statement of Hani Hammoud), para. 17.

¹³⁷² Exhibit 4D137 (Witness statement of Hani Hammoud), para. 19.

719. Mr Hammoud also testified about another meeting between himself, Mr Hariri and Witness 45, on 11 January 2005. Witness 45 had met Mr Hariri to relay comments that had been made to him by the president of the Hezbollah Political Committee, Mr Ibrahim Amin El-Sayyed.¹³⁷³ According to Mr Hammoud, Mr El-Sayyed asked Witness 45 if Mr Hariri had ‘gone crazy’, and said that ‘people will kill him’ because of his refusal to change the electoral lists.¹³⁷⁴ Mr Hariri again did not pay much heed—he thought that if people tried to kill him, they would be committing suicide.¹³⁷⁵ Mr Hammoud said that Mr Hariri considered these comments an attempt to intimidate and scare him and to pressure him to change his political behaviour.¹³⁷⁶

720. On 10 February 2005, according to a UNIC Beirut press release, Mr Terje Rød-Larsen, the UN Special Envoy, visited Mr Al-Assad in Damascus to discuss the implementation of Security Council resolution 1559.¹³⁷⁷ The press release described Mr Rød-Larsen as saying that the talks were ‘extremely encouraging and constructive’.¹³⁷⁸ However, according to Mr Hamade, Mr Rød-Larsen then insisted on visiting Quraitem Palace before returning to Europe, so as to inform Mr Hariri of President Al-Assad’s ‘very angry’ threats, and to warn him to leave Lebanon for his own safety.¹³⁷⁹

721. After the meeting of 13 February 2005 between Mr El-Sabeh, Mr Hamade, Mr Jumblatt and Mr Hariri, Mr El-Sabeh told Mr Hariri—with reference to the attack on Mr Hamade—that he was afraid of what might happen to Mr Hariri and Mr Jumblatt. Mr Hariri laughed it off—Mr Hamade warned him, however, that the situation should be taken seriously.¹³⁸⁰

722. On 13 February, Mr Ali Hamade also spoke to Mr Hariri about the political and security pressures. He asked Mr Hariri whether he feared for his security, and Mr Hariri responded ‘Do you believe that he’d be silly enough to do it?’—by which, in Mr Hamade’s view, he meant President Al-Assad killing Mr Hariri or Mr Jumblatt.¹³⁸¹

¹³⁷³ Hani Hammoud, T. 20 May 2015, pp 7-8. Mr Ibrahim Amin El-Sayyed’s name is also transliterated as *Al-Sayyed*. For example, exhibit P1107 (Statement of Witness PRH045, 12 August 2010), para. 36.

¹³⁷⁴ Hani Hammoud, T. 20 May 2015, pp 8-9.

¹³⁷⁵ Hani Hammoud, T. 20 May 2015, p. 9.

¹³⁷⁶ Hani Hammoud, T. 21 May 2015, pp 88-89.

¹³⁷⁷ Exhibit P532 (UNIC Beirut press review, 11 February 2005), pp 1-2.

¹³⁷⁸ Exhibit P532, p. 1.

¹³⁷⁹ Marwan Hamade, T. 8 December 2014, pp 63-64. See also exhibit P301, p. 376.

¹³⁸⁰ Bassem El-Sabeh, T. 17 March 2015, p. 44.

¹³⁸¹ Ali Hamade, T. 13 April 2015, pp 69-70.

723. A number of other witnesses also gave evidence about the perception of risk immediately before the attack. Mr Amer Chehadeh, a close protection officer and driver for Mr Hariri, stated that although the team had been advised to remain alert in the weeks before the attack, Mr Hariri ‘felt reassured’, and the team ‘never felt any danger or any threat’.¹³⁸²

724. However, Ms Roula Nasser said that, in the last few weeks before the attack, her brother Mr Talal Nasser and his team ‘had a feeling that something was going to happen’.¹³⁸³ According to Ms Nasser, her brother had to work on the day of the attack because of the ‘critical’ political situation.¹³⁸⁴ Mr Tarek Soubra, a member of Mr Hariri’s close protection team who was on leave on the day of the attack, also stated that Mr Nasser had told him that ‘they’ wanted to target ‘us’, around a week or ten days before the attack.¹³⁸⁵

725. Ms Zeina Chehade Tarraf also stated that her late husband Mr Ziad Tarraf—one of Mr Hariri’s close protection officers who died in the attack—had been stressed with work before the attack because there were ‘lots of threats by the Syrian intelligence’.¹³⁸⁶ Mr Majdalani stated that the reduction in security led to the feeling that there might be a physical threat to the former prime minister.¹³⁸⁷ Witness 357 stated that before the assassination Mr Hariri did not feel at ease and there were threats against him.¹³⁸⁸

726. Mr El-Khoury testified that on 13 February 2005, Mr Bassel Fuleihan returned from abroad, visited him at home and the two then went together to visit Mr Hariri at Quraitem Palace. There, Mr Fuleihan told Mr Hariri that there were serious threats to kill political figures in Lebanon, namely either Mr Hariri or Mr Jumblatt. The source of the information may have been British intelligence. Mr El-Khoury said that the result was that ‘for the first time it appeared to me that the Prime Minister was taking such threats very seriously’.¹³⁸⁹ Mr Hammoud, who was also there, gave a similar account stating that, upon returning from vacation in Switzerland, Mr Fuleihan told Mr Hariri that there was ‘an attempt ongoing’ to kill him and that the information

¹³⁸² Amer Chehadeh, T. 16 October 2014, pp 10-11, 48-50.

¹³⁸³ Exhibit 1V34 (Roula Nasser’s statement), para. 9.

¹³⁸⁴ Exhibit 1V34 (Roula Nasser’s statement), para. 12.

¹³⁸⁵ Exhibit P336 (Statement of Tarek Soubra), para. 68.

¹³⁸⁶ Exhibit 1V37 (Zeina Tarraf’s statement), para. 7.

¹³⁸⁷ Atef Majdalani, T. 29 April 2015, p. 5.

¹³⁸⁸ Witness PRH357, T. 2 June 2015, p. 18.

¹³⁸⁹ Ghattas El-Khoury, T. 20 January 2015, pp 39-41.

had been received from a ‘British agency’.¹³⁹⁰ According to Mr El-Khoury, Mr Hariri had previously always said that ‘they will never dare to do and they will have to pay a very high price on any attempt on [my] life’ and considered it ‘a red line’. But this time he did not give this usual response, saying instead that he would make a few contacts or calls. Mr Hariri seemed upset, disturbed and seemed to take the threats very seriously.¹³⁹¹

727. Similarly, according to Mr Majdalani, Mr Fuleihan—who had gone to Quraitem Palace at around 19:00 straight from the airport after returning from a European vacation¹³⁹²—told Mr Hariri that he had heard about a wave of assassinations.¹³⁹³ Without revealing the source of this information, Mr Fuleihan emphasised that the threat should be taken seriously¹³⁹⁴ and told Mr Hariri ‘Try as much as possible to change your routes, your convoys, your cars, because these threats are serious.’¹³⁹⁵

728. Coincidentally, the same day, Sunday, 13 February 2005, *Al-Hayat* carried an article headed, ‘New warning against attacks targeting any of the symbols of the Lebanese opposition’ stating that:

Sources said that the international community sent a clear message to Syria “not to shed the blood” of any of the opposition figures in Lebanon. The message asserted that should Walid Joumblat or Rafic Hariri be victims of any assassination attempt, “this will mark the final severance in the relationship between Syria and the international community.”¹³⁹⁶

729. In January 2006, the UNHCR Commissioner, Mr Detlev Mehlis, conducted what could only be considered in investigatory terms as irregular, a joint ‘interview’ with three prominent Lebanese

¹³⁹⁰ Exhibit 4D137 (Witness statement of Hani Hammoud), para. 31.

¹³⁹¹ Ghattas El-Khoury, T. 20 January 2015, pp 42-43. On the other hand, Mr Salim Diab, who was also present at Quraitem Palace that night, 13 February 2005, with some of the participants to the meeting, had no memory of an MP referring to threats against Mr Hariri’s life. However, Mr Hariri told the witness to watch out and to be careful. Salim Diab, T. 3 February 2015, pp 72-73.

¹³⁹² Mr Hariri had contacted Mr Fuleihan on his holiday, insisting that he return in order to join Mr Hariri at the joint parliamentary committee on 14 February 2005 to discuss the draft electoral law. Atef Majdalani, T. 29 April 2015, pp 9-10.

¹³⁹³ Atef Majdalani, T. 29 April 2015, p. 9. Mr Majdalani was present when Mr Fuleihan relayed this, as—according to Mr Majdalani—was Mr El-Khoury. Atef Majdalani, T. 30 April 2015, pp 21-22.

¹³⁹⁴ Atef Majdalani, T. 29 April 2015, p. 11.

¹³⁹⁵ Atef Majdalani, T. 29 April 2015, p. 11, T. 30 April 2015, pp 21-22.

¹³⁹⁶ Exhibit P369 (*Al-Hayat* article, 13 February 2005), p. 2.

figures, Mr Siniora, Mr Berri and Mr Hariri's sister, Ms Bahia Hariri, on the topic of suspicion of Mr Ghazaleh's involvement in Mr Hariri's death.

730. Ms Hariri told Mr Mehlis that during the four months after the attempt on Mr Hamade's life 'we used to receive a lot of information that he was at risk, that he should be careful, that he was under threat, that they could not forgive him for 1559 and that they don't trust him and after looking into all the electoral laws, they realised that his electoral bloc would still be very significant and this increased the danger'. Further, 'Actually, they didn't want Rafik Hariri out of the government. They wanted him out of politics. Period.'¹³⁹⁷

731. The Trial Chamber also recorded as an agreement between the Parties that 'In his armoured vehicle, Mr Hariri was accompanied by MP Mr Bassel Fuleihan.' The Trial Chamber additionally recorded Mr Fuleihan's death in the explosion as an agreed fact between the Parties; Mr Fuleihan was in the passenger seat of Mr Hariri's vehicle.¹³⁹⁸

S. The Accused's and Mustafa Amine Badreddine's alleged associations with Hezbollah

1. Evidence on Accused's and Mr Badreddine's alleged associations with Hezbollah

(a) General evidence

732. The Trial Chamber received some evidence that the Accused and Mr Badreddine were associated with, supporters of or supported by, Hezbollah.

733. In a speech on 11 November 2010—shortly before the Prosecutor submitted an indictment against Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra to the Pre-Trial Judge for confirmation¹³⁹⁹—the Secretary-General of Hezbollah, Mr Nasrallah, stated that the resistance was being targeted 'via an indictment' at the Special Tribunal.¹⁴⁰⁰ Of the Special Tribunal generally,

¹³⁹⁷ Exhibit 2D139 (Transcript of a recorded conversation between Mr Fouad Siniora, Mr Nabih Berri, Ms Bahia Hariri and UNIIIC Commissioner Mr Detlev Mehlis, 14 January 2006), pp 25-26 (ERNs 312975-312976).

¹³⁹⁸ Agreed facts, nos (i), (ix).

¹³⁹⁹ It was submitted on 17 January 2011 and confirmed on 28 June 2011.

¹⁴⁰⁰ Exhibit P2090 (Speech by Hassan Nasrallah on 11 November 2010), p. 11, where Mr Nasrallah stated: 'The fifth and last phase is the STL and the indictment. (That is at the present time. Only Allah knows. As long as there is America and "Israel" and there is a beautiful country like Lebanon which has water and perhaps oil and diversities and special properties conspiracies will not stop). We go back to the very beginning - dragging us to a confrontation

he said, ‘(This is to those who are looking forward to the issuance of the indictment.) Mistaken is he who believes that we will allow the arrest or detention of any of our mujahedeen. The hand that attempts to reach them will be cut off.’¹⁴⁰¹

734. On 2 July 2011—shortly after the Pre-Trial Judge confirmed the original indictment¹⁴⁰²—Mr Nasrallah responded, stating that it had been issued ‘against brothers in the resistance’.¹⁴⁰³

735. The Pre-Trial Judge issued international arrest warrants for the apprehension of Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra in the original indictment on 8 July 2011, and on 28 July 2011 ordered the lifting of the confidentiality of their names and biographical details.¹⁴⁰⁴

736. Two weeks later, on 17 August 2011, in a speech for *Iftar* at the Women’s Branch of the Islamic Resistance Support Association, Mr Nasrallah criticised the indictment and the evidence supporting it. He referred to Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra as ‘four honourable resistance men’. The relevant portion reads:

However, I would like to begin with giving evidences by what took place today to give it priority. It has to do with the indictment. Indeed, at previous times we talked lengthily to the effect that the Special Tribunal for Lebanon is moving in this perspective. It focused on one supposition. It refused to work on any other suppositions despite the existence of indications and conditional evidences through which Israel might be accused or investigating Israel would be valid. Still they are moving on that track and through the past period, they accused four honourable resistance men. Today, either the complete text or the greater part of what is called the indictment of these Resistance men was published.¹⁴⁰⁵

with the international community. Now we entered forcefully in a new stage of targeting the Resistance via an indictment? What is the whole idea?’

¹⁴⁰¹ Exhibit P2090, p. 13.

¹⁴⁰² Decision relating to the examination of the Indictment of 10 June 2011.

¹⁴⁰³ Exhibit P458.1 (Transcript of Hassan Nasrallah’s response to the Special Tribunal ‘indictment’, 2 July 2011), p. 6 (ERN 60223025).

¹⁴⁰⁴ Arrest warrant for Mr Ayyash; Arrest warrant for Mr Badreddine; Arrest warrant for Mr Oneissi; Arrest warrant for Mr Sabra; Pre-Trial Judge order partly lifting the confidentiality of the indictment.

¹⁴⁰⁵ Exhibit P2095 (Speech by Hassan Nasrallah on 17 August 2011), p. 5.

In the same speech he said:

To you sisters and to all the public opinion who are listening to me I say: Today we are more confident that what is taking place is of a high level of injustice, politicisation and accusation. These honourable resistance men should not even be referred to as accused. This is slander, and they are accused by this slander.¹⁴⁰⁶

737. In a speech commemorating Mr Badreddine, broadcast on 20 May 2016, Mr Nasrallah said that the Special Tribunal is ‘being exploited as a weapon to target this Resistance and the leaders of this Resistance and their moral and bodily assassination’.¹⁴⁰⁷

738. The Trial Chamber also received evidence that witnesses or potential witnesses called by the Prosecution refused to attend an interview or follow-up interview with Prosecution investigators, instead referring them to the Hezbollah Security Committee. And, further, that the Committee’s permission was required before certain witnesses would attend interviews or court.¹⁴⁰⁸

739. The four Accused and Mr Badreddine are Muslim Shiite.¹⁴⁰⁹

(b) Mustafa Amine Badreddine

740. On 13 May 2016, Hezbollah announced through *Al-Manar* TV’s website that Mr Badreddine had died in Syria.¹⁴¹⁰ In the article, Hezbollah stated that it would ‘accept blessings

¹⁴⁰⁶ Exhibit P2095, p. 6.

¹⁴⁰⁷ Exhibit P1989 (Transcript of video recording for *Al-Manar* TV regarding Mustafa Badreddine’s memorial ceremony), p. 10.

¹⁴⁰⁸ Exhibit P1136 (Witness statement of Timothy Holford), paras 11.3.3, 12.2, 13.4, 14.3, 15.3, 15.5, 16.4; Timothy Holford, T. 15 September 2016, pp 45-46, 69-70, 72.

¹⁴⁰⁹ Exhibit P683 (Identity card application form of Mr Merhi); exhibit P691 (Identity card application form of Mr Ayyash); exhibit P1040 (Birth certificate of Mr Badreddine); exhibit P1066 (Family civil status register extract for Hassan Oneissi); exhibit P1078 (Family personal status extract).

¹⁴¹⁰ Exhibit P1982 (*Al-Manar* TV news article, 13 May 2016), referring to a Hezbollah statement: ‘After a lifetime full of jihad, prison, wounds and considerable achievements, Sayed Zou Al-fiqar concluded his life by martyrdom, joining other martyr commanders; among them is his partner in jihad, the commander Hajj Imad MUGHNIYEH. This is the nature of resistance; it does grow with its leaders when they are alive, and it does pride itself with them when they die. We ask the Almighty to bless him with vast mercy and permanent happiness’ and to another Hezbollah statement, according to which ‘The initial instigations show that a large explosion targeted one of our centres near Damascus International Airport, and led to the martyrdom of the commander Mustafa Badreddine (Al-Sayed Zou Al-fiqar) and the injury of others.’

on commander jihadist Hajj Mustafa Badreddine (Al-sayed Zou Al-fiqar)' starting that day, on 13 May 2016, at the *Al-Mujtaba* compound.¹⁴¹¹

741. *Al-Manar* broadcast the condolence ceremony and funeral procession for Mr Badreddine held on 13 May 2016 in Beirut.¹⁴¹² Senior Hezbollah members, Mr Amine Sherri, Mr Wafik Safa, Mr Ali Ammar, Mr Hussein Hajj Hassan, Mr Hasan Fadlallah, Sheikh Naim Qassem and Mr Sayyed Hashem Safieddine attended the memorial ceremony.¹⁴¹³ The broadcast showed footage of this procession—with a coffin draped with a Hezbollah flag and Mr Badreddine's brothers Mr Mohammed Amine Badreddine and Mr Adnan Badreddine—following it. A military band played and a guard of honour wearing military fatigues with Hezbollah flags flanked the procession.¹⁴¹⁴

¹⁴¹¹ Exhibit P1982, p. 2.

¹⁴¹² Exhibits P1986-P1987 (Video extracts of *Al-Manar* TV broadcast of Mustafa Badreddine's condolence ceremony, 13 May 2016); exhibit P1988 (Video extract of *Al-Manar* TV broadcast of Mustafa Badreddine's funeral procession, 13 May 2016).

¹⁴¹³ Exhibits P1986-P1987.

¹⁴¹⁴ Exhibit P1988.



Exhibit P1988 – a video extract of Al-Manar TV broadcast of Mustafa Badreddine’s funeral procession, 13 May 2016

742. At a commemoration ceremony held on 20 May 2016, Mr Nasrallah lauded Mr Badreddine as one of Hezbollah’s ‘best leaders’.¹⁴¹⁵ *Al-Manar* broadcast a two-hour tribute to Mr Badreddine—which included a live broadcast of Mr Nasrallah’s speech to the gathering of almost an hour and a quarter—praising at length Mr Badreddine’s role in the resistance. Mr Nasrallah stated that Mr Badreddine had been involved in the resistance from its ‘first moments and hours’, by forming, training and directing *jihadi* groups and being involved in multiple military operations.¹⁴¹⁶

743. Mr Nasrallah described Mr Badreddine as a military leader in confronting Israel in the war in July 2006. ‘Among his achievements was dismantling the networks of collaborators with the “Israeli” enemy in 2008 and the years that followed’ and he ‘was in charge of leading and

¹⁴¹⁵ Exhibit P1989, pp 1-2.

¹⁴¹⁶ Exhibit P1989, p. 2.

commanding the Hezbollah military and security units inside Syrian territories’ after Hezbollah entered the conflict in Syria.¹⁴¹⁷

744. Mr Badreddine had assumed the ‘leadership of the Military Central Command in Hezbollah’ in 1995, was a military leader in July 2006 and by 2016 commanded Hezbollah military and security units in Syria.¹⁴¹⁸ Mr Nasrallah acknowledged that upon his death, Mr Badreddine’s name and true identity could be openly used.¹⁴¹⁹ Mr Badreddine’s brother, Mr Mohammed Badreddine, was present and gave a speech at the commemoration ceremony.¹⁴²⁰



Exhibit P1983 – a photograph of Mr Badreddine in military uniform released by Hezbollah in May 2016, published in Alahed

745. A biography of Mr Badreddine, with accompanying military photographs under the heading ‘In the photos: Who is the great jihadist leader, the martyr Mustafa Badreddine “Al-Sayyed Zoulfiqar”?’ was published on *Alahed*’s website on 13 May 2016, and stated the following:

- In 1982, he worked on the formation of *jihadist* groups and trained them to confront the Zionist enemy.
- He is considered one of the most prominent *mujahedeen* who combated the Israeli invasion at the entrances of *Kheldah* region, south of Beirut and was injured in the

¹⁴¹⁷ Exhibit P1989, p. 3.

¹⁴¹⁸ Exhibit P1989, pp 2-3.

¹⁴¹⁹ Exhibit P1989, p. 2.

¹⁴²⁰ Exhibit P1989, p. 1.

clashes. He was also among the vanguards of participants in *El-Ghobeiri* clashes and the Airport Bridge in 1982.

- The martyr leader worked on the formation and the training of military resistance groups against the Israeli occupation to expel them from the capital and suburbs.
- In 1992, he became in charge of the Central Military Unit Command and built formations and set out military plans. He planned many heroic and martyrdom operations and special operations such as the assault on hostile positions, planting explosives and clashes, which forced the Zionist occupier to withdraw in 2000.
- He played a prominent role in facing the aggression in July 1993 and forced the enemy's Prime Minister Rabin, at the time to admit defeat by Hezbollah.
- In 1996, during the aggression of the 'Grapes of Wrath', he established the foundations for a new stage which made the world recognise the legitimacy of resistance and its right to defend its territory.
- In 1997, he had a prominent role in the planning and supervision of special operation *Ansarieh*.
- He worked on dismantling dozens of espionage networks of the Israeli enemy agents inside Lebanon.
- With the start of the Syrian crisis in 2011, he was one of the first leaders who attended, planned, led and faced the *takfiri* plan on the Syrian territory, military and security.
- The martyr leader continued to follow up his *jihad* activities until he was granted the honour of martyrdom near the Damascus International Airport on 13 May 2016.¹⁴²¹

746. During the alleged attribution period, Mr Badreddine, using his personal mobiles 354 and 944, also had telephone contacts with Mr Safa, Mr Ammar and Mr Sherri.¹⁴²²

747. On 18 May 2016, another commemoration ceremony was held in Mr Badreddine's honour in Damascus, Syria. The memorial was held at the *Sayyeda Zeinab* shrine and various senior Syrian officials, religious leaders and military representatives attended. These included Mr Abou El-Fadl El Tabtabaii, the representative of the Islamic Revolution Commander in Syria, Major-General

¹⁴²¹ Exhibit P1983 (*Alahed* news article, 13 May 2016), pp 1-2. See also exhibit P1984 (photographs of Mustafa Badreddine from *Alahed* news article, 13 May 2016); exhibit P1985 (video excerpt of Mustafa Badreddine from *Alahed* news article, 13 May 2016).

¹⁴²² See paras 4112, 4181.

Oussama Khaddour, the Director of Political Administration of the Syrian Arab Republic and Sheikh Qaouk Fachad.¹⁴²³

748. Sheikh Qaouk Fachad lauded Mr Badreddine as a ‘great jihadist commander at the resistance who was killed as a martyr in the battle of defending Syria, Lebanon and the Nation’.¹⁴²⁴ Major-General Khaddour praised Mr Badreddine’s ‘jihadist personality’, his ‘commitment to the resistant approach’ and his positive relationship with his comrades.¹⁴²⁵



Exhibit P1990 – extract of Tasnim news article on memorial ceremony in Syria, 18 May 2016

749. On 25 May 2016, the Iranian Supreme Leader, Ayatollah Ali Khamenei, met Mr Badreddine’s family in Tehran and gave his ring to Mr Badreddine’s son, Ali. The Tasnim Iranian News Agency reported that the Ayatollah had said, ‘Your family is the family of a martyr. Not just the family of martyr Badreddine but martyr Imad Mughniyeh, his son and others.’¹⁴²⁶ The

¹⁴²³ Exhibit P1990 (*Tasnim* news article on memorial ceremony in Syria, 18 May 2016), pp 1, 3.

¹⁴²⁴ Exhibit P1990, pp 1-2.

¹⁴²⁵ Exhibit P1990, p. 3.

¹⁴²⁶ Exhibit P1991 (*Tasnim* news article, 26 May 2016), p. 2. The late Imad Mughniyeh was Mr Badreddine’s brother-in-law.

report was accompanied by photographs of Mr Khamenei with the family, and presenting the ring to Mr Ali Badreddine.¹⁴²⁷

750. The evidence that Mr Badreddine was a long-standing and senior Hezbollah military commander is uncontested and incontrovertible. However, for the reasons set out in chapter XIV ‘Legal findings on elements of the crimes and Individual criminal responsibility’, (B) (3) (f) (i) ‘Mustafa Badreddine and Hezbollah’, the Trial Chamber did not consider that it received reliable evidence of his position in Hezbollah in 2004 and 2005, namely in the indictment period.

(c) Salim Jamil Ayyash

751. The Trial Chamber received limited evidence on Mr Ayyash’s affiliations with Hezbollah. Apart from Mr Nasrallah’s statement that he was one of the ‘honourable men of the resistance’, Mr Ayyash was selected in December 2003 to escort a Hezbollah MP in the 1424 Hajj pilgrimage in January 2004 and was described as a ‘brother’ in a letter from the Office of the Head of the Loyalty to the Resistance Bloc.¹⁴²⁸ For the Hajj in 2004, two applications were entered in the Hajj database for Mr Ayyash.¹⁴²⁹ The first application was rejected while the second was accepted because a Hezbollah MP sponsored him.¹⁴³⁰

752. A year later, with a letter to the Head of the Pilgrimage Affairs Committee, the Loyalty of the Resistance Bloc again assisted Mr Ayyash and his wife in obtaining a visa to Saudi Arabia to perform the Hajj pilgrimage in 2005.¹⁴³¹ Although Mr Ayyash had travelled to the Hajj in 2004, the following year the Hajj Committee granted his application because he was sponsored by the Loyalty to the Resistance Bloc.¹⁴³² Mr Ayyash was also listed in the contact details of a vehicle insurance policy for Mr Abdallah Ali Safieddine, Hezbollah’s representative in Iran, to whom Mr Ayyash has family connections.¹⁴³³

¹⁴²⁷ Exhibit P1991.

¹⁴²⁸ Exhibit P1673 (Lists of persons sponsored by the Loyalty to the Resistance Bloc to the President regarding the Hajj pilgrimages in years 2004 to 2011), p. 6; exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), paras 40-41, 47-50.

¹⁴²⁹ Exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), paras 46-48.

¹⁴³⁰ Exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), paras 46-48; exhibit P1673, p. 6.

¹⁴³¹ Exhibit P1673, pp 11-13.

¹⁴³² Exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), paras 48, 50.

¹⁴³³ Exhibit P693 (Statement of Ghassan Saab), paras 7-12, p. 12 (ERN 60302632); exhibit P1107 (Statement of Witness PRH045, 12 August 2010), para. 72. *See also* exhibit P2026.2 (Attribution report of Andrew Donaldson

753. As set out in its statement of September 2016, the Prosecution intended to tender into evidence the witness statements of a Prosecution investigator that demonstrated that a number of people associated with Mr Ayyash referred investigators to the Hezbollah Security Committee for approval.¹⁴³⁴ In January 2017, the Prosecution notified the Trial Chamber of its strategic decision not to tender this evidence.¹⁴³⁵ The four were on the Prosecution's witness list until at least December 2016, when the Prosecution informed the Defence and the Legal Representatives of Victims that it no longer intended to call them.¹⁴³⁶ The Ayyash Defence cross-examined Mr Andrew Donaldson on their statements because he had used them as source material in early versions of his attribution report relating to Mr Ayyash.¹⁴³⁷

754. Mr Ayyash also had telephone contacts with Hezbollah officials, Mr Wafik Safa, the secretary of Hezbollah's Security Command, and Mr Safieddine, using his personal mobile 170 and his network mobile, Yellow 669.¹⁴³⁸ The Prosecution submits that the presence of mobiles attributed to and used by Mr Ayyash—Green 300 and Yellow 294—in the vicinity of a meeting between Mr Hariri and Mr Nasrallah at Haret Hreik on 21 December 2004 means that he may have known about it, thus adding to the evidence of his connections to Hezbollah.¹⁴³⁹

regarding Mr Ayyash), para. 92 (g); exhibit P1032 (Family personal status extracts), pp 9-10; exhibit P1034 (Family personal status extracts), pp 3 (ERN 60144966), 15 (ERN 60144978), 24-25 (ERNS 60144986-60144987).

¹⁴³⁴ F2735, Prosecution Summary Statement of Evidence in Relation to Paragraph 49 of the Amended Consolidated Indictment, 23 September 2016, para. 14. A public redacted version was filed on 31 October 2017.

¹⁴³⁵ F2948, Notice Concerning an Updated Prosecution Summary Statement of Evidence in relation to paragraph 49 of the Amended Consolidated Indictment, 20 January 2017, para. 2. *See also* F2948, Public Redacted Annex A, Updated Prosecution Summary Statement of Evidence in relation to paragraph 49 of the Amended Consolidated Indictment, 31 October 2017, para. 14.

¹⁴³⁶ F2626, Prosecution Notice of Updated Revised Witness List, 20 June 2016, Annex A, pp 6, 14, 23; Procedural matters, T. 16 October 2017, pp 36, 43-46, T. 17 October 2017, pp 8-9.

¹⁴³⁷ *See for example*, Andrew Donaldson, T. 17 October 2017, pp 12-15, 20-24, 30-33, 36-37, 40-45, exhibit P2026 (Attribution report of Andrew Donaldson regarding Mr Ayyash, version 4), Annex D. The statements were marked for identification for the Ayyash Defence as 1D456 MFI, 1D457 MFI, 1D458 MFI and 1D459 MFI. The Ayyash Defence then applied for their admission into evidence which the Trial Chamber dismissed. Decision denying admission of statements tendered by Ayyash Defence, paras 10, 23-24, 26-27, disposition. The Trial Chamber found that the statements most properly belonged to the Defence case, and their admission into evidence—over the Prosecution's opposition before its case was closed—may cause procedural unfairness to the Prosecution, as it would be forced to elect whether to cross-examine a witness without knowing where the evidence fits into the Defence's case.

¹⁴³⁸ *See* chapter IX 'Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine', (B) 'Salim Jamil Ayyash' (1) (e) (i) c. 'Contact profile' and (2) (a) (i) d. 'Contact profile'.

¹⁴³⁹ Prosecution final trial brief, paras 327-332.

755. From all of this—independently of Mr Nasrallah’s description of Mr Ayyash as one of the ‘four honourable Resistance men’—the Trial Chamber can conclude that Mr Ayyash had affiliations with Hezbollah.

(d) Hassan Habib Merhi

756. The Trial Chamber received no evidence of Mr Nasrallah making any public statement about Mr Merhi—directly or indirectly—connecting him with Hezbollah. Mr Merhi had some family Hezbollah affiliations.

757. The only evidence connecting Mr Merhi with Hezbollah is through his younger brother, Mr Youssef Habib Merhi, who died according to media reports on 10 March 2004, while ‘doing his jihad duty’. Mr Youssef Merhi was proclaimed ‘a martyr’ by Hezbollah and his funeral procession on 10 March 2004 was led by Hezbollah senior politicians and representatives. Mr Nasrallah himself made a speech at a memorial service for Mr Youssef Merhi at the end of a one-week commemoration period.¹⁴⁴⁰

758. According to Prosecution investigator and expert witness Mr Gary Platt, on 30 November 2004, two ‘Syrian deposit’ MPs, Mr Nasser Kandil and Mr Adnan Arakji, were in contact with Mr Ghazaleh multiple times throughout the day, mostly in the evening. Mr Kandil was also unusually contacted by Mr Ali Ammar, the Hezbollah MP who was also a common contact of Mr Badreddine and Mr Merhi.¹⁴⁴¹ Mr Merhi, using his personal mobile, Purple 231, also called Mr Ammar twice on 30 November 2004: once in the morning and once in the evening.¹⁴⁴² According to the Prosecution, this suggests that Purple 231 may be a ‘non-personal phone’ and that its user was a cadre of Hezbollah.¹⁴⁴³

¹⁴⁴⁰ Exhibit P2097 (News article on the death of Youssef Habib Merhi); exhibit P2100 (News articles on the death of Youssef Habib Merhi, March 2004), pp 1-3. *See also* exhibit P1051 (Personal status extracts and certificates).

¹⁴⁴¹ *See* chapters IX ‘Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine’, (C) ‘Hassan Habib Merhi’ (2) (d) ‘Contact profile’, (3) (c) ‘Contact profile’, (F) ‘Mustafa Amine Badreddine’ (4) (a) (iv) ‘Contact profile’, (6) (a) (i) ‘Contact profile’. *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), para. 235.

¹⁴⁴² Exhibit P527 (Call sequence table of Purple 231), pp 101-102. *See also* exhibit P1782, para. 235; chapter IX ‘Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine’, (C) (3) (c) ‘Contact profile’.

¹⁴⁴³ Prosecution final trial brief, para. 123.

759. The Trial Chamber is of the view that it has received insufficient evidence in relation to Mr Merhi to draw any conclusions as to whether he was a supporter of Hezbollah.

(e) Hussein Hassan Oneissi

760. The strongest evidence of Mr Oneissi's Hezbollah affiliation is Mr Nasrallah's description of him as one of the 'four honourable resistance men'. Added to this is a family connection with Hezbollah in that his younger brother, Mr Ahmed Hassan Oneissi, and nephew, Mr Ali Ahmed Oneissi, were declared 'martyrs' by Hezbollah upon their deaths.¹⁴⁴⁴ The Trial Chamber is satisfied that at least in 2010, Mr Oneissi could have been described as a Hezbollah supporter.

(f) Assad Hassan Sabra

761. Mr Sabra is also one of the 'four honourable resistance men' and the Trial Chamber has no reason to disbelieve Mr Nasrallah's uncontested description to this effect. Further, one witness described Mr Sabra as a Hezbollah supporter when he was younger,¹⁴⁴⁵ another that he was connected to Hezbollah¹⁴⁴⁶ and a third that he was a Hezbollah supporter.¹⁴⁴⁷ His younger brother, Mr Moussa Hassan Sabra, was recognised as a Hezbollah 'fighter' at a commemorative ceremony for him, attended by Hezbollah officials.¹⁴⁴⁸

(g) Conclusion

762. From this evidence, and with reference to paragraph 49 of the amended consolidated indictment, the Trial Chamber can safely conclude that Mr Badreddine, Mr Ayyash, Mr Oneissi and Mr Sabra were Hezbollah supporters. It has insufficient evidence to make this finding in Mr Merhi's case but notes that a member of his immediate family certainly fell into that category. Mr Badreddine was undoubtedly a valued senior Hezbollah military commander.

763. In September 2016, the Prosecution argued that 'certain senior Hezbollah officials or public representatives' were using particular telephone numbers which 'were in contact with some of the

¹⁴⁴⁴ Exhibit P2092 (National News Agency article, 7 August 2006), p. 7. *See also* exhibit P1066; exhibit P2096 (Photographs of Ahmed Hassan Oneissi and Ali Ahmed Oneissi).

¹⁴⁴⁵ Exhibit P1150 (Interview of Witness PRH069, 19 October 2010), p. 33.

¹⁴⁴⁶ Exhibit P1149 (Statement of Witness PRH106, dated 15 October 2010), para. 60.

¹⁴⁴⁷ Exhibit P2103 (Witness statement of Abbas Mohammed Alaaeddine, 21 October 2010), pp 62-63.

¹⁴⁴⁸ Exhibit P2094 (*Al-Manar* TV news report, 9 September 2007).

telephone numbers attributed’ to the Accused or Mr Badreddine.¹⁴⁴⁹ Specifically, the Prosecution alleges that behavioural and contact patterns of senior Syrian and Hezbollah officials, including Mr Wafik Safa, and the reaction of the covert networks, reinforces the conclusion that the networks were controlled by Mr Ayyash and overseen by Mr Badreddine.¹⁴⁵⁰

764. It alleges in particular that Mr Ghazaleh had contact with Mr Safa immediately after the first and second Bristol Group meetings, as well as Mr Hariri’s refusal to accept Syrian ‘deposits’ on 9 January 2005 and his meeting with Mr Kandil on 4 February 2005.¹⁴⁵¹ The calls are relevant only to establish links—in the sense of contacts—between Mr Ayyash and Mr Badreddine and Hezbollah officials. But it can go no further as the Trial Chamber has already found that it would not make findings on Mr Safa—who has been neither charged nor named in the amended consolidated indictment as a co-conspirator—having any role in the conspiracy alleged.¹⁴⁵²

765. The Trial Chamber received no positive evidence that either any specific Hezbollah member or its leadership, and in particular, Mr Nasrallah, had any motive to kill Mr Hariri. The evidence from both Prosecution and Defence witnesses was of the existence of a constructive relationship between the two men.

2. Submissions

766. The Prosecution, the Legal Representatives of Victims and the Ayyash, Oneissi and Sabra Defence made submissions on the ‘political’ evidence.

(a) Prosecution

767. The Prosecution submits that Mr Hariri’s assassination was political in nature. There is no other reasonable explanation for the meticulously planned, audacious attack against one of Lebanon’s most prominent political figures that was carried out in a way that was obviously designed to make a dramatic public statement.

¹⁴⁴⁹ F2735, Prosecution Summary Statement of Evidence in Relation to Paragraph 49 of the Amended Consolidated Indictment, 23 September 2016, para. 20. A public redacted version was filed on 31 October 2017.

¹⁴⁵⁰ Prosecution final trial brief, para. 625.

¹⁴⁵¹ Prosecution final trial brief, paras 656-660, 670, 688-694, 696, 739, 741, 743-746.

¹⁴⁵² See para. 132.

768. According to the Prosecution, the Accused and Mr Badreddine were connected through their common support for Hezbollah, independent of their telephone usage. The Accused were part of a conspiracy that was led and coordinated by Mr Badreddine, a ‘celebrated martyr who fought for Hezbollah for 30 years’.

769. The Accused’s actions alone demonstrated their participation in the conspiracy and their criminal responsibility. However, the Trial Chamber does not need to find that the Accused were acting on behalf or at the behest of any organisation for a conviction. Links between the Accused and Hezbollah demonstrate the Accused’s common interests and explain the political context in which the attack occurred.¹⁴⁵³

770. The Prosecution argues that Mr Badreddine was ‘an experienced operative with the necessary skills, knowledge and ability to train others in the sophisticated preparation and execution’ of the attack. And, further, his ‘affiliation with Hezbollah explains how he was able to operate using a phone network belonging to Hezbollah’.¹⁴⁵⁴

771. The Prosecution also relies upon the Green network being a Hezbollah network—by virtue of Mr Nasrallah’s alleged admission of this to Mr Al-Hassan—to prove that the Accused were using a covert network.¹⁴⁵⁵ The Trial Chamber has found that the Green network was operating as a closed network, but that it was not satisfied of the reliability of Mr Wissam Al-Hassan’s assertion of what Mr Nasrallah allegedly said to him about the ownership of the 18 mobiles in the wider Green network.¹⁴⁵⁶

772. The Prosecution concludes that the evidence on the historical and political background reveals a growing tension in the months leading up to the attack arising from Mr Hariri’s and others’ opposition to Syrian control in Lebanon. Certain groups, including Hezbollah, were aligned with Syria and had an interest in maintaining the *status quo*.¹⁴⁵⁷ The Accused’s political affiliations, coupled with the surrounding political context, assist in understanding the Accused’s common interests. The fact that those interests aligned with maintaining the *status quo*, which

¹⁴⁵³ Prosecution final trial brief, paras 5-6, 21-26, 317-324, 341; Prosecution closing submissions, T. 11 September 2018, pp 21-22. *See also* Amended consolidated indictment, para. 49.

¹⁴⁵⁴ Prosecution final trial brief, para. 321.

¹⁴⁵⁵ Prosecution final trial brief, paras 325-326, 341-342.

¹⁴⁵⁶ *See* paras 2243, 2246.

¹⁴⁵⁷ Prosecution final trial brief, para. 24.

Mr Hariri threatened, is relevant in understanding the timing and motivations behind the Accused's actions.¹⁴⁵⁸

(b) Defence

773. The Ayyash Defence argues that the Prosecution's attempts to link the political evidence to the allegation that the Accused were supporters of Hezbollah asks the Trial Chamber to draw inferences which extend well beyond this allegation. The Prosecution led no evidence that the Accused, by virtue of their alleged support for Hezbollah, had access to its resources. Further, the Ayyash Defence had no notice of the Prosecution's allegation that Mr Ayyash, as a supporter of Hezbollah, had any reason to know of a confidential meeting on 21 December 2004 between Mr Hariri and Mr Nasrallah.¹⁴⁵⁹

774. The Trial Chamber has found in analysing Defence claims of a lack of notice, that no notice issue arises, because the submission that the Accused were supporters of Hezbollah—and related arguments—does not go to a material fact underpinning any criminal responsibility.¹⁴⁶⁰

775. The Ayyash Defence submits that the Prosecution failed to persuasively demonstrate a link between the political context and the activity of the network phones, advancing that the political evidence in large part serves as a distraction from the real issues before the Trial Chamber.¹⁴⁶¹ The Prosecution's submission that Mr Hariri was killed by the pro-Syrian side, specifically Hezbollah, to 'maintain the status quo' is not borne out by the Prosecution's own evidence when viewed objectively.¹⁴⁶² To the contrary, Mr Hariri and Mr Nasrallah engaged in continuous dialogue.¹⁴⁶³ The evidence shows a friendly and cooperative relationship between Mr Hariri and Mr Nasrallah and a dialogue with Syria on various issues. While the relationship with Syria was not without its tensions, these tensions do not rise to the level necessary to support the ambiguous insinuations of a 'non-personal motive' to kill Mr Hariri.¹⁴⁶⁴ In reality:

¹⁴⁵⁸ Prosecution final trial brief, paras 24, 26.

¹⁴⁵⁹ Ayyash Defence final trial brief, paras 46, 64-66, 68; Ayyash Defence closing submissions, T. 17 Sept 2018, pp 19-21, 23. *See also* section chapter II 'The Prosecution's pleaded case', (B) (5) 'Hezbollah and the political context'.

¹⁴⁶⁰ *See* para. 122.

¹⁴⁶¹ Ayyash Defence final trial brief, para. 45.

¹⁴⁶² Ayyash Defence final trial brief, para. 74.

¹⁴⁶³ Ayyash Defence final trial brief, para. 78.

¹⁴⁶⁴ Ayyash Defence final trial brief, para. 90.

Prime Minister Hariri was, in fact, a permanent friend to the Syrians. And the foreign minister of Syria, Walid Moallem, described him as being the foreign minister of Lebanon and Syria together. And this happened nine days before the assassination.¹⁴⁶⁵

776. The Prosecution's political evidence also 'lacks any material evidence regarding Hezbollah's motive or Syria's motive' to kill Mr Hariri.¹⁴⁶⁶

777. The Merhi Defence submits that the Prosecution infers the existence of links between the Accused and Hezbollah on the basis of prejudices and tenuous associations, including religious confessions of the Accused and their presumed places of residence in Dahyieh. Similarly, it argues that the only evidence tendered by the Prosecution to link Mr Merhi to Hezbollah—calls from Purple 231 to a telephone attributed to Mr Ali Ammar, a Hezbollah MP, and connections between Mr Merhi's brother and Hezbollah—is insufficient to establish such a link which is central to its case.¹⁴⁶⁷

778. The Oneissi Defence argues that the Prosecution has not established that Mr Oneissi was a supporter of Hezbollah. In particular, it submits that Mr Nasrallah's speeches have no evidentiary weight and Mr Oneissi is not referred to by name in any of them and that evidence suggesting that Mr Oneissi's brother and nephew were declared martyrs by Hezbollah upon their death does not constitute evidence of links between Mr Oneissi and Hezbollah. Familial links cannot be used to infer Mr Oneissi's support for Hezbollah. The underlying evidence is uncorroborated and unreliable to confirm his family members' deaths let alone their Hezbollah membership. In addition, it cannot be inferred from Mr Oneissi's religion or place of residence that he was a Hezbollah supporter. The Prosecution did not present any evidence directly linking Mr Oneissi to Hezbollah. Even if proven, such a link does not establish the political context in which the attack occurred, nor demonstrates that the assassination was political, nor proves his individual criminal responsibility.¹⁴⁶⁸

779. Further, the Prosecution's political background witnesses are all allies and friends of Mr Hariri, thus presenting a one-sided view of the situation.¹⁴⁶⁹ Contrary to the Prosecution's

¹⁴⁶⁵ Ayyash Defence closing submissions, T. 17 September 2018, p. 17.

¹⁴⁶⁶ Ayyash Defence closing submissions, T. 17 September 2018, pp 25-26.

¹⁴⁶⁷ Merhi Defence final trial brief, paras 7-8.

¹⁴⁶⁸ Oneissi Defence final trial brief, paras 618-622.

¹⁴⁶⁹ Oneissi Defence final trial brief, para. 625.

narration, another approach considers that the Syrian role in Lebanon was to preserve stability and remain on good terms with both Mr Hariri and his opponents.¹⁴⁷⁰

780. The Sabra Defence argues that the Prosecution's allegation that the Accused are supporters of Hezbollah is based on insufficient, weak and tangential evidence. By relying on the alleged connections between the Accused and Hezbollah, yet claiming that the Trial Chamber does not need to find they were acting on behalf of or at the behest of Hezbollah, the Prosecution is attempting to support its weak and circumstantial case while seeking to 'have its cake and eat it'.¹⁴⁷¹

781. Counsel for Mr Sabra further contend that the Prosecution should have pleaded—as material facts in the amended consolidated indictment—the alleged role in Mr Hariri's assassination of Hezbollah and others, such as Mr Ghazaleh, Mr Safa or President Al-Assad.¹⁴⁷² These arguments, the Sabra Defence submits, are absolutely crucial to the allegation that the Accused had access to the necessary means to carry out the assassination, as otherwise there is no evidence that they would have had access to the military resources necessary to undertake the attack.¹⁴⁷³

782. Consequently, counsel for Mr Sabra argue that the Trial Chamber cannot make findings on the supposed non-personal motive for the assassination; on Syria's or Hezbollah's alleged position in relation to the non-personal motive; on the relationship of authority or control between the Syrian regime and Hezbollah; on Hezbollah's internal military and political functioning; on any military or operational capacity of Hezbollah to plan, prepare or conduct military or alleged terrorist activities; and on the alleged motivations or acts of Mr Ghazaleh, Mr Safa, or President Al-Assad.¹⁴⁷⁴

(c) Legal Representatives of Victims

783. The Legal Representatives of Victims argue that between October 2004 and June 2005, a number of pro-Hariri and anti-Syrian public figures were killed or injured by bombs in Beirut.

¹⁴⁷⁰ Oneissi Defence final trial brief, para. 629.

¹⁴⁷¹ Sabra Defence final trial brief, paras 440, 451-452.

¹⁴⁷² Sabra Defence closing submissions, T. 21 September 2018, pp 13, 21-22.

¹⁴⁷³ Sabra Defence closing submissions, T. 21 September 2018, pp 22-23.

¹⁴⁷⁴ Sabra Defence closing submissions, T. 21 September 2018, p. 25.

This highlights the uncertainty that was clouding Lebanon at that time, and how anti-Syrian politicians and prominent figures in Lebanon were constantly targeted due to their political stance.¹⁴⁷⁵

784. The Legal Representatives of Victims also submit that it was inconceivable that the assassination was plotted and executed only by the four Accused and Mr Badreddine. This ‘was not the work of a simple criminal gang. This was the work of a political organisation, which killed for its political beliefs’.¹⁴⁷⁶ In the Legal Representatives of Victims’ submission, this organisation was Hezbollah. The Accused were associated with Hezbollah—Mr Badreddine’s commitment to Hezbollah is of particular note.¹⁴⁷⁷ Further, given the sophistication and the complexity of the crime and its professionalism, it relied on a highly powerful security, technical and military organisation that worked with such ease and tranquillity on a terrain where it had full control—this, in the Legal Representatives of Victims’ submission, was Hezbollah.¹⁴⁷⁸

785. Although the evidence that ‘Syria’s dark hand was on the tiller’ is admittedly less direct, the ‘dots appear ... to join up sufficiently convincingly’. The target of the attack was undoubtedly Mr Hariri and it is inconceivable that the reason for his murder was not political.¹⁴⁷⁹

786. The Legal Representatives of Victims further submit that Mr Hariri and Hezbollah were capable of cooperation, even alliance. It was Syria that stood to gain from Mr Hariri’s death and to lose from his election as prime minister. There is abundant evidence in this respect and of Hezbollah’s fidelity to Syria. The idea that Hezbollah did Syria’s bidding without being asked seems fairly remote, especially in light of the evidence that Mr Hariri received threats from the Syrian regime and the pattern of attacks against other anti-Syrian politicians and advocates.¹⁴⁸⁰

T. Summary

787. The Trial Chamber is satisfied from the evidence that:

¹⁴⁷⁵ Legal Representatives of Victims final trial brief, para. 72.

¹⁴⁷⁶ Legal Representatives of Victims final trial brief, paras 89-90.

¹⁴⁷⁷ Legal Representatives of Victims closing submissions, T. 14 September 2018, pp 81-82, 89.

¹⁴⁷⁸ Legal Representatives of Victims closing submissions, T. 14 September 2018, p. 106.

¹⁴⁷⁹ Legal Representatives of Victims closing submissions, T. 14 September 2018, p. 82.

¹⁴⁸⁰ Legal Representatives of Victims closing submissions, T. 14 September 2018, p. 82.

- From the end of the civil war Syria had an overwhelming political, military and economic dominance in Lebanon;
- From the Israeli withdrawal from southern Lebanon in 2000, internal Lebanese opposition grew to the continuing presence of Syrian soldiers in Lebanon and to Hezbollah maintaining an armed militia, contrary to the Taif Agreement;
- The opposition was expressed through political allegiances including of Mr Jumblatt's Druze political faction, Christians and members of Mr Hariri's Future Movement;
- Mr Hariri's political allies vocally supported UN Security Council resolution 1559;
- The Syrian government wanted the mandate of President Lahoud—who was a strong supporter of Syria—to be extended by the Lebanese Parliament;
- Mr Hariri and his allies were opposed to this;
- The Syrian Government imposed certain electoral candidates on Mr Hariri, which were known as 'Syrian deposits';
- In August 2004, President Al-Assad effectively ordered Mr Hariri to support the extension of President Lahoud's mandate, stating that Syria alone would choose the President of Lebanon;
- Mr Hariri did not publicly support UN Security Council resolution 1559, passed on 2 September 2004, which called for the withdrawal of foreign troops from Lebanon and the disbanding of armed militias. The foreign troops in question were Syrian and the militia was Hezbollah's;
- On 3 September 2004, Mr Hariri and his bloc voted in Parliament to extend the mandate and on 12 September 2004 he announced that his government would resign;
- In the months before his assassination, Mr Hariri's allies were publicly calling for an end to the Syrian political, military and economic dominance over Lebanon;

- Their efforts increased after the passage of resolution 1559, including in the three Bristol meetings, 22 September 2004, 13 December 2004 and 2 February 2005, in which Mr Hariri was represented by his political supporters;
- According to many witnesses, the attempted assassination of Mr Marwan Hamade on 1 October 2004 could be construed as a warning to Mr Hariri and Mr Jumblatt not to cross the line;
- Mr Hariri resigned on 20 October 2004 and was planning to run in the May 2005 elections. He would have been proposing the loosening of Syrian dominance over Lebanon and supporting the immediate withdrawal of Syrian troops;
- A proposed electoral law for the 2005 elections—supported by the Syrian government—was designed to diminish Mr Hariri’s chances of having members of his bloc elected to Parliament and hence his prospects of a new term as prime minister;
- The Syrian government was insisting that Mr Hariri accept so-called Syrian ‘deposits’ in his electoral list, and Mr Hariri was opposed to this;
- The Chief of Syrian Military Intelligence in Lebanon, Mr Ghazaleh, received regular monthly cash payments from Mr Hariri through intermediaries from 1993 onwards, including a ‘double’ payment on Sunday 13 February 2005;
- Mr Hariri and Mr Nasrallah had good relations in the years immediately before his death and were meeting regularly;
- Mr Hariri believed that Hezbollah’s militia should be disarmed, at the very least, when peace with Israel was achieved;
- Mr Badreddine, Mr Ayyash, Mr Oneissi and Mr Sabra were Hezbollah supporters;
- Mr Mustafa Badreddine was a senior Hezbollah military official;
- The growing opposition to the Syrian presence in Lebanon threatened Syria’s interests;

- Syria and Hezbollah may have had motives to eliminate Mr Hariri, and some of his political allies;
- There is no evidence that the Hezbollah leadership had any involvement in Mr Hariri's murder and there is no direct evidence of Syrian involvement in it;
- There is no evidence that either Mr Ayyash or Mr Badreddine were directed by the Hezbollah leadership to arrange logistical support for Mr Hariri's assassination; and
- The attack involved an RDX-based explosive. Some witnesses observed that 'RDX is so powerful that it is most suitable for military purposes'.¹⁴⁸¹ From this, it may be concluded that those responsible for co-ordinating the attack had access to what could be described as 'military-grade explosives'.

¹⁴⁸¹ See para. 1143.

V. PARTICIPATION OF VICTIMS

A. Victims' role and participation in trials before international, hybrid or internationalised tribunals

788. The role and participation of victims in trials conducted under international criminal law procedural law varies between the different international criminal institutions. Victims of international crimes tried before the ICTY, the ICTR and the SCSL had no standing to participate in the proceedings—except as witnesses called by a party. The IRMCT—which is mandated to perform a number of ‘residual’ functions previously carried out by the ICTY and the ICTR, and whose Statute and Rules of Procedure and Evidence are modelled on the Statute and Rules of those tribunals—also does not envisage victim participation.

789. The Statute and the Rules of the Special Tribunal, like the Rome Statute of the ICC and the Law on the Kosovo Specialist Chambers and Specialist Prosecutor's Office, allow a form of victim participation. Victims granted participant status at the Special Tribunal—as well as at the ICC and the Kosovo Specialist Chambers¹⁴⁸²—are not a ‘party’ to the proceedings.¹⁴⁸³

790. The ECCC—which is a national court with the presence of international judges, prosecutors and defence counsel—follows a different, civil law, model where victims may participate in the proceedings as ‘civil parties’ or ‘*parties civiles*’.¹⁴⁸⁴

¹⁴⁸² The Kosovo Specialist Chambers are established within the Kosovo justice system—they are attached to each level of the court system in Kosovo—but are staffed by international judges and personnel. They apply, among other sources of law, customary international law and the substantive criminal law of Kosovo insofar as it complies with customary international law.

¹⁴⁸³ Rule 2 defines the term ‘Party’ as ‘the Prosecutor or the Defence’. *See also* Decision on the Legal Representatives’ application to call evidence, para. 2, fn. 2. The Lebanese Code of Criminal Procedure has the civil party system. As the Explanatory Memorandum of the Special Tribunal’s President of 12 April 2012 illustrates, the Statute excludes that victims may act as ‘*parties civiles*’. The main *raison d’être* of *parties civiles*, namely their participation in criminal proceedings for the purpose of seeking compensation, is removed. Rules of Procedure and Evidence — Tribunal’s President’s Explanatory Memorandum (as of 12 April 2012), paras 15-16; UN Doc. S/2006/893 (15 November 2006), ‘Report of the Secretary-General on the Establishment of a Special Tribunal for Lebanon’, paras 31-32. *See also* Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office, 3 August 2015, Art. 22; Rules of Procedure and Evidence before the Kosovo Specialist Chambers, Rule 2 (defining the terms ‘Party’ and ‘Victims Participating in the Proceedings’).

¹⁴⁸⁴ ECCC Internal Rules (rev. 9), as revised on 16 January 2015, Rule 23 ‘General Principles of Victims Participation as Civil Parties’. This Rule provides that the purpose of civil party action before the ECCC is to: a) participate in criminal proceedings against those responsible for crimes within the jurisdiction of the ECCC by supporting the Prosecution, and b) seek collective and moral reparations.

791. Article 17 of the Special Tribunal’s Statute and Article 68 (3) of the Rome Statute set out in identical terms the frameworks of victim participation. They are drawn from the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, whose Article 6 (b) provides that the responsiveness of judicial processes to the needs of the victims should be facilitated by allowing their ‘views and concerns’ to be presented at ‘appropriate stages of the proceedings’.¹⁴⁸⁵ Article 22 of the Law on the Kosovo Specialist Chambers and Specialist Prosecutor’s Office does not use this same expression—victims’ ‘views and concerns’—but according to a similar rationale envisages representations on behalf of the victims during the proceedings.¹⁴⁸⁶

792. The main difference in the victim participation procedures before the Special Tribunal and the ICC concerns the compensation regime. The ICC can itself grant reparations to victims—and it has its own statutory Trust Fund for Victims—whereas the Statute specifies that victims may bring an action for compensation in a national court or other competent body, based on a judgment finding an accused ‘guilty of a crime that has caused harm to a victim’.¹⁴⁸⁷ In both, the right to compensation is conviction-based, meaning it requires an accused to be convicted of a charged crime. The Kosovo Specialist Chambers can make reparation orders, after convicting an accused of a crime.¹⁴⁸⁸

B. Who are the Participating Victims?

793. Article 17 of the Statute provides that:

where the personal interests of the victims are affected, the Special Tribunal shall permit their views and concerns to be presented and considered at stages of the proceedings

¹⁴⁸⁵ In the UN Declaration, the General Assembly called upon States to take the necessary steps to give effect to the provisions contained in the Declaration and affirmed the necessity of adopting national and international measures to secure the universal and effective recognition of, and respect for, the rights of victims of crime and abuse of power; UN Doc A/RES/40/34/Annex (1985).

¹⁴⁸⁶ Law No. 05/L-053 on the Kosovo Specialist Chambers and Specialist Prosecutor’s Office, 3 August 2015, Art. 22, which provides that the victims’ personal interest and rights in the criminal proceedings are ‘notification, acknowledgement and reparation’. According to Article 22 (5), victims will be represented by a Victims’ counsel and no self-representation is permitted.

¹⁴⁸⁷ Statute, Art. 25; Rome Statute, Art. 75; *Bemba* decision on reparations proceedings, para. 3. Further, under the Special Tribunal’s Rules, victims cannot participate before the confirmation of an indictment, during the investigation stage (Rule 86 (A)).

¹⁴⁸⁸ Alternatively, where appropriate, the Specialist Chambers may refer the victims to civil litigation within the other courts of Kosovo; Law No. 05/L-053 on the Kosovo Specialist Chambers and Specialist Prosecutor’s Office, 3 August 2015, Art. 22 (8)-(9).

determined to be appropriate by the Pre-Trial Judge or the Chamber and in a manner that is not prejudicial to or inconsistent with the rights of the Accused and a fair and impartial trial.

Victims, therefore, have a conditional right to participate in the Special Tribunal's proceedings.¹⁴⁸⁹

794. Rule 2 defines a *victim* as 'a natural person who has suffered physical, material, or mental harm as a direct result of an attack within the Tribunal's jurisdiction'. This definition of a victim encompasses both 'direct' victims and 'indirect' victims who personally suffered harm as a direct result of the attack.¹⁴⁹⁰ It includes the 22 people killed in the explosion or as a result of it, who are normally referred to as the 'victims of the attack'—all the Parties agreed that this fact is uncontested¹⁴⁹¹—and the 226 who were injured in the explosion—another fact that each Party agreed is uncontested.¹⁴⁹²

795. A victim participating in the proceedings is defined as a 'victim of an attack within the Tribunal's jurisdiction who has been granted leave by the Pre-Trial Judge to present his views and concerns at one or more stages of the proceedings after an indictment has been confirmed'.¹⁴⁹³ Necessarily, this definition is encompassed within the definition of 'victim', which is broader. The 'participating victim' status first depends on a victim having applied to the Special Tribunal to participate in the proceedings.

796. In this case, the Pre-Trial Judge granted this status to 76 people.¹⁴⁹⁴ However, the participatory status of six participating victims was withdrawn either by the Pre-Trial Judge or the Trial Chamber—for four of them at the request of the Legal Representatives of Victims following their deaths.¹⁴⁹⁵ The Pre-Trial Judge's decisions granting the 'participating victim' status was

¹⁴⁸⁹ Decision on the Legal Representatives' application to call evidence, para. 5.

¹⁴⁹⁰ Pre-Trial Judge decision on victims' participation in the proceedings, paras 43, 45.

¹⁴⁹¹ Second decision on agreed facts (Merhi), para. 1 (i). In addition to killing Mr Rafik Hariri, the explosion killed 21 other persons listed in Schedule A of the amended consolidated indictment.

¹⁴⁹² Second decision on agreed facts (Merhi), para. 1 (ii).

¹⁴⁹³ Rule 2. Under Rule 86, if the Pre-Trial Judge has confirmed the indictment, a person claiming to be a victim of a crime within the Special Tribunal's jurisdiction may be granted the status of victim participating in the proceedings pursuant to Article 17.

¹⁴⁹⁴ Pre-Trial Judge decision on victims' participation in the proceedings; Second decision on victim participation; Third decision on victim participation; Fifth decision on victim participation; Sixth decision on victim participation; Seventh decision on victim participation; Eighth decision on victim participation.

¹⁴⁹⁵ Decision authorising two victims to withdraw their participation; Decision authorising a victim to withdraw their participation; Decision withdrawing one participating victim; Decision withdrawing participating victim (2020); Decision delivered in court authorising one victim to withdraw their participation.

based on his examining and finding *prima facie* evidence that the applicants had suffered physical, material or mental harm as a direct result of the attack of 14 February 2005.¹⁴⁹⁶ The participating victims in this case are either relatives of those who died in or as a result of the explosion, or people who were physically injured and or who suffered material damage in the explosion.

797. The Pre-Trial Judge, in his decision on victims' participation in the proceedings, decided, consistently with ICC case law and to ensure the expeditiousness and fairness of the proceedings, that the victims authorised to participate in proceedings could only do so through a legal representative. He also decided that they formed a single group for the purpose of their legal representation before the Special Tribunal.¹⁴⁹⁷ The Registrar, pursuant to the Pre-Trial Judge's decision, designated common legal representatives to represent the interests of those granted the status of participating victims.¹⁴⁹⁸ Twenty-six participating victims, including one former participating victim, were granted protective measures, either by the Pre-Trial Judge or the Trial Chamber, including as witnesses in the trial.¹⁴⁹⁹ Their names or any identifying information were expunged from any record disclosed to the public.

798. The Statute explicitly provides that the Special Tribunal may identify victims who have suffered harm as a result of the commission of crimes by an Accused convicted by the Special Tribunal.¹⁵⁰⁰ While this does not require that the Special Tribunal 'identify' them to seek compensation before a national court or other competent body, it makes the 'identification' of the victims and the related harm of enhanced relevance to the trial proceedings and to the victims' right to participate. In support of this, the Explanatory Memorandum on the Rules of Procedure and Evidence states (legally incorrect in part) that:

¹⁴⁹⁶ Pre-Trial Judge decision on victims' participation in the proceedings, paras 2-3. The Pre-Trial Judge stated that his determinations on the status of victims participating in the proceedings, due to the *prima facie* standard applied, were 'without prejudice to another Chamber's determination in a final judgment that an individual who has been granted VPP [victim participating in the proceedings] status by the Pre-Trial Judge on the basis of *prima facie* evidence is or is not a victim of an attack falling within the Tribunal's jurisdiction'.

¹⁴⁹⁷ Pre-Trial Judge decision on victims' participation in the proceedings, paras 112, 127, disposition.

¹⁴⁹⁸ Designation decision for Legal Representatives of Victims. Rule 2 defines the *legal representative of a victim participating in the proceedings* as 'counsel representing a victim participating in proceedings before the Tribunal'.

¹⁴⁹⁹ The Pre-Trial Judge granted requests for protective measures for 32 participating victims, but protective measures in relation to six of them (Victims V10, V43, V54, V55, V80 and V84) were later rescinded. *See for example*, Decision on eight requests for protective measures; Decision rescinding protective measures granted to Victims 54 and 55. *See also* Decision on protective measures for 11 witnesses.

¹⁵⁰⁰ Statute, Art. 25.

Notwithstanding that the trial proceedings in the Tribunal are not aimed at determining compensation but rather establishing whether an accused is guilty or innocent, the drafters of the Rules of Procedures and Evidence deemed it fair and appropriate to grant extensive participation in proceedings to victims.

Based on the Tribunal's "identification", victims may later bring an action for compensation before a national court and, for the purpose of such "identification", the participation of victims in the criminal proceedings before the Tribunal may prove of enormous value.¹⁵⁰¹

799. It is legally incorrect because a trial chamber does not pronounce on the innocence of an accused person, who is always presumed innocent until pronounced guilty after a trial.¹⁵⁰²

800. The Legal Representatives of Victims presented evidence at trial showing that academics had 'argued for the formulation of a broader definition' for those who are considered to be 'victims of terrorism'.¹⁵⁰³ According to expert academic commentary, acts of terrorism spread outwards affecting primary, secondary and tertiary victims.¹⁵⁰⁴

801. 'Primary victims', who are also referred to as direct victims, include those who are killed or injured in the terrorist attack; 'secondary victims' include dependants and relatives of the direct victims and first responders; and 'tertiary victims', also referred to as 'vicarious victims', are those

¹⁵⁰¹ Rules of Procedure and Evidence — Tribunal's President's Explanatory Memorandum (as of 12 April 2012), para. 16; Statute, Art. 25.

¹⁵⁰² The text states, incorrectly, 'establishing whether an accused is guilty or innocent', whereas the Trial Chamber, consistent with the principles of international human rights law, is only required to determine whether guilt was established beyond reasonable doubt. Article 16 (3) (c) of the Statute provides that 'In order to convict the accused, the relevant Chamber must be convinced of the guilt of the accused beyond reasonable doubt'. According to Rule 148, 'A finding of guilt may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt'.

¹⁵⁰³ Exhibit 1V42 (Professor Letschert's report), pp 7-8. The Trial Chamber permitted Professor Rianne Letschert, a victimologist, to provide opinion evidence as part of the victims' case and admitted her report into evidence. Professor Letschert pointed to the definition provided by Alex Schmid, who distinguishes between primary and secondary victims of terrorism, Alex Schmid, *Magnitudes and Focus of Terrorist Victimisation*, in U. Ewald and K. Turkovic (eds), *Large-scale victimisation as a potential source of terrorist activities* (IOS Press, Amsterdam), pp 3-19.

¹⁵⁰⁴ Professor Letschert explained that a study of 2010—carried out at the request of the European Commission—suggested dividing the large group of secondary victims, as defined by Alex Schmid, into two groups, introducing in this way a category of tertiary victims. The rationale was that 'terrorist acts specifically target tertiary victims as well as primary and secondary victims'. In the research project, they 'were asked by the European Commission to assess whether there was a need to have separate legal principles for victims of terrorism'. A publication resulted from this project, exhibit 1V42 (Professor Letschert's report), pp 7-9, citing Rianne Letschert, Ines Staiger and Antony Pemberton, *Victims of Terrorism in Assistance to Victims of Terrorism, Towards a European Standard of Justice* (Springer Press, 2010); Legal Representatives of Victims final trial brief, paras 6-7; Rianne Letschert, T. 8 September 2017, p. 25.

who may suffer psychological effects beyond the primary or secondary victims or the object of the attack. These include: those who have well-founded reasons to fear that they might be a victim of terrorism in the future; those whose normal lifestyle is changed; and those who experienced income loss or property damage due to acts of terrorism. Professor Letschert testified that, with respect to the crime of terrorism, ‘we don’t only talk about the direct victim but we talk about actually the entire population, and we could stretch it even further, the entire international community’.¹⁵⁰⁵

802. Each Accused is charged with participating in a conspiracy aimed at committing a terrorist act and either with committing a terrorist act (Mr Ayyash) or as accomplices to a terrorist act (Mr Merhi, Mr Oneissi and Mr Sabra).¹⁵⁰⁶ According to the Legal Representatives of Victims’ submissions, ‘it is the victims’ case that the bombing was an act of terrorism’.¹⁵⁰⁷ To the extent that the Trial Chamber finds that the attack on 14 February 2005 amounted to a terrorist act, the victims of the attack are ‘victims of terrorism’. The cited academic definition of victims of terrorism does not affect or impact the legal definition of a victim under the Statute or Rules. Nevertheless, the Trial Chamber finds that it is a useful working definition for the purpose of considering the impact of the attack of 14 February 2005 on ‘victims’, including participating victims, and the harm that they have suffered and or suffer as a result.

803. The Trial Chamber also acknowledges, based on Professor Letschert’s evidence, that ‘for many bereaved family members, the term “victim” refers to the deceased. They themselves often prefer to be considered “survivors”’.¹⁵⁰⁸

C. Modes of victims’ participation in the trial

804. Specific Rules define the modes of victims’ participation during the trial.¹⁵⁰⁹ Further, before the trial’s commencement, after hearing the Parties and the Legal Representatives of

¹⁵⁰⁵ Exhibit 1V42 (Professor Letschert’s report), pp 7-8; Legal Representatives of Victims final trial brief, paras 6-7; Rianne Letschert, T. 8 September 2017, pp 44-45.

¹⁵⁰⁶ Amended consolidated indictment, paras 53-55, 63-64.

¹⁵⁰⁷ Legal Representatives of Victims final trial brief, paras 58, 65-66.

¹⁵⁰⁸ Exhibit 1V42 (Professor Letschert’s report), p. 6. As there are no references in the relevant passage of the report, it is not clear whether this view on the term ‘victim’ has been expressed by the participating victims in these proceedings or derives from previous work on victims conducted by Professor Letschert.

¹⁵⁰⁹ *See for example*, Rule 87 (A)-(B) ‘Modes of Participation of Victims in the Proceedings’; Rule 143 ‘Opening Statements’; Rule 147 (A) ‘Closing Arguments’.

Victims, the Trial Chamber gave directions on the conduct of the proceedings under Rule 130 (A),¹⁵¹⁰ to supplement the Statute and the Rules. These included guidelines in relation to the participation of victims in the trial. In these, the Trial Chamber stated that it could call witnesses to testify for the participating victims and allow them, through their legal representatives, to tender documents and records into evidence. The guidelines also stated that the Legal Representatives of Victims could: participate in meetings and conferences before the Trial Chamber unless otherwise ordered, access written material consistent with the practice ordered by the Pre-Trial Judge,¹⁵¹¹ file motions and briefs and make oral submissions in relation to any issue that affected the victims' personal interests.¹⁵¹²

805. Through their legal representatives, the participating victims made opening statements,¹⁵¹³ questioned witnesses upon the Trial Chamber's invitation,¹⁵¹⁴ filed motions and observations,¹⁵¹⁵ filed a final trial brief,¹⁵¹⁶ presented closing submissions,¹⁵¹⁷ received all documents filed by the Parties, except for some limited material filed *ex parte* to which their access was restricted, and participated in status conferences and trial case management meetings.¹⁵¹⁸ The Trial Chamber also authorised the Legal Representatives of Victims to present evidence. The presentation of *viva voce* or live evidence and written statements—through their formal admissions and reading out of

¹⁵¹⁰ Directions on the conduct of the proceedings, para. 1. Rule 130 (A) relevantly provides that 'The Trial Chamber, after hearing the parties, may give directions on the conduct of the proceedings as necessary and desirable to ensure a fair, impartial, and expeditious trial'.

¹⁵¹¹ Decision on modalities of victim participation.

¹⁵¹² Directions on the conduct of the proceedings, paras 1-2, and annexed 'Guidelines on the Conduct of the Proceedings', para. 19.

¹⁵¹³ Legal Representatives of Victims opening statement, T. 17 January 2014, pp 53-87. *See also* Order on modes of victim participation, T. 29 October 2013, p. 31, where the Trial Chamber granted two applications from the Legal Representatives of Victims, to make an opening statement and have a small number of victims present in the courtroom during the opening statement.

¹⁵¹⁴ *See for example*, where the Legal Representatives of Victims questioned witnesses, Abdel-Qader Darwiche, T. 22 January 2014, pp 17-18; Gerard Murray, T. 30 September 2014, pp 21-24; Rachid Hammoud, T. 4 December 2014, pp 28-44.

¹⁵¹⁵ As to filings from the Legal Representatives of Victims *see for example*, F2325, Request of the Legal Representative of Victims to Allow Three Participating Victims to Attend Proceedings in the Courtroom, 17 November 2015; F2660, Request of the Legal Representative of Victims to Rescind Protective Measures Granted to One Participating Victim, 20 July 2016.

¹⁵¹⁶ Legal Representatives of Victims final trial brief.

¹⁵¹⁷ Legal Representatives of Victims closing submissions, T. 14 September 2018, pp 77-113.

¹⁵¹⁸ Status conference, T. 17 May 2017.

summaries—took place over six days between 28 August and 8 September 2017. This is described as the ‘victims’ case’.¹⁵¹⁹

806. While the Rules only expressly refer to a Prosecution case and a Defence case¹⁵²⁰—as is normal in adversarial proceedings—the Statute and Rules allow a ‘victims’ case’. The Trial Chamber authorised one based on the criteria and principles described below,¹⁵²¹ ensuring that participating victims do not act as an auxiliary Prosecutor or double up on the Prosecution’s evidence. Participating victims must not present further evidence that simply supports the Prosecution’s case. The Trial Chamber was mindful of the necessity to avoid, as much as possible, any overlap between the two cases. It acknowledged the inevitable tension between the two competing objectives of allowing the participating victims to present their views and concerns and the right of the Accused to a fair and expeditious trial. It was also aware that participating victims would probably support a Prosecution case against those they may believe harmed them or their relatives.¹⁵²²

807. Professor Rianne Letschert commented in her testimony that ‘this Tribunal has really made an effort to make participation meaningful and to give also what I would call genuine attention to the voice of the victims in this case. So if that’s a lesson learned for future tribunals, I think it is an example that this Tribunal has been setting’.¹⁵²³

808. During the trial, participating victims themselves gave evidence, *viva voce* and or through written statements, either as Prosecution witnesses or as witnesses in the victims’ case, at the Legal Representatives of Victims’ request and with the Trial Chamber’s permission. Participating victims also personally attended public sessions of the proceedings in the courtroom, including during the opening statements, the presentation of evidence in the victims’ case and closing submissions. Thirty-three participating victims attended proceedings in the courtroom.¹⁵²⁴

¹⁵¹⁹ Decision on the Legal Representatives’ application to call evidence, paras 60, 93, 98. *See also* Decision admitting into evidence statements of participating victims; Decision permitting Professor Letschert to provide opinion evidence; Decision admitting documentary evidence on the Legal Representatives of Victims’ application.

¹⁵²⁰ Rules 112 (A), 128, 129, 148 (A).

¹⁵²¹ *See below*, sub-section (D) ‘The principles and criteria the Trial Chamber applied in deciding on the participating victims’ application to present or call evidence and on the appropriate stage of the proceedings for such presentation’.

¹⁵²² Decision on the Legal Representatives’ application to call evidence, paras 34-35, 70-72, 76.

¹⁵²³ Rianne Letschert, T. 8 September 2017, pp 106-107.

¹⁵²⁴ Mr Robert Aoun, Ms Ghina Mneimneh Ghalayini, Mr Raymond Abou-Chaaya, Ms Maria Al-Kasti, Ms Sanaa El Sheikh, Mr Wissam Naji, Mr Rachid Hammoud, Mr Nabih Mhanna, Mr Mahmoud Wazzan, Ms Liliane Khallouf, Mr Mehi Elddin Meneimneh, Mr Abdel-Qader Darwiche, Ms Nivine Darwiche, Ms Hana Diab El-Arab, Mr Saadeddine

Participating victims who testified in the victims' case were also asked, at the end of their testimony, whether they wished to stay in the courtroom, with the other participating victims, to continue attending the proceedings.¹⁵²⁵

809. The Trial Chamber issued general directions on the attendance of participating victims in the courtroom and permitted it on a case-by-case basis. It underlined that, in accordance with Article 17 of the Statute, the views and concerns of victims may be presented in court by their legal representatives. Logistical and physical considerations, however—and notably the Tribunal's limited resources and the size of the courtroom—imposed limitations on the number of victims who could be present in the courtroom at any one time. The Trial Chamber considered requests for the attendance of victims in the courtroom within this context. It also considered whether the proceedings at which the attendance was requested were to be held in a public session, whether any testifying witness had protective measures and whether the participating victims had a dual status, namely whether they were simultaneously a victim and a witness.¹⁵²⁶

810. During the presentation of the victims' evidence, the Trial Chamber authorised the Registrar to facilitate live courtroom streaming of public hearing sessions via a one-way video-conference link to a secure location in Beirut. This allowed public participating victims to observe public hearing sessions without a 30-minute broadcasting delay—which otherwise applies for the broadcasting of the proceedings to the public through the internet.¹⁵²⁷ This offered participating victims sufficient access to follow the proceedings as though they were present in the courtroom's public gallery.¹⁵²⁸ During the victims' case, the Trial Chamber's Presiding Judge and the other Judges asked the participating victims who attended the proceedings in the courtroom questions directly from the floor.¹⁵²⁹ Some of them had also provided evidence through witness statements, which were formally admitted into evidence while they were present.

Darwiche, Ms Clémence Tarraf, Mr Mamdouh Tarraf, Ms Bakiza Nasser (who is now deceased), Mr Kamal Nasser, Mr Bilal Nasser, Ms Roula Nasser, Ms Ihsan Fayed, Ms Sahar Kalaoui, Mr Saadeddine Hariri, Ms Yasma Fuleihan, Mr Bassam Osman, Mr Hicham Osman, Mr Rabih Nohra, Ms Rima Ghalayini, Ms Zeina Chehade Tarraf, Ms Fatme El Bahi (who is now deceased), Ms Dina Ghalayini, Mr Mohammed Diab. Twenty-three of them also provided evidence, either live or in written form.

¹⁵²⁵ *For example*, Ihsan Fayed, T. 7 September 2017, p. 56.

¹⁵²⁶ *See for example*, Decision on Participating Victims' attendance of proceedings.

¹⁵²⁷ STL website, <https://www.stl-tsl.org/en/contacts/visiting-the-stl/the-courtroom>.

¹⁵²⁸ Decision authorising live courtroom streaming.

¹⁵²⁹ Evidentiary matters, T. 29 August 2017, pp 89-102, T. 6 September 2017, pp 13-16, T. 7 September 2017, pp 71-75, 80-81, 86-87.

811. The Judges' questions concerned the impact, and any continuous impact, on them of the explosion on 14 February 2005—including resulting from the death of any relative; the effect of attending the proceedings in the courtroom or hearing the other participating victims' evidence; their expectations from the Special Tribunal; whether they had sought, or received, compensation for their harm and its amount; possible recommendations to the Lebanese government on mechanisms for compensation; and more generally their views and concerns as participating victims. The Trial Chamber emphasises that neither the questions nor the responses went to the individual criminal responsibility of the Accused.

812. According to Professor Letschert's evidence,¹⁵³⁰ the fact that victims sat in the courtroom behind their lawyers, instead of in the public gallery, is 'a novelty in international criminal justice', and victims described it as an empowering experience.¹⁵³¹ According to her, 'victims who were asked to testify also reported feelings of empowerment'.¹⁵³²

813. The Legal Representatives of Victims stated in their closing submissions that victims' participation has 'enriched' the proceedings and 'added human substance'. It allowed those who 'are the principal audience of these proceedings' to participate in them.¹⁵³³

D. The principles and criteria the Trial Chamber applied in deciding on the participating victims' application to present or call evidence and on the appropriate stage of the proceedings for such presentation

814. The Special Tribunal's Rules explicitly envisage that victims participating in the proceedings can seek, and be permitted, to present evidence. Rules 87 (B) and 146 (A) provide that a victim participating in the proceedings may request the Trial Chamber, after hearing the Parties, to call witnesses.

815. On 3 May 2017, the Legal Representatives of Victims submitted an application seeking the Trial Chamber's permission to call nine live witnesses—seven participating victims and two non-

¹⁵³⁰ As noted above (*see fn. 1503*), the Trial Chamber permitted Professor Letschert, a victimologist, to provide opinion evidence as part of the victims' case and admitted her report into evidence.

¹⁵³¹ Exhibit 1V42 (Professor Letschert's report), pp 29, 36-37; Rianne Letschert, T. 8 September 2017, pp 50-51; Legal Representatives of Victims final trial brief, paras 715-716, 745.

¹⁵³² Exhibit 1V42 (Professor Letschert's report), p. 29.

¹⁵³³ Legal Representatives of Victims closing submissions, T. 14 September 2018, p. 79.

victim witnesses—and present the evidence of 19 other witnesses in written statements, under either Rules 155 or 158. They additionally presented a schedule of ‘proposed agreed facts’, submitting that the Parties’ agreement to them would have substantially eliminated the need to seek the admission of most of the approximately 400 documents contained in their exhibit list.¹⁵³⁴ On 10 May 2017, the Legal Representatives of Victims sought leave to amend their witness list by adding four witnesses—who were victims participating in the proceedings—whose statements they intended to tender into evidence under Rule 155.¹⁵³⁵

816. In considering that application, the Trial Chamber examined the pertinent international case law. It found that the criteria used by the ICC to permit victims to give or call evidence could be relevant. At the same time, however, the Trial Chamber noted the differences between the Special Tribunal and the ICC,¹⁵³⁶ namely, the victims’ entitlement to apply to give or call evidence is not explicitly provided for in the Rome Statute or the ICC’s Rules, it is only recognised in the case law.¹⁵³⁷ Further, the presentation of evidence by the participating victims is conditional upon the victims ‘making a real contribution to the search for the truth’, based on a provision that has no equivalent in the Special Tribunal’s Statute or Rules.¹⁵³⁸

817. The Trial Chamber also found that some requirements of the ICC case law are explicitly provided in the Special Tribunal’s statutory provisions on victims’ participation, namely that the presentation of the victims’ views and concerns must not be prejudicial to or inconsistent with the

¹⁵³⁴ F3116, Request of the Legal Representative of Victims to Call Witnesses and Tender Other Evidence and for Guidance on Its Disclosure Obligations, in Compliance with the Judge Rapporteur’s 11 April 2017 Order, with Confidential Annexes A, B and C, 3 May 2017.

¹⁵³⁵ F3132, Request of the Legal Representative of Victims to add four Witnesses to its Witness List, with Confidential Annex A, 10 May 2017.

¹⁵³⁶ Decision on the Legal Representatives’ application to call evidence, paras 16-22.

¹⁵³⁷ Decision on the Legal Representatives’ application to call evidence, para. 12, referring to *Lubanga* decision on appeals regarding victims’ participation, paras 97-99. *See also Banda* decision on victim participation, para. 24.

¹⁵³⁸ Decision on the Legal Representatives’ application to call evidence, para. 19, referring to *Katanga and Ngudjolo* decision on modalities of victim participation at trial, para. 91. The ICC case law has interpreted Article 69 (3) of the Rome Statute (reading, relevantly, that the Court ‘shall have the authority to request the submission of all evidence that it considers necessary for the determination of the truth’) as to leave ‘open the possibility for victims to move the Chamber to request the submission of all evidence that it considers necessary for the determination of the truth’. The ICC Appeals Chamber has ruled that, in order to allow victims to participate meaningfully in the trial, the Trial Chamber may, where appropriate, authorise them to tender evidence. *Lubanga* decision on appeals regarding victims’ participation, paras 97-99; *Katanga and Ngudjolo* decision on modalities of victim participation at trial, para. 81.

rights of the Accused to a fair and impartial trial,¹⁵³⁹ and that the victims' personal interests must be affected by the proceedings, issue or evidence.¹⁵⁴⁰

818. The Trial Chamber, therefore, noted, considered or decided the following:¹⁵⁴¹

- The overriding principle in deciding whether victims may present or call evidence must be that in Rule 150 (D), namely, 'that the interests of justice so require';¹⁵⁴²
- This principle must be read jointly with Articles 17 and 25 of the Statute;
- Consistent with ICC case law,¹⁵⁴³ submitting evidence at trial may be a means for the participating victims to express their 'views and concerns'—which they have a qualified statutory right to do before the Special Tribunal, under Article 17 of its Statute;
- Article 25 of the Statute explicitly envisages the identification, in the judgment, of the victims and the harm they suffered. As the Explanatory Memorandum on the Rules of Procedure and Evidence states, 'based on the Tribunal's "identification", victims may later bring an action for compensation before a national court, and, for the purpose of such "identification", the participation of victims in the proceedings before the Tribunal may prove of enormous value';¹⁵⁴⁴
- It follows that recognising, and adequately recording, the participating victims' harm may make their participation meaningful; and the interests of justice may therefore permit hearing evidence for this purpose;

¹⁵³⁹ Article 17—and more generally Articles 16 and 21—of the Statute require the Trial Chamber to ensure that the presentation of the victims' views and concerns will not be prejudicial to or inconsistent with the rights of the Accused to a fair and impartial trial. Article 16 sets forth the rights of the Accused, including the right to be tried without undue delay, and that the onus is on the Prosecutor to prove the guilt of the Accused. Article 21, 'Powers of the Chambers', relevantly provides that the Special Tribunal shall confine the trial strictly to an expeditious hearing of the issues raised by the charges and take strict measures to prevent any action that may cause unreasonable delay.

¹⁵⁴⁰ Decision on the Legal Representatives' application to call evidence, paras 18-19.

¹⁵⁴¹ Decision on the Legal Representatives' application to call evidence.

¹⁵⁴² Rule 150 (D) provides that 'a victim participating in the proceedings may be permitted to give evidence if a Chamber decides that the interests of justice so require'. The Trial Chamber considered that Rule 150 (D), by providing that a victim may be permitted to give evidence, does not distinguish between *viva voce* evidence and evidence in the form of written statements. Decision on the Legal Representatives' application to call evidence, paras 13, 87.

¹⁵⁴³ *Katanga and Ngudjolo* decision on modalities of victim participation at trial, para. 82.

¹⁵⁴⁴ Rules of Procedure and Evidence —Tribunal's President's Explanatory Memorandum (as of 12 April 2012), para. 16.

- Further, as acknowledged by the Appeals Chamber, the personal interests of the victims include their potential ability to claim compensation;¹⁵⁴⁵
- Consistent with ICC case law,¹⁵⁴⁶ material may be admitted into evidence if it ‘relates to matters that are properly to be considered by the Trial Chamber in its investigation of the charges against the Accused or in its evaluation of the views and concerns of participating victims’;¹⁵⁴⁷
- Receiving evidence from a victim must be considered appropriate, considering its capacity to assist the Trial Chamber in understanding the case or evidence heard;¹⁵⁴⁸
- Victims’ participation, through the presentation of evidence, must be proportionate and consistent with the right of the Accused to a fair and expeditious trial;¹⁵⁴⁹
- Participating victims cannot act as a second or auxiliary Prosecutor;¹⁵⁵⁰ and
- While noting that under the ICC’s case law, victims are not generally and under all circumstances precluded from tendering ‘evidence relating to the guilt or innocence of the accused’¹⁵⁵¹ or testifying on the role of the accused in the crimes charged,¹⁵⁵² it must be

¹⁵⁴⁵ Appeal decision on victims’ request to respond to Badreddine Defence interlocutory appeal, para. 5.

¹⁵⁴⁶ *Lubanga* decision on the admission of documents related to Witness 297, para. 10.

¹⁵⁴⁷ Decision admitting into evidence statements of participating victims, para. 16.

¹⁵⁴⁸ Decision on the Legal Representatives’ application to call evidence, paras 17, 31, 76, referring to ICC case law, including *Ntaganda* decision on the presentation of victims’ evidence, views and concerns, para. 11; *Katanga and Ngudjolo* decision on modalities of victim participation at trial, para. 87.

¹⁵⁴⁹ Decision on the Legal Representatives’ application to call evidence, para. 27, referring to *Lubanga* decision allowing victims to express their views and concerns and to present evidence at trial, para. 26.

¹⁵⁵⁰ Decision on the Legal Representatives’ application to call evidence, paras 34, 70, referring to *Katanga and Ngudjolo* directions for the conduct of the proceedings, paras 22 (b), 82; *Katanga and Ngudjolo* decision dismissing Mr Katanga’s appeal regarding the modalities of victim participation at trial, paras 110-113; *Situation in the DRC* decision of 17 January 2006 on victims’ participation, para. 51.

¹⁵⁵¹ *Lubanga* decision on appeals regarding victims’ participation, para. 97 (*see also* paras 93-95). *See also* *Katanga and Ngudjolo* decision dismissing Mr Katanga’s appeal regarding the modalities of victim participation at trial, para. 113. Judges Pikis and Kirsch—dissenting from *Lubanga* decision on appeals regarding victims’ participation—stated that victims cannot adduce evidence on the guilt of the accused and that their participation is confined to the expression of their views and concerns. Partly Dissenting Opinion of Judge G.M. Pikis, paras 4-6, 15; Partly Dissenting Opinion of Judge Philippe Kirsch, paras 4-5, 23-24, 39 (referring to the Rome Statute envisaging that the accused is faced by one Prosecutor, ‘rather than, potentially, multiple accusers’).

¹⁵⁵² *Katanga and Ngudjolo* decision dismissing Mr Katanga’s appeal regarding the modalities of victim participation at trial, paras 110-113; *Katanga and Ngudjolo* directions for the conduct of the proceedings, paras 22 (b), 82. *See also* *Situation in the DRC* decision of 17 January 2006 on victims’ participation, para. 51.

ensured that participating victims do not double up on the Prosecution's evidence by presenting further evidence that simply supports the Prosecutor's case.¹⁵⁵³

819. The Trial Chamber, in deciding about the appropriate stage of the proceedings for the victims to present their evidence—and therefore in scheduling the victims' case—considered that, while under the Rules participating victims can be heard at the sentencing stage, this does not preclude the Trial Chamber from hearing them on the harm suffered at an earlier stage in the proceedings, namely during the presentation of the evidence. It also noted the possible tension between Rules 146 (B) and 167. Rule 146 (B) provides that the evidence called by the Trial Chamber at the request of the participating victims shall be presented between the evidence for the Prosecutor and the evidence for the Defence. Rule 167 states that, at the close of the Prosecutor's case, the Trial Chamber must enter a judgment of acquittal on any count if there is no evidence capable of supporting a conviction on that count.

820. The Trial Chamber considered that, if it had acquitted the Accused under Rule 167 either *proprio motu* or on the application of an Accused, the Trial Chamber could not have heard any evidence for the participating victims—as the case would have been over—and their right to participate in the manner proposed would have been 'nullified'.¹⁵⁵⁴ As Rule 146 (B) allows the Trial Chamber, in the interests of justice, to alter the sequence of presentation of evidence, it decided that varying the order was warranted and interposed the presentation of the authorised evidence before the formal closure of the Prosecutor's case.¹⁵⁵⁵ The Parties were consulted before the Trial Chamber made this decision and did not object.

821. The Trial Chamber also noted that at the ICC, according to directions from trial chambers, any 'no case to answer motion'¹⁵⁵⁶ has followed the completion of the evidence called at the victims' request.¹⁵⁵⁷ The Trial Chamber further considered that the anticipated evidence it authorised did not provide *direct* evidence of the individual criminal responsibility of any Accused

¹⁵⁵³ Decision on the Legal Representatives' application to call evidence, paras 34, 71-72.

¹⁵⁵⁴ Decision on the Legal Representatives' application to call evidence, paras 42-43, 74, 94.

¹⁵⁵⁵ Decision on the Legal Representatives' application to call evidence, paras 94-95.

¹⁵⁵⁶ At the Special Tribunal an application under Rule 167.

¹⁵⁵⁷ Decision on the Legal Representatives' application to call evidence, para. 97, referring to *Ruto and Sang* decision on the conduct of the proceedings, para. 34, and *Ntaganda* decision on the conduct of the proceedings, para. 17. The Trial Chamber has also noted, however, that there are no ICC statutory provisions on a judgment of acquittal at the close of the Prosecutor's case.

and, therefore, its presentation could not impact any subsequent Trial Chamber determination under Rule 167.¹⁵⁵⁸

E. The victims' case

822. On 31 July 2017, the Trial Chamber granted the Legal Representatives of Victims' application to present the evidence of eight *viva voce* (live) witnesses—seven participating victims and a victimologist, Professor Letschert—and to submit 23 written statements for admission into evidence—21 from participating victims, one from a deceased former participating victim and one from another person, namely Witness PRH352.¹⁵⁵⁹

823. The Trial Chamber deferred its decision on the Legal Representatives of Victims' application to call a second non-victim witness, Dr Fares Souaid—a surgeon, political observer and former Lebanese MP.¹⁵⁶⁰ Dr Souaid, according to the Legal Representatives of Victims, was expected to testify about the political background and chain of events that preceded and followed the attack of 14 February 2005 and, as a physician, about the victims' humanitarian and psychological problems and pain. The Oneissi Defence opposed the application on the basis that the Legal Representatives of Victims had not demonstrated how Dr Souaid's expected evidence on political aspects would have affected the victims' personal interests nor had they explained whether he had examined the victims to provide an opinion on their problems and pain or whether he was presented as a lay or expert witness.

824. The Trial Chamber then ordered the Legal Representatives of Victims to provide to the Trial Chamber and disclose to the Parties a statement or report from this witness or a document outlining the scope of his testimony, before deciding whether to permit him to testify.¹⁵⁶¹ The Legal Representatives of Victims, however, subsequently withdrew Dr Souaid from their witness list, submitting that, after having reviewed the totality of the evidence at their disposal, and that presented during the Prosecution's case, Dr Souaid's evidence would have been 'otiose'.¹⁵⁶²

¹⁵⁵⁸ Decision on the Legal Representatives' application to call evidence, para. 97.

¹⁵⁵⁹ Decision on the Legal Representatives' application to call evidence, para. 89, disposition.

¹⁵⁶⁰ Decision on the Legal Representatives' application to call evidence, disposition.

¹⁵⁶¹ Decision on the Legal Representatives' application to call evidence, para. 86, disposition.

¹⁵⁶² F3270, Request of the Legal Representative of Victims to withdraw one witness from its witness list, 11 August 2017, paras 8-9; Decision on the Legal Representatives' application to withdraw one witness, para. 6.

825. One of the seven participating victims authorised by the Trial Chamber to testify could not attend, and the Legal Representatives of Victims instead sought the admission into evidence of his statement under Rule 155.¹⁵⁶³ The Trial Chamber ultimately admitted into evidence 24 witness statements, under Rules 155 and 158, and heard seven witnesses—six of them were participating victims. Six testified in person and one via video-conference link from the Special Tribunal's office in Beirut.

826. At the request of the Legal Representatives of Victims, the Trial Chamber also admitted into evidence documents—22 exhibits—under Rule 154. They were either tendered through a witness or through bar table motions. One of them was a compilation of 181 documents—the Trial Chamber admitted 175 of them into evidence.¹⁵⁶⁴ They consist of medical records, identification documents, family or individual status extracts, death certificates of people who died in or as a result of the explosion, documents relating to financial expenses and employment, photographs, press clippings and Lebanese court decisions.

827. The Trial Chamber also recorded, under Rule 122, the agreement of the Prosecutor and counsel for Mr Ayyash and Mr Sabra that 172 facts proposed by the Legal Representatives of Victims were uncontested. The Trial Chamber found that it may consider them proved at trial, in the cases against Mr Ayyash and Mr Sabra. They are listed in annex E to this judgment. As the Statute gives participating victims a qualified right to present their views and concerns and explicitly envisages the identification, in a judgment, of the victims and the harm they suffered, the Trial Chamber interpreted Rule 122 as allowing it to record agreements as to evidence between the Parties on 'facts' regarding the participating victims' identification and harm, which the Legal Representatives proposed.¹⁵⁶⁵

828. On 11 April 2017, the Trial Chamber's Presiding Judge, as Judge Rapporteur for reaching agreement between the Parties on matters in dispute, ordered the Legal Representatives of Victims to submit to the Parties, by 3 May 2017, proposals for agreements as to the content of any

¹⁵⁶³ Victim 27. Decision admitting into evidence the statements of Victims 27 and 73; Decision admitting into evidence statements of participating victims, paras 2-3.

¹⁵⁶⁴ Exhibit 1V45 (Rule 154 documents Legal Representatives of Victims). The Legal Representatives of Victims sought the admission into evidence of 189 documents. Of these, the Trial Chamber had already admitted eight. Of the remaining 181 documents, the Trial Chamber denied the admission of six. Decision admitting documentary evidence on the Legal Representatives of Victims' application, para. 6, fns 11-13, disposition.

¹⁵⁶⁵ Decision on agreed facts (participating victims) (Ayyash and Sabra), paras 6-8, disposition.

documents whose admission into evidence they intended to seek. The Legal Representatives of Victims accordingly filed a schedule of ‘proposed agreed facts’.

829. While the Prosecution and the Ayyash and Sabra Defence did not contest any of the ‘proposed agreed facts’, the Merhi and Oneissi Defence submitted that they could not agree to *any* of them because of the absence of instructions from the Accused, who are being tried *in absentia*. In both its decision authorising the presentation of evidence by victims and its decision recording the agreement as to evidence of the Prosecutor and the Ayyash and Sabra Defence, the Trial Chamber expressed its difficulty in understanding the basis for counsel for Mr Merhi and Mr Oneissi not accepting those facts as uncontested and how the absence of direct instructions from the Accused in this regard could affect this process. The Trial Chamber noted that most of the proposed agreed facts were uncontroversial, relating to matters such as dates of birth and medical reports of injuries.¹⁵⁶⁶ These are not matters that appear to be legitimately in dispute.¹⁵⁶⁷

830. The 175 documents admitted as a single exhibit¹⁵⁶⁸ contain the documents supporting those uncontroversial facts. The lack of agreement by counsel for Mr Merhi and Mr Oneissi meant that the presentation of those facts was required. The Trial Chamber accordingly authorised the Legal Representatives of Victims to submit the supporting documents for admission into evidence.¹⁵⁶⁹

831. The Trial Chamber was satisfied that the victims’ case, as proposed by the Legal Representatives of Victims, was contained and proportionate. It was also generally unopposed. It could not therefore have affected the Accused’s right to a fair trial and in particular their right to be tried without undue delay.¹⁵⁷⁰ Further, as it related to the identification of the victims and their

¹⁵⁶⁶ Decision on agreed facts (participating victims) (Ayyash and Sabra), paras 9-10; Decision on the Legal Representatives’ application to call evidence, para. 101. *See also* Procedural matters, T. 4 May 2017, pp 85-88; Status conference, T. 17 May 2017, pp 4-8.

¹⁵⁶⁷ Procedural matters, T. 4 May 2017, p. 85 (where the Presiding Judge—when hearing from the Parties about the time they needed to submit their position on the Legal Representatives of Victims’ ‘proposed agreed facts’—raised the issue of whether any connection may exist at all between the content of documents such as medical reports or birth certificates and a client’s instructions to Defence counsel, and as to ‘what a client would instruct ... to do in relation to medical reports’. Counsel for Mr Oneissi responded that while understanding these remarks, ‘as a matter of general principle it’s difficult for Defence counsel to agree to any facts in the absence of the instructions of a client’).

¹⁵⁶⁸ Exhibit 1V45 (Rule 154 documents Legal Representatives of Victims).

¹⁵⁶⁹ Decision on the Legal Representatives’ application to call evidence, para. 101, disposition.

¹⁵⁷⁰ Decision on the Legal Representatives’ application to call evidence, para. 75.

harm—as envisaged under Article 25—it could not alter the Prosecutor’s onus to prove the guilt of the Accused beyond reasonable doubt.¹⁵⁷¹

1. *Viva voce* (live) witnesses—six participating victims

832. The Trial Chamber heard the evidence of six participating victims, Mr Robert Aoun, Ms Lama Ghalayini, Ms Maria Al-Kasti, Ms Liliane Khallouf, Ms Ihsan Fayed and Victim 16.

833. The evidence concerns mostly uncontested matters because the fact that Ms Al-Kasti, Ms Khallouf and Victim 16 were injured in the explosion and that the relatives of Mr Aoun—his brother, Mr Joseph Aoun—of Ms Ghalayini—her father, Mr Abdul Hamid Ghalayini—and of Ms Fayed—her husband, Mr Talal Nasser—were killed by the explosion were already facts agreed between all the Parties.¹⁵⁷²

834. Under Rule 122, however, the Trial Chamber decided that a more complete presentation of those facts was required in the interests of justice, in particular in the interests of the victims. It found that the evidence would have provided a more comprehensive narrative of the events and offered a more complete picture of the impact of the charged crimes upon their individual victims.¹⁵⁷³

835. The evidence is relevant to the explosion on 14 February 2005, its effects on victims and the consequent harm suffered by them. It enabled the participating victims to express their views and concerns and therefore, in the Trial Chamber’s view, helped to ensure their meaningful participation in the proceedings. It has also assisted the Trial Chamber to better understand what happened and the impact of the crime on the victims.¹⁵⁷⁴ The victims shared their personal stories of the attack on 14 February 2005—unique to each of them—together with their grief, concerns and hopes. As noted below,¹⁵⁷⁵ it has broadened the Prosecution’s narrative and is relevant to the Trial Chamber’s assessment of the gravity of the crimes.

¹⁵⁷¹ Decision on the Legal Representatives’ application to call evidence, para. 76.

¹⁵⁷² Second decision on agreed facts (Merhi), para. 1.

¹⁵⁷³ Decision on the Legal Representatives’ application to call evidence, paras 78-79.

¹⁵⁷⁴ Decision on the Legal Representatives’ application to call evidence, paras 76-79, 83.

¹⁵⁷⁵ See below, sub-section (F) (6) (d) ‘Broadening the narrative—the scope of the Trial Chamber’s findings’.

836. According to the academic definition of victims of terrorism proposed by Professor Letschert as described, three witnesses were ‘secondary victims’.¹⁵⁷⁶ Mr Aoun, Ms Ghalayini and Ms Fayed lost close family members in the attack. They described the last time they saw or spoke to them before the attack, how they found out about their fate, their search of the crime scene or going to the hospitals or morgues in Beirut searching for their relatives and the effects of the loss on themselves and family members. This included their anxiety and suffering PTSD.¹⁵⁷⁷

837. Ms Al-Kasti, Ms Khallouf and Victim 16 were injured in the blast while they were at the HSBC bank near the St Georges Hotel. Ms Al-Kasti and Ms Khallouf worked in the bank, and Victim 16 was visiting it for a work-related transaction. Ms Khallouf and Victim 16 described the moment of the explosion—but Ms Al-Kasti had no recollection as a result of losing consciousness. They testified about how they were injured or escaped from the building, how they were transferred to hospitals or that they regained consciousness there and about their physical or psychological harm, including for continuous or permanent damages.¹⁵⁷⁸ Their evidence is described in more detail in chapter VI ‘Explosion on 14 February 2005’, (G) ‘Victim harm’ regarding the impact of the explosion on the victims.

838. The witnesses were uniquely placed to give evidence about their experiences and the personal harm suffered, which is specific to each victim. While other Prosecution witnesses may have provided oral testimony of similar facts, their evidence could not strictly be considered as cumulative as ‘none of their personal histories are the same’.¹⁵⁷⁹ The Trial Chamber considered this aspect because Rule 155 includes—among the factors favouring the admission of evidence in the form of a written statement in lieu of oral evidence—that the evidence is cumulative and concerns the impact of crimes upon victims.

¹⁵⁷⁶ Above, at fns 1503-1504.

¹⁵⁷⁷ Ms Ghalayini, Mr Aoun and Ms Fayed testified, respectively, on 28 August, 30 August and 7 September 2017.

¹⁵⁷⁸ Ms Al-Kasti and Ms Khallouf testified on 29 August 2017 and Victim 16 testified on 30 August 2017.

¹⁵⁷⁹ Decision on the Legal Representatives’ application to call evidence, paras 81-82, quoting the *Lubanga* decision allowing victims to express their views and concerns and to present evidence at trial (para. 37), referring, in that case, to the account of former child soldiers.

2. Professor Dr Rianne Letschert's evidence

839. Professor Letschert is a professor of international law and victimology at the Maastricht Law School, in the Netherlands, and is *Rector Magnificus*¹⁵⁸⁰ of Maastricht University.¹⁵⁸¹ She previously held the victimology and international law chair at Tilburg University, where she directed the International Victimology Institute of Tilburg.¹⁵⁸² At the time of her testimony, she had authored or co-authored what she described as nine 'key' academic publications and books.¹⁵⁸³

840. Considering Professor Letschert's professional experience and qualifications, the Trial Chamber permitted her to provide opinion evidence on the victimological profile of the participating victims as the victims of an explosion, their needs and the ways in which access to justice can fulfil those needs, and it admitted into evidence her report on the participating victims' views and concerns.¹⁵⁸⁴ The Trial Chamber found that her evidence was conducive to giving a more complete picture of the impact of the attack upon the victims and therefore it found that it was in the interests of justice to authorise its presentation.¹⁵⁸⁵

841. Professor Letschert's report provides an overview of the main findings from academic literature on the effects of terrorist incidents on victims and societies in general and, based on her previous work, the victims' needs with regard to the criminal justice system.¹⁵⁸⁶

842. Alongside this analysis from both her work and general scholarly publications, Professor Letschert made her 'findings' based on interviews with the participating victims. Professor Letschert testified that she had interviewed all except three participating victims—who did not agree to talk to her. She interviewed most of them several times between October 2013 and October 2016. Professor Letschert also reviewed the participating victims' applications and supporting

¹⁵⁸⁰ This title, using English terminology, corresponds to a provost, or in some systems, to the vice chancellor. It is someone responsible for the quality of the education and research within the entire institution. It is 'an administrative function in the governance, in the executive board of a university'. Rianne Letschert, T. 8 September 2017, p. 21.

¹⁵⁸¹ Rianne Letschert, T. 8 September 2017, pp 6, 21-22; exhibit 1V43 (Professor Letschert's *curriculum vitae*).

¹⁵⁸² Rianne Letschert, T. 8 September 2017, pp 19-20; exhibit 1V43.

¹⁵⁸³ Exhibit 1V43.

¹⁵⁸⁴ Decision permitting Professor Letschert to provide opinion evidence, paras 6, 20, disposition; exhibit 1V42 (Professor Letschert's report).

¹⁵⁸⁵ Decision permitting Professor Letschert to provide opinion evidence, para. 6, referring to Decision on the Legal Representatives' application to call evidence, para. 85.

¹⁵⁸⁶ Exhibit 1V42 (Professor Letschert's report), p. 11.

documents.¹⁵⁸⁷ She interviewed most of them several times.¹⁵⁸⁸ Her report addresses the psychological impact and the physical and financial consequences of the attack on the participating victims and their views, concerns and justice needs and expectations of the Special Tribunal, including the need for participation in the criminal justice system.¹⁵⁸⁹ Professor Letschert also explored how the victims' views and expectations changed over time and provided recommendations for future situations where international criminal justice may aim to provide redress to victims.¹⁵⁹⁰

843. Professor Letschert explained that events and circumstances in the aftermath of a crime can have a considerable impact on an individual victim, such as the media attention, the experiences with the criminal justice system and the influence of a support network—including from a government. From her interviews with participating victims, she testified that media attention and attacks on the Special Tribunal's legitimacy caused the victims frustration, concern and additional stress, which she described as 'secondary victimization'.¹⁵⁹¹

844. Her evidence is described in more detail in chapter VI 'Explosion on 14 February 2005', (G) 'Victim harm' below on the impact of the attack on the victims.

845. Professor Letschert's report considers the participating victims as 'victims of terrorism'. It describes the potential consequences of terrorist victimisation and how the participating victims have experienced these consequences.¹⁵⁹² This was of course premised on the attack of 14 February 2005 being a terrorist attack, which in court proceedings requires a legal characterisation. The Trial Chamber accordingly decided to disregard, at the time of admission into evidence of the report and presentation of Professor Letschert's oral evidence, any suggestion or assumption in it that the participating victims were *legally* victims of a terrorist act. It found that this went to the legal characterisation of the attack and, therefore, the Trial Chamber's adjudication

¹⁵⁸⁷ Rianne Letschert, T. 8 September 2017, pp 35, 37; exhibit 1V42 (Professor Letschert's report), p. 11; Decision permitting Professor Letschert to provide opinion evidence, para. 20.

¹⁵⁸⁸ Exhibit 1V42 (Professor Letschert's report), p. 3.

¹⁵⁸⁹ Exhibit 1V42 (Professor Letschert's report), p. 3; Rianne Letschert, T. 8 September 2017, pp 27, 41.

¹⁵⁹⁰ Exhibit 1V42 (Professor Letschert's report), pp 37-38.

¹⁵⁹¹ Rianne Letschert, T. 8 September 2017, pp 54, 58-64.

¹⁵⁹² Exhibit 1V42 (Professor Letschert's report), pp 10-23. *See in particular* p. 11, where Professor Letschert states 'I will first address the potential psychological, physical and financial consequences of terrorism in general and secondly how the participating victims have experienced *these*' (emphasis added).

of the charges.¹⁵⁹³ However, the Trial Chamber has now found, in chapter XIV ‘Legal findings on elements of the crimes and Individual criminal responsibility’, (A) (1) (a) ‘The crime’ below, that the explosion that targeted Mr Hariri and affected the participating victims, was a terrorist act. Consequently, it can now consider Professor Letschert’s report in its entirety, including its assumptions that the participating victims were victims of terrorism.

846. In admitting it into evidence, the Trial Chamber considered that Professor Letschert’s report, with its summary of the views and concerns of the majority of the participating victims, provided an effective, convenient and judicially economical manner of receiving their views and concerns without affecting the Accused’s rights to a fair trial. The alternative manner of receiving evidence from all the participating victims would have consumed much court time and Special Tribunal resources.¹⁵⁹⁴

847. The Trial Chamber considered that, based on her *curriculum vitae*, Professor Letschert was conceivably well qualified to provide expert evidence in the field of victimology.¹⁵⁹⁵ The Legal Representatives, however, requested the Trial Chamber to hear her as a witness who could provide opinion evidence, rather than as an expert, and the Trial Chamber received her evidence in this manner. The Trial Chamber nevertheless notes that Professor Letschert undoubtedly appears to be an expert in this field. The Prosecution did not object to the application for the admission of Professor Letschert’s report. The Sabra Defence took no position and did not file a response. The Oneissi Defence opposed the admission into evidence of Professor Letschert’s report. It noted that Professor Letschert’s experience in the field of victimology is multidisciplinary and academic and that, based on her CV, it was unclear whether, prior to the investigations for the report, she had any experience of the subject, either involving interviews with victims of alleged terrorism or of any other crime. The Ayyash and Merhi Defence took no position on the admission of the report or application for Professor Letschert to provide opinion evidence, on the premise that it was not an expert report and that there was no request to grant her expert status.

¹⁵⁹³ Decision permitting Professor Letschert to provide opinion evidence, paras 21-23.

¹⁵⁹⁴ Decision permitting Professor Letschert to provide opinion evidence, para. 29.

¹⁵⁹⁵ Decision permitting Professor Letschert to provide opinion evidence, para. 19.

848. The Trial Chamber is not aware of any prior cases at the ICC—and therefore in any other trial conducted under international criminal law procedural law—where non-victim witnesses have been authorised to present evidence upon a request from participating victims.¹⁵⁹⁶

3. Witness statements

849. Seven participating victims who provided written statements were injured in the explosion. They are: Mr Raymond Abou-Chaaya, Ms Sanaa El Sheikh, Mr Wissam Naji, Mr Mehi Elddin Meneimneh, Mr Rabih Nohra, Victim 33 and Victim 73.¹⁵⁹⁷ Their evidence provides information on their whereabouts and activities on 14 February 2005 and the harm they suffered.

850. Mr Mehi Elddin Meneimneh and V033 were members of Mr Hariri's convoy. The others, at the time of the explosion, were working in buildings in the area affected by it. V073 was in his nearby shop, Ms El Sheikh was in the St Georges branch of the HSBC bank, Mr Naji was in his office in the nearby Machkhas Centre building and Mr Nohra was in a restaurant in the Phoenicia International Hotel. Mr Abou-Chaaya was an ISF postman who was passing the Phoenicia International Hotel on his motorcycle.

851. The other 17 witnesses are relatives of people who died in, or as a result of, the explosion.¹⁵⁹⁸ They are:

- Ms Nivine Darwiche—the sister of Mr Mohammed Darwiche, one of Mr Hariri's personal bodyguards;
- Ms Clemence Tarraf—the sister of Mr Ziad Tarraf, a member of Mr Hariri's convoy;
- Ms Zeina Chehade Tarraf—Mr Tarraf's wife;

¹⁵⁹⁶ *Ntaganda* decision on the presentation of victims' evidence, views and concerns, paras 16-19 (noting the Defence submissions that 'only participating victims have been authorized to give evidence in past cases'). More recently, in the *Ongwen* case before the ICC, the Trial Chamber authorised three expert witnesses—proposed by the Common Legal Representative for Victims—to present evidence. *Ongwen* decision authorising the presentation of victims' evidence, disposition.

¹⁵⁹⁷ Exhibits 1V11, 1V12, 1V13, 1V14, 1V22, 1V40 and 1V41.

¹⁵⁹⁸ Exhibits 1V21, 1V23, 1V24, 1V25, 1V26, 1V27, 1V28, 1V29, 1V30, 1V31, 1V33, 1V34, 1V35, 1V36, 1V37, 1V38 and 1V39.

- Mr Kamal Nasser—the brother of Mr Talal Nasser, a leader of Mr Hariri’s personal protection team;
- Ms Roula Nasser—Mr Nasser’s sister;
- Ms Bakiza Nasser—another sister of Mr Nasser. Her status as participating victim was withdrawn following her death on 17 February 2017, at the Legal Representatives of Victims’ request. The Trial Chamber admitted her statement into evidence under Rule 158 as that of an unavailable witness;
- Mr Hicham Osman and Mr Mohamad Osman—brothers of Mr Haitham Osman, who was in the area of the explosion and died after he was hit in the stomach by flying shrapnel;
- Ms Dina Ghalayini—the sister of Mr Mohammed Riad Ghalayini, one of Mr Hariri’s bodyguards;
- Victim 58—a relative of a member of Mr Hariri’s convoy;
- Witness 352—a relative of one of Mr Hariri’s bodyguards; and
- Victims 26, 27, 36, 37, 38 and 78—relatives of different people who were in the area affected by the explosion who died due to the attack.

852. These witnesses’ evidence provides information on their last contacts with the deceased relatives, their relationship with them, how they learned about the explosion and, in several cases, who identified the bodies. The evidence is also of the material, physical or mental harm they and their family members suffered as a result of their relatives’ deaths.

853. Some had already testified as Prosecution witnesses in the trial. The Trial Chamber, however, received additional submissions from the Legal Representatives of Victims as to why they sought to present evidence by witnesses who had already provided evidence as Prosecution witnesses. It was satisfied by the Legal Representatives of Victims’ explanation that the relevant witness statements supplemented the previous evidence and either included information that the participating victims became aware of only after giving their evidence, or was related to the harm

they suffered. Further, no Party raised any objection or concern.¹⁵⁹⁹ The Trial Chamber accordingly found that the interests of justice allowed the Legal Representatives of Victims to present these statements by applying for their admission under Rule 155.¹⁶⁰⁰ The Trial Chamber then admitted them into evidence under that Rule.

4. A single exhibit containing 175 documents and the 172 facts that the Prosecution, Ayyash and Sabra Defence agreed are uncontested

854. The Trial Chamber found 175 documents, grouped into a single exhibit,¹⁶⁰¹ relevant and probative of: the participating victims' identities; the relationship of some of them with those killed in the attack; and the participating victims' physical, mental or material harm. Further, some documents corroborated other evidence. They are described in more detail below.¹⁶⁰²

855. The 172 facts that the Prosecution, the Ayyash and Sabra Defence agree are uncontested, supported by the 175 documents, concern the deaths and injuries resulting from the explosion. This includes the specific causes of death and the type of injuries, the relationship between those killed and the participating victims, the material, physical and mental harm the participating victims suffered and related diagnoses and treatments.¹⁶⁰³ The Trial Chamber did not record four facts as uncontested, as proposed by the Legal Representatives of Victims, which were based on documents that the Trial Chamber found lacking the requisite relevance and probative value for admission into evidence. They related to certain participating victims' treatments, operations or diagnoses.¹⁶⁰⁴ The Trial Chamber found that the Legal Representatives of Victims did not provide submissions or information to establish that the medical conditions described in the documents proposed for admission were related to the explosion.¹⁶⁰⁵

¹⁵⁹⁹ Decision on the Legal Representatives' application to call evidence, paras 49, 57, 91.

¹⁶⁰⁰ Decision on the Legal Representatives' application to call evidence, paras 90-92.

¹⁶⁰¹ Exhibit 1V45 (Rule 154 documents Legal Representatives of Victims).

¹⁶⁰² Regarding the impact of the explosion on the victims, *see* chapter VI 'Explosion on 14 February 2005', (G) 'Victim harm'.

¹⁶⁰³ Decision on agreed facts (participating victims) (Ayyash and Sabra), para. 4.

¹⁶⁰⁴ Proposed agreed facts nos 37, 105, 190-191 concerning: (i) the treatment prescribed for Victim 12's medical conditions; (ii) an operation undergone by Victim 30; and (iii) certain diagnoses concerning Victim 73. Decision on agreed facts (participating victims) (Ayyash and Sabra), para. 11, fn. 19, referring to Decision admitting documentary evidence on the Legal Representatives of Victims' application, paras 39-41.

¹⁶⁰⁵ The Trial Chamber did not disbelieve the existence of such a connection but was concerned that the Legal Representatives of Victims had failed to establish the supporting documents' relevance or probative value. Decision admitting documentary evidence on the Legal Representatives of Victims' application, paras 39-41, 62, 64, 68, disposition.

F. The probative value of the evidence presented by and for the participating victims

856. Several times during the trial the Trial Chamber informed the Parties that it wished to receive submissions on the weight that could be given to the evidence that it permitted the Legal Representatives of Victims to present. In an order scheduling final trial briefs and closing submissions, the Trial Chamber ordered the Parties and the Legal Representatives of Victims to address this in their final trial briefs. The Legal Representatives of Victims and all the Parties—with the exception of the Oneissi Defence—did so. During their oral closing submissions, upon the Presiding Judge’s query, the Oneissi Defence clarified that it took no specific position on this matter.¹⁶⁰⁶

1. The Legal Representatives of Victims’ submissions

857. The Legal Representatives of Victims requested that, irrespective of findings in relation to the individual Accused, the judgment record the fact that the participating victims are individually and collectively victims of the explosion of 14 February 2005 and the extent of their suffering. In this way, the certified copy of the Trial Chamber’s ‘judgment will be an effective tool as a means of securing compensation before domestic courts’.¹⁶⁰⁷

858. The Legal Representatives of Victims submitted that the evidence adduced during the victims’ case should be given ‘the highest probative value and crucial weight’. This is because the participating victims coherently and consistently provided a detailed narrative to the case and assisted the Trial Chamber in understanding the extent of the harm caused by the attack not just on themselves, but also on other participating victims, non-participating victims and more generally the Lebanese people.¹⁶⁰⁸ The victims’ case furnished the Special Tribunal with facts and evidence that the Parties did not provide, thus broadening and enriching the narrative.¹⁶⁰⁹

859. As an example, Ms Liliane Khallouf and Victim 16 provided vivid accounts of the explosion, as they were in the HSBC building when it occurred.¹⁶¹⁰ Ms Ghalayini’s evidence shed

¹⁶⁰⁶ Oneissi Defence closing submissions, T. 20 September 2018, pp 122-123.

¹⁶⁰⁷ Legal Representatives of Victims final trial brief, paras 656 (referring to Article 25 of the Statute), 748.

¹⁶⁰⁸ Legal Representatives of Victims final trial brief, para. 120.

¹⁶⁰⁹ Legal Representatives of Victims final trial brief, paras 729-731.

¹⁶¹⁰ Legal Representatives of Victims final trial brief, para. 730.

light on the inefficiency and incapability of the search and rescue efforts of the ‘Lebanese authorities’¹⁶¹¹ during the immediate aftermath of and the days following the attack, such as ‘the security forces’,¹⁶¹² and how the victims were treated by the ‘Lebanese authorities’.¹⁶¹³ According to the Legal Representatives of Victims, the inadequacy of search operations and investigations and inefficiency of the ‘local authorities’ are further highlighted in the UN ‘Report of the Fact-Finding Mission to Lebanon inquiring into the causes, circumstances and consequences of the assassination of former Prime Minister Rafik Hariri’ of 24 March 2005.¹⁶¹⁴

860. The witnesses’ evidence is relevant to and probative of the events and the harm that each suffered. It is first-hand and uncontroversial. The *viva voce* witnesses took the solemn declaration and each witness statement contains a declaration of truth and was signed. The Parties neither objected to the witnesses testifying, asked questions, nor objected to the admission into evidence of the witness statements. The live witnesses provided concrete and corroborative evidence which is consistent with the evidence of other participating victims, the Legal Representatives of Victims’ documentary evidence, the Prosecution’s evidence and the ‘unsworn statements’ of participating victims who answered the questions that the Trial Chamber asked them directly from the floor when attending the proceedings in the courtroom during the victims’ case. The participating victims all knew that the Special Tribunal cannot grant compensation or order reparations. According to the Legal Representatives of Victims, their willingness to testify was not financially motivated but stemmed from the determination to assist the Special Tribunal in finding the truth behind the attack.¹⁶¹⁵

861. Their evidence can also assist the Trial Chamber in assessing the gravity of the crimes.¹⁶¹⁶ The Legal Representatives of Victims invite the Trial Chamber to find: first, that the crimes are especially grave as crimes of a terrorist nature, being indiscriminate and involving the use of a huge amount of explosives detonated in a location likely to cause massive destruction and loss of life. And second, that terrorist acts such as this impact more seriously on victims and necessarily

¹⁶¹¹ Legal Representatives of Victims final trial brief, paras 668, 730.

¹⁶¹² Legal Representatives of Victims final trial brief, para. 323

¹⁶¹³ Legal Representatives of Victims final trial brief, para. 668 (*see also* paras 95-96, 306-309, 314, 323, 660, 662, 668-670, 729-730).

¹⁶¹⁴ Legal Representatives of Victims final trial brief, para. 669, referring to UN Doc. S/2005/203, paras 33, 48-49.

¹⁶¹⁵ Legal Representatives of Victims final trial brief, paras 115-119, 741.

¹⁶¹⁶ Legal Representatives of Victims final trial brief, para. 117.

upon a wider group of people.¹⁶¹⁷ This massive crime ‘did not distinguish between politicians and civilians, between rich and poor, man or woman, Muslim or Christian, or target or passer-by’.¹⁶¹⁸ The gravity of the crime and the harms suffered define the gravity of the offences charged in the amended consolidated indictment, as the mode of commission of an offence and its impact upon victims are similarly components of the gravity of an offence.¹⁶¹⁹

862. These findings should be part of the judgment on conviction, as ‘the regime at this court, at this Tribunal, relating to the question of reparations’ entitles victims to receive a signed copy of the judgment to take elsewhere. Therefore, findings of fact on the gravity of the offences are important to victims. Since these findings could also be, in some cases, aggravating factors, the Trial Chamber should be wary not to engage in double counting. The Legal Representatives of Victims submitted that ‘double-counting would be to assess the gravity of the offence, for example, by reference to the fact that it involved the planting of a bomb and then further to aggravate the sentence by referring to the same circumstance’.¹⁶²⁰

863. The participating victims’ oral evidence can also assist the Trial Chamber in understanding the culture in Lebanon, how victims are perceived there and the societal customs that contributed to the hardship suffered by the participating victims and victims generally. In this respect, the Legal Representatives of Victims point to Professor Letschert’s evidence that many participating victims complained about the lack of psychological support in Lebanon and how some of them, especially male, could be stigmatised for seeking such assistance. The Legal Representatives of Victims cited ICC case law in support of relying on victims’ testimonies for understanding local customs.¹⁶²¹

864. Regarding Professor Letschert’s evidence, the Legal Representatives of Victims submit that ‘it should bear significant weight’ in the Trial Chamber’s evaluation as to the gravity of the

¹⁶¹⁷ Legal Representatives of Victims closing submissions, T. 14 September 2018, p. 83.

¹⁶¹⁸ Legal Representatives of Victims closing submissions, T. 14 September 2018, p. 103.

¹⁶¹⁹ Legal Representatives of Victims closing submissions, T. 14 September 2018, p. 83.

¹⁶²⁰ Legal Representatives of Victims closing submissions, T. 14 September 2018, p. 84. The Legal Representatives added, ‘So you aggravate the sentence twice.’ The Trial Chamber understands that the Legal Representatives of Victims intended to submit that the same factor cannot be used to aggravate the sentence twice: both to assess the gravity of the offence and as an aggravating circumstance. This is established in international criminal case law. *See for example, Dragomir Milošević Appeal Judgment*, para. 306; *Deronjić Judgment on sentencing appeal*, para. 106.

¹⁶²¹ Legal Representatives of Victims final trial brief, paras 117-118, referring to *Katanga Trial Judgment*, para. 66, which states ‘In-court testimonies allowed the Chamber to measure the very specific significance of local customs and the role of family relationships in Ituri’.

crimes and the harm suffered by the participating victims and the victims in general. Her evidence presents an overview of the victims' suffering, views and concerns without the need to call or present the evidence of all, and in particular of those who could not be heard due to time constraints or for any other reasons could not participate in the proceedings in a more direct manner.¹⁶²²

865. The Legal Representatives of Victims submit that, according to ICTY case law, summarising uncontroversial material—either in a document or through a witness—amounts to ‘a considerable saving of time’.¹⁶²³ Professor Letschert’s research, interviews and testimony are heavily and consistently corroborated by participating victims’ evidence, documents tendered by the Legal Representatives of Victims and the participating victims’ unsworn statements.¹⁶²⁴ Professor Letschert clearly set out the methodology. Although she did not testify as an expert under Rule 161, the Trial Chamber could assess her evidence based on similar criteria.¹⁶²⁵

866. Professor Letschert—echoing concerns expressed by the victims—suggested that the judgment should include a statement raising awareness on the consequences that negative media reporting may have on victims of a crime and, consequently, on the media’s responsibilities.¹⁶²⁶

867. Regarding the documents tendered under Rule 154, the Legal Representatives of Victims submit that they are reliable, have high probative value and cause no prejudicial effects on the Parties. The Trial Chamber should therefore accord them due weight.¹⁶²⁷ They are official documents issued by reliable sources including hospitals, clinics and the Lebanese Ministry of Interior and Municipalities. They can prove, or corroborate other evidence that proves, the identities of the participating victims. They also complement and corroborate their narratives. Additionally, they prove the different types of harm the participating victims suffered due to the

¹⁶²² Legal Representatives of Victims final trial brief, paras 123, 128-129.

¹⁶²³ Legal Representatives of Victims final trial brief, para. 127, referring to *Slobodan Milošević* Appeal decision on admissibility of evidence, para. 21.

¹⁶²⁴ Legal Representatives of Victims final trial brief, para. 126.

¹⁶²⁵ Legal Representatives of Victims final trial brief, para. 126. In the chapter on the assessment of the evidence (*see* chapter III ‘Assessment of evidence’, (D) (1) (c) (ii) ‘Expert witnesses’), the Trial Chamber has explained that, in assessing the evidence of expert witnesses, it considers factors such as the professional competence of each witness in his or her field of expertise, the material at his or her disposal, the methodologies used, the sources upon which the expert based his or her opinion and the extent to which the findings were consistent with other evidence in the case. It has found international criminal case law on the matter persuasive and has followed it. *Mladić* Trial Judgment, para. 5282; *Taylor* Trial Judgment, para. 208; *Lubanga* Trial Judgment, para. 112; *Nyiramasuhuko and others* Trial Judgment, para. 196.

¹⁶²⁶ Rianne Letschert, T. 8 September 2017, pp 54, 58-64; exhibit 1V42 (Professor Letschert’s report), pp 18-19.

¹⁶²⁷ Legal Representatives of Victims final trial brief, para. 134.

attack. They also illustrate their expectations regarding reparations, and add weight to the evidence regarding the gravity of the crimes. As none of the documents go to proving the acts and conduct of the Accused, the Trial Chamber can conclude that facts are proven beyond reasonable doubt when there is only one reasonable finding to be made.¹⁶²⁸

868. Many participating victims did not have the financial means to periodically have medical consultations since the attack and did not ‘keep a record of all their consultations’. As to documents attesting the harm suffered that are dated years after the attack, the Trial Chamber did not receive any contradicting documents proving that the harm did not result from the attack. To the contrary, the documents corroborate the *viva voce* evidence, witness statements and other documents. The documents were tendered to reduce the length of the victims’ case considerably and to avoid the risk of re-traumatising participating victims.¹⁶²⁹

869. In evaluating the harm suffered by the participating victims, ‘including the matter of lack of financial aid’, the Trial Chamber should also rely on the statements made by those participating victims—albeit not under oath—who were present in the courtroom as observers during the victims’ case.¹⁶³⁰ The Legal Representatives of Victims submit that those participating victims responded to several questions posed by the judges on the harm they suffered and the compensation they received or did not receive in Lebanon. They cite in support of their argument the ICC case law permitting victims to present views and concerns that do not have the status of evidence.¹⁶³¹ The Legal Representatives of Victims also rely on the ECCC rules¹⁶³² and case law, according to which civil parties only provide unsworn testimonies in court, which can however be relied on by a trial chamber in its evaluation of the gravity of the crimes and for its findings on the guilt of the accused.¹⁶³³

¹⁶²⁸ Legal Representatives of Victims final trial brief, para. 131, referring to *Katanga* Trial Judgment, para. 110; *Bemba* Trial Judgment, para. 246.

¹⁶²⁹ Legal Representatives of Victims final trial brief, paras 132-133.

¹⁶³⁰ Legal Representatives of Victims final trial brief, paras 135, 138.

¹⁶³¹ Legal Representatives of Victims final trial brief, para. 136, referring to *Bemba* decision on the Legal Representatives of Victims’ application to present evidence and the views and concerns of victims, para. 19; *Lubanga* decision allowing victims to express their views and concerns and to present evidence at trial, annex, para. 25.

¹⁶³² ECCC Internal Rules (rev. 9), as revised on 16 January 2015, Rule 23 (4) stating that ‘the Civil Party cannot be questioned as a simple witness in the same case and, subject to Rule 62 relating to Rogatory Letters, may only be interviewed under the same conditions as a Charged Person or Accused’.

¹⁶³³ Legal Representatives of Victims final trial brief, paras 137-138, referring to *Nuon Chea and Khieu Samphan* Case 002/01 Appeal Judgment, paras 312-313, 317-320.

870. Further, they submitted that the Trial Chamber heard evidence, and should make findings, on ‘the failures of the relevant Lebanese authorities’ to properly discharge their functions during the immediate aftermath of the attack and throughout their search for missing persons, including Mr Abdul Hamid Ghalayini and Mr Zahi Bou Rjeily.¹⁶³⁴ This caused additional distress and suffering to the victims.¹⁶³⁵

871. The Legal Representatives of Victims submit that not every finding in a judgment has to relate directly to the charges—like background, historical and political findings—and that criminal courts’ findings on shortcomings in investigations are not only proper but rather common. They refer to the example of cases of child abuse, in which judges make findings about inadequate social services or poor police work.¹⁶³⁶

872. Finally, the Trial Chamber cannot ignore the evidence heard on this from Ms Lama Ghalayini or the evidence about Mr Bou Rjeily’s death, which occurred on 15 February 2005 from suffocation, after he was buried under rubble for 15 hours.¹⁶³⁷ The Legal Representatives of Victims submit that, had he been discovered on 14 February, he might very well have lived.¹⁶³⁸

2. Prosecution submissions

873. According to the Prosecution, as the *viva voce* witnesses testified under oath, the witness statements and the documents were admitted into evidence under Rules 155, 158 and 154—respectively—and the Trial Chamber followed its consistent practice on the relevant opinion evidence, the Trial Chamber should assess the evidence presented by the Legal Representatives of Victims within the framework of the Statute and the Rules. Therefore, it should assess it in the same manner as all other admitted evidence.¹⁶³⁹

¹⁶³⁴ Legal Representatives of Victims final trial brief, para. 662 (*see also* paras 660, 668-670, 735).

¹⁶³⁵ Legal Representatives of Victims final trial brief, para. 670.

¹⁶³⁶ Legal Representatives of Victims closing submissions, T. 14 September 2018, p. 85.

¹⁶³⁷ Legal Representatives of Victims closing submissions, T. 14 September 2018, pp 85, 92.

¹⁶³⁸ Legal Representatives of Victims closing submissions, T. 14 September 2018, p. 92. *See also* Legal Representatives of Victims final trial brief, paras 96, 325-335, referring to the evidence of Mr Nazih Abu Rjeily, Mr Zahi Bou Rjeily’s brother (Nazih Abu Rjeily, T. 24 January 2014, pp 3-14). The Trial Chamber has found at para. 6285 of chapter XIII ‘Applicable law’, that the failure to recover someone who was buried under rubble alive is an example of a subsequent cause of a victim’s death that would not preclude the causal link with the Accused’s act under Article 204 of the Lebanese Criminal Code.

¹⁶³⁹ Prosecution final trial brief, para. 48.

3. Ayyash Defence submissions

874. The Ayyash Defence takes no position on the weight to be given to the Legal Representatives of Victims' evidence, apart from submitting that the Trial Chamber should give no weight to Professor Letschert's *viva voce* opinion evidence, her report¹⁶⁴⁰ and the slide presentation that she used in court.¹⁶⁴¹

875. Professor Letschert's evidence falls into two categories, namely, summarising materials from the victims and a study of the collective harm they suffered.¹⁶⁴² The summary of material already admitted through the victims provides no added value and no need has been established for such a summary.¹⁶⁴³ The Trial Chamber should instead look to the material admitted through the victims themselves.¹⁶⁴⁴

876. Professor Letschert's 'study of the collective harms suffered by victims is not relevant to the mandate of the Chamber at this stage of the trial to assess the guilt or innocence of the Accused'.¹⁶⁴⁵ Relying on Article 25 (3) of the Statute and Rule 86 (G), the Ayyash Defence submits that the Trial Chamber has no mandate to address these issues and to make any reparation orders.¹⁶⁴⁶ Such evidence is more appropriate in the determination of compensation or reparations before a national court, *after* the Trial Chamber renders a judgment and only if there are convictions.¹⁶⁴⁷

4. Merhi Defence submissions

877. The Merhi Defence submits that the participating victims have presented no evidence relating to the Accused's guilt or innocence. For this reason, their evidence has no impact on establishing the truth and can therefore only be considered as the expression of their observations.¹⁶⁴⁸ In support of this argument, the Merhi Defence relies on ICC case law stating

¹⁶⁴⁰ Exhibit 1V42 (Professor Letschert's report).

¹⁶⁴¹ Exhibit 1V44 (Professor Letschert's PowerPoint presentation).

¹⁶⁴² Ayyash Defence closing submissions, T. 17 September 2018, p. 10.

¹⁶⁴³ Ayyash Defence final trial brief, para. 44; Ayyash Defence closing submissions, T. 17 September 2018, p. 10.

¹⁶⁴⁴ Ayyash Defence closing submissions, T. 17 September 2018, p. 10.

¹⁶⁴⁵ Ayyash Defence final trial brief, para. 44; Ayyash Defence closing submissions, T. 17 September 2018, p. 10.

¹⁶⁴⁶ Ayyash Defence final trial brief, para. 44, also referring to the *Lubanga* Appeals Chamber decision on the principles and procedures to be applied to reparations, para. 65; Ayyash Defence closing submissions, T. 17 September 2018, p. 10.

¹⁶⁴⁷ Ayyash Defence final trial brief, para. 44; Ayyash Defence closing submissions, T. 17 September 2018, p. 10.

¹⁶⁴⁸ Merhi Defence final trial brief, para. 593.

that evidence ‘which does not pertain to the guilt or innocence of the accused would most likely be considered inadmissible and irrelevant’.¹⁶⁴⁹

878. Further, contrary to the Legal Representatives of Victims’ submissions, evidence on the nature and the extent of the harm suffered by the victims and the gravity of the crime should not be taken into account ‘in a judgment relating to the guilt or innocence of an accused’.¹⁶⁵⁰ In addition, the Trial Chamber should not try to quantify any possible damage or the victims’ harm. The appropriate forum to deal with the issue of compensation is a national jurisdiction or any other competent body, and not the Special Tribunal.¹⁶⁵¹

5. Sabra Defence submissions

879. The Sabra Defence submits that relying on the participating victims’ evidence must be limited to assessing their individual experiences and the personal harm suffered. It cannot be used to bolster the Prosecution’s evidence against the Accused.¹⁶⁵²

880. The Legal Representatives of Victims’ submissions on ‘the possibility of identification, and recommendation of appropriate forms of reparations’ are premature, exceed the scope of Article 25 and should only be considered upon conviction.¹⁶⁵³

6. Findings

(a) Scope of the evidence

881. The testimony and material presented either by or for the participating victims does not provide *direct* evidence of the individual criminal responsibility of any Accused.¹⁶⁵⁴ Collectively, however, it goes to proving the elements of the offences charged to the extent that harm to the

¹⁶⁴⁹ Merhi Defence final trial brief, para. 593, referring to the *Lubanga* decision on appeals regarding victims’ participation, para. 97. The Merhi Defence also relies on the *Katanga and Ngudjolo* decision dismissing Mr Katanga’s appeal regarding the modalities of victim participation at trial, which states, in paras 112-113, that evidence relating to the role of the accused can be included in the evidence deemed necessary for the determination of the truth and that, on this basis, victims may be allowed to participate in the proceedings by presenting evidence ‘pertaining to the guilt or innocence of the accused’.

¹⁶⁵⁰ Merhi Defence final trial brief, para. 594.

¹⁶⁵¹ Merhi Defence final trial brief, para. 594.

¹⁶⁵² Sabra Defence final trial brief, para. 162, referring to Decision on the Legal Representatives’ application to call evidence, paras 71-72, and *Lubanga* decision on appeals regarding victims’ participation, paras 3, 93-95.

¹⁶⁵³ Sabra Defence final trial brief, para. 163, referring to Legal Representatives of Victims final trial brief, Chapter 6 ‘Expectations expressed and reparations sought by the participating victims’.

¹⁶⁵⁴ Decision on the Legal Representatives’ application to call evidence, para. 97.

named victims of the attack, or death, is an element of proof in relation to the charges—for example, intentional homicide with premeditation by using explosive materials.¹⁶⁵⁵ In fact, the Prosecution itself called some of the participating victims to testify in its case.

882. The Trial Chamber however was mindful to ensure that the participating victims did not ‘double up’ on the Prosecution evidence or act as a second Prosecutor. In authorising the presentation of the evidence, the Trial Chamber considered that it concerned mostly uncontroversial matters, in the sense that the evidence or facts were not contested by the Defence.

883. The Parties had previously agreed that the explosion killed, in addition to Mr Hariri, the 21 people listed in schedule A to the amended consolidated indictment and injured the 226 listed in its schedule B.¹⁶⁵⁶ As the participating victims who were injured in the explosion are included among those in schedule B—except for one, Victim 73¹⁶⁵⁷—and the list of deceased in schedule A includes the relatives of the other participating victims, the deaths or general harm and or injury the participating victims’ evidence relates to, is uncontested by the Parties.¹⁶⁵⁸

884. The Prosecution, as a result of these agreements as to evidence between the Parties, submitted that certain documents that the Trial Chamber had decided to admit on the Prosecution’s application were duplicative of what was ‘already deemed to be proven’. Therefore, it did not produce them for formal admission into evidence.¹⁶⁵⁹ The Trial Chamber later admitted them into evidence upon the Legal Representatives of Victims’ request.¹⁶⁶⁰ The Trial Chamber has found under Rule 122—as noted above¹⁶⁶¹—that the interests of justice required a more complete presentation of those uncontested facts, in particular in the interests of the victims, to allow a more comprehensive narrative of the explosion and a more complete picture of the impact of the charged crimes upon individual victims.¹⁶⁶²

¹⁶⁵⁵ See para. 6274.

¹⁶⁵⁶ Second decision on agreed facts (Merhi).

¹⁶⁵⁷ Decision admitting documentary evidence on the Legal Representatives of Victims’ application, para. 66; Decision admitting into evidence statements of participating victims, para. 17, fn. 24.

¹⁶⁵⁸ One participating victim, Mr Mahmoud Wazzan, is not a relative to the immediate victims of the explosion nor was he injured in it. Mr Wazzan was the owner of a service company which had to vacate the premises it used due to the damages caused to it by the explosion. He claims to have suffered material damages. Legal Representatives of Victims final trial brief, paras 269-270.

¹⁶⁵⁹ Evidentiary matters, T. 26 June 2014, p. 31.

¹⁶⁶⁰ Decision admitting documentary evidence on the Legal Representatives of Victims’ application, paras 42-43.

¹⁶⁶¹ See para. 834.

¹⁶⁶² Decision on the Legal Representatives’ application to call evidence, paras 78-79.

885. The focus of the victims' case in these proceedings consists in identifying the victims and having the harm suffered recorded and thus recognised. Regarding the Merhi Defence's submission that the participating victims' evidence is only the expression of their observations and would be inadmissible or irrelevant according to ICC case law¹⁶⁶³—as it does not relate 'to the guilt or innocence' of the Accused—as outlined above,¹⁶⁶⁴ at the ICC the victims' entitlement to give or call evidence is neither in the Rome Statute nor the ICC Rules but rather is only recognised in the case law.¹⁶⁶⁵ Further, the presentation of evidence by the participating victims at the ICC is conditional upon the victims 'making a real contribution to the search for the truth', based on a provision that is not contained in the Special Tribunal's Statute or Rules.¹⁶⁶⁶

886. Besides, the Trial Chamber is only concerned with whether the Accused are guilty beyond reasonable doubt, under Article 16 (3) (c) of the Statute, and not their innocence. Otherwise this would reverse the onus, as they are presumed innocent until proven guilty.¹⁶⁶⁷ In this respect, the Merhi Defence submission is legally incorrect.

887. In authorising the victims' case, the Trial Chamber relied on reading Rule 150 (D) and Articles 17 and 25 together. Under Rule 150 (D), participating victims may be permitted to give evidence if 'the interests of justice so require'. The submission of evidence at trial may be a means for the participating victims to express their 'views and concerns', to which they have a qualified statutory right, under Article 17 of the Statute. Article 25 explicitly envisages the identification of victims and the harm they suffered in the judgment. Therefore, recognising and adequately recording their harm may make victim participation meaningful, and the interests of justice may therefore permit hearing evidence for this purpose.¹⁶⁶⁸ The Trial Chamber has also decided that material is admissible not only when relevant to matters that the Trial Chamber has to consider in

¹⁶⁶³ Merhi Defence final trial brief, para. 593, referring to the *Lubanga* decision on appeals regarding victims' participation, para. 97.

¹⁶⁶⁴ See above, at para. 816.

¹⁶⁶⁵ Decision on the Legal Representatives' application to call evidence, para. 12, referring to *Lubanga* decision on appeals regarding victims' participation, paras 97-99.

¹⁶⁶⁶ Article 69 (3) of the Rome Statute.

¹⁶⁶⁷ Under Article 16 (3) (b) of the Statute, the onus is on the Prosecutor to prove the guilt of the Accused. An Accused is presumed innocent until a trial chamber finds that their guilt has been established beyond reasonable doubt.

¹⁶⁶⁸ Decision on the Legal Representatives' application to call evidence, paras 14-15, 24.

determining the charges against the Accused, but also in evaluating the participating victims' views and concerns.¹⁶⁶⁹

888. Additionally, the Merhi Defence never objected to the Trial Chamber receiving the *viva voce* evidence presented by the Legal Representatives of Victims. The Merhi Defence did not object either to the Legal Representatives of Victims' application for admission into evidence of 24 witness statements under Rules 155 and 158. It opposed only the admission into evidence of 13 out of the 181 documents which the Legal Representatives of Victims tendered in a single exhibit.¹⁶⁷⁰

(b) Identifying the victims and recording their harm

889. The Trial Chamber, as the Merhi Defence correctly submits, has no role in quantifying the harm suffered by any victim—it has several times noted that the Special Tribunal cannot grant reparations¹⁶⁷¹—but this is not what the Legal Representatives of Victims ask from the Trial Chamber. The Trial Chamber understands that the Legal Representatives of Victims, when seeking that the Trial Chamber record the *extent* of the victims' suffering, refer to the scope, breadth or gravity of this harm, rather than to any estimate or pecuniary measure. That would of course form the basis of an assessment of compensation or reparations in a national system. But this is not the Trial Chamber's role.

890. Under Rule 86 (G):

any person identified in a final judgement as a victim, or otherwise considering himself or herself victim, who has suffered harm as a result of the commission of crimes by an accused convicted by the Tribunal may request from the Registrar a certified copy of the judgement for the purpose of exercising his or her rights under national or other relevant law, as provided by Article 25 of the Statute.

¹⁶⁶⁹ Decision admitting into evidence statements of participating victims, para. 16.

¹⁶⁷⁰ The Merhi Defence submitted that the 13 documents were not relevant and or probative and therefore did not meet the requirements set out in Rule 149 (C). Under Rule 149 (C), a 'Chamber may admit any relevant evidence which it deems to have probative value'. Further, while the Merhi Defence did not formally object to the admission of invoices, it submitted that this did not amount to agreeing with possible claims for financial compensation for damages or the amounts paid by certain victims. Decision admitting documentary evidence on the Legal Representatives of Victims' application, para. 5.

¹⁶⁷¹ Decision on the Legal Representatives' application to call evidence, para. 6; Decision admitting into evidence statements of participating victims, para. 19.

891. Article 25 explicitly envisages the identification, by the Special Tribunal, of the victims who have suffered harm—from which they may later bring an action for compensation before a national court or other competent body.

892. The Trial Chamber's role, therefore, includes identifying the victims and considering any harm suffered. In granting the 'participating victim' status, the Pre-Trial Judge applied a *prima facie*¹⁶⁷² standard of proof. He assessed whether there were sufficient *prima facie* credible grounds that the applicants suffered harm and whether the particular circumstances of the harm suffered corresponded *prima facie* to those of the attack on 14 February 2005.¹⁶⁷³

893. Under Article 25, the Trial Chamber may now identify, based on the evidence it heard or received, the 'victims' who have suffered harm as a result of the attack and within this can determine whether the individuals who were granted participating victim status are victims of the attack.

894. The Trial Chamber will also, where appropriate, make findings about harm caused to Prosecution witnesses who are not participating victims. Article 25 of the Statute allows the Trial Chamber—for the purpose of facilitating any future claim for compensation before any competent authority in Lebanon—to 'identify victims who have suffered harm' as a result of the explosion of 14 February 2005. There is nothing in this provision or elsewhere in the Special Tribunal's legal framework that limits this identification to victims formally admitted as participating in the proceedings.

895. With regard to the applicable standard of proof, the Special Tribunal's Statute and Rules do not contain any explicit provision or guidance. Under international criminal case law, ICC trial chambers apply a *prima facie* standard for victims' participation at trial,¹⁶⁷⁴ and do not further consider, in their judgments, the victims' status or identification unless a chamber 'concludes that its original *prima facie* evaluation was incorrect' and amends their previous orders by withdrawing

¹⁶⁷² An ICTY judge, Judge Sidhwa, applying the '*prima facie* case test' in confirming an indictment, commented that 'in Latin the expression "*prima facie*" means at first sight, or on the face of it, or on first impression', *Rajić* Confirmation of the Indictment, p. 2. Under Rule 86 (B), governing the granting of victim participation status to applicant victims by the Pre-Trial Judge, 'an applicant must provide *prima facie* evidence that he is a victim as defined in Rule 2'.

¹⁶⁷³ Pre-Trial Judge decision on victims' participation in the proceedings, paras 1-2, 51, 61-62.

¹⁶⁷⁴ *Al Mahdi* reparations order, para. 39; *Al Mahdi* decision on victim participation, paras 17-22.

the right of any victim to participate in the proceedings.¹⁶⁷⁵ After a judgment of conviction, a specific phase may be devoted, at the ICC, to identifying victims for the purposes of reparations. While the Prosecution must establish the material facts ‘beyond reasonable doubt’ during the trial, the standard of proof applicable to reparation proceedings—also in light of the difficulties victims may face in obtaining evidence in support of their claim—is on a ‘balance of probabilities’.¹⁶⁷⁶

896. The Trial Chamber cannot order reparations but may identify victims, which may assist them in claiming compensation before a national court or another competent body. It could be reasoned that the Trial Chamber, while applying the standard of proof beyond reasonable doubt to establish the facts forming the elements of the crimes—including the death of the *direct* victims of the crimes of intentional homicide—could apply the preponderance of evidence or balance of probabilities standard to its findings on the harm suffered by victims in instances when it relates to facts which are not material to the elements of the pleaded crimes.¹⁶⁷⁷

897. The Trial Chamber however—as explained below at paragraphs 1455 and 1495—is satisfied beyond reasonable doubt that direct and indirect victims suffered harm. Further, consistent with the Pre-Trial Judge’s decisions and the case law of other international criminal

¹⁶⁷⁵ On this basis, in the *Lubanga* Trial Judgment, the Trial Chamber by majority withdrew the right to participate in the proceedings of certain victims who had testified as Prosecution witnesses. Judge Odio Benito interestingly commented that ‘it is unfair and discriminatory to impose upon individuals with dual status a higher evidentiary threshold (beyond reasonable doubt) as regards their victim status, while all other victims participating in the proceedings have not been subject to thorough examination by the parties and the Chamber, as these young persons have been. When reparations are evaluated, it will be up to the Trial Chamber to determine the criteria utilised in determining their final status. Consequently, I consider they should maintain their status as victims for the remaining proceedings in this trial.’ *Lubanga* Trial Judgment, paras 484, 502, 1362-1363; *Lubanga* Trial Judgment, Separate and dissenting opinion of Judge Odio Benito, para. 35.

¹⁶⁷⁶ *Katanga* order for reparations, paras 45-51; *Lubanga* Appeals Chamber decision on the principles and procedures to be applied to reparations, paras 82-84; *Lubanga* decision on the principles and procedures to be applied to reparations, paras 251-254; *Al Mahdi* reparations order, paras 42-44.

¹⁶⁷⁷ According to international criminal case law, the preponderance of evidence standard—also known as the balance of probabilities—requires that a court is satisfied that what is asserted is, more probably than not, true. While it does not require the same degree of conviction as the beyond reasonable doubt standard applicable to the facts on which a finding of guilt is based, it nonetheless still requires sufficiently convincing evidence to satisfy a court that the matter is proven. This standard allows judges to take into account the nature of the matter to be proven and the consequences flowing from the particular finding of fact, when deciding whether or not they are sufficiently convinced as to the existence of the fact at issue. It has been applied in assessing whether an accused is fit to stand trial or whether mitigating factors have been established for sentencing. *Kajelijeli* Appeal Judgment, para. 294; *Muhimana* Appeal Judgment, para. 231; *Strugar* Appeal Judgment, para. 56; *Popović and others* Appeal decision denying request to terminate appellate proceedings, para. 21; *Kvočka and others* decision on review of Registrar’s withdrawal of legal aid, para. 12; *Strugar* decision dismissing Defence motion to terminate proceedings, para. 38.

courts and Lebanese courts, the psychological/mental harm suffered by (close) family members can be presumed in the case of the death of the direct victims.¹⁶⁷⁸

898. As to the Legal Representatives of Victims' request that the judgment record that participating victims are victims of the explosion on 14 February 2005, including their suffering, 'irrespective of findings in relation to the individual Accused',¹⁶⁷⁹ the Trial Chamber notes that the victims' personal interest in compensation, according to the Statute—as at the ICC and at the Kosovo Specialist Chambers—is conviction-based. Article 25 envisages the identification of the victims by a judgment finding an Accused guilty of the crimes that have caused them harm.¹⁶⁸⁰

899. Article 25, however, is relevant to define the compensation regime for the victims and does not limit, of itself, the scope of the Trial Chamber's findings, based on the evidence it heard and received. Even in the absence of a conviction, the Trial Chamber may identify the people who were victims of the attack on 14 February 2005. It must do this for the direct victims where their death or injury must be proved beyond reasonable doubt. In this case, the Trial Chamber has found the deaths and injuries proven after the Parties agreed to the names of those deceased or injured in the explosion, as listed in the schedules to the amended consolidated indictment.

900. The participating victims who observed the proceedings in the courtroom during the victims' case provided additional information when answering questions posed by the Trial Chamber Judges. The Trial Chamber does not find convincing the Legal Representatives of Victims' reliance on the ECCC's rules and case law to submit that the Trial Chamber should also rely on theses 'unsworn statements' to assess the harm suffered by the victims. The ECCC has a different legal framework, where victims are civil parties to the proceedings.

901. The Legal Representatives of Victims' reliance on ICC case law—to submit that those 'unsworn statements' represent views and concerns that do not have the status of evidence—is more persuasive. The ICC case law distinguishes between the presentation of evidence by victims and the expression of their 'views and concerns in person', which are governed by different

¹⁶⁷⁸ Pre-Trial Judge decision on victims' participation in the proceedings, para. 84, referring to *Duch* Appeal Judgment, para. 562 and *Kony and others* Appeals Chamber decision on victims' participation, para. 36. *See also*, *Katanga* order for reparations, paras 57, 61-62, 121-122; *Murr* Judgment, p. 60 (with regard to moral damages awarded due to the pain suffered by close relatives of persons killed in the attack).

¹⁶⁷⁹ Legal Representatives of Victims final trial brief, para. 748.

¹⁶⁸⁰ Statute, Art. 25 (1).

requirements. Expressing views and concerns in person is equivalent to presenting submissions and does not form part of the trial evidence.¹⁶⁸¹ The Trial Chamber, in authorising the presentation of the victims' case, has not followed the ICC case law in distinguishing between these two forms of participation. It has already outlined the differences from the ICC statutory framework and has allowed the participating victims to present evidence when the interests of justice so required—reading this principle jointly with Articles 17 and 25.

902. However, in the specific circumstances—as the participating victims who provided additional information in court were not previously authorised to provide evidence nor took any oath—the Trial Chamber will consider their statements in reply to its questions as views and concerns given in person. While not evidence, the Trial Chamber nonetheless will consider them in its overall assessment of the harm suffered by the victims. Further, there was no objection to this course, it will cause no prejudice to the Accused and no counsel of an Accused cross-examined any participating victim.

(c) Gravity of the crimes

903. The Legal Representatives of Victims submit that the participating victims' evidence can assist the Trial Chamber in assessing the gravity of the crimes, that the harm suffered by the victims is a component of the gravity of an offence and that, due to the Statute's reparation regime, findings on this gravity—including as resulting from the nature and modalities of the act of terrorism—should be a part of the judgment on conviction.¹⁶⁸² The Merhi Defence responds that evidence on the nature and the extent of the harms suffered by the victims and the gravity of the crime should not be taken into account in a judgment relating to the guilt of an accused.¹⁶⁸³

¹⁶⁸¹ ICC Trial Chambers authorise this form of participation in the alternative to the presentation of evidence, when victims fail to reach the higher threshold to testify, requiring them to 'make a genuine contribution to the truth'. *Ntaganda* decision on the presentation of victims' evidence, views and concerns, paras 10, 22, 25, 28, 31, 49; *Bemba* decision on the Legal Representatives of Victims' application to present evidence and the views and concerns of victims, paras 19-20, 23 (ii), 33.

¹⁶⁸² Legal Representatives of Victims closing submissions, T. 14 September 2018, pp 83-84; Legal Representatives of Victims final trial brief, para. 117.

¹⁶⁸³ Merhi Defence final trial brief, para. 594.

904. The Trial Chamber considers that the gravity of the offence is one of the factors that a trial chamber must take into account in sentencing.¹⁶⁸⁴ Under Article 24 (2) of the Statute, ‘in imposing sentence, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person’. A similar provision was in the ICTR and ICTY Statutes and appears in the IRMCT and Rome Statutes.¹⁶⁸⁵

905. The gravity of the offence includes the inherent gravity of the crime and the Accused’s criminal conduct—their form and degree of participation—and also encompasses the impact of the crimes on the victims.¹⁶⁸⁶ In particular, in assessing the gravity of the crimes, ICTY trial chambers have taken into account the number of victims, the effect of the crimes on broader targeted groups and the suffering inflicted on the victims.¹⁶⁸⁷ According to the ICTY Appeals Chamber, factors relevant to sentencing include both the consequences of the crimes for the victims who were directly injured and the effects on the immediate victims’ relatives.¹⁶⁸⁸ ICC Trial Chambers too have considered, in sentencing, the gravity of the crimes with regard to the extent of the damage caused and in particular ‘the harm caused to the victims and their families’.¹⁶⁸⁹ The actual infliction of terror on the civilian population has also been taken into account in assessing the gravity of a crime.¹⁶⁹⁰

¹⁶⁸⁴ According to ICTY case law, gravity is the primary factor or ‘litmus test’ in determining the appropriate sentence. *Galić* Appeal Judgment, para. 392; *Delalić and others (Čelebići)* Appeal Judgment, para. 731; *Aleksovski* Appeal Judgment, para. 182; *Blaškić* Appeal Judgment, para. 683.

¹⁶⁸⁵ These are, respectively, Article 23 (2), Article 24 (2), Article 22 (3) and Article 78(1) in the ICTR, ICTY, IRMCT and Rome Statutes.

¹⁶⁸⁶ *Blaškić* Appeal Judgment, para. 683; *Vasiljević* Appeal Judgment, para. 182; *Furundžija* Appeal Judgment, para. 249; *Galić* Appeal Judgment, para. 410; *Galić* Trial Judgment, para. 758.

¹⁶⁸⁷ *Galić* Appeal Judgment, paras 410, 446, 454; *Galić* Trial Judgment, paras 758, 764.

¹⁶⁸⁸ *Blaškić* Appeal Judgment, para. 683 (‘the effects of the crime on relatives of the immediate victims may be considered as relevant to the culpability of the offender and in determining a sentence’); *Krnjelac* Appeal Judgment, para. 260 (‘the Appeals Chamber considers that, even where no blood relationships have been established, a trier of fact would be right to presume that the accused knew that his victim did not live cut off from the world but had established bonds with others’).

¹⁶⁸⁹ This factor is explicitly envisaged in Rule 145 of the ICC Rules of Procedure and Evidence, ‘Determination of sentence’, among those to be given consideration in determining the sentence. *Lubanga* decision on sentence, para. 44.

¹⁶⁹⁰ *Galić* Trial Judgment, para. 764; *Galić* Appeal Judgment, para. 449.

906. The Special Tribunal's Rules provide for bifurcated trial proceedings,¹⁶⁹¹ as at the ICC. One is designed to find whether the guilt of the Accused is established beyond reasonable doubt, and the other is for sentencing, if the Accused's guilt has been established.¹⁶⁹²

907. Under Rule 87 (C), a victim participating in the proceedings may be heard by the Trial Chamber on the personal impact of the crimes or file written submissions on the matter at the sentencing stage, upon the Trial Chamber's authorisation. The Trial Chamber, in authorising the presentation of evidence by the Legal Representatives of Victims, considered that the victims' evidence during sentencing proceedings goes to the Trial Chamber's consideration of their suffering for determining the gravity of the crime, or as an aggravating circumstance on sentence. The Trial Chamber also considered that this did not preclude it from allowing the victims to be heard, in relation to the harm they suffered, at an earlier stage of the proceedings, while ensuring that the issues and facts are not unnecessarily repeated.¹⁶⁹³

908. As argued by the Legal Representatives of Victims,¹⁶⁹⁴ although they do not rely on any authority, the participating victims' evidence may assist the Trial Chamber in assessing the gravity of the crimes—and their harm is a relevant factor to this determination. The Trial Chamber finds the relevant international criminal case law reviewed above persuasive. The question here, however, is whether the Trial Chamber may make findings on the gravity of the offences in this judgment, given the Rules provide for a distinct sentencing phase for this purpose, subsequent to a conviction.

909. In support of their request that the Trial Chamber make findings on the gravity of the crime in the judgment, the Legal Representatives of Victims submit that this is important to the victims as they are entitled to receive a signed copy of the judgment and take it to a competent authority for claiming 'reparations'.¹⁶⁹⁵ The Legal Representatives of Victims do not articulate or explain in

¹⁶⁹¹ Rule 171, 'Sentencing Procedure'. Its paragraph A provides that, if the Trial Chamber finds the accused guilty of a crime, the Prosecutor and the Defence may submit any relevant information that may assist the Trial Chamber in determining an appropriate sentence'. *See also* Rome Statute, Art. 76 (1).

¹⁶⁹² Rules of Procedure and Evidence —Tribunal's President's Explanatory Memorandum (as of 12 April 2012), paras 45-46. In the original ICTY and ICTR frameworks, sentencing was a distinct phase, but later the two sets of proceedings were merged.

¹⁶⁹³ Decision on the Legal Representatives' application to call evidence, para. 27, referring to *Lubanga* decision allowing victims to express their views and concerns and to present evidence at trial, para. 26.

¹⁶⁹⁴ Legal Representatives of Victims closing submissions, T. 14 September 2018, pp 83-84.

¹⁶⁹⁵ Legal Representatives of Victims closing submissions, T. 14 September 2018, p. 84.

more detail why findings on the gravity of the crime would be important in this context and do not point to any relevant provision when describing the Lebanese law applicable in a civil action for damages suffered as a result of a crime. They submit that, according to Article 134 of the Lebanese Code of Obligations and Contracts—to which reparations are subject—reparations due to the victim of an offence should correspond to the totality of the harm they have suffered.¹⁶⁹⁶ Maybe, although it is not expressly stated, they assume that the graver the crime, the greater the possible compensation.

910. According to the ICC case law on the principles and procedures to be applied to reparations,¹⁶⁹⁷ the scope of a convicted person's liability for reparations must be proportionate to the harm caused and, among other things, their participation in the commission of the crime. Moreover, ICC reparation orders refer to the relevant Trial Chamber's decisions on sentence and their findings on the gravity of the crimes.¹⁶⁹⁸ Further, the UN 'Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law' provide that reparation must be proportional to the *gravity of the violation* and the harm suffered.¹⁶⁹⁹

911. The Trial Chamber will assess the evidence presented by and for the participating victims and make the relevant findings on this and, consequently, on the impact of the crimes on them.¹⁷⁰⁰ However, making findings on the gravity of the crimes at this stage would require consideration of other factors—on which the Parties may wish to present relevant submissions or evidence—and this assessment belongs, according to the Statute, to a different phase of the trial proceedings. Further, there is no gravity requirement in respect of the elements of any offence charged or of any offence within the jurisdiction of the Special Tribunal.

912. Nevertheless, there is no doubt that terrorism is one of the most serious and heinous crimes and that the attack on 14 February 2005 was very grave. As the Appeals Chamber noted in its first interlocutory decision on the applicable law, the UN Security Council has defined terrorism as

¹⁶⁹⁶ Legal Representatives of Victims final trial brief, paras 679-690.

¹⁶⁹⁷ As noted above, the ICC can itself grant reparations to victims.

¹⁶⁹⁸ *Lubanga* Appeals Chamber decision on the principles and procedures to be applied to reparations, para. 118; *Katanga* order for reparations, paras 252, 259-260, 264.

¹⁶⁹⁹ UN Doc. A/RES/60/147/Annex, principle IX, para. 15.

¹⁷⁰⁰ As noted above at para. 907, with regard to Rule 87 (C), the Trial Chamber will ensure that the related issues and facts are not repeated at the sentencing stage.

‘one of the most serious threats to peace and security’ and has considered the ‘terrorist attacks’ under the Tribunal’s jurisdiction as ‘particularly grave acts of terrorism’.¹⁷⁰¹ The Trial Chamber has found, in chapter XIV ‘Legal findings on elements of the crimes and Individual criminal responsibility’, (A) (1) (a) ‘The crime’, that the explosion that targeted Mr Hariri, a leading political figure, was a terrorist act. It also found that it used 2,500 to 3,000 kilograms of TNT equivalent explosive,¹⁷⁰² which was detonated in a busy public street, in the middle of the day and caused an indiscriminate loss of life, destruction and was designed to and in fact inflicted terror.

913. As to the Legal Representatives of Victims’ submission that the Trial Chamber should not engage in double counting because findings such as those on the impact of the crimes on the victims can also be aggravating factors,¹⁷⁰³ the Trial Chamber agrees with international criminal case law that factors that a Trial Chamber takes into account for the gravity of the crime cannot additionally be taken into account as separate aggravating circumstances.¹⁷⁰⁴ However, these submissions are relevant to calculating a sentence, which is not what the Trial Chamber will do in this judgment under Rule 168.

914. In assessing the impact of the crimes on the victims, the Trial Chamber has also considered Professor Letschert’s evidence. Contrary to the Ayyash Defence’s submission, her evidence—summarising views and concerns from the participating victims—adds to the participating victims’ evidence. Whereas only a limited number of participating victims provided evidence, the Trial Chamber is satisfied that Professor Letschert’s evidence, based on her interviews, reflects the views and concerns of most of them. Moreover, counsel for Mr Ayyash chose not to cross-examine her and did not challenge her evidence on this point.

915. The Ayyash Defence’s submission that Professor Letschert’s evidence on the victims’ ‘collective harm’ is only relevant to determining compensation is also unconvincing. The 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power defines victims as ‘persons who individually or *collectively* have suffered harm’¹⁷⁰⁵—a definition that Professor

¹⁷⁰¹ First interlocutory decision on applicable law, paras 104, 110 (referring to UN Doc. S/RES/1566 (2004)), 124.

¹⁷⁰² See para. 1250.

¹⁷⁰³ Legal Representatives of Victims closing submissions, T. 14 September 2018, p. 84.

¹⁷⁰⁴ See for example, *Deronjić* Judgment on sentencing appeal, para. 106; *Dragomir Milošević* Appeal Judgment, para. 306.

¹⁷⁰⁵ UN Doc. A/RES/40/34/Annex (1985), para. 1 (emphasis added).

Letschert refers to in her evidence. The ICC Appeals Chamber has noted that harm can ‘be both personal and collective in nature’.¹⁷⁰⁶ The Trial Chamber agrees: harm can be both personal to an individual victim and collective, as it was suffered across a multitude of people or a community. The specific nature of the crime is relevant to this result. An act of terrorism is intended to cause a state of terror and can therefore affect a large number of people.¹⁷⁰⁷ By its definition, that is its objective.

916. While Professor Letschert does not use the expression ‘collective harm’, she explains that acts of terrorism spread outwards affecting primary, secondary and tertiary victims, in other words the society at large.¹⁷⁰⁸ She pointed to the views of certain participating victims that the attack affected the entire country and that losing Mr Hariri—a ‘prime minister that could have guaranteed a stable Lebanon’—amounted to losing ‘a dream’ relating to the country.¹⁷⁰⁹ The attack affected a cross-section of the population.¹⁷¹⁰ The Legal Representatives of Victims point to the feeling of insecurity and fear shared by participating victims and submit that the participating victims’ *viva voce* evidence too characterises the impact of the bombing upon themselves, the other participating victims and the ‘wider societal, cultural and economic impact of the events upon the Lebanese people’.¹⁷¹¹ Professor Letschert also explains—as described in more detail below¹⁷¹²—common or similar psychological consequences to those who survived the bombing, including having a lasting fear of further terrorist attacks.¹⁷¹³

917. To the extent that the Ayyash Defence, with ‘collective harm’, means to refer to Professor Letschert’s evidence either on the harm to ‘tertiary victims’, as society at large, or on the harm that several victims collectively suffered,¹⁷¹⁴ the Trial Chamber finds that this evidence is relevant to the assessment of the impact of the crimes on victims and, later, on their gravity. As noted above, according to international criminal case law, the number of victims, the effects of the crimes on

¹⁷⁰⁶ *Lubanga* decision on appeals regarding victims’ participation, para. 35.

¹⁷⁰⁷ See chapter XIII ‘Applicable law’, (C) (1) ‘Terrorist act’; exhibit 1V42 (Professor Letschert’s report), pp 7-8.

¹⁷⁰⁸ See para. 800.

¹⁷⁰⁹ Exhibit 1V42 (Professor Letschert’s report), pp 9-10.

¹⁷¹⁰ Exhibit 1V42 (Professor Letschert’s report), p. 21.

¹⁷¹¹ Legal Representatives of Victims final trial brief, paras 100, 107.

¹⁷¹² See chapter VI ‘Explosion on 14 February 2005’, (G) ‘Victim harm’.

¹⁷¹³ Exhibit 1V42 (Professor Letschert’s report), pp 8-9, 14-15, 21-23.

¹⁷¹⁴ This evidence will be illustrated, in more detail, in chapter VI ‘Explosion on 14 February 2005’, (G) ‘Victim harm’.

broader targeted groups and the actual infliction of terror on the civilian population are factors that a trial chamber can take into account in assessing the gravity of a crime.¹⁷¹⁵

918. The Defence may have confused the issue of ‘collective harm’ with that of the ‘collective measures’ that the Legal Representatives of Victims ask the Trial Chamber to recommend as appropriate forms of reparation.¹⁷¹⁶ Reparations can either be individual or collective and, according to ICC case law, ‘collective reparations’ to a community may be appropriate to repair harm caused to a community.¹⁷¹⁷ Despite the intertwining between the two issues—collective harm and collective reparations—any evidence that victims suffered harm collectively or that harm was done to a collective/community, will be considered by the Trial Chamber in assessing the impact of crimes on victims and later, if need be, the gravity of the crimes. The distinct request that the Trial Chamber issue recommendations on reparations is considered in more detail below.¹⁷¹⁸

(d) Broadening the narrative—the scope of the Trial Chamber’s findings

919. As submitted by the Legal Representatives of Victims, the victims’ case broadened the Prosecution’s narrative. In particular, on the explosion and its aftermath, the Trial Chamber heard the accounts of people, victims, who were not in the convoy but in the proximity of the explosion, like Ms Khallouf and Victim 16. The Trial Chamber also heard evidence on the search for missing persons and rescue efforts after the attack. Certain evidence also goes—according to the Legal Representatives of Victims—to ‘how the victims were treated’ or ‘perceived’ in Lebanon. Based on the victims’ concerns, Professor Letschert invited the Trial Chamber to raise awareness of the consequences that negative media reporting may have on victims of crimes, and media’s responsibilities by adding ‘a statement within the judgement that would say that victims have expressed concern relating to negative media reporting and what that does with them’.¹⁷¹⁹

920. ‘The scope of a trial is fixed by the indictment’,¹⁷²⁰ and by the statutory provisions on the Tribunal’s jurisdiction. According to international criminal case law, in conformity with human

¹⁷¹⁵ At para. 905.

¹⁷¹⁶ Legal Representatives of Victims final trial brief, paras 701-702, 753; Ayyash Defence final trial brief, para. 44; Ayyash Defence closing submissions, T. 17 September 2018, p. 10. *See also* Merhi Defence final trial brief, para. 595.

¹⁷¹⁷ *Al Mahdi* reparations order, paras 45, 49, 53-54, 59.

¹⁷¹⁸ *See below*, sub-section (H) ‘Repairing the harm—sought recommendations for appropriate forms of reparations.

¹⁷¹⁹ Legal Representatives of Victims final trial brief, paras 695-697, 729-730.

¹⁷²⁰ Separate opinion of Judge Shahabuddeen in *Gacumbitsi* Appeal Judgment, para. 63.

rights law,¹⁷²¹ a Trial Chamber is required to provide clear, reasoned findings of those facts which are essential to its determinations either to convict or acquit an individual, on the basis of the pleaded charges.¹⁷²²

921. By virtue of the victims' participation at the Special Tribunal, however—which some other international criminal tribunals did not allow—and the relevant statutory provisions, the scope of the findings that a Trial Chamber may, or should, enter is broader. As noted above, the Trial Chamber, under Article 25, will also make findings relevant to the identification of the victims of the crimes who have suffered harm.

922. Accordingly, to the extent that any evidence relates to, or demonstrates, any harm suffered by the victims—or shows any fact that may have contributed to exacerbate such harm—the Trial Chamber will consider it and make any relevant findings.

923. The Legal Representatives of Victims made no specific reference in their submissions on the propriety and frequency of criminal courts making findings on the shortcomings of investigations. However, precedent exists for this in international criminal case law, as international trial chambers have been critical of the manner in which investigations or parts of them were conducted. The Trial Chamber considers therefore that making such a finding in the circumstances is appropriate.

924. In the ICC's *Katanga* trial judgment, for example, the Trial Chamber noted the absence of Prosecution forensic investigation missions close to the date of the events and that 'before the opening of the trial, it would have been desirable for the Prosecution to visit the places where the Accused persons lived and where preparations for the attack on Bogoro were allegedly made', including to allow situating and determining the locations of certain key places. The ICC Trial Chamber also noted that proper knowledge of the topography of the region would have been

¹⁷²¹ As noted by the ICTY Appeals Chamber, the case law that has developed under the European Convention on Human Rights establishes that a reasoned opinion is a component of the fair hearing requirement, but that 'the extent to which this duty ... applies may vary according to the nature of the decision' and 'can only be determined in the light of the circumstances of the case'. The European Court of Human Rights has held that a 'tribunal is not obliged to give a detailed answer to every argument'. *Furundžija* Appeal Judgment, para. 69, citing *Ruiz Torija* Judgment, para. 29; *Van De Hurk* Judgment, para. 61.

¹⁷²² Article 23 of the Statute provides that the Trial Chamber's judgment 'shall be accompanied by a reasoned opinion in writing'. *Hadžihasanović and Kubura* Appeal Judgment, para. 13; *Kvočka and others* Appeal Judgment, para. 23; *Renzaho* Appeal Judgment, para. 320.

helpful in eliciting useful clarification from several witnesses. It found that it would have been desirable for the Prosecution to have called certain military leaders and taken a statement from Mr Katanga at the investigating stage. This would have allowed the Trial Chamber to compare his testimony at the end of trial, after he had heard all the witnesses, with any previous statement. The Trial Chamber also noted that the Prosecution should have thoroughly reviewed the civil status and educational background of its witnesses and pursued certain specific issues in its investigation.¹⁷²³

G. Participating Victims' expectations—establishing the truth

1. Legal Representatives of Victims' submissions

925. The Legal Representatives of Victims submit that victims expect and are entitled to the most detailed examination of the chain of responsibility possible and request the Trial Chamber to identify all persons and or organisations responsible for the attack.¹⁷²⁴ This right is not inconsistent with the Accused's right to a reasoned opinion and can be derived from the right to compensation consistent with Article 25.¹⁷²⁵ The Prosecution is focused on proving the guilt of the Accused, but the victims' interest goes beyond that.¹⁷²⁶

926. They submit that, in addition to the four Accused and Mr Badreddine, 'a larger scale of network and organisation' was responsible for the attack on 14 February 2005. It was not the work of a simple criminal gang but of a political organisation which killed for its political belief.¹⁷²⁷ According to the Legal Representatives of Victims, the political organisation is Hezbollah, very probably acting as the agent of the Syrian regime.¹⁷²⁸

927. The reason behind the Special Tribunal's creation was that '*all those responsible* for the terrorist bombing that killed former Lebanese Prime Minister Rafiq Hariri and others be identified and brought to justice'.¹⁷²⁹ Only to determine the issues necessary to find the case proved against the four named Accused would be 'unforgivable', especially to the victims. They want to know

¹⁷²³ *Katanga* Trial Judgment, paras 59-67.

¹⁷²⁴ Legal Representatives of Victims final trial brief, para. 661.

¹⁷²⁵ Legal Representatives of Victims final trial brief, para. 661.

¹⁷²⁶ Legal Representatives of Victims closing submissions, T. 14 September 2018, p. 99.

¹⁷²⁷ Legal Representatives of Victims final trial brief, paras 89-90.

¹⁷²⁸ Legal Representatives of Victims closing submissions, T. 14 September 2018, pp 81-82, 88-89, 106.

¹⁷²⁹ Legal Representatives of Victims final trial brief, para. 658 (emphasis omitted).

why they were injured or their loved ones were killed.¹⁷³⁰ The judgment must be comprehensive, say the whole truth and embrace the circumstances, ‘the whys and the wherefores’.¹⁷³¹ Lebanese people wait to hear this judgment to break the vicious circle of silence and indifference.¹⁷³² Regardless of whether some findings are necessary for the conviction of the Accused, specific factual and contextual findings are necessary and intrinsic to justice and to the truth.¹⁷³³ The judgment cannot and should not take into account the political effect that it might or might not have.¹⁷³⁴

928. The more detailed Legal Representatives of Victims’ arguments, which rely on Prosecution evidence concerning the political context or other Prosecution evidence, including the alleged role of Hezbollah in the attack, are dealt with in chapter IV ‘Historical and political background to the attack’.

2. Findings

929. In UN Security Council Resolution 1664—cited by the Legal Representatives of Victims—the Security Council requested the UN Secretary-General ‘to negotiate an agreement with the Government of Lebanon aimed at establishing a tribunal of an international character based on the highest international standards of criminal justice’. In the preamble, the Security Council stated that it was ‘*mindful* of the demand of the Lebanese people that all those responsible for the terrorist bombing that killed former Lebanese Prime Minister Rafiq Hariri and others be identified and brought to justice’.

930. This same clause is contained in UN Security Council Resolution 1757, in which the Security Council established the Special Tribunal by deciding, acting under Chapter VII of the Charter of the UN, that the provisions of the Agreement on the establishment of the Special Tribunal for Lebanon, including its attachment, the Statute, entered into force.

¹⁷³⁰ Legal Representatives of Victims closing submissions, T. 14 September 2018, pp 80, 95, 99.

¹⁷³¹ Legal Representatives of Victims closing submissions, T. 14 September 2018, p. 89, *see also* p. 95; Legal Representatives of Victims of Victims final trial brief, para. 747.

¹⁷³² Legal Representatives of Victims closing submissions, T. 14 September 2018, p. 98.

¹⁷³³ Legal Representatives of Victims closing submissions, T. 14 September 2018, pp 99, 101-102.

¹⁷³⁴ Legal Representatives of Victims closing submissions, T. 14 September 2018, p. 100.

931. On 10 June 2011, the Prosecutor submitted an indictment against Mr Ayyash, Mr Oneissi, Mr Sabra and Mr Badreddine to the Pre-Trial Judge, who confirmed it on 28 June 2011. This indictment was later amended due to a number of developments, including the joinder with Mr Merhi's case¹⁷³⁵ and the termination of the proceedings against Mr Badreddine. The scope of the trial is defined by the amended consolidated indictment and the Special Tribunal's statutory provisions.

932. According to Rule 55 (C), in performing his functions, 'the Prosecutor shall assist the Tribunal in establishing the *truth*'.¹⁷³⁶ Further, the Trial Chamber may exercise control over the mode and order of questioning witnesses and presenting evidence so that the questioning and presentation of evidence is effective for the 'ascertainment of the *truth*'.¹⁷³⁷

933. The 'truth' that a trial chamber, within the scope of a trial, can and must establish—and to which the Rules refer—is any that a court can establish from the evidence before it. When Professor Letschert stated that a court has a role in explaining to the victims its mandate's limitations and that 'to establish [the] truth according to legal principles is different and difficult', the Presiding Judge underlined that 'a court can only deal with the evidence which is before the court'.¹⁷³⁸

934. Within this context, a tribunal can exercise a judicial 'truth-finding function'—as an ICTY trial chamber has described one of that tribunal's objectives.¹⁷³⁹

935. However, Professor Letschert herself—while praising the system of victims' participation at the Special Tribunal, its giving 'genuine attention to the voice of the victims in this case' and setting an example for future tribunals¹⁷⁴⁰—stated that one of the few recommendations for

¹⁷³⁵ Case no. STL-13-04.

¹⁷³⁶ Emphasis added.

¹⁷³⁷ Rule 150 (G) (emphasis added). The relevant part of this provision reads 'upon an objection raised by a Party, the Chamber may exercise control over the mode and order of questioning witnesses and presenting evidence so as to: (i) make the questioning and presentation effective for the ascertainment of the truth'.

¹⁷³⁸ Rianne Letschert, T. 8 September 2017, p. 107.

¹⁷³⁹ *Sikirica and others* Sentencing Judgment, para. 149, referring to the *Todorović* Sentencing Judgment, para. 81 ('a guilty plea is always important for the purpose of establishing the truth in relation to a crime').

¹⁷⁴⁰ Rianne Letschert, T. 8 September 2017, pp 106-107.

improvement consisted in informing the victims about the limitations of the Special Tribunal's mandate.¹⁷⁴¹

936. She testified that several participating victims want to know the 'whole truth'—beyond 'sentencing' the Accused¹⁷⁴²—namely know who or what organisation or State actually gave the order for the assassination.¹⁷⁴³ In her view, explaining how a legal system works would help in tempering their expectations at the start of the process. In her opinion, that a court cannot solve everything that victims might require, is an important message of itself.¹⁷⁴⁴

937. The Trial Chamber is confident that the Legal Representatives of Victims have explained to the participating victims how a criminal trial works, as they have an important role and responsibility in this regard. The Trial Chamber reiterates that the scope of the trial is defined by the amended consolidated indictment, the statutory provisions and the evidence heard. Within these boundaries, the Trial Chamber has made the findings necessary or appropriate to understand the events alleged in the amended consolidated indictment, as comprehensively as possible, and determine whether the Accused's guilt has been established beyond reasonable doubt. In consideration of the victims' participation—as noted above—the scope of the Trial Chamber's findings also include identifying the victims of the crimes and recording their harm.

938. The Trial Chamber is not a truth and reconciliation commission or a commission of inquiry. It applies rules of evidence—as expressly provided in the Rules of Procedure and Evidence—to admit evidence, and also to exclude it when required for a fair trial.¹⁷⁴⁵ These Rules reflect the highest standard of international criminal procedure and must be interpreted in a manner consonant

¹⁷⁴¹ Exhibit 1V42 (Professor Letschert's report), pp 37-38; Rianne Letschert, T. 8 September 2017, p. 107.

¹⁷⁴² Professor Letschert testified that by no means she 'meant to make any link between the views and concerns of the victims participating in the case to the accused' (Rianne Letschert, T. 8 September 2017, pp 11-12). Therefore, the witness may have rather meant to state that the participating victims' expectations go further than 'having the criminal responsibility of the Accused ascertained'. The victims' case, however, appears to favour the establishment of the Accused's criminal responsibility as the Legal Representatives of Victims submitted that '*in addition to the four Accused and Mr Badreddine ... a larger scale of network and organisation was responsible for the 14 February attack*' (Legal Representatives of Victims final trial brief, paras 89-90 (emphasis added)). The Trial Chamber has already noted that 'it is also inevitable that participating victims will most probably support a Prosecution case against those they may believe have harmed them or their relatives. The interest of some may be in ensuring that Accused persons are convicted and sentenced'. Decision on the Legal Representatives' application to call evidence, para. 71.

¹⁷⁴³ Exhibit 1V42 (Professor Letschert's report), pp 37-38; Rianne Letschert, T. 8 September 2017, p. 107. About the 'difficult concept of truth', Professor Letschert said that a tribunal will only 'provide part of the puzzle'.

¹⁷⁴⁴ Rianne Letschert, T. 8 September 2017, pp 107-108.

¹⁷⁴⁵ Under Article 21 (2) of the Statute and Rule 149 (D).

with the Statute and the international standards on human rights.¹⁷⁴⁶ The Trial Chamber, unlike fact-finding missions or commissions of inquiry, is bound by the Statute and international human rights law, to ensure that the Accused's rights to a fair trial are respected. It is not therefore equipped to establish an 'objective truth'—behind what is pleaded in an indictment and is proved by the evidence before it—if in fact an 'objective truth' exists.

939. However, within the boundaries defined by the amended consolidated indictment and the evidence received, it follows from the victims' right to claim for compensation under Article 25—and their right to participation—that they have a personal interest in the Trial Chamber's conclusions on the individual criminal responsibility of the Accused. Within this context, victims have a personal interest in having the responsibilities for the attack ascertained—to the extent that they were pleaded and that the Prosecutor has established them.

940. However, as to the comparison with the Accused's right to a reasoned opinion—requiring a trial chamber to provide reasoning in support of its findings on the substantive considerations relevant for a decision¹⁷⁴⁷—the Trial Chamber notes that the Accused's right to a reasoned opinion is a function of his or her ability to exercise a right of appeal. The right to appeal a judgment, or sentence, is explicitly envisaged only for the *persons convicted* and the *Prosecutor*.¹⁷⁴⁸ Therefore, any parallel between the Accused's right to a reasoned opinion and any victims' entitlement to have, within the scope of the trial, the responsibilities for the attack ascertained may have limited validity or applicability.¹⁷⁴⁹

¹⁷⁴⁶ Article 28 (2) of the Statute; Rule 3 (A) (ii), 'Interpretation of the Rules'.

¹⁷⁴⁷ *Mladić* Appeal decision regarding fair trial and presumption of innocence, para. 25. According to international criminal case law, 'there may be an indication of disregard when evidence, which is clearly relevant to the findings, is not addressed in the Trial Chamber's reasoning'. *Uwinkindi* Appeal decision dismissing request for revocation of referral, para. 40.

¹⁷⁴⁸ Article 26 (1) of the Statute, 'Appellate proceedings'; Rule 177 (A) (ii), 'Notice of Appeal', which sets the time limit for any *Party* to appeal a judgment or sentence.

¹⁷⁴⁹ Rule 87 (D) provides that, 'At the appeal stage, subject to the authorisation of the Appeals Chamber, after hearing the Parties, a victim participating in the proceedings may participate in a manner deemed appropriate by the Appeals Chamber'.

H. Repairing the harm—sought recommendations for appropriate forms of reparations

1. Introduction

941. The ‘Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law’, adopted by the United Nations General Assembly Resolution 60/147, provide for a right to ‘adequate, effective and prompt reparation for harm suffered’ by victims of serious human rights violations. Reparation should be proportional to the gravity of the violations and the harm suffered.¹⁷⁵⁰ These principles also establish that, in accordance with its domestic laws and international legal obligations, a State must provide reparation to victims and should endeavour to establish national programs for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.

942. Further, according to Article 8 of the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power:

offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.¹⁷⁵¹

943. Under Article 12 of this declaration, ‘when compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to: (a) victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; and (b) the family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimizations’. Finally, under Article 13:

the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for

¹⁷⁵⁰ UN Doc. A/RES/60/147/Annex, principle IX, paras 15-16.

¹⁷⁵¹ UN Doc. A/RES/40/34/Annex (1985), paras 8, 11-13.

this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.¹⁷⁵²

944. In domestic laws, depending on whether a State provides for a national statutory compensation scheme, two channels may exist for a victim to claim compensation for the injuries or damages they have suffered: from the offender during criminal proceedings—or other legal proceedings—or from the state, namely from a compensation authority or any relevant body. For example, a European Union Council Directive requires each European Union member state to establish a national scheme on compensation to victims of violent intentional crimes committed in their respective territories.¹⁷⁵³ They must establish or designate one or several authorities or any other bodies to be responsible for deciding upon applications for compensation.

945. Under Lebanese law, there is no general national compensation scheme for victims of crimes. A victim of an offence can claim compensation for the damages suffered by initiating a civil action,¹⁷⁵⁴ either before the same criminal court where the alleged perpetrators and accomplices are prosecuted or, separately, before the competent civil authority.¹⁷⁵⁵ Article 138 of the Lebanese Criminal Code provides that ‘the perpetrator of any offence causing harm, be it material or moral, to another person shall be held liable for compensation’. Under Article 129 of the same code, the civil sanctions that a criminal court judge can impose are: restitution, damages, confiscation, publication of the judgment and court fees. According to Article 134 of the Lebanese

¹⁷⁵² UN Doc. A/RES/40/34, Annex (1985), paras 8, 11-13.

¹⁷⁵³ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, Article 7. In Italy, for example, according to the national law implementing the directive, compensation can be claimed for medical and assistance costs—except in instances of sexual assault or homicide, in which case the victims are paid a fixed amount of compensation, determined by a Ministerial decree, even if there are no medical and assistance costs to be paid. A claim must be submitted within 60 days following an order finding that the offence was committed by a person or persons unknown, or following the last step in enforcement proceedings undertaken without success, or following the date that a criminal conviction becomes final. Italian Law no. 122 of 7 July 2016, Article 11. In England and Wales, according to ‘The Criminal Injuries Compensation Scheme 2012’, the types of payments that may be made include those for injuries, loss of earning, bereavement and dependency. The amount of an injury payment is determined in accordance with a set tariff (Article 33, annex E). An award will be withheld unless the incident has been reported to the police as soon as reasonably practicable. A person may be eligible for an award whether or not the incident giving rise to the criminal injury has resulted in the conviction of an assailant. The application must be submitted within two years after the date of the incident. A claims officer may defer determination of an application until satisfied that the applicant has taken all reasonable steps to obtain any social security benefits, insurance payments, damages or compensation to which the applicant may be entitled in respect of the same injury (Article 98 (b)).

¹⁷⁵⁴ Lebanese Code of Criminal Procedure, Art. 5.

¹⁷⁵⁵ With regard to crimes falling within the jurisdiction of military courts, actions on personal civil rights can be brought only before a civil court, which will render its decision after a final criminal judgment has been issued. Lebanese Military Code, Art. 25.

Code of Obligations and Contracts, reparations due to a victim of an offence must correspond to the entire damage the victim has sustained. Moral damage as well as material damage is taken into account.

946. In international criminal law, the ICTY and ICTR Statutes provided that a trial chamber, in a judgment convicting the accused, could ‘order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners’.¹⁷⁵⁶ Restitution was hence the only form of reparations that the ICTY and ICTR could order. The IRMCT Statute contains the same provision.¹⁷⁵⁷ However, no ICTY or ICTR Trial Chamber ever made such an order. As to compensation, the ICTY and ICTR Rules, similar to Article 25 of the Statute, provided that the Registrar transmitted to the competent authorities of the States concerned the judgment finding the accused guilty of a crime that had caused injury to a victim and that a victim could then bring an action in a national court or other competent body to obtain compensation.¹⁷⁵⁸ However, there was no provision regarding the identification in the judgment of the victims—as contained in Article 25 (1) of the Special Tribunal’s Statute.

947. As noted already,¹⁷⁵⁹ the ICC can itself grant reparations to victims—and it has its own statutory Trust Fund for Victims.¹⁷⁶⁰ The Kosovo Specialist Chambers can also order reparations. Alternatively, ‘where appropriate, the Specialist Chambers may refer the Victims to civil litigation in the other courts of Kosovo’.¹⁷⁶¹ And under Article 25 of the Statute, victims may bring an action for compensation in a national court or other competent body. As at the ICC and the Kosovo Specialist Chambers, the right to compensation depends upon the conviction of an accused person.

2. Submissions

948. According to the Legal Representatives of Victims, the participating victims’ main preoccupation, based on Professor Letschert’s evidence, is the ‘reclamation of their rights’.

¹⁷⁵⁶ ICTY Statute, Art. 24 (3); ICTR Statute, Art. 23 (3), under the title ‘Penalties’. *See also* ICTY Rules 98 and 105; ICTR Rules 88 and 105.

¹⁷⁵⁷ IRMCT Statute, Art. 22 (4), reading: ‘In addition to imprisonment, the Single Judge or Trial Chamber may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners’.

¹⁷⁵⁸ Rule 106 in the ICTY and ICTR Rules.

¹⁷⁵⁹ At para. 792.

¹⁷⁶⁰ Rome Statute, Art. 75.

¹⁷⁶¹ Law No. 05/L-053 on the Kosovo Specialist Chambers and Specialist Prosecutor’s Office, 3 August 2015, Art. 22 (8)-(9).

Repairing the harm caused to victims may require the application of both individual measures—including restitution, compensation and rehabilitation—and general or collective measures—which could include the identification and conviction of the perpetrators, the erection of statues or memorials and apologies by the wrongdoers.¹⁷⁶²

949. Relying on ICC case law, the Legal Representatives of Victims note that the Special Tribunal’s legal framework does not provide the participating victims with the possibility to seek reparations before the Tribunal. This however is no bar to the Trial Chamber providing guidance on a financial compensation scheme and recommending appropriate forms of reparation for the participating victims and victims of the attack that might serve as a baseline to State authorities.¹⁷⁶³

950. The Legal Representatives of Victims cite, in support of this argument, that the Presidents of the ICTY and ICTR—before which victims could not claim reparations—sent to the UN Security Council letters on their findings on compensation to victims for their injuries. In completion strategy reports, they also noted that the absence of reparations for victims had hindered the goal of providing justice to them.¹⁷⁶⁴

951. According to the participating victims’ ‘testimony and expressions’, there was no universally applicable compensation scheme available to the victims of the attack.¹⁷⁶⁵ There was an inconsistent and even iniquitous distribution of compensation to victims in this case by various employers, insurance schemes and government bodies, in particular the Lebanese High Relief Commission (HRC).¹⁷⁶⁶

¹⁷⁶² Legal Representatives of Victims final trial brief, paras 652-653.

¹⁷⁶³ Legal Representatives of Victims final trial brief, paras 654-655 (referring to *Lubanga* Appeals Chamber decision on the principles and procedures to be applied to reparations, paras 53, 200, 202 and *Lubanga* decision on the principles and procedures to be applied to reparations, para. 222).

¹⁷⁶⁴ Legal Representatives of Victims final trial brief, para. 667, referring, for example, to UN Doc. S/2017/1001, Letter dated 29 November 2017 from the ICTY President, addressed to the UN Security Council, para. 204.

¹⁷⁶⁵ Legal Representatives of Victims final trial brief, para. 673.

¹⁷⁶⁶ Legal Representatives of Victims final trial brief, paras 673-678, 749. The HRC is a Lebanese public agency that reports to the prime minister. It is up to the prime minister or the cabinet to ask this commission to compensate, as a matter of urgency, people affected in cases of catastrophes, floods, act of war or famines. T. 29 August 2017, pp 78-79, 83-84 (where these explanations were provided by counsel for the Legal Representatives of Victims, Mr Mohammad F. Mattar). Certain victims of the attack applied for compensation from the HRC and Victim 30 received a cheque from the HRC. Exhibit 1V45 (Rule 154 documents Legal Representatives of Victims), pp 528-529 (ERN V030-E051); Maria Al-Kasti, T. 29 August 2017, pp 74-75; Mr Robert Aoun, T. 30 August 2017, p. 26; V016, T. 30 August 2017, p. 72 (where Victim 16 stated that he was not aware that a mechanism to ask for compensation existed); Maria Al-Kasti, T. 29 August 2017, pp 75-83. According to Mr Mattar, the HRC’s awarding compensation

952. The Legal Representatives of Victims invite the Trial Chamber to remind the Lebanese Government of the terms of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power on the matter of ‘compensation’ and the importance of the availability of an adequate compensation scheme for the victims¹⁷⁶⁷ or, alternatively, to recommend the establishment of a voluntary trust fund to compensate the victims in the cases ‘within the Tribunal’s jurisdiction’—‘possibly even the HRC itself’.¹⁷⁶⁸ Victims cannot ask the HRC for compensation—although its main mission is to receive and distribute donations made to the Lebanese Government—due to the different nature of compensation at issue.¹⁷⁶⁹

953. In determining awards, the trust or body could have regard to criteria and scales used by, for example, national criminal injuries compensation bodies elsewhere in the world.¹⁷⁷⁰ According to Professor Letschert, ‘since it will be quite difficult to receive compensation in a Lebanese court after this trial, also there one has to be realistic, it could be advisable to set up a victims trust fund through which victims could have access to financial relief’. As an example, she pointed to a fund set up after the terrorist attacks in the US on 11 September 2001, which was administered by a ‘Special Master’.¹⁷⁷¹ According to the Legal Representatives of Victims, the amount of reparations awarded by Lebanese courts for moral damages is usually insignificant and inappropriate compared to the actual loss and pain suffered by the victims.¹⁷⁷²

954. The Legal Representatives of Victims submit that the identification of victims—as envisaged under Article 25 of the Statute—is a form of symbolic reparation and serves as an

depends on the discretion of the government, although decisions on individual claims will be taken by the higher council.

¹⁷⁶⁷ UN Doc. A/RES/40/34/Annex (1985). The Legal Representatives of Victims point to the provisions in articles 12 and 13 of the UN declaration, which are cited above, in para. 943. The Legal Representatives of Victims also underline that, as good practice, the UN Office on Drugs and Crime (UNODC) recommends that ‘States should consider establishing national victims’ funds, resourced by proceeds derived from assets seized in accordance with legislative provisions from persons convicted of serious crimes related to terrorism or legal entities that have been restrained and forfeited, having been found civilly liable for financing terrorist activities’ (UNODC, Good Practices in supporting victims of terrorism within the criminal justice framework, October 2015, p. 49).

¹⁷⁶⁸ Legal Representatives of Victims final trial brief, paras 673-675, 749.

¹⁷⁶⁹ Legal Representatives of Victims final trial brief, paras 676-678.

¹⁷⁷⁰ Legal Representatives of Victims final trial brief, para. 750.

¹⁷⁷¹ Professor Letschert explained that victims of those terrorist acts were put in categories and their harms were calculated in these categories. Rianne Letschert, T. 8 September 2017, pp 94, 109-110.

¹⁷⁷² Legal Representatives of Victims final trial brief, para. 690. The Legal Representatives refer to the cases of reparations for the equivalent of USD 25,000 and USD 66,666 ordered, respectively, by the Lebanese Criminal Appeal Court and the Criminal Cassation Court, for a mother who lost her child in a car accident and the six heirs of a murdered man.

acknowledgement of the harm suffered by the participating victims and victims generally. A judgment that identifies the victims and acknowledges the impact of the crimes on them is an authoritative affirmation of the harm they suffered.¹⁷⁷³ According to a number of victims, as meaningful symbolic reparation, an apology is due from: those convicted and those who stood behind them in the conspiracy, those who mismanaged the search and rescue operations, the Lebanese Security Services, judicial investigators and the HRC.¹⁷⁷⁴

955. According to the Sabra Defence, the Legal Representatives of Victims' submissions on 'the possibility of identification and recommendation of appropriate forms of reparations' are premature, exceed the scope of Article 25 and, in any event, should only be considered upon conviction.¹⁷⁷⁵ Counsel for Mr Sabra 'will therefore only address these submissions in the event that Rule 171 proceedings are initiated against' Mr Sabra.¹⁷⁷⁶ The Merhi Defence rejects the Legal Representatives of Victims' submissions that the Trial Chamber should make recommendations, because this does not fall within its mandate.¹⁷⁷⁷

3. Findings

956. According to the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, redress for victims of crimes includes restitution and *compensation*.¹⁷⁷⁸ Under the Rome Statute, the ICC may order 'reparations'—to or in respect of victims—which include restitution, *compensation* and rehabilitation, although this list is not exclusive.¹⁷⁷⁹

957. The Special Tribunal, as noted, cannot grant compensation or order reparations. Article 25 of the Statute, '*Compensation to victims*', provides that a victim may bring an action to obtain *compensation* in a national court or other competent body.¹⁷⁸⁰ The Lebanese Code of Criminal Procedure allows a party aggrieved by an offence to initiate a 'civil action for *compensation*' for

¹⁷⁷³ Legal Representatives of Victims final trial brief, para. 656.

¹⁷⁷⁴ Legal Representatives of Victims final trial brief, paras 702-703, 751.

¹⁷⁷⁵ Sabra Defence final trial brief, para. 163, referring to Legal Representatives of Victims final trial brief, Chapter 6 'Expectations expressed and reparations sought by the participating victims'.

¹⁷⁷⁶ Namely sentencing after conviction. Sabra Defence final trial brief, para. 163.

¹⁷⁷⁷ Merhi Defence final trial brief, para. 595, referring to Legal Representatives of Victims final trial brief, paras 750-755.

¹⁷⁷⁸ UN Doc. A/RES/40/34/Annex (1985), paras 8-13.

¹⁷⁷⁹ Rome Statute, Art. 75. Other types of reparations include the Court's conviction and sentence themselves, the judgment's wide publication and establishing or assisting campaigns designed to improve the position of victims.

¹⁷⁸⁰ *Indemnisation des victimes* (in the French version).

damages suffered as a result of it.¹⁷⁸¹ According to ICC case law, restitution is the modality of reparation to restore the victims to their circumstances before the crime was committed, when this is achievable, and rehabilitation may include the provision of medical services, psychological or social assistance and legal services.

958. While some of the distinctions between reparations and compensation may be more terminological than substantive, *compensation* is generally made in the form of a monetary payment and must be considered when appropriate and if the economic harm is sufficiently quantifiable.¹⁷⁸² Also the ‘Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law’ refer to compensation as a form of reparation for any economically assessable damage.¹⁷⁸³

959. The harm suffered by the victims of the attack on 14 February 2005—lost lives, personal injuries or the loss of a family member—cannot be restituted, as restoration of the original situation of the victim, before the violation, is impossible. Nevertheless, the Trial Chamber does not interpret Article 25 of the Statute as limiting the type of reparations a victim of the attack may seek before a national court or competent body, by narrowing it to ‘*compensation*’ in its strict sense, as defined in international criminal case law. Victims will be able to seek, pursuant to the relevant legislation, the type of reparations they consider more appropriate, including those with a symbolic value.¹⁷⁸⁴

960. The Legal Representatives of Victims submit that the identification of victims and the acknowledgement of the harm in the judgment is a form of symbolic reparation. The Trial Chamber agrees with these submissions. As noted above at paragraph 818, the Trial Chamber in this judgment identifies the victims of the attack and records their harm.

¹⁷⁸¹ Lebanese Code of Criminal Procedure, Art. 5.

¹⁷⁸² *Lubanga* decision on the principles and procedures to be applied to reparations, paras 222-241.

¹⁷⁸³ UN Doc. A/RES/60/147/Annex.

¹⁷⁸⁴ Under Article 136 of the Lebanese Code of Obligations and Contracts (English translation by Gabriel M. Bustros, January 2009), ‘in principle, reparation is in the form of cash; it is granted by way of damages but it lies with the judge to give it a form more appropriate to the victims’ interest; it then comes in kind and may notably consist in insertions in press media’. *See also* *Lubanga* decision on the principles and procedures to be applied to reparations, para. 222.

961. The Legal Representatives of Victims rely on ICC case law to argue that the Trial Chamber can identify and recommend the most appropriate modalities of reparations. However, the relevant ICC statutory provisions require the Court to establish principles relating to reparations—which it can later issue.¹⁷⁸⁵ As the Special Tribunal cannot order reparations, accordingly, it will not provide guidance to State authorities on financial schemes for reparations, or on the criteria and scales that a trust or body should use.

962. In admitting the participating victims' witness statements into evidence, the Trial Chamber noted that several contained information as to the 'reparations' that they would consider appropriate. It acknowledged that these witnesses did not request reparations before the Trial Chamber and it received those portions of the statements into evidence only as expressing the participating victims' 'views and concerns'. It considered, however, that those portions had no probative value and the Trial Chamber would not have relied upon them for its findings in the judgment.¹⁷⁸⁶ Nevertheless, the identification by the Trial Chamber of the harms suffered by the victims may assist the victims in obtaining compensation. But the Trial Chamber cannot assess them.

963. The Trial Chamber has heard about a dramatic disparity in treatment among the participating victims as to 'compensation'—meaning the pecuniary remedy, for the loss or damage suffered, not depending on prosecutorial charges or judicial accountability, that participating victims received, or not, or applied for after the attack.¹⁷⁸⁷ The Trial Chamber underlines that compensation should be appropriate and proportional to the gravity of the harm suffered. The Trial Chamber notes the sense of injustice perceived by some victims because some were compensated while most, it appears, were not. Compensation should not depend on the circumstances of the victims, their connections, employment relationship or insurance scheme.¹⁷⁸⁸ Finally, as a general

¹⁷⁸⁵ Rome Statute, Art. 75.

¹⁷⁸⁶ Decision admitting into evidence statements of participating victims, para. 19.

¹⁷⁸⁷ The evidence and information the Trial Chamber heard on this matter is set out in chapter VI 'Explosion on 14 February 2005', (G) 'Victim harm'.

¹⁷⁸⁸ According to Article VIII of the 'Revised Guidelines of the Committee of Ministers of the Council of Europe on the protection of victims of terrorist acts', adopted on 19 May 2017, 'victims should receive fair, appropriate and timely compensation for the damages which they suffered'.

proposition, the Trial Chamber agrees that victims of crimes should be entitled to receive a form of statutory compensation, such as those mandated by the European Union, referred to above.¹⁷⁸⁹

I. Length of the trial

964. Professor Letschert stated that, during the last round of interviews with the participating victims, some showed signs of frustration because of the length of the proceedings and expressed a lack of understanding ‘as to why it takes so long to present evidence which they often found boring and technical’.¹⁷⁹⁰ The mere acknowledgement of their victimisation became less empowering and less valuable. The younger victims showed more signs of frustration than the older generation, but also some relatively older victims expressed concerns ‘if they would live through the verdict’.¹⁷⁹¹ According to Professor Letschert, their continuous support for the Special Tribunal, despite that, can be explained by the importance they attribute to the fact that ‘a tribunal is investigating this case in a country where there is a culture of impunity with regard to this kind of crimes’, and by the symbolic acknowledgement that they receive from it.¹⁷⁹²

965. International criminal law case law has addressed the issue of the length of proceedings only in relation to the Accused’s right to be tried without undue delay. This right is established in Article 16 (4) (c) of the Statute. As to the interrelation between the length of proceedings and victims’ participation, a trial chamber needs to be satisfied that the presentation of evidence by or for victims does not infringe on the right of the Accused to be tried without undue delay.¹⁷⁹³ Further, the Trial Chamber has a duty, under the Statute, to confine the trial to an expeditious hearing and to take strict measures to prevent any action that may cause unreasonable delay.¹⁷⁹⁴

966. The ICTR Appeals Chamber has stressed that it is not unreasonable to expect that the judicial process before that tribunal will not always be as expeditious as before domestic courts

¹⁷⁸⁹ See para. 944.

¹⁷⁹⁰ Exhibit 1V42 (Professor Letschert’s report), pp 26, 30-31; Rianne Letschert, T. 8 September 2017, p. 103.

¹⁷⁹¹ Rianne Letschert, T. 8 September 2017, pp 104-106; Legal Representatives of Victims final trial brief, para. 400.

¹⁷⁹² Rianne Letschert, T. 8 September 2017, pp 104-106.

¹⁷⁹³ Statute, Art. 17, ‘Rights of Victims’. Decision on the Legal Representatives’ application to call evidence, paras 18, 75; *Lubanga* decision allowing victims to express their views and concerns and to present evidence at trial, para. 17; *Katanga and Ngudjolo* directions for the conduct of the proceedings, paras 21-22; *Katanga and Ngudjolo* decision on modalities of victim participation at trial, para. 87; *Bemba* decision on the Legal Representatives of Victims’ application to present evidence and the views and concerns of victims, paras 21-22.

¹⁷⁹⁴ Statute, Art. 21 (1), ‘Powers of Chambers’.

because of the inherent complexity of the cases.¹⁷⁹⁵ Factors relevant to determining the level of complexity of a particular case include the number of counts, the number of accused, the number of witnesses, the quantity of evidence and the complexity of the facts and of the law.¹⁷⁹⁶

967. In closing remarks before declaring that the hearing was closed under Rule 148 (A), the Trial Chamber—through its Presiding Judge—highlighted that the trial record comprises some 3,131 exhibits and the evidence of 307 witnesses, and that the transcript is just under 37,000 pages in English, around 37,500 in French and over 19,100 pages in Arabic.¹⁷⁹⁷ It also pointed to the many overlapping factors which slow the processes of international trials, such as the need for witnesses to travel to the seat of the court (or testify via video-link), the challenges of witnesses testifying with simultaneous translation into at least two other languages, the international aspect of the investigation and trial and complex matters involving the protection of witnesses.¹⁷⁹⁸

968. Other unique specific factors had the effects of adding several months to this trial or delaying its commencement. The Special Tribunal was established in March 2009, four years after the attack in 2005; between March 2005 and December 2008, 12 UN fact-finding reports were produced, including 11 by the UNIIC.

969. The indictments against the five Accused were submitted in six sets of filings over a period of almost two and half years. The Prosecutor submitted his first indictment on 17 January 2011—against Mr Ayyash. This was just under two years after the Special Tribunal’s commencement. On 11 March 2011, the Prosecutor submitted a second indictment, this time adding as accused persons Mr Oneissi and Mr Sabra. He submitted his third indictment—also against Mr Badreddine—on 6 May 2011. The Pre-Trial Judge confirmed a subsequent amended indictment against all four Accused on 28 June 2011. This case was not transferred to the Trial Chamber until 25 October 2013.

¹⁷⁹⁵ *Nyiramasuhuko and others* Appeal Judgment, para. 359.

¹⁷⁹⁶ *Nyiramasuhuko and others* Appeal Judgment, para. 360. Further, in the *Nyiramasuhuko and others* case, two years and two and a half months between closing arguments and the written delivery of the Trial Judgment was considered a not excessive period for the judgment drafting phase due to the size and complexity of the case considered. *Nyiramasuhuko and others* Appeal Judgment, para. 377.

¹⁷⁹⁷ Presiding Judge’s closing remarks, T. 21 September 2018, pp 99-100. As updated by the Special Tribunal’s Court Management Services Section, the exhibits are 3,135 and the witnesses were 297. From the start of trial to 21 September 2018, the pages of transcript are 36,993 in English, 37,683 in French and 19,257 in Arabic.

¹⁷⁹⁸ Presiding Judge’s closing remarks, T. 21 September 2018, p. 101.

970. The Prosecutor filed his fifth indictment on 8 February 2012—more than a year after submitting his first indictment—seeking to add Mr Merhi’ name to the existing indictment against the original four Accused. But, a month later, the Pre-Trial Judge ordered the Prosecutor to file a separate indictment, rather than an amendment to the existing indictment. The new Prosecutor submitted a separate indictment against Mr Merhi in October 2012, but withdrew it in December 2012, and then resubmitted it on 5 June 2013. It was eventually confirmed on 31 July 2013.

971. On 18 December 2013—virtually on the eve of the scheduled commencement of the trial of Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra—the Prosecutor sought the joinder of the two indictments into one. This was one month short of three years from the filing of the initial indictment for confirmation against Mr Ayyash, and 22 months after the Prosecutor first sought to add Mr Merhi to the existing confirmed indictment.

972. The trial against the first four Accused started on 16 January 2014, and on 11 February 2014 the Trial Chamber joined the two cases and adjourned the trial. The adjournment was to allow the newly appointed Merhi Defence counsel to absorb the evidence and prepare for trial. The trial recommenced only on 18 June 2014.

973. There were also several prosecutions for contempt, for the broadcasting or the publishing of information on purported confidential witnesses.

974. The proceedings against Mr Badreddine were terminated pursuant to an order of the Appeals Chamber—that, after suspending the trial, set aside a Trial Chamber’s decision and found that sufficient evidence had been presented to convince it that Mr Badreddine’s death had been proved to the requisite standard.

975. Other factors included a strategic litigation decision by the Merhi Defence that led the Prosecution to reinvestigate an aspect of the case against Mr Merhi and produce new evidence; an unsuccessful application to disqualify the Trial Chamber Judges, which was filed by the Oneissi Defence; and a human element in judicial illness.¹⁷⁹⁹

¹⁷⁹⁹ Presiding Judge’s closing remarks, T. 21 September 2018, pp 101-108.

976. Therefore, despite the Trial Chamber's best endeavours to ensure that the judicial process could finish earlier, it took in total four and a half years.

977. The Trial Chamber considers that victims have a personal interest that the trial be expeditious, and understands the frustration expressed by some participating victims about the duration of the proceedings. However, the Trial Chamber has always been very aware of its duty to confine the trial to an expeditious hearing and take strict measures to prevent any action that may cause unreasonable delay.

978. As to the time the Trial Chamber has dedicated to drafting the judgment—of 2,641 pages with more than 13,000 footnotes—the Trial Chamber had to carefully analyse the evidence presented throughout 415 sitting days, including very technical evidence, and the Parties' competing arguments on this in order to do justice to the Accused, the Prosecution and the participating victims in such a complex case.

J. Participating victims' views and concerns on protective measures and psychological support

979. Professor Letschert stated that some victims are fearful of retaliation after the verdict and are concerned that the Special Tribunal has not addressed the question of the continuation of protective measures after trial or 'if the Tribunal ends'.¹⁸⁰⁰ Professor Letschert suggested to 'investigate what could be offered to those confidential victims who have these concerns and how their needs could be accommodated'.¹⁸⁰¹

980. Professor Letschert also underlined that psychological assistance during trial proceedings is of paramount importance 'in particular in countries such as Lebanon, where a victim support network is absent'. As the Legal Representatives of Victims' team lacked psychological victim support, and although the work of the psychologist in the Special Tribunal's Victims and Witnesses Unit was appreciated, participating victims expressed the need for more psychological support in the Netherlands and in Lebanon.¹⁸⁰² On the basis of Professor Letschert's view that professional psychological support to participating victims should be available not only during trial proceedings

¹⁸⁰⁰ Exhibit 1V42 (Professor Letschert's report), p. 38; Rianne Letschert, T. 8 September 2017, p. 101.

¹⁸⁰¹ Exhibit 1V42 (Professor Letschert's report), p. 38.

¹⁸⁰² Exhibit 1V42 (Professor Letschert's report), p. 38; Rianne Letschert, T. 8 September 2017, pp 108-109.

but also in Beirut, the Legal Representatives of Victims invite the Trial Chamber to make recommendations regarding the management of future proceedings. The Legal Representatives of Victims add that these are matters that the Victims' Participation Unit at the Special Tribunal can develop and report on in the future.¹⁸⁰³ It is a lesson to be learned also for other tribunals.¹⁸⁰⁴

981. As to the participating victims' protective measures, as noted above,¹⁸⁰⁵ 26 participating victims, including one former participating victim, were granted protective measures, either by the Pre-Trial Judge or the Trial Chamber, including as witnesses in the trial. Their names or any other identifying information were redacted from any record disclosed to the public. The protective measures were granted under Rule 133. No person may disclose information protected by the Tribunal's orders. Any knowing violation of them may result in prosecution under Rule 60 *bis* 'Contempt and Obstruction of Justice', punishable by a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 Euros, or both.¹⁸⁰⁶

982. Rule 133 (G) provides that, once protective measure have been ordered in respect of a victim or witness in any proceedings before the Tribunal, they 'continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal', unless and until they are varied in accordance with the procedure set out in Rule 133, when a Party to subsequent proceedings applies to vary the ordered protective measures.

983. This Rule explicitly provides for the protective measures' continued effect in relation to subsequent proceedings before the Special Tribunal. The Trial Chamber wants to stress that, once victims or witnesses are covered by a protection order, the protection mechanism is triggered. Until a protection order is rescinded or varied, the order remains in force.¹⁸⁰⁷ This is so even if no subsequent proceedings are pending, or after the Special Tribunal's mandate is completed. Every person in the Special Tribunal to whom the protected information was disclosed has the continuous obligation to keep the protected identity confidential. Further, anyone who becomes aware of the protected information and of the victim's or witness's involvement in the proceedings can never

¹⁸⁰³ Legal Representatives of Victims final trial brief, paras 692-694, 754.

¹⁸⁰⁴ Rianne Letschert, T. 8 September 2017, p. 108.

¹⁸⁰⁵ See para. 797.

¹⁸⁰⁶ Rule 60 *bis* (J).

¹⁸⁰⁷ *Nshogoza* Trial Judgment, para. 162-163, referring to *Nahimana and others* decision on Defence violations of Decisions and Rules, para. 14.

disclose it, unless the relevant protective measure is rescinded. While this is not expressly provided in Rule 133 (G), protective measures continue to have effect also in any other proceedings, including before the Lebanese jurisdiction.¹⁸⁰⁸

984. The purpose of protective measure is to safeguard the victims' or witnesses' 'privacy and protection', as stated in Rule 133. The protective measures' purpose would be frustrated should they dissolve at the end of the trial or of the Special Tribunal's mandate. As is underlined by international criminal case law, 'protected information has to remain so until confidentiality is lifted'. 'To hold otherwise would mean to undermine all protective measures imposed by a Chamber'.¹⁸⁰⁹ An order remains in force until a chamber decides otherwise.¹⁸¹⁰

985. A protection order is an assurance that participating victims' or witnesses' identities will be protected.¹⁸¹¹ The Trial Chamber and the Special Tribunal take seriously their obligation to protect victims and witnesses. Accordingly, the 'protection and support of victims and witnesses' is one of the (residual) functions that the Special Tribunal has identified as a core obligation, pursuant to its legal foundations, that cannot terminate upon the conclusion of all trials and appeals. As occurred with regard to other *ad hoc* international criminal tribunals, once the Special Tribunal's mandate is completed, this function should be continued by a successor entity.

986. As to the Legal Representatives of Victims' request that the Trial Chamber make recommendations—based on Professor Letschert's and the participating victims' views—on the need for professional psychological support in Beirut in future proceedings, the Trial Chamber endorses any improvement in supporting the participating victims' needs. It refers the matter of Professor Letschert's recommendation—based on the participating victims' views—to the Registrar and the Victims' Participation Unit, for their consideration. This is an ancillary matter,

¹⁸⁰⁸ The ICTY Rule 75 on 'Measures for Protection of Victims and Witnesses' was amended in July 2007 to explicitly add that protective measures, once ordered, continued to have effect—not only in any other proceedings before the ICTY—but also before '*another jurisdiction*' (unless and until they were rescinded, varied, or augmented) (Rule 75 (F) (i)). Rule 75 (H) was also amended to set out the procedure for any request for variation of protective measures from judges and parties in another jurisdiction. At the ICTY, even prior to that amendment, and at the ICTR—where the relevant Rule 75 on 'Measures for Protection of Victims and Witnesses' was never amended accordingly—a variation of the relevant protective measures was sought before a bench or parties in another jurisdiction were able to access any confidential material. *Slobodan Milošević* decision varying protective measures, para. 9; *Nyiramasuhuko and others* Appeals Chamber decision of 17 May 2012, para. 13. *See also* Rule 86 (F) (i) and (H) of the IRMCT Rules.

¹⁸⁰⁹ *Marijačić and Rebić* Appeal Judgment, para. 45.

¹⁸¹⁰ *Jović* Appeal Judgment, para. 30; *Marijačić and Rebić* Appeal Judgment, para. 45.

¹⁸¹¹ *Nahimana and others* decision on Defence violations of Decisions and Rules, para. 14.

as it is not a formal finding for the purpose of determining whether the Accused are guilty, or for any other purpose accepted by the Trial Chamber to be within its mandate as set out above.

VI. EXPLOSION ON 14 FEBRUARY 2005

A. Introduction

987. On the morning of Monday 14 February 2005, Mr Hariri left Quraitem Palace to attend a morning session of the Lebanese Parliament.¹⁸¹² Shortly before 12:00, he left Parliament and went to café *Place de l'Étoile*, where he stayed for around 45 minutes.¹⁸¹³ At around 12:45, he left the café and asked his security detail to prepare his convoy to go back to the palace to attend a lunch appointment.¹⁸¹⁴ At around 12:49, he entered his armoured vehicle, accompanied by MP Mr Bassel Fuleihan.¹⁸¹⁵ At approximately 12:55, as the convoy passed a Mitsubishi Canter on *Rue Minet el Hosn* outside the St Georges Hotel, the suicide bomber detonated the explosives.¹⁸¹⁶

988. The Trial Chamber has heard uncontested evidence about what happened on 14 February 2005 from participating victims—both relatives of those who died in or as a result of the explosion, and people who were physically injured and or suffered material damage in the explosion—and from other witnesses. The victims shared their personal stories of the attack on 14 February 2005—unique to each of them—together with their grief, concerns and hopes, thus broadening the Prosecution's narrative. The Trial Chamber did not consider the evidence of participating victims in determining the Accused's criminal responsibility; the Parties had previously agreed that the explosion killed, in addition to Mr Hariri, the 21 people listed in schedule A to the amended consolidated indictment and injured the 226 listed in its schedule B.¹⁸¹⁷

B. Before the explosion on Monday 14 February 2005

989. In the early morning of Monday 14 February 2005, Mr Hariri was at Quraitem Palace attending meetings,¹⁸¹⁸ before departing for a session of the joint parliamentary committees to

¹⁸¹² Amended consolidated indictment, para. 8; Prosecution final trial brief, para. 979.

¹⁸¹³ Amended consolidated indictment, para. 10; Prosecution final trial brief, paras 986, 994.

¹⁸¹⁴ Amended consolidated indictment, para. 11.

¹⁸¹⁵ Amended consolidated indictment, para. 12; Prosecution final trial brief, para. 998.

¹⁸¹⁶ Amended consolidated indictment, paras 8-14; Prosecution final trial brief, paras 1003-1004.

¹⁸¹⁷ Agreed facts, nos (i)-(ii).

¹⁸¹⁸ Exhibit P301 (Visitor logbook for Quraitem Palace), ERNs D0380904-D0380905.

discuss the proposed electoral law,¹⁸¹⁹ scheduled for 11:00.¹⁸²⁰ Civilian bodyguards Mr Amer Chehadeh and Mr Mohammed Dia were told about the trip 30 and 45 minutes in advance, respectively.¹⁸²¹ Other convoy members were informed about the trip at the last moment.¹⁸²² It departed half an hour or 45 minutes before the Parliamentary session,¹⁸²³ and took between ten and 15 minutes to arrive there.¹⁸²⁴

990. On arriving at Parliament, Mr Hariri greeted attendees, then walked over to MP Mr Bassem El-Sabeh and asked to sit with him.¹⁸²⁵ Mr Hariri reportedly told Mr El-Sabeh that:

these people are launching ... a broad-based campaign against us. They consider that we are in a bad state ... They think we are afraid. But I want to send them a message. You and I, both of us, as soon as the cameramen arrive, we are going to flash them a wide smile. Let them film us and let them see us like this. We are comfortable and we are at ease.¹⁸²⁶

991. During the session, Mr Hariri spoke about his views and reservations about the draft electoral law for about 15 minutes, then left.¹⁸²⁷

¹⁸¹⁹ See chapter IV 'Historical and political background to the attack', (K) 'Electoral Law'.

¹⁸²⁰ Exhibit P540 (Minutes of Parliamentary Committee Session); Bassem El-Sabeh, T. 17 March 2015, p. 45. The time of the parliamentary session had been made public one week before: exhibit P540, p. 4; Faisal Salman, T. 8 January 2015, p. 23; exhibit P336 (Statement of Tarek Soubra), para. 80.

¹⁸²¹ Amer Chehadeh, T. 16 October 2014, p. 16; Mohammed Dia, T. 17 October 2014, pp 2-3.

¹⁸²² Witness PRH357, T. 2 June 2015, p. 17; Witness PRH256, T. 22 October 2014, p. 7.

¹⁸²³ Mohammed Dia, T. 17 October 2014, p. 3; Amer Chehadeh, T. 16 October 2014, p. 16.

¹⁸²⁴ Amer Chehadeh, T. 16 October 2014, pp 18-19.

¹⁸²⁵ Bassem El-Sabeh, T. 17 March 2015, pp 45-46.

¹⁸²⁶ Bassem El-Sabeh, T. 17 March 2015, p. 46.

¹⁸²⁷ Atef Majdalani, T. 29 April 2015, pp 10, 29-30.



Exhibit P90 (Photographs of Parliament provided with Ahmad Nabil Ismail's witness statement), p. 103 (Photograph of Mr Hariri and Mr El-Sabeh taken in Parliament on 14 February 2005)

992. At around noon, Mr Hariri left Parliament and walked to the café *Place de l'Étoile*.¹⁸²⁸ He was accompanied by his close protection team and conferred with journalists including Mr Faisal Salman.¹⁸²⁹ The convoy then left Parliament around 12:45 or 12:50, hurrying to return for a lunch reception at Quraitem Palace with Mr Hariri driving himself and Mr Fuleihan in the front passenger seat.¹⁸³⁰

¹⁸²⁸ Exhibit P90, pp 371-373; exhibit P110 (Witness statement of Helena Habraken; investigator's notes on timing of photographs), pp 3-5; *see also* Witness PRH076, T. 14 October 2014, pp 30-31; Faisal Salman, T. 8 January 2015, p. 31.

¹⁸²⁹ Faisal Salman, T. 8 January 2015, pp 30-31, 36-37. *See also* Mohammed Dia, T. 17 October 2014, p. 4; Witness PRH076, T. 14 October 2014, p. 31; Witness PRH357, T. 2 June 2015, p. 40; Witness PRH149, T. 3 June 2015, pp 93-94.

¹⁸³⁰ Witness PRH357, T. 3 June 2015, p. 7; Witness PRH009, T. 11 October 2016, pp 42, 79; Witness PRH076, T. 14 October 2014, p. 39.



Exhibit P90, p. 397 (Photograph of Mr Hariri after leaving the café Place de l'Étoile)

993. The composition of Mr Hariri's convoy was decided on each occasion by his close protection officers Mr Al-Arab and Mr Nasser for the civilian side, and his chief of security, Mr Wissam Al-Hassan, for the ISF side.¹⁸³¹ It usually consisted of six or seven cars. An ISF black or navy blue Toyota Land Cruiser VX-R four wheel drive, with four ISF members,¹⁸³² and equipped with a siren and lights,¹⁸³³ would be in the lead.¹⁸³⁴ Its role was to clear the road before the convoy.¹⁸³⁵

994. This was followed by one of three black Mercedes S500 vehicles used by Mr Hariri's close protection detail; all were equipped with jamming devices.¹⁸³⁶ Each of these cars had, in addition to a driver, a close protection officer in the passenger seat and one behind the driver, to monitor the road on their respective side and report anything unusual.¹⁸³⁷ Radios were used for communication throughout the convoy and with the palace because the jammers blocked mobile telephone signals.¹⁸³⁸

995. Next came Mr Hariri's car: he mainly drove himself,¹⁸³⁹ in an armoured Mercedes S600,¹⁸⁴⁰ with darkened windows.¹⁸⁴¹ A second identical armoured car was used as a spare vehicle for long trips and as a decoy vehicle.¹⁸⁴² Following Mr Hariri would be the second and third black Mercedes

¹⁸³¹ Exhibit P335 (Zakaria Badawi's witness statement), para. 12; exhibit P336 (Statement of Tarek Soubra), paras 58, 68; Marwan Hamade, T. 18 November 2014, p. 49.

¹⁸³² Exhibit P339 (Witness PRH314's statement), para. 12.

¹⁸³³ Witness PRH357, T. 2 June 2015, p. 36; Witness PRH256, T. 22 October 2014, p. 42; Witness PRH149, T. 3 June 2015, p. 86.

¹⁸³⁴ Exhibit P334 (Youssef Al-Ajouz's witness statement), para. 18; exhibit P335 (Zakaria Badawi's witness statement), paras 12, 18; exhibit P339 (Witness PRH314's statement), para. 18.

¹⁸³⁵ Exhibit P1185 (Statement of Witness PRH009), para. 12. *See also* Witness PRH357, T. 2 June 2015, pp 11, 44.

¹⁸³⁶ Witness PRH357, T. 2 June 2015, p. 36; exhibit P334 (Youssef Al-Ajouz's witness statement), paras 18, 28; exhibit P339 (Witness PRH314's statement), para. 18; exhibit P336 (Statement of Tarek Soubra), para. 114; exhibit P335 (Zakaria Badawi's witness statement), paras 12, 18.

¹⁸³⁷ Amer Chehadeh, T. 16 October 2014, pp 13-14, 52-53; Mohammed Dia, T. 16 October 2014, p. 69, T. 17 October 2014, pp 8, 16.

¹⁸³⁸ Witness PRH357, T. 2 June 2015, pp 36-38; Witness PRH256, T. 22 October 2014, p. 6; Witness PRH076, T. 14 October 2014, p. 35; exhibit P334 (Youssef Al-Ajouz's witness statement), paras 29-30; exhibit P338 (Witness PRH234's statement), para. 18; exhibit P335 (Zakaria Badawi's witness statement), para. 70; exhibit P336 (Statement of Tarek Soubra), para. 114.

¹⁸³⁹ Exhibit P335 (Zakaria Badawi's witness statement), paras 12, 48; exhibit P339 (Witness PRH314's statement), para. 48; exhibit P336 (Statement of Tarek Soubra), para. 94; Witness PRH357, T. 2 June 2015, p. 14.

¹⁸⁴⁰ Exhibit P335 (Zakaria Badawi's witness statement), para. 51.

¹⁸⁴¹ Exhibit P339 (Witness PRH314's statement), para. 51.

¹⁸⁴² Exhibit P336 (Statement of Tarek Soubra), para. 102; Amer Chehadeh, T. 16 October 2014, p. 11; Mohammed Dia, T. 16 October 2014, pp 72-73; Witness PRH076, T. 14 October 2014, pp 56-57.

S500 security cars. These would travel almost side by side where there was enough room or otherwise fall into a single line behind Mr Hariri's vehicle.¹⁸⁴³

996. Finally, there would be a blue Chevrolet Suburban converted to act as an ambulance,¹⁸⁴⁴ driven by a security officer. Witnesses varied on the distance that the ambulance would drive behind the third security Mercedes S500. According to Mr Tarek Soubra, a civilian bodyguard who was not on duty on 14 February 2005, Mr Al-Arab had decided that the ambulance would drive a few hundred metres behind the convoy.¹⁸⁴⁵ Witness PRH234, also not in the convoy on 14 February, stated that the ambulance would usually be around two to three metres behind because the convoy would drive fast; he could not remember ever hearing about the ambulance keeping back from the convoy.¹⁸⁴⁶

997. As it departed from Parliament on Monday 14 February 2005, the convoy was constituted as usual.¹⁸⁴⁷ There were six vehicles. The ISF Toyota Land Cruiser was up front.¹⁸⁴⁸ The ISF officers were armed as usual¹⁸⁴⁹ and, on departing for Quraitem Palace, were told: 'anyone who gets near the convoy, shoot them because the situation is not good.'¹⁸⁵⁰ Mr Hussein Diab was driving the Land Cruiser.¹⁸⁵¹

998. The Land Cruiser was followed by the first black Mercedes S500 close protection vehicle.¹⁸⁵² Mr Chehadeh was, unusually, driving the second vehicle,¹⁸⁵³ and Mr Dia was in the

¹⁸⁴³ Exhibit P334 (Youssef Al-Ajouz's witness statement), para. 18; exhibit P335 (Zakaria Badawi's witness statement), paras 12, 18.

¹⁸⁴⁴ Exhibit P334 (Youssef Al-Ajouz's witness statement), para. 18; exhibit P335 (Zakaria Badawi's witness statement), paras 12, 18; exhibit P339 (Witness PRH314's statement), para. 18.

¹⁸⁴⁵ Exhibit P336 (Statement of Tarek Soubra), para. 58, *see also* Witness PRH076, T. 15 October 2014, p. 39.

¹⁸⁴⁶ Exhibit P338 (Witness PRH234's statement), paras 15, 19.

¹⁸⁴⁷ Amer Chehadeh, T. 16 October 2014, pp 7-9; Mohammed Dia, T. 16 October 2014, pp 67-68, 70-74, 76; Witness PRH076, T. 14 October 2014, pp 14-17; Witness PRH357, T. 2 June 2015, pp 33-34. *See also* exhibit P334 (Youssef Al-Ajouz's witness statement), para. 18; exhibit P339 (Witness PRH314's statement), para. 18; exhibit P338 (Witness PRH234's statement), para. 14; exhibit P335 (Zakaria Badawi's witness statement), paras 12, 18; exhibit P336 (Statement of Tarek Soubra), paras 42, 78.

¹⁸⁴⁸ Amer Chehadeh, T. 16 October 2014, p. 12; Mohammed Dia, T. 16 October 2014, pp 68-69, 74; Witness PRH357, T. 2 June 2015, pp 11-13; Witness PRH076, T. 14 October 2014, p. 19. *See also* exhibit P288 (Mohammed Dia's hand-drawn sketches of Mr Hariri's convoys), p. 1; exhibit P339 (Witness PRH314's statement), para. 18.

¹⁸⁴⁹ Witness PRH357, T. 2 June 2015, p. 35; Witness PRH076, T. 14 October 2015, p. 32; Witness PRH149, T. 3 June 2015, p. 92.

¹⁸⁵⁰ Witness PRH357, T. 2 June 2015, pp 41-42.

¹⁸⁵¹ Witness PRH357, T. 2 June 2015, pp 33-35.

¹⁸⁵² Amer Chehadeh, T. 16 October 2014, pp 12, 20, 36-37; Mohammed Dia, T. 16 October 2014, pp 68-69; Witness PRH076, T. 14 October 2014, pp 14, 19.

¹⁸⁵³ Amer Chehadeh, T. 16 October 2014, pp 5, 9, 11-12.

passenger seat next to him.¹⁸⁵⁴ Third was Mr Hariri's armoured vehicle, which he was driving himself.¹⁸⁵⁵ On the day of the explosion, he was accompanied by Mr Fuleihan.¹⁸⁵⁶ The sketch below shows the composition of the convoy that day:

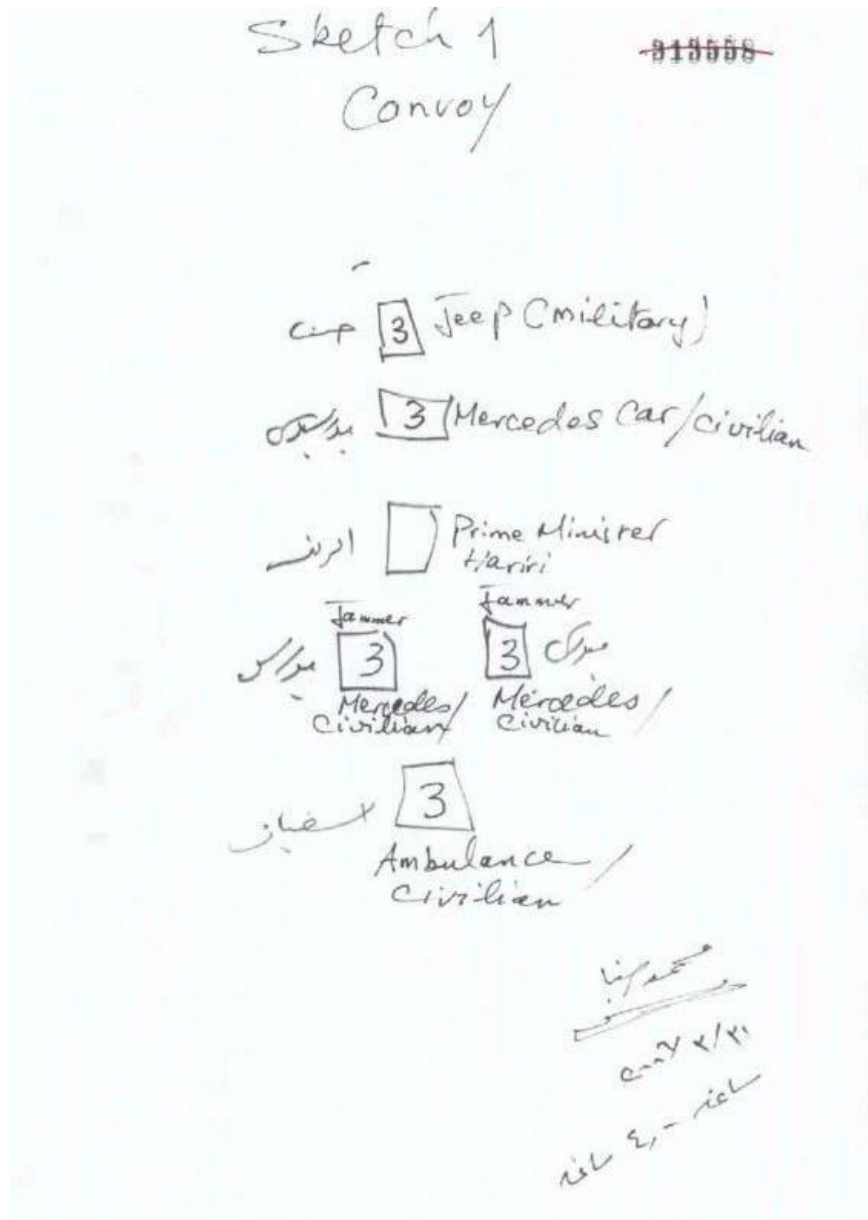


Exhibit P288, p. 1

¹⁸⁵⁴ Mohammed Dia, T. 16 October 2014, pp 66, 68-69, T. 17 October 2014, pp 3, 16.

¹⁸⁵⁵ Witness PRH076, T. 14 October 2014, pp 15-16, 19, 34; exhibit P1185 (Statement of Witness PRH009), para. 25. See also Witness PRH357, T. 2 June 2015, pp 13-14; exhibit P339 (Witness PRH314's statement), para. 48; exhibit P335 (Zakaria Badawi's witness statement), paras 12, 48, 51; exhibit P336 (Statement of Tarek Soubra), paras 96, 98.

¹⁸⁵⁶ Mohammed Dia, T. 16 October 2014, p. 69; Witness PRH076, T. 14 October 2014, p. 21.

999. Behind Mr Hariri's car—fourth and fifth in the convoy—were the other two close protection vehicles.¹⁸⁵⁷ Mr Mohamed Darwiche—one of Mr Hariri's personal bodyguards—was driving the fourth car, and with him were Mr Nasser and Mr Al-Arab, the supervisor of the close protection team.¹⁸⁵⁸ Mr Ziad Tarraf, a bodyguard, was driving the fifth car. Mr Mohammed Ghalayini and Mr Omar Al-Masri were in that vehicle with him.¹⁸⁵⁹ The ambulance was last,¹⁸⁶⁰ with a driver and two paramedics, Mr Rachid Hammoud and Mr Mazen Al-Zahabi.¹⁸⁶¹

1000. Witnesses varied on who usually decided the convoy's route.¹⁸⁶² According to Mr Tarek Soubra—one of Mr Hariri's bodyguards¹⁸⁶³—Mr Al-Arab would decide the route.¹⁸⁶⁴ According to Mr Dia, Mr Nasser decided the route without consulting the ISF.¹⁸⁶⁵ On the day of the explosion, according to Witnesses 9 and 357, Mr Al-Arab and Mr Nasser decided the route 'as usual'.¹⁸⁶⁶

1001. The journey from Parliament to Quraitem Palace would usually take ten to 15 minutes.¹⁸⁶⁷ On 14 February 2005, the convoy took the road around the harbour, known as the 'maritime' or 'coastal' road, back to the palace.¹⁸⁶⁸ The jamming devices were switched on, and the commercial radios and mobiles were not working.¹⁸⁶⁹ The radio was on in the ambulance, although it was 'disturbed once or twice'.¹⁸⁷⁰

¹⁸⁵⁷ Amer Chehadeh, T. 16 October 2014, pp 12-13; Mohammed Dia, T. 16 October 2014, pp 68-70; Witness PRH076, T. 16 October 2014, p. 19.

¹⁸⁵⁸ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 49-62; exhibit 1V33 (Kamal Nasser's statement), para. 13; exhibit 1V24 (V058's statement), para. 6.

¹⁸⁵⁹ Exhibit 2D74 (Witness PRH256's statements), p. 4.

¹⁸⁶⁰ Amer Chehadeh, T. 16 October 2014, pp 37-38, 41; Mohammed Dia, T. 16 October 2014, pp 69-70; Witness PRH076, T. 14 October 2014, p. 20; Witness PRH256, T. 22 October 2014, pp 8, 17-18. *See also* exhibit P338 (Witness PRH234's statement), paras 14-15.

¹⁸⁶¹ Witness PRH256, T. 22 October 2010, p. 7.

¹⁸⁶² Exhibit P339 (Witness PRH314's statement), para. 20; exhibit P336 (Statement of Tarek Soubra), para. 64.

¹⁸⁶³ Exhibit P336 (Statement of Tarek Soubra), para. 1.

¹⁸⁶⁴ Exhibit P336 (Statement of Tarek Soubra), para. 60.

¹⁸⁶⁵ Mohammed Dia, T. 17 October 2014, p. 7.

¹⁸⁶⁶ Witness PRH009, T. 11 October 2016, p. 65; exhibit P1185 (Statement of Witness PRH009), para. 13; Witness PRH009, T. 12 October 2016, pp 83-95 (private session); Witness PRH357, T. 2 June 2015, p. 18. *See also* Witness PRH149, T. 3 June 2015, p. 94.

¹⁸⁶⁷ Witness PRH009, T. 11 October 2016, p. 78; Witness PRH357, T. 3 June 2015, p. 2; exhibit P336 (Statement of Tarek Soubra), para. 60.

¹⁸⁶⁸ Witness PRH076, T. 14 October 2013, p. 22; Amer Chehadeh, T. 16 October 2014, pp 19-20. *See also* Witness PRH149, T. 3 June 2015, p. 88.

¹⁸⁶⁹ Exhibit P1185 (Statement of Witness PRH009), paras 18-19; Witness PRH009, T. 11 October 2016, pp 65-66; Witness PRH149, T. 3 June 2015, p. 97; exhibit P339 (Witness PRH314's statement), para. 67. *See also* exhibit P334 (Youssef Al-Ajouz's witness statement), para. 38; Witness PRH357, T. 2 June 2015, pp 37-38, 40-41.

¹⁸⁷⁰ Witness PRH256, T. 22 October 2014, pp 17, 21. *See also* Witness PRH076, T. 14 October 2014, p. 35; exhibit P334 (Youssef Al-Ajouz's witness statement), para. 33; exhibit P338 (Witness PRH234's statement), paras 17-18.

1002. At the start of its journey, the convoy had to stop for a few minutes as it was driving through Foch Street, due to work on the sidewalk or footpath.¹⁸⁷¹ As it approached the St Georges Hotel, however, the convoy was moving smoothly. Witness 76 and Witness 256 both stated that the convoy was going at about 70 kilometres per hour.¹⁸⁷² Mr Chehadeh testified that the convoy was moving at 60 to 80 kilometres per hour.¹⁸⁷³ Mr Dia could not remember the speed, but said that the convoy usually moved between 90 and 120 kilometres per hour,¹⁸⁷⁴ and Mr Hammoud thought that the convoy was going at a ‘normal’ speed immediately before the explosion, between 60 to 70 kilometres per hour.¹⁸⁷⁵

1003. The ambulance vehicle was some distance behind the other cars in the convoy. Witness 256 stated that the ambulance was driving ‘at a distance’ from the rest of the cars in the convoy, approximately ten to 15 metres.¹⁸⁷⁶ Mr Chehadeh testified that the ambulance would usually ‘stay at a far distance from the last vehicle’ but he did not know its precise distance on that day.¹⁸⁷⁷

1004. As the convoy neared the explosion site, the ‘Phoenicia tunnel’, opposite the Phoenicia Hotel, was to its left.¹⁸⁷⁸ Mr Chehadeh and Mr Dia stated that there were no vehicles blocking their way, parked in an unusual manner or trying to pull into traffic.¹⁸⁷⁹ Witnesses 357, 9 and 149 stated that a large yellow truck, driven by an elderly man and carrying metal, was driving in front of the convoy.¹⁸⁸⁰ The driver of the Land Cruiser moved closer to the lorry in order to ‘push’ him aside and allow for the convoy to pass easily. The yellow truck passed over the spot at which the explosion occurred, there was no other vehicle on that site.¹⁸⁸¹

¹⁸⁷¹ Witness PRH256, T. 22 October 2014, pp 18-19.

¹⁸⁷² Witness PRH076, T. 14 October 2014, p. 39; Witness PRH256, T. 22 October 2014, p. 18.

¹⁸⁷³ Amer Chehadeh, T. 16 October 2014, p. 20.

¹⁸⁷⁴ Amer Chehadeh, T. 16 October 2014, p. 20; Mohammed Dia, T. 17 October 2014, pp 39-40.

¹⁸⁷⁵ Rachid Hammoud, T. 4 December 2014, pp 19-20.

¹⁸⁷⁶ Witness PRH256, T. 22 October 2014, pp 8, 17-18.

¹⁸⁷⁷ Amer Chehadeh, T. 16 October 2014, pp 37-38, 41.

¹⁸⁷⁸ Witness PRH076, T. 14 October 2014, p. 40. The Trial Chamber understands the witness to be referring to the Suleiman Frangieh tunnel, also known as the St Georges tunnel.

¹⁸⁷⁹ Amer Chehadeh, T. 16 October 2014, pp 54-56; Mohammed Dia, T. 17 October 2014, p. 17. *See also* Witness PRH256, T. 22 October 2014, p. 18.

¹⁸⁸⁰ Witness PRH357, T. 2 June 2015, p. 44; Witness PRH009, T. 11 October 2016, p. 45, T. 13 October 2016, pp 15, 17-18 (private session); Witness PRH149, T. 3 June 2015, pp 97-98. *See also* exhibit P1185 (Statement of Witness PRH009), paras 5, 11-12; exhibit P1186 (Statement of Witness PRH009), para. 5.

¹⁸⁸¹ Witness PRH357, T. 2 June 2015, p. 88, T. 3 June 2015, pp 65-66.

1005. As the convoy neared the St Georges Hotel, the alarms of parked cars were activated by the jammers.¹⁸⁸² No witness saw a white Mitsubishi Canter on the right-hand side outside the St Georges Hotel.¹⁸⁸³

C. The explosion and immediate aftermath

1006. The Parties agree that the explosion occurred at 12:55, killing 22 persons and injuring at least 226 others. The Legal Representatives of Victims submit that the aftermath of the attack was chaotic and ‘hell-like’.¹⁸⁸⁴

1007. The explosion occurred around 40 or 50 metres behind the lead vehicle in Mr Hariri’s convoy.¹⁸⁸⁵ Witnesses described two deep sounds a second apart,¹⁸⁸⁶ a ‘huge roaring sound’ and ‘a wave of hot pressure’,¹⁸⁸⁷ a ‘huge explosion’,¹⁸⁸⁸ ‘the sound of an aircraft going through the sound barrier’,¹⁸⁸⁹ or ‘a missile thrown by a large artillery gun’,¹⁸⁹⁰ and described it as ‘like an earthquake’.¹⁸⁹¹ The explosion was heard throughout the city, up to 25 kilometres away.¹⁸⁹² While some could barely remember the ordeal due to the injuries and shock,¹⁸⁹³ and described it as ‘dream-like’,¹⁸⁹⁴ many gave a vivid account of the explosion and immediate aftermath.

1008. In the convoy, windows shattered in the ISF Land Cruiser at the front, and the vehicle was pushed several metres forward away from the explosion.¹⁸⁹⁵ The vehicle rolled forward until it

¹⁸⁸² Witness PRH357, T. 2 June 2015, pp 37-39.

¹⁸⁸³ Amer Chehadeh, T. 16 October 2014, pp 54-55; Mohammed Dia, T. 17 October 2014, p. 17; Witness PRH009, T. 13 October 2016, pp 14, 19, 21 (private session); Witness PRH357, T. 2 June 2015, p. 45; exhibit P262.1, pp 6-7.

¹⁸⁸⁴ Legal Representatives of Victims final trial brief, paras 91-96.

¹⁸⁸⁵ Witness PRH357, T. 2 June 2015, p. 46.

¹⁸⁸⁶ Exhibit P262.1, p. 7.

¹⁸⁸⁷ Exhibit P82 (Omar Fayoumi’s statement), p. 6. *See also* exhibit P262.1, p. 8.

¹⁸⁸⁸ Exhibit 1V13 (Wissam Naji’s statement), para. 7.

¹⁸⁸⁹ Exhibit P262.1, p. 8.

¹⁸⁹⁰ Exhibit P336 (Statement of Tarek Soubra), para. 88.

¹⁸⁹¹ Khalil Al-Arab, T. 10 February 2014, p. 7.

¹⁸⁹² Robert Aoun, T. 30 August 2017, p. 5; Ihsan Fayed, T. 7 September 2017, pp 18-19; Abdel-Qader Darwiche, T. 22 January 2014, pp 13-14.

¹⁸⁹³ Exhibit 1V13 (Wissam Naji’s statement), para. 7; exhibit 1V22 (V073’s statement), para. 8; Witness PRH076, T. 14 October 2014, p. 41.

¹⁸⁹⁴ Exhibit 1V11 (Sanaa El-Sheikh’s witness statement), para. 11.

¹⁸⁹⁵ Witness PRH009, T. 11 October 2016, p. 45, T. 13 October 2016, p. 16; Witness PRH357, T. 2 June 2015, p. 39.

came to a stop on the pavement.¹⁸⁹⁶ The driver lost consciousness,¹⁸⁹⁷ and several passengers were thrown out of the car.¹⁸⁹⁸ The second convoy vehicle also flew forward and then hit the ground very hard.¹⁸⁹⁹ Mr Hariri was thrown outside his car.¹⁹⁰⁰ The ambulance bumped into the car in front,¹⁹⁰¹ and the front part of the ambulance caught fire.¹⁹⁰² The photograph immediately below shows the scene shortly after the explosion:



Exhibit P65 (Photograph of the scene of the explosion), ERN D0001755

1009. Mr Raymond Abou-Chaaya, a postman for the ISF, was riding his motorcycle in heavy traffic past the Phoenicia Hotel on his way back to ISF headquarters in Achrafieh, after delivering

¹⁸⁹⁶ Witness PRH149, T. 3 June 2015, pp 98, 104-105; exhibit P116.3 (Aerial photo of crime scene marked by Witness PRH149); Witness PRH357, T. 2 June 2015, pp 47-50; exhibit P116.1 (Aerial photo of crime scene marked by Witness PRH357).

¹⁸⁹⁷ Witness PRH009, T. 11 October 2016, p. 45; Witness PRH149, T. 3 June 2015, p. 98; Witness PRH357, T. 2 June 2015, pp 51-52.

¹⁸⁹⁸ Witness PRH357, T. 2 June 2015, p. 39; Witness PRH149, T. 3 June 2015, pp 98-99.

¹⁸⁹⁹ Amer Chehadeh, T. 16 October 2014, p. 21; Mohammed Dia, T. 17 October 2014, p. 12.

¹⁹⁰⁰ Witness PRH357, T. 2 June 2015, p. 54.

¹⁹⁰¹ Witness PRH256, T. 22 October 2014, p. 19.

¹⁹⁰² Witness PRH256, T. 22 October 2014, pp 23-24; Rachid Hammoud, T. 4 December 2014, pp 16-17.

an envelope to Quraitem Palace.¹⁹⁰³ At the moment of the explosion, he was thrown off his motorcycle about four metres, ‘as though a storm had hit me’.¹⁹⁰⁴

1010. The minutes immediately after the explosion were confused and horrific. Objects were falling out of the sky around the convoy.¹⁹⁰⁵ There was fire and black smoke all around the explosion site,¹⁹⁰⁶ and the visibility was very poor due to the dust, fumes and fire.¹⁹⁰⁷ One witness describes a ‘black, mushroom like cloud’.¹⁹⁰⁸

1011. The HSBC building was a scene of ‘chaos and destruction’.¹⁹⁰⁹ People were screaming.¹⁹¹⁰ There were ‘fire and flames everywhere,’¹⁹¹¹ dust and smoke,¹⁹¹² and it was dark.¹⁹¹³ The moment of the explosion was described as ‘hell ... like the whole building was collapsing’.¹⁹¹⁴ The upper floors had no doors, windows or ceiling left.¹⁹¹⁵ It was described as total chaos.¹⁹¹⁶ The windows shattered and the ceiling fell onto people;¹⁹¹⁷ Ms Al-Kasti was trapped with the frame of one of the glass windows around her neck.¹⁹¹⁸ Cheques blew out of the windows.¹⁹¹⁹

1012. In the *Machkas* Centre, glass smashed everywhere and the gas in the air-conditioner exploded.¹⁹²⁰ In a nearby shop, glass shattered, merchandise broke and the metal doors of the shop were destroyed.¹⁹²¹ An electric lamp post was blown into the ground floor of the Phoenicia

¹⁹⁰³ Exhibit P190 (Raymond Abou-Chaaya’s witness statement), paras 6-9.

¹⁹⁰⁴ Exhibit P190 (Raymond Abou-Chaaya’s witness statement), para. 9.

¹⁹⁰⁵ Exhibit P190 (Raymond Abou-Chaaya’s witness statement), para. 10.

¹⁹⁰⁶ Amer Chehadeh, T. 16 October 2014, pp 21, 24-25; Mohammed Dia, T. 17 October 2014, pp 9, 12; Witness PRH256, T. 22 October 2014, p. 19; Witness PRH357, T. 2 June 2015, p. 53; exhibit P190 (Raymond Abou-Chaaya’s witness statement), para. 10.

¹⁹⁰⁷ Amer Chehadeh, T. 16 October 2014, pp 21-22, 24-25; Witness PRH149, T. 3 June 2015, p. 99; Witness PRH357, T. 2 June 2015, pp 53-54. *See also* Mohammed Dia, T. 17 October 2014, p. 9; Witness PRH256, T. 22 October 2014, p. 19.

¹⁹⁰⁸ Exhibit P262.1, pp 8-9.

¹⁹⁰⁹ Exhibit P82 (Omar Fayoumi’s statement), p. 7.

¹⁹¹⁰ Exhibit P262.1, p. 8.

¹⁹¹¹ Victim V016, T. 30 August 2017, p. 47.

¹⁹¹² Exhibit P82 (Omar Fayoumi’s statement), pp 6-7.

¹⁹¹³ Victim V016, T. 30 August 2017, p. 46.

¹⁹¹⁴ Victim V016, T. 30 August 2017, pp 37-39, 44-45; exhibit P181 (Bilal Yamout’s witness statement), para. 18. *See also* exhibit P190 (V016’s statement), ERN 60209195.

¹⁹¹⁵ Exhibit P181 (Bilal Yamout’s witness statement), paras 13-14; Victim V016, T. 30 August 2017, p. 45.

¹⁹¹⁶ Exhibit P181 (Bilal Yamout’s witness statement), para. 14.

¹⁹¹⁷ Victim V016, T. 30 August 2017, p. 45; exhibit P181 (Bilal Yamout’s witness statement), para. 13; exhibit 1V11 (Sanaa El-Sheikh’s witness statement), para. 12; exhibit P181 (Bilal Yamout’s witness statement), para. 13.

¹⁹¹⁸ Liliane Khallouf, T. 29 August 2017, p. 10.

¹⁹¹⁹ Exhibit P181 (Bilal Yamout’s witness statement), para. 17.

¹⁹²⁰ Exhibit 1V13 (Wissam Naji’s statement), para. 7.

¹⁹²¹ Exhibit 1V22 (Victim V073’s statement), para. 8.

Hotel.¹⁹²² A restaurant in the vicinity experienced a shock wave, with smashing glass and a collapsed ceiling.¹⁹²³



Exhibit 1V6 (Photographs of the HSBC office after the explosion), ERN V031-E011_1

1013. The dead and wounded were everywhere. Witness PRH009 described seeing ‘carnage. I saw what looked like hell. It was hard for me to set my eyes on what I saw’.¹⁹²⁴ Mr Abou-Chaaya saw ‘people in red’ and realised they were covered in blood.¹⁹²⁵ One woman was trapped under a small Pepsi truck and her body was cut in two.¹⁹²⁶ Witness 149 saw ‘bodies and limbs’, ‘half a human being’ and the remains of several men.¹⁹²⁷ In the HSBC building, people were covered in blood.¹⁹²⁸

1014. In the 15 minutes or so after the explosion, survivors began to extricate themselves and others from the scene. Employees and visitors in the HSBC building began leaving by the

¹⁹²² Exhibit P262.1, p. 4.

¹⁹²³ Exhibit P262.1, p. 8.

¹⁹²⁴ Witness PRH009, T. 11 October 2016, p. 45. *See also* Amer Chehadeh, T. 16 October 2014, p. 21.

¹⁹²⁵ Exhibit P190 (Raymond Abou-Chaaya’s witness statement), para. 10.

¹⁹²⁶ Witness PRH357, T. 2 June 2015, p. 76.

¹⁹²⁷ Witness PRH149, T. 4 June 2015, pp 3-4.

¹⁹²⁸ Exhibit 1V11 (Sanaa El-Sheikh’s witness statement), para. 12; Victim V016, T. 30 August 2017, p. 46.

staircase.¹⁹²⁹ Some crawled,¹⁹³⁰ others ran when they could.¹⁹³¹ It took about 20 minutes to clear everyone out of the building.¹⁹³² More able people helped the injured out of the building.¹⁹³³ HSBC worker Ms Khallouf tried to help her colleague Ms Al-Kasti, who did not respond, before she was instructed to leave the building, and did.¹⁹³⁴ Witness PRH351 remained in the ‘scene of devastation and chaos’—‘in a very shocked state’—for the next two hours providing assistance to the wounded, before leaving to go see his parents and then to a hospital where a wound on his head was stitched.¹⁹³⁵



Exhibit P65 (Photograph of the scene of the explosion), ERN D0001816

¹⁹²⁹ Liliane Khallouf, T. 29 August 2017, p. 9; Victim V016, T. 30 August 2017, p. 46.

¹⁹³⁰ Victim V016, T. 30 August 2017, p. 46.

¹⁹³¹ Liliane Khallouf, T. 29 August 2017, p. 9.

¹⁹³² Exhibit P82 (Omar Fayoumi’s statement), pp 4, 7.

¹⁹³³ Exhibit P181 (Bilal Yamout’s witness statement), para. 15; exhibit P82 (Omar Fayoumi’s statement), pp 7-8.

¹⁹³⁴ Liliane Khallouf, T. 29 August 2017, p. 10.

¹⁹³⁵ Exhibit P262.1, paras 81-82; exhibit P262, paras 22, 24.

1015. A call was made from the ISF vehicle—which had been at the front of the convoy—to the control room, advising that the explosion had occurred.¹⁹³⁶ Mr Hammoud escaped through the roof of the ambulance, as it was catching fire.¹⁹³⁷ The fire extinguisher from the Land Cruiser was used to try to put out the fire consuming Mr Hariri's vehicle.¹⁹³⁸ Mr Fuleihan was 'melting because of the fire',¹⁹³⁹ in flames, burning.¹⁹⁴⁰ Mr Chehadeh went to see if Mr Hariri or anyone else was alive, but could not see properly because of the fire and smoke.¹⁹⁴¹ Witness 357 ran towards Mr Hariri's vehicle, which was on fire, but Mr Hariri was not inside.¹⁹⁴² Mr Dia, Witness 9 and Witness 357 saw Mr Hariri's body on the ground; Mr Dia identified him by his wedding ring.¹⁹⁴³ After about ten to 15 minutes, the fuel tanks in the convoy vehicles started to explode,¹⁹⁴⁴ and the ammunition loaded inside one of the Mercedes vehicles also began to explode.¹⁹⁴⁵

1016. Firefighters arrived and tried to put out the fire.¹⁹⁴⁶ Mr Zakaria Badawi, one of Mr Hariri's civilian bodyguards,¹⁹⁴⁷ went to the explosion site and saw his friends covered 'in blood' and firemen trying to extinguish fires on cars, bodies and buildings.¹⁹⁴⁸ Sometime afterwards, ambulances arrived at the scene; some witnesses stated that there was a delay in their arrival.¹⁹⁴⁹ The ambulances were very cramped, and 'there was blood everywhere'.¹⁹⁵⁰ Witness 357 saw Mr Hariri being carried to an ambulance, which transported him to the American University Hospital.¹⁹⁵¹ At the hospital, according to one witness, Mr Walid Jumblatt told Mr Bahaa Hariri, Mr Hariri's son, that his father died.¹⁹⁵² Mr Fuleihan survived the immediate impact of the

¹⁹³⁶ Witness PRH009, T. 11 October 2016, p. 45.

¹⁹³⁷ Rachid Hammoud, T. 4 December 2014, p. 17.

¹⁹³⁸ Witness PRH357, T. 2 June 2015, pp 53-54, T. 3 June 2015, p. 70; Witness PRH009, T. 11 October 2016, p. 46; Witness PRH149, T. 3 June 2015, pp 99-100.

¹⁹³⁹ Witness PRH357, T. 2 June 2015, pp 54, 75. *See also* Witness PRH149, T. 3 June 2015, pp 100-101; Witness PRH009, T. 11 October 2016, p. 46.

¹⁹⁴⁰ Witness PRH357, T. 2 June 2015, p. 75; Witness PRH149, T. 3 June 2015, p. 100.

¹⁹⁴¹ Amer Chehadeh, T. 16 October 2014, pp 21, 25.

¹⁹⁴² Witness PRH357, T. 2 June 2015, pp 53-54.

¹⁹⁴³ Mohammed Dia, T. 17 October 2014, p. 9; Witness PRH357, T. 2 June 2015, pp 54-55; Witness PRH149, T. 3 June 2015, pp 15, 99-100.

¹⁹⁴⁴ Amer Chehadeh, T. 16 October 2014, p. 22; Mohammed Dia, T. 17 October 2014, pp 9, 12.

¹⁹⁴⁵ Witness PRH357, T. 2 June 2015, p. 54; Witness PRH009, T. 11 October 2016, p. 45.

¹⁹⁴⁶ Amer Chehadeh, T. 16 October 2014, p. 22.

¹⁹⁴⁷ Exhibit P335 (Zakaria Badawi's witness statement), p. 2.

¹⁹⁴⁸ Exhibit P335 (Zakaria Badawi's witness statement), p. 9.

¹⁹⁴⁹ Witness PRH009, T. 11 October 2016, p. 46; Bassem El-Sabeh, T. 17 March 2015, p. 49; Witness PRH149, T. 4 June 2015, p. 2; Victim V016, T. 30 August 2017, p. 47; exhibit 1V22 (V073's statement), para. 9.

¹⁹⁵⁰ Exhibit 1V12 (Rabih Nohra's statement), para. 10.

¹⁹⁵¹ Witness PRH357, T. 2 June 2015, p. 54.

¹⁹⁵² Witness PRH149, T. 4 June 2015, pp 7-9.

explosion. He was transferred from the American University of Beirut Medical Center to France for treatment, where he succumbed to his injuries two months later on 18 April 2005.¹⁹⁵³

D. Searching for relatives in the hospitals

1017. The Legal Representatives of Victims argue that due to the chaos and disorder in the hospitals, many relatives and friends of the victims failed to obtain accurate information about them.¹⁹⁵⁴ Witnesses and victims gave evidence about the hardship of searching for information—from Quraitem Palace, the explosion site and the hospitals— about their relatives, throughout the remainder of the day and night of 14 February 2005. For some of them, this too continued well into the days and weeks after.

1018. Many learnt of the attack through TV news broadcasts,¹⁹⁵⁵ which were sometimes speculative. A Dubai-based station broadcast the news that everyone in the convoy was dead. After receiving this information from her brother, Mr Hammoud's wife collapsed. She was seven or eight months pregnant at the time of the explosion.¹⁹⁵⁶

1019. Witnesses testified that the mobile networks were 'down' after the attack,¹⁹⁵⁷ meaning that calls to relatives did not go through. A number of witnesses tried to contact Quraitem Palace for information, but often received no reply, or inaccurate information. When Mr Talal Nasser's brother called, nobody answered.¹⁹⁵⁸ Ms Roula Nasser, Talal Nasser's sister, called and the palace hung up on her.¹⁹⁵⁹ Ms Zeina Tarraf went to Quraitem Palace in person—some people told her that

¹⁹⁵³ Victims agreed facts, V062; exhibit 1V45 (Rule 154 documents Legal Representatives of Victims), pp 745-746.

¹⁹⁵⁴ Legal Representatives of Victims final trial brief, para. 94.

¹⁹⁵⁵ Exhibit 1V37 (Zeina Tarraf's statement), para. 11; Mamdouh Tarraf, T. 22 January 2014, p. 13; Abdel-Qader Darwiche, T. 22 January 2014, p. 14; exhibit 1V24 (V058's statement), para. 9; Ihsan Fayed, T. 7 September 2017, pp 20-21, 32-33.

¹⁹⁵⁶ Rachid Hammoud, T. 4 December 2014, pp 34-35.

¹⁹⁵⁷ Exhibit P181 (Bilal Yamout's witness statement), para. 15; Victim V016, T. 30 August 2017, p. 49; exhibit P82 (Omar Fayoumi's statement), p. 9; exhibit 1V35 (Bazika Nasser's statement), para. 11; exhibit 1V38 (Dina Ghalayini's statement), para. 7; exhibit 1V34 (Roula Nasser's statement), para. 11; exhibit 1V36 (Clemence Tarraf's statement), para. 9; Liliane Khallouf, T. 29 August 2017, p. 23; Lama Ghalayini, T. 28 August 2017, p. 18; Robert Aoun, T. 30 August 2017, pp 6-7; Ihsan Fayed, T. 7 September 2017, pp 19-20; Witness PRH256, T. 22 October 2014, p. 19. Landlines were not affected, Robert Aoun, T. 30 August 2017, p. 7.

¹⁹⁵⁸ Exhibit 1V33 (Kamal Nasser's statement), para. 10.

¹⁹⁵⁹ Exhibit 1V34 (Roula Nasser's statement), paras 12-13.

her husband had been out with the convoy, while others said he was there in the palace.¹⁹⁶⁰ Mr Abdel-Qader Darwiche called the palace and was told that his brother was fine.¹⁹⁶¹

1020. While some witnesses were unable to reach the explosion site,¹⁹⁶² others reached the site and tried to get information about their missing relatives. Mr Robert Aoun drove to about one-and-a-half kilometres from the location of the explosion, parked and walked on foot to the explosion site. He described the site as ‘the end of the world. Blood everywhere. Fire everywhere. Destruction.’¹⁹⁶³ The security forces would not let him enter the site, and the officer in charge told him that there were no more bodies or wounded persons at the site, and that he should look in the hospitals.¹⁹⁶⁴ Ms Roula Nasser went to the explosion site and saw someone that she knew, who told her that Mr Nasser was ‘fine and alive’, and had been taken to the American University Hospital.¹⁹⁶⁵

1021. Many witnesses described searching between the various hospitals in Beirut looking for missing persons.¹⁹⁶⁶ The hospitals were extremely crowded,¹⁹⁶⁷ and full of burned bodies.¹⁹⁶⁸ While the American University Hospital had a list on the wall with injured people’s names,¹⁹⁶⁹ records were not complete. Misinformation was rife. Mr Wissam Naji’s father was first informed that his son was dead, and only found out that he was alive after about four hours.¹⁹⁷⁰ Ms Zeina Tarraf stayed until the evening at the hospital, ‘running around and looking for answers’.¹⁹⁷¹ Victim 37 was told by an official at the American University Hospital to go home because they could not do anything for her.¹⁹⁷²

¹⁹⁶⁰ Exhibit 1V37 (Zeina Tarraf’s statement), para. 12.

¹⁹⁶¹ Abdel-Qader Darwiche, T. 22 January 2014, p. 18.

¹⁹⁶² Khalil Al-Arab, T. 10 October 2015, p. 8.

¹⁹⁶³ Robert Aoun, T. 30 August 2017, p. 6.

¹⁹⁶⁴ Robert Aoun, T. 30 August 2017, pp 8, 15.

¹⁹⁶⁵ Exhibit 1V34 (Roula Nasser’s statement), para. 12.

¹⁹⁶⁶ Abdel-Qader Darwiche, T. 22 January 2014, p. 15; exhibit 1V31 (V038’s statement), para. 10; exhibit 1V30 (V037’s statement), para. 11; Khalil Al-Arab, T. 10 October 2015, p. 8; Lama Ghalayini, T. 28 August 2017, p. 19; Nazih Abu Rjeily, T. 24 January 2014, p. 8; exhibit 1V23 (Nivine Darwiche’s statement), para. 11; Mamdouh Tarraf, T. 22 January 2014, p. 24; Robert Aoun, T. 30 August 2017, pp 15-16; exhibit 1V30 (V037’s statement), paras 11, 13; exhibit P265 (Witness statement of Abdel-Hakim Ghalayini), ERN 60291709.

¹⁹⁶⁷ Exhibit 1V25 (Hicham Osman’s statement), para. 10; exhibit 1V26 (Mohammed Osman’s statement), para. 11; exhibit 1V36 (Clemence Tarraf’s statement), para. 10; exhibit 1V37 (Zeina Tarraf’s statement), para. 12.

¹⁹⁶⁸ Exhibit 1V13 (Wissam Naji’s statement), para. 8.

¹⁹⁶⁹ Exhibit 1V33 (Kamal Nasser’s statement), para. 8.

¹⁹⁷⁰ Exhibit 1V13 (Wissam Naji’s statement), para. 10.

¹⁹⁷¹ Exhibit 1V37 (Zeina Tarraf’s statement), para. 13.

¹⁹⁷² Exhibit 1V30 (V037’s statement), para. 12.

1022. Information about deceased family members was disseminated through unofficial channels. Mr Darwiche was told by one of Mr Hariri's bodyguards that his brother was dead;¹⁹⁷³ and Ms Clemence Tarraf was informed by a convoy member.¹⁹⁷⁴ Mr Kamal Nasser was informed by a bodyguard that there was 'nothing left' of his brother.¹⁹⁷⁵ Ms Clemence Tarraf described opening curtains in all of the rooms in the American University Hospital to try to find her brother.¹⁹⁷⁶

1023. Some witnesses described how they were not given access to the morgues. Others, who were allowed in, vividly described the horrors of looking among unknown dead bodies for their dead family members.¹⁹⁷⁷ Mr Kamal Nasser 'was opening the drawers of the dead. The authorities forgot about me there due to the chaotic situation. I was left alone, searching for my brother's corpse, but I could not find it.'¹⁹⁷⁸ Witness PRH352's son was given a shoe belonging to a completely burnt unidentified body.¹⁹⁷⁹ Mr Nasser saw Mr Hariri's body in one of the drawers, as well as Mr Darwiche's, whose body had been cut in half. Some drawers contained only the remains of human bodies.¹⁹⁸⁰ Victim 37 searched among the bodies in the morgue of the American University Hospital and described the scene as 'terrifyingly unpleasant': 'There were body parts everywhere. I cannot erase that disturbing sight from my head since then ... One of the deceased had a bullet proof vest on his body, but all his limbs were missing.'¹⁹⁸¹

1024. While Mr Abu Rjeily described how his brother 'did not seem dead',¹⁹⁸² other witnesses told of the especially traumatic experience of seeing the damaged bodies of loved ones. Mr Abdel-Qader Darwiche's brother's head was 'totally maimed', with only a bit of his hair remaining, and

¹⁹⁷³ Abdel-Qader Darwiche, T. 22 January 2014, p. 18.

¹⁹⁷⁴ Exhibit 1V36 (Clemence Tarraf's statement), para. 10.

¹⁹⁷⁵ Exhibit 1V33 (Kamal Nasser's statement), para. 14.

¹⁹⁷⁶ Exhibit 1V36 (Clemence Tarraf's statement), para. 11.

¹⁹⁷⁷ Lama Ghalayini testified that her sister was given access to the morgue of the American hospital to check whether her father was there because his name was not listed among the deceased, Lama Ghalayini, T. 28 August 2017, p. 19. After a suggestion made at one of the hospitals, Mr Aoun began to search the morgues, Robert Aoun, T. 30 August 2017, p. 16. Other witnesses were not immediately given access to the morgues. When Mamdouh Tarraf arrived at the American University Hospital, he asked to be let in to the morgue, but was not allowed in there by policemen. He was finally given access to the morgue after a request by someone from Quraitem Palace, Mamdouh Tarraf, T. 22 January 2014, p. 25. Victim 27 went to the hospital but was not allowed to see the body, exhibit 1V21 (V027's statement), para. 13.

¹⁹⁷⁸ Exhibit 1V33 (Kamal Nasser's statement), para. 12.

¹⁹⁷⁹ Exhibit 1V39 (Witness PRH352's statement), para. 9.

¹⁹⁸⁰ Exhibit 1V33 (Kamal Nasser's statement), para. 13.

¹⁹⁸¹ Exhibit 1V30 (V037's statement), para. 12.

¹⁹⁸² Nazih Abu Rjeily, T. 24 January 2014, p. 11.

he was missing arms and legs.¹⁹⁸³ Mr Nasser was given a bag of mixed body parts, some of which were initially buried in a grave designated for his brother despite not belonging to him.¹⁹⁸⁴ He 'did not dare to tell this to the rest of the family.'¹⁹⁸⁵

E. Search and rescue efforts of the Lebanese authorities at the explosion site

1025. The Trial Chamber heard evidence about the way in which the Lebanese authorities dealt with search and rescue operations at the explosion site. The Legal Representatives of Victims highlighted the lack of cooperation and coordination, inefficiency of search efforts and lack of professionalism on behalf of the Lebanese authorities, in particular in relation to the death of Mr Zahi Bou Rjeily.¹⁹⁸⁶ Mr Abu Rjeily and the Ghalayini family offered particularly tragic accounts of the failures of the Lebanese authorities in relation to their family members.

1026. Mr Abu Rjeily, Mr Zahi Bou Rjeily's brother, went to the explosion site at around 20:00 in the evening of 14 February 2005. He was unable to pass the secure perimeter and was told that no further injured people or bodies were found.¹⁹⁸⁷ He tried to give a statement to the police, but was told that they were unable to do anything.¹⁹⁸⁸ The following day he returned around 09:00 and saw an ambulance leaving the St Georges for the American University Hospital. The family was told that a body had been found and the officer in charge later confirmed that the body belonged to Mr Zahi Bou Rjeily.¹⁹⁸⁹ Mr Abu Rjeily learnt from the coroner's report that his brother had lived for 12 hours after the explosion. He had suffocated to death, as late as 05:00 in the morning of 15 February 2005.¹⁹⁹⁰

1027. Ms Lama Ghalayini provided evidence about her family's traumatic experiences in trying to find her father's body. The Ghalayini family made repeated efforts to ensure that the explosion site was adequately searched, including bringing their own search equipment. Body parts not

¹⁹⁸³ Abdel-Qader Darwiche, T. 22 January 2014, pp 15-16.

¹⁹⁸⁴ Exhibit 1V33 (Kamal Nasser's statement), para. 14-15.

¹⁹⁸⁵ Exhibit 1V42 (Professor Letschert's report), p. 17.

¹⁹⁸⁶ Legal Representatives of Victims final trial brief, paras 95-96.

¹⁹⁸⁷ Nazih Abu Rjeily, T. 24 January 2014, p. 9.

¹⁹⁸⁸ Nazih Abu Rjeily, T. 24 January 2014, p. 10.

¹⁹⁸⁹ Nazih Abu Rjeily, T. 24 January 2014, p. 11.

¹⁹⁹⁰ Nazih Abu Rjeily, T. 24 January 2014, pp 11-12.

belonging to Mr Ghalayini were found on Friday 18 and Monday 21 February 2005.¹⁹⁹¹ The family was permitted access to the crime scene on 2 March 2005, at 09:00, to observe the search operations which were being undertaken.¹⁹⁹² At around 10:30, Ms Ghalayini's uncle tried to negotiate with the senior police officer on site to gain entry, and as he did so, he smelled 'a really bad smell. The smell of bodies.'¹⁹⁹³ Her uncle asked the Civil Defence to check that spot.¹⁹⁹⁴ After the removal of a thin layer of sand of around ten centimetres, they found a foot, which did not belong to Mr Ghalayini, but underneath it was Mr Ghalayini's body.¹⁹⁹⁵

F. Forensic evidence

1028. The Trial Chamber heard from witnesses who were members of the international and Lebanese forensic teams which investigated the explosion. The Lebanese Military Intelligence and ISF conducted their own investigation and analyses of the explosion in February and March 2005.¹⁹⁹⁶ Several witnesses provided evidence on their role in the investigation, such as members of the Lebanese ISF forensic team—Mr Mahmoud Khashab, Mr Hussein Krayem,¹⁹⁹⁷ Mr Walid Othman, Mr Joseph Safi and Witness PRH566—and Lebanese ISF judicial police, including Mr Mohammed Kheireddine, Mr Tanios Gemayel, Mr Elie Hawa and Mr Michel Jbeily.

1029. Lebanese military investigating judges—first Judge Rasheed Mezher and later Judge Michel Abou-Arraj—were in charge of overseeing the investigation and delegated the investigation of the crime scene to the ISF directorate-general.¹⁹⁹⁸

1030. Following a request from the Lebanese prime minister, the UN Secretary-General dispatched a fact-finding mission to Beirut to inquire into the causes, the circumstances and the consequences of this assassination.¹⁹⁹⁹ Following its arrival in Beirut on 25 February 2005, the

¹⁹⁹¹ Lama Ghalayini, T. 28 August 2017, pp 31, 51.

¹⁹⁹² Lama Ghalayini, T. 28 August 2017, pp 70, 78-79.

¹⁹⁹³ Lama Ghalayini, T. 28 August 2017, pp 80, 83.

¹⁹⁹⁴ Lama Ghalayini, T. 28 August 2017, p. 80.

¹⁹⁹⁵ Lama Ghalayini, T. 28 August 2017, pp 81, 84-85.

¹⁹⁹⁶ Exhibit 2D4 (Report by General Ashraf Rifi, 15 March 2005); exhibit P282 (Statement of Ziad Nasr), ERN 60287014; exhibit P247 (ISF Explosives Bureau report, 2 March 2005), p. 1.

¹⁹⁹⁷ The witness's last name is spelled differently in various documents and submissions in this case. However, the witness spelled his name in court as 'Krayem' and the Trial Chamber will use this spelling, Hussein Krayem, T. 10 September 2014, p. 3.

¹⁹⁹⁸ Jamil El-Sayyed, T. 7 June 2018, pp 13-14.

¹⁹⁹⁹ The FitzGerald Commission. Judicial notice facts, no. 1; Decision on taking judicial notice, para. 28, disposition, table A.

mission met Lebanese officials and representatives of different political groups, thoroughly reviewed the Lebanese investigation and legal proceedings, examined the crime scene and the evidence collected by the Lebanese authorities, collected and analysed samples from the crime scene and interviewed witnesses in relation to the crime.²⁰⁰⁰

1031. On 1 March 2005, Mr Peter FitzGerald, the head of the UN fact-finding mission,²⁰⁰¹ asked the Swiss government to send a team of specialists in the areas of explosives, ballistics, DNA and crime-scene work to assist in the investigation.²⁰⁰² The Swiss government sent a team of experts to Beirut on 5 March 2005, and they issued a report later that month.²⁰⁰³

1032. In July 2005, the UNIIC—which had been established by Security Council Resolution 1595 on 7 April 2005 and was operational as of 16 June 2005—contacted the Dutch government asking it to conduct a forensic investigation of the crime scene.²⁰⁰⁴ Between 28 and 31 July 2005, Mr Joe Hoffman²⁰⁰⁵ and Dr Anick van de Craats²⁰⁰⁶ made an initial visit to the crime scene.²⁰⁰⁷ The Dutch forensic team arrived on 11 August 2005, headed by Mr Hoffman, and was comprised of crime scene investigators from the Dutch Forensic Police, including Mr Jan Kuitert²⁰⁰⁸ and Dr van de Craats.²⁰⁰⁹ It started the investigation of the crime scene on 13 August 2005.²⁰¹⁰ Their report came out at the end of September 2005.²⁰¹¹

1033. The Dutch forensic team received assistance: from Lebanese ISF officers in searching the crime scene; a team of six British divers and divers from the Lebanese fire brigade in searching

²⁰⁰⁰ Judicial notice facts, no. 1.

²⁰⁰¹ The Fact-finding Mission to Lebanon inquiring into the causes, circumstances and consequences of the assassination of former Prime Minister Rafik Hariri was headed by Mr Peter FitzGerald and submitted its report on 24 March 2005 (S/2005/203).

²⁰⁰² Exhibit P242 (Swiss forensic team expert report), p. 3.

²⁰⁰³ Exhibit P242 (Swiss forensic team expert report), pp 3, 20.

²⁰⁰⁴ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 5; Anick van de Craats, T. 28 August 2014, pp 5-6.

²⁰⁰⁵ Then head of crime scene investigation department of the Dutch Forensic Police in Limburg-Zuid; now deceased.

²⁰⁰⁶ The Trial Chamber declared Anick van de Craats a forensic expert in the area of explosives, Decision on twelve expert witnesses, para. 15.

²⁰⁰⁷ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 5; Anick van de Craats, T. 28 August 2014, p. 7.

²⁰⁰⁸ The Trial Chamber declared Jan Kuitert a forensic expert specialising in the area of explosives, Decision on twelve expert witnesses, para. 15.

²⁰⁰⁹ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 6; Anick van de Craats, T. 28 August 2014, pp 7, 10.

²⁰¹⁰ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 7; Anick van de Craats, T. 28 August 2014, p. 15.

²⁰¹¹ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 5-7, 89.

underwater in the St Georges marina; and from expert Witness PRH507²⁰¹² and Mr Ali Mohammed Diab, an electronics technician, with the recognition and examination of the damaged remains of jamming devices.²⁰¹³ Dr Gerard Murray advised the Dutch forensic team on the crime scene investigation.²⁰¹⁴ Mr Gerhard Geyer²⁰¹⁵ assisted in identifying the parts of the Mitsubishi Canter used in the attack.²⁰¹⁶ Witnesses PRH185 and PRH186²⁰¹⁷ provided expert reports on the identification of a piece of an engine block.²⁰¹⁸ A scientist from France and a team of three Japanese crime scene investigators assisted with the crime scene investigation and analysis.²⁰¹⁹ The Dutch forensic team consulted a specialist of the Lebanese seismic institute in Beirut and Dr Fouad Hussein Ayoub²⁰²⁰ in relation to searching for human remains in the crime scene. In the final stage of the Dutch forensic team's investigation, a toxicologist at the American University College of Science and Technology in Beirut analysed the chemical composition of materials found at the crime scene.²⁰²¹

1034. The Spanish government dispatched a team of experts from May to June 2006, including forensic crime-scene investigator Witness PRH155,²⁰²² and they issued a report in July 2006.²⁰²³

²⁰¹² The Trial Chamber declared Witness PRH507 an expert in matters regarding the functioning and operation of jamming devices, Decision on twelve expert witnesses, para. 10.

²⁰¹³ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 7, appendix B.

²⁰¹⁴ Dr Murray is a chemist from Forensic Science Northern Ireland who was deemed to be an expert in forensic explosives investigations, Gerard Murray, T. 29 September 2014, pp 7-8; exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 7; exhibit P277 (Report of Gerard Murray), p. 1; Decision on twelve expert witnesses, paras 13-15.

²⁰¹⁵ An expert in identifying Mitsubishi Canter parts, Decision on expertise (Mr Geyer).

²⁰¹⁶ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 7; Anick van de Craats, T. 28 August 2014, p. 19.

²⁰¹⁷ Witness PRH185 is an expert in tool marks, analysis and fractography and Witness PRH186 is an expert in vehicles and trucks. The Trial Chamber found that Witnesses 185 and 186 were qualified within the meaning of Rule 161 to offer an expert opinion as to the identification of a piece of an engine block, Decision on twelve expert witnesses, paras 52, 55, 58, 61.

²⁰¹⁸ Exhibit P342 (Witness PRH186's expert report on examination of an engine part, 28 June 2010); exhibit P343 (Witness PRH185's expert report on damage to an engine block, 3 June 2010).

²⁰¹⁹ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 7; Anick van de Craats, T. 28 August 2014, p. 19.

²⁰²⁰ Dr Ayoub was declared by the Trial Chamber under Rule 161 as an expert in forensic science specialised in human identification, Decision on expert reports of 1 July 2014; Decision on expertise (Professor Ayoub and Dr Mansour). *See also* Fouad Ayoub, T. 1 July 2014, pp 11-13, 15-16. Dr Ayoub wrote seven reports for the UNIIC, of which two were co-authored. The reports describe the collection of human remains from the crime scene of the explosion, information about the DNA profiling of those remains and the DNA profiling of individuals related to alleged suspects.

²⁰²¹ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 8.

²⁰²² Witness 155 was declared by the Trial Chamber as a forensic expert under Rule 161, Decision on expertise (Witness PRH155), paras 1, 3-4, disposition.

²⁰²³ Witness PRH155, T. 24 September 2014, p. 17; exhibit P266 (Spanish forensic team expert report), pp 2-3, 13, 291.

As examined more fully below, several other experts conducted subsequent forensic analyses of the explosion.

1. Crime scene investigation and recovery of evidence

(a) Initial surveillance and investigation at the crime scene

1035. Members of the Lebanese security, military, judicial and Civil Defence services, and of the Red Cross, participated in the rescue, evacuation and body recovery operations at the crime scene immediately after the explosion. This included fire stations from different sectors of Beirut, the ISF Central Accidents Bureau, falling under the ISF judicial police, the ISF Explosives Bureau and the ISF Counter-terrorism and Major Crimes Unit.

1036. Mr Khaled Toubaili is a retired fireman who served in the Beirut Fire Department as a first lieutenant at the time of the attack.²⁰²⁴ At 12:55 on 14 February 2005, he was on duty at the Bashoura Barracks in Beirut when he heard a massive explosion and immediately took his crew to the scene with two fire trucks and one ambulance. Mr Toubaili and his crew reached the Four Seasons Hotel and saw columns of fire and thick black smoke.²⁰²⁵ There was no visibility at the crime scene; it was completely dark because of the smoke and breathing was impossible without a mask.²⁰²⁶

1037. Mr Toubaili realised that his resources were inadequate to extinguish the fire and called for reinforcements from the three fire department sectors in Beirut.²⁰²⁷ He and his crew could not advance past an area between the St Georges Hotel and the Phoenicia Hotel—ten to 15 metres from the crater—because of rubble on the road.²⁰²⁸ At that point, Mr Toubaili instructed fire fighters to approach the crater while the ambulance team took five or six injured people to the American University Hospital in Beirut.²⁰²⁹ The fire brigade command and teams from the three fire department sectors arrived at the scene ten minutes after Mr Toubaili; the Red Cross and the Civil Defence arrived later.²⁰³⁰

²⁰²⁴ Khaled Toubaili, T. 27 January 2014, p. 6.

²⁰²⁵ Khaled Toubaili, T. 27 January 2014, p. 7.

²⁰²⁶ Khaled Toubaili, T. 27 January 2014, p. 39.

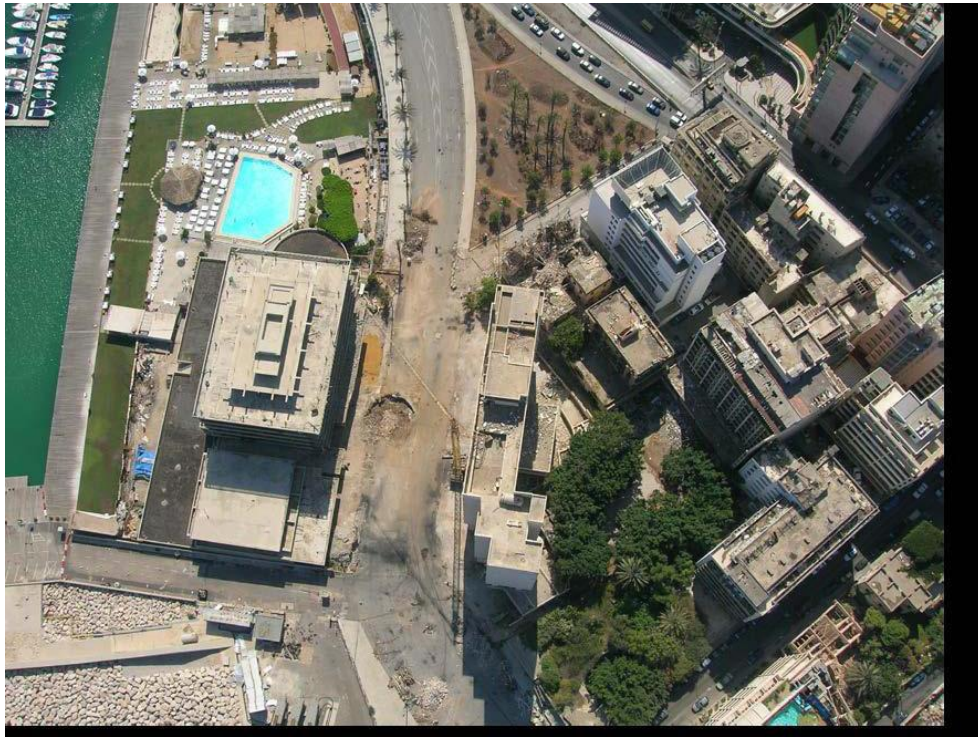
²⁰²⁷ Khaled Toubaili, T. 27 January 2014, pp 7, 11.

²⁰²⁸ Khaled Toubaili, T. 27 January 2014, p. 12.

²⁰²⁹ Khaled Toubaili, T. 27 January 2014, p. 13.

²⁰³⁰ Khaled Toubaili, T. 27 January 2014, pp 13, 30.

1038. Mr Toubaili's crew extinguished the burning vehicles on the north side of the crater, near the Byblos building, while crews from the second and third sectors who had arrived from the south worked to extinguish the fire on the other side of the crater.²⁰³¹ The area between the crater and the St Georges Hotel was impassable.²⁰³²



Aerial photograph of the crime scene with the crater in the middle and the two hotels

Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 11 (photograph 1)

1039. The first two floors of the Byblos building were on fire. Smoke was coming from the uninhabited St Georges Hotel. This smoke made breathing hard for anyone near the building.²⁰³³ Mr Toubaili took some team members into the first two floors of the Byblos building to search for people in need of assistance and to evacuate victims and extinguish fires.²⁰³⁴ The team found four or five people who had been injured and had lost consciousness and immediately took them to the

²⁰³¹ Khaled Toubaili, T. 27 January 2014, pp 12-17.

²⁰³² Khaled Toubaili, T. 27 January 2014, p. 23.

²⁰³³ Khaled Toubaili, T. 27 January 2014, p. 25.

²⁰³⁴ Khaled Toubaili, T. 27 January 2014, pp 25-26.

hospital.²⁰³⁵ Inside the Byblos building, a member of Mr Toubaili's team informed him that the bombing had targeted Mr Hariri.²⁰³⁶

1040. Mr Toubaili and his team were forced to fight the fire lying down for fear of more explosions from petrol tanks.²⁰³⁷ The fire was constantly reigniting until large quantities of foam were used to completely extinguish it. The armoured cars in Mr Hariri's convoy posed a much greater difficulty to the firefighters than civilian cars, due to their large and protected fuel tanks.²⁰³⁸ The firefighters commenced the cooling-down process after the fire was completely extinguished—the entire process took over three hours.²⁰³⁹ Mr Toubaili and his team left the area at around 19:00 that evening.²⁰⁴⁰

1041. A total of 70 to 80 firefighters were called to assist at the explosion site, in addition to military officers both in plain clothes and in uniform²⁰⁴¹ who directed the operations.²⁰⁴² Mr Toubaili clarified that it was not the fire department's role to prevent civilians from entering the crime scene, however, the fire brigade used yellow cordon tape to create a perimeter around the area after the fire was extinguished.²⁰⁴³ This perimeter did not cover the narrow St Georges side of the crater.²⁰⁴⁴ Mr Toubaili was not concerned about the crater as it did not contain any injured people or any fires—the military and security forces were in charge of the crater.²⁰⁴⁵ No one from Mr Toubaili's team moved any bodies from the crime scene.²⁰⁴⁶

1042. Mr Mohammed Kheireddine, an adjutant-in-chief with the ISF judicial police in the Central Accidents Bureau,²⁰⁴⁷ was working at the Helou barracks in Beirut on 14 February 2005 when he

²⁰³⁵ Khaled Toubaili, T. 27 January 2014, p. 26.

²⁰³⁶ Khaled Toubaili, T. 27 January 2014, p. 29.

²⁰³⁷ Khaled Toubaili, T. 27 January 2014, p. 31.

²⁰³⁸ Khaled Toubaili, T. 27 January 2014, p. 32.

²⁰³⁹ Khaled Toubaili, T. 27 January 2014, pp 33, 35.

²⁰⁴⁰ Khaled Toubaili, T. 28 January 2014, p. 36.

²⁰⁴¹ The uniforms worn by people at the scene were designated according to their role and rank, Khaled Toubaili, T. 28 January 2014, pp 9-10.

²⁰⁴² Khaled Toubaili, T. 28 January 2014, pp 25, 28, 34.

²⁰⁴³ Khaled Toubaili, T. 28 January 2014, pp 12, 39-40.

²⁰⁴⁴ Khaled Toubaili, T. 28 January 2014, p. 46.

²⁰⁴⁵ Khaled Toubaili, T. 28 January 2014, p. 22.

²⁰⁴⁶ Khaled Toubaili, T. 28 January 2014, p. 34.

²⁰⁴⁷ Mohammed Kheireddine, T. 22 July 2014, p. 15; exhibit P236 (Statement of Mohammed Kheireddine), pp 2, 8.

heard the explosion.²⁰⁴⁸ He and his team received an order from the police operation centre²⁰⁴⁹ and following an order from the section chief, they rushed to the crime scene.²⁰⁵⁰ They arrived about an hour after the explosion,²⁰⁵¹ where they took photographs, recorded a video and made notes.²⁰⁵² He had not previously inspected such a large crime scene.²⁰⁵³

1043. Mr Kheireddine and his team spent four to five hours at the crime scene, dressed in civilian clothing.²⁰⁵⁴ On arrival, there was no barrier to entering the crime scene, and no one registering the names of all persons present.²⁰⁵⁵ There were many people at the crime scene, including members of the ISF, army intelligence and military police.²⁰⁵⁶ Mr Kheireddine observed numerous damaged and burned vehicles and wreckage surrounding the crater, including two Mercedes vehicles from which charred bodies, two from one and three from the other, were lifted out.²⁰⁵⁷

1044. Some bodies had already been transferred to local hospitals when Mr Kheireddine and his team arrived at the scene.²⁰⁵⁸ Authorities removed the top of a vehicle with a small bulldozer in order to remove bodies from the vehicle.²⁰⁵⁹ The fire at the crime scene had been extinguished when he arrived,²⁰⁶⁰ and the crater was filled with water from broken pipes and water used to put out the fire.²⁰⁶¹

²⁰⁴⁸ Exhibit P236 (Statement of Mohammed Kheireddine), pp 8, 15.

²⁰⁴⁹ Mr Kheireddine refers to receiving the order from the 'operation centre' and later from the 'Beirut Police Operation Room', exhibit P236 (Statement of Mohammed Kheireddine), pp 8, 23.

²⁰⁵⁰ Exhibit P236 (Statement of Mohammed Kheireddine), pp 8, 23.

²⁰⁵¹ Mohammed Kheireddine, T. 22 July 2014, pp 29-30, 46, 60; exhibit P236 (Statement of Mohammed Kheireddine), p. 8.

²⁰⁵² Mohammed Kheireddine, T. 22 July 2014, pp 18-22, 31-32, 48-49, 52, 58-60, T. 23 July 2014, p. 56; exhibit P236 (Statement of Mohammed Kheireddine), pp 8-9, 23; exhibit P171 (Video of explosion site).

²⁰⁵³ Mohammed Kheireddine, T. 22 July 2014, pp 28-29.

²⁰⁵⁴ Mohammed Kheireddine, T. 22 July 2014, pp 49, 61.

²⁰⁵⁵ Mohammed Kheireddine, T. 22 July 2014, pp 43-44.

²⁰⁵⁶ Mohammed Kheireddine, T. 22 July 2014, pp 60-61; Abdel-Badih Soussi, T. 3 February 2014, pp 4-8, 10-12, 15-16.

²⁰⁵⁷ Exhibit P236 (Statement of Mohammed Kheireddine), pp 23, 29-43, 55.

²⁰⁵⁸ Mohammed Kheireddine, T. 23 July 2014, p. 41.

²⁰⁵⁹ Mohammed Kheireddine, T. 23 July 2014, pp 41-43.

²⁰⁶⁰ Mohammed Kheireddine, T. 22 July 2014, pp 57-59.

²⁰⁶¹ Mohammed Kheireddine, T. 22 July 2014, p. 68; exhibit P238 (ISF forensic report), p. 2. *See also* Witness PRH301, T. 4 February 2014, pp 47-49; exhibit P118 (Report on escorting Swiss experts), pp 70-71.

Removal of convoy vehicles from the crime scene

1045. Six vehicles, including five from Mr Hariri's convoy, were removed by the ISF from the inner crime scene to the police headquarters at Helou Barracks during the evening on 14 February 2005.²⁰⁶²

1046. First Sergeant Tanios Gemayel, an adjutant with the ISF judicial police working in the Central Accidents Bureau, like Mr Kheireddine, was asked to go to the crime scene between 22:00 and 23:00 on 14 February 2005 to film the transfer of Mr Hariri's convoy vehicles to the Helou Barracks in Beirut.²⁰⁶³ He worked until around 02:00 the next morning.²⁰⁶⁴ Mr Gemayel assigned each damaged vehicle from the convoy a number from 'one'—Mr Hariri's vehicle—to 'six' while at the crime scene.²⁰⁶⁵ The vehicles were taken to the barracks on a big truck; Mr Gemayel accompanied them and photographed the vehicles once at the barracks.²⁰⁶⁶ He described the presence of trucks, bulldozers and other vehicles at the crime scene.²⁰⁶⁷ He noted that there was a level of urgency to remove the cars quickly from the crime scene, for reasons he did not know.²⁰⁶⁸ Stills from the video of the removal of the vehicles are immediately below:

²⁰⁶² Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 13, 19, 50.

²⁰⁶³ Tanios Gemayel, T. 10 February 2014, pp 22, 24-27, 31-32, 57-58, 60; exhibit P179 (Statement of Tanios Gemayel dated 10 August 2005), p. 3; exhibit 5D5 (Video of transfer of cars to Helou Barracks). *See also* exhibit P236 (Statement of Mohammed Kheireddine), p. 8.

²⁰⁶⁴ Tanios Gemayel, T. 10 February 2014, p. 27.

²⁰⁶⁵ Tanios Gemayel, T. 10 February 2014, pp 26, 28-29, 31-32, 59, 65, 73, 84-85, 89-90; exhibit P179 (Statement of Tanios Gemayel dated 10 August 2005), p. 3; exhibit P180 (Diagram on which Mr Gemayel marked the locations of vehicles 'one' through 'four'); exhibit 5D7 (Annotated version of ISF diagram of placement of vehicles after the explosion).

²⁰⁶⁶ Tanios Gemayel, T. 10 February 2014, pp 26-27; exhibit P179 (Statement of Tanios Gemayel dated 10 August 2005), pp 3-4. *See also* Witness PRH301, T. 4 February 2014, pp 47-49; exhibit P118, pp 70-71.

²⁰⁶⁷ Tanios Gemayel, T. 10 February 2014, pp 61-62, 74, 80-81; exhibit P179 (Statement of Tanios Gemayel dated 10 August 2005), p. 3; exhibit 5D5.

²⁰⁶⁸ Tanios Gemayel, T. 10 February 2014, p. 86.

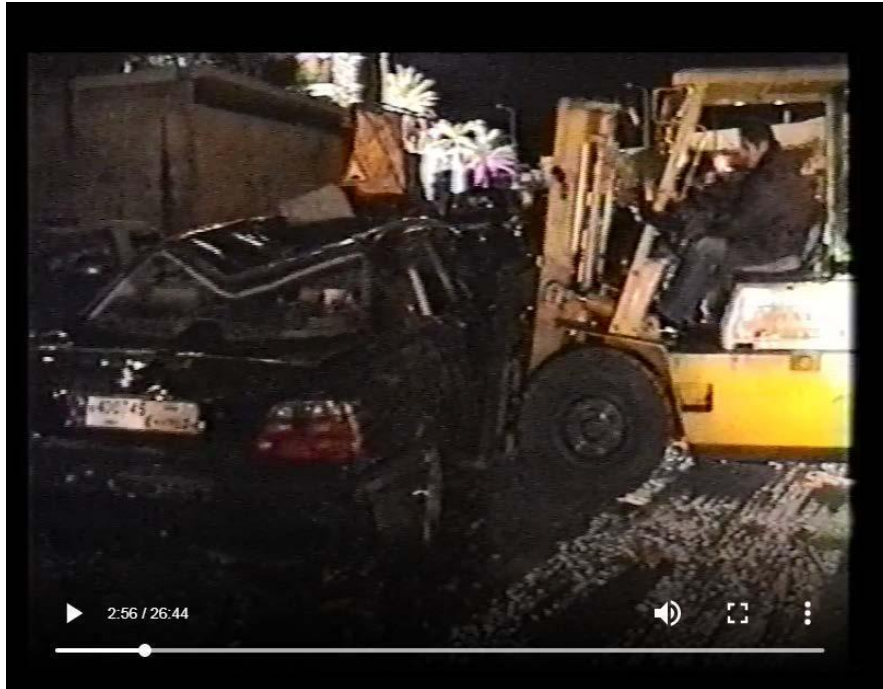


Exhibit 5D5 (Video of transfer of cars to Helou Barracks), 2:56



Exhibit 5D5 (Video of transfer of cars to Helou Barracks), 6:08

1047. Mr Jamil El-Sayyed, a military officer and director of the Lebanese General Security Directorate at the time of the attack,²⁰⁶⁹ who testified for the Oneissi Defence stated that he was

²⁰⁶⁹ Jamil El-Sayyed, T. 5 June 2018, pp 2-3.

informed that military investigating Judge Rasheed Mezher ordered that the vehicles be moved the same night and the authorities were planning on opening the road for traffic the following day.²⁰⁷⁰ Mr El-Sayyed testified that he intervened and told the Minister of Interior and Brigadier-General Al-Hajj that this was not a normal traffic accident and that they could not open the road and must preserve the crime scene.²⁰⁷¹ According to Mr El-Sayyed, there was no contamination of the crime scene after this, but ‘of course there were some mistakes that were committed’.²⁰⁷²

Examination of convoy vehicles

1048. The Dutch forensic team examined the vehicles and the remains at the barracks, almost five months later, on 5 and 6 September 2005.²⁰⁷³ The Spanish forensic team examined the convoy vehicles during a five day period between 11 May and 3 June 2006 as part of its forensic analysis of the crime scene.²⁰⁷⁴ All of the vehicles were stored at the Lebanese police headquarters and were covered with blue plastic when the Dutch team’s investigations started, however they reported that it was not clear whether the vehicles had been protected in this way during the previous six months.²⁰⁷⁵ The Spanish team reported that all of the vehicles were covered with tarpaulins and were under cover when they conducted their later investigation.²⁰⁷⁶

1049. Witness 155, working with the Spanish forensic team, testified that in terms of his analysis as a ballistics expert, the transfer of the cars from the crime scene to the Helou Barracks before their examination did not cause a problem, as precautions had been taken not to lose the evidence.²⁰⁷⁷ However, he said that an examination of the vehicles at the crime scene would have provided a clearer picture.²⁰⁷⁸

²⁰⁷⁰ Jamil El-Sayyed, T. 5 June 2018, p. 110.

²⁰⁷¹ Jamil El-Sayyed, T. 5 June 2018, pp 108-111.

²⁰⁷² Jamil El-Sayyed, T. 5 June 2018, p. 109.

²⁰⁷³ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 50; Anick van de Craats, T. 28 August 2014, p. 70.

²⁰⁷⁴ Exhibit P266 (Spanish forensic team expert report), pp 13, 144.

²⁰⁷⁵ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 50.

²⁰⁷⁶ Exhibit P266 (Spanish forensic team expert report), p. 144.

²⁰⁷⁷ Witness PRH155, T. 25 September 2014, p. 34.

²⁰⁷⁸ Witness PRH155, T. 25 September 2014, pp 35-36.

1050. The Dutch forensic team numbered the convoy vehicles 401, 402, 403, 405 and 406.²⁰⁷⁹ Metal debris from another vehicle was also removed from the crime scene and placed next to the six vehicles.²⁰⁸⁰ It was numbered 404.²⁰⁸¹

1051. A black Toyota Land cruiser VX-R, with number plate B485868, was numbered vehicle 401.²⁰⁸² The damage the vehicle sustained was typical of a blast wave of an explosion. It was hit on the rear by the explosion but with insufficient impact to make any perforations.²⁰⁸³

1052. Vehicle 402, a black Mercedes Benz S500 with number plate B186395, had also been severely damaged.²⁰⁸⁴ Vehicle 402 was hit from the rear by the blast and had more damage than vehicle 401 because it was closer to the blast.²⁰⁸⁵

1053. Vehicle 403 was an armoured Mercedes Benz S600, driven by Mr Hariri himself.²⁰⁸⁶ It had structural damage despite the armour, and both the exterior and interior were completely

²⁰⁷⁹ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 49; exhibit P266 (Spanish forensic team expert report), pp 264-266. Another vehicle, numbered 301, was a black BMW with number plate B400745 that had also been transferred and placed in the barracks. The Dutch forensic team noted specifically that the vehicle's roof was bent inwards, the front windshield was broken and all other windows were missing. The body had several perforations and the back of the vehicle was more severely damaged than the front. The Dutch forensic team concluded that this vehicle was not in close range of the explosive device, and that this type of vehicle was not used in Mr Hariri's convoy, therefore it did not belong to the convoy, exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 49.

²⁰⁸⁰ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 49.

²⁰⁸¹ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 60, 65.

²⁰⁸² Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 49-50; exhibit P266 (Spanish forensic team expert report), p. 264. Specifically, the vehicle had dents in the front, on the sides and on top and a large dent in the rear. Its rear bumper was perforated twice. The front windshield was blown in, all other windows were missing and the airbags had been activated, exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 49-50; exhibit P266 (Spanish forensic team expert report), pp 144-159.

²⁰⁸³ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 49-50; exhibit P266 (Spanish forensic team expert report), pp 264-265.

²⁰⁸⁴ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 51-52; exhibit P266 (Spanish forensic team expert report), p. 264.

²⁰⁸⁵ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 51-52; exhibit P266 (Spanish forensic team expert report), pp 264-265. Specifically, both sides of the vehicle and the roof were heavily dented and the sun roof window was broken. The spare wheel cover at the bottom was ripped open and the exhaust was perforated. The bonnet was penetrated by the four suspension springs and the front bumper was partially detached. The right side of the vehicle was perforated and dented at full length. The rear bumper had a large number of perforations and was partly detached. The trunk lid was heavily deformed. The windshield and the rear right window were perforated, the rear left window was pulled down and had a crack and the other windows were broken. Airbags had been activated in the front and on the left side. The front left wheel was intact, the front right tyre was perforated and the rear tyres slid off the rims, exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 51-52. *See also* exhibit P266 (Spanish forensic team expert report), pp 159-182.

²⁰⁸⁶ Exhibit P266 (Spanish forensic team expert report), p. 264; exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 53-54.

destroyed.²⁰⁸⁷ The expert forensic teams concluded that the vehicle was hit from the rear right side by the blast wave.²⁰⁸⁸

1054. Vehicle 404, a Mercedes Benz S, was almost completely destroyed.²⁰⁸⁹ Some of the vehicle parts, for example, the remains of a spare wheel, a metal part of one of the seats and part of the axis, were identified by their article numbers as belonging to a Mercedes S type built after 1998.²⁰⁹⁰ The Dutch forensic team found further severely damaged vehicle parts, for example bottom plates with seat railings and an engine block,²⁰⁹¹ ‘showing Mercedes characteristics’.²⁰⁹² Based on information received from Mr Hariri’s bodyguards that there had been another Mercedes in the convoy similar to vehicle 402 with a jamming device, the Dutch forensic team concluded that these vehicle parts likely belonged to vehicle 404.²⁰⁹³ The parts were heavily damaged and therefore the forensic teams concluded that they belonged to a vehicle which had been located close to the explosion centre and was the second protection vehicle.²⁰⁹⁴ As primarily parts of the left side of the chassis were recovered, this vehicle had most likely been hit by the blast from the right side.²⁰⁹⁵

²⁰⁸⁷ Exhibit P266 (Spanish forensic team expert report), pp 183, 265. The number plates were missing. The vehicle identification number was ‘WDB 2201 781A 258991’. The Dutch forensic team reported that its body work was heavily burned and rusted and its colour could not be determined. Its bonnet and front bumper were missing. The engine was present but burnt. Only the rear right armoured window was found, placed on the engine block, and other windows were missing. The rear right door was separated from the vehicle and was found on the engine block. The front left door was separated too and was found on the front seats or what remained of them. Its tyres were completely burned to the rims. A large armouring plate was detached from the rear side. The chassis beam was deformed and bent to the left. The rear wheel casings were damaged, more on the right side. The bottom plate of the trunk was missing. The petrol tank was torn open and found inside the vehicle, exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 53-54; exhibit P266 (Spanish forensic team expert report), pp 183-201.

²⁰⁸⁸ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 53-54; exhibit P266 (Spanish forensic team expert report), p. 265.

²⁰⁸⁹ Exhibit P266 (Spanish forensic team expert report), p. 265; exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 60.

²⁰⁹⁰ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 60-64.

²⁰⁹¹ With numbers ‘R113 016 16 01’ and ‘06 03 01 08 02 561 S 026’.

²⁰⁹² Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 64.

²⁰⁹³ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 60, 65; Anick van de Craats, T. 28 August 2014, pp 80-81. *See also* exhibit P266 (Spanish forensic team expert report), pp 202-207.

²⁰⁹⁴ Exhibit P266 (Spanish forensic team expert report), pp 207, 264-265; exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 64-65; Anick van de Craats, T. 28 August 2014, p. 81.

²⁰⁹⁵ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 64-65; Anick van de Craats, T. 28 August 2014, p. 81; exhibit P266 (Spanish forensic team expert report), pp 207, 265.

1055. Vehicle 405 was a Mercedes Benz S500 and was completely burned and severely damaged, especially on the right front side.²⁰⁹⁶ The Dutch forensic team concluded that vehicles 403 and 405 were equally close to the explosive device. Vehicle 403 had just passed by the device and vehicle 405 was facing it.²⁰⁹⁷

1056. Vehicle 406 was a blue General Motors Company Chevrolet Suburban used for medical assistance and emergencies, referred to as ‘the ambulance’.²⁰⁹⁸ The expert forensic teams concluded that vehicle 406 faced the explosive device with its right front side and was further away than vehicles 403 and 405 because it sustained less damage.²⁰⁹⁹

²⁰⁹⁶ Exhibit P266 (Spanish forensic team expert report), pp 208, 264-266; exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 55-56. The plates were missing. The vehicle identification number was ‘WDB 2201 751A 209162’. The Dutch forensic team reported that the vehicle’s front bumper and bonnet were missing and the engine was burned and partially torn. The right side doors were severely deformed, dented and perforated. The left front door was missing. All of its windows were missing. Only the left rear tyre was in place, albeit burned, and all other tyres were missing. Rims were in place but heavily damaged. The left rear door, the rear bumper and the trunk lid were dented and deformed. *See also* exhibit P266 (Spanish forensic team expert report), pp 208-220.

²⁰⁹⁷ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 55-56; Anick van de Craats, T. 28 August 2014, p. 77. *See also* exhibit P266 (Spanish forensic team expert report), pp 265-266.

²⁰⁹⁸ Exhibit P266 (Spanish forensic team expert report), pp 221, 264; exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 57-58. Both number plates were missing and the Dutch forensic team could not locate its vehicle identification number. According to the Dutch forensic team’s observations, the bonnet was torn in two pieces, perforated and folded on the windshield. The front bumper and the suspension were damaged and moved. The grill and the car batteries were missing. The Dutch forensic team recorded many horizontal perforations on the right side and dents and burns on the left side of the body work. The left front wheel was also burned. Wheels on the right side were flat and damaged. All of the windows were missing. *See also* exhibit P266 (Spanish forensic team expert report), pp 221-255.

²⁰⁹⁹ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 57-58; Anick van de Craats, T. 28 August 2014, p. 78; exhibit P266 (Spanish forensic team expert report), pp 263, 266.

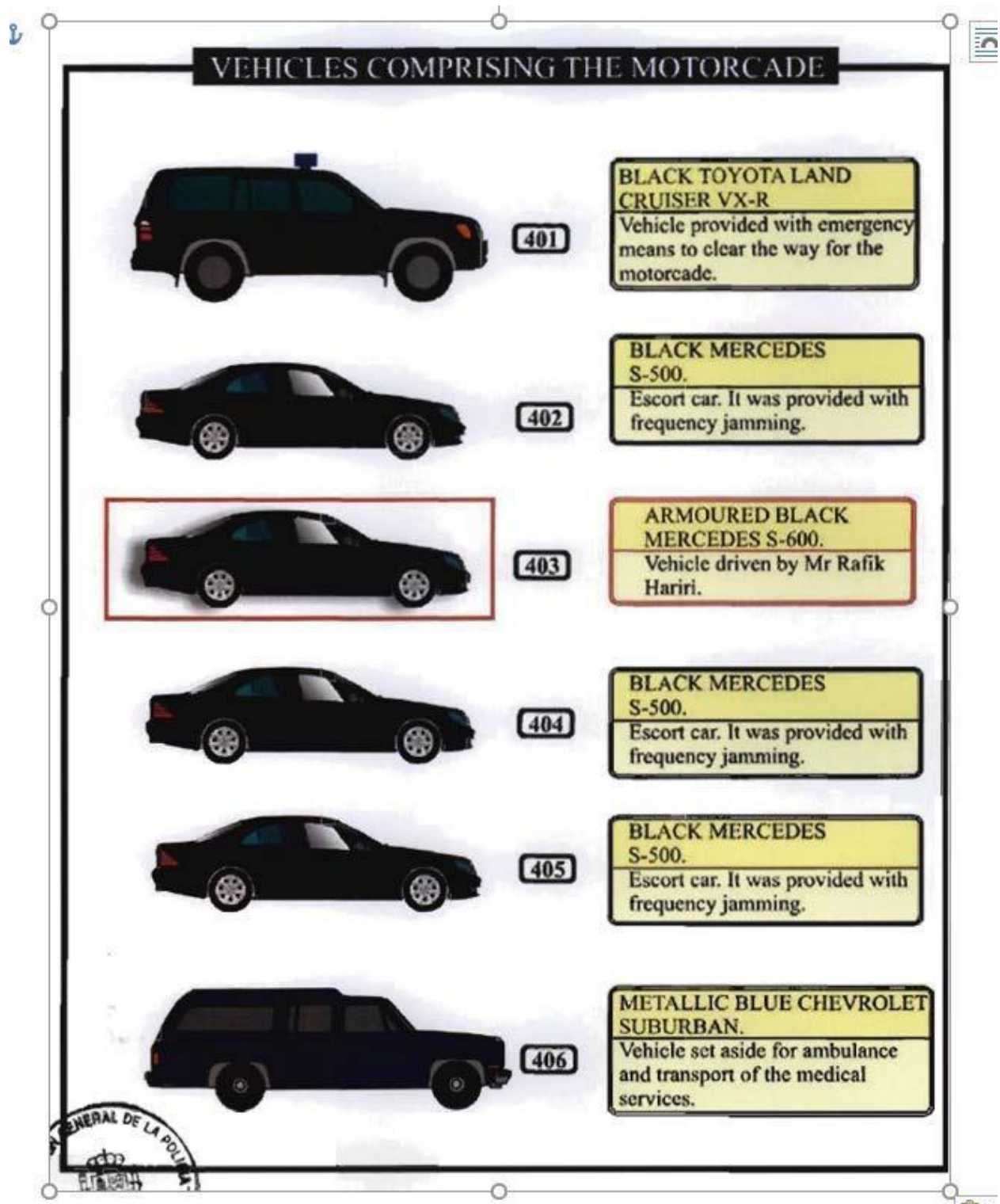


Exhibit P266 (Spanish forensic team expert report), p. 272

1057. The expert forensic teams determined the relative position of the vehicles at the time of the explosion, as reflected in their numbering of the vehicles. Vehicles 401, 402 and 403 had passed the explosive device before it exploded as damages to them were more severe in the rear or on the rear right side.²¹⁰⁰ The rear of vehicle 401 was less affected than that of vehicles 402 and 403.²¹⁰¹ It is likely that vehicle 404 was located very close to the IED,²¹⁰² closer than 403 and 405, at the time of the explosion.²¹⁰³ Vehicles 405 and 406 were more heavily damaged on the front right side; therefore they were facing the explosion centre.²¹⁰⁴ Vehicle 405 was almost fully destroyed, and vehicle 406 had less damage.²¹⁰⁵

²¹⁰⁰ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 89; Anick van de Craats, T. 28 August 2014, p. 79; exhibit P266 (Spanish forensic team expert report), pp 258-260, 264-265.

²¹⁰¹ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 58-59, Anick van de Craats, T. 28 August 2014, pp 77, 79; exhibit P266 (Spanish forensic team expert report), pp 258-260, 264-265.

²¹⁰² Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 89; Anick van de Craats, T. 28 August 2014, p. 79; exhibit P266 (Spanish forensic team expert report), pp 261, 265.

²¹⁰³ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 60; exhibit P266 (Spanish forensic team expert report), pp 261, 265.

²¹⁰⁴ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 58, 89; Anick van de Craats, T. 28 August 2014, p. 79; exhibit P266 (Spanish forensic team expert report), pp 262-263, 265-266.

²¹⁰⁵ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 60; exhibit P266 (Spanish forensic team expert report), pp 262-263, 265-266.

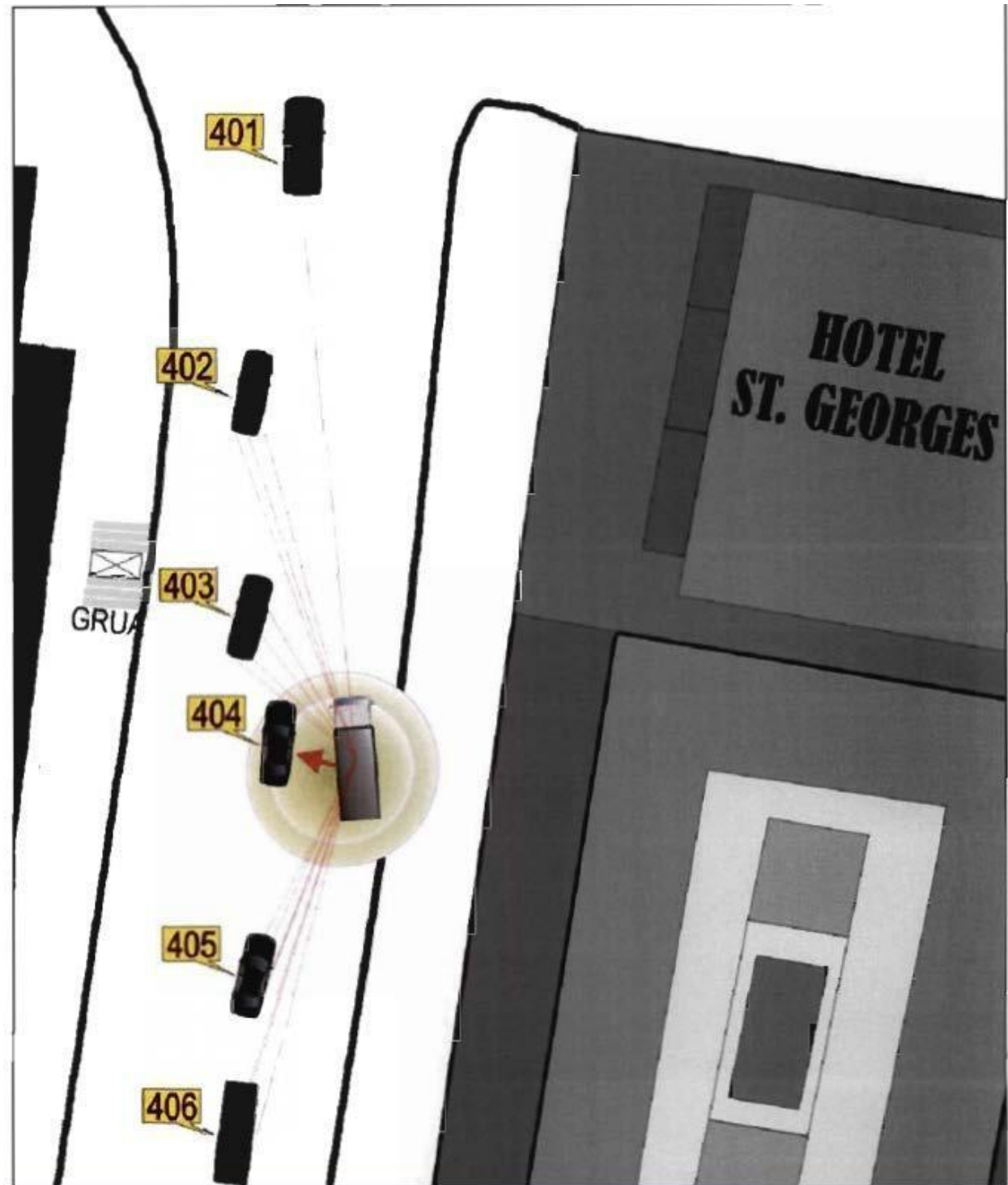


Exhibit P266 (Spanish forensic team expert report), p. 257

(b) Collection of evidence

1058. On Monday 14 February 2005, after the explosion, Judge Mezher organised a meeting of ten to 20 people including high-ranking officers from state security, the army, the ISF and general security, and junior officers.²¹⁰⁶ The judge issued instructions to all security units to work together in the investigation of the crime scene.²¹⁰⁷ Members of the ISF's Bureau of Explosives and two soldiers brought two to four vehicle parts found in the crater to the meeting.²¹⁰⁸

i. Collection of vehicle parts

1059. Judge Mezher assigned the ISF Bureau of Explosives the task of identifying the vehicle, if any, to which the parts belonged.²¹⁰⁹

1060. The Explosives Bureau's task was to inspect and examine suspicious vehicles, disarm devices, confiscate explosive material and inspect explosion sites.²¹¹⁰ Within an hour of the explosion, Witness PRH566, who worked at the bureau, and four explosive experts went to the crime scene to inspect it.²¹¹¹ These experts were: Mr Joseph Safi, First Sergeant Hussein Krayem and two civilian contractors working at the bureau, Mr Mahmoud Khashab and Mr Walid Othman.²¹¹² Witness 566 and his colleagues were the first to enter the crater after the explosion.²¹¹³ They retrieved items from the explosion, including vehicle parts—examined in detail below—

²¹⁰⁶ Abdel-Badih Soussi, T. 3 February 2014, pp 12, 24-25.

²¹⁰⁷ Witness PRH566, T. 6 February 2014, p. 64. *See also* exhibit 2D4 (Report by General Ashraf Rifi, 15 March 2005), ERNs 50010860-50010861.

²¹⁰⁸ Abdel-Badih Soussi, T. 3 February 2014, pp 13-15, 35; Witness PRH566, T. 5 February 2014, pp 11-12; Mahmoud Khashab, T. 8 September 2014, pp 13-15, 17-19, 79-81, 83-84, T. 9 September 2014, pp 11-13, 19-21, 28-29; Hussein Krayem, T. 9 September 2014, pp 77-79; exhibit P249 (Statement of Hussein Krayem), para. 14; exhibit P247 (ISF Explosives Bureau report, 2 March 2005), pp 5-6; exhibit P126 (Map showing the locations where Mitsubishi canter parts were found).

²¹⁰⁹ Abdel-Badih Soussi, T. 3 February 2014, p. 28.

²¹¹⁰ Witness PRH566, T. 5 February 2014, p. 7.

²¹¹¹ Witness PRH566, T. 5 February 2014, pp 6-8; Walid Othman, T. 3 September 2014, p. 16; Mahmoud Khashab, T. 8 September 2014, pp 12-14.

²¹¹² Witness PRH566, T. 5 February 2014, pp 8-10; Walid Othman, T. 2 September 2014, pp 5-13; Mahmoud Khashab, T. 8 September 2014, pp 6, 10-11, 13; Hussein Krayem, T. 9 September 2014, pp 65-66; exhibit P69, pp 2, 9, 21, 23, 30; exhibit P121 (ISF report on seizing mechanical parts and pieces from explosion site), p. 1.

²¹¹³ Walid Othman, T. 3 September 2014, pp 16-17; Mahmoud Khashab, T. 8 September 2014, pp 70-71. *See also* Hussein Krayem, T. 10 September 2014, p. 79.

noted where they were found and stored them at the bureau in Helou Barracks.²¹¹⁴ Witness 566 and his colleagues then prepared a report.²¹¹⁵

Underwater collection

1061. About four days after the explosion, Mr Samir Yazbek, the Head of the Lebanese Civil Defence's Marine Rescue Team, was assigned by the Directorate General to conduct a diving mission in the St Georges area to look for Mr Mohammed Ghalayini who was missing.²¹¹⁶ During the mission, Mr Yazbek recognised vehicle parts and filmed them.²¹¹⁷ Almost a month later, between 12 and 16 March 2005, he conducted several diving missions to retrieve vehicle parts in coordination with officials from the ISF Central Accidents Bureau.²¹¹⁸ Dr Schlatter from the Swiss team of experts was involved in the dive with Mr Yazbek on 12 March 2005, and they found a metal part containing Mitsubishi insignia.²¹¹⁹ Mr Yazbek retrieved 62 parts from the seabed facing the St Georges Hotel on these dives and handed them over to the Central Accidents Bureau.²¹²⁰

1062. On 16 March 2005, Mr Gemayel, with the Central Accidents Bureau of the ISF judicial police, photographed artefacts collected by Mr Yazbek from the seabed, 500 metres to one kilometre from the explosion.²¹²¹ When an item was recovered, it was photographed and assigned a brief description and a number up to 62.²¹²² The item was then given to an explosives expert.²¹²³

²¹¹⁴ Witness PRH566, T. 5 February 2014, pp 11-13; Walid Othman, T. 2 September 2014, pp 14-15, 19-21; Mahmoud Khashab, T. 8 September 2014, pp 19-23, 30-40, 76. *See also* exhibit P123 (ISF list of car parts found at the explosion site); exhibit P130 (Photograph of vehicle part); exhibit P134 (Photograph of vehicle part); exhibit P246 (Map of crater); exhibit 2D40 (Interview with Mahmoud Khashab, 8 April 2005); exhibit P249 (ISF Explosives Bureau report, 22 February 2005), ERNs 60278859-60278861.

²¹¹⁵ Exhibit P247 (ISF Explosives Bureau report, 2 March 2005).

²¹¹⁶ Exhibit P255 (Statement of Samir Yazbek), paras 1, 8.

²¹¹⁷ Exhibit P255 (Statement of Samir Yazbek), para. 8.

²¹¹⁸ Exhibit P255 (Statement of Samir Yazbek), paras 8-9, 11; exhibit P255 (ISF Central Accidents Bureau reports on parts retrieved from the seabed by Samir Yazbek), ERNs 60286251-60286260.

²¹¹⁹ Konrad Schlatter, T. 26 August 2014, pp 60-63; exhibit P242 (Swiss forensic team expert report), pp 6, 10, annexed photographs 32-33 (ERNs D0008419-D0008420); exhibit P147 (Mitsubishi car part – metal fragment); exhibit P224 (Metal fragment with Mitsubishi emblem); exhibit P255, ERNs 60286251-60286253. *See also* Witness PRH301, T. 4 February 2014, pp 53-59; exhibit P118 (Report on escorting Swiss experts); exhibit P119 (Annotated photographs of crime scene); exhibit P120 (Annotated photographs of crime scene).

²¹²⁰ Exhibit P255 (Statement of Samir Yazbek), para. 11; exhibit P255, ERNs 6028651-60286260; exhibit P255.1 (Videoclip of underwater retrieval of items).

²¹²¹ Tanios Gemayel, T. 10 February 2014, pp 52-53. *See also* Witness PRH301, T. 4 February 2014, pp 49-51; exhibit P118 (Report on escorting Swiss experts), pp 76-77, 93.

²¹²² Tanios Gemayel, T. 10 February 2014, pp 53-55; exhibit P178 (Report on metal pieces from the explosion site).

²¹²³ Tanios Gemayel, T. 10 February 2014, pp 53, 55.

1063. One of the Lebanese divers retrieved an indicator handle—a vehicle part near the steering wheel—and it was later found to belong to the Mitsubishi Canter.²¹²⁴ However, according to Mr Othman, this part was never taken to a laboratory for fingerprint analysis. He was not aware of any judicial order to test for fingerprints and such an order would not be logical given that the part had been in salt water and the fingerprints would not have remained.²¹²⁵

1064. Mr Malcolm Wilson, a police officer with the Anti-Terrorist branch of the Counter-Terrorism Command in the UK,²¹²⁶ and two other police officers travelled to Beirut from the UK on 20 June 2005 at the UNIIIC's request.²¹²⁷ Their purpose was to establish the feasibility of an underwater search of the Mediterranean Sea and a swimming pool near the crime scene to recover evidence.²¹²⁸ The swimming pool could not be emptied as it was fed by sea water and needed to be searched by divers.²¹²⁹ It was in a horrible state, containing rotting material, rubbish and other detritus.²¹³⁰ At the end of this visit, Mr Wilson and his team estimated that a team of six divers from the UK Metropolitan Police, assisted by local Lebanese divers, could systematically search the designated area of the sea and swimming pool in eight to ten days.²¹³¹

²¹²⁴ Walid Othman, T. 4 September 2014, pp 33-35.

²¹²⁵ Walid Othman, T. 4 September 2014, pp 34-35.

²¹²⁶ Malcolm Wilson, T. 7 February 2014, p. 2.

²¹²⁷ Malcolm Wilson, T. 7 February 2014, pp 4-6; exhibit P163 (UK Metropolitan Police Service Anti-Terrorist Branch report on site visit, 23 June 2005), p. 1.

²¹²⁸ Malcolm Wilson, T. 7 February 2014, pp 6, 8-9; exhibit P163, pp 1, 5.

²¹²⁹ Malcolm Wilson, T. 7 February 2014, pp 42-43; exhibit P164 (UK Metropolitan Police Service Anti-Terrorist Branch report on underwater search, 5 September 2005), pp 9, 14.

²¹³⁰ Malcolm Wilson, T. 7 February 2014, p. 43; exhibit P164, pp 9-10.

²¹³¹ Exhibit P163, pp 6-7; *see also* Malcolm Wilson, T. 7 February 2014, pp 10-11.



Aerial photograph of the crime scene showing the sea, the marina and the crater

Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 11 (photo 2)

1065. On 26 August 2005, Mr Wilson and six police officers returned to the crime scene and commenced a forensic search of the marine areas.²¹³² They were assisted by 12 or more Lebanese divers, depending on the day, most of whom were unpaid volunteers.²¹³³ The dive team marked the designated search area in the sea with buoys and weighted ropes in an arc shape in front of where the explosion occurred, beginning some 100-120 metres from the crater.²¹³⁴

1066. When an item was recovered from the seabed, the divers brought it from the point of recovery to Mr Wilson at the marina, where he was informed as to where it was found. These items were cleaned and examined to see if they had any identifying marks and Mr Wilson then

²¹³² Exhibit P164, pp 6-7; Malcolm Wilson, T. 7 February 2014, pp 10-12, 26. *See also* exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 7, 10.

²¹³³ Malcolm Wilson, T. 7 February 2014, pp 12-13, 26, 43; *see also* exhibit P164, pp 11-18.

²¹³⁴ Malcolm Wilson, T. 7 February 2014, pp 12-14, 17-19; exhibit P164, pp 7-8, 22. *See also* exhibit P167 (PowerPoint presentation underwater search).

sequentially labelled them and handed them over to the UN local investigator, Mr Rizvi Kaiser.²¹³⁵ Mr Wilson assigned letters to the recovered items depending on whether they came from the sea and if they were vehicle parts.²¹³⁶ At the conclusion of the search, the divers had performed a sweep of beyond 230 metres offshore.²¹³⁷ Two divers recovered several items, including vehicle parts, from the swimming pool.²¹³⁸ The dive team concluded its search on 3 September 2005 and recovered a total of 40 items.²¹³⁹

ii. Collection of videotaped claim of responsibility by Lebanese authorities

1067. On the night of 14 February 2005, Mr El-Sayyed heard from journalist Mr Ibrahim El-Amine that the chief of Al-Jazeera's Beirut office, Mr Ghassan Ben-Jeddo,²¹⁴⁰ was in possession of a videotaped claim of responsibility for the attack.²¹⁴¹ Al-Jazeera employees collected it from a cardboard box placed in a tree near their office. Mr El-Sayyed called Mr Ben-Jeddo and requested that he bring him the video tape.²¹⁴² The following morning, Mr Ben-Jeddo met Mr El-Sayyed and gave him the tape in a white envelope.²¹⁴³ Mr Ben-Jeddo informed him about the telephone calls leading up to the collection of the video tape and Mr El-Sayyed asked him if anyone had opened the envelope; Mr Ben-Jeddo stated: 'We tried to hold it with a handkerchief'.²¹⁴⁴

1068. Mr El-Sayyed believed there may have been fingerprints on the video tape and attached a 'highly confidential' seal and a note to it: 'Please do not carry or put your hand on the tape in order

²¹³⁵ Malcolm Wilson, T. 7 February 2014, p. 20; exhibit P164, p. 10.

²¹³⁶ Malcolm Wilson, T. 7 February 2014, pp 26-28; exhibit P164, p. 11. *See also* exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 48.

²¹³⁷ Malcolm Wilson, T. 7 February 2014, pp 47-48; exhibit P164, p. 9.

²¹³⁸ Exhibit P164, pp 10, 14.

²¹³⁹ Malcolm Wilson, T. 7 February 2014, p. 48; exhibit P164, pp 11-17.

²¹⁴⁰ Ghassan Ben-Jeddo, T. 8 July 2015, pp 57, 69; Witness PRH006, T. 23 June 2015, p. 24.

²¹⁴¹ Jamil El-Sayyed, T. 7 June 2018, pp 13-14. *See* chapter XII 'Claim of responsibility for the attack on Rafik Hariri', (F) (4) (c) (v) 'Collection of the video and letter for further details on how Mr Ben-Jeddo came into possession of the tape'.

²¹⁴² Jamil El-Sayyed, T. 7 June 2018, p. 14; Ghassan Ben-Jeddo, T. 9 July 2015, pp 43-44, 64-65; exhibit 5D166 (Statement of Ghassan Ben-Jeddo, dated 15 July 2005), para. 23; exhibit 5D167 (Ghassan Ben-Jeddo's witness statements), paras 82, 113-114; exhibit 5D169 (Statements of Ghassan Ben-Jeddo, dated 9 March 2005 and 9 April 2005), p. 8.

²¹⁴³ Jamil El-Sayyed, T. 7 June 2018, p. 14; Ghassan Ben-Jeddo, T. 9 July 2015, pp 43-44, 64-65; exhibit 5D166 (Statement of Ghassan Ben-Jeddo, dated 15 July 2005), para. 23; exhibit 5D167 (Ghassan Ben-Jeddo's witness statements), paras 105-106, 118, 123-124, 126; exhibit 5D169 (Statements of Ghassan Ben-Jeddo, dated 9 March 2005 and 9 April 2005), p. 8.

²¹⁴⁴ Jamil El-Sayyed, T. 7 June 2018, p. 15; *see* chapter XII 'Claim of responsibility for the attack on Rafik Hariri', (B) (1) (g) 'Broadcast of the claim video at 17:30'.

to protect the fingerprints’.²¹⁴⁵ He then provided the tape to Judge Abou Arraj; according to procedure, it is the military investigating judge’s responsibility to take control of all evidence related to a case and he or she can then refer the case to the ISF for further investigation if necessary.²¹⁴⁶ Mr Ben-Jeddo testified that the letter—attached to the video tape—was not handled with the same care as the video tape.²¹⁴⁷ He gave the original letter either to Mr El-Sayyed or to the FitzGerald fact-finding mission.²¹⁴⁸ The Al-Jazeera employees had not retrieved the cardboard box from the tree, only the envelope containing the tape and the letter.²¹⁴⁹

(c) Management of the crime scene and investigation

i. Lebanese officials’ investigation of the crime scene

Lack of training and coordination by Lebanese authorities

1069. General Ashraf Rifi was the ISF Deputy Inspector General, and also the liaison officer of the Ministry of Interior and Municipalities with the UN Fact-Finding Mission sent to Beirut to investigate the attack.²¹⁵⁰ He produced a report on 15 March 2005 with his conclusions about the investigation immediately following the attack and his proposals.²¹⁵¹ He reported that immediately following the attack, the security, military, judicial and civil defence services who rushed to the crime scene ‘unfortunately failed to meet the required standards expected from them and errors were committed’.²¹⁵² He reported a myriad of serious errors committed by the various authorities involved. They included that the crime scene was chaotic, not only in the first few hours after the incident but for an ‘unjustifiably long period afterwards’, and a lack of coordination between all of the security services present at the crime scene.²¹⁵³

1070. Mr El-Sayyed testified that the ‘crime scene investigators, particularly in the Lebanese interior forces, didn’t have the right experience. There were a lot of mistakes made’.²¹⁵⁴ According

²¹⁴⁵ Jamil El-Sayyed, T. 7 June 2018, p. 15.

²¹⁴⁶ Jamil El-Sayyed, T. 7 June 2018, pp 15-21.

²¹⁴⁷ Ghassan Ben-Jeddo, T. 9 July 2015, p. 48.

²¹⁴⁸ Ghassan Ben-Jeddo, T. 9 July 2015, pp 50, 65.

²¹⁴⁹ Ghassan Ben-Jeddo, T. 9 July 2015, p. 67.

²¹⁵⁰ Exhibit 2D4 (Report by General Ashraf Rifi, 15 March 2005), ERNs 50010850, 50010857.

²¹⁵¹ Exhibit 2D4.

²¹⁵² Exhibit 2D4, ERN 50010852.

²¹⁵³ Exhibit 2D4, ERN 50010852. *See also* Witness PRH566, T. 6 February 2014, pp 61-62, 64.

²¹⁵⁴ Jamil El-Sayyed, T. 5 June 2018, p. 108.

to Witness 566, the lack of co-ordination between the security organs was illustrated when the security forces and the Lebanese army were extracting metal objects from the crime scene without informing the other of what they had found.²¹⁵⁵ There was a sense of competition between the security organs to discover what had happened.²¹⁵⁶

1071. Witness 566 testified that he and his colleagues were not trained either to conduct an investigation or preserve a crime scene for forensic analysis.²¹⁵⁷ They also were not supplied with the required equipment to manage the crime scene.²¹⁵⁸ However, they were not in charge of protecting the crime scene.²¹⁵⁹

1072. Critical evidence was removed from the crime scene when the six convoy vehicles were removed and taken to the Helou Barracks ‘under the pretext of preserving them’.²¹⁶⁰ Tow trucks and other heavy duty vehicles used to remove the vehicles drove into the crime scene within hours of the explosion to remove the convoy vehicles.²¹⁶¹ Another vehicle, a BMW, which was not part of the convoy, was also removed. According to General Rifi, care should have been taken to preserve the vehicles in the exact positions they were in after the explosion to assist in establishing the circumstances of the attack.²¹⁶²

1073. Furthermore, General Rifi noted that a bulldozer entered the crime scene on the evening of 14 February 2005 for no justifiable reason; as soon as the Minister of Interior and Municipalities became aware of this, he ordered that it be removed and for the crime scene to be preserved.²¹⁶³

1074. Mr Kheireddine, a Lebanese police officer and one of the first responders at the crime scene, noted the presence of a bulldozer in a video taken by him and his team although he had not been informed of any plan to clear the crime scene on 14 or 15 February 2005.²¹⁶⁴ Bulldozers and

²¹⁵⁵ Witness PRH566, T. 6 February 2014, pp 64-65.

²¹⁵⁶ Witness PRH566, T. 6 February 2014, p. 65.

²¹⁵⁷ Witness PRH566, T. 5 February 2014, p. 86, T. 6 February 2014, pp 5-8, 23, 26, 36. *See also* Mahmoud Khashab, T. 8 September 2014, p. 81, T. 9 September 2014, pp 36-37.

²¹⁵⁸ Witness PRH566, T. 6 February 2014, pp 6-7.

²¹⁵⁹ Witness PRH566, T. 5 February 2014, pp 87-88, T. 6 February 2014, pp 14-15.

²¹⁶⁰ Exhibit 2D4, ERN 50010853.

²¹⁶¹ Exhibit 5D5 (Video of transfer of cars to Helou Barracks).

²¹⁶² Exhibit 2D4, ERN 50010853.

²¹⁶³ Exhibit 2D4, ERN 50010853.

²¹⁶⁴ Mohammed Kheireddine, T. 22 July 2014, pp 20-21, T. 23 July 2014, p. 21; exhibit P171 (Video of explosion site).

heavy machinery were used to rescue victims who were still alive and remove bodies. There was no clear organisation of such tasks.²¹⁶⁵

1075. Yellow crime scene tape had not been used, at least in one instance, across the front of the St Georges building.²¹⁶⁶ According to Mr Kheireddine, a crime scene should have had tape around the entire perimeter, and people who were not supposed to be there should have been removed.²¹⁶⁷ He also testified that explosives experts at the crime scene on 14 February 2005 were not wearing gloves but that using gloves and special clothing would have been proper procedure for anyone inspecting a crime scene involving an explosion.²¹⁶⁸ Mr Kheireddine said that standard practices and training for such investigations have changed post-February 2005.²¹⁶⁹

1076. Mr Othman, a member of the ISF forensic team sent to the crime scene immediately after the explosion, testified that his team did not wear special clothing or gloves while examining the crime scene; it was chaos and they were working under difficult circumstances and their main concern was to ‘find any evidence in order to preserve it and use it later on’.²¹⁷⁰ Procedures have changed since 2005 and now forensic teams in Lebanon use internationally-recognised protective clothing to attend crime scenes.²¹⁷¹

1077. According to Dr Murray, an expert in forensic explosives investigations,²¹⁷² using gloves and forensic suits is standard procedure for anyone entering a crime scene, particularly after an explosion has occurred.²¹⁷³

²¹⁶⁵ Mohammed Kheireddine T. 23 July 2014, pp 41-43.

²¹⁶⁶ Mohammed Kheireddine T. 23 July 2014, pp 17-20. *See also* exhibit P171.

²¹⁶⁷ Mohammed Kheireddine T. 23 July 2014, p. 46.

²¹⁶⁸ Mohammed Kheireddine T. 23 July 2014, pp 6-7, 39; exhibit P238 (ISF forensic report), ERN 50000458.

²¹⁶⁹ Mohammed Kheireddine T. 23 July 2014, pp 44-46.

²¹⁷⁰ Walid Othman, T. 3 September 2014, pp 41-43.

²¹⁷¹ Walid Othman, T. 3 September 2014, p. 42.

²¹⁷² *See above*, at fn. 2014.

²¹⁷³ Gerard Murray, T. 29 September 2014, pp 56-57.



*Exhibit P101 (Photograph of crater and crime scene taken by Mr Ali Mohamad),
ERN D0185185*

1078. A video taken on 14 February 2005 showed a journalist going under the yellow tape and walking through the crime scene, appearing to continue conducting an interview.²¹⁷⁴ This is shown in exhibit P160 below.

²¹⁷⁴ Mohammed Kheireddine T. 23 July 2014, pp 33-34; exhibit P160 (Video including clips taken at the crime scene on 14 February 2005), 28:46-29:00.



Exhibit P160

1079. Although formal guidelines existed regarding processing evidence after an explosion,²¹⁷⁵ Witness 566 testified that, for example, the parts collected from the crime scene and brought to the meeting at the military court on 14 February 2005 were not labelled or even stored in a container.²¹⁷⁶ The experts did not have an official log of recovered items, nor were records kept of the timing of when each item was retrieved.²¹⁷⁷ The vehicle parts were only given codes once the experts finished collecting all of the parts.²¹⁷⁸

1080. Mr Othman, Mr Khashab and Mr Krayem, members of the ISF forensic team and Witness 566's colleagues, testified that, at the request of investigating Judge Abou-Arraj, their team returned around 33 vehicle parts they had retrieved on the day of the explosion—including four Mitsubishi vehicle parts—to the crime scene on 17 or 18 February 2005.²¹⁷⁹ The judge told them to return the parts to the crime scene because the UN Fact-Finding Mission wanted them back in

²¹⁷⁵ Witness PRH566, T. 6 February 2014, pp 8-10.

²¹⁷⁶ Witness PRH566, T. 6 February 2014, pp 22-23.

²¹⁷⁷ Witness PRH566, T. 6 February 2014, pp 33-36.

²¹⁷⁸ Witness PRH566, T. 6 February 2014, pp 39-41.

²¹⁷⁹ Walid Othman, T. 3 September 2014, pp 21-30, 32-40, T. 4 September 2014, pp 69-70, 73-75; Mahmoud Khashab, T. 8 September 2014, pp 30-33, 72, 75-77, T. 9 September 2014, pp 5-6, 33-34; Hussein Krayem, T. 10 September 2014, pp 6-7, 15. *See also* exhibit 3D33 (Statement of Walid Othman), p. 4; exhibit 3D33.1 (Marked photograph attached to Walid Othman's statement).

the locations where they were initially found.²¹⁸⁰ Mr Khashab and Mr Krayem returned the parts and tried to place them in their approximate locations, both inside and around the crater.²¹⁸¹ Mr Khashab testified that they did not have any notes or diagrams to remind them of where the parts were originally found, however, Mr Krayem testified they had drafted a small map and they put the parts back at the crime scene according to this map.²¹⁸² They then photographed and labelled the parts.²¹⁸³

Search for victims at the crime scene

1081. General Rifi reported that the search for missing people was conducted in ‘an irresponsible, unprofessional and careless manner; some missing persons were found by chance or by families at a later date’. For example, Mr Zahi Bou Rjeily’s body was found on Tuesday 15 February 2005 and based on the medical examiner’s report he was alive for 12 hours after the explosion.²¹⁸⁴ Another victim’s body was found eight days after the explosion and Mr Ghalayini’s body was found 16 days after the attack by his family rather than by police officers or civil defence services.²¹⁸⁵

1082. Ms Lama Abdul Hamid Ghalayini, Mr Abdul Hamid Ghalayini’s daughter, testified during the victims’ case about the search for her father’s body.²¹⁸⁶ She testified that her sister first went to the explosion site on 15 February at 11:00 and was surprised to find that no search and rescue operations were ongoing; only the convoy vehicles had been removed.²¹⁸⁷ Civilians and politicians

²¹⁸⁰ Walid Othman, T. 3 September 2014, pp 21-30, 32-40, T. 4 September 2014, pp 69-70, 73-75; Mahmoud Khashab, T. 8 September 2014, pp 30-32, 72, 76, T. 9 September 2014, pp 33, 39. *See also* Hussein Krayem, T. 10 September 2014, pp 22-23; exhibit 2D42 (Statement of Hussein Krayem), p. 4; exhibit 3D33 (Statement of Walid Othman), p. 4; exhibit 3D33.1.

²¹⁸¹ Mahmoud Khashab, T. 8 September 2014, pp 32-34, 37-40, T. 9 September 2014, pp 5-6, 33-34; Hussein Krayem, T. 10 September 2014, p. 7.

²¹⁸² Mahmoud Khashab, T. 8 September 2014, pp 32-34, 37-40, T. 9 September 2014, pp 5-6; Hussein Krayem, T. 10 September 2014, pp 7-8, 38-39; exhibit P126 (Map showing the locations where Mitsubishi canter parts were found).

²¹⁸³ Mahmoud Khashab, T. 8 September 2014, pp 33-34, T. 9 September 2014, pp 34-35; Hussein Krayem, T. 10 September 2014, pp 7-8.

²¹⁸⁴ Exhibit 2D4, ERN 50010852.

²¹⁸⁵ Exhibit 2D4, ERN 50010853.

²¹⁸⁶ Lama Ghalayini, T. 28 August 2017, pp 12, 26-37.

²¹⁸⁷ Lama Ghalayini, T. 28 August 2017, p. 23.

were also present at the site.²¹⁸⁸ Ms Ghalayini and her family asked the police to use trained dogs to search the area but the police said it was not authorised.²¹⁸⁹

1083. On 17 or 18 February, Ms Ghalayini and her family then sought and received permission from an investigative judge to bring their own trained dogs ‘from a special school for dogs’ to search the crime scene for Mr Ghalayini because they were not given police dogs.²¹⁹⁰ First Lieutenant Shadi Saadeddine, from the ISF Counter-terrorism and Major Crimes Unit,²¹⁹¹ escorted the family—including Ms Ghalayini, her sister, two uncles and cousins—during the search on 17 February.²¹⁹² The dogs were given Mr Ghalayini’s clothes to smell first before searching for him.²¹⁹³ According to Mr Saadeddine, search dogs are usually trained and accompanied by a member of the judicial police and based on his recollection this was not the case during this visit.²¹⁹⁴ Ms Ghalayini pointed out burned body parts and other evidence to Dr Ayoub and police officers who were searching the crime scene that day and they collected the evidence.²¹⁹⁵ They started the search late in the day and it got dark quickly and they could not see anything so the family left the crime scene with the dogs without finding Mr Ghalayini.²¹⁹⁶

1084. On Saturday 19 February, the police brought their own dogs to search the crime scene for Mr Ghalayini for about 20 minutes but did not find him.²¹⁹⁷ Ms Ghalayini and her sister were present at the crime scene during this search and were told that the dogs they used that day were not trained to search for bodies, but rather for explosives and drugs.²¹⁹⁸ However, someone told her that a search for bodies with the assistance of dogs would have been easier if it had been done much earlier, immediately following the explosion.²¹⁹⁹

²¹⁸⁸ Lama Ghalayini, T. 28 August 2017, pp 23-24, 28.

²¹⁸⁹ Lama Ghalayini, T. 28 August 2017, pp 26-28.

²¹⁹⁰ Lama Ghalayini, T. 28 August 2017, pp 26-27, 29, 32; *compare* exhibit P186 (Statement of Shadi Saadeddine), para. 20, pp 36-38.

²¹⁹¹ Exhibit P186 (Statement of Shadi Saadeddine), para. 1; Shadi Saadeddine, T. 25 June 2014, p. 68.

²¹⁹² Exhibit P186 (Statement of Shadi Saadeddine), para. 20, pp 36-38; Lama Ghalayini, T. 28 August 2017, pp 29-32.

²¹⁹³ Lama Ghalayini, T. 28 August 2017, pp 29-32; exhibit P194 (Statement of Fouad Ayoub), p. 3; exhibit P186 (Statement of Shadi Saadeddine), p. 36.

²¹⁹⁴ Exhibit P186 (Statement of Shadi Saadeddine), pp 36-38; Shadi Saadeddine, T. 26 June 2014, pp 11-14.

²¹⁹⁵ Lama Ghalayini, T. 28 August 2017, p. 31.

²¹⁹⁶ Lama Ghalayini, T. 28 August 2017, pp 31-32.

²¹⁹⁷ Lama Ghalayini, T. 28 August 2017, pp 32, 35-36.

²¹⁹⁸ Lama Ghalayini, T. 28 August 2017, pp 35-37.

²¹⁹⁹ Lama Ghalayini, T. 28 August 2017, p. 36.

1085. On Monday 21 February, Ms Ghalayini and her family participated in an unsuccessful search for her father's body at sea with a team of professional divers from the Civil Defence.²²⁰⁰

1086. On Tuesday 22 February, Ms Ghalayini and her sister returned to the crime scene where they did not see any obvious search operation continuing; vehicles were still in place, or cut into pieces, at the crime scene, including on the side of the Byblos building where their father's body was later found.²²⁰¹

1087. Ms Ghalayini and members of her family met Judge Abou-Arraj on Saturday 26 February and he informed them that the search operation of the crime site was completed and they were no longer searching for bodies. He said that there were only two bodies which had not been found—her father's and Mr Abu Adass's—and that they would not find any of her father's 'dust', or any of his remains, at the crime scene.²²⁰²

1088. Following this meeting—and a report in the media that a stray cat at the crime scene was seen holding a hand in its mouth—Ms Ghalayini and her family organised a peaceful sit-in on 1 March close to the St Georges Hotel to put pressure on the authorities to continue searching the explosion site.²²⁰³ Hundreds of people participated in the sit-in, including demonstrators already at the scene, friends and family and opposition MPs.²²⁰⁴

1089. The same day, with additional pressure from some of the MPs at the sit-in, the investigative judge authorised the family to enter the crime scene on 2 March at 09:00 together with a search team.²²⁰⁵ The family initially was not allowed to enter and while Ms Ghalayini's uncle was negotiating with the Beirut police chief near the Byblos building, he detected a bad smell and saw flies surrounding one area.²²⁰⁶ He pointed this out and Civil Defence personnel then checked this spot, where vehicles had been parked the day before. They found a foot under a small layer of

²²⁰⁰ Lama Ghalayini, T. 28 August 2017, pp 43-45, 50; exhibit P255 (Statement of Samir Yazbek), para. 8.

²²⁰¹ Lama Ghalayini, T. 28 August 2017, p. 56.

²²⁰² Lama Ghalayini, T. 28 August 2017, pp 59-62.

²²⁰³ Lama Ghalayini, T. 28 August 2017, pp 64, 69-71.

²²⁰⁴ Lama Ghalayini, T. 28 August 2017, p. 69.

²²⁰⁵ Lama Ghalayini, T. 28 August 2017, pp 70, 73, 78-79.

²²⁰⁶ Lama Ghalayini, T. 28 August 2017, pp 79-80, 82-84.

sand, and under the foot, they found Mr Ghalayini's body.²²⁰⁷ After his body was found, there was a state of chaos as civilians and media entered the crime scene and photographed the body.²²⁰⁸

1090. General Rifi reported that another serious error which undermined the investigation was the delay in and the failure to appoint an investigating judge to oversee the case.²²⁰⁹ According to General Rifi, as soon as Judge Abou-Arraj took over the investigation, all of the security services and judicial police officers fell under his command; he issued writs and took measures in particular to preserve the crime scene. However, the measures did not meet the required standards for dealing with a crime scene of this magnitude. General Rifi stated that stricter measures were required to prevent tampering with the crime scene and preserving the evidence to assist in the investigation, while ensuring that priority was given to search for the dead and injured and provide necessary first aid.²²¹⁰ According to Witness 566, following the instructions from the investigating judge, coordination improved.²²¹¹

1091. General Rifi also reported that the ISF Inspectorate General conducted disciplinary investigations pursuant to instructions from the Minister of Interior and Municipalities on 25 February 2005 following the flawed investigation of the explosion. As a result, the ISF Inspectorate General recommended the dismissal of both Chiefs of the Beirut Police and the Judicial Police.²²¹²

1092. At some point before the explosion, Witness 566 was introduced to Mr Jameh Jameh, an officer with the Syrian Intelligence, by Mr Krayem and Mr Khashab, his colleagues at the ISF Explosives Bureau.²²¹³ He was requested to regularly inform Mr Jameh whenever an incident related to security occurred. This disturbed Witness 566.²²¹⁴ Mr Jameh called Witness 566 on Tuesday 15 February to ask about the explosion the previous day.²²¹⁵ Witness 566 further called

²²⁰⁷ Lama Ghalayini, T. 28 August 2017, pp 80-81, 83, 85. *See also* exhibit P265 (Witness statement of Abdel-Hakim Ghalayini), ERNs 60291710, 60291712.

²²⁰⁸ Lama Ghalayini, T. 28 August 2017, pp 86-87.

²²⁰⁹ Exhibit 2D4, ERNs 50010853-50010854.

²²¹⁰ Exhibit 2D4, ERN 50010852.

²²¹¹ Witness PRH566, T. 6 February 2014, pp 64-65.

²²¹² Exhibit 2D4, ERN 50010852.

²²¹³ Witness PRH566, T. 5 February 2014, pp 77-78.

²²¹⁴ Witness PRH566, T. 5 February 2014, pp 79-80. *See also* Mahmoud Khashab, T. 9 September 2014, pp 50-54; Hussein Krayem, T. 10 September 2014, pp 44-48.

²²¹⁵ Witness PRH566, T. 5 February 2014, pp 80-81.

Mr Jameh on 15, 16, 17 and 23 February to relay further information about the explosion.²²¹⁶ According to Witness 566, Mr Jameh and his staff were the ‘de facto rulers’ of the crime scene and needed to be involved in order to prevent clashes.²²¹⁷

ii. Swiss forensic team investigation of crime scene—March 2005

1093. The Swiss forensic team arrived in Beirut in March 2005.²²¹⁸ Dr Konrad Schlatter, a Swiss chemist who the Trial Chamber declared an expert in examining explosives,²²¹⁹ identified a number of ways in which the crime scene in Beirut was altered. Evidence was moved as a matter of course because a lot of emergency personnel and other officials were on and around the crime scene.²²²⁰ The convoy vehicles had already been removed, in some instances not very carefully, and pieces of evidence had been removed when he and his team arrived.²²²¹ In fact, the removal of vehicles by mechanical means allowed for the potential for distortion or damage of the vehicles.²²²² Dr Schlatter and his team reviewed videos taken at the time and it was evident that little attention was given to securing evidence at the crime scene.²²²³

1094. Dr Schlatter described that environmental influences, such as heat from the explosion and sunshine, moisture due to a burst water pipe and several periods of rain, wind and light, can all lead to chemical changes in the evidence.²²²⁴ Heavy machinery was used at the crime scene²²²⁵ and some repair work had already been carried out.²²²⁶ Dr Schlatter testified that altering the crime scene made his team’s work more difficult as the crime scene was no longer in its original state

²²¹⁶ Witness PRH566, T. 5 February 2014, pp 81-83.

²²¹⁷ Witness PRH566, T. 5 February 2014, p. 82.

²²¹⁸ Witness PRH301, T. 4 February 2014, pp 39-42.

²²¹⁹ Decision on twelve expert witnesses, paras 7-9; Konrad Schlatter, T. 26 August 2014, pp 6, 9-10. Dr Schlatter is a qualified bomb technician and completed extensive training in forensics with specific courses in bomb scene management and terrorist investigation. In addition, he headed a scientific forensic department within a civilian police unit responsible for securing and examining evidence of crimes involving explosives, Konrad Schlatter, T. 26 August 2014, pp 6, 9-10; exhibit 3D27 (Konrad Schlatter’s CV).

²²²⁰ Konrad Schlatter, T. 26 August 2014, p. 18; exhibit P242 (Swiss forensic team expert report), p. 4.

²²²¹ Konrad Schlatter, T. 26 August 2014, p. 18, T. 27 August 2014, pp 38-39, 64; exhibit P242 (Swiss forensic team expert report), p. 4.

²²²² Konrad Schlatter, T. 27 August 2014, pp 31-32.

²²²³ Konrad Schlatter, T. 26 August 2014, pp 19-20, T. 27 August 2014, pp 37, 59, 61, 76; exhibit P242 (Swiss forensic team expert report), p. 4.

²²²⁴ Konrad Schlatter, T. 26 August 2014, p. 18.

²²²⁵ Konrad Schlatter, T. 27 August 2014, p. 70; exhibit 5D5.

²²²⁶ Konrad Schlatter, T. 27 August 2014, pp 38-39.

and he was not confident that items found at the scene were all from the explosion.²²²⁷ Despite the alterations, he acknowledged that it was still possible to obtain information about the explosion.²²²⁸

iii. Dutch forensic team investigation of crime scene—August 2005

1095. The Dutch forensic team started its investigation of the crime scene on 13 August 2005, assisted by other experts and Lebanese officers.²²²⁹ The area of the explosion stretched along the main road, *Rue Minet el Hosn*, for around 250 metres in between the St Georges Hotel to the north, north-east, and Hotel Byblos to the south, south-west.²²³⁰ The team divided the crime scene into inner and wider parts, and the inner crime scene into 11 zones.²²³¹ The inner crime scene included the St Georges and Byblos Hotels, part of *Rue Minet el Hosn* between the two hotels and the crater.²²³² The wider crime scene included longer stretches of *Rue Minet el Hosn*,²²³³ a park, a building next to the HSBC Bank to the east, part of the Marina road, the coastal area of the Mediterranean Sea, a swimming pool and a parking lot with three power generators to the west.²²³⁴

²²²⁷ Konrad Schlatter, T. 26 August 2014, p. 20, T. 27 August 2014, pp 41, 75.

²²²⁸ Konrad Schlatter, T. 27 August 2014, pp 83, 86.

²²²⁹ See paras 1032-1033.

²²³⁰ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 10, 17.

²²³¹ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 11, 14, 18; Anick van de Craats, T. 28 August 2014, pp 11, 13. Zones A to F stretch in front of the St Georges Hotel on the side of *Rue Minet el Hosn* from east to west. Zone C includes the crater. Zones G to K are on the Byblos Hotel side of *Rue Minet el Hosn* from west to east, exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 14, figure 2.

²²³² Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 11, 18; Anick van de Craats, T. 28 August 2014, p. 11.

²²³³ Both *Rue Minet el Hosn* and the Marina road were asphalted, exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 18.

²²³⁴ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 10, 17.



Photograph of the crime scene area from the east cordon towards the crater

*Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 12 (photo 3)*²²³⁵

1096. During the first three weeks of their investigation, the Dutch forensic team searched the crime scene, beginning with the wider crime scene area then the inner area.²²³⁶ They registered each item found.²²³⁷

1097. The Dutch forensic team noted that to examine a crime scene nearly six months after the incident occurred is not common practice.²²³⁸ The wider crime scene was cordoned off on 15 February 2005 and guarded by the ISF.²²³⁹ Some vehicles parked alongside the roads were still

²²³⁵ The photograph is undated; however, it was included in the Dutch forensic report dated 30 September 2005, so it was taken some time between 14 February and 30 September 2005.

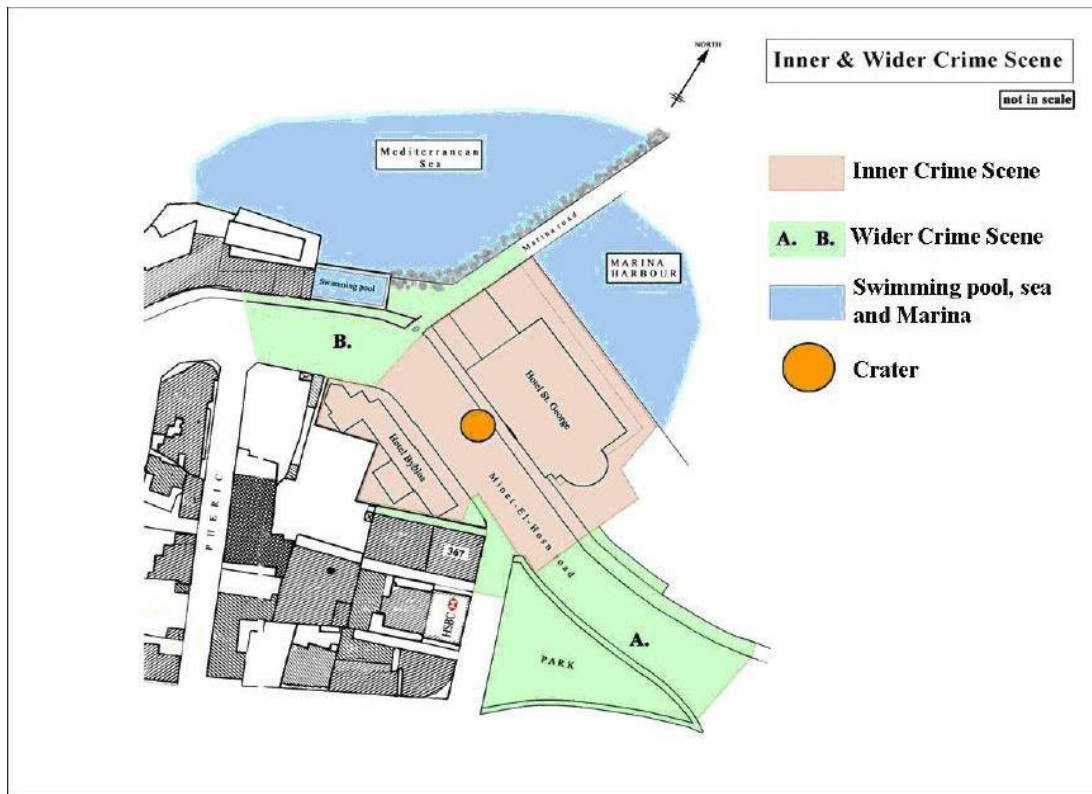
²²³⁶ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 10; Anick van de Craats, T. 28 August 2014, pp 11, 18.

²²³⁷ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 47; Anick van de Craats, T. 28 August 2014, pp 18-19.

²²³⁸ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 6; Anick van de Craats, T. 28 August 2014, p. 14.

²²³⁹ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 6-7, 17; Anick van de Craats, T. 28 August 2014, p. 15.

in their place when the Dutch forensic team arrived to the crime scene.²²⁴⁰ The Dutch forensic team found 39 severely damaged vehicles in the inner crime scene and 67 vehicles in the wider crime scene.²²⁴¹ An overview of the crime scene is shown below in the diagram and photograph extracted from exhibit P244, the Dutch forensic expert report:



Schematic overview of the crime scene (sketch is not scaled)

Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 10 (figure 1)

1098. Some parts of the crime scene were disturbed on several occasions;²²⁴² other areas, such as the upper floors of the Byblos and St Georges Hotels, were presumably not contaminated.²²⁴³ The Dutch forensic team recovered and collected more than 1,000 exhibits from the crime scene.

²²⁴⁰ Anick van de Craats, T. 28 August 2014, p. 12. *See also* exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 12, photo 3.

²²⁴¹ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 18; Anick van de Craats, T. 28 August 2014, pp 15, 24.

²²⁴² Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 6-7.

²²⁴³ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 6.

mostly metal or plastic fragments from vehicles, including from a red Ford, one or more Mercedes and a Mitsubishi, electronic wires and circuit boards, a weapon with eleven spent cartridges, two discharged and one damaged bullets, personal items, such as a note with telephone numbers, a SIM card, a valet, a pair of glasses, keys and a TV remote control.²²⁴⁴

iv. Spanish forensic team investigation of crime scene—May to June 2006

1099. The Spanish government sent a team of experts to Beirut in May 2006 to assist in the investigation.²²⁴⁵ Witness 155 described the methodology of the Spanish team, including the recording of evidence located,²²⁴⁶ dividing the crime scene into specific search zones,²²⁴⁷ and its search practices.²²⁴⁸ He said that debris was searched, sifted then piled to leave a clear central area,²²⁴⁹ and that it was expected that they would clear the crime scene of all traces of evidence.²²⁵⁰ Every mound of debris found at the crime scene was opened and examined carefully, even where the materials had been moved from another area of the crime scene after the explosion.²²⁵¹ The team collected items of interest and listed them in an inventory as an appendix to their final report.²²⁵² Given the time constraints, Witness 155 said a selective approach was taken, focusing on items such as possible metallic parts from the bomb, the vehicles involved and possible organic remains from the victims.²²⁵³ The materials collected were consistent with other crime scenes where there had been an explosion, including bone fragments, clothing, wiring, electronic circuits and parts of vehicles.²²⁵⁴

1100. However, according to the witness, there were shortcomings in the preservation of the crime scene.²²⁵⁵ Heavy machinery had been used to move debris, which included evidence, and

²²⁴⁴ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 47-48, appendix A.

²²⁴⁵ See para. 1034.

²²⁴⁶ Exhibit P266 (Spanish forensic team expert report), pp 6-7.

²²⁴⁷ Witness PRH155, T. 24 September 2014, pp 11-13; exhibit P266 (Spanish forensic team expert report), pp 8-11.

²²⁴⁸ Witness PRH155, T. 24 September 2014, pp 16-18, 34.

²²⁴⁹ Witness PRH155, T. 24 September 2014, p. 31.

²²⁵⁰ Witness PRH155, T. 25 September 2014, p. 38.

²²⁵¹ Witness PRH155, T. 24 September 2014, pp 59-60.

²²⁵² Witness PRH155, T. 24 September 2014, p. 12; exhibit P266 (Spanish forensic team expert report), p. 6, appendix.

²²⁵³ Witness PRH155, T. 24 September 2014, p. 23.

²²⁵⁴ Witness PRH155, T. 24 September 2014, pp 28-29.

²²⁵⁵ Witness PRH155, T. 24 September 2014, p. 53.

other forensic teams had examined the crime scene before his team arrived.²²⁵⁶ He highlighted that evidentiary material was still found by his team 15 months after the explosion, and even after the scene had already been searched by the Swiss and Dutch forensic teams and Lebanese investigating authorities.²²⁵⁷ However, he acknowledged that an initial search may have been difficult because of the confusion after the explosion and the risk of further attack or of a fire following the initial explosion.²²⁵⁸ Further, the crime scene was an 11,000 square metre site covered with rubble, and evidence may have been as small as a finger nail. Finally, some areas, such as the terraces of the St Georges Hotel, had not previously been cleared, and items found by his team there had not been moved there after the explosion.²²⁵⁹

v. Submissions

1101. The Merhi Defence argues that the crime scene was a state of chaos and mismanaged following the explosion.²²⁶⁰ The crime scene was severely contaminated and this therefore casts doubt on the reliability of the evidence collected there and on the results of its analysis.²²⁶¹ The crater and its content were mismanaged by the 'Lebanese authorities'. They allowed a significant number of people in and around the crater to collect human remains and move vehicle parts from the explosion.²²⁶² The area around the crater was disturbed by bulldozers and the crime scene was not sealed off or restricted and family members and unaccompanied dogs were allowed to enter.²²⁶³ The crater had also flooded with water which further damaged the evidence in it.²²⁶⁴ Also, vehicle fragments found at the scene were mishandled and the convoy vehicles were removed the evening of the explosion. Explosive experts removed a number of vehicle parts and then returned them 'roughly to the location at the crime scene where they had been found'.²²⁶⁵

²²⁵⁶ Witness PRH155, T. 24 September 2014, p. 54.

²²⁵⁷ Witness PRH155, T. 24 September 2014, pp 60-64.

²²⁵⁸ Witness PRH155, T. 24 September 2014, pp 61-62.

²²⁵⁹ Witness PRH155, T. 24 September 2014, p. 62.

²²⁶⁰ Merhi Defence final trial brief, paras 459-469; Merhi Defence closing submissions, T. 18 September 2018, pp 24-28.

²²⁶¹ Merhi Defence final trial brief, para. 459; Merhi Defence closing submissions, T. 18 September 2018, pp 24-28.

²²⁶² Merhi Defence final trial brief, para. 460.

²²⁶³ Merhi Defence final trial brief, paras 460-462, 465-466; Merhi Defence closing submissions, T. 18 September 2018, pp 24-25.

²²⁶⁴ Merhi Defence final trial brief, para. 460.

²²⁶⁵ Merhi Defence final trial brief, paras 468-469.

1102. The Prosecution responded that any issues with the management of the crime scene by the Lebanese authorities did not affect the collection of the DNA.²²⁶⁶

vi. Findings on the management of the crime scene and investigation

1103. The Trial Chamber received extensive evidence about the crime scene investigation, including from members of the Lebanese police, fire department, Civil Defence and ISF Explosives Bureau who were the first responders at the explosion site. It also received evidence from members of the international investigation teams sent to assist in the investigation and to collect further evidence at the crime scene between March 2005 and July 2006.

1104. The Trial Chamber has also considered further evidence, including from surviving members of the convoy and participating victims, either relatives of those who died in or as a result of the explosion or people who were physically injured. This is analysed in detail in relation to the harm to the victims.²²⁶⁷

1105. The evidence reveals a mismanaged, disorganised and chaotic approach to the crime scene investigation, particularly in the initial period after the explosion. Extensive evidence was received from which the Trial Chamber can conclude that there was little to no coordination between the various responsible Lebanese authorities during this period.

1106. While acknowledging the ease of hindsight criticism, it is also evident that many elementary crime scene procedures were either ignored or not followed. The Trial Chamber recognises the inevitability of turmoil in the immediate aftermath of such a terrorist attack—including of course the uncertainty of whether another may follow—and especially where someone as prominent as Mr Hariri was its target. On top of this was the natural concern of friends and family of those who may have been victims of the explosion, who rushed to the scene and were allowed onto it. And into this mix must be added the distrust—that some Lebanese people had towards their state institutions—that some victims testified about. The evidence revealed the frustration that some victims felt in relation to the competence of the investigation, with some even taking investigatory matters into their own hands.

²²⁶⁶ Prosecution closing submissions, T. 13 September 2018, pp 53-54.

²²⁶⁷ See sub-section (G) ‘Victim harm’, below.

1107. The Trial Chamber also recognises that the priority immediately after the explosion was rescue and recovery—with an emphasis on the wounded—and safety in, for example, putting out the fire. This would inevitably contaminate any crime scene. Securing the crime scene was, it appears, very much a secondary issue.

1108. However, putting these factors aside, some of the most basic crime scene processes were virtually non-existent. For example, while the fire brigades on the scene in the first hours used yellow tape to cordon off at least part of the crime scene after putting out the fire, they were not responsible for preventing civilians from entering the crime scene. Nor were the fire brigades in charge of protecting the crater. These responsibilities fell to the military and security forces. As a result, numerous civilians including journalists were allowed to enter the crime scene haphazardly within hours of the explosion and in the days following. Although the Trial Chamber received evidence that the wider crime scene was cordoned off on Tuesday 15 February 2005, and guarded by the ISF, photographs and videos showed numerous non-essential personnel trampling over an unsecured crime scene.

1109. Also, members of the Lebanese forensic team and police did not wear gloves or forensic suits while investigating the crime scene or handling exhibits, while according to Dr Murray, using such protective gear is standard procedure following an explosion. These lapses were inexplicable and the Trial Chamber agrees with General Rifi's contemporaneous critique in this sense.

1110. But what is perhaps more incomprehensible was the removal of the convoy vehicles from the crime scene immediately after the explosion—by mechanical means, and in some instances not very carefully. Bulldozers and heavy machinery also were used at the crime scene. The removal process allowed for potential damage to the vehicles and the heavy machinery disturbed the crime scene at a crucial time before any forensic experts could search for or analyse evidence. The video of the removal shows a reckless destruction of a crime scene which may have resulted in the loss of crucial forensic evidence. This was completely avoidable. It was done on the evening of Monday 14 February when there was no reason, much less any urgency, in suddenly—and during the night—clearing a live crime scene in this rough and insensitive manner. Although it is possible that the Lebanese authorities, including Judge Mezher, instructed the immediate removal of the convoy vehicles to preserve them from any interference at the crime scene, the Trial Chamber is not satisfied that this was justified or prudent, at least not in the manner it occurred.

1111. And thereafter, the crime scene was neither properly secured nor protected from further potential contamination, such as from the elements. In this respect the Trial Chamber has considered the environmental influences on the evidence found at the explosion site, including rainfall at least on 19 February 2005,²²⁶⁸ which added to the water damage from the fire hoses used to extinguish the fire.

1112. Furthermore, the authorities had no coordinated procedure to search for missing persons in the days following the explosion, and some victims' bodies were found weeks after the explosion. This cannot be attributed to the initial panic and chaos at the crime scene immediately after the explosion. As an example, Mr Ghalayini's body was found only after repeated attempts by his family to search for him at the crime scene, on their own and on one occasion with search dogs they brought onsite and paid for themselves. After contacting authorities on multiple occasions, Mr Ghalayini's family members themselves ultimately found his body buried under rubble, over two weeks after the explosion occurred, on 2 March 2005.²²⁶⁹

1113. As noted, the Trial Chamber refers to General Rifi's conclusions, and especially that the crime scene was chaotic not just in the first hours but for an 'unjustifiably long period afterwards'. In particular, it accepts his conclusion that the search for missing persons was unprofessional and careless and care was not exercised in processing and preserving evidence from the crime scene.

1114. The Trial Chamber also agrees with the international experts' criticisms of the management of the crime scene. The Swiss forensic experts—who arrived on 5 March 2005, three weeks after the explosion—noted that little attention had been given to securing evidence at the crime scene and that heavy machinery was used to remove vehicles and for other purposes. Further, environmental influences also negatively affected the reliability of the evidence.

1115. However, despite this, the Swiss experts could still collect evidence to assist in the investigation. The Dutch forensic team arrived in Beirut six months after the explosion, in August 2005, and recovered more than 1,000 exhibits from the crime scene. But to exacerbate this, the Spanish team found evidence at the crime scene *15 months after* the explosion, even *after* the scene

²²⁶⁸ On Dr Ayoub's evidence, *see* para. 1383, below.

²²⁶⁹ *See* paras 1027, 1391.

had already been searched by Swiss *and* Dutch teams, *and* Lebanese authorities. The Spanish experts even cleared new areas of the explosion site which had never been previously searched.

1116. The Trial Chamber cannot comprehend the lack of coordination in the investigation following the explosion which even continued—albeit to a lesser degree—in the subsequent searches by the international forensic teams, as is demonstrated by the fact that they continued to find and process evidence 15 months after the attack. The Trial Chamber acknowledges, however, that, as noted by the Spanish forensic team, the crime scene spanned 11,000 square metres and evidence may have been as small as a finger nail.

1117. In light of the above, the Trial Chamber finds that the mismanagement of the initial investigation could have affected the reliability of some evidence recovered at the crime scene, including aspects of the collection of human remains. This is further considered below in relation to the findings on the human remains recovery and their DNA analysis, and in particular as it relates to an unidentified male.

1118. Despite all this, the Trial Chamber is satisfied that Lebanese officers and experts, assisted by multiple international forensic teams, conducted thorough and successful investigations into various aspects of the explosion in very difficult circumstances. This included explosives, ballistics and forensic crime scene investigation—including Lebanese volunteers and international underwater diving teams and experts in identifying vehicle parts—and forensic science and human identification.

1119. The Trial Chamber is satisfied that the various investigations resulted in the reliable collection of key evidence at the crime scene, such as the vehicle parts and some of the human remains, which are addressed below. The Trial Chamber is not convinced that the gross deficiencies in the initial investigation affected in any material manner the evidence underlying the issues that require deliberation on the guilt of the Accused.

2. Forensic analysis of the explosion

1120. How the explosion occurred was a significant focus of the trial. Conflicting evidence was presented as to the quantity of explosives used, whether the explosion took place above or below ground and how it was triggered.

1121. The Trial Chamber has carefully reviewed the enormous body of technical and forensic evidence relating to these and other issues. This included forensic reports, several of which were hundreds of pages long.²²⁷⁰ Around 30 witnesses provided statements or testified before the Trial Chamber, some over multiple days.²²⁷¹ Defence counsel extensively challenged much of this evidence through cross-examination.²²⁷²

1122. The Trial Chamber designated as experts a number of witnesses who testified and provided their analyses of the explosion: Professors Daniel Ambrosini and Bibiana Luccioni, who are Argentinian professors of engineering and experts in analysing the effects of explosions;²²⁷³ Mr Bart Hoozeboom, an image researcher at the Netherlands Forensic Institute who is an expert in forensic image analysis;²²⁷⁴ Dr Gerard Murray, a chemist from Forensic Science Northern Ireland who is an expert in forensic explosives investigations;²²⁷⁵ Dr Anick van de Craats, a senior forensic advisor at the Netherlands Forensic Institute who is an expert in forensic explosives investigations;²²⁷⁶ Mr Gerhard Geyer, a Mitsubishi manager in Germany who is an expert in identifying Mitsubishi Canter parts;²²⁷⁷ Dr Konrad Schlatter, a Swiss chemist who is an expert in examining explosives;²²⁷⁸ and Witness 507, who designed and built jamming device systems for Mr Hariri's convoy and is an expert regarding the functioning and operation of jamming devices.²²⁷⁹

1123. ISF forensic team members Mr Mahmoud Khashab, Mr Hussein Krayem, Mr Walid Othman, Mr Joseph Safi and their colleague Witness PRH566,²²⁸⁰ and ISF officer Mr Assaad

²²⁷⁰ For example, exhibit P266 (Spanish forensic team expert report).

²²⁷¹ For example, Daniel Ambrosini, T. 23-25 February 2015.

²²⁷² For example, Daniel Ambrosini, T. 25 February 2015, pp 7-93.

²²⁷³ Daniel Ambrosini, T. 23 February 2015, p. 7, T. 25 February 2015, p. 12; Bibiana Luccioni, T. 26 February 2015, pp 4-5, 8-9; exhibit P378 (International College of Experts report on attack of 14 February 2005), p. 5; Decision on twelve expert witnesses, paras 62-64.

²²⁷⁴ Bart Hoozeboom, T. 15 July 14, p. 8; Decision on expertise (Mr Geyer and Mr Hoozeboom), paras 13-14.

²²⁷⁵ Gerard Murray, T. 29 September 2014, pp 7-8; Decision on twelve expert witnesses, paras 13-15.

²²⁷⁶ Anick van de Craats, T. 28 August 2014, pp 3, 6; exhibit P244 (Report of forensic investigation, Ministry of Justice, Netherlands Forensic Institute), p. 7; Decision on twelve expert witnesses, paras 13-15.

²²⁷⁷ Gerhard Geyer, T. 16 July 2014, pp 5-6; Decision on expertise (Mr Geyer).

²²⁷⁸ Konrad Schlatter, T. 26 August 2014, pp 6, 9; exhibit 3D27; Decision on twelve expert witnesses, paras 7-9.

²²⁷⁹ Decision on Witnesses PRH291 and PRH507, para. 10; exhibit P293 (Witness PRH507's statement of 15 August 2015), paras 3-5; Witness PRH507, T. 20 October 2014, pp 14-15.

²²⁸⁰ Mahmoud Khashab, T. 8 September 2014, pp 6, 10-11; Hussein Krayem, T. 9 September 2014, pp 64-66; Walid Othman, T. 2 September 2014, pp 3-6; Witness PRH566, T. 5 February 2014, pp 6-8; exhibit P315 (Statement of Joseph Safi), pp 2, 8.

Nohra²²⁸¹ testified. Ms Robyn Fraser, a former Prosecution investigator,²²⁸² and Mr Ali Mohammed Diab, an electrical engineer who helped to install jamming devices in Mr Hariri's convoy, also gave evidence.²²⁸³

(a) High explosives

1124. The Prosecutor alleges that high explosives were used in the attack.²²⁸⁴ The Trial Chamber heard evidence regarding the science of high explosives as well as the kind of explosion that occurred during the attack.

i. High explosives in general

1125. Dr van de Craats explained that high explosives are chemical substances that react very rapidly, namely in micro-seconds, to suitable stimuli, thereby releasing a large amount of energy.²²⁸⁵ An explosion of high explosive material is known as a detonation reaction.²²⁸⁶

1126. The Dutch forensic team noted that the primary effects of a detonation reaction are a shock wave, a fireball and a blast in the air.²²⁸⁷ The instantaneous production of such a large amount of gases increases the pressure, thereby causing the sound effect.²²⁸⁸ The secondary effects of the explosion can include the projection of high velocity fragments from destroyed materials close to the explosion's centre, the sliding of large objects such as vehicles and the movement of entire walls from the blast.²²⁸⁹

1127. Dr van de Craats explained that the detonation velocity, namely the speed at which the detonation reaction propagates, is higher than the speed of sound²²⁹⁰ and is so fast that it results in

²²⁸¹ Assaad Nohra, T. 4 February 2014, pp 5-6.

²²⁸² Robyn Fraser, T. 22 January 2014, p. 36.

²²⁸³ Exhibit P290 (Ali Diab's witness statements), pp 2, 15, 48, 60. *See also* Witness PRH507, T. 20 October 2014, p. 15.

²²⁸⁴ Amended consolidated indictment, paras 4, 41.

²²⁸⁵ Anick van de Craats, T. 28 August 2014, p. 45; exhibit P377 (Argentinian expert report on quantity of explosives), p. 8; exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 9.

²²⁸⁶ Anick van de Craats, T. 28 August 2014, p. 45; exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 9.

²²⁸⁷ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 9.

²²⁸⁸ Anick van de Craats, T. 28 August 2014, p. 45; exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 9.

²²⁸⁹ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 9-10.

²²⁹⁰ Anick van de Craats, T. 28 August 2014, pp 45-46, T. 1 September 2014, p. 58; exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 9.

brisanse—the complete destruction of all material in the near vicinity. This explains why there is a crater.²²⁹¹ When the detonation velocity increases, the brisanse effect is greater and the fragments from the explosion are smaller.²²⁹²

ii. Were high explosives used in the attack?

1128. Dr van de Craats opined that the attack consisted of a detonation from high explosives.²²⁹³ She observed that when wall or ceilings have been moved, it shows it was a detonation reaction.²²⁹⁴ The bent column and the canopy bent upwards at the front of the St Georges Hotel demonstrated that a detonation reaction had occurred very close to the building.²²⁹⁵ Similarly, the fact that a three-and-a-half metre section of the front wall of the Byblos Hotel that was 20 centimetres thick had been pushed back 60 centimetres and severely demolished meant that an ‘enormous explosion’ had taken place.²²⁹⁶

²²⁹¹ Anick van de Craats, T. 28 August 2014, p. 46, T. 1 September 2014, p. 57; exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 9.

²²⁹² Anick van de Craats, T. 1 September 2014, pp 57-58.

²²⁹³ Anick van de Craats, T. 1 September 2014, p. 8, T. 28 August 2014, p. 49. *See also* exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 89.

²²⁹⁴ Anick van de Craats, T. 28 August 2014, p. 47.

²²⁹⁵ Anick van de Craats, T. 28 August 2014, p. 49.

²²⁹⁶ Anick van de Craats, T. 28 August 2014, pp 52-53.



Photo 30: The set-off concrete wall of the Byblos Hotel over a length of 350 cm.

Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 41

1129. Dr van de Craats observed that the explosion had been so powerful that it had blown out all the sliding doors on the balconies of the Byblos Hotel and propelled some of them into the back wall of the building.²²⁹⁷

²²⁹⁷ Anick van de Craats, T. 28 August 2014, pp 56-59; exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 45-46.



Photo 34: A frame of a sliding door to the balcony at the front of the Byblos Hotel penetrating into the back wall of the building with in the enlarged photo a detail of this penetration.

Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 45

1130. Dr van de Craats explained that the deformation, irregular pattern of sharp edges and shearing off of metal fragments recovered at the scene also demonstrated a large explosive force and intense heat, further demonstrating that a detonation explosion reaction had occurred.²²⁹⁸

1131. The Swiss forensic team also determined that high explosives were used, given the presence of ‘washout’ on pieces of debris, vehicles and metal structures close to the crater.²²⁹⁹ Washout occurs when metals that are very close to high explosive explosions are exposed to

²²⁹⁸ Anick van de Craats, T. 28 August 2014, pp 95-97.

²²⁹⁹ Konrad Schlatter, T. 26 August 2014, pp 57-58; exhibit P242 (Swiss forensic team expert report), pp 9, 19.

extreme pressure and temperatures, resulting in the removal or evaporation of materials. The traces left on the parts from this process are known as washout.²³⁰⁰

1132. Dr Schlatter acknowledged that the same effects produced by washout can also be caused by erosion, corrosion and acid. The Swiss team did not test the metal pieces for washout but relied on visual inspection.²³⁰¹ Dr Schlatter added that, because the team observed washout on several parts, this showed that it was caused by an explosion and not by other factors.²³⁰²

iii. Submissions

1133. None of the Defence made any challenges regarding this issue.

iv. Findings

1134. Based on the above, the Trial Chamber finds beyond a reasonable doubt that the attack consisted of a detonation reaction of high explosives. The damage and destruction to the St Georges and Byblos Hotels demonstrate the nature of the explosion, most notably the bent column and canopy at the St Georges Hotel and the large portion of the Byblos Hotel front wall that slid 60 centimetres. The mangled metal fragments found at the scene of the explosion, and the presence of washout on several of them, further confirms that high explosives were used during the attack.

(b) Type of high explosives

1135. The Prosecution alleges that the attack involved the use of the explosive material RDX.²³⁰³ The Trial Chamber has reviewed the evidence regarding the procedures for determining the type of explosives used, as well as the properties of RDX.

i. Identifying the type of explosives and RDX generally

1136. Dr Murray, who had had 40 years of experience with forensic explosives investigations and had examined hundreds of explosions,²³⁰⁴ explained the process for identifying the type of explosives used in an explosion. An explosion leaves traces because not all of the explosives are

²³⁰⁰ Konrad Schlatter, T. 26 August 2014, pp 57-58, T. 27 August 2014, p. 80.

²³⁰¹ Konrad Schlatter, T. 27 August 2014, p. 81.

²³⁰² Konrad Schlatter, T. 27 August 2014, pp 86-87; exhibit P242 (Swiss forensic team expert report), p. 9.

²³⁰³ Prosecution final trial brief, paras 1056, 1061.

²³⁰⁴ Gerard Murray, T. 29 September 2014, pp 7-8. *See also* exhibit P277 (Report of Gerard Murray), p. 2.

consumed in the explosion. Investigators should recover pieces of the explosive device or any other materials that might contain traces of the explosives and send them to a forensic laboratory. Factors that influence the presence of explosive residue on items include the nature of the explosive used, the time since the explosion, the treatment of the item's surfaces and the distance from the explosion.²³⁰⁵ The Swiss forensic team noted additional factors that can negatively affect the likelihood of finding residues, such as heat, humidity and the type and composition of the materials where the residue is found.²³⁰⁶

1137. Mr Khashab noted that explosive residues could be present on vehicle parts.²³⁰⁷ Mr Othman added that metals do not absorb explosive materials, and thus it was better to take samples for residue from tissues, textiles and soils and other materials that do absorb explosive materials.²³⁰⁸

1138. Dr Murray observed that swabs are used as part of the process to identify the type of explosives used. Swabs are made of cotton, wool or nylon, moistened with solvent and kept inside a small sealed polythene bag. The investigator takes the swab out, rubs it over a surface and returns it to a bag. In a general purpose explosives swabbing kit, not all the swabs are used. The unused ones are the control swabs, which are tested to see if the kit has been contaminated.²³⁰⁹

1139. Dr Murray added that, once his laboratory received the swabs, he first extracted any possible residues from the swabs with a solvent. He then processed the solution using high-pressure liquid chromatography to determine if there were potentially any commonly observed organic explosive materials. If the result was positive, another analysis was conducted to see if any particular explosive residue was present.²³¹⁰

1140. In response to questions from the Badreddine Defence, Dr Murray noted that cross-contamination is when an object with explosive residue left traces of that residue on another object.²³¹¹ One cannot distinguish between what was transferred via cross-contamination and what

²³⁰⁵ Gerard Murray, T. 29 September 2014, pp 8-9, 34.

²³⁰⁶ Exhibit P242 (Swiss forensic team expert report), pp 10-11.

²³⁰⁷ Mahmoud Khashab, T. 8 September 2014, pp 15-16, 72.

²³⁰⁸ Walid Othman, T. 3 September 2014, p. 51, T. 4 September 2014, pp 51-52.

²³⁰⁹ Gerard Murray, T. 29 September 2014, pp 11, 34.

²³¹⁰ Gerard Murray, T. 29 September 2014, pp 15, 61-62.

²³¹¹ Gerard Murray, T. 29 September 2014, p. 45.

was already present on the object itself.²³¹² Each transfer results in less residue being present.²³¹³ The amount of residue present on an object from cross-contamination depends on how much residue was on the object originally exposed to the explosive and how prolonged the contact was between the original object and subsequent objects.²³¹⁴

1141. Dr Murray agreed that exhibits at a crime scene should be carefully and individually packaged. Investigators should wear gloves and full forensic suits.²³¹⁵ If an investigator used bare hands to handle an exhibit at an explosion scene, the person should be swabbed before touching any exhibits.²³¹⁶ Exhibits should be transported and stored in sealed containers such as nylon bags to avoid cross-contamination.²³¹⁷

1142. Dr Murray discussed the properties of RDX, or cyclotrimethylenetrinitramine, which is a very powerful high explosive.²³¹⁸ It is typically available in one kilogram blocks that are about the size of a house brick, is malleable like modelling clay such that it can be moulded into any shape and remains stable and usable for years.²³¹⁹ Mr Khashab added that, because RDX is a soft explosive material, it can be compressed into a plastic bag, thereby increasing its destructive effect.²³²⁰

1143. It is relatively easy to acquire the components to make RDX.²³²¹ However, manufacturing RDX in a plasticized form would require chemical expertise and skill.²³²² It is commonly available as Semtex, which is composed of both RDX and an orange-coloured dye, and can be purchased from its manufacturer.²³²³ A couple of witnesses observed that RDX is so powerful that it is most

²³¹² Gerard Murray, T. 29 September 2014, pp 46-47.

²³¹³ Gerard Murray, T. 29 September 2014, pp 49-50.

²³¹⁴ Gerard Murray, T. 29 September 2014, pp 51-52.

²³¹⁵ Gerard Murray, T. 29 September 2014, pp 56-57.

²³¹⁶ Gerard Murray, T. 29 September 2014, p. 57.

²³¹⁷ Gerard Murray, T. 29 September 2014, p. 58.

²³¹⁸ Gerard Murray, T. 29 September 2014, pp 18, 26; exhibit P277 (Report of Gerard Murray), pp 3-4. *See also* exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 9.

²³¹⁹ Gerard Murray, T. 30 September 2014, pp 8-10, 34.

²³²⁰ Mahmoud Khashab, T. 8 September 2014, p. 55.

²³²¹ Gerard Murray, T. 29 September 2014, p. 40.

²³²² Gerard Murray, T. 29 September 2014, p. 43.

²³²³ Gerard Murray, T. 29 September 2014, pp 33, 40-42.

suitable for military purposes.²³²⁴ The manufacturer of Semtex said that it was available for industrial use but Dr Murray was unaware of any such use.²³²⁵

1144. RDX is about 1.35 times more powerful than TNT, or trinitrotoluene.²³²⁶ RDX's density is around 1.45 gram per cubic centimetre.²³²⁷ RDX requires a detonator with a small amount of high explosive, typically an electric detonator, battery and switch.²³²⁸

ii. Which high explosives were used in the attack?

1145. The Prosecution relies on Dr Murray's evidence to establish the type of high explosives used during the attack.²³²⁹

1146. After visiting the scene of the explosion in September 2005, Dr Murray worked with the Dutch forensic team to decide which items recovered from the scene should be swabbed to check for explosive residue.²³³⁰ Dr Murray and Dr van de Craats selected for swabbing metal fragments that were heavily damaged and highly deformed, thereby indicating they might have been closely involved with the explosion.²³³¹ The exhibits Dr Murray saw in Beirut were not bagged up; some were in cardboard boxes. Cross-contamination was therefore possible.²³³²

1147. Dr Murray provided swab kits and cotton swabs to Dr van de Craats, who performed the swabbing.²³³³ According to Dr van de Craats, the conditions for swabbing were good and the

²³²⁴ Gerard Murray, T. 29 September 2014, pp 26, 38; exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 9; Mahmoud Khashab, T. 8 September 2014, p. 64; *but see* exhibit P277 (Report of Gerard Murray), p. 4 (wherein Dr Murray states that RDX is used both commercially and militarily).

²³²⁵ Gerard Murray, T. 29 September 2014, p. 40.

²³²⁶ Gerard Murray, T. 29 September 2014, p. 27; exhibit P242 (Swiss forensic team expert report), p. 18; exhibit P277 (Report of Gerard Murray), p. 2, annex 1. *See also* Mahmoud Khashab, T. 8 September 2014, p. 55.

²³²⁷ Gerard Murray, T. 29 September 2014, p. 27; exhibit P277 (Report of Gerard Murray), annex 1. *See also* Walid Othman, T. 4 September 2014, p. 52.

²³²⁸ Gerard Murray, T. 29 September 2014, pp 35-36.

²³²⁹ Prosecution final trial brief, para. 1056.

²³³⁰ Gerard Murray, T. 29 September 2014, pp 11-12; Anick van de Craats, T. 28 August 2014, pp 20-21; exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 16; exhibit P277 (Report of Gerard Murray), p. 1.

²³³¹ Gerard Murray, T. 29 September 2014, p. 12; exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 16; exhibit P277 (Report of Gerard Murray), p. 2.

²³³² Gerard Murray, T. 29 September 2014, p. 61.

²³³³ Gerard Murray, T. 29 September 2014, p. 44; Anick van de Craats, T. 28 August 2014, pp 20-21, T. 1 September 2014, p. 9; exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 16; exhibit P277 (Report of Gerard Murray), p. 2.

standard international procedure for taking swabs had been followed.²³³⁴ Dr Murray agreed that the Dutch forensic team had taken steps to avoid cross-contamination.²³³⁵

1148. Specifically, the Dutch forensic team had used a recently renovated office where as far as known no explosive materials were used before. They cleaned the working table and put plastic covers on it, took control swabs of the working surface and the gloves of the person taking swabs and ensured that those taking swabs wore a sterile, surgical coat and gloves. They also processed the gloves and swabs under standard contamination control procedures and ensured that the person taking swabs wore no watches, rings or other ornaments.²³³⁶

1149. Dr Murray's laboratory examined the control swabs and found that they did not have any RDX present, which meant that the surfaces on which the swabs had been taken were not contaminated with RDX.²³³⁷

1150. At Dr Murray's laboratory in Northern Ireland, he analysed the swabs taken by the Dutch team.²³³⁸ Four swabs contained significant amounts of RDX.²³³⁹ Three of these came from parts of a Mitsubishi Canter.²³⁴⁰ The amount of RDX recovered was much higher than he had encountered when investigating explosions in Northern Ireland.²³⁴¹

²³³⁴ Anick van de Craats, T. 28 August 2014, p. 21.

²³³⁵ Gerard Murray, T. 29 September 2014, pp 53-54. *See also* exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 16.

²³³⁶ Gerard Murray, T. 29 September 2014, pp 53-54; exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 16.

²³³⁷ Gerard Murray, T. 30 September 2014, p. 38.

²³³⁸ Gerard Murray, T. 29 September 2014, p. 12; Anick van de Craats, T. 28 August 2014, p. 21; exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 17; exhibit P277 (Report of Gerard Murray), p. 3.

²³³⁹ Gerard Murray, T. 29 September 2014, pp 18-19; exhibit P277 (Report of Gerard Murray), pp 3-4. The amount of residue present ranged from approximately 1,100-1,600 nanograms. Gerard Murray, T. 29 September 2014, pp 62-63; exhibit P277 (Report of Gerard Murray), p. 3.

²³⁴⁰ Exhibit P277 (Report of Gerard Murray), p. 3; exhibits P130 and P134 (Photographs of vehicle parts). *See also* exhibit P250 (*Aide-mémoire* for Gerard Murray's evidence on Mitsubishi canter parts), lines 1, 4; Gerard Murray, T. 29 September 2014, pp 18-19.

²³⁴¹ Gerard Murray, T. 29 September 2014, pp 29-30.

1151. Dr Murray did not identify any other explosive materials.²³⁴² He concluded that the attack involved an RDX-based explosive, with no other type of explosive being used.²³⁴³ He could not identify its source.²³⁴⁴

1152. The Swiss forensic team also swabbed various items for explosive residue and took a soil sample from the crater. They divided the swabs and soil sample into three groups labelled A, B and C. Group A was analysed at the American University of Science and Technology in Beirut. Of these, only the soil sample tested positive for explosive residue, specifically TNT.²³⁴⁵ They were unable to test group B.²³⁴⁶ The Swiss team tested group C at their laboratory and did not find any explosive residue, including the soil sample from group C. Dr Schlatter explained that because the Swiss forensic team could not confirm the positive test for the group A soil sample, this result was questionable.²³⁴⁷

1153. The Spanish forensic team determined that, based on a prior UN analysis (meaning presumably the UNIIIC) of the crater soil and other items that were in close contact with the explosion, the explosives were composed of TNT, RDX and PENT.²³⁴⁸ The explosive charge therefore contained either TNT and RDX, connected with a detonating cord made of PENT, or TNT and Semtex—which is made of RDX and PENT.²³⁴⁹

1154. The Lebanese Military Intelligence forensic team found that the type of explosives was TNT, based on the analysis of samples taken from the explosion site.²³⁵⁰ A different forensic team,

²³⁴² Gerard Murray, T. 29 September 2014, p. 28, T. 30 September 2014, p. 38; exhibit P277 (Report of Gerard Murray), p. 3.

²³⁴³ Gerard Murray, T. 29 September 2014, pp 34-35, 38; exhibit P277 (Report of Gerard Murray), p. 4.

²³⁴⁴ Gerard Murray, T. 30 September 2014, p. 37.

²³⁴⁵ Konrad Schlatter, T. 26 August 2014, pp 25-26, 63-65; exhibit P242 (Swiss forensic team expert report), pp 5, 11-12, 17-18.

²³⁴⁶ Dr Schlatter tried to test the soil sample from group B at the American University, but was forced to leave Beirut before he could do so. Konrad Schlatter, T. 26 August 2014, p. 65; exhibit P242 (Swiss forensic team expert report), p. 18.

²³⁴⁷ Konrad Schlatter, T. 26 August 2014, pp 65-68, T. 27 August 2014, pp 81-82.

²³⁴⁸ The Trial Chamber understands PENT to be another acronym of PETN (pentaerythritoltetranitrate). PETN is a well-known type of explosive that is also used for medical purposes, Gerard Murray, T. 29 September 2014, pp 16, 18; exhibit P277 (Report of Gerard Murray), p. 3.

²³⁴⁹ Exhibit P266 (Spanish forensic team expert report), pp 274, 289.

²³⁵⁰ Exhibit P282 (Statement of Ziad Nasr), ERNs 60287014, 60287017.

from the ISF, could not identify the type of explosives used.²³⁵¹ Mr Khashab, a member of the ISF team, explained that the team did not have the technology at that time needed to test for residue.²³⁵²

1155. Mr Othman, also on the ISF team, believed that mortar missiles had been added to the explosives, based on the ISF team finding pieces of shrapnel from such missiles in the Byblos Hotel.²³⁵³ He explained that mortars put in an explosive charge would increase the level of shrapnel.²³⁵⁴ He acknowledged that one could not always distinguish shrapnel from a mortar from shrapnel from another source.²³⁵⁵ On the other hand, Dr van de Craats said that the Dutch forensic team did not find that shrapnel had been intentionally placed in the explosive device.²³⁵⁶ Dr Schlatter could not imagine adding a mortar to a bomb.²³⁵⁷

1156. Mr Assaad Nohra, an ISF officer,²³⁵⁸ accompanied a private expert from the American University of Science and Technology, who had taken cotton swabs and soil samples from the attack site to determine the type of explosives. Mr Nohra did not hear from the expert as to what the test results were.²³⁵⁹

1157. In addition to taking swabs for Dr Murray to analyse, the Dutch team also took a separate set of swabs for the team to examine itself.²³⁶⁰ The Trial Chamber did not receive the results of any separate analysis by the Dutch team.

iii. Submissions

1158. The Prosecution submits that the large amounts of RDX found on the swabs strongly supports the conclusion that an RDX-based high explosive was used in the explosion.²³⁶¹

1159. The Ayyash Defence submits that while Dr Murray determined that an RDX-based explosive was the source of the explosion, the Prosecution led no evidence on the origin of the

²³⁵¹ Walid Othman, T. 3 September 2014, p. 78; exhibit P247 (ISF Explosives Bureau report, 2 March 2005), p. 8.

²³⁵² Mahmoud Khashab, T. 8 September 2014, p. 73.

²³⁵³ Walid Othman, T. 2 September 2014, pp 63-64, T. 4 September 2014, p. 56; exhibit P247, p. 6; exhibit P247.1 (ISF Explosives Bureau report – photographs), p. 15.

²³⁵⁴ Walid Othman, T. 2 September 2014, p. 63.

²³⁵⁵ Walid Othman, T. 4 September 2014, p. 57.

²³⁵⁶ Anick van de Craats, T. 28 August 2014, p. 69.

²³⁵⁷ Konrad Schlatter, T. 27 August 2014, p. 25.

²³⁵⁸ Assaad Nohra, T. 4 February 2014, pp 5-6.

²³⁵⁹ Assaad Nohra, T. 4 February 2014, p. 18.

²³⁶⁰ Anick van de Craats, T. 28 August 2014, p. 21.

²³⁶¹ Prosecution final trial brief, paras 1056, 1061.

explosives. Therefore, the Prosecution theory that the Accused had access to explosives as a result of their support for Hezbollah is not supported by the evidence.²³⁶² There were no other Defence submissions on these points.

iv. Findings

1160. In light of the above evidence, the Trial Chamber finds that the specific type of high explosives used was RDX, as determined by Dr Murray.

1161. Dr Murray, in preparing his report for this case, drew upon his four decades of experience in forensic explosives investigations and his examination of hundreds of explosions. The Trial Chamber accepts Dr Murray's and Dr van de Craats's evidence that the Dutch forensic team took sufficient steps to avoid cross-contamination. The team followed international procedures for taking swabs. Most importantly, the Dutch team took control swabs, and Dr Murray confirmed these control swabs did not have RDX, which showed a lack of contamination. This concrete evidence outweighs the mere possibility of cross-contamination from items kept in boxes rather than in bags. Accordingly, the Trial Chamber rejects the Badreddine Defence's suggestion during cross-examination that cross-contamination tainted Dr Murray's results.

1162. Dr Murray also explained the careful process through which his laboratory tested the swabs taken by Dr van de Craats from pieces recovered from the explosion site. Four of these swabs contained significant amounts of RDX, and Dr Murray's analysis did not find the presence of any other types of explosive materials.

1163. Mr Othman from the Lebanese ISF forensic team believed that mortar missiles had been added to the explosives. However, he acknowledged that the shrapnel he identified as coming from mortars might have come from another source. The Dutch forensic team, on the other hand, did not find that shrapnel had been intentionally added to the explosive device. In other words, no positive forensic evidence supports Mr Othman's belief. Given the lack of confirmation by the Dutch team, added to Dr Schlatter's opinion that he could not imagine a mortar being added to a bomb, the Trial Chamber does not accept that mortar missiles were added to the explosives charge.

²³⁶² Ayyash Defence final trial brief, para. 66. *See also* Ayyash Defence closing submissions, T. 17 September 2018, pp 20-21.

1164. Similarly, the evidence from the other forensic teams casts no doubt on Dr Murray's conclusion. The Swiss team had one positive result for TNT from a soil sample, but was unable to duplicate it, thereby calling this result into question. The Spanish team concluded that the explosive charge was a mixture of TNT, RDX and PENT, but the basis for their determination is not clear. The Lebanese Military Intelligence team found that the explosives were made of TNT, but the Trial Chamber did not receive any additional information as to how the samples were taken at the explosion site or how they were analysed. The Trial Chamber also did not receive the results of other tests conducted by Lebanese and Dutch forensic teams.

1165. The Trial Chamber therefore is satisfied beyond a reasonable doubt that the attack involved an RDX-based explosive.

1166. The Trial Chamber received no evidence of how and where this RDX was obtained.

(c) Quantity, height and shape of the explosives

1167. The Prosecutor alleges that around 2,500 kilograms of TNT equivalent explosive material were used, the explosion occurred 50-80 centimetres above ground level and the explosives were distributed, namely laid out in a rectangular shape.²³⁶³

1168. Professor Ambrosini explained that the crater and damage resulting from an explosion depend on the combined effects of the quantity of explosives used, their location above or below ground level and the shape of the explosive charge.²³⁶⁴ The Trial Chamber has accordingly carefully reviewed the evidence as to the possible quantity of explosive materials used in the attack, whether it was placed above or below ground and whether the shape of the explosives was distributed or concentrated.

i. Quantity of explosives

1169. The Trial Chamber received a large amount of technical and forensic evidence on the quantity of explosives, in particular, various analyses of the amount of explosives used.

²³⁶³ Amended consolidated indictment, paras 42, 56 (f), 58 (e) (ii), 60 (h), 62 (g); Prosecution final trial brief, paras 2, 1053, 1057, 1061, 1124, 1137.

²³⁶⁴ Daniel Ambrosini, T. 25 February 2015, p. 90.

a. Calculating the quantity of explosives generally

1170. Professor Ambrosini explained that different types of explosives are more or less powerful than one another.²³⁶⁵ When calculating the quantity of explosives, the concept of ‘TNT equivalence’ is used.²³⁶⁶ Dr Murray explained how TNT equivalence works: TNT is assigned the value of one, explosives that are more powerful than TNT have TNT equivalent values greater than one, while explosives less powerful than TNT are assigned TNT equivalent values less than one.²³⁶⁷

1171. The actual mass of a non-TNT explosive is converted into its equivalent TNT mass through a formula based on the explosive material’s specific energy, peak overpressure or impulse. TNT equivalence is separate for each of these values.²³⁶⁸ Two explosives with a different mass but the same TNT equivalent mass will produce the same effect.²³⁶⁹

1172. A wide variation in the quantity of explosives can produce similar effects.²³⁷⁰ In other words, an explosive charge of 1,000 kilograms of TNT equivalent and an explosive charge of 1,500 kilograms of TNT equivalent will produce similar effects. Only when an explosive charge reaches 5,000 or 10,000 kilograms of TNT equivalent will the effect be significantly different to that of 1,000 kilograms.²³⁷¹

b. Calculating the quantity of explosives used in the attack

1173. The Prosecution relies on Professors Ambrosini’s and Luccioni’s evidence to determine the quantity of explosives.²³⁷² They calculated the quantity based on both the size of the crater and

²³⁶⁵ Daniel Ambrosini, T. 23 February 2015, p. 30; Mahmoud Khashab, T. 8 September 2014, p. 55.

²³⁶⁶ Daniel Ambrosini, T. 23 February 2015, p. 30; Anick van de Craats, T. 28 August 2014, p. 68; Walid Othman, T. 3 September 2014, p. 70; Mahmoud Khashab, T. 8 September 2014, p. 17.

²³⁶⁷ Gerard Murray, T. 29 September 2014, p. 26.

²³⁶⁸ Exhibit P378 (International College of Experts report on attack of 14 February 2005), pp 19-20; Daniel Ambrosini, T. 25 February 2015, pp 40-41.

²³⁶⁹ Bibiana Luccioni, T. 26 February 2015, p. 98.

²³⁷⁰ Daniel Ambrosini, T. 23 February 2015, pp 26-28, 36.

²³⁷¹ Daniel Ambrosini, T. 23 February 2015, p. 29.

²³⁷² Prosecution final trial brief, paras 1052-1053.

the damage to the surrounding buildings,²³⁷³ with Professor Ambrosini focusing on the crater and Professor Luccioni on the damage.²³⁷⁴

1174. Professor Ambrosini explained that only a certain range in the quantity could have created the crater. Similarly, only another particular range could produce the level of damage to the nearby buildings. The actual quantity of explosives would therefore fall within the overlap between these two ranges, because only amounts within the overlap could create both the crater and the resulting damage.²³⁷⁵ Professor Ambrosini described this as a ‘dual-monitoring system’.²³⁷⁶ Professor Luccioni added that, because they conducted multiple analyses of the explosion’s effects, this decreased their margin of error.²³⁷⁷

1175. To calculate the possible quantity of explosives used, they created computer simulations²³⁷⁸ that reproduced the effects of explosions in making craters and damaging buildings.²³⁷⁹ These computer models combined physics, chemistry and engineering,²³⁸⁰ and required up to six computers to perform all the calculations.²³⁸¹

1176. Specifically, their computer simulations modelled the behaviour of materials such as air, masonry, concrete, soil and steel during an explosion.²³⁸² The two experts determined the values for each material through their own tests, tests conducted by others, books and manuals.²³⁸³ They

²³⁷³ Daniel Ambrosini, T. 23 February 2015, pp 15-16; exhibit P377 (Argentinian expert report on quantity of explosives), p. 5; exhibit P378 (International College of Experts report on attack of 14 February 2005), pp 16, 28.

²³⁷⁴ Bibiana Luccioni, T. 26 February 2015, pp 6-7.

²³⁷⁵ Daniel Ambrosini, T. 23 February 2015, pp 17-21; exhibit P379 (Presentation by Argentinian experts on amount of explosives), p. 4; exhibit P379.1 (Annotated excerpt of presentation by Argentinian experts on amount of explosives).

²³⁷⁶ Daniel Ambrosini, T. 25 February 2015, p. 90.

²³⁷⁷ Bibiana Luccioni, T. 27 February 2015, p. 62.

²³⁷⁸ The two experts also described them as ‘numerical simulations’. Daniel Ambrosini, T. 23 February 2015, p. 23; exhibit P378 (International College of Experts report on attack of 14 February 2005), p. 16.

²³⁷⁹ Daniel Ambrosini, T. 23 February 2015, pp 23, 31; exhibit P377 (Argentinian expert report on quantity of explosives), p. 6; exhibit P378 (International College of Experts report on attack of 14 February 2005), p. 16. The results of their simulations were expressed in TNT equivalent kilograms. The two experts did not try to identify the type of explosive used. Daniel Ambrosini, T. 23 February 2015, p. 31.

²³⁸⁰ Daniel Ambrosini, T. 23 February 2015, p. 37.

²³⁸¹ Daniel Ambrosini, T. 23 February 2015, p. 33.

²³⁸² Daniel Ambrosini, T. 23 February 2015, pp 38-40; exhibit P377 (Argentinian expert report on quantity of explosives), pp 7-12.

²³⁸³ Daniel Ambrosini, T. 23 February 2015, pp 40-41.

used a range of possible values for various materials' properties. As a result, any variations in a material's properties would not impact the results of their computer simulations.²³⁸⁴

1177. They also used numerical meshes in their computer simulations, because the computer models were so large. For a numerical mesh, the computer model of an explosion was divided into tiny blocks. Calculations were then performed for each block to determine what occurred at that particular point in the model over a period. The finer the mesh was, the more accurate the results would be.²³⁸⁵ They reduced the mesh size in their simulations to the point that its fineness made no difference.²³⁸⁶

1178. Finally, Professors Ambrosini and Luccioni incorporated data from real-world testing of explosives to run their simulations and to calibrate their results.²³⁸⁷ They performed a series of tests using explosives that they included in their simulations.²³⁸⁸ They also incorporated data from explosives tests performed by others in France and Syria.²³⁸⁹

1179. In particular, they relied on the results of a test conducted in October 2010 known as Forensic Project 33 ('FP-33'). It took place in France at the Prosecution's behest, and aimed to reproduce as much as possible the attack explosion.²³⁹⁰ The road, pathway and surrounding vehicles were recreated.²³⁹¹ A Mitsubishi Canter was loaded with 2,467 kilograms of TNT equivalent explosives, laid out in a rectangular shape.²³⁹² The experts modelled the explosion before the test, and their predicted results were similar to the results of the crater size from the

²³⁸⁴ Bibiana Luccioni, T. 27 February 2015, pp 60-62.

²³⁸⁵ Daniel Ambrosini, T. 23 February 2015, pp 75-76.

²³⁸⁶ Daniel Ambrosini, T. 25 February 2015, p. 30. *See also* exhibit P378 (International College of Experts report on attack of 14 February 2005), annex 1, p. 6.

²³⁸⁷ Daniel Ambrosini, T. 23 February 2015, pp 23-24, 32, T. 25 February 2015, pp 53-54; exhibit P378 (International College of Experts report on attack of 14 February 2005), p. 16.

²³⁸⁸ Daniel Ambrosini, T. 23 February 2015, pp 60-67; exhibit P377 (Argentinian expert report on quantity of explosives), pp 15-17; exhibit P379, pp 8-11. Professor Ambrosini stated that the experimental results from their own tests were quite close to the predicted results from their computer simulations. Daniel Ambrosini, T. 23 February 2015, pp 66-67; exhibit P377 (Argentinian expert report on quantity of explosives), p. 17; exhibit P379, p. 11.

²³⁸⁹ Daniel Ambrosini, T. 23 February 2015, pp 67-72, 78-85, T. 24 February 2015, pp 14-21; exhibit P377 (Argentinian expert report on quantity of explosives), pp 17-26; exhibit P379, pp 13-27; exhibit P379.2 (Annotated excerpt of presentation by Argentinian experts on amount of explosives).

²³⁹⁰ Exhibit P378 (International College of Experts report on attack of 14 February 2005), annex 1, p. 2; Daniel Ambrosini, T. 24 February 2015, p. 83. *See also* exhibit P380 (Presentation by Argentinian experts on the analysis of the FP-33 crater).

²³⁹¹ Daniel Ambrosini, T. 24 February 2015, p. 84.

²³⁹² Daniel Ambrosini, T. 24 February 2015, pp 83-84.

actual test explosion.²³⁹³ Professor Ambrosini himself took part in the test.²³⁹⁴ Following the test, they used its results to refine their computer models and make them more precise.²³⁹⁵ Until his involvement in the FP-33 test, Professor Ambrosini had believed that the quantity of explosives used was smaller.²³⁹⁶

Calculating based on the crater's size

1180. Professors Ambrosini and Luccioni first estimated the quantity of explosives from the crater size. Accordingly, the Trial Chamber has examined the general evidence regarding craters produced by explosions, the evidence as to the size of the crater resulting from the explosion and finally the two experts' analysis of the quantity of explosives needed to create such a crater.

Size of a crater generally

1181. The size of a crater depends on three factors: the quantity of explosives, the shape of the explosive and the height of the explosive above or below ground.²³⁹⁷ As the quantity of explosives increases, so too does the diameter of the crater.²³⁹⁸ Ground reflection also impacts the size of the crater.²³⁹⁹

1182. 'Ejecta' is the material blown out of a crater by the force of the explosion. This material is also referred to as the 'lips' of the crater.²⁴⁰⁰ Professor Ambrosini explained that, rather than measuring from the top of the crater's lips, the actual crater diameter should be measured based on two points located at what would have been ground level before the explosion.²⁴⁰¹ 'Fallback'

²³⁹³ Daniel Ambrosini, T. 24 February 2015, pp 85-86; exhibit P378 (International College of Experts report on attack of 14 February 2005), annex 1, pp 32-33.

²³⁹⁴ Daniel Ambrosini, T. 24 February 2015, p. 83.

²³⁹⁵ Daniel Ambrosini, T. 24 February 2015, pp 86-87; exhibit P378 (International College of Experts report on attack of 14 February 2005), pp 16, 28, annex 1, p. 4.

²³⁹⁶ Daniel Ambrosini, T. 24 February 2015, p. 86.

²³⁹⁷ Daniel Ambrosini, T. 23 February 2015, p. 65.

²³⁹⁸ Daniel Ambrosini, T. 24 February 2015, p. 68.

²³⁹⁹ Daniel Ambrosini, T. 24 February 2015, p. 44.

²⁴⁰⁰ Daniel Ambrosini, T. 23 February 2015, p. 44.

²⁴⁰¹ Daniel Ambrosini, T. 23 February 2015, p. 44; exhibit P377 (Argentinian expert report on quantity of explosives), p. 14.

is the material that comes out of the crater after the explosion and lands back in it, and thus can hide the crater's true depth.²⁴⁰²

1183. In an ideal scenario, where the ground is homogenous, the crater forms a cone.²⁴⁰³ The presence of rocks, asphalt, pipes or cables can produce deviations from this ideal shape.²⁴⁰⁴

Measuring the crater

1184. The Prosecution relies on Mr Bart Hoogeboom's measurement of the size of the crater's diameter.²⁴⁰⁵ Mr Hoogeboom was an image researcher at the Netherlands Forensic Institute who specialized in photogrammetry—the measurement of images in photographs and videos.²⁴⁰⁶ He had appeared in court as an expert in 15 other cases and drafted photogrammetry reports in approximately 100 cases.²⁴⁰⁷

1185. Mr Hoogeboom prepared a photogrammetry report in 2010 in which he measured the diameter of the crater resulting from the attack.²⁴⁰⁸ He explained how he prepared this report. First, he selected 13 photographs²⁴⁰⁹ from which he could take measurements.²⁴¹⁰ The photographs were divided into three sets: one taken on the day of the explosion and two others taken four days later.²⁴¹¹ He needed three separate sets to ensure there were enough buildings around the crater, to provide a scale for taking measurements.²⁴¹²

1186. His next step was to extract three-dimensional information from the photographs.²⁴¹³ He then combined this three-dimensional information with data from a laser scan of the crater site

²⁴⁰² Daniel Ambrosini, T. 23 February 2015, p. 45; exhibit P377 (Argentinian expert report on quantity of explosives), p. 14; exhibit P377.1 (Annotated version of Argentinian expert report).

²⁴⁰³ Konrad Schlatter, T. 26 August 2014, p. 27.

²⁴⁰⁴ Konrad Schlatter, T. 26 August 2014, pp 27-28, T. 27 August 2014, pp 84-85.

²⁴⁰⁵ Prosecution final trial brief, fn. 2156.

²⁴⁰⁶ Bart Hoogeboom, T. 15 July 14, pp 8, 11.

²⁴⁰⁷ Bart Hoogeboom, T. 15 July 14, p. 11.

²⁴⁰⁸ Exhibit P209 (Netherlands Forensic Institute report on crater measurements).

²⁴⁰⁹ Bart Hoogeboom, T. 15 July 2014, pp 18-19; exhibit P209 (Netherlands Forensic Institute report on crater measurements), pp 5-7.

²⁴¹⁰ Bart Hoogeboom, T. 15 July 2014, pp 15-16; exhibit P209 (Netherlands Forensic Institute report on crater measurements), p. 3.

²⁴¹¹ Bart Hoogeboom, T. 15 July 2014, pp 18-19; exhibit P209 (Netherlands Forensic Institute report on crater measurements), pp 5-7. The photographs came from the UNIIIC and the media. Bart Hoogeboom, T. 15 July 2014, p. 17.

²⁴¹² Bart Hoogeboom, T. 15 July 2014, pp 20, 22.

²⁴¹³ Bart Hoogeboom, T. 15 July 2014, pp 25-30, 32-39; exhibit P209 (Netherlands Forensic Institute report on crater measurements), pp 4, 7-12; exhibit P211 (Photograph marked by Bart Hoogeboom).

made by the Dutch police in 2010.²⁴¹⁴ This laser scan created a three-dimensional representation of the buildings surrounding the location where the crater was.²⁴¹⁵

1187. Once he combined the three dimensional information from the photographs and laser scan, Mr Hoogeboom was able to measure the crater.²⁴¹⁶ It was difficult to identify where the crater rim was, so, he consulted a colleague who was an explosives expert and then applied an inverted truncated cone shape to the points identified on the crater.²⁴¹⁷ Based on the cone shape, Mr Hoogeboom concluded that the crater's diameter was 11.4 metres and the depth was 1.9 metres.²⁴¹⁸ In addition, he conducted several measurements between various identifiable points near the edge of the crater; these measurements were 10.2, 11.1 and 11.5 metres.²⁴¹⁹ Mr Hoogeboom's measurements had a margin of error of 'several per cent'.²⁴²⁰

²⁴¹⁴ Bart Hoogeboom, T. 15 July 2014, pp 13-15, 40-45; exhibit P209 (Netherlands Forensic Institute report on crater measurements), pp 4, 13-14.

²⁴¹⁵ Bart Hoogeboom, T. 15 July 2014, pp 14-15. The crater had been closed up by the time of the laser scan, Bart Hoogeboom, T. 15 July 2014, p. 15.

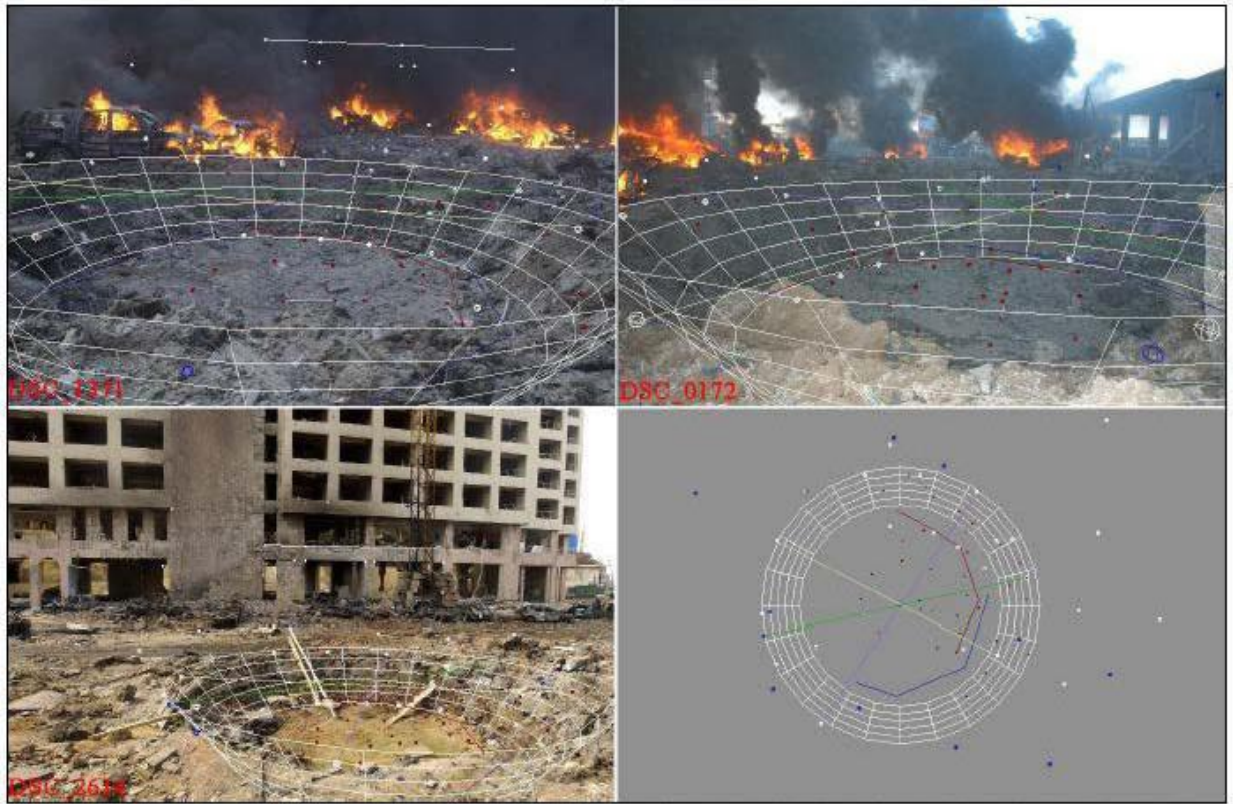
²⁴¹⁶ Bart Hoogeboom, T. 15 July 2014, pp 16, 45-46; exhibit P209 (Netherlands Forensic Institute report on crater measurements), pp 4, 15-17.

²⁴¹⁷ Bart Hoogeboom, T. 15 July 2014, pp 46, 49-50.

²⁴¹⁸ Bart Hoogeboom, T. 15 July 2014, pp 46-48; exhibit P209 (Netherlands Forensic Institute report on crater measurements), p. 18.

²⁴¹⁹ Bart Hoogeboom, T. 15 July 2014, pp 46, 48; exhibit P209 (Netherlands Forensic Institute report on crater measurements), p. 16.

²⁴²⁰ Bart Hoogeboom, T. 15 July 2014, p. 47.



Results of fitting a part of a cone on the datasets and the photographs. The result is shown on the photographs DSC_1371 and DSC_0172 from photoset one and DSC_2614 from photoset two. Furthermore a top view is given.

Exhibit P209 (Netherlands Forensic Institute report on crater measurements), p. 16

1188. Several other measurements of the crater's size were received in evidence. The Swiss forensic team measured the crater diameter at about 12.5 metres, with a depth of two metres. They too noted that it was in the shape of an inverted truncated cone.²⁴²¹ The Spanish team measured the crater at 13.72 and 12.82 metres in diameter and 1.83-2.00 metres deep.²⁴²²

1189. Meanwhile, the Lebanese ISF investigators measured the crater diameter at 12.4 metres and the depth at 2.3 metres.²⁴²³ Mr Safi, a member of the ISF team, said the original diameter of the crater was nine metres.²⁴²⁴ The Lebanese Military Intelligence team found that the crater was 12 metres in diameter and 2.3 metres deep.²⁴²⁵

²⁴²¹ Exhibit P242 (Swiss forensic team expert report), pp 6, 13.

²⁴²² Exhibit P266 (Spanish forensic team expert report), p. 279.

²⁴²³ Walid Othman, T. 2 September 2014, p. 34; exhibit P247 (ISF Explosives Bureau report, 2 March 2005), p. 1.

²⁴²⁴ Exhibit P315 (Statement of Joseph Safi), pp 8, 12.

²⁴²⁵ Exhibit P282 (Statement of Ziad Nasr), ERN 60287014.

Professors Ambrosini's and Luccioni's calculation of the quantity of explosives based on the crater's size

1190. Professors Ambrosini and Luccioni relied on Mr Hoogeboom's measurement of the crater's diameter when calculating the quantity of explosives used. Professor Ambrosini explained that Mr Hoogeboom's analysis was the most reliable, because of his methodology. Also, while several other forensic teams gave only one measurement for the diameter, Mr Hoogeboom provided two measurements. Two measurements were better because the crater was oval-shaped and not circular, and Mr Hoogeboom's range of values for the crater's diameter accounted for uncertainties in his measuring, such as disturbances to the crater.²⁴²⁶

1191. Mr Hoogeboom measured the crater's diameter as between 10.2 and 11.5 metres.²⁴²⁷ The two experts converted these figures to an equivalent diameter²⁴²⁸ of 10.8 metres. They considered 10.8 metres to be the upper limit, because Mr Hoogeboom used photographs taken four days after the explosion, and, by that time, the crater would have been altered. The two experts calculated the lower limit of the diameter to be 9.7 metres, based on a five per cent variation.²⁴²⁹

1192. They performed a series of computer simulations to calculate the quantity of explosives needed to produce a crater with a diameter of 9.7-10.8 metres.²⁴³⁰ They determined that it would require 2,400-3,100 kilograms of TNT equivalent if the explosive charge had a rectangular shape and was 75-80 centimetres above the ground.²⁴³¹ For an underground explosion, the quantity of explosives would be 500-773 kilograms of TNT equivalent.²⁴³² At ground level with a rectangular-

²⁴²⁶ Daniel Ambrosini, T. 25 February 2015, pp 78-79.

²⁴²⁷ Daniel Ambrosini, T. 25 February 2015, p. 79.

²⁴²⁸ An equivalent diameter is the diameter a crater would have if it was circular in shape with the same area, Daniel Ambrosini, T. 23 February 2015, p. 72.

²⁴²⁹ Daniel Ambrosini, T. 24 February 2015, pp 10, 71, T. 25 February 2015, pp 72, 78-79; exhibit P378 (International College of Experts report on attack of 14 February 2005), annex 2, p. 3.

²⁴³⁰ Daniel Ambrosini, T. 24 February 2015, pp 10, 66-75, T. 25 February 2015, pp 72, 78-79; exhibit P377 (Argentinian expert report on quantity of explosives), pp 37, 42; exhibit P378 (International College of Experts report on attack of 14 February 2005), annex 2, p. 3; exhibit P386. Prior to receiving Mr Hoogeboom's analysis, Professors Ambrosini and Luccioni had relied on the crater's diameter as being between nine and 12 metres when calculating the amount of explosives, Daniel Ambrosini, T. 24 February 2015, pp 72-73; exhibit P386.1.

²⁴³¹ Exhibit P378 (International College of Experts report on attack of 14 February 2005), annex 2, p. 6; Daniel Ambrosini, T. 24 February 2015, p. 88.

²⁴³² Daniel Ambrosini, T. 24 February 2015, p. 13; exhibit P381 (Presentation by Argentinian experts on numerical simulation of building damage), ERN D0437131. Because the ground under the explosion site consisted of rock starting at two metres deep, Professors Ambrosini's and Luccioni's computer simulations for underground explosions only examined possible depths of up to two metres, Daniel Ambrosini, T. 24 February 2015, p. 8.

shaped load, less than 2,500 kilograms of TNT equivalent would be required. Finally, if the explosion occurred at ground level but with a concentrated load, namely a spherical shape, the quantity of explosives needed would be 18,300-28,120 kilograms of TNT equivalent.²⁴³³

1193. Professor Ambrosini testified that the pipes under the road had a negligible influence on the shape of the crater resulting from the attack because the quantity of explosives was so large.²⁴³⁴ However, if the explosives were located inside a truck, the resulting crater would be smaller and rounder in shape.²⁴³⁵

Calculating based on the damage

Damage to surrounding buildings from an explosion generally

1194. Four witnesses testified generally about analysing damage resulting from an explosion. Dr van de Craats explained that damage to surrounding buildings is ‘very important’ for analysing an explosion.²⁴³⁶ Professor Luccioni noted that the damage to surrounding buildings from an explosion is directly related to the overpressure and impulse generated by the explosion.²⁴³⁷ Dr Schlatter defined ‘overpressure’ as the pressure created by an explosion’s shock wave, and ‘impulse’ as the time that the pressure lasts.²⁴³⁸

1195. According to Professor Luccioni, peak overpressure is the highest level of pressure from the explosion,²⁴³⁹ while peak impulse is the maximum impulse.²⁴⁴⁰ The higher the peak overpressure and peak impulse values, the greater the level of damage that is sustained.²⁴⁴¹ The

²⁴³³ Exhibit P378 (International College of Experts report on attack of 14 February 2005), annex 2, p. 6.

²⁴³⁴ Daniel Ambrosini, T. 25 February 2015, p. 52.

²⁴³⁵ Daniel Ambrosini, T. 24 February 2015, pp 63-64.

²⁴³⁶ Anick van de Craats, T. 28 August 2014, p. 44.

²⁴³⁷ Bibiana Luccioni, T. 26 February 2015, pp 18, 25.

²⁴³⁸ Konrad Schlatter, T. 27 August 2014, p. 17.

²⁴³⁹ Bibiana Luccioni, T. 26 February 2015, p. 25. Overpressure is calculated by subtracting the atmospheric pressure from the pressure from the blast, Daniel Ambrosini, T. 24 February 2015, p. 24. Overpressure from a blast is followed by the pressure dropping below normal air pressure, exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 9. Therefore, after a blast there is a positive and negative wave, creating a vacuum, Walid Othman, T. 2 September 2014, pp 53-54; exhibit P247, pp 7-8; Bibiana Luccioni, T. 26 February 2015, p. 26.

²⁴⁴⁰ Bibiana Luccioni, T. 26 February 2015, pp 25-26. *See also* exhibit P390 (Annotated excerpt of Argentinian expert report on quantity of explosives).

²⁴⁴¹ Bibiana Luccioni, T. 26 February 2015, pp 28-30; exhibit P377 (Argentinian expert report on quantity of explosives), p. 52; exhibit P381, p. 6. *See also* exhibit P242 (Swiss forensic team expert report), p. 14.

further from the centre of an explosion, the lower the overpressure value,²⁴⁴² and thus the lower the amount of damage.²⁴⁴³ As a result, overpressure can be estimated from the observed damage to buildings and windows. The quantity of explosives used can then be estimated based on the damaged materials' distance from the centre of the explosion.²⁴⁴⁴

1196. The damage to surrounding buildings from an explosion can also be influenced by reflected blast waves. Professor Ambrosini explained that when a blast wave from an explosion reaches a solid object, it reflects off that object.²⁴⁴⁵ Professor Luccioni observed that an explosion would produce an initial shock wave, which then bounces off the ground creating a reflected shock wave, both of which strike a building with significant force.²⁴⁴⁶ As the blast waves are reflected, the pressure increases.²⁴⁴⁷ The effect of ground reflection is not significant close to an explosion's centre, but grows larger as the distance from the blast increases.²⁴⁴⁸ Further, the effect of ground reflection is even greater when the explosive charge is located above ground level.²⁴⁴⁹

1197. Indeed, an explosion in a narrow street with tall buildings with few openings will create higher peak pressure and peak impulse values because of reflections from the nearby walls. Professor Luccioni said that this is known as the canyon effect.²⁴⁵⁰ Dr Schlatter added that, in urban areas, there can be damage further away because the pressure is channelled.²⁴⁵¹

Professors Ambrosini's and Luccioni's analysis of damage to surrounding buildings from the attack

1198. For the second part of their analysis, Professors Ambrosini and Luccioni calculated the quantity of explosives needed to produce the damage to the surrounding buildings. They divided

²⁴⁴² Daniel Ambrosini, T. 24 February 2015, p. 41.

²⁴⁴³ Anick van de Craats, T. 1 September 2014, p. 58.

²⁴⁴⁴ Exhibit P242 (Swiss forensic team expert report), p. 14. *See also* exhibit P377 (Argentinian expert report on quantity of explosives), p. 50.

²⁴⁴⁵ Daniel Ambrosini, T. 24 February 2015, pp 28, 36-37. *See also* Walid Othman, T. 4 September 2014, p. 40.

²⁴⁴⁶ Bibiana Luccioni, T. 27 February 2015, p. 32.

²⁴⁴⁷ Bibiana Luccioni, T. 26 February 2015, p. 18.

²⁴⁴⁸ Daniel Ambrosini, T. 24 February 2015, pp 42-43; Bibiana Luccioni, T. 27 February 2015, p. 33; exhibit P377 (Argentinian expert report on quantity of explosives), p. 28; exhibit P379, p. 30; exhibit P379.3 (Annotated excerpt of presentation by Argentinian experts on amount of explosives).

²⁴⁴⁹ Daniel Ambrosini, T. 24 February 2015, pp 27-28, 39.

²⁴⁵⁰ Bibiana Luccioni, T. 26 February 2015, pp 76-78; exhibit P378 (International College of Experts report on attack of 14 February 2005), annex 1, p. 17.

²⁴⁵¹ Konrad Schlatter, T. 26 August 2014, p. 72.

this into three sub-parts: an urban scale analysis, a building analysis of the St Georges and Byblos Hotels and a structural analysis of a portion of the facades of the two hotels.²⁴⁵² Each analysis was conducted separately.²⁴⁵³

1199. Professor Luccioni explained that performing all three analyses provided both an overview of all the damage and focused attention on more specific areas of damage. She said that the smaller the area covered, the more certainty there was as to damage and structural characteristics.²⁴⁵⁴ She added that they considered the structural scale analysis to be the most accurate.²⁴⁵⁵

1200. Professor Ambrosini further explained that their computer models took into account ground reflection for the damage to the Byblos Hotel, because it was further away from the explosion and the reflection effect was greater.²⁴⁵⁶ They did not factor ground reflection into their analysis of the St Georges Hotel, because it was only ten metres from the explosion.²⁴⁵⁷

1201. Professor Ambrosini stated that their computer simulations found that the presence of the nearby buildings had no impact on the damage resulting from the explosion.²⁴⁵⁸ On the other hand, Dr van de Craats opined that the blast wave reflected off the Byblos Hotel and returned to the St Georges Hotel, causing additional damage.²⁴⁵⁹

1202. Professor Luccioni noted that the canyon effect would not have affected the convoy vehicles in the middle of the street. Any such effect would only have impacted locations near the buildings, such as sidewalks.²⁴⁶⁰ Similarly, Professor Ambrosini explained that, because the explosion was on a street that was 36 metres wide, any reflections that were generated from the St Georges or Byblos Hotels did not affect the convoy of vehicles.²⁴⁶¹ Mr Othman, though, testified

²⁴⁵² Exhibit P377 (Argentinian expert report on quantity of explosives), pp 50-73; exhibit P378 (International College of Experts report on attack of 14 February 2005), annex 2, pp 7-26.

²⁴⁵³ Bibiana Luccioni, T. 26 February 2015, p. 52.

²⁴⁵⁴ Bibiana Luccioni, T. 26 February 2015, pp 27-28.

²⁴⁵⁵ Bibiana Luccioni, T. 26 February 2015, p. 52.

²⁴⁵⁶ Daniel Ambrosini, T. 24 February 2015, pp 45-46. *See also* exhibit P377 (Argentinian expert report on quantity of explosives), pp 59-60.

²⁴⁵⁷ Daniel Ambrosini, T. 24 February 2015, p. 45. *See also* Bibiana Luccioni, T. 27 February 2015, p. 33.

²⁴⁵⁸ Daniel Ambrosini, T. 24 February 2015, pp 47-48; exhibit P377 (Argentinian expert report on quantity of explosives), p. 29; exhibit P379, p. 41.

²⁴⁵⁹ Anick van de Craats, T. 28 August 2014, pp 49-50.

²⁴⁶⁰ Bibiana Luccioni, T. 26 February 2015, pp 77-79; exhibit P378 (International College of Experts report on attack of 14 February 2005), annex 1, pp 17-23, 34.

²⁴⁶¹ Daniel Ambrosini, T. 24 February 2015, pp 29-31, 35-36, 38-39.

that because the explosion took place near the concrete wall of the St Georges Hotel, the blast reflected off the wall and hit the convoy more powerfully.²⁴⁶²

1203. Finally, Professor Ambrosini noted that a vehicle would have no impact on an explosion's blast waves if the explosives were placed inside the vehicle.²⁴⁶³

1204. Professors Ambrosini and Luccioni first examined the damage to the surrounding buildings through an urban scale analysis, which examines the damage to structures within a specific radius of the blast.²⁴⁶⁴ In performing this analysis, they relied on the Swiss forensic team's observation of the damage to surrounding buildings.²⁴⁶⁵

1205. The Swiss team found that up to 300 metres away some window parts were completely destroyed.²⁴⁶⁶ On the other hand, Mr Othman noted that glass was shattered up to 800 metres away due to reflection of the shock wave.²⁴⁶⁷ Dr Schlatter concluded that, because Beirut has narrow streets, this may have channelled the blast's pressure, resulting in damage to windows further away than expected.²⁴⁶⁸

1206. Professors Ambrosini and Luccioni ran numerical simulations to see what quantity of explosives would result in the observed level of damage at 300-350 metres away from the blast.²⁴⁶⁹ They concluded that it required at least 1,000 kilograms of TNT equivalent to break window glass at that distance from the explosion.²⁴⁷⁰

1207. Professors Ambrosini and Luccioni also conducted a building scale analysis of the St Georges and Byblos Hotels. They chose these two buildings because they were close to the explosion, and there were few obstacles between the explosives and the buildings.²⁴⁷¹

²⁴⁶² Walid Othman, T. 4 September 2014, p. 42.

²⁴⁶³ Daniel Ambrosini, T. 24 February 2015, pp 62-63. *See also* exhibit P377 (Argentinian expert report on quantity of explosives), p. 32.

²⁴⁶⁴ Bibiana Luccioni, T. 26 February 2015, pp 18-19.

²⁴⁶⁵ Bibiana Luccioni, T. 26 February 2015, p. 27.

²⁴⁶⁶ Konrad Schlatter, T. 26 August 2014, p. 71.

²⁴⁶⁷ Walid Othman, T. 2 September 2014, p. 52. *See also* exhibit P247, p. 5.

²⁴⁶⁸ Konrad Schlatter, T. 26 August 2014, p. 72.

²⁴⁶⁹ Bibiana Luccioni, T. 26 February 2015, pp 28-34; exhibit P377 (Argentinian expert report on quantity of explosives), pp 51-53; exhibit P391 (Annotated excerpt of Argentinian expert report on quantity of explosives).

²⁴⁷⁰ Bibiana Luccioni, T. 26 February 2015, pp 19, 34; exhibit P377 (Argentinian expert report on quantity of explosives), p. 53; exhibit P379, p. 71; exhibit P381, p. 7.

²⁴⁷¹ Exhibit P377 (Argentinian expert report on quantity of explosives), p. 50.

1208. They analysed the distribution of damage to the buildings' facades.²⁴⁷² For the St Georges Hotel, they identified numerous points of damage on the facade of the building—as shown on the photograph below—while, for the Byblos Hotel, they identified a single point on its facade.²⁴⁷³



Exhibit P381, p. 12

1209. Professors Ambrosini and Luccioni then determined the level of damage that would result at each identified point on the building facades from various amounts of explosives and compared their calculations to the actual damage sustained to the facades at these same spots.²⁴⁷⁴ The two experts found that the observed level of damage to the St Georges and Byblos Hotels could have resulted from 1,800-3,600 kilograms of TNT equivalent.²⁴⁷⁵

²⁴⁷² Exhibit P377 (Argentinian expert report on quantity of explosives), p. 53.

²⁴⁷³ Bibiana Luccioni, T. 26 February 2015, pp 36-38; exhibit P377 (Argentinian expert report on quantity of explosives), pp 54, 60; exhibit P381, pp 9, 12-13.

²⁴⁷⁴ Bibiana Luccioni, T. 26 February 2015, pp 40-46. *See also* exhibit P377 (Argentinian expert report on quantity of explosives), p. 55; exhibit P392 (Annotated excerpt of Argentinian expert report on quantity of explosives).

²⁴⁷⁵ Bibiana Luccioni, T. 26 February 2015, pp 46-52; exhibit P377 (Argentinian expert report on quantity of explosives), p. 61; exhibit P377.2 (Correction to Argentinian expert report); exhibit P379, p. 80; exhibit P381, p. 14.

1210. Finally, Professors Ambrosini and Luccioni conducted a structural scale analysis by examining a specific portion of the facades of the St Georges and Byblos Hotels at ground level.²⁴⁷⁶ As noted, they considered the structural scale analysis the most accurate.²⁴⁷⁷

1211. For this analysis, they chose areas from the buildings' facades that were closest to the blast and most sensitive to the force of the blast.²⁴⁷⁸ With the St Georges Hotel, they focused on a portion of the reinforced concrete frame at ground level just in front of the explosion, which had three columns and a balcony.²⁴⁷⁹ This is shown in the photograph below:



Exhibit P381, p. 16

1212. For the Byblos, they chose part of a shear wall at ground level that was also just in front of the explosion, as is on the photograph below.²⁴⁸⁰

²⁴⁷⁶ Bibiana Luccioni, T. 26 February 2015, pp 53, 80; exhibit P377 (Argentinian expert report on quantity of explosives), p. 61; exhibit P381, p. 15.

²⁴⁷⁷ Bibiana Luccioni, T. 26 February 2015, p. 52.

²⁴⁷⁸ Bibiana Luccioni, T. 26 February 2015, pp 54-55, 80.

²⁴⁷⁹ Bibiana Luccioni, T. 26 February 2015, pp 53-54; exhibit P377 (Argentinian expert report on quantity of explosives), pp 61-62.

²⁴⁸⁰ Bibiana Luccioni, T. 26 February 2015, p. 80; exhibit P378 (International College of Experts report on attack of 14 February 2005), annex 2, pp 7-8. Dr van de Craats noted that the same part of the Byblos Hotel was closest to the



Exhibit P378 (International College of Experts report on attack of 14 February 2005), annex 2, p. 8

1213. The experts ran a number of computer simulations to compare the effects of different amounts of explosives on the selected portions of the St Georges and Byblos facades with the actual damage sustained.²⁴⁸¹ For both, they found the closest approximation that would result in the same level of damage was 2,500 kilograms of TNT-equivalent at a height of 75 centimetres.²⁴⁸² Their overall conclusion for the structural analysis was that the quantity of explosives was 2,500-3,000 of TNT equivalent, detonated at a height of 50-80 centimetres above the ground.²⁴⁸³

Professors Ambrosini and Luccioni's overall calculation as to the quantity of explosives used in the attack

1214. Based on the entirety of their analysis of the crater size and the damage to the surrounding buildings, Professors Ambrosini and Luccioni concluded that the quantity of explosives was

centre of the explosion, Anick van de Craats, T. 28 August 2014, p. 52. *See also* exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 42.

²⁴⁸¹ Bibiana Luccioni, T. 26 February 2015, p. 87.

²⁴⁸² Bibiana Luccioni, T. 26 February 2015, pp 88-92; exhibit P378 (International College of Experts report on attack of 14 February 2005), annex 2, pp 19, 26.

²⁴⁸³ Bibiana Luccioni, T. 26 February 2015, p. 92; exhibit P378 (International College of Experts report on attack of 14 February 2005), annex 2, p. 29; exhibit P381, p. 51.

between 2,500 and 3000 kilograms of TNT equivalent for an above ground explosion.²⁴⁸⁴ According to the Prosecution, this would be equivalent to 1,852 to 2,222 kilograms of RDX, which would have a volume of 1.277-1.532 cubic metres.²⁴⁸⁵ This mass and volume of explosives could fit on a Mitsubishi Canter light truck.²⁴⁸⁶

Other calculations as to the quantity of explosives used in the attack

1215. In addition to Professors Ambrosini's and Luccioni's calculations, the Trial Chamber also received evidence of other estimates as to the quantity of explosives used in the attack.

1216. The Swiss forensic team calculated that to create the crater, an underground explosion would use about 300 kilograms of explosives, while an above ground explosion would require 1,000-1,500 kilograms.²⁴⁸⁷ Based on the damage to the surrounding buildings, including the Byblos and St Georges Hotels, around 1,000 kilograms of explosives were used.²⁴⁸⁸ Their conclusion was that the quantity of explosives was 1,000 kilograms.²⁴⁸⁹

1217. The Spanish forensic team estimated that the quantity of explosives was between 1,100 and 1,700 kilograms of TNT equivalent. They based their calculation on the crater, the damage to the convoy and the surrounding buildings and the fragments recovered from the truck bomb.²⁴⁹⁰

1218. The Lebanese Military Intelligence team calculated that the quantity of explosives was 300 kilograms of TNT, based on analysis of samples taken from the explosion site.²⁴⁹¹ A team from

²⁴⁸⁴ Bibiana Luccioni, T. 26 February 2015, p. 98; exhibit P378 (International College of Experts report on attack of 14 February 2005), annex 2, p. 29; exhibit P381, ERN D0437134.

²⁴⁸⁵ Prosecution final trial brief, para. 1061, fns 2192-2193. As noted before at para. 1144, RDX is 1.35 times more powerful than TNT and has a density of 1.45 gram per cubic centimetre. To determine the equivalent mass for RDX, the amount of explosives in TNT equivalent is divided by 1.35. The mass for RDX is then divided by 1.45 to determine the volume in cubic centimetres, which is further divided by 1,000,000 to determine the volume in cubic metres. See also Daniel Ambrosini, 25 February 2015, pp 2-5; exhibit P387 (Screenshot of boxes and measurements in courtroom).

²⁴⁸⁶ Walid Othman, T. 3 September 2014, p. 72; exhibit P378 (International College of Experts report on attack of 14 February 2005), annex 1, pp 2-3, 5; Daniel Ambrosini, 25 February 2015, pp 3-4.

²⁴⁸⁷ Exhibit P242 (Swiss forensic team expert report), pp 13, 19.

²⁴⁸⁸ Exhibit P242 (Swiss forensic team expert report), p. 15.

²⁴⁸⁹ Exhibit P242 (Swiss forensic team expert report), p. 20. Dr Schlatter noted that this was a 'conservative estimate', Konrad Schlatter, T. 27 August 2014, p. 83.

²⁴⁹⁰ Exhibit P266 (Spanish forensic team expert report), pp 278, 289. There is a discrepancy in the report, in that the Spanish team estimated the range of values at 1,100-1,700 at one point and 1,200-1,700 at a later point, with no explanation as to why the two ranges differ.

²⁴⁹¹ Exhibit P282 (Statement of Ziad Nasr), ERN 60287014.

the Lebanese ISF estimated the quantity of explosives at 500 kilograms of TNT equivalent. They derived this figure from the crater and the resulting damage.²⁴⁹²

ii. Height of the explosives

1219. The Prosecution alleges that the explosion took place 50 to 80 centimetres above ground level,²⁴⁹³ namely the height of the rear of a Mitsubishi Canter light truck.

1220. During the trial, the Merhi Defence put into issue whether the explosion occurred above or below ground. The evidence focuses first on the general differences between above and below ground explosions, and then on the different opinions as to where this explosion took place. As noted above, determining the height or depth at which the explosion took place has a significant effect on the resulting crater and damages, along with the quantity and shape of the explosives.²⁴⁹⁴

a. Above and below ground explosions generally

1221. One difference between above and below ground explosions is, as Dr Schlatter noted, the appearance of the resulting crater.²⁴⁹⁵ Professor Ambrosini explained that the ‘lips’²⁴⁹⁶ of a crater will normally be larger if the explosion was underground and not above ground.²⁴⁹⁷ Whether an explosion is underground or above ground cannot be determined based solely on the crater’s lips.²⁴⁹⁸ Also, an underground explosion will produce more fallback²⁴⁹⁹ than an above ground explosion.²⁵⁰⁰ Mr Othman explained that, unlike an above ground explosion, the effects of an underground blast are similar to the shape of an erupting volcano.²⁵⁰¹

1222. Dr Schlatter explained that another difference is that, to produce a similar-sized crater, an above ground explosion requires three times as much explosives as an underground blast. The difference is due to the underground explosive charge contacting the ground directly, unlike an

²⁴⁹² Walid Othman, T. 3 September 2014, pp 69-70, 73-74. *See also* exhibit P247 (ISF Explosives Bureau report, 2 March 2005), p. 6; exhibit P315 (Statement of Joseph Safi), p. 12.

²⁴⁹³ Prosecution final trial brief, paras 1057, 1061.

²⁴⁹⁴ Daniel Ambrosini, T. 25 February 2015, p. 90. *See also* para. 1168.

²⁴⁹⁵ Konrad Schlatter, T. 26 August 2014, p. 79.

²⁴⁹⁶ *See* para. 1182.

²⁴⁹⁷ Daniel Ambrosini, T. 23 February 2015, p. 47, T. 25 February 2015, p. 83.

²⁴⁹⁸ Daniel Ambrosini, T. 23 February 2015, p. 50.

²⁴⁹⁹ *See* para. 1182.

²⁵⁰⁰ Daniel Ambrosini, T. 23 February 2015, pp 48-49, T. 25 February 2015, pp 83-84.

²⁵⁰¹ Walid Othman, T. 2 September 2014, pp 55, 57.

above ground charge.²⁵⁰² Similarly, an explosive charge that is underground but closer to the surface requires more explosives to produce a same-sized crater as a charge that is buried deeper. Dr Schlatter added that, the deeper the explosives are buried, the smaller the damage will be to surrounding buildings and windows.²⁵⁰³ Professors Ambrosini and Luccioni noted that, in effect, the underground explosion will be muffled,²⁵⁰⁴ and the blast wave will be equivalent to an explosion at ground level that is further away.²⁵⁰⁵

1223. By contrast, the blast waves of an above ground explosion spread further than an underground one, resulting in greater damage and injuries.²⁵⁰⁶ Therefore, an above ground explosion is ‘much more destructive’ than an underground one.²⁵⁰⁷ So, to achieve the highest level of damage, an explosive charge should be placed above ground rather than buried.²⁵⁰⁸

b. Was the attack an underground explosion?

1224. The Prosecution relies on Professors Ambrosini and Luccioni’s conclusion that the explosion did not take place underground.²⁵⁰⁹ Professor Ambrosini explained that for an underground explosion, a direct correlation exists between a crater’s diameter, depth and the quantity of explosives used.²⁵¹⁰

1225. Professors Ambrosini and Luccioni calculated that, to produce a crater of 9.7-10.8 metres in diameter from an underground explosion, the quantity of explosives would be between 500 and 773 kilograms of TNT equivalent.²⁵¹¹ Professor Luccioni explained that this quantity would have been insufficient to produce the actual, observed damage to the surrounding buildings, including the St Georges and Byblos Hotels. On the other hand, the quantity of explosives needed from an underground explosion to produce the actual level of damages would result in a ‘gargantuan’

²⁵⁰² Konrad Schlatter, T. 27 August 2014, pp 10, 83.

²⁵⁰³ Konrad Schlatter, T. 27 August 2014, p. 17.

²⁵⁰⁴ Daniel Ambrosini, T. 24 February 2015, p. 65; Bibiana Luccioni, T. 26 February 2015, p. 12.

²⁵⁰⁵ Bibiana Luccioni, T. 26 February 2015, pp 10-12, 15-16. *See also* exhibit P388 (Annotated excerpt of presentation by Argentinian experts on amount of explosives).

²⁵⁰⁶ Bibiana Luccioni, T. 27 February 2015, pp 2-3.

²⁵⁰⁷ Mahmoud Khashab, T. 8 September 2014, p. 54.

²⁵⁰⁸ Walid Othman, T. 2 September 2014, p. 62.

²⁵⁰⁹ Prosecution final trial brief, paras 1058-1060.

²⁵¹⁰ Daniel Ambrosini, T. 23 February 2015, pp 87-88.

²⁵¹¹ Daniel Ambrosini, T. 24 February 2015, p. 13; exhibit P381, ERN D0437131.

crater, much larger than the size of the actual crater. For these reasons, Professors Ambrosini and Luccioni concluded that the explosion could not have occurred underground.²⁵¹²

1226. Other investigation teams similarly concluded that the explosion was not underground. The Swiss forensic team calculated that an underground explosion would have required about 300 kilograms of explosives to create a crater of that size.²⁵¹³ For such an explosion, the radius for damages to windows would be 170 metres, although the Swiss team observed window damage up to 300 metres.²⁵¹⁴ Given this, Dr Schlatter stated that the explosion could not have taken place underground.²⁵¹⁵

1227. The Spanish forensic team noted that the explosion was not below ground, because the asphalt, pebbles and soil would have directed the blast wave upwards, creating a ‘cannon effect’ that would have resulted in less damage to people, vehicles and buildings.²⁵¹⁶ Dr Murray also concluded that the explosion was not underground based on his examination of the scene.²⁵¹⁷ Dr van de Craats observed that it could not have been an underground explosion, given the damage to the St Georges’s columns and the Byblos wall that slid.²⁵¹⁸

1228. Mr Othman testified that it was not an underground explosion because the damage to the St Georges and Byblos Hotels and the shape of the crater would have been different.²⁵¹⁹ Mr Khashab agreed that the explosion was not below ground, because if it had been, the crater would be bigger, blocks of asphalt would be at a greater distance, the damage to the St Georges Hotel and underground infrastructure would be different and Mr Hariri’s vehicle would have been

²⁵¹² Bibiana Luccioni, T. 26 February 2015, pp 8, 94, 98; exhibit P378 (International College of Experts report on attack of 14 February 2005), annex 2, pp 28-29; exhibit P381, ERNs D0437130-D0437131. *See also* Daniel Ambrosini, T. 24 February 2015, p. 83. Originally, Professor Ambrosini thought it had been an underground explosion, because the blast had sent a manhole cover onto the third floor of the St Georges Hotel and a piece of asphalt of 60-70 kilograms to the 11th floor of the Byblos Hotel. But his full analysis led him to conclude that it was above ground. Daniel Ambrosini, T. 25 February 2015, pp 61, 95.

²⁵¹³ Exhibit P242 (Swiss forensic team expert report), p. 13.

²⁵¹⁴ Exhibit P242 (Swiss forensic team expert report), pp 14-15.

²⁵¹⁵ Konrad Schlatter, T. 26 August 2014, pp 82-83. The Swiss team also conducted a ballistics analysis of the heavy debris found at the scene of the explosion. Based on that analysis, it could not determine whether the explosion was above or below ground, Konrad Schlatter, T. 26 August 2014, pp 73-74, 76; exhibit P242 (Swiss forensic team expert report), pp 15-17, 19. Dr Schlatter himself thought that the pattern of asphalt might indicate that it was an above ground explosion, given that pieces of asphalt at the crater were top side up. He acknowledged that academic literature did not support his interpretation, Konrad Schlatter, T. 26 August 2014, p. 77, T. 27 August 2014, pp 22-23.

²⁵¹⁶ Exhibit P266 (Spanish forensic team expert report), pp 286-287.

²⁵¹⁷ Gerard Murray, T. 30 September 2014, pp 19-20.

²⁵¹⁸ Anick van de Craats, T. 28 August 2014, p. 63, T. 1 September 2014, p. 42.

²⁵¹⁹ Walid Othman, T. 4 September 2014, pp 15-16.

upside down afterwards.²⁵²⁰ Mr Krayem also stated that the explosion was not underground. He noted that a lamp post 25 metres from the crater was unaffected. If the explosion was below ground, the lamp post's base would have been damaged.²⁵²¹

1229. Conversely, the Trial Chamber heard some non-expert opinion that it was an underground explosion. Witness PRH009, who rode in Mr Hariri's convoy,²⁵²² testified that the explosion took place underground. He noted that one of the convoy vehicles had been torn to pieces. If the explosion was above ground, it would have been pushed in the opposite direction.²⁵²³ Mr Jamil El-Sayyed, who testified for the Oneissi Defence, agreed that the explosion was underground.²⁵²⁴ Witness PRH351, a civil engineer, stated that the explosion was at ground level or below ground.²⁵²⁵ He noted the displacement of two large pillars at the St Georges Hotel, cracks in columns on the St Georges's terrace level and damage at the basement levels of the St Georges and Byblos Hotels.²⁵²⁶ Witness 351, however, acknowledged that he was not a structural expert and could not give an expert opinion on this issue.²⁵²⁷

c. Was the attack a ground level explosion?

1230. Professors Ambrosini and Luccioni also examined whether the explosion was at ground level. They calculated that a concentrated load lying on the ground and producing a crater with a diameter of 9.7-10.8 metres would require 18,300 to 28,120 kilograms of TNT equivalent. To produce the same-sized crater from a rectangular-shaped load on the ground would require less than 2,500 kilograms of TNT equivalent.²⁵²⁸

²⁵²⁰ Mahmoud Khashab, T. 8 September 2014, p. 64.

²⁵²¹ Hussein Krayem, T. 10 September 2014, p. 71, *see also* p. 85.

²⁵²² Witness PRH009, T. 11 October 2016, pp 9-10, T. 13 October 2014, p. 14.

²⁵²³ Witness PRH009, T. 13 October 2016, p. 34, *see also* T. 11 October 2016, p. 87 (private session), T. 13 October 2016, p. 44 (private session).

²⁵²⁴ Jamil El-Sayyed, T. 5 June 2018, p. 107.

²⁵²⁵ Exhibit P262.1, p. 8.

²⁵²⁶ Exhibit P262, paras 11-12; exhibit P262.1, pp 3, 9.

²⁵²⁷ Exhibit P262, para. 12; exhibit P262.1, p. 9.

²⁵²⁸ Exhibit P378 (International College of Experts report on attack of 14 February 2005), annex 2, p. 6.

1231. Professor Luccioni stated that an explosion at ground level would result in less damage to surrounding buildings than an explosion 76 centimetres above ground.²⁵²⁹ As a result, they concluded that the explosive was not at ground level.²⁵³⁰

1232. Dr van de Craats agreed that the explosion did not take place at ground level. She noted that, if this had happened, the greatest damage would be found at the lowest part of a column at the St Georges, as opposed to the actual damage, which was higher up the column.²⁵³¹

1233. Mr Othman agreed that the explosives had not been lying on the ground. If they had, the shape of the crater would have been slightly different. Also, his forensic team would not have recovered metal parts of vehicles from within the crater.²⁵³²

1234. By contrast, the Swiss forensic team concluded that an explosion at ground level was more likely, given the damage to the surrounding neighbourhood and the dimensions of the crater.²⁵³³ When the Swiss team referred to an above ground explosion, they meant at ground level and not above the ground.²⁵³⁴ Dr Schlatter explained that, in particular, the damage to windows showed that the explosion was at ground level.²⁵³⁵ He added that the low trajectory of metal pieces that embedded in vehicles or bent a lamp post also demonstrated an explosion at ground level, because a buried explosive would have sent metal pieces at a different angle.²⁵³⁶ Also, as stated before, at paragraph 1131, this team noted the presence of washout on pieces of debris, vehicles and metal structures close to the crater, which further demonstrated that an explosion at ground level had occurred. The team, though, acknowledged that it could not exclude the possibility that the washout had come from a below ground explosion.²⁵³⁷ Dr Schlatter added that if the explosion had

²⁵²⁹ Bibiana Luccioni, T. 26 February 2015, p. 75; exhibit P378 (International College of Experts report on attack of 14 February 2005), annex 1, pp 17, 34-35.

²⁵³⁰ Bibiana Luccioni, T. 26 February 2015, p. 98; exhibit P378 (International College of Experts report on attack of 14 February 2005), annex 2, p. 29; exhibit P381, ERN D0437134.

²⁵³¹ Anick van de Craats, T. 1 September 2014, pp 38-41, 43; exhibits 2D30 and 2D31 (Annotated excerpts of Report of Forensic Investigations, Ministry of Justice, Netherlands Forensic Institute (exhibit P244)).

²⁵³² Walid Othman, T. 3 September 2014, p. 79.

²⁵³³ Konrad Schlatter, T. 26 August 2014, pp 72-73, 78, T. 27 August 2014, p. 88; exhibit P242 (Swiss forensic team expert report), p. 20.

²⁵³⁴ Konrad Schlatter, T. 27 August 2014, pp 25, 89.

²⁵³⁵ Exhibit P242 (Swiss forensic team expert report), p. 19.

²⁵³⁶ Konrad Schlatter, T. 26 August 2014, pp 83-84.

²⁵³⁷ Exhibit P242 (Swiss forensic team expert report), p. 19.

occurred above ground level, more explosives would be needed to produce the same-sized crater.²⁵³⁸

d. Was the attack an above ground explosion?

1235. The Prosecution relies on Professors Ambrosini's and Luccioni's analysis that the explosion took place above ground level.²⁵³⁹ The two experts concluded that the best fit for the observed size of the crater and resulting damage to the surrounding buildings was an explosion that occurred between 50 and 80 centimetres above ground level,²⁵⁴⁰ given the overlap between their calculations. As noted earlier,²⁵⁴¹ their calculations for the crater were that the explosive charge was 75 to 80 centimetres above the ground,²⁵⁴² while their structural analysis found that the charge was at a height of 50 to 80 centimetres off the ground.²⁵⁴³ Such a location corresponds to the height of the rear compartment of a Mitsubishi Canter light truck.

1236. Other investigation teams reached a similar conclusion that the explosion was above ground. Dr van de Craats concluded that the centre of the explosion was slightly above ground level, based on the resulting bent columns at the St Georges, the sliding of the wall at the Byblos, the pattern of perforations on the damaged cars and the crater.²⁵⁴⁴ The greatest damage to the Byblos wall was slightly above ground and the concrete part of the wall was missing, further showing that the explosion had been above ground.²⁵⁴⁵

1237. The Spanish team concluded that, based on the items recovered, the damage to vehicles and surrounding buildings, the location of impacts and the fires, that it was an above ground explosion.²⁵⁴⁶

²⁵³⁸ Konrad Schlatter, T. 27 August 2014, pp 25, 89.

²⁵³⁹ Prosecution final trial brief, paras 1058-1060.

²⁵⁴⁰ Bibiana Luccioni, T. 26 February 2015, pp 97-98; exhibit P378 (International College of Experts report on attack of 14 February 2005), p. 16, annex 2, p. 29; exhibit P379, p. 102; exhibit P381, ERN D0437134.

²⁵⁴¹ See para. 1192.

²⁵⁴² Exhibit P378 (International College of Experts report on attack of 14 February 2005), annex 2, p. 6; Daniel Ambrosini, T. 24 February 2015, p. 88.

²⁵⁴³ Bibiana Luccioni, T. 26 February 2015, p. 92; exhibit P378 (International College of Experts report on attack of 14 February 2005), annex 2, p. 29.

²⁵⁴⁴ Anick van de Craats, T. 28 August 2014, pp 33, 63, 66-67, T. 1 September 2014, pp 36-39, 44-46; exhibit 2D30.

²⁵⁴⁵ Anick van de Craats, T. 1 September 2014, pp 45-46.

²⁵⁴⁶ Exhibit P266 (Spanish forensic team expert report), p. 286.

1238. Mr Othman similarly noted that it was an above ground explosion, based on the damage to the St Georges and Byblos Hotels.²⁵⁴⁷ His ISF team found that it was an above ground explosion based on the horizontal demolition and fragmentation of the cars, the indentation and 50-centimetre shift of the bottom of the wall at the Byblos Hotel and the bend in the middle of the pillars at the St Georges Hotel.²⁵⁴⁸ Mr Safi also believed that it was an above ground explosion based on the damage to the convoy vehicles and the effects of the shrapnel.²⁵⁴⁹ Mr Krayem stated that the explosion was above ground because they found Mitsubishi parts in the crater and in the sea.²⁵⁵⁰ Witness PRH566 agreed with the ISF team's conclusion that it was an above ground explosion.²⁵⁵¹

1239. The Lebanese Military Intelligence team found that the explosion was above ground based on the damage to nearby vehicles, the radius of the fire, the distribution of shrapnel and the absence of cracks in the ground or blown out sewer openings.²⁵⁵²

iii. Shape of the explosives

1240. The Prosecution alleges that the explosives used in the attack were distributed, namely laid out in a rectangular shape.²⁵⁵³ The Trial Chamber received evidence as to the shape of the explosive charge, which is also known as the distribution of the explosive load. As noted above at paragraph 1168, the shape of the charge is a significant factor for the resulting crater and level of damage, together with the height and quantity of explosives.

a. Shapes of explosives generally

1241. Professor Ambrosini explained that an explosive charge can be concentrated or distributed. A concentrated load is where the three dimensions are similar, such as a sphere or cube. A distributed load is where one of the three dimensions of the charge is longer or shorter than the other sides, such as a sheet of paper.²⁵⁵⁴

²⁵⁴⁷ Walid Othman, T. 4 September 2014, p. 15.

²⁵⁴⁸ Exhibit P247 (ISF Explosives Bureau report, 2 March 2005), p. 7. *See also* Witness PRH566, T. 6 February 2014, pp 51-53.

²⁵⁴⁹ Exhibit P315 (Statement of Joseph Safi), p. 10.

²⁵⁵⁰ Hussein Krayem, T. 10 September 2014, pp 80-81.

²⁵⁵¹ Witness PRH566, T. 6 February 2014, pp 51-53.

²⁵⁵² Exhibit P282 (Statement of Ziad Nasr), ERN 60287014.

²⁵⁵³ Prosecution final trial brief, paras 1057, 1061.

²⁵⁵⁴ Daniel Ambrosini, T. 23 February 2015, pp 55-59.

1242. Professor Ambrosini noted how the shape of the load impacts the resulting crater and explained that the area of the charge is more important than its volume for the resulting shape of the crater.²⁵⁵⁵ For example, a square load would produce a circular crater, while a rectangular load would create an oval crater.²⁵⁵⁶ The area of the charge also affects the size of the crater; a large rectangular-shaped charge produces a larger crater than one with the shape of a cylinder, even if both have the same quantity of explosives.²⁵⁵⁷ A crater caused by a missile would be smaller and have a different shape because the missile has a concentrated load.²⁵⁵⁸

1243. Professor Luccioni explained that the shape of the load also affects the resulting damage to the surrounding buildings. The more concentrated a load is, the higher the pressure and impulse values from the explosion are, and therefore the greater the level of damage.²⁵⁵⁹ When analysing structural damage, the difference between a rectangular and square-shaped load would not be significant unless the load was extremely elongated.²⁵⁶⁰

b. Shape of explosives used in the attack

1244. Professors Ambrosini and Luccioni examined whether the explosive charge was distributed or concentrated. Professor Ambrosini testified that a concentrated load might have caused the crater but would have resulted in ‘other types’ of damage.²⁵⁶¹ Also, based on the FP-33 test, referred to above at paragraph 1179, Professors Ambrosini and Luccioni found that a more concentrated load would have resulted in greater damage to surrounding buildings.²⁵⁶² The two experts added that an above ground explosion with a concentrated load was unlikely, given that the crater would have been smaller had the quantity of explosives been 3,600 kilograms or less, while the damage would have been greater if above 3,600 kilograms.²⁵⁶³

²⁵⁵⁵ Daniel Ambrosini, T. 24 February 2015, pp 76-78.

²⁵⁵⁶ Daniel Ambrosini, T. 23 February 2015, p. 71.

²⁵⁵⁷ Daniel Ambrosini, T. 24 February 2015, pp 76, 78-79.

²⁵⁵⁸ Daniel Ambrosini, T. 23 February 2015, p. 65.

²⁵⁵⁹ Bibiana Luccioni, T. 26 February 2015, p. 48. *See also* exhibit P378 (International College of Experts report on attack of 14 February 2005), annex 1, pp 17, 35.

²⁵⁶⁰ Bibiana Luccioni, T. 27 February 2015, pp 27-29.

²⁵⁶¹ Daniel Ambrosini, T. 25 February 2015, p. 90.

²⁵⁶² Exhibit P378 (International College of Experts report on attack of 14 February 2005), annex 1, p. 35.

²⁵⁶³ Exhibit P378 (International College of Experts report on attack of 14 February 2005), annex 2, p. 28; exhibit P381, p. 53. *See also* Bibiana Luccioni, T. 26 February 2015, pp 95-97.

1245. Both experts further agreed that the explosives charge was distributed. Professor Ambrosini explained that the shape of the crater demonstrated that the explosive load was more likely to be rectangular-shaped, and that the crater and damage to surrounding buildings correlated with a distributed load.²⁵⁶⁴ Based on their analyses and computer simulations, Professor Luccioni added that a distributed load corresponded best with their determinations as to the quantity and height of the explosives.²⁵⁶⁵

1246. The Spanish forensic team also examined the shape of the explosive charge. They similarly concluded that the load was rectangular given the crater, the surrounding objects and the use of the Mitsubishi Canter.²⁵⁶⁶

iv. Location of the detonation point

1247. Professors Ambrosini and Luccioni examined another aspect as to how the explosives were detonated, namely the location of the detonation point.²⁵⁶⁷ If a detonator is placed in the middle of the explosive charge, the detonation will spread evenly throughout the explosives. But if a detonation point is located off centre, the overpressure increases on the opposite side of the charge.²⁵⁶⁸ As a result, when planning an attack with explosives, the detonation point should be placed on the side opposite of where a target is located, because that will produce greater overpressure and thus more damage at the target's location.²⁵⁶⁹

1248. Mr Othman testified that a guided charge is designed to push the blast in a given direction.²⁵⁷⁰ The Spanish forensic team explained that, when it is not possible to direct an explosive charge, the quantity of explosives is usually increased to achieve the intended results.²⁵⁷¹

²⁵⁶⁴ Daniel Ambrosini, T. 24 February 2015, p. 81, T. 25 February 2015, p. 90; exhibit P377 (Argentinian expert report on quantity of explosives), p. 45; exhibit P378 (International College of Experts report on attack of 14 February 2005), p. 28.

²⁵⁶⁵ Bibiana Luccioni, T. 26 February 2015, pp 92-93, 97-98; exhibit P378 (International College of Experts report on attack of 14 February 2005), annex 2, p. 29; exhibit P381, p. 51.

²⁵⁶⁶ Exhibit P266 (Spanish forensic team expert report), pp 274-277.

²⁵⁶⁷ Daniel Ambrosini, T. 24 February 2015, p. 48.

²⁵⁶⁸ Daniel Ambrosini, T. 24 February 2015, pp 50-54; exhibit P377 (Argentinian expert report on quantity of explosives), pp 30-32; exhibit P378 (International College of Experts report on attack of 14 February 2005), p. 28; exhibit P379, pp 32-33; exhibit P385 (Sketch drawn by Daniel Ambrosini).

²⁵⁶⁹ Daniel Ambrosini, T. 24 February 2015, pp 56-57, T. 25 February 2015, p. 6. *See also* exhibit P266 (Spanish forensic team expert report), p. 278.

²⁵⁷⁰ Walid Othman, T. 4 September 2014, p. 42.

²⁵⁷¹ Exhibit P266 (Spanish forensic team expert report), p. 278.

1249. As for the attack itself, Professor Ambrosini explained that, given the enormous quantity of explosives used and the short distance between the explosives and the convoy, the damage to the vehicles and the surrounding buildings would have been the same regardless of where the detonation point was located.²⁵⁷² For an explosion that took place 80 centimetres off the ground, the location of the detonation point also would not affect the size of the crater.²⁵⁷³ Based on their analysis of the damage to the surrounding buildings, the two experts were unable to determine the location of the detonation point.²⁵⁷⁴

v. Findings on the quantity, height and shape of the explosives

1250. The evidence as to the quantity, height and shape of the explosives is extensive, technical and complex. Nevertheless, the conclusions from this evidence are straightforward. Relying on Professors Ambrosini and Luccioni's analysis, the Trial Chamber finds that the quantity of explosives used in the attack was in the range of 2,500 to 3,000 kilograms of TNT equivalent, the explosion took place approximately 50 to 80 centimetres above ground level and the explosive charge was rectangular in shape.

1251. The Trial Chamber accepts the validity of Professors Ambrosini and Luccioni's methodology in creating the computer simulations that reproduced the effects of explosions. These simulations incorporated data from real-world testing of explosives and the behaviour of certain materials such as masonry and steel during an explosion. The two experts validated and updated their computer models based on new data, most notably the FP-33 test conducted in France. They also relied on a range of values for the properties of various materials to account for any variations in the materials themselves.

1252. The Trial Chamber likewise accepts Mr Hoogeboom's measurement as to the size of the crater. Professors Ambrosini and Luccioni relied upon these measurements. Mr Hoogeboom testified at length as to his methodology for measuring the crater through photogrammetry. The absence of a similarly detailed explanation underlying the other measurements of the crater's size in evidence leads the Trial Chamber to place less weight on the measurements of others. The Trial Chamber therefore finds that the explosion created a crater that, based on the cone shape, had a

²⁵⁷² Daniel Ambrosini, T. 24 February 2015, pp 52-53, T. 25 February 2015, pp 6-7.

²⁵⁷³ Daniel Ambrosini, T. 24 February 2015, p. 59; exhibit P377, p. 36.

²⁵⁷⁴ Daniel Ambrosini, T. 24 February 2015, p. 60, T. 25 February 2015, p. 6; exhibit P378, p. 28.

diameter of around 11.4 metres with a depth of around 1.9 metres, within a margin of error of several per cent.

1253. As for the quantity of explosives used, the Trial Chamber highlights Professor Ambrosini's evidence that producing a crater similarly sized to the one from the attack would require some 2,400 to 3,100 kilograms of TNT equivalent if the explosion took place 75 to 80 centimetres above the ground and was rectangular-shaped. Professor Luccioni also set out how, given the damage sustained in the surrounding urban environment, the facades of the St Georges and the Byblos Hotels and specific parts of them, the quantity of explosives was 2,500 to 3,000 kilograms of TNT equivalent, for an explosion 50 to 80 centimetres above the ground and distributed in shape. This calculation also served as their overall conclusion regarding the quantity of explosives, given the overlap with the calculation of the crater.

1254. The two experts' calculations as to the quantity of explosives far exceeded that of other forensic teams, which provided estimates such as 300, 500, 1,000 and 1,100 to 1,700 kilograms of TNT equivalent. The Trial Chamber notes Professor Ambrosini's evidence that even he initially thought the quantity of explosives used was smaller, until his involvement in the FP-33 test, which involved an explosion of 2,467 kilograms of TNT equivalent, convinced him otherwise. More importantly, the Trial Chamber finds that Professors Ambrosini and Luccioni's 'dual-monitoring system'—determining the range of explosives that corresponded to both the size of the resulting crater and the level of damage sustained by the nearby buildings, especially the St Georges and Byblos—makes their calculation the most reliable.

1255. Professor Ambrosini and Dr van de Craats differed on whether nearby buildings impacted the level of damage from the explosion, and Professors Ambrosini and Luccioni disagreed with Mr Othman on whether the canyon effect impacted the convoy of vehicles. However, any isolated differences between these witnesses' evidence does not detract from the validity of Professors Ambrosini and Luccioni's overall calculations as to the quantity of explosives. This is because the two experts performed multiple analyses of the explosion's effects, which, as Professor Luccioni noted, decreased the margin of error for their results.

1256. Likewise, the reliability of the two experts' analysis is not undermined by comparing the Swiss team's finding—which Professor Luccioni relied on for the urban scale analysis—that

windows were damaged up to 300 metres away with Mr Othman's testimony that glass was shattered up to 800 metres away. This apparent discrepancy can be explained by the effect of channelling in urban areas such as Beirut with narrow streets, which results in window damage further away than expected. Professor Luccioni described the urban scale analysis as less accurate, and the two Argentinian experts relied more on the structural scale analysis of the damage, which they described as more precise. Thus, any conflict between the Swiss team and Mr Othman's evidence does not affect the two experts' overall calculation of the quantity of explosives.

1257. Regarding the placement of the explosives, the Trial Chamber accepts Professors Ambrosini and Luccioni's conclusion that an explosion 50 to 80 centimetres off the ground best fits the results of the attack, especially the crater and level of damage. Several other forensic teams reached a similar result. The international forensic teams and the Lebanese ISF forensic team agreed that the explosion did not occur underground, given the damage to the surrounding buildings and other factors. Dr van de Craats and Mr Othman supported Professors Ambrosini and Luccioni's determination that the explosion was not at ground level. Both agreed that the explosion took place above ground level, as did the Spanish team, other members of the Lebanese ISF team and the Lebanese Military Intelligence team, based primarily on the damage to the surrounding buildings or vehicles.

1258. On the other hand, the Swiss team determined that the explosion took place at ground level. However, Dr Schlatter testified that, for an above ground explosion, the quantity of explosives would be greater than their estimate of 1,000 kilograms. He thus implicitly accepted the possibility of an explosion off the ground. Witness 351 thought that the explosion was below ground, based on the damage he observed to the St Georges and Byblos Hotels. But Witness 351 was frank that he could not give an expert opinion on this issue. The Trial Chamber disregards his assertion in light of this concession. Witness 9 and Mr El-Sayyed also believed the explosion took place underground. Witness 9 relied on a convoy vehicle being torn to pieces rather than pushed to one side. However, such destruction is equally consistent with an above ground explosion, which can be much more destructive than an underground one. Mr El-Sayyed had no relevant expertise and provided no basis for his opinion. In any event, these non-expert views about the height of the explosion have no probative weight.

1259. With regard to the shape of the explosives, Professors Ambrosini and Luccioni were clear that a rectangular-shaped explosive charge best conformed to the shape of the crater and the damage to the surrounding buildings. A concentrated explosive load did not match either the crater or the resulting damage. The Spanish forensic team concurred that the explosive charge was rectangular-shaped, further strengthening their conclusion.

1260. The Trial Chamber cannot make a finding as to where the detonation point was located, because the two Argentinian experts could not determine this. However, any uncertainty over this minor aspect of the explosion does not affect the Trial Chamber's determination as to the explosives' quantity, height and shape.

1261. Finally, counsel for Mr Badreddine and Mr Merhi both suggested that Professors Ambrosini and Luccioni did not act independently from the Prosecution. Counsel posited that the two experts were instead brought in to validate the Prosecution's prior conclusions about the explosion.²⁵⁷⁵ Professor Ambrosini rejected this suggestion and said that the two experts were free to conduct an independent study and to reach their own conclusions.²⁵⁷⁶ The Trial Chamber, having heard Professors Ambrosini and Luccioni testify and having reviewed their reports, rejects the Defence's suggestion that they were somehow influenced by the Prosecution. Both experts demonstrated throughout their evidence that they formed their conclusions on the basis of their own independent analyses. For example, Professor Ambrosini explained that his initial hypothesis was that an underground explosion had occurred, but the results of his and Professor Luccioni's analysis convinced him otherwise.²⁵⁷⁷

(d) Use of Mitsubishi Canter light truck

1262. The Prosecutor alleges that the explosives were concealed in the cargo area of a Mitsubishi Canter open tray truck.²⁵⁷⁸ The Trial Chamber has found that a white 2002 Mitsubishi Canter right-hand-drive light commercial truck, with chassis number FE52CE560619 and engine block number 4D33J01926, was sold in Tripoli in January 2005.²⁵⁷⁹ The Trial Chamber received evidence of

²⁵⁷⁵ Daniel Ambrosini, T. 25 February 2015, pp 9, 66.

²⁵⁷⁶ Daniel Ambrosini, T. 25 February 2015, pp 10, 66, 95.

²⁵⁷⁷ Daniel Ambrosini, T. 25 February 2015, p. 95.

²⁵⁷⁸ Amended consolidated indictment, paras 4, 41; *see also* Prosecution final trial brief, paras 1061, 1064, 1073-1084.

²⁵⁷⁹ *See* chapter XI 'Importation and sale of Mitsubishi Canter'.

CCTV images of a white truck in the immediate area of the attack before the explosion, and the recovery of Canter parts from the crime scene afterwards.

- i. Was a Mitsubishi Canter seen near the explosion site before the attack?

1263. The Prosecutor alleges in the amended consolidated indictment and final trial brief that CCTV footage first shows that a Mitsubishi Canter exited the Suleiman Frangieh tunnel near the explosion site less than one hour before the attack, and then shows it driving slowly to the explosion site a few minutes before the attack.²⁵⁸⁰ The Trial Chamber has carefully reviewed the relevant CCTV footage, including videos and still images, and the testimony of the witnesses who commented on the footage. It also considered the evidence of witnesses from Mr Hariri's convoy who survived the attack.

- a. CCTV systems near the explosion site

1264. The Prosecution relies on CCTV footage from three locations close to the explosion site: the Suleiman Frangieh tunnel, the Phoenicia Hotel and the HSBC Bank. The Suleiman Frangieh tunnel exits onto Fakhreddine Street, close to the Phoenicia and Monroe Hotels.²⁵⁸¹ The HSBC Bank is on *Minet el Hosn* Street, between the Phoenicia Hotel and the attack site.²⁵⁸² These locations are shown on the following aerial photograph:

²⁵⁸⁰ Amended consolidated indictment, para. 40; Prosecution final trial brief, paras 1073-1084.

²⁵⁸¹ Robyn Fraser, T. 22 January 2014, pp 41, 57, 83; exhibit P3 (Marked image); exhibit P5 (Robyn Fraser report on CCTV evidence), para. 115.

²⁵⁸² Exhibit P5, para. 17; exhibit P18 (Supporting map for Robyn Fraser report), p. 4.

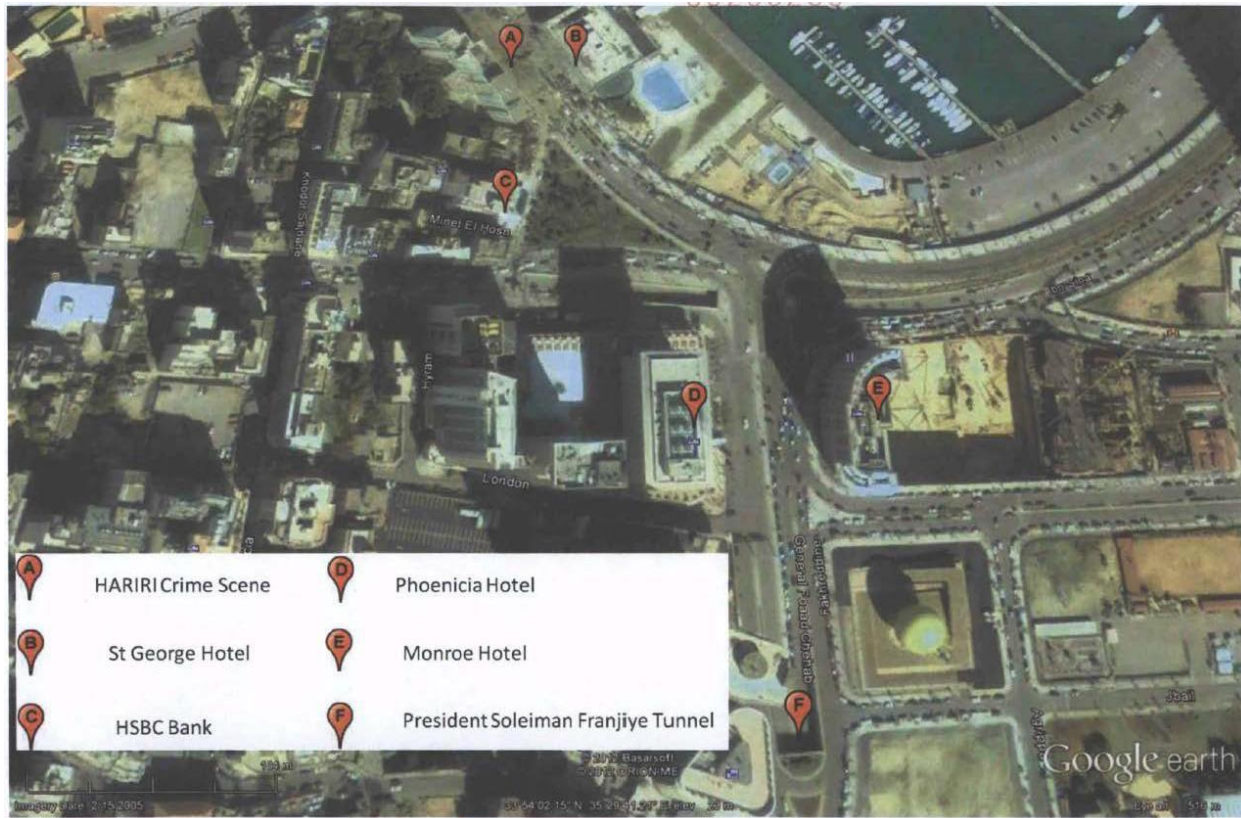


Exhibit P18, p. 4

1265. On 14 February 2005, the Suleiman Frangieh tunnel, Phoenicia Hotel and HSBC Bank each had their own CCTV system.²⁵⁸³ Soon after the attack, Lebanese and international investigators obtained copies of CCTV footage from each location for the period before and after the attack.²⁵⁸⁴

1266. After reviewing CCTV footage from all three locations, investigators determined that none of the CCTV systems had been set to the correct time on the day of the attack. As a result, the time stamps displayed in the relevant CCTV footage were not accurate.²⁵⁸⁵ Ms Robyn Fraser, a former Prosecution investigator,²⁵⁸⁶ identified when each CCTV system captured the explosion and

²⁵⁸³ Robyn Fraser, T. 22 January 2014, pp 42, 83, 110; exhibit P5, paras 9-10, 18, 41-43, 47, 80, 95-97, 116, 130-133.

²⁵⁸⁴ Robyn Fraser, T. 22 January 2014, pp 43, 84, 110; exhibit P5, paras 9-10, 22-40, 81-82, 85-94, 117-118, 123-129; exhibit P50 (Statement of Hussein Sharri), paras 7-17; exhibit P71 (Statement of Hussein Sharri), p. 4; exhibit P261 (Statement of Witness PRH070), pp 6 (para. 8), 7 (paras 11-12), 15 (para. 8), 16 (paras 13-14), 24 (paras 17-19); exhibit P181 (Bilal Yamout's witness statement), paras 21-22; exhibit P273 (Statement of Witness PRH240), paras 9-22; exhibit P273.1 (Statement of Witness PRH240), p. 3.

²⁵⁸⁵ Exhibit P5, paras 52-59, 102, 135-139.

²⁵⁸⁶ Robyn Fraser, T. 22 January 2014, p. 36.

compared the explosion's actual time to the time as recorded in the CCTV footage.²⁵⁸⁷ Based on this, she calculated that the time for the Suleiman Frangieh tunnel CCTV system was slow by one minute and 54 seconds,²⁵⁸⁸ the time for the Phoenicia Hotel CCTV system was fast by 47 minutes and 48 seconds²⁵⁸⁹ and the time for the HSBC Bank CCTV system was slow by 58 minutes and 37 seconds.²⁵⁹⁰ The Trial Chamber has accepted Ms Fraser's calculations as reliable and has cited to the times she calculated,²⁵⁹¹ rather than to those displayed on the CCTV still images.

b. CCTV footage of a white truck

1267. A white truck first appeared in CCTV footage from the Suleiman Frangieh tunnel. Six different cameras within the tunnel recorded a white truck traveling through and exiting the tunnel onto Fakhreddine Street around 11:56:57.²⁵⁹² The truck's number plate was obscured, and none of the digits were legible, as is shown in the still below.²⁵⁹³

²⁵⁸⁷ Robyn Fraser, T. 22 January 2014, p. 79; exhibit P5, paras 55-57, 103, 139-140.

²⁵⁸⁸ Robyn Fraser, T. 22 January 2014, p. 79; exhibit P5, para. 140.

²⁵⁸⁹ Robyn Fraser, T. 22 January 2014, p. 102; exhibit P5, para. 103.

²⁵⁹⁰ Exhibit P5, para. 57. *See also* exhibit P80 (Statement of Timothy Jolly), para. 13.

²⁵⁹¹ Ms Fraser stated that the actual time of the explosion was 12:55:03, based on an underlying seismology report from the Lebanon National Centre of Geophysics, Robyn Fraser, T. 22 January 2014, p. 79; exhibit P5, para. 55. However, the evidence submitted at trial (a different seismology report) shows the explosion's actual time was two seconds later, at 12:55:05, exhibit P317 (National Council of Scientific Geophysique report related to earthquake signals), p. 16. For ease of reference, the Trial Chamber relies on Ms Fraser's times as she calculated them and has not updated them to address this two-second gap.

²⁵⁹² Robyn Fraser, T. 22 January 2014, pp 49-56, T. 23 January 2014, pp 41, 49; exhibit P5, paras 146-147, 163; exhibits P6-P10 (Still images from Suleiman Frangieh tunnel CCTV footage), P73-P79 (Video excerpts from Suleiman Frangieh tunnel CCTV footage).

²⁵⁹³ Robyn Fraser, T. 23 January 2014, pp 60-61.



Exhibit P6

1268. The last camera in the tunnel then recorded the truck after it left the tunnel. In CCTV footage from this camera, the truck moved to the right and disappeared from view.²⁵⁹⁴ According to Ms Fraser, this shows that, after the truck exited the tunnel, it did not continue straight on Fakhreddine Street. Rather, the truck merged to the right, left Fakhreddine Street and entered a side street in front of the Monroe Hotel.²⁵⁹⁵ Prosecution investigator Mr Gary Platt agreed that the

²⁵⁹⁴ Exhibits P11 (Video excerpt from Suleiman Frangieh tunnel CCTV footage), P33-P43 (Still images from Suleiman Frangieh tunnel CCTV footage), P73.

²⁵⁹⁵ Robyn Fraser, T. 22 January 2014, pp 62-64, 72-75, T. 23 January 2014, pp 29-30, 41-43; exhibit P4 (Marked image); exhibit P5, paras 148, 165; exhibit P49 (Marked image). See also exhibit P81 (Statement of Quentin Mugg), para. 11.

truck merged onto a side street after leaving the tunnel and then drove around the front of the Monroe Hotel.²⁵⁹⁶

1269. Mr Platt believed that at this point the truck would have remained near the Monroe Hotel. Given all the explosives it was carrying, the truck had a heavy load and needed to drive at a slow speed. In his view, it would have needed a location where it could stay close to the explosion site, have easy access to the road leading to the site and not draw any attention, namely the area east of the Monroe Hotel.²⁵⁹⁷

1270. A white truck next appeared on CCTV footage more than 50 minutes later, again on the Suleiman Frangieh tunnel's CCTV system. CCTV footage from the last camera in the tunnel shows it entering from the side street onto Fakhreddine Street at 12:50:58. The white truck then drove towards the explosion site.²⁵⁹⁸

1271. Less than 30 seconds later, a white truck appeared on a different CCTV system, from the Phoenicia Hotel. CCTV footage, consisting of one still image, showed the truck traveling north on Fakhreddine Street at 12:51:26.²⁵⁹⁹ According to Ms Fraser who analysed the images, the truck was moving, and not parked in front of the Monroe Hotel. This is because the truck did not appear in the frames before and after the still image.²⁶⁰⁰ The white truck is circled in the video stills below:

²⁵⁹⁶ Gary Platt, T. 13 March 2017, p. 80, T. 14 March 2017, pp 14, 26-31, 37-39; exhibit P1923 (Chronology PowerPoint presentation – 13 February 2005 to 16 February 2005), slides 91-95; exhibit P1923.3 (Marked version of slide 100 of exhibit P1923); exhibit P1923.4 (Marked version of slide 74 of exhibit P1923); exhibit P1930.1 (Marked version of exhibit P1930).

²⁵⁹⁷ Gary Platt, T. 14 March 2017, pp 18-19, 30, T. 5 April 2017, p. 43.

²⁵⁹⁸ Robyn Fraser, T. 22 January 2014, pp 75-77, 81; exhibit P5, paras 149-150, 166; exhibit P13 (Video excerpt from Suleiman Frangieh tunnel CCTV footage); exhibit P81 (Statement of Quentin Mugg), para. 11.

²⁵⁹⁹ Robyn Fraser, T. 22 January 2014, pp 89-96, 100, 103, T. 23 January 2014, pp 44, 50; Gary Platt, T. 14 March 2017, pp 14, 50-52; exhibit P5, paras 111, 167; exhibit P15 (Marked version of exhibit P20); exhibit P17 (Marked version of exhibit P16); exhibit P19 (Marked version of exhibit P18); exhibit P20 (Still image from Phoenicia Hotel CCTV footage); exhibit P273.2 (Video excerpt from Phoenicia Hotel CCTV footage); exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1186; exhibit P1923, slide 126; exhibit P1923.5 (Marked version of slide 74 of exhibit P1923).

²⁶⁰⁰ Robyn Fraser, T. 22 January 2014, pp 94-95, T. 23 January 2014, pp 48-49; exhibit P5, paras 111, 167.



Exhibit P15

1272. One minute after, a white truck was captured in CCTV footage from the HSBC Bank. This video showed a white truck traveling along *Minet el Hosn* Street towards the location of the attack from 12:52:36 until 12:53:17.²⁶⁰¹ Other cars could be seen passing the white truck. The truck was captured in 30 frames of the CCTV footage, while other vehicles only appeared in three to five frames. According to Ms Fraser, this shows that the truck travelled slowly, approximately ten times slower than normal traffic.²⁶⁰²

²⁶⁰¹ Robyn Fraser, T. 23 January 2014, pp 4-6, 15-18, 50; Gary Platt, T. 14 March 2017, p. 53; exhibit P5, paras 74, 168; exhibit P24 (Video excerpt from HSBC Bank CCTV footage); exhibit P26 (Still images from HSBC Bank CCTV footage); exhibit P80 (Statement of Timothy Jolly), para. 14; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1191; exhibit P1923, slide 127.

²⁶⁰² Robyn Fraser, T. 23 January 2014, p. 7; exhibit P5, paras 74-75.



Extract from exhibit P1923 (Chronology PowerPoint presentation – 13 February 2005 to 16 February 2005), slide 127²⁶⁰³

1273. Two minutes later, the same HSBC Bank CCTV camera captured Mr Hariri's convoy as it sped towards the St Georges Hotel. The CCTV system recorded the convoy at 12:54:57.²⁶⁰⁴

c. Identification of the truck in the CCTV footage

1274. Several witnesses testified about whether the vehicle in the CCTV footage was a Mitsubishi Canter.

²⁶⁰³ See also exhibit P26, p. 2.

²⁶⁰⁴ Robyn Fraser, T. 23 January 2014, pp 6, 19-20; exhibit P5, paras 77, 169; exhibit P27 (Still images from HSBC Bank CCTV footage), pp 14-23; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1192; exhibit P1923, slides 135-136.

1275. Ms Fraser compared the white trucks seen in the CCTV footage from the Suleiman Frangieh tunnel, Phoenicia Hotel and HSBC Bank and concluded that they were similar to each other and a Mitsubishi Canter stolen in Japan in October 2004 and suspected of being involved in the explosion.²⁶⁰⁵ She noted that the tarpaulins on the backs of the trucks had the same dimensions, the tarpaulins and the trays had similar shading, the tops of the tarpaulins were in similar positions, the front cabins had similar shading, height and appearance, the side front windows were similarly shaped and the front bumpers were similar.²⁶⁰⁶

1276. However, Ms Fraser could not say for certain that they were all the same vehicle.²⁶⁰⁷ She could not identify the make and model of the vehicle in each set of CCTV footage.²⁶⁰⁸ She acknowledged that she was not a vehicle expert.²⁶⁰⁹ Tellingly, she could not affirm from viewing the various CCTV footages that the vehicle in the footage was a Mitsubishi Canter, that it carried explosives or that it was involved in the explosion.²⁶¹⁰

1277. Similarly, Mr Gerhard Geyer, an expert in identifying Mitsubishi Canter parts,²⁶¹¹ testified that he could not determine if the vehicle in the three sets of CCTV footage was a Canter.²⁶¹² Many still images that he viewed were too small and out of focus to make an identification.²⁶¹³ Further, it was not possible to identify a Canter from the rear, because truck bodies came from different suppliers.²⁶¹⁴

1278. Witness PRH041, who worked for the vehicle dealership in Tripoli that sold the Canter in January 2005,²⁶¹⁵ could not identify the truck in the Suleiman Frangieh tunnel CCTV footage.

²⁶⁰⁵ Robyn Fraser, T. 23 January 2014, pp 8-9; exhibit P5, paras 12-13, 74, 76, 113, 151, 159-161.

²⁶⁰⁶ Robyn Fraser, T. 23 January 2014, pp 8-9. *See also* exhibit P5, paras 76, 113, 151, 159-161.

²⁶⁰⁷ Robyn Fraser, T. 23 January 2014, p. 88. *See also* pp 62-66, 81-87.

²⁶⁰⁸ Robyn Fraser, T. 23 January 2014, p. 91.

²⁶⁰⁹ Robyn Fraser, T. 23 January 2014, pp 61-62, 88, 92.

²⁶¹⁰ Robyn Fraser, T. 23 January 2014, p. 92.

²⁶¹¹ The Trial Chamber found that Mr Geyer is a technical manager of Mitsubishi Motors Germany and has 17 years of experience between 1990 and 2007 in servicing Mitsubishi vehicles and their parts, which enables him to identify Mitsubishi parts from those of other vehicles, Decision on expertise (Mr Geyer). *See also* Gerhard Geyer, T. 16 July 2014, pp 9, 12; exhibit P233 (Statement of Gerhard Geyer), p. 2. Mr Geyer obtained technical qualifications in regard to motor vehicles in 1974, initially working with agricultural machinery, and commenced employment with Mitsubishi in Germany in 1990. From 1990-1995, he was responsible for heavy vehicles and up to that point was just working on Canters. As of 1995, he became a manager working with Canters and L200s, Gerhard Geyer, T. 16 July 2014, pp 7-8, 31.

²⁶¹² Gerhard Geyer, T. 17 July 2014, pp 73-74, 77-78, 102; exhibit 2D24 (Gerhard Geyer email correspondence), p. 1.

²⁶¹³ Gerhard Geyer, T. 17 July 2014, pp 75-78; exhibit 2D24, p. 1.

²⁶¹⁴ Gerhard Geyer, T. 17 July 2014, pp 74, 77; exhibit 2D24, p. 1.

²⁶¹⁵ Witness PRH041, T. 17 June 2015, pp 5-7.

Because the image showed the rear of the vehicle, he thought it could be either a Mitsubishi or an Isuzu truck.²⁶¹⁶ He added that the vehicle in the CCTV footage was different from the Mitsubishi Canter that was in the Tripoli dealership because that one had a metallic flatbed and no tarpaulin.²⁶¹⁷

1279. Likewise, Witness PRH075, who imported Japanese pick-up trucks and owned the Mitsubishi Canter that was sold in Tripoli,²⁶¹⁸ said that the vehicle in the Suleiman Frangieh tunnel CCTV footage was different to the Canter he sold. Unlike his Canter, that in the tunnel had a tarpaulin, a closed flatbed and higher sides in the back,²⁶¹⁹ but the two vehicles were otherwise similar.²⁶²⁰ If the additions to the tunnel truck's flatbed were removed, Witness 75 thought that it would be '80 per cent' similar to his Canter.²⁶²¹ Otherwise, the tunnel truck could be a Mitsubishi, or a Toyota, or an Isuzu; the three truck brands looked '90 per cent' similar when viewing their flatbeds from the rear.²⁶²²

1280. Witness PRH063, who sold the Mitsubishi Canter in Tripoli,²⁶²³ saw a photograph of the truck in the media, presumably from the CCTV footage, that was different to the Canter he sold. The headlights and front fascia were different,²⁶²⁴ and the truck pictured in the media was a left-hand drive,²⁶²⁵ while the Canter he sold was a right-hand drive.²⁶²⁶

1281. The Dutch forensic team noted in their report that a Mitsubishi vehicle had been recorded by the CCTV camera at the HSBC Bank.²⁶²⁷

²⁶¹⁶ Witness PRH041, T. 17 June 2015, p. 27.

²⁶¹⁷ Witness PRH041, T. 17 June 2015, pp 28-29.

²⁶¹⁸ Witness PRH075, T. 15 June 2015, pp 2-3, 6-7.

²⁶¹⁹ Witness PRH075, T. 16 June 2015, pp 52, 60-61, *see also* pp 54-55, T. 15 June 2015, pp 62-64.

²⁶²⁰ Witness PRH075, T. 16 June 2015, p. 65.

²⁶²¹ Witness PRH075, T. 16 June 2015, p. 67.

²⁶²² Witness PRH075, T. 16 June 2015, p. 69. *See also* p. 62.

²⁶²³ Witness PRH063, T. 4 June 2015, pp 73, 75-76, 78.

²⁶²⁴ Witness PRH063, T. 10 June 2015, p. 27. A car's fascia refers to the front-end components such as the grille, headlights and front bumper.

²⁶²⁵ Witness PRH063, T. 10 June 2015, p. 27.

²⁶²⁶ Witness PRH063, T. 4 June 2015, p. 76.

²⁶²⁷ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 68.

d. Evidence from convoy survivors

1282. The Trial Chamber heard from witnesses who were part of Mr Hariri's convoy and survived the attack.

1283. Witness PRH076,²⁶²⁸ Mr Amer Chehadeh,²⁶²⁹ Witness PRH256²⁶³⁰ and Witness 9²⁶³¹ all did not see a Mitsubishi Canter in front of the St Georges Hotel.²⁶³² Likewise, Mr Mohammed Dia²⁶³³ testified that he did not see a truck or van outside the St Georges Hotel.²⁶³⁴ Witness 9 spoke to survivors, and none mentioned a Mitsubishi Canter at the explosion site.²⁶³⁵ He heard that a few days after the attack people in the Lebanese intelligence services went to the buildings near the St Georges Hotel and took away any relevant CCTV footage.²⁶³⁶

e. Submissions

1284. The Prosecution submits that there are strong similarities between the white trucks seen in the three sets of CCTV footage and the Mitsubishi Canter sold in Tripoli, after allowing for modification to the Canter, arguing that the 'white truck in the CCTV footage is visually indistinguishable from a Mitsubishi Canter'.²⁶³⁷

1285. The Prosecution further argues that the truck's movements in the hour before the explosion, as recorded on CCTV, show that the truck was used in the attack. Specifically, the truck exited the Suleiman Frangieh tunnel close to when Mr Hariri was expected to leave Parliament. When Mr Hariri went to a nearby café instead, the truck pulled off to the side of the road near the Monroe Hotel to wait. Once Mr Hariri's convoy was on its way, the truck re-emerged in front of the Suleiman Frangieh tunnel and passed the Phoenicia and Monroe Hotels. It then slowed to a crawl

²⁶²⁸ Witness PRH076, T. 14 October 2015, pp 11, 20.

²⁶²⁹ Mr Chehadeh was a close protection officer for Mr Hariri who drove the second car in the convoy, Amer Chehadeh, T. 16 October 2014, pp 5, 11-12.

²⁶³⁰ Witness PRH256, T. 22 October 2014, pp 4, 6.

²⁶³¹ Witness PRH009, T. 11 October 2016, pp 9-10, T. 13 October 2014, p. 14.

²⁶³² Witness PRH076, T. 15 October 2014, pp 23-24, 32; exhibit 2D68 (Witness PRH076's statements), pp 18, 45; Amer Chehadeh, T. 16 October 2014, pp 54-55; Witness PRH256, T. 22 October 2014, p. 22; Witness PRH009, T. 13 October 2016, p. 14, *see also* p. 19 (private session).

²⁶³³ Mr Dia was a close protection officer for Mr Hariri who rode in the second vehicle, Mohammed Dia, T. 16 October 2014, p. 66, T. 17 October 2014, p. 3.

²⁶³⁴ Mohammed Dia, T. 17 October 2014, p. 17.

²⁶³⁵ Witness PRH009, T. 13 October 2016, p. 21 (private session).

²⁶³⁶ Witness PRH009, T. 13 October 2016, pp 21-31 (private session).

²⁶³⁷ Prosecution final trial brief, paras 1073, 1078, 1081.

in front of the HSBC Bank, so that it could reach the explosion site just before Mr Hariri's convoy arrived.²⁶³⁸ While the evidence shows that the truck in the CCTV footage was the Mitsubishi Canter, the Trial Chamber need not be satisfied of this beyond a reasonable doubt. Whether the Canter was captured on CCTV cameras is not an essential fact for conviction, namely not a material fact.²⁶³⁹

1286. The Ayyash Defence notes that the same white truck might be present in the CCTV footage from the Suleiman Frangieh tunnel, Phoenicia Hotel and HSBC Bank.²⁶⁴⁰ However, Ms Fraser was not qualified to comment on whether the same vehicle was seen in the three sets of CCTV footage, or whether it was a Mitsubishi Canter.²⁶⁴¹ And Mr Geyer could not say that the truck captured on CCTV cameras was a Canter.²⁶⁴²

1287. The Merhi Defence argues that there is no evidence that the truck in the three sets of CCTV footage was the vehicle used in the attack. Witnesses, such as Mr Dia and Witnesses 76 and 256, denied that the Mitsubishi Canter entered traffic near the explosion site. The Merhi Defence also highlights that there were no photographs of the Canter at the crime scene at the time of the explosion. There were many CCTV systems in the area of the attack, but most CCTV footage 'disappeared in very mysterious circumstances'.²⁶⁴³

f. Findings

1288. The Trial Chamber is unable to find that the white truck seen in CCTV footage exiting from the Suleiman Frangieh tunnel and passing the Phoenicia Hotel and HSBC Bank was a Mitsubishi Canter.

1289. The Trial Chamber has carefully reviewed the CCTV footage from each location, and still images derived from this footage. It appears that the same white truck is depicted in the CCTV footage from the Suleiman Frangieh tunnel, Phoenicia Hotel and HSBC Bank. As noted by

²⁶³⁸ Prosecution final trial brief, paras 1074, 1083-1084; Prosecution closing submissions, T. 13 September 2018, pp 95-106.

²⁶³⁹ Prosecution closing submissions, T. 13 September 2018, pp 104-105.

²⁶⁴⁰ Ayyash Defence final trial brief, para. 177.

²⁶⁴¹ Ayyash Defence final trial brief, paras 177-178.

²⁶⁴² Ayyash Defence final trial brief, para. 179.

²⁶⁴³ Merhi Defence closing submissions, T. 18 September 2018, p. 65.

Ms Fraser, several aspects of the trucks are consistent across the three sets of CCTV footage, such as the front cabin and the tarpaulin being a similar shape, size and colour.

1290. The evidence, however, does not establish that the white truck seen in the CCTV footage was a Mitsubishi Canter. None of the witnesses positively identified that truck as a Canter. The Trial Chamber stresses that witnesses who had extensive experience with Mitsubishi Canters, such as Mr Geyer, an expert in Canter parts, and Witness 75, who imported Japanese pick-up trucks, could not identify the CCTV truck as a Canter. Mr Geyer and Witness 75 further highlighted the difficulties of trying to identify a Canter from its rear. Yet this is the only vantage point for the Suleiman Frangieh tunnel CCTV footage.

1291. Even Ms Fraser, who initially concluded that the truck in the CCTV footage was similar to a Mitsubishi Canter, backtracked. Under cross-examination, she conceded that she could not identify the make and model of that truck, and could not say that it was a Mitsubishi Canter.

1292. The Trial Chamber is not persuaded by the Merhi Defence's argument, namely the consistent evidence of those in the convoy who survived the attack, all of whom testified that they did not see a Mitsubishi Canter before the explosion. Such evidence is unsurprising. Convoy members should not be expected to remember one truck, which presumably looked normal, out of the many vehicles they saw that day. The Trial Chamber does not find these witnesses' evidence helpful to its assessment of the CCTV footage.

1293. The Merhi Defence's claim that CCTV footage disappeared under mysterious circumstances appears to rest on Witness 9's evidence that he heard that Lebanese intelligence services took away CCTV footage from buildings near the St Georges Hotel. The provenance of this information however is unclear and even assuming its truth, would not assist the Trial Chamber with the relevant issue, namely identifying the make and model of the white truck seen in the CCTV footage.

1294. The Dutch forensic team identified the truck in the HSBC Bank footage as a Mitsubishi vehicle, but this comes from its report only. Also, it is only an assertion, and there is no explanation as to why this truck should be a Mitsubishi rather than a different Japanese brand. This evidence thus carries much less weight than that of the witnesses who testified to the contrary and explained their positions.

1295. The Trial Chamber therefore is not satisfied that the Mitsubishi Canter was seen near the attack site shortly before the explosion.

ii. Recovery of Mitsubishi Canter parts at the crime scene after the attack

1296. The Prosecution alleges that the location and condition of Mitsubishi Canter parts recovered at the crime scene after the explosion demonstrate that the explosive device was situated in the Canter's cargo space.²⁶⁴⁴ Several witnesses testified as to how and where vehicle parts were found by the various investigation teams, and how they were identified as belonging to a Mitsubishi Canter.

a. Finding and identifying Mitsubishi Canter parts

1297. The Lebanese explosives experts who were first on the scene found parts from a Mitsubishi vehicle in the centre of the crater. They were found to come from a Mitsubishi Canter.²⁶⁴⁵ The Lebanese experts consulted the exclusive Mitsubishi dealership in Lebanon, and Japanese forensic experts contacted the Mitsubishi factory in Tokyo, Japan, to assist in identifying the heavily damaged vehicle parts. Further, an expert witness in Mitsubishi vehicle identification, Mr Gerhard Geyer, examined vehicle parts in Beirut.²⁶⁴⁶ This led to the identification of 41 items.²⁶⁴⁷ Most of these items were discovered by the Lebanese investigating authorities and the UNIIC investigators to the west of and inside the crater. Some parts were found in the St Georges Hotel, others in the Mediterranean Sea. The Lebanese investigators however did not record all of the places where they found parts.²⁶⁴⁸

1298. ISF forensic team members, including Witness 566, Mr Othman, Mr Krayem, Mr Khashab and Mr Safi, were responsible for retrieving the first vehicle parts from inside the crater.²⁶⁴⁹

²⁶⁴⁴ Prosecution final trial brief, para. 1064.

²⁶⁴⁵ See para. 1298.

²⁶⁴⁶ See para. 1301. See also exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 68; Anick van de Craats, T. 28 August 2014, p. 19.

²⁶⁴⁷ See para. 1301.

²⁶⁴⁸ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 70.

²⁶⁴⁹ Exhibit P121 (ISF report on seizing mechanical parts and pieces from explosion site); exhibit P122 (File on recovered parts from explosion site); exhibit P123 (ISF list of car parts found at the explosion site); exhibit P125 (ISF report about car parts found); exhibit P247, pp 5-6; Witness PRH566, T. 5 February 2014, pp 15-22, 24-26, 38-39; Walid Othman, T. 2 September 2014, pp 14-15, 19-21, T. 4 September 2014, pp 35-37; Mahmoud Khashab, T. 8 September 2014, pp 20-22, 75-77; Hussein Krayem, T. 10 September 2014, pp 64-65; exhibit 2D40 (Interview with

Initially they did not know that the recovered parts belonged to a Mitsubishi vehicle.²⁶⁵⁰ However, a Mitsubishi logo was visible on parts found at the centre of the crater and Witness 566 and his team immediately searched for Mitsubishi parts.²⁶⁵¹ All of the identifiable vehicle parts, which were retrieved from the crater and underwater,²⁶⁵² were taken to motor vehicle dealerships to identify whether they were Mitsubishi parts.²⁶⁵³ The chief of maintenance at Lebanon's only Mitsubishi dealership confirmed that some parts belonged to a Canter.²⁶⁵⁴ Witness 566 and his colleagues retrieved 23 Canter vehicle parts.²⁶⁵⁵ Based on the examination of the vehicle parts, they determined that the Mitsubishi parts had suffered the most damage.²⁶⁵⁶

1299. During their underwater search, Mr Wilson and his UK dive team found a vehicle part with a Mitsubishi logo and a Canter wheel rim.²⁶⁵⁷ Dr Schlatter and the Swiss team of experts also found one metal part with the Mitsubishi insignia.²⁶⁵⁸

Mahmoud Khashab, 8 April 2005); exhibit P249 (ISF Explosives Bureau report, 22 February 2005), ERNs 60278859-60278861. *See also* exhibit P315 (Statement of Joseph Safi), pp 8-12, 36.

²⁶⁵⁰ Witness PRH566, T. 5 February 2014, pp 32-33, T. 6 February 2014, p. 46; Walid Othman, T. 4 September 2014, pp 35-37; Mahmoud Khashab, T. 8 September 2014, pp 20-22; Hussein Krayem, T. 10 September 2014, pp 12-13.

²⁶⁵¹ Exhibit P121, p. 4; Walid Othman, T. 4 September 2014, pp 35-37; Witness PRH566, T. 6 February 2014, pp 54-56; Mahmoud Khashab, T. 8 September 2014, pp 22-23; Hussein Krayem, T. 10 September 2014, pp 13-14, 64-65; exhibit P249 (ISF Explosives Bureau report, 22 February 2005), ERNs 60278861-60278862.

²⁶⁵² Witness PRH566, T. 5 February 2014, pp 38-43, 70-72; exhibit P126; exhibit P153 (Maps showing the locations where Mitsubishi canter parts were found). *See also* exhibit P255 (Statement of Samir Yazbek), paras 8-9, 11, 13; exhibit P255 (ISF Central Accident Bureau reports on parts retrieved from the seabed by Samir Yazbek), ERNs 60286251-60286260; exhibit P255.1 (Videoclip of underwater retrieval of items).

²⁶⁵³ Witness PRH566, T. 5 February 2014, pp 11-12, 27, 38-39, 48-51; exhibit P121, pp 4-5. *See also* Walid Othman, T. 4 September 2014, pp 54-55; Hussein Krayem, T. 9 September 2014, pp 80-81, T. 10 September 2014, pp 62-64; exhibit P249 (ISF Explosives Bureau report, 22 February 2005), ERNs 60278862-60278863.

²⁶⁵⁴ Exhibit P121, pp 2-5; Witness PRH566, T. 5 February 2014, pp 27-30, 33, 38, 48; Walid Othman, T. 2 September 2014, pp 27-28; exhibit P249 (ISF Explosives Bureau report, 22 February 2005), ERNs 60278862-60278863. *See also* exhibit P124 (ISF report on mechanical parts comparison).

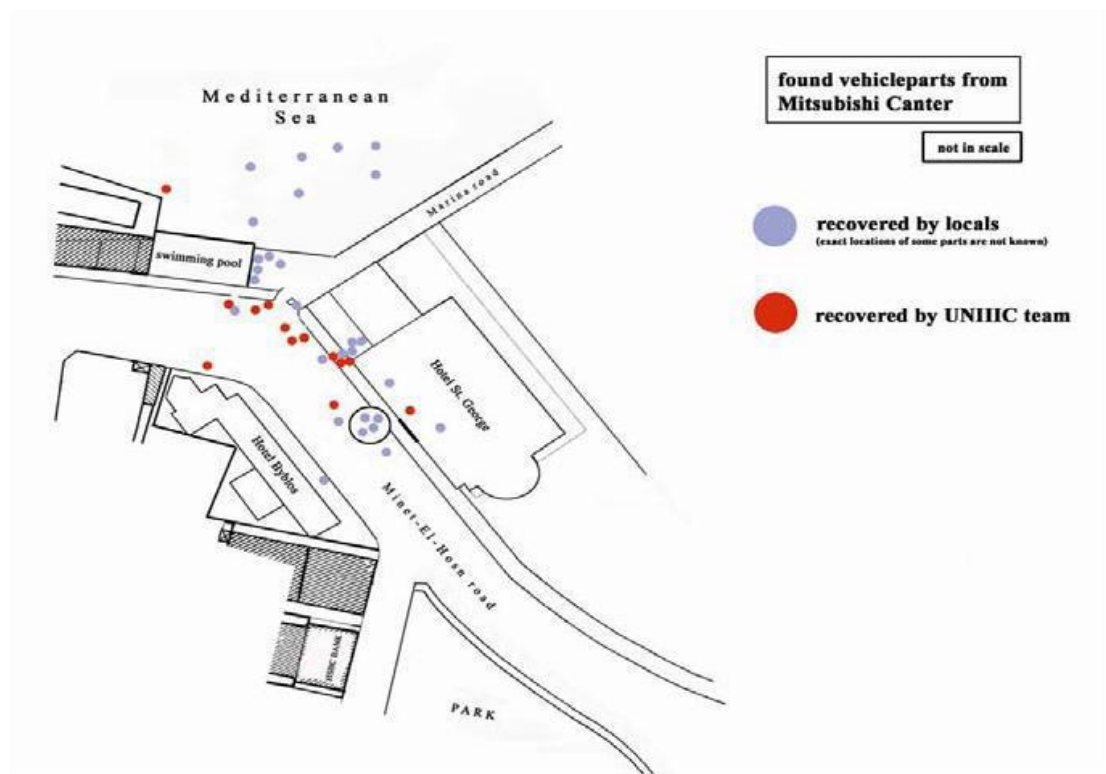
²⁶⁵⁵ Witness PRH566, T. 5 February 2014, pp 38-43, 56-72; exhibit P126; exhibits P130.1, P131.1, P132.1, P133.1, P134.1, P135.1, P136.1, P137.1, P138.1, P139.1, P140.1, P141.1, P142.1, P143.1, P144.1, P145.1, P146.1, P147.1, P148.1, P149.1, P150.1, P151.1, P152.1 (Photographs of Mitsubishi vehicle parts recovered from the crime scene); exhibit P153. *See also* Hussein Krayem, T. 9 September 2014, pp 73-79; Walid Othman, T. 2 September 2014, pp 64-71; exhibit P249 (Statement of Hussein Krayem), paras 10-16; exhibit P249 (ISF Explosives Bureau report, 22 February 2005), ERNs 60278865-60278885; exhibit P247.2 (Mitsubishi canter parts pictures); exhibit P247.3 (ISF report with car part pictures); exhibit P115 (List of recovered car pieces); exhibit P249.1 (List of artefacts in ISF Explosives Bureau report, 22 February 2005); Abdel-Badih Soussi, T. 3 February 2014, pp 20-21; exhibit P315 (Statement of Joseph Safi), pp 8-12, 36, 39-56.

²⁶⁵⁶ Witness PRH566, T. 6 February 2014, pp 55-56.

²⁶⁵⁷ Malcolm Wilson, T. 7 February 2014, pp 26-32, 44-45, 49-52; exhibit P164 (UK Metropolitan Police Service Anti-Terrorist Branch report on underwater search, 5 September 2005), pp 11, 15; exhibit P165 (Bag containing fragments); exhibit P165.2 (Screenshot of exhibit P165); exhibit P165.3 (Forensic photograph of artefact); exhibit P166 (Metal fragments).

²⁶⁵⁸ *See above*, at para. 1061; exhibit P224 (Metal fragment with Mitsubishi emblem).

1300. The Dutch forensic team also found Canter parts while searching the crime scene in August 2005.²⁶⁵⁹ Where they were found is shown on the diagram below.



Overview of locations of vehicle parts originating from the Mitsubishi Canter. In blue are the exhibits recovered by the Lebanese authorities and in red are the exhibits recovered by UNIIC

Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 70 (figure 11)

1301. Mr Geyer went to Beirut to assist in identifying small vehicle parts found at the crime scene.²⁶⁶⁰ Most Canter parts bear a logo or a spare parts number, and he could identify these by sight, or by using an electronic parts manual.²⁶⁶¹ He identified 41 of the recovered vehicle parts as

²⁶⁵⁹ Exhibits P166.2, P214-P216, P220-P222, P223.1, P226-P227, P229-P232 (Photographs of Mitsubishi parts recovered at the crime scene); exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 102, 104-106, 109-111, 113-117, 119, 130, 136. *See also* exhibit P250 (*Aide-mémoire* for Gerard Murray's evidence on Mitsubishi canter parts); exhibit P250.1 (*Aide-mémoire* for Gerard Murray's evidence: map of Mitsubishi canter parts).

²⁶⁶⁰ Exhibit P233 (Statement of Gerhard Geyer), p. 2. *See also* exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 7.

²⁶⁶¹ Gerhard Geyer, T. 16 July 2014, pp 10-12.

Canter parts.²⁶⁶² These included the 23 found by Witness 566 and his team, and those retrieved by the Swiss and Dutch forensic teams.

1302. One of the 41 Canter parts was an engine block piece with the number 4D33-J01926.²⁶⁶³ Witness PRH185 determined that it was an unmodified original part as there were no welding or metallic inclusions.²⁶⁶⁴ Witness PRH186 found that the engine block had a serial number for a Mitsubishi 4-cylinder diesel engine vehicle and that the number had not been altered.²⁶⁶⁵ Based on the engine block number, the Dutch forensic team, with the assistance of the Mitsubishi factory in Tokyo, identified the vehicle registration number as FE52 CE-0560619.²⁶⁶⁶



Metal fragment with the engine block number 4D33-J01926 of the Mitsubishi Canter

Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 71 (photo 52)

²⁶⁶² Gerhard Geyer, T. 16 July 2014, pp 47-49, 54-57, 62-68, 71-74, 76-89, T. 17 July 2014, pp 8-21, 23-63; exhibit P213 (Technical report on Mitsubishi parts); exhibit P233 (Statement of Gerhard Geyer), pp 3-6. *See also* exhibits P250, P250.1.

²⁶⁶³ Exhibit P214; exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 68-69; Jan Kuitert, T. 11 September 2014, pp 27-28.

²⁶⁶⁴ Exhibit P343 (Witness PRH185's expert report on damage to an engine block, 3 June 2010), pp 7-8.

²⁶⁶⁵ Exhibit P342 (Witness PRH186's expert report on examination of an engine part, 28 June 2010), pp 9-10.

²⁶⁶⁶ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 70.

b. Forensic examination of Mitsubishi Canter parts

1303. Dr van de Craats testified that the most likely scenario was that the Mitsubishi Canter carried the explosive.²⁶⁶⁷ It was the most damaged vehicle at the scene and only very small parts were recovered from it.²⁶⁶⁸ Dr van de Craats could not rule out the possibility that another vehicle had carried the bomb and had been obliterated by the detonation, but such a scenario was not very plausible on the evidence.²⁶⁶⁹

1304. The Lebanese ISF team concluded that the Canter transported the explosive device. It noted that the Canter's engine was fragmented, and Canter parts were found in the crater and 80 metres away. This indicated that the explosives had been very close to the Canter.²⁶⁷⁰ Other partially destroyed Canter parts, such as from the engine and the axles, had been found in the crater. This demonstrated that the explosives were on top of these parts.²⁶⁷¹ Mr Khashab stated that when a vehicle explodes, its remains are normally found in the crater.²⁶⁷² Mr Krayem testified that the Canter had carried the explosives because the vehicle parts that were closest to the point of explosion and had melted were from a Mitsubishi.²⁶⁷³ Witness 566 concurred that the vehicle parts recovered showed that the exploded vehicle was a Mitsubishi, because the Canter parts suffered more damage than those from other vehicles.²⁶⁷⁴

1305. Moreover, according to Mr Othman, a Mitsubishi Canter could carry up to three tonnes.²⁶⁷⁵

c. Submissions

1306. The Prosecution argues that the Mitsubishi Canter was at the centre of the explosion, in close proximity to it. Canter parts were found in the crater and far away. The engine block was fragmented and contained microscopic fractures, which pointed to its involvement in the

²⁶⁶⁷ Anick van de Craats, T. 1 September 2014, pp 36-37.

²⁶⁶⁸ Anick van de Craats, T. 28 August 2014, pp 90-91.

²⁶⁶⁹ Anick van de Craats, T. 1 September 2014, pp 58-59.

²⁶⁷⁰ Exhibit P247 (ISF Explosives Bureau report, 2 March 2005), pp 6-7.

²⁶⁷¹ Walid Othman, T. 2 September 2014, p. 28, T. 3 September 2014, pp 31-32, T. 4 September 2014, pp 32, 36, 76.

²⁶⁷² Mahmoud Khashab, T. 8 September 2014, p. 66.

²⁶⁷³ Hussein Krayem, T. 10 September 2014, pp 13-14, *see also* pp 64-65.

²⁶⁷⁴ Witness PRH566, T. 5 February 2014, pp 33, 38, T. 6 February 2014, pp 55-56.

²⁶⁷⁵ Walid Othman, T. 3 September 2014, pp 71-72.

explosion.²⁶⁷⁶ Further, the forensic evidence concluded that the engine block was an unmodified original part.²⁶⁷⁷

1307. The Merhi Defence argues that there is no evidence that the engine block was not removed from the original truck before the explosion.²⁶⁷⁸

d. Findings

1308. The Trial Chamber finds that 41 vehicle parts recovered by the Lebanese and international investigation teams after the explosion came from a Mitsubishi Canter. One part was an engine block, number 4D33-J01926, from a Mitsubishi vehicle with vehicle registration number FE52 CE-0560619.

1309. The Trial Chamber is satisfied with Mr Geyer's identification of the Mitsubishi parts based on his 17 years of experience in working with Mitsubishi vehicles and their parts.

1310. As has already been explained at paragraphs 1069-1119 above, there were serious issues in the crime scene management following the explosion. Some vehicle parts, including at least three parts belonging to a Mitsubishi vehicle, were removed from the crime scene on the day of the explosion and were returned to the crime scene to be photographed and only then were properly logged.²⁶⁷⁹ However, based on the various investigation teams' combined efforts after the initial investigation, including the diving and explosives investigators and forensic experts, the Trial Chamber is satisfied that the 41 parts identified by Mr Geyer came from a Mitsubishi Canter.

1311. Based on the location and number of Mitsubishi Canter parts found at the crime scene after the explosion, the Trial Chamber is satisfied that a Mitsubishi Canter with the identifying engine block number 4D33-J01926 was at the scene of the attack when the explosion occurred. As explained earlier, at paragraphs 1288-1295, the CCTV footage of the white truck does not establish that the Canter was seen near the attack site before the explosion. This, however, does not preclude the Trial Chamber from determining, based on other compelling evidence, that the Canter was there.

²⁶⁷⁶ Prosecution final trial brief, paras 1063-1064.

²⁶⁷⁷ Prosecution final trial brief, fn. 2200.

²⁶⁷⁸ Merhi Defence closing submissions, T. 18 September 2018, p. 73.

²⁶⁷⁹ See para. 1080.

1312. The Trial Chamber further finds that the explosive device was in the Mitsubishi Canter's cargo space. Dr van de Craats testified that the most likely scenario was that the Canter carried the explosive device. The Lebanese ISF team also concluded that the Canter transported the device, given the condition and location of the Canter parts that were recovered. Members of this team explained that the high level of damage to the recovered Canter parts, and the presence of Canter parts in the crater, showed that the explosives were in the Canter.

1313. Dr Murray found that significant amounts of the explosive RDX were found on various Canter parts recovered from the crime scene, further demonstrating that the Canter was in close proximity to the explosives.

1314. A Canter can carry a load of up to three tonnes, meaning one could transport the quantity of explosives as found by the Trial Chamber, namely 1,852 to 2,222 kilograms of RDX. This is set out in paragraph 1305.

1315. The Trial Chamber rejects the Merhi Defence's speculative argument that the engine block had been removed from the original truck before the explosion. Witness 185 examined the engine block and provided an uncontested expert opinion that it was an unmodified original part.

1316. The Trial Chamber is thus satisfied beyond reasonable doubt that the explosives were situated in the rear of a Mitsubishi Canter with the identifying engine block number 4D33-J01926.

(e) Triggering system for the explosives

1317. The Prosecutor pleaded that a suicide bomber detonated the explosives.²⁶⁸⁰ To make a finding on this issue, the Trial Chamber examined witness evidence on how explosive charges are detonated, how jamming devices can prevent remote detonation and how the explosion was triggered.

i. Triggering systems in general

1318. The Dutch forensic team explained that an IED, or improvised explosive device, is a device designed to set off an explosive charge in a certain moment and at a certain place.²⁶⁸¹ An explosive

²⁶⁸⁰ Amended consolidated indictment, paras 4, 13, 41.

²⁶⁸¹ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 10.

device has three main parts: the activation mechanism, the detonator and the explosive charge. The activation mechanism sets off the small explosion in the detonator. The detonator is an igniter specially designed to produce a small explosion that is powerful enough to set off the explosive charge.²⁶⁸² For a high explosive, the explosion starts at the location of the detonator within the explosive charge, and proceeds in stages throughout the rest of the explosive charge in a matter of milliseconds.²⁶⁸³

1319. The Dutch forensic team explained the three ways to activate an explosive device: remotely with a transmitter and receiver, using a time delay activation device and by a suicide bomber who activates the device manually.²⁶⁸⁴ The Swiss forensic team considered other technical devices to trigger the detonation, such as photoelectric barrier or driving over a contact.²⁶⁸⁵ Dr van de Craats explained that detonators can be electronic or non-electronic, such as using mechanical force.²⁶⁸⁶ Most detonators are electronic, and those can be activated by a nine-volt battery.²⁶⁸⁷

ii. Jamming devices

1320. The Prosecution submits that the jamming devices in Mr Hariri's convoy were switched on and operating at the time of the attack, thereby preventing remote detonation of the explosives.²⁶⁸⁸ The Trial Chamber heard evidence on the functioning of jamming devices, the presence of such devices in Mr Hariri's convoy and the likelihood that the devices were activated when the explosion took place.

²⁶⁸² Anick van de Craats, T. 1 September 2014, pp 55-56; exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 10.

²⁶⁸³ Daniel Ambrosini, T. 24 February 2015, p. 49.

²⁶⁸⁴ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 10, 83. *See also* Mahmoud Khashab, T. 8 September 2014, pp 57-58.

²⁶⁸⁵ Exhibit P242 (Swiss forensic team expert report), p. 18.

²⁶⁸⁶ Anick van de Craats, T. 1 September 2014, p. 55. *See also* Walid Othman, T. 3 September 2014, pp 67-68.

²⁶⁸⁷ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 10.

²⁶⁸⁸ Prosecution final trial brief, paras 1066, 1069-1072.

a. Jamming devices in general

1321. On the Prosecution's application, the Trial Chamber found that Witness 507 was an expert in the field of functioning and operation of jamming devices.²⁶⁸⁹ He had designed and built jamming device systems for Mr Hariri's convoy for ten years.²⁶⁹⁰

1322. Remote controls and mobile telephones are electronic transmitters and receivers²⁶⁹¹ and can be used to detonate IEDs remotely.²⁶⁹² Receivers are set to a certain frequency waiting for signals from transmitters communicating with them at the same frequency.²⁶⁹³ Jammers are designed to block these signals before they reach the receiver by running many frequencies on various frequency bands at the same time, thus creating a disturbed zone or fog around the receivers.²⁶⁹⁴ Jammers are also used to prevent the wire-tapping of mobile telephones or the detonation of explosive devices.²⁶⁹⁵

1323. The efficiency of a jammer depends on different factors. These include the frequency and the strength of the disturbed signal, the conditions at the jammer's location, the distance between the transmitter and the receiver attached to the explosive and environmental conditions, such as the reflection of transmitted signals from buildings, other systems transmitting electromagnetic fields or weather conditions, such as air humidity.²⁶⁹⁶

²⁶⁸⁹ Decision on Witnesses PRH291 and PRH507, para. 10. The Defence did not challenge his qualifications as an expert under Rule 161 (B) (iii).

²⁶⁹⁰ Exhibit P293 (Witness PRH507's statement of 15 August 2015), paras 3-5; Witness PRH507, T. 20 October 2014, pp 14-15, 70, T. 21 October 2014, p. 3.

²⁶⁹¹ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), appendix B, p. 3.

²⁶⁹² Exhibit P293 (Witness PRH507's statement of 15 August 2015), para. 11.

²⁶⁹³ Exhibit P293 (Witness PRH507's statement of 15 August 2015), para. 11; Witness PRH507, T. 20 October 2014, pp 48-49.

²⁶⁹⁴ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), appendix B, p. 3; Witness PRH507, T. 20 October 2014, pp 9, 48-49, *see also* T. 21 October 2014, pp 37-38.

²⁶⁹⁵ Witness PRH507, T. 20 October 2014, p. 9.

²⁶⁹⁶ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), appendix B, p. 3; Witness PRH507, T. 20 October 2014, pp 23, 49-50, 66; exhibit P294 (Witness PRH507's statement to the Lebanese investigating judge on 8 June 2015), p. 6.

b. Jamming devices in the convoy

1324. The Trial Chamber received Prosecution evidence that of the six vehicles in Mr Hariri's convoy three were equipped with jamming devices that were switched on and fully operational on 14 February 2005.²⁶⁹⁷

1325. Witness 507 and Mr Ali Mohammed Diab, who worked for Mr Hariri as an electrical engineer,²⁶⁹⁸ installed the jamming devices in three Mercedes sedans which were in Mr Hariri's convoy.²⁶⁹⁹

1326. The jamming device system used in the convoy vehicles was designed to disrupt signals of remotely controlled IEDs and was operating with a power output of 190 Watts in the frequency range of 20 MHz to four GHz.²⁷⁰⁰ Most receivers then available on the market worked within this frequency range.²⁷⁰¹ When switched on and functioning, it disturbed mobiles and radios in the convoy vehicles.²⁷⁰² As the convoy drove by, the jammers occasionally set off the alarms of cars parked along the route²⁷⁰³ and interfered with TV shows that people were watching.²⁷⁰⁴

1327. The jammers in Mr Hariri's convoy cars had four parts. These were first, six channels to generate and transmit energy, each in a specific frequency band of electromagnetic fields;²⁷⁰⁵

²⁶⁹⁷ Prosecution final trial brief, paras 979, 1066, 1669-1072.

²⁶⁹⁸ Exhibit P290 (Ali Diab's witness statements), pp 2, 15, 48.

²⁶⁹⁹ Witness PRH507, T. 20 October 2014, pp 15-16, 20, 33; exhibit P294 (Witness PRH507's statement to the Lebanese investigating judge on 8 June 2015), p. 3. *See also* Witness PRH507, T. 21 October 2014, p. 5; exhibit P290 (Ali Diab's witness statements), p. 60.

²⁷⁰⁰ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), appendix B, p. 2; exhibit P290 (Ali Diab's witness statements), pp 25-26, 49, 60; Witness PRH507, T. 20 October 2014, pp 12, 14. *See also* Witness PRH076, T. 14 October 2014, pp 34, 43; Amer Chehadeh, T. 16 October 2014, pp 14, 38.

²⁷⁰¹ Witness PRH507, pp 13-14, 21; exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), appendix B, p. 3; exhibit P293 (Witness PRH507's statement of 15 August 2015), para. 11; exhibit P290 (Ali Diab's witness statements), p. 60.

²⁷⁰² Witness PRH507, T. 21 October 2014, p. 47; Witness PRH076, T. 14 October 2014, p. 35; exhibit 2D68 (Witness PRH076's statements), p. 17.

²⁷⁰³ Exhibit P290 (Ali Diab's witness statements), p. 31; Witness PRH076, T. 14 October 2014, pp 37-38; exhibit 2D68 (Witness PRH076's statements), p. 17. *See also* Witness PRH507, T. 21 October 2014, pp 81-82, 84-85.

²⁷⁰⁴ Ali Diab, T. 12 December 2014, pp 53-56; exhibit P290 (Ali Diab's witness statements), pp 29-30. *See also* Witness PRH507, T. 21 October 2014, pp 76, 88-89; exhibit P295 (Map showing the location of a shop in relation to the St Georges Hotel).

²⁷⁰⁵ The frequency range of 20 MHz to four GHz was divided into six frequency bands: 20-100 MHz, 100-500 MHz, 500-1,000 MHz, 1,000-2,000 MHz, 2,000-3,000 MHz and 3,000-4,000 MHz (or four GHz), *see* exhibit P290 (Ali Diab's witness statements), p. 60; exhibit P290 (Manual for Jammer System JS 204), pp 44-45. These jammers were 'sweep jammers' which carry high-frequency signals across the frequency bands at a high speed, *see* exhibit P290 (Jamming techniques against remote controlled IEDs), pp 34-38; Witness PRH507, T. 20 October 2014, pp 30-33; exhibit P290 (Ali Diab's witness statements), pp 25, 60.

second, a remote control with one main switch and six switches to switch each channel on and off, and LED lights for each switch; third, two batteries to provide the necessary power; and fourth, several different antennae to distribute the jamming signals.²⁷⁰⁶ The remote control was placed in the car cabin, the channels and the batteries were in the boot and the antennae were on the boot lid.²⁷⁰⁷



Remote control of the jamming device installed under the armrest in the second convoy vehicle

Exhibit P292 (Photographs by the Dutch Forensic Team of jammers found in convoy cars 402 and 405), p. 1

²⁷⁰⁶ Exhibit P290 (Manual for Jammer System JS 204), pp 41-45; Witness PRH507, T. 20 October 2014, pp 11-14, 34-37; exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), appendix B, p. 2.

²⁷⁰⁷ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), appendix B, p. 2; Witness PRH507, T. 20 October 2014, p. 11; exhibit P290 (Ali Diab's witness statements), p. 31; Ali Diab, T. 12 December 2014, p. 67.



Channels and wiring of a jamming device similar to those installed in Mr Hariri's convoy vehicles

Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), appendix B, p. 3

1328. The jammers allowed outgoing radio signals only and blocked those incoming.²⁷⁰⁸ Convoy members could communicate with the Quraitem Palace control room, which was equipped with a high gain antenna, via their hand-held radios or through the car radio even if the jammers were switched on but could not receive messages from it.²⁷⁰⁹ Through the same means they could also communicate with each other if the convoy vehicles were close enough,²⁷¹⁰ and particularly if the user of the receiving set was riding in front of the user transmitting the message.²⁷¹¹ The radio transmission, however, gets weaker with distance.²⁷¹²

²⁷⁰⁸ Exhibit P290 (Ali Diab's witness statements), p. 17.

²⁷⁰⁹ Exhibit P290 (Ali Diab's witness statements), pp 16-18. *See also* exhibit P1185 (Statement of Witness PRH009), p. 5, para. 18.

²⁷¹⁰ Witness PRH256, T. 22 October 2014, p. 6; exhibit 2D68 (Witness PRH076's statements), pp 17-18; Witness PRH076, T. 15 October 2014, pp 26-27, 39, 48.

²⁷¹¹ Exhibit P290 (Ali Diab's witness statements), pp 16-17.

²⁷¹² Witness PRH507, T. 20 October 2014, pp 50-51, T. 21 October 2014, pp 30, 54, 56, 61-62; exhibit P290 (Ali Diab's witness statements), p. 17.

1329. Employing more jamming devices enlarges the protection zone.²⁷¹³ To protect Mr Hariri's vehicle, one car with a jammer would drive in the front; this was the 'clearance vehicle', covering the zone where the convoy was advancing. A second car would drive by the flanks shielding Mr Hariri's vehicle, and a third behind, providing additional protection in the rear. All three would work as one overall jamming system and provide an elliptical shaped protection zone focused on Mr Hariri's vehicle.²⁷¹⁴

1330. Bodyguards in Mr Hariri's convoy and security personnel at Quraitem Palace used simple procedures to check if the jammers worked.²⁷¹⁵ As the convoy prepared to set off and the jammers were switched on, the bodyguards checked whether their mobile handsets and the commercial radio worked because if the jammers were on, they would normally disturb the reception of radio signals.²⁷¹⁶ Another way to check was to observe if the images on TV screens turned fuzzy as the convoy passed by.²⁷¹⁷ The frequency band of the jammer device's third channel was set to 500-1,000 MHz.²⁷¹⁸ This is the same frequency band that TV stations and GSM mobiles then used.²⁷¹⁹ Mr Diab relied on these observations as the primary source of information of the jammers' daily functionality.²⁷²⁰

1331. Mr Hariri's vehicles, equipped with the jammers, were always guarded.²⁷²¹ Only Witness 507 and Mr Diab had access to the jamming devices.²⁷²² To prevent unwanted manipulation, Mr Diab removed the jamming devices before the cars were sent for maintenance and reinstalled

²⁷¹³ Witness PRH507, T. 21 October 2014, pp 56-57, 59-60.

²⁷¹⁴ Witness PRH507, T. 21 October 2014, pp 54, 56-58, 60; exhibit P290 (Ali Diab's witness statements), pp 61, 65; Witness PRH076, T. 15 October 2014, p 29. *See also* exhibit P333 (PowerPoint slide illustrating that jammers project stronger signals forward and weaker signals behind); exhibit P288 (Mohammed Dia's hand-drawn sketches of Mr Hariri's convoys), p. 1; Mohammed Dia, T. 16 October 2014, pp 68-70.

²⁷¹⁵ Ali Diab, T. 12 December 2014, pp 53-56, 80; exhibit P290 (Ali Diab's witness statements), pp 29-30.

²⁷¹⁶ Exhibit P290 (Ali Diab's witness statements), pp 29-30; Witness PRH076, T. 14 October 2014, pp 35-37, T. 15 October 2014, pp 38, 41-42; exhibit 2D68 (Witness PRH076's statements), p. 47; Amer Chehadeh, T. 16 October 2014, pp 15, 39-42; Mohammed Dia, T. 16 October 2014, pp 78-79, T. 17 October 2014, pp 5-6; Witness PRH256, T. 22 October 2014, p. 46.

²⁷¹⁷ Ali Diab, T. 12 December 2014, pp 53-56, 80; exhibit P290 (Ali Diab's witness statements), pp 29-30; Amer Chehadeh, T. 16 October 2014, p. 15; Witness PRH149, T. 4 June 2015, p. 15.

²⁷¹⁸ Ali Diab, T. 12 December 2014, pp 53-56, 79-80; exhibit P290 (Ali Diab's witness statements), pp 29-30, 60; exhibit P290 (Manual for Jammer System JS 204), pp 44-45.

²⁷¹⁹ Ali Diab, T. 12 December 2014, pp 53-56, 79-80; exhibit P290 (Ali Diab's witness statements), pp 29-30.

²⁷²⁰ Ali Diab, T. 12 December 2014, pp 53-56, 78, 80; exhibit P290 (Ali Diab's witness statements), pp 29-30.

²⁷²¹ Exhibit P290 (Ali Diab's witness statements), p. 29.

²⁷²² Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), appendix B, p. 2; exhibit P290 (Ali Diab's witness statements), pp 24, 29; Ali Diab, T. 12 December 2014, pp 46, 63. *See also* Amer Chehadeh, T. 16 October 2014, p. 36.

them after their return.²⁷²³ As a general rule, Witness 507 inspected and carried out regular maintenance of these jammers four times a year and additionally whenever irregularities occurred.²⁷²⁴ Mr Diab was in charge of their daily maintenance.²⁷²⁵ Witness 507 last inspected the jammers in the three Mercedes sedans sometime in January 2005.²⁷²⁶ Mr Diab checked the devices two days before the explosion.²⁷²⁷ Both found that all worked properly.²⁷²⁸

c. Penetrating a jamming device

1332. Witness 507 described theoretical ways of penetrating a jamming device system and detonating an explosive remotely.²⁷²⁹ Frequencies outside the jammer's frequency range may be used wirelessly, namely those below 20 MHz and above four GHz.²⁷³⁰ However, an antenna with a minimum of ten metres is needed to send a signal below 20 MHz.²⁷³¹ A much smaller, 30-centimetre long and 15-centimetre wide 'Yagi' antenna could transmit a signal higher than four GHz but any object in between the transmitter and the receiver would disrupt it.²⁷³² Another method is to equip the receiver with a high gain antenna, such as a parabolic antenna, but this would make it visible.²⁷³³ Laser transmitting systems, working in the THz²⁷³⁴ band, may also be

²⁷²³ Exhibit P290 (Ali Diab's witness statements), p. 29.

²⁷²⁴ Exhibit P293 (Witness PRH507's statement of 15 August 2015), para. 5; exhibit P294 (Witness PRH507's statement to the Lebanese investigating judge on 8 June 2015), p. 4; Witness PRH507, T. 20 October 2014, p. 20, T. 21 October 2014, pp 5-6; Ali Diab, T. 12 December 2014, p. 46.

²⁷²⁵ Exhibit P293 (Witness PRH507's statement of 15 August 2015), para. 5; exhibit P294 (Witness PRH507's statement to the Lebanese investigating judge on 8 June 2015), p. 5; Witness PRH507, T. 20 October 2014, p. 20; Ali Diab, T. 12 December 2014, p. 46.

²⁷²⁶ Exhibit P293 (Witness PRH507's statement of 15 August 2015), paras 5, 7; exhibit P294 (Witness PRH507's statement to the Lebanese investigating judge on 8 June 2015), p. 4; exhibit P290 (Ali Diab's witness statements), p. 25; Witness PRH507, T. 20 October 2014, p. 16.

²⁷²⁷ Exhibit P290 (Ali Diab's witness statements), p. 29.

²⁷²⁸ Exhibit P293 (Witness PRH507's statement of 15 August 2015), paras 5, 7; exhibit P294 (Witness PRH507's statement to the Lebanese investigating judge on 8 June 2015), p. 4; exhibit P290 (Ali Diab's witness statements), p. 29; Witness PRH507, T. 20 October 2014, p. 16.

²⁷²⁹ Witness PRH507, T. 20 October 2014, pp 55-61, T. 21 October 2014, p. 75.

²⁷³⁰ Witness PRH507, T. 20 October 2014, p. 55; exhibit P293 (Witness PRH507's statement of 15 August 2015), para. 13.

²⁷³¹ Witness PRH507, T. 20 October 2014, pp 55, 58-59; exhibit P290 (Ali Diab's witness statements), pp 27-28.

²⁷³² Witness PRH507, T. 20 October 2014, pp 55, 58-59; exhibit P293 (Witness PRH507's statement of 15 August 2015), para. 13.

²⁷³³ Exhibit P290 (Ali Diab's witness statements), pp 27-28.

²⁷³⁴ 1 THz = 1,000 GHz.

used but may not work if an object between the transmitter and the receiver interrupts the laser beam.²⁷³⁵

1333. Within the jammer's frequency range, different kinds of transmitters and receivers may randomly succeed.²⁷³⁶ Transmitting a stronger signal than that created by the jammer may also overcome the jammer's defence; however, it requires knowledge of the jammer's capacity and involves a large module with an amplifier, a cooling system, a large battery or other source of power supply.²⁷³⁷ High power transmitters are used by TV and radio stations or for military purposes and are not easily available on the market.²⁷³⁸ Even if available, such a transmitter could only penetrate the jamming system if it was placed within two to four metres from it, and because of its dimensions it would be difficult to hide.²⁷³⁹

1334. Satellite telephones communicate at around 1,600 MHz, falling within the frequency range of the jamming device, making them unreliable tools to defeat a jamming device.²⁷⁴⁰ Even if modified antennae were used to enhance the strength of the signals, the antenna of the receiver should have a clear line of sight to the satellite.²⁷⁴¹ Therefore, using them downtown, such as in a built up area in Beirut, is problematic because of high buildings and narrow streets.²⁷⁴² If the satellite signals are too weak, the telephone will use the GSM network.²⁷⁴³ Additionally, the time needed to connect the satellite telephone used as a receiver to the satellite varies unforeseeably.²⁷⁴⁴

1335. If the explosive and the receiver are placed underground, it would be difficult for a wireless transmitter to send signals to the receiver. If the receiver is placed on the road surface, it is exposed

²⁷³⁵ Witness PRH507, T. 20 October 2014, p. 55; exhibit P293 (Witness PRH507's statement of 15 August 2015), para. 19; exhibit P294 (Witness PRH507's statement to the Lebanese investigating judge on 8 June 2015), pp 9-10; exhibit P290 (Ali Diab's witness statements), p. 27.

²⁷³⁶ Witness PRH507, T. 20 October 2014, pp 56-57; exhibit P293 (Witness PRH507's statement of 15 August 2015), para. 13.

²⁷³⁷ Witness PRH507, T. 20 October 2014, pp 56-57; exhibit P293 (Witness PRH507's statement of 15 August 2015), para. 13; exhibit P294 (Witness PRH507's statement to the Lebanese investigating judge on 8 June 2015), pp 7-8.

²⁷³⁸ Exhibit P294 (Witness PRH507's statement to the Lebanese investigating judge on 8 June 2015), p. 8; exhibit P290 (Ali Diab's witness statements), p. 28.

²⁷³⁹ Exhibit P290 (Ali Diab's witness statements), p. 28; Witness PRH507, T. 20 October 2014, pp 56-57.

²⁷⁴⁰ Witness PRH507, T. 20 October 2014, pp 26-27, 57; exhibit P293 (Witness PRH507's statement of 15 August 2015), paras 25-29; exhibit P290 (Ali Diab's witness statements), p. 30.

²⁷⁴¹ Witness PRH507, T. 20 October 2014, pp 26-27, 57; exhibit P293 (Witness PRH507's statement of 15 August 2015), paras 30-37.

²⁷⁴² Witness PRH507, T. 20 October 2014, pp 26-27, 57, T. 21 October 2014, p. 35; exhibit P290 (Ali Diab's witness statements), p. 30. *See also* exhibit P289 (Investigators notes on testing jammers), p. 2.

²⁷⁴³ Exhibit P290 (Ali Diab's witness statements), p. 30.

²⁷⁴⁴ Exhibit P293 (Witness PRH507's statement of 15 August 2015), para. 37.

to other signals' disturbance, namely noise signals, and becomes more susceptible to the jammer's effects blocking the remote control sending the signal to the receiver.²⁷⁴⁵

1336. Witness 507 also explained the theoretical possibility of using the jammer signals to detonate the explosive device.²⁷⁴⁶ As the jammer's radio signals can activate less sophisticated car alarm systems, which are in plastic housing, they can similarly set off a detonating system of a bomb.²⁷⁴⁷ However, the jammer is not the only thing that can trigger this reaction. A portable radio at the right distance may also have the same effect making such triggering system less reliable.²⁷⁴⁸

1337. Jamming devices are defenceless against manual detonation, such as by a suicide bomber.²⁷⁴⁹ They are also ineffective against time-delayed detonation.²⁷⁵⁰

d. Were the convoy's jamming devices turned on?

Evidence from convoy members

1338. The Trial Chamber heard evidence from Mr Hariri's civilian close protection officers, ISF officers and medical personnel travelling in the convoy that the jammers were switched on and working on 14 February 2005 in the second, the fourth and fifth convoy cars²⁷⁵¹ driving from Parliament to Quraitem Palace.²⁷⁵² Witness 357 noted that car alarms activated as the convoy drove by cars parked on the road before the entrance of the St Georges Hotel just before the explosion.²⁷⁵³

²⁷⁴⁵ Witness PRH507, T. 20 October 2014, p. 65; exhibit P294 (Witness PRH507's statement to the Lebanese investigating judge on 8 June 2015), pp 10-11.

²⁷⁴⁶ Witness PRH507, T. 21 October 2014, p. 84.

²⁷⁴⁷ Witness PRH507, T. 21 October 2014, pp 84-85. *See also* exhibit P290 (Ali Diab's witness statements), p. 31.

²⁷⁴⁸ Witness PRH507, T. 21 October 2014, p. 84.

²⁷⁴⁹ Witness PRH507, T. 20 October 2014, pp 55-56, 66, T. 21 October 2014, pp 39-40, 43; exhibit P294 (Witness PRH507's statement to the Lebanese investigating judge on 8 June 2015), p. 10; exhibit P290 (Ali Diab's witness statements), p. 30; Ali Diab, T. 12 December 2014, p. 52.

²⁷⁵⁰ Witness PRH507, T. 20 October 2014, pp 55-56, 66, T. 21 October 2014, pp 39-40; exhibit P294 (Witness PRH507's statement to the Lebanese investigating judge on 8 June 2015), p. 10. *See also* exhibit P290 (Ali Diab's witness statements), p. 30.

²⁷⁵¹ Convoy vehicles 402, 404 and 405.

²⁷⁵² Witness PRH076, T. 14 October 2014, pp 35-38; exhibit 2D68 (Witness PRH076's statements), pp 18, 47; Amer Chehadeh, T. 16 October 2014, pp 38-39, 61; Mohammed Dia, T. 17 October 2014, pp 6-7; Witness PRH256, T. 23 October 2014, p. 16; Witness PRH357, T. 2 June 2015, pp 37-39; Witness PRH149, T. 3 June 2015, p. 97, T. 4 June 2015, p. 15; Witness PRH009, T. 11 October 2016, pp 65-66. *See also* exhibit P287 (Photograph of jamming device in the boot of the second convoy vehicle, annotated by Witness PRH076).

²⁷⁵³ Witness PRH357, T. 2 June 2015, pp 37-39.

Witness 149 testified that he could not listen to the radio because the broadcast was disturbed.²⁷⁵⁴ Both concluded that the jammers must have been working.

1339. Mr Amer Chehadeh, the driver of the Mercedes in front of Mr Hariri's armoured Mercedes, testified that he switched on the jammer in the second convoy vehicle when Mr Hariri left café *Place de l'Étoile*.²⁷⁵⁵ When leaving Parliament, the standard checks in the vehicles equipped with jamming devices—whether the mobiles or the commercial radios had reception—were carried out.²⁷⁵⁶

1340. The commercial radio in the sixth convoy vehicle, the ambulance, worked on the day of the attack and when the convoy was *en route* from Parliament to Quraitem Palace, notwithstanding the ambulance's proximity to the convoy vehicles in front of it with the jamming device.²⁷⁵⁷ The ambulance normally kept a greater distance from the convoy to remain intact in case of an incident and thus to be able to help if needed.²⁷⁵⁸ Witness 256 estimated that the average distance of the ambulance, vehicle 406, from the last Mercedes Benz S500 in the convoy, vehicle 405, was ten to 15 metres, and the commercial radio should not have worked in the car.²⁷⁵⁹ Witness 507 and Mr Diab noted, however, that jammers in the convoy are directed to the front, focusing on the protected vehicle, and their signals in the rear are weaker.²⁷⁶⁰

1341. As he left the vehicle after the explosion, Witness 256 looked at the Mercedes in front of the ambulance, which had not yet caught fire, and saw that the LED lights of the jammer's remote control were still on.²⁷⁶¹

²⁷⁵⁴ Witness PRH149, T. 3 June 2015, p. 97, T. 4 June 2015, p. 18.

²⁷⁵⁵ Amer Chehadeh, T. 16 October 2014, pp 11-12, 20, 38.

²⁷⁵⁶ Witness PRH076, T. 14 October 2014, p. 37; exhibit 2D68 (Witness PRH076's statements), pp 18, 47; Amer Chehadeh, T. 16 October 2014, p. 61; Mohammed Dia, T. 16 October 2014, p. 80, T. 17 October 2014, p. 7.

²⁷⁵⁷ Witness PRH256, T. 22 October 2014, pp 16-17, 21, 46, T. 23 October 2014, pp 8-9, 11-14; exhibit 2D74 (Witness PRH256's statements), p. 7.

²⁷⁵⁸ Witness PRH256, T. 22 October 2014, pp 17-18, 40; Rachid Hammoud, T. 4 December 2014, pp 21, 48-53; exhibit 2D84 (Rashid Hammoud's statements) p. 4. *See also* Witness PRH076, T. 15 October 2014, p. 39; Amer Chehadeh, T. 16 October 2014, pp 37-38; exhibit P334 (Youssef El-Ajouz's statements), p. 11.

²⁷⁵⁹ Witness PRH256, T. 22 October 2014, pp 43-45, 49-51; exhibit 2D74 (Witness PRH256's statements), p. 7.

²⁷⁶⁰ Witness PRH507, T. 21 October 2014, pp 54, 56-57; exhibit P290 (Ali Diab's witness statements), p. 17; Ali Diab, T. 12 December 2014, pp 44, 48-50. *See also* exhibit P333.

²⁷⁶¹ Witness PRH256, T. 23 October 2014, p. 16.

Forensic analysis of jamming devices

1342. In August 2005, the Dutch forensic team found parts of jamming devices, remote controls, antennae, batteries and channel casings at the crime scene and in what remained of two of the four Mercedes type S vehicles in Mr Hariri's convoy at Helou Barracks.²⁷⁶² On 15 August 2005, Witness 507, Mr Diab and UNIIC investigators²⁷⁶³ tested whether the jamming devices in Mr Hariri's convoy vehicles were switched on and functioning.²⁷⁶⁴

1343. The Dutch forensic team found jamming device parts in a severely damaged Mercedes Benz S500, with number plate B186395,²⁷⁶⁵ which had been the second car in Mr Hariri's convoy, vehicle 402.²⁷⁶⁶

1344. Witness 507 and Mr Diab observed that the remote control of the jamming device was properly placed in the car cabin, in the armrest, next to the driver's seat.²⁷⁶⁷ The main switch and five channel switches were turned on and still operable.²⁷⁶⁸ One of the channel switches was not functioning and the test could not establish if it had been turned on at the time of the explosion.²⁷⁶⁹ Based on these observations, Witness 507 and Mr Diab concluded that the remote control may have been functioning properly, and the main switch and five of the channel switches had been turned on.²⁷⁷⁰

²⁷⁶² Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 14, 51-52, 56, 66, appendix A, items 00175, 00183, 00197, 00215, 00221, 00225, 00237, 00249, 00295, V-00323, 00375, 00481, V-00500, 00512 and 00513.

²⁷⁶³ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 7, appendix B, p. 2.

²⁷⁶⁴ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 7, appendix B; Witness PRH507, T. 20 October 2014, pp 38-39; Ali Diab, T. 12 December 2014, pp 28-29.

²⁷⁶⁵ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 51-52.

²⁷⁶⁶ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 58-60, 89; Anick van de Craats, T. 28 August 2014, pp 72, 82.

²⁷⁶⁷ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 51-52, appendix B, p. 4; exhibit P292, pp 1-2; Witness PRH507, T. 20 October 2014, pp 42-43, 45. *See also* Anick van de Craats, T. 28 August 2014, p. 102.

²⁷⁶⁸ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), appendix B, p. 4; exhibit P292, p. 1; exhibit P293 (Witness PRH507's statement of 15 August 2015), p. 6; Witness PRH507, T. 20 October 2014, pp 42-43.

²⁷⁶⁹ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), appendix B, p. 4; exhibit P292, p. 1; Witness PRH507, T. 20 October 2014, pp 44-45, T. 21 October 2014, pp 53-54; exhibit P290 (Manual for Jammer System JS 204), p. 44; Ali Diab, T. 12 December 2014, pp 84-87; exhibit 2D107 (Extract from exhibit P244, appendix B, annotated by Ali Diab).

²⁷⁷⁰ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), appendix B, p. 4; Witness PRH507, T. 20 October 2014, pp 42-43.

1345. The six channels of the jamming device and one of its batteries were in the rear compartment.²⁷⁷¹ Mr Diab testified that the jamming device could work on one battery as long as the vehicle's generator provided the necessary power to it.²⁷⁷² Witness 507 noted that the plugs and the safety fuses connecting the channels to the antennae and to the remote control had been forcibly removed, and the wires were screwed out between the remote control and the channels.²⁷⁷³ This could not have been caused by the explosion, but rather by someone unexperienced in jamming devices.²⁷⁷⁴

1346. Mr Diab extracted still images from Future TV footage of the crime scene after the explosion to show that the damaged door of the second vehicle's boot was open, and the cable connecting the top left channel—the fourth frequency band—with its antenna was disconnected.²⁷⁷⁵ He explained that the explosion could have forced the boot lid open and could have unplugged the cable or the cable may have been connected improperly.²⁷⁷⁶

1347. A test of this jammer with an electronic spectrum analyser, a tool designed to measure high-frequency signals broadcast from the channels to the antennae,²⁷⁷⁷ showed that the frequency range of each of the six channels was wider than the range specified for each channel, providing overlaps between the neighbouring frequency bands.²⁷⁷⁸ Notwithstanding that Witness 507 and Mr Diab did not determine the energy output of each channel, they concluded that electronically the six channels had likely been intact and operating properly at the time of the explosion.²⁷⁷⁹

²⁷⁷¹ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 51-52, appendix B, p. 4; exhibit P293 (Witness PRH507's statement of 15 August 2015), p. 6; Ali Diab, T. 12 December 2014, p. 74; Anick van de Craats, T. 28 August 2014, pp 102-103.

²⁷⁷² Ali Diab, T. 12 December 2014, pp 71-74.

²⁷⁷³ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), appendix B, p. 4; exhibit P293 (Witness PRH507's statement of 15 August 2015), p. 6; Witness PRH507, T. 20 October 2014, p. 42, T. 21 October 2014, pp 45-46.

²⁷⁷⁴ Witness PRH507, T. 21 October 2014, pp 45-46.

²⁷⁷⁵ Ali Diab, T. 12 December 2014, pp 22-23, 25-27, 29-30, 35-36, 70-71, 89-90; exhibit P329 (Stills extracted from Future TV footage showing jammer); exhibits P329.1 and P329.2 (Stills extracted from Future TV footage showing jammer, annotated by Ali Diab); exhibit 2D106 (Zoomed-in photograph extracted from exhibit P244, appendix B, annotated by Ali Diab); exhibit 2D108 (Photograph extracted from exhibit P329, annotated by Ali Diab).

²⁷⁷⁶ Ali Diab, T. 12 December 2014, pp 22-23, 25-27, 29-30, 35-36, 70-71.

²⁷⁷⁷ Witness PRH507, T. 20 October 2014, pp 18-20.

²⁷⁷⁸ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), appendix B, pp 4-5; exhibit P293 (Witness PRH507's statement of 15 August 2015), p. 6; Witness PRH507, T. 20 October 2014, pp 43-44.

²⁷⁷⁹ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), appendix B, pp 4-5; Witness PRH507, T. 21 October 2014, pp 43-44.

1348. The Dutch forensic team also found a jamming device remote control inside another severely damaged and burnt Mercedes S500, convoy vehicle 405, and the antennae on its boot door.²⁷⁸⁰ It identified wirings, some of the channels and the channels casing of this vehicle in the debris placed next to convoy vehicles.²⁷⁸¹

1349. The channels of the jamming device were heavily burnt and could not be electronically tested.²⁷⁸² The remote control plugs, the channels and the antennae were still intact.²⁷⁸³ The wires between the remote control and the channels were broken.²⁷⁸⁴ The antennae were severely damaged and the connection to the channel was broken.²⁷⁸⁵ The remote control was in its correct position inside the vehicle, and the main switch was on.²⁷⁸⁶ Four switches were turned on but only one was functioning.²⁷⁸⁷ The remaining two channel switches were damaged and it could not be determined if they had been switched on at the time of the explosion.²⁷⁸⁸ Based on these observations, Witness 507 and Mr Diab concluded that this jamming device was also most likely operating properly when the explosion occurred.²⁷⁸⁹

1350. The Dutch forensic team collected remains of a third jamming device from debris around the crater.²⁷⁹⁰ These included parts of the antenna box, an antenna splitter, electronic circuit boards

²⁷⁸⁰ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 55-56, 66; exhibit P292, p. 3; Anick van de Craats, T. 28 August 2014, pp 78, 82, 101.

²⁷⁸¹ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 55-56, 66; exhibit P292, p. 4.

²⁷⁸² Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), appendix B, pp 3-4; exhibit P293 (Witness PRH507's statement of 15 August 2015), p. 6; Anick van de Craats, T. 28 August 2014, p. 101.

²⁷⁸³ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 55-57, appendix B, pp 3-4; Anick van de Craats, T. 28 August 2014, p. 101.

²⁷⁸⁴ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), appendix B, p. 4.

²⁷⁸⁵ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), appendix B, p. 3; Witness PRH507, T. 20 October 2014, p. 40.

²⁷⁸⁶ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), appendix B, p. 3; Witness PRH507, T. 20 October 2014, p. 40; Anick van de Craats, T. 28 August 2014, p. 101.

²⁷⁸⁷ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), appendix B, p. 3; exhibit P290 (Manual for Jammer System JS 204), p. 44; Ali Diab, T. 12 December 2014, pp 84-87; exhibit 2D107 (Extract from exhibit P244, appendix B, annotated by Ali Diab).

²⁷⁸⁸ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), appendix B, p. 3; Witness PRH507, T. 21 October 2014, pp 48, 50-51.

²⁷⁸⁹ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), appendix B, p. 4.

²⁷⁹⁰ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 66-68; Anick van de Craats, T. 28 August 2014, pp 83-84.

with metal casings and coax cable connectors.²⁷⁹¹ These could not be tested.²⁷⁹² The forensic team concluded that these belonged to the fourth car of Mr Hariri's convoy, vehicle 404, which was close to the explosion centre.²⁷⁹³

1351. To find out if the jammers worked properly on the day of the attack, on 16 August 2005 Witness 507 and Mr Diab conducted a test at the crime scene of the jammers installed in two vehicles.²⁷⁹⁴ These were the same type, set on the same frequency bands as the jammers installed in Mr Hariri's convoy.²⁷⁹⁵ Witness 507 and Mr Diab used four Nokia and Siemens mobiles.²⁷⁹⁶ A portable mobile base station was placed close to the crater.²⁷⁹⁷ The test showed that when the vehicles with the jammers were about 40 metres from the crater, the mobiles at the crater stopped working.²⁷⁹⁸

e. Submissions

1352. The Prosecution submits that the jamming devices in the convoy were switched on and working on the day of the attack. The driver of the second convoy vehicle testified that he turned on the devices for his car. Convoy security personnel noted interference with their mobiles and commercial radio as well as car alarms being triggered, which demonstrated that the jamming devices were working.²⁷⁹⁹ Immediately after the explosion, the ambulance driver saw that the lights of the jammer's remote control in the fifth convoy vehicle were still on.²⁸⁰⁰ The devices were checked and monitored on a regular basis, and each time found to work properly.²⁸⁰¹ Finally,

²⁷⁹¹ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 66-68; exhibit P291 (Annotated image); Witness PRH507, T. 20 October 2014, pp 46-47; Anick van de Craats, T. 28 August 2014, pp 83-84.

²⁷⁹² Witness PRH507, T. 20 October 2014, p. 45; exhibit P293 (Witness PRH507's statement of 15 August 2015), para. 39.

²⁷⁹³ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 60, 64-68, 89.

²⁷⁹⁴ Exhibit P289, p. 1; Witness PRH507, T. 20 October 2014, pp 22-23, T. 21 October 2014, pp 18-19.

²⁷⁹⁵ Witness PRH507, T. 20 October 2014, p. 23, T. 21 October 2014, pp 18, 20.

²⁷⁹⁶ Exhibit P289, p. 1.

²⁷⁹⁷ Exhibit P289, pp 1, 5. *See also* Ali Diab, T. 12 December 2014, pp 31, 38-40; exhibits P330-P332.

²⁷⁹⁸ Witness PRH507, T. 20 October 2014, pp 23-24. *See also* exhibit P289, p. 1.

²⁷⁹⁹ Prosecution final trial brief, para. 1069.

²⁸⁰⁰ Prosecution final trial brief, para. 1072.

²⁸⁰¹ Prosecution final trial brief, para. 1071.

experts inspected the jamming devices after the explosion and found that devices in two convoy vehicles were turned on and working at the time of the explosion.²⁸⁰²

1353. The jamming devices sent stronger signals towards the front than to the rear. As a result, people riding in the ambulance, the last convoy vehicle, sometimes experienced no interference with their mobiles or the commercial radio.²⁸⁰³

1354. Counsel for Mr Ayyash and Mr Merhi and the former Accused, Mr Badreddine, cross-examined Prosecution witnesses testifying on the jamming devices in the convoy. They challenged the Prosecution's case and the testimony about whether the jamming devices were switched on and functioning before the explosion, whether these devices were well-maintained and ways to overcome their effect. They also challenged the credibility of their accounts.²⁸⁰⁴ The Defence did not repeat these challenges in their final trial briefs or oral closing submissions.

f. Findings

1355. The Trial Chamber finds that the jamming device systems were activated at the time of the attack.

1356. There is no dispute that three vehicles in Mr Hariri's convoy had jamming devices installed. The only issue is whether they were turned on and working. The evidence from before and after the attack is consistent that the jammers were operational.

1357. The Trial Chamber is satisfied that the convoy witnesses who saw the jammers were functioning were credible and reliable. They had an independent recollection of the events which corroborated each other's accounts. Mr Chehadeh, the driver of the second convoy vehicle, testified that he switched on the vehicle's jammer after they left *café Place de l'Étoile* near Parliament. Others in the convoy saw various indicators that the devices were working, such as car alarms going off as the convoy passed and interference with the convoy vehicles' radios. Right

²⁸⁰² Prosecution final trial brief, para. 1072.

²⁸⁰³ Prosecution final trial brief, para. 1070.

²⁸⁰⁴ See for example, Witness PRH507, T. 21 October 2014, pp 5-6, 34-40, 43-47, 50-51, 53-54, 56-60, 62-65, 75, 76-80, 84-85; Ali Diab, T. 12 December 2014, pp 57-59, 70-91, 93-98; Witness PRH076, T. 15 October 2014, pp 7-10, 37-42; Amer Chehadeh, T. 16 October 2014, pp 37-48; Mohammed Dia, T. 17 October 2014, pp 18-24; Witness PRH256, T. 22 October 2014, pp 39-40, 44-47, 51-53, T. 23 October 2014, pp 8-14; Rashid Hammoud, T. 4 December 2014, pp 48-49, 57-61, 63-67; T. 4 June 2015, pp 13-14; Anick van de Craats; T. 1 September 2014, p. 60.

after the explosion, Witness 256 saw that the lights on the fifth convoy vehicle's jammer remote control were still on.

1358. Subsequent forensics analyses of the jamming devices further confirm that they were switched on. In August 2005, Witness 507 and Mr Diab, who had installed the jamming devices in the convoy vehicles, tested the devices twice in two days. They found that the devices were still working properly and most likely had been activated on the day of the attack.

1359. The regular inspections of the jamming devices also provide strong support that they functioned properly. The jammers underwent daily and quarterly maintenance. The convoy vehicles were guarded and only a few select and trusted people could access the devices. The most recent checks before the attack, including one just two days prior, found the jamming devices worked properly.

1360. Further, Witness 256, consistent with his statement from 2006, testified that the commercial radio in the ambulance was working just before the attack. Normally, jamming devices in the convoy vehicles would have interfered with the vehicles' radios. Witness 507 and Mr Diab, though, explained that the jammers in the convoy aimed their signals to the front more than to the rear. So, the radio working properly in the ambulance, which was the last convoy vehicle, does not demonstrate that the jamming devices were turned off. It also does not outweigh all the contrary evidence referred to above.

(f) Triggering system used in the attack

i. Evidence

1361. The consensus of the various Lebanese and international investigation teams was that a suicide bomber triggered the explosion.

1362. The Dutch forensic team observed that it was not possible to use a time delay activation device for the attack because it was not clear when Mr Hariri's convoy would pass the St Georges Hotel.²⁸⁰⁵

²⁸⁰⁵ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 83.

1363. A remote control device was possible because the hotels and other tall buildings surrounding the explosion site allowed for ideal positioning to trigger the explosion remotely. These locations were far enough away to be safe and they allowed a clear view of the convoy. Even if the convoy's jammer devices were working, this would not mean all remote control devices had been blocked. However, the Dutch team found it highly unlikely that a TV remote control recovered at the crime scene on the road was used to activate the IED.²⁸⁰⁶ The TV remote had not been modified. A TV remote works at close range and would not have worked from the Monroe Hotel.²⁸⁰⁷ The Dutch team concluded that a suicide bomber was slightly more likely. It noted that, for one deceased person, only tiny human remains had been recovered and the person had not been identified or reported missing.²⁸⁰⁸

1364. The Spanish forensic team concluded, based on their other findings in their report, that the 'most feasible' hypothesis was a suicide bomber. However, they noted the lack of clear evidence supporting this theory. They also acknowledged the possibility that the bomb was detonated by remote control, after the Canter driver had parked the vehicle and left in another vehicle. But they found this to be unlikely given the amount of time involved to conduct such an operation.²⁸⁰⁹

1365. Dr Murray agreed with the Dutch forensic team that the most likely scenario for activating the explosion was a suicide bomber.²⁸¹⁰ He explained that there would not have been enough time for a driver to park the Mitsubishi Canter truck and then go into a nearby building to trigger the explosives.²⁸¹¹ He acknowledged, though, that it was possible for one person to drive the vehicle and another person to wait nearby and trigger the explosion remotely.²⁸¹²

1366. The Swiss forensic team thought that it was not possible for the explosion to be triggered by time delay, photoelectric barrier or driving over a contact, because these were not precise enough to strike a moving vehicle. They said that a suicide bomber, a person triggering the

²⁸⁰⁶ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 25, 81-82, appendix A, p. 16.

²⁸⁰⁷ Gerard Murray, T. 30 September 2014, pp 21, 24, 29; exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 82.

²⁸⁰⁸ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 83, 89-90.

²⁸⁰⁹ Exhibit P266 (Spanish forensic team expert report), pp 283-284, 290.

²⁸¹⁰ Gerard Murray, T. 30 September 2014, p. 31; exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 90.

²⁸¹¹ Gerard Murray, T. 30 September 2014, pp 11, 15.

²⁸¹² Gerard Murray, T. 30 September 2014, p. 16.

explosion remotely or the use of technical devices were all possible means of triggering the explosion.²⁸¹³ They did not find anything at the scene of the explosion that indicated what kind of trigger it was.²⁸¹⁴

1367. The ISF team could not determine how the explosives were detonated.²⁸¹⁵ Mr Othman thought that both a suicide bomber or remote control were possible.²⁸¹⁶ Mr Khashab noted that because of the jamming devices in the convoy, it would have been difficult to detonate the explosives by remote control.²⁸¹⁷

1368. The Lebanese Military Intelligence team concluded that the most likely method of ignition was a suicide bomber. They noted the jamming devices in the convoy would block a remote control signal. Using a wired detonation method was unlikely because of the difficulty in manoeuvring the explosives and the ease of identifying a perpetrator.²⁸¹⁸

ii. Submissions

1369. The Prosecution submits that using a suicide bomber to detonate the explosives was the only viable option for executing an attack on such a complex target. It would be a workaround for the jamming devices in Mr Hariri's convoy, which precluded wireless detonation. A suicide bomber could also detonate the explosive device immediately next to the target, which was crucial given the convoy's high speed. Moreover, experts agreed that the method of detonation was a suicide bomber.²⁸¹⁹

1370. The Ayyash Defence submits that the Prosecution did not present evidence on the triggering mechanism used to detonate the explosion and international investigators were unable to find any indication of how the explosion was detonated. Similarly as noted above,²⁸²⁰ the

²⁸¹³ Exhibit P242 (Swiss forensic team expert report), p. 18.

²⁸¹⁴ Exhibit P242 (Swiss forensic team expert report), p. 20.

²⁸¹⁵ Exhibit P247 (ISF Explosives Bureau report, 2 March 2005), p. 7.

²⁸¹⁶ Walid Othman, T. 3 September 2014, pp 67-68.

²⁸¹⁷ Mahmoud Khashab, T. 8 September 2014, p. 56.

²⁸¹⁸ Exhibit P282 (Statement of Ziad Nasr), ERN 60287014.

²⁸¹⁹ Prosecution final trial brief, paras 1065-1068.

²⁸²⁰ See para. 1159.

Ayyash Defence argues that the evidence does not support the Prosecution's contention that the explosives and detonation device came from Hezbollah.²⁸²¹

iii. Findings

1371. The Trial Chamber has no reason to disagree with the consensus of the forensic teams that a suicide bomber triggered the explosion. Each team eliminated the other possible means of detonation as inappropriate for targeting a moving convoy of vehicles. This leaves only the possibilities of a remote control device or a suicide bomber. As Dr Murray and the Spanish team explained, triggering the explosion remotely was difficult. There was only a limited amount of time available for the Canter driver to park the vehicle and get away quickly in another vehicle driven by someone else.

1372. Having one person drive the vehicle and another trigger the explosion remotely was possible. However, the jamming devices used by Mr Hariri's convoy would hinder the use of a remote control device. The jammers were switched on and working when the explosion took place. So they would have disrupted the transmission of any signals within the jammer system's frequency range from a remote control to a wireless explosive device that was close to the convoy. Witness 507 and Mr Diab found it unlikely that transmitters working outside this range were used to overcome the jamming devices. Long antennae transmitting signals below 20 MHz could not be set up in a short time in a concealed way. Beyond the range, namely above four GHz, any object between the transmitter and the receiver would interrupt the signal.

1373. Finally, the evidence as to the single unidentified deceased male whose remains were recovered at the explosion site²⁸²² supports the conclusion that a suicide bomber detonated the explosion. This unidentified male was the person closest to the explosive device when it detonated, just one or two metres away. In other words, he was close enough to activate the device in person.

1374. Lastly, the Trial Chamber also considered that the letter attached to the claim of responsibility tape placed in a tree near the Al-Jazeera offices also makes reference of a 'suicide operation'.²⁸²³

²⁸²¹ Ayyash Defence final trial brief, para. 66.

²⁸²² See para. 1378.

²⁸²³ See para. 4880.

1375. The Trial Chamber therefore finds beyond a reasonable doubt that a suicide bomber triggered the attack.

3. Human remains recovery and forensic analysis

1376. The amended consolidated indictment pleads that in addition to killing Mr Hariri, the explosion killed 21 others and injured 226 persons.²⁸²⁴ The Parties agreed upon these facts, namely that (i) in addition to killing Mr Hariri, the explosion killed 21 others,²⁸²⁵ and (ii) injured 226 persons.²⁸²⁶ The number and identification of the deceased and injured victims is uncontested.²⁸²⁷ The names of the deceased and injured victims are listed below or in annex D of this judgment.

1377. The Trial Chamber received evidence from members of the ISF police and Lebanese and international experts in forensic science about the recovery of bodies, human remains and the identification of victims following the explosion.

(a) Recovery of human remains

1378. Twenty-three people died in the explosion or in the aftermath of the blast, including the suicide bomber.²⁸²⁸ However, only 20 complete bodies were recovered from the crime scene.²⁸²⁹ Mr Bassel Fuleihan died on 18 April 2005, in Paris, France, from his injuries caused by the explosion.²⁸³⁰ Two known victims whose bodies were not recovered were Mr Yahya Al-Arab, one of Mr Hariri's security chiefs, and Mr Talal Nabih Nasser, a personal bodyguard for Mr Hariri and deputy of his security detail.²⁸³¹ They were travelling in vehicle number 404 and due to the complete destruction of the vehicle, it was likely the closest vehicle to the epicentre of the explosion.²⁸³² The third victim's body was not identified and is described below as the 'unidentified man'.²⁸³³

²⁸²⁴ Amended consolidated indictment, para. 4, schedules A-B.

²⁸²⁵ Agreed facts, no. (i).

²⁸²⁶ Agreed facts, no. (ii).

²⁸²⁷ Agreed facts, nos (i)-(ii).

²⁸²⁸ Exhibit P194 (Statement of Fouad Ayoub), p. 3; Fouad Ayoub, T. 2 July 2014, pp 30-31; exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 87.

²⁸²⁹ Exhibit P194 (Statement of Fouad Ayoub), p. 3; exhibit P192 (Medical report on Mr Bassel Farid Fuleihan).

²⁸³⁰ Exhibit P194 (Statement of Fouad Ayoub), p. 3; exhibit P192, p. 27.

²⁸³¹ Exhibit P194 (Statement of Fouad Ayoub), p. 3.

²⁸³² Exhibit P266 (Spanish forensic team expert report), p. 265.

²⁸³³ Exhibit P194 (Statement of Fouad Ayoub), p. 3.

1379. Twenty death certificates were issued.²⁸³⁴ Death certificates were issued for Mr Al-Arab and Mr Nasser even though their bodies were not recovered.²⁸³⁵ The Lebanese Ministry of Interior and Municipalities did not issue death certificates for Mr Sobhi Mohammed Al-Khodr or Mr Farhan Ahmad Issa because they were Syrians.²⁸³⁶

1380. Immediately after the explosion, the ISF requested Dr Fouad Ayoub, who the Trial Chamber declared an expert in forensic science specialised in human identification,²⁸³⁷ to assist in identifying the bodies found at the crime scene and which were later transported to several hospitals in Beirut.²⁸³⁸ Over the next 48 hours, Dr Ayoub, and Mr Kheireddine, a Lebanese police officer, and their teams went to the American University Hospital, Hotel *Dieu* Hospital and *Al Makassed* Hospital in Beirut to assist in identifying bodies.²⁸³⁹ The remaining bodies were identified by the victims' relatives.²⁸⁴⁰

1381. At the hospitals, Mr Kheireddine photographed the bodies of deceased victims, a number of which were heavily charred, and took their fingerprints.²⁸⁴¹ He and Dr Ayoub examined, photographed and lifted fingerprints from eight bodies at the American University Hospital.²⁸⁴² Dr Ayoub took six additional samples from bodies at the morgue to send for DNA analysis at the American University of Science and Technology in Beirut.²⁸⁴³ Mr Kheireddine and his team compiled a report and sent the film negatives to the forensic laboratory.²⁸⁴⁴

²⁸³⁴ Exhibit P191 (Death certificates); exhibit P192, p. 27.

²⁸³⁵ Exhibit P191, pp 7-45.

²⁸³⁶ Exhibit P191, p. 4; exhibit P204 (Report by Dr Ayoub on DNA data of individuals recovered from crime scene), pp 6, 17, 24, 32.

²⁸³⁷ Dr Ayoub was declared by the Trial Chamber under Rule 161 as an expert in forensic science specialised in human identification, Decision on expert reports of 1 July 2014, Decision on expertise (Professor Ayoub and Dr Mansour). *See also* Fouad Ayoub, T. 1 July 2014, pp 11-13, 15-16. Dr Ayoub wrote seven reports for the UNIIC, of which two were co-authored. The reports describe the collection of human remains from the crime scene of the explosion, information about the DNA profiling of those remains and the DNA profiling of individuals related to alleged suspects.

²⁸³⁸ Exhibit P194 (Statement of Fouad Ayoub), pp 2-3; Fouad Ayoub, T. 1 July 2014, pp 13-15, 17-18.

²⁸³⁹ Exhibit P194 (Statement of Fouad Ayoub), p. 5; Fouad Ayoub, T. 1 July 2014, pp 17-18; Mohammed Kheireddine, T. 23 July 2014, pp 34-35, 49; exhibit P236 (Statement of Mohammed Kheireddine), p. 9.

²⁸⁴⁰ Fouad Ayoub, T. 1 July 2014, pp 17-18.

²⁸⁴¹ Mohammed Kheireddine, T. 23 July 2014, pp 34-35, 49; exhibit P236 (Statement of Mohammed Kheireddine), p. 9.

²⁸⁴² Exhibit P236 (Statement of Mohammed Kheireddine), pp 24, 44-54. However, Mr Kheireddine admitted that it is not possible to lift fingerprints off a heavily charred surface such as those at the crime scene after this type of explosion, Mohammed Kheireddine, T. 23 July 2014, p. 49.

²⁸⁴³ Exhibit P194 (Statement of Fouad Ayoub), p. 5.

²⁸⁴⁴ Exhibit P236 (Statement of Mohammed Kheireddine), p. 9.

1382. On Monday 14 February 2005, late into the night, Dr Ayoub identified the following bodies at the American University Hospital: Mr Hariri, Mr Mahmoud Saleh Al-Khalaf, Mr Mohammed Saadeddine Darwiche, Mr Issa, Mr Tarraf and Mr Mohamed Riad Hussein Ghalayini. Early in the morning on 15 February, he went to Hotel *Dieu* Hospital and identified Mr Omar Al-Masri's body through a dental record examination.²⁸⁴⁵ He then went to *Al Makassed* Hospital and learned that Ms Rima Bazzi's body had been identified by her parents; her body was released the following morning.²⁸⁴⁶

1383. Dr Ayoub finalised a report with the initial results of his analysis on Thursday 17 February 2005, after which Lebanese judicial authorities, including Judge Mezher, asked him to go to the crime scene to retrieve further human remains.²⁸⁴⁷ On Friday 18 February 2005, Dr Ayoub and his team searched for human remains at the crime scene.²⁸⁴⁸ There were still missing bodies, including those of Mr Abdul Hamid Ghalayini and the presumed suicide bomber, and Dr Ayoub wanted to search the crime scene for their remains and, in particular, before the start of expected rain.²⁸⁴⁹ He recalled that it rained on the following day, Saturday 19 February, but that between 14 and 18 February there was no rainfall in Beirut.²⁸⁵⁰ He was concerned that if it started raining, the human tissue and remains could be moved by the water, making it difficult to collect them. Water can also have a negative impact on DNA.²⁸⁵¹ The crater was already entirely filled with water at this point, but Dr

²⁸⁴⁵ Exhibit P194 (Statement of Fouad Ayoub), pp 5-6.

²⁸⁴⁶ Exhibit P194 (Statement of Fouad Ayoub), p. 5.

²⁸⁴⁷ Exhibit P194 (Statement of Fouad Ayoub), p. 3. Dr Ayoub later drafted a portion of the report entitled 'DNA results of samples taken from the crime scene, indicated on the map and taken five days after the explosion' of 24 February 2005 (exhibit P196). It contains annotated photographs of the collected samples and an extensive DNA analysis of the samples collected, including details of the methodology, results and their interpretation, Fouad Ayoub, T. 1 July 2014, pp 21-27, 31-60.

²⁸⁴⁸ Fouad Ayoub, T. 1 July 2014, pp 19-21; exhibit P194 (Statement of Fouad Ayoub), p. 3; exhibit P196 (Dr Ayoub's report on DNA results of samples from crime scene, 24 February 2005), p. 3. *See also* exhibit P200 (Dr Ayoub's forensic report on human parts of unidentified male), p. 10; exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 48, 87. Dr Ayoub repeatedly stated that he visited the crime scene on 18 February 2005. However, he also stated that it was 'some five days after the explosion' and the expert report on the forensic investigation of the explosion prepared by the Dutch forensic team (exhibit P244) states that Dr Ayoub and his team were at the crime scene on 19 February 2005. Based on the evidence before it, in particular the multiple written witness statements signed by Dr Ayoub, the Trial Chamber is satisfied that Dr Ayoub went to the crime scene on 18 February 2005, not 19 February 2005.

²⁸⁴⁹ Fouad Ayoub, T. 1 July 2014, pp 19, 36-37, T. 2 July 2014, pp 33-35, 48.

²⁸⁵⁰ Fouad Ayoub, T. 2 July 2014, p. 35.

²⁸⁵¹ Fouad Ayoub, T. 1 July 2014, pp 19, 36-37.

Ayoub was confident that it was filled with water when the explosion happened, and he did not think there were any human remains in the crater.²⁸⁵²

1384. The judicial authorities restricted Dr Ayoub's search to open spaces visible by the naked eye; he was not allowed to search the crater itself, in or around burned vehicles or any rubble because he was told that the Swiss experts were expected to arrive.²⁸⁵³ He marked a large perimeter around the crime scene and moved toward the centre of it to collect all of the remains inside.²⁸⁵⁴ He collected remains in the Byblos building, up to the second floor, and up to the first floor of the St Georges Hotel, but was unable to go any higher due to debris obstructing the stairways.²⁸⁵⁵ On 18 February, Dr Ayoub recovered seven samples of human remains.²⁸⁵⁶

1385. Mr Michel Jbeily and Mr Bashir Al-Hamsi, warrant officers at the ISF Central Accidents Bureau, which took fingerprints, DNA and photographs and issued crime investigation reports,²⁸⁵⁷ collected human remains from the crime scene after the explosion on Monday 14 February 2005 and on the following day.²⁸⁵⁸

1386. Mr Jbeily found remains at the ground floor entrance to and on the first floor of the Byblos building; he photographed the remains as he found them and gave them reference numbers.²⁸⁵⁹ On 15 February 2005, he and a colleague also found the body of Mr Zahi Bou Rjeily under rubble on the first floor of an unoccupied building across from the St Georges Hotel.²⁸⁶⁰ Mr Al-Hamsi found the remains of a human finger.²⁸⁶¹ They took samples of the human remains and photographs.²⁸⁶² The same evening, Civil Defence personnel also found a foot and they took a sample.²⁸⁶³

²⁸⁵² Fouad Ayoub, T. 2 July 2014, pp 108-109.

²⁸⁵³ Fouad Ayoub, T. 1 July 2014, pp 21, 38-39; exhibit P194 (Statement of Fouad Ayoub), p. 3.

²⁸⁵⁴ Exhibit P194 (Statement of Fouad Ayoub), p. 3.

²⁸⁵⁵ Exhibit P194 (Statement of Fouad Ayoub), pp 3, 6.

²⁸⁵⁶ Exhibit P194 (Statement of Fouad Ayoub), p. 6.

²⁸⁵⁷ Exhibit P259 (Statement of Michel Jbeily), paras 7-8; exhibit P258 (Statement of Bashir Al-Hamsi), paras 1, 7.

²⁸⁵⁸ Exhibit P259 (Statement of Michel Jbeily), para. 9; exhibit P259.1 (ISF Central Accidents Bureau report on collection of samples at explosion site on 14 February 2005), p. 2; exhibit P259.2 (ISF Central Accidents Bureau report, 15 February 2005).

²⁸⁵⁹ Exhibit P259 (Statement of Michel Jbeily), paras 11, 14-16; exhibit P259.1, pp 2, 6; exhibit P259.2, pp 1, 4-13.

²⁸⁶⁰ Exhibit P260 (ISF Central Accidents Bureau report, 16 February 2005), pp 2, 11.

²⁸⁶¹ Exhibit P258.1 (ISF Central Accidents Bureau report, 16 February 2005). *See also* exhibit P258 (Statement of Bashir Al-Hamsi), paras 9-10.

²⁸⁶² Exhibit P260, pp 2-12. *See also* exhibit P259 (Statement of Michel Jbeily), paras 20, 25-26; exhibit P259.2, pp 2-3.

²⁸⁶³ Exhibit P259 (Statement of Michel Jbeily), paras 19, 22; exhibit P259.2, p. 3.

1387. The remains collected on 14 February were put into envelopes and taken to the laboratories at the American University for Science and Technology and St Joseph University in Beirut.²⁸⁶⁴

1388. On Monday 21 February 2005, Witness PRH450, a judicial investigator working with the military police, discovered the burned body of a man under a vehicle about four metres from the crater.²⁸⁶⁵ On Saturday 26 February 2005, Dr Ayoub performed DNA analysis on a body recovered from the crime scene about a week after the explosion and it revealed that it was the body of Mr Mahmoud Saleh Al-Hamad Al-Mohammed.²⁸⁶⁶

1389. On 25 and 26 February 2005, Judge Abou-Arraj instructed Mr Al-Hamsi and Mr Gemayel, who were working in the ISF Central Accidents Bureau, to inspect human remains at the explosion site, lift samples and take photographs.²⁸⁶⁷ On 25 February, Mr Al-Hamsi collected human remains on the ground floor of the Byblos building.²⁸⁶⁸ On 26 February, Mr Gemayel carried out a technical inspection of part of a foot that was found at the crime scene by the Borj squad, a police squad in charge of the area in Beirut covering the crime scene—specifically the area between Manara and St Georges and downtown Beirut.²⁸⁶⁹

1390. On 1 March 2005, Mr Kheireddine returned to the crime scene to photograph human remains and to collect a sample from a hand found at the scene that day.²⁸⁷⁰ Mr Saadeddine informed him that he had moved the hand from under the rubble and showed Mr Kheireddine where it was.²⁸⁷¹ Mr Kheireddine took the sample to Dr Ayoub at the American University of Science and Technology.²⁸⁷²

²⁸⁶⁴ Exhibit P259 (Statement of Michel Jbeily), paras 12, 16; exhibit P259.1, pp 2-4.

²⁸⁶⁵ Witness PRH450, 24 June 2014, pp 7, 26-27, 29; exhibit P185 (Statement of Witness PRH450), p. 8.

²⁸⁶⁶ Exhibit P194 (Statement of Fouad Ayoub), p. 5.

²⁸⁶⁷ Tanios Gemayel, T. 10 February 2014, pp 36-39, 41; exhibit P258.2 (ISF Central Accidents Bureau report, 28 February 2005).

²⁸⁶⁸ Exhibit P258.2, pp 3, 5, 8-9. *See also* exhibit P258 (Statement of Bashir Al-Hamsi), para. 11.

²⁸⁶⁹ Tanios Gemayel, T. 10 February 2014, pp 36-37; exhibit P175 (Body samples seized from crime scene); exhibit P177 (Statement of Tanios Gemayel dated 24 January 2013), pp 2-3.

²⁸⁷⁰ Exhibit P236 (Statement of Mohammed Kheireddine), pp 9, 15-16, 64-68; Tanios Gemayel, T. 10 February 2014, pp 48-49.

²⁸⁷¹ Exhibit P236 (Statement of Mohammed Kheireddine), p. 16

²⁸⁷² Exhibit P236 (Statement of Mohammed Kheireddine), p. 9.

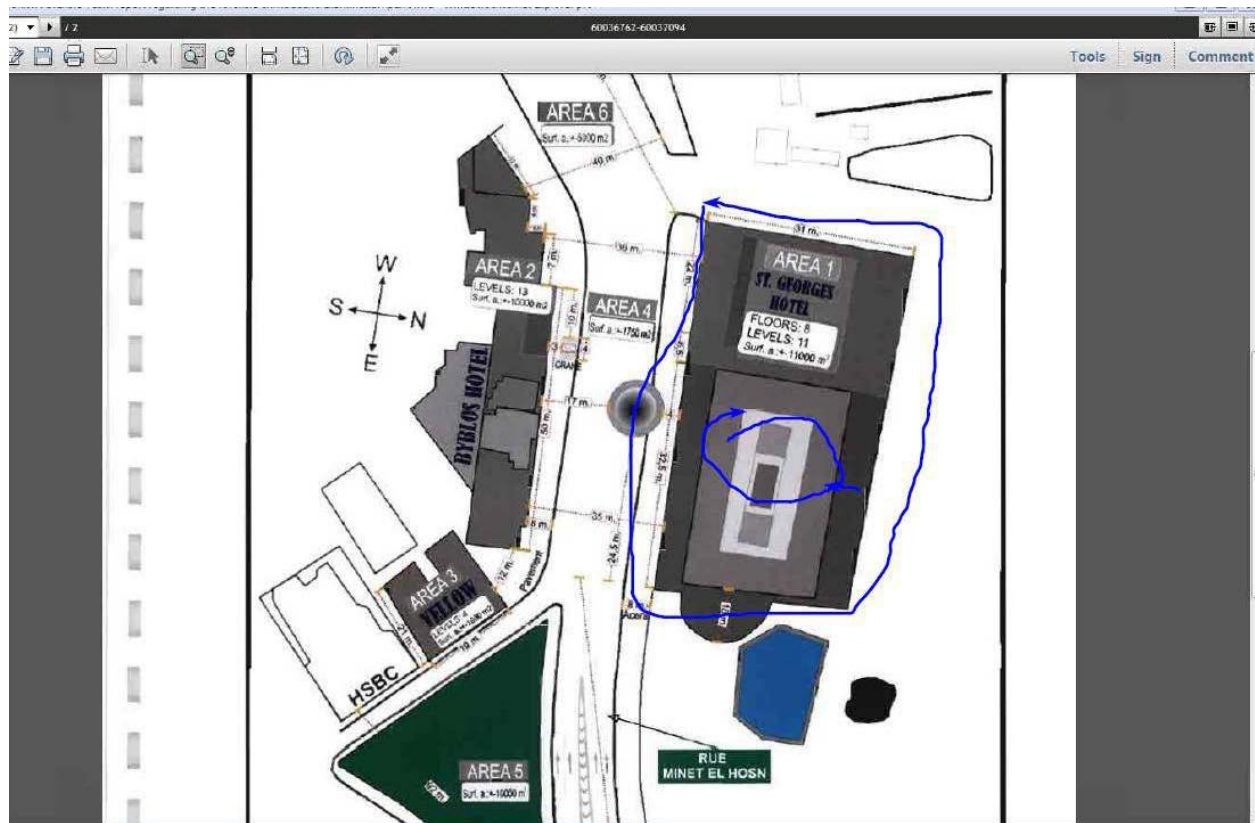


Exhibit 2D26 (Diagram showing the St Georges Beach Club area investigated by Mr Kheireddine and a team of explosive technicians)

1391. On 2 March 2005, Mr Jbeily and his colleague from the ISF Central Accidents Bureau, with the assistance of the Civil Defence and family members,²⁸⁷³ found the body of Mr Ghalayini under rubble in front of the Byblos Hotel building.²⁸⁷⁴ Mr Jbeily and his colleagues also found a foot not belonging to the body under the rubble.²⁸⁷⁵

1392. On 6 March 2005, Mr Elie Hawa, a First Sergeant and Crime Scene Officer with the ISF Central Accidents Bureau,²⁸⁷⁶ was informed about a human tooth found at the explosion site.²⁸⁷⁷ Mr Hawa and his colleague went to the crime scene to inspect the tooth and where it was found—on the northern sidewalk to the east of the explosion, about nine metres away from the first

²⁸⁷³ See para. 1027 for relevant evidence from Ms Lama Ghalayini.

²⁸⁷⁴ Exhibit P259.3 (ISF Central Accidents Bureau report, 3 March 2005), pp 1-10. See also Lama Ghalayini, T. 28 August 2017, p. 86; exhibit P265 (Witness statement of Abdel-Hakim Ghalayini), ERNs 60291710, 60291712.

²⁸⁷⁵ Exhibit P259.3, pp 2, 8-9.

²⁸⁷⁶ Exhibit P256 (Statement of Elie Hawa), para. 1.

²⁸⁷⁷ Exhibit P256 (ISF police *Al Burj* squad reports, 6 March 2005), ERNs 60286286-6028297. See also exhibit P256 (Statement of Elie Hawa), para. 9.

St Georges Hotel entrance and 35 metres from the crater caused by the explosion.²⁸⁷⁸ The tooth was 2.5 centimetres long with a broken part and the remainder was black, burned by the fire.²⁸⁷⁹ Mr Hawa inspected it, took photographs and delivered it to the laboratory for testing.²⁸⁸⁰

1393. On 10 March 2005, investigating Judge Abu-Arraj instructed the Borj squad to appoint a patrol to go to the explosion site and take further samples and photographs of human remains and other items.²⁸⁸¹ Following this instruction, Mr Gemayel and Mr Al-Hamsi, of the Central Accident Bureau, were appointed to the patrol.²⁸⁸² When they arrived, they joined members of the Civil Defence in removing rubble from an area south of the crater, by the Byblos building. They removed light rubble by hand and used a small Bobcat bulldozer to remove heavy rubble to extract human remains and other items.²⁸⁸³ The items found and photographed included a handgun and holster, a car number plate and a purse with car papers.²⁸⁸⁴ They took several samples of the human remains to identify victims.²⁸⁸⁵

1394. The Dutch forensic team discovered more human remains at the crime scene. On 19 August 2005, they found bone fragments of a hip and a femur. On 30 August, they recovered the remains of a hand.²⁸⁸⁶ They found these in front of the Byblos Hotel.²⁸⁸⁷

1395. The Spanish forensic team investigated the crime scene between May and June 2006 and collected further biological remains.²⁸⁸⁸ Witness 155, a member of the Spanish team of experts, found fragments from human bodies at the crime scene, specifically on the base of a crane attached

²⁸⁷⁸ Exhibit P256 (ISF police *Al Burj* squad reports, 6 March 2005), ERNs 60286287, 60286292, 60286294.

²⁸⁷⁹ Exhibit P256 (ISF police *Al Burj* squad reports, 6 March 2005), ERNs 60286287, 60286292-60286293.

²⁸⁸⁰ Exhibit P256 (ISF police *Al Burj* squad reports, 6 March 2005), ERNs 60286287, 60286292, 60286295. *See also* exhibit P256 (Statement of Elie Hawa), para. 10.

²⁸⁸¹ Tanios Gemayel, T. 10 February 2014, p. 44; exhibit P176 (ISF Central Accidents Bureau forensic report on human remains), p. 3.

²⁸⁸² Tanios Gemayel, T. 10 February 2014, pp 44-46; exhibit P176, p. 3.

²⁸⁸³ Tanios Gemayel, T. 10 February 2014, pp 45-46.

²⁸⁸⁴ Tanios Gemayel, T. 10 February 2014, pp 45-46; exhibit P176, pp 3-5, 9-12.

²⁸⁸⁵ Tanios Gemayel, T. 10 February 2014, p. 47; exhibit P176, pp 5-10, 12-15. *See also* P258 (Statement of Bashir Al-Hamsi), paras 12-15.

²⁸⁸⁶ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 48-49, 87-88, 115, 130 (the human remains are listed in appendix A: Register of exhibits, BP-00241, BP-00242, BP-00409).

²⁸⁸⁷ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 87.

²⁸⁸⁸ Witness PRH155, T. 24 September 2014, p. 17; exhibit P266 (Spanish forensic team expert report), pp 4-5, 13, 22-24, 36-42, 57, 83, 89-90, 98, 125, 129, 142, 295, 297, 302, 304, 306-308, 310-311, 315-326, 328, 331, 334, 336, 339-340, 344-345, 347-350.

to the Byblos Hotel and in the crater.²⁸⁸⁹ The Spanish team found 207 presumed biological exhibits.²⁸⁹⁰ On 30 May 2006, they found a second tooth.²⁸⁹¹

1396. Although the Spanish forensic team observed the standard forensic protocols, they could not guarantee that samples had not decomposed, or been contaminated by previous forensic searches, interference by animals, the lapse of time or weather conditions.²⁸⁹² Also, some evidence may have been missed.²⁸⁹³ Dr Ayoub assisted the Spanish experts and was involved in the same capacity as in 2005 in retrieving remains, analysing the DNA and preparing the relevant reports.²⁸⁹⁴

(b) Forensic analysis of victims' remains

1397. Human remains from three members of Mr Hariri's convoy were recovered from the crime scene: Mr Darwiche's mutilated body and smaller body parts from Mr Nasser and Mr Al-Arab.²⁸⁹⁵ Two bags of unknown human remains were given to Mr Al-Arab's family for burial before any DNA analysis was done on them.²⁸⁹⁶ The bone fragments recovered at the crime scene on 19 August 2005 were identified as Mr Nasser's, and a part of the hand found on 30 August was identified as Mr Darwiche's.²⁸⁹⁷ Notably, human remains of these three members of the convoy, who had been seated in the fourth convoy vehicle, were found in the same area in front of the Byblos Hotel.²⁸⁹⁸

1398. Smaller pieces of tissue and bones belonging to a third unidentified person, the 'unidentified man', were also recovered.²⁸⁹⁹

1399. Human remains collected at the crime scene which were too small or damaged to be identified visually were sent for analysis at laboratories at St Joseph University in Beirut, the

²⁸⁸⁹ Witness PRH155, T. 24 September 2014, pp 39-41, T. 25 September 2014, p. 8; exhibit P266 (Spanish forensic team expert report), pp 67-69.

²⁸⁹⁰ Exhibit P266 (Spanish forensic team expert report), appendix, p. 1; Witness PRH155, T. 25 September 2014, pp 3, 5. *See also* exhibits 2D46-2D58 (Photographs of human remains).

²⁸⁹¹ Fouad Ayoub, T. 2 July 2014, pp 86-88; exhibit 2D22 (Extract of Dr Ayoub's report from 25 April 2008).

²⁸⁹² Exhibit P266 (Spanish forensic team expert report), p. 7; Witness PRH155, T. 25 September 2014, pp 14-15.

²⁸⁹³ Witness PRH155, T. 25 September 2014, p. 42.

²⁸⁹⁴ Fouad Ayoub, T. 2 July 2014, p. 11; exhibit P200 (Dr Ayoub's forensic report on human parts of unidentified male). *See also* exhibit P266 (Spanish forensic team expert report), p. 8.

²⁸⁹⁵ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 60, 87.

²⁸⁹⁶ Exhibit P194 (Statement of Fouad Ayoub), pp 3-4.

²⁸⁹⁷ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 87.

²⁸⁹⁸ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 60, 87-88.

²⁸⁹⁹ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 87.

American University of Science and Technology and later to the Netherlands Forensics Institute to establish DNA profiles to potentially match to victims.²⁹⁰⁰ Analysts established DNA profiles from the remains and by comparison created groups of matching DNA.²⁹⁰¹

1400. Dr Ayoub documented the remains he collected on a map of the crime scene²⁹⁰² to link to the DNA the results of the DNA analysis.²⁹⁰³ The remains were separated and numbered, ‘preserved in a scientific manner’ and transported in a vehicle to the two laboratories for DNA testing.²⁹⁰⁴

1401. Mr Asaad Nohra, the Head of the ISF Forensic Laboratories Bureau from 1991 to 2010, testified that after the explosion, the Bureau received samples from ISF investigators and forwarded them to one or both of the laboratories at St Joseph University and the American University of Science and Technology for DNA or chemical analysis.²⁹⁰⁵ Records were kept of incoming and outgoing samples and samples were also sent directly by investigators to private laboratories without first being submitted to the Bureau.²⁹⁰⁶ It did not conduct its own analysis on these samples.²⁹⁰⁷ The Bureau’s staff generally did not attend crime scenes, but received evidence provided by investigators; an exception was when a judicial or rogatory writ²⁹⁰⁸ was issued ordering them to go to the crime scene.²⁹⁰⁹ This occurred during the investigation and Mr Nohra

²⁹⁰⁰ See for example, exhibit P196 (Dr Ayoub’s report on DNA results of samples from crime scene, 24 February 2005), pp 1, 7-8; exhibit P197 (Report by Dr Fouad Ayoub on recovered tooth, 11 March 2005), p. 1; exhibit P199 (Dr Mansour’s DNA profile analysis report); exhibit P206 (Report on DNA profile analysis for human identity testing, 8 March 2005); exhibit P207 (Report on DNA profile analysis for human identity testing, 15 March 2005); exhibit P208 (ISF DNA profile analysis); exhibit P278 (Netherlands Forensic Institute report on forensic anthropological and DNA related investigation, 31 October 2012).

²⁹⁰¹ Fouad Ayoub, T. 1 July 2014, pp 52-55. See for example, exhibit P197 (Report by Dr Fouad Ayoub on recovered tooth, 11 March 2005), p. 1; exhibit P199 (Dr Mansour’s DNA profile analysis report); exhibit P206 (Report on DNA profile analysis for human identity testing, 8 March 2005); exhibit P207 (Report on DNA profile analysis for human identity testing, 15 March 2005); exhibit P208; exhibit P278 (Netherlands Forensic Institute report on forensic anthropological and DNA related investigation, 31 October 2012).

²⁹⁰² Exhibit P194 (Statement of Fouad Ayoub), pp 9, 66; exhibit P195 (Marked image); Fouad Ayoub, T. 1 July 2014, pp 26-27.

²⁹⁰³ Fouad Ayoub, T. 1 July 2014, pp 21, 32-35, 40-44.

²⁹⁰⁴ Fouad Ayoub, T. 1 July 2014, pp 39, 45-47; Asaad Nohra, T. 4 February 2014, pp 9, 13.

²⁹⁰⁵ Asaad Nohra, T. 4 February 2014, pp 9, 11-13, 15.

²⁹⁰⁶ Asaad Nohra, T. 4 February 2014, pp 15-17.

²⁹⁰⁷ Asaad Nohra, T. 4 February 2014, pp 13-14, 17.

²⁹⁰⁸ A rogatory writ, or a letter rogatory, is a formal request from a court for some type of judicial assistance, including for the collection of evidence.

²⁹⁰⁹ Asaad Nohra, T. 4 February 2014, pp 13-14, 17-18.

was required to accompany an expert from the American University of Science and Technology to the crime scene to collect swabs and soil samples.²⁹¹⁰

i. DNA analysis of human remains: timeline

1402. Dr Issam Mansour, whom the Trial Chamber declared an expert in forensic science,²⁹¹¹ headed the forensic DNA laboratory at the American University of Science and Technology.²⁹¹² In February and March 2005, his laboratory received samples, some from ISF officials and others from Dr Ayoub, taken from the unidentified bodies of victims at hospitals in Beirut or from the crime scene.²⁹¹³ To avoid contamination, Dr Ayoub and his colleagues delivered the material to the laboratories in sealed plastic pillboxes. They placed larger pieces of human remains in transparent, nylon bags.²⁹¹⁴

1403. Dr Ayoub was not involved in the DNA analysis himself but interpreted the results of the DNA analyses carried out at the laboratories.²⁹¹⁵ It was not possible to extract a complete DNA profile from some samples because they were mixed with soil or kept under heat for a long period. Extreme temperature such as exposure to fire would not change the DNA profile but would make it more difficult to extract.²⁹¹⁶ He explained that DNA is often taken from the head of the femur or the teeth during exhumation of human remains as teeth in particular do not degrade and are resistant to different chemical changes.²⁹¹⁷

1404. In 2012, Dr Reza Gerretsen, a forensic pathologist at the Netherlands Forensic Institute, whom the Trial Chamber declared an expert in forensic anthropology,²⁹¹⁸ further analysed the

²⁹¹⁰ Asaad Nohra, T. 4 February 2014, pp 13-14, 18.

²⁹¹¹ Dr Mansour was declared an expert in forensic science by the Trial Chamber under Rule 161, Decision on expertise (Dr Mansour); Decision on expertise (Professor Ayoub and Dr Mansour), paras 36-37.

²⁹¹² Issam Mansour, T. 3 July 2014, pp 7-9, 62-64; exhibit 2D23 (American University of Sciences and Technology website photograph).

²⁹¹³ Issam Mansour, T. 3 July 2014, pp 31-32; exhibit P206 (Report on DNA profile analysis for human identity testing, 8 March 2005), pp 3-7.

²⁹¹⁴ Fouad Ayoub, T. 1 July 2014, pp 48-52; exhibit P196 (Dr Ayoub's report on DNA results of samples from crime scene, 24 February 2005), pp 61-64.

²⁹¹⁵ Fouad Ayoub, T. 1 July 2014, pp 48, 52-55; exhibit P196 (Dr Ayoub's report on DNA results of samples from crime scene, 24 February 2005), pp 67, 81.

²⁹¹⁶ Fouad Ayoub, T. 1 July 2014, pp 56-59, T. 2 July 2014, pp 3-4.

²⁹¹⁷ Fouad Ayoub, T. 2 July 2014, pp 3-4.

²⁹¹⁸ Dr Gerretsen was declared by the Trial Chamber under Rule 161 as an expert in forensic anthropology, Decision on twelve expert witnesses, paras 32-33; Reza Gerretsen, T. 30 September 2014, p. 42. Dr Gerretsen stated that he was then the only forensic pathologist in the Netherlands. He was not a DNA expert and did not carry out DNA analysis. According to him, pathologists work with soft tissue, while forensic pathologists work with hard tissue, such

human remains recovered from the explosion.²⁹¹⁹ Specifically, he analysed the DNA of various materials which had not rendered a clear DNA profile in the previous analyses. This material included items recovered from the crime scene in May 2006 and, to a smaller extent, remains which had been buried and exhumed from graves later.²⁹²⁰

1405. The Netherlands Forensic Institute received the remains in large sealed bags and smaller envelopes.²⁹²¹ The large bags were photographed and x-rayed and then after opening them, their contents were photographed and analysed.²⁹²² Dr Gerretsen sorted the hard tissue and deteriorated soft tissue and worked with a DNA specialist to determine the likely sources of the DNA material.²⁹²³ Dr Gerretsen and the DNA specialist selected pieces of bone which had a larger outer layer, rather than spongy pieces, and after cleaning, they were submitted for DNA testing.²⁹²⁴ The smaller envelopes contained dry pieces of evidence and it was easier to process them and recognise the human remains.²⁹²⁵

ii. Results of DNA analysis: identification of victims

a. Remains of Mr Nasser and Mr Al-Arab

1406. To identify Mr Nasser's remains, Dr Ayoub analysed remains he found at the crime scene on 18 February 2005 together with a bag of remains received at the American University hospital on 17 February. Based on these remains, he requested approval from investigating Judge Abou-Arraj to take DNA samples from victims' families. After obtaining approval to take samples from

as bones and teeth and the areas surrounding those tissues. The basic work of a forensic pathologist is the forensic identification of bone tissue and, in particular, whether that tissue is human. Reza Gerretsen, T. 30 September 2014, pp 42-43, T. 1 October 2014, pp 35-37. Dr Gerretsen's reports were admitted as exhibits P278 (Netherlands Forensic Institute report on forensic anthropological and DNA related investigation, 31 October 2012) and P279 (Netherlands Forensic Institute report on forensic anthropological investigation, 4 March 2013).

²⁹¹⁹ Reza Gerretsen, T. 30 September 2014, pp 46-47.

²⁹²⁰ Reza Gerretsen, T. 30 September 2014, pp 39, 44-45; exhibit P278 (Netherlands Forensic Institute report on forensic anthropological and DNA related investigation, 31 October 2012), pp 14-20.

²⁹²¹ Reza Gerretsen, T. 30 September 2014, pp 46, 49; exhibit P278 (Netherlands Forensic Institute report on forensic anthropological and DNA related investigation, 31 October 2012), p. 21.

²⁹²² Reza Gerretsen, T. 30 September 2014, pp 49-50; exhibit P278 (Netherlands Forensic Institute report on forensic anthropological and DNA related investigation, 31 October 2012), p. 21.

²⁹²³ Reza Gerretsen, T. 30 September 2014, pp 49-51, 53-54; exhibit P278 (Netherlands Forensic Institute report on forensic anthropological and DNA related investigation, 31 October 2012), p. 21.

²⁹²⁴ Reza Gerretsen, T. 30 September 2014, pp 54-55; exhibit P278 (Netherlands Forensic Institute report on forensic anthropological and DNA related investigation, 31 October 2012), p. 21.

²⁹²⁵ Reza Gerretsen, T. 30 September 2014, pp 56-57.

the families, on 9 April 2005, Dr Ayoub determined that these remains belonged to Mr Nasser by comparing them with a DNA analysis of a sample taken from his mother.²⁹²⁶

1407. Regarding the identification of Mr Al-Arab, similarly on 9 April 2005, Dr Ayoub identified human remains recovered on 18 February 2005, plus an additional three human remains discovered by the ISF, to belong to Mr Al-Arab. Immediately following the explosion, Mr Al-Arab's family took human remains from the American University Hospital, yet to be analysed by Dr Ayoub, and buried them and had a funeral.²⁹²⁷ Mr Nasser's family also had a funeral and buried a body but according to Dr Ayoub, there was no body identified as Mr Nasser at the time of the funeral on Wednesday 16 February 2005.²⁹²⁸

1408. On 30 January 2006, Dr Ayoub exhumed bags of human remains from Mr Al-Arab's grave to determine if they contained any of Mr Ahmad Abu Adass's remains, but the DNA analysis of the remains was inconclusive.²⁹²⁹ The same night, Dr Ayoub opened Mr Nasser's grave and identified the body with dental records.²⁹³⁰

1409. Later DNA analysis and cross-comparison by Professor Christophe Champod, whom the Trial Chamber declared an expert in the forensic analysis of human remains,²⁹³¹ and the Dutch and Spanish forensic experts, identified Mr Al-Arab²⁹³² and Mr Nasser²⁹³³ by small human remains recovered at the crime scene.

²⁹²⁶ Exhibit P194 (Statement of Fouad Ayoub), p. 6.

²⁹²⁷ Exhibit P194 (Statement of Fouad Ayoub), p. 7.

²⁹²⁸ Exhibit P194 (Statement of Fouad Ayoub), pp 6, 8.

²⁹²⁹ Exhibit P205 (Statement of Fouad Ayoub dated 26 January 2013), paras 24, 26-36.

²⁹³⁰ Exhibit P205 (Statement of Fouad Ayoub dated 26 January 2013), para. 25.

²⁹³¹ The Trial Chamber declared him an expert under Rule 161 in forensic DNA analysis of human remains, Decision on twelve expert witnesses, paras 48, 51. Professor Champod was not required to testify in court.

²⁹³² Exhibit P318.1 (Appendix to report by Christophe Champod and others on DNA profile comparisons, 31 January 2013), p. 1 (group 7); exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 87; exhibit P267 (*Aide-mémoire*: summary of biological items identified by Spanish forensic team); exhibit P278 (Netherlands Forensic Institute report on forensic anthropological and DNA related investigation, 31 October 2012), pp 28, 32-40; Reza Gerretsen, T. 30 September 2014, pp 57-62.

²⁹³³ Exhibit P318.1, p. 3 (group 18); exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 87; exhibit P267, pp 1, 3; exhibit P278 (Netherlands Forensic Institute report on forensic anthropological and DNA related investigation, 31 October 2012), pp 24, 32-40; Reza Gerretsen, T. 30 September 2014, pp 57-62.

b. Analysis of other human remains

1410. DNA analysis of the small human remains collected at the crime scene connected the remains to other known deceased victims.²⁹³⁴

1411. Dr Mansour performed DNA analyses on 46 samples he received between 14 February and 10 March 2005.²⁹³⁵ He also received eight samples which were oral swabs and toothbrushes to be used as reference samples for the DNA forensic profiling comparisons.²⁹³⁶ One of the toothbrushes was said to belong to Mr Ahmad Abu Adass.²⁹³⁷ Dr Mansour successfully extracted DNA profiles and analysed 45 total samples.²⁹³⁸ He concluded that the samples belonged to seven humans—six males and one female.²⁹³⁹

1412. Samples of one of the six males were consistent with the DNA profile from the remains identified as Mr Ghalayini, the last body discovered at the crime scene.²⁹⁴⁰ Dr Mansour analysed two oral swabs from Mr Ghalayini's daughters as reference samples and concluded that the samples from Mr Ghalayini's remains belonged to their biological father.²⁹⁴¹

1413. In 2012, Dr Gerretsen conducted further DNA analyses on the human remains.²⁹⁴² Dr Gerretsen identified four people in addition to Mr Nasser and Mr Al-Arab—one female and

²⁹³⁴ Exhibit P318.1, groups 2-19; Issam Mansour, T. 3 July 2014, pp 30-41, 43-51; exhibit P206 (Report on DNA profile analysis for human identity testing, 8 March 2005); exhibit P267, pp 1, 3; Reza Gerretsen, T. 30 September 2014, pp 57-62; exhibit P278 (Netherlands Forensic Institute report on forensic anthropological and DNA related investigation, 31 October 2012), pp 23-29, 32-40. *But see* exhibit P268 (List of biological and possible biological remains found at the crime scene between February 2005 and June 2006).

²⁹³⁵ Issam Mansour, T. 3 July 2014, pp 31-35; exhibit P206 (Report on DNA profile analysis for human identity testing, 8 March 2005), pp 3-7; exhibit P207 (Report on DNA profile analysis for human identity testing, 15 March 2005), pp 3-4.

²⁹³⁶ Issam Mansour, T. 3 July 2014, pp 32-35; exhibit P206 (Report on DNA profile analysis for human identity testing, 8 March 2005), p. 5.

²⁹³⁷ Issam Mansour, T. 3 July 2014, p. 33; exhibit P206 (Report on DNA profile analysis for human identity testing, 8 March 2005), p. 5. *See* para. 1430, below.

²⁹³⁸ Exhibit P206 (Report on DNA profile analysis for human identity testing, 8 March 2005), pp 17-18; exhibit P207 (Report on DNA profile analysis for human identity testing, 15 March 2005), pp 9-10.

²⁹³⁹ Exhibit P206 (Report on DNA profile analysis for human identity testing, 8 March 2005), pp 13-17; exhibit P207 (Report on DNA profile analysis for human identity testing, 15 March 2005), pp 9-10.

²⁹⁴⁰ Issam Mansour, T. 3 July 2014, pp 49-50; exhibit P207 (Report on DNA profile analysis for human identity testing, 15 March 2005), pp 9-10.

²⁹⁴¹ Issam Mansour, T. 3 July 2014, pp 50-51; exhibit P207 (Report on DNA profile analysis for human identity testing, 15 March 2005), pp 6-10.

²⁹⁴² Reza Gerretsen, T. 30 September 2014, pp 46-47.

three males: Ms Aalaa Osfour, Mr Mohammed Darwiche, an unidentified male and another male who was determined to be alive.²⁹⁴³

iii. Submissions

1414. The Merhi Defence submits that the crime scene was severely contaminated casting doubt on the reliability of the evidence collected there and on the results from its analysis.²⁹⁴⁴ The human remains were not collected before rain fell the day after the explosion and such rainfall or water flooding the crater further damaged the evidence and could eliminate DNA traces.²⁹⁴⁵ Furthermore, no one collected samples from the crater for the purposes of DNA analysis.²⁹⁴⁶

1415. The Prosecution responded to the Merhi Defence submission that DNA may not have been found, was washed into the sea or was displaced by water from firefighters or rain, arguing that it is speculative, not substantiated by the evidence and did not affect the collection of the DNA at the crime scene.²⁹⁴⁷

iv. Findings

1416. The Trial Chamber received agreed facts which establish that Mr Hariri and 21 others died and 226 persons were injured as a result of the explosion on 14 February 2005. The Trial Chamber considered the death certificates in evidence for 20 of the deceased victims, including Mr Hariri, as follows:

1. Mr Yahya Al-Arab;
2. Mr Omar Al-Masri;
3. Mr Mazen Al-Zahabi;

²⁹⁴³ Reza Gerretsen, T. 30 September 2014, pp 57-62; exhibit P278 (Netherlands Forensic Institute report on forensic anthropological and DNA related investigation, 31 October 2012), pp 23-40. *See also* exhibit P283 (*Aide-mémoire* for Dr Gerretsen on identified human remains). Dr Gerretsen identified a single sample, a piece of human tibia bone, as being 'slightly more probable' that it belonged to the alive injured male, DNA profile F, than to anyone else; however, the Netherlands Forensic Institute did not have a DNA profile from the injured male for comparison, exhibit P279 (Netherlands Forensic Institute report on forensic anthropological investigation, 4 March 2013), pp 3-5; exhibit P279.1 P279.1 (Photograph of tibia); exhibit P279.2 (Photograph of tibia); Reza Gerretsen, T. 30 September 2014, pp 68-74.

²⁹⁴⁴ Merhi Defence final trial brief, para. 459.

²⁹⁴⁵ Merhi Defence final trial brief, paras 460, 463-464.

²⁹⁴⁶ Merhi Defence final trial brief, paras 464, 473.

²⁹⁴⁷ Prosecution closing submissions, T. 13 September 2018, pp 53-54.

4. Mr Mohammed Darwiche;²⁹⁴⁸
5. Mr Bassel Farid Fuleihan;
6. Mr Mohammed Riad Ghalayini;
7. Mr Rafik Hariri;
8. Mr Talal Nasser;
9. Mr Ziad Tarraf;
10. Mr Joseph Aoun;
11. Mr Zahi Bou Rjeily;
12. Mr Mahmoud Al-Hamad Al-Mohammed;
13. Mr Mahmoud Al-Khalaf;
14. Ms Rima Bazzi;
15. Mr Abdo Bou Farah;
16. Ms Yamama Damen;
17. Mr Abdul Hamid Ghalayini;
18. Mr Rawad Suleiman Haidar;
19. Ms Alaa Osfour; and
20. Mr Haitham Osman.

1417. Although death certificates were not issued for Mr Sobhi Mohammed Al-Khodr or Mr Farhan Ahmad Issa, the Trial Chamber is satisfied that their bodies were identified and that they died as a result of the attack.

1418. The Trial Chamber also considered specific DNA evidence of human remains recovered for at least seven people—one female and six males, including Ms Aalaa Osfour, Mr Nasser,

²⁹⁴⁸ Transliteration of names from Arabic to English has resulted in some variation in spelling across different documents, for example between Darwish and Darwiche, Othman and Osman, Ghalayeeni and Ghalayini, Riyadh and Riad.

Mr Al-Arab, Mr Mohammed Darwiche, Mr Ghalayini, a male victim who was determined to be alive and an unidentified male.

1419. The Trial Chamber already found above that evidence at the crime scene was mishandled and that the investigation following the explosion was flawed.²⁹⁴⁹ The Trial Chamber considers that it is probable that rainfall and other sources of water damaged the evidence, and in particular the DNA evidence, found at the crime scene. It is also very likely that the mismanagement of the crime scene affected the quality and quantity of the evidence recovered there. However, based on the agreed facts and the totality of the supporting forensic evidence discussed above, the Trial Chamber finds that Mr Hariri and 21 others died and 226 people, as pleaded, were injured as a result of the explosion on 14 February 2005.²⁹⁵⁰

(c) Forensic examination of the DNA of the unidentified male and of Mr Abu Adass

1420. The Prosecution submits that the evidence proves the unidentified man was closest to the blast when the explosive device detonated based on the overall distribution of human remains found at the crime scene. However, the unidentified man's DNA did not match that of Mr Abu Adass nor was Mr Abu Adass's DNA found at the crime scene.²⁹⁵¹ The Trial Chamber received evidence from various experts on the forensic analysis of human remains and forensic odontology.

i. DNA analysis of the unidentified male

1421. The Spanish forensic team, Dr Ayoub and Lebanese authorities, including Mr Jbeily and colleagues with the ISF Central Accidents Bureau, recovered remains from the unidentified man at the crime scene.²⁹⁵² In total, the experts and investigators recovered and identified 92 human

²⁹⁴⁹ See sub-section (F) (1) (vi) 'Findings on the management of the crime scene and investigation', and generally, sub-section (F) (1) 'Crime scene investigation and recovery of evidence'.

²⁹⁵⁰ The Trial Chamber, in considering the Legal Representatives of Victims' submissions, has found, in sub-section (G) (2) (b) (x) 'Victim 73', that a participating victim, Victim 73, whose name was not included among the 226 injured people listed in schedule B to the amended consolidated indictment, was also injured as a result of the explosion. This is only relevant to identifying, in the judgment, the victims who have suffered harm due to the attack.

²⁹⁵¹ Prosecution final trial brief, paras 1088-1089, 1096-1099; Prosecution closing submissions, T. 13 September 2018, pp 53-55.

²⁹⁵² Exhibit P319 (*Aide-mémoire* for Christophe Champod's evidence on DNA profiles of the unknown man); exhibit P319.1 (Map of location of 92 biological exhibits recovered at crime scene).

parts belonging to the unidentified man.²⁹⁵³ The total quantity of remains was small, with a combined weight of less than one kilogram.²⁹⁵⁴

1422. Dr Ayoub was involved in analysing the DNA related to the remains of the unidentified individual recovered from the crime scene.²⁹⁵⁵ In other suicide bombing cases in which he was involved—numbering more than 25—Dr Ayoub had always had human remains to analyse even if the suicide bomber's body had been destroyed given its close proximity to the bomb.²⁹⁵⁶ In this case, the remains of the individual closest to the bomb could not be identified.²⁹⁵⁷

1423. Dr Ayoub compared the size of Mr Nasser's and Mr Al-Arab's remains and their positioning in relation to the blast with those of the unidentified man as a factor determining that the remains of the unidentified man were the closest to the explosion.²⁹⁵⁸ According to Dr Ayoub, there was no evidence to suggest that there may have been a second unknown man between the unidentified male and the bomb or otherwise present at the crime scene.²⁹⁵⁹

1424. In 2006, the Spanish forensic team recovered 33 parts of the unidentified man.²⁹⁶⁰ It reported that remains of the unidentified man were found in two specific areas of the crime scene, as allocated by the experts,—areas 6 and 1I.²⁹⁶¹ Area 6 was the exit way from the crime scene, west of the general forensic examination area.²⁹⁶² Area 1I—the lower flat roof surface of the St Georges Hotel—was in the same direction as area 6.²⁹⁶³ This is shown in the diagram from exhibit P266 below.

²⁹⁵³ Exhibit P319; exhibit P319.1. *See also* exhibit P318.1, group 1; exhibit P278 (Netherlands Forensic Institute report on forensic anthropological and DNA related investigation, 31 October 2012), pp 3, 25-27, 32-40; exhibit P283.

²⁹⁵⁴ Fouad Ayoub, T. 2 July 2014, p. 9.

²⁹⁵⁵ Fouad Ayoub, T. 2 July 2014, pp 11-15; exhibit P200 (Dr Ayoub's forensic report on human parts of unidentified male).

²⁹⁵⁶ Fouad Ayoub, T. 1 July 2014, pp 60-61.

²⁹⁵⁷ Fouad Ayoub, T. 1 July 2014, pp 62, 65-66.

²⁹⁵⁸ Fouad Ayoub, T. 2 July 2014, pp 9-10, 106, 113.

²⁹⁵⁹ Fouad Ayoub, T. 2 July 2014, p. 113.

²⁹⁶⁰ Fouad Ayoub, T. 2 July 2014, pp 14-15; exhibit P200 (Dr Ayoub's forensic report on human parts of unidentified male), pp 71-74. *See also* exhibit P267.

²⁹⁶¹ Exhibit P266 (Spanish forensic team expert report), ERNs 60037058, 60037095, 60037097, 60037100; exhibit P319, pp 1-3.

²⁹⁶² Exhibit P266 (Spanish forensic team expert report), ERN 60036849.

²⁹⁶³ Exhibit P266 (Spanish forensic team expert report), ERNs 60036770, 60036772-60036773.

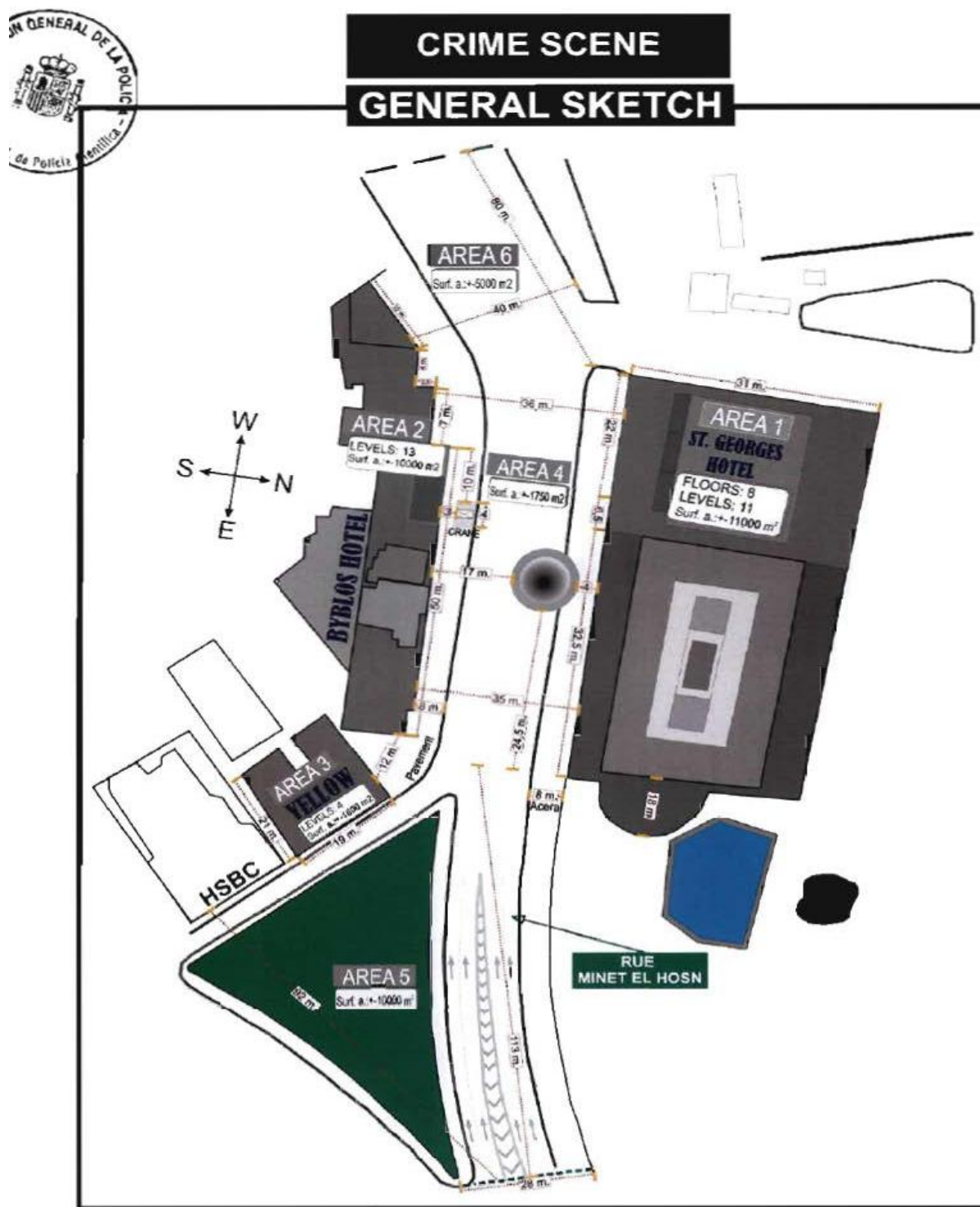


Exhibit P266 (Spanish forensic team expert report), ERN 60036762

1425. Dr van de Craats and the Dutch forensic team reached the same conclusion as Dr Ayoub regarding the position of the unidentified man in the explosion. The Dutch team relied on Dr Ayoub's analysis of the human remains he collected—small pieces of tissue, a tooth, a piece of his thumb, a piece of his cheekbone, a piece of an ear and a hair—with the DNA profile of an unidentified man, which were found to the west of the explosion centre, at the intersection of *Rue Minet el Hosn* and the Marina road.²⁹⁶⁴ According to the Dutch forensic team, this demonstrates that the unidentified man must have been very close to—one or two metres—the explosive device on the west side.²⁹⁶⁵ The recovered human remains are marked on the diagram below, prepared by the Dutch forensic team.

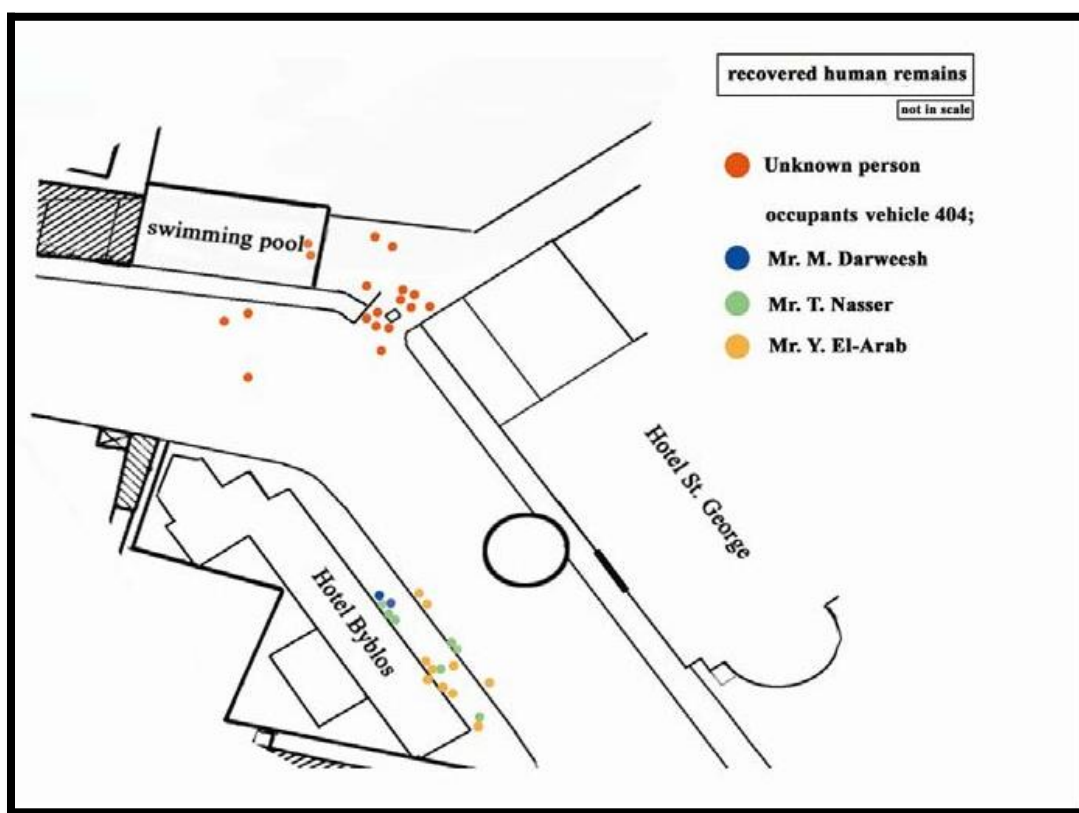


Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 88 (figure 13)

²⁹⁶⁴ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), pp 87-88.

²⁹⁶⁵ Exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute), p. 87.

1426. Dr Ayoub, who also specialised in forensic odontology,²⁹⁶⁶ was informed on 6 March 2005 of the burned tooth recovered at the crime scene.²⁹⁶⁷ Forensic odontology is a science dealing with human identification based on dental records and x-rays. It is used in particular in circumstances where the bodies of victims were subject to the forces of a blast, fire or water, for example, and where the jaw, mouth and the unique shape of the teeth could help in identifying the victims.²⁹⁶⁸

1427. He examined the tooth, analysed its DNA and determined that it belonged to a male, based on the size of its root and neck.²⁹⁶⁹ The tooth's colouring and lack of calcium deposits suggested that it belonged to a young person, in his early 20s, not older than 25 years.²⁹⁷⁰ Finally, he found that there was a distinguishing feature on the tooth—its surface shape was in the form of a spade, which is a feature rarely seen among the Lebanese.²⁹⁷¹ Dr Ayoub concluded that the tooth thus belonged to a 20-25-year-old man who was not Lebanese, or who had not lived in Lebanon for a long period before his death.²⁹⁷² Based on the DNA analysis and shape, Dr Ayoub concluded that the tooth belonged to the unidentified individual whose remains they had found earlier.²⁹⁷³

²⁹⁶⁶ Fouad Ayoub, T. 1 July 2014, pp 14-16.

²⁹⁶⁷ Exhibit P197 (Report by Dr Fouad Hussein Ayoub on recovered tooth, 11 March 2005), p. 1; Fouad Ayoub, T. 1 July 2014, pp 62-63.

²⁹⁶⁸ Fouad Ayoub, T. 1 July 2014, pp 14-16.

²⁹⁶⁹ Exhibit P197 (Report by Dr Fouad Hussein Ayoub on recovered tooth, 11 March 2005), p. 4. *See also* exhibit P199 (Dr Mansour's DNA profile analysis report).

²⁹⁷⁰ Exhibit P197 (Report by Dr Fouad Hussein Ayoub on recovered tooth, 11 March 2005), pp 4-5.

²⁹⁷¹ Exhibit P197 (Report by Dr Fouad Hussein Ayoub on recovered tooth, 11 March 2005), p. 5.

²⁹⁷² Exhibit P197 (Report by Dr Fouad Hussein Ayoub on recovered tooth, 11 March 2005); Fouad Ayoub, T. 1 July 2014, pp 63-66.

²⁹⁷³ Exhibit P197 (Report by Dr Fouad Hussein Ayoub on recovered tooth, 11 March 2005); exhibit P198 (Photographs of recovered tooth); Fouad Ayoub, T. 1 July 2014, pp 62-63.



Exhibit P198

1428. Dr Ayoub analysed the DNA of the second tooth found on 30 May 2006 but could not obtain a DNA profile from it.²⁹⁷⁴ Dr Ayoub explained that this could be because it was retrieved from the crime scene a year and a half after the incident and that it had been exposed to various conditions, such as soil and sun.²⁹⁷⁵ Based on x-rays, it appeared to come from a young person.²⁹⁷⁶

ii. DNA analysis related to Mr Ahmad Abu Adass

1429. On the evening of the explosion, following the release of the video recording showing Mr Abu Adass, ISF officers took Mr Abu Adass's parents' fingerprints and DNA samples in saliva form at the ISF headquarters.²⁹⁷⁷ Mr Gemayel collected the samples in the presence of the head of the Information Branch and immediately delivered them to the forensic laboratories office of the

²⁹⁷⁴ Fouad Ayoub, T. 2 July 2014, pp 86-88; exhibit 2D22 (Extract of Dr Ayoub's report from 25 April 2008).

²⁹⁷⁵ Fouad Ayoub, T. 2 July 2014, pp 87-88; exhibit 2D22 (Extract of Dr Ayoub's report from 25 April 2008).

²⁹⁷⁶ Fouad Ayoub, T. 2 July 2014, p. 87; exhibit 2D22 (Extract of Dr Ayoub's report from 25 April 2008).

²⁹⁷⁷ Exhibit P257 (Statement of Youssef Khayreddine), p. 17; Tanios Gemayel, T. 10 February 2014, pp 24-26, 30-31; exhibit P179 (Statement of Tanios Gemayel dated 10 August 2005), p. 3.

Scientific Division of the police.²⁹⁷⁸ Saliva samples were also obtained from Mr Abu Adass's two sisters and his mother on 18 March 2006—more than a year later.²⁹⁷⁹

1430. The ISF also retrieved Mr Abu Adass's toothbrush from his family residence and provided it to Dr Mansour on 16 February 2005 for analysis.²⁹⁸⁰ This toothbrush, and two other sample toothbrushes, were delivered to Dr Mansour in an envelope or bag and labelled on the outside of the packaging.²⁹⁸¹ A nuclear DNA profile for Mr Abu Adass was created from samples taken from the toothbrush, in addition to a nuclear DNA profile taken from his presumed mother and father.²⁹⁸² The DNA profile from the toothbrush belonged to a male and matched at least one allele²⁹⁸³ from each of Mr Abu Adass's parents, and both Dr Ayoub and Dr Mansour confirmed that it belonged to a biological son of the Abu Adass family.²⁹⁸⁴ Dr Mansour did not conduct any further DNA analysis on another male member of the Abu Adass family, such as Mr Abu Adass's brother.²⁹⁸⁵

1431. Professor Champod confirmed that the DNA evidence he analysed provided 'very strong support' for the proposition that Mr Abu Adass is the biological son of his parents.²⁹⁸⁶

1432. Dr Mansour identified four samples, including the partially burned tooth, as belonging to the unidentified man.²⁹⁸⁷ However, none of the samples retrieved at the crime scene matched Mr Abu Adass's DNA profile.²⁹⁸⁸

²⁹⁷⁸ Tanios Gemayel, T. 10 February 2014, pp 24-26, 30-33; *see also* exhibit P179 (Statement of Tanios Gemayel dated 10 August 2005), p. 3.

²⁹⁷⁹ Exhibit P201 (Buccal DNA swabbings report); exhibit P202 (Dr Ayoub's report on obtaining a DNA profile); Fouad Ayoub, T. 2 July 2014, pp 20-22, 109.

²⁹⁸⁰ Issam Mansour, T. 3 July 2014, pp 32-33, 69-70; exhibit P206 (Report on DNA profile analysis for human identity testing, 8 March 2005), p. 5.

²⁹⁸¹ Issam Mansour, T. 3 July 2014, pp 69-70.

²⁹⁸² Fouad Ayoub, T. 2 July 2014, pp 16-17.

²⁹⁸³ Alleles are pairs or series of genes on a chromosome that determine hereditary characteristics.

²⁹⁸⁴ Fouad Ayoub, T. 2 July 2014, pp 17-18, 20-21, 109; Issam Mansour, T. 3 July 2014, pp 44, 46-47; exhibit P206 (Report on DNA profile analysis for human identity testing, 8 March 2005), pp 16, 18; *see also* Asaad Nohra, T. 4 February 2014, p. 23; exhibit P117 (ISF forensic report on genetic imprints), p. 5.

²⁹⁸⁵ Issam Mansour, T. 3 July 2014, p. 71.

²⁹⁸⁶ Exhibit P318 (Report by Christophe Champod and others on DNA profile comparisons, 31 January 2013), ERN 60278547.

²⁹⁸⁷ Issam Mansour, T. 3 July 2014, pp 38-41; exhibit P206 (Report on DNA profile analysis for human identity testing, 8 March 2005), pp 9-11, 14, 17.

²⁹⁸⁸ Issam Mansour, T. 3 July 2014, p. 44; exhibit P206 (Report on DNA profile analysis for human identity testing, 8 March 2005), pp 16, 18; Fouad Ayoub, T. 2 July 2014, pp 22, 28-29. *See also* exhibit P196 (Dr Ayoub's report on DNA results of samples from crime scene, 24 February 2005), p. 7; exhibit P204 (Report by Dr Ayoub on DNA data of individuals recovered from crime scene).

1433. On 21 June 2005, Dr Mansour received another evidentiary sample—a chewed piece of chewing gum from Ms Ibtissam Taha, the mother of a person of interest in the attack, Mr Khaled Taha.²⁹⁸⁹ The sample was collected by an official in the forensic laboratories office of the Scientific Division of the police at the request of investigating Judge Elias Eid. The Judge instructed the official to take samples from Mr Taha’s parents and proceed with a DNA profile analysis on him.²⁹⁹⁰ Dr Mansour analysed the sample and found that it did not match any of the DNA profiles of samples recovered from the crime scene.²⁹⁹¹

1434. According to the ISF Forensic Laboratories Bureau, a DNA analysis of 17 biological samples from the crime scene concluded that none of the genetic imprints matched the genetic imprints of either of Mr Abu Adass’s parents.²⁹⁹²

1435. Professor Champod compared all the DNA profiles from the human remains collected at the crime scene to Mr Abu Adass’s DNA profile and none of the comparisons ‘led to any match or close correspondence’. Professor Champod also compared Mr Abu Adass’s mother’s DNA profile with all of the DNA profiles of the human remains recovered after the explosion and found that none of them were her ‘biological child or relative of maternal lineage’.²⁹⁹³

iii. Submissions

1436. According to the Prosecution, 92 biological parts of the ‘unknown man’ were recovered, including a tooth demonstrating that he was no more than 25 years old. The distribution of the remains of the unidentified man demonstrates that he was inside or immediately in front of the cab of the vehicle and no more than one to two metres from the explosive device when it exploded.²⁹⁹⁴

²⁹⁸⁹ Issam Mansour, T. 3 July 2014, p. 53; exhibit P208 (ISF DNA profile analysis), pp 10, 12. *See also* exhibit P203 (Dr Ayoub’s report on Ms Taha’s DNA profile); Fouad Ayoub, T. 2 July 2014, pp 24-26. Regarding Mr Taha, *see* chapter XII ‘Claim of responsibility for the attack on Rafik Hariri’, (E) ‘Mr Abu Adass’s disappearance and surrounding events’.

²⁹⁹⁰ Exhibit P208, pp 1-8.

²⁹⁹¹ Issam Mansour, T. 3 July 2014, pp 53-55; exhibit P208, pp 9-11. *See also* exhibit P203; Fouad Ayoub, T. 2 July 2014, pp 24-26.

²⁹⁹² Asaad Nohra, T. 4 February 2014, pp 19-22; exhibit P117, p. 5.

²⁹⁹³ Exhibit P318 (Report by Christophe Champod and others on DNA profile comparisons, 31 January 2013), ERNs 60278548, 60278550. *See also* exhibit P318 (Corrigendum to report by Christophe Champod and others on DNA profile comparisons, 3 June 2013), ERN 60281214.

²⁹⁹⁴ Prosecution final trial brief, paras 1086-1088.

However, his DNA did not match that of Mr Abu Adass, nor was Mr Abu Adass's DNA found at the crime scene. Therefore, he could not have been the suicide bomber.²⁹⁹⁵

1437. According to the Merhi Defence, it was impossible to conclude that all individuals were identified after the explosion and therefore, the Trial Chamber cannot find beyond reasonable doubt that Mr Abu Adass's remains were not at the crime scene.²⁹⁹⁶ Given the contamination of the crime scene, it is a reasonable possibility that the biological evidence which could prove Mr Abu Adass's presence disappeared or was destroyed before it was analysed.²⁹⁹⁷ There were eight samples of human fragments found at the crime scene without a DNA profile.²⁹⁹⁸ While the Prosecution alleges that the tooth found at the crime scene did not belong to Mr Abu Adass, there was a second tooth found at the crime scene a year after the explosion and it was not possible to extract any DNA from it, despite the fact that teeth are among the best DNA sources.²⁹⁹⁹

1438. Further, Dr Ayoub conceded that there could have been smaller fragments of an individual who had been even closer to the explosion which had not been found—they could have been propelled into the sea or elsewhere during the blast as the remains of the unknown man were propelled in the direction of the sea.³⁰⁰⁰ Finally, it is a reasonable possibility that although Mr Abu Adass was not driving the van—because he could not drive—he could have been inside, or immediately in front of, the van to ensure the manual detonation of the bomb at the right time.³⁰⁰¹

1439. The Prosecution responded to the Merhi Defence argument about the eight bone fragment samples with no DNA profile, submitting that one of the items had a DNA profile that matched one of the identified victims, Mr Al-Arab. The remaining seven samples without a profile were too deteriorated to find a match and in any case, it is 'highly unlikely and speculative that the one

²⁹⁹⁵ Prosecution final trial brief, paras 1089, 1096-1099; Prosecution closing submissions, T. 13 September 2018, pp 53-55.

²⁹⁹⁶ Merhi Defence final trial brief, paras 470, 478; Merhi Defence closing submissions, T. 18 September 2018, pp 23-24, 41.

²⁹⁹⁷ Merhi Defence final trial brief, paras 463, 470, 478; Merhi Defence closing submissions, T. 18 September 2018, pp 44, 56-57.

²⁹⁹⁸ Merhi Defence final trial brief, para. 472, annex L; Merhi Defence closing submissions, T. 18 September 2018, pp 41-43.

²⁹⁹⁹ Merhi Defence final trial brief, para. 474; Merhi Defence closing submissions, T. 18 September 2018, pp 42-43.

³⁰⁰⁰ Merhi Defence final trial brief, paras 471-473; Merhi Defence closing submissions, T. 18 September 2018, pp 44-46, 49.

³⁰⁰¹ Merhi Defence final trial brief, paras 475-476; Merhi Defence closing submissions, T. 18 September 2018, p. 52.

man ostensibly to be found there just happened to be' one of the seven that could not be profiled.³⁰⁰²

iv. Findings

1440. The Trial Chamber has considered that Dr Ayoub and the Dutch forensic team reached the same conclusion based on the distribution of the remains at the crime scene—that the unidentified man was very close, within one to two metres to the explosive device when it detonated. The Spanish forensic team's findings on where the remains were found are also consistent with this conclusion. In light of this, the Trial Chamber is satisfied that based on the remains of the unidentified male recovered at the crime scene, he was the closest in proximity—within one to two metres—to the explosive device when it detonated. He was most likely the suicide bomber.

1441. The Trial Chamber has carefully considered the evidence on the teeth found at the crime scene on 6 March 2005 and 30 May 2006, and in particular Dr Ayoub's evidence that the first tooth came from an unidentified male. Dr Ayoub concluded that it belonged to a 20-25-year-old man who was not Lebanese, or had not lived in Lebanon for a long period. Dr Ayoub's conclusion on the identity of the unidentified male based on this tooth is unconvincing, in particular that it belonged to a man 'who had not lived in Lebanon for a long period before his death'. Dr Ayoub refers to a distinguishing feature on the tooth that is rarely seen among the Lebanese to substantiate this conclusion, but there is no scientific support for such a conclusion, which rather was based on Dr Ayoub's own personal observations. The Trial Chamber therefore will not base any findings on this aspect of Dr Ayoub's evidence.

1442. The Trial Chamber however is satisfied with Dr Ayoub's evidence about the other characteristics of the tooth found on 6 March 2005 and accepts that it belonged to a young male in his early 20s.

1443. Beyond the evidence that the tooth belonged to a young male in his early 20s, there is no further identifying evidence in the human remains analysed by the forensic experts on his identity. The Trial Chamber therefore cannot make a finding on the identity of the 'unidentified male'.

³⁰⁰² Prosecution closing submissions, T. 13 September 2018, pp 55-58.

1444. For the second tooth found in 2006, Dr Ayoub could not retrieve a DNA profile from it and therefore there is insufficient evidence to make any finding on this tooth.

1445. The expert forensic evidence shows that none of the human remain samples found at the crime scene matched Mr Abu Adass's DNA profile. The Trial Chamber has considered the contamination which occurred at the crime scene and how it may have affected the quality, and quantity, of human remains recovered.³⁰⁰³ It has also considered that there were at least seven samples of human remains with no DNA profile. However, there is no further evidence that these samples belong to Mr Abu Adass. Therefore, the Trial Chamber cannot be satisfied, from the totality of the evidence before it, that these samples belonged to Mr Abu Adass.

1446. However, based on the DNA evidence found at the scene and the analysis of DNA samples from Mr Abu Adass's family members, the Trial Chamber is satisfied beyond a reasonable doubt that Mr Abu Adass was not the suicide bomber.

4. Conclusion

1447. In summary, the Trial Chamber finds that the crime scene investigation was mismanaged and chaotic, particularly in the initial period after the explosion. While the disorganised nature of the initial investigation affected the reliability of some evidence recovered at the crime scene, the subsequent investigations by the Lebanese authorities and various international teams resulted in the reliable collection of the key evidence referred to above.

1448. The Trial Chamber further finds that the attack involved an explosion of high explosives material, specifically RDX, in the quantity of 2,500 to 3,000 kilograms of TNT equivalent, laid out in a rectangular shape, located 50 to 80 centimetres above the ground in the rear of a Mitsubishi Canter truck, and triggered by a suicide bomber. Finally, the Trial Chamber finds that the attack killed 22 people, including Mr Hariri, and injured 226 others, as pleaded, and that the unknown suicide bomber died in the explosion.³⁰⁰⁴

³⁰⁰³ See above, at para. 1419.

³⁰⁰⁴ See paras 1416-1418.

G. Victim harm

1. Introduction

1449. In this section, the Trial Chamber sets out the harm caused to the victims of the explosion of 14 February 2005. The Trial Chamber will make findings of harm in relation to indirect and direct victims.³⁰⁰⁵ Direct victims are those who were directly killed or injured by the explosion,³⁰⁰⁶ while indirect victims are those who are dependants or relatives of persons who died or were injured in the explosion.³⁰⁰⁷ The Trial Chamber will satisfy itself to ‘beyond a reasonable doubt’ standard with respect to direct victims. Arguably, a ‘balance of probabilities’ standard suffices for indirect victims,³⁰⁰⁸ the Trial Chamber is in any case satisfied beyond reasonable doubt that indirect victims suffered harm.

1450. The Trial Chamber has also, where appropriate, made findings about harm caused to Prosecution witnesses who are not participating victims.³⁰⁰⁹ Article 25 of the Statute allows the Trial Chamber—for the purpose of facilitating any future claim for compensation before any competent authority in Lebanon—to ‘identify victims who have suffered harm’ as a result of the explosion of 14 February 2005. Nothing in this provision, or elsewhere in the Special Tribunal’s

³⁰⁰⁵ Rule 2 defines a victim as ‘a natural person who has suffered physical, material or mental harm as a direct result of an attack within the Tribunal’s jurisdiction’. This definition of a victim encompasses both ‘direct’ victims and ‘indirect’ victims who personally suffered harm as a direct result of the attack. Professor Letschert, relying on the definition provided by Alex Schmid, adopted the phrase ‘primary’ and ‘secondary’ victims. Exhibit 1V42 (Professor Letschert’s report), pp 7-8.

³⁰⁰⁶ Pre-Trial Judge decision on victims’ participation in the proceedings, paras 43, 45. *See also* exhibit 1V42 (Professor Letschert’s report), p. 8. Professor Letschert did not provide a definition of ‘primary’ victims, but referred to a definition provided by Mr Schmid, which provides that this category of victims can include: a) Those who are killed by terrorist kidnappers, hostage-takers, gunmen or bombers; b) Those who are injured, mutilated or mentally tortured by terrorists but are ultimately released or liberated; c) Those who are wounded or die in a counter-terrorist rescue operation at the hands of terrorists or armed first responders; and d) Those who become mentally or physically handicapped or die (by suicide) in a causal sequence to one or several terrorist events in which they were involved or of which they were direct witnesses.

³⁰⁰⁷ Pre-Trial Judge decision on victims’ participation in the proceedings, paras 43, 45. *See also* exhibit 1V42 (Professor Letschert’s report), p. 8. Professor Letschert defined secondary victims as ‘dependants or relatives of the deceased and first responders to acts of terrorism’. The Trial Chamber considers that this category could also include dependents or relatives of those injured in the attack and in the present case, there is no evidence of actual first responders to acts of terrorism. In the present case, the category of secondary victims was quite narrow and Professor Letschert referred to this: there was ‘a limited range of familial relationship between the bereaved victims and the deceased’. Rianne Letschert, T. 8 September 2017, pp 49, 54-56.

³⁰⁰⁸ *See* paras 895-896.

³⁰⁰⁹ *See* para. 894; *see also* sub-section (4) ‘Witnesses who are not participating victims’, below.

legal framework, limits this identification to victims formally authorised to participate in the proceedings.

1451. In her evidence, victimologist Professor Rianne Letschert, who provided evidence for the Legal Representatives of Victims, also identified a category of ‘tertiary’ victims, ‘in other words society at large’.³⁰¹⁰ The impact on this category is, for Professor Letschert, what is distinctive about the crime of terrorism. The Special Tribunal’s Statute and Rules restrict participation as victims to natural persons who can show physical, material or mental harm consequential to the attack. To avoid confusion, the Trial Chamber has therefore considered evidence on the question of broader societal harm, without using the term ‘victim’.

2. Direct victims

(a) Deceased victims

1452. The Prosecution and counsel for each Accused agreed, under Rule 122, that the explosion on 14 February 2005, in Beirut, killed the former Prime Minister of Lebanon, Mr Rafik Hariri, and 21 others, listed in schedule A of the amended consolidated indictment.³⁰¹¹ The Trial Chamber concluded that further evidence is not required, in the interests of justice, to prove these deaths.³⁰¹²

1453. The Trial Chamber found that the explosion on 14 February 2005 killed Mr Hariri and eight members of his motor convoy: Mr Yahya Al-Arab, Mr Omar Al-Masri, Mr Mazen Al-Zahabi, Mr Mohammed Darwiche, Mr Bassel Farid Fuleihan, Mr Mohammed Riad Ghalayini, Mr Talal Nasser and Mr Ziad Tarraf. Additionally, it found that the explosion caused the death of 13 bystanders: Mr Joseph Aoun, Mr Zahi Bou Rjeily, Mr Mahmoud Al-Hamad Al-Mohammed, Mr Mahmoud Al-Khalaf, Mr Sobhi Mohammed Al-Khodr, Ms Rima Bazzi, Mr Abdo Bou Farah, Ms Yamama Damen, Mr Abdul Hamid Ghalayini, Mr Rawad Suleiman Haidar, Mr Farhan Ahmad Issa, Ms Alaa Osfour and Mr Haitham Osman.³⁰¹³

³⁰¹⁰ Exhibit 1V42 (Professor Letschert’s report), p. 9.

³⁰¹¹ Agreed facts, no. (i).

³⁰¹² The Trial Chamber has in any event received into evidence the death certificates for the majority of the victims who perished in the explosion. Exhibit P191 (Death certificates); exhibit 1V45 (Rule 154 documents Legal Representatives of Victims), pp 739, 741, 745-746.

³⁰¹³ See paras 1416-1417.

(b) Participating victims

1454. The Legal Representatives of Victims submit that the following victims participating in the proceedings suffered direct physical, mental and or material harm as a result of the explosion: Ms Liliane Khallouf,³⁰¹⁴ Ms Maria Al-Kasti,³⁰¹⁵ Victim 16,³⁰¹⁶ Ms Sanaa El-Sheikh,³⁰¹⁷ Mr Nabih Mhanna,³⁰¹⁸ Mr Wissam Naji,³⁰¹⁹ Mr Rabih Nohra,³⁰²⁰ Victim 35,³⁰²¹ Mr Raymond Abou-Chaaya,³⁰²² Victim 73,³⁰²³ Victim 30,³⁰²⁴ Mr Mahmoud Wazzan,³⁰²⁵ Mr Mohammed Dia,³⁰²⁶ Mr Rachid Hammoud,³⁰²⁷ Victim 34,³⁰²⁸ Victim 12,³⁰²⁹ Victim 13³⁰³⁰ and Victim 33.³⁰³¹

1455. The Trial Chamber finds beyond reasonable doubt that the following participating victims suffered relevant harm as a direct result of the explosion, as follows.

i. Liliane Khallouf

1456. Ms Liliane Khallouf³⁰³² was working in the HSBC building when the explosion took place. She fell flat on her face, causing head, facial and nose trauma.³⁰³³ Immediately after the explosion, she left the building and sat on the pavement outside the HSBC building; she felt dizzy, and her face was swollen and covered in blood.³⁰³⁴ She was taken to the St Georges Hospital, where she remained for five or six days, undergoing an operation for injuries to her nose and face.³⁰³⁵ She had 12 days of sick leave, starting from 17 February 2005.³⁰³⁶ Ms Khallouf spent money on

³⁰¹⁴ Legal Representatives of Victims final trial brief, paras 139-152.

³⁰¹⁵ Legal Representatives of Victims final trial brief, paras 153-172.

³⁰¹⁶ Legal Representatives of Victims final trial brief, paras 173-190.

³⁰¹⁷ Legal Representatives of Victims final trial brief, paras 191-201.

³⁰¹⁸ Legal Representatives of Victims final trial brief, paras 202-206.

³⁰¹⁹ Legal Representatives of Victims final trial brief, paras 207-217.

³⁰²⁰ Legal Representatives of Victims final trial brief, paras 218-228.

³⁰²¹ Legal Representatives of Victims final trial brief, paras 229-236.

³⁰²² Legal Representatives of Victims final trial brief, paras 237-248.

³⁰²³ Legal Representatives of Victims final trial brief, paras 249-257.

³⁰²⁴ Legal Representatives of Victims final trial brief, paras 258-268.

³⁰²⁵ Legal Representatives of Victims final trial brief, paras 269-270.

³⁰²⁶ Legal Representatives of Victims final trial brief, paras 588-594.

³⁰²⁷ Legal Representatives of Victims final trial brief, paras 567-587.

³⁰²⁸ Legal Representatives of Victims final trial brief, paras 640-651.

³⁰²⁹ Legal Representatives of Victims final trial brief, paras 595-609.

³⁰³⁰ Legal Representatives of Victims final trial brief, paras 610-625.

³⁰³¹ Legal Representatives of Victims final trial brief, paras 626-639.

³⁰³² Victims agreed facts, V031.

³⁰³³ Exhibit 1V45, pp 533, 536-537.

³⁰³⁴ Liliane Khallouf, T. 29 August 2017, p. 11.

³⁰³⁵ Liliane Khallouf, T. 29 August 2017, pp 11-12, 22; exhibit 1V45, pp 533, 536-537.

³⁰³⁶ Exhibit 1V45, pp 536-537, 539-540.

hospital fees and medication after the explosion.³⁰³⁷ Her condition improved after a second operation on her nose a year later, although she still experiences discomfort and sinus infections.³⁰³⁸ Ms Khallouf also suffered a concussion.³⁰³⁹ Moving her head quickly causes her dizziness due to the severity of the concussive blow.³⁰⁴⁰ This sometimes occurs on a daily basis.³⁰⁴¹ The sound of an ambulance siren transports Ms Khallouf back to the day of the explosion.³⁰⁴²

ii. Maria Al-Kasti

1457. Ms Maria Al-Kasti³⁰⁴³—also working in the HSBC building—lost consciousness in the explosion and was in a state of semi-consciousness in hospital for around 48 hours.³⁰⁴⁴ Her husband told her that she underwent a CT (computerised tomography) scan and a wound on the back of her head was stapled.³⁰⁴⁵ When she woke up, she was vomiting blood.³⁰⁴⁶ Doctors told her that she had internal bleeding in her head and a fracture on the right side of her skull.³⁰⁴⁷ She had head trauma, a right frontal concussion and right frontal small subdural and subarachnoid hematoma.³⁰⁴⁸

1458. When she first left the hospital, she was taking a number of medications, including strong painkillers and medicine for nausea,³⁰⁴⁹ she was unable to drive for a period.³⁰⁵⁰ She was signed off work until early April 2005, due to the head injury.³⁰⁵¹ She stayed with her in-laws for around two months as she felt unable to be alone at home,³⁰⁵² and suffered depression, for which she was prescribed an anti-depressant for a short time.³⁰⁵³ Her husband took over helping her children with their homework for a period of three or four months.³⁰⁵⁴

³⁰³⁷ Exhibit 1V45, pp 545-546, 548-549.

³⁰³⁸ Liliane Khallouf, T. 29 August 2017, pp 22, 27. *See also* exhibit 1V45, pp 542-543.

³⁰³⁹ Liliane Khallouf, T. 29 August 2017, pp 25-26.

³⁰⁴⁰ Liliane Khallouf, T. 29 August 2017, pp 22, 26.

³⁰⁴¹ Liliane Khallouf, T. 29 August 2017, p. 26.

³⁰⁴² Liliane Khallouf, T. 29 August 2017, p. 23.

³⁰⁴³ Victims agreed facts, V009.

³⁰⁴⁴ Maria Al-Kasti, T. 29 August 2017, p. 41.

³⁰⁴⁵ Maria Al-Kasti, T. 29 August 2017, p. 49. *See also* exhibit 1V45, p. 193.

³⁰⁴⁶ Maria Al-Kasti, T. 29 August 2017, pp 49-50.

³⁰⁴⁷ Maria Al-Kasti, T. 29 August 2017, p. 50.

³⁰⁴⁸ Exhibit 1V45, p. 193.

³⁰⁴⁹ Maria Al-Kasti, T. 29 August 2017, pp 57-58.

³⁰⁵⁰ Maria Al-Kasti, T. 29 August 2017, p. 61.

³⁰⁵¹ Exhibit 1V45, p. 194.

³⁰⁵² Maria Al-Kasti, T. 29 August 2017, pp 57-58.

³⁰⁵³ Maria Al-Kasti, T. 29 August 2017, p. 59.

³⁰⁵⁴ Maria Al-Kasti, T. 29 August 2017, pp 61-62.

1459. Ms Al-Kasti suffered long-lasting effects from the explosion. She testified that it is impossible to forget and has seriously impacted her life.³⁰⁵⁵ She has lost a fraction of her senses of taste and smell due to damage to the olfactory nerve in her head.³⁰⁵⁶ This damage to her senses has been difficult for her psychologically³⁰⁵⁷ and affects her everyday life.³⁰⁵⁸ Ms Al-Kasti also suffers from neck pain and headaches, as well as dizziness, and some memory loss about the time before her marriage.³⁰⁵⁹ She has stopped celebrating Valentine's Day.³⁰⁶⁰

iii. Victim 16

1460. Victim 16,³⁰⁶¹ who was inside the HSBC building at the time of the explosion, was bruised and scratched from the shattered glass.³⁰⁶² He could not sleep on the night of 14 February 2005 for fear he might die, and wrote his will.³⁰⁶³ A doctor who examined him the following day noted that he was suffering from 'severe headaches, stress, incoherence and has several bruises over his whole body', and recommended he be examined by a neurologist.³⁰⁶⁴

1461. The mental and physical harm Victim 16 suffered was long-lasting. He stayed home and was unable to return to Beirut for four months after the explosion.³⁰⁶⁵ A urologist who examined him on 10 April 2005 certified that he suffered from insomnia and hearing the sound of explosions while sleeping, urinary incontinence and sexual impotence.³⁰⁶⁶ These symptoms persisted in 2017.³⁰⁶⁷ Victim 16 explained that he was constantly anxious and, wanting to isolate himself from family and friends, struggled at home; he eventually visited a neurologist on the insistence of his wife.³⁰⁶⁸ On 29 April 2005, Victim 16 was diagnosed with a spastic colon.³⁰⁶⁹ In June 2005, a neurological examination found that, as a result of the explosion, over the previous four months,

³⁰⁵⁵ Maria Al-Kasti, T. 29 August 2017, p. 84.

³⁰⁵⁶ Maria Al-Kasti, T. 29 August 2017, pp 51-55.

³⁰⁵⁷ Maria Al-Kasti, T. 29 August 2017, p. 55.

³⁰⁵⁸ Maria Al-Kasti, T. 29 August 2017, pp 55-57, 66-67.

³⁰⁵⁹ Maria Al-Kasti, T. 29 August 2017, pp 51, 57, 60.

³⁰⁶⁰ Maria Al-Kasti, T. 29 August 2017, p. 60.

³⁰⁶¹ Victims agreed facts, V016; exhibit 1V45, pp 315-318, 323.

³⁰⁶² Victim V016, T. 30 August 2017, pp 47, 51.

³⁰⁶³ Victim V016, T. 30 August 2017, p. 52.

³⁰⁶⁴ Victim V016, T. 30 August 2017, pp 51-54; exhibit P190 (V016's statement), p. 1. *See also* exhibit 1V45, p. 325.

³⁰⁶⁵ Victim V016, T. 30 August 2017, p. 52.

³⁰⁶⁶ Exhibit 1V45, p. 327. *See also* exhibit P190 (V016's statement), p. 2; Victim V016, T. 30 August 2016, pp 56-58, 67.

³⁰⁶⁷ Victim V016, T. 30 August 2017, pp 63-65.

³⁰⁶⁸ Victim V016, T. 30 August 2017, pp 54-56.

³⁰⁶⁹ Exhibit 1V45, p. 333.

Victim 16 suffered from ‘a serious state of stress accompanied by depression and panic attacks’.³⁰⁷⁰ These symptoms persisted in 2010³⁰⁷¹ and 2017.³⁰⁷²

1462. Victim 16 was diagnosed with PTSD in 2010; at that time, he was suffering chronic stress, headaches, stomach aches and sexual impotence, and required ongoing medical care.³⁰⁷³ He was still suffering from these effects and taking a number of medications in 2017.³⁰⁷⁴ He explained to the Trial Chamber that he is a changed person; unable to endure loud noise; and added: ‘I panic. I’m afraid about the future, about the present. I’m always in a state of fear.’³⁰⁷⁵ Victim 16 also suffered material damage from the explosion. His car was completely destroyed in the blast.³⁰⁷⁶

1463. He had been unable to work since the explosion.³⁰⁷⁷ He had not sought or received any financial or moral compensation; he hopes that the Special Tribunal will be able to establish the truth and bring the perpetrators to justice, and he hopes to be compensated.³⁰⁷⁸

iv. Sanaa El-Sheikh

1464. Ms Sanaa El-Sheikh³⁰⁷⁹ was in her office on the second floor of the HSBC at the moment of the explosion.³⁰⁸⁰ Ms El-Sheikh was injured by glass shrapnel falling on her head. Colleagues later told her that she was covered in blood; she was carried out of the building and driven to the American University Hospital.³⁰⁸¹ She began to comprehend what had happened at the hospital, where she remained until 21:30 that evening.³⁰⁸² A wound on the left side of her crown required 22 or 25 stitches, performed without anaesthesia.³⁰⁸³ She also suffered from face bruises and hypotension.³⁰⁸⁴ She was given ten days of sick leave, but returned to work a week later.³⁰⁸⁵ Her

³⁰⁷⁰ Exhibit 1V45, p. 33. *See also* exhibit P190 (V016’s statement), p. 2.

³⁰⁷¹ Exhibit 1V45, p. 335.

³⁰⁷² Victim V016, T. 30 August 2017, p. 64.

³⁰⁷³ Exhibit 1V45, p. 329. *See also* exhibit P190 (V016’s statement), pp 2-3, 5.

³⁰⁷⁴ Victim V016, T. 30 August 2017, pp 65-66. *See also* exhibit P190 (V016’s statement), pp 2-3.

³⁰⁷⁵ Victim V016, T. 30 August 2017, pp 64, 66-67.

³⁰⁷⁶ Victim V016, T. 30 August 2017, pp 39-44, 69; exhibit 1V45, pp 337, 339, 341. *See also* exhibit 1V15 (Photograph of car after the explosion); exhibit P190 (Victim V016’s statement), pp 5-6.

³⁰⁷⁷ Victim V016, T. 30 August 2017, p. 69; exhibit P190 (V016’s statement), pp 4-5.

³⁰⁷⁸ Victim V016, T. 30 August 2017, pp 70-75.

³⁰⁷⁹ Victims agreed facts, V010.

³⁰⁸⁰ Exhibit 1V11 (Sanaa El-Sheikh’s witness statement), para. 10.

³⁰⁸¹ Exhibit 1V11 (Sanaa El-Sheikh’s witness statement), para. 12.

³⁰⁸² Exhibit 1V11 (Sanaa El-Sheikh’s witness statement), paras 11, 13.

³⁰⁸³ Exhibit 1V11 (Sanaa El-Sheikh’s witness statement), para. 14; exhibit 1V45, pp 200-201.

³⁰⁸⁴ Exhibit 1V45, p. 201.

³⁰⁸⁵ Exhibit 1V11 (Sanaa El-Sheikh’s witness statement), para. 15.

head was then still swollen.³⁰⁸⁶ Since the attack, the witness has become ‘very nervous generally’.³⁰⁸⁷

1465. Ms El-Sheikh could not use her car for about eight months after the explosion. She received compensation for damage to her car, covering an insignificant portion of the costs incurred.³⁰⁸⁸

v. Nabih Mhanna

1466. Having driven his employer to the HSBC, Mr Nabih Mhanna³⁰⁸⁹ was standing in front of the building at the moment of the explosion.³⁰⁹⁰ Mr Mhanna sustained an injury to his right hand and was briefly treated at the American University Hospital.³⁰⁹¹ He had to take a week off work.³⁰⁹²

vi. Wissam Naji

1467. Mr Wissam Naji³⁰⁹³ was writing an email at his desk on the third floor of the *Machkhas* Center at the moment of the explosion. When he opened his eyes, the office was destroyed and there was glass everywhere. His ears and eyes were hurting. Mr Naji’s secretary came in and fainted when she saw him. He saw blood on his hand as he tried to wake her. He felt warm blood coming out of his body and realised he was hurt.³⁰⁹⁴

1468. He was taken to the American University Hospital where he received first aid.³⁰⁹⁵ He sustained injuries to his leg and neck, which took two to three weeks to heal. Due to the trauma of the explosion, he was unable to have children for five years after the attack and underwent long and costly treatment.³⁰⁹⁶ Mr Naji could not recall much about the period after the attack, but stated it was a very difficult time in which he suffered psychologically. There were days when he could not work and relied on his mother.³⁰⁹⁷ He could not forget the burned bodies, chaos and screaming

³⁰⁸⁶ Exhibit 1V11 (Sanaa El-Sheikh’s witness statement), para. 15.

³⁰⁸⁷ Exhibit 1V11 (Sanaa El-Sheikh’s witness statement), para. 18.

³⁰⁸⁸ Exhibit 1V11 (Sanaa El-Sheikh’s witness statement), para. 16;

³⁰⁸⁹ Victims agreed facts, V019.

³⁰⁹⁰ Exhibit P190 (Nabih Mhanna’s witness statement), pp 1, 4.

³⁰⁹¹ Exhibit P190 (Nabih Mhanna’s witness statement), pp 1-3. *See also* exhibit 1V45, pp 373-374.

³⁰⁹² Exhibit P190 (Nabih Mhanna’s witness statement), p. 4. *See also* exhibit 1V45, pp 373-374.

³⁰⁹³ Victims agreed facts, V014.

³⁰⁹⁴ Exhibit 1V13 (Wissam Naji’s statement), para. 7.

³⁰⁹⁵ Exhibit 1V13 (Wissam Naji’s statement), para. 8.

³⁰⁹⁶ Exhibit 1V13 (Wissam Naji’s statement), para. 11.

³⁰⁹⁷ Exhibit 1V13 (Wissam Naji’s statement), para. 12.

at the hospital,³⁰⁹⁸ or the sadness of the hours after the attack when his family believed him to be dead.³⁰⁹⁹

vii. Rabih Nohra

1469. Mr Rabih Nohra,³¹⁰⁰ at work in the Café Mondo in the Phoenicia Hotel, was pushed toward the inside of the restaurant and saw destruction all around him.³¹⁰¹ Although he did not lose consciousness, it took him about 15 minutes to understand what had happened. A colleague asked him if he was hurt; he realised that he was bleeding and checked himself for injuries.³¹⁰² He could not feel the pain until later in the hospital, but was ‘very anxious and very tired’.³¹⁰³

1470. Mr Nohra sustained injuries from broken glass to the right side of his face, which required stitches and has left scars.³¹⁰⁴ He suffered significant material damage. His place of employment was badly affected by the explosion; his basic salary was lowered and the customer tips on which he relied dried up. This caused him a lot of stress and he was forced to postpone his wedding.³¹⁰⁵ He hopes that the perpetrators will be punished,³¹⁰⁶ and additionally stated that a ‘memorial for the victims, payment of money, apology by the offender, apology by officials ... are all important and should happen ... As for me, I felt that my life had stopped for a while.’³¹⁰⁷

viii. Victim 35

1471. Victim 35,³¹⁰⁸ who was at the Phoenicia Hotel, was knocked to the floor by the force of the explosion and suffered head trauma from a ceiling falling on him.³¹⁰⁹ He was treated at a hospital for two days.³¹¹⁰ Victim 35 was hallucinating, unresponsive to commands and stimuli, and ‘moving his head in a crazy manner’; he was unable to move his lower extremities and complained

³⁰⁹⁸ Exhibit 1V13 (Wissam Naji’s statement), para. 8.

³⁰⁹⁹ Exhibit 1V13 (Wissam Naji’s statement), paras 9-10.

³¹⁰⁰ Victims agreed facts, V080.

³¹⁰¹ Exhibit 1V12 (Rabih Nohra’s statement), paras 8-9; exhibit P190 (Victim interview of Rabih Nohra), ERN 60193142.

³¹⁰² Exhibit 1V12 (Rabih Nohra’s statement), para. 9.

³¹⁰³ Exhibit 1V12 (Rabih Nohra’s statement), paras 9-10.

³¹⁰⁴ Exhibit 1V12 (Rabih Nohra’s statement), para. 11; exhibit P190 (Victim interview of Rabih Nohra), ERNs 60193142-60193143. *See also* exhibit 1V45, p. 880.

³¹⁰⁵ Exhibit 1V12 (Rabih Nohra’s statement), para. 11.

³¹⁰⁶ Exhibit 1V12 (Rabih Nohra’s statement), para. 18.

³¹⁰⁷ Exhibit 1V12 (Rabih Nohra’s statement), para. 19.

³¹⁰⁸ Victims agreed facts, V035.

³¹⁰⁹ Exhibit P190 (V035’s statement), ERNs 60197867-60197868.

³¹¹⁰ Exhibit P190 (V035’s statement), ERN 60197869; exhibit 1V45, p. 558.

of severe pain when minimal pressure was applied, as well as neck pain.³¹¹¹ At the time of his interview, he was still mentally affected by what happened.³¹¹²

ix. Raymond Abou-Chaaya

1472. Mr Raymond Abou-Chaaya³¹¹³ was riding his motorcycle past the Phoenicia Hotel when he was thrown about four meters in the explosion, ‘as though a storm had hit me’.³¹¹⁴ Although wearing a helmet, he used his hands to cover his head and remained conscious.³¹¹⁵ All he could hear was the roaring sound from the explosion, which felt ‘as if an engine had ignited in my head’.³¹¹⁶ After about 15 minutes, Mr Abou-Chaaya retrieved his motorcycle, found it still worked and rode it back to the ISF headquarters. There, he sat on the ground and could not move.³¹¹⁷ Soldiers drove him to the *Sacré-Cœur* Hospital, where he remained for two to three days for observation.³¹¹⁸

1473. Mr Abou-Chaaya suffered scratches, damage to his left eardrum and neck and lower back pain.³¹¹⁹ A medical report dated 16 February 2005 states that he was admitted to the emergency room on 14 February 2005 and ‘suffers from pain in both ears and several bruises on his body from a powerful explosion’. The report gave Mr Abou-Chaaya one week sick leave. Mr Abou-Chaaya took three months off work. In the period immediately after the attack, his ears were so sensitive that he ‘could not stand two persons talking at the same time’.³¹²⁰ He had pain in his neck and lower back, and wore a neck brace for three months.³¹²¹ When he returned to work, Mr Abou-Chaaya’s supervisor allowed him to not ride a motorcycle at work.³¹²²

1474. Mr Abou-Chaaya’s salary was deducted during the period he was off work.³¹²³ His hospital fee was covered by his employer, the ISF, but not his treatment. His supervisor personally paid for

³¹¹¹ Exhibit 1V45, p. 590.

³¹¹² Exhibit P190 (V035’s statement), ERN 60197871.

³¹¹³ Victims agreed facts, V008.

³¹¹⁴ Exhibit 1V14 (Raymond Abou-Chaaya’s witness statement), para. 9; exhibit 1V45, p. 182.

³¹¹⁵ Exhibit 1V14 (Raymond Abou-Chaaya’s witness statement), para. 9.

³¹¹⁶ Exhibit 1V14 (Raymond Abou-Chaaya’s witness statement), para. 10.

³¹¹⁷ Exhibit 1V14 (Raymond Abou-Chaaya’s witness statement), para. 11.

³¹¹⁸ Exhibit 1V14 (Raymond Abou-Chaaya’s witness statement), paras 11-12.

³¹¹⁹ Exhibit 1V45, p. 182.

³¹²⁰ Exhibit 1V14 (Raymond Abou-Chaaya’s witness statement), para. 14.

³¹²¹ Exhibit 1V14 (Raymond Abou-Chaaya’s witness statement), para. 13.

³¹²² Exhibit 1V14 (Raymond Abou-Chaaya’s witness statement), para. 15.

³¹²³ Exhibit 1V14 (Raymond Abou-Chaaya’s witness statement), para. 15.

part of Mr Abou-Chaaya's medical treatment until he suffered an accident and could not continue to assist financially.³¹²⁴ At the time of his statement to the Legal Representatives of Victims, Mr Abou-Chaaya had an ear test every 15 days. He was prescribed medications and massages by the doctor, but these were not helping. He continued to feel pain in his neck, lower back and left ear, but had got used to it.³¹²⁵ He had recently resigned from his job.³¹²⁶ The roaring in Mr Abou-Chaaya's ears returns each year as the day of the explosion grows closer.³¹²⁷

1475. Mr Abou-Chaaya stated that there should be compensation and reparations: 'many people lost their loved ones, and some lost parts of their bodies'.³¹²⁸

x. Victim 73

1476. Victim 73³¹²⁹ was in a shop near the explosion site at the moment of the explosion and was thrown on the ground by its force, hurt by shattered glass and bleeding profusely.³¹³⁰ Since the explosion, he is forgetful and has problems with his hearing, sight, heart, veins, arteries and cholesterol. He takes a number of medications and wears corrective lenses.³¹³¹ A 2007 medical note states that, at that time, he suffered from stable angina.³¹³²

1477. In addition to damage to his car, the explosion caused extensive damage to Victim 73's shop and merchandise; his business was also badly affected by the subsequent closure of the area for investigations. He received compensation for the damage to his business and vehicle, but this was insufficient to cover his losses.³¹³³ Victim 73 hoped that the truth about what happened would be uncovered, for a memorial for the victims and financial compensation.³¹³⁴

³¹²⁴ Exhibit 1V14 (Raymond Abou-Chaaya's witness statement), para. 16.

³¹²⁵ Exhibit 1V14 (Raymond Abou-Chaaya's witness statement), para. 13.

³¹²⁶ Exhibit 1V14 (Raymond Abou-Chaaya's witness statement), para. 15.

³¹²⁷ Exhibit 1V14 (Raymond Abou-Chaaya's witness statement), para. 12.

³¹²⁸ Exhibit 1V14 (Raymond Abou-Chaaya's witness statement), para. 17.

³¹²⁹ Victims agreed facts, V073; exhibit 1V45, pp 858-859, 861.

³¹³⁰ Exhibit 1V22 (V073's statement), paras 8-9.

³¹³¹ Exhibit 1V22 (V073's statement), para. 10.

³¹³² Exhibit 1V45, p. 862.

³¹³³ Exhibit 1V22 (V073's statement), para. 11.

³¹³⁴ Exhibit 1V22 (V073's statement), para. 12.

xi. Victim 30

1478. Victim 30³¹³⁵ was at the Phoenicia Hotel and was hit by glass debris and parts of the ceiling.³¹³⁶ He sustained minor cuts to his head, back and legs.³¹³⁷ More significantly, he suffered PTSD and ‘a serious mental shock’.³¹³⁸ He later suffered a heart attack.³¹³⁹ Victim 30 had had marital problems since the explosion. A psychologist he consulted in 2010 and 2011 stated that he suffered ‘symptoms associated with post-traumatic stress; emotional block, with a sense of detachment from the family circle in general and the spouse in particular, avoidance of emotions, insomnia and disturbed sleep, hypervigilance, flashbacks of the bodies of his dead colleagues which he had to pick up himself, a sense of no future and a strong sense of insecurity’.³¹⁴⁰

1479. In addition to losing friends and colleagues who perished in the explosion, Victim 30 lost his business and with it his earning capacity.³¹⁴¹ Victim 30 also lost a number of valuable office items and had to replace them.³¹⁴² He received a cheque from the Lebanese Higher Relief Commission.³¹⁴³

xii. Mahmoud Wazzan

1480. Mr Mahmoud Wazzan³¹⁴⁴—the owner of the Poly Service maintenance and cleaning company—had an office in the STARCO Complex in Beirut, which was destroyed in the explosion. He was forced to vacate the premises and incurred material damage as a result, losing everything invested in the business, as his insurance did not cover damage related to terrorist attacks.³¹⁴⁵

³¹³⁵ Victims agreed facts, V030; exhibit 1V45, pp 470-473.

³¹³⁶ Exhibit P262.1, paras 23-30, 59-62, 65-66, 75-76.

³¹³⁷ Exhibit P262.1, paras 117-118; exhibit 1V45, pp 488-489.

³¹³⁸ Exhibit P262, para. 22.

³¹³⁹ Exhibit P262, para. 22.

³¹⁴⁰ Exhibit 1V45, p. 527.

³¹⁴¹ Exhibit P262, para. 20.

³¹⁴² Exhibit 1V45, pp 490, 493-494, 496, 498, 500-501, 503, 505, 508, 511-519.

³¹⁴³ Exhibit 1V45, p. 529.

³¹⁴⁴ Victims agreed facts, V029.

³¹⁴⁵ Exhibit 1V42 (Professor Letschert’s report), p. 25 (fn. 162). *See also* exhibit 1V45, pp 462, 464, 466, 468.

xiii. Mohammed Dia

1481. Mr Mohammed Dia, passenger in the second convoy vehicle, lost consciousness for several minutes after the explosion.³¹⁴⁶ A witness at the scene saw him ‘crying and slamming his head near the door to the St Georges’.³¹⁴⁷ Mr Dia then went to Quraitem Palace but could not remember how he got there. Once there, he realised that he was injured and was examined by a doctor.³¹⁴⁸ He sustained injury to his ears and received treatment for his hearing.³¹⁴⁹ Following the explosion, he was depressed, stayed at home for about three months and was unable to speak to anyone.³¹⁵⁰ He saw a psychologist. Mr Dia continued to take medication and saw a doctor every year, staying ‘a while for treatment’.³¹⁵¹ He had been unable to return to work since the explosion and stayed at home.³¹⁵²

xiv. Rachid Hammoud

1482. It was immediately clear that Mr Rachid Hammoud,³¹⁵³ a paramedic in the convoy ambulance, was seriously injured in the explosion. His face, head and arms were covered with blood and he could not see through one eye.³¹⁵⁴ He was in pain in the ambulance and unable to stand up because of two fractures in his leg and severe burns.³¹⁵⁵ There was shrapnel in his head and face; some was extracted over the following few days and one piece remained in his right eye.³¹⁵⁶ It took him about ten days to regain some sight in that eye.³¹⁵⁷ He also had a ‘very deep injury’ on his right mandible, which was treated by a plastic surgeon, as well as first and second degree burns on his head and face.³¹⁵⁸ His legs could not initially be put in a cast because of the

³¹⁴⁶ Mohammed Dia, T. 17 October 2014, pp 8-9.

³¹⁴⁷ Exhibit P336 (Statement of Tarek Soubra), para. 90.

³¹⁴⁸ Mohammed Dia, T. 17 October 2014, pp 10, 13-14.

³¹⁴⁹ Mohammed Dia, T. 17 October 2014, p. 13.

³¹⁵⁰ Mohammed Dia, T. 17 October 2014, pp 12-13, 23-24.

³¹⁵¹ Mohammed Dia, T. 17 October 2014, p. 13.

³¹⁵² Mohammed Dia, T. 17 October 2014, p. 20.

³¹⁵³ Victims agreed facts, V018.

³¹⁵⁴ Rachid Hammoud, T. 4 December 2014, p. 31. *See also* exhibit 1V45, p. 345.

³¹⁵⁵ Rachid Hammoud, T. 4 December 2014, pp 18, 37-38; exhibit P100 (Photographs of explosion), ERN D0184541. *See also* exhibit 1V45, p. 346.

³¹⁵⁶ Rachid Hammoud, T. 4 December 2014, pp 36-37.

³¹⁵⁷ Rachid Hammoud, T. 4 December 2014, pp 37, 43-44.

³¹⁵⁸ Rachid Hammoud, T. 4 December 2014, pp 37, 44-45.

burns.³¹⁵⁹ He suffered from burns to his forearm and right leg, multiple lacerations over his cheek and thigh, a fracture in his left leg and a nasal septal deviation.³¹⁶⁰

1483. He spent 25 days in hospital, but discharged himself because he felt threatened by a visit from a man with a Syrian accent.³¹⁶¹ He saw a psychologist and received medication for three or four months after the explosion.³¹⁶² He sought further medical assistance in March, April and May 2005 and was found to require rest because of his fractures and burns.³¹⁶³ In 2017, he was still suffering from PTSD.³¹⁶⁴

1484. Mr Hammoud's wife, who was pregnant at the time of the explosion, collapsed when she was misinformed that Mr Hammoud had died.³¹⁶⁵ She spent the next 25 days in hospital by his side.³¹⁶⁶ His children were unable to recognise him for some days after the explosion due to swelling from his injuries.³¹⁶⁷

1485. Mr Hammoud suffered from a number of long-term physical and psychological effects. These include a hearing impairment, a problem with a disc in his back which required surgery and the piece of glass in his eye.³¹⁶⁸ Since the explosion, he was very nervous and stressed, and took anti-anxiety medication.³¹⁶⁹ Mr Hammoud returned to work about three months after the explosion, but gave up his position at the American University Hospital at the end of 2005 as he felt unable to properly carry out his functions.³¹⁷⁰ He also angers quickly, which affects his entire household.³¹⁷¹ In an interview with Professor Letschert, Mr Hammoud said that he was fearful of future attacks and that 'everyday he says goodbye to his family as if it was the last day'.³¹⁷²

³¹⁵⁹ Rachid Hammoud, T. 4 December 2014, p. 38.

³¹⁶⁰ Exhibit 1V45, p. 347.

³¹⁶¹ Rachid Hammoud, T. 4 December 2014, pp 38-39, 43; exhibit 1V45, p. 347.

³¹⁶² Rachid Hammoud, T. 4 December 2014, p. 43.

³¹⁶³ Exhibit 1V45, pp 351, 353, 355.

³¹⁶⁴ Exhibit 1V45, p. 241.

³¹⁶⁵ Rachid Hammoud, T. 4 December 2014, p. 35.

³¹⁶⁶ Rachid Hammoud, T. 4 December 2014, pp 36, 42.

³¹⁶⁷ Rachid Hammoud, T. 4 December 2014, p. 42.

³¹⁶⁸ Rachid Hammoud, T. 4 December 2014, p. 41.

³¹⁶⁹ Rachid Hammoud, T. 4 December 2014, pp 41-42.

³¹⁷⁰ Rachid Hammoud, T. 4 December 2014, p. 40.

³¹⁷¹ Rachid Hammoud, T. 4 December 2014, p. 42.

³¹⁷² Exhibit 1V42 (Professor Letschert's report), p. 14.

xv. Mehi Eldin Meneimneh

1486. After the explosion, Mr Meneimneh,³¹⁷³ an ISF officer who was part of Mr Hariri's convoy,³¹⁷⁴ was stunned, scared, helpless and in shock. His hands, legs and head were hit by shrapnel. After about an hour, he went to the American University Hospital and was treated for his injuries. He had cuts and bruises all over his body and a hairline fracture in his right leg.³¹⁷⁵

1487. Mr Meneimneh suffered lasting psychological problems, including PTSD.³¹⁷⁶ He was more nervous than before the incident, had difficulty regulating his moods and experienced stress and nervous tension. He was taking anti-depressant medication, in addition to tranquilisers to feel more comfortable at night. Mr Meneimneh did not take time off work in the eight to nine months following the explosion.³¹⁷⁷ He felt marginalised and violated in his rights,³¹⁷⁸ and sought financial and moral compensation.³¹⁷⁹

xvi. Victim 12

1488. Victim 12³¹⁸⁰ lost consciousness in the explosion. His hospital discharge certificate dated 15 February 2005 states that he suffered head trauma, a severe headache and loss of consciousness.³¹⁸¹ He was diagnosed with vertigo and headaches in 2005 and 2006.³¹⁸² A 2011 neurology report states that he suffers from dystychiphobia—fear of accidents—and receives permanent medical treatment.³¹⁸³ He continued to suffer from PTSD.³¹⁸⁴

xvii. Victim 13

1489. Victim 13³¹⁸⁵ did not lose consciousness immediately after the explosion. At the hospital, he underwent two scans and an x-ray, which showed that he suffered from a radial head fracture

³¹⁷³ Victims agreed facts, V034.

³¹⁷⁴ Exhibit 1V45, p. 555.

³¹⁷⁵ See exhibit P190, ERNs 60209245-60209247.

³¹⁷⁶ Exhibit 1V41 (Mehi Eldin Meneimneh's victim statement), para. 9. See also exhibit 1V45, p. 555.

³¹⁷⁷ Exhibit 1V41 (Mehi Eldin Meneimneh's victim statement), para. 8; see also exhibit P190, ERNs 60209248-60209249.

³¹⁷⁸ Exhibit 1V41 (Mehi Eldin Meneimneh's victim statement), para. 9.

³¹⁷⁹ Exhibit 1V41 (Mehi Eldin Meneimneh's victim statement), para. 12.

³¹⁸⁰ Victims agreed facts, V012.

³¹⁸¹ Exhibit 1V2 (Hospital discharge report).

³¹⁸² Exhibit 1V45, p. 215.

³¹⁸³ Exhibit 1V45, p. 218.

³¹⁸⁴ Exhibit 1V45, p. 241.

³¹⁸⁵ Victims agreed facts, V013; exhibit 1V45, pp 295-296.

and had shrapnel in his right forearm. A piece of iron was lodged in Victim 13's eye, his face and head were swollen and covered in glass, and his hair and parts of his face were burnt. Victim 13 was admitted to hospital on 3 June 2005 for problems with his finger, and discharged the same day.³¹⁸⁶

1490. On 21 November 2011, a neurosurgery report showed that Victim 13 was suffering from nervous system energy depletion, anxiety and depression, for which he received medication. Since the explosion, Victim 13 receives medical treatment for anxiety, phobia, high cholesterol and eczema. In 2017, he was suffering from PTSD.³¹⁸⁷

xviii. Victim 33

1491. Victim 33³¹⁸⁸ suffered a broken leg. He suffers from blood clots in his feet and is unable to stand for long periods. Occasionally, his feet swell up as a result. An angiologist-cardiologist report from 22 November 2011 stated that he had been undergoing treatment for thrombosis and thrombophlebitis in both legs since 21 February 2005.³¹⁸⁹

1492. In 2017, Victim 33 was also suffering from PTSD³¹⁹⁰ and depression, and taking anti-depressants; he felt that he could not live without them. He returned to work immediately after the explosion, while still being treated for his injuries, and was not offered any economic compensation from his work or the government of Lebanon.

3. Indirect participating victims

1493. The Legal Representatives of Victims submitted that the following victims participating in the proceedings suffered physical, mental and or material harm as a result of losing a family member in the explosion on 14 February 2005: Mr Robert Aoun,³¹⁹¹ Ms Ghina Mneimneh Ghalayini; Ms Rana Ghalayini; Ms Lama Ghalayini;³¹⁹² Ms Saada Hachem Abu Rjeily; Mr Nazih

³¹⁸⁶ Exhibit 1V45, p. 300.

³¹⁸⁷ Exhibit 1V45, p. 241.

³¹⁸⁸ Victims agreed facts, V033; exhibit 1V45, p. 555.

³¹⁸⁹ Exhibit 1V45, p. 557.

³¹⁹⁰ Exhibit 1V45, p. 241.

³¹⁹¹ Legal Representatives of Victims final trial brief, paras 271-285.

³¹⁹² Legal Representatives of Victims final trial brief, paras 286-324.

Abu Rjeily;³¹⁹³ Victim 36;³¹⁹⁴ Victim 37;³¹⁹⁵ Victim 38;³¹⁹⁶ Victim 20; Victim 21; Victim 22;³¹⁹⁷ Victim 27; Victim 28;³¹⁹⁸ Victim 26; Victim 78;³¹⁹⁹ Ms Ghazia Hourri; Mr Khaled Osman; Mr Bassam Osman; Mr Abdo Osman; Mr Hicham Osman; Mr Mohammed Osman; Mr Kamal Osman; Ms Laura Osman;³²⁰⁰ Mr Saadeddine Hariri;³²⁰¹ Ms Yasma Fuleihan;³²⁰² Victim 60; Victim 61;³²⁰³ Ms Siham Harb;³²⁰⁴ Ms Ihsan Fayed;³²⁰⁵ Mr Kamal Nasser; Mr Bilal Nasser; Ms Roula Nasser;³²⁰⁶ Ms Hana Diab Al-Arab;³²⁰⁷ Mr Saadeddine Darwiche; Mr Sahar Kalaoui; Mr Abdel-Qader Darwiche; Ms Nivine Darwiche;³²⁰⁸ Victim 58;³²⁰⁹ Ms Zeina Chehade Tarraf; Ms Clemence Tarraf; Mr Mamdouh Tarraf;³²¹⁰ Victim 5; Ms Dina Ghalayini;³²¹¹ and Victim 42.³²¹²

1494. Professor Letschert's report sets out a number of psychological, behavioural and social consequences for the relatives of persons injured or killed in the attack, drawing both on academic research and her own interviews with victims. Professor Letschert also testified that a number of victims, specifically those whose family members were not employed by the Hariri family, have suffered significant financial loss.³²¹³ The Trial Chamber has endorsed the finding of the Pre-Trial Judge:

With regard to the closeness of the relationship between the direct and indirect victims, first-degree relatives are presumed to have a special bond of affection with the direct victim. Therefore, the harm suffered by these immediate family members can be presumed

³¹⁹³ Legal Representatives of Victims final trial brief, paras 325-335.

³¹⁹⁴ Legal Representatives of Victims final trial brief, paras 336-343.

³¹⁹⁵ Legal Representatives of Victims final trial brief, paras 344-358.

³¹⁹⁶ Legal Representatives of Victims final trial brief, paras 359-370.

³¹⁹⁷ Legal Representatives of Victims final trial brief, paras 371-376.

³¹⁹⁸ Legal Representatives of Victims final trial brief, paras 377-389.

³¹⁹⁹ Legal Representatives of Victims final trial brief, paras 390-403.

³²⁰⁰ Legal Representatives of Victims final trial brief, paras 404-421.

³²⁰¹ Legal Representatives of Victims final trial brief, paras 422-429.

³²⁰² Legal Representatives of Victims final trial brief, paras 430-436.

³²⁰³ Legal Representatives of Victims final trial brief, para. 436.

³²⁰⁴ Legal Representatives of Victims final trial brief, paras 437-458.

³²⁰⁵ Legal Representatives of Victims final trial brief, paras 459-480.

³²⁰⁶ Legal Representatives of Victims final trial brief, paras 437-458.

³²⁰⁷ Legal Representatives of Victims final trial brief, paras 481-497.

³²⁰⁸ Legal Representatives of Victims final trial brief, paras 498-514.

³²⁰⁹ Legal Representatives of Victims final trial brief, paras 515-522.

³²¹⁰ Legal Representatives of Victims final trial brief, paras 523-545.

³²¹¹ Legal Representatives of Victims final trial brief, paras 546-554.

³²¹² Legal Representatives of Victims final trial brief, paras 555-566.

³²¹³ Exhibit 1V42 (Professor Letschert's report), p. 23.

in case of death of the direct victim, consistent with the jurisprudence of other international courts.³²¹⁴

1495. The Trial Chamber finds beyond reasonable doubt that the following victims suffered relevant harm as a direct result of the explosion, as follows.

(a) Robert Aoun

1496. Mr Robert Aoun,³²¹⁵ who lost his brother Mr Joseph Aoun, was unable to go back to work for six weeks because he was ‘really sad’. He subsequently has provided emotional support to Mr Joseph Aoun’s wife and son.³²¹⁶ Mr Joseph Aoun’s wife was four months pregnant when he died and had to be sedated by a doctor before she could be told the news. She had to return to work after her husband’s death and is also still taking medication.³²¹⁷ Her son Joe, named after his father, has always asked about his father.³²¹⁸ Mr Joseph Aoun had been like a father to the rest of the family since their father had died in 1982, and took care of everyone.³²¹⁹ His mother was greatly affected by her son’s death, and was very emotional at the funeral.³²²⁰ She subsequently suffered nerve problems and high blood pressure, for which she was still taking medication in 2017.³²²¹

(b) Abdul Hamid Ghalayini’s family

1497. Mr Abdel-Hakim Ghalayini spoke to his brother, Mr Abdul Hamid Ghalayini, for the last time at 12:42 on Monday 14 February 2005. His brother, who was taking a walk on the Sea Corniche toward the St Georges Hotel, called him from a payphone at the corner of the Hard Rock Café.³²²² Mr Ghalayini searched for his brother ‘in all hospitals between the injured and the dead’ but was unable to find him.³²²³ He reported his brother missing on 16 February 2005; but his body was not found in the St Georges area until 2 March 2005, when it was handed over to the family.³²²⁴

³²¹⁴ See para. 897, referring to Pre-Trial Judge decision on victims’ participation in the proceedings, para. 84, citing *Duch* Appeal Judgment, para. 562; *Kony and others* Appeals Chamber decision on victims’ participation, para. 36.

³²¹⁵ Victims agreed facts, V001; exhibit 1V45, pp 55-56, 58.

³²¹⁶ Robert Aoun, T. 30 August 2017, pp 25-26.

³²¹⁷ Robert Aoun, T. 30 August 2017, pp 18-19.

³²¹⁸ Robert Aoun, T. 30 August 2017, p. 22.

³²¹⁹ Robert Aoun, T. 30 August 2017, p. 19.

³²²⁰ Robert Aoun, T. 30 August 2017, pp 19-21.

³²²¹ Robert Aoun, T. 30 August 2017, pp 20-21.

³²²² Exhibit P265 (Witness statement of Abdel-Hakim Ghalayini), ERN 60291708.

³²²³ Exhibit P265 (Witness statement of Abdel-Hakim Ghalayini), ERN 60291709.

³²²⁴ Exhibit P265 (Witness statement of Abdel-Hakim Ghalayini), ERN 60291710.

1498. Ms Lama Ghalayini³²²⁵ testified that she was ‘totally devastated’ by the death of her father.³²²⁶ She described the period of searching for his body as ‘a second crime’ committed against him.³²²⁷ Upon the discovery of his body, she was ‘angry’, ‘revolted’ and the image ‘took years to try to remove’.³²²⁸ It took her about two years after the incident to get back on her feet.³²²⁹ After the body of her father was discovered, other family members went to the hospital to formally identify the body because ‘we couldn’t stand on our feet anymore because of the shock and the scene that we had just witnessed’.³²³⁰ She described the psychological harm which was caused to her—particularly by the 17 days of delay in finding his body—which included looking at other bodies, searching the crime scene and being confronted with ‘mistreatment and disrespect’.³²³¹ For a long time afterwards, Ms Lama Ghalayini suffered from PTSD, which in 2017 was still affecting her.³²³² She had not yet told her eldest son about his grandfather, due to fear of causing him trauma.³²³³

1499. Her sister, Ms Rana Ghalayini, was also suffering from PTSD.³²³⁴ Lama Ghalayini also described the impact on her mother, Ms Ghina Mneimneh Ghalayini,³²³⁵ who remained at home for much of the time her daughters were searching, due to being in a state of shock and sedated.³²³⁶ Subsequently, her mother’s life ‘completely changed’ and she was taking anti-depressants and suffering from sleep deprivation.³²³⁷

(c) Saada Hachem Abu Rjeily and Nazih Abu Rjeily

1500. Mr Nazih Abu Rjeily³²³⁸ spent the afternoon and evening of 14 February 2005 frantically searching for Mr Zahi Bou Rjeily in Beirut’s hospitals and at the scene of the explosion, and repeatedly calling his mobile.³²³⁹ The next morning, he identified the body of his brother—who

³²²⁵ Victims agreed facts, V004.

³²²⁶ Lama Ghalayini, T. 28 August 2017, p. 31.

³²²⁷ Lama Ghalayini, T. 28 August 2017, p. 91.

³²²⁸ Lama Ghalayini, T. 28 August 2017, p. 89.

³²²⁹ Lama Ghalayini, T. 28 August 2017, p. 95.

³²³⁰ Lama Ghalayini, T. 28 August 2017, p. 89.

³²³¹ Lama Ghalayini, T. 28 August 2017, p. 92.

³²³² Lama Ghalayini, T. 28 August 2017, p. 92. *See also* exhibit 1V45, p. 150.

³²³³ Lama Ghalayini, T. 28 August 2017, pp 94-95.

³²³⁴ Lama Ghalayini, T. 28 August 2017, p. 93.

³²³⁵ Exhibit 1V45, pp 73-74.

³²³⁶ Lama Ghalayini, T. 28 August 2017, pp 92-93.

³²³⁷ Lama Ghalayini, T. 28 August 2017, p. 93.

³²³⁸ Victims agreed facts, V024; exhibit 1V45, pp 404-405.

³²³⁹ Nazih Abu Rjeily, T. 24 January 2014, pp 8-10.

had suffocated in the dust with minor injuries 12 hours after the explosion—at the American University Hospital morgue.³²⁴⁰ He testified that:

my brother did not seem dead. There was no injuries to his head, to his face, or to any other body part ... His body was intact. And of course after that we were not aware of what we said, what we did, where we went. It was really emotional.³²⁴¹

1501. The psychological impact of his brother's death, how he died, and that he could have been saved, was devastating for the whole family.³²⁴² Mr Abu Rjeily described a heavy sense of frustration and guilt: 'If there was anyone who listened to us, maybe he would still be alive today. Maybe he suffocated. Maybe he was screaming for help.' He added that 'until now we still think that we would have been able to do something to save his life'³²⁴³ and wonders 'what was he suffering and thinking?'³²⁴⁴

1502. Having lost their father earlier in life, he stated that 'we only had each other'³²⁴⁵ and with Zahi's death he lost 'a part of me'.³²⁴⁶ Ms Saada Hachem Abu Rjeily,³²⁴⁷ mother of Mr Zahi Bou Rjeily, who lives with Mr Nazih Abu Rjeily, 'keeps crying all the time ... She has nothing else to do but cry, and she remembers him all the time.'³²⁴⁸

(d) Victim 36

1503. Victim 36 lost a family member, with whom she was very close, in the explosion.³²⁴⁹ She stayed at home that day, confused and suffering an unbearable headache in the commotion of the house.³²⁵⁰ On finding out about her family member's death, she felt anger and guilt.³²⁵¹ The stress, and belief that her life no longer had meaning, led her to attempt suicide a couple of weeks later.³²⁵²

³²⁴⁰ Nazih Abu Rjeily, T. 24 January 2014, pp 10-11.

³²⁴¹ Nazih Abu Rjeily, T. 24 January 2014, p. 11.

³²⁴² Nazih Abu Rjeily, T. 24 January 2014, pp 12, 14.

³²⁴³ Nazih Abu Rjeily, T. 24 January 2014, p. 12.

³²⁴⁴ Nazih Abu Rjeily, T. 24 January 2014, p. 14.

³²⁴⁵ Nazih Abu Rjeily, T. 24 January 2014, p. 12.

³²⁴⁶ Nazih Abu Rjeily, T. 24 January 2014, p. 13.

³²⁴⁷ Exhibit 1V45, pp 399-400, 402.

³²⁴⁸ Nazih Abu Rjeily, T. 24 January 2014, p. 12.

³²⁴⁹ Exhibit 1V29 (V036's statement), paras 7, 9.

³²⁵⁰ Exhibit 1V29 (V036's statement), para. 9.

³²⁵¹ Exhibit 1V29 (V036's statement), para. 12.

³²⁵² Exhibit 1V29 (V036's statement), para. 13.

1504. At the time of her statement, Victim 36 regularly suffered panic, depression, guilt and social isolation.³²⁵³ She had seen a psychologist but found it unhelpful³²⁵⁴ and refused treatment.³²⁵⁵ She felt responsible for the welfare of her remaining family, and like she had disappointed her deceased family member.³²⁵⁶ Victim 36 wants financial compensation from the Special Tribunal, to enable her to provide a better standard of living and medical care for her remaining family.³²⁵⁷

(e) Victim 37

1505. Victim 37³²⁵⁸ lost ‘the person I loved the most, the person who loved me most in return. Along with his death, the affection and tenderness he used to show me vanished.’³²⁵⁹ She was enduring significant and constant mental anguish.³²⁶⁰ She was also very scared of the dark and could not stand to be alone in a dark room.³²⁶¹ She was waking up in the middle of the night, short of breath, and feeling ‘terrorised and afraid’. She felt imprisoned and like she died together with her family member.³²⁶²

1506. A medical note, dated 10 October 2011, states that she suffered from PTSD and presented signs of depression, fatigue and low self-esteem.³²⁶³ Her depression was ongoing on 10 December 2012.³²⁶⁴ Victim 37 lost her sight in one eye and suffered from high blood pressure, high cholesterol and arthritis—conditions attributed to the stress of her loss.³²⁶⁵

1507. Victim 37 also suffered material damage.³²⁶⁶ She expects that the Special Tribunal will punish the perpetrators, making an example of them to others that they cannot get away with

³²⁵³ Exhibit 1V29 (V036’s statement), paras 14-15, 18.

³²⁵⁴ Exhibit 1V29 (V036’s statement), para. 17.

³²⁵⁵ Exhibit 1V45, p. 415.

³²⁵⁶ Exhibit 1V29 (V036’s statement), paras 16, 18-19.

³²⁵⁷ Exhibit 1V29 (V036’s statement), para. 21.

³²⁵⁸ Exhibit 1V45, p. 411.

³²⁵⁹ Exhibit 1V30 (V037’s statement), para. 29.

³²⁶⁰ Exhibit 1V30 (V037’s statement), paras 18-21, 25-26, 29.

³²⁶¹ Exhibit 1V30 (V037’s statement), para. 23.

³²⁶² Exhibit 1V30 (V037’s statement), para. 29.

³²⁶³ Exhibit 1V45, p. 419.

³²⁶⁴ Exhibit 1V45, p. 422.

³²⁶⁵ Exhibit 1V30 (V037’s statement), para. 22.

³²⁶⁶ Exhibit 1V30 (V037’s statement), paras 20, 24, 27.

similar crimes.³²⁶⁷ She hopes that others will not lose their loved ones in the same way³²⁶⁸ and stated that an apology from the perpetrators ‘would mean nothing’.³²⁶⁹

(f) Victim 38

1508. Victim 38’s³²⁷⁰ young age when her close family member died in the explosion means she felt that she lost her chance to develop a relationship with him, or to attend his funeral and say goodbye.³²⁷¹ She stated, ‘I wanted to be there and see him getting buried ... I missed the chance to kiss him one last time. I missed the chance to hold his hand one last time.’³²⁷² She felt often empty and depressed, and that what should be significant celebrations and milestones were meaningless.³²⁷³ A medical report, dated 6 December 2012, states that she was then ‘profoundly shocked’ at her family member’s death; suffered from malaise and had difficulty sleeping; and was irritable, angry and withdrawn. In addition, her depression was severe but she refused all treatment.³²⁷⁴

1509. Victim 38 was enduring a heavy sense of guilt for the sacrifices made by her remaining family member to provide for her needs.³²⁷⁵ She wants compensation for the suffering of remaining family members, to enable them to retire and rest.³²⁷⁶

(g) Victims 20, 21 and 22

1510. Victim 21 lost her husband and her children, Victims 20 and 22, lost their father, in the explosion.³²⁷⁷ Professor Letschert stated that Victim 21 told her that she was sad that her children will not have a normal childhood and sought psychological treatment following her husband’s

³²⁶⁷ Exhibit 1V30 (V037’s statement), para. 25.

³²⁶⁸ Exhibit 1V30 (V037’s statement), para. 28.

³²⁶⁹ Exhibit 1V30 (V037’s statement), para. 27.

³²⁷⁰ Exhibit 1V45, p. 413.

³²⁷¹ Exhibit 1V31 (V038’s statement), paras 11-12, 14.

³²⁷² Exhibit 1V31 (V038’s statement), para. 11.

³²⁷³ Exhibit 1V31 (V038’s statement), paras 12, 14.

³²⁷⁴ Exhibit 1V45, p. 424.

³²⁷⁵ Exhibit 1V31 (V038’s statement), paras 15-16, 19.

³²⁷⁶ Exhibit 1V31 (V038’s statement), para. 19.

³²⁷⁷ Exhibit 1V45, pp 383-384, 386, 388, 390-391, 393.

death.³²⁷⁸ As her husband was the breadwinner of the family, his death had materially affected them and Victim 21 expressed a need for monetary compensation.³²⁷⁹

(h) Victim 27

1511. Victim 27 lost his father in the explosion.³²⁸⁰ Victim 27 did not initially understand the news of his father's death, then became outraged and collapsed.³²⁸¹ Coming to terms with losing his father in such an arbitrary way was strenuous and had taken a long time.³²⁸² He stated that, while nothing can compensate the family for their loss, the Lebanese government should provide better support for victims of this and other similar attacks.³²⁸³

(i) Victim 26

1512. Victim 26 lost a child in the explosion.³²⁸⁴ She had a nervous breakdown after her child's death, and felt pain in her body because of the shock and trauma she experienced.³²⁸⁵ She was unable to work and personally paid for the treatment costs. She was permanently taking five medications.³²⁸⁶

1513. Victim 26's husband grew old quickly after his child's death. In its immediate aftermath, he developed diabetes and, later on, eyesight problems, back pain and lung deficiency, each of which required long-term treatment with medication and hospitalisation.³²⁸⁷

1514. Victim 26 wanted the perpetrators of the explosion to be punished; to receive an apology by the perpetrators; financial compensation; and believed that a memorial for the victims would be important for those who have lost a loved one.³²⁸⁸

³²⁷⁸ Exhibit 1V42 (Professor Letschert's report), p. 20 (fn. 115).

³²⁷⁹ Exhibit 1V42 (Professor Letschert's report), pp 23, 33 (fns 149-150, 213).

³²⁸⁰ Exhibit 1V45, pp 449-450, 452.

³²⁸¹ Exhibit 1V21 (V027's statement), para. 12.

³²⁸² Exhibit 1V21 (V027's statement), para. 20.

³²⁸³ Exhibit 1V21 (V027's statement), para. 21.

³²⁸⁴ Exhibit 1V45, pp 426-427, 429.

³²⁸⁵ Exhibit 1V27 (V026's statement), para. 9.

³²⁸⁶ Exhibit 1V27 (V026's statement), para. 10.

³²⁸⁷ Exhibit 1V27 (V026's statement), para. 10.

³²⁸⁸ Exhibit 1V27 (V026's statement), para. 12.

(j) Victim 78

1515. Victim 78³²⁸⁹ lost her child, whom she described as tender, kind hearted and ‘brightening everyone’s life’, in the explosion.³²⁹⁰ She suffered ‘indescribable emotional pain’ and remained in psychological turmoil. In the immediate aftermath, Victim 78 suffered a nervous breakdown and was treated with tranquilisers. As a result of the stress, she also suffered a number of physical ailments, requiring surgeries to her knee and shoulder. Since her child’s death, Victim 78 has had diabetes and a heart condition, and was taking eight different medications, including sedatives. She also suffered material damage: aside from losing her child’s financial support, she bore a large part of the costs of her medical treatments.³²⁹¹

1516. Victim 78 hopes that no one else will go through what she went through.³²⁹² From the Special Tribunal, Victim 78 would like the truth and for the perpetrators to be punished; an apology from the offenders; a memorial for the victims; and financial compensation.³²⁹³

(k) Haitham Osman’s family

1517. Mr Mohammed Osman³²⁹⁴ and Mr Hicham Osman³²⁹⁵ gave statements regarding the impact of their brother Haitham’s death, following two surgeries which failed to correct shrapnel damage to his liver.³²⁹⁶ Their mother, Ms Ghazia Hourri,³²⁹⁷ fainted several times on the day of the explosion.³²⁹⁸ She broke down and was unable to see his body, but Mohammed, his father and his brothers viewed the body.³²⁹⁹ Both brothers stated that their mother was gravely impacted by Haitham’s death.³³⁰⁰ His death ‘destroyed her, she did not believe that her son was dead for a full year and would wait on the balcony for him’.³³⁰¹ She began to lose her memory and spent ‘long

³²⁸⁹ Exhibit 1V45, pp 874-875.

³²⁹⁰ Exhibit 1V28 (V078’s statement), paras 7-8.

³²⁹¹ Exhibit 1V28 (V078’s statement), para. 9.

³²⁹² Exhibit 1V28 (V078’s statement), para. 11.

³²⁹³ Exhibit 1V28 (V078’s statement), para. 12.

³²⁹⁴ Victims agreed facts, V069; exhibit 1V45, pp 845-846.

³²⁹⁵ Victims agreed facts, V068; exhibit 1V45, pp 842-843.

³²⁹⁶ Exhibit 1V26 (Mohammed Osman’s statement), para. 13; exhibit 1V25 (Hicham Osman’s statement), para. 12.

³²⁹⁷ Victims agreed facts, V071; exhibit 1V45, pp 850-851.

³²⁹⁸ Exhibit 1V25 (Hicham Osman’s statement), para. 11.

³²⁹⁹ Exhibit 1V26 (Mohammed Osman’s statement), para. 14.

³³⁰⁰ Exhibit 1V26 (Mohammed Osman’s statement), para. 18; exhibit 1V25 (Hicham Osman’s statement), paras 14-15.

³³⁰¹ Exhibit 1V26 (Mohammed Osman’s statement), para. 18.

hours in the house, sitting and staring blankly'.³³⁰² Ms Houri's health deteriorated and, at the time of her sons' interviews, was bed-ridden, weighing 35 kilograms, fed through a tube and unable to walk or talk.³³⁰³ Their father, Mr Khaled Osman,³³⁰⁴ was also impacted, although he tried to remain calm and control it.³³⁰⁵ His advanced age meant that it was difficult for him to carry his wife around the house and support her.³³⁰⁶

1518. Mr Mohammed Osman found the first month very difficult and suffered from sleeplessness and involuntary crying fits. Almost three years later, he drove close to another bomb blast, in which his car was lifted in the air.³³⁰⁷ He was unharmed but thought about his family almost losing another family member due to a bomb blast.³³⁰⁸ Mr Hicham Osman described his older brother as his best friend. He was unable to eat or talk for many days after his brother's death, and stayed at home with their mother.³³⁰⁹ Mr Bassam Osman,³³¹⁰ Mr Abdo Osman,³³¹¹ Ms Laura Osman³³¹² and Mr Kamal Osman³³¹³ also suffered the loss of their brother.³³¹⁴

1519. The family was also financially impacted by Mr Osman's loss, as he was one of the breadwinners and they were in the habit of relying on each other.³³¹⁵ As a result, they could not afford proper medical care for their mother.³³¹⁶ 'We are all suffering as a family',³³¹⁷ Mr Hicham Osman stated, 'there is a heavy atmosphere and a lot of sadness'.³³¹⁸

³³⁰² Exhibit 1V25 (Hicham Osman's statement), para. 14.

³³⁰³ Exhibit 1V26 (Mohammed Osman's statement), para. 18; exhibit 1V25 (Hicham Osman's statement), paras 14-15.

³³⁰⁴ Victims agreed facts, V072; exhibit 1V45, pp 853-854.

³³⁰⁵ Exhibit 1V26 (Mohammed Osman's statement), para. 19; exhibit 1V25 (Hicham Osman's statement), para. 16.

³³⁰⁶ Exhibit 1V25 (Hicham Osman's statement), para. 16.

³³⁰⁷ Exhibit 1V26 (Mohammed Osman's statement), para. 14.

³³⁰⁸ Exhibit 1V26 (Mohammed Osman's statement), para. 17.

³³⁰⁹ Exhibit 1V25 (Hicham Osman's statement), para. 13.

³³¹⁰ Victims agreed facts, V063; exhibit 1V45, pp 834-835, 856.

³³¹¹ Victims agreed facts, V066; exhibit 1V45, pp 838-839, 856.

³³¹² Victims agreed facts, V067; exhibit 1V45, pp 840, 856.

³³¹³ Victims agreed facts, V070; exhibit 1V45, pp 848, 856.

³³¹⁴ Exhibit 1V45, pp 856.

³³¹⁵ Exhibit 1V26 (Mohammed Osman's statement), para. 20; exhibit 1V25 (Hicham Osman's statement), para. 17.

³³¹⁶ Exhibit 1V25 (Hicham Osman's statement), para. 17.

³³¹⁷ Exhibit 1V25 (Hicham Osman's statement), para. 16.

³³¹⁸ Exhibit 1V25 (Hicham Osman's statement), para. 17.

(l) Saadeddine Hariri

1520. Mr Saadeddine Hariri,³³¹⁹ who lost his father, Mr Hariri, wants to know the identities of the perpetrators of the crime and who ordered his father's assassination.³³²⁰

(m) Yasma Fuleihan

1521. According to the Legal Representatives of Victims, although he survived the blast, Mr Bassel Fuleihan suffered third degree burns to 95 per cent of his body, and 'quite literally had no skin'. He was initially identified through his wedding ring and the fact that he kept repeating one word: 'Yasma'.³³²¹

1522. He was flown to France for treatment, where his wife Ms Yasma Fuleihan³³²² spent 64 days in hospital by his side, taking an active part in his treatment, until he succumbed to his injuries.³³²³

1523. The Legal Representatives of Victims submit that she and her children have never returned to live in Beirut and live in perpetual fear.³³²⁴

(n) Talal Nasser's family

1524. Ms Ihsan Fayed,³³²⁵ upon hearing of her husband Mr Talal Nasser's death, lost consciousness.³³²⁶ She was then sedated.³³²⁷ She did not initially want to attend her husband's funeral, because she refused to accept that he was dead.³³²⁸ The day after the funeral, she took the flowers she had bought for him on Valentine's Day and laid them on his grave.³³²⁹ In the period immediately following the attack, she was unable to look after the children on her own, and her parents stayed with her.³³³⁰ For the first few months after the bombing, she did not want to leave

³³¹⁹ Victims agreed facts, V059.

³³²⁰ Exhibit 1V42 (Professor Letschert's report), p. 32 (fn. 210). *See also* exhibit 1V45, pp 731-732, 734.

³³²¹ Legal Representatives of Victims submissions, T. 18 June 2014, p. 13.

³³²² Victims agreed facts, V062.

³³²³ Exhibit 1V45, pp 745-746, 823-824, 826.

³³²⁴ Legal Representatives of Victims submissions, T. 18 June 2014, p. 14.

³³²⁵ Victims agreed facts, V056; exhibit 1V45, pp 724-726, 728.

³³²⁶ Ihsan Fayed, T. 7 September 2017, p. 24.

³³²⁷ Ihsan Fayed, T. 7 September 2017, p. 28.

³³²⁸ Ihsan Fayed, T. 7 September 2017, pp 26-27.

³³²⁹ Ihsan Fayed, T. 7 September 2017, p. 29.

³³³⁰ Ihsan Fayed, T. 7 September 2017, p. 47.

the house;³³³¹ she suffered from anxiety and had to take medication to be able to sleep.³³³² Subsequently, her whole life changed, as she had to take charge of all of the household responsibilities, which had previously been undertaken by her husband.³³³³ She received treatment for chronic depression.³³³⁴

1525. Mr Nasser was the sole provider for the family at the time of his passing; Ms Fayed since returned to work.³³³⁵ At the time of Ms Fayed's testimony, Mr Nasser's full salary continued to be paid by the Hariri family, and she had received insurance payouts of USD 100,000. Her children also received tuition and were to receive a trust fund from the Hariri family when they turned 20 years old.³³³⁶

1526. Ms Fayed's eldest daughter, Ms Sarah Nasser,³³³⁷ who was seven in 2005, had a very strong relationship with her father.³³³⁸ She watched images of the explosion as they unfolded.³³³⁹ When she first returned to school, she would tell the teacher she was unwell so that she could leave the classroom to avoid questioning from the other children.³³⁴⁰ Ms Sarah Nasser saw a psychiatrist for around a year and a half to deal with her struggles with accepting the loss of her father.³³⁴¹

1527. Her youngest daughter, Ms Lynn Nasser,³³⁴² who was four-and-a-half in 2005, did not quite understand what had happened.³³⁴³ As she got older, she began to realise that something was missing from her life.³³⁴⁴ This affected her psychologically, and as a consequence she began stuttering when she was about seven or eight years old.³³⁴⁵ She saw a specialist speech therapist

³³³¹ Ihsan Fayed, T. 7 September 2017, pp 47-48.

³³³² Ihsan Fayed, T. 7 September 2017, p. 47.

³³³³ Ihsan Fayed, T. 7 September 2017, pp 46, 49.

³³³⁴ Exhibit 1V45, p. 729.

³³³⁵ Ihsan Fayed, T. 7 September 2017, pp 48-49.

³³³⁶ Ihsan Fayed, T. 7 September 2017, pp 49-50.

³³³⁷ Victims agreed facts, V054; exhibit 1V45, pp 717-718, 720-721, 728.

³³³⁸ Ihsan Fayed, T. 7 September 2017, p. 35.

³³³⁹ Ihsan Fayed, T. 7 September 2017, pp 21, 33, 38.

³³⁴⁰ Ihsan Fayed, T. 7 September 2017, p. 38.

³³⁴¹ Ihsan Fayed, T. 7 September 2017, pp 39-41.

³³⁴² Victims agreed facts, V055; exhibit 1V45, pp 717-718, 720-721.

³³⁴³ Ihsan Fayed, T. 7 September 2017, pp 35, 43.

³³⁴⁴ Ihsan Fayed, T. 7 September 2017, p. 43.

³³⁴⁵ Ihsan Fayed, T. 7 September 2017, pp 43-44.

for about a year. She improved, but her stutter recurs under stress, and she still sees the speech therapist from time to time.³³⁴⁶

1528. Ms Roula Nasser³³⁴⁷ described the impact of her brother Mr Talal Nasser's death upon her. She got married, as her wedding was already scheduled, but then got divorced.³³⁴⁸ She was still living with their mother, Ms Siham Harb,³³⁴⁹ who had Alzheimer's and was being treated for chronic depression.³³⁵⁰ Her mother was forgetting things, but not her son.³³⁵¹

1529. Also impacted were Mr Talal Nasser's brothers, Mr Bilal Nasser³³⁵² and Mr Kamal Nasser,³³⁵³ and his sister Ms Bakiza Nasser (who is now deceased).³³⁵⁴

(o) Hana Diab Al-Arab

1530. Ms Hana Diab Al-Arab³³⁵⁵ lost her loving husband of 34 years, Mr Yahya Al-Arab.³³⁵⁶ Having heard the explosion and seen her son on TV footage searching the convoy vehicles, she went to Quraitem Palace to look for her husband.³³⁵⁷ Ms Hana Diab Al-Arab's daughter, Ms Alia Al-Arab, described her parents' relationship as 'lovely' and testified that 'they loved each other and they were also friends. We never had problems in the family. There was a lot of love in our whole household.'³³⁵⁸ Ms Hana Al-Arab was 'devastated' by her husband's death.³³⁵⁹ She is 'not the same person anymore' and is 'always ill'.³³⁶⁰ She was suffering from severe depression,³³⁶¹ for which she was taking medication.³³⁶²

³³⁴⁶ Ihsan Fayed, T. 7 September 2017, pp 44-45.

³³⁴⁷ Victims agreed facts, V052; exhibit 1V45, pp 709-710.

³³⁴⁸ Exhibit 1V34 (Roula Nasser's statement), para. 15.

³³⁴⁹ Victims agreed facts, V053.

³³⁵⁰ Exhibit 1V34 (Roula Nasser's statement), para. 16. *See also* exhibit 1V45, pp 712-714.

³³⁵¹ Exhibit 1V34 (Roula Nasser's statement), para. 16.

³³⁵² Victims agreed facts, V050; exhibit 1V45, pp 703-704.

³³⁵³ Victims agreed facts, V049; exhibit 1V45, pp 700-701.

³³⁵⁴ Victims agreed facts, V048; exhibit 1V45, pp 692, 694-695, 697-698.

³³⁵⁵ Victims agreed facts, V043.

³³⁵⁶ Exhibit 1V45, pp 649-650, 652. *See also* Alia Al-Arab, T. 4 December 2015, pp 72-73.

³³⁵⁷ Alia Al-Arab, T. 4 December 2015, pp 76-77.

³³⁵⁸ Alia Al-Arab, T. 4 December 2015, p. 72.

³³⁵⁹ Alia Al-Arab, T. 4 December 2015, p. 77.

³³⁶⁰ Alia Al-Arab, T. 4 December 2015, p. 79.

³³⁶¹ Exhibit 1V45, p. 643.

³³⁶² Alia Al-Arab, T. 4 December 2015, p. 79.

(p) Mohammed Darwiche's family

1531. Ms Nivine Darwiche³³⁶³ last spoke to her younger brother Mr Darwiche—a bodyguard in Mr Hariri's convoy, whom she described as her friend and closest confidant—ten minutes before the explosion. They planned to see each other later in the day and she urged him to finish work soon. He said he had to get into the car as Mr Hariri was ready to leave.³³⁶⁴

1532. The death of her brother, 'the one [she] always sat with', caused Ms Darwiche significant mental harm.³³⁶⁵ She stated that she felt 'crazy': 'I started seeing him standing at the window, feel his hand on my shoulder. I would sometimes wake up and see him standing right in front of me.'³³⁶⁶

1533. Ms Darwiche was afraid to be at home alone and unable to look after her infant child.³³⁶⁷ Her husband took a month of unpaid leave from work to support her.³³⁶⁸ Ms Darwiche also suffered material damage. As her brother was a breadwinner for their parents, the family had to take over this responsibility; additionally, she lost the deposit on a house she had put down with her brother, which she was later unable to purchase. Ms Darwiche hopes that the trial brings justice and the perpetrators are punished.³³⁶⁹

1534. Mr Abdel-Qader Darwiche³³⁷⁰ testified that his deceased brother had been the sole income earner of the family,³³⁷¹ which included their parents and two sisters.³³⁷² On his brother's death, he had to take on his brother's role, and left school to work to provide for his family; this situation continues.³³⁷³ His mother still mourned the loss of his brother, frequently crying and being depressed.³³⁷⁴ His father lost all of his teeth from stress, and his condition was deteriorating.³³⁷⁵

³³⁶³ Victims agreed facts, V041; exhibit 1V45, pp 607-608, 610.

³³⁶⁴ Exhibit 1V23 (Nivine Darwiche's statement), paras 6-7, 9-10, 12.

³³⁶⁵ Exhibit 1V23 (Nivine Darwiche's statement), para. 12.

³³⁶⁶ Exhibit 1V23 (Nivine Darwiche's statement), para. 13.

³³⁶⁷ Exhibit 1V23 (Nivine Darwiche's statement), paras 13-14.

³³⁶⁸ Exhibit 1V23 (Nivine Darwiche's statement), para. 14.

³³⁶⁹ Exhibit 1V23 (Nivine Darwiche's statement), para. 16.

³³⁷⁰ Victims agreed facts, V040; exhibit 1V45, pp 600-601, 603.

³³⁷¹ Abdel-Qader Darwiche, T. 22 January 2014, p. 16.

³³⁷² Abdel-Qader Darwiche, T. 22 January 2014, pp 13, 16.

³³⁷³ Abdel-Qader Darwiche, T. 22 January 2014, pp 16-17.

³³⁷⁴ Abdel-Qader Darwiche, T. 22 January 2014, p. 15.

³³⁷⁵ Abdel-Qader Darwiche, T. 22 January 2014, pp 16-17.

Mr Darwiche said he continued to suffer horrible thoughts.³³⁷⁶ Since the experience of fruitlessly searching hospitals for his brother, he had suffered from chronic gastric pain.³³⁷⁷

1535. Ms Sahar Kalaoui,³³⁷⁸ on behalf of herself and her husband Mr Saadeddine Darwiche,³³⁷⁹ provided additional information to the Trial Chamber about how their son's death affected them. Ms Kalaoui told the Trial Chamber that Mr Darwiche's death was very difficult and had caused the health of all family members to deteriorate. Her husband lost his teeth. He fell down on the day of the attack and broke his spine, and subsequently underwent three surgeries; a further surgery was pending at the time of their appearance before the Special Tribunal.³³⁸⁰ He was unable to talk after suffering from cancer.³³⁸¹ The family received Mr Darwiche's salary from the Hariri family for some time after his death, as well as insurance pay-out for her son of USD 100,000.³³⁸² Ms Kalaoui told the Trial Chamber that she hopes the truth will emerge and the perpetrators will be brought to justice, and that the family's losses will be compensated.³³⁸³

(q) Victim 58

1536. Victim 58³³⁸⁴ stated of her immediate family member and friend, who died on 14 February 2005, that 'we used to share everything with each other' and 'he represented everything beautiful in our lives'.³³⁸⁵ When she realised he may have been hurt in the explosion, she panicked and became hysterical. She drove to Beirut, through the smoke and fire of burning tyres on the street to her parents' house, and found them 'in very bad state', having been informed of their family member's death.³³⁸⁶

³³⁷⁶ Abdel-Qader Darwiche, T. 22 January 2014, p. 16.

³³⁷⁷ Abdel-Qader Darwiche, T. 22 January 2014, p. 17.

³³⁷⁸ Victims agreed facts, V057; exhibit 1V45, p. 620.

³³⁷⁹ Victims agreed facts, V044; exhibit 1V45, pp 617-618.

³³⁸⁰ Evidentiary matters, T. 6 September 2017, p. 13 (views and concerns expressed by Ms Kalaoui in court); *see* paras 810-813.

³³⁸¹ Evidentiary matters, T. 6 September 2017, p. 14 (views and concerns expressed by Ms Kalaoui in court); *see* paras 810-813.

³³⁸² Evidentiary matters, T. 6 September 2017, pp 14-16 (views and concerns expressed by Ms Kalaoui in court); *see* paras 810-813.

³³⁸³ Evidentiary matters, T. 6 September 2017, p. 15 (views and concerns expressed by Ms Kalaoui in court); *see* paras 810-813.

³³⁸⁴ Victims agreed facts, V058; exhibit 1V45, pp 612-613.

³³⁸⁵ Exhibit 1V24 (V058's statement), para. 7.

³³⁸⁶ Exhibit 1V24 (V058's statement), para. 9.

1537. Victim 58 suffered a heart attack soon after. She was admitted to an intensive care unit with life-threatening high blood pressure and a swollen heart, and remained there for a week.³³⁸⁷ She received treatment for an extended period and, at the time of her statement, was still taking medication and attending a biannual check-up.³³⁸⁸ Victim 58 continued to suffer considerable sadness and was unable to cook or eat dishes her family member liked or wash the clothes he left behind.³³⁸⁹

1538. Her family suffered material harm as her immediate family member was the main breadwinner.³³⁹⁰ She is hopeful that the Special Tribunal will find the truth and bring the perpetrators to justice and stated that, while nothing can compensate for his death, financial compensation would improve the family's circumstances.³³⁹¹

(r) Ziad Tarraf's family

1539. Mr Mamdouh Tarraf's³³⁹² brother Ziad died in the explosion.³³⁹³ Mamdouh Tarraf explained that his uncles had been unable to identify his brother's body due to the severity of the burns.³³⁹⁴ The death of his brother was a huge and irreparable loss for the entire family.³³⁹⁵ His father and another brother had passed away before his brother, who was the breadwinner for the family.³³⁹⁶ He was particularly close to his brother, and his loss has left a void in his life.³³⁹⁷ At the time of his death, his brother had been married for four years and had two children.³³⁹⁸ He was now raising his brother's children.³³⁹⁹

1540. Ms Zeina Tarraf³⁴⁰⁰ spoke of the loss of her husband, Mr Ziad Tarraf. They had been married for less than five years, but were very attached to one another.³⁴⁰¹ She was still thinking

³³⁸⁷ Exhibit 1V24 (V058's statement), para. 10.

³³⁸⁸ Exhibit 1V24 (V058's statement), para. 10; *see also* exhibit 1V45, p. 615.

³³⁸⁹ Exhibit 1V24 (V058's statement), para. 10.

³³⁹⁰ Exhibit 1V24 (V058's statement), para. 12.

³³⁹¹ Exhibit 1V24 (V058's statement), paras 13-14.

³³⁹² Victims agreed facts, V046.

³³⁹³ Exhibit 1V45, pp 667-668.

³³⁹⁴ Mamdouh Tarraf, T. 22 January 2014, p. 26.

³³⁹⁵ Mamdouh Tarraf, T. 22 January 2014, p. 28.

³³⁹⁶ Mamdouh Tarraf, T. 22 January 2014, pp 22-23, 28.

³³⁹⁷ Mamdouh Tarraf, T. 22 January 2014, p. 29.

³³⁹⁸ Mamdouh Tarraf, T. 22 January 2014, pp 23, 27.

³³⁹⁹ Mamdouh Tarraf, T. 22 January 2014, p. 27.

³⁴⁰⁰ Victims agreed facts, V082; exhibit 1V45, pp 670-673, 675.

³⁴⁰¹ Exhibit 1V37 (Zeina Tarraf's statement), para. 8.

about her husband a lot and had been advised to take anti-depressants.³⁴⁰² The death of their father caused her children, who were two and four years old at the time, to suffer.³⁴⁰³ Her older child had trouble at school and saw the school psychologist.³⁴⁰⁴ The Hariri family helped at first by paying money, albeit inconsistently, but eventually the money stopped. Ms Tarraf had to sell the car and borrow money. Ultimately, she had to leave Lebanon because she had no source of income there.³⁴⁰⁵ Ms Tarraf explained that she would like her family to be financially compensated, because apology by the perpetrators ‘means nothing’.³⁴⁰⁶

1541. Ms Clemence Tarraf³⁴⁰⁷ explained the impact of her brother’s death on the family. Her mother went out searching for her son and, a month after his death, woke up at around 03:00 and began searching for him again.³⁴⁰⁸ Her mother hated life, and still wore black all the time, even attending Ms Tarraf’s wedding in black.³⁴⁰⁹ Mr Tarraf’s children were very young at the time; one child was only four years old, but understood what had happened due to the devastation at home.³⁴¹⁰ Ms Tarraf herself experienced headaches and sleeping problems for about 50 days after the attack. She suffered from migraines for three years and lost weight due to the stress. Emotionally, she could not believe what had happened, as she was very close to her brother.³⁴¹¹ It also affected the family financially, as her brother had been the main provider for the family.³⁴¹²

(s) Mohammed Riad Ghalayini’s family

1542. Ms Dina Ghalayini³⁴¹³ explained that her brother, Mr Mohammed Ghalayini, was the ‘pillar of and provider for the family. I used to rely on him for everything. He was part of my heart.’ Her mother was heavily affected by his death and had lost hope in life. Her mother consulted psychiatrists and doctors, and received psychological treatment.³⁴¹⁴

³⁴⁰² Exhibit 1V37 (Zeina Tarraf’s statement), para. 21. Ms Tarraf explained that she did not want to take anti-depressants because she wanted to deal with the loss herself and had her faith as her own medication.

³⁴⁰³ Exhibit 1V37 (Zeina Tarraf’s statement), paras 9, 16-17.

³⁴⁰⁴ Exhibit 1V37 (Zeina Tarraf’s statement), para. 20.

³⁴⁰⁵ Exhibit 1V37 (Zeina Tarraf’s statement), para. 19.

³⁴⁰⁶ Exhibit 1V37 (Zeina Tarraf’s statement), para. 23.

³⁴⁰⁷ Victims agreed facts, V045; exhibit 1V45, pp 657, 664-665.

³⁴⁰⁸ Exhibit 1V36 (Clemence Tarraf’s statement), para. 12.

³⁴⁰⁹ Exhibit 1V36 (Clemence Tarraf’s statement), para. 19.

³⁴¹⁰ Exhibit 1V36 (Clemence Tarraf’s statement), para. 13.

³⁴¹¹ Exhibit 1V36 (Clemence Tarraf’s statement), para. 16.

³⁴¹² Exhibit 1V36 (Clemence Tarraf’s statement), para. 18.

³⁴¹³ Victims agreed facts, V086; exhibit 1V45, p. 177.

³⁴¹⁴ Exhibit 1V38 (Dina Ghalayini’s statement), para. 8.

(t) Victim 42

1543. Victim 42 and his wife suffered immense grief having lost their son.³⁴¹⁵ As their son was the family's breadwinner, they were also materially affected.³⁴¹⁶ For Victim 42, knowing the truth about the attack would be the most important outcome—he wants the perpetrators to be punished.³⁴¹⁷

(u) Victims 5, 7, 47, 51, 60, 61, 83, and Mr Omar Tarraf

1544. The following participating victims lost an immediate family member in the explosion of 14 February: Victim 5,³⁴¹⁸ Victim 7,³⁴¹⁹ Victim 47,³⁴²⁰ Victim 51,³⁴²¹ Victim 60,³⁴²² Victim 61,³⁴²³ Victim 83³⁴²⁴ and Mr Omar Tarraf.³⁴²⁵

4. Witnesses who are not participating victims

1545. The Trial Chamber finds beyond reasonable doubt that the following witnesses suffered relevant harm as a direct result of the explosion, as follows.

(a) Amer Chehadeh

1546. Mr Amer Chehadeh, a close protection officer of Mr Hariri who was driving the second convoy vehicle, did not lose consciousness as the car flew forward and hit the ground.³⁴²⁶ He stayed at the scene and did his utmost to offer assistance.³⁴²⁷ A witness at the scene saw Mr Chehadeh, with a head injury, 'very nervous', shouting and searching for Mr Hariri's car.³⁴²⁸

³⁴¹⁵ Exhibit 1V42 (Professor Letschert's report), p. 12 (fn. 37).

³⁴¹⁶ Exhibit 1V42 (Professor Letschert's report), p. 33 (fn. 213).

³⁴¹⁷ Exhibit 1V42 (Professor Letschert's report), pp 31-32 (fns 203, 207).

³⁴¹⁸ Exhibit 1V45, p. 161.

³⁴¹⁹ Exhibit 1V45, p. 165.

³⁴²⁰ Exhibit 1V45, pp 689-690.

³⁴²¹ Exhibit 1V45, pp 706-707.

³⁴²² Exhibit 1V45, pp 815-816.

³⁴²³ Exhibit 1V45, pp 819-820.

³⁴²⁴ Exhibit 1V45, pp 678-679.

³⁴²⁵ Victims agreed facts, V084; exhibit 1V45, pp 682-683.

³⁴²⁶ Amer Chehadeh, T. 16 October 2014, p. 24.

³⁴²⁷ Amer Chehadeh, T. 16 October 2014, pp 13, 21-22, 24-25.

³⁴²⁸ Exhibit P336 (Statement of Tarek Soubra), paras 72, 90.

1547. After most people had been evacuated from the area, Mr Chehadeh was taken to the American University Hospital in an ambulance.³⁴²⁹ He suffered two punctured eardrums and was bleeding from the ears; he had a cut vein in his neck, skull fracture and a torn muscle in his knee. He was in shock and could not hear anything for a long time.³⁴³⁰

1548. Eighteen months to two years after the explosion, Mr Chehadeh was diagnosed with diabetes and later suffered a heart attack; he linked these conditions to his fluctuating blood pressure and neck injury as well as the stress and suffering.³⁴³¹ He sustained permanent hearing impairment and is now unable to hear anyone speaking softly. At the time of his testimony, Mr Chehadeh was undergoing treatment for neck pain.³⁴³² He explained that, as a result of the injury to his neck, the veins in his neck and head do not work properly and cause fluctuations in blood pressure.³⁴³³ When stressed, the witness feels significant neck pain and sometimes loses his balance and falls.³⁴³⁴

1549. Since the explosion, Mr Chehadeh's memory was weaker,³⁴³⁵ and the memories of what happened upset him a lot.³⁴³⁶ He suffered ever more frequent 'memory flashes' and 'can never forget that day as long as I live'.³⁴³⁷ He 'lost a father figure' on the day of Mr Hariri's assassination.³⁴³⁸

(b) Bilal Omar Yamout

1550. Mr Bilal Omar Yamout suffered bruising and ruptured muscles in his back, from a window falling onto his back in the explosion.³⁴³⁹ He was examined at the American University Hospital and given medication for the pain.³⁴⁴⁰ He remained at the hospital for about two hours before

³⁴²⁹ Amer Chehadeh, T. 16 October 2014, p. 27; exhibit P336 (Statement of Tarek Soubra), para. 72.

³⁴³⁰ Amer Chehadeh, T. 16 October 2014, p. 48.

³⁴³¹ Amer Chehadeh, T. 16 October 2014, pp 29-30.

³⁴³² Amer Chehadeh, T. 16 October 2014, pp 27-28.

³⁴³³ Amer Chehadeh, T. 16 October 2014, p. 29.

³⁴³⁴ Amer Chehadeh, T. 16 October 2014, p. 28.

³⁴³⁵ Amer Chehadeh, T. 16 October 2014, pp 6-7, 27, 30.

³⁴³⁶ Amer Chehadeh, T. 16 October 2014, p. 28.

³⁴³⁷ Amer Chehadeh, T. 16 October 2014, p. 29.

³⁴³⁸ Amer Chehadeh, T. 16 October 2014, p. 31.

³⁴³⁹ Exhibit P181 (Bilal Yamout's witness statement), paras 13-14; exhibit P190 (Interview of Bilal Yamout), ERNs 60209295-60209296.

³⁴⁴⁰ Exhibit P181 (Bilal Yamout's witness statement), para. 16; exhibit P190 (Interview of Bilal Yamout), ERN 60209296.

returning to the HSBC.³⁴⁴¹ The witness took painkillers and applied medication for the bruising, and his daily life was affected, for three months after the explosion.³⁴⁴² Fear from the explosion caused him ongoing nervous tension and high blood pressure.³⁴⁴³ The windows of his 1993 Range Rover were shattered in the explosion, the car had severe dents and the on-board computer did not work.³⁴⁴⁴ He received some compensation for damage to his vehicle from his employer.³⁴⁴⁵

(c) Witness PRH009

1551. Witness 9 was hit by glass debris in the neck and upper body in the explosion. He remained in the hospital for about three hours.³⁴⁴⁶ He suffered a 30 per cent loss of hearing and had continuing headaches lasting several days at a time, for which he was taking medication.³⁴⁴⁷ Untreatable damage to his middle ear, which controls balance, means he was suffering dizziness.³⁴⁴⁸ He was also suffering from ongoing knee pain.³⁴⁴⁹ Although Witness 9 did not feel the emotional impact of the blast immediately, he subsequently suffered the indescribable pain of losing someone very dear to his heart in Mr Hariri.³⁴⁵⁰

(d) Alia Al-Arab and family

1552. Ms Alia Al-Arab and her brothers, Mr Tareq Al-Arab and Mr Wael Al-Arab, lost their father.³⁴⁵¹ They heard the explosion and waited for Mr Yahya Al-Arab's regular call to make sure they were okay. This did not come.³⁴⁵² Ms Alia Al-Arab frantically tried to call her father, her children's school and her parents' home.³⁴⁵³ Mr Tareq Al-Arab went to the explosion site to look for his father among the vehicles.³⁴⁵⁴

³⁴⁴¹ Exhibit P181 (Bilal Yamout's witness statement), para. 17; exhibit P190 (Interview of Bilal Yamout), ERN 60209297.

³⁴⁴² Exhibit P190 (Interview of Bilal Yamout), ERNs 60209297-60209298.

³⁴⁴³ Exhibit P190 (Interview of Bilal Yamout), ERNs 60209298-60209299.

³⁴⁴⁴ Exhibit P190 (Interview of Bilal Yamout), ERN 60209299.

³⁴⁴⁵ Exhibit P190 (Interview of Bilal Yamout), ERN 60209300.

³⁴⁴⁶ Witness PRH009, T. 11 October 2016, p. 47.

³⁴⁴⁷ Witness PRH009, T. 11 October 2016, pp 47-48.

³⁴⁴⁸ Witness PRH009, T. 11 October 2016, p. 48.

³⁴⁴⁹ Witness PRH009, T. 11 October 2016, pp 46-47.

³⁴⁵⁰ Witness PRH009, T. 11 October 2016, pp 47-48.

³⁴⁵¹ Alia Al-Arab, T. 4 December 2015, p. 72.

³⁴⁵² Alia Al-Arab, T. 4 December 2015, pp 75-76.

³⁴⁵³ Alia Al-Arab, T. 4 December 2015, p. 75.

³⁴⁵⁴ Alia Al-Arab, T. 4 December 2015, pp 75-76.

1553. Ms Alia Al-Arab had a very strong relationship with her father, who was her ‘closest friend’ and support, in constant contact and very attached to his grandchildren.³⁴⁵⁵ On being informed of her father’s death, she was ‘crying and screaming’; for the following two days she was ‘not really aware of what was happening around me’.³⁴⁵⁶ Ms Al-Arab testified that since his death, she has felt constant fear for her children and family, and suffers panic attacks if there is an explosion; she was taking medication for anxiety and panic attacks.³⁴⁵⁷ Mr Wael Al-Arab, whose health situation requires constant support, lost his primary carer,³⁴⁵⁸ a role then taken up by his mother,³⁴⁵⁹ and was taking anti-depressants.³⁴⁶⁰ Ms Alia Al-Arab testified that her family wants truth and justice, for the perpetrators to be punished, and that the Special Tribunal’s work is ‘a great source of relief’ for the family.³⁴⁶¹

(e) Tarek Soubra

1554. Mr Tarek Soubra, a civilian bodyguard for Mr Hariri who was on leave on the day of the explosion,³⁴⁶² dropped to the floor as the windows of the nearby shop in which he was standing shattered. About 15 minutes later, convinced by passers-by that the convoy had been hit, he ran on foot to the explosion.³⁴⁶³ He looked for Mr Hariri’s car but could not recognise any of the convoy vehicles. Mr Soubra saw his colleagues, Mr Mohammed Dia, Mr Hassan Al-Ajouz and Mr Amer Chehadeh, injured and in distress.³⁴⁶⁴ Colleagues told the witness that they saw him in a state of shock and repeating ‘what happened?’³⁴⁶⁵

1555. He remained at the scene for about an hour before taking Mr Chehadeh to the hospital, where many people were shouting and crying.³⁴⁶⁶ Ambulances arrived with the bodies of deceased persons. When he saw Ms Joumana Hariri and Mr Bahaa Hariri, Mr Soubra knew that Mr Hariri’s body had been found. Mr Soubra returned to Quraitem Palace and found his family outside; his

³⁴⁵⁵ Alia Al-Arab, T. 4 December 2015, pp 73, 78.

³⁴⁵⁶ Alia Al-Arab, T. 4 December 2015, p. 77.

³⁴⁵⁷ Alia Al-Arab, T. 4 December 2015, p. 78.

³⁴⁵⁸ Alia Al-Arab, T. 4 December 2015, pp 73-74.

³⁴⁵⁹ Alia Al-Arab, T. 4 December 2015, p. 79.

³⁴⁶⁰ Alia Al-Arab, T. 4 December 2015, p. 74.

³⁴⁶¹ Alia Al-Arab, T. 4 December 2015, p. 80.

³⁴⁶² Exhibit P336 (Statement of Tarek Soubra), para. 32.

³⁴⁶³ Exhibit P336 (Statement of Tarek Soubra), para. 72.

³⁴⁶⁴ Exhibit P336 (Statement of Tarek Soubra), paras 72, 90.

³⁴⁶⁵ Exhibit P336 (Statement of Tarek Soubra), para. 90.

³⁴⁶⁶ Exhibit P336 (Statement of Tarek Soubra), paras 72, 90.

wife had forgotten that he was off work that day and ‘everyone was very stressed’. Inside the palace ‘everyone was crying and whenever I faced one of my colleagues we started crying’.³⁴⁶⁷

1556. For the witness and his family, ‘it was a very dramatic day’. Mr Soubra stated that Mr Yahya Al-Arab was just like his father, and he had been ‘completely different’ since the explosion. Having for a time believed him to be hurt, his wife, mother and son were traumatised by the events.³⁴⁶⁸

5. Tertiary harm

1557. In Professor Letschert’s opinion, the ‘main difference’ between terrorism and other crimes lies ‘in the context in which terrorist victimisation occurs, and its audience. Victims of terrorism, by definition, are attacked as representative of a larger group’.³⁴⁶⁹ In her view, with these crimes, ‘we don’t only talk about the direct victim but we talk about actually the entire population, and we could stretch it even further, the entire international community.’³⁴⁷⁰

1558. The Trial Chamber heard evidence from several victims about the broader impact of the attack. Mr Nohra stated that the attack was on the whole country. ‘What happened has affected everyone.’³⁴⁷¹ Similarly, Mr Amer Chehadeh testified that ‘the assassination of Rafik Hariri was the assassination of the entire country’.³⁴⁷² In Mr Nasser’s view, the death of Mr Hariri meant that he had ‘lost a dream, not only relating to his brother, but also relating to his country, losing a prime minister that could have guaranteed a stable Lebanon’.³⁴⁷³

1559. Some victims feared the prospect of further attacks.³⁴⁷⁴ Mr Mohammed Osman, following his close encounter with another terrorist attack two years later, gave evidence that he ‘holds a grudge against Lebanon, I am sick and tired of it, because we are never safe’.³⁴⁷⁵

³⁴⁶⁷ Exhibit P336 (Statement of Tarek Soubra), para. 72.

³⁴⁶⁸ Exhibit P336 (Statement of Tarek Soubra), para. 90.

³⁴⁶⁹ Exhibit 1V42 (Professor Letschert’s report), p. 10.

³⁴⁷⁰ Rianne Letschert, T. 8 September 2017, p. 44.

³⁴⁷¹ Exhibit 1V12 (Rabih Nohra’s statement), para. 19.

³⁴⁷² Amer Chehadeh, T. 16 October 2014, p. 31.

³⁴⁷³ Exhibit 1V42 (Professor Letschert’s report), p. 10.

³⁴⁷⁴ Rianne Letschert, T. 8 September 2017, pp 82-83.

³⁴⁷⁵ Exhibit 1V26 (Mohammed Osman’s statement), para. 17.

1560. Victim 16 gave evidence that the perpetrators of the attack ‘have killed tens and hundreds, morally and psychologically. If the sentence is rendered, because we trust the Special Tribunal for Lebanon, then people will recover hope. And then the Lebanese people would decide to keep living in Lebanon.’³⁴⁷⁶ Mr Abou-Chaaya stated that he would like Lebanon to find the truth.³⁴⁷⁷ Similarly, Witness 352 testified that, as a Lebanese person, he wants the Special Tribunal to uncover the truth of who killed Mr Hariri:

We have never seen such a leader in the history of Lebanon. I do not belong to any political party or political affiliation or political group in Lebanon. I’m a Lebanese citizen ... And when we had a leader such as Rafik Hariri, he came to contribute to the development of Lebanon ... He was not only helping people from his sect or religion, he was helping students from all religious groups in Lebanon ... he was the only leader in the history of Lebanon that can be described as a patriotic leader ... we want to see the truth.³⁴⁷⁸

³⁴⁷⁶ Victim V016, T. 30 August 2017, p. 75.

³⁴⁷⁷ Exhibit 1V14 (Raymond Abou-Chaaya’s witness statement), para. 17.

³⁴⁷⁸ Witness PRH352, T. 24 January 2014, pp 24-25.

VII. RELIABILITY OF TELECOMMUNICATIONS EVIDENCE

Summary of the evidence and findings

1561. The Prosecution's case relies upon expert cell site analysis of the call data records of mobiles it attributed to the four Accused, and Mr Badreddine. Mr John Edward Philips, an expert in cell site analysis and telecommunications, gave extensive opinion evidence on the telecommunications data provided by two Lebanese telecommunications providers, Alfa and Touch, relating to particular mobiles. This was to identify their approximate geographic location and to track their movements.

1562. Mr Philips used the call data records of these mobiles, and the cell site data relating to the cell masts to which they connected. He also used the networks' coverage maps which show where cell sectors provide the predicted best coverage and plotted them onto Google Earth. The Prosecution used its own software, the 'electronic presentation of evidence', to illustrate the relevant mobile call and movement patterns by plotting the coverage maps onto it.

1563. The Trial Chamber was satisfied that Mr Philips's cell site analysis was sufficiently reliable to use to assess the *general* locations and movements of these mobiles. The Trial Chamber was also satisfied that Alfa's and Touch's call data records and cell site data were business records created in the normal course of their business. Much of the evidence of the Alfa and Touch representatives, respectively Witnesses 705 and 707, was based on business records mainly produced in the normal course of business.

1564. The Trial Chamber was also satisfied of the reliability of their evidence as suitably qualified corporate witnesses who used a range of data from relevant sources, including information from outside of their own personal knowledge. The Trial Chamber was thus satisfied that the telecommunications data had the necessary probative value to use to determine that specified mobiles were communicating with each other in the four pleaded Red, Yellow, Blue and Green networks, and the Purple group of mobiles, and to approximately locate the mobiles.

1565. The evidence is also sufficiently reliable and probative to use to determine whether the four Accused and Mr Badreddine were using the personal mobiles allegedly attributed to each. Hence,

the cell site evidence had the probative value needed to determine whether the personal mobiles of Mr Ayyash, Mr Badreddine and Mr Merhi were co-locating with the relevant pleaded Red, Yellow, Blue and Green network mobiles, and thus whether these mobiles had a single user. In making these findings, the Trial Chamber carefully considered the inherent margin of error in Alfa's and Touch's predicted coverage maps, the non-contemporaneous nature of some of the basic cell data the Prosecution was using and the approximation method used to produce the data.

A. Introductory concepts

1. Introduction and overview

1566. The case against the four Accused and the pleaded co-conspirator, Mr Badreddine, is based upon analysing communications between mobiles attributed to them, on either their personal mobiles or mobiles alleged to have communicated with each other in the four pleaded Red, Yellow, Blue and Green networks. The Prosecution led evidence of the telecommunications data that it argued related to their mobile communications throughout the indictment period. According to the Prosecution, when taken in conjunction with the evidence of Mr Hariri's movements and other key events, this evidence demonstrates their involvement in the planning and execution of the attack, such as by watching his movements and searching for appropriate places to launch the attack on his convoy. This evidence derives from the cell network and call data records of two Lebanese telecommunications providers, Alfa and Touch. To use these records to attribute mobiles to the Accused, the Trial Chamber must be satisfied that they are reliable.

1567. This required evidence of how Alfa and Touch functioned; this included the production of the call data records, and how these companies organised their cell sites, including mapping the relevant cell sectors. The Trial Chamber received extensive evidence on this from representatives of the two companies and from a telecommunications cell site expert.

1568. The Trial Chamber, on the Prosecution's application, declared Mr Philips an expert in telecommunications and cell site analysis and received his eight expert reports on single user analysis into evidence. The reports concern cell site analysis generally, and the analysis of the

pleaded networks and attribution of these mobiles in particular.³⁴⁷⁹ He also provided extensive testimony in support of these reports.

1569. Generally, Mr Philips described how cell site analysis, since its inception in the early 1990s and more widespread use after 2000, has been used to investigate major crimes. He described it as being analogous to, and used in the same way as DNA analysis, fingerprinting, blood analysis and CCTV. Cell site analysis can provide indications of a suspect's presence in an area and movement, a suspect's identity and the contacts of a particular mobile.³⁴⁸⁰

1570. Mr Philips explained that cell site analysis aims to give an approximation of a mobile telephone's location from calls it has made or received.³⁴⁸¹ He believed that it is in many ways superior to forensic evidence, such as finger print and DNA analysis, because it is always available and time-specific. Cell site analysis can lead to or be used in conjunction with other investigative methods, such as reviewing CCTV records, to definitively place a mobile and its user in a specific location.³⁴⁸²

1571. Unlike GPS, cell site analysis cannot pinpoint the location of a mobile, and by extension the mobile's user, at the time of use.³⁴⁸³ It can, however, indicate 'the likely area' of a mobile's location at a particular time with 'extremely high' accuracy.³⁴⁸⁴ Cell site analysis also shows the

³⁴⁷⁹ Decision on opinion evidence (Mr Donaldson), paras 16, 19, 69, 96; Decision on request to strike portions of an expert report, para. 8; Decision on expertise (Mr Philips – GSM); Decision on expertise (Mr Philips – Telecommunications and cell site). As an external expert, the Trial Chamber received Mr Philips's general report on cell site analysis, 'An Introduction to Cell Site Analysis as Applied to GSM Networks' (exhibit P549) and seven single user analysis reports (exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash); exhibit P1112 (Expert report of John Edward Philips – Single user analysis, Suspects 4, 5, 6, 7 and 8); exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review); exhibit P1936 (Expert report of John Edward Philips – Single user analysis in relation to Blue 322, Blue 324 and Blue 585); exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine); exhibit P1938 (Expert report of John Edward Philips – Single user analysis with end cell review, Suspect 3, Mr Merhi); exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi)). The Trial Chamber received four additional reports on mission phones prepared by Mr Philips (exhibit P1114 (Expert report of John Edward Philips – Red mission phones); exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones); exhibit P1116 (Expert report of John Edward Philips – Green mission phones); exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones)). *See also* Decision on opinion evidence (Mr Donaldson), pp 16-19, referring to John Edward Philips, T. 18 August 2015, pp 4-8, 12-39, T. 25 April 2017, pp 7-12 (cross-examination by the Ayyash Defence); exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 145.

³⁴⁸⁰ John Edward Philips, T. 18 August 2015, p. 50.

³⁴⁸¹ John Edward Philips, T. 20 August 2015, p. 55.

³⁴⁸² John Edward Philips, T. 18 August 2015, p. 51.

³⁴⁸³ John Edward Philips, T. 18 August 2015, pp 48-49, 55, 58-60.

³⁴⁸⁴ John Edward Philips, T. 18 August 2015, p. 55.

movement of a mobile progressively over time and over multiple calls.³⁴⁸⁵ As a result, if two or more mobiles have similar movement patterns over a sustained period, a cell site analyst may find that these mobiles are ‘co-locating’ and hence have a single user.³⁴⁸⁶

1572. This telecommunications data, on which the Prosecution relied, contains details of the outgoing and incoming numbers; the time date and duration of each call; and the network mast activated by the call. This points to the mobile user’s approximate location.³⁴⁸⁷ Mr Philips explained that mobile networks generate this data for their own billing and system purposes.³⁴⁸⁸ For this reason, the providers have a genuine incentive to ensure its accuracy, especially in competitive markets because networks with subpar coverage or a reputation for inaccurate billing will not last.³⁴⁸⁹ Although the telecommunication providers do not generate the data for forensic purposes, it has evolved and was subsequently adapted and refined for cell site analysis.³⁴⁹⁰

1573. To understand the underlying data, Prosecution analysts extracted the calls relating to a particular mobile number from call data records and presented them in what are termed ‘call sequence tables’, arranged chronologically. These tables are a form of derivative evidence that makes the information in the call data records explicable. The Prosecution also used Alfa’s and Touch’s maps depicting the approximate coverage for the relevant cells in their networks. These are described as ‘best server coverage maps’. During the trial, the Prosecution presented the evidence using demonstrative aids, including its in-house electronic presentation of evidence (EPE) software.³⁴⁹¹

1574. Understanding the cell site evidence in this case requires a more detailed examination of how cellular networks generate this data, and the information that the Prosecution relies upon.

2. GSM system

1575. As part of his overview, Mr Philips explained that mobile networks were first conceptualized in the 1980s, created in 1990, and the first Global System for Mobile

³⁴⁸⁵ John Edward Philips, T. 18 August 2015, p. 49.

³⁴⁸⁶ John Edward Philips, T. 18 August 2015, pp 59-62.

³⁴⁸⁷ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 108.

³⁴⁸⁸ John Edward Philips, T. 18 August 2015, pp 49-51.

³⁴⁸⁹ John Edward Philips, T. 18 August 2015, pp 51-52.

³⁴⁹⁰ John Edward Philips, T. 18 August 2015, pp 49-50.

³⁴⁹¹ See sub-section (H) ‘Electronic presentation of evidence (EPE)’, below.

communication, or GSM, was introduced in 1991 in Finland.³⁴⁹² This first generation ‘1G’ network was incompatible with other 1G networks.³⁴⁹³ To facilitate pan-European coverage, a second generation of GSM systems was developed, replacing 1G.³⁴⁹⁴ The ‘2G’ system was adopted worldwide, including in Lebanon, where the system was installed in 1994.³⁴⁹⁵ The three main component groups of GSM architecture are: first, mobile stations, second, a base station subsystem and third, a switching subsystem.³⁴⁹⁶

1576. A mobile station (MS) has two operational parts, namely, mobile equipment and SIM cards.³⁴⁹⁷

1577. The mobile equipment is the telephone or handset the subscriber uses to access the network, and it has a unique identity number known as the IMEI. This has 14 digits and contains information such as the handset’s make and model and a serial number to identify a particular handset. Sometimes the manufacturers add one or two digits.³⁴⁹⁸ The first eight digits signify the ‘Type Allocation Code’ (TAC) describing the mobile’s brand and model. The remaining digits are defined by the manufacturer: six are the serial number and one is a check digit.³⁴⁹⁹

1578. The SIM card is an electronic chip inserted into a handset; the SIM is personalised by associating that handset with a specific user and a particular number.³⁵⁰⁰ It is uniquely identified by an integrated circuit card identifier serial number which may be printed on the SIM card, but is also in the SIM card as a 19 or 20 digit number. The SIM card holds the International Mobile Subscriber Identity (IMSI); this is a unique number that identifies the subscriber over the radio

³⁴⁹² John Edward Philips, T. 18 August 2015, pp 18, 26-27, 65.

³⁴⁹³ John Edward Philips, T. 18 August 2015, pp 15, 26, 65.

³⁴⁹⁴ John Edward Philips, T. 18 August 2015, p. 65.

³⁴⁹⁵ John Edward Philips, T. 18 August 2015, pp 15-16, 18-19, 26-27, 29, 65-66; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 18.

³⁴⁹⁶ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 18-20.

³⁴⁹⁷ John Edward Philips, T. 18 August 2015, pp 66-67; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 24.

³⁴⁹⁸ John Edward Philips, T. 18 August 2015, pp 75-76.

³⁴⁹⁹ Exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 93.

³⁵⁰⁰ John Edward Philips, T. 18 August 2015, pp 66-67; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 26.

path and is used elsewhere over the network.³⁵⁰¹ The number associated with the SIM card is distinct from the telephone number assigned to the user.³⁵⁰²

1579. The base station sub-system is the central equipment of the GSM network.³⁵⁰³ It provides the link between the mobile and the switching subsystem. Mr Philips explained that mobiles do not ‘talk to each other directly’, but rather the ‘mobile talks into the network, and it talks into the network via a base station normally known as a cell site’.³⁵⁰⁴

1580. The base station sub-system has two operational parts: a base transceiver station (BTS) and a base station controller (BSC). The base transceiver station has transmitting and receiving antennas and signalling equipment that provide air interface for a cell to route the call. This equipment is collectively termed a ‘cell site’.³⁵⁰⁵

1581. The base transceiver station communicates with the mobile. A single base transceiver station can support one or more cells.³⁵⁰⁶ Urban base stations are typically cell towers with antennas mounted on the top or antennas mounted on roofs or the sides of buildings.³⁵⁰⁷ Cell towers are also called ‘masts’. The base station controller supervises and controls a number of the base transceiver station’s functions, including its cell administration. A base station controller may be located with the mobile switching centre which can control many base station controllers.³⁵⁰⁸

1582. The switching subsystem is the main switching centre of the GSM network and has a number of functional blocks.

1583. First, the mobile switching centre (MSC) handles call setting up, routing and supervising calls between external networks, such as the integrated services digital network (ISDN) and public

³⁵⁰¹ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 26-27.

³⁵⁰² John Edward Philips, T. 18 August 2015, pp 67-69.

³⁵⁰³ John Edward Philips, T. 18 August 2015, pp 83-84; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 18-19.

³⁵⁰⁴ John Edward Philips, T. 18 August 2015, pp 77-78.

³⁵⁰⁵ John Edward Philips, T. 18 August 2015, p. 83.

³⁵⁰⁶ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 19.

³⁵⁰⁷ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 43-44.

³⁵⁰⁸ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 19.

switched telephone network (PSTN),³⁵⁰⁹ and the mobile.³⁵¹⁰ The MSC also creates the call data records relating to calls which are subsequently used, for instance, for billing.³⁵¹¹ These records, corresponding to outgoing and incoming calls and text messages, accumulate at the mobile switching centres until the call data records are retrieved from the MSCs at regular intervals by the mediation platform; this is a system used to convert certain data types into other data types.³⁵¹²

1584. Second, the home location register (HLR) is a database which holds subscriber information related to that network. Only one HLR in any network maintains data on the current location of a mobile, identification numbers and various addresses.³⁵¹³

1585. Third, the visitor location register (VLR) is another type of database that supports registration, authentication and call routing to or from a mobile roaming in an area of a mobile switching centre.³⁵¹⁴ 'Roaming' allows a mobile to operate on a cellular network other than the network to which the mobile is subscribed, that is, its home network. Each MSC has a VLR that holds the data relevant for handling calls from or to the mobiles that are currently in its area. The relevant data is downloaded from the HLR when the mobile subscriber switches on the mobile in the area of the visited MSC, in that way initiating the registration process.³⁵¹⁵ Both the VLR and the HLR ensure that calls or messages are sent to the appropriate cell site, as the receiving mobile could be located anywhere on a network which permits roaming.³⁵¹⁶

1586. Fourth, the equipment identity register (EIR) is a type of database, which stores the IMEI of the mobiles that are used on the system, so if, for example, a handset is stolen, it can be blacklisted and hence prevented from accessing the system.³⁵¹⁷

³⁵⁰⁹ The ISDN is a circuit-switched digital telephone network system which provides voice and data over conventional telephone circuits. The PSTN is a normal public telephone system. The gateway mobile services switching centre (GMSC) is a mobile switching centre serving as an interface between the mobile network and other networks such as PSTN and ISDN, exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 19, 169-170.

³⁵¹⁰ John Edward Philips, T. 18 August 2015, pp 78, 88-89.

³⁵¹¹ John Edward Philips, T. 18 August 2015, p. 89; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 19.

³⁵¹² John Edward Philips, T. 18 August 2015, pp 92-93.

³⁵¹³ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 19.

³⁵¹⁴ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 20, 27-28, 36, 172.

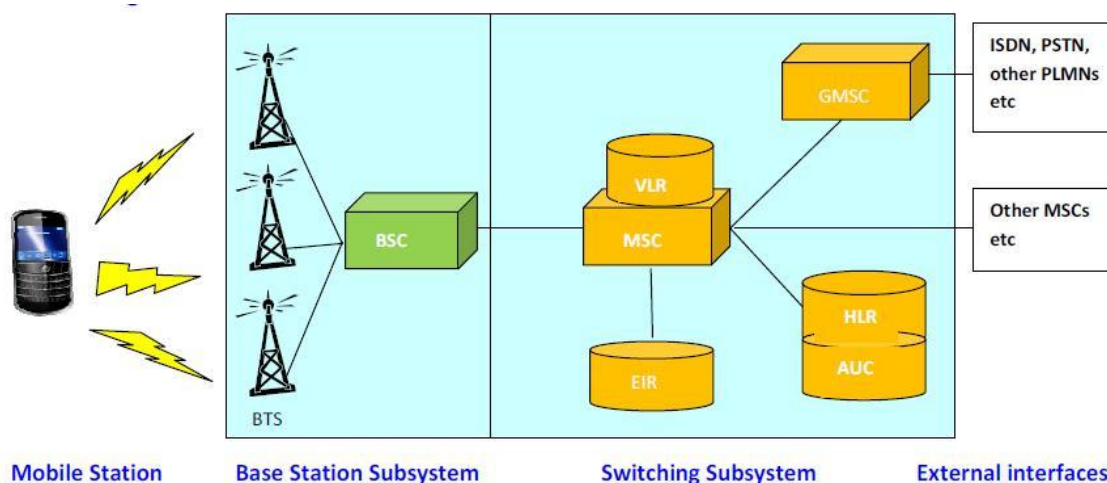
³⁵¹⁵ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 19-20.

³⁵¹⁶ John Edward Philips, T. 18 August 2015, p. 85.

³⁵¹⁷ John Edward Philips, T. 18 August 2015, pp 85-86.

1587. Fifth, the authentication centre (AUC) is a processing centre that is associated with the HLR. Its main purpose is to provide data security features that authenticate the subscriber.³⁵¹⁸

1588. The image below is extracted from Mr Philips's general report 'An Introduction to Cell Site Analysis as Applied to GSM Networks', exhibit P549, and shows the main components of a GSM network.³⁵¹⁹



3. Configuration of individual markets

1589. Mr Philips explained that after a common GSM system was created in 1990 in Europe, individual markets configured aspects such as the mobile interface, billing and coverage to suit their own needs.³⁵²⁰ However, for the entire system to work, it was crucial that the technology in each country and for each market was compatible with the central GSM system.³⁵²¹

1590. The GSM system's basic operations incorporate variables to accommodate different environments—urban, rural and hotspots where cell sites operate differently—to provide optimal service.³⁵²² Similarly, all systems generate and use the same data for cell site analysis.³⁵²³ Although Mr Philips had no detailed knowledge of the Lebanese networks, he was unaware of anything

³⁵¹⁸ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 20, 168.

³⁵¹⁹ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 18. For completeness: the public land mobile network (PLMN) is a land mobile network established to provide telecommunication services to the public, exhibit P549, p. 171.

³⁵²⁰ John Edward Philips, T. 18 August 2015, p. 19.

³⁵²¹ John Edward Philips, T. 18 August 2015, pp 18-19, 28.

³⁵²² John Edward Philips, T. 18 August 2015, pp 31-32.

³⁵²³ John Edward Philips, T. 18 August 2015, pp 32-33.

‘unique about Lebanon that would make certain peculiarities that only appear there within the context of the GSM system’.³⁵²⁴

1591. He also explained that base GSM systems are configured for the particularities of individual markets.³⁵²⁵ These may include features such as the area over which a cell site may work and the capacity provided within a network.³⁵²⁶ Although all networks have a common fundamental architecture, no GSM systems are configured identically; each must be configured according to the geography and population density of the area covered.³⁵²⁷ Cell site analysis, Mr Philips explained, does not take into account such individual changes to systems because the system already accounts for those variables.³⁵²⁸

1592. The Lebanese GSM system was installed in 1994.³⁵²⁹ Mr Philips, who is British, stated that because the Lebanese network was installed very soon after the European first network, he ‘would imagine the systems were brought in from Europe’.³⁵³⁰ He expected the technology used in the Lebanese GSM system to be very similar to the UK’s.³⁵³¹

1593. However, he had no knowledge of the Lebanese system ‘in terms of background detail and the exact configuration, but the operation is the same as anywhere in the UK’.³⁵³² Mr Philips noted that while it was common practice in his UK investigations to perform field measurements to ensure the accuracy of the network and best server maps, he was not asked to take any of these steps in this case.³⁵³³ The Prosecution did not suggest that he travel to Lebanon to conduct his cell site analysis, even though Mr Philips thought that this would have been beneficial.³⁵³⁴

4. Sending SMS

1594. Sending an SMS, or text message, follows mainly the same procedure as a voice call. The main difference is that text messages are stored in an SMS message centre—between the switching

³⁵²⁴ John Edward Philips, T. 18 August 2015, p. 31.

³⁵²⁵ John Edward Philips, T. 18 August 2015, pp 32, 35.

³⁵²⁶ John Edward Philips, T. 18 August 2015, p. 35.

³⁵²⁷ John Edward Philips, T. 18 August 2015, pp 31, 33, 35, 83.

³⁵²⁸ John Edward Philips, T. 18 August 2015, pp 33-34.

³⁵²⁹ John Edward Philips, T. 18 August 2015, pp 29, 65.

³⁵³⁰ John Edward Philips, T. 18 August 2015, p. 107.

³⁵³¹ John Edward Philips, T. 18 August 2015, pp 19, 28-29.

³⁵³² John Edward Philips, T. 18 August 2015, p. 35.

³⁵³³ John Edward Philips, T. 24 August 2015, pp 84-87.

³⁵³⁴ John Edward Philips, T. 24 August 2015, p. 20.

centres—until the incoming mobile is switched on, and within coverage, enabling it to receive messages. In a store-and-forward process, the message is stored and then forwarded to the incoming mobile almost immediately. However, if the incoming mobile is switched off or not within coverage, the message will remain at the SMS message centre until the incoming mobile can receive the message. If a mobile remains switched off or out of coverage for some period, messages can get ‘pent-up’, at the SMS message centre, until the mobile is available. The mobile will then receive a succession of messages sent when it was unavailable. The significance of this is that the time when a message is sent may not correspond to when it is received.³⁵³⁵

5. Theft or loss of handset or SIM

1595. Mobile telephones, as noted above, have two parts, namely, the handset and a SIM card.³⁵³⁶ Because a telephone number is assigned to a SIM card, the telecommunications company can provide a new device and reassign the original number to a new SIM card if a mobile is lost or stolen. Losing a mobile means losing a SIM card and IMSI number, but not the telephone number.³⁵³⁷

1596. Mr Philips explained that due to the sophisticated authorisation procedures, it is extremely difficult for someone other than the owner of the telephone number to use that number. When a mobile accesses a mobile network, it goes through an authorisation process where the network sends a number to the mobile. In response, the mobile uses its own personal key that is unique to the SIM to produce a number sequence that the mobile sends back to the network. The mobile can log on and use the network if the network is expecting that number sequence from the mobile. Once logged in, the network assigns the telephone a temporary IMSI (TMSI) for use over a short period. The TMSI can change several times in a day. That is why stealing a telephone number is not as simple as knowing the IMSI number, because the number communicating with the network is often the TMSI number.³⁵³⁸

1597. Additionally, the same telephone number cannot be attributed to two different SIM cards. If a handset is stolen or lost, the SIM card is also lost.³⁵³⁹ Mr Philips explained that the mobile

³⁵³⁵ John Edward Philips, T. 18 August 2015, pp 80-81.

³⁵³⁶ John Edward Philips, T. 18 August 2015, pp 66-67.

³⁵³⁷ John Edward Philips, T. 18 August 2015, p. 69.

³⁵³⁸ John Edward Philips, T. 18 August 2015, pp 71-72.

³⁵³⁹ John Edward Philips, T. 18 August 2015, pp 90-91.

network can be informed of this directly, but it will most likely become aware of a stolen handset or SIM card when the user comes in to replace it. If the user requests the same telephone number, the network checks to see if the telephone number is available, and may discover that the number is already associated with a different SIM. The network will then deregister the telephone number from the stolen SIM to register it to the newly purchased SIM.³⁵⁴⁰ If someone tries to use the old SIM to make a call, the network will reject the call; this is because the SIM has been dissociated from the number and no longer has access to the network. However, until the mobile company dissociates a telephone number from a SIM, someone may use a stolen handset or SIM card to make and receive calls.³⁵⁴¹

1598. Some handset manufacturers restrict their use to one network.³⁵⁴² However, if a mobile is unlocked and therefore usable on any network, it can accept any SIM without affecting the mobile's functionality. Mr Philips explained that swapping a SIM from one handset to another does not change the IMSI or telephone number, but the IMEI will change to reflect the new handset's make and model.³⁵⁴³

6. Call data used for cell site analysis

1599. Call data records, cell data and location area codes—collectively termed 'raw data'—are used to conduct cell site analysis.³⁵⁴⁴ In his general report, Mr Philips explained that call data refers to call metadata collected by telecommunication providers and the location area code refers to the unique identification number of a cell. To analyse the data, network providers must provide, upon request, call data records for the mobiles of interest.

1600. In his experience, depending on the network, this data will be in different formats and may be in single or multiple files. The cell used may be difficult to identify in call data records because the 'cell identity' or 'cell ID' is represented by a number which provides no information about the cell used.³⁵⁴⁵ In other words, an identifying number rather than the cell's name is used as the cell's identity.

³⁵⁴⁰ John Edward Philips, T. 18 August 2015, pp 91-92.

³⁵⁴¹ John Edward Philips, T. 18 August 2015, pp 90-91.

³⁵⁴² John Edward Philips, T. 18 August 2015, p. 69.

³⁵⁴³ John Edward Philips, T. 18 August 2015, pp 76-77.

³⁵⁴⁴ John Edward Philips, T. 18 August 2015, pp 94-95.

³⁵⁴⁵ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 108.

1601. For some networks, the cell identity may not be sufficient and the location area code may also be needed. Cell site data is static data, Mr Philips explained, at least compared with dynamic data in which call data records are produced with every voice call or text message.³⁵⁴⁶

(a) Call data records

1602. Call data records, as opposed to the content of the calls, are the call metadata collected by telecommunication providers, such as Alfa and Touch, for customer billing and system management purposes.³⁵⁴⁷ They are digital data of telephone activity automatically generated and retained in the course of the ordinary business activity of these types of companies. The data contains details of the outgoing and incoming numbers, the time, date and duration of each call and the cell mast activated by the call.³⁵⁴⁸

1603. These records are dynamic because they are produced with calls or texts. Two records are created for each call: one for the incoming call and one for the outgoing call. However, Mr Philips explained, no record is created if a call is attempted but does not connect, for example, when a call is made but is cut short before connecting to a system such as a voice message system.³⁵⁴⁹

1604. MSCs generate this data in a raw, unrefined and unprocessed format. The MSC data is read-only; it can be viewed, but not modified.³⁵⁵⁰ The image below—an extract from a slide presentation entitled ‘Cell site analysis’ that Mr Philips used as visual aid during his testimony—shows call data records in their raw format.³⁵⁵¹ This illustrates that when viewed in its raw form, the data is effectively unreadable.

³⁵⁴⁶ John Edward Philips, T. 18 August 2015, pp 94, 98.

³⁵⁴⁷ John Edward Philips, T. 18 August 2015, pp 32, 51, 102; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 86.

³⁵⁴⁸ John Edward Philips, T. 18 August 2015, pp 100, 104-105.

³⁵⁴⁹ John Edward Philips, T. 18 August 2015, pp 94-96.

³⁵⁵⁰ John Edward Philips, T. 18 August 2015, p. 98.

³⁵⁵¹ John Edward Philips, T. 18 August 2015, p. 103; exhibit P550 (PowerPoint presentation, John Edward Philips), slide 43. The grey boxes in the extract show redactions of telephone numbers, for example 03/1234567.


```

030;37 0 02-26 00:00:42;;732831;415039500592990;0;03163;:::;21;0;0;0;0;9613996060;
031;38 34 0;2006-02-26 00:00:42;;732831;415037500752345;0;06482;:::;22;0;0;0;0;9613996060;|
031;39 00 491439;0;2006-02-26 00:00:42;;732831;415037500806070;0;07393;:::;22;0;0;0;0;9613996060;
031;36 35 0;2006-02-26 00:00:42;;732831;415030500229045;0;06153;:::;22;0;0;0;0;9613996060;
031;37 3 0;2006-02-26 00:00:35;0SC27;0UIR00;732831;415030500166545;2;06183;F40234;:::3507712050083712;::11;0;0;0;0;
030;38 0 02-26 00:00:43;;732831;415038500538012;0;06633;:::;21;0;0;0;0;9613996060;
031;37 31 0;2006-02-26 00:00:35;0SC10;0UIR00;732831;415037500548301;2;00661;F40234;:::3570930088000203;::11;0;0;0;0;
031;36 37 0;2006-02-26 00:00:44;;732831;415030500180622;0;06094;:::;22;0;0;0;0;9613996060;
030;38 0 02-26 00:00:44;;732831;415030500111000;0;06104;:::;21;0;0;0;0;9613996060;
031;36 38 0;2006-02-26 00:00:44;;732831;415030500214426;0;06663;:::;22;0;0;0;0;9613996060;
031;39 05 ;23;2006-02-26 00:00:21;0SC18;0HSC02;732831;415039500550605;2;03041;F40234;:::3556610012604611;::11;0;0;0;0;
031;38 34 6;2006-02-26 00:00:39;0SC10;0UIR00;732831;415030500214431;2;06153;F40234;:::3509912055544125;::11;0;0;0;0;

```

Example of call data records in raw format from Mr Philips's PowerPoint presentation: An introduction to cell site analysis as applied to GSM networks – exhibit P550, slide 43

1605. The Prosecution extracted and arranged the call data records into call sequence tables—analysed below at paragraphs 1624-1636—that allowed the analysis and presentation of this data.

1606. The Prosecution relied on these tables to prove that mobile users, whom it alleges included the four Accused and Mr Badreddine, contacted each other.³⁵⁵² Using these tables in conjunction with cell site evidence, the Prosecution attempted to show where they were geographically when they made the calls.³⁵⁵³ Alfa and Touch, like all mobile networks, created maps that show the predicted best server coverage for the cells in their networks.³⁵⁵⁴ From this information and other cell site evidence, the Prosecution analysed and approximated, using cell site analysis, the location of a mobile connecting to a network.³⁵⁵⁵

1607. The Prosecution filed 20 motions and supplementary applications seeking the admission into evidence, under Rules 154 and 155, of call sequence tables derived from call data records and the related witness statements.³⁵⁵⁶ The Trial Chamber declined to admit the call data records

³⁵⁵² Prosecution final trial brief, para. 51.

³⁵⁵³ Prosecution final trial brief, para. 54.

³⁵⁵⁴ Prosecution final trial brief, paras 65-66; Prosecution closing submissions, T. 11 September 2018, p. 44. *See also* Witness PRH707, T. 9 February 2016, pp 24-27; Witness PRH705, T. 5 May, 2016, pp 91-92; John Edward Philips, T. 19 August 2015, pp 35, 60-65.

³⁵⁵⁵ Prosecution final trial brief, para. 54; Prosecution closing submissions, T. 11 September 2018, pp 46-47.

³⁵⁵⁶ F1831, Prosecution Motion For the Admission of Red Network-Related Call Sequence Tables and Related Statement, 28 January 2015; F1832, Prosecution Motion for the Admission of Green Network Related Call Sequence Tables and Related Statement, 29 January 2015; F1836, Prosecution Motion for the Admission of Purple Phone Related Call Sequence Tables, 30 January 2015; F1837, Prosecution Motion for the Admission of Blue Network-Related Call Sequence Tables and Related Statements, 2 February 2015; F1840, Prosecution Motion for the Admission of Yellow Phone Related Call Sequence Tables and Related Statements, 3 February 2015; F1911, Supplementary Submission to “Prosecution Motion for the Admission of Green Network Related Call Sequence Tables and Related Statement” of 29 January 2015, 16 April 2015; F2607, Supplementary Submission to Prosecution Motion for the Admission of Yellow Phone-Related Call Sequence Tables and Related Statement, 30 May 2016; F2123, Public Redacted Version of Prosecution Motion for the Admission of Call Sequence Tables Related to the Accused Ayyash, 7 October 2016; F2137, Public Redacted Version of Prosecution Motion for the Admission of Call Sequence Tables Related to the Accused Badreddine and Related Statements, 7 October 2016; F2140, Public Redacted Version of

themselves into evidence—as opposed to call sequence tables—as they are voluminous and unreadable in their raw format.³⁵⁵⁷

1608. Before deciding on whether to admit the call data records or only the call sequence tables, the Trial Chamber heard evidence on the creation, storage and retrieval of the call data records and on the provenance, accuracy, integrity and authenticity of both the call data records and the call sequence tables.³⁵⁵⁸

1609. The Trial Chamber determined that no practical utility could exist in admitting into evidence all the call data records from which the call sequence tables are derived. A Prosecution analyst testified that the raw data received from Alfa and Touch consisted of billions of records and terabytes of data, and without uploading them into a database they would be illegible and not searchable.³⁵⁵⁹ Without extraction of the relevant data into a readable format, it is meaningless, as the extract above from Mr Philips’s slide shows.³⁵⁶⁰ In four decisions, the Trial Chamber explained at length that admitting the underlying raw call data records into evidence would have made no

Prosecution Motion for the Admission of Call Sequence Tables Related to the Movements of Rafik Hariri and Related Events, 10 October 2016; F2124, Public Redacted Version Prosecution Motion for the Admission of Call Sequence Tables Related to the Accused Merhi, 11 October 2016; F2125, Public Redacted Version of Prosecution Motion for the Admission of CSTs and SMS CSTs Related to the Accused Assad Hassan Sabra, 7 October 2016; F2126, Public Redacted Version of Prosecution Motion for the Admission of Call Sequence Tables Related to the False Claim of Responsibility, 11 October 2016; F2127, Public Version of Prosecution Motion for the Admission of Call Sequence Tables Relevant to the Purchase of the Mitsubishi Canter and the Sale of Red Network Handsets, 11 October 2016; F3010, Prosecution Application for the Admission into Evidence of Nine Exhibits Previously “Marked for Identification”, 22 February 2017; F2996, Public Redacted Version of Prosecution Motion for the Admission of 10 Call Sequence Tables Related to the Accused Ayyash and the Accused Merhi pursuant to Rule 154 and one related witness statement pursuant to Rule 155, 7 March 2017; F3454, Prosecution Motion for the Admission of a Supplementary Call Sequence Table Related to P01340 pursuant to Rule 154 and a Related Witness Statement pursuant to Rule 155, 4 December 2017; F3084, Public Redacted Version of Prosecution Motion to Admit 27 Documentary Exhibits and 1 Witness Statement Relating to the Attribution of Telephone Numbers to Hassan Habib Merhi, 31 July 2019; F3412, Public Redacted Version of Prosecution Motion for the Admission of a Call Sequence Table Related to the Accused Merhi Pursuant to Rule 154 and a Related Witness Statement Pursuant to Rule 155, 2 August 2019.

³⁵⁵⁷ Decision on five Prosecution motions on call sequence tables and witness statements, para. 113; Decision denying admission of two call sequence tables, para. 21; Decision admitting single user report (Grey mobile), para. 27.

³⁵⁵⁸ *For example*, Decision on five Prosecution motions on call sequence tables and witness statements; Appeal decision on legality of transfer of call data records.

³⁵⁵⁹ Spartak Mkrtchyan, T. 14 September 2015, pp 41, 80, 82-83, T. 15 September 2015, p. 26; *see also* Prosecutor’s opening statement, T. 16 January 2014, p. 48.

³⁵⁶⁰ Exhibit P550 (PowerPoint presentation, John Edward Philips), slide 43.

difference in any practical sense because only the call sequence tables could make this raw data meaningful and legible.³⁵⁶¹

1610. The Badreddine and Oneissi Defence, in response to the Prosecution's application to admit call sequence tables into evidence, moved the Trial Chamber under Rule 162 (B)³⁵⁶² to exclude the call sequence tables from the evidence on the basis that the data used to produce the tables was gathered in breach of international standards on human rights, including the right to privacy, and the applicable Lebanese law governing the collection of such evidence.³⁵⁶³ The Ayyash, Badreddine and Merhi Defence alleged an irregularity by arguing that the Prosecution did not tender into evidence the call data records from which the call sequence tables were produced.³⁵⁶⁴

1611. The Trial Chamber held that the transfer of the call data records from Lebanon to the UNIIIC and the Prosecution was neither unlawful nor arbitrary and that there had been no violation of international standards on human rights. Additionally, two Security Council Resolutions, numbers 1595 and 1757; the Agreement on the establishment of the Special Tribunal for Lebanon; the Statute; the Special Tribunal's Rules; and a Memorandum of Understanding between the UNIIIC or the Special Tribunal and the relevant Lebanese authorities, provided the necessary legal authorisation of the transfer of the call data records.³⁵⁶⁵

1612. The Trial Chamber held, however, that the admission of the cell site evidence and call data records into evidence was conditional upon the Prosecution providing contextual evidence on its provenance.³⁵⁶⁶ Specifically, the Trial Chamber ordered the Prosecution to call at least one witness who could testify to the creation of the call sequence tables and to the collection and storage of

³⁵⁶¹ Corrected version of decision on Prosecution motion to admit Witness PRH707's statements; Decision on admission of Witness PRH705's statements and annexes into evidence; Decision on admission of Witness PRH707's statements and annexes into evidence; Decision on admission of Prosecution's cell site evidence.

³⁵⁶² Under Rule 162 'Exclusion of certain evidence', (A) 'No evidence shall be admissible if obtained by methods which cast substantial doubt on its reliability or if its admission is antithetical to, or would seriously damage, the integrity of the proceedings' and (B) 'In particular, evidence shall be excluded if it has been obtained in violation of international standards on human rights, including the prohibition of torture'.

³⁵⁶³ Decision on five Prosecution motions on call sequence tables and witness statements, paras 61-65, 75-110.

³⁵⁶⁴ Decision on five Prosecution motions on call sequence tables and witness statements, paras 63, 112.

³⁵⁶⁵ Decision on five Prosecution motions on call sequence tables and witness statements, paras 108-110.

³⁵⁶⁶ Decision on five Prosecution motions on call sequence tables and witness statements, para. 113; Decision on admission of Witness PRH707's statements and annexes into evidence. In addition, the administrator of the Prosecution 'SQL' database, Mr Spartak Mkrtchyan, testified (T. 14-15 September 2015) regarding the design, implementation, maintenance and repair of the database that enables call record analysis.

their underlying call data records.³⁵⁶⁷ The Appeals Chamber upheld this decision in an interlocutory appeal that the Trial Chamber had certified on the Oneissi Defence's application.³⁵⁶⁸

1613. Consequently, five Prosecution analysts and investigators, Ms Kei Kamei, Mr Andrew Donaldson, Ms Helena Habraken, Mr Lachlan Christie and Mr Christian Carnus, testified on the creation of the call sequence tables.³⁵⁶⁹ Witness 705, from Touch, and Witness 707, from Alfa, testified on the collection and storage of their underlying call data records and contextual evidence on their provenance.

(b) Format and use of call data records

1614. The Prosecution obtained call data records from Alfa and Touch in different raw formats. In 2004 and 2005, Alfa and Touch saved call data records on magnetic tapes; only later were they saved on DVDs and computer hard drives.³⁵⁷⁰ In relation to Alfa's and Touch's records, the Trial Chamber found that call data records in their raw form constitute business records produced in the normal course of business.³⁵⁷¹ These records were automatically generated by different departments and officials from Alfa and Touch. A limited number of Alfa's and Touch's records were prepared for the possible purposes of litigation, specifically, by being provided to the UNHCR and then the Prosecution for use in court.³⁵⁷²

1615. The Defence had full access to the relevant raw call data records and databases and could reproduce each Prosecution call sequence table from the call data records. Defence counsel also cross-examined the Prosecution analysts and investigators on the creation of tables.³⁵⁷³

³⁵⁶⁷ Decision on five Prosecution motions on call sequence tables and witness statements, para. 115.

³⁵⁶⁸ Appeal decision on legality of transfer of call data records.

³⁵⁶⁹ Kei Kamei, T. 20-21 July 2015, T. 16-19 November 2015; Andrew Donaldson, T. 21 July 2015; Helena Habraken, T. 22 July 2015, T. 27 September 2016; Lachlan Christie, T. 22 July 2015; Christian Carnus, T. 22 July 2015.

³⁵⁷⁰ Re Alfa: Witness PRH707, T. 10 February 2016, pp 28-29, 44. Re Touch: Witness PRH705, T. 11 May 2016, pp 12-15; exhibit P826 (Witness PRH705's statement of 16 November 2015), para. 160; exhibit P826.9 (Table showing frequency of backup and retention period of backed up data, updated on 6 November 2009, annex 16 (1) to Witness PRH705's statement of 16 November 2015); exhibit P826.10 (Backup procedure, dated 19 March 2010, annex 16 (2) to Witness PRH705's statement of 16 November 2015), pp 2-4.

³⁵⁷¹ Corrected version of decision on Prosecution motion to admit Witness PRH707's statements, para. 55; Decision on admission of Witness PRH705's statements and annexes into evidence, para. 25; Decision on Prosecution motion to admit Witness PRH705's statements, para. 24.

³⁵⁷² Corrected version of decision on Prosecution motion to admit Witness PRH707's statements, para. 66; Decision on admission of Witness PRH705's statements and annexes into evidence, paras 25, 27.

³⁵⁷³ Decision on admission of call sequence tables related to Mr Hariri's movements, paras 32, 69-70. *See also* Appeal decision regarding inspection room and call data records, paras 2-3, 15.

1616. Defence counsel also produced and tendered into evidence their own call sequence tables derived from the same call data records.³⁵⁷⁴ In the same way as the Prosecution, they relied on call sequence tables but without seeking to admit the underlying call data records into evidence. Further, during pre-trial, and in a Rule 53 meeting, the Trial Chamber, in the presence of Defence counsel and their assistants, visited the Prosecution's inspection room where the Prosecution briefed it on the call data records database.³⁵⁷⁵ During the meeting, the Prosecution performed demonstrations of search queries and answered questions from the Trial Chamber and Defence counsel and their assistants, including on how the call data records were stored and how the call sequence tables were created.³⁵⁷⁶

(c) Cell site data

1617. According to Mr Philips's general report, network operators, including Alfa and Touch, produce and maintain a database containing cell site information.³⁵⁷⁷ Cell site data includes: the date of its production; who produced it; a record reference; the cell ID; the cell site's name and full address including postal code; its grid co-ordinates, sector number or code; the number of sectors and azimuths of each sector; the orientation, azimuth or bearing in degrees from north of each sector; the antenna height; and the date when a cell site first came in service.³⁵⁷⁸

1618. The cell ID is a unique number within the call data records identifying the cell used at the start and end of a call or a text message.³⁵⁷⁹ In its complete form it consists of four elements: the mobile country code; the mobile network code; the location area code; and the cell's identity.³⁵⁸⁰

³⁵⁷⁴ For example, exhibits 5D352, 5D353, 5D354, 5D522, 5D523, 5D524, 5D525, 5D526, 5D527, 5D528, 5D529, 5D530, 5D531 (Thirteen call sequence tables: six call sequence tables underlying exhibit 5D348 and seven call sequence tables underlying exhibit 5D356); exhibit 5D348 (PowerPoint presentation 'Phone numbers with cell site activities similar to Purple 018'); exhibit 5D356 (PowerPoint presentation 'Use of "Cola Area" Cells by Contacts of Mobile *018'); Call sequence table decision (Ayyash and Merhi Defence); Decision denying admission of two call sequence tables; Reasons for admission of 22 Sabra Defence documents; Decision on admission of Sabra Defence documents of 28 March 2018.

³⁵⁷⁵ Held on 26 November 2013. Rule 53 provides: 'The Registrar, or Registry staff designated by the Registrar, shall, as appropriate, take minutes of the plenary meetings of the Tribunal and of the proceedings of a Judge or Chamber, other than private deliberations.'

³⁵⁷⁶ Order regarding Rule 53 meeting minutes, annex A; F3772, Registrar's Submission Pursuant to Rule 48 (C) in Response to the Trial Chamber's Order of 21 June 2019, 11 July 2019, annex A.

³⁵⁷⁷ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 101.

³⁵⁷⁸ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 102-103.

³⁵⁷⁹ John Edward Philips, T. 18 August 2015, p. 94; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 101-102. *See also* Kei Kamei, T. 20 July 2015, p. 27.

³⁵⁸⁰ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 101.

1619. Mr Philips's general report explained that network operators constantly update their database containing cell site information, as new cell sites are brought on line, or taken out of service, or modified. They can extract details of each call from their database, using the cell ID as the search term.³⁵⁸¹ However, network operators do not have all of this data readily available, especially when the cell site data is not recent.³⁵⁸²

1620. The Prosecution used the cell tower to which mobiles connected—identified in the call data records by its cell ID and the cell coverage maps—to show the approximate location of a mobile making or receiving a call/SMS. The Prosecution, in its final trial brief, argued that reading cell site data in conjunction with a relevant call sequence table provides an approximate location where the respective mobile was used for each call.³⁵⁸³

1621. Mr Philips explained that, at a minimum, the cell site data shows the address and or coordinates of the cell site and the azimuth.³⁵⁸⁴ The azimuth, or bearing, is the direction in which the sector antenna is pointing and shows the direction in which the cell projects.³⁵⁸⁵ The terms 'centreline', 'azimuth' and 'bearing' are interchangeable.³⁵⁸⁶ A 'sector' of a cell site provides radio signal coverage over one part, an arc of approximately 120 degrees, of the entire area of coverage provided by the site.³⁵⁸⁷

1622. The image below, from Mr Philips's general report, shows an azimuth 'tilt', a technique used to give more extensive coverage for a cell site location by directing the antenna on the horizontal plane—if pointed downwards, it is called 'downtilt', and where upwards, 'uptilt'.³⁵⁸⁸

³⁵⁸¹ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 101.

³⁵⁸² Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 103.

³⁵⁸³ Prosecution final trial brief, para. 54.

³⁵⁸⁴ John Edward Philips, T. 19 August 2015, p. 24; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 102.

³⁵⁸⁵ John Edward Philips, T. 19 August 2015, p. 24; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 103; Witness PRH705, T. 5 May 2016, pp 79-81.

³⁵⁸⁶ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 71, fn. 14.

³⁵⁸⁷ John Edward Philips, T. 19 August 2015, pp 39-40; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 43.

³⁵⁸⁸ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 49-50.

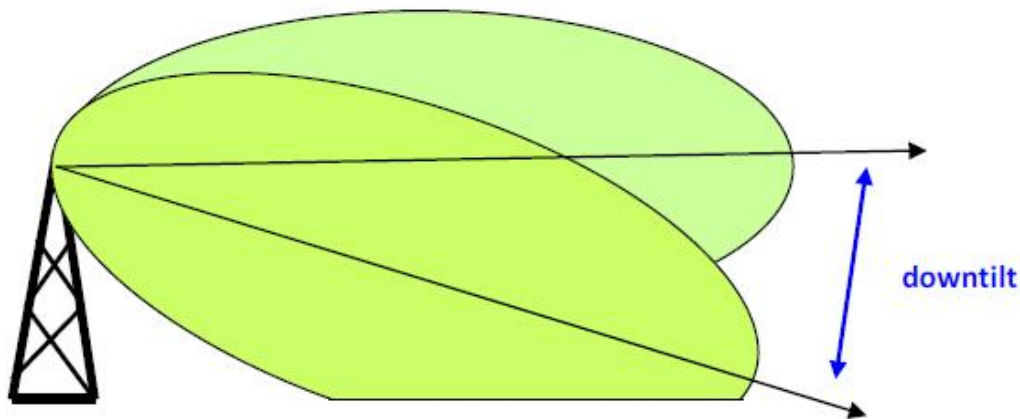


Image extracted from Mr Philips's report 'An introduction to cell site analysis as applied to GSM networks' – exhibit P549, p. 50, figure 027

1623. The image below, also from Mr Philips's general report, is an 'idealised' view of a cell 'sectorisation'. This shows three equal sectors, each of 120 degrees, directed on azimuths of 60, 180 and 300 degrees. The three-sectored cell site is the most common cell configuration. The azimuth is the centre line of the bearing of the antenna. Each sector is associated with a discrete cell which itself has its own base transceiver system—as noted above at paragraph 1581.³⁵⁸⁹

³⁵⁸⁹ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 44-45.

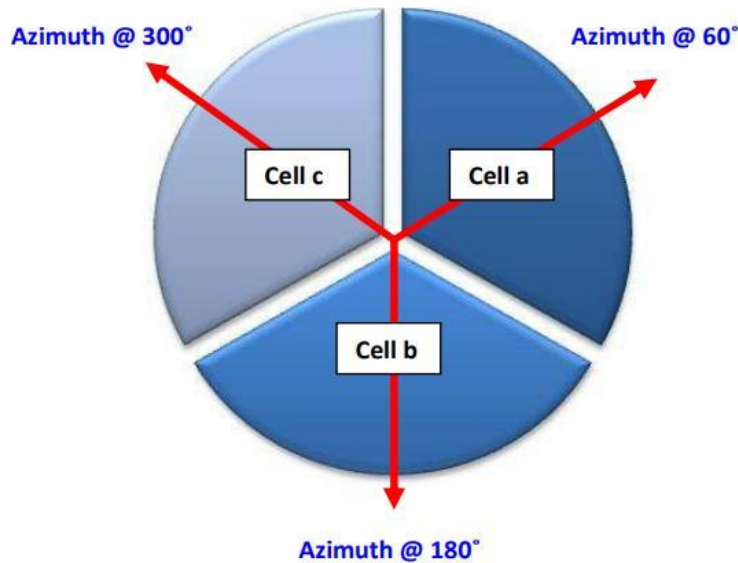


Image extracted from Mr Philips's report 'An introduction to cell site analysis as applied to GSM networks' – exhibit P549, p. 44

(d) Call sequence tables

1624. Prosecution analysts created call sequence tables from source material that the UNIIC and the Prosecution had obtained from Alfa and Touch in response to their requests for assistance.³⁵⁹⁰ The analysts explained that Alfa and Touch provided call data records either in the form of individual text files for individual mobile numbers, or in the form of larger files for multiple numbers.³⁵⁹¹

1625. They also described how they opened the text files directly within Excel spreadsheets and that for larger files, the Prosecution designed and created its own database by using Microsoft's

³⁵⁹⁰ Kei Kamei, T. 20 July 2015, pp 17-18, 23, 29-31; exhibit P516 (Witness Statement of Kei Kamei, 14 January 2015), para. 16; exhibit P528 (Witness Statement of Helena Habraken, 18 December 2014), para. 16.

³⁵⁹¹ Exhibit P516 (Witness Statement of Kei Kamei, 14 January 2015), para. 17; exhibit P528 (Witness Statement of Helena Habraken, 18 December 2014), para. 17.

Structured Query Language (SQL).³⁵⁹² The Prosecution analysts, Ms Kamei, Mr Donaldson, Ms Habraken, Mr Christie and Mr Carnus testified about how they created the call sequence tables.³⁵⁹³

1626. Ms Kamei explained that the SQL software converted the raw call data records into a searchable database from which call record patterns could be analysed. A specific search query of a mobile number, a cell tower or various combinations permits searching across folders and databases, and then analysis of the information retrieved.³⁵⁹⁴ Ms Habraken stated that each analyst:

extracted call data records and cell site information—collected by Alfa and Touch in connection with mobile telephones using their services, for customer billing and systems management—and entered it into call sequence tables to allow presentation and analysis, but without altering the data.³⁵⁹⁵

1627. The analysts produced call sequence tables in a ‘standardised’ and ‘mechanical’ manner by copying and pasting the relevant data from the underlying material.³⁵⁹⁶ To produce call sequence tables, analysts searched the database for calls made and received by a particular number, or—combining those two searches—all calls involving a number.³⁵⁹⁷

1628. Alfa and Touch also provided the Prosecution with cell site information that permits the conversion of the numerical cell ID codes included in the call data records into cell tower names.³⁵⁹⁸ The cell tower name is the name the telecommunication service provider gives a specific cell tower, referencing its location,³⁵⁹⁹ for example, in Aabdeh—which is north of Tripoli, Lebanon—there is an Alfa cell tower named AABDEH2.³⁶⁰⁰

³⁵⁹² Kei Kamei, T. 20 July 2015, pp 34, 65; exhibit P516 (Witness Statement of Kei Kamei, 14 January 2015), para. 17; exhibit P528 (Witness Statement of Helena Habraken, 18 December 2014), para. 17. SQL is a special programming language for databases. The Prosecution’s SQL database enables call data record analysis. The Prosecution’s database administrator, Mr Spartak Mkrtchyan, testified on 14-15 September 2015 regarding the design, implementation, maintenance and repair of this database. This is a Microsoft Asset product.

³⁵⁹³ Kei Kamei, T. 20-21 July 2015, T. 16-19 November 2015; Andrew Donaldson, T. 21 July 2015; Helena Habraken, T. 22 July 2015, T. 27 September 2016; Lachlan Christie, T. 22 July 2015; Christian Carnus, T. 22 July 2015.

³⁵⁹⁴ Kei Kamei, T. 20 July 2015, pp 17, 38-42.

³⁵⁹⁵ Exhibit P528 (Witness Statement of Helena Habraken, 18 December 2014), paras 11, 13.

³⁵⁹⁶ Kei Kamei, T. 20 July 2015, pp 34-36, 56; Helena Habraken, T. 27 September 2016, pp 38, 54-55.

³⁵⁹⁷ Kei Kamei, T. 20 July 2015, pp 39-40, 74.

³⁵⁹⁸ Kei Kamei, T. 20 July 2015, pp 19, 26-28; exhibit P516 (Witness Statement of Kei Kamei, 14 January 2015), paras 13, 27; exhibit P528 (Witness Statement of Helena Habraken, 18 December 2014), paras 13, 27.

³⁵⁹⁹ Witness PRH707, T. 15 February 2016, p. 31.

³⁶⁰⁰ Witness PRH707, T. 16 February 2016, pp 35-36.

1629. The Prosecution produced different types of call sequence tables, including standard call sequence tables containing only Lebanese mobile calls, landline call sequence tables, roaming call sequence tables and SMS call sequence tables. All contain the basic ‘call’ types: namely, outgoing call, incoming call, outgoing SMS and incoming SMS.³⁶⁰¹ The Prosecution analysts explained that for some numbers, call sequence tables included emergency calls, outgoing calls while roaming and incoming calls while roaming.³⁶⁰²

1630. For each voice call or SMS, Mr Philips and the Prosecution analysts explained, a call sequence table includes the date and time of the call; the other telephone number involved; the direction of the call; its duration; the IMEI used by the target number; and the cell tower used by the target number at the start of the call.³⁶⁰³ When data was available and the Prosecution determined it to be relevant to the charges in the amended consolidated indictment, the call sequence table also included information on the cell sector that was used at the end of the call, the ‘end cell’ data.³⁶⁰⁴

1631. Prosecution analysts also created combined or composite call sequence tables from multiple call sequence tables by merging and sorting a number of individual call sequence tables by time and date. A combined call sequence table will show two mobiles of interest that are in contact with one another, and there are two entries for each call.³⁶⁰⁵ Below is an excerpt from Mr Philips’s general report, exhibit P549, showing an extract from a ‘combined call sequence table’. It shows a call between two mobiles: the outgoing ‘Calling party’ (in blue) on the left, and the incoming ‘Called party’ (in orange) on the right. Each ‘half’ of the call comes from separate call data records for each mobile; and both are from different networks.³⁶⁰⁶

³⁶⁰¹ Exhibit P516 (Witness Statement of Kei Kamei, 14 January 2015), para. 20; exhibit P528 (Witness Statement of Helena Habraken, 18 December 2014), para. 20.

³⁶⁰² Exhibit P516 (Witness Statement of Kei Kamei, 14 January 2015), paras 21-26; exhibit P528 (Witness Statement of Helena Habraken, 18 December 2014), paras 21-26.

³⁶⁰³ John Edward Philips, T. 18 August 2015, pp 111-117; exhibit P516 (Witness Statement of Kei Kamei, 14 January 2015), para. 12; exhibit P528 (Witness Statement of Helena Habraken, 18 December 2014), para. 12.

³⁶⁰⁴ Exhibit P516 (Witness Statement of Kei Kamei, 14 January 2015), para. 12; exhibit P528 (Witness Statement of Helena Habraken, 18 December 2014), para. 12; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 109-110.

³⁶⁰⁵ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 111-112.

³⁶⁰⁶ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 111.

Call no	Date	Time	Calling party	Called party	Message type	IMEI	Duration	First cell id	Last cell id
15	12.05.11	13:05:13	07950.323XXX	07853.666XXX	Outgoing	35078120142XXXX	00:00:12	52341	52341
16	12.05.11	13:05:17	07950.323XXX	07853.666XXX	Incoming	35896804943XXXX	00:00:12	2456	2456

Excerpt from a combined call sequence table with cell detail removed, extracted from Mr Philips's report 'An introduction to cell site analysis as applied to GSM networks' – exhibit P549, p. 111, figure 058

1632. These two call data records refer to the same call between the mobiles, so the start time of both calls should be the same, without the four-second difference shown.³⁶⁰⁷ Mr Philips explained that the call times are generated at each MSC within a network. However, they are normally not synchronised across any network and certainly not between networks. As a result, there can be time differences between the start times of calls on the same network, and between calls on different networks. These should normally be approximately a few seconds but can be greater.³⁶⁰⁸

1633. To show a call between two mobiles in a single line, Prosecution analysts also produced simplified call sequence tables. The two lines from the excerpt above can be presented as a single line, as shown in the image below, also extracted from Mr Philips's report. The Prosecution used these types of call sequence tables for mapping calls from the cell site name and cell ID.³⁶⁰⁹

Call no	Date	Time	Call type	Phone calling	Cell site name	Cell id Start	Cell id End	Duration	Phone Called	Cell site name	Cell id Start	Cell id End
12	12.05.11	13:05:13	Voice	07950.323XXX	Brown Farm	52341	52341	00:00:12	07853.666XXX	Dew House	2456	2456

Excerpt from a single line combined call sequence table extracted from Mr Philips's report 'An introduction to cell site analysis as applied to GSM networks' – exhibit P549, p. 112, figure 059

1634. Ms Kamei explained that after completing a call sequence table, the analyst who created it checked it for inconsistencies, such as missing data, and the analysts then shared the completed call sequence tables among themselves for peer review.³⁶¹⁰ For peer review, another analyst would check a completed call sequence table, going back to the raw data for one to five calls on each

³⁶⁰⁷ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 111.

³⁶⁰⁸ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 112; *see also* John Edward Philips, T. 18 August 2015, pp 82-83, 113-116, T. 1 September 2016, pp 93-95, T. 2 September 2016, pp 6, 10.

³⁶⁰⁹ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 111-112.

³⁶¹⁰ Kei Kamei, T. 20 July 2015, pp 58-60.

page.³⁶¹¹ Ms Kamei and Ms Habraken explained that when new data was made available to the Prosecution, revised versions of the tables were created, and in cases of identified errors, corrected tables were produced.³⁶¹²

1635. The Defence initially challenged the Prosecution's call sequence tables—and most specifically how they were produced—and Defence counsel cross-examined the Prosecution analysts and investigators as to their methodology. Ultimately, however, there was little resistance to the resulting tables being received into evidence. The Prosecution submitted in its final trial brief that the call sequence tables should receive the same weight as the call data records, which it described as 'the underlying business records'.³⁶¹³

1636. Defence counsel also created call sequence tables relevant to challenges to the Prosecution case and asked the Trial Chamber to admit them into evidence.³⁶¹⁴ For example, the Trial Chamber admitted into evidence 13 call sequence tables prepared by the Sabra Defence.³⁶¹⁵ In its applications, Defence counsel relevantly explained the methodology for the creation of the call sequence tables, including on the methods used for extracting the records from the SQL database, selecting records of interest, identifying fields of relevance, the process of copying the data, the process of the transfer of the spreadsheet and the formatting.³⁶¹⁶

³⁶¹¹ Kei Kamei, T. 21 July 2015, pp 6-7, 44-49, 51-55.

³⁶¹² Exhibit P516 (Witness Statement of Kei Kamei, 14 January 2015), para. 38; exhibit P528 (Witness Statement of Helena Habraken, 18 December 2014), para. 38.

³⁶¹³ Prosecution final trial brief, para. 51, pointing out that the Trial Chamber had 'heard extensive evidence on the standardised production of CSTs, as well as evidence on the design and maintenance of the Structured Query Language database used for analysing CDRs and from which some CSTs were created.' (internal footnotes omitted).

³⁶¹⁴ *For example*, F3414, Sabra Defence Application for Admission into Evidence of Twenty Two Documents Marked for Identification, 16 November 2017.

³⁶¹⁵ Reasons for admission of 22 Sabra Defence documents; exhibits 5D352, 5D353, 5D354, 5D522, 5D523, 5D524, 5D525, 5D526, 5D527, 5D528, 5D529, 5D530, 5D531 (Thirteen call sequence tables: six call sequence tables underlying exhibit 5D348 and seven call sequence tables underlying exhibit 5D356); exhibit 5D348; exhibit 5D356.

³⁶¹⁶ *For example*, F3251, Motion for the Admission of Documents Relating to the Claim of Responsibility – The Fax, 26 July 2017.

B. Cellular networks, signal coverage and cell allocation

1. Cellular networks and cellular signal coverage

(a) Best serving cell and types of cells

1637. A cellular network is a radio network distributed over land through cells where each cell includes a fixed location transceiver known as a base station. These cells together provide radio coverage over large geographic areas. Understanding how a mobile's geographic location may be determined from the cellular network coverage data and the cell used to make or receive a call is essential to appreciating how the Prosecution used attribution and co-location in its case.

1638. Mr Philips, in his general report, explained that the radio coverage area is the area over which a 'usable signal' can be received, and includes 'blackspots' where no radio coverage is provided.³⁶¹⁷ Cells are configured to provide overlapping signal coverage, especially in urban areas.³⁶¹⁸ The image below, from Mr Philips's general report, shows that tall buildings supporting a cell site may provide little or no coverage around the base of the building on which the antenna is mounted. Otherwise, a distant cell site—*i.e.* 'Cell site b' in the example below—may provide coverage.³⁶¹⁹

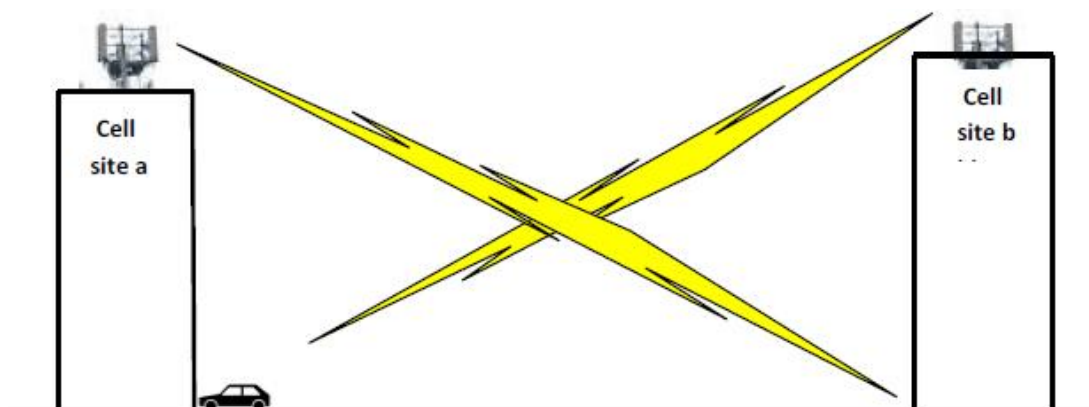


Image extracted from Mr Philips's report 'An introduction to cell site analysis as applied to GSM networks' – exhibit P549, p. 52, figure 030

³⁶¹⁷ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 13.

³⁶¹⁸ John Edward Philips, T. 20 August 2015, p. 51.

³⁶¹⁹ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 52.

1639. Radio waves are electromagnetic waves, which travel at the speed of light and have many of the characteristics of light; thus, particularly in an urban environment, radio waves can be reflected, scattered and diffracted. The image extracted below, from Mr Philips's general report, shows two signals arriving at the vehicle from 'Cell a'—the top one from a scattered/reflected path and the bottom one from a diffracted path.³⁶²⁰

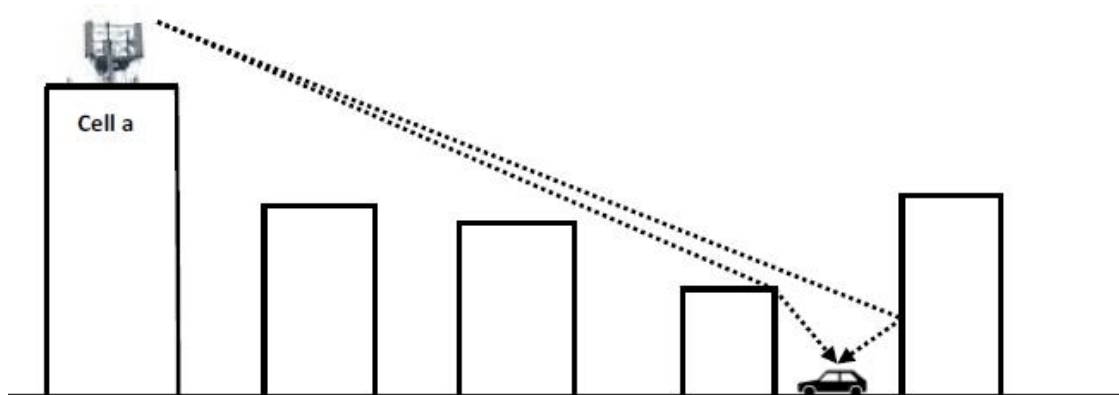


Image extracted from Mr Philips's report 'An introduction to cell site analysis as applied to GSM networks' – exhibit P549, p. 56, figure 032

1640. Within an operational cellular system, the mobile normally uses the cell providing the strongest signal in comparison with the neighbouring cells.³⁶²¹ In this sense, each cell provides, over a certain geographic area, the strongest signal compared to its neighbouring cells. This cell is referred to as the 'best serving cell'; the area over which it provides best server coverage is called the 'best server coverage area'.³⁶²²

1641. The image below, extracted from Mr Philips's general report, shows the 'idealised' shapes of the best server coverage of three cells. In practice, however, the best server coverage of cells is not in a uniform shape.³⁶²³ Therefore, his report explains, there is no defined boundary between 'competing' cells. In the extract below, 'Cell b' may provide best server coverage in certain locations within the solid area of 'Cell a'.³⁶²⁴ Further, best server coverage boundaries normally

³⁶²⁰ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 55-56.

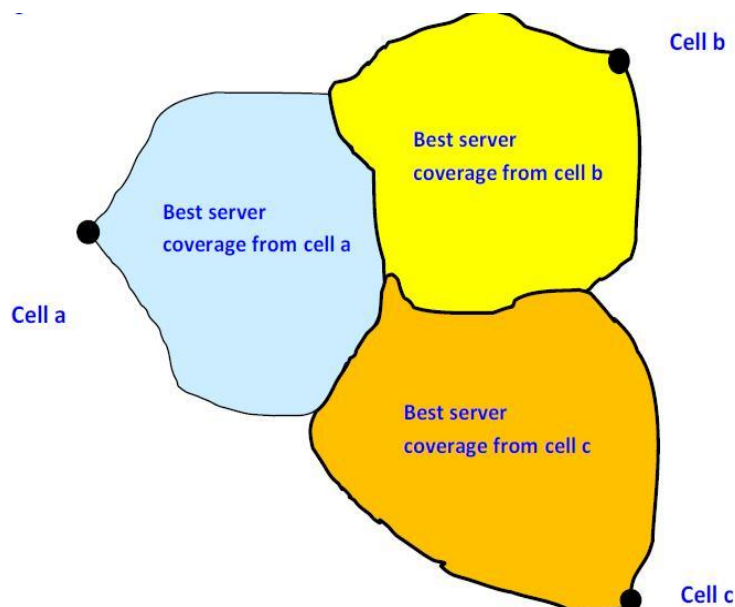
³⁶²¹ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 57.

³⁶²² Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 32, 67.

³⁶²³ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 32.

³⁶²⁴ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 32, 73.

change on an ongoing basis. This means that coverage boundaries are normally in a constant state of flux and are dynamic.³⁶²⁵



*'Idealised' shapes of the best server coverage of three cells extracted from Mr Philips's report
'An introduction to cell site analysis as applied to GSM networks' – exhibit P549, p. 32,
figure 018*

1642. Mr Philips, in his general report, explained the five main cell categories that provide different cell 'sizes' in a network. There are macro, micro, pico, femto and umbrella cells. The coverage area of each cell varies according to the environment where the base station antennas are installed.³⁶²⁶

1643. Macro cells are those where the base station antenna is installed on a mast or a building above the average roof top level; they need elevation to provide extensive coverage.³⁶²⁷ They are designed to provide coverage over large rural, urban or suburban areas.³⁶²⁸ Higher buildings in the surrounding area, however, could affect the coverage by blocking the signal.³⁶²⁹

³⁶²⁵ John Edward Philips, T. 19 August 2015, pp 46-47; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 32, 73.

³⁶²⁶ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 46-55.

³⁶²⁷ John Edward Philips, T. 19 August 2015, p. 50.

³⁶²⁸ John Edward Philips, T. 19 August 2015, pp 50-53, T. 20 August 2015, pp 11-20, 22-23.

³⁶²⁹ John Edward Philips, T. 19 August 2015, p. 51.

1644. Micro cells have an antenna height under the average roof top level and are typically used in urban areas to provide limited coverage to specific areas.³⁶³⁰ The best server coverage of micro cells is over an area immediately around the cell and may be no more than 100 or 200 metres.³⁶³¹

1645. Pico cells are small cells whose coverage diameter is typically less than 50 metres and are mainly used indoors, such as in an office building for use by a company.³⁶³²

1646. Femto cells are designed for use in residential or small business environments and connect to the service provider's network through a broadband internet connection.³⁶³³

1647. Umbrella cells are an application of a cell, rather than a distinct type of cell. Typically they are macro cells that cover a relatively wide area of smaller macro or micro cells; they fill in the gaps in coverage between those cells.³⁶³⁴ Mr Philips explained that typically 'it consists of a macro cell, covering a relatively wide area, overlaid onto several microcells'.³⁶³⁵

1648. Mr Philips's general report explained that umbrella cells work in two main ways. First, a mobile initially uses the umbrella cell. It is then 'handed over' to the most appropriate micro cell within the 'umbrella', as a local mobile. Second, a mobile moves quickly within the 'umbrella' cell. Rather than being handed over from one micro cell to another, it remains on the umbrella cell. An example of this is on a motorway through a built-up area where mobiles in vehicles remain on the umbrella cell while mobiles operating in the built-up area use the local micro cells.³⁶³⁶

1649. The network itself classifies a cell; a cell may be classified as macro yet still cover only a small area. The cell in that example originally serviced a much broader area, but with an increase in demand, additional cells were added in the surrounding areas, thereby restricting the best server coverage of the original cell.³⁶³⁷

³⁶³⁰ John Edward Philips, T. 19 August 2015, pp 42, 51-56, T. 20 August 2015, pp 11-15, 25-26.

³⁶³¹ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 53.

³⁶³² John Edward Philips, T. 19 August 2015, p. 51, T. 20 August 2015, p. 27, T. 25 August 2015, pp 70, 76.

³⁶³³ John Edward Philips, T. 19 August 2015, p. 51, T. 25 August 2015, pp 70-71.

³⁶³⁴ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 55; John Edward Philips, T. 25 August 2015, pp 65-66.

³⁶³⁵ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 55.

³⁶³⁶ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 55.

³⁶³⁷ John Edward Philips, T. 20 August 2015, pp 11-12, 19.

1650. Mr Philips explained that cells are smaller in urban areas and larger in rural areas; they tend to be much more heavily concentrated in urban areas and more spread out in rural areas.³⁶³⁸ For example, a two squared kilometre area of Beirut contains approximately 50 cells, whereas one of 30 by 40 kilometres in rural Lebanon only contains 14 cells.³⁶³⁹ The more tightly packed the cells, the smaller the best server coverage area. Cell site analysis can therefore determine a mobile's location with more accuracy in urban cells than in rural areas, where the cells cover much larger stretches.³⁶⁴⁰

(b) Coverage prediction

1651. Mr Philips, in his general report, explained that a coverage prediction is made to determine the area over which a signal from a cell can provide a 'usable signal'.³⁶⁴¹ Witness 707 explained, from his experience, that most network providers, including Alfa and Touch, plan their networks' coverage using computer-based modelling tools, such as Aircom's Asset.³⁶⁴²

1652. Aircom, according to that witness, is a company that provides network design, optimisation and management software and consultancy for mobile networks. It created Asset, a radio planning and optimisation software tool, providing coverage, capacity, cell parameter and neighbour planning for mobile cellular networks.³⁶⁴³ Witnesses 705 and 707 stated that commercial software programs like this allow network providers to plan and target the coverage of each cell in their networks to maximise the coverage and thus profitability. These tools produce predicted server coverage maps for each cell.³⁶⁴⁴

1653. To produce what is termed a 'prediction package', engineers upload—into a modelling tool—information stored in network operators' databases. It is grouped into four categories,

³⁶³⁸ John Edward Philips, T. 20 August 2015, pp 2-3.

³⁶³⁹ John Edward Philips, T. 20 August 2015, pp 5, 8.

³⁶⁴⁰ John Edward Philips, T. 20 August 2015, p. 6.

³⁶⁴¹ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 57.

³⁶⁴² Witness PRH707, T. 16 February 2016, pp 80-81, T. 17 February 2016, pp 4-6, 8.

³⁶⁴³ Witness PRH707, T. 11 February 2016, pp 31-32, 34-35, T. 12 February 2016, pp 74-78.

³⁶⁴⁴ Witness PRH707, T. 11 February 2016, pp 32-35; Witness PRH705, T. 5 May 2016, pp 87-88, T. 21 July 2016, p. 17.

namely, first, a propagation model; second, a terrain model; third a clutter model; and fourth, transmission parameters.³⁶⁴⁵

1654. A propagation model, according to Mr Philips, estimates the signal loss from the transmitter to areas of interest, which is called the path loss.³⁶⁴⁶ Witnesses 705 and 707 explained that it generally applies the ‘clutter’ model, which is the ground area type over which radio waves propagate that takes into account topography and clutter ‘categories’ such as water, forest, urban and suburban terrain.³⁶⁴⁷ According to Mr Philips, depending on which propagation model is used, it may contain the terrain component. It can also be introduced from a separate source as a terrain profile, which provides the contour elements of the ground over which the coverage is to be estimated.³⁶⁴⁸

1655. A terrain model is a digitised terrain profile which provides the contour elements of the ground over the estimated coverage area.³⁶⁴⁹ The transmission parameters typically include the antenna details, the azimuth, its tilt, the height of the antenna above the ground and the antenna’s frequency.³⁶⁵⁰

1656. Mr Philips’s general report uses a coverage prediction map to illustrate the product created by the modelling tool. The parameters are entered into the modelling tool and the results are shown in the form of signal level ranges. These are superimposed onto a map in coloured bands; they represent the strength of a radio signal over an area. This is also known as a predicted coverage map. Knowing the extent of usable coverage informs the network of where the cell is likely to provide a signal, and its estimated strength beyond the required best server coverage area.³⁶⁵¹

1657. Mr Philips used a coverage prediction map of Cornwall in the UK, below, to illustrate signal strengths. The strongest is closest to the cell site, marked in red in the centre. The further

³⁶⁴⁵ John Edward Philips, T. 19 August 2015, pp 95-97; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 57.

³⁶⁴⁶ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 57.

³⁶⁴⁷ Witness PRH707, T. 15 February 2016, p. 6, T. 22 April 2016, pp 24-28; Witness PRH705, T. 6 May 2016, pp 6, 68, 77-78; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 60-61.

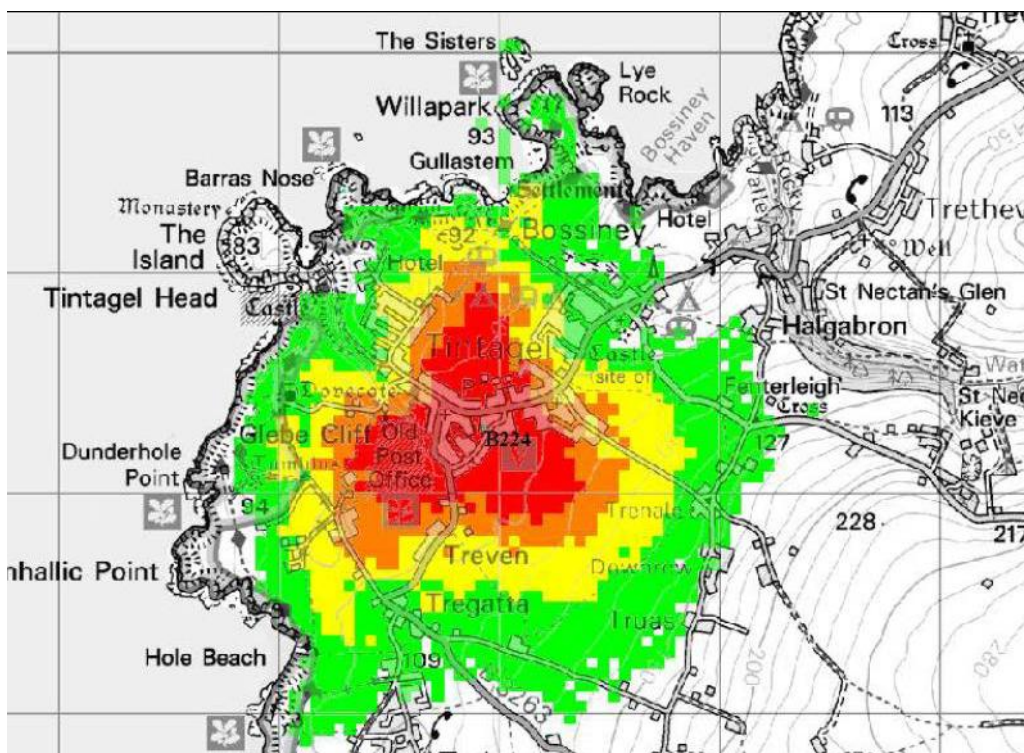
³⁶⁴⁸ John Edward Philips, T. 19 August 2015, pp 96-97; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 58.

³⁶⁴⁹ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 58.

³⁶⁵⁰ Witness PRH707, T. 22 April 2016, pp 32-33.

³⁶⁵¹ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 62-64.

away from the cell site, the weaker the signal—here it is in yellow. The weakest predicted level, coloured green, is on the outer edge.³⁶⁵²



Coverage prediction map of three cells in the UK showing the signal strength level, extracted from Mr Philips's report 'An introduction to cell site analysis as applied to GSM networks' – exhibit P549, p. 64, figure 042

1658. Coverage predictions, according to Mr Philips, inherently contain a degree of inaccuracy. Despite this, they are deemed sufficiently accurate for radio coverage planning, are used throughout the industry and are more than adequate to indicate the area over which a certain level of coverage is expected.³⁶⁵³

(c) Best server coverage prediction

1659. Witness 705 explained that in an area with several radio signals, the strongest signal provides the best server coverage; the cell providing the signal is therefore the 'best serving

³⁶⁵² Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 64.

³⁶⁵³ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 66.

coverage cell’.³⁶⁵⁴ Every cellular network contains many areas of best server coverage, each relating to a different cell.³⁶⁵⁵ ‘Predicted best server coverage’, which is represented in map form, shows the area over which each cell site is predicted to emit the strongest signal.³⁶⁵⁶ It does not necessarily, Witness 705 explained, reflect the *actual* coverage, because the landscape of the area may change, and propagation tools and maps used to predict coverage do not take into account certain types of ‘blockage’, such as trees or newly built buildings.³⁶⁵⁷

1660. Alfa and Touch provided this data to the Prosecution in the form of shape files. Shape files are sets of data which may be uploaded into software used for creating coverage maps, such as ArcGIS. When projected onto a map of Lebanon, for example, they show the predicted best server coverage for respective cell sectors, and include mast locations and azimuths.³⁶⁵⁸ Witness 707 testified that engineers at Alfa used shape files to calculate and obtain estimates of the best cell provided by a specific station.³⁶⁵⁹ These were generated by Asset to show the best cell serving a certain location on a digital map.³⁶⁶⁰

1661. Mr Philips explained the difference between best server coverage maps and ‘plots’. Plots show the best server coverage for each individual cell on each network and can be loaded into software and superimposed on a map. Best server coverage maps, on the other hand, are static images of the plots superimposed on a map, in this case of Lebanon, from February 2005. Maps are merely a picture, so beyond simply enlarging the image a single cell cannot be selected and inspected.³⁶⁶¹

1662. Best server plots are used by network planners and operators to show the likely best server coverage from multiple cells for network cell planning.³⁶⁶² The image below of a map of an area in south-west London, extracted from Mr Philips’s report, shows the best server plot from a cell site, denoted by the large red dot at the top right. The line from the red dot pointing down to the

³⁶⁵⁴ Witness PRH705, T. 20 July 2016, p. 88; *see also* exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 67-68.

³⁶⁵⁵ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 68

³⁶⁵⁶ Witness PRH705, T. 20 July 2016, p. 88; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 68-69.

³⁶⁵⁷ Witness PRH705, T. 20 July 2016, p. 94.

³⁶⁵⁸ Witness PRH707, T. 12 February 2016, pp 74-78; Witness PRH705, T. 9 May 2016, pp 7, 10.

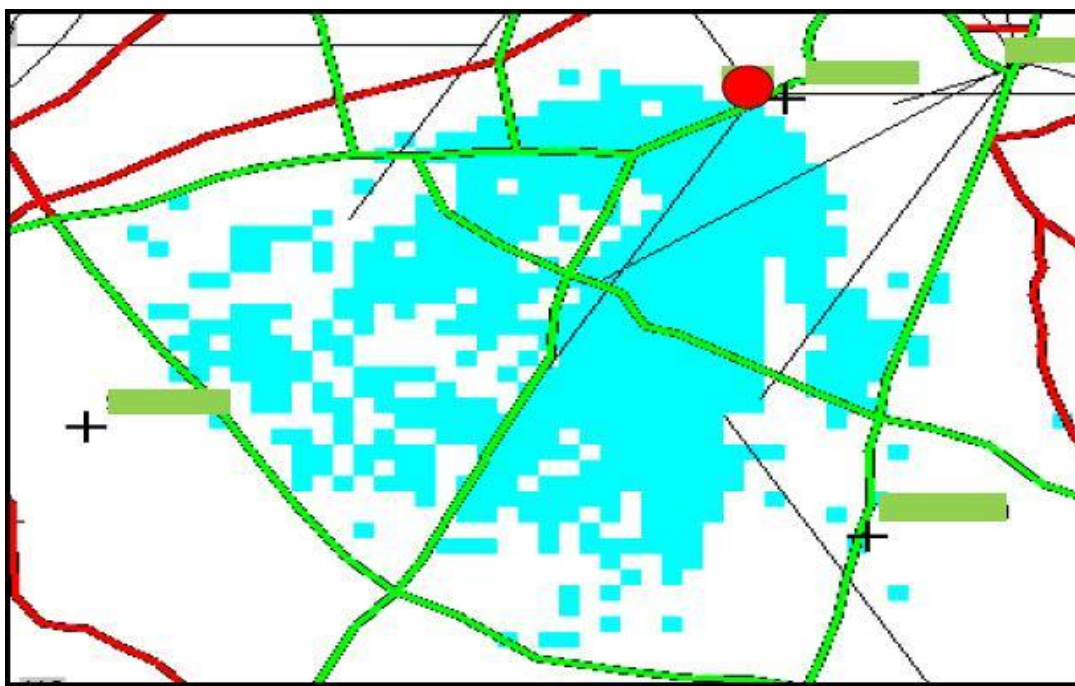
³⁶⁵⁹ Witness PRH707, T. 15 February 2016, pp 15-19.

³⁶⁶⁰ Witness PRH707, T. 15 February 2016, pp 24-25.

³⁶⁶¹ John Edward Philips, T. 20 August 2015, pp 89-90.

³⁶⁶² Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 127.

left, or south-west, is the azimuth of the cell of interest. The blue patched area is the predicted best server coverage.³⁶⁶³



A best server plot from a cell site marked with the red dot, extracted from Mr Philips's report 'An introduction to cell site analysis as applied to GSM networks' – exhibit P549, p. 70, figure 043

1663. Mr Philips's general report explains that best server plots were not intended for forensic applications. Rather, as with call data records, they were adopted for this purpose. However, unlike call data records, best server coverage plots in most instances are the 'fallback position'. If absolute confirmation of best server coverage of a location is required, then a field survey is usually the best option, although for many reasons this may not be possible, practical or affordable.³⁶⁶⁴

1664. The Prosecution prepared and used as a visual aid an atlas that identified 432 Alfa and Touch cell sites relevant to its case, including their azimuths and predicted coverage areas throughout Lebanon.³⁶⁶⁵ For illustration purposes, the image below, extracted from that atlas,

³⁶⁶³ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 70-71.

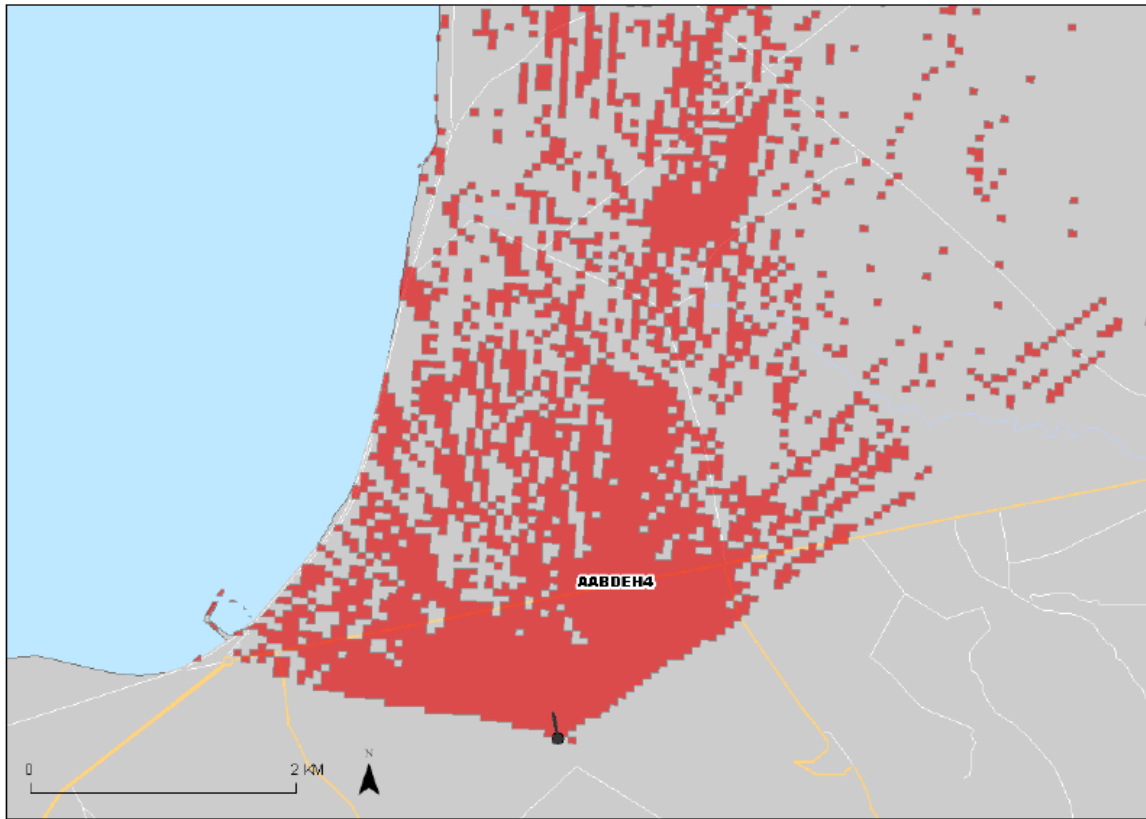
³⁶⁶⁴ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 127.

³⁶⁶⁵ Exhibit P1152 (Atlas of relevant cell sectors). The source materials on which the Prosecution relied to produce the atlas are dated 2004, 2005, 2007 and 2010.

exhibit P1152, shows the cell tower (mast), azimuth and the projected best server coverage of the Alfa cell named ‘AABDEH4’ in northern Lebanon, north of Bebnine, near Tripoli. It is accompanied below by a table of basic information about the cell sector, including its geographic coordinates, azimuth direction, cell type and coverage surface (shape) area,³⁶⁶⁶ which were projected onto a map in the electronic presentation of evidence—a tool developed by the Prosecution to visually represent telecommunications and geographic evidence from a desktop computer.³⁶⁶⁷

³⁶⁶⁶ Exhibit P1152, p. 1.

³⁶⁶⁷ See sub-section (H) ‘Electronic presentation of evidence (EPE)’.



Name	Network	Type	Cell ID	CGI (hex)	Azimuth	Longitude	Latitude	Shape area
AABDEH4	ALFA	MACRO	0351	41501181F0351; 41501181B0351	350	36.00029341	34.51218787	23.8 km ²
Sources: 60174538-60174624\60174550(DVD); (D0306651-D0306707; D0429118-D0429137 ; D0344470-D0344488)								

Alfa cell AABDEH4's cell tower, azimuth and the projected best server coverage accompanied by a table of basic information on the cell sector, extracted from the atlas of relevant cell sectors – exhibit P1152, p. 1

1665. Shape files illustrate the surface area over which each cell is predicted to emit the strongest signal compared with neighbouring cells. Various factors influence coverage, including the location in a cell sector from which a call is made, the antenna height, topography and surrounding buildings. According to Witness 707, the Alfa shape files are approximations that are 60 to 70 per cent accurate.³⁶⁶⁸ Mr Philips, while not providing a comparable figure, testified that the prediction maps cannot be one hundred per cent accurate and inherently contain a margin of error.³⁶⁶⁹

³⁶⁶⁸ Witness PRH707, T. 16 February 2016, pp 78-81, T. 21 April 2016, pp 32, 35, 37-38, 42, T. 3 May 2016, pp 91-92. See para. 1746.

³⁶⁶⁹ John Edward Philips, T. 19 August 2015, p. 100; see also Gary Platt, T. 19 April 2017, pp 20-21.

1666. The Prosecution entered the call data records and cell site data, including shape files, coverage maps and other mapping data, into its electronic presentation of evidence software. This allows different pieces of evidence to be shown together. It can effectively and efficiently illustrate and visually represent places and events, such as the locations and movements of the mobiles allegedly used to plan the attack against Mr Hariri.³⁶⁷⁰ For instance, the software can identify when two call data records form two sides of a single call—namely, the dialling and receiving of a call—so that the program only displays one call.³⁶⁷¹

(d) Best server coverage measurements and limitations

1667. In his general report, Mr Philips explained that the cell designated to provide best server coverage is the dominant best serving cell over most of that area. Its accuracy is higher the closer it is to the cell mast. A person within the area of predicted best server coverage can normally use that cell to make a call. That does not preclude a mobile from connecting to other cells from within the same area, but it is less likely. A best server coverage plot does not show the extent that other cells are likely to provide best server coverage within the predicted best server coverage area of the cell of interest. The cell of interest also likely provides some best server coverage out of the predicted area. For planning purposes, however, network providers consider a best server coverage plot sufficiently reliable.³⁶⁷²

1668. Individual buildings also present limitations to best server coverage plots, as they are not often defined on clutter maps and can cause localised anomalies. The image below, extracted from Mr Philips's general report, shows 'building A', which should receive a stronger signal from 'Cell a', as it is closer than 'Cell b'. However, according to Mr Philips, 'Cell b' will most likely provide a stronger signal than 'Cell a' due to signal blocking or shadowing of the signal from 'Cell a' on that side of the building, thus causing anomalous best server coverage. This shows that even within an area of strong best server coverage from one cell, pockets of best server coverage will be present from other cells.³⁶⁷³

³⁶⁷⁰ See further sub-section (H) 'Electronic presentation of evidence (EPE)'.

³⁶⁷¹ See para. 2025.

³⁶⁷² Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 82.

³⁶⁷³ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 76.

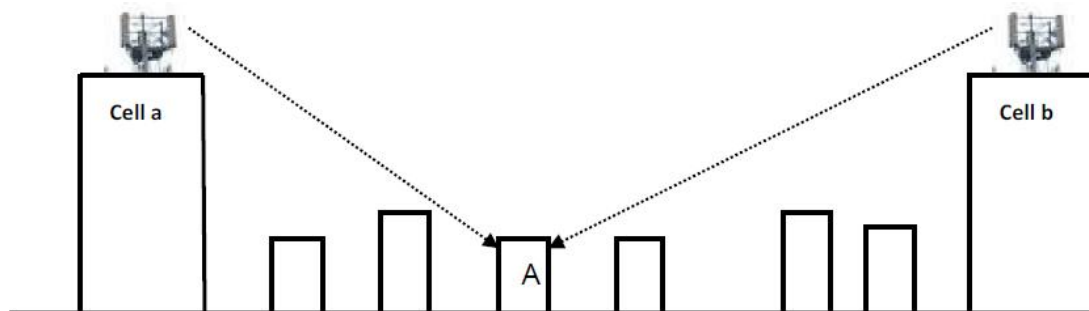


Image extracted from Mr Philips's report 'An introduction to cell site analysis as applied to GSM networks' – exhibit P549, p. 76, figure 049

1669. To fine-tune and to improve existing network coverage—and as a more accurate alternative to using prediction maps and shape files—network providers, including Alfa and Touch, use manual drive testing. This technique is also referred to as a field survey or as field measurements. Witnesses 705 and 707 explained that this involves engineers walking or driving around with a mobile testing device that physically measures and records the strength of the signal and the coverage by a particular cell.³⁶⁷⁴

1670. Witness 707, for Alfa, explained that they used a 'TEMS' device, which takes automatic measurements, that are then transferred into a digital map. This device measures the signal every few seconds and records the values regardless of the speed of the device, whether it is in a vehicle or the engineers are walking around with it.³⁶⁷⁵ He stated of its accuracy:

So I think that the test drive is the best way to confirm and to verify the coverage of a specific area. It is better than the shape files that we have seen previously, because in this case, the device is replacing or is taking -- is using or is putting itself in the shoes of a subscriber or a user, a phone user. And this is why these types of test drives reflect accurately the situation on the ground.³⁶⁷⁶

1671. Witness 705, for Touch, described the same process of driving around using the TEMS device. He explained that where the area was far away or they did not have the resources for drive testing, they relied more on predictions. But, 'if we can rely on drive test, it's definitely better to

³⁶⁷⁴ Witness PRH707, T. 16 February 2016, pp 71-72; Witness PRH705, T. 5 May 2016, pp 65, 86, 92-93.

³⁶⁷⁵ Witness PRH707, T. 16 February 2016, p. 72.

³⁶⁷⁶ Witness PRH707, T. 16 February 2016, pp 69-71.

plan the network.’ Touch also tended to rely a lot on customer complaints to spark the drive testing. ‘Based on the drive test, we decide if we can optimize the surrounding cell site to cover the specific complaint or to solve a specific complaint or if we need to install a new site’.³⁶⁷⁷

1672. Mr Philips explained that ‘the networks have a very defined area over which to survey and may concentrate on areas closer to the cell boundaries’. This is because ‘the areas closer to the cell site should be far more predictable in terms of relative signal strength.’³⁶⁷⁸

1673. Both Mr Philips in his general report, and Witnesses 705 and 707 in their testimony, explained that based on the measurements from drive testing—which are not 100 per cent accurate but are more accurate than the shape files—network providers adjust the cell coverage. They do this either by changing the azimuth tilt or the height of the cell tower antennas, or by installing an additional station, or by setting up a mobile temporary base transceiver station.³⁶⁷⁹

2. Cell allocation

1674. Mr Philips explained how cell allocation works. When a call is made, the network normally allocates the call into the cell providing the best server coverage where the mobile is; as explained above at paragraph 1640, it is termed the best serving cell.³⁶⁸⁰ To allocate a call into a cell, an exchange of information occurs between the mobile and the network.³⁶⁸¹

1675. Mr Philips explained that networks do not track mobiles and that they ‘don’t know where each mobile is at any one given time, and they don’t need to.’³⁶⁸²

1676. Networks only need to know where a mobile is when the network needs to connect a call to it. When a mobile wants to make a call, it tells the network where it is.³⁶⁸³ To do this, Mr Philips explained that the mobile first scans and tunes into the best serving cell; when ‘a mobile first

³⁶⁷⁷ Witness PRH705, T. 5 May 2016, pp 92-93.

³⁶⁷⁸ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 85.

³⁶⁷⁹ Witness PRH707, T. 11 February 2016, pp 32-34, 47, 71-72, T. 19 April 2016, pp 62-63; Witness PRH705, T. 5 May 2016, pp 81, 92-93; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 83-85.

³⁶⁸⁰ John Edward Philips, T. 20 August 2015, pp 28-29, 86; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 33.

³⁶⁸¹ John Edward Philips, T. 20 August 2015, pp 28, 30-33, 39-41.

³⁶⁸² John Edward Philips, T. 20 August 2015, p. 28.

³⁶⁸³ John Edward Philips, T. 20 August 2015, p. 28.

registers onto the network it ‘camps’ onto the strongest signal, which relates to a particular cell, by measuring the levels of all the channels on the network’.³⁶⁸⁴

1677. Through this cell, the mobile sends the network a measurement report whereby it informs the network of which cell is providing the strongest signal. It lists, in order of signal strength, the next six cells providing the strongest signal after the best serving cell.³⁶⁸⁵ The list consists of ‘neighbouring cells’, also known as ‘halo cells’, that are in the general vicinity of the best serving cell broadcast to the mobile to monitor.³⁶⁸⁶ These six neighbouring cells most likely also constitute ‘adjacent cells’, that are cells physically next to the best serving cell.³⁶⁸⁷

1678. The strongest signal or signals are normally from the cells that are physically closest to the mobile. However, the strongest signal or one of the strongest signals reported to the network may be outside this inner ring and not an adjacent cell but rather a neighbouring cell. Importantly, not all neighbouring cells are adjacent cells. But all adjacent cells are neighbouring cells.³⁶⁸⁸

1679. To produce the measurement report, the mobile tunes into each neighbouring cell and in approximately half a second measures the cells’ signal levels. It selects the top six cells and sends them to the network.³⁶⁸⁹ The mobile continuously monitors and measures the signal level of more than six neighbouring cells. However, it only reports back to the network the best serving cell and the top six cells which provide the next strongest signal.³⁶⁹⁰

1680. Mr Philips explained that the neighbouring cells are then designated as the next cells the mobile could use if it moves.³⁶⁹¹ A mobile constantly monitors and measures the best serving cell and its neighbouring cells even when it is in idle mode, that is, not on a call.³⁶⁹² In a call, however,

³⁶⁸⁴ John Edward Philips, T. 20 August 2015, pp 28-29, 40-41; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 33.

³⁶⁸⁵ John Edward Philips, T. 20 August 2015, pp 28-33, 40-41, 51-52, 70; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 34; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 58.

³⁶⁸⁶ John Edward Philips, T. 20 August 2015, pp 29, 51, 87; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 33.

³⁶⁸⁷ John Edward Philips, T. 20 August 2015, pp 28, 70, 86.

³⁶⁸⁸ John Edward Philips, T. 20 August 2015, pp 86-87.

³⁶⁸⁹ John Edward Philips, T. 18 August 2015, p. 106, T. 20 August 2015, pp 30-33, 52; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 34.

³⁶⁹⁰ John Edward Philips, T. 20 August 2015, pp 30-33, 51, 70, 87.

³⁶⁹¹ John Edward Philips, T. 20 August 2015, p. 29.

³⁶⁹² John Edward Philips, T. 20 August 2015, pp 32, 38; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 34.

the mobile sends measurement reports to the network every half a second to allow the network to determine into which cell the call should be allocated.³⁶⁹³

1681. When the mobile moves, the best serving cell changes and the mobile connects to the new best serving cell and receives a new set of eligible neighbouring cells.³⁶⁹⁴ By this method, the mobile can stay connected, while travelling over large distances, by continually switching from one best serving cell to another.³⁶⁹⁵

1682. Below is an extract from Mr Philips's general report showing the best serving cell, in green with the arrow, and the neighbouring cells, in yellow, surrounding the best serving cell:³⁶⁹⁶

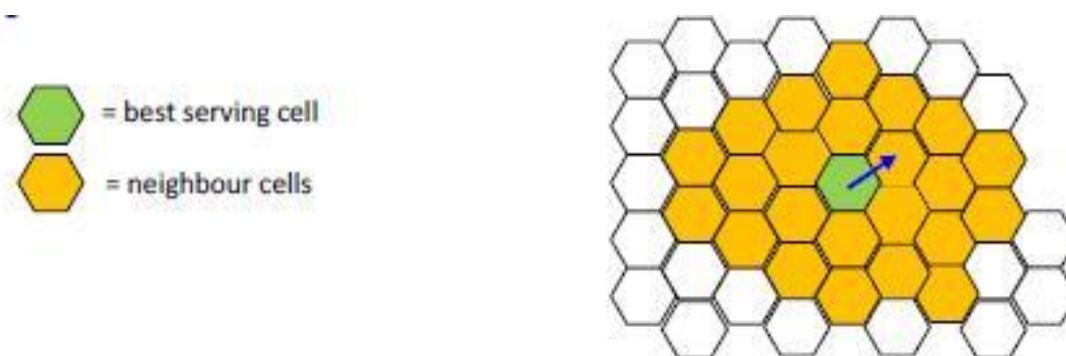


Diagram showing a best serving cell (in green) and the eligible neighbour cells (in yellow), extracted from Mr Philips's report 'An introduction to cell site analysis as applied to GSM networks' – exhibit P549, p. 33, figure 019

1683. As the next diagram below shows—as Mr Philips's general report states—when the mobile moves in the direction of the arrow, the best serving cell changes and the mobile tunes into the new best serving cell, in light green.³⁶⁹⁷ Once the mobile tunes into the new best serving cell, it receives a new set of neighbouring cells with respect to the new best serving cell, which include

³⁶⁹³ John Edward Philips, T. 20 August 2015, pp 30-33, 38-39.

³⁶⁹⁴ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 33-34.

³⁶⁹⁵ John Edward Philips, T. 20 August 2015, p. 32; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 34.

³⁶⁹⁶ John Edward Philips, T. 20 August 2015, p. 52; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 33.

³⁶⁹⁷ John Edward Philips, T. 20 August 2015, p. 32; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 33.

many of the old neighbouring cells, in yellow, plus a complement of new neighbouring cells, in pink.³⁶⁹⁸ This successively occurs when the mobile is in constant movement.³⁶⁹⁹

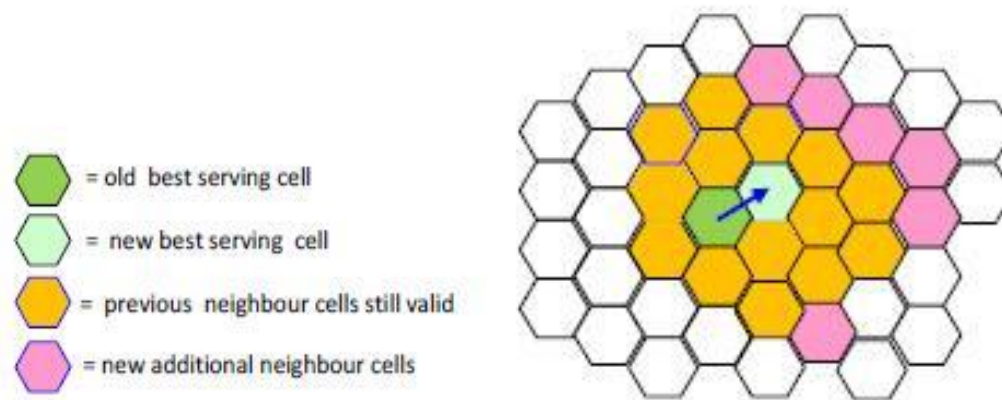


Diagram showing a changing best serving cell (in light green) and the new additional neighbour cells (in pink), extracted from Mr Philips's report 'An introduction to cell site analysis as applied to GSM networks' – exhibit P549, p. 33, figure 020

1684. Mr Philips also explained the technical procedure after the network receives the measurement report from the mobile. It then conducts its own assessment and based on the signal strength from the mobile, the quality of the signal and the 'timing advance', determines the best serving cell into which the call should be allocated.³⁷⁰⁰

1685. 'Timing advance', Mr Philips and Witness 707 explained, is the approximate distance of the mobile from a particular cell and is calculated using the time a signal from a mobile takes to connect to a particular cell.³⁷⁰¹ This parameter sets a maximum distance from which a mobile can use this particular cell.³⁷⁰² The timing advance parameter is optional and may be set in the GSM system to avoid switching into a distant cell.³⁷⁰³ Engineers may therefore decide whether to install it in the GSM system and with regard to all or selected cells.³⁷⁰⁴

³⁶⁹⁸ John Edward Philips, T. 20 August 2015, p. 32; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 33-34.

³⁶⁹⁹ John Edward Philips, T. 20 August 2015, pp 32-33.

³⁷⁰⁰ John Edward Philips, T. 18 August 2015, p. 106, T. 20 August 2015, pp 28, 30-33.

³⁷⁰¹ John Edward Philips, T. 20 August 2015, pp 31, 37; Witness PRH707, T. 12 February 2016, pp 71, 73; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 22.

³⁷⁰² Witness PRH707, T. 12 February 2016, pp 71-72; John Edward Philips, T. 20 August 2015, pp 35, 37, 44.

³⁷⁰³ John Edward Philips, T. 20 August 2015, pp 35-36.

³⁷⁰⁴ John Edward Philips, T. 20 August 2015, pp 35, 44.

1686. To allocate a call into a cell, the network considers not one but the average of a succession of measurement reports received from the mobile. The network determines this over approximately 11 cycles, which takes around five seconds. This prevents the call from constantly switching between different cells when one cell's signal level is momentarily stronger than that of another.³⁷⁰⁵

(a) Exceptional circumstances in cell allocation

1687. Mr Philips, in his general report and his testimony, explained that the network normally and ideally allocates a call to the best serving cell.³⁷⁰⁶ However, in exceptional circumstances the network allocates a call into a different cell.³⁷⁰⁷ These circumstances can relate to cell performance, or cell overloading.³⁷⁰⁸ Cell performance-based allocation occurs when the cell recommended and reported as the best serving cell by the mobile fails to meet the acceptable performance parameters set by the network.³⁷⁰⁹ In this sense, the network can measure not only the strength but also the quality of the signal.³⁷¹⁰ In exceptional circumstances, the cell providing the strongest signal and recommended by the mobile might not have a good quality.³⁷¹¹

1688. When a cell has the strongest signal—and thus is the best serving cell—but has poor quality, the network allocates the call into another cell.³⁷¹² Factors that may contribute to a strong signal having bad quality include interference or distortion on the channel, or the 'timing advance'.³⁷¹³

1689. Both Mr Philips and Witness 707 explained that cell overloading is caused by the heavy use of the best serving cell, which reaches its maximum capacity and therefore cannot support another voice call.³⁷¹⁴ This may occur, for instance, when there is unexpected road traffic due to

³⁷⁰⁵ John Edward Philips, T. 20 August 2015, p. 39.

³⁷⁰⁶ John Edward Philips, T. 20 August 2015, pp 40-41; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 35.

³⁷⁰⁷ John Edward Philips, T. 20 August 2015, pp 40-45, 50-52.

³⁷⁰⁸ John Edward Philips, T. 20 August 2015, pp 42-43, 45-48, 51-52.

³⁷⁰⁹ John Edward Philips, T. 20 August 2015, p. 42.

³⁷¹⁰ John Edward Philips, T. 20 August 2015, pp 32, 42-45.

³⁷¹¹ John Edward Philips, T. 20 August 2015, pp 42-45.

³⁷¹² John Edward Philips, T. 20 August 2015, pp 42-43, 51.

³⁷¹³ John Edward Philips, T. 20 August 2015, pp 43-44.

³⁷¹⁴ John Edward Philips, T. 20 August 2015, p. 45; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 167; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 58.

an accident or the mass exit of crowds from major sports events or concerts.³⁷¹⁵ The Trial Chamber received evidence of network congestion in the afternoon on 14 February 2005.³⁷¹⁶

1690. When the overloading or congestion of the best serving cell is a recurrent problem for a long period, network engineers will solve the problem either by upgrading the capacity of the respective cell, or, if the overloaded cell has already reached its maximum capacity, by installing a new cell next to it to mitigate the load of the calls.³⁷¹⁷ According to Mr Philips, networks are therefore dynamic, as changes are made throughout time to the network to meet varying demands.³⁷¹⁸

1691. When the congestion of the best serving cell occurs for short periods of time, the problem is solved in two ways. Either by redirecting the call into one of the six cells reported in the measurement report, that is a neighbouring cell,³⁷¹⁹ and most likely the one providing the second strongest signal after the best serving cell,³⁷²⁰ or to the strongest cell, irrespective of its location.³⁷²¹ Or, alternatively, by deciding not to allocate the call into another cell with a lesser signal quality so as not to compromise the quality of the call.³⁷²²

1692. In sum, according to Mr Philips's evidence, when the best serving cell is momentarily overloaded, the network can allocate the call into one of the six reported neighbouring cells or send a busy response to the caller and not allocate the call into any cell until the best serving cell is available again.³⁷²³ The allocation of a call to a cell different from the best serving cell due to

³⁷¹⁵ John Edward Philips, T. 20 August 2015, pp 46-47.

³⁷¹⁶ See chapter XII 'Claim of responsibility for the attack on Rafik Hariri', (F) (4) (b) 'Stability of the networks on Monday 14 February 2005 after the explosion'.

³⁷¹⁷ John Edward Philips, T. 20 August 2015, p. 47. See also Witness PRH707, T. 12 February 2016, p. 68.

³⁷¹⁸ John Edward Philips, T. 20 August 2015, pp 47-48.

³⁷¹⁹ John Edward Philips, T. 20 August 2015, pp 47, 55, 85-87; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 167.

³⁷²⁰ John Edward Philips, T. 20 August 2015, pp 51-53; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 167.

³⁷²¹ John Edward Philips, T. 26 August 2015, pp 31-32.

³⁷²² John Edward Philips, T. 20 August 2015, pp 48-51; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 35.

³⁷²³ John Edward Philips, T. 20 August 2015, p. 86; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 35.

overloading is called, according to Mr Philips and Witness 707, a ‘directed retry’.³⁷²⁴ Deciding whether to redirect a call or to send a busy response depends on the network’s policy.³⁷²⁵

1693. When a directed retry occurs, the call data records do not normally record the best serving cell, from which the call is redirected. That cell remains unknown. It is unknown—on the basis of the call data records—even *whether* a directed retry occurred as there is nothing in the call data records that shows this.³⁷²⁶ This does not mean that the location of the mobile has changed, but rather that the mobile is using the signal of a neighbouring cell while being located in the geographic area covered by the best serving cell.³⁷²⁷

1694. Although the call data records do not show the first choice cell and when a call has been redirected, telecommunication providers have information, including general statistics, on the number of redirected calls.³⁷²⁸ Witness 707 stated that in 2004 and 2005, the Alfa network had activated the ‘directed retry’ feature.³⁷²⁹

1695. Mr Philips and Witness 707 explained that the cell into which a call is redirected is one in the same general area as the best serving cell. The two are likely to share areas of common best server coverage.³⁷³⁰ The call must be directed to one of the six reported cells, because those are the only cells the mobile is reporting to the network as available.³⁷³¹ The cells into which the call is allocated at the beginning and the end of a call are recorded in the call data records as the ‘start cell ID’ and the ‘end cell ID’. Any interim, or other cells used on the call would not be recorded in the call data records.³⁷³²

³⁷²⁴ John Edward Philips, T. 20 August 2015, pp 51-53, 58, 64-65; Witness PRH707, T. 12 February 2016, pp 59, 62, 64; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 35.

³⁷²⁵ John Edward Philips, T. 20 August 2015, pp 48-49; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 35.

³⁷²⁶ John Edward Philips, T. 20 August 2015, pp 53-54.

³⁷²⁷ John Edward Philips, T. 20 August 2015, pp 56-57, 64, 70.

³⁷²⁸ John Edward Philips, T. 20 August 2015, pp 53-54; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 167.

³⁷²⁹ Witness PRH707, T. 12 February 2016, p. 60.

³⁷³⁰ John Edward Philips, T. 20 August 2015, pp 51, 86; Witness PRH707, T. 12 February 2016, p. 59; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 35.

³⁷³¹ John Edward Philips, T. 20 August 2015, pp 51, 55.

³⁷³² John Edward Philips, T. 20 August 2015, pp 28-29, 41; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 92.

1696. Finally, Mr Philips explained how propagation anomalies can occur.³⁷³³ This is especially across water or due to elevation.³⁷³⁴ These anomalies usually occur when someone is trying to make a call, but loses the signal before the call is connected.³⁷³⁵

1697. When a mobile loses signal, it will search for the best server coverage signal again. If the mobile has increased its elevation after losing signal, it may connect to a cell that is at a greater distance but nonetheless provides a strong signal.³⁷³⁶ In this instance, when the call does finally connect, it may connect to what Mr Philips described as a ‘remote and obviously wrong cell site’ for where the mobile actually is.³⁷³⁷

1698. However, safeguards are built into the systems. Mr Philips outlined these as, first, if a distant cell does not appear within the neighbouring cells, it cannot be used. Second, timing advance can put a distance limitation on the available cells. These safeguards are available within the GSM system, but each network must be configured to utilise them.³⁷³⁸

1699. In his testimony, Mr Philips used a slide presentation entitled ‘Cell site analysis’.³⁷³⁹ The graphic below, extracted from it and to which Mr Philips referred as ‘a simulation of a mobile moving through an area of East London’, illustrates a mobile in a vehicle moving from the best server coverage area of one cell to another cell, including the ‘start cell’ and the ‘end cell’. This was plotted on the route the mobile was travelling to show the succession of cells that provided best server coverage of the route.³⁷⁴⁰

³⁷³³ John Edward Philips, T. 20 August 2015, pp 33-34.

³⁷³⁴ John Edward Philips, T. 20 August 2015, p. 34.

³⁷³⁵ John Edward Philips, T. 20 August 2015, pp 33, 36.

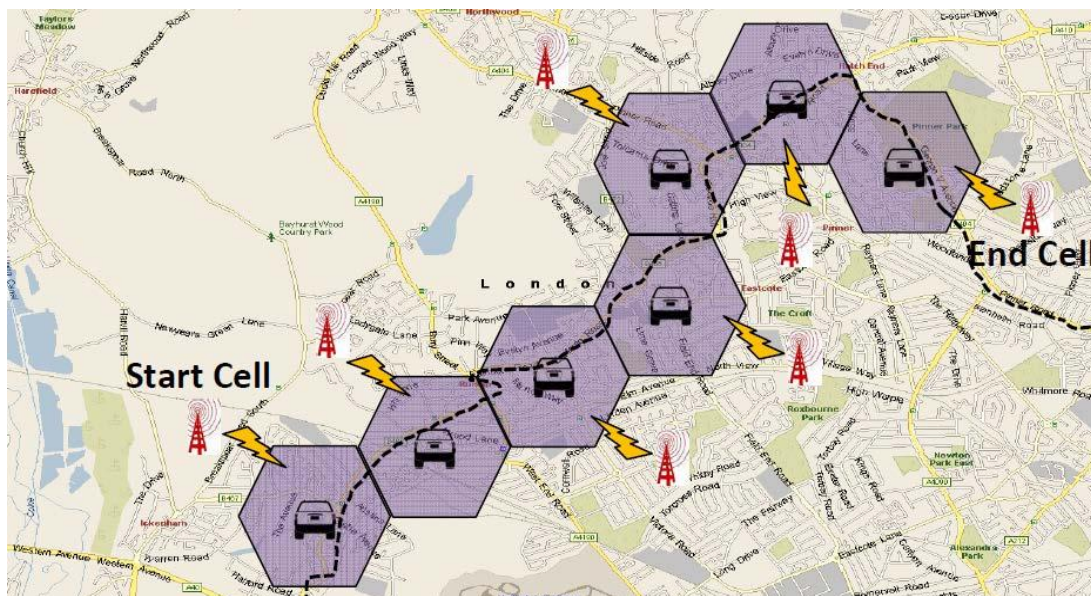
³⁷³⁶ John Edward Philips, T. 20 August 2015, pp 36-37.

³⁷³⁷ John Edward Philips, T. 20 August 2015, pp 33, 36.

³⁷³⁸ John Edward Philips, T. 20 August 2015, p. 36.

³⁷³⁹ Exhibit P550 (PowerPoint presentation, John Edward Philips).

³⁷⁴⁰ John Edward Philips, T. 19 August 2015, pp 18-19; exhibit P550, slides 137-138.



Visual graphic showing a mobile moving through several best server coverages, including the start cell and end cell, extracted from Mr Philips's PowerPoint presentation 'Cell site analysis as applied to GSM networks' – exhibit P550, slide 138

(b) Anomalies in cell allocation

1700. Different forms of disruption may change the cell to which a mobile connects. This may affect determining the accuracy of determining the location of the mobile for cell site analysis.

1701. Directed retry, referred to above, is one.³⁷⁴¹ Further, Mr Philips described the 'fading' that can occur when cellular signals are changing, even with little or no movement.³⁷⁴² Fast fading occurs when there is an instantaneous change of signal due to normal reflections from a building. These events typically occur in an urban environment, but can also occur with vehicles where there is a reflection and the mobile uses a cell different to that in the network's prediction model.³⁷⁴³

1702. Call data records only show the start and end cell for each call. Thus, no record is made of a call change due to fast fading mid-call, unless the new cell was that used at the end of the call.³⁷⁴⁴

³⁷⁴¹ See para. 1692-1694.

³⁷⁴² John Edward Philips, T. 25 August 2015, p. 63.

³⁷⁴³ John Edward Philips, T. 25 August 2015, pp 66-67.

³⁷⁴⁴ John Edward Philips, T. 25 August 2015, p. 69.

Slow fading, on the other hand, occurs when signals are so similar in strength that the best server coverage may switch between two different cells.³⁷⁴⁵

1703. Repeaters, explained Mr Philips, which are designed to amplify an existing signal, can also affect cell allocation.³⁷⁴⁶ These typically control a link in the cell service where there is no coverage, or the optimal signal is inadequate. They are generally outside the network's control and can cause problems to the service by creating interference.³⁷⁴⁷

1704. Finally, co-channel interference is where an adjacent channel bleeds into another; it means that the two frequencies are on the same channel which creates interference.³⁷⁴⁸

C. Alfa network and generation of call data records and cell site data

1. Introduction

1705. The Mobile Interim Company No. 1 S.A.L. (MIC1) is a joint stock company registered at Baabda, Lebanon, trading as 'Alfa'.³⁷⁴⁹ Alfa has managed Lebanon's first mobile network, owned by the Lebanese State, since 2004.³⁷⁵⁰ Initially it was called 'Cellis'.³⁷⁵¹ Alfa's officially designated representative to the Special Tribunal, Witness 707, who joined Alfa in 2012,³⁷⁵² gave evidence in witness statements and courtroom testimony about Alfa's mobile telephone network, business practices and records.

1706. Alfa provided records to the UNIIIC in July 2005, including coverage maps, maps with drive tests, coordinates of Alfa cell sites, cover letters and responses to requests for assistance.³⁷⁵³

³⁷⁴⁵ John Edward Philips, T. 25 August 2015, p. 61.

³⁷⁴⁶ John Edward Philips, T. 25 August 2015, pp 69-73, T. 25 July 2016, pp 72-73.

³⁷⁴⁷ John Edward Philips, T. 25 August 2015, pp 70-75.

³⁷⁴⁸ John Edward Philips, T. 26 August 2015, pp 64-65.

³⁷⁴⁹ Exhibit P1192 (Statement of Witness PRH707, 11 November 2015), p. 1; exhibit P1192.2 ('Management Agreement between Lebanon and Consortium Detecon International', annex 2 to Witness PRH707's statement of 11 November 2015), p. 9; exhibit P769 (*Aide-mémoire* for Witness PRH707's evidence: list of acronyms), p. 2.

³⁷⁵⁰ Witness PRH707, T. 29 January 2016, p. 83; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 14; exhibit P1192.2.

³⁷⁵¹ Witness PRH707, T. 29 January 2016, pp 83-84, T. 10 February 2016, p. 43, T. 16 February 2016, pp 50-51, T. 17 February 2016, p. 14.

³⁷⁵² Witness PRH707, T. 29 January 2016, p. 65, T. 20 April 2016, p. 31; exhibit P768 (Witness 707's *curriculum vitae*), p. 1; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 11. The Trial Chamber also notes that Witness 707 has over two decades of professional experience in telecommunications, Witness PRH707, T. 29 January 2016, p. 64; exhibit P768.

³⁷⁵³ Witness PRH707, T. 16 February 2016, pp 52, 58-64, 75.

In 2010, Alfa provided the Prosecution with predicted best server coverage plots in the form of ArcGIS shape files for 718 Alfa cell sectors on air in 2005, 2007 and 2010.³⁷⁵⁴

1707. Regarding mapping information for 2005, Alfa informed the Prosecution that, due to the lack of a digital site database, the mapping information was created by approximation. Witness 707—and another Alfa employee whose statement was annexed to the witness's—stated of information provided to the Prosecution in 2010, that:

In respect of mapping information for 2005 and as Alfa does not possess a digital site database dating to 2005, the mapping information was created by way of best approximation through the following method. The oldest working site database we have dates back to 29 January 2007. It contains all Alfa sites/cells that were put on air until 29 January 2007. In order to produce the coverage array for 2005, only the cells which were on air until the end of the 2005 year were considered whereas cells from beginning 2006 until 29 January 2007 were ignored. The obtained array was converted into TAB (MapInfo compatible) and then shape (ArcView compatible) files.³⁷⁵⁵

1708. The cell site data provided to UNIIIC and the Prosecution, respectively, in 2007 and 2010, therefore consisted of estimates.³⁷⁵⁶

1709. In 2013, Alfa provided the Prosecution with 192 shape files for Alfa cell sectors.³⁷⁵⁷ According to Witness 707, Alfa produced the files using values for the coordinates of the stations from 2004 and 2005 and azimuth and vertical tilt values from 2013.³⁷⁵⁸ In 2015, Alfa provided the Prosecution with 938 shape files for 2005.³⁷⁵⁹

1710. Witness 707 explained that when Alfa provided information to the Prosecution, it originated from its relevant specialised departments.³⁷⁶⁰ For some requests for assistance, especially relating to information from 2004 and 2005, Alfa used past company records and

³⁷⁵⁴ Exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 164. *See also* exhibit P1192.8 (Annex 14 to Witness PRH707's statement of 11 November 2015), paras 9-11.

³⁷⁵⁵ Exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 164. *See also* exhibit P1192.8, para. 12.

³⁷⁵⁶ Witness PRH707, T. 11 February 2016, pp 57, 70-71, T. 12 February 2016, pp 51, 53.

³⁷⁵⁷ Exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 164. *See also* exhibit P775 (Excel spreadsheet with mast and azimuth information, mast locations and azimuth orientations, Annex 14 (2) to Witness 707's statement of 11 November 2015).

³⁷⁵⁸ Witness PRH707, T. 18 April 2016, pp 17-19, T. 20 April 2016, p. 3.

³⁷⁵⁹ Exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 164.

³⁷⁶⁰ Witness PRH707, T. 29 January 2016, pp 82, 86-88.

verified the information through new searches and analyses.³⁷⁶¹ In his evidence, Witness 707 also relied on the expertise of other company departments.³⁷⁶²

2. Alfa's network architecture

1711. The diagram below is extracted from an annex to Witness 707's statement showing the structure and components of Alfa's network architecture in 2004 and 2005.³⁷⁶³

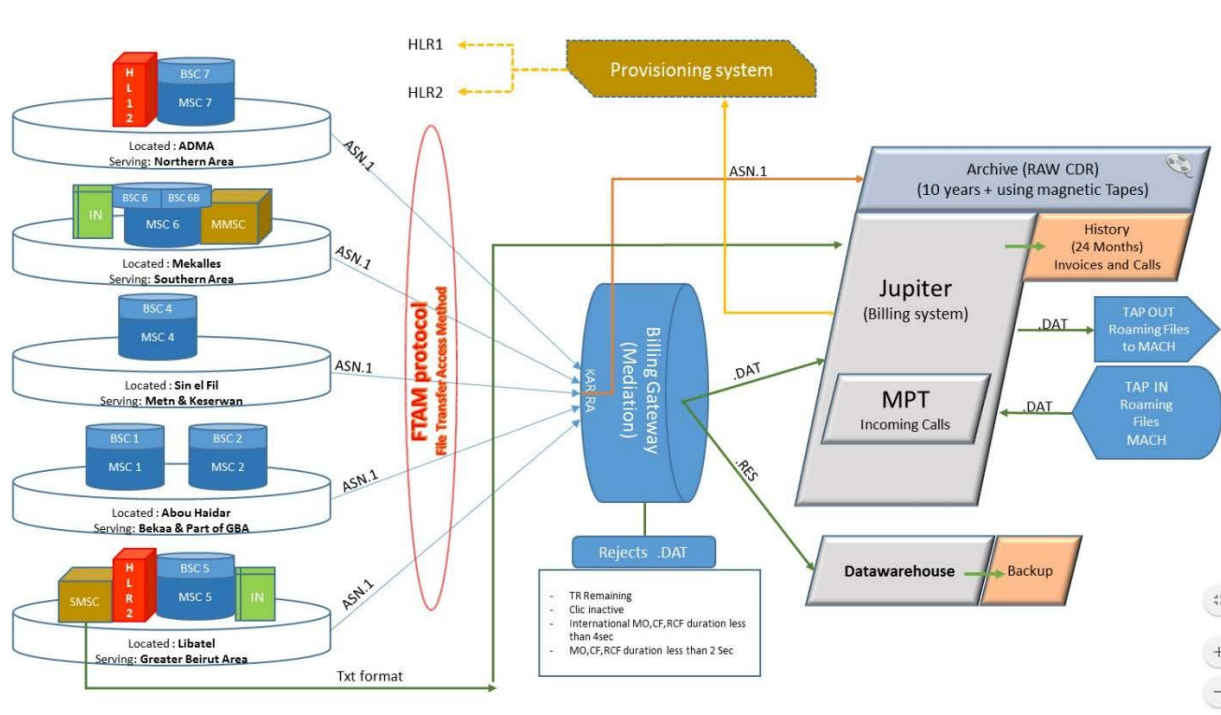


Diagram showing the structure and the components of Alfa's network architecture in 2004 and 2005 – exhibit P773 (Annex 4, 'Logical schematic of the network in 2004 and 2005' to Witness 707's witness statement of 11 November 2015)

1712. These components are:

- a. The 'Base Transceiver Station' (BTS), which is the base station or cell tower and contains an antenna system and radios that communicate with mobiles;

³⁷⁶¹ Witness PRH707, T. 29 January 2016, pp 82-83, 89, 93.

³⁷⁶² Witness PRH707, T. 29 January 2016, pp 91, 97, 100, 107, T. 9 February 2016, p. 30.

³⁷⁶³ Witness PRH707, T. 9 February 2016, pp 39-41; exhibit P773 ('Logical schematic of the network in 2004 and 2005', annex 4 to Witness PRH707's statement of 11 November 2015), p. 1.

- b. The 'Base Station Controller' (BSC), which controls a number of BTSs;
- c. The 'Mobile Switching Centre' (MSC), which is the heart of the network's infrastructure, making connections to establish calls, linking the mobile network to the landline network (or Public Switched Telephone Network (PSTN)) and billing;
- d. The 'Short Message Service Centre' (SMSC), which generates and stores text message related records;
- e. The 'Gateway Mobile Switching Centre' (GMSC), which is responsible for making connections between other networks, such as other cellular providers, PSTN and the international network;
- f. The 'Home Location Register' (HLR), which provides a permanent record of the technical information for all subscribers of the home network;
- g. The 'Visitor Location Register' (VLR), which provides a temporary record of subscriber information (from home and other networks) while a user is in a specific geographic area;
- h. The 'Pre-pay Intelligent Network' (PPIN), which manages pre-paid subscriptions;
- i. The 'Mediation Device' (MD), which is the interface between MSC and the billing system, receiving data from the MSC and translating it for the billing system;
- j. The billing system, which decides which call data record fields to use and generates and calculates the costs of calls; and
- k. The data warehouse, which is a database used for statistical and marketing purposes.³⁷⁶⁴

³⁷⁶⁴ Witness PRH707, T. 9 February 2016, pp 44, 65, 73-75, 77-78, T. 10 February 2016, p. 38, T. 11 February 2016, p. 49, T. 17 February 2016, p. 64; exhibit P769; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), paras 22, 42; exhibit P1192.11 (Alfa response to request for assistance), p. 1.

3. Call data records and related issues

1713. Witness 707 explained that Alfa's call data records are generated automatically from the MSC.³⁷⁶⁵ In some cases, the MSC information can only be read through decoding systems.³⁷⁶⁶ Their main purpose is billing for the post-paid lines.³⁷⁶⁷ According to its contractual obligations with the Lebanese government, Alfa had to retain call data records for ten years.³⁷⁶⁸ The azimuth, the tilt, the height of a particular cell tower and its geographic coordinates were stored in Alfa's business records.³⁷⁶⁹ As these records are automatically generated without human input, such documents, according to Witness 707, are highly accurate.³⁷⁷⁰

1714. The witness also described how the network architecture's components identify subscribers by the mobiles' IMSI.³⁷⁷¹ IMSI information is kept in the SIM.³⁷⁷² The IMSI is unique and used in any network to which it connects and is usually a 15-digit number.³⁷⁷³ The first three digits are the 'Mobile Country Code' (MCC), followed by the 'Mobile Network Code' (MNC).³⁷⁷⁴ The remaining digits are the 'Mobile Subscription Identification Number' (MSIN).³⁷⁷⁵ Lebanon's MCC is '415'; Alfa's MNC is '01'.³⁷⁷⁶

1715. The 'Mobile Station International Subscriber Directory Number' (MSISDN) is the technical term for the mobile telephone number.³⁷⁷⁷ A network assigns an IMSI to an MSISDN.³⁷⁷⁸ The MSISDN is made up of the country code ('961' for Lebanon), the 'National Destination Code'

³⁷⁶⁵ Witness PRH707, T. 29 January 2016, p. 110.

³⁷⁶⁶ Witness PRH707, T. 29 January 2016, pp 110-111, 118-119.

³⁷⁶⁷ Witness PRH707, T. 29 January 2016, pp 110-112, T. 10 February 2016, p. 74.

³⁷⁶⁸ Witness PRH707, T. 9 February 2016, p. 51, T. 10 February 2016, p. 28, T. 3 May 2016, p. 34.

³⁷⁶⁹ Witness PRH707, T. 15 February 2016, pp 60-62, T. 16 February 2016, pp 29-30.

³⁷⁷⁰ Witness PRH707, T. 19 April 2016, pp 38, 68.

³⁷⁷¹ Exhibit P769, p. 2; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 29.

³⁷⁷² Witness PRH707, T. 9 February 2016, pp 28, 38; exhibit P769, p. 3; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), paras 29, 36.

³⁷⁷³ Exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 30.

³⁷⁷⁴ Witness PRH707, T. 18 February 2016, p. 30; exhibit P769, pp 2-3; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 30.

³⁷⁷⁵ Exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 30.

³⁷⁷⁶ Witness PRH707, T. 16 February 2016, p. 35, T. 18 February 2016, p. 30; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 31.

³⁷⁷⁷ Witness PRH707, T. 17 February 2016, p. 48; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 32; exhibit P769, p. 3. Exhibit P769 (*Aide-mémoire* for Witness PRH707's evidence: list of acronyms) refers to 'MSISDN' as a 'Mobile Station Integrated Services Digital Network', while Witness 707's statement, exhibit P1192, refers to it as 'Mobile Station International Subscriber Directory Number'.

³⁷⁷⁸ Exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 32.

and the subscriber number.³⁷⁷⁹ The prefix ‘3’ in a Lebanese MSISDN signified that it is a mobile number.³⁷⁸⁰ IMSI and MSISDN are both fields in call data records.³⁷⁸¹

1716. The IMEI unique to each handset is automatically transmitted when connected to the network and appears in call data records.³⁷⁸² IMEI data is not ‘generated’ by Alfa, but by the handset when making or receiving a call.³⁷⁸³ The MD filters out IMEI data from call data records sent to the billing system and this data is retained by the data warehouse as a separate field.³⁷⁸⁴

1717. Witness 707 explained, as had Mr Philips, that when a SIM card is inserted into a handset, the mobile searches for the nearest mobile cell tower or BTS.³⁷⁸⁵ Once a call request is made by the BSC, the MSC checks the subscriber details of the caller with the HLR.³⁷⁸⁶ If the caller is identified as an Alfa subscriber, the MSC is notified and connects the call.³⁷⁸⁷ For Alfa, if the subscriber is on a pre-paid service, an additional check is made to see whether it has enough credit to proceed.³⁷⁸⁸

1718. When an Alfa subscriber makes a call request to a roaming subscriber, not in Alfa’s geographic area, the same procedure applies, with the additional step of the VLR contacting the HLR to obtain the caller’s details. If an agreement exists between Alfa and the network where the roaming mobile is, the call will be approved and connected by the MSC.³⁷⁸⁹ However, there was no national roaming in Lebanon in 2005.³⁷⁹⁰

³⁷⁷⁹ Witness PRH707, T. 18 April 2016, p. 37; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), paras 32-33.

³⁷⁸⁰ Witness PRH707, T. 18 February 2016, p. 17.

³⁷⁸¹ Exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 34.

³⁷⁸² Exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 36.

³⁷⁸³ Witness PRH707, T. 29 January 2016, pp 117-118; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 94.

³⁷⁸⁴ Exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 95.

³⁷⁸⁵ Witness PRH707, T. 9 February 2016, pp 31, 47-48, 64-65; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 45.

³⁷⁸⁶ Witness PRH707, T. 9 February 2016, pp 45, 64-65; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), paras 40, 47-48.

³⁷⁸⁷ Exhibit P1192 (Statement of Witness PRH707, 11 November 2015), paras 40, 48.

³⁷⁸⁸ Witness PRH707, T. 9 February 2016, p. 75; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 49.

³⁷⁸⁹ Exhibit P1192 (Statement of Witness PRH707, 11 November 2015), paras 50-51.

³⁷⁹⁰ Witness PRH707, T. 29 January 2016, p. 109; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 229.

1719. The witness described that when an Alfa subscriber initiates a call to another network, for example Touch, an international number or a landline, the same procedure applies, however, a gateway is required. The gateway acts as the entrance of non-Alfa subscribers to Alfa's network.³⁷⁹¹

1720. In 2004 and 2005, call data records were stored, in different forms and for different periods, in the billing system, the data warehouse and the archive.³⁷⁹²

1721. The transfer of call data records from the MSC to the Mediation Device (MD) is automatic.³⁷⁹³ Witness 707 stated that no one had write access before reaching the mediation device and the access to raw call data files was limited at this stage.³⁷⁹⁴

1722. When responding to the Prosecution's requests for call data records with end cell data, Alfa, according to Witness 707, had to retrieve archived call data records and decode them through the MD.³⁷⁹⁵ During this process, at least one corrupted backup file, for July 2004, was discovered; this may have resulted in incomplete records.³⁷⁹⁶ Call data records started to be archived in Alfa's data warehouse as of 1 August 2004.³⁷⁹⁷ Before that, they were archived on magnetic tapes and, in a more limited fashion, in back-up systems of the billing department.³⁷⁹⁸

1723. The prefix '101' in the telephone number field of call data records signifies that the call was made by a pre-paid mobile with 'Call Line Identification Restriction', meaning that the caller withheld their number.³⁷⁹⁹ Pre-paid services at Alfa were called 'Clic' before 2004 and 'Active' afterwards.³⁸⁰⁰ Post-paid services were called 'Basic', then 'Classic'.³⁸⁰¹

³⁷⁹¹ Exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 52.

³⁷⁹² Witness PRH707, T. 10 February 2016, pp 74-75.

³⁷⁹³ Exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 123.

³⁷⁹⁴ Witness PRH707, T. 10 February 2016, p. 76; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), paras 123-125.

³⁷⁹⁵ Witness PRH707, T. 10 February 2016, pp 33-34; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 127.

³⁷⁹⁶ Witness PRH707, T. 3 May 2016, pp 35, 44; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), paras 128, 193.

³⁷⁹⁷ Witness PRH707, T. 10 February 2016, pp 45-46, T. 11 February 2016, p. 30.

³⁷⁹⁸ Witness PRH707, T. 10 February 2016, pp 43-44, 67, 75, T. 3 May 2016, pp 34-35, T. 4 May 2016, pp 80, 82.

³⁷⁹⁹ Exhibit P769, p. 1; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), paras 187, 208.

³⁸⁰⁰ Witness PRH707, T. 29 January 2016, pp 103, 108.

³⁸⁰¹ Witness PRH707, T. 29 January 2016, p. 108.

1724. Witness 707 described the process of creating coverage maps at Alfa. Alfa uploaded into mapping software the cell site shape files, corresponding azimuth values and geographic coordinates which created ‘projected’ values and images onto maps of Lebanon.³⁸⁰² He explained that Alfa had no unified or centralised database in 2004 and 2005, and that this prevented the Prosecution, in 2016, from verifying the accuracy of the records that Alfa provided to the UNIIIC in July 2005. Specifically, of the azimuths, the height of cell tower antennas and their vertical tilt as they existed in 2004 and 2005.³⁸⁰³

1725. The witness explained that, even though Alfa could not verify the type and frequency of the changes to its cell sites from the period of 2004 to 2005, values of a cell site, such as azimuth, vertical tilt and antenna position, do not change significantly over time and are minimal because the cell site itself remains in place. Changes would only occur in specific instances, such as when a new station is built.³⁸⁰⁴

1726. As a consequence, he said, the contemporaneous values that Alfa used in 2010, 2013 and 2015 to produce the coverage maps provided to the Special Tribunal were ‘not far’ from those used in 2004 and 2005.³⁸⁰⁵

1727. Moreover, technological developments since 2005—such as the introduction of the third and fourth generations mobile systems, ‘3G’ and ‘4G’, the availability of clutter models³⁸⁰⁶ with increased accuracy and updates of the Asset software—allowed Alfa in later years to produce more accurate coverage maps than those from 2004 or 2005.³⁸⁰⁷

³⁸⁰² *For example*, exhibit P779 (Maps showing Alfa Cell Sites February 2005); exhibit 2D73 (Alfa Coverage maps of various areas in Beirut). *See also, for example*, exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine); exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash); exhibit P1112 (Expert report of John Edward Philips – Single user analysis, Suspects 4, 5, 6, 7 and 8).

³⁸⁰³ Witness PRH707, T. 16 February 2016, pp 52, 58-64, 75.

³⁸⁰⁴ Witness PRH707, T. 15 February 2016, pp 35-36, 64-69, T. 16 February 2016, p. 8, T. 18 April 2016, pp 5, 23, T. 20 April 2016, pp 24-25.

³⁸⁰⁵ Witness PRH707, T. 18 April 2016, p. 23.

³⁸⁰⁶ ‘Clutter’, as described above, at paragraph 1654, refers to data relating to defined categories such as water, forest, urban and suburban terrain, which affect radio signals. Network operators upload this data into computer-based modelling tools to determine the area over which a signal from a cell can provide a ‘usable signal’, Witness PRH707, T. 15 February 2016, p. 6; Witness PRH705, T. 6 May 2016, pp 7, 77, T. 5 May 2016, p. 88, T. 22 April 2016, pp 24-28; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 57-61.

³⁸⁰⁷ Witness PRH707, T. 15 February 2016, pp 62, 64, T. 16 February 2016, pp 24-25, T. 21 April 2016, pp 35-40.

1728. The witness explained, from his experience in the industry, that Aircom's Asset is used by nearly all mobile network operators; they rely upon them despite a margin of error of 20 to 30 per cent.³⁸⁰⁸ Witness 707 clarified that this is an acceptable level of accuracy for planning and marketing purposes, and that the coverage maps of Asset cannot be one hundred per cent accurate.³⁸⁰⁹ The Alfa radio planning department considered this 'minor margin of error' of 20 to 30 per cent in its coverage maps a level of accuracy sufficient to routinely decide whether to install a new cell site.³⁸¹⁰

1729. As Alfa was not required to maintain a centralised database before 2015, the azimuth values of the cell sites in Alfa's network were not contemporaneously registered in 2004 and 2005.³⁸¹¹ In the absence of a digital site database from 2004 or 2005, Alfa generated shape files based on data from 2007 and 2010. Alfa's records, created in 2010, contained data on which cell sites were operational in 2005 and the coordinates of their geographic location.³⁸¹² If the database for a year was not available, Alfa used that closest in time and then filtered out the stations put in place after the relevant period. This explains why Alfa had to use cell data from 2007 and azimuth and tilt values from 2010.³⁸¹³

1730. Witness 707 said that from 2004 to 2007, however, Alfa did not add many new stations, and its network was stable.³⁸¹⁴ Complaints from consumers regarding coverage causing Alfa to change the direction of an antenna were slight and did not radically change the coverage of cell sectors.³⁸¹⁵

1731. Both Mr Philips and Witness 707 explained that network operators, including Alfa, ensure that their networks are stable over time in terms of the number and capacity of the operating cells,

³⁸⁰⁸ Witness PRH707, T. 16 February 2016, pp 80-81. *See also* Witness PRH707, T. 17 February 2016, pp 8-9, 11-12, T. 21 April 2016, pp 46-47.

³⁸⁰⁹ Witness PRH707, T. 16 February 2016, pp 26, 78, 80-81, T. 17 February 2016, pp 8, 11-12, T. 21 April 2016, pp 43-48.

³⁸¹⁰ Witness PRH707, T. 17 February 2016, pp 8-9, T. 21 April 2016, pp 36-37, T. 3 May 2016, pp 90-91.

³⁸¹¹ Witness PRH707, T. 11 February 2016 pp 54-55, 77, T. 12 February 2016, p. 38, T. 20 April 2016, pp 7, 45-46, T. 3 May 2016, pp 45-47.

³⁸¹² Witness PRH707, T. 15 February 2016, pp 3-4, 24-25, 40-45, 83-84, *see also* T. 9 February 2016, pp 24-25.

³⁸¹³ Witness PRH707, T. 15 February 2016, pp 44-45, 50; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 164.

³⁸¹⁴ Witness PRH707, T. 15 February 2016, p. 41.

³⁸¹⁵ Witness PRH707, T. 15 February 2016, pp 65, 68-69.

including antennas' azimuths.³⁸¹⁶ For instance, during Israel's attacks on Lebanon in July 2006, only four cell sites were completely destroyed and eight sites were partly damaged. Three of the four in south Lebanon were rebuilt in the same locations, and the eight damaged sites were repaired.³⁸¹⁷ Witness 707 testified that only two sites, Baidar and Naqoura, in the south of Lebanon, had their cell IDs changed as a result of war damage.³⁸¹⁸

1732. As for the accuracy of Alfa's clutter model, Witness 707 explained that erecting a tall building or the presence of a high tree would not require completely relocating an antenna, but rather it would be moved higher.³⁸¹⁹ When buildings are demolished, as in July 2006, an existing cell site would provide a larger coverage.³⁸²⁰

1733. The witness explained that the call data records allow the identification of the number of cell sites in use in 2004 and 2005. Alfa's call data records also record the cell number, its Cell Global Identity (CGI), but not the cell name; this was why the CGI had to be connected to the relevant cell names for the call sequence tables.

1734. Moreover, the CGI identifies the call ID connected to a base station controller and from this, which mobile switching centre/mobile station control was connected to the base station controller.³⁸²¹

4. Cell site related issues

1735. In 2010, Alfa, according to Witness 707, produced the 2005 shape files by approximating the mapping information.³⁸²²

1736. As Alfa did not have all the information requested by the Prosecution relating to its 2005 coverage, it used the call data records from 2005 to establish which cells were then on air.³⁸²³ Specifically, its oldest site database, of 29 January 2007, was taken as a starting point and the cells

³⁸¹⁶ John Edward Philips, T. 20 August 2015, pp 91-93; Witness PRH707, T. 11 February 2016, pp 71-73.

³⁸¹⁷ Witness PRH707, T. 18 April 2016, pp 32-35.

³⁸¹⁸ Witness PRH707, T. 18 April 2016, pp 32-33.

³⁸¹⁹ Witness PRH707, T. 15 February 2016, pp 74-75.

³⁸²⁰ Witness PRH707, T. 4 May 2016, p. 39.

³⁸²¹ Witness PRH707, T. 9 February 2016, pp 51-52.

³⁸²² Witness PRH707, T. 15 February 2016, pp 3-4, 40-44; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 164; exhibit P1192.8, para. 12.

³⁸²³ Witness PRH707, T. 20 April 2016, pp 77-78.

that only came on air from 2006 were removed.³⁸²⁴ This meant that cells coming on air between March and December 2005 were included in the maps and cells that were dismantled between March and December 2005 were not.³⁸²⁵

1737. The Sabra Defence suggested to the witness that the coverage maps would have been more accurate had Alfa provided mapping information depicting the situation up to 14 February 2005.³⁸²⁶ Witness 707 explained that Alfa used the 2010 digital map for the underlying map.³⁸²⁷ In 2010, Alfa had generated the shape files by including in Asset the stations working in 2004 and 2005, and added the 2010 tilts and the azimuths.³⁸²⁸ Alfa could not take into account geographic changes to the area in this period, such as construction or destruction of buildings.³⁸²⁹

1738. Witness 707 explained that the 2004 and 2005 digital maps had a less sophisticated resolution than those dating from 2010. The accuracy was based on 20 square metre boxes in urban areas and 50 square metre boxes in rural areas.³⁸³⁰ The 2010 digital map of Lebanon, that Alfa used to produce the shape files, was more accurate than those of 2004 and 2005, given Asset's improvements.³⁸³¹

1739. The propagation model used to create the coverage maps in 2010 and 2013 represented the situation in those years.³⁸³² Witness 707 compared the clutter model used in 2010 to create coverage maps with that of 2004 and explained that, 'in general terms, the maps generated in 2010 should be more accurate than if we had generated them in 2004, 2005. The reason for that is the improvement in the Aircom tool'.³⁸³³

³⁸²⁴ Witness PRH707, T. 15 February 2016, pp 41, 50, 82-83, T. 20 April 2016, pp 59-61, 63-67; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 164. *See also* exhibit P1192.8, para. 12; Witness PRH707, T. 21 April 2016, p. 11.

³⁸²⁵ Exhibit 5D243 (Extracts from 'Security Main' and related maps), p. 1.

³⁸²⁶ Witness PRH707, T. 21 April 2016, pp 10-11, 14, 27-28, 30; exhibit 5D243, pp 1, 5-6.

³⁸²⁷ Witness PRH707, T. 15 February 2016, pp 64, 79, T. 3 May 2016, pp 87-88.

³⁸²⁸ Witness PRH707, T. 15 February 2016, pp 49, 55, 60, 62, 64, T. 16 February 2016, p. 58, T. 18 April 2016, pp 17-19, T. 20 April 2016, pp 3-4, T. 3 May 2016, pp 77, 83, 88.

³⁸²⁹ Witness PRH707, T. 12 February 2016, pp 18-19, T. 15 February 2016, p. 79.

³⁸³⁰ Witness PRH707, T. 16 February 2016, p. 11, T. 21 April 2016, pp 93-95.

³⁸³¹ Witness PRH707, T. 15 February 2016, pp 73, 83-84, T. 3 May 2016, pp 87-88; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 166.

³⁸³² Witness PRH707, T. 3 May 2016, p. 87.

³⁸³³ Witness PRH707, T. 15 February 2016, pp 64, 72-76.

1740. He also explained that Alfa did not delete updates to the digital map of Lebanon, or the clutter model in 2004 and 2005, until 2010. When producing the shape files for the Prosecution, Alfa used some values—antenna azimuth, tilt and height—from the 2010 maps to create the maps for 2004 and 2005.³⁸³⁴ In June 2015, Alfa used the 2012 clutter and propagation models to produce the shape files for the Prosecution.³⁸³⁵

1741. As to the impact of the radical geographic changes between 2004 and 2016, including the demolished and newly-erected buildings in Beirut, on Alfa's clutter model and respectively coverage maps of areas relevant to the Prosecution case, Witness 707 described them as 'some change, simple change'.³⁸³⁶ The 2010 clutter model was more accurate than those from 2004 and 2005, and Alfa's radio department most likely made the necessary adjustments in Asset to reflect the changes in clutter caused by Israel's attacks on Lebanon in 2006.³⁸³⁷

1742. When asked about Alfa's use of the 2010 clutter model to reconstitute the 2005 clutter,³⁸³⁸ Mr Philips explained that for identifying the cells that continued to operate in an area, after changes in the clutter:

of more relevance would be how many of the cell sites that were existing in 2005 were still existing in 2010, and how many did they need to change because the building no longer existed. I think that would be more of a significant factor and that would not be speculative. It would be a figure provided by the network. The clutter model, how it does or doesn't change, is -- and the extent over which it does, is speculative.³⁸³⁹

1743. He also stated that such changes did not significantly affect the core of the best server coverage in the vicinity of the cell site.³⁸⁴⁰

1744. Witness 707 testified that past azimuths and tilts and, to some extent antenna heights, were of little importance to Alfa and were not stored in a centralised database which is why it could not

³⁸³⁴ Witness PRH707, T. 15 February 2016, pp 64-65.

³⁸³⁵ Witness PRH707, T. 16 February 2016, pp 8-10.

³⁸³⁶ Witness PRH707, T. 12 February 2016, pp 18-19, T. 15 February 2016, pp 73-76.

³⁸³⁷ Witness PRH707, T. 15 February 2016, pp 73-76.

³⁸³⁸ In cross-examination, counsel for Mr Merhi asked Mr Philips to comment on the clutter model that Alfa used in 2010 to reconstitute the predicted coverage for Alfa's BRAJNE2 cell site, John Edward Philips, T. 26 April 2017, pp 109-110; exhibit P1803 (Prosecution electronic presentation of evidence snapshot 62 in relation to slide 236 of P1793 showing an enlarged coverage of BRAJNE2).

³⁸³⁹ John Edward Philips, T. 26 April 2017, pp 109-110.

³⁸⁴⁰ John Edward Philips, T. 26 April 2017, p. 116.

specifically confirm all such past details.³⁸⁴¹ Antenna feeder type and length is a further factor that Alfa could not specifically confirm.³⁸⁴² These values are only changed in specific cases, and only slightly, mostly following a complaint about weak coverage in an area.³⁸⁴³ A change of up to 15 degrees in the azimuth does not radically change the coverage area.³⁸⁴⁴

1745. Alfa had around 900 cells on air in 2004 and 2005.³⁸⁴⁵ According to Witness 707, the best server coverage estimates produced using Asset as a prediction tool, which took into account as much as possible the topography, such as buildings, matched reality by ‘a high percentage’.³⁸⁴⁶ While important for coverage purposes, the clutter model and the prediction tool did not account for details of buildings, such as height, shape or material.³⁸⁴⁷ The digital map of this prediction tool was updated once or twice a year.³⁸⁴⁸

1746. In Witness 707’s view, overall, the predicted best server coverage maps of 2004 and 2005 matched the real coverage on the ground by 60 to 70 per cent.³⁸⁴⁹ The witness considered this a slight margin of error.³⁸⁵⁰ He explained that he based this estimate on his own experience and that no real standard existed to compare the prediction maps and the real coverage on the ground. If a telecommunication engineer was able to achieve at least a 70 per cent match between the predicted coverage and the real coverage, this was considered a good result.³⁸⁵¹

1747. The margin of error would, however, be greater at the outer edges of the shape files.³⁸⁵² The factors limiting accuracy of the maps were: the resolution of the digital map of Lebanon, the

³⁸⁴¹ Witness PRH707, T. 29 January 2016, pp 124-126, T. 11 February 2016, pp 54-57, 70-71, 85-87, T. 12 February 2016, p. 17, T. 15 February 2016, pp 29-30, 35, 42, T. 16 February 2016, p. 42, T. 20 April 2016, pp 23, 38, T. 22 April 2016, pp 32-33, T. 3 May 2016, pp 50-51, 80-81, 83-85, T. 25 July 2016, pp 7-8, 22.

³⁸⁴² Witness PRH707, T. 20 April 2016, pp 43-44.

³⁸⁴³ Witness PRH707, T. 11 February 2016, p. 72, T. 15 February 2016, pp 35-36, 64-69, T. 18 April 2016, p. 23, T. 20 April 2016, pp 24-25, 35, T. 3 May 2016, p. 88.

³⁸⁴⁴ Witness PRH707, T. 20 April 2016, p. 37, T. 3 May 2016, pp 85-86, T. 25 July 2016, p. 41.

³⁸⁴⁵ Witness PRH707, T. 9 February 2016, p. 49.

³⁸⁴⁶ Witness PRH707, T. 12 February 2016, pp 18-19, 80, T. 15 February 2016, pp 6, 8-9, T. 16 February 2016, p. 26, T. 22 April 2016, pp 26-29, T. 4 May 2016, pp 67-68.

³⁸⁴⁷ Witness PRH707, T. 22 April 2016, pp 27-28, T. 4 May 2016, pp 67-68.

³⁸⁴⁸ Witness PRH707, T. 15 February 2016, p. 6.

³⁸⁴⁹ Witness PRH707, T. 16 February 2016, pp 78-81, T. 21 April 2016, pp 32, 35, 38, 42, T. 3 May 2016, pp 91-92.

³⁸⁵⁰ Witness PRH707, T. 17 February 2016, p. 9, T. 21 April 2016, p. 44.

³⁸⁵¹ Witness PRH707, T. 16 February 2016, pp 78-79.

³⁸⁵² Witness PRH707, T. 16 February 2016, pp 79-81, T. 17 February 2016, pp 11-12, T. 21 April 2016, pp 46-47.

margin of error of the algorithm used in the prediction tool, the accuracy of the underlying digital map, using certain values from later years and the human factor in using the prediction tool.³⁸⁵³

1748. The predicted best coverage from some cell sectors shows ‘patches of coverage’, also known as ‘scattered coverage’, which are located at a large distance from the cell tower. This occurs, for example, for cell sites near the sea where the signal is reflected on the water.³⁸⁵⁴ Calls can be made or received but their quality could be affected. Witness 707 explained in his statement that:

These distinct patches of coverage are the output of the prediction tool and it may be theoretically possible that this part of the cell could be used to actually make or receive a call, but the quality of the call could be bad. In essence the coverage is polluted, so when a person was in the area where the remote patch of coverage is, they would be using a nearby cell rather than the cell with patchy scattered coverage.³⁸⁵⁵

1749. In most cases, a mobile will use the best serving signal for a call.³⁸⁵⁶ In general, the closer a mobile is to a station, the stronger the signal.³⁸⁵⁷ Witness 707 explained that some low-quality handsets interact with the network signal in an unusual way leading to other signals being used.³⁸⁵⁸ When a handset is behind a building or when the station is above capacity, other signals may be picked up.³⁸⁵⁹ When a station has reached its capacity, the BSC transfers a call to a nearby station, usually an adjacent one, in a directed retry.³⁸⁶⁰

1750. Witness 707 stated that these exceptions occur in no more than two per cent of cases.³⁸⁶¹ He explained that in situations of network congestion, as was the case in the aftermath of Mr Hariri’s assassination, such cases would be more numerous.³⁸⁶² Alfa did not collect data of such anomalies from 2004 and 2005.³⁸⁶³ Consistent with Mr Philips’s general evidence, Witness 707

³⁸⁵³ Witness PRH707, T. 21 April 2016, pp 36, 39.

³⁸⁵⁴ Exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 194.

³⁸⁵⁵ Exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 195.

³⁸⁵⁶ Witness PRH707, T. 9 February 2016, p. 31, T. 12 February 2016, p. 56, T. 22 April 2016, p. 20.

³⁸⁵⁷ Witness PRH707, T. 12 February 2016, p. 56.

³⁸⁵⁸ Witness PRH707, T. 9 February 2016, p. 33, T. 22 April 2016, pp 50-51, 53, 55-56, T. 4 May 2016, p. 32.

³⁸⁵⁹ Witness PRH707, T. 12 February 2016, pp 56-57, T. 25 July 2016, p. 64.

³⁸⁶⁰ Witness PRH707, T. 12 February 2016, pp 58-59, 62-63, T. 22 April 2016, p. 47.

³⁸⁶¹ Witness PRH707, T. 9 February 2016, p. 34, T. 22 April 2016, p. 52 (stating that there would be one or two exceptional cases out of millions of calls per day), T. 25 July 2016, p. 64.

³⁸⁶² Witness PRH707, T. 25 July 2016, pp 56-57.

³⁸⁶³ Witness PRH707, T. 9 February 2016, p. 37, T. 22 April 2016, p. 53.

noted that call data records do not show whether cell tower connections result from a directed retry.³⁸⁶⁴

1751. He also stated that predicted best server coverage maps neither take into account the signal strengths of cell towers, nor represent actual coverage maps.³⁸⁶⁵ A cell tower's signal, albeit weak, may therefore be picked up by a mobile outside the borders of a shape file.³⁸⁶⁶ In Witness 707's view, it is difficult to use predicted best server coverage maps to determine *actual* coverage.³⁸⁶⁷

5. Witness 707's clarifications

1752. Defence counsel, on many occasions, challenged Witness 707's ability to testify on matters that were not within his direct personal knowledge, of which there are numerous examples in his statements. The witness made it clear that he had obtained much of the information on which he was testifying from other Alfa employees and departments. In several instances, he stated that he would have to consult colleagues before he could provide further specific information. Consequently, during a break in his evidence, the Trial Chamber sought clarification from the Prosecution on several matters arising from Witness 707's testimony and witness statements, and gave the witness permission to consult colleagues in a protocol to be agreed with Defence counsel.³⁸⁶⁸

1753. As a result of this consultation, when Witness 707 reappeared in court, he was then asked to comment, for example, on how the azimuth and coordinate values of Alfa cell site data were found on the computer of an engineer from Alfa's radio department.³⁸⁶⁹

³⁸⁶⁴ Witness PRH707, T. 12 February 2016, p. 64, T. 22 April 2016, p. 35.

³⁸⁶⁵ Witness PRH707, T. 21 April 2016, pp 83-84, 92-93, 95-96, T. 22 April 2016, p. 23, T. 4 May 2016, pp 41-42, T. 25 July 2016, pp 66, 68.

³⁸⁶⁶ Witness PRH707, T. 21 April 2016, pp 80-81, 92-94, T. 22 April 2016, p. 23, T. 4 May 2016, p. 42; exhibit 5D245 (PowerPoint presentation: 'Alfa drive test and theoretical coverage').

³⁸⁶⁷ Witness PRH707, T. 25 July 2016, pp 66-68.

³⁸⁶⁸ For instance, the Trial Chamber held that Witness 707 had relied on records that he did not produce himself and upon information given to him by other Alfa employees or departments and that the witness was testifying as a corporate witness giving mixed evidence as to matters within his own personal knowledge and matters of which he was informed. The Trial Chamber permitted him to obtain further information from Alfa personnel and departments in relation to multiple paragraphs from his statements that were contested by Defence counsel. *See for example*, Corrected version of decision on Prosecution motion to admit Witness PRH707's statements, paras 65, 71-72; Witness PRH707, T. 18 February 2016, pp 3, 22-23, 27, 30-31, T. 19 April 2016, pp 7-9, 19-20, 23-24, 41-47.

³⁸⁶⁹ Witness PRH707, T. 20 April 2016, p. 6.

1754. He explained that before Alfa started organising a centralised cell site database in 2014, it had multiple databases and it was common practice that each department had its own database.³⁸⁷⁰ He clarified that the engineer could have saved the database only on an Alfa workstation computer and the company policy did not allow Alfa employees to use personal computers at work.³⁸⁷¹ He added that despite the merging of the various databases in 2014, the values in the new centralised database were the same as those before the merger of the databases.³⁸⁷²

D. Touch network and generation of call data records and cell site data

1. Introduction

1755. The Mobile Interim Company No. 2 S.A.L. is a joint stock company registered in Beirut, a ‘Mobile Telecommunications Company’ trading as ‘Touch’.³⁸⁷³ The company’s officially designated representative to the Special Tribunal³⁸⁷⁴ was Witness 705, an engineer specialising in wireless telecommunications. He testified on Touch’s mobile telephone network, its business practices and records.³⁸⁷⁵ He had worked in radio network planning and optimisation and joined Touch in 2012.³⁸⁷⁶ Like Witness 707, in providing his evidence, Witness 705 relied on the expertise of other company departments.³⁸⁷⁷

1756. In 2010, Touch provided the Prosecution with a CD containing the 2004 Touch coverage maps and the locations of its cell masts and cell sectors, in the form of shape files.³⁸⁷⁸ It also

³⁸⁷⁰ Witness PRH707, T. 20 April 2016, pp 6-11.

³⁸⁷¹ Witness PRH707, T. 20 April 2016, pp 12-13.

³⁸⁷² Witness PRH707, T. 20 April 2016, pp 11-12, 14.

³⁸⁷³ Exhibit P826 (Witness PRH705’s statement of 16 November 2015), paras 14, 17; exhibit P821 (Management Agreement between Mobile Telecommunications Company and Republic of Lebanon, annex 2 to Witness PRH705’s statement of 16 November 2015), p. 9.

³⁸⁷⁴ Witness PRH705, T. 5 May 2016, p. 18 (private session); exhibit P826 (Witness PRH705’s statement of 16 November 2015), para. 2; exhibit P826.1 (Designation of Witness PRH705 as Touch’s representative to the Special Tribunal, annex 1 to Witness PRH705’s statement of 16 November 2015).

³⁸⁷⁵ Witness PRH705, T. 5 May 2016, pp 14-15, 17 (private session), 26; exhibit P811 (Witness PRH705’s *curriculum vitae*); exhibit P826 (Witness PRH705’s statement of 16 November 2015), paras 11-13; exhibit P1096 (Witness PRH705’s statement of 4 May 2016), paras 15-17.

³⁸⁷⁶ Witness PRH705, T. 5 May 2016, pp 15, 17 (private session); exhibit P811; exhibit P826 (Witness PRH705’s statement of 16 November 2015), paras 1, 11-13; exhibit P1096 (Witness PRH705’s statement of 4 May 2016), paras 15-17.

³⁸⁷⁷ *See for example*, Witness PRH705, T. 5 May 2016, pp 29-33.

³⁸⁷⁸ Witness PRH705, T. 9 May 2016, pp 14-15.

provided cell data from 2004 and 2005.³⁸⁷⁹ The 2004 shape files, unlike those provided by Alfa, were generated contemporaneously.³⁸⁸⁰ The files were produced on 16 February 2004 and provided to the Prosecution on 22 September 2010.³⁸⁸¹ By 2004, the clutter data and the propagation model were both outdated.³⁸⁸²

1757. Touch also provided the UNIIC, on 8 October 2007, with two worksheets showing the azimuth values for all cells on air at the end of February 2005 and in September 2007.³⁸⁸³

1758. Additionally, in response to a request for assistance, Touch provided the Prosecution with seven worksheets containing Touch's cell site data saved on seven dates; 15 February 2005, 1 April 2005, 12 August 2006, 17 September 2008, 21 November 2009, 3 May 2010 and 7 July 2010.³⁸⁸⁴ Touch's radio planning unit, from its archive, also provided the Prosecution a radio frequency plan for Monday 14 February 2005, which sets out the distribution of channels assigned with the radios at each cell.³⁸⁸⁵

2. Touch network architecture

1759. The diagram below is extracted from a diagram of Touch's network architecture in June 2006.

³⁸⁷⁹ See sub-sections (4) 'Cell site related issues' and (5) 'Clarification of discrepancies', below.

³⁸⁸⁰ Witness PRH705, T. 9 May 2016, pp 14-15.

³⁸⁸¹ Witness PRH705, T. 9 May 2016, p. 14, T. 20 July 2016, pp 59-60, T. 21 July 2016, p. 17; exhibit P815 (Annex 19 to Witness PRH705's statement of 16 December 2015); exhibit P816 (Annex 20 to Witness PRH705's statement of 16 November 2015), pp 1, 4; exhibit P1122 (ArcView shape files Touch); exhibit P826 (Witness PRH705's statement of 16 November 2015), para. 230. See also exhibit P953 (Series of responses from Touch to Witness PRH705's questions), p. 1.

³⁸⁸² Witness PRH705, T. 6 May 2016, pp 68-69, 77-78, T. 9 May 2016, p. 32, T. 20 July 2016, pp 92-93; exhibit P816, p. 1.

³⁸⁸³ Exhibit P1182 (Touch cell information and azimuth values in February 2005 and September 2007).

³⁸⁸⁴ Witness PRH705, T. 5 May 2016, p. 84, T. 6 May 2016, pp 22-23, 38-48, T. 21 July 2016, p. 40; exhibit P812 (Prosecution's request for assistance, 12 July 2010); exhibit P813; exhibit P815, p. 1; exhibit P1181 (CD containing exhibit P813 and cell coverage maps dated 5 November 2007).

³⁸⁸⁵ Witness PRH705, T. 9 May 2016, pp 61, 67-71, T. 20 July 2016, pp 58-59, T. 21 July 2016, pp 9-12, 40; exhibit P820 (Radio frequency plan, annex 23 (2) to Witness PRH705's statement of 16 November 2015); exhibit P953, p. 1; exhibit P1096 (Witness PRH705's statement of 4 May 2016), para. 13.

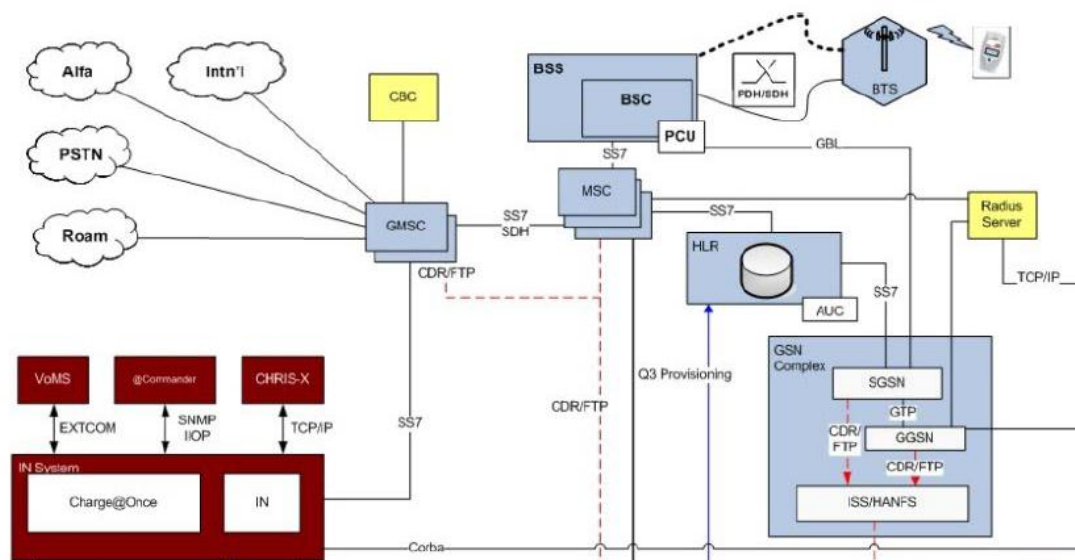


Diagram showing an extract from the structure and components of Touch's network architecture in June 2006 – exhibit P825 (Diagram of Touch's network architecture, annex 4 to Witness PRH705's statement of 16 November 2015)

1760. Witness 705's evidence related to the structure of mobile networks and is very similar to Witness 707's. Like Witness 707, he testified that mobile calls are processed through the GSM network composed of base transceiver stations (BTS or cell sites), base station controllers (BSC), mobile switching centres (MSC), home location registers (HLR),³⁸⁸⁶ visitor location registers (VLR) and gateway mobile switching centres (GMSC).³⁸⁸⁷ The MSCs are responsible for establishing calls, linking the GSM network to the public switched telephone network (PSTN or the landline network) and billing.³⁸⁸⁸

³⁸⁸⁶ In 2004 and 2005, Touch had two HLRs, Witness PRH705, T. 20 July 2016, pp 38-39, 48; exhibit P826 (Witness PRH705's statement of 16 November 2015), para. 24, read together with exhibit P952 (Touch's response to request for assistance clarifying paragraphs in Witness PRH705's statements).

³⁸⁸⁷ Exhibit P826 (Witness PRH705's statement of 16 November 2015), paras 24, 28; exhibit P769 (*Aide-mémoire* for Witness PRH707's evidence: list of acronyms).

³⁸⁸⁸ Exhibit P826 (Witness PRH705's statement of 16 November 2015), paras 24, 45; exhibit P826.2 (Network architecture and call set-up, annex 3 to Witness PRH705's statement of 16 November 2015), p. 1; exhibit P769; exhibit P825 (Diagram of Touch's network architecture, annex 4 to Witness PRH705's statement of 16 November 2015).

1761. In 2004 and 2005, each of the five MSCs, the SMS centre (SMS-C) switch and the landline network had its own internal clock.³⁸⁸⁹ These clocks were set manually and not synchronised.³⁸⁹⁰ Logs of changes on these clocks were no longer available because the old MSCs used in 2004 and 2005 were dismantled and replaced with new switches.³⁸⁹¹ Time differences between the clocks could continue for a number of months.³⁸⁹² Witness 705 did not know the time difference between the MSCs in 2004 and 2005.³⁸⁹³

1762. The BTSs contain radios that communicate with mobiles, an antenna system and supporting hardware and software.³⁸⁹⁴ Each cell site is connected by a BSC which is in control of the radios and the switching function.³⁸⁹⁵ Touch had two GMSCs, responsible for connecting the home network with the network of the other mobile telecommunication service providers, the landline network and the international network.³⁸⁹⁶ The intelligent network (IN) platform manages the prepaid subscriptions while the HLRs are network elements that permanently record the technical information of all subscribers belonging to the home network.³⁸⁹⁷ In almost every MSC, a VLR temporarily records details of home network subscribers and subscribers from other networks visiting the area.³⁸⁹⁸ Finally, Witness 705 outlined the general changes in Touch's network architecture between 2004 and 2016.³⁸⁹⁹

1763. Like Mr Philips and Witness 707, he explained that if a cell reaches a predetermined threshold in its capacity, a subsystem of the cell tower responsible for handling traffic may force

³⁸⁸⁹ Exhibit P826 (Witness PRH705's statement of 16 November 2015), para. 258; Witness PRH705, T. 10 May 2016, p. 30.

³⁸⁹⁰ Exhibit P826 (Witness PRH705's statement of 16 November 2015), para. 258; *see also* Witness PRH705, T. 10 May 2016, p. 30, T. 21 July 2016, pp 30-31.

³⁸⁹¹ Exhibit P826 (Witness PRH705's statement of 16 November 2015), para. 179, read together with exhibit P952. *See also* Witness PRH705, T. 20 July 2019, p. 43.

³⁸⁹² Exhibit P826 (Witness PRH705's statement of 16 November 2015), paras 181, 258 (para. 181 must be read together with exhibit P952). *See also* Witness PRH705, T. 20 July 2019, p. 43.

³⁸⁹³ Witness PRH705, T. 21 July 2016, pp 31-32.

³⁸⁹⁴ Exhibit P826 (Witness PRH705's statement of 16 November 2015), paras 24, 43; exhibit P826.2, p. 1; exhibit P825; exhibit P769.

³⁸⁹⁵ Witness PRH705, T. 9 May 2016, p. 62; exhibit P826 (Witness PRH705's statement of 16 November 2015), paras 24, 44; exhibit P826.2, p. 1; exhibit P825; exhibit P769.

³⁸⁹⁶ Witness PRH705, T. 10 May 2016, p. 33; exhibit P826 (Witness PRH705's statement of 16 November 2015), paras 24, 50; exhibit P825; exhibit P769.

³⁸⁹⁷ Exhibit P826 (Witness PRH705's statement of 16 November 2015), paras 24, 41, 46-47 (para. 24, in relation to the HLR, has to be read together with exhibit P952); exhibit P826.2, p. 1; exhibit P825; exhibit P769.

³⁸⁹⁸ Exhibit P826 (Witness PRH705's statement of 16 November 2015), paras 24, 48; exhibit P826.2, p. 1; exhibit P769.

³⁸⁹⁹ Exhibit P826 (Witness PRH705's statement of 16 November 2015), paras 30, 34; Witness PRH705, T. 5 May 2016, p. 30, T. 10 May 2016, pp 26-28.

another mobile, which is already in the process of a call, to connect to another cell and free up a traffic channel, which meets specific requirements.³⁹⁰⁰

1764. ‘Handover’ occurs if the new signal is between three decibels weaker and 63 decibels stronger than the old signal.³⁹⁰¹ Congestion relief may be triggered during peak hours of the cell traffic or by events occurring on the day.³⁹⁰² A call may also be ‘handed over’ from one cell to another if the caller is moving between cells, or making a call at the boundaries of two neighbouring cells and a truck blocks the signal of the serving cell.³⁹⁰³ Call data records do not capture that a handover occurred.³⁹⁰⁴ The cell used in the beginning of the call is registered in the call data records, and the cell used at the end of the call may also appear.³⁹⁰⁵

3. Call data records and related issues

1765. Witness 705 provided much the same evidence as Witness 707 on call data records and subscriber information. For example, the witness stated that the mobile subscriber integrated services digital network number (MSISDN) is the telephone number associated with the SIM card, which identifies the subscription in the network.³⁹⁰⁶ The IMSI contained in the SIM card is another number the cellular networks use to identify subscribers’ details.³⁹⁰⁷ Further, the IMSI shows when a subscriber moves from one cell to another. During this process, a signal is sent out which is updated in the subscriber’s location.³⁹⁰⁸

1766. Touch stored pre-paid and post-paid subscriber information in its customer relationship management (CRM) database. This included subscribers’ names and personal data, contract numbers (for post-paid subscribers), the MSISDN, the IMSI, the integrated circuit card identity

³⁹⁰⁰ Witness PRH705, T. 6 May 2016, pp 10-13; exhibit P826 (Witness PRH705’s statement of 16 November 2015), paras 55, 57.

³⁹⁰¹ Witness PRH705, T. 6 May 2016, pp 10-13; exhibit P826 (Witness PRH705’s statement of 16 November 2015), para. 57.

³⁹⁰² Witness PRH705, T. 6 May 2016, p. 10; exhibit P826 (Witness PRH705’s statement of 16 November 2015), para. 59.

³⁹⁰³ Witness PRH705, T. 21 July 2016, pp 6-8.

³⁹⁰⁴ Witness PRH705, T. 6 May 2016, pp 13-14, T. 21 July 2016, p. 8; *see also* exhibit P826 (Witness PRH705’s statement of 16 November 2015), para. 59.

³⁹⁰⁵ Witness PRH705, T. 6 May 2016, pp 13-14, T. 21 July 2016, p. 8.

³⁹⁰⁶ Exhibit P826 (Witness PRH705’s statement of 16 November 2015), paras 40-41; exhibit P769.

³⁹⁰⁷ Exhibit P826 (Witness PRH705’s statement of 16 November 2015), paras 35-36; exhibit P769.

³⁹⁰⁸ Exhibit P826 (Witness PRH705’s statement of 16 November 2015), paras 197, 200, 202.

number of the SIM card, the point of sale information and all activities related to the subscription.³⁹⁰⁹

1767. In 2004 and 2005, International Turnkey Systems provided Touch's billing system, and used the Telecom Advanced Business Solution (TABS) software.³⁹¹⁰ The information in the TABS CRM database, or subscriber database, was populated manually with the information in subscriber application forms for Touch's pre-paid and post-paid services, such as the 'GSM service contract', the 'post-paid customer info', the 'features & services request', 'request for subscription / prepaid line' and the 'prepaid customer info'.³⁹¹¹

1768. In 2004 and 2005, for a pre-paid line branded as 'MTC Magic', the subscribers had to provide a copy of their identification document and a completed and signed pre-paid customer information sheet.³⁹¹² Subscribers could recharge their credit by purchasing a recharge voucher or scratch card from authorised distributors.³⁹¹³

1769. Touch could deactivate post-paid and pre-paid lines on the subscriber's request, due to loss or defect of the SIM card, transfer of ownership to a new post-paid subscriber, migration from pre-

³⁹⁰⁹ Witness PRH705, T. 10 May 2016, pp 53-54, 56-57, T. 20 July 2016, p. 48; exhibit P826 (Witness PRH705's statement of 16 November 2015), para. 345, read together with exhibit P952. *See also* exhibit P1101 (Touch list of activation and deactivation dates); exhibit P1099 (Touch's response to Prosecution request for information on Witness PRH705's evidence), para. 4 (a)-(b); Witness PRH705, T. 21 July 2016, pp 65-66.

³⁹¹⁰ Witness PRH705, T. 10 May 2016, pp 53-54, T. 20 July 2016, p. 48; exhibit P1093 (Witness PRH705's statement of 16 December 2015) paras 11-13, read together with exhibit P952; exhibits P1093.1-P1093.6 (Agreements between Touch and International Turnkey Systems, annexes 1-6 to Witness PRH705's statement of 16 December 2015); exhibit P769.

³⁹¹¹ Witness PRH705, T. 10 May 2016, p. 58, T. 11 May 2016, pp 30-32, 38; exhibit P826 (Witness PRH705's statement of 16 November 2015), paras 116, 126-127, 134-138; exhibit P830 ('GSM service contract' form, annex 5 to Witness PRH705's statement of 16 November 2015); exhibit P831 ('Postpaid customer info' form, annex 7 to Witness PRH705's statement of 16 November 2015); exhibit P826.4 ('Features & services request' form, annex 8 to Witness PRH705's statement of 16 November 2015); exhibit P826.5 ('Request for subscription / prepaid line', annex 9 to Witness PRH705's statement of 16 November 2015); exhibit P826.6 ('Lost SIM card' form, annex 11 to Witness PRH705's statement of 16 November 2015); exhibit P826.7 ('MTC release form', annex 12 to Witness PRH705's statement of 16 November 2015); exhibit P826.8 ('Corporate offer contract' form, annex 13 to Witness PRH705's statement of 16 November 2015); exhibit P833 ('LibanCell customer info-prepaid line', annex 14 to Witness PRH705's statement of 16 November 2015). *See also* Witness PRH705, T. 20 July 2016, pp 42-43, 48; exhibit P952; exhibit P826.11 (Response to request for assistance, annex 18 to Witness PRH705's statement of 16 November 2015).

³⁹¹² Witness PRH705, T. 10 May 2016, p. 5, T. 11 May 2016, pp 4-5, 76; exhibit P826 (Witness PRH705's statement of 16 November 2015), paras 127, 275, 277, 327 (para. 127 read together with exhibit P952); exhibit P826.5; exhibit P833. *See also* Witness PRH705, T. 20 July 2016, pp 42, 44, 48.

³⁹¹³ Witness PRH705, T. 11 May 2016, pp 7-8, exhibit P826 (Witness PRH705's statement of 16 November 2015), paras 329-333; exhibit P826.20 ('Tariffs and fees—Magic before migration', annex 29 to Witness PRH705's statement of 16 November 2015); exhibit P826.21 ('Tariffs and fees—Magic after migration', annex 30 to Witness PRH705's statement of 16 November 2015); exhibit P826.23 (List of authorised distributors, annex 32 to Witness PRH705's statement of 16 November 2015).

paid to post-paid subscription or blocked SIM card.³⁹¹⁴ For an additional monthly fee, subscribers could request additional services (or cancel them) through the ‘features & services request’ form.³⁹¹⁵

1770. The MSC automatically generated call data records every time a Touch subscriber made or received a call.³⁹¹⁶ In 2004 and 2005, Touch did not generate records for missed calls, end cell data and recharge data.³⁹¹⁷ Archiving SMS contents was not an automatic process.³⁹¹⁸

1771. From February 2004, Touch archived the SMS content written in English, although content from March 2004 and between 16 and 31 August 2004 was unavailable due to missing or corrupted tapes.³⁹¹⁹ The contents of the Arabic script text messages were stored from 7 January 2005 in binary code (ASN.1).³⁹²⁰ Data messages within SMS, such as photographs, could not be decoded into readable text.³⁹²¹ When the SMS-C switch reached its storage limit, the technical department staff manually retrieved the SMS contents and stored them in a readable format on tapes in locked cabinets separately from call data records.³⁹²²

³⁹¹⁴ Exhibit P826 (Witness PRH705’s statement of 16 November 2015), paras 301-307, 314-316, 319-320 (paras 301-302, 304, 315, 320 must be read together with exhibit P952); exhibit P826.6. *See also* Witness PRH705, T. 20 July 2016, pp 46-48.

³⁹¹⁵ Witness PRH705, T. 11 May 2016, pp 3-4; exhibit P826 (Witness PRH705’s statement of 16 November 2015), paras 126, 273-274, 279-280, 337; exhibit P826.4; exhibit P826.18 (‘Postpaid & prepaid booklet’, annex 27 to Witness PRH705’s statement of 16 November 2015); exhibit P826.19 (Touch’s services and products and their launch dates, annex 28 to Witness PRH705’s statement of 16 November 2015). *See also* exhibit P952; Witness PRH705, T. 20 July 2016, pp 42, 45, 47-48.

³⁹¹⁶ Witness PRH705, T. 6 May 2016, p. 14, T. 10 May 2016, pp 10-11, 19-21, 24, 29, 77, 88; exhibit P826 (Witness PRH705’s statement of 16 November 2015), paras 65, 67-70 (para. 68 must be read together with exhibit P952). *See also* Witness PRH705, T. 20 July 2016, pp 40-41, 48. Touch did not keep a record of voice messages. Voice messages were stored for seven days in the subscriber’s mailbox and then automatically deleted, exhibit P826 (Witness PRH705’s statement of 16 November 2015), para. 103.

³⁹¹⁷ Witness PRH705, T. 10 May 2016, pp 88-90; exhibit P826 (Witness PRH705’s statement of 16 November 2015), para. 104; *see also* John Edward Philips, T. 19 August 2015, p. 16.

³⁹¹⁸ Witness PRH705, T. 10 May 2016, pp 37-39, T. 20 July 2016, p. 61; exhibit P953.

³⁹¹⁹ Witness PRH705, T. 10 May 2016, pp 35, 38-39.

³⁹²⁰ Witness PRH705, T. 10 May 2016, pp 40-41.

³⁹²¹ Exhibit P826 (Witness PRH705’s statement of 16 November 2015), paras 271-272 (para. 271 must be read together with exhibit P952). *See also* exhibit P826.16 (Request for assistance of 25 July 2013, annex 26 (1) to Witness PRH705’s statement of 16 November 2015); exhibit P826.17 (Touch’s response to request for assistance of 25 July 2013 clarifying the binary content of an SMS, annex 26 (2) to Witness PRH705’s statement of 16 November 2015). *See also* Witness PRH705, T. 20 July 2016, pp 44, 48.

³⁹²² Witness PRH705, T. 10 May 2016, pp 37-40, T. 20 July 2016, pp 61-62; exhibit P953.

1772. While the subscriber was roaming abroad, only outbound text messages were generated at the SMS-C switch.³⁹²³ Call data records for roaming calls made and received by a Touch subscriber abroad were generated by partner networks and transferred to the subscriber's service provider through the data clearing house.³⁹²⁴ These are known as 'TAP' files, named after the mechanism 'transferred account procedure', through which telecommunication service providers exchange roaming billing information.³⁹²⁵ They were stored separately in a dedicated roaming module.³⁹²⁶

1773. Discrepancies between the call data records generated at the MSC and the SMS content records generated at the SMS-C switch may occur when the sender of a text message sets the mobile handset to receive a delivery status report or sends a message while roaming abroad.³⁹²⁷

1774. Witness 705 explained the transfer of data from the MSC to the billing system.³⁹²⁸ Call data records generated at the MSC were automatically transferred to the billing system.³⁹²⁹ There, the data was translated into text format, readable to the billing system, and filtered by types of calls.³⁹³⁰ The database administrator did not have access to the call data records at the MSC, and, in the absence of an ASN.1 editor, the administrator could not modify the data during the mediation process.³⁹³¹ Touch had editors for TAP files only.³⁹³²

³⁹²³ Witness PRH705, T. 10 May 2016, pp 72-73. *See also* exhibit P826 (Witness PRH705's statement of 16 November 2015), para. 270.

³⁹²⁴ Witness PRH705, T. 10 May 2016, pp 58-59, 72-73; exhibit P826 (Witness PRH705's statement of 16 November 2015), paras 71-73. *See also* exhibit P1093.8 (List of short codes used in Touch's roaming call data records, annex 14 to Witness PRH705's statement of 16 December 2015).

³⁹²⁵ Exhibit P826 (Witness PRH705's statement of 16 November 2015), para. 71.

³⁹²⁶ Witness PRH705, T. 10 May 2016, p. 59; exhibit P826 (Witness PRH705's statement of 16 November 2015), paras 71-72.

³⁹²⁷ Exhibit P826 (Witness PRH705's statement of 16 November 2015), para. 270. *See also* exhibit P826 (Witness PRH705's statement of 16 November 2015), paras 263-269 (paras 268-269 have to be read together with exhibit P952); Witness PRH705, T. 20 July 2016, pp 44, 48.

³⁹²⁸ Witness PRH705, T. 10 May 2016, pp 21, 73-75, 77-83.

³⁹²⁹ Witness PRH705, T. 10 May 2016, pp 19, 21, 73, 77-79, 81, T. 11 May 2016, p. 16; exhibit P827 ('The CDR Lifecycle', annex 15 to Witness PRH705's statement of 16 November 2015).

³⁹³⁰ Witness PRH705, T. 10 May 2016, pp 79-80, T. 11 May 2016, pp 10-11; exhibit P827.

³⁹³¹ Witness PRH705, T. 11 May 2016, pp 16-17, 21, T. 20 July 2016, p. 53; exhibit P826 (Witness PRH705's statement of 16 November 2015), para. 80; exhibit P1095 (Witness PRH705's statement of 26 February 2016). *See also* Witness PRH705, T. 20 July 2016, pp 42, 48; exhibit P952 (to be read together with para. 80 of exhibit P826 and para. 17 of exhibit P1095).

³⁹³² Witness PRH705, T. 11 May 2016, pp 17-18, T. 20 July 2016, p. 53; exhibit P826 (Witness PRH705's statement of 16 November 2015), para. 80; exhibit P1095 (Witness PRH705's statement of 26 February 2016). *See also* Witness PRH705, T. 20 July 2016, pp 42, 48; exhibit P952 (to be read together with para. 80 of exhibit P826 and para. 17 of exhibit P1095).

1775. Touch's information technology department regularly saved the call data records, following established procedures, to magnetic tapes, in read-only format.³⁹³³ Backups were kept in a secure area.³⁹³⁴ The database was rebuilt every two months on the test machine from the database backups and Touch then retained the backup files for a predetermined period or indefinitely.³⁹³⁵ Additionally, Touch held approximately two years of live data for quick customer queries.³⁹³⁶ Since 1997, Touch has archived billing-related call data records. As of October 2001, it also archived non-billing information and since January 2005, it archived the raw data from the switch.³⁹³⁷

1776. Witness 705 explained the process of retrieving the call data records from the archives.³⁹³⁸ The database administrator restored the database from the data archived on the tapes with a special tape reader. The analysts with read-only access to the database created a query for the relevant period and the results were sent back to the entity requesting information.³⁹³⁹

1777. The call data record for a call or SMS fits into one or two rows. A single row call data is where a caller, for example, receives an announcement such as having insufficient credit on the account. These calls are considered invalid in the system.³⁹⁴⁰ Another explanation for a single row data record is when a call is not established, meaning a call not made because the network is congested, the call is too short to be considered an actual call or the caller ends the call before it connects.³⁹⁴¹

³⁹³³ Witness PRH705, T. 11 May 2016, pp 12-13; exhibit P826 (Witness PRH705's statement of 16 November 2015), para. 160; exhibit P826.9 (Table showing frequency of backup and retention period of backed up data, updated on 6 November 2009, annex 16 (1) to Witness PRH705's statement of 16 November 2015); exhibit P826.10 (Backup procedure, dated 19 March 2010, annex 16 (2) to Witness PRH705's statement of 16 November 2015).

³⁹³⁴ Witness PRH705, T. 11 May 2016, p. 12; exhibit P826.10, p. 4.

³⁹³⁵ Exhibit P826.10, pp 4-7.

³⁹³⁶ Witness PRH705, T. 11 May 2016, pp 15-16.

³⁹³⁷ Exhibit P826 (Witness PRH705's statement of 16 November 2015), para. 161, read together with exhibit P952. *See also* Witness PRH705, T. 20 July 2016, pp 43, 48.

³⁹³⁸ Witness PRH705, T. 11 May 2016, pp 19-24, T. 20 July 2016, pp 68-69; exhibit P953, p. 2.

³⁹³⁹ Witness PRH705, T. 11 May 2016, pp 22-24.

³⁹⁴⁰ Exhibit P826 (Witness PRH705's statement of 16 November 2015), para. 250; *see also* Witness PRH705, T. 20 July 2016, pp 44, 48; exhibit P952.

³⁹⁴¹ Exhibit P826 (Witness PRH705's statement of 16 November 2015), paras 256-257.

1778. In addition to the 2004 shape files and the cell data from 2004 and 2005, Touch also provided the Prosecution with data from drive testing between 2005 and 2007.³⁹⁴² Touch used the prediction tool brand ‘Planet’ until the end of 2004, and from July 2007, it used Asset. It produced best server coverage maps for radio planning and optimisation.³⁹⁴³

1779. Witness 705 explained how Touch generated shape files in 2004, which included the location, azimuth and tilt information centralised in a site database.³⁹⁴⁴ It collected and recorded on a CD the geographic coordinates of cell sites using commercially available GPS receivers and accounted for slight consequential changes in the data as a result of transferring the data from the GPS into another propagation tool, namely Planet or Asset.³⁹⁴⁵ This information was used to generate shape files which illustrate the cell sites and the site and cell parameters.³⁹⁴⁶

4. Cell site related issues

1780. Witness 705 testified about Touch’s practices in recording and storing basic information of its cell sites.³⁹⁴⁷ The technical department’s radio network planning unit had a centralised Microsoft Access database (using SQL language), to store current data about Touch’s cell sites.³⁹⁴⁸ As part of its everyday business practice, Touch recorded in this database the cell name, the cell global identity (CGI) number, the geographic coordinates, the antenna height, the azimuth values, the effective radiated power (ERP) of the antennas and a parameter termed ‘Max_Tx_BTS’, which was used for 2G equipment.³⁹⁴⁹ During Witness 705’s time at Touch, the database was updated daily.³⁹⁵⁰

³⁹⁴² Exhibit P826 (Witness PRH705’s statement of 16 November 2015), para. 261; *see also, for example*, exhibit P826.14 (Annex 25 (1) to Witness PRH705’s statement of 16 November 2015); exhibit P826.15 (Annex 25 (2) to Witness PRH705’s statement of 16 November 2015).

³⁹⁴³ Witness PRH705, T. 5 May 2016, pp 88-89, T. 6 May 2016, pp 2-4, 76, T. 21 July 2016, p. 17; exhibit P815; exhibit P816, p. 1. *See also* exhibit P826.12 (Annex 21 (1) to Witness PRH705’s statement of 16 November 2015); exhibit P826.13 (Annex 21 (2) to Witness PRH705’s statement of 16 November 2015).

³⁹⁴⁴ Witness PRH705, T. 5 May 2016, pp 79-80.

³⁹⁴⁵ Witness PRH705, T. 9 May 2016, pp 6-12.

³⁹⁴⁶ Witness PRH705, T. 9 May 2016, pp 10-12.

³⁹⁴⁷ Witness PRH705, T. 5 May 2016, pp 83-85, T. 6 May 2016, pp 22-23, 40-48. *See also* exhibit P813 (Touch’s cell site data exported on 15 February 2005, 1 April 2005, 12 August 2006, 17 September 2008, 21 November 2009, 3 May 2010 and 7 July 2010); exhibit P815.

³⁹⁴⁸ Witness PRH705, T. 5 May 2016, pp 78-79 (private session), 80-84, T. 6 May 2016, pp 22-23, 40-48, T. 9 May 2016, p. 70.

³⁹⁴⁹ Witness PRH705, T. 9 May 2016, pp 53-60; exhibit P819 (Touch’s cell site radio database, annex 23 (1) to Witness PRH705’s statement of 16 November 2015); exhibit P1096 (Witness PRH705’s statement of 4 May 2016), para. 12.

³⁹⁵⁰ Witness PRH705, T. 5 May 2016, pp 85-87, T. 20 July 2016, pp 84-85.

1781. In 2004 and 2005, changes to the cells across the network occurred only once or twice a month.³⁹⁵¹ By 2016, daily drive tests of the network by the radio network planning unit were necessary to optimise the network by changing the azimuth or tilt of an under-functioning cell site, due to higher demand and more network activities.³⁹⁵²

1782. Witness 705 described the process. Engineers conducted drive tests using a test mobile system with a Touch SIM card inserted and connected to a computer which logged all interactions between the mobile and the network as they drove on Lebanon's roads. Radio engineers then analysed these logs and used their findings to optimise the network.³⁹⁵³

1783. From around 2013 or 2014, Touch kept records of the changes to cell sites.³⁹⁵⁴ Riggers changing the cell site's azimuth or tilt filled out a document recording the changes.³⁹⁵⁵ The database was updated from these documents.³⁹⁵⁶ The witness was sceptical about whether every change in the network had been recorded.³⁹⁵⁷ However, Touch's engineers monitored the 'key performance indicators' of the network, which would have alerted them to a radical change in the cell site's parameters or a dramatic degrading of the system.³⁹⁵⁸

1784. Touch, unlike Alfa, kept the coverage maps for all its cell sites on air in 2004 and 2005 and provided them to the UNIIIC and the Prosecution. Touch's technical department exported its cell site data from the database into Excel documents to save the network's settings at particular points in time.³⁹⁵⁹ Touch provided the Prosecution with seven Excel worksheets containing Touch's cell site data saved on: 15 February 2005, 1 April 2005, 12 August 2006, 17 September 2008, 21

³⁹⁵¹ Witness PRH705, T. 5 May 2016, pp 86-87, T. 9 May 2016, p. 48, T. 20 July 2016, pp 84-85.

³⁹⁵² Witness PRH705, T. 5 May 2016, pp 86-87, T. 20 July 2016, pp 84-86.

³⁹⁵³ Witness PRH705, T. 5 May 2016, pp 92-93; exhibit P769, p. 4 (defining TEMS as 'Test Mobile System'—an investigation tool for road surveys and drive tests).

³⁹⁵⁴ Witness PRH705, T. 5 May 2016, p. 85, T. 6 May 2016, p. 20.

³⁹⁵⁵ Witness PRH705, T. 5 May 2016, p. 85, T. 6 May 2016, p. 20, T. 20 July 2016, pp 82-83.

³⁹⁵⁶ Witness PRH705, T. 5 May 2016, p. 85, T. 6 May 2016, p. 20.

³⁹⁵⁷ Witness PRH705, T. 6 May 2016, pp 24-27.

³⁹⁵⁸ Witness PRH705, T. 6 May 2016, pp 24-25, 28, T. 21 July 2016, pp 13-15.

³⁹⁵⁹ Witness PRH705, T. 5 May 2016, pp 78-79 (private session), 82, 84-85, T. 6 May 2016, pp 22-23, 40-45, 47-48, T. 21 July 2016, pp 9-13, 16-17. *See also* exhibit P813.

November 2009, 3 May 2010 and 7 July 2010,³⁹⁶⁰ and the radio planning unit provided a radio frequency plan for Monday 14 February 2005.³⁹⁶¹

1785. Touch had changed some of the cell names to make them more consistent with their locations, but it did not mean that the cell's locations had changed.³⁹⁶² The cell global identity (CGI) number includes Touch's network code, the location area code (LAC) and the cell identification number. The first digit of the location area code refers to the MSC that serves the cell.³⁹⁶³

1786. Touch generally recorded and stored the date when a site was put on air.³⁹⁶⁴ It also recorded and stored its geographic coordinates, taken using commercial GPS devices.³⁹⁶⁵ The values, after conversion, were entered in Touch's propagation tool to create coverage maps.³⁹⁶⁶ For remote areas and when lacking resources for drive testing, Touch used a propagation tool to produce coverage maps.³⁹⁶⁷

1787. One cell site may have one to six sectors.³⁹⁶⁸ Before it was put on air, the azimuth values of the directional antenna were taken with a compass and recorded in the SQL database.³⁹⁶⁹ Changes to the azimuth, due to optimisation of the network or physical changes on the cell site, were also recorded.³⁹⁷⁰

³⁹⁶⁰ Witness PRH705, T. 5 May 2016, p. 84, T. 6 May 2016, pp 22-23, 38-48, T. 21 July 2016, p. 40; exhibit P812 (Prosecution's request for assistance, 12 July 2010); exhibit P813; exhibit P815, p. 1; exhibit P1181 (CD containing exhibit P813 and cell coverage maps dated 5 November 2007).

³⁹⁶¹ Witness PRH705, T. 9 May 2016, pp 61, 67-71, T. 20 July 2016, pp 58-59, T. 21 July 2016, pp 9-12, 40; exhibit P820 (Radio frequency plan, annex 23 (2) to Witness PRH705's statement of 16 November 2015); exhibit P953, p. 1; exhibit P1096 (Witness PRH705's statement of 4 May 2016), para. 13.

³⁹⁶² Witness PRH705, T. 6 May 2016, pp 41-42; exhibit P1093 (Witness PRH705's statement of 16 December 2015), para. 26; exhibit P1093.9 (Annex 15 to Witness PRH705's statement of 16 December 2015).

³⁹⁶³ Witness PRH705, T. 6 May 2016, pp 40-43.

³⁹⁶⁴ Witness PRH705, T. 9 May 2016, pp 22-23. *See also* exhibit P826 (Witness PRH705's statement of 16 November 2015), para. 214; exhibit P816, pp 5-6; exhibit P1122.

³⁹⁶⁵ Witness PRH705, T. 6 May 2016, pp 35-36, T. 9 May 2016, pp 5-9; exhibit P813.

³⁹⁶⁶ Witness PRH705, T. 9 May 2016, pp 5-7, 38-40; exhibit P818 (Clarification to correct geographic coordinates of 19 Touch cell sectors and correct azimuths for three Touch cell towers in 2004 and 2005, annex 22 (2) to Witness PRH705's statement of 16 November 2015).

³⁹⁶⁷ Witness PRH705, T. 5 May 2016, p. 92.

³⁹⁶⁸ Witness PRH705, T. 5 May 2016, p. 80, T. 6 May 2016, pp 40, 43.

³⁹⁶⁹ Witness PRH705, T. 6 May 2016, pp 36-37, 43, T. 9 May 2016, pp 48-50.

³⁹⁷⁰ Witness PRH705, T. 9 May 2016, pp 48-52; exhibit P818, p. 2.

1788. The best server coverage map of a cell shows the points where the best signal of the cell is predicted.³⁹⁷¹ Coverage predictions should be used as an ‘indication’ or ‘estimation’ of two-dimensional coverage at ground level.³⁹⁷²

1789. Touch’s best server coverage maps of 2004 could not be reproduced because it did not archive the 2004 terrain and clutter maps, and Planet’s licence had expired at the end of 2004.³⁹⁷³

1790. Touch’s coverage maps had been built on a digital elevation map using a 20 metre resolution.³⁹⁷⁴ The clutter model, an additional map layer entered into the propagation tool, showed vegetation and buildings.³⁹⁷⁵ Site and cell parameters, such as the geographic coordinates of the cell towers, the azimuth and tilt of the cells, the antenna height and the effective radiated power (ERP) of the antenna, were entered in the propagation tool.³⁹⁷⁶ Propagation models were assigned to each cell in the network.³⁹⁷⁷ They were calibrated using drive test results to provide cell coverage values closest to reality and to reach acceptable ‘key performance indicators’.³⁹⁷⁸ Touch outsourced their calibration to another company. Propagation models are calibrated ‘once and then’, unless there are significant changes in the clutter or in the environment.³⁹⁷⁹

1791. Touch, unlike Alfa, provided the Prosecution with two ‘snapshots’ of the database it maintained.³⁹⁸⁰ Specifically, Touch provided a coverage map of its cells in GIS (geographical information system) shape files format produced by its technical department. Additionally, Touch provided data from drive tests for 39 cells that had been put on air after 16 February 2004, determining the approximate coverage of each cell.³⁹⁸¹ It provided also the geographical data of

³⁹⁷¹ Witness PRH705, T. 5 May 2016, pp 91-92, T. 20 July 2016, pp 87-90, 92, T. 21 July 2016, p. 41.

³⁹⁷² Witness PRH705, T. 20 July 2016, p. 94, T. 21 July 2016, pp 18-19, 24-25, 40-41; exhibit P816, p. 1.

³⁹⁷³ Witness PRH705, T. 20 July 2016, pp 59-60, T. 21 July 2016, pp 12-13, 17, 24-25; exhibit P816, p. 1; exhibit P953, p. 1.

³⁹⁷⁴ Witness PRH705, T. 6 May 2016, p. 66; exhibit P816, p. 1.

³⁹⁷⁵ Witness PRH705, T. 6 May 2016, pp 77-78; exhibit P816.

³⁹⁷⁶ Witness PRH705, T. 5 May 2016, pp 83, 87, 91, T. 9 May 2016, pp 6-8, 10-11, 58-60; *see also* exhibit P816.

³⁹⁷⁷ Witness PRH705, T. 6 May 2016, p. 68.

³⁹⁷⁸ Witness PRH705, T. 6 May 2016, pp 68-69, T. 20 July 2016, p. 60, T. 21 July 2016, pp 21-22.

³⁹⁷⁹ Witness PRH705, T. 6 May 2016, pp 70-71.

³⁹⁸⁰ Witness PRH705, T. 5 May 2016, pp 78-82 (private session), 84.

³⁹⁸¹ Witness PRH705, T. 6 May 2016, p. 69, T. 9 May 2016, pp 17-21, T. 21 July 2016, pp 20-21; exhibit P816, pp 1, 4-5.

Lebanon and a copy of the software used to display the coverage files, namely, Esri ArcView 3.1.³⁹⁸²

5. Clarification of discrepancies

1792. The Prosecution compared the sets of data included in Touch's cell site data of 15 February 2005³⁹⁸³ and its best server coverage maps of 16 February 2004.³⁹⁸⁴ It noted some discrepancies between the two in relation to the geographic coordinates of 19 cell sectors and the azimuths of five cells (on three cell towers) and sent a request for assistance to Touch seeking clarification.³⁹⁸⁵

1793. In response, Touch copied the two sets of geographic coordinates of the 19 cell sectors into a table and highlighted the correct coordinates. The response stated that the differences in the coordinates were due to inaccuracies of commercial GPS devices and the conversion of the coordinates from decimal to other formats. Touch further explained that the changes in the azimuth values resulted from the continuous optimisation process, including relocation of cell sites.³⁹⁸⁶

E. General submissions in relation to Witnesses 705 and 707 and their evidence

1. Prosecution

1794. The Prosecution, in oral closing submissions, argued that the call data records and the cell site data provided by Alfa and Touch—which constitute business records created in the normal course of business—were sufficiently reliable for the Trial Chamber to use.

1795. Mr Philips, Prosecution counsel explained, used this data to conduct cell site analysis as a reliable technique to determine general locations and the movements of mobiles relevant to the Prosecution case. The non-contemporaneous data received from Alfa and Touch and the inherent margin of error related to the predicted best coverage maps should be assessed on the basis of the

³⁹⁸² Witness PRH705, T. 6 May 2016, p. 84; exhibit P816, pp 1, 4; exhibit P1122.

³⁹⁸³ Exhibit P813.

³⁹⁸⁴ Exhibit P1122.

³⁹⁸⁵ Exhibit P817 (Prosecution's request for assistance, 24 June 2014).

³⁹⁸⁶ Exhibit P818.

totality of the evidence. This includes the patterns of call activity and the peculiar and exceptional manner in which the network mobiles operated.³⁹⁸⁷

1796. The Defence argued generally that the telecommunication companies did not maintain centralised and contemporaneous databases of cell coordinates, azimuths and tilts. In response to these arguments, the Prosecution submitted that Witness 705 highlighted that Touch's radio planning unit stored information regarding azimuth, tilt and address location of cell masts in its SQL database and that this data could be exported into Excel files.³⁹⁸⁸ The Prosecution added that Touch's radio planning unit prepared the shape files for 2004, which were provided to it in 2010.³⁹⁸⁹

1797. In response to the Ayyash and Oneissi Defence suggesting that Witness 707 referred to a kind of map other than a coverage map, the Prosecution submitted that the witness merely clarified the distinction between the marketing JPEG maps—which were similar to Alfa's coverage maps of various areas in Beirut³⁹⁹⁰—and the shape files that Alfa had provided to the Prosecution.³⁹⁹¹

1798. The Prosecution rejected the Merhi Defence's suggestion that where a mobile cannot connect to the best serving cell in an urban area this means that it is in a larger potential area because of the number of surrounding cells. It argued that this suggestion contradicts Witness 705's and Mr Philips's evidence that, in urban environments, the proximity between the best serving cell and the six surrounding cells would result in a mobile being located in a small geographic area.³⁹⁹²

1799. The Oneissi Defence suggested in its final trial brief that the call data records could have been manipulated and that there was no evidence that the Prosecution had checked them against the original binary source data. In response, the Prosecution stated that this argument had no evidentiary or legal basis. While Mr Philips could not exclude that call data records could be manipulated, his overall testimony was that it would have been impossible in this case and that it

³⁹⁸⁷ Prosecution closing submissions, T. 11 September 2018, pp 44, 49-50, 53, 59, 68, 84-88.

³⁹⁸⁸ Prosecution final trial brief, paras 64-65; Prosecution closing submissions, T. 11 September 2018, p. 77.

³⁹⁸⁹ Prosecution final trial brief, para. 65; Prosecution closing submissions, T. 11 September 2018, p. 78.

³⁹⁹⁰ Exhibit 2D73 (Alfa coverage maps of various areas in Beirut).

³⁹⁹¹ Prosecution closing submissions, T. 11 September 2018, p. 82.

³⁹⁹² Merhi Defence final trial brief, paras 127-128; Prosecution final trial brief, paras 58-59; Prosecution closing submissions, T. 11 September 2018, p. 58, referring to Witness PRH705, T. 6 May 2016, p. 6; John Edward Philips, T. 20 August 2015, pp 4-6.

would have required a ‘reverse cell site analysis’ to review all relevant calls and locations to ensure the consistency in the time and place on both ends of the call and within the larger framework of the mobile’s calls. Further, this would only have been possible at the ‘mediation stage’, meaning when the records were in an unintelligible, binary form.³⁹⁹³ According to Mr Philips, this would have required manipulating both Alfa’s and Touch’s records.³⁹⁹⁴

2. Defence

(a) Common Defence submissions

1800. Counsel for the four Accused argued that Alfa and Touch lacked a standard data collection protocol or storage procedure. This, coupled with the human and environmental errors resulting from manual data recording and the possibility of manipulating the call data records, cast doubt on the entire record making and record keeping process of cell site information for the relevant period. The veracity of Alfa’s and Touch’s data cannot be confirmed.³⁹⁹⁵

1801. Alfa failed to keep records for each specific category of cell site information during the relevant period.³⁹⁹⁶ Neither Alfa nor Touch could confirm when the cell site information used by the Prosecution was recorded or by whom.³⁹⁹⁷ The deficiencies and lack of safeguards in Alfa’s and Touch’s telecommunications data rendered the telecommunications evidence itself unreliable and devoid of any weight. Mr Philips, Mr Donaldson and Mr Platt were therefore unable to provide reliable evidence.³⁹⁹⁸

³⁹⁹³ Prosecution closing submissions, T. 11 September 2018, pp 48-49, referring to John Edward Philips, T. 30 August 2016, pp 71-73. Witness 707 similarly referred to the theoretical possibility of manipulating call data records, exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 133.

³⁹⁹⁴ Prosecution closing submissions, T. 11 September 2018, pp 48-49, referring to John Edward Philips, T. 30 August 2016, pp 71-73; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 98-99.

³⁹⁹⁵ Ayyash Defence final trial brief, paras 236, 239-240; Ayyash Defence closing submissions, T. 17 September 2018, pp 64-65; Merhi Defence final trial brief, paras 103, 106-108, 111; Oneissi Defence final trial brief, para. 132; Sabra Defence final trial brief, paras 132, 146-147, 149-150.

³⁹⁹⁶ Ayyash Defence final trial brief, para. 250.

³⁹⁹⁷ Ayyash Defence final trial brief, para. 236.

³⁹⁹⁸ Ayyash Defence final trial brief, paras 186-187, 263 (with respect to the weight to be assigned to the telecommunications evidence, the Ayyash Defence refers to four of its written submissions where it elaborates this argument: F2471, Public Redacted Version of: Ayyash Defence response to ‘Prosecution Motion for the Admission of Witness Statements Signed by Witness PRH707’, 26 February 2016; F2677, Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH707, 29 July 2016; F2678, Public Redacted Version of Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH705 of 29 July 2016, 3 August 2016; F2683, Ayyash Defence Further Submissions on Prosecution Motions Related to Evidence From Call Service Providers, 8 August

1802. The Defence of each Accused challenged the reliability of the telecommunications evidence provided by Touch and Alfa through Witnesses 705 and 707. The Ayyash, Sabra, and Oneissi Defence also opposed the classification of these records and documents as business records for reasons such as a disregard for the human errors that occur when manually registering cell site values.³⁹⁹⁹

1803. The four sets of Defence counsel had challenged Witnesses 705's and 707's evidence during trial.⁴⁰⁰⁰ The Ayyash and Oneissi Defence argued that the Prosecution made a strategic decision not to call, or was not precluded from calling, multiple witnesses with specific knowledge from Alfa's and Touch's various departments, who could have effectively responded to questions in cross-examination.⁴⁰⁰¹ The lack of personal knowledge and inability to question those with such knowledge not only stripped the telecommunications evidence of any weight, but has denied all of the Accused the right to a fair trial.⁴⁰⁰²

1804. Defence counsel also argued that, in the absence of a standardised, contemporaneous storage procedure or regularly updated database for cell site information in 2004 and 2005, the cell site information that Alfa sent to the Prosecution was recorded on the personal computer attributed to an Alfa engineer.⁴⁰⁰³

2016); Ayyash Defence closing submissions, T. 17 September 2018, pp 64-65; Merhi Defence final trial brief, para. 89; Merhi Defence closing submissions, T. 18 September 2018, p. 112.

³⁹⁹⁹ Ayyash Defence final trial brief, paras 212-221, 236, 239; Sabra Defence final trial brief, paras 107-110, 150; Oneissi Defence final trial brief, paras 54-56, 66.

⁴⁰⁰⁰ See for example, F2471, Public Redacted Version of: Ayyash Defence response to 'Prosecution Motion for the Admission of Witness Statements Signed by Witness PRH707', 26 February 2016; F2472, Public Redacted Version of "Badreddine Defence Response to 'Prosecution Motion for the Admission of Witness Statement signed by Witness PRH707'", 29 February 2016; F2470, Sabra Defence Response to "Prosecution Motion for the Admission of Witness Statement Signed by PRH707", 26 February 2016; F2476, *Adjonction de la défense de Merhi aux réponses des défenses d'Ayyash et Badreddine à la* "Prosecution Motion for the Admission of Witness Statement Signed by Witness PRH707", 29 February 2016; F2474, Defence for Hussein Hassan Oneissi Joinder to "Ayyash Defence Response to 'Prosecution Motion for the Admission of Witness Statements Signed by Witness PRH707'" dated 26 February 2016, 29 February 2016.

⁴⁰⁰¹ Ayyash Defence final trial brief, para. 225; Oneissi Defence final trial brief, para. 48; see also Ayyash Defence closing submissions, T. 17 September 2018, pp 48, 58, 61.

⁴⁰⁰² Ayyash Defence final trial brief, para. 225; Ayyash Defence closing submissions, T. 17 September 2018, pp 51, 57-58.

⁴⁰⁰³ For example, the Oneissi Defence referred specifically to exhibit P775 (Excel spreadsheet with mast and azimuth information, mast locations and azimuth orientations, Annex 14 (2) to Witness 707's statement of 11 November 2015); exhibit P778 (Cell Tower Information as provided by Alfa including Site co-ordinates in Eastings / Northings - Sector Azimuth - Tower type); exhibit P1123 (ArcView shape files Alfa); exhibit P1124 (CD with data for Alfa cell sectors in July 2005), Oneissi Defence final trial brief, para. 58.

1805. Witness 707 testified that the azimuth and coordinate values were found on a computer belonging to an unnamed former employee in Alfa's radio department. Defence counsel submit that this data is personal information maintained by company employees which was not kept through a standard procedure in the normal course of business to ensure its reliability.⁴⁰⁰⁴ Where they had obtained the data, what changes they had made or for what purpose they even had it is not in evidence.⁴⁰⁰⁵

1806. Witness 707 even cautioned that the data that Alfa provided to the UNIIIC in 2007 for 2004 and 2005 would not have been as accurate had the records been collected in 2005.⁴⁰⁰⁶ Based on the procedures Alfa used to record and store its data, it could confirm the values of the primary set of coordinates that existed only in 2010 and the secondary set values relating only to 2007.⁴⁰⁰⁷ Witnesses 705 and 707 were unable to explain how the cell site data was collected and recorded and the methods used to produce shape files; and Witness 707 admitted to not knowing the exact date of the azimuth values given to the Prosecution.⁴⁰⁰⁸

1807. Although the Trial Chamber found that the evidence provided by Witnesses 705 and 707 was *prima facie* reliable for the purpose of admission into evidence because it came from 'qualified personnel', no evidence was led as to the qualifications of anyone who provided information to Witnesses 705 and 707 at the time they provided their statements or who produced or retrieved the documents.⁴⁰⁰⁹ Due to a lack of continuity in the system or employees from 2004 and 2005 to present, it was not only difficult but in some cases impossible for the witnesses to consult the employees who produced the documents at the time or had contemporaneous personal knowledge.⁴⁰¹⁰

⁴⁰⁰⁴ Ayyash Defence final trial brief, paras 236, 244; Merhi Defence final trial brief, para. 103; Merhi Defence closing submissions, T. 19 September 2018, p. 14; Oneissi Defence final trial brief, paras 58-59; Oneissi Defence closing submissions, T. 19 September 2018, p. 66; Sabra Defence final trial brief, para. 149.

⁴⁰⁰⁵ Sabra Defence final trial brief, para. 149.

⁴⁰⁰⁶ Ayyash Defence final trial brief, para. 242.

⁴⁰⁰⁷ Sabra Defence final trial brief, para. 154.

⁴⁰⁰⁸ Merhi Defence final trial brief, paras 101, 109; Ayyash Defence final trial brief, para. 239; Ayyash Defence closing submissions, T. 17 September 2018, p. 65.

⁴⁰⁰⁹ Ayyash Defence final trial brief, para. 223; Ayyash Defence closing submissions, T. 17 September 2018, pp 51, 53-54, 62.

⁴⁰¹⁰ Ayyash Defence final trial brief, para. 224; Ayyash Defence closing submissions, T. 17 September 2018, p. 57.

1808. Changes to a network from factors such as building height, topography and wind velocity can cause radical changes in tilt and by extension reduce a cell's best server coverage.⁴⁰¹¹ As to cell allocation and the impact of directed retry on cell site analysis, directed retry at Alfa did not take into account the proximity of the next most appropriate cell, but only its signal strength. Overlapping usable signals from several cell sites, slow fading and differing start and end cells in the call data records for the same call also negatively affect the cell site analysis.⁴⁰¹²

1809. Based on a specific example on the afternoon of Monday 14 February 2005 where a mobile connected to a cell site while outside its coverage area, the Oneissi Defence argued that the call data records and the theoretic maps alone are insufficient to determine a mobile's location. And, neither Witness 707 nor Mr Philips gave evidence that such cases constitute exceptional circumstances and do not render the cell site analysis unreliable.⁴⁰¹³

(b) Ayyash Defence

1810. The Ayyash Defence additionally submits that the evidence on the recorded azimuth values is not accurate because Witness 707 verified that Alfa could not confirm them.⁴⁰¹⁴ Alfa had no protocol for recording changes to the system, meaning that the changes were either not recorded or the file was merely updated without storing the previous values.⁴⁰¹⁵ Further, as Witness 707 could not provide information on the origin of the files that Alfa sent to the Prosecution, only the contemporaneous data for the cell identity codes from 2005 was reliable.⁴⁰¹⁶

1811. Witnesses 705 and 707 had insufficient knowledge on gathering and storing telecommunications data at Touch and Alfa to provide reliable evidence. Instead, they relied on hearsay information from unnamed colleagues from various Touch and Alfa departments, without affording the Defence the possibility to cross-examine them.⁴⁰¹⁷

⁴⁰¹¹ Merhi Defence final trial brief, para. 125; Oneissi Defence final trial brief, para. 77.

⁴⁰¹² Oneissi Defence final trial brief, paras 145, 147-149.

⁴⁰¹³ Oneissi Defence final trial brief, paras 150-152. In this example, an Al-Jazeera employee, Witness PRH115, went to a tree near his work to collect a video tape containing the claim of responsibility for the attack, *see* paras 5590, 5600, 5671-5672, 5675.

⁴⁰¹⁴ Ayyash Defence final trial brief, para. 248.

⁴⁰¹⁵ Ayyash Defence final trial brief, paras 243.

⁴⁰¹⁶ Ayyash Defence final trial brief, paras 245-246.

⁴⁰¹⁷ Ayyash Defence final trial brief, paras 226-228, 230-232, 234.

1812. The Defence did not know the identities of the Alfa employees who assisted Witness 707 and who were present during meetings with the Prosecution nor what they said. As both the network and its employees have undergone drastic changes since 2004, it cannot be assumed that the employees had first-hand knowledge of the topics to which they spoke.⁴⁰¹⁸ Witness 705 had never worked with call data records before becoming Touch's designated representative to the Special Tribunal.⁴⁰¹⁹ Nor did he have any experience with the production of predicted coverage maps or consult anyone on this.⁴⁰²⁰

1813. Witness 705 also had no personal knowledge of all the evidence about which he testified and took 'for granted' the information provided to him by Touch.⁴⁰²¹ The witness was the second designated Touch representative to provide a statement to the Special Tribunal. He had made a lengthy statement to the Prosecution, and as an example of his lack of personal knowledge, the Ayyash Defence noted that from the 343 paragraphs of his 73-page first statement, only 13 belonged to Witness 705 personally, while 325 paragraphs were 'word for word' what the previously designated representative had stated in his written statement to the Prosecution. The witness had only made 18 changes to the 343 paragraphs.⁴⁰²²

1814. Witness 705 was only made aware of crucial components of Touch's data, such as its centralised database and the 2004 and 2005 snapshots of its database, through his predecessor's written statement and conversations with the Prosecution.⁴⁰²³ The Prosecution did not establish the provenance of the majority of Witness 705's evidence.⁴⁰²⁴

1815. Witness 705 was also unclear on the frequency, practice or purpose of Touch taking snapshots of its database, stating that a snapshot was not taken after each change and therefore a change in azimuth would not have been noted. The Ayyash Defence termed it an occasional 'static

⁴⁰¹⁸ Ayyash Defence final trial brief, para. 229.

⁴⁰¹⁹ Ayyash Defence final trial brief, para. 231; Ayyash Defence closing submissions, T. 17 September 2018, p. 49.

⁴⁰²⁰ Ayyash Defence final trial brief, para. 231; Ayyash Defence closing submissions, T. 17 September 2018, p. 50.

⁴⁰²¹ Ayyash Defence final trial brief, para. 232; Ayyash Defence closing submissions, T. 17 September 2018, pp 55-56.

⁴⁰²² Ayyash Defence final trial brief, paras 232-234; Ayyash Defence closing submissions, T. 17 September 2018, p. 50.

⁴⁰²³ Ayyash Defence final trial brief, para. 237.

⁴⁰²⁴ Ayyash Defence final trial brief, para. 222; Ayyash Defence closing submissions, T. 17 September 2018, p. 54.

representation of the database saved' and argued that this practice made the database an insufficiently reliable source for creating any predicted best server coverage map.⁴⁰²⁵

1816. Moreover, Touch constantly changed its cell site database due to physical adjustments made by its engineers to optimise the quality of the network in response to customer complaints.⁴⁰²⁶ Touch manually recorded tilt and azimuth changes in 2004 and 2005 and Witness 705 confirmed that the Touch cell site data was subject to human and environmental errors. He did not know how changes were recorded in the Touch database in 2004 and 2005. He testified that in 2010, only five to ten people had access to and could change Touch's database, without explaining how or by whom the database was controlled in 2004 and 2005.⁴⁰²⁷

1817. Further, admitting any document provided by a company under the 'business records exception', given the reliability assessment granted in domestic jurisdictions to that category of evidence, risks expanding the definition and thereby eroding any protection it usually affords.⁴⁰²⁸

1818. Specifically, for any weight to be given to such records, the tendering Party must demonstrate some measure of accuracy.⁴⁰²⁹ The absence of contemporaneous information regarding cell sites and predicted best server coverage maps, and Witnesses 705 and 707's lack of contemporaneous knowledge, created 'fatally flawed' and unreliable telecommunications data which lack evidentiary weight. This deprived the Defence of the opportunity to challenge the evidence on the underlying telecommunications records.⁴⁰³⁰

(c) Merhi Defence

1819. The Merhi Defence highlights that Witness 707 only began working at Alfa in 2012 and lacked knowledge of the 2004 and 2005 data. The Alfa employees who would have been best placed to testify on the reliability of the data received were no longer employed there.⁴⁰³¹

⁴⁰²⁵ Ayyash Defence final trial brief, paras 240-241.

⁴⁰²⁶ Ayyash Defence final trial brief, para. 238.

⁴⁰²⁷ Ayyash Defence final trial brief, para. 239.

⁴⁰²⁸ Ayyash Defence final trial brief, para. 217.

⁴⁰²⁹ Ayyash Defence final trial brief, para. 217; Ayyash Defence closing submissions, T. 17 September 2018, p. 62.

⁴⁰³⁰ Ayyash Defence final trial brief, paras 210-211; Ayyash Defence closing submissions, T. 17 September 2018, p. 48.

⁴⁰³¹ Merhi Defence final trial brief, para. 99.

1820. Alfa consistently changed azimuth values without keeping a record of the changes and Witness 707 was unable to confirm the extent of the impact the azimuth changes had on the network and whether the received azimuth values correspond to the date of the site installation.⁴⁰³² Witness 707 could not provide key information about cell sites, tilt and azimuth, including the discrepancies in the provided data.⁴⁰³³ As Alfa did not save data related to antennas' tilt and radius before 2015, the real time azimuth changes from 2004 to 2007 cannot be retrieved.⁴⁰³⁴

1821. Witness 707 could not answer many of the questions posed relating to Alfa, including whether the azimuths provided to the Prosecution corresponded to those of 2004 and 2005.⁴⁰³⁵ And he admitted that Alfa technicians failed to register tilt adjustments in 2004 and 2005.⁴⁰³⁶

(d) Oneissi Defence

1822. The Oneissi Defence additionally submits that Witness 707 had no experience in using Asset, which Alfa used to create the coverage maps on which the Prosecution relied. Further, he did not know whether Alfa used a clutter model in Asset dating from 2004 and 2005.⁴⁰³⁷ The Prosecution also relied on outdated azimuth values of cell sites as a result of unregistered complaints about weak coverage and weather-induced azimuth changes, and the significant addition of new cell sites after 2005.⁴⁰³⁸ Mr Philips stated that relying on theoretical coverage maps for determining the location of a mobile was 'second-guessing'.⁴⁰³⁹

1823. Witness 707 was not an Alfa employee when the vast majority of the Alfa evidence was created. He did not communicate directly with any Alfa technicians who presumably would have been responsible for producing the data, but instead spoke with those whom he had a 'direct hierarchical relationship'. Witness 707 prepared for his testimony by asking questions of

⁴⁰³² Merhi Defence final trial brief, paras 116-117.

⁴⁰³³ Merhi Defence final trial brief, paras 100-102.

⁴⁰³⁴ Merhi Defence final trial brief, paras 107, 112, 125; Merhi Defence closing submissions, T. 19 September 2018, p. 15.

⁴⁰³⁵ Merhi Defence final trial brief, paras 111, 116; Merhi Defence closing submissions, T. 19 September 2018, p. 14.

⁴⁰³⁶ Merhi Defence final trial brief, para. 125.

⁴⁰³⁷ Oneissi Defence final trial brief, para. 47.

⁴⁰³⁸ Oneissi Defence final trial brief, paras 62-63.

⁴⁰³⁹ Oneissi Defence final trial brief, paras 130, 159.

colleagues from various departments who themselves may have even consulted other colleagues because the witness did not have personal access to the records.⁴⁰⁴⁰

1824. Witness 707 could only provide remote hearsay evidence in relation to the majority of Alfa's telecommunications data which was used in the electronic presentation of evidence, including Alfa coordinates and azimuth information and the primary source of Alfa theoretical coverage maps. This was because Alfa sent the data when Witness 707 was not employed there.⁴⁰⁴¹ Witness 707's evidence therefore had no probative value.⁴⁰⁴²

1825. The danger of relying upon an anonymous individual's personal database was made clear during Witness 707's cross-examination which showed 39 discrepancies in recorded azimuths found in two Alfa cell site lists received by the Prosecution four months apart.⁴⁰⁴³ Twenty-three of the 39 discrepancies showed differences between 20 and 99 degrees and ten showed a difference greater than 100 degrees.⁴⁰⁴⁴ Witness 707 explained in response that it could have been a result of the 'difference depending on which database the engineer used' when extracting the values.⁴⁰⁴⁵

1826. The Prosecution failed to call any witnesses who could have given direct evidence about Alfa's telecommunications data.⁴⁰⁴⁶ Additionally, Witness 707's evidence should be excluded under Rule 149 (D) because it could not be tested, it is remote hearsay and Witness 707 lacked personal knowledge.⁴⁰⁴⁷ If it is not excluded, the Trial Chamber should exercise caution in assessing the weight of Witness 707's evidence.⁴⁰⁴⁸

1827. Finally, the Oneissi Defence argues that the call data records could have been manipulated, and that there was no evidence that the Prosecution checked them against the original binary source data, which cannot be manipulated.⁴⁰⁴⁹

⁴⁰⁴⁰ Oneissi Defence final trial brief, paras 44, 47, 155; Oneissi Defence closing submissions, T. 19 September 2018, pp 61-62.

⁴⁰⁴¹ Oneissi Defence final trial brief, para. 44.

⁴⁰⁴² Oneissi Defence final trial brief, para. 49.

⁴⁰⁴³ Oneissi Defence final trial brief, paras 59, 65; Oneissi Defence closing submissions, T. 19 September 2018, p. 66.

⁴⁰⁴⁴ Oneissi Defence final trial brief, para. 65.

⁴⁰⁴⁵ Oneissi Defence final trial brief, para. 59.

⁴⁰⁴⁶ Oneissi Defence final trial brief, paras 49, 51.

⁴⁰⁴⁷ Oneissi Defence final trial brief, paras 43, 49-51.

⁴⁰⁴⁸ Oneissi Defence final trial brief, para. 52.

⁴⁰⁴⁹ Oneissi Defence final trial brief, para. 132.

(e) Sabra Defence

1828. The Sabra Defence similarly notes that, even though Alfa could confirm the location of any cell site that is still in the same location as it was in 2004 and 2005, it could not confirm the azimuth and tilt values for those years.⁴⁰⁵⁰

1829. Further, ‘Alfa’s network has changed substantially between 2004 and present day’ although Witness 707 was uncertain of the extent to which azimuths changed from their installation in 2004 and 2005, or from then until 2010. He acknowledged that the data received years after the values have been recorded cannot be as accurate as values that had been collected contemporaneously.⁴⁰⁵¹

1830. Further, the Prosecution did not present the results of the limited drive tests conducted in 2007 and 2010 in specific locations in Beirut because, according to Mr Philips, they were unlikely to yield fruitful results. They would ‘provide ammunition’ to the Defence.⁴⁰⁵²

F. Findings on Witnesses 705 and 707 and their evidence

1. Witnesses 707 and 705 as corporate witnesses and business records

1831. In June 2015, the Lebanese Ministry of Telecommunications designated Witness 707 as the authorised representative for Alfa to testify before the Special Tribunal about its business records and practices.⁴⁰⁵³ In October that year, Touch nominated Witness 705 as the authorised representative for the company, and his nomination was also approved by the Lebanese Minister of Telecommunications.⁴⁰⁵⁴

1832. Both witnesses produced lengthy statements with detailed annexes. Their evidence and the annexes to their statements were the subject of strong Defence challenges.

⁴⁰⁵⁰ Sabra Defence final trial brief, para. 148.

⁴⁰⁵¹ Sabra Defence final trial brief, paras 151-152.

⁴⁰⁵² Sabra Defence final trial brief, para. 145.

⁴⁰⁵³ Corrected version of decision on Prosecution motion to admit Witness PRH707’s statements, para. 4.

⁴⁰⁵⁴ Decision to add Witness PRH705 to the Prosecution’s witness list, para. 3; F2471, Prosecution Motion to add PRH705 to its Witness List, 17 November 2015, para. 3.

1833. The Trial Chamber received parts of their statements and relevant annexes into evidence,⁴⁰⁵⁵ and heard substantial oral testimony, including many days of cross-examination by Defence counsel. These witness statements and accompanying annexes describe in detail Alfa's and Touch's networks and business practices, and the generation, retrieval, storage and business use of Alfa's and Touch's call data records and the cell site data.⁴⁰⁵⁶ The Trial Chamber also permitted the Prosecution to supplement or replace parts of Witnesses 705's and 707's oral evidence with the written statements that they adopted under Rule 156 (iii).⁴⁰⁵⁷

1834. Defence counsel objected to admitting the written statements arguing that to do so would hinder their ability to perform effective cross-examination because the statements may contain hearsay or 'double hearsay'.⁴⁰⁵⁸ In deciding to admit portions of the statements into evidence, the Trial Chamber reiterated that no rule of international criminal law procedural law or of the Special

⁴⁰⁵⁵ In addition to the annexes to Witness 705's written statements analysed above, the Trial Chamber also carefully considered other annexes in terms of their content and in the context of the other evidence relevant to the creation, storage and retrieval of the call data records and cell site data, as well as generally on the provenance, accuracy, integrity and authenticity of the telecommunications evidence. The annexes considered include: exhibits P467 (Annexes 8, 10 and 12 to Witness PRH705's statement of 16 December 2015, Touch and LibanCell application, identification and customer info forms); P826.3 (Copy of post-paid service contract); P826.22 (Purchase orders for SIM cards); P826.24 (Touch's security procedures); P826.25 (Touch's security procedures); P826.26 (Chart with security services provided to Touch by three security companies); P1097 (Information from Touch on the departments consulted to verify information); P1098 (Unicode converter provided by Touch). The Trial Chamber also carefully considered the annexes to Witness 707's written statements in terms of their content and in the context of the other relevant evidence. The considered annexes include: exhibits P770 (Alfa call data records before August 2004); P771 (Alfa call data records after August 2004); P774 (Alfa response to a UNIIIC request for assistance providing call data records for Lebanon between January 2006 and December 2007); P781 (Folder entitled 'Drive Test' containing 5 maps with drive test results); P791 (Extracts of Alfa's services and procedures in 2004 and 2005); P800 (Azimuth values and specific details of Alfa cell sectors SOLIDR1, SOLIDR2 and SOLIDR3); P801 (Clarification and information on cell sector MOVPIK1); P1192.4 (Explanation on timing and clocks for call data records, Annex 9 to Witness PRH707's statement of 11 November 2015).

⁴⁰⁵⁶ Corrected version of decision on Prosecution motion to admit Witness PRH707's statements, paras 9, 75; Decision on Prosecution motion to admit Witness PRH705's statements, paras 5, 21; Decision on admission of Witness PRH705's statements and annexes into evidence, para. 128; Decision on admission of Witness PRH707's statements and annexes into evidence, para. 198.

⁴⁰⁵⁷ Corrected version of decision on Prosecution motion to admit Witness PRH707's statements, para. 42; Decision on Prosecution motion to admit Witness PRH705's statements, para. 14. Rule 156 permits the Trial Chamber to receive into evidence in lieu of oral evidence, a written statement or transcript of evidence, going to proof of the acts or conduct of an accused as charged in the indictment only if the following conditions are satisfied: [...] (iii) the witness attests that the statement accurately reflects his declaration of what he would say if examined. Rule 156 applied to Witnesses 705's and 707's statements insofar as their evidence goes to the acts and conduct of the Accused as charged in the amended consolidated indictment.

⁴⁰⁵⁸ Corrected version of decision on Prosecution motion to admit Witness PRH707's statements, paras 16-17, 22, 48; Decision on Prosecution motion to admit Witness PRH705's statements, paras 10, 18.

Tribunal's Rules prohibited the Trial Chamber from admitting hearsay evidence and that an assessment of hearsay is a matter of evidentiary weight.⁴⁰⁵⁹

1835. The Trial Chamber determined that selected paragraphs of Witness 707's statements were relevant to Alfa's generation, storage and business use of call data records and cell site data, and had probative value as to the reliability of Alfa's records and data.⁴⁰⁶⁰ In the decision admitting these paragraphs into evidence, it held:

The Trial Chamber has carefully noted the objections by Defence counsel based on reliability and in particular as to whether the witness should be permitted to testify about matters that are not strictly within his personal knowledge. The Trial Chamber is well aware of the limitations of Witness 707's knowledge, and in particular of Alfa's business practices before he was employed there, and of technical issues that others have assisted him with.⁴⁰⁶¹

1836. The Trial Chamber similarly held that the relevant portions of Witness 705's statements and annexes were relevant to Touch's generation, storage and business use of call data records and cell site data.⁴⁰⁶² Given the absence of international criminal law procedural law in relation to corporate witnesses, the Trial Chamber reiterated that neither the Trial Chamber nor the Parties were bound by domestic rules of evidence governing this category of witnesses.⁴⁰⁶³

1837. Further, mid-testimony, the Prosecution belatedly proposed admitting Witness 707's three statements into evidence in their entirety. However, as the Prosecution had already led nine days of evidence from the witness, the Trial Chamber refused the Prosecution's late application. Having considered that the witness had already testified on numerous matters already covered in the three statements, the Trial Chamber did not see the need to receive repetitive evidence.⁴⁰⁶⁴ Instead, it

⁴⁰⁵⁹ Corrected version of decision on Prosecution motion to admit Witness PRH707's statements, paras 49-50; Decision on Prosecution motion to admit Witness PRH705's statements, para. 19; Decision on admission of Witness PRH705's statements and annexes into evidence, para. 21; Decision on admission of Witness PRH707's statements and annexes into evidence, paras 44, 48; Decision on admission of Prosecution's cell site evidence, para. 65.

⁴⁰⁶⁰ Corrected version of decision on Prosecution motion to admit Witness PRH707's statements, paras 51, 53.

⁴⁰⁶¹ Corrected version of decision on Prosecution motion to admit Witness PRH707's statements, para. 53.

⁴⁰⁶² Decision on Prosecution motion to admit Witness PRH705's statements, paras 21-23.

⁴⁰⁶³ Corrected version of decision on Prosecution motion to admit Witness PRH707's statements, para. 52; Decision on admission of Witness PRH705's statements and annexes into evidence, paras 20-21; Decision on admission of Witness PRH707's statements and annexes into evidence, para. 53; Decision on admission of Prosecution's cell site evidence, para. 71.

⁴⁰⁶⁴ Corrected version of decision on Prosecution motion to admit Witness PRH707's statements, paras 43-45.

held that the paragraphs from Witness 707's statements and annexes selected and proposed by the Prosecution were admissible, but delayed admitting them into evidence until the conclusion of the witness's evidence and after hearing from Defence counsel.⁴⁰⁶⁵

1838. Likewise, the Trial Chamber denied the Prosecution's motion to admit the written statements and annexes of Witness 705 in full, instead holding that select paragraphs appeared to be relevant. It deferred admitting them into evidence until the Prosecution had provided further evidence as to their provenance.⁴⁰⁶⁶

1839. The Trial Chamber recognises the limitations of Witness 707's knowledge and that he relied upon records that he did not produce, and upon the knowledge of other Alfa employees to provide him with information.

1840. The Trial Chamber nevertheless considers that the larger the company and the more complex the issues, the greater the likelihood that records will come from a range of sources. Finding the creator of each record or document in these circumstances is impractical and sometimes even impossible, especially years after the events in question. Businesses, by nature, are dynamic and over time practices and procedures including record-creation and maintenance evolve. Companies merge and expand. Employees come and go. Technology advances.

1841. The Trial Chamber is of the view that identifying and hearing evidence from the Alfa employee who created each of the records and documents received into evidence would have been a meaningless and unfeasible exercise. The fact that a witness testifying for a large corporation does not have full personal knowledge of all the matters to which they are testifying—but can provide evidence based upon reviewing company records and practices and obtaining information from other company personnel—does not prevent that person from giving that evidence. The Trial Chamber may still give the evidence the appropriate weight.⁴⁰⁶⁷

⁴⁰⁶⁵ Corrected version of decision on Prosecution motion to admit Witness PRH707's statements, paras 18, 75.

⁴⁰⁶⁶ Decision on Prosecution motion to admit Witness PRH705's statements, para. 33.

⁴⁰⁶⁷ Corrected version of decision on Prosecution motion to admit Witness PRH707's statements, paras 56, 72; Decision on Prosecution motion to admit Witness PRH705's statements, para. 24; Decision on admission of Witness PRH705's statements and annexes into evidence, para. 22; Decision on admission of Witness PRH707's statements and annexes into evidence, para. 45; Decision on admission of Prosecution's cell site evidence, para. 69.

1842. In domestic civil and criminal proceedings, companies typically designate corporate representatives to testify in court as to internal corporate matters, including company records and their creation. There is no reason, either in practice or in principle, why this should be different in proceedings conducted under international criminal law procedural law. It is the only practical solution in the circumstances described above. However, this must of course be carefully balanced with the rights of Accused persons to a fair trial in confronting the evidence against them. In assessing the weight that it can give to evidence falling into this category, the Trial Chamber has factored this in.

1843. Some of the information in the witnesses' written statements and some documents admitted into evidence concerns information that Witnesses 707 and 705 obtained from other Alfa and Touch employees or departments. This, of itself, does not make these statements and documents inherently less reliable, or otherwise affect the weight to be given to them.

1844. In addition, Witnesses 707 and 705 explained that Alfa and Touch lacked continuity in both their systems, and—as would be expected in large corporations—their employees from 2004 and 2005 onwards. Witness 705 also stated that it was difficult to find employees remaining from that period and that not every unit or staff member he consulted was there in 2004 and 2005. In the Trial Chamber's experience this is not at all unusual in any large workplace with frequent personnel turnover.

1845. The Trial Chamber is not persuaded by the Ayyash and Oneissi Defence's argument that the Prosecution made a strategic decision not to call, or was not precluded from calling, multiple witnesses with specific knowledge from Alfa's and Touch's various departments. The Trial Chamber highlights that Alfa's and Touch's suitably qualified personnel using a range of data from relevant sources provided both witnesses with the information in their statements that was outside their personal knowledge. Indeed, it is difficult to envisage how in the circumstances, it could have been otherwise. Not only judicial economy but practicality precluded Alfa and Touch from attempting to find multiple witnesses to testify to record-keeping practices from over a decade earlier.

1846. The Trial Chamber considers that a witness testifying for large corporations such as Alfa or Touch can provide evidence based upon a combination of personal knowledge, reviewing

company records, documents and practices and communicating with other company personnel. A witness testifying as the representative of such corporation can provide evidence even where they do not have personal knowledge, provided that this witness can attest that the testimony represents and is based on business record information. The role of a company representative is not confined to producing records and it is not unusual that such witnesses have a limited capacity to answer questions outside of their direct knowledge.

1847. During their testimony both witnesses were able to consult their colleagues, departments and business records for information that they could not themselves directly provide. Minimal irregularities and inconsistencies in corporate business records or record-keeping practices should not cast doubt on the reliability of Witnesses 705's and 707's evidence, and Alfa's and Touch's records and documents. The role of the company representatives in this case—who in both cases gave mixed evidence as to matters within their own personal knowledge and matters of which they were informed by other employees or departments—is not confined to producing records.

1848. It is not unusual that such witnesses have a limited capacity to answer questions outside of their direct knowledge. Moreover, as explained above, the Trial Chamber for this reason permitted Witness 707 to obtain further information from Alfa personnel and departments in relation to multiple paragraphs from his statements contested by Defence counsel. In the Trial Chamber's view—for the purpose of assessing the reliability and giving weight to the best available evidence it received from Alfa and Touch—Witnesses 705 and 707, by virtue of their positions in and experience with the companies, and their expertise in the industry, were appropriate corporate representatives.

1849. The Trial Chamber has carefully reviewed Witness 705's evidence, and rejects the Ayyash and Oneissi Defence's suggestion that he had no personal knowledge of all the evidence, and that he merely took 'for granted' the information Touch gave him. The Ayyash Defence argued that he made minimal changes to his predecessor's written statements showing that he lacked personal knowledge of Touch's business practices, and hence that the Prosecution could not establish the provenance of most of his evidence. However, in the Trial Chamber's view this does not necessarily undermine the reliability of his evidence. The witness had substantial experience both at Touch and in the telecommunications industry, and had sufficient general and specific knowledge of most of the areas of his testimony to give it probative value.

1850. The Trial Chamber has also considered the Ayyash Defence's submissions that Witness 705 had no knowledge of how changes were recorded in Touch's cell site database in 2004 and 2005, and how or by whom this database was then controlled. However, these submissions are unconvincing in light of Witness 705's extensive account about the maintenance of Touch's cell site database over the years.

1851. Based on the totality of Witnesses 705's and 707's oral and written evidence, the Trial Chamber is satisfied that both witnesses had adequate personal knowledge and experience as corporate witnesses to provide their evidence. Moreover, they consulted suitably qualified personnel at Alfa and Touch on things outside their personal knowledge. Combined, these two factors give sufficient weight to these witnesses' evidence in relation to Alfa's and Touch's documents, records and practices to make their evidence probative.

2. Witnesses 707's and 705's substantive evidence

1852. The evidence as to Alfa's business practices, record making and record keeping practices is extensive, technical and complex. Witness 707's evidence was based on his lengthy and varied experience which included four years at Alfa and approximately 25 years in telecommunications. The Trial Chamber considered his training and areas of expertise; his experience at Alfa's predecessor company, Cellis; and his appointment as the representative witness for Alfa.

1853. The witness referred extensively to his statements and provided additional evidence on the sources of his information and the process by which he informed himself of matters outside his realm of expertise or personal experience. The Trial Chamber highlights that the witness repeatedly said that while different staff may have prepared the original responses to the Prosecution's requests for assistance and confirmed the responses, the source of the information was always Alfa's business records.

1854. In determining that Witness 707's evidence was sound, the Trial Chamber took into account Alfa's procedures in responding to requests for assistance. In his testimony, he explained, for instance, the retrieval of call data from the billing system or the archived call data records depending on the fields requested. He explained how he had prepared for his testimony, including reviewing previous responses to requests for assistance sent by Alfa. He gave extensive evidence

on Alfa's business practices based on his experience with the company. He explained Alfa's practices in 2004 and 2005 and those that had not changed.

1855. Witness 705 was the designated representative responsible for collecting responses to requests for assistance on behalf of Touch's Technical Department, and he provided evidence on the procedure from personal experience.

1856. Regarding his evidence generally, the Trial Chamber is satisfied that he demonstrated how his experience as a telecommunication engineer, his work experience at Touch and knowledge of the company practices in his area qualified him to provide evidence for Touch. The Trial Chamber considered the substantial evidence on Touch's records relating to cell sites including the responsible teams and company records related to location of sites and physical changes made to sites. The witness provided information not only in his capacity as Touch's representative, but also from his personal knowledge. For areas beyond his expertise, he consistently identified the Touch department that provided the information. When uncertain of the source, he sought assistance from the relevant department or unit.

1857. The Trial Chamber has carefully considered the Ayyash Defence's submissions that Witness 705 had not worked with call data records before becoming Touch's representative to the Special Tribunal and that he had no experience with producing predicted coverage maps. However, having heard his testimony and having examined his witness statements, and considered his lengthy work experience both at Touch and in the field of radio network planning and optimisation, the Trial Chamber does not accept that Witness 705 is an unreliable witness.

1858. Witness 705 conceded that he had not directly worked with call data records before becoming Touch's representative, but he demonstrated a comprehensive understanding of the essentials of how call data records and coverage maps are generated. He was extensively involved in drive tests and provided the sources of his information and explained how he had informed himself of matters outside his personal experience.

1859. As to the Oneissi Defence's argument that Witness 707's hearsay evidence should be excluded from evidence under Rule 149 (D), the Trial Chamber concludes that none of the conditions for exclusion of evidence under this Rule were met. In addition, the Trial Chamber has

considered with additional caution those aspects of Witness 707's evidence where he did not have direct personal knowledge.

1860. The Trial Chamber is not persuaded by the suggestion by counsel for the four Accused that the reliability and evidential weight of the azimuth and coordinate values received from Alfa is diminished because these values were found on the computer of an unknown Alfa engineer. Witness 707's testimony—namely that before the merger of the various databases into a centralised database in 2014, it was common practice for Alfa engineers to have various databases of azimuth and coordinate values on their company-owned computers and that values entered into the 2014 database were the same as those before the merger—supports the alternative view.

1861. The Trial Chamber rejects as speculative the Oneissi Defence's suggestion that Alfa's and Touch's call data records might have been manipulated. Mr Philips testified that, contrary to this suggestion, the manipulator would have had to have conducted 'reverse cell site analysis' and 'reverse cell siting'. This would have been highly difficult and complex, if not impossible, to achieve, and would have left a trail, of which there is no evidence. There is nothing in the trial record supporting this suggestion.

1862. In the Trial Chamber's view, Witnesses 705's and 707's accounts as a whole were credible, reliable and internally consistent, despite their lack of contemporaneous personal knowledge relating to discrete parts of Alfa's and Touch's record making practices. The Trial Chamber assessed the quality of their evidence, including the accuracy of their memory, in order to assess its reliability and credibility. The Trial Chamber finds that Witnesses 705 and 707 had sufficient personal knowledge, and consulted suitably qualified personnel at Alfa and Touch as to matters outside of their personal knowledge, such as to allow it to assess and give appropriate weight to the specific telecommunications evidence on which the Prosecution relied to determine mobile users' approximate locations or movements.

G. Call data records and cell site data received from Alfa and Touch

1. Summary of evidence

1863. The Trial Chamber received into evidence 15 items of cell site evidence on which the Prosecution relied to prove the reliability of the network's coverage maps, the call data records and call sequence tables. Witnesses 705 and 707 provided evidence on these.

1864. This evidence can be grouped into three categories. The first is the basic cell information from Touch and Alfa, such as the names and the geographic coordinates of relevant cell towers, cell sector names, Cell Global Identity (CGI) or cell ID, azimuths and the installation and removal dates for specific cells and the type of cell.

1865. The second is the shape files from Touch and Alfa that spatially describe vector features such as points, lines and polygons, and can plot geographical features such as water, vegetation and urban features such as roads. The third is the predicted best server coverage for cell sites in the Alfa network.⁴⁰⁶⁸

1866. With eight exceptions,⁴⁰⁶⁹ Witnesses 705 and 707 were questioned about these items during the admission of the Prosecution's cell site evidence and their evidence in court.

1867. Each category is assessed below. The submissions and the Trial Chamber's findings on each are set out in the following 15 sub-sections. The more general Defence submissions on the call data records and cell site data received from Alfa and Touch, some of which concern these 15 items, follow at paragraphs 1949-1980.

⁴⁰⁶⁸ Decision on admission of Prosecution's cell site evidence, para. 26.

⁴⁰⁶⁹ Exhibits P1122 (ArcView shape files Touch), P1123 (ArcView shape files Alfa), P1124 (CD with data for Alfa cell sectors in July 2005), P1125 (CD with shape files for three Alfa cell sectors in Tripoli), P1126 (Two spreadsheets with Alfa cell site information), P1181 (CD containing exhibit P813 and cell coverage maps dated 5 November 2007), P1182 (Touch cell information and azimuths values in February 2005 and September 2007), P1184 (Excel spreadsheet 'On Air-Off Air' with information on Alfa cell sites in 2013).

(a) CD containing the data for Touch's 2004 coverage maps⁴⁰⁷⁰

1868. This CD contains data relating to the locations of Touch cell masts and cell sectors, their orientation and best server coverage for 2004, which are required to prove the locations and movements of the relevant mobiles.

1869. Witness 705 gave detailed explanations about the files on the CD. A radio engineer from Touch's radio planning unit in its technical department produced a note describing its contents and how the data can be viewed using ArcGIS.⁴⁰⁷¹ Witness 705 also explained, based on this note, how Touch produced shape files in 2004 and how it recorded in a database the azimuth, location and tilt data using the available GPS receivers.⁴⁰⁷²

1870. The Ayyash Defence submitted that Witness 705 became aware of the existence of Touch's centralised database and the snapshots only through his predecessor's statement and conversations with the Prosecution.⁴⁰⁷³ During cross-examination, the witness conceded that he did not know what GPS devices Touch had used in 2004 and 2005 or their level of accuracy.⁴⁰⁷⁴

1871. The Trial Chamber is, however, satisfied that Witness 705 went further in his testimony than simply rehearsing the contents of the CD and provided context to the shape files and clarified its more technical aspects. The Ayyash Defence submissions that Touch was not using accurate GPS systems, or that Witness 705 was not qualified to testify about the CD and the note, are not supported by any evidence.

1872. The Trial Chamber has reviewed the CD of data for Touch's 2004 coverage maps and considered Witness 705's testimony. Witness 705 was questioned about the data recorded on the CD—that was extracted from Touch's business records—and the content of this CD, including the note explaining its content. He outlined how Touch produced the 2004 shape files and how it recorded the azimuth, location and tilt values in the company's database. The Trial Chamber thus finds that these coverage maps are accurate and sufficiently reliable to be probative. The Trial

⁴⁰⁷⁰ Exhibit P1122.

⁴⁰⁷¹ Witness PRH705, T. 6 May 2016, pp 62-63, 85, T. 9 May 2016, pp 4-34; exhibit P826 (Witness PRH705's statement of 16 November 2015), para. 230. The Touch engineer's note was referred to in court as a document entitled 'Request.doc', exhibit P816 (Annex 20 to Witness PRH705's statement of 16 November 2015).

⁴⁰⁷² Witness PRH705, T. 5 May 2016, pp 79-80, T. 9 May 2016, pp 6-12.

⁴⁰⁷³ Ayyash Defence final trial brief, para. 237.

⁴⁰⁷⁴ Witness PRH705, T. 21 July 2016, p. 22.

Chamber has carefully considered Witness 705's evidence related to these maps and more generally his experience and position in the company, and his general expertise in the industry. It is of the view that the maps are probative of the Touch network structure in 2004.

(b) CD containing data from Touch between 2005 and 2010⁴⁰⁷⁵

1873. The first file on the CD is an Excel spreadsheet titled 'Sites' containing what Witness 705 described as a 'snapshot' of basic Touch cell information on seven specific dates between 2005 and 2010.⁴⁰⁷⁶ The second category of files is Touch shape files for 2007 and 2010. The last category of files is written answers from Touch to a Prosecution request for assistance which included, for instance, a note explaining the contents of other files on the CD. This included an explanation that Touch did not have best server prediction maps for 2005 because, from late 2004 to 2007, it did not have a planning tool such as Asset to generate these maps, and instead used drive testing.⁴⁰⁷⁷

1874. The Prosecution put the data on the CD into the electronic presentation of evidence to determine, at relevant times, the approximate locations of the mobiles it attributes to the Accused and Mr Badreddine, based upon cell activations.

1875. Witness 705 explained that the data on this CD came from Touch's business records. The Prosecution used the data to demonstrate the Touch cells activated by relevant mobiles. The Trial Chamber has reviewed the files on the CD, and especially the note explaining the contents of other files on the CD, and Witness 705's testimony about the CD and the explanatory note.⁴⁰⁷⁸ It is satisfied that all are reliable and probative. The data's extraction from Touch's business records is sufficient to satisfy the Trial Chamber of this.

⁴⁰⁷⁵ Exhibit P1181.

⁴⁰⁷⁶ Exhibit P813 (Touch's cell site data exported on 15 February 2005, 1 April 2005, 12 August 2006, 17 September 2008, 21 November 2009, 3 May 2010 and 7 July 2010); Witness PRH705, T. 6 May 2016, pp 47-49.

⁴⁰⁷⁷ Exhibit P815 (Annex 19 to Witness PRH705's statement of 16 December 2015); Witness PRH705, T. 6 May 2016, p. 85.

⁴⁰⁷⁸ Witness PRH705, T. 6 May 2016, pp 48-50, 75-76, 84-85, T. 9 May 2016, pp 37-45.

(c) Excel spreadsheet with cell tower information for Touch for 2005 and 2007⁴⁰⁷⁹

1876. This spreadsheet that Touch provided to the UNIIIC in October 2007 is accompanied by a letter signed by a Touch representative. The letter explains that the spreadsheet lists the antenna azimuths for all Touch cells that were on air at the end of February 2005 and in September 2007. The spreadsheet has three columns for each of those years listing the cell ID with the corresponding cell name and azimuth.⁴⁰⁸⁰

1877. Witness 705 testified that Touch records the location, azimuth, height and tilt of cell sites and stores it in the Radio Planning Unit's database.⁴⁰⁸¹ He conveyed the importance of recording this information and its accuracy, since coverage can be improved only by changing the azimuth of an antenna.⁴⁰⁸² Touch entered the data from this database into the propagation tool to generate coverage maps.⁴⁰⁸³ In cross-examination, the Defence did not ask the witness any specific question about the document.

1878. Based on the cover letter from Touch to the UNIIIC and Witness 705's evidence on how and why Touch gathered this information, the Trial Chamber considers the spreadsheet to contain data extracted from the database Touch maintained in the ordinary course of its business.

1879. The spreadsheet provides orientation data for relevant Touch cell masts and cell sectors activated by mobiles alleged to have been used in the planning and preparation of the attack on Mr Hariri. This data is also useful in verifying the cell ID, cell sector names and azimuth that Touch provided to the Prosecution. The Trial Chamber therefore considers this spreadsheet to be probative of the locations of the used mobiles and, in light of the factors discussed above, accurate and sufficiently reliable to be probative.

⁴⁰⁷⁹ Exhibit P1182.

⁴⁰⁸⁰ Exhibit P1182. *See also* Decision on admission of Prosecution's cell site evidence, paras 110-114.

⁴⁰⁸¹ Witness PRH705, T. 5 May 2016, pp 79-81.

⁴⁰⁸² Witness PRH705, T. 5 May 2016, p. 81.

⁴⁰⁸³ Witness PRH705, T. 5 May 2016, p. 83.

(d) List of data on 737 Alfa cell sectors (Annexes 14 (2) and 15)⁴⁰⁸⁴

1880. Annex 14 (2) to Witness 707's statement of 11 November 2015 is a list of 737 Alfa cell sectors with details of the cell site ID, longitude, latitude, tower type, sector, splitter and azimuth.⁴⁰⁸⁵ The Prosecution obtained this document from Alfa in 2010. The Prosecution used it to verify the coordinates, azimuth and type of individual cell sectors in its cell site analysis.⁴⁰⁸⁶ The information was extracted from the working site database of Alfa's radio department, as in 2004 and 2005, Alfa did not have a complete site database.⁴⁰⁸⁷

1881. The Oneissi Defence argued that the data in this list cannot be considered as a business record, that it was produced before Alfa established a centralised database of cell site information and that Alfa could not provide cell site data from 2004 and 2005.⁴⁰⁸⁸ The Merhi and Oneissi Defence objected to this document, arguing that Witness 707 could not confirm its provenance and accuracy.⁴⁰⁸⁹

1882. The Badreddine Defence also opposed its admission into evidence, arguing that it refers to a witness statement from someone who did not appear in court.⁴⁰⁹⁰ The Sabra and Ayyash Defence similarly argued at the time that as Alfa lacked a complete cell site database for 2004 and 2005, the data in this list was produced at the 2010 Prosecution's request and therefore is not a business record. The data was not reliable because the Prosecution did not demonstrate how it was

⁴⁰⁸⁴ Exhibit P775 (Excel spreadsheet with mast and azimuth information, mast locations and azimuth orientations, Annex 14 (2) to Witness 707's statement of 11 November 2015); Witness PRH707, T. 11 February 2016, pp 58-59. *See also* exhibit P1192.9 (Cover letter accompanying Excel spreadsheet with mast and azimuth information, mast locations and azimuth orientations, Annex 15 to Witness PRH707's statement of 11 November 2015).

⁴⁰⁸⁵ Exhibit P775; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), paras 163-164. *See also* F2004, Corrected Annex A to "Prosecution Motion for the Admission of Cell Site Evidence", 23 June 2015, row 5; Decision on admission of Prosecution's cell site evidence, paras 29, 117.

⁴⁰⁸⁶ F2689, Prosecution Response to "Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH707", 15 August 2016, paras 8-9. *See also* F2004, Corrected Annex A to "Prosecution Motion for the Admission of Cell Site Evidence", 23 June 2015, row 5.

⁴⁰⁸⁷ Witness PRH707, T. 20 April 2016, p. 59.

⁴⁰⁸⁸ Oneissi Defence final trial brief, paras 55-56, 58, 60-62, 64, 66.

⁴⁰⁸⁹ F2676, The Defence for Hussein Hassan Oneissi Supplemental Submissions in relation to the Admissibility of Call Sequence Tables, Cell Site Data and Annexes to PRH707's Witness Statement, 29 July 2016, paras 30, 35; F2682, Merhi Defence Joinder to "The Defence for Hussein Hassan Oneissi Supplemental Submissions in relation to the Admissibility of Call Sequence Tables, Cell Site Data and Annexes to PRH707's Witness Statement", 5 August 2016, paras 1-2.

⁴⁰⁹⁰ Badreddine Defence submission, T. 16 February 2016, p. 4.

produced, by whom and where the database was maintained and how the geographic coordinates of cell sites were validated.⁴⁰⁹¹

1883. Witness 707 clarified that in preparing the list, the Alfa engineer must have used only the stations on air in 2005.⁴⁰⁹² He conceded some of the azimuths in the list may have been from after 2005 or that some or all of them were from 1995, 1997 or 1999.⁴⁰⁹³ The Sabra Defence submitted that 13 Alfa cells in northern Beirut, such as MOVNPK, CLMNSO, BHSQAR and TRIBUN, were incorrectly added to this list and that the list contained 17 errors.⁴⁰⁹⁴ Witness 707 explained that errors may be due to the approximation or ‘reverse engineering’ that Alfa used to produce the predicted best coverage for 2005.⁴⁰⁹⁵

1884. In the Trial Chamber’s opinion, the reliability of this list rests on Witness 707’s testimony. He gave general evidence on how Alfa stored its basic cell information, including on its storage methods and that some values from 2004 and 2005 could be reconfirmed because they still existed.⁴⁰⁹⁶ The Trial Chamber is satisfied, as noted above at paragraph 1862, that the witness was credible and his evidence was generally reliable. When he could not answer a question or provide information, he stated so and that he would need to consult someone else in the company or its records. The Trial Chamber has also carefully considered that Witness 707’s evidence related to this list is based on his extensive experience in the company and his expertise in the telecommunications sector. This adds to the weight that the Trial Chamber has given to it.

1885. The Trial Chamber, however, carefully considered the Defence challenges to this document and the discrepancies it identified, and that the original Alfa representative witness who signed and provided the documents⁴⁰⁹⁷ was not called to testify. The reliability of this data is also undermined by Alfa having used an approximation to produce this data. In the absence of any other corroboration of the list, the Trial Chamber considers it appropriate to give this document more

⁴⁰⁹¹ F2677, Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH707, 29 July 2016, paras 21-22; F2680, Sabra Joinder to “Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH707” and “Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH705”, 1 August 2016, para. 1.

⁴⁰⁹² Witness PRH707, T. 20 April 2016, p. 58.

⁴⁰⁹³ Witness PRH707, T. 3 May 2016, pp 56-58, 86.

⁴⁰⁹⁴ Witness PRH707, T. 21 April 2016, pp 16-19.

⁴⁰⁹⁵ Witness PRH707, T. 21 April 2016, pp 19-28.

⁴⁰⁹⁶ *For example*, Witness PRH707, T. 11 February 2016, pp 51-57, T. 12 February 2016, pp 8-21, T. 15 February 2016, pp 28-30, 42-44.

⁴⁰⁹⁷ F2689, Prosecution Response to “Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH707”, 15 August 2016, para. 9.

limited weight. Considering that the data was not contemporaneously collected and generated, the Trial Chamber applied caution in assessing the conclusions based on this evidence.

1886. An official letter signed by Alfa's CEO accompanied the CD; it is an inseparable part of Witness 707's evidence as Alfa's representative, the Trial Chamber considers this document to be authentic and reliable.

(e) 938 Alfa shape files (Annex 16 (a) (1))⁴⁰⁹⁸

1887. This annex to Witness 707's statement of 11 November 2015 is Alfa's response to a Prosecution request for assistance which includes a CD with 938 Alfa shape files for 2005. The Ayyash and Sabra Defence submit that, although the shape files in this annex derive partially from data kept as part of Alfa's everyday business practices, they are not business records. The shape files in this annex are unreliable because the underlying data the Prosecution relied on to reconstruct coverage maps was extracted from different periods.⁴⁰⁹⁹ Also, Witness 707 could not confirm the source of information or the specific values Alfa used to generate these specific shape files.⁴¹⁰⁰

1888. Even though Witness 707 did not generate these shape files, he gave detailed evidence on how they were produced. He clarified that the data for each station was verified and all the information that could potentially impact the radio waves was considered to ensure the highest level of accuracy of the data.⁴¹⁰¹

1889. The Trial Chamber considers that this set of shape files derives from and was extracted from Alfa's business records analysed above. These were created by the approximation method that Alfa used to produce the predicted best coverage for 2004 and 2005 when it did not have a centralised, complete database. That Alfa extracted this data from multiple company databases

⁴⁰⁹⁸ Exhibit P1192.10 (938 Alfa shape files, Annex 16 (a) (1) to Witness PRH707's statement of 11 November 2015). Annex 16 (a) (2) is a response to a request for assistance and includes explanations and clarifications related to annex 16 (a) (1), exhibit P1192.11 (Alfa response to request for assistance).

⁴⁰⁹⁹ F2677, Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH707, 29 July 2016, paras 46-47; F2680, Sabra Joinder to "Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH707" and "Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH705", 1 August 2016, para. 1.

⁴¹⁰⁰ F2677, Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH707, 29 July 2016, para. 47 (referring to Witness PRH707, T. 29 January 2016, p. 122).

⁴¹⁰¹ Witness PRH707, T. 15 February 2016, p. 7.

from different periods does not weaken its status as a record created in the ordinary course of business.

1890. Concerning the reliability of the information, Witness 707 stated that he had been informed:

by the Radio Department and so believe that the basic methodology used to generate the shape files contained in 2010/RFA0447 (dated 12 July 2010) is identical to the basic methodology used to generate those shape files contained in 2013/RFA0006 (09 January 2013) and in 2015/RFA0103 (dated 16 June 2015). *As far as I am aware, the same cell site data (coordinates and azimuth values), namely those as recorded in our working site database were used to generate this coverage.*⁴¹⁰² (emphasis added)

1891. The Trial Chamber is satisfied that Witness 707 was sufficiently qualified and was duly informed by suitably qualified personnel using data from relevant sources—in this case the radio department—enabling him to provide evidence on the reliability of the data; the Defence did not undermine the general reliability of the approximation method used to create the shape files. Moreover, the witness's evidence was that there were only minimal changes to the network in the relevant time period. This general network stability must mean that the approximation method is sufficiently reliable for the Trial Chamber to use without too much qualification. In this sense, the shape files are probative. However, in the absence of the original values from 2004 and 2005, the Trial Chamber will give them slightly reduced weight.

1892. The Trial Chamber has found that the cover letter accompanying the shape files provided context to the files and was reliable.

- (f) List of cell tower information for Alfa cell sectors based on information from 2007⁴¹⁰³

1893. This is a 29-page list of cell site information that the UNIIIC obtained from Alfa in 2007 that includes geographic coordinates, azimuth values and cell types that, as explained by Witness

⁴¹⁰² Exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 169.

⁴¹⁰³ Exhibit P778 (Cell Tower Information as provided by Alfa including Site co-ordinates in Eastings / Northings - Sector Azimuth - Tower type). This is annex 13 to Witness 707's witness statement of 11 November 2015 (exhibit P1192) and was saved on the DVD admitted as exhibit P1123.

707, originated from Alfa's radio planning department. It shows the location of Alfa cell sites and their coverage at the relevant times.⁴¹⁰⁴

1894. The document is divided into three parts. The first is the geographic coordinates of each cell site under the headings 'SITE, Easting, Northing'. The second is each cell site broken down into cell sectors with information in sub-headings under the heading, 'Sectors', 'CELLULE, Splitter, Type, Azimuth 1, Split Azimuth', setting out whether a cell has been split in two,⁴¹⁰⁵ and if so, the azimuth of the split cell. Coverage type spells out whether the cell is macro, micro, indoor or maxite. The third is a list of repeaters and it specifies whether they are indoor or outdoor, with the headings, 'Repeaters, Easting, Northing, Coverage Type, Azimuth'.⁴¹⁰⁶

1895. Witness 707 lacked first-hand knowledge of the information obtained in 2007 because he was not then employed at Alfa.⁴¹⁰⁷ However, he gave detailed evidence as to how Alfa recorded and used these types of values.⁴¹⁰⁸

1896. Of who provided the information, the witness stated that 'it is normal or natural that such values and such files come from the radio planning department'.⁴¹⁰⁹ Of its origin, he said, 'these values were taken after the station had been installed and is operational, and they should coincide with the values set during the planning phase'.⁴¹¹⁰ However, he had no better information as to how the three parts of this list were compiled, stating that 'we do not have the records that prove the main source or origin of these values'.⁴¹¹¹ And, further, during questioning in evidence in chief:

Q. Mr. Witness, can you tell from looking at the document how it was put together?

A. Unfortunately, I have no information about the drafting of the document. The information was sent based on responses to RFAs sent by the STL. We do not have the annexes of that specific response.⁴¹¹²

⁴¹⁰⁴ Witness PRH707, T. 12 February 2016, pp 7-10.

⁴¹⁰⁵ A 'splitter' is when the sector is split into two antennas to cover more ground, Witness PRH707, T. 9 May 2016, pp 19-20.

⁴¹⁰⁶ Exhibit P778, pp 1-29.

⁴¹⁰⁷ Witness PRH707, T. 12 February 2016, pp 12-13.

⁴¹⁰⁸ Witness PRH707, T. 12 February 2016, pp 8-21, T. 3 May 2016, pp 53-54.

⁴¹⁰⁹ Witness PRH707, T. 12 February 2016, p. 15.

⁴¹¹⁰ Witness PRH707, T. 3 May 2016, pp 53-54.

⁴¹¹¹ Witness PRH707, T. 12 February 2016, p. 15.

⁴¹¹² Witness PRH707, T. 12 February 2016, p. 13.

1897. In challenging the admission into evidence of the list, the Oneissi and Merhi Defence argued that Witness 707 could not confirm its accuracy or describe how it was produced and that Alfa did not keep records of the origin of data included in the list.⁴¹¹³ The Ayyash and Sabra Defence similarly objected to it because the witness had no information as to its source or how it was produced except that it was usual for these values to come from Alfa's radio planning department.⁴¹¹⁴ The Oneissi Defence also argued that the data in this list cannot be considered as business records, that it was produced before Alfa established a centralised database of cell site information and that Alfa could not provide cell site data from 2004 and 2005.⁴¹¹⁵

1898. The Trial Chamber has reviewed the list and carefully considered Witness 707's evidence. Considering that Alfa did not collect and register these values in 2004 and 2005 and did not keep records of the data's origin, and that Witness 707 had no specific information as to the source of these records other than that they came from the radio planning department, the Trial Chamber has cautiously evaluated it.

1899. The data in the list had to have been extracted from Alfa's business records. The values are essential for the operation of a mobile telecommunications network. A provider such as Alfa must of necessity maintain records of this type of information. And the Trial Chamber has no reason to doubt that Alfa in 2007, acting in good faith, provided to the UNIIC this list of values relating to its cells. There is nothing before the Trial Chamber that casts doubt on the origin and source of the information in the lists, namely, that it directly derived from the values of the cell sites, at least in 2007.

1900. That Alfa was no longer able in 2016 to confirm values from 2007 does not necessarily diminish their reliability since they had to have been extracted and provided to the UNIIC from Alfa's 2007 contemporaneous business records.

⁴¹¹³ F2676, The Defence for Hussein Hassan Oneissi Supplemental Submissions in relation to the Admissibility of Call Sequence Tables, Cell Site Data and Annexes to PRH707's Witness Statement, 29 July 2016, para. 32; F2682, Merhi Defence Joinder to "The Defence for Hussein Hassan Oneissi Supplemental Submissions in relation to the Admissibility of Call Sequence Tables, Cell Site Data and Annexes to PRH707's Witness Statement", 5 August 2016, paras 1-2.

⁴¹¹⁴ F2677, Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH707, 29 July 2016, para. 29; F2680, Sabra Joinder to "Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH707" and "Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH705", 1 August 2016, para. 1.

⁴¹¹⁵ Oneissi Defence final trial brief, paras 55-56, 58, 60-62, 64, 67-68.

1901. Witness 707's evidence was that the information came from Alfa's radio planning department and matched the values of the cells on air. His general evidence was to the effect that any changes in the cells between 2004 to 2005 and 2007 and 2010 would have been minimal and occasional. Based on the combination of Witness 707's general evidence and that relating specifically to this document, the Trial Chamber is satisfied of the general accuracy of the three lists, and therefore their reliability. The Trial Chamber also carefully considered that Witness 707's evidence related to these lists derives from his lengthy experience in the company and his expertise in the industry. This further supports their reliability.

1902. The lack of direct evidence as to the provenance of the lists does however raise an issue with regard to the quality of some of the UNIIC's investigatory work on what was obviously a crucial angle of inquiry, namely, obtaining the underlying cell site data. In the Trial Chamber's view, rather than relying on Alfa sending it the requested information, the UNIIC should also have obtained a contemporaneous statement from whoever compiled the information, setting out clearly how it was put together, including precisely when the information was current. The failure to do this, while regrettable, does not damage the reliability of the information to the point that it loses its weight.

(g) Two coverage maps of Beirut and Lebanon showing Alfa cell sites in February 2005⁴¹¹⁶

1903. In May 2007—over two years after the UNIIC's establishment—Alfa, using Asset software, and at the UNIIC's request, created coverage maps of Lebanon and the greater Beirut area for February 2005.⁴¹¹⁷

1904. The Prosecution relied on these maps to compare various predictive shape files.⁴¹¹⁸ Witness 707 testified that the Alfa employee who had produced the maps in 2007 had left the company, 'but these types of maps are not of great use for us at the technical level'.⁴¹¹⁹ The maps, he explained, were produced using Asset Aircom which was the only software that could do this.⁴¹²⁰

⁴¹¹⁶ Exhibit P779 (Maps showing Alfa Cell Sites February 2005). Exhibit P779 is annex 16 (b) to Witness PRH707's statement of 11 November 2015.

⁴¹¹⁷ Exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 171.

⁴¹¹⁸ Witness PRH707, T. 16 February 2016, pp 13-14, 21-26.

⁴¹¹⁹ Witness PRH707, T. 16 February 2016, p. 13.

⁴¹²⁰ Witness PRH707, T. 16 February 2016, pp 13-14.

Such maps were not produced ‘on a daily basis’ but rather on request. The reasons could be for marketing purposes or to show areas of Lebanon that did not have mobile coverage.⁴¹²¹ To make the map Asset has to recalculate the map based upon the propagation model.⁴¹²²

1905. He described the maps as ‘a series of samples that were requested from the Asset Aircom in order to exhibit the coverage of all the cell sites in Lebanon or for this map in Beirut’.⁴¹²³ Further, if ‘we go back to 2004, 2005, we can reproduce these types of maps based on the stations that we had in 2004, 2005 and based on the azimuths, the tilts, and elevations that we have.’⁴¹²⁴ Of the process that must have been used to create the maps he said:

We also have one person who used to work with us in 2007 but who is no longer an employee. Unfortunately, we cannot verify the information he input in the software, but it should be accurate. He has no other source for inputting the information other than the one available to everyone else. If we are talking about the azimuth and the vertical tilt, the engineer cannot just input any information into the software to produce such maps, no. He should use specific information, and most probably he used the 2007 information that also applied to the period of 2004, 2005.⁴¹²⁵

1906. The Defence attacked the reliability of the maps. The Oneissi and Merhi Defence argued that Witness 707 was unable to confirm who at Alfa produced the maps and how they were generated.⁴¹²⁶ The Ayyash and Sabra Defence similarly submitted that the witness could not confirm the accuracy of the maps, including who created them and on what values the maps were

⁴¹²¹ Witness PRH707, T. 16 February 2016, pp 20-21.

⁴¹²² Witness PRH707, T. 16 February 2016, p. 24.

⁴¹²³ Witness PRH707, T. 16 February 2016, p. 22.

⁴¹²⁴ Witness PRH707, T. 16 February 2016, p. 24.

⁴¹²⁵ Witness PRH707, T. 16 February 2016, p. 29.

⁴¹²⁶ F2676, The Defence for Hussein Hassan Oneissi Supplemental Submissions in relation to the Admissibility of Call Sequence Tables, Cell Site Data and Annexes to PRH707’s Witness Statement, 29 July 2016, paras 33-35; F2682, Merhi Defence Joinder to “The Defence for Hussein Hassan Oneissi Supplemental Submissions in relation to the Admissibility of Call Sequence Tables, Cell Site Data and Annexes to PRH707’s Witness Statement”, 5 August 2016, paras 1-2.

based.⁴¹²⁷ Witness 707 was neither able to explain how and when the maps were produced, nor could he testify to the competence of those who produced them when they worked at Alfa.⁴¹²⁸

1907. During Witness 707's evidence, counsel for Mr Ayyash had objected to the admission of the maps, submitting that the employee who produced this map no longer works at Alfa and that Witness 707 could not testify regarding the competence of who produced the maps, how they were produced and when they were produced.⁴¹²⁹

1908. In the Trial Chamber's view, the reliability of the maps depends not on who specifically created them but rather on the process, including how and when they were produced and what Alfa department produced them. Witness 707 as Alfa's corporate representative, and especially given his relevant experience in the industry, did not need to have first-hand knowledge of the maps nor of who created them.

1909. The Trial Chamber has carefully examined the maps in light of Witness 707's general evidence as to how material was produced at the UNIIIC's and the Prosecution's request, and also his specific evidence on how these particular maps had to have been created. The fact that the employees who produced the maps no longer work at Alfa does not of itself undermine their accuracy, particularly given that the witness explained in some detail the purpose of such maps, and how they would have been produced. Witness 707 testified that the maps could only have been produced by Asset, using the available values that were already in the system. Crucially, he stated that the engineer who produced the maps in 2007, 'has no other source for inputting the information other than the one available to everyone else'.⁴¹³⁰

1910. The only real point of uncertainty here is whether the information used was from 2007 or 2005. Witness 707 said that the engineer 'most probably ... used the 2007 information that also applied to the period of 2004, 2005'.⁴¹³¹ This evidence can be taken no further.

⁴¹²⁷ F2677, Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH707, 29 July 2016, paras 34, 53; F2680, Sabra Joinder to "Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH707" and "Ayyash Defence Submissions on the Evidence of Prosecution Witness PRH705", 1 August 2016, para. 1.

⁴¹²⁸ Ayyash Defence final trial brief, para. 246; Sabra Defence final trial brief, paras 109-110; *see also* Witness PRH707, T. 12 February 2016, pp 12-13, T. 16 February 2016, pp 13-15.

⁴¹²⁹ Witness PRH707, T. 16 February 2016, pp 14-19, including submissions by counsel for Mr Badreddine, T. 16 February 2016, pp 18-19.

⁴¹³⁰ Witness PRH707, T. 16 February 2016, p. 29.

⁴¹³¹ Witness PRH707, T. 16 February 2016, p. 29.

1911. While the Prosecution bears the evidentiary onus of persuading a chamber of the reliability of its proposed evidence, nothing in the Defence challenge has convinced the Trial Chamber to doubt the accuracy of these maps. Witness 707's evidence was that there would have been very few changes to the network between 2004 and 2007. He testified that between those years, Alfa's network was stable and it did not add many new stations,⁴¹³² and azimuth changes are only occasional and minimal.⁴¹³³

1912. In light of the witness's evidence of minimal changes to the network in those years, the Trial Chamber is satisfied that even if the engineer only used the 2007 information, the effect on the reliability of the maps would be slight.

1913. The Trial Chamber, having carefully considered the evidence, thus has no reason to consider that the maps generated by Alfa of cell sites on air in February 2005 was not accurate. The Defence challenge to its accuracy is based upon a lack of specific information as to how the 2005 maps were produced in 2007. In the Trial Chamber's view, no doubt has been cast on the general accuracy of these maps.

1914. Notwithstanding this and apart from obtaining the maps late, it also highlights a deficit in the UNHCR's record keeping practices; proper records should have been generated in 2007 concerning the provenance of the material provided by Alfa (and anyone else). The UNHCR should have obtained better information from Alfa, including witness statements, about how the maps were produced. These shortfalls do not, however, adversely impact the weight to be given to the exhibit.

- (h) Excel spreadsheet titled 'Security Main' containing basic cell information for Alfa⁴¹³⁴

1915. This spreadsheet, which is recorded on the DVD that Alfa provided to the Prosecution in July 2010,⁴¹³⁵ contains the name, type, region, Cell Global Identity (CGI), service dates, sector

⁴¹³² Witness PRH707, T. 15 February 2016, p. 41.

⁴¹³³ Witness PRH707, T. 15 February 2016, pp 35-36, 64-69, T. 20 April 2016, pp 24-25.

⁴¹³⁴ Exhibit P780.

⁴¹³⁵ Exhibit P1123.

splitter, coordinates and azimuth direction for 794 Alfa cell sectors still on air in 2010, and 37 cell sectors taken off air between 2005 and 2010.⁴¹³⁶

1916. The Prosecution relied on this data to verify the CGI code and service dates for relevant Alfa cell sectors for 2004 and 2005. The Prosecution then used the information from the spreadsheet to create the call sequence tables that match cell codes from call data records with cell names. Witness 707 described the contents of the spreadsheet and explained the meaning of the columns.⁴¹³⁷

1917. He explained that the data in the spreadsheet was extracted from Alfa's business records and could be checked against its archives.⁴¹³⁸ He also explained some of the discrepancies in the CGIs identified in the spreadsheet.⁴¹³⁹ For instance, the witness clarified that whereas some of the CGIs in the document had 12 digits, the CGIs should have 13 digits⁴¹⁴⁰ and that an 'on air' date for a specific cell site could be explained by a possible formatting error.⁴¹⁴¹

1918. Witness 707 clarified that for seven of 16 cells, the correct CGI was provided in the file entitled 'sites_Req49.txt' and that 'simply a digit was missing in the Cell ID segment of the CGI in the corresponding entries' in the 'Security Main' spreadsheet. There were also other discrepancies in the CGIs in this spreadsheet.⁴¹⁴² Nevertheless, the witness made it clear that none of the discrepancies implied a significant change in the relevant cell stations' locations.⁴¹⁴³

1919. The last two pages list the 37 stations that were taken off air between 7 January 2005 and 25 January 2010, including for most, the 'on air' and 'dismantling' dates. Witness 707 explained Alfa's practice in taking stations off air, that as with all operators:

The number of stations that are put off air is very limited because the objective of the company, as I said, is to use as much as possible the investment which was put in a specific

⁴¹³⁶ Witness PRH707, T. 16 February 2016, pp 34-36, 51. *See also* Decision on admission of Prosecution's cell site evidence, para. 126.

⁴¹³⁷ Witness PRH707, T. 16 February 2016, pp 34-51.

⁴¹³⁸ Witness PRH707, T. 16 February 2016, pp 34, 41, 47.

⁴¹³⁹ Exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 179.

⁴¹⁴⁰ Witness PRH707, T. 16 February 2016, pp 46-47.

⁴¹⁴¹ Witness PRH707, T. 20 April 2016, pp 68-69.

⁴¹⁴² This is addressed in paragraphs 1932-1933 below dealing with the file 'sites_Req49.txt' (exhibit P799 (Alfa cell ID codes)).

⁴¹⁴³ Exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 179.

station knowing that the investment at the financial level is really very big. So we invest highly in these cell sites. And consequently, the companies try to avoid, to the maximum, the dismantling of a site unless, of course, there are some legal reasons behind it or some technical reasons behind it. Let's say that this cell site is not anymore giving the result that was expected of it. Consequently, it is removed from the network and they transfer it to another cell site. While the fact of removing cell sites in general on a daily basis is not an objective and is not something that is done.⁴¹⁴⁴

1920. The Parties agreed on the spreadsheet's provenance.⁴¹⁴⁵ The Trial Chamber is satisfied of its reliability as a document extracted from Alfa's business records. There is no other reasonable explanation for its provenance. Having considered Witness 707's testimony on the spreadsheet, including his explanation of the discrepancies in the CGIs identified in the spreadsheet, the Trial Chamber is satisfied that the spreadsheet containing basic cell information for Alfa in essence is accurate and sufficiently reliable to be probative.

(i) DVD containing Alfa cell tower information for 2005, 2007 and 2010⁴¹⁴⁶

1921. This DVD, provided to the Prosecution by an Alfa representative in July 2010, contains the shape files for the predicted best server coverage for Alfa cell sectors in 2005, 2007 and 2010. In particular, the four files on the DVD provide cell tower best server coverage predictions in 2005 for 733 Alfa cell sites, and cell tower map coordinates and azimuth direction for 750 Alfa cell sites.⁴¹⁴⁷

1922. To create the 2005 shape files saved on this DVD, Alfa used the data from the 2010 Excel spreadsheet with 737 Alfa cell sectors (exhibit P775).⁴¹⁴⁸ Witness 707 gave detailed evidence on how the shape files were generated.⁴¹⁴⁹ Specifically, he explained that Alfa's records in 2010 contained data, including coordinates of their geographic location, related to the cell sites that were on air in 2005.⁴¹⁵⁰ If for a particular year Alfa lacked the required data, such as the azimuth and tilt values, it used the closest in time available data and excluded the cell sites deactivated after the

⁴¹⁴⁴ Witness PRH707, T. 16 February 2016, pp 48-49.

⁴¹⁴⁵ Witness PRH707, T. 21 April 2016, pp 2-4.

⁴¹⁴⁶ Exhibit P1123.

⁴¹⁴⁷ Witness PRH707, T. 25 July 2016, pp 88-89; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 164. *See also* Decision on admission of Prosecution's cell site evidence, para. 116.

⁴¹⁴⁸ Witness PRH707, T. 15 February 2016, pp 24-25.

⁴¹⁴⁹ Witness PRH707, T. 9 February 2016, pp 24-25, T. 15 February 2016, pp 3-4, 40-43, 83-84.

⁴¹⁵⁰ Witness PRH707, T. 15 February 2016, p. 60.

material date. This led Alfa to use tilt values from 2010 and cell data from 2007 to produce the 2005 shape files.⁴¹⁵¹

1923. The Sabra Defence, in cross-examination, relied on the Excel spreadsheet titled 'Security Main' recorded on this DVD listing Alfa basic cell information⁴¹⁵² to highlight 17 errors in the 2005 shape files. The Sabra Defence suggested to the witness that the respective shape files included cells that must have been removed because they had been deactivated at the material time. Witness 707 clarified that these 17 cells amount to a level of error of no more than three or four per cent out of 1,400 cells included in this document. The spreadsheet contains the data for only 831 activated and deactivated cell sectors rather than 1,400.⁴¹⁵³

1924. As to the shape files for 2005, the Trial Chamber considers Witness 707's written statement and testimony on how these files were produced and the use of the data from the 2010 Excel spreadsheet with 737 Alfa cell sectors⁴¹⁵⁴ sufficient to confirm their reliability and probative value.⁴¹⁵⁵ The inconsistencies identified by the Sabra Defence by relying on the spreadsheet listing Alfa basic cell information⁴¹⁵⁶ do not render the 2005 shape files unreliable. The identified errors are statistically insignificant.

1925. According to Witness 707, between 2004 and 2007, Alfa's network was stable and it did not add many new stations.⁴¹⁵⁷ Regarding the azimuths, he stressed that changes to an antenna's orientation over time would be occasional and minimal and would occur only in specific cases. Such instances included installing a new station in the vicinity of an existing one, the aftermath of extreme weather conditions and the service provider receiving complaints from customers about the coverage quality.⁴¹⁵⁸ Adjustments to the direction of an antenna, resulting for instance from complaints about the coverage, would be 'slight' and the changes would not significantly alter the coverage of a cell sector.⁴¹⁵⁹ The Trial Chamber is therefore satisfied that between 2005 and 2010

⁴¹⁵¹ Witness PRH707, T. 15 February 2016, pp 24-25, 44-54; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 164.

⁴¹⁵² Exhibit P780 (Excel spreadsheet titled 'Security Main' containing basic cell information for Alfa).

⁴¹⁵³ Witness PRH707, T. 21 April 2016, pp 32-33.

⁴¹⁵⁴ Exhibit P775.

⁴¹⁵⁵ See para. 1884. See also for example, Witness PRH707, T. 17 February 2016, pp 9-12.

⁴¹⁵⁶ Exhibit P780.

⁴¹⁵⁷ Witness PRH707, T. 15 February 2016, p. 41.

⁴¹⁵⁸ Witness PRH707, 15 February 2016, pp 35-36, 64-69, T. 20 April 2016, pp 24-25.

⁴¹⁵⁹ Witness PRH707, T. 15 February 2016, pp 65, 69.

Alfa's network integrity and configuration did not change in such a manner as to render unreliable the shape files produced for 2005.

1926. With regard to the shape files for 2007 and 2010, even though Alfa used azimuth and tilt values from 2010 for both sets of shape files on the DVD, the telecommunication company had provided contemporaneous azimuth values to the UNIIIC in 2007.⁴¹⁶⁰ The Trial Chamber is of the view that, although Alfa in 2016 was no longer able to confirm the values from 2007,⁴¹⁶¹ this does not diminish their reliability since they were extracted and provided from Alfa's contemporaneous business records that were created in 2007.

1927. The Trial Chamber considers that Witness 707's extensive evidence on Alfa's record keeping practices for those years in relation to these shape files further supports their reliability.

1928. However, considering the approximation or 'reverse engineering' method that Alfa used in 2010 to produce these predicted coverage maps for 2004 and 2005—years for which Alfa had no centralised database—the Trial Chamber has applied caution in reaching the conclusions based on this evidence.

1929. Again, although it is a matter of concern that the UNIIIC apparently did not obtain better information from Alfa in 2007—nor more vitally two years earlier—as to how this information was produced, this omission has not adversely impacted the weight to be given to the exhibit.

- (j) Excel spreadsheet 'On Air-Off Air' with information on Alfa cell sites in 2013⁴¹⁶²

1930. Alfa provided the Prosecution with an Excel spreadsheet listing information related to 319 Alfa cell sites operating in 2013. The column headers are site, cell, type, region, CGI (HEX), put on air date, put off air date, sector, splitter, long(itude), lat(itude) and azimuth. The spreadsheet also contains the same information for 69 Alfa cells deactivated before 2013. The Prosecution used this basic cell information to produce call sequence tables and the conversion of numerical cell

⁴¹⁶⁰ Exhibit P778.

⁴¹⁶¹ Witness PRH707, T. 25 July 2016, pp 7-8.

⁴¹⁶² Exhibit P1184.

IDs into cell tower names. The Alfa cell sites are related to the cells activated by mobiles that the Prosecution alleges were involved in the attack on Mr Hariri.

1931. The Trial Chamber finds the information in the spreadsheet to be reliable as, like the spreadsheet titled ‘Security Main’ containing similar information, it was extracted from Alfa’s business records.⁴¹⁶³ The Trial Chamber has no reason to doubt the accuracy of the information, and for the same reasons set out in assessing the reliability of the ‘Security Main’ spreadsheet, this basic cell information for Alfa cells is reliable.

(k) Cell ID codes for Alfa⁴¹⁶⁴

1932. This file, which Alfa provided to the UNHCR in December 2005, contains a number of Alfa cell ID codes.⁴¹⁶⁵ The Prosecution relied on it to explain the discrepancies identified in the CGIs included in the ‘Security Main’ spreadsheet, referred to directly above. Witness 707 explained that other discrepancies between the file ‘sites_Req49.txt’ and the ‘Security Main’ spreadsheet were the consequence of minor configuration changes made by Alfa between 2005 and 2010 to cell sites.⁴¹⁶⁶

1933. The Trial Chamber considers that the discrepancies identified in this document are relatively minor, and do not undermine the reliability of this document as a whole. As the cell ID codes for Alfa were extracted from Alfa business records, and applying the same reasoning as that used to assess the reliability of the ‘Security Main’ spreadsheet to which the ID codes for Alfa cells relate, these ID codes are, in the Trial Chamber’s view, accurate and sufficiently reliable to be probative.

⁴¹⁶³ Exhibit P780.

⁴¹⁶⁴ Exhibit P799.

⁴¹⁶⁵ This file is annex 16 (c) to Witness PRH707’s statement of 11 November 2015 (exhibit P1192). *See also* exhibit P799 (Annex 16 (C) (2) to Witness PRH707’s statement of 11 November 2015), ERN D0484151; Procedural matters, T. 19 April 2016, pp 59-61.

⁴¹⁶⁶ Exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 179.

(l) CD with Alfa call data records and cell site data⁴¹⁶⁷

1934. The only folder on this CD admitted into evidence is titled '3a\cell-coverage-July-2005' and contains shape files for 369 Alfa cell sectors for July 2005.⁴¹⁶⁸ The Prosecution used the shape files to create maps showing coverage for specific Alfa cell sectors to which relevant mobiles connected. In addition, the Prosecution analyst Ms Kei Kamei testified that she had used a text file from a different folder on this CD that contains call data records.⁴¹⁶⁹

1935. As with the DVD containing Alfa cell tower information for 2005, 2007 and 2010,⁴¹⁷⁰ the Trial Chamber is satisfied that the data contained on this CD is reliable, despite Alfa not preserving respective contemporaneous values from 2005 in its records.

1936. Witness 707 gave extensive testimony that these values would not have fundamentally changed in later years to a degree that would significantly invalidate the accuracy of the shape files. Based on the witness's position in the company and his lengthy experience in the telecommunications industry, and on his evidence about Alfa's record keeping, the Trial Chamber accepts this evidence. It is satisfied of the general accuracy of the data on this CD, which shows the coverage areas of relevant Alfa cell sites in 2005. It is sufficiently reliable to be probative.

1937. Just as it has with exhibit P1123, in considering the approximation method that Alfa used to produce in 2013 these predicted coverage maps for 2004 and 2005—years for which Alfa had no centralised database—the Trial Chamber has applied caution in assessing any conclusions based on this evidence.

(m) CD containing shape files for three Alfa cell sectors in Tripoli⁴¹⁷¹

1938. The CD contains shape files for three cell sectors in northern Lebanon, in Tripoli—MAARAD1, MAARAD2 and MAARAD3. According to the Prosecution, mobiles involved in the

⁴¹⁶⁷ Exhibit P1124.

⁴¹⁶⁸ Exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 164. *See also* F2004, Corrected Annex A to "Prosecution Motion for the Admission of Cell Site Evidence", 23 June 2015, row 10; Procedural matters, T. 8 September 2016, p. 46; Decision on admission of Prosecution's cell site evidence, paras 134-136, 138-139.

⁴¹⁶⁹ Kei Kamei, T. 20 July 2015, pp 86-87. One of the files on this CD, saved in a folder other than folder 3a, was attached as Annex B to Witness 707's statement of 25 January 2016 (exhibit P1194) and is exhibit P784 (Annex B to Witness 707's statement of 25 January 2016), Witness PRH707, T. 17 February 2016, p. 81; Decision on admission of Witness PRH707's statements and annexes into evidence, paras 63, 189-190.

⁴¹⁷⁰ Exhibit P1123.

⁴¹⁷¹ Exhibit P1125.

attack on Mr Hariri connected to these cells in 2004 and 2005. Witness 707 testified about these sectors' geographic coordinates, types of antenna, the location of the antennas, their azimuth and vertical tilt and how Alfa's radio planning team measured those values.⁴¹⁷²

1939. This CD is linked to the chart⁴¹⁷³ comparing changes in azimuth values between those provided by Alfa to the UNIIIC in 2007⁴¹⁷⁴ and those provided to the Prosecution in 2010,⁴¹⁷⁵ and showing that the azimuths of only 20 Alfa cell sectors had changed.⁴¹⁷⁶ The absence of the azimuths of MAARAD1, MAARAD2 and MAARAD3 from the chart allowed the Trial Chamber to infer that they may not have changed either in 2007 or 2010.

1940. Additionally, Witness 707 was clear in his evidence that changes to an antenna orientation over time, including the values of azimuth and tilt, are insignificant and infrequent and would only occur in specific instances.⁴¹⁷⁷ Further, the shape values were extracted from the Alfa business records. Therefore, applying the same reasoning used to assess the reliability of the chart comparing the 2007 and 2010 values, in the Trial Chamber's view, the shape files for the three Alfa cell sectors are accurate and reliable and probative. It has no reason to doubt the accuracy of these business records.

(n) Two spreadsheets with Alfa cell site information⁴¹⁷⁸

1941. In September 2007, Alfa provided the UNIIIC with two spreadsheets, 'Alfa cell list 19-09-2007' and 'Cellpart3', accompanied by a letter signed by Alfa's Managing Director and Chief Executive Officer. The first spreadsheet contains the CGI of 1,090 Alfa cells and the second contains original coordinates, azimuth direction and service dates of three specific cell sectors in Beirut: PHENMB1, MOVPIK1 and BHVOUT1/2. The Prosecution relied on the first spreadsheet to produce call sequence tables by finding cell tower names corresponding to cell ID codes and

⁴¹⁷² Witness PRH707, T. 29 January 2016, pp 120-121.

⁴¹⁷³ Exhibit P776 (List of discrepancies in azimuth directions and locations for data provided re Alfa cell sites, Annex 19 to Witness PRH707's statement of 11 November 2015).

⁴¹⁷⁴ Exhibit P778.

⁴¹⁷⁵ Exhibit P775.

⁴¹⁷⁶ Witness PRH707, T. 11 February 2016, pp 69-71, 88, T. 15 February, p. 32.

⁴¹⁷⁷ Witness PRH707, T. 15 February 2016, pp 35-36, 64-69, T. 20 April 2016, pp 24-25.

⁴¹⁷⁸ Exhibit P1126.

used the information from the second spreadsheet to verify and ascertain the accuracy of the azimuths of PHENMB1 and MOVPIK1.⁴¹⁷⁹

1942. Witness 707 explained that Alfa produced spreadsheets, such as these, in 2007 based on the available records and clarified generally that it was not possible to confirm mechanical values such as an azimuth of an antenna for 2004 and 2005.⁴¹⁸⁰ Nevertheless, the coordinates will not have changed if the respective cell sites still exist.⁴¹⁸¹ The Defence neither contested the spreadsheets nor cross-examined Witness 707 on either document.

1943. The spreadsheets are probative of the cell tower names in the Prosecution's call sequence tables and the azimuths for PHENMB1 and MOVPIK1. The Prosecution in turn relied on this and other data to determine the location of mobiles used to prepare and plan the attack of 14 February 2005. As the data included in the spreadsheets was extracted from Alfa business records, and in light of the lack of contest by the Defence, the Trial Chamber is satisfied that these spreadsheets are authentic and reliable and are probative. It has no reason to doubt the accuracy of this information.

(o) Spreadsheet 'CellID' containing details of Alfa cell sectors⁴¹⁸²

1944. This spreadsheet, which was provided to the Prosecution on DVD by Alfa representatives in March 2010, contains generic data produced in the usual course of Alfa's business, including details of 1,749 Alfa cell sectors on air on 19 March 2010, such as their type, region, CGI, installation date, sectors, splitter, original longitude and latitude and azimuth.

1945. Similar details were provided for 83 cell sectors that were off air in 2010. The Prosecution relied on this information to verify the CGI, coordinates, azimuth and cell type of some cell sectors and to find cell tower names corresponding to cell ID codes for the purpose of creating call sequence tables.⁴¹⁸³

⁴¹⁷⁹ Exhibit P1126; *see also* Decision on admission of Prosecution's cell site evidence, paras 148-149.

⁴¹⁸⁰ Witness PRH707, T. 9 February 2016, pp 48-49, T. 11 February 2016, pp 55-56.

⁴¹⁸¹ Witness PRH707, T. 16 February 2016, p. 8.

⁴¹⁸² Exhibit P1183 (Data for Alfa cell sectors on air on 19 March 2010 and off air in 2010).

⁴¹⁸³ Exhibit P1183; *see also* Decision on admission of Prosecution's cell site evidence, paras 156-157.

1946. Counsel for Mr Oneissi questioned Witness 707 on the differences between the azimuth values in this spreadsheet and those in the spreadsheet titled ‘Security Main’.⁴¹⁸⁴ The witness provided specific answers only after seeing the details of the requests for assistance from the Prosecution that generated the two documents. In relation to both this and the list of Alfa azimuths and locations⁴¹⁸⁵—comparing discrepancies between the 2010 Excel spreadsheet with 737 Alfa cell sectors⁴¹⁸⁶ and the lists with information for Alfa cell sectors based on 2007 data⁴¹⁸⁷—Witness 707 explained that the changes in azimuth values were reasonable considering that the spreadsheets covered a number of years.⁴¹⁸⁸

1947. Alfa contemporaneously provided this type of cell data, including that contained in this spreadsheet, to the Prosecution; Defence counsel did not specifically challenge the reliability of the data. Moreover, Witness 707 testified about a spreadsheet containing similar information and confirmed that it was extracted from Alfa’s business records.⁴¹⁸⁹ The spreadsheet is probative of the cell ID codes and cell tower names the Prosecution used to produce call sequence tables. In light of the comprehensive evidence given by Witness 707 regarding this and related documents, the Trial Chamber finds the spreadsheet ‘Cell ID’ to be accurate and sufficiently reliable to be probative.

2. Submissions on the Alfa and Touch cell site evidence generally

1948. The specific submissions on the individual 15 items of cell site evidence the Prosecution relied on to prove the reliability of the coverage maps, call data records and call sequence tables are detailed directly above. A summary of the general submissions on the call data records and cell site data received from Alfa and Touch follows; some of these also relate to the 15 items.

⁴¹⁸⁴ Exhibit P780.

⁴¹⁸⁵ Exhibit P776.

⁴¹⁸⁶ Exhibit P775.

⁴¹⁸⁷ Exhibit P778.

⁴¹⁸⁸ Witness PRH707, T. 25 July 2016, pp 16-17, 31-45, 53-54.

⁴¹⁸⁹ Exhibit P780.

(a) Defence

i. Common submissions

1949. The Ayyash, Merhi, Oneissi and Sabra Defence reiterate that the theoretical coverage maps provided by Alfa represent only a prediction and reflect only 60 to 70 per cent of the actual coverage in 2004 and 2005.⁴¹⁹⁰ The Ayyash Defence submitted that this level of accuracy was a ‘killer blow’ to the Prosecution case, but did not suggest an acceptable percentage of coverage.⁴¹⁹¹

1950. The Sabra Defence submits that Alfa used underlying data to create coverage maps which is incomplete, unverifiable, based on unreliable information, and is not representative of the indictment period.⁴¹⁹² The Ayyash Defence similarly argues that the Trial Chamber cannot give any weight and rely on Alfa’s and Touch’s data and records for the following reasons. First, because they are not suited for the forensic purposes. Second, Alfa and Touch lacked sufficient record-keeping safeguards. Third, they are not contemporaneous records. And fourth, Witnesses 705’s and 707’s evidence is untested hearsay.⁴¹⁹³

1951. Alfa’s coverage maps depict fragments of theoretical coverage. In reality, the coverage may be located elsewhere or not even exist.⁴¹⁹⁴ These maps do not reflect the in-building, in-car or above ground coverage, which is particularly important in Beirut.⁴¹⁹⁵ As Alfa and Touch did not use these ‘more or less’ accurate maps for forensic purposes but as marketing tools, they must be regarded as the ‘fall back’ option. As confirmed by Witness 707, the coverage maps were produced on request and for marketing purposes, and were not used to estimate specific

⁴¹⁹⁰ Ayyash Defence final trial brief, para. 197; Oneissi Defence final trial brief, paras 133, 139; Sabra Defence final trial brief, para. 140; Merhi Defence final trial brief, paras 130-134; Ayyash Defence closing submissions, T. 17 September 2018, p. 66; Oneissi Defence closing submissions, T. 19 September 2018, p. 55; *see also* Sabra Defence closing submissions, T. 21 September 2018, p. 33.

⁴¹⁹¹ Ayyash Defence final trial brief, para. 197; Ayyash Defence closing submissions, T. 17 September 2018, pp 66-67: ‘PRESIDING JUDGE RE: And you’re saying 60 to 70 per cent isn’t enough. 100 per cent you’ll never get. Is there a figure which you would say is one which we could accept is reliable enough? Like 80, 85, 90, 95? 75?’

MR. HANNIS: 90 starts to sound good, Your Honour. I can’t put a number on it because I think you have to link it to other factors, and I’m going to talk about that for a little bit. But to make that claim I think goes too far. And, again, you know, I’m a little wise-cracker sometimes, but in effect, they say 60 to 70 per cent is no problem. In what world is the Prosecution living in where 100 per cent is not better than 60 to 70 per cent? If that’s the case, I’d like to borrow 100.000 from Mr. Povoas and he’ll be fine if I pay back only 60.000’.

⁴¹⁹² Sabra Defence final trial brief, para. 158.

⁴¹⁹³ Ayyash Defence final trial brief, para. 263; Ayyash Defence closing submissions, T. 17 September 2018, p. 65.

⁴¹⁹⁴ Oneissi Defence final trial brief, para. 140.

⁴¹⁹⁵ Oneissi Defence final trial brief, para. 141; Ayyash Defence final trial brief, para. 198; Merhi Defence final trial brief, para. 147.

weaknesses in the network.⁴¹⁹⁶ From the end of 2004 until 2007, Touch did not even produce predicted coverage maps.⁴¹⁹⁷

1952. The Ayyash, Oneissi and Sabra Defence submitted that for Alfa's and Touch's records to have any weight, they must have been created at or near the time of the events in question.⁴¹⁹⁸ Business documents created for litigation lack the same indicia of reliability as the business records created in the course of ordinary business.⁴¹⁹⁹ The fact that the documents were produced in 2010 and not created contemporaneously lessens their reliability because the person who created the document may not have been present at the pertinent time or may not have a good memory as to processes employed at that time.⁴²⁰⁰

1953. The Ayyash, Merhi, Oneissi and Sabra Defence argue that the accuracy of the prediction coverage maps is affected by the clutter model and azimuth values, which are not accurate, complete or known for 2004 and 2005, and which did not take into consideration the changes that resulted from Israel's attacks on Lebanon in 2006.⁴²⁰¹ For instance, the Prosecution used the 2010 clutter model to reconstitute the clutter in 2005 despite the fact that the clutter around Mr Merhi's alleged residence in south Beirut was affected by the topographical changes caused by Israel's attacks on Lebanon in 2006.⁴²⁰² Moreover, Mr Philips stated that in his UK cases, he considered local clutter to better understand the cell coverage, while the Prosecution did not inform him that Alfa used the clutter model from 2010 rather than 2005.⁴²⁰³

ii. Ayyash Defence

1954. The Ayyash Defence further submits that hearing from corporate witnesses does not relieve the Prosecution of its burden to establish the provenance or reliability of business records and the

⁴¹⁹⁶ Ayyash Defence final trial brief, para. 252; Sabra Defence final trial brief, paras 128, 138; Oneissi Defence final trial brief, paras 82, 129, 156; Oneissi Defence closing submissions, T. 19 September 2018, pp 55-56.

⁴¹⁹⁷ Ayyash Defence final trial brief, para. 252; Ayyash Defence closing submissions, T. 17 September 2018, p. 64.

⁴¹⁹⁸ Ayyash Defence final trial brief, para. 214; Ayyash Defence closing submissions, T. 17 September 2018, p. 59; Sabra Defence final trial brief, para. 110; Oneissi Defence final trial brief, para. 54.

⁴¹⁹⁹ Ayyash Defence final trial brief, para. 216.

⁴²⁰⁰ Ayyash Defence final trial brief, paras 214-216; Ayyash Defence closing submissions, T. 17 September 2018, p. 59; Oneissi Defence final trial brief, para. 54.

⁴²⁰¹ Ayyash Defence closing submissions, T. 17 September 2018, pp 64, 66; Oneissi Defence final trial brief, paras 47, 74, 78-79, 156, 665; Sabra Defence final trial brief, para. 159; Merhi Defence final trial brief, paras 130, 133; Merhi Defence closing submissions, T. 19 September 2018, pp 3, 54.

⁴²⁰² Merhi Defence final trial brief, paras 342-349.

⁴²⁰³ Ayyash Defence final trial brief, paras 271-272, 304; Oneissi Defence final trial brief, paras 122, 124. The Prosecution did not make any submissions relating to clutter in its final trial brief or closing submissions.

processes used to gather, store and retrieve them.⁴²⁰⁴ The lack of a centralised database combined with no protocols or systems in place to ensure the reliable recording and maintenance of data is no reason ‘to trust’ the data related to 2004 and 2005.⁴²⁰⁵

1955. The Trial Chamber should not rely on the data produced in 2007 and 2010 to recreate a picture of Alfa’s network in 2004 and 2005. It is not possible to confirm who produced the Alfa coverage maps provided to the Special Tribunal nor the veracity of the information relied upon to create them. Any analysis based on Alfa’s cell site information is unreliable.⁴²⁰⁶

1956. According to the Ayyash Defence, the changes in Touch’s database and the resulting changes of the network’s predicted coverage would only be reflected in a predicted best server coverage map if the software program was re-run. The February 2004 predicted coverage files thus have little relevance to February 2005 because of the changes in the intervening period.⁴²⁰⁷

1957. The changes made during the year between the two snapshots—February 2004 and February 2005—would have affected these coverage maps based on the data from the ‘snapshots’, and there is no reliable information from Witness 705 or from Touch documents on how many changes occurred.⁴²⁰⁸ Touch’s database is insufficiently reliable because it was constantly changing through regular network optimisation or fine-tuning.⁴²⁰⁹

1958. With respect to the maps received from both Alfa and Touch, the Ayyash Defence highlighted that, as a mobile does not need to move to use multiple cells within a short amount of time, predicted coverage maps cannot reflect reality and only show an average of dynamic changes in signal strength.⁴²¹⁰

⁴²⁰⁴ Ayyash Defence final trial brief, para. 222.

⁴²⁰⁵ Ayyash Defence final trial brief, paras 243-244; Ayyash Defence closing submissions, T. 17 September 2018, pp 64-65.

⁴²⁰⁶ Ayyash Defence final trial brief, paras 245, 249, 251, 254; Ayyash Defence closing submissions, T. 17 September 2018, p. 65.

⁴²⁰⁷ Ayyash Defence final trial brief, para. 239.

⁴²⁰⁸ Ayyash Defence final trial brief, paras 236, 240; Ayyash Defence closing submissions, T. 17 September 2018, pp 63-64.

⁴²⁰⁹ Ayyash Defence final trial brief, paras 238, 241; Ayyash Defence closing submissions, T. 17 September 2018, pp 63-64.

⁴²¹⁰ Ayyash Defence final trial brief, para. 200.

iii. Merhi Defence

1959. The Merhi Defence submits that Witness 707 confirmed that, as Alfa's azimuth and tilt values changed over time without Alfa recording them in a database, the values from 2004 and 2005 have been lost.⁴²¹¹ Any inference based on the call data provided by Alfa is therefore invalid.⁴²¹² With respect to the spreadsheet listing details of Alfa cell sectors based on information from 2007, Witness 707 could not confirm the date corresponding to the azimuth values provided to the Prosecution or the frequency of the changes made by Alfa.⁴²¹³ The same spreadsheet contained outdated and obsolete information regarding the slant of antennas, incline and azimuth values.⁴²¹⁴ The manually recorded information for some stations dates back to 1995.⁴²¹⁵

1960. Additional factors that make the azimuth values provided by Alfa not representative of the situation in 2004 and 2005 include the addition of new cell sites and the dismantling of the old ones, which had an impact on the coverage of the adjacent cells.⁴²¹⁶ Further, comparing the 'Security Main' spreadsheet⁴²¹⁷ and the 'CellID' spreadsheet⁴²¹⁸ revealed 39 differences in azimuth values.⁴²¹⁹ Also, the Prosecution was not able to reconcile the inconsistencies between the 'Security Main' spreadsheet⁴²²⁰ and the list of Alfa azimuths and locations.⁴²²¹ In addition, the 2010 Excel spreadsheet with 737 Alfa cell sectors⁴²²² contains 285 fewer cells than the list with information for Alfa's cell sectors based on information from 2007.⁴²²³

1961. The Prosecution oversimplified the data received from Alfa and Touch, in effect presenting it in a way not reflecting reality.⁴²²⁴ The data derived from nine different sources and was generated

⁴²¹¹ Merhi Defence final trial brief, paras 105-108.

⁴²¹² Merhi Defence final trial brief, para. 108.

⁴²¹³ Merhi Defence final trial brief, paras 109-112 (referring to exhibit P778).

⁴²¹⁴ Merhi Defence final trial brief, paras 103, 105; Merhi Defence closing submissions, T. 19 September 2018, p. 15, referring to exhibit P778.

⁴²¹⁵ Merhi Defence final trial brief, para. 109.

⁴²¹⁶ Merhi Defence final trial brief, paras 113-117.

⁴²¹⁷ Exhibit P780.

⁴²¹⁸ Exhibit P1183.

⁴²¹⁹ Merhi Defence final trial brief, para. 118.

⁴²²⁰ Exhibit P780.

⁴²²¹ Merhi Defence final trial brief, paras 119-120. The list of correct Alfa azimuths and locations (exhibit P776) compares the discrepancies between the spreadsheet listing the names, coordinates and azimuth of 737 Alfa cell sectors based on information from 2010 (exhibit P775) and the lists with information for Alfa cell sectors based on information from 2007 (exhibit P778).

⁴²²² Exhibit P775.

⁴²²³ Merhi Defence final trial brief, paras 119-120.

⁴²²⁴ Merhi Defence final trial brief, para. 83.

in various years.⁴²²⁵ Alfa's use of its data as well as the 2010 propagation model resulted in the coverage maps being 'skewed'.⁴²²⁶ The maps are an estimate and they represent only a coverage prediction.⁴²²⁷ Further, the coverage maps provided by Alfa were distorted by the impact of the destruction during the 2006 war in Lebanon and the new buildings which altered the coordinates and the height of some antennas.⁴²²⁸

iv. Oneissi Defence

1962. The Oneissi Defence submits that no weight should be placed on the Alfa evidence as it lacks reliability and any probative value is substantially outweighed by the prejudice the Oneissi Defence suffered by not being able to cross-examine the Alfa employees who produced and provided this evidence.⁴²²⁹ Further, the Trial Chamber should reconsider under Rule 140 its erroneous decision to admit the 2010 and 2007 azimuth and coordinate information (exhibits P775 and P778) as business records.⁴²³⁰ The prejudice to Mr Oneissi by this decision lies in the admission of, and possible reliance on, unreliable evidence of fundamental importance.⁴²³¹

1963. The Oneissi Defence notes that the spreadsheet with details of Alfa cell sectors and the two sets of Alfa coverage maps relied upon in the electronic presentation of evidence were produced and provided to the Prosecution before Alfa established, in 2014, a central database of cell site information.⁴²³² Specifically, these are: first, the spreadsheet with details of Alfa cell sectors based on information from 2010;⁴²³³ second, the spreadsheet with details of Alfa cell sectors based on information from 2007;⁴²³⁴ third, the shape files received in 2010 for the predicted best server

⁴²²⁵ Merhi Defence final trial brief, para. 90.

⁴²²⁶ Merhi Defence final trial brief, para. 124.

⁴²²⁷ Merhi Defence final trial brief, paras 86, 131, 153.

⁴²²⁸ Merhi Defence final trial brief, paras 121-124.

⁴²²⁹ Oneissi Defence final trial brief, paras 53, 155.

⁴²³⁰ In relation to exhibit P775: Witness PRH707, T. 11 February 2016, pp 58-59; Decision on admission of Witness PRH707's statements and annexes into evidence, paras 134-140, 154-156, disposition. In relation to exhibit P778: Witness PRH707, T. 12 February 2016, pp 22-23; Decision on admission of Witness PRH707's statements and annexes into evidence, paras 120-125, 154-156, disposition.

⁴²³¹ Oneissi Defence final trial brief, paras 54-56.

⁴²³² Oneissi Defence final trial brief, para. 58; Oneissi Defence closing submissions, T. 19 September 2018, p. 65.

⁴²³³ Exhibit P775.

⁴²³⁴ Exhibit P778.

coverage for Alfa cell sectors;⁴²³⁵ and fourth, the shape files received in 2013 for the predicted best server coverage for Alfa cell sectors.⁴²³⁶

1964. The underlying data, including azimuth and tilt values, in the shape files the Prosecution received in 2010⁴²³⁷ and 2013⁴²³⁸ for the predicted best server coverage for Alfa cell sectors were not created using contemporaneous values from 2004 and 2005, and therefore negatively impact the reliability of the shape files.⁴²³⁹ Moreover, these 2010⁴²⁴⁰ and 2013⁴²⁴¹ shape files were not subjected to second-level review through drive tests or field reviews to confirm their accuracy.⁴²⁴²

1965. The lack of a centralised database negatively affects the reliability of the spreadsheet with details of Alfa cell sectors based on information from 2010⁴²⁴³ and the spreadsheet with details of Alfa cell sectors based on information from 2007.⁴²⁴⁴ The data in these documents was extracted from an individual database for which the Prosecution has led no evidence and could have been mismanaged, outdated or out of use. Furthermore, the Prosecution led no evidence about Alfa's employees who were responsible for updating these databases.⁴²⁴⁵

1966. Alfa had no records of any changes in azimuth values over time. Thus, the spreadsheet with details of Alfa cell sectors based on information from 2010,⁴²⁴⁶ and the spreadsheet with details of Alfa cell sectors based on information from 2007,⁴²⁴⁷ do not show azimuth values of the cell sites in 2004 and 2005. Rather they are for 2007 and 2010, when they were produced and provided to the UNIIIC and the Prosecution.⁴²⁴⁸

⁴²³⁵ Exhibit P1123.

⁴²³⁶ Exhibit P1124.

⁴²³⁷ Exhibit P1123.

⁴²³⁸ Exhibit P1124.

⁴²³⁹ Oneissi Defence final trial brief, paras 74-75.

⁴²⁴⁰ Exhibit P1123.

⁴²⁴¹ Exhibit P1124.

⁴²⁴² Oneissi Defence final trial brief, para. 81.

⁴²⁴³ Exhibit P775.

⁴²⁴⁴ Exhibit P778.

⁴²⁴⁵ Oneissi Defence final trial brief, para. 60.

⁴²⁴⁶ Exhibit P775

⁴²⁴⁷ Exhibit P778.

⁴²⁴⁸ Oneissi Defence final trial brief, para. 61; Oneissi Defence closing submission, T. 19 September 2018, pp 69-70.

1967. The Oneissi Defence notes that Witness 707 testified that, ‘the farther we go from 2005 and 2007, the preciseness of the information would be less’, meaning the older the values the less accurate they are.⁴²⁴⁹

1968. The Prosecution has not established the provenance of the spreadsheet with details of Alfa cell sectors based on information from 2007.⁴²⁵⁰ Witness 707 testified that Alfa’s radio planning department was able to provide the information contained in the 2007 Alfa cell sectors data and was usually the department which ‘uses these values the most’, but the witness could only speculate as to the origin of the values. When shown the spreadsheet with the 2007 Alfa cell sectors data, the witness stated that he ‘had no information about the drafting of this document’ and that Alfa did not ‘have the records that prove the main source of origin of these values’ and that Alfa could not identify the source of the values in this spreadsheet.⁴²⁵¹

1969. The accuracy of the azimuth values in the spreadsheet with details of Alfa cell sectors based on information from 2007 could not be confirmed. It was ‘normal’ at Alfa that the geographic coordinates were inaccurate by up to 50 metres, and that there may be another 40 metres between the geographic coordinates and the antenna itself. Also, the spreadsheet with details of Alfa cell sectors based on information from 2007 cannot be considered as a business record as it was produced in 2007 for litigation purposes and it has not been established that Alfa used the specific values contained in this spreadsheet in the ordinary course of business.⁴²⁵²

1970. The Oneissi Defence also argues that the shape files received in 2010 for the predicted best server coverage for Alfa cell sectors, and the shape files received in 2013 for the predicted best server coverage for Alfa cell sectors in July 2005, namely exhibits P1123 and P1124, are unreliable. They suffer from an ‘important margin of error’ due to the general limitations of the maps.⁴²⁵³

1971. The maps were created in 2010 and 2013, respectively, and are the product of ‘reverse engineering’.⁴²⁵⁴ Additionally, Alfa did not synchronise information relating to the installation and

⁴²⁴⁹ Oneissi Defence final trial brief, para. 61.

⁴²⁵⁰ Oneissi Defence final trial brief, para. 67, referring to exhibit P778.

⁴²⁵¹ Oneissi Defence final trial brief, paras 67-68.

⁴²⁵² Oneissi Defence final trial brief, para. 68, referring to exhibit P778.

⁴²⁵³ Oneissi Defence final trial brief, para. 70.

⁴²⁵⁴ Oneissi Defence final trial brief, paras 71, 156.

dismantling dates of cells in a centralised database⁴²⁵⁵ and this information was used to create the shape files.⁴²⁵⁶ Further, Witness 707 was unable to determine where this information came from but suggested it was most probably from the spreadsheet titled ‘Security Main’ containing basic cell information for Alfa,⁴²⁵⁷ and there were a number of discrepancies between the spreadsheet and the shape files received in 2010 for the predicted best server coverage for Alfa cell sectors.⁴²⁵⁸

1972. Even though, according to Witness 707, ‘some of the information’ from the spreadsheet with details of Alfa cell sectors based on information from 2010 was relied upon to create the 2010 shape files for the predicted best server coverage for Alfa cell sectors, the deficiencies in the spreadsheet have negatively affected those 2010 shape files.⁴²⁵⁹

1973. The spreadsheet with details of Alfa cell sectors does not contain all of the information needed to create those files, such as the antenna height or tilt values. The source of the data used to create the shape files received in 2013 for the predicted best server coverage for Alfa cell sectors was similarly unknown. It was impossible to confirm the accuracy of the antenna height values from 2004 and 2005 which needed to be fed into Asset to produce an acceptable coverage map. The vertical orientation of an antenna was also needed as it significantly affects the coverage of a cell site.⁴²⁶⁰

1974. Witness 707 stated that tilt values change over time but that they do not undergo major changes, and a change of five to seven degrees does not really affect the coverage. This is, however, in direct contradiction to Mr Philips’s statement in his report that ‘the extent and strength of coverage is reduced considerably simply by the application of 7 degree of downtilt.’⁴²⁶¹

1975. The Oneissi Defence stresses that coverage maps, such as exhibits P1123 and P1124, were created and generated according to requests for assistance or for marketing purposes, not for technical reasons.⁴²⁶² Witness 707 confirmed that Alfa did not use the coverage maps that the

⁴²⁵⁵ Oneissi Defence final trial brief, para. 72.

⁴²⁵⁶ Exhibits P1123-P1124.

⁴²⁵⁷ Exhibit P780.

⁴²⁵⁸ Oneissi Defence final trial brief, para. 72.

⁴²⁵⁹ Oneissi Defence final trial brief, para. 74.

⁴²⁶⁰ Oneissi Defence final trial brief, para. 74.

⁴²⁶¹ Oneissi Defence final trial brief, para. 74 (referring to exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction)).

⁴²⁶² Oneissi Defence final trial brief, paras 82-83.

Prosecution used in the electronic presentation of evidence, and the specific maps on which he was asked to comment during his cross-examination were incomplete and insufficient to determine the location of a mobile.⁴²⁶³

1976. In addition, these coverage maps cannot depict overlapping coverage since cell site signals are constantly ‘varying’ and ‘moving in level’. The boundaries of cell sites are therefore constantly changing and it is unlikely that the boundaries in reality would exist in the form of straight lines as sometimes depicted in the electronic presentation of evidence for Alfa’s theoretical coverage.⁴²⁶⁴

v. Sabra Defence

1977. The Sabra Defence submits that Alfa provided only an estimate of the total number of cells that were in use in 2004 and 2005 and, as with cell site values, this cannot be verified.⁴²⁶⁵ Due to the lack of properly recorded contemporaneous data, the Prosecution erroneously relied on the 2010 Excel spreadsheet with 737 Alfa cell sectors and the lists with information for Alfa cell sectors based on information from 2007.⁴²⁶⁶ The measurements of the azimuth values are also likely to be affected by the fluctuations in the recording equipment caused by the materials in the cell masts.⁴²⁶⁷

1978. The Prosecution described the data on which it relied as the ‘best available’, falling far below the absolute requirement for data to be contemporaneous to the time of the incident if used for forensic purposes. The Sabra Defence argued that ‘best available evidence’ should not be confused with the ‘best evidence rule’, according to which secondary evidence is admissible if the original document does not exist and or cannot be obtained. For accurate cell site analysis, the values as they existed at the time of the incident must be replicated, while outdated and unverified evidence is insufficient.⁴²⁶⁸

1979. The comparison of data between 2007 and 2010 does not relate to the indictment period, thus is irrelevant for the purpose of supporting an analysis of the network at that time. The Sabra

⁴²⁶³ Oneissi Defence final trial brief, paras 84-86.

⁴²⁶⁴ Oneissi Defence final trial brief, para. 140.

⁴²⁶⁵ Sabra Defence final trial brief, para. 150.

⁴²⁶⁶ Sabra Defence final trial brief, paras 153-154.

⁴²⁶⁷ Sabra Defence final trial brief, para. 149.

⁴²⁶⁸ Sabra Defence final trial brief, para. 155.

Defence submits that the list of correct Alfa azimuths and locations suffers from the same issues of reliability regarding confirmation of accuracy.⁴²⁶⁹

1980. The Prosecution's reliance on Alfa's coordinates for the locations of their cell masts in operation in Lebanon during the relevant period and the cell IDs for cell sectors on their network is largely irrelevant because it is the information regarding the cells, specifically their azimuth and tilt at the relevant time that is required. The file containing cell ID codes for Alfa similarly merely lists the names and region of cells on the network and are not used to produce predicted best server coverage.⁴²⁷⁰

(b) Prosecution

1981. In response to the Defence arguments concerning Alfa lacking a centralised database, the Prosecution submits that the evidence shows that the cell site data and coverage maps originated from Alfa and Touch and that Alfa's cell site data was stored in databases retained by the radio planning department. Centralised storage means data is accessible beyond the department that used the data. In any case, the Defence did not explain why centralised storage is necessary to ensure its reliability.⁴²⁷¹

1982. The Prosecution responded to the Oneissi Defence's submission regarding the 20 differences in azimuths between the 2007 and 2010 data received from Alfa in the spreadsheets with details of Alfa cell sectors based on information from 2007 and from 2010. The Prosecution submits that Defence counsel omitted to mention that 707 azimuth values were common to both lists.⁴²⁷²

⁴²⁶⁹ Sabra Defence final trial brief, para. 156. The list of correct Alfa azimuths and locations (Exhibit P776) compares the discrepancies between the spreadsheet listing the names, coordinates and azimuth of 737 Alfa cell sectors based on information from 2010 (exhibit P775) and the lists with information for Alfa cell sectors based on information from 2007 (exhibit P778).

⁴²⁷⁰ Sabra Defence final trial brief, para. 157.

⁴²⁷¹ Prosecution closing submissions, T. 11 September 2018, pp 78-79; *see also* Prosecution final trial brief, para. 56.

⁴²⁷² Prosecution closing submissions, T. 11 September 2018, p. 63 (referring to exhibits P778 and P775); *see also* Prosecution final trial brief, para. 66.

1983. The 20 differences thus represent changes to a mere 3.3 per cent of the azimuths over three years. The remaining 96.7 per cent of the azimuths remained unchanged over that period.⁴²⁷³ The Prosecution highlighted that none of these compared cells are relevant to the case.⁴²⁷⁴

1984. The Oneissi Defence's argument that the azimuth values in the spreadsheet of Alfa cell sectors based on 2010 information,⁴²⁷⁵ and the spreadsheet of Alfa cell sectors based on 2007 information,⁴²⁷⁶ do not constitute business records, comes from the common law principle prohibiting hearsay evidence and its definition of business records. However, neither concept is applicable or relevant.⁴²⁷⁷

1985. Instead, the high reliability of Alfa's azimuth values and cell site locations rests on their provenance from Alfa's data, and that Alfa had a business purpose to retain this data.⁴²⁷⁸ In addition, the requests for assistance were formulated in a neutral manner and the responses from Alfa pre-dated the indictment.⁴²⁷⁹

1986. In response to the Oneissi Defence's submission on the discrepancies between the 'Security Main' spreadsheet⁴²⁸⁰ and 'CellID' spreadsheet,⁴²⁸¹ the Prosecution submits that the Defence omitted to mention that 39 differences in azimuth values of the 831 cell sectors amount to less than five per cent of the cell sectors common on both lists.⁴²⁸² Further, the Alfa network was stable throughout the relevant period and the cell sectors existing in 2005 were still in place in 2010 and can be confirmed through their geographic coordinates, cell IDs and the call data records.⁴²⁸³

1987. The Prosecution responded to judicial questions in relation to the estimated 60 to 70 per cent accuracy of the prediction maps for 2004 and 2005, submitting that this estimate was based on Witness 707's own experience, and that the Prosecution case does not require the predicted

⁴²⁷³ Prosecution final trial brief, para. 66; *see also* Prosecution closing submissions, T. 11 September 2018, p. 63.

⁴²⁷⁴ Prosecution closing submissions, T. 11 September 2018, p. 63; *see also* Prosecution final trial brief, para. 65.

⁴²⁷⁵ Exhibit P775.

⁴²⁷⁶ Exhibit P778.

⁴²⁷⁷ Prosecution closing submissions, T. 11 September 2018, p. 65.

⁴²⁷⁸ Prosecution closing submissions, T. 11 September 2018, pp 67-68.

⁴²⁷⁹ Prosecution closing submissions, T. 11 September 2018, pp 65-66.

⁴²⁸⁰ Exhibit P780.

⁴²⁸¹ Exhibit P1183.

⁴²⁸² Prosecution closing submissions, T. 11 September 2018, p. 69.

⁴²⁸³ Prosecution final trial brief, paras 56-57.

coverage maps to be of any higher accuracy.⁴²⁸⁴ The Prosecution added that the impact of the prediction maps' estimated accuracy on cell site analysis was that a mobile was placed in a larger geographic area.⁴²⁸⁵

1988. The Prosecution highlighted that it was not necessary for the Trial Chamber to determine that a 'mobile phone user was within the precise area shown by a coverage map. Rather ... the Chamber should make such determinations on the basis of the totality of the evidence'.⁴²⁸⁶ The Trial Chamber must determine, based on the totality of the evidence, whether the Accused took part in actions that demonstrate their participation in the crimes charged in the amended consolidated indictment.⁴²⁸⁷

3. Findings on Alfa's and Touch's call data records and cell site data

(a) Alfa's and Touch's call data records and cell site data as business records

1989. Before permitting Witness 707 to testify about the contents of Alfa records that he did not personally prepare, the Trial Chamber thoroughly researched the issue.⁴²⁸⁸ It was unable to identify any case law or provision of international criminal law procedural law in relation to the admission into evidence or reliability assessment of corporate business records.⁴²⁸⁹

1990. The approaches taken in national jurisdictions on which the Defence relies, such as the US case law cited by the Ayyash Defence in its final trial brief, confirms only that domestic criminal case law lacks consistent precedent with respect to the principles that underlie the assessment of corporate business records. The Trial Chamber reiterates that it is not bound by domestic legislation or case law.⁴²⁹⁰

⁴²⁸⁴ Prosecution final trial brief, paras 52-53, 62; Prosecution closing submissions, T. 11 September 2018, pp 56, 86-93.

⁴²⁸⁵ Prosecution closing submissions, T. 11 September 2018, pp 56, 59.

⁴²⁸⁶ Prosecution final trial brief, para. 53.

⁴²⁸⁷ Prosecution final trial brief, para. 70.

⁴²⁸⁸ Corrected version of decision on Prosecution motion to admit Witness PRH707's statements, para. 52.

⁴²⁸⁹ The case law related to 'letters, minutes, transcripts of parliamentary speeches, maps, decrees, situation reports, internal and external communications of international organizations, and NGOs, films, videotapes, written and audio records of intercepted conversations, media reports, contemporaneous diaries and forensic, medical and autopsy reports', Sluiter 2013, p. 1081; Corrected version of decision on Prosecution motion to admit Witness PRH707's statements, paras 54-59.

⁴²⁹⁰ Corrected version of decision on Prosecution motion to admit Witness PRH707's statements, para. 52.

1991. However, the Trial Chamber, without attempting to provide a comprehensive definition of and identify all the features of corporate business records, observes that in many domestic legal systems business records are those produced by an organisation in the ordinary course of business. These records are automatically generated, like call data records, and by their nature, are recorded and stored by various company personnel and officials in differing capacities and different departments and units. The size and complexity of the organisation exponentially heightens the potential for records to come from a diversity of internal sources.

1992. Common law jurisdictions that generally prohibit hearsay exempt business records from the prohibition.⁴²⁹¹ This is because business records created in the usual course of business are deemed to have the necessary indicia of reliability and as these records are considered an exception, courts do not require the original record maker to testify as to the document's authenticity.

1993. The Trial Chamber recognises that records produced for the purpose of litigation may be extracted in response to an investigation and that it may be appropriate in some circumstances to treat the two differently. It is true that, if records are created for the purpose of litigation, the record maker is more likely to be available to testify about the provenance of information within the record and its reliability. Here, however, the evidence to which the Parties refer as records produced for the purpose of litigation is not substantively different from the underlying call data records and cell site data from which they were derived or extracted. Rather it is merely re-formatted for ease of presentation in court.

1994. The Trial Chamber was presented with sufficient evidence to conclude that most of the evidence contained in the telecommunication witnesses' statements and accompanying annexes derives from Alfa's and Touch's business records that were produced in the normal course of business, and had not been created for the purpose of litigation. Even if prepared for the purpose of litigation in the widest sense, namely, being extracted from their databases and provided to investigatory authorities such as the UNHCR and the Office of the Prosecutor, the Trial Chamber

⁴²⁹¹ For example, in Canada: *Canada Evidence Act* (R.S.C., 1985, c. C-5), s. 30. In Australia: *Evidence Act 1995*, s. 69. In the UK: *Criminal Justice Act 2003*, s. 117. In the US: *Federal Rules of Evidence 2015*, Rule 803 (6). See also for example, *Wilcox and others* Nova Scotia Court of Appeal reasons for judgment, para. 53; *Forbes* Federal Court of Australia reasons for judgment, paras 100, 102; *Horncastle and others* UK Supreme Court judgment, para. 35.

still considers that the call data records and cell site evidence provided by Alfa and Touch constitute a form of corporate business records.

1995. Alfa and Touch employees extracted and prepared this information and data. Their only ostensible interest was to record as accurately as possible matters relating to the business. This diminishes the potential for misrepresentation and fabrication and for third parties to manufacture the data so that it contains a ‘favourable’ version.

1996. Regarding the call sequence tables, the Trial Chamber received extensive evidence from Prosecution analysts and investigators who produced the call sequence tables of the methodology and the built-in internal checks and balances; this included reviewing every call sequence table. The Trial Chamber is satisfied of the reliability of the tables as derivative evidence representing the underlying data. The Defence cast no real doubt on any of the call sequence tables, and, of significance, Defence counsel also produced their own call sequence tables—using the same underlying call data records—and tendered them into evidence in support of their own cases.

1997. The Trial Chamber is accordingly satisfied that the call sequence tables produced by both Prosecution and Defence are reliable representations of the data in the underlying call data records. The Trial Chamber may therefore rely upon these tables as accurate extracts of the call data records.

1998. In light of this and based on the totality of the evidence and having considered the Defence challenges, the Trial Chamber is satisfied that the call data records and cell site data provided by Alfa and Touch essentially constitute business records created in the normal course of business. They therefore possess the necessary reliability and are probative. The Trial Chamber accordingly may rely on them in analysing the relevant mobiles’ locations and movements.

(b) Alfa’s call data records and cell site data

1999. Witness 707 gave thorough and detailed testimony on the generation of Alfa’s call data records. The Trial Chamber highlights his evidence that call data records are automatically generated at the MSCs, and that up to and including the mediation process, there is no human input or any other possibility to alter these records.

2000. In a schematic, the witness clarified how call data records are processed for use in billing.⁴²⁹² He confirmed that Alfa's MSCs were the only source for the call data records provided to the Prosecution. He gave detailed evidence on Alfa's storage of call data records, including its storage of magnetic tapes, the archiving in the billing system.

2001. The Trial Chamber has carefully reviewed the Alfa coverage maps provided to the UNIIIC in 2005 and the other in 2007, the two sets of Alfa predictive coverage shape files provided to the Prosecution in 2010 and 2013 and the several lists of basic cell information.

2002. Witness 707 gave extensive and detailed evidence on the cell site data provided by Alfa to the UNIIIC and the Prosecution, including on how the materials are used in Alfa's business operations, the procedure and inputs used to generate the shape files, the planning tool used and the company's personnel tasked to produce shape files. The Trial Chamber considered his evidence on the recording of basic cell information and which values can still be verified, as well as on the evolution of the storage methods of basic cell information at Alfa. The witness reiterated that, within the period relevant to the case, the changes to an antenna orientation over time, including the values of azimuth and tilt, were insignificant and infrequent and would only occur in specific instances.

2003. Alfa started to organise and centralise record keeping in 2014 because, as Witness 707 explained, no practice for centrally storing cell site data existed in 2004 and 2005. Nor was Alfa legally required to do so.

2004. Apparently, the approximation or 'reverse engineering' method that Alfa used to produce the predicted best coverage for the years for which it had no database was the only method it could use to replicate and provide the requested cell site data to the Prosecution. As opposed to Alfa's replicated cell site data, its drive tests conducted for network optimisation are by their nature irregular and fragmented. The Trial Chamber therefore rejects the Sabra Defence suggestion that the Prosecution failed to rely on the available, though limited, results of Alfa drive tests.

2005. The Trial Chamber also rejects the Oneissi Defence and the Merhi Defence arguments that Witness 707 could not confirm the accuracy of the two sets of cell site data that Alfa provided to

⁴²⁹² Exhibit P773.

the Prosecution in 2010 and 2013, or describe how they were produced, and that Alfa did not keep records on the origin of that data.

2006. In assessing the weight to be given to these sources for the Alfa coverage maps, the Trial Chamber has taken into account the reliability of the approximation method Alfa used to create this data in the absence of contemporaneous data for 2004 and 2005. The Trial Chamber is of the view that these sets of data have evidential weight and merit consideration where relevant; however, it has exercised caution in attributing weight. In addition, in its findings on mobiles' general locations and movements, the Trial Chamber has borne in mind the Defence challenges to both the credibility and reliability of this data.

2007. As for the Oneissi Defence's argument on reconsideration—that the Trial Chamber should reconsider its 'erroneous' decision to admit the 2010 and 2007 azimuth and coordinate information in exhibits P775 and P778 as business records⁴²⁹³—counsel did not submit a discrete application for reconsideration. This of itself would be sufficient reason to dismiss the 'application'. However, it also fails because the Trial Chamber could not find any substantiated reasons demonstrating a clear error of reasoning or the need to reconsider its decision to prevent an injustice.

(c) Accuracy of maps

2008. A major question is to what extent the Trial Chamber can rely on the theoretical coverage maps provided by Alfa and Touch considering that they reflect, based on Witness 707's estimation, only 60 to 70 per cent of the actual coverage in 2004 and 2005. According to the Prosecution, the impact of the inherent inaccuracy of these maps is that a mobile at the time of a communication is placed in a larger geographic area. Furthermore, the Prosecution case does not require the predicted coverage maps to be of any higher accuracy for the Trial Chamber to determine the approximate, general location or movement of a mobile.

2009. The Trial Chamber accepts that the 60 to 70 per cent accuracy of the Alfa prediction maps affects the reliability of the cell site analysis and the electronic presentation of evidence on which the Trial Chamber relied to determine the approximate location and movements of the mobiles relevant to the Prosecution case. The Trial Chamber, however, notes Mr Philips's evidence that

⁴²⁹³ Oneissi Defence final trial brief, paras 54-56.

this margin of error affects the borders or edges of a cell sector and not the central part of the coverage. Additionally, Witness 707's evidence was that, if the edges are removed from the predicted coverage plot—amounting to the outer ten per cent of the shape file—the accuracy for the remaining plot increases and largely reflects the real coverage on the ground.

2010. Nevertheless, considering the importance of Alfa's prediction coverage maps as a key element of the Prosecution's telecommunications evidence, for each finding relating to a mobile's approximate, general location or movement, the Trial Chamber has applied caution by considering the inherent 60 to 70 per cent accuracy of the Alfa prediction maps, the non-contemporaneous nature of some of the basic cell data and the approximation method used to reconstruct it.

2011. At the same time, however, the Trial Chamber has also considered Mr Philips's evidence that to determine a mobile's location and movements, a cell site analyst does not require more than cell site coordinates, alone or combined with azimuth values. As an expert in cell site analysis, he characterised Alfa's and Touch's best server plots as an additional tool that a cell site analyst could use to supplement the available cell site coordinates, to determine a mobile's approximate location and movements.

2012. As to the clutter model used to create Alfa's coverage maps, the Trial Chamber has borne in mind that, according to Mr Philips and Witness 707, while Aircom's Asset clutter model was not contemporaneous with the period relevant to the Prosecution case, the changes in topography over the years—including those resulting from Israel's attacks on Lebanon in 2006—can affect the coverage maps but not in a significant or radical way. This is equally applicable to the clutter model used to create Touch's coverage maps.

(d) Touch call data records and cell site data

2013. The Trial Chamber highlights the varying weight it gave the cell site evidence from Alfa and Touch based on the sources and methods used to generate this data. Namely, the Trial Chamber has given more weight to the data from the 2004 and 2005 snapshots that Touch made of its contemporaneous database and the coverage maps based on this data. This is in contrast to the diminished weight it has given to Alfa's equivalent evidence, such as the 2007 and 2010 azimuth and coordinate data, in exhibits P775 and P778.

2014. The Trial Chamber has carefully reviewed the two sets of 2004 predictive coverage shape files and basic cell information Touch provided to the Prosecution in 2010, accompanied by detailed explanatory documents. It has also considered that Witness 705 confirmed and commented on this data. As to the reliability of Touch shape files, unlike Alfa, Touch kept the contemporaneous coverage maps for all its cell sites on air in 2004 and 2005 and provided them to the UNIIIC and the Prosecution. The Trial Chamber has also reviewed the contemporaneous cell site data for 2004 and 2005 and the results of the drive testing Touch carried out between 2005 and 2007.

2015. The Trial Chamber has also carefully considered Witness 705's evidence on Touch automatically generating call data records as its business records. The Touch records were similarly created inside the MSC in a format that cannot be altered. The flow of call data records to mediation from the MSC is also fully automated. Of relevance is Witness 705's explanation that, throughout the mediation process, the company does not add or delete any MSC-generated records and fields of the call data records.

2016. Witness 705 testified on the production of the Touch predictive coverage maps and the generation of the shape files, including the inputs required and the procedure of calibrating a propagation model. The Trial Chamber has carefully considered his evidence on the accuracy of shape files and Touch's practice of exporting the site database on a regular basis.

2017. The Trial Chamber is not convinced by the Ayyash Defence's submission that Witness 705's lack of personal knowledge about the procedure and devices Touch used in 2004 and 2005 to generate the data it provided to the Prosecution impacts the reliability of the evidence. In the Trial Chamber's view, the witness had sufficient corporate and industry experience to testify as to the accuracy of the data, based on the information that he had.

2018. The telecommunications data consists of contemporaneous business records produced by Touch in the normal course of business. In the Trial Chamber's view, after carefully considering the totality of the evidence and the submissions, it has the necessary probative value required to be used to determine the general locations and movements of the mobiles relevant to the Prosecution case.

H. Electronic presentation of evidence (EPE)

1. Summary of evidence

2019. The electronic presentation of evidence is a tool developed by the Prosecution to visually represent telecommunications and geographic evidence from a desktop computer.⁴²⁹⁴ It displays particular locations and routes, in addition to the approximate locations from which various calls were made at specific times.⁴²⁹⁵ Its main function is to bring together mobile call information and geographic evidence and to visually display it in an accessible, reliable and efficient manner.⁴²⁹⁶

2020. The electronic presentation of evidence was built by professional software developers at the Prosecution's request.⁴²⁹⁷ A Prosecution analyst, Mr Andrew Fahey, was in charge of its development. From 2012, he managed the project team that developed this software.⁴²⁹⁸

2021. Mr Fahey testified to its development and demonstrated its functionalities.⁴²⁹⁹ He used telecommunications data provided to the Prosecution by Alfa and Touch;⁴³⁰⁰ maps from, for example, the 2010 edition of the Zawarib Beirut Atlas;⁴³⁰¹ and information from witness testimonies to plot that evidence on the electronic maps used with the software.⁴³⁰² For instance, he referred to the testimony of an officer in Mr Hariri's security team, who described the convoy's route from Quraitem Palace to the Sacred Heart Church on the morning of 14 February 2005.⁴³⁰³

⁴²⁹⁴ Exhibit P595 (Witness Statement of Andrew Fahey of 14 August 2015), para. 8; Andrew Fahey, T. 16 September 2015, pp 23-24.

⁴²⁹⁵ Andrew Fahey, T. 16 September 2015, pp 30-31.

⁴²⁹⁶ Exhibit P595 (Witness Statement of Andrew Fahey of 14 August 2015), para. 12.

⁴²⁹⁷ Andrew Fahey, T. 17 September 2015, p. 38. The electronic presentation of evidence itself was received into evidence as exhibit P592.1.

⁴²⁹⁸ Andrew Fahey, T. 16 September 2015, p. 23.

⁴²⁹⁹ Andrew Fahey, T. 16 September 2015, T. 17 September 2015, T. 27 October 2015.

⁴³⁰⁰ Andrew Fahey, T. 8 September 2016, p. 7.

⁴³⁰¹ Exhibit P298 (Zawarib Greater Beirut Atlas).

⁴³⁰² Andrew Fahey, T. 14 September 2016, p. 90, T. 15 September 2016, p. 7, T. 16 September 2015, p. 30; exhibit P663 (Witness Statement of Andrew Fahey), para. 18.

⁴³⁰³ Witness PRH101, T. 5 October 2016; Andrew Fahey, T. 16 September 2015, p. 30.

2022. Mr Fahey described how he combined the maps from the Lebanese Land Registry and the GeoVision⁴³⁰⁴ street map. He explained how he converted geographic coordinates from the Lebanese Land Registry system to GeoVision to enable comparison of the geographic data.⁴³⁰⁵

2023. The database uploaded into the electronic presentation of evidence has five categories of evidence stored on the Special Tribunal's Registry's server.⁴³⁰⁶ The first category is the mapping information, the map of Lebanon from GeoVision data.⁴³⁰⁷ The second is the landmark information described by Mr Fahey as 'points of interest and routes that exist within the country'. The third is locations and orientations of cell masts and cell sites.⁴³⁰⁸ The fourth is mobile call information retrieved from call sequence tables, and the fifth is attribution-related information—linking the mobile numbers to certain names, as in the amended consolidated indictment.⁴³⁰⁹ Below is an excerpt from exhibit P1120⁴³¹⁰ showing the primary and secondary sources of Touch's and Alfa's cell site data, referred to above at paragraphs 1863-1947, used in the electronic presentation of evidence:

	Coordinates	Azimuths	Coverage	Cell Identity Codes
Primary source	Feb 2004 MTC Touch coverage maps with tower locations and azimuths	Feb 2004 MTC Touch coverage maps with tower locations and azimuths	Feb 2004 MTC Touch coverage maps with tower locations and azimuths	Feb 2004 MTC Touch coverage maps with tower locations and azimuths
	R91-100028, ERN 60182385	R91-100028, ERN 60182385	R91-100028, ERN 60182385	R91-100028, ERN 60182385
Secondary source	Exhibit P813 15 Feb 2005 Excel worksheet with tower locations, azimuths and ID codes	Exhibit P813 15 Feb 2005 Excel worksheet with tower locations, azimuths and ID codes		Exhibit P813 15 Feb 2005 Excel worksheet with tower locations, azimuths and ID codes
	ERN D0321890-D0322178, at D0322120-D0322147	ERN D0321890-D0322178, at D0322120-D0322147		ERN D0321890-D0322178, at D0322120-D0322147

⁴³⁰⁴ GeoVision is a company based in Lebanon that develops maps and other data for commercial purposes of the Geographic Information System designed to capture, store, manipulate, analyse, manage and present spatial or geographic data. Andrew Fahey, T. 16 September 2015, p. 25; exhibit 4D275 (Letter from GeoVision S.A.L. on the Methodology Used when Preparing Electronic Mapping Data), p. 4.

⁴³⁰⁵ Andrew Fahey, T. 27 October 2015, pp 50-54.

⁴³⁰⁶ Andrew Fahey, T. 16 September 2015, p. 24.

⁴³⁰⁷ Andrew Fahey, T. 16 September 2015, p. 24; exhibit P595 (Witness Statement of Andrew Fahey of 14 August 2015), para. 12. The map was admitted as exhibit P548 (Map of Lebanon from Geovision S.A.L.).

⁴³⁰⁸ Andrew Fahey, T. 16 September 2015, p. 24; exhibit P595 (Witness Statement of Andrew Fahey of 14 August 2015), para. 12.

⁴³⁰⁹ Andrew Fahey, T. 16 September 2015, pp 9, 24; exhibit P595 (Witness Statement of Andrew Fahey of 14 August 2015), para. 12.

⁴³¹⁰ P1120 (Summary of Cell Site Evidence used in the EPE).

	Coordinates	Azimuths	Coverage	Cell Identity Codes
Primary source	Exhibit P775 MFI Excel spreadsheet titled "2005" reflecting 2004/2005 coordinates Received 2010 ERN D0484089-D0484108	Exhibit P775 MFI Excel spreadsheet titled "2005" but reflecting 2010 azimuths Received 2010 ERN D0484089-D0484108	Coverage maps reconstituted for the end of 2005 (DVD containing Alfa cell coverage information, subfolder titled "Service_Block_Specific\2005") Received 2010 R91-100027, ERN 60174550	Exhibit P799 File titled "sites_Req49.txt" for 2005 Received 2005 ERN D0484132-D0484150
Secondary source	Exhibit P778 MFI Excel spreadsheet titled "alfa 02-2005.xls" reflecting 2004/2005 coordinates Received 2007 ERN D0484056-D0484084	Exhibit P778 MFI Excel spreadsheet titled "alfa 02-2005.xls" but reflecting 2007 azimuths Received 2007 ERN D0484056-D0484084	Coverage maps reconstituted based on 2004/2005 coordinates (ArcGIS files titled "2013-RFA0006-LEB-JOB\3a\cell-coverage-july-2005") Received 2013 R91-804315, ERN 60279410	Exhibit P780 MFI Excel spreadsheet titled "Security Main.xls" Received 2010 ERN D0429118-D0429137

Summary of cell site evidence from Alfa and Touch used in the electronic presentation of evidence - exhibit P1120, pp 1-2

2024. Mr Fahey demonstrated how different parameters of the evidence can be chosen and shown in the electronic presentation of evidence. For example, the location of the cell site masts can be shown on the map.⁴³¹¹ In another example, he demonstrated how different routes, such as those taken by Mr Hariiri's security convoy, may be highlighted on the map.⁴³¹² The uploaded information can be displayed with long or short labels, where the long labels include, for instance, a full name of a geographic location and a short label displays only an acronym.⁴³¹³ The electronic presentation of evidence also features editing and adding new information functions.⁴³¹⁴

2025. Mr Fahey used an 'EPE demonstration call list' to elaborate on the telecommunications data uploaded and used in the electronic presentation of evidence.⁴³¹⁵ The list consists of the dialing number, replaced in the electronic presentation of evidence with the name of the person to whom the Prosecution attributed the mobile; the date and time of the call; the dialing cell site; the call type; and the call's duration. The same type of information is provided for the recipient and the number is substituted with the name of the person receiving the call.⁴³¹⁶

2026. An additional function allows snapshots of what was shown on the screen during testimony. Each snapshot used during witnesses' testimonies was given an exhibit number and

⁴³¹¹ Andrew Fahey, T. 16 September 2015, p. 33; exhibit P595 (Witness Statement of Andrew Fahey of 14 August 2015), para. 24.

⁴³¹² Andrew Fahey, T. 16 September 2015, p. 30.

⁴³¹³ Andrew Fahey, T. 16 September 2015, p. 28.

⁴³¹⁴ Andrew Fahey, T. 17 September 2015, pp 24-25.

⁴³¹⁵ Exhibit P593 ('EPE demonstration call list' dated 12 February 2005).

⁴³¹⁶ Andrew Fahey, T. 16 September 2015, pp 43-44.

saved on the Registry's server to allow the Parties' access to them.⁴³¹⁷ Each Party had access to the electronic presentation of evidence and could conduct checks before or after it was used in the courtroom.⁴³¹⁸

2027. Additional information about every snapshot was also made available in the database. For instance, the date and time of taking it, as well as the name of the person who was operating the electronic presentation of evidence when the snapshot was taken.⁴³¹⁹ For illustration purposes, Mr Fahey used snapshots—including the two shown below—to demonstrate the database's features and functions.⁴³²⁰ He used them to illustrate a 'demonstration call list' for mobile Red 652 dated 12 February 2005.⁴³²¹

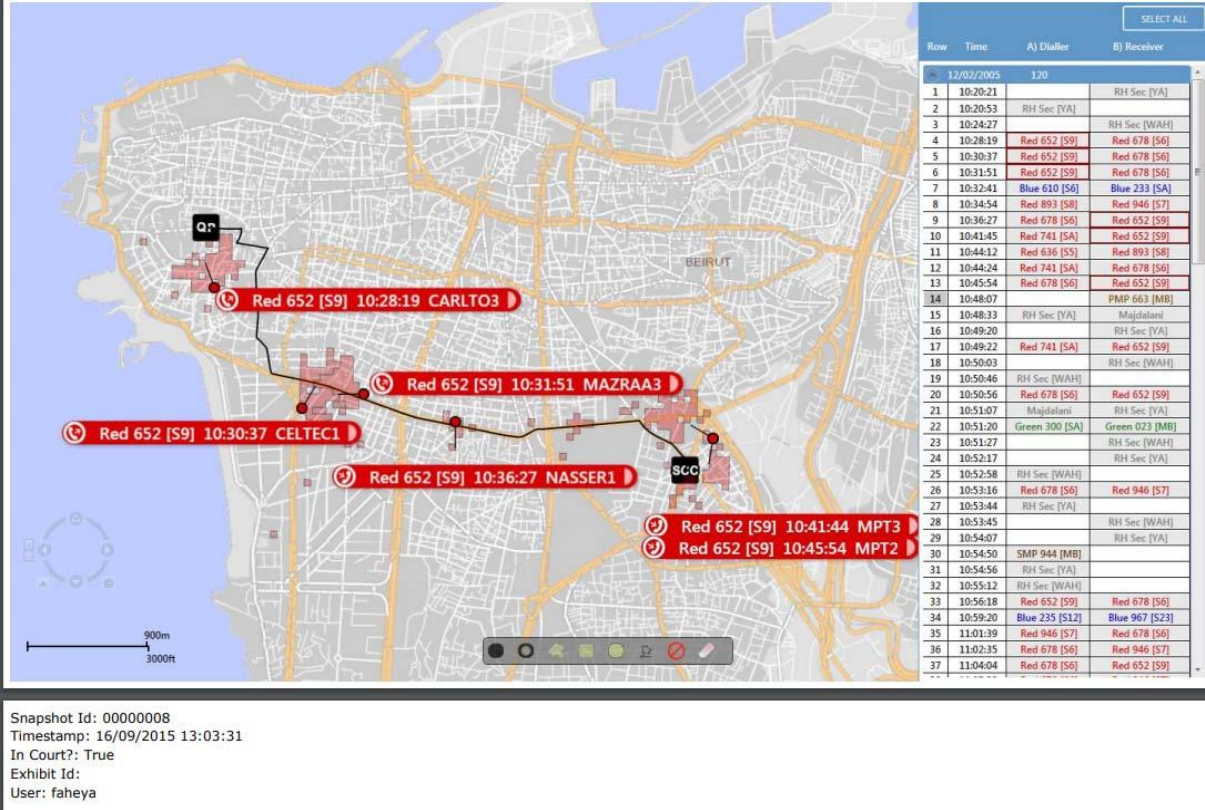
⁴³¹⁷ Andrew Fahey, T. 16 September 2015, pp 25, 103; exhibit P595 (Witness Statement of Andrew Fahey of 14 August 2015), para. 36. *See also* examples of electronic presentation of evidence snapshots at exhibits P593.1 (Snapshots 1st session 16 Sep 2015: ID 1 to 4 - Call List for 12 February 2004: EPE Demonstration), P593.2 (Snapshots 2nd session 16 September 2015: ID 5 to 10 – Call list for 12 February 2005: Electronic presentation of evidence Demonstration) and P593.3 (Snapshots 3rd session 16 Sep 2015: ID 11 to 16 - Call List for 12 February 2004: EPE Demonstration).

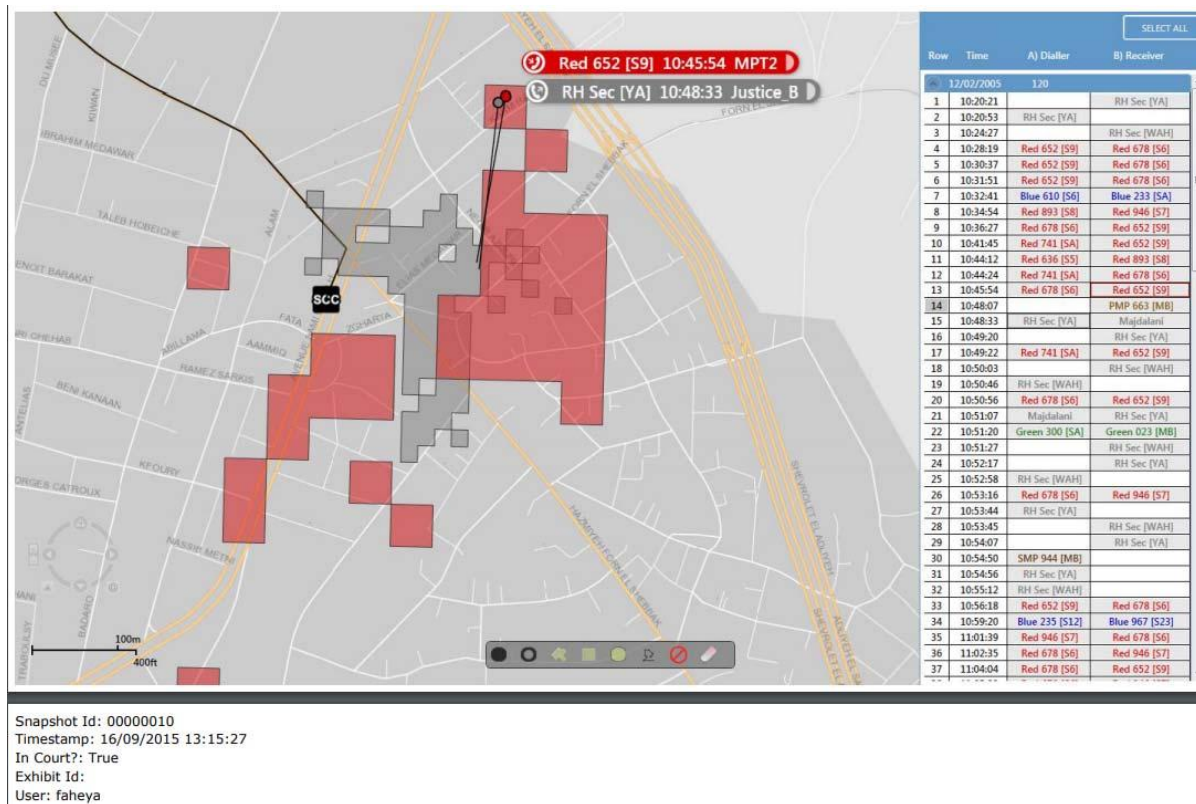
⁴³¹⁸ Andrew Fahey, T. 17 September 2015, pp 3-4.

⁴³¹⁹ Exhibit P595 (Witness Statement of Andrew Fahey of 14 August 2015), para. 36.

⁴³²⁰ Exhibit P593.2.

⁴³²¹ Andrew Fahey, T. 16 September 2015, pp 55-58, 65-68.





Two snapshots used by Mr Fahey to demonstrate in court the electronic presentation of evidence's functions, namely a 'demonstration call list' for Red 652 on 12 February 2005 – exhibit P593.2 (Snapshots 2nd session 16 September 2015: ID 5 to 10 – Call list for 12 February 2005: Electronic presentation of evidence Demonstration)

2028. Mr Fahey also outlined the steps taken to ensure quality control.⁴³²² He elaborated on what was done to ensure that the software correctly represented the proposed evidence stored in the databases. He was continually testing the software with his colleague from the Prosecution's electronic presentation of evidence development team. Further, a core group of users familiar with the information used in the electronic presentation of evidence checked the underlying information against what was displayed on the screen. Additionally, Mr Fahey anticipated that the witnesses would also use the electronic presentation of evidence maps and verify them.⁴³²³

⁴³²² Andrew Fahey, T. 17 September 2015, pp 2-8.

⁴³²³ Andrew Fahey, T. 17 September 2015, p. 3.

2029. Prosecution analyst Mr Andrew Donaldson testified that he ‘manually went through and paired over 40,000 rows of data from different sources’⁴³²⁴ in the early stages of the work on the system.⁴³²⁵ To create coverage maps, Prosecution investigator Mr Gary Platt also used the mapping system later used for the electronic presentation of evidence ‘on a daily basis’.⁴³²⁶

2. Submissions

(a) Prosecution

2030. The Prosecution submits that the data related to the cell mast locations and cell mast operations used in the electronic presentation of evidence was contemporaneous to the indictment period.⁴³²⁷

2031. The Prosecution underlines that the maps used in the system come from Alfa’s and Touch’s shape files.⁴³²⁸ Although they are not entirely contemporaneous with the time of the attack, they are a reliable representation of the period as both networks were stable over the relevant time. Hence, there were no significant alterations in the predicted best server coverage. Further, the comparison of Alfa’s and Touch’s data demonstrates a ‘high degree of consistency’.⁴³²⁹

(b) Defence

i. Common submissions

2032. The Ayyash, Oneissi and Sabra Defence submit that Mr Fahey lacked the required experience, expertise and qualifications, and he did not consult with any cell site analyst or cellular network employee to confirm the method he used to combine sources of information from different years or the feasibility of doing so. Mr Fahey’s testimony should not be given any weight because his analysis is inconclusive due to his inability to conduct a comparative analysis on the information provided by Alfa and Touch.⁴³³⁰

⁴³²⁴ Andrew Donaldson, T. 21 July 2015, p. 93.

⁴³²⁵ Andrew Donaldson, T. 21 July 2015, p. 94.

⁴³²⁶ Gary Platt, T. 14 April 2016, p. 60.

⁴³²⁷ Prosecution final trial brief, fn. 83.

⁴³²⁸ Prosecution closing submissions, T. 11 September 2018, pp 61-62.

⁴³²⁹ Prosecution final trial brief, paras 65-67; Prosecution closing submissions, T. 11 September 2018, p. 62.

⁴³³⁰ Ayyash Defence final trial brief, paras 254-255; Sabra Defence final trial brief, para. 160; Oneissi Defence final trial brief, para. 105. The Ayyash Defence refers to its cross-examination of Mr Fahey and the various percentages of

ii. Ayyash Defence

2033. The Ayyash Defence argues that the cell site analysis using the electronic presentation of evidence cannot determine whether a mobile is close to the cell site, at the outside edge of a predicted coverage plot or even outside the predicted best server coverage areas due to congestion and interferences, but still within usable coverage. The discussions on the ‘core’ of a predicted coverage area as opposed to its boundaries, which do not exist in reality, are therefore irrelevant.⁴³³¹

2034. Mr Fahey created composite coverage maps for Touch and Alfa combining a number of materials into a single file. The maps are insufficiently accurate representations of coverage at any time and especially in 2004 and 2005.⁴³³²

2035. The Prosecution compounded the companies’ errors by combining data from different sources without confirming the accuracy of the data and without taking into consideration ‘knock-on effects that changes to the data would have on surrounding cells’.⁴³³³ The Prosecution atlas showing 432 Alfa and Touch cell sites relevant to its case⁴³³⁴ and the index of Alfa and Touch cell details used in the electronic presentation of evidence,⁴³³⁵ are manifestly inadequate to depict the knock-on effects that changes to a site will have on the network.⁴³³⁶ There is no way of reconstructing the coverage as it was at the relevant time.⁴³³⁷ Hence, if the underlying evidence is already unreliable, additional work conducted on the telecommunications evidence does not change its unreliability.⁴³³⁸

2036. The Ayyash Defence submits that the Prosecution relied on predicted coverage maps and cell site information applicable in February 2005, while the mobile activity in the Prosecution case covers 2002 to 2006. The new buildings and destruction during the 2006 war, which would have

overlap that could be found depending on different counting methodologies, Andrew Fahey, T. 14 September 2016, pp 47-67.

⁴³³¹ Ayyash Defence final trial brief, para. 199.

⁴³³² Ayyash Defence final trial brief, para. 254.

⁴³³³ Ayyash Defence final trial brief, paras 194, 258.

⁴³³⁴ Exhibit P1152 (Atlas of relevant cell sectors). The source materials on which the Prosecution relied to produce the atlas are dated 2004, 2005, 2007 and 2010. *See also* exhibit P1152 (annex B), p. 35.

⁴³³⁵ Exhibit P1121 (Index of cell details used in the electronic presentation of evidence).

⁴³³⁶ Ayyash Defence final trial brief, paras 261-262.

⁴³³⁷ Ayyash Defence final trial brief, para. 254.

⁴³³⁸ Ayyash Defence final trial brief, para. 257.

altered the predicted coverage, were not taken into account.⁴³³⁹ Mr Philips, Mr Platt and Mr Donaldson used the map for the period outside of February 2005 and the Trial Chamber received into evidence slides using this map.⁴³⁴⁰ The Prosecution's maps and the index of Alfa's and Touch's cell details used in the electronic presentation of evidence should not be given any weight.⁴³⁴¹

2037. Finally, the Ayyash Defence submits that in his testimony Mr Fahey presented no standard of methodology for his work. Mr Fahey, when assessing one of the plots, found that it 'coincided well', but conceded that there was no standard against which this was being measured beyond a visual examination and approximately 50 per cent overlap indication was a 'good match'.⁴³⁴² As this shows Mr Fahey's lack of experience, the Trial Chamber should not give his work any evidentiary weight.⁴³⁴³

iii. Merhi Defence

2038. The Merhi Defence states that as the data underlying the maps is 'incomplete or totally unknown' for 2004 and 2005, the electronic presentation of evidence relies on imprecise data.⁴³⁴⁴ Mr Fahey disregarded the inconsistencies between the azimuths received in 2007 and those received in 2010 when the data was integrated into the database.⁴³⁴⁵ Hence, no weight should be given to the electronic presentation of evidence maps and Mr Platt's slides on which he relied in his testimony.⁴³⁴⁶

2039. The Merhi Defence submits that as Alfa did not provide all of the 2010 coverage maps, the electronic presentation of evidence contains only about 78 per cent of Alfa's cell sectors. Further, out of the coverage maps provided by Alfa, Mr Fahey compared less than six per cent of the maps. The results of the comparison are therefore not sufficient to state that the coverage maps reflect

⁴³³⁹ Ayyash Defence final trial brief, para. 259.

⁴³⁴⁰ Ayyash Defence final trial brief, para. 260; Ayyash Defence closing submissions, T. 17 September 2018, p. 71.

⁴³⁴¹ Ayyash Defence final trial brief, para. 262.

⁴³⁴² Ayyash Defence final trial brief, para. 255.

⁴³⁴³ Ayyash Defence final trial brief, para. 255; Ayyash Defence closing submissions, T. 17 September 2018, p. 65.

⁴³⁴⁴ Merhi Defence final trial brief, paras 87, 104, 133.

⁴³⁴⁵ Merhi Defence final trial brief, paras 90, 105.

⁴³⁴⁶ Merhi Defence final trial brief, paras 87, 92.

the situation in 2005. Consequently, they cannot be probative for drawing inferences regarding the Accused's movements.⁴³⁴⁷

2040. The Prosecution intentionally did not discuss in its final trial brief the evidential weight of the database-generated maps or attempt to defend the electronic presentation of evidence program itself.⁴³⁴⁸

iv. Oneissi Defence

2041. The Oneissi Defence submits that even if the Trial Chamber finds that the underlying Alfa data is sufficiently reliable, the depiction in the electronic presentation of evidence 'cannot reasonably be found to reflect the Alfa network as it was in 2004-2005'. The electronic presentation of evidence demonstrated a product of 'no less than ten sources of data'. Further, 'for all four types of cell site information, the primary sources of data were either incomplete or inconsistent with the secondary source'.⁴³⁴⁹

2042. Mr Fahey suggested in his testimony that there was partial overlap between the coverage of specific cell sites when the depiction in the exhibit titled 'Alfa coverage maps of various areas in Beirut'⁴³⁵⁰ and the exhibit titled 'DVD containing Alfa cell tower information for 2005, 2007 and 2010'⁴³⁵¹ were compared. In fact, the coverage was significantly different and coincided only slightly.⁴³⁵² Also, he used the Alfa coverage maps received in July 2015⁴³⁵³ for the purposes for which they were not meant, namely because they were lower in quality than those Mr Platt used in the UK and did not show signal strength, and few cell sites on the map were labeled.⁴³⁵⁴

2043. The Oneissi Defence argues that Mr Fahey lacked the expertise to comment 'on the quality or the level of agreement as regards coverage plots' while comparing what was shown in the electronic presentation of evidence and in the exhibit 'Alfa coverage maps of various areas in Beirut'.⁴³⁵⁵ It further argues that the choice of the 63 cells for comparison was too small to draw

⁴³⁴⁷ Merhi Defence final trial brief, paras 95-97.

⁴³⁴⁸ Merhi Defence final trial brief, para. 98.

⁴³⁴⁹ Oneissi Defence final trial brief, paras 98-100, 157.

⁴³⁵⁰ Exhibit 2D73 (Alfa coverage maps of various areas in Beirut).

⁴³⁵¹ Exhibit P1123 (ArcView shape files Alfa).

⁴³⁵² Oneissi Defence final trial brief, paras 92, 109, 115.

⁴³⁵³ Exhibit 2D73.

⁴³⁵⁴ Oneissi Defence final trial brief, para. 111.

⁴³⁵⁵ Oneissi Defence final trial brief, para. 112.

conclusions.⁴³⁵⁶ Also, the sample was supposed to involve cells relevant to the case, while in fact some were omitted.⁴³⁵⁷

2044. With respect to the cell site BNPI3—located south of Parliament, adjacent and very close to the tree near the Al-Jazeera office with the video tape containing the claim of responsibility for the attack—Mr Fahey was unable to compare the theoretical coverage in the electronic presentation of evidence with that in the exhibit ‘Alfa coverage maps of various areas in Beirut’. He chose the 2010 azimuth values for use in the electronic presentation of evidence, despite the 2005 data being more contemporaneous.⁴³⁵⁸ The Oneissi Defence submits that the choice was made because that value would possibly offer coverage more suiting the Prosecution’s submissions.⁴³⁵⁹

2045. Mr Fahey also reached conclusions that actually fall within the Trial Chamber’s fact-finding function in stating that the electronic presentation of evidence represented ‘to a very large degree’ the 2004 and 2005 Alfa network.⁴³⁶⁰ Also, his work was ‘arbitrary and unscientific’.⁴³⁶¹ Additionally, the Oneissi Defence submitted that Mr Fahey does not have experience in analysing call data records and other cell site evidence.⁴³⁶² Yet, despite this, he also discussed issues such as the installation or removal of cell sites on neighboring cell sites.⁴³⁶³ Mr Fahey’s opinions regarding the Alfa cell site information should be ‘disregarded’.⁴³⁶⁴

2046. Mr Fahey demonstrated ‘subjective interpretation of coincidence’ between coverage plots and ‘allowed for arbitrary margins of error’.⁴³⁶⁵

2047. Further, Mr Fahey is ‘professionally invested in the success of the EPE’. The Oneissi Defence highlights that the Trial Chamber must exercise caution as the ‘conflict of interest is manifest’.⁴³⁶⁶ The electronic presentation of evidence was designed by the Prosecution and hence

⁴³⁵⁶ Oneissi Defence final trial brief, para. 112; Oneissi Defence closing submissions, T. 19 September 2018, p. 95.

⁴³⁵⁷ Oneissi Defence final trial brief, para. 113.

⁴³⁵⁸ Oneissi Defence final trial brief, para. 586.

⁴³⁵⁹ Oneissi Defence closing submissions, T. 19 September 2018, pp 91-92.

⁴³⁶⁰ Oneissi Defence final trial brief, paras 92, 106.

⁴³⁶¹ Oneissi Defence final trial brief, para. 114.

⁴³⁶² Oneissi Defence final trial brief, paras 93, 157.

⁴³⁶³ Oneissi Defence final trial brief, para. 97.

⁴³⁶⁴ Oneissi Defence final trial brief, para. 93.

⁴³⁶⁵ Oneissi Defence final trial brief, paras 114, 116.

⁴³⁶⁶ Oneissi Defence final trial brief, para. 94.

the witnesses testifying on it were prejudiced.⁴³⁶⁷ Moreover, the GeoVision maps used in the electronic presentation of evidence were imprecise and they reflect only ‘medium precision’ with regard to geographic coordinates.⁴³⁶⁸

2048. Mr Fahey analysed a document which compared the coverage maps of Lebanon obtained from Alfa in 2005 with the corresponding azimuths and cell site coordinates received in 2007 and 2010⁴³⁶⁹ and confirmed that it showed a consistency of 99 per cent for mast locations and 97 per cent for azimuth directions.⁴³⁷⁰

2049. As the almost complete lack of labeling of the cell sites on the electronic presentation of evidence maps made it impossible to know which cell sites correspond to those in exhibit 2D73, Mr Fahey merely assumed that because a cell site appeared to be in the same location it was the same cell site.⁴³⁷¹

2050. The Prosecution did not know the azimuth, height and tilt of the antennas in 2005 and Mr Fahey used software, which corresponded to the urbanisation of Beirut in 2010.⁴³⁷²

v. Sabra Defence

2051. The Sabra Defence argued that Mr Fahey is not a cell site engineer or analyst and that he does not have experience in the production of coverage maps. Further, he could not assess and consider the knock-on impact that his theoretical combining of different sets of data would have in terms of signal across the network in reality.⁴³⁷³ Mr Fahey’s methodology was ‘flawed, incomplete and poorly explained’ and the maps he produced should be given no weight.⁴³⁷⁴

⁴³⁶⁷ Oneissi Defence final trial brief, para. 94; Oneissi Defence closing submissions, T. 19 September 2018, p. 34.

⁴³⁶⁸ Oneissi Defence final trial brief, para. 104.

⁴³⁶⁹ Exhibit 2D73. This document was prepared for demonstrative purposes and was not used in the electronic presentation of evidence, Witness PRH707, T. 16 February 2016, pp 53-68; Andrew Fahey, T. 8 September 2016, pp 48-61. *See also* exhibit P775 (Excel spreadsheet with mast and azimuth information, mast locations and azimuth orientations, Annex 14 (2) to Witness PRH707’s statement of 11 November 2015); exhibit P778 (Cell Tower Information as provided by Alfa including Site co-ordinates in Eastings / Northings - Sector Azimuth - Tower type); exhibit P779 (Maps showing Alfa Cell Sites February 2005); exhibit P1127 (Examples of Coordinates and Azimuth Comparisons undertaken by Andrew Fahey); exhibit 1128 (Maps illustrating possible differences between records regarding location of masts).

⁴³⁷⁰ Andrew Fahey, T. 8 September 2016, pp 16, 59.

⁴³⁷¹ Oneissi Defence final trial brief, para. 111.

⁴³⁷² Oneissi Defence final trial brief, para. 78; Oneissi Defence closing submissions, T. 19 September 2018, p. 73.

⁴³⁷³ Sabra Defence final trial brief, para. 160.

⁴³⁷⁴ Sabra Defence final trial brief, para. 161.

3. Findings on the electronic presentation of evidence

2052. In international criminal law jurisdictions, the electronic presentation of evidence is usually conducted through some type of ‘eCourt’ system, which publishes exhibits electronically in the courtroom. Electronically presented evidence is generally considered to be a significant enhancement to the efficiency of the trial and understanding of a large body of evidence.⁴³⁷⁵ Evidence presentation packages, including eCourt and slide presentations, are favourably received in international courts as visual aids. Domestic courts have also increasingly used electronic presentation of evidence software.⁴³⁷⁶

2053. Courts do not consider the use of the electronic presentation of cell site evidence prejudicial if an expert can attest to the methodology used to create the presentation.⁴³⁷⁷ In addition, courts generally allow the use of electronic presentations of evidence that are based on cell site information already admitted into evidence.⁴³⁷⁸ The factors assessed by courts in determining whether evidence presentations may be admitted into evidence include whether: the primary evidence used to construct the presentation is available to the other party to test the correctness of the summary; and the person who prepared the presentation is available for cross-examination.⁴³⁷⁹

2054. Moreover, domestic courts rely on electronic presentation of evidence software as a visual aid in document intensive and complex criminal trials.⁴³⁸⁰ A Canadian superior court has stated that not allowing such a presentation of evidence risks an unfair trial, noting that if the jury cannot comprehend the evidence, then the trial may be unfair. The presentation of cell site evidence was not a ‘stand-alone’ document but rather a tool to facilitate the understanding of the evidence.⁴³⁸¹

⁴³⁷⁵ Lubanga decision on the E-Court Protocol, para. 19.

⁴³⁷⁶ For example, *Sanchez and others* US Court of Appeals opinion, p. 20; *Mack and others* US District Court ruling, pp 10-11; *Pan and others* Ontario Superior Court ruling, paras 118-119, 122-123; Brereton 2007, p. 9; UK protocol for the management of complex criminal cases 2005, section vi: Electronic presentation of evidence; see also *McCree* US Court of Appeals opinion, p. 2.

⁴³⁷⁷ *Mack and others* US District Court ruling, pp 10-11.

⁴³⁷⁸ For example, *Sanchez and others* US Court of Appeals opinion, pp 16-20; *Mack and others* US District Court ruling, pp 10-11; *Pan and others* Ontario Superior Court ruling, paras 15-16; see also *McCree* US Court of Appeals opinion, p. 2.

⁴³⁷⁹ For example, *Palazzo* US Court of Appeals decision, pp 7-8; *Winn* US Court of Appeals opinion, p. 17; see also *Mack and others* US District Court ruling, p. 11.

⁴³⁸⁰ For example, *Pan and others* Ontario Superior Court ruling, paras 27, 29-32, 119, 122; Brereton 2007, p. 10; Protocol for the management of complex criminal cases 2005, section vi: Electronic presentation of evidence; see also UK Serious Fraud Office Operational Handbook 2019, Electronic Presentation of Evidence.

⁴³⁸¹ *Pan and others* Ontario Superior Court ruling, paras 97, 99, 104.

Furthermore, a court may be more willing to accept the electronic presentation of evidence if the defence has adequate notice and the ability to address any deficiencies.⁴³⁸²

2055. Here, due to the technical complexity of the evidence, the use of an electronic visual aid such as the electronic presentation of evidence was essential to the presentation and understanding of the case.

2056. Contrary to the Oneissi Defence's submission that Mr Fahey's conclusions substituted the Trial Chamber's fact-finding function, the Trial Chamber concludes that the electronic presentation of evidence is a sufficiently reliable tool for its purpose. It is not completely precise but is sufficiently accurate to assist in assessing the cell site evidence. The Trial Chamber is aware of its limitations and has factored them in when using the tool, including in using the software to produce its own maps. In this respect, the Trial Chamber emphasises that the Defence also used the electronic presentation of evidence as demonstrative evidence in court.⁴³⁸³

2057. It significantly enhanced the Trial Chamber's understanding of the lengthy and complex evidence, thus ensuring a fair trial. Without it, the Trial Chamber would have had difficulties to understand the masses of technical detail without visual context; this includes the presentation of both Prosecution and Defence cases. And in this respect, the visual aids used by Defence counsel in court, were as useful as the Prosecution's. The Trial Chamber remained the trier of fact, assessing every piece of analysis and conclusion. Mr Fahey has not usurped its statutory function.

2058. Furthermore, the Defence had adequate notice of the software and could challenge any of its shortcomings during the trial. The Trial Chamber is satisfied that Defence counsel had the opportunity to challenge its reliability during Mr Fahey's testimony, and that the Parties could conduct checks before or after the electronic presentation of evidence was used in the courtroom, as each snapshot was saved and made accessible to the Parties.

⁴³⁸² *Pan and others* Ontario Superior Court ruling, para. 107.

⁴³⁸³ *For example*, exhibits 3D309 (Electronic presentation of evidence snapshot showing the location of mobiles), 3D374 (Electronic presentation of evidence snapshot showing the distance measurements between the cell mast of SYBNAY2 and selected areas within ANQOUN2), 4D319 (Electronic presentation of evidence snapshot of BNPI3).

I. Elements of cell site analysis

2059. The Prosecution relies on Mr Philips's cell site analysis of Alfa's and Touch's telecommunications data to identify the approximate geographic location of a mobile's user at the time of making or receiving a call or SMS, and to track the movements of a mobile over time. To place a mobile in a general geographic location, Mr Philips relied on both call data records relating to a particular mobile and cell site data relating to the mast to which that mobile connected.⁴³⁸⁴

2060. Based on Mr Philips's view that the absolute accuracy of the best server plots is insignificant, the Prosecution submitted that the coverage maps it used were reliable tools that may be used to assess the evidence.⁴³⁸⁵ The analysed call data records relate to a mobile, not directly to a person, and attribution techniques are needed to attribute the mobile to a person.⁴³⁸⁶

2061. The Trial Chamber has explained above the methodology in putting call data records and cell site data into call sequence tables.⁴³⁸⁷ In his general report, Mr Philips explained that, as contact between mobiles of interest is not immediately obvious from the call sequence tables, cell site analysis uses simple contact tables. These show an association between the mobiles of interest; they may also show contact in periods before key events, which may form part of a call pattern analysis.⁴³⁸⁸ Below is an excerpt from his general report showing a contact table for five mobiles. The column on the left shows the mobiles making a call and the other columns show each mobile receiving a call.⁴³⁸⁹ The appropriate square is marked with an (x) where any contact occurs between two mobiles.⁴³⁹⁰

⁴³⁸⁴ Prosecution final trial brief, para. 54; Prosecution closing submissions, T. 11 September 2018, pp 46-47.

⁴³⁸⁵ Prosecution final trial brief, paras 62-70; Prosecution closing submissions, T. 11 September 2018, pp 56, 59-61.

⁴³⁸⁶ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 108.

⁴³⁸⁷ See sub-section (A) (6) (d) 'Call sequence tables'.

⁴³⁸⁸ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 113.

⁴³⁸⁹ The greyed-out boxes are there because a mobile would not normally call itself, although this could occur, for example, in voicemail retrieval; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 113.

⁴³⁹⁰ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 113.

	Mobile a	Mobile b	Mobile c	Mobile d	Mobile e
Mobile a		X	X	X	X
Mobile b	X				
Mobile c	X				
Mobile d	X				
Mobile e	X				

A contact table showing association between five mobiles – exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 113, figure 060

2062. Combined tables are created when the pattern of contact is of particular interest. In the table below—extracted from the same report—calls between two mobiles are presented on a single line, showing common data relating to both mobiles. This table focuses on the call contact over the period of particular interest, in terms of the number, duration and when they occurred, both in isolation and relative to other calls.⁴³⁹¹

Date	Time	Calling Party	Called Party	Message Type	Duration
10.05.10	10:05:12	Mobile blue	Mobile red	Outgoing	00:01:15
10.05.10	10:15:23	Mobile red	Mobile orange	Incoming	00:00:45
10.05.10	10:32:45	Mobile green	Mobile blue	Outgoing	00:00:13
10.05.10	11:10:45	Mobile blue	Mobile red	Outgoing	00:00:01
10.05.10	11:27:56	Mobile blue	Mobile red	Incoming	00:00:45
10.05.10	11:44:16	Mobile red	Mobile green	Incoming	00:00:23
10.05.10	11:58:25	Mobile orange	Mobile green	Outgoing	00:02:45

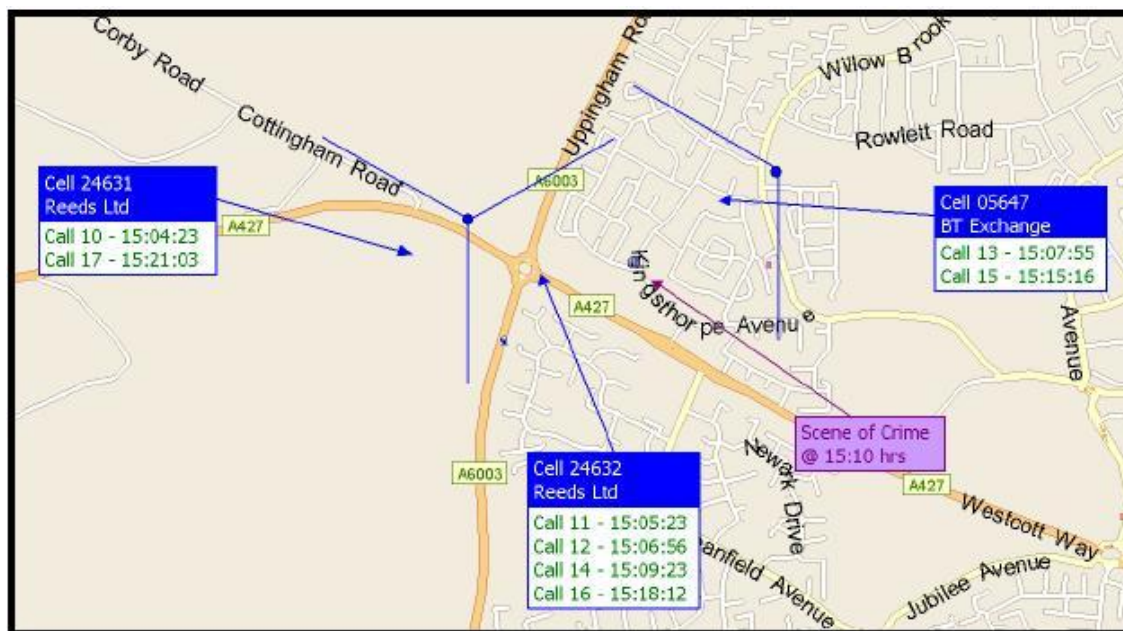
A combined table showing the date, time, duration and the details of the calling parties – exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 114, figure 061

2063. The visual representation of the call data, which shows the mobiles' movement and location, or the combination of both, involves mapping the cell sites to which mobiles connected and the time of use. The information required for mapping is mainly extracted from call sequence tables.⁴³⁹²

⁴³⁹¹ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 114-115.

⁴³⁹² Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 115.

2064. For illustration purposes only, the map below—extracted from the same report—relates to a ‘murder’ that occurred at 15:10 at the location marked on the map as ‘scene of crime’.⁴³⁹³ The scale of the map shows the cells used, with sectors of all calls, and includes the cell and call labels. The calls were mapped before, during and after the incident. The map shows the mobile arriving probably from the west, around 15:04, spending time in an area, including the ‘scene of crime’ between 15:05 and 15:18 and then leaving the area by 15:21.⁴³⁹⁴



Map showing call mapping related to a ‘murder’ which occurred at the location marked as ‘scene of crime’ – exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 118, figure 064

2065. The cell and call labels that appear in the map above can contain far more comprehensive cell and call data, including the network, the cell name, the cell ID, the call number, the call start time, the call designation and the mobile’s identity.⁴³⁹⁵

⁴³⁹³ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 117-118.

⁴³⁹⁴ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 118-119.

⁴³⁹⁵ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 116-117.

1. Impact of time on cell configuration in Lebanon

(a) Summary of evidence

2066. Before Mr Philips testified on this topic, the Prosecution and Defence agreed that when he spoke about changes to the network over the indictment period, he would not testify about whether any changes occurred, but rather only on the impact that any such changes would have on his cell site analysis.⁴³⁹⁶

2067. Mr Philips explained that networks are initially rolled out to provide coverage, and subsequently supplementary cells are added to provide capacity. In Lebanon, both Alfa and Touch had been in operation for around ten years by the time of the attack.⁴³⁹⁷

2068. Systems of that age, he explained, tend to be pretty stable and not be in a constant state of flux, because those managing the network are aware of the vagaries of the network and have effectively tailored it to the customers' requirements.⁴³⁹⁸ That does not mean that the networks become static. Changes are still necessary to provide additional coverage for a new housing development or to close gaps. There will therefore be changes to the network, but they will be fairly limited in nature.⁴³⁹⁹

2069. When networks change, it is usually due to the addition of cells, and not because cells have been removed. The addition of a cell likely only impacts adjacent cells, making them smaller. Mr Philips was unaware of the number of cells added between when the attack occurred and when Alfa and Touch sent their data to the Special Tribunal. He assumed that cells were added rather than taken away.⁴⁴⁰⁰

2070. Mr Philips stated that changes in an existing network will not alter the general area the mobile is located in or the location of the existing cell sites, but instead will increase or decrease the size of the best server plot. The effect of a change in best server plot size is a variation in the precision of the predicted location of the mobile.⁴⁴⁰¹

⁴³⁹⁶ Procedural matters, T. 20 August 2015, p. 80.

⁴³⁹⁷ John Edward Philips, T. 20 August 2015, p. 91.

⁴³⁹⁸ John Edward Philips, T. 20 August 2015, pp 91-93.

⁴³⁹⁹ John Edward Philips, T. 20 August 2015, pp 92-93, 96-97, 105.

⁴⁴⁰⁰ John Edward Philips, T. 20 August 2015, p. 93.

⁴⁴⁰¹ John Edward Philips, T. 20 August 2015, pp 96-97.

2071. Since the best server coverage plots provided by Touch were from February 2004 and the period of interest is between September 2004 and February 2005, the plots are likely to be marginally larger in the February 2004 file than they were in the period of interest, due to the addition of cells.⁴⁴⁰² The effect on Alfa's plots would likely be the opposite, because the plots were from December 2005.⁴⁴⁰³ Its best server coverage areas therefore would most likely have been larger in the period of interest than their representation in the December 2005 data. The exact changes depend on the number and location of new cells added.⁴⁴⁰⁴

2072. Mr Philips stated that, under ideal conditions, the mobile networks would provide plots for analysis corresponding to the period of interest, namely from September 2004 to February 2005.⁴⁴⁰⁵ Touch provided plots from February 2004, which Mr Philips confirmed to be a 'pretty comprehensive complement of the best server coverage plots', as opposed to Alfa's plots from December 2005, which Mr Philips described as an 'incomplete best server coverage complement'.⁴⁴⁰⁶ Mr Philips supplemented the plots he received from Alfa with 'not ideal' extracts from the fixed best server coverage maps from February 2005.⁴⁴⁰⁷

2073. Mr Philips was able to compare the fixed map image from February 2005 to the best server plots provided by Alfa, to inspect any variability in best server coverage between the two. If only the map of Lebanon was used, he explained, this task would be difficult, as the detail is lost when zooming in on a particular area. However, Alfa also provided maps specifically of Beirut, in which each cell is much more discernible.⁴⁴⁰⁸ During this exercise, Mr Philips compared the peripheral coverage of the Alfa cells, as opposed to the coverage near the cell sites themselves, because the periphery is the portion most likely to be affected by the addition of an adjacent cell.⁴⁴⁰⁹ The comparison of the map and plots provided by Alfa showed high correlation.⁴⁴¹⁰

⁴⁴⁰² John Edward Philips, T. 20 August 2015, pp 93-95, 97, 105; exhibit P550 (PowerPoint presentation, John Edward Philips), slides 155-156.

⁴⁴⁰³ John Edward Philips, T. 20 August 2015, pp 95, 97, 105.

⁴⁴⁰⁴ John Edward Philips, T. 20 August 2015, pp 95-96; exhibit P550 (PowerPoint presentation, John Edward Philips), slides 157-158.

⁴⁴⁰⁵ John Edward Philips, T. 20 August 2015, pp 88-89.

⁴⁴⁰⁶ John Edward Philips, T. 20 August 2015, pp 89, 91, 108.

⁴⁴⁰⁷ John Edward Philips, T. 20 August 2015, pp 90-91, 108.

⁴⁴⁰⁸ John Edward Philips, T. 20 August 2015, pp 97-98.

⁴⁴⁰⁹ John Edward Philips, T. 20 August 2015, pp 102, 108.

⁴⁴¹⁰ John Edward Philips, T. 20 August 2015, pp 107-108.

2074. When questioned by Defence counsel, Mr Philips admitted that he did not know how the predictive coverage maps were created, but stated that he could understand how the telecommunication companies may have created them.⁴⁴¹¹

2075. Despite their shortcomings, Mr Philips explained that best server coverage predictions are a reliable tool for placing a mobile in an area. He added, ‘I keep using this term, “an area,” you can never pinpoint where a mobile is unless you have GPS’. These predictions serve as an enhancement to cell site analysis, which is usually performed using only cell coordinates and azimuths.⁴⁴¹²

(b) Submissions

2076. The Prosecution argues that while Alfa could not confirm the azimuth values contemporaneous to the relevant period, the key aspects of its network have been stable between the time of the events alleged in the amended consolidated indictment and when Alfa provided the relevant shape files and cell site data.⁴⁴¹³

2077. The relevant cell sectors remained in operation and were in the same locations throughout the period relevant to the amended consolidated indictment.⁴⁴¹⁴ Cell sites remained in the same locations and the changes to azimuth values were infrequent and minor, whereas the impact of using non-contemporaneous shape files and data on cell site analysis would be minimal.⁴⁴¹⁵ Touch’s radio planning department similarly confirmed that the network was stable and that changes to cell sites in 2004 and 2005 were less frequent than in 2016.⁴⁴¹⁶

2078. Further, Witness 705 estimated that the changes made to the cell site were once or twice a month in 2004 and 2005, as opposed to once or twice a day.⁴⁴¹⁷

⁴⁴¹¹ John Edward Philips, T. 25 August 2015, pp 12-13.

⁴⁴¹² John Edward Philips, T. 20 August 2015, pp 110-111.

⁴⁴¹³ Prosecution final trial brief, para. 56; Prosecution closing submissions, T. 11 September 2018, pp 61-63.

⁴⁴¹⁴ Prosecution final trial brief, paras 56-57; Prosecution closing submissions, T. 11 September 2018, p. 63.

⁴⁴¹⁵ Prosecution final trial brief, paras 56-57, 66-68; Prosecution closing submissions, T. 11 September 2018, pp 63, 69-71, 84.

⁴⁴¹⁶ Prosecution closing submissions, T. 11 September 2018, p. 72.

⁴⁴¹⁷ Prosecution closing submissions, T. 11 September 2018, p. 72; Witness PRH705, T. 5 May 2016, pp 86-87.

2079. The Ayyash, Oneissi and Sabra Defence contested this, submitting that the ‘networks are in a constant state of flux’.⁴⁴¹⁸ The Oneissi Defence also questioned the networks’ consistency and stability due to changes in Beirut over the span of a decade, namely the addition of new buildings and the destruction of south Beirut caused by Israel’s attacks on Lebanon in 2006.⁴⁴¹⁹ Further, Mr Philips’s testimony was that ‘cells will be added and removed on an ongoing basis’ and would have to have an impact on the network.⁴⁴²⁰

2. Best server coverage characteristics

2080. Mr Philips explained that best server coverage predictions are based, in part, on the height of the aerial antenna. Height is taken into account regardless of whether the cell is macro or micro, because it determines the propagation characteristics of that aerial.⁴⁴²¹ This is why hilly terrain can cause fragmented best server coverage, as a hill far away from the cell itself may pick up a signal from that cell as the strongest one, whereas a valley closer to the cell may not.⁴⁴²² The shape of the best server coverage area for each cell is also influenced by the coverage of the adjacent cells.⁴⁴²³ Further, best server coverage is not uniform and ‘sometimes it’s not structured around the cell site itself’.⁴⁴²⁴

2081. Although installations of cell site networks are usually subcontracted out following the initial roll-out, Mr Philips considered that usually, neither the weather, the time nor the people installing or maintaining it would affect its physical state, specifically the antenna. This is because the companies that own them have a stake in the antenna being securely placed and maintained.⁴⁴²⁵ He had never seen any site maintenance records for the antennas.⁴⁴²⁶

2082. Mr Philips agreed that the calibration of the software used for the propagation software/algorithm is dependent on the type of data pertaining to the terrain and the clutter that is

⁴⁴¹⁸ Sabra Defence final trial brief, para. 124; Ayyash Defence final trial brief, para. 200; Oneissi Defence final trial brief, para. 149; Oneissi Defence closing submissions, T. 19 September 2018, pp 66-67.

⁴⁴¹⁹ Oneissi Defence final trial brief, paras 79, 156; Oneissi Defence closing submissions, T. 19 September 2018, p. 88.

⁴⁴²⁰ Oneissi Defence final trial brief, para. 76; Oneissi Defence closing submissions, T. 19 September 2018, p. 88.

⁴⁴²¹ John Edward Philips, T. 20 August 2015, pp 18-19.

⁴⁴²² John Edward Philips, T. 20 August 2015, pp 20-21.

⁴⁴²³ John Edward Philips, T. 20 August 2015, p. 24.

⁴⁴²⁴ John Edward Philips, T. 20 August 2015, p. 23.

⁴⁴²⁵ John Edward Philips, T. 25 August 2015, pp 46-53.

⁴⁴²⁶ John Edward Philips, T. 25 August 2015, p. 53.

fed into it.⁴⁴²⁷ In putting together his generic report on the operation of mobile networks, he did not compose a cell site analysis report that was ‘Beirut-centric’, but rather used examples from rural areas in the UK to illustrate the effects of terrain models.⁴⁴²⁸

2083. Moreover, when asked about the quality of particular predictive coverage maps, he was unable to respond and stated that he could offer no comment on whether the prediction maps provided by the networks were more appropriate in a rural environment than in an urban environment.⁴⁴²⁹

2084. Best server coverage, he explained, cannot be predicted on a continuum, but instead is predicted over a series of small areas. The size of the squares on the maps depicting predicted best coverage varies between Touch and Alfa and is based on the resolution of the prediction system the networks use. Touch’s had a 20 metre resolution whereas Alfa’s was a 50 metre resolution, thereby providing theoretically better resolution and predictions for the Touch network.⁴⁴³⁰

3. Impact of propagation anomalies, exceptional circumstances in cell allocation and other factors on cell site analysis

(a) Summary of evidence

2085. Mr Philips, in his report, explained that areas of best server coverage from one cell are sometimes distributed within the notional best server coverage area of another cell. This means that each cell does not have a simply defined area of best server coverage, but has fragmented best server coverage areas.⁴⁴³¹

2086. When asked about the effects on cell site analysis, Mr Philips responded: ‘We know there are shortcomings. We know it’s not a perfect representation of the actual best server coverage area on the ground.’ As to fragments within the coverage area, he accepted that they are only ascertainable if a survey is conducted on the ground, and that there is no other way of knowing

⁴⁴²⁷ John Edward Philips, T. 24 August 2015, p. 34.

⁴⁴²⁸ John Edward Philips, T. 24 August 2015, pp 41-43.

⁴⁴²⁹ John Edward Philips, T. 24 August 2015, pp 66-67.

⁴⁴³⁰ John Edward Philips, T. 20 August 2015, pp 23-24.

⁴⁴³¹ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 71.

where these fragments are located; this means that when a mobile makes a call, it could trigger the cell within whose coverage it is on the predictive map, or it could trigger another cell.⁴⁴³²

2087. He further explained that ‘there is some variability in that of cell boundaries, where the best server coverage area can increase or decrease. Not massively but it does that and it does that all the time.’⁴⁴³³ He added that the factors that affect the cell boundaries do not really affect the analysis of travelling mobiles, especially over long distances.⁴⁴³⁴

2088. These forms of disruptions, anomalies and exceptional circumstances in cell allocation, such as congestion,⁴⁴³⁵ can affect the accuracy of the location of the mobile for the purpose of cell site analysis. Therefore, Mr Philips stated, to determine the location of the mobile, the range of its approximate location was expanded to encompass all seven cells—the best serving cell and the six neighbouring cells surrounding it.⁴⁴³⁶

2089. To illustrate this, in the image below—extracted from Mr Philips’s court presentation slides—the inner dotted circle shows the best serving cell and the area for which that cell provides best server coverage.⁴⁴³⁷ Normally, the mobile would be expected to be in the inner circle. The outer dotted circle shows the enlarged range of the approximate location of the mobile to be considered for the purpose of cell site analysis when the best serving cell is unavailable.⁴⁴³⁸

2090. In this scenario, the call has been redirected to one of the adjacent cells, but there is no certainty from where. The approximate location of the mobile is diluted to encompass all the adjacent cells. It does not change the general area the mobile is likely to be in.⁴⁴³⁹ Instead, it only reduces the precision of its predicted location.⁴⁴⁴⁰ The image shows that, even when the predicted location of the mobile is enlarged, the neighbouring cells are contained within a relatively small area—within one kilometre in this example.⁴⁴⁴¹

⁴⁴³² John Edward Philips, T. 20 August 2015, p. 58, T. 25 August 2015, p. 37.

⁴⁴³³ John Edward Philips, T. 20 August 2015, pp 58-59.

⁴⁴³⁴ John Edward Philips, T. 20 August 2015, pp 59, 63.

⁴⁴³⁵ See sub-section (B) (2) ‘Cell allocation’.

⁴⁴³⁶ John Edward Philips, T. 20 August 2015, p. 56.

⁴⁴³⁷ Exhibit P550, slide 150.

⁴⁴³⁸ John Edward Philips, T. 20 August 2015, pp 55-56, 70, *see also* pp 64-65.

⁴⁴³⁹ John Edward Philips, T. 20 August 2015, pp 56-57, 65.

⁴⁴⁴⁰ John Edward Philips, T. 20 August 2015, pp 57, 65.

⁴⁴⁴¹ John Edward Philips, T. 20 August 2015, p. 69.

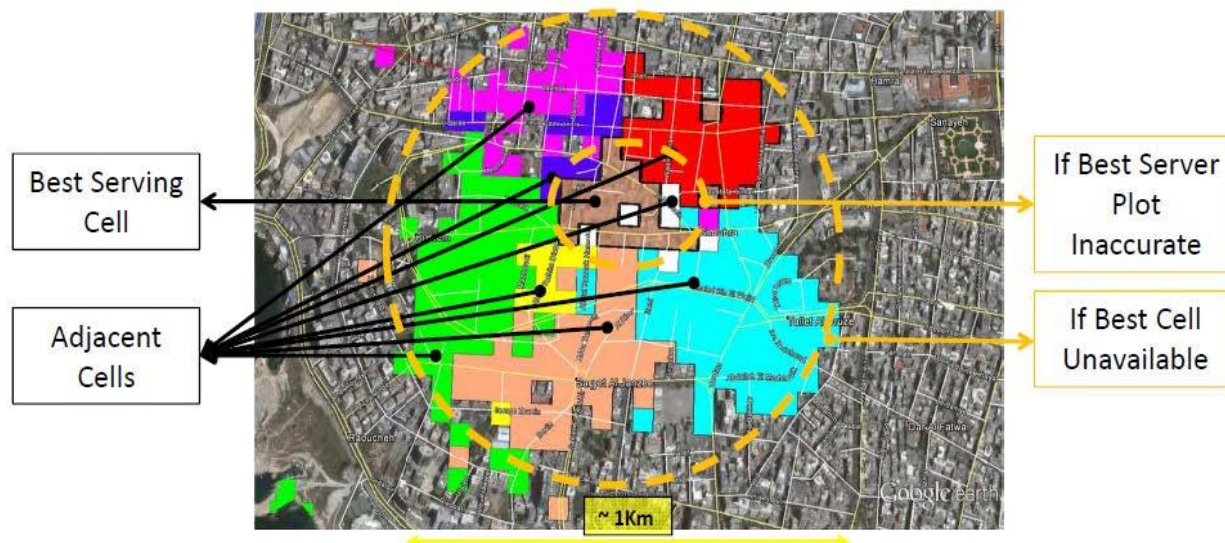


Image showing the enlarged predicted location of a mobile – exhibit P550 (PowerPoint presentation, John Edward Philips), slide 150

2091. The image below, from the same set of slides, shows how any inaccuracy in the predicted area of best server coverage or the unavailability of the best serving cell is generally likely to expand the potential area in which the mobile is located.⁴⁴⁴² It means the degree of uncertainty of the area is expanded, reducing the precision of the predicted location.⁴⁴⁴³

2092. On the left hand map, the blue hexagons show the predicted location of a moving mobile when using the best serving cell. On the map on the right, the pink hexagons show the predicted location of a moving mobile when the call is redirected to a neighbouring cell.⁴⁴⁴⁴

2093. Mr Philips explained that this image shows that the redirection of a call has limited impact on the prediction of the mobile's location. The impact on cell site analysis is that the precision of the mobile's location at the moment of the call decreases as the predicted best server coverage area is enlarged.⁴⁴⁴⁵ However, such anomalies in cell allocation are infrequent exceptions.⁴⁴⁴⁶

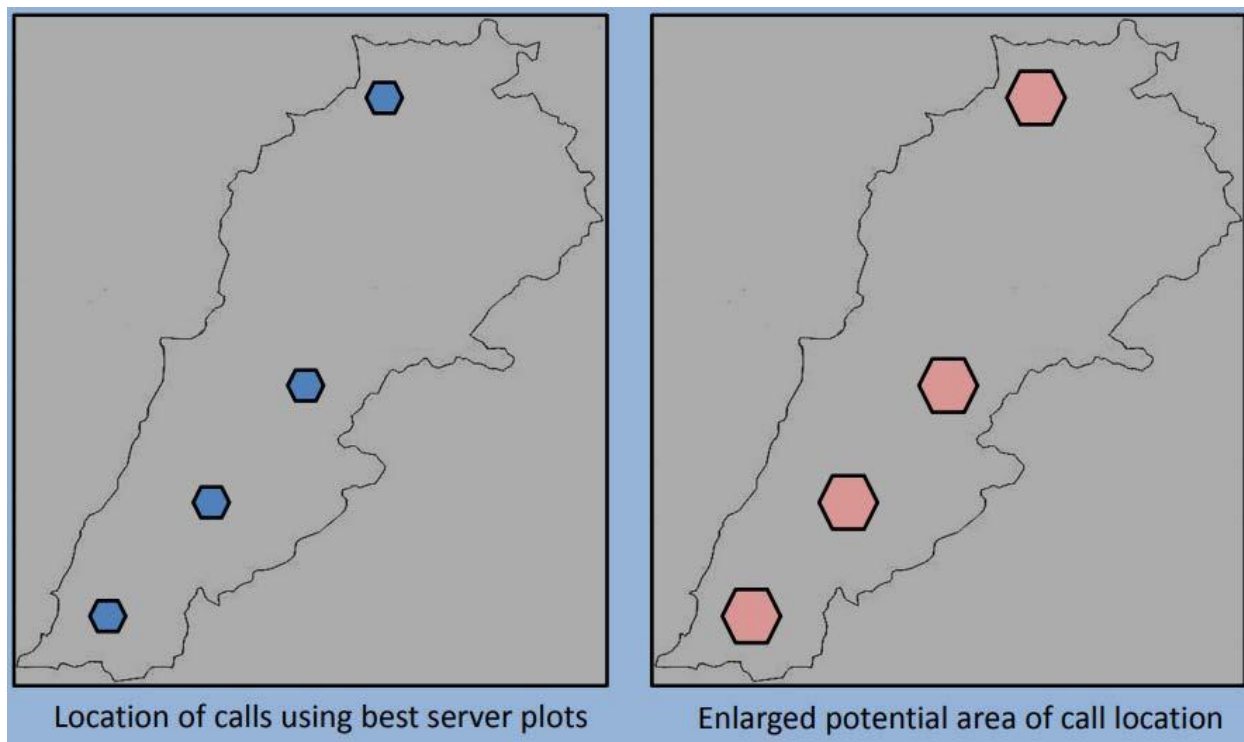
⁴⁴⁴² John Edward Philips, T. 20 August 2015, pp 56-59; exhibit P550, slide 147.

⁴⁴⁴³ John Edward Philips, T. 20 August 2015, pp 56-57.

⁴⁴⁴⁴ John Edward Philips, T. 20 August 2015, pp 57-58; exhibit P550, slide 147.

⁴⁴⁴⁵ John Edward Philips, T. 20 August 2015, pp 57-59, 63; exhibit P550, slide 147.

⁴⁴⁴⁶ John Edward Philips, T. 20 August 2015, pp 62-63.



Two maps showing the predicted location of a moving mobile – exhibit P550 (PowerPoint presentation, John Edward Philips), slide 147

2094. The relevance and practical application of this is illustrated in the following example, showing that it can be positively determined precisely where a witness was when using his mobile. On Monday 14 February 2005, an Al-Jazeera employee, Witness PRH115, went to a tree near his work to collect a video tape containing the claim of responsibility for the attack. The witness stated that he was ‘under the tree’ or ‘by the tree’ when he sent two text messages at 15:52 and 15:53, and stated generally that he sent these messages and received two messages—at 15:54 and 15:55—during the period when he was collecting the video tape from the tree.⁴⁴⁴⁷

2095. He sent his first text message at 15:52 and his mobile activated Bashoura_A on the Touch network, which according to Touch’s coverage maps, did not provide the predicted best server coverage to the tree, but rather to an area around 300 metres south-west of it. A minute later, at 15:53, he sent his second text message and his mobile activated Riad_El_Soloh_B, which provided

⁴⁴⁴⁷ Witness PRH115, T. 7 July 2015, pp 62-63; exhibit P492 (Statements of Witness PRH115, dated 8 February 2007, 3 October 2008 and 13 March 2015), para. 11 (ERN 60305508); exhibit P493 (Call sequence table of Witness PRH115’s mobile, 14 February 2005), p. 1. *See also* chapter XII ‘Claim of responsibility for the attack on Rafik Hariri’, (B) (1) (d) ‘Collection of the videoed claim of responsibility and the letter at 15:53’.

the predicted best coverage to the tree. The witness then received two text messages, at 15:54 and 15:55, again activating Riad_El_Soloh_B and then Bashoura_A.⁴⁴⁴⁸

2096. Thus, within three minutes, while the witness was physically next to the tree, his mobile twice activated Riad_El_Soloh_B—that provided best coverage for the tree—and twice connected to Bashoura_A, which was around 300 metres away.⁴⁴⁴⁹ He was never in the area theoretically covered by Bashoura_A.

(b) Submissions

2097. The Ayyash Defence reiterates that Alfa's maps, on which the Prosecution relies, cannot be used for forensic purposes as they are approximate, provide only estimations and are not based on drive testing.⁴⁴⁵⁰ The accuracy of the Alfa cell coordinates—and in particular those included in the list of 192 Alfa cell towers, in exhibit P775⁴⁴⁵¹—have not been confirmed manually by measuring the coordinates of each cell.⁴⁴⁵²

2098. The Sabra Defence notes that the Prosecution did not rely on the results of limited drive tests it carried out in Beirut in 2007 and 2010. As explained by Mr Philips, drive tests would be accurate only if carried out contemporaneously with the incident being investigated.⁴⁴⁵³ To determine the location of a mobile, a cell site analyst would normally carry out a field survey to establish the actual coverage as opposed to the theoretical coverage of that location.⁴⁴⁵⁴ Neither Mr Philips nor Mr Platt surveyed the cells relevant to the Prosecution case, as they would have routinely done in their national jurisdictions.⁴⁴⁵⁵

2099. As for the impact of network congestion on cell site analysis, the Oneissi Defence argues that network congestion has an impact on cell site analysis. It points to, first, Witness 707's account on the network congestion resulting from the explosion on 14 February 2005 and Alfa's incidents

⁴⁴⁴⁸ Exhibit P493, p. 1; exhibit 4D360 (Purple activity amongst Al-Jazeera SMS exchanges re collecting the tape from the tree: 15:53-15:55), ERNs 1DT41889-1DT41894.

⁴⁴⁴⁹ This was calculated using exhibit P592.1 (Electronic Presentation of Evidence Software).

⁴⁴⁵⁰ Ayyash Defence final trial brief, paras 252, 263; Ayyash Defence closing submissions, T. 17 September 2018, pp 61-62.

⁴⁴⁵¹ Exhibit P775 (Excel spreadsheet with mast and azimuth information, mast locations and azimuth orientations, Annex 14 (2) to Witness PRH707's statement of 11 November 2015).

⁴⁴⁵² Oneissi Defence final trial brief, para. 66.

⁴⁴⁵³ Sabra Defence final trial brief, paras 143-145.

⁴⁴⁵⁴ Oneissi Defence final trial brief, paras 135-136.

⁴⁴⁵⁵ Oneissi Defence final trial brief, paras 136-138.

log from the same day,⁴⁴⁵⁶ and second, Witness 115's account on connecting on the same day to a cell 300 metres away from where he used his mobile. It argues that they demonstrate inconsistencies between the theoretical coverage and the actual coverage, specifically relating to the afternoon of the attack.⁴⁴⁵⁷

2100. The Merhi Defence submits that due to the lack of information about the frequency of congestion on mobile networks in Lebanon in 2005, it was impossible to determine how often a mobile activated another cell due to congestion. This includes by analysing call data records, which did not register cases of directed retry.⁴⁴⁵⁸ It contradicted the Prosecution submission that in the event of congestion a call will be redirected to only one of six neighbouring cells, but submits rather that the directed retry function can consider up to 20 cells before selecting a cell with the strongest signal, even if farther away. A mobile connecting to neighbouring cells was likely to be closer to the congested best serving cell because best server coverage extends over smaller areas in urban environments.⁴⁴⁵⁹

2101. The Prosecution in its closing submissions rejected the Merhi Defence's argument that, in case of congestion, where a mobile cannot connect to the best serving cell in an urban area, the mobile must be in a larger potential area because of the number of surrounding cells. It responded that this contradicts Witness 705's and Mr Philips's evidence⁴⁴⁶⁰ that when the cells are next to each other they provide coverage for smaller geographic areas.⁴⁴⁶¹ The Prosecution argues that, based on Witness 705's evidence, this would be highly exceptional and there is no evidence that this occurred in any calls.⁴⁴⁶²

⁴⁴⁵⁶ Exhibit 4D263 (Extract from an Alfa business record which is a log of incidents that occurred across the Alfa network on 14 February 2005).

⁴⁴⁵⁷ Oneissi Defence final trial brief, paras 592-593. *See also* chapter XII 'Claim of responsibility for the attack on Rafik Hariri', (F) (4) (c) (v) 'Collection of the video and the letter'.

⁴⁴⁵⁸ Merhi Defence final trial brief, para. 127.

⁴⁴⁵⁹ Merhi Defence final trial brief, para. 128; Prosecution final trial brief, paras 58-60.

⁴⁴⁶⁰ Witness PRH705, T. 6 May 2016, pp 6, 10; John Edward Philips, T. 20 August 2015, p. 6.

⁴⁴⁶¹ Prosecution closing submissions, T. 11 September 2018, p. 58.

⁴⁴⁶² Prosecution closing submissions, T. 11 September 2018, pp 58-59; exhibit P826 (Witness PRH705's statement of 16 November 2015), para. 59.

4. Mobiles' locations and movements

(a) Summary of evidence

2102. Mr Philips explained that there are multiple ways for a cell site analyst to plot the location and movements of a mobile. The most basic uses only cell site coordinates, or the cell site coordinates and the azimuths.⁴⁴⁶³ Alternatively, an analyst can use azimuth and best server plots to track a mobile's movement and location.⁴⁴⁶⁴ Mr Philips described using the best server plots in addition to the cell site coordinates and the azimuths for each cell as 'an additional tool above and beyond the basic cell site and sector' or a 'luxury'.⁴⁴⁶⁵ He relied in his analysis on call sequence tables, best server coverage maps and cell data.⁴⁴⁶⁶

2103. To determine a mobile's movements using only cell site coordinates, Mr Philips explained that the movement must be tracked and observed over a succession of calls.⁴⁴⁶⁷ Plotting cell sites in this way over time can denote movement of a mobile and therefore the mobile's attributed user.⁴⁴⁶⁸ He further stated that:

What may be indicative from these is the fact that when you get several calls over a period using ... the same cell, that might mean the mobile has stopped at that location. Equally, lack of that doesn't mean a mobile could have stopped at any other location. But if you're looking at travel and there is a big interval between calls, then it's probably consistent with discontinuous travel.⁴⁴⁶⁹

2104. With regard to determining a mobile's location with cell site coordinates and azimuths, Mr Philips testified that best server coverage can only be approximated by using this method. Adding the estimated signal strength for each cell gives 'a pretty good idea of where a mobile is likely to be selected'.⁴⁴⁷⁰ However, this is only a 2D model which does not take into account topography, such as rivers, or large buildings. Mr Philips normally used this method in the UK.⁴⁴⁷¹

⁴⁴⁶³ John Edward Philips, T. 20 August 2015, pp 111-114.

⁴⁴⁶⁴ John Edward Philips, T. 20 August 2015, pp 114-116.

⁴⁴⁶⁵ John Edward Philips, T. 20 August 2015, p. 117.

⁴⁴⁶⁶ John Edward Philips, T. 24 August 2015, pp 20, 84.

⁴⁴⁶⁷ John Edward Philips, T. 20 August 2015, p. 112.

⁴⁴⁶⁸ John Edward Philips, T. 20 August 2015, p. 113.

⁴⁴⁶⁹ John Edward Philips, T. 20 August 2015, pp 112-113.

⁴⁴⁷⁰ John Edward Philips, T. 20 August 2015, p. 113.

⁴⁴⁷¹ John Edward Philips, T. 20 August 2015, pp 113-114.

He agreed that cell site coordinates and azimuths are ‘the essential ingredients’ for cell site analysis.⁴⁴⁷²

2105. As for determining locations with azimuths and best server plots, Mr Philips testified that networks have the advantage of adding building clutter and terrain/topography to their predictions.⁴⁴⁷³ However, azimuth spacing is ‘by no means uniform’. For this type of analysis, the sector arms and azimuths are overlaid over the best server coverage plots. This shows that ‘the cell site and sector is a reasonable representation of where the best server plot should be contained within’.⁴⁴⁷⁴

2106. This also illustrates the non-uniformity of best server coverage, by indicating holes in the best server coverage and coverage that is provided outside of the sector arms. Those holes could be either areas of no coverage or areas of coverage provided by unplotted cells.⁴⁴⁷⁵

(b) Submissions

2107. The Ayyash Defence argues that examining the methodology of Mr Philips’s analysis reveals that it is unreliable; the Trial Chamber should give no weight to Mr Philips’s analysis.⁴⁴⁷⁶

2108. The Oneissi Defence notes that Mr Philips expressly refused to give an accuracy estimation of cell site analysis and that it is not possible to determine to any reliable degree the location of a mobile based only on the call data records and the theoretical coverage. Mr Philips testified that he could do *much* of his cell site analysis work only based on the cell coordinates and azimuths, without however specifying which elements.⁴⁴⁷⁷

5. Mr Philips’s access to information

(a) Summary of evidence

2109. Mr Philips described how his work for the Prosecution was virtually isolated from everyone else’s. He was not informed about the work others were doing, nor was he allowed to access it,

⁴⁴⁷² John Edward Philips, T. 20 August 2015, pp 116-117.

⁴⁴⁷³ John Edward Philips, T. 20 August 2015, p. 114.

⁴⁴⁷⁴ John Edward Philips, T. 20 August 2015, pp 115-116.

⁴⁴⁷⁵ John Edward Philips, T. 20 August 2015, p. 116.

⁴⁴⁷⁶ Ayyash Defence final trial brief, para. 187.

⁴⁴⁷⁷ Oneissi Defence final trial brief, paras 129-131, 133-134.

and he did not review any technical reports.⁴⁴⁷⁸ Moreover, Mr Philips explained that the work he was assigned was ‘fragmented’. He was given very selected pieces of data and asked to analyse them.⁴⁴⁷⁹

2110. For example, he did not receive the information regarding the propagation model. He had no knowledge regarding the software the telecommunication companies used, how they would have used it, whether they would have had any other modelling within it, or the appropriateness of that.⁴⁴⁸⁰

(b) Submissions

2111. The Ayyash Defence submits that Mr Philips’s reports should be assessed considering his filtered knowledge about the case and the situation in Lebanon in 2004 and 2005.⁴⁴⁸¹

2112. The Merhi Defence argues that the Prosecution, in effect, cherry picked the information provided to their experts. On multiple occasions, Mr Philips admitted that he did not receive case-specific, applicable information.⁴⁴⁸² He could not consider how weather, traffic, season, day of the week or time of the day affected his analysis, and did not account for routes of travel or traffic patterns in Beirut or Lebanon.⁴⁴⁸³

2113. The Merhi Defence submits that Mr Philips was not provided with Mr Merhi’s residential address and did not take into account traffic density, duration of travel or the extent of damage caused by Israel’s attacks on Lebanon in 2006, when he analysed the telecommunication data.⁴⁴⁸⁴ Mr Philips worked ‘in a vacuum’, was ‘very compartmentalised’ in the way he did his work and received insufficient information.⁴⁴⁸⁵ The information he received was filtered, so he did not have the overall picture. As a consequence, his analysis is ‘purely objective and abstract’.⁴⁴⁸⁶

⁴⁴⁷⁸ John Edward Philips, T. 24 August 2015, pp 18-19.

⁴⁴⁷⁹ John Edward Philips, T. 24 August 2015, p. 85.

⁴⁴⁸⁰ John Edward Philips, T. 24 August 2015, p. 28.

⁴⁴⁸¹ Ayyash Defence final trial brief, para. 274.

⁴⁴⁸² Merhi Defence final trial brief, paras 187, 205-206; Merhi Defence closing submissions, T. 18 September 2018, pp 113, 115, 119-120.

⁴⁴⁸³ Ayyash Defence final trial brief, para. 270.

⁴⁴⁸⁴ Merhi Defence final trial brief, para. 344; Merhi Defence closing submissions, T. 18 September 2018, p. 113.

⁴⁴⁸⁵ Ayyash Defence final trial brief, para. 269; Merhi Defence final trial brief, para. 206; Merhi Defence closing submissions, T. 18 September 2018, p. 119.

⁴⁴⁸⁶ Ayyash Defence final trial brief, para. 269; Merhi Defence final trial brief, para. 205; Merhi Defence closing submissions, T. 18 September 2018, p. 120.

2114. Further, the Prosecution only brought Mr Philips in to verify a theory, but it failed to give him crucial information to do so.⁴⁴⁸⁷ Had Mr Philips been given all of the appropriate information, his responses to the Merhi Defence's questions would have varied depending on the various aspects affecting cell coverage.⁴⁴⁸⁸

2115. The Oneissi Defence argues that the Prosecution deliberately isolated Mr Philips and his work, stating that the information with which he was provided was 'extremely restricted'. Mr Philips was neither told what other people, including Mr Donaldson, were doing nor was he allowed to access their work, and while he asked questions, 'the answers aren't forthcoming'. Mr Philips himself noted that his meetings with the Prosecution were 'quite limited' and 'very much controlled'.⁴⁴⁸⁹

2116. It also highlights how extensively the Prosecution restricted Mr Philips, by comparing his time with the Special Tribunal to Mr Philips's work with the UK prosecution services, where he would be 'fully incorporated within the investigation team' and 'given a total view of the case'. For example, Mr Philips would meet with the officers involved and would be aware of the suspects and crime scenes.⁴⁴⁹⁰ Additionally, Mr Philips found 'quite strange', based on his previous experience, that he was not asked to revise or conduct peer review of technical reports, such as Mr Fahey's work comparing Alfa data, Mr Donaldson's attribution report or Mr Platt's chronology report.⁴⁴⁹¹

2117. Mr Philips stated that he found it 'very difficult' to make professional suggestions, such as visiting Lebanon. Mr Philips never visited Lebanon in his capacity as a Prosecution expert, though he 'would have liked to have gone'. According to the Oneissi Defence, as Mr Philips had 'no real knowledge of what happened in Lebanon', he relied on examples specific to the UK in his cell site analysis report.⁴⁴⁹² Mr Philips's restricted access resulted in denying him the 'full perspective' of the Prosecution's relevant work.⁴⁴⁹³

⁴⁴⁸⁷ Merhi Defence final trial brief, para. 208; Merhi Defence closing submissions, T. 18 September 2018, pp 115-116, 119.

⁴⁴⁸⁸ Merhi Defence final trial brief, para. 205; Merhi Defence closing submissions, T. 18 September 2018, p. 115.

⁴⁴⁸⁹ Oneissi Defence final trial brief, paras 119, 154.

⁴⁴⁹⁰ Oneissi Defence final trial brief, para. 118.

⁴⁴⁹¹ Oneissi Defence final trial brief, para. 119.

⁴⁴⁹² Oneissi Defence final trial brief, para. 121; Ayyash Defence final trial brief, paras 266-268.

⁴⁴⁹³ Oneissi Defence final trial brief, para. 120.

2118. In addition, Mr Philips was not aware of, or was misinformed as to, the basic information in relation to Alfa's data and its deficiencies. He was not provided with information regarding the software Alfa used to create the non-contemporaneous theoretical coverage maps, the accuracy of the information input by Alfa or the models used within those maps.⁴⁴⁹⁴

2119. He was not informed that Alfa could not confirm azimuth and tilt values from 2005, nor the altitude of cells; Alfa's use of a clutter model from 2010 rather than 2005; network congestion figures; or the cultural use of mobiles in Lebanon in 2004 and 2005.⁴⁴⁹⁵ The weight of Mr Philips's evidence was negatively affected by the Prosecution's 'deliberate strategy of isolation'.⁴⁴⁹⁶

2120. The Oneissi Defence further submits that the Prosecution failed to correct Mr Philips's multiple misapprehensions about the reliability of Alfa's data. When the Defence pointed these out to him, his reaction was that had he known, he 'would have asked questions'. Further, Mr Philips's belief that the theoretical coverage maps created by Mr Fahey 'indicated that in the majority of the cases the same cell sites were retained' was incorrect because Mr Fahey only compared 63 of the 1,100 Alfa cell sites in 2005 and never stated 'the same cell sites were retained'.⁴⁴⁹⁷

2121. Of these omissions, the Oneissi Defence submits that:

This strategy speaks volumes about the Prosecution's confidence in its case. From it, the Chamber should infer that the Prosecution did not want an independent cell site analysis expert to scrutinize the Prosecution telecommunications case in its full context. It is evidence of the Prosecution's concern that, should PHILIPS have become aware of the deficiencies, he would inevitably have been asked his opinion on it in the witness box by the Chamber and Defence Counsel. This strategy must not be rewarded or endorsed by the Chamber – which must ask itself, yet again, whether such a strategy is concomitant with the Prosecution's duty to assist the Tribunal in establishing the truth.⁴⁴⁹⁸

⁴⁴⁹⁴ Oneissi Defence final trial brief, paras 122, 124; Ayyash Defence final trial brief, para. 271.

⁴⁴⁹⁵ Ayyash Defence final trial brief, paras 271, 273.

⁴⁴⁹⁶ Oneissi Defence final trial brief, para. 127.

⁴⁴⁹⁷ Oneissi Defence final trial brief, paras 125-126.

⁴⁴⁹⁸ Oneissi Defence final trial brief, para. 128, citing Rule 55 (C).

And further:

the Chamber cannot rely on evidence led from PHILIPS, the Prosecution's only cell site analysis expert, who was 'deliberately' segregated from Prosecution staff, strategy and work product; 'chaperoned' when he visited the Prosecution at the Tribunal; and from whom the Prosecution strategically hid the myriad shortcomings of the data with which he worked.⁴⁴⁹⁹

6. Findings on cell site analysis

2122. The Trial Chamber heard Mr Philips's detailed account of how—relying on the combination of call data records related to a particular mobile, cell site data relating to the mast to which the respective mobile connected and predictive coverage maps—he used cell site analysis to determine the approximate location of a mobile and track its movements.

2123. The Defence raised no challenge or any significant doubt as to whether cell site analysis itself is a sufficiently reliable method or technique to determine mobiles' approximate locations and movements. Rather, the Defence challenges relate to the underlying telecommunications evidence—that the Trial Chamber has already addressed above—on which Mr Philips and other experts and Prosecution analysts based their analysis. The Defence has also attacked whether Mr Philips had sufficient knowledge of the Lebanese telecommunications networks in 2004 and 2005 to conduct his analysis. A further challenge is to the quality of the information that the Prosecution gave him, while segregating him from the work of Prosecution officials.

2124. After carefully considering the totality of the relevant evidence, the Trial Chamber finds that cell site analysis, which also takes into consideration the enlarged range of a mobile's approximate location, is a technique capable of providing sufficiently reliable assessments and results on which the Trial Chamber can rely in reaching a conclusion regarding the relevant mobiles' general locations and movements. Any limitations in the evidence of relevant mobiles' general location and movement are factors that the Trial Chamber must carefully consider in assessing the evidence and determining its weight.

⁴⁴⁹⁹ Oneissi Defence final trial brief, para. 158.

2125. As to the issue of network congestion, based on Witness 705's and Witness 707's evidence, a call from a congested cell will be redirected, or 'handed over', into one of the six normally neighbouring cells regardless of whether it is in an urban or rural environment. Mr Philips further explained that, in cases of congestion, the network can redirect a call to the strongest cell irrespective of its location.

2126. However, Alfa or Touch did not provide any statistics on congestion frequency. Nevertheless, a careful review of this evidence leads to the conclusion that, in cases of large scale congestion, such as on the afternoon of the attack on Monday 14 February 2005,⁴⁵⁰⁰ it could be expected that, as a result of all six neighbouring cells also being congested, the next best serving cell to which a redirected call would connect would be further away than the six neighbouring cells.

2127. The example referred to above of Witness 115's mobile connecting to an adjacent cell with a predicted best server coverage that was at least 200 to 300 metres away from him—based on how it is measured—supports the Prosecution's argument that, even in exceptional circumstances, where a mobile user is not physically within the predicted best server coverage area of a cell, the mobile could be in a somewhat enlarged area. Namely, in the predicted best server coverage area of the six surrounding neighbour cells, as opposed to being in a completely different area.⁴⁵⁰¹ Conversely, this example also supports Defence submissions attacking the accuracy of the predicted best coverage maps, arguing that they are too unreliable to prove a mobile's actual location.

2128. The Trial Chamber has carefully distinguished, in terms of reliability of the telecommunications evidence, two distinct scenarios. One is comparing specific locations and cell activations—as in cases of determining the location of a mobile connecting to a cell in relation to a specific geographic location.⁴⁵⁰² The other is comparing two cell activations—as in cases of dynamic surveillance and co-location.

⁴⁵⁰⁰ See para. 5546.

⁴⁵⁰¹ Prosecution final trial brief, paras 60-61.

⁴⁵⁰² For example, network mobiles' cell activations in the area of Quraitem Palace or Purple mobiles' cell activations in the area of the Arab University Mosque.

2129. In the first situation, determining a mobile's actual location is undermined by the diminished reliability of the telecommunications evidence, namely the accuracy of the predicted best coverage maps. Conversely, in the second situation, the reliability of the telecommunications evidence increases due to reliance on patterns of call activity and joint movements.⁴⁵⁰³ That was the gist of Mr Philips's evidence on this issue.

2130. In addition to the specific factors affecting the cell site analysis, such as propagation anomalies and exceptional circumstances in cell allocation, the Trial Chamber has borne in mind further general factors that affect the cell site analysis. These are the slow and fast fading, the differing start and end cells in the call data records for the same call, the in-car and in-building coverage and weather-induced changes to the coverage, the gaps in the coverage maps and the underlying data and the effects of inclusion of new cells on the surrounding cells. It must factor these in when considering the Prosecution's conclusions or inferences based on the cell site analysis. It must and has exercised due caution.

2131. The Merhi Defence's argument that the Trial Chamber should render a 'not guilty' verdict solely on the basis of challenges to the reliability of the telecommunications evidence analysed above, and that no trier of fact could make findings on the Accused's guilt beyond reasonable doubt due to these challenges, is not persuasive. The Trial Chamber must examine the evidence in its totality, and in doing so it has thoroughly factored in the limitations of the telecommunications evidence underlying Mr Philips's cell site analysis. As noted above, the reliability issue is more acute when the Prosecution is using the cell site evidence to precisely place an Accused person at a relevant location at a specific time. This is most particularly in relation to the case against Mr Oneissi and Mr Sabra, insofar as they are alleged to have been present near the Arab University Mosque in December 2004 and January 2005, involved in Mr Abu Adass's disappearance, and near payphones and a tree on the afternoon of Monday 14 February 2005.

2132. The Trial Chamber has assessed the calls relevant to the material facts pleaded in the amended consolidated indictment, in the context of the totality of the evidence, which contains a number of essential elements. In addition to the mobiles' general location, which is determined using cell site analysis, this assessment includes how the mobiles were used, including call patterns

⁴⁵⁰³ See paras 4673-4677.

and movement, such as when a mobile consistently returned to a particular location. In some circumstances, this could be considered a home location.

2133. The Trial Chamber also considered the connections between the Accused through their mobile communications along with otherwise inexplicable links between these calls and events related to the preparation and perpetration of the attack and or the conspiracy to assassinate Mr Hariri.

2134. The Trial Chamber rejects the Oneissi Defence and Merhi Defence suggestion that Mr Philips's work was too 'compartmentalised', 'restricted', 'isolated' or 'controlled'.

2135. In terms of access to the Prosecution's information, the Trial Chamber has distinguished between the roles of Mr Philips as an external expert, and those of in-house analysts and experts, such as Mr Donaldson and Mr Platt. The comparison with Mr Philips's investigative experience in the UK is also misleading, as in this case the Prosecution engaged him as an external expert to whom it would provide only limited information.

2136. The Trial Chamber is satisfied that the Prosecution provided Mr Philips with as much information as it considered necessary for him to produce his reports, but to also preserve and demonstrate his independence and impartiality, and to enable him to testify with neutrality and scientific objectivity. The extent of Mr Philips's access to the Prosecution's information was determined by the need to bring a proper focus to his analysis and to avoid any unnecessary work not strictly required for adequate analysis and conclusions.

2137. When analysing Mr Philips's expert reports and rejecting or adopting his conclusions, the Trial Chamber has carefully considered a number of features. These include his field of professional expertise, the material made available to him, his methodology and the extent of his impartiality.

2138. The Defence did not explain how Mr Philips's alleged lack of access to information available to the Prosecution impacted his ability to fulfil his general duties as an external expert or the specific task of conducting cell site analysis in a way that negatively affected the weight of his evidence or prejudiced the Defence. Defence counsel questioned Mr Philips in court and drew to

the Trial Chamber's attention—both at the time, and in final trial submissions—any perceived methodological deficiencies in his work.

2139. In the Trial Chamber's view his work was properly segregated from that of the Prosecution's in-house analysts. This segregation has added to the credibility and reliability of his analysis. Had the Prosecution provided him with more information, or had had him working closely with its analysts, lawyers and investigators, or briefed him on who the suspects were, the Defence would undoubtedly have attacked and attempted to undermine his independence.

2140. The Trial Chamber is also mindful that there is more than one model under which a Prosecution service—or even a Defence team—may engage an external expert. Depending on the circumstances, it could keep the expert at arm's length, or alternatively, integrate the person to an extent into its work, as Mr Philips testified had been his experience in the UK. In the circumstances of this case, the Trial Chamber is satisfied that the Prosecution acted correctly in engaging Mr Philips in the manner described.

2141. The Trial Chamber, however, is also of the view that the Prosecution should have provided Mr Philips with more information on the shortcomings in some of the material given to him, and in particular that Alfa had not contemporaneously produced its maps and shape files. Doing so would have permitted him to have sought further information before writing his reports, asked follow-up questions and to have, if he considered it necessary, modified or qualified his opinions.

2142. However, considering the totality of Mr Philips's evidence together with his extensive expertise in telecommunications, cell site analysis and the workings of GSM generally as applied to cell site analysis, the Trial Chamber is ultimately unconvinced by the Oneissi Defence's argument that Mr Philips's initial lack of awareness on these shortcomings impacted the reliability of the evidence. Despite his being informed of these things only in court during Defence cross-examination, ultimately this did not cause Mr Philips to alter or withdraw his general opinions. The Trial Chamber therefore cannot find that Mr Philips's work was to any significant degree negatively affected by how he was given access to the Prosecution's information in general, and how he was provided with case-specific information in particular.

2143. The Trial Chamber's overall conclusion is that Alfa's and Touch's cell site records are sufficiently reliable to be used for cell site analysis in *generally* determining the approximate

location, movement and call patterns of mobiles. They thus have the necessary probative value for this purpose.

2144. Importantly, in assessing the conclusions based on these records, the Trial Chamber thoroughly considered the inherent 60 to 70 per cent accuracy of the Alfa prediction maps, the non-contemporaneous nature of some of the cell data and the approximation method used to reconstruct it. Some specific issues of reliability, including of network congestion after the attack on Mr Hariri on 14 February 2005, are examined in detail in relation to some pleaded mobiles.

2145. The Trial Chamber is also satisfied of the general reliability of Mr Philips's evidence. Hence, it can safely use his expertise and conclusions to analyse the Prosecution's evidence of the four pleaded Red, Yellow, Blue and Green networks, and the attribution of personal mobiles to the four Accused and Mr Badreddine, and therefore any potential pleaded co-location with network mobiles.

VIII. NATURE AND PURPOSE OF COLOUR-CODED MOBILE NETWORKS AND PURPLE GROUP OF MOBILES

A. Introduction

2146. The Prosecutor alleges that the Accused carried out Mr Hariri's assassination by using groups of mobiles that operated as networks, namely mobile groups with a high frequency of contacts within the group.⁴⁵⁰⁴ The Green network of three mobiles, allegedly monitored and coordinated the attack and the false claim of responsibility.⁴⁵⁰⁵ The Red network of eight mobiles, carried out the assassination of Mr Hariri.⁴⁵⁰⁶ The Blue network of 15 mobiles and the Yellow network of 13 mobiles, were used to prepare for the attack, including the surveillance of Mr Hariri.⁴⁵⁰⁷ The three mobiles in the fifth group, the Purple mobiles, were used to communicate with each other and others outside the group to coordinate the false claim of responsibility.⁴⁵⁰⁸ The Purple mobiles' call patterns are analysed below at paragraphs 2427-2489, under the heading 'Purple group of mobiles'.⁴⁵⁰⁹

2147. The major areas of dispute between the Parties are whether the mobile users in each group operated together as a network, whether they used the mobiles covertly and whether the various mobile groups were interconnected and engaged in a common mission.

2148. The Trial Chamber has received evidence as to mobile networks in general, each color-coded mobile group and possible connections between the various mobile groups. The evidence included call sequence tables, mobile subscription forms, mobile and SIM card payment receipts and witness evidence on topics such as the purchase of the mobiles.

2149. The Trial Chamber also received evidence on the investigation of the mobile groups, in particular how the Lebanese military intelligence and the Lebanese ISF discovered the mobiles in

⁴⁵⁰⁴ Amended consolidated indictment, para. 14.

⁴⁵⁰⁵ Amended consolidated indictment, paras 15 (b), 19 (a).

⁴⁵⁰⁶ Amended consolidated indictment, paras 15 (a), 19 (b), 22.

⁴⁵⁰⁷ Amended consolidated indictment, paras 15 (c)-(d), 19 (b).

⁴⁵⁰⁸ Amended consolidated indictment, paras 15 (e), 19 (c)-(d).

⁴⁵⁰⁹ *Compare also* chapter XII 'Claim of responsibility for the attack on Rafik Hariri', H 'The non-covert nature of the use of the Purple mobiles'.

the Red, Green, Blue and Yellow networks between 2005 and 2007.⁴⁵¹⁰ Their starting point was a cell dump analysis,⁴⁵¹¹ when the investigators requested the identities of all mobiles on all networks that provide best server coverage at the crime scene, and then requested a list of calls using these mobiles over a fixed period, to identify possible suspects.⁴⁵¹²

2150. The Trial Chamber also received extensive and detailed evidence from two Prosecution expert witnesses: Mr John Edward Philips and Mr Gary Platt.

2151. Mr John Edward Philips has more than 30 years of experience as a chartered engineer and many years experience with cell site analysis. The Trial Chamber declared him an expert in mobile networks and their various aspects, such as hierarchies among users of the networks, users' roles and possible missions of the network.⁴⁵¹³ He testified at length regarding mobile networks and produced four expert reports on mobile networks.⁴⁵¹⁴

2152. Mr Gary Platt is a Prosecution investigator.⁴⁵¹⁵ Before joining the Prosecution, Mr Platt worked for 15 years in police forces in the UK. He dealt with covert mobile networks in investigations concerning different types of crime: kidnapping, jewellery robberies, drug dealing, human trafficking and the terrorist attacks in London on 7 July 2005.⁴⁵¹⁶ He has experience with investigations of more than 100 covert networks.⁴⁵¹⁷ The Trial Chamber declared Mr Platt qualified to give an expert opinion on the identification and organisation of covert communication

⁴⁵¹⁰ Exhibit 5D418 (Investigator Notes – Finding the Communication Networks), paras 4-39. Lebanese investigators labelled the Red network 'Network One', the Green network 'Network Two' and the Blue network 'Network Three', exhibit 5D418, para. 3.

⁴⁵¹¹ Exhibit 5D418, paras 4-7.

⁴⁵¹² Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 105-107. *See also* exhibit 5D418, para. 2 (a).

⁴⁵¹³ Decision on opinion evidence (Mr Donaldson), paras 16, 19, 69, 96; Decision denying exclusion of Mr Philips's evidence; Decision on request to strike portions of an expert report, para. 8; Decision on expertise (Mr Philips – GSM); Decision on expertise (Mr Philips – Telecommunications and cell site).

⁴⁵¹⁴ *For example*, T. 25 April 2017; T. 6 September 2016; T. 2 September 2016; T. 1 September 2016; T. 31 August 2016; T. 21 August 2015; exhibits P1114 (Expert report of John Edward Philips – Red mission phones), P1115 (Expert report of John Edward Philips – 15 Blue mission phones), P1116 (Expert report of John Edward Philips – Green mission phones), P1117 (Expert report of John Edward Philips – Common Mission Phones).

⁴⁵¹⁵ Exhibit P794 (Mr Platt's *curriculum vitae*).

⁴⁵¹⁶ Gary Platt, T. 5 April 2016, pp 8, 54, T. 26 July 2016, p. 18.

⁴⁵¹⁷ Gary Platt, T. 26 July 2016, p. 18.

networks.⁴⁵¹⁸ He testified at length regarding mobile networks and drafted an expert report on network analysis.⁴⁵¹⁹

B. Mobile networks in general

2153. A mobile network is a group of mobiles that form a communication network.⁴⁵²⁰ A ‘mission phone’ is a special type of mobile network. Mr Philips defined a ‘mission phone’ as a mobile obtained and dedicated to a specific objective or mission, which is covert and almost always ‘nefarious’.⁴⁵²¹ Those involved in the mission do not want to be associated with it, so anonymity in all areas is key⁴⁵²² and an essential characteristic.⁴⁵²³ These mobiles differ from personal mobiles, which are non-covert mobiles used to call family and friends and are for everyday usage.⁴⁵²⁴

1. Characteristics of a mobile network

2154. Mr Platt and Mr Philips both gave evidence outlining the main characteristics of a covert mobile network. Although their emphasis and terminology varied somewhat, they concurred on the most important factors.

2155. Mr Platt testified that there were organisational factors and also those demonstrating covertness.⁴⁵²⁵ However, he testified that ‘covert’ and ‘organised’ factors worked in tandem with each other, for example a group of mobiles that communicated only with other mobiles in the same group demonstrated both organisation and a desire for secrecy.⁴⁵²⁶

⁴⁵¹⁸ Oral decision on Mr Platt’s expertise; Decision on expertise (Mr Platt), disposition. The Trial Chamber declared him qualified to give an expert opinion also on matters connected with the surveillance of criminal networks. *See* para. 331.

⁴⁵¹⁹ *For example*, T. 4 April 2017; T. 14 March 2017; T. 24 January 2017; T. 26 July 2016; T. 15 April 2016; T. 14 April 2016; T. 6 April 2016; T. 5 April 2016; exhibit P796.1 (Network analysis report – updated 8 February 2018).

⁴⁵²⁰ Exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 10.

⁴⁵²¹ John Edward Philips, T. 21 August 2015, pp 95, 98, 102, T. 31 August 2016, pp 13-14, 27, 34-35; exhibit P1114 (Expert report of John Edward Philips – Red mission phones), p. 2, para. 3.1.2.1; exhibit P1118 (PowerPoint presentation on common mission phones, John Edward Philips), slide 9. *See also* exhibit P550 (PowerPoint presentation, John Edward Philips), p. 247.

⁴⁵²² John Edward Philips, T. 21 August 2015, pp 95-97, 102, T. 31 August 2016, pp 13-16. *See also* exhibit P550, slide 247.

⁴⁵²³ John Edward Philips, T. 31 August 2016, pp 13-16; exhibit P1118, slide 9.

⁴⁵²⁴ Gary Platt, T. 4 April 2017, p. 25.

⁴⁵²⁵ Gary Platt, T. 5 April 2016, pp 47-49.

⁴⁵²⁶ Gary Platt, T. 6 April 2016, pp 44, 54-55, T. 26 July 2016, pp 33, 38-39, 70-71, T. 15 April 2016, pp 6, 16, 18, 37-38, 78.

2. Organisational factors

2156. A wide range of factors can establish that a group of mobiles are operating as a network. They can be broadly grouped into: (a) setting up the network; (b) the equipment used by the mobiles; (c) the mobiles' usage and activity; and (d) the end of the network.

(a) Setting up the network

2157. Mr Philips and Mr Platt stated that, based on their experience, a network is often set up through coordinated actions. For example, the handsets and SIM cards for the mobiles in a group may be purchased at the same time and from the same location.⁴⁵²⁷ Similarly, the mobiles within the group may be initialised on the provider network and used for the first time at the same time and place.⁴⁵²⁸

2158. Sequencing patterns at the time of setup can show group management. Each mobile handset has an IMEI number,⁴⁵²⁹ while every SIM card has a unique IMSI number⁴⁵³⁰ and MSISDN number (the calling number).⁴⁵³¹ According to Mr Philips, if one or more of these numbers are close in sequence for a group of mobiles, this can show that they were purchased together.⁴⁵³²

2159. After the initial setup, the group's expansion can show that they form a network, if the additional mobiles are added in a systematic and simultaneous manner.⁴⁵³³

⁴⁵²⁷ Exhibit P1114 (Expert report of John Edward Philips – Red mission phones), pp 4, 23, 62; Gary Platt, T. 5 April 2016, p. 48.

⁴⁵²⁸ Exhibit P1114 (Expert report of John Edward Philips – Red mission phones), p. 4; Gary Platt, T. 15 April 2016, pp 59, 64.

⁴⁵²⁹ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), p. 164; Witness PRH707, T. 18 February 2016, p. 17; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 36.

⁴⁵³⁰ Witness PRH707, T. 9 February 2016, pp 27-28. For further details, *see* chapter VII 'Reliability of telecommunications evidence'.

⁴⁵³¹ Witness PRH707, T. 18 February 2016, p. 28; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 32.

⁴⁵³² Exhibit P1114 (Expert report of John Edward Philips – Red mission phones), p. 3, para. 3.1.2.4; exhibit P1116 (Expert report of John Edward Philips – Green mission phones), pp 73-74.

⁴⁵³³ Gary Platt, T. 14 April 2016, pp 82-90; *see also* exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), p. 404, paras 6.7.5.1-6.7.5.3.

(b) Equipment

2160. Mr Philips and Mr Platt explained that analysis of the equipment used by a group of mobiles can help show they form a network. Typically users will choose a basic, cheap handset model, which will be used throughout the network of mobiles.⁴⁵³⁴

2161. Users within the mobile group may also swap handsets. Mr Platt testified that mobiles may be collected each day—after disconnecting handsets and SIM cards—to redistribute them on the next operational day. Handset sharing thus tends to show an organisational process.⁴⁵³⁵

(c) Usage

2162. How the mobiles are used is a critical indicator of whether they are operating as a network, according to Mr Philips and Mr Platt. In particular, mobile networks require a closed user group,⁴⁵³⁶ which is an essential characteristic.⁴⁵³⁷ A closed group means that all calls, incoming and outgoing, take place within the group.⁴⁵³⁸ These closed groups are kept relatively small. The in-group communications relate to the mission in which the mobile users are involved.⁴⁵³⁹

2163. The days and times when the mobiles are used can also show that they are part of a network. According to Mr Philips, a group of mobiles being used together more frequently can also show organisation, such as in the lead-up to an important activity.⁴⁵⁴⁰

2164. Where the mobiles are used is also relevant. When various mobiles operate from the same location repeatedly, this shows that they are working together.⁴⁵⁴¹ Similarly, a group of mobiles suddenly appearing together in an exceptional location—away from the mobile user's typical area—can show they are focused on a particular mission.⁴⁵⁴²

⁴⁵³⁴ Exhibit P1114 (Expert report of John Edward Philips – Red mission phones), p. 3.

⁴⁵³⁵ Gary Platt, T. 15 April 2016, p. 80, T. 26 July 2016, p. 14.

⁴⁵³⁶ John Edward Philips, T. 25 April 2017, p. 95, T. 26 April 2017, p. 28.

⁴⁵³⁷ John Edward Philips, T. 31 August 2016, pp 13-16; exhibit P1118 (PowerPoint presentation on common mission phones, John Edward Philips), slide 9; Gary Platt, T. 4 April 2017, pp 10-12.

⁴⁵³⁸ Gary Platt, T. 5 April 2016, p. 47; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), para. 10.4.13.1.1.2.

⁴⁵³⁹ John Edward Philips, T. 31 August 2016, pp 34-35.

⁴⁵⁴⁰ Exhibit P1116 (Expert report of John Edward Philips – Green mission phones), p. 14; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), para. 10.4.13.1.1.6; John Edward Philips, T. 31 August 2016, pp 14, 37.

⁴⁵⁴¹ Exhibit P1114 (Expert report of John Edward Philips – Red mission phones), p. 4, para. 6.3.16.

⁴⁵⁴² John Edward Philips, T. 31 August 2016, pp 36-37; exhibit P1118, slide 12.

2165. The length of calls can also be a significant factor. Mr Platt testified that, for mobile networks dealing with crimes such as armed robbery or kidnapping, calls tend to be shorter because they are merely for information passing. In other types of covert networks—such as for drugs—calls tend to take longer because orders are being placed.⁴⁵⁴³

2166. According to Mr Philips, a hierarchical call flow can reflect an organised structure, whereby one mobile acting as a leader communicates down a hierarchy chain to its subordinates.⁴⁵⁴⁴ Other calls made in a sequential order, namely one mobile calling another which then calls another, can show the passing of information in an organised manner throughout the group.⁴⁵⁴⁵

2167. The existence of a mobile network can be inferred from coordinated top-ups, during which several mobiles within the group receive additional prepaid credit at the same time. Also, the numbers on the mobile recharge cards may be in a sequential order, demonstrating that the mobiles are linked.⁴⁵⁴⁶ Of particular note is that only Alfa provided the Prosecution with information on recharge cards for adding credit to their pre-paid mobiles;⁴⁵⁴⁷ Touch could not provide information on top-up payments for its pre-paid mobiles.⁴⁵⁴⁸

2168. Other indicators of organised usage can include the mobiles all using the same provider network and mobiles within the group sharing common contacts.⁴⁵⁴⁹

(d) Closure of the network

2169. Based on Mr Philips's and Mr Platt's experience, all the mobiles in a group ceasing operation around the same time can demonstrate that they are operating as a network.⁴⁵⁵⁰ A mobile's final calls ordinarily signal the execution of the crime itself. When the mobiles are no

⁴⁵⁴³ Gary Platt, T. 26 July 2016, p. 17.

⁴⁵⁴⁴ Exhibit P1114 (Expert report of John Edward Philips – Red mission phones), p. 4; exhibit P1116 (Expert report of John Edward Philips – Green mission phones), pp 4, 14.

⁴⁵⁴⁵ Gary Platt, T. 26 July 2016, p. 17.

⁴⁵⁴⁶ Gary Platt, T. 5 April 2016, p. 48, T. 15 April 2016, p. 72.

⁴⁵⁴⁷ Gary Platt, T. 6 April 2016, pp 17, 33; exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 1104 (Alfa provided the Prosecution with information on recharge cards used by the Yellow and Blue mobiles).

⁴⁵⁴⁸ Gary Platt, T. 6 April 2016, p. 16.

⁴⁵⁴⁹ Gary Platt, T. 15 April 2016, p. 41; exhibit P1114 (Expert report of John Edward Philips – Red mission phones), p. 3; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 782-786.

⁴⁵⁵⁰ Exhibit P1114 (Expert report of John Edward Philips – Red mission phones), p. 4; Gary Platt, T. 5 April 2016, p. 49.

longer needed for that crime, their users discard them.⁴⁵⁵¹ Giving up the mobiles lowers the likelihood that an investigation team can subsequently identify the mobile users.⁴⁵⁵²

2170. Not all mobiles in a network are necessarily discarded upon mission completion. Mr Philips testified that the closer a mobile is to the crime, the higher its forensic visibility, namely the risk that its call activity will be associated with the crime, and thus the greater the need to discard it. Conversely, a mobile with low forensic visibility might not be discarded. For example, a mobile with a high volume of calls that was active near the crime scene would be highly visible.⁴⁵⁵³

2171. A large amount of credit remaining on the mobiles in a group after they are discarded could also show that they are part of a network,⁴⁵⁵⁴ given that the organisers are well-funded and willing to sacrifice thousands of dollars.⁴⁵⁵⁵

3. Covert factors

2172. Mr Philips and Mr Platt further identified, based on their experience, characteristics of a mobile network showing that it is covert.

2173. Mr Platt testified that a key method for preserving anonymity is to provide no details about the subscriber or a fake identity when setting up a mobile, such as purchasing the handset and starting a SIM card subscription.⁴⁵⁵⁶ However, the Trial Chamber also heard testimony that, in Lebanon during 2004 and 2005, people who purchased prepaid mobile subscriptions typically did not provide identification cards. Mobile dealers would routinely use other people's identification cards instead. As a result, the named subscriber on a prepaid subscription form often did not match the buyer's identity.⁴⁵⁵⁷

2174. Users in a covert network will also avoid certain common mobile features that are more likely to reveal their identity. For example, they will not send or receive text messages, because

⁴⁵⁵¹ John Edward Philips, T. 31 August 2016, pp 43-44, T. 2 September 2016, p. 49; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), para. 10.4.13.1.1.9; Gary Platt, T. 26 July 2016, pp 31-32.

⁴⁵⁵² Gary Platt, T. 26 July 2016, pp 32-33.

⁴⁵⁵³ John Edward Philips, T. 31 August 2016, pp 16-17, 40-42, T. 6 September 2016, pp 13-14.

⁴⁵⁵⁴ Gary Platt, T. 5 April 2016, p. 49.

⁴⁵⁵⁵ Gary Platt, T. 15 April 2016, pp 22-24.

⁴⁵⁵⁶ Gary Platt, T. 4 April 2016, p. 94, T. 5 April 2016, p. 14, T. 15 April 2016, p. 31, T. 4 April 2017, pp 10-12. *See also* exhibit P1114 (Expert report of John Edward Philips – Red mission phones), p. 4.

⁴⁵⁵⁷ Witness PRH553, T. 8 September 2015, pp 47-53.

these messages may contain incriminating content. They will avoid using voicemail, because voicemails could contain incriminating information or identify the speaker by their voice. Users will not activate call forwarding, because it may transfer to a landline associated with the user, thereby revealing their identity.⁴⁵⁵⁸

2175. Mr Platt testified that, to help keep the network covert, users will rely on untraceable payment methods.⁴⁵⁵⁹ They will use cash and avoid credit card transactions when buying handsets or recharge cards for prepaid mobiles, to avoid leaving a financial trail.⁴⁵⁶⁰ Also, simultaneous cash payments for a group of mobiles can help show their organisation and coordination.⁴⁵⁶¹

2176. Similarly, pre-paid mobiles, which require a top-up—or recharging—process, are more anonymous than post-paid mobiles, which usually require personal and banking details from the subscriber.⁴⁵⁶²

2177. Mr Platt testified that handset swapping can also hide usage and the mobile's user. Detaching the SIM card from the handset ensures that there are no accidental incoming calls and the criminals cannot be traced. Criminals may also change handsets to confuse investigators trying to attribute the mobiles, given that two sources can be used for tracking: the SIM card's IMSI and the handset's IMEI. Swapping also helps prevent mobiles from being used for personal reasons, which threatens secrecy.⁴⁵⁶³

2178. Finally, users can help preserve anonymity by purchasing the mobile and adding credit—if it is a pre-paid mobile—in a different place from where the user normally uses the mobile.⁴⁵⁶⁴

⁴⁵⁵⁸ John Edward Philips, T. 31 August 2016, pp 51-53.

⁴⁵⁵⁹ Gary Platt, T. 4 April 2017, pp 11-12, 18.

⁴⁵⁶⁰ Gary Platt, T. 15 April 2016, pp 37-38. *See also* John Edward Philips, T. 31 August 2016, pp 14, 53-54.

⁴⁵⁶¹ Gary Platt, T. 6 April 2016, pp 90, 93.

⁴⁵⁶² Exhibit P1114 (Expert report of John Edward Philips – Red mission phones), pp 3-5; exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 5.1.3.4-5.1.3.5.

⁴⁵⁶³ Gary Platt, T. 15 April 2016, pp 79-81. *See also* exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 515; exhibit P795 (Network analysis presentation), slide 113.

⁴⁵⁶⁴ Exhibit P1114 (Expert report of John Edward Philips – Red mission phones), p. 5.

4. Weighing the factors

2179. According to Mr Philips, the essential characteristics of a covert network are a closed user group, anonymity and involvement in a mission.⁴⁵⁶⁵ However, a mobile does not have to display every other characteristic noted above to be regarded as belonging to a network.⁴⁵⁶⁶ The presence and degree of these characteristics will differ among different networks, depending on how close the mobile is to the planning and execution of the crime. The closer a mobile is associated to the crime, the more these characteristics should be present.⁴⁵⁶⁷

2180. Mr Platt gave evidence that some factors can be common across various mobile networks, such as exclusive communications within the mobile group and anonymous subscribers,⁴⁵⁶⁸ while other factors may only apply to certain networks, such as the mobiles' limited period of activity, which he analysed for the Red mobile network.⁴⁵⁶⁹

5. Submissions

2181. The Ayyash Defence submits that Mr Philips had only encountered mission mobiles rarely, testified about them even less and had never written a report on them before. As such, his work in this novel area has not been subject to peer review.⁴⁵⁷⁰ With regard to the characteristics of mission mobiles, Mr Philips failed to indicate whether there are essential characteristics and did not provide a hierarchy of the characteristics.⁴⁵⁷¹ In some parts of his analysis, Mr Philips dropped certain characteristics when they did not suit the outcome, thus tailoring them to best fit the evidence. The Ayyash Defence submits that this renders Mr Philips's opinions unreliable and urges the Trial Chamber not to place any weight on his evidence on mission mobiles.⁴⁵⁷²

⁴⁵⁶⁵ John Edward Philips, T. 31 August 2016, pp 13-16; exhibit P1118 (PowerPoint presentation on common mission phones, John Edward Philips), slide 9.

⁴⁵⁶⁶ Exhibit P1116 (Expert report of John Edward Philips – Green mission phones), pp 3, 13; exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), p. 2.

⁴⁵⁶⁷ John Edward Philips, T. 21 August 2015, pp 96, 102, 107-109. *See also* exhibit P550 (PowerPoint presentation, John Edward Philips), p. 248.

⁴⁵⁶⁸ Exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 1215.

⁴⁵⁶⁹ Gary Platt, T. 26 July 2016, pp 7-9, 34. *See also* exhibit P795 (Network analysis presentation), slide 115.

⁴⁵⁷⁰ Ayyash Defence final trial brief, para. 277; Ayyash Defence closing submissions, T. 17 September 2018, pp 73-75.

⁴⁵⁷¹ Ayyash Defence final trial brief, paras 280-282.

⁴⁵⁷² Ayyash Defence final trial brief, paras 282-283, 285; Ayyash Defence closing submissions, T. 17 September 2018, pp 75, 78.

2182. It further submits that Mr Platt's expert report on the mobile networks is in large part his summary of network mobile call sequence tables and documents, and does not contain any methodology. In his report, Mr Platt found only that the Red mobiles were 'covert'—without explaining the basis for this conclusion—and did not address the 'covertness' of the other networks. Mr Platt's testimony provided little more as to methodology. He only covered the manner in which mobiles were subscribed, their exclusive use among group members, a lack of text messages and payment methods. As a result, Mr Platt's report and testimony are summary evidence and the Trial Chamber should therefore give them no weight and instead rely on the underlying evidence.⁴⁵⁷³

2183. According to the Sabra Defence, Mr Platt lacks independence and impartiality. The alleged users of the mobile telephone networks had already been suggested to him as being the perpetrators when he joined the Prosecution and his role was to compile the evidence necessary to confirm this ostensibly established fact.⁴⁵⁷⁴

6. Findings

2184. Mr Philips and Mr Platt gave clear and detailed evidence as to what constitutes a covert mobile network. Mr Philips noted that some characteristics were 'essential' while others were not required in every situation. This is appropriate given the different contexts in which a mobile network might operate. The Trial Chamber does not accept the Ayyash Defence's submission that he tailored his list of characteristics for a covert network to match the evidence. As Mr Philips explained, he prioritised characteristics based on their importance, and he sometimes used different terminology to describe the same factor.⁴⁵⁷⁵

2185. Further, the characteristics outlined by Mr Philips—and Mr Platt—are straightforward, logical and based on common sense. The absence of peer review for these factors and Mr Philips's relative lack of experience with covert networks thus does not undermine his evidence, particularly

⁴⁵⁷³ Ayyash Defence final trial brief, para. 332.

⁴⁵⁷⁴ Sabra Defence final trial brief, para. 91. Similar Defence challenges regarding Mr Platt's evidence on the 'Chronology of Events' are addressed in chapter III 'Assessment of evidence', (D) (1) (b) (ii) 'Witness independence and association with Parties'.

⁴⁵⁷⁵ John Edward Philips, T. 25 April 2017, pp 86-89, 92, 95-96.

when Mr Platt, who concurred on most of these factors, has had experience with more than 100 covert networks.

2186. The Trial Chamber does not agree with the Ayyash Defence's arguments that Mr Platt did not address the 'covertness' of the Green, Blue and Yellow networks, thereby undermining his expert report on mobile networks. In his report, he concluded that each of these mobile groups shared several common features that reflected covertness and prevented identification of the mobile users.⁴⁵⁷⁶ The validity of his conclusions are addressed below in regard to each network.

2187. The Trial Chamber is also satisfied that Mr Platt sufficiently explained the factors he relied on to conclude that the mobile groups were organised and covert networks. He explicitly cited various characteristics—such as a closed user group, simultaneous payments for subscriptions or recharge cards, lack of details or false information regarding the mobile users' identities, SIM cards and handsets not being used after the crime was completed and cash payments—when examining the various networks, as analysed in the following sections for each network. Mr Platt therefore did not provide merely summary evidence or unsubstantiated opinions.

2188. The fact that both the UNHCR and the Prosecution had already identified the mobile networks before Mr Platt joined the Prosecution does not necessarily demonstrate bias in his analysis. As an expert, he assessed whether, based on objective factors, the mobiles in each group belonged to a covert network. In his analysis, he relied on call data records converted into call sequence tables, witness statements and related documentation pertaining to: subscriber details, purchase history and financial records. To prepare his report, he reviewed and analysed all evidence from the investigation and, where there was a gap, he requested the missing material from the investigation team.

2189. In other areas of his evidence, for example, the chronology of events, Mr Platt candidly noted his disagreement with the Prosecution lawyers' decision not to produce an updated version

⁴⁵⁷⁶ Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 688, 691, 706-709, 723-726, 740-743 in relation to the Green network or its three mobiles, paras 780, 791, 813, 832, 852, 871, 899, 907, 926, 947, 967, 989, 1009, 1029, 1048, 1067, 1088 in relation to the Blue network or the 15 Blue mobiles in it, and paras 1113, 1125, 1134-1135, 1156-1157, 1176-1177, 1198-1199 in relation to the Yellow network or its four Yellow mobiles.

of his report and frankly described as ‘a bit misleading’ slides prepared by others in an in-court slide presentation⁴⁵⁷⁷—thus showing the independence of his analysis and opinions.

2190. For these reasons, the Trial Chamber finds that Mr Platt was sufficiently independent in conducting this analysis. Even so, the Trial Chamber recognises that, as a Prosecution employee, Mr Platt was close to the investigation and may have shared the Prosecution’s common goal, namely, convincing the Trial Chamber of the Accused’s culpability. As set out in paragraphs 317-318, the Trial Chamber has kept this in mind when evaluating his evidence, and considered it in light of the sources he had relied upon and other relevant evidence.

2191. Finally, in regard to which and how many of the characteristics must be satisfied for a group of mobiles to be classified as a network, the Trial Chamber has assessed the totality of the evidence, including the underlying evidence relied on by Mr Philips and Mr Platt, and reached its own conclusions for each alleged network.

C. Green network

2192. The Prosecutor alleges that the Green network mobiles—Green 023, Green 071 and Green 300—were used to monitor and coordinate the preparations for the attack, including the preparation of the false claim of responsibility. Further, the Green network was used to monitor the physical perpetration of the attack. The Green network mobiles were used from at least 30 September 2004 to 14 February 2005. From 13 October 2004 until they ceased all activity on 14 February 2005 about one hour before the attack on Mr Hariri, the Green network mobiles communicated exclusively with each other and had no outgoing text messages.⁴⁵⁷⁸

2193. Mr Philips and Mr Platt analysed Green 023, Green 071 and Green 300 to determine whether they formed a covert network. They also looked at 15 other mobiles—Green 026, Green 029, Green 030, Green 032, Green 034, Green 046, Green 048, Green 049, Green 050, Green 064, Green 065, Green 260, Green 280, Green 290 and Green 992—because Green 023, Green 071 and

⁴⁵⁷⁷ Gary Platt, T. 25 January 2017, p. 52, T. 27 January 2017, pp 2-3, T. 6 February 2017, pp 55, 94-95, T. 7 February 2017, p. 17, T. 9 February 2017, p. 6.

⁴⁵⁷⁸ Amended consolidated indictment, paras 15(b), 19(a), 39(a); Prosecution pre-trial brief, paras 25-26.

Green 300 started as part of this larger group of 18 mobiles in July and August 2004 before forming their own closed network.⁴⁵⁷⁹

2194. Mr Philips, in his ‘Green mission phones’ report, concluded that:

Comparison of these mobile phones with the generally accepted characteristics of mission phones leave little doubt that these are Mission Phones though the focus of Green 071 may be different from that of the other 2 Green Phones.⁴⁵⁸⁰

2195. Specific activity by the Green mobiles is set out below.⁴⁵⁸¹

1. Setting up the network

2196. The Green mobiles all operated on the Alfa network.⁴⁵⁸²

2197. The SIM card for Green 071 was purchased on 9 July 2004,⁴⁵⁸³ the SIM card for Green 023 was bought from a different dealer on 12 August 2004⁴⁵⁸⁴ and the SIM card for Green 300 was purchased from the same dealer as Green 023’s on 13 August 2004.⁴⁵⁸⁵ All of these cards were purchased together with SIM cards for other mobiles within the larger group of 18 Green mobiles.⁴⁵⁸⁶ In particular, the IMSI numbers from the SIM cards for Green 023, Green 300 and Green 071 showed a pattern. Each mobile’s IMSI directly preceded or followed the IMSI number of another mobile from the larger group of 18 Green mobiles—Green 023 followed Green 026,

⁴⁵⁷⁹ Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 673-676; exhibit P1116 (Expert report of John Edward Philips – Green mission phones), paras 5.1.1.3-5.1.1.8, 7.5.7.

⁴⁵⁸⁰ Exhibit P1116 (Expert report of John Edward Philips – Green mission phones), p. 2.

⁴⁵⁸¹ See chapters X ‘Chronology of network mobile activity before Mr Hariri’s assassination on Monday 14 February 2005’ and XII ‘Claim of responsibility for the attack on Rafik Hariri’.

⁴⁵⁸² Exhibit P1116 (Expert report of John Edward Philips – Green mission phones), p. 3.

⁴⁵⁸³ Exhibit P405 (Subscription contract for Green 071), ERN 60105006; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 734, 736.

⁴⁵⁸⁴ Exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 718; exhibit P792 (Alfa SIM cards’ activation and deactivation dates); exhibit P405 (Subscription contract for Green 023), ERN 60105118.

⁴⁵⁸⁵ Exhibit P405 (Subscription contract for Green 300), ERN 60105090; exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 703; exhibit P1116 (Expert report of John Edward Philips – Green mission phones), p. 74; *see also* exhibit P1207 (Call sequence table of Green 300), p. 1.

⁴⁵⁸⁶ Exhibit P1116 (Expert report of John Edward Philips – Green mission phones), pp 22-23, para. 7.2.2; exhibit P405, ERNs 60105006, 60105118, 60105090; Gary Platt, T. 6 April 2016, pp 57, 62-63, T. 14 April 2016, pp 18-19, 72. *See also* exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 675, 684, 691.

Green 071 preceded Green 065 and Green 300 was in between Green 032 and Green 992.⁴⁵⁸⁷ This is set out in the following table:

	IMSI	Dealer
Green 030	94906	A
Green 048	94907	A
Green 046	94908	A
Green 034	94909	A
Green 071	94920	A
Green 065	94921	A
Green 290	94922	A
Green 280	94923	A
Green 049	94887	A
Green 050	94888	A
Green 260	94889	A
Green 064	94890	A
Green 026	89823	B
Green 023	89824	B
Green 029	89818	B
Green 032	89819	B
Green 300	89820	B
Green 992	89821	B

Table 1 with Green mobiles' IMSI numbers from John Edward Philips's Green Mission Phones report—exhibit P1116, p. 22

2198. Green 071 was activated on 15 July 2004 and first used on 26 July 2004.⁴⁵⁸⁸ Green 300 and Green 023 were both activated on the same day—13 August 2004—and first used on consecutive days, 17 and 18 August 2004, respectively.⁴⁵⁸⁹ These mobiles, and the other mobiles from the

⁴⁵⁸⁷ Exhibit P1116 (Expert report of John Edward Philips – Green mission phones), paras 7.2.2.1-7.2.2.2, p. 22 (table 1).

⁴⁵⁸⁸ Exhibit P405 (Subscription contract for Green 071), ERN 60105006; exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 734.

⁴⁵⁸⁹ Exhibit P405, ERNs 60105118, 60105090; exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 718; exhibit P792; exhibit P1116 (Expert report of John Edward Philips – Green mission phones), pp 22-23 (tables 1 and 2), paras 7.4.3.1, 7.4.4.1; exhibit P1207, p. 1.

larger group of 18 Green mobiles, were all activated in the same area, albeit at different times, which, according to Mr Platt, demonstrated an organisational process.⁴⁵⁹⁰

2199. The Trial Chamber did not receive evidence on the purchase of the Green mobiles' handsets.⁴⁵⁹¹

2. Equipment

2200. Green 023, Green 300 and Green 071 all used the same make and model of handset, a Nokia model 1100. The other 15 Green mobiles also used this same basic handset model.⁴⁵⁹²

2201. Green 023 and Green 300 continuously used their handsets from September 2004 through 14 February 2005.⁴⁵⁹³ Green 071 used the same handset from 24 September 2004 to 7 February 2005.⁴⁵⁹⁴ Before that, Green 071's handset was also used by another Green mobile (Green 290) for a single call on 4 August 2004.⁴⁵⁹⁵

3. Usage

2202. Mr Philips and Mr Platt focused on the same period of use for Green 023, Green 300 and Green 071, namely 13 October 2004 through 14 February 2005.⁴⁵⁹⁶

2203. According to Mr Philips, the three Green mobiles were operational for 42 days during this period.⁴⁵⁹⁷ Mr Platt stated that these mobiles were in communication on 39 days and were active on 41 days of this period.⁴⁵⁹⁸ Based on the underlying evidence, the Trial Chamber has calculated that the three Green mobiles were in communication on 39 days. They were operational on 41 days

⁴⁵⁹⁰ Gary Platt, T. 6 April 2016, pp 61, 76-77.

⁴⁵⁹¹ Gary Platt, T. 6 April 2016, p. 57.

⁴⁵⁹² John Edward Philips, T. 31 August 2016, p. 117; exhibit P1116 (Expert report of John Edward Philips – Green mission phones), para. 7.3.1.

⁴⁵⁹³ John Edward Philips, T. 31 August 2016, p. 117; exhibit P1116 (Expert report of John Edward Philips – Green mission phones), para. 7.3.1; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 712-713, 729-730.

⁴⁵⁹⁴ Exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 739.

⁴⁵⁹⁵ Exhibit P1116 (Expert report of John Edward Philips – Green mission phones), paras 7.3.1.18-7.3.1.21.

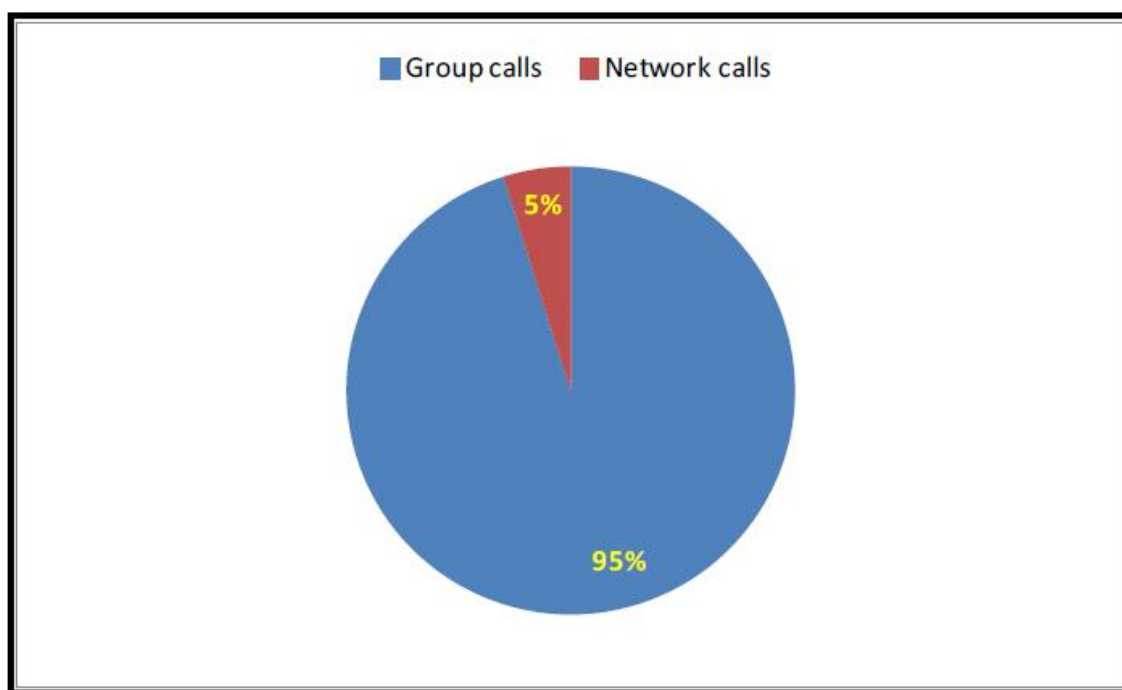
⁴⁵⁹⁶ Gary Platt, T. 14 April 2016, pp 30-31; exhibit P1116 (Expert report of John Edward Philips – Green mission phones), para. 7.5.1.1.

⁴⁵⁹⁷ Exhibit P1116 (Expert report of John Edward Philips – Green mission phones), paras 7.5.1.1-7.5.1.2.

⁴⁵⁹⁸ Exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 690; Gary Platt, T. 14 April 2016, pp 19-20; *see also* exhibit P1116 (Expert report of John Edward Philips – Green mission phones), para. 7.5.1.2.

in total, which includes two days—9 November and 29 December 2004—when Green 071, Green 300 and Green 023 did not make or receive calls, but each received a service text message.⁴⁵⁹⁹

2204. During this period, Green 071, Green 023 and Green 300 operated within an absolute closed user group. They communicated only within this closed user group, with no contact with any other mobile.⁴⁶⁰⁰ There were no misdials and no calls to third parties.⁴⁶⁰¹ They did not send text messages between themselves or to others.⁴⁶⁰² According to Mr Philips, during this period, there were only ten incoming text messages from the Alfa network, representing five percent of the total of 206 voice and text communications.⁴⁶⁰³



Graph 2 from John Edward Philips's Green Mission Phones report - exhibit P1116, p. 33

⁴⁵⁹⁹ Exhibit P1205 (Call sequence table of Green 071), p. 8; exhibit P1207 (Call sequence table of Green 300), p. 3; exhibit P1211 (Call sequence table of Green 023), p. 3.

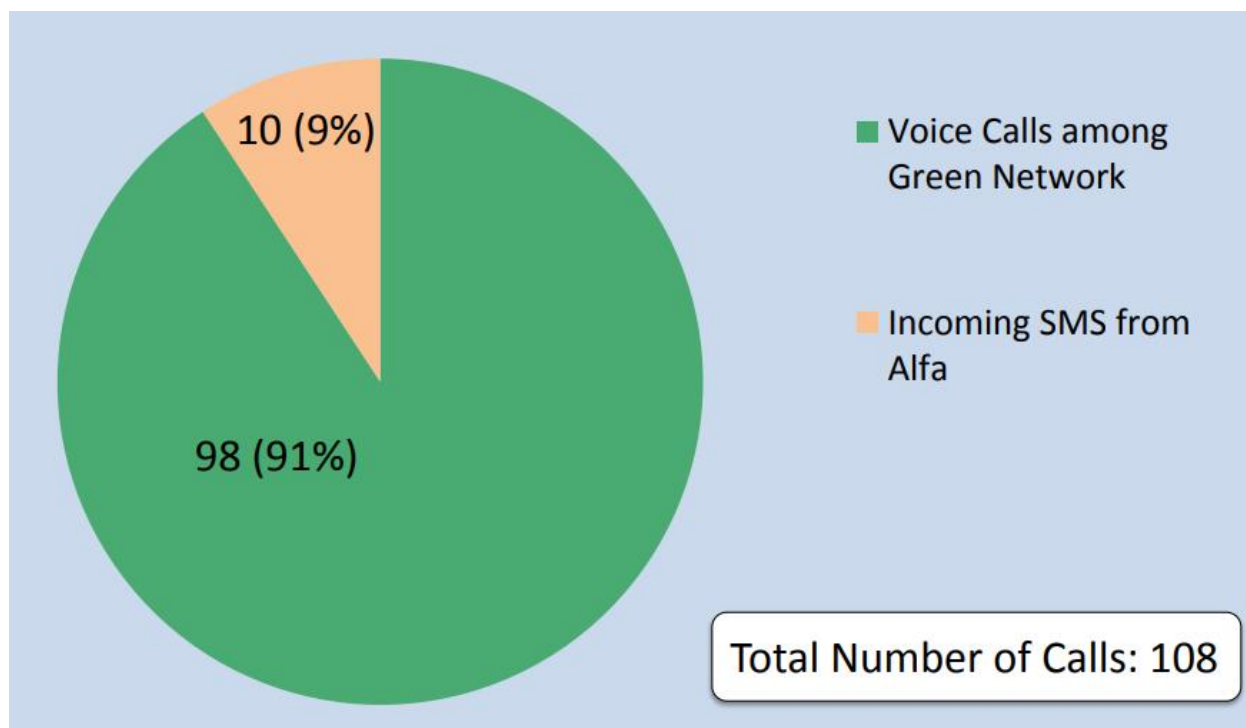
⁴⁶⁰⁰ Exhibit P1116 (Expert report of John Edward Philips – Green mission phones), p. 3, para. 7.5.1.1; exhibits P1205, P1207, P1211; Gary Platt, T. 6 April 2016, p. 57; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 688, 707, 711.

⁴⁶⁰¹ Gary Platt, T. 14 April 2016, pp 20-21.

⁴⁶⁰² Gary Platt, T. 6 April 2016, p. 80; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 706, 723, 740.

⁴⁶⁰³ Exhibit P1116 (Expert report of John Edward Philips – Green mission phones), p. 3, paras 7.5.1.17-7.5.1.20. Given that all calls were between the Green mobiles, there were 98 calls, not double the amount as Mr Philips appears to suggest.

2205. Mr Platt testified that there were 108 calls in total, of which 98 were between the three Green mobiles, and 10 were incoming service text messages.⁴⁶⁰⁴



Slide 49 of Gary Platt's Network analysis presentation – exhibit P795

2206. Before 13 October 2004, Green 023, Green 071 and Green 300 communicated with other Green mobiles from the initial group of 18 Green mobiles. Green 023 and Green 300 also had contacts with external numbers before 13 October 2004.⁴⁶⁰⁵

2207. Mr Philips and Mr Platt both gave evidence—based on the relevant call sequence tables—that the Green mobiles made no calls from 11 November through 19 December 2004.⁴⁶⁰⁶ Mr Platt explained that this 40-day inactivity was due to the Green mobiles being switched off. According to him, there was no operational need for them to be active during this period, which demonstrates that the Green mobiles were used for an operational purpose. If the mobiles were switched on, the

⁴⁶⁰⁴ Gary Platt, T. 14 April 2016, pp 21, 27-31; exhibit P795 (Network analysis presentation), slide 49.

⁴⁶⁰⁵ Exhibit P1207, p. 2; exhibit P1211, p. 1; exhibit P1116 (Expert report of John Edward Philips – Green mission phones), paras 7.4.3.3, 7.4.4.6.

⁴⁶⁰⁶ Exhibit P1116 (Expert report of John Edward Philips – Green mission phones), paras 7.5.1.1-7.5.1.2; exhibit P1205, p. 8; exhibit P1207, p. 3; exhibit P1211, p. 3; Gary Platt, T. 6 April 2016, p. 57, T. 14 April 2016, p. 37.

users could be identified, because of the increased chance that an incoming text message or a misdial would locate them.⁴⁶⁰⁷

2208. The activity of the three Green mobiles was concentrated in Beirut. From 13 October 2004 to 14 February 2005, 85 per cent of their calls came from the Beirut area, 3.4 per cent were made from the Nabatiyeh and Saida area and one per cent came from the Tripoli area.⁴⁶⁰⁸ Sixty-five per cent of all Green calls used cells in the southern suburbs of Beirut.⁴⁶⁰⁹

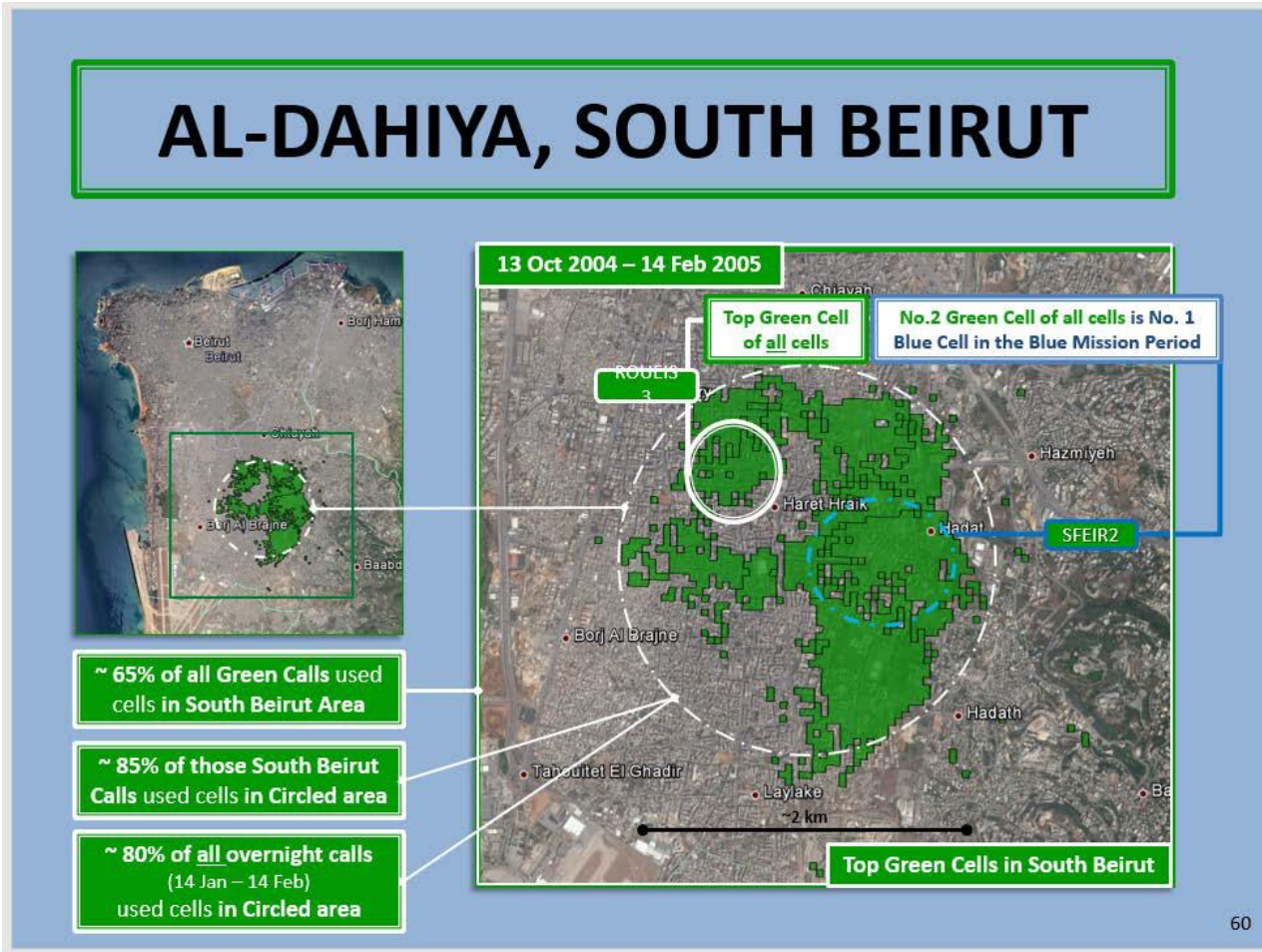
2209. For Green 023, Green 300 and Green 071, ROUEIS3 was the most used cell, the focal point for their activity. The second most used cell by the three Green mobiles was SFEIR2. This cell was also the top cell used by the Blue mobiles.⁴⁶¹⁰ Both cells were in the southern suburbs of Beirut.

⁴⁶⁰⁷ Gary Platt, T. 24 January 2017, pp 43-44.

⁴⁶⁰⁸ Gary Platt, T. 14 April 2016, p. 48.

⁴⁶⁰⁹ John Edward Philips, T. 1 September 2016, pp 45-47; exhibit P1118 (PowerPoint presentation on common mission phones, John Edward Philips), slide 60; exhibits P1205, P1207, P1211; exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 683.

⁴⁶¹⁰ John Edward Philips, T. 1 September 2016, pp 55-56; exhibit P1118, slide 60.



Slide 60 of John Edward Philips's PowerPoint presentation – exhibit P1118

2210. According to Mr Philips, the calls made by the three Green mobiles followed a pattern he described as follows:

This is a typical 'open-triangle' arrangement which normally illustrates some sort of hierarchy which, in this case, would be with Green 023 at the top and Green 071 and Green 300 'in the lower ranks'.⁴⁶¹¹

⁴⁶¹¹ Exhibit P1116 (Expert report of John Edward Philips – Green mission phones), p. 32, para. 7.5.1.13.

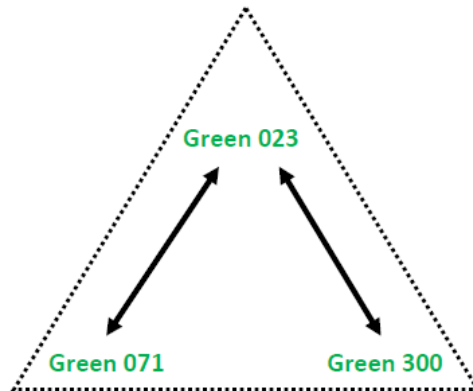


Figure 1 from John Edward Philips's Green Mission Phones report - exhibit P1116, p. 32

2211. Mr Philips and Mr Platt both emphasised the structured nature of the calls. There were no calls between Green 071 and Green 300. There were only communications between Green 071 and Green 023, and between Green 300 and Green 023.⁴⁶¹² The calls were mainly between Green 023 and Green 300 and to a lesser extent between Green 023 and Green 071.⁴⁶¹³ Mr Philips explained in his report that because Green 071 was a mission mobile and was in contact with Green 023, it can be inferred that its user was involved in a common mission with Green 023.⁴⁶¹⁴

2212. According to Mr Platt, the lack of calls between Green 300 and Green 071 suggested a 'command' structure for the network with Green 023 as the focal point.⁴⁶¹⁵ Mr Platt acknowledged that Green 071 and Green 300's users might not be friends and therefore did not communicate with each other. However, he added that friends normally would not use covert mobiles that connected with only one other mobile.⁴⁶¹⁶ In response to the Ayyash Defence's suggestion of another scenario, whereby Green 023 is subordinate to both Green 300 and Green 071 or a 'management consultant' with the other Green mobiles as its clients, Mr Platt stated that this could be a possibility when considering the facts in isolation.⁴⁶¹⁷

⁴⁶¹² Gary Platt, T. 14 April 2016, p. 34; exhibit P795, slide 50; John Edward Philips, T. 1 September 2016, p. 13, T. 2 September 2016, pp 7, 46; exhibit P1116 (Expert report of John Edward Philips – Green mission phones), paras 7.5.1.9-7.5.1.12; exhibits P1205, P1207 and P1211; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 680, 689, 698, 715, 732.

⁴⁶¹³ Gary Platt, T. 14 April 2016, p. 34; exhibit P795, slide 50. Of the 98 calls made between 13 October 2004 and 14 February 2005, only 18 were between Green 071 and Green 023. The other 80 were between Green 023 and Green 300.

⁴⁶¹⁴ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), para. 5.5.3.11.

⁴⁶¹⁵ Gary Platt, T. 14 April 2016, p. 34.

⁴⁶¹⁶ Gary Platt, T. 4 April 2017, pp 37-38.

⁴⁶¹⁷ Gary Platt, T. 4 April 2017, p. 40; exhibit 1D346 (Green network diagrams).

2213. The monthly invoices for Green 023, Green 071 and Green 300 were paid each month, along with the invoices for the other mobiles from the larger group of 18 Green mobiles. Mr Platt testified that all subscriptions were paid at the same place—the Alfa Customer Centre in Furn El Chebbac, Beirut—on the same dates, usually within a period of minutes.⁴⁶¹⁸ The payments were in sequential order and probably made by the same person.⁴⁶¹⁹

Invoice	Phone Numbers	Date	Time
M660091	Green 030 Green 048	28-Sept-04	10:44:00 AM
M660092	Green 064 Green 260	28-Sept-04	10:44:00 AM
M660093	Green 034 Green 046	28-Sept-04	10:45:00 AM
M660094	Green 049 Green 050	28-Sept-04	10:45:00 AM
M660095	Green 280 Green 290	28-Sept-04	10:45:00 AM
M660096	Green 071 Green 065	28-Sept-04	10:45:00 AM
M660097	Green 023 Green 026	28-Sept-04	10:45:00 AM
M660098	Green 300 Green 992	28-Sept-04	10:45:00 AM
M660099	Green 029 Green 032	28-Sept-04	10:45:00 AM

Slide 45 regarding Green mobiles' monthly invoices from Gary Platt's Network analysis presentation - exhibit P795

2214. According to Mr Platt, the way the Green mobiles were used and paid for suggested some kind of organisation in their operation.⁴⁶²⁰

⁴⁶¹⁸ Gary Platt, T. 6 April 2016, pp 82-83; exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 687 and the corresponding tables at pp 94-101; *see also* exhibit P1116 (Expert report of John Edward Philips – Green mission phones), paras 7.6.1.1-7.6.1.2, 7.6.1.4; exhibit P486 (Monthly invoices for Green network mobiles).

⁴⁶¹⁹ Gary Platt, T. 6 April 2016, p. 88.

⁴⁶²⁰ Gary Platt, T. 4 April 2017, p. 50, T. 6 April 2016, p. 93.

4. Closure of the network

2215. Green 071 ceased activity on 7 February 2005, after which its handset and SIM card were not used again.⁴⁶²¹

2216. On 14 February 2005, at 11:58, just about one hour before the explosion that killed Mr Hariri, Green 300 called Green 023 from near the marina area in Beirut. This marked the final Green call.⁴⁶²² According to Mr Platt, this final call is consistent with a coordination and command structure and with the fact that the operation succeeded.⁴⁶²³

2217. After 14 February 2005, Green 023 and Green 300's SIM cards and handsets were not used again.⁴⁶²⁴

2218. The final invoice payment for Green 023, Green 071 and Green 300—and the other mobiles from the larger group of 18 Green mobiles—was on 28 May 2005.⁴⁶²⁵ All Green mobiles were deactivated by the Alfa mobile network on 23 August 2005.⁴⁶²⁶

2219. Mr Platt testified that all the Green mobiles continued to be paid—and some mobiles from the larger group of 18 Green mobiles continued to be used—for several months after the attack because in his view the Green network mobile users were confident that they would not be discovered. It was also possible that whoever provided the Green mobiles to their users was oblivious to their actual use in the attack.⁴⁶²⁷ According to him, something scared the Green mobile users because they ceased payment in May 2005 rather than pay until July 2005, when their contracts ended.⁴⁶²⁸ It was also possible that whoever paid for the Green mobiles suddenly died, got sick or moved away.⁴⁶²⁹ Mr Platt agreed that the continued usage of the Green mobiles after

⁴⁶²¹ Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 695, 748.

⁴⁶²² Gary Platt, T. 13 March 2017 pp 93-94; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1136; exhibit P1207 (Call sequence table of Green 300), p. 5; exhibit P1211 (Call sequence table of Green 023), p. 6. *See also* exhibit P1118 (PowerPoint presentation on common mission phones, John Edward Philips), slide 94.

⁴⁶²³ Gary Platt, T. 14 March 2017, pp 7-8.

⁴⁶²⁴ Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 712-713, 729-730.

⁴⁶²⁵ Exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 696.

⁴⁶²⁶ Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 682, 696; exhibit P1116 (Expert report of John Edward Philips – Green mission phones), para. 7.6.1.5; exhibit P792 (Alfa SIM cards' activation and deactivation dates).

⁴⁶²⁷ Gary Platt, T. 4 April 2017, pp 32-33, T. 6 April 2016, p. 88.

⁴⁶²⁸ Gary Platt, T. 4 April 2017, p. 34.

⁴⁶²⁹ Gary Platt, T. 4 April 2017, p. 36.

the attack risked exposing their users; therefore, it did not make sense to leave a trail by further using them.⁴⁶³⁰

2220. The total costs for all 18 Green mobiles was at least USD 7,683.35, including the initial purchase and monthly invoices.⁴⁶³¹

5. Anonymity

2221. Mr Platt's report states that the users of Green 023, Green 071 and Green 300 relied on false identities for their subscriptions.⁴⁶³² Specifically, the Lebanese Civil Status Directorate and Directorate General for Political and Refugees Affairs had no records for those listed on the subscription contracts for these three mobiles.⁴⁶³³

2222. The users of Green 023, Green 071 and Green 300 also avoided using common mobile features. They did not send text messages between themselves or to others and only received text messages from service numbers.⁴⁶³⁴ They did not use voice mail or call forwarding.⁴⁶³⁵

2223. The monthly invoices for all 18 Green mobiles,⁴⁶³⁶ including Green 023, Green 071 and Green 300, were paid in cash each time.⁴⁶³⁷ On the other hand, the main area of use for the three Green mobiles was the same as where their SIM cards were purchased: the southern suburbs of Beirut.⁴⁶³⁸

2224. According to Mr Philips, the Green mobiles provided very little evidence as to who their users were.⁴⁶³⁹ They made few calls and those calls were not concentrated around the crime

⁴⁶³⁰ Gary Platt, T. 4 April 2017, p. 86.

⁴⁶³¹ Exhibits P405, P485 (Monthly invoices for Green network mobiles), P486; exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 685; exhibit P1116 (Expert report of John Edward Philips – Green mission phones), pp 22, 67, paras 7.2.1.4, 7.6.1.5.

⁴⁶³² Exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 691.

⁴⁶³³ Exhibit P405, ERNs 60105006, 60105118, 60105090; exhibit P397 (Document from civil status directorate and letter from Directorate General for Political and Refugees Affairs); exhibit P1964 (Records of national identity card and civil extract. *See also* exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 703, 736.

⁴⁶³⁴ Gary Platt, T. 6 April 2016, p. 80; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 706, 723, 740.

⁴⁶³⁵ Exhibit P1116 (Expert report of John Edward Philips – Green mission phones), pp 4-5.

⁴⁶³⁶ *See* para. 2193.

⁴⁶³⁷ Gary Platt, T. 6 April 2016, pp 81, 88, 90.

⁴⁶³⁸ Exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 683; exhibit P1116 (Expert report of John Edward Philips – Green mission phones), paras 7.2.4.1-7.2.4.5, p. 23 (table 2).

⁴⁶³⁹ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), para. 10.4.13.1.1.3.

scene.⁴⁶⁴⁰ Similarly, Mr Platt testified that the Green mobiles' use was more disciplined than the other networks. The Green network was the most covert because almost all of the calls were made between Green mobiles.⁴⁶⁴¹

2225. According to Mr Wissam Al-Hassan, Mr Hariri's chief of security in 2005,⁴⁶⁴² the Secretary-General of Hezbollah, Mr Hassan Nasrallah, told him during a meeting, between September and mid-October 2005,⁴⁶⁴³ that 'Network 2' was a Hezbollah network and that it was used to track Lebanese agents suspected of dealing with Israeli Mossad agents.⁴⁶⁴⁴ The Trial Chamber admitted Mr Al-Hassan's evidence under Rule 158, namely as an unavailable witness, and he was not cross-examined.⁴⁶⁴⁵ Also, Mr Nasrallah stated at a press conference on 9 August 2010 that he submitted data to Mr Al-Hassan in late 2005 or early 2006 that Hezbollah was tracking an Israeli agent.⁴⁶⁴⁶

6. Submissions

2226. The Prosecution submits that the Green network was the 'communication hub' used to command and oversee the preparation of each limb of the plot, including the attack, and the delivery and dissemination of the false claim. Despite their very limited direct association with the attack itself—namely, only one call on 14 February 2005 an hour before it occurred—the three Green mobiles' users adopted a high degree of covertness, discipline and focus to ensure that their anonymity was protected. This included fictitious subscriber information, cash payments, exclusive communications within the group and coordinated disposal of the SIMs and handsets.⁴⁶⁴⁷

⁴⁶⁴⁰ John Edward Philips, T. 6 September 2016, p. 13.

⁴⁶⁴¹ Gary Platt, T. 14 April 2016, pp 20-21, 34.

⁴⁶⁴² Mr Al-Hassan was a former Lebanese ISF official. He had resigned from the ISF on 4 February 2005 and was not working on 14 February 2005. Later the same year, in late July, Mr Al-Hassan returned to the ISF. In early 2006, he became the head of the ISF's Information Branch and was assigned to lead the investigation into Mr Hariri's death. On 19 October 2012, Mr Al-Hassan died in a car bombing in Beirut, for which no one has been charged to date. Decision on admission of Mr Al-Hassan's interview, paras 1-2.

⁴⁶⁴³ Exhibit P2122 (Interview of Wissam Al-Hassan, 17 June 2012), pp 61, 80-98, 105, 110, 114-117, 120.

⁴⁶⁴⁴ Mr Al-Hassan described 'Network 2' as a 'senior officials' network, discovered by Captain Wissam Eid—the head of the Technical Division of the ISF's Information Branch—in September 2005'. Exhibit P2122, pp 34-36, 39, 41-51, 79, 86-89, 94, 104, 108-109, 114-125.

⁴⁶⁴⁵ Exhibit P2121 (Interview of Wissam Al-Hassan, 16 June 2012); exhibit P2122; Decision on admission of Mr Al-Hassan's interview.

⁴⁶⁴⁶ Exhibit P2098 (Press conference on 9 August 2010), p. 2.

⁴⁶⁴⁷ Prosecution final trial brief, paras 354-355.

2227. The Prosecution submits that a number of elements in the behaviour of the Green network reflected a strong degree of co-ordination, cohesion and focus demonstrating an organised, well-resourced entity. Evidence of its organisation includes the open triangle formation of contact and the call flow, the restricted number of short and sometimes co-ordinated calls and the collective monthly payments for all 18 mobiles at the same time.⁴⁶⁴⁸

2228. The Ayyash Defence challenges Mr Philips's assertion that the Green network was an open triangle with Green 023 at the top and Green 071 and Green 300 in the 'lower ranks'. Such a pattern of calls may also be consistent with other configurations, such as an inverted triangle or a straight horizontal line with all users on equal level. The Prosecution's assertion that one user is giving orders to another could equally be a subordinate reporting to a superior, assuming there is a hierarchical relationship between the users.⁴⁶⁴⁹

2229. The Merhi Defence submits that the Prosecution did not explain the purpose of the Green network mobiles and did not prove that the Green network was a mission network or that its mission was to coordinate Mr Hariri's assassination.⁴⁶⁵⁰ Mr Philips stated that Green 071's mission could not be established from its call sequence table and that its mission was different from that of Green 023 and Green 300. Furthermore, Green 071 ceased use a week before the attack and therefore can hardly be linked to the explosion.⁴⁶⁵¹ To the contrary, this was not in a coordinated manner with the other Green mobiles and at the time of the attack, but several days before.⁴⁶⁵²

2230. It also submits that Mr Philips failed to link Green 071 to the explosion on 14 February 2005. Mr Philips connected Green 071 to the common mission through its contact with Green 023, but this is a speculative link as neither the activity nor the location of calls involving Green 071 was exceptional.⁴⁶⁵³ Green 071 was isolated from the alleged surveillance activities in both the alleged preparation and execution phases. It was also isolated from call flows between the Red, Blue and Green networks. Furthermore, this mobile had neither exceptional activity nor movements.⁴⁶⁵⁴ Contrary to the Prosecution's assertion that the Green network ceased activities in

⁴⁶⁴⁸ Prosecution final trial brief, para. 356.

⁴⁶⁴⁹ Ayyash Defence final trial brief, paras 288-289.

⁴⁶⁵⁰ Merhi Defence final trial brief, paras 370-371.

⁴⁶⁵¹ Merhi Defence final trial brief, paras 372-373.

⁴⁶⁵² Merhi Defence final trial brief, paras 395-400.

⁴⁶⁵³ Merhi Defence final trial brief, paras 372-378.

⁴⁶⁵⁴ Merhi Defence final trial brief, paras 374-383.

a coordinated manner, Green 071 ceased activity one week before the other Green mobiles.⁴⁶⁵⁵ Also, the Prosecution fails to explain the serious breaches in anonymity of the Green network, such as contacting numbers outside the group, using monthly invoices instead of pre-paid credit and Mr Nasrallah's attribution of the Green network to Hezbollah.⁴⁶⁵⁶

2231. The Prosecution failed to prove that the Green network was a criminal network belonging to Hezbollah whose mission was to assassinate Mr Hariri. The only evidence that the Green network belonged to Hezbollah was Mr Wissam Al-Hassan's interview, on which the Trial Chamber should not place any weight due to its unreliability, uncorroborated hearsay nature and Mr Al-Hassan's unavailability to testify and be cross-examined.⁴⁶⁵⁷

7. Findings

2232. The Trial Chamber finds that there was a covert Green network composed of the three Green mobiles—Green 023, Green 300 and Green 071—operating from 13 October 2004 until 14 February 2005.

2233. The evidence of the expert witnesses Mr Philips and Mr Platt, assessed in light of the underlying documentary evidence such as the call sequence tables, demonstrates that Green 023, Green 300 and Green 071 formed a closed user group. Communications within the three Green mobiles were exclusive as of 13 October 2004 until their final activity in February 2005. They had no contact with any other mobile or landline, including text messages.

2234. The exclusive communication within the Green network was intentional. The calling activity of the three Green mobiles reveals that initially—before 13 October 2004—their users communicated with other mobiles from the larger group of 18 Green mobiles and external numbers. The communication between Green 023, Green 300 and Green 071 became exclusive subsequently and thus purposefully.

⁴⁶⁵⁵ Merhi Defence final trial brief, paras 395-400.

⁴⁶⁵⁶ Merhi Defence final trial brief, paras 384-394.

⁴⁶⁵⁷ Merhi Defence final trial brief, paras 363-369.

2235. Also, most of Green 023's calls were incoming from Green 300 and Green 071. This shows that the communication between the Green mobiles followed a strict discipline—with Green 300 never calling Green 071 and vice versa—and an organisational structure.

2236. The time and place of use also show an organising hand behind the three Green mobiles. They were only used for around 40 days over four months. They were all silent at the same time, from 11 November through 19 December 2004. Their primary area of use was in the southern suburbs of Beirut. Green 071 ceased activity on Monday 7 February 2005, and Green 023 and Green 300's final call was on 14 February 2005, just before the attack. None of these mobiles were ever used again. All of this is strong evidence of coordinated action by these mobiles' users.

2237. The Trial Chamber also relies on the organised setup and financing of the Green mobiles to find that they were part of a network. The SIM cards for Green 023 and Green 300 were purchased from the same dealer on the same date, they were both activated on the same date, and they were first used within a day of each other. All three mobiles were activated in the same location, along with the other mobiles from the larger group of 18 Green mobiles. The monthly invoices for all three mobiles, as well as the larger group of 18 Green mobiles, were all paid in cash at the same time and place.

2238. The SIM card numbers provide some additional support for an organisational process, in that the IMSI numbers for Green 023, Green 071 and Green 300 immediately precede or follow the IMSI numbers of another mobile from the larger group of 18 Green mobiles. Similarly, the use of the same basic handset make and model for all three mobiles, and the fact that they were all on the Alfa network, provides further limited evidence of coordination among the users.

2239. The Trial Chamber finds that the Green network was a covert network due to the anonymity of its users. The evidence shows that the three Green mobiles were purchased using fake identification documents, and the bills were simultaneously paid in cash every month. They avoided sending any text messages and did not use voice mail or call forwarding.

2240. Of note, the Green mobiles engaged in almost no handset swapping and did not travel outside of their main area of use to purchase their SIM cards, unlike other networks analysed

below.⁴⁶⁵⁸ The absence of these characteristics, however, does not outweigh the many examples noted above as to this mobile group's organisation and secrecy.

2241. The Merhi Defence submitted that the 'Green Network's anonymity was partly flawed' and that some of the Green mobiles had contacts with known individuals, but this concerns other mobiles within the larger group of 18 Green mobiles. These arguments do not refer to Green 023, Green 300 or Green 071. To be clear, the 'Green Network' as found by the Trial Chamber applies only to these three mobiles, and not the larger group of 18 Green mobiles.

2242. The Trial Chamber also does not agree with the Merhi Defence's contention that the Green mobiles breached anonymity by using post-paid accounts. This ignores that the mobile users ensured their anonymity through fake identification documents and cash payments.

2243. As for Mr Al-Hassan's statement that Mr Nasrallah allegedly admitted that the Green network belonged to Hezbollah, the Trial Chamber is not satisfied as to its reliability. It is not clear that the Green network—and particularly Green 023, Green 071 and Green 300—as alleged by the Prosecution is the same as 'Network 2' which Mr Al-Hassan and Mr Nasrallah allegedly discussed. Also, Mr Al-Hassan's evidence is hearsay—his out-of-court statement of what Mr Nasrallah allegedly told him—and thus of limited reliability. Mr Nasrallah's statement at a press conference that he provided Mr Al-Hassan data that Hezbollah was tracking an Israeli agent similarly does not specify what, if any, mobiles Hezbollah used during the tracking.

2244. Given the exclusive communications between the three mobiles and the call flow structure among them, the Trial Chamber finds that Green 071 was one of the mobiles within the Green network, contrary to the Merhi Defence's suggestion.

2245. As for the fact that other mobiles from the larger group of 18 Green mobiles—apart from Green 023, Green 300 or Green 071—continued to be used after Monday 14 February 2005, this does not undermine the Trial Chamber's findings, given that its conclusions only relate to these three Green mobiles.

2246. In light of the secrecy regarding the Green mobiles, the deliberate exclusivity of their communications and the organisation and structure of their calls, the Trial Chamber concludes that

⁴⁶⁵⁸ See sub-sections (D) 'Red network', (E) 'Blue network' and (F) 'Yellow network'.

Green 023, Green 071 and Green 300 operated as a covert network. Their possible connection and common mission with the other networks is addressed at the end of this chapter.⁴⁶⁵⁹

D. Red network

2247. The Prosecutor alleges that the Red network of eight mobiles was used to observe Mr Hariri and locations connected to him and to carry out his assassination. The mobiles communicated almost exclusively with each other and had no outgoing text messages.⁴⁶⁶⁰ They were all pre-paid, purchased without supplying subscriber information and all activated within 30 minutes of each other on 4 January 2005.⁴⁶⁶¹ They were all topped up during a 45-minute period on 2 February 2005.⁴⁶⁶² The final call within the network took place at 12:53 on 14 February 2005. After that, the Red mobiles were never used again.⁴⁶⁶³

2248. Mr Platt analysed the following mobiles to determine whether they were part of a network: Red 572, Red 636, Red 652, Red 662, Red 678, Red 741, Red 893 and Red 946.⁴⁶⁶⁴ Mr Philips analysed six of these mobiles; he did not include Red 572 and Red 662.⁴⁶⁶⁵ According to Mr Philips, these two were sparsely used, and he considered them ‘spare’ mobiles.⁴⁶⁶⁶ Because the Prosecution alleges that the Red network consisted of all eight Red mobiles, including the ‘spare’ mobiles,⁴⁶⁶⁷ the Trial Chamber has examined all eight, and not just the six analysed by Mr Philips.

2249. Specific activity by the Red mobiles is set out below in analysing the wider chronology of events leading to Mr Hariri’s assassination.⁴⁶⁶⁸

⁴⁶⁵⁹ See sub-section (G) ‘The networks’ common mission’.

⁴⁶⁶⁰ Amended consolidated indictment, paras 15 (a), 19 (b), 22.

⁴⁶⁶¹ Amended consolidated indictment, para. 25.

⁴⁶⁶² Amended consolidated indictment, para. 35.

⁴⁶⁶³ Amended consolidated indictment, para. 39 (c).

⁴⁶⁶⁴ Gary Platt, T. 15 April 2016, p. 55, T. 26 July 2016, p. 8; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 482-483; *see also* exhibit P795 (Network analysis presentation), slide 98.

⁴⁶⁶⁵ Exhibit P1114 (Expert report of John Edward Philips - Red mission phones), p. 2; exhibit P1118 (PowerPoint presentation on common mission phones, John Edward Philips), slide 15.

⁴⁶⁶⁶ John Edward Philips, T. 31 August 2016, pp 44-46.

⁴⁶⁶⁷ Prosecution final trial brief, para. 346.

⁴⁶⁶⁸ See chapter X ‘Chronology of network mobile activity before Mr Hariri’s assassination on Monday 14 February 2005’.

1. Setting up the network

2250. All Red mobiles operated on the Alfa network.⁴⁶⁶⁹

2251. Five handsets for the Red mobiles were purchased from a mobile store in Tripoli on 30 December 2004.⁴⁶⁷⁰ Two more handsets were bought around 23 November 2004,⁴⁶⁷¹ and the remaining one was purchased between November 2004 and January 2005.⁴⁶⁷²

2252. The SIM cards for the Red mobiles were bought from one or more retail outlets within the Tripoli area sometime between 24 December 2004 and 4 January 2005.⁴⁶⁷³ Witness PRH553, who owned a mobile store in Tripoli, purchased 20 SIM cards from the 'Power Group', an authorised Alfa distributor, on 24 December 2004.⁴⁶⁷⁴ This group of 20 cards included the SIM cards for the eight Red mobiles.⁴⁶⁷⁵ The witness did not keep good records, so it is unclear when the eight Red SIM cards were sold, or if the witness sold them to another local store first, or directly to the Red mobile users.⁴⁶⁷⁶ As noted in more detail below,⁴⁶⁷⁷ the application forms for the Red mobile SIM cards were dated 12 January 2005, but this is likely not the actual date of sale.⁴⁶⁷⁸

⁴⁶⁶⁹ Exhibit P1114 (Expert report of John Edward Philips – Red mission phones), p. 3.

⁴⁶⁷⁰ Gary Platt, T. 15 April 2016, pp 56, 68-69; exhibit P465 (Statement of Nowar Dona), ERN 40005829, where Mr Dona stated that, according to the daily sales book, he sold the mobiles on 30 December 2004; exhibit P465, paras 15-38, ERNs 302284-302285, where Mr Dona first stated that, based on his sales book, he sold five mobiles—four Alcatel and one Siemens—in December 2004. He then stated that it was discovered that the sale took place on 30 December 2004. Exhibit P465, ERN 40005820.

⁴⁶⁷¹ Exhibit P557 (Statement of Haisam Jamal), paras 5, 7, 22-23.

⁴⁶⁷² Exhibit P559 (Statement of Ahmad Moghrabi), paras 5-7, 9-10, 14, 16; exhibit P403 (Packing list for import of mobile handsets), p. 2.

⁴⁶⁷³ Gary Platt, T. 15 April 2016, pp 57, 66, 67; exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 509; exhibit P575 (Photographs of a mobile shop in Tripoli); exhibit P484 (Power group invoices SIM cards). *See also* exhibit P795 (Network analysis presentation), slide 102.

⁴⁶⁷⁴ Gary Platt, T. 15 April 2016, p. 57; exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 509; Witness PRH553, T. 8 September 2015, pp 79-92; exhibit P484, ERN 60048383. The English translation contains a typographical error in the bar code number.

⁴⁶⁷⁵ Exhibit P404 (Alfa identification forms – eight Red mobiles).

⁴⁶⁷⁶ Gary Platt, T. 15 April 2016, pp 57, 67-68; Witness PRH553, T. 8 September 2015, pp 70-75, T. 9 September 2015, pp 16-17.

⁴⁶⁷⁷ *See* sub-section (D) (5) 'Anonymity'.

⁴⁶⁷⁸ Witness PRH553, T. 8 September 2015, p. 67, 70, 74-75, T. 9 September 2015, pp 16-17.

2253. The Red mobiles were all first used and initialised on the provider network on 4 January 2005.⁴⁶⁷⁹ This occurred north-east of Tripoli.⁴⁶⁸⁰ The initialisations occurred within a minute or two of each other, except for a seven-minute gap for Red 572.⁴⁶⁸¹ According to Mr Platt, this demonstrated group management and was consistent with one person or one group doing the initialisations. Also, during these initialisations, Red 572 used a handset which Red 946 had previously used.⁴⁶⁸²

2254. On 5 January 2005, the person who bought the five Red handsets returned to the shop complaining that one did not work.⁴⁶⁸³ Mr Nowar Dona—of the mobile shop—inserted his personal SIM card into the handset, confirmed that it was working and returned it to the purchaser.⁴⁶⁸⁴

2255. Mr Philips examined whether the IMEI numbers for the six Red mobiles revealed any patterns. For two handsets, the IMEI numbers were close (ending in 590027 and 590058).⁴⁶⁸⁵ The SIM card barcodes for all the mobiles were in close sequential order—all within a range of

⁴⁶⁷⁹ Exhibit P792 (Alfa SIM cards' activation and deactivation dates), p. 1; exhibit P1114 (Expert report of John Edward Philips - Red mission phones), p. 10, paras 6.2.6, 6.3.2.1, 6.3.16; John Edward Philips, T. 31 August 2016, p. 47. Mr Platt described them as service-related calls. Gary Platt, T. 15 April 2016, p. 58. *See also* exhibit P795, slide 103 (which compiles information on these service-related calls on 4 January 2005, as extracted from the call sequence tables of the eight mobile numbers: exhibits P1197-P1204). According to Mr Platt's evidence, the SIM cards were 'initiated' on 4 January 2005, Gary Platt, T. 15 April 2016, p. 57; exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 514 (emphasis added). The Trial Chamber notes, however, that Alfa had already activated the SIM cards on the GSM network on 21 December 2004, exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 509. The Trial Chamber heard other evidence that the SIM cards were already activated when coming from Alfa to the distributor: 'The phone or the SIM card was ready to be used', Saadeddine El-Ajouz, T. 31 August 2015, pp 69-71. The Trial Chamber therefore understands that what occurred on 4 January 2005 was the mobiles' first usage to call Alfa service code 1456, exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 485.

⁴⁶⁸⁰ Gary Platt, T. 15 April 2016, p. 64. *See also* exhibit P1114 (Expert report of John Edward Philips – Red mission phones), para. 6.3.2.6; exhibit P795, slide 104 (a map depicting the cell masts associated with the initialization calls of the Red mobiles).

⁴⁶⁸¹ Gary Platt, T. 15 April 2016, p. 64. *See also* exhibit P795, slide 103. There is another 12-minute gap before Red 946 makes a third voice call to number 1456, after two previous calls to the same number.

⁴⁶⁸² Gary Platt, T. 15 April 2016, pp 58-64. *See also* exhibit P795, slide 103.

⁴⁶⁸³ Mr Platt testified that the person returned to the shop on 5 January 2005. Gary Platt, T. 15 April 2016, pp 68-69. Mr Dona, however, did not state with precision the date when the person returned to the shop. In different statements, he stated that this person returned to the shop '2 or 3', 'four' and 'four or five' days later, exhibit P465 (Statement of Nawar Dona), ERNs 302285, 40005822, 40005829. However, the exact date results from the call sequence table of Mr Dona's mobile, exhibit P1282 (Call sequence table for mobile ending in 859).

⁴⁶⁸⁴ Gary Platt, T. 15 April 2016, pp 68-69; exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 513; exhibit P1282 (Call sequence table for mobile ending in 859). *See also* exhibit P795, slide 105; exhibit P465 (Statement of Nawar Dona), ERNs 302285, 40005829.

⁴⁶⁸⁵ Exhibit P1114 (Expert report of John Edward Philips – Red mission phones), paras 6.2.4.1, 6.2.6.

numbers ending between 057 and 067. For the MSISDN numbers, only Red 652 and Red 678 were close (3129652 and 3129678).⁴⁶⁸⁶

2. Equipment

2256. Eight handsets were used for the eight Red mobiles between 4 January and 14 February 2005.⁴⁶⁸⁷ Seven handsets were used for the six Red mobiles analysed by Mr Philips, involving four different models, all of which were basic handsets.⁴⁶⁸⁸

2257. There was extensive handset swapping among the Red mobiles. Seven mobiles—all but Red 662—used either two or three handsets,⁴⁶⁸⁹ as shown by the following table:

IMEI (Handset)	Red 572	Red 636	Red 652	Red 662	Red 678	Red 741	Red 893	Red 946
354184000078100	X	X						X
355047005900580		X				X	X	
355047005900270			X		X			
354184000062520	X		X			X	X	
350019353695030						X	X	
351262006708680	X		X		X			
354184000059470								X
354184000067270				X	X			

Table regarding handset use from Gary Platt's Network Analysis report - exhibit P796.1, p. 63

2258. The swapping occurred on five days, including the initialisation and top-up days.⁴⁶⁹⁰ The handsets were used only with Red SIM cards with the exception of two handsets on two dates.⁴⁶⁹¹

⁴⁶⁸⁶ Exhibit P792, p. 1.

⁴⁶⁸⁷ Exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 512; exhibits P1197-P1204.

⁴⁶⁸⁸ Exhibit P1114 (Expert report of John Edward Philips - Red mission phones), paras 6.2.2.1, 6.2.2.3, 6.2.6.

⁴⁶⁸⁹ Gary Platt, T. 15 April 2016, p. 79; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 512-516. *See also* exhibit P795 (Network analysis presentation), slide 113. The IMEIs used are identified in the call sequence tables. On five days—4, 14 and 20 January 2005, 2 and 14 February 2005—the call sequence tables of the relevant seven Red mobiles show a change in the IMEIs used. The same IMEIs were used by more Red mobiles. *See also* exhibit P790 (IMEI information for Alfa numbers).

⁴⁶⁹⁰ Gary Platt, T. 15 April 2016, p. 79; exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 515. *See also* exhibit P795, slide 113; exhibits P1197-P1200 and P1202-P1204.

⁴⁶⁹¹ One of these two handsets (IMEI 354184000059470) was used on 5 January 2005 with the SIM card of Mr Dona—the operator of a mobile shop who sold it and was asked to repair it. The other was used with the SIM card of Ms Razan Awayda—the sales representative of the authorised dealer of Siemens and Alcatel handsets (Kettaneh) which sold this handset along with the other four handsets used with the Red mobiles to Mr Dona's shop. Ms Awayda used to install her own SIM card into new handsets to show them to customers or did so upon Mr Dona's request for him

2259. Mr Philips also noted handset swapping among the Red mobiles that he analysed.⁴⁶⁹²

3. Usage

2260. After the initialisation process on 4 January 2005, all Red mobiles were inactive until Friday, 14 January 2005. According to Mr Platt, they were probably switched off to avoid being detected.⁴⁶⁹³

2261. The Red mobiles then made and received calls between Friday, 14 January and Monday, 14 February 2005. They made calls on 11 days during this period⁴⁶⁹⁴ and were active on one more day just to add credit.⁴⁶⁹⁵ According to Mr Platt, on the other days, the mobiles were probably switched off and this limited usage was for a certain purpose and that it was a disciplined usage, to avoid identification.⁴⁶⁹⁶

2262. Peak usage time was from 10:00 to 18:00—80 per cent of all calls—with no calls between 22:00 and 07:00.⁴⁶⁹⁷ As a result, the Red mobiles users' homes could not be identified through a traditional cell site analysis method of analysing the first and last call of each day to pinpoint a user's likely residence.⁴⁶⁹⁸

to be sure that a handset he bought was ready and active. Exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 513; exhibit P561 (Statement of Razan Awayda); exhibit P1285 (Call sequence table of mobile 508); exhibit P465 (Statement of Nawar Dona); exhibit P1282 (Call sequence table for mobile ending in 859); exhibit P1967 (Witness statement of Christian Carnus regarding examination of Red and Green handset usage), paras 9, 15.

⁴⁶⁹² Exhibit P1114 (Expert report of John Edward Philips – Red mission phones), paras 6.2.3, 6.2.6.

⁴⁶⁹³ Gary Platt, T. 26 July 2016, pp 7-8, 10.

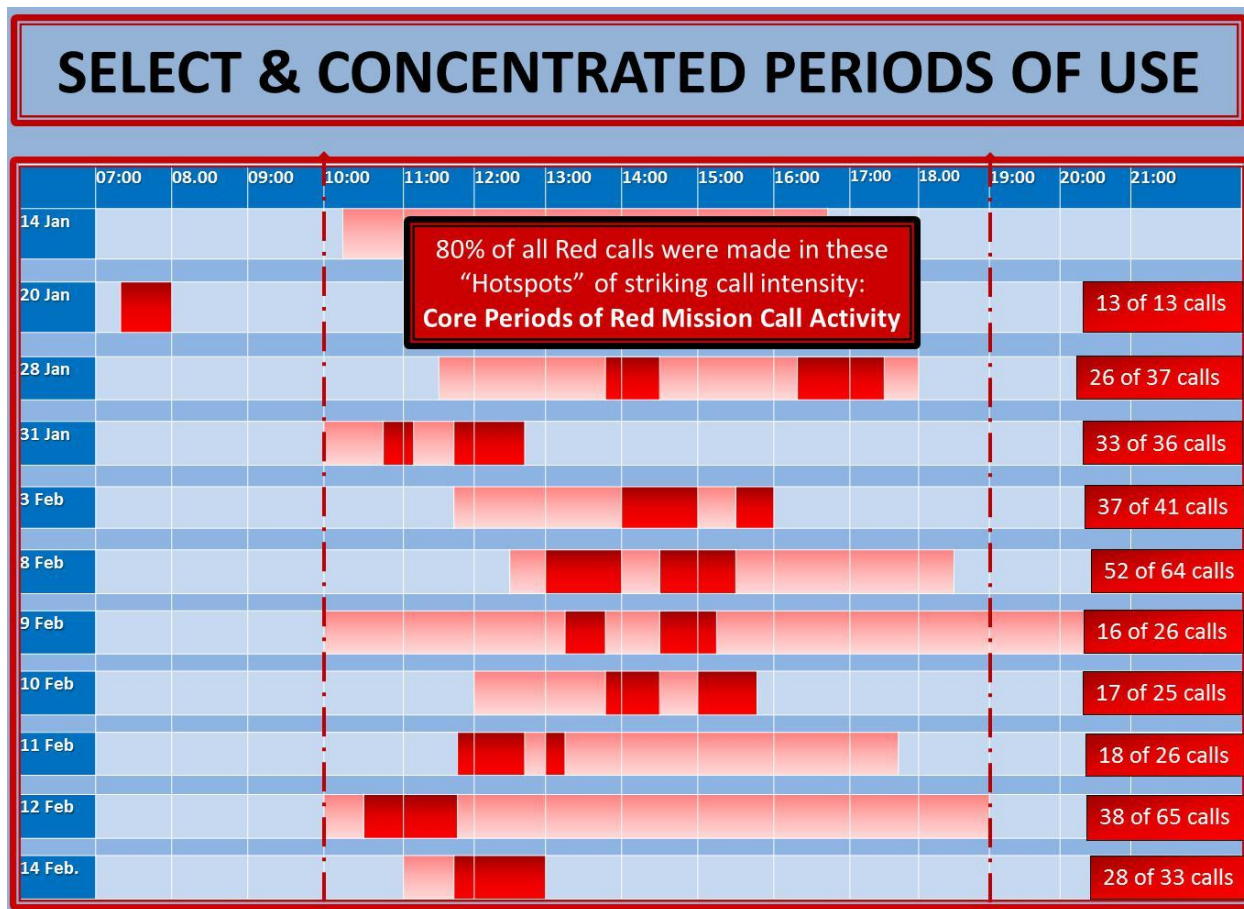
⁴⁶⁹⁴ John Edward Philips, T. 31 August 2016, pp 47, 55, 61-62, 64, T. 25 April 2017, p. 85; Gary Platt, T. 26 July 2016, pp 7, 12, T. 15 April 2016, p. 77; exhibit P792 (Alfa SIM cards' activation and deactivation dates), p. 1; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 484-486; exhibit P1114 (Expert report of John Edward Philips - Red mission phones), p. 10; exhibit P1118 (PowerPoint presentation on common mission phones, John Edward Philips), slides 15, 18-19. These days were: 14, 20, 28 and 31 January 2005 and 3, 8, 9, 10, 11, 12 and 14 February 2005, when Red 636, Red 946, Red, 652, Red 679 and Red 893 were active. Red 741 was active on ten days: all those noted above except 10 February 2005. Red 662 and Red 572 were active—apart from the 'initialisation' and re-crediting days, on two days—20 January 2005 and 3 February 2005—and one day—14 January 2005—respectively (Red 572 was also active on 3 February 2005, but only to receive a text message from Alfa number 1456). Exhibits P1197 (Call sequence table for Red 741), P1198 (Call sequence table for Red 893), P1199 (Call sequence table for Red 652), P1200 (Call sequence table for Red 572), P1201 (Call sequence table for Red 662), P1202 (Call sequence table for Red 946), P1203 (Call sequence table for Red 636) and P1204 (Call sequence table for Red 678).

⁴⁶⁹⁵ Gary Platt, T. 15 April 2016, pp 76-77; exhibits P1197-P1204.

⁴⁶⁹⁶ Gary Platt, T. 26 July 2016, pp 7-8.

⁴⁶⁹⁷ Exhibit P1118, slide 19; John Edward Philips, T. 31 August 2016, pp 61-62.

⁴⁶⁹⁸ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 6.1.3.11-6.1.3.12.



Slide 19 of John Edward Philips's PowerPoint presentation – exhibit P1118

2263. The eight Red mobiles were involved in 448 calls.⁴⁶⁹⁹ Three hundred and ninety-six calls were between the Red mobiles themselves.⁴⁷⁰⁰ Of these, 388 involved the six principal Red mobiles.⁴⁷⁰¹ Another 47 calls were 'service calls', to or from the service provider Alfa.⁴⁷⁰² Mr Platt explained that the remaining five calls were probably misdials.⁴⁷⁰³ Excluding communications with service numbers, 99 per cent of all communications of Red mobiles were with each other.⁴⁷⁰⁴

⁴⁶⁹⁹ Gary Platt, T. 26 July 2016, p. 8; exhibits P1197-P1204.

⁴⁷⁰⁰ Gary Platt, T. 15 April 2016, p. 55, T. 26 July 2016, p. 8; *see also* exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 496-501; exhibit P795 (Network analysis presentation), slide 116; exhibits P1197-P1204.

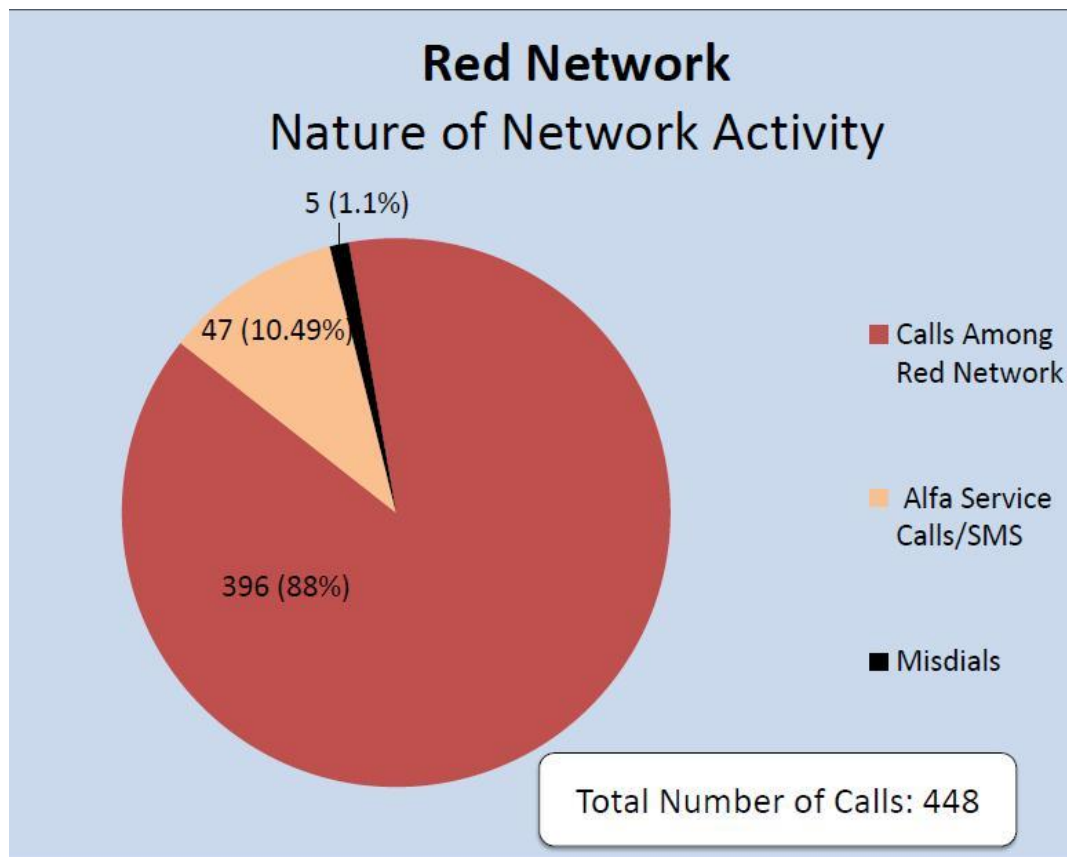
⁴⁷⁰¹ Gary Platt, T. 15 April 2016, pp 55-56.

⁴⁷⁰² These are calls to or text messages from number 1456, an Alfa customer number to activate mobile credit. Gary Platt, T. 26 July 2016, pp 8-9; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 502-505; *see also* exhibit P795, slide 116.

⁴⁷⁰³ Gary Platt, T. 26 July 2016, p. 9; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 506-508; *see also* exhibit P795, slide 116.

⁴⁷⁰⁴ Exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 496.

According to Mr Platt, the occurrence of only five misdials—out of 448 calls—showed a very high level of covertness and discipline by the mobiles' users.⁴⁷⁰⁵

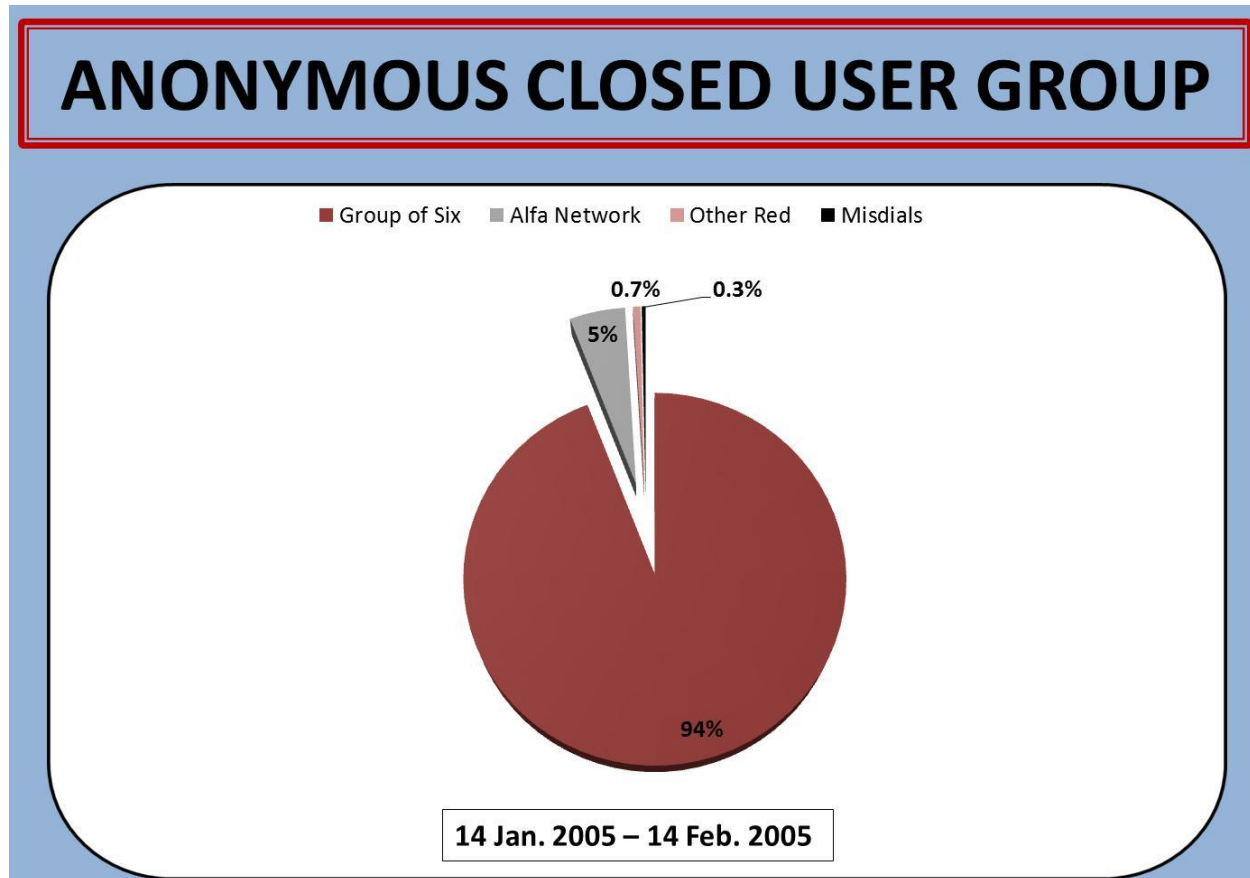


Slide 116 from Gary Platt's Network analysis presentation - exhibit P795

2264. Mr Philips found similar results for the six Red mobiles he analysed. Of the total number of calls, 94 per cent (390 calls) were among the six Red mobiles, five per cent were to or from the Alfa network service provider, 0.7 per cent involved the two other Red mobiles and 0.3 per cent were 'misdials'.⁴⁷⁰⁶

⁴⁷⁰⁵ Gary Platt, T. 26 July 2016, pp 11-12.

⁴⁷⁰⁶ Exhibit P1114 (Expert report of John Edward Philips – Red mission phones), pp 4, 53; exhibit P1118, slide 16; John Edward Philips, T. 31 August 2016, pp 48-50, 66-67.



Slide 16 of John Edward Philips's PowerPoint presentation – exhibit P1118

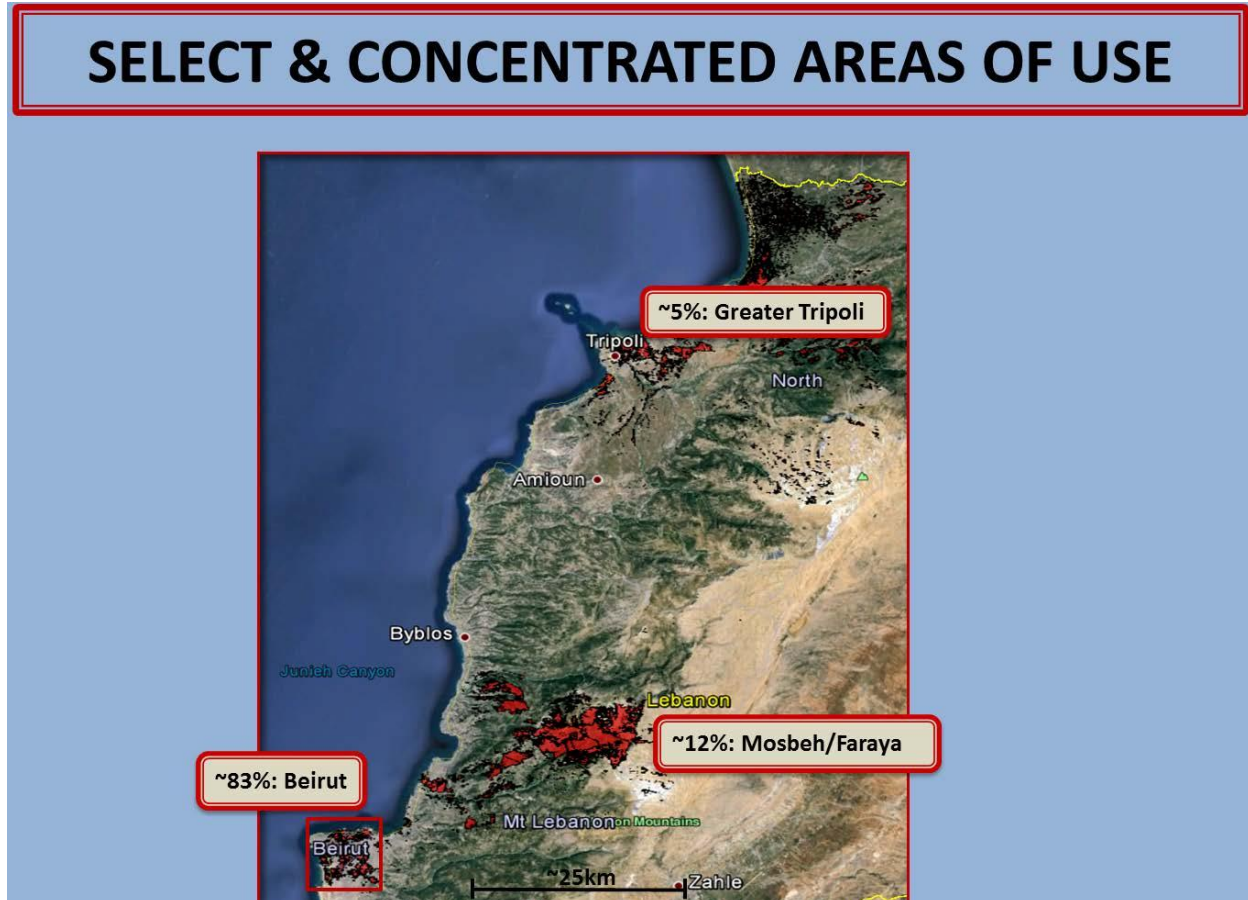
2265. Mr Platt testified that a very high number of the calls between the Red network mobiles were of a quite short duration.⁴⁷⁰⁷ Also, a lot of calls ‘were made in sequential order’. One Red mobile was calling another which in turn called another Red mobile. He testified that, in his view, it was ‘for information passing’.⁴⁷⁰⁸ Therefore, ‘there wasn’t ... much conversations’ between Red mobile users.⁴⁷⁰⁹

⁴⁷⁰⁷ Gary Platt, T. 26 July 2016, p. 16. *See also* exhibit P795, slide 119 (showing that 80 per cent of the Red network calls were shorter than one minute, and 18 per cent lasted between one and two minutes).

⁴⁷⁰⁸ Gary Platt, T. 26 July 2016, p. 17.

⁴⁷⁰⁹ Gary Platt, T. 26 July 2016, p. 18.

2266. Most of the Red network's call activity (83 per cent) occurred in the Beirut area, 12 per cent of the calls in the area between Zouk-Mosbeh and Faraya and five per cent in the Tripoli area.⁴⁷¹⁰ Peak usage area was the Beirut coastal area.⁴⁷¹¹



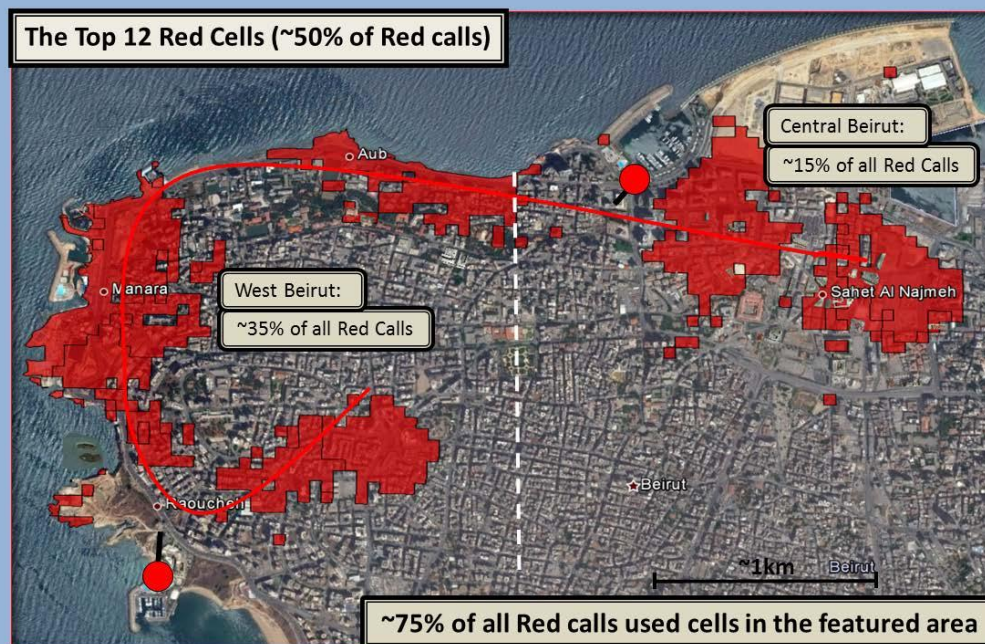
Slide 20 of John Edward Philips's PowerPoint presentation – exhibit P1118

⁴⁷¹⁰ Gary Platt, T. 26 July 2016, p. 18; exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 518; see also exhibit P1118, slide 20; John Edward Philips, T. 31 August 2016, pp 67-68, 73, 79-80; exhibit P795, slide 120.

⁴⁷¹¹ Exhibit P1118, slides 20-21; John Edward Philips, T. 31 August 2016, p. 67.

SELECT & CONCENTRATED AREAS OF USE

Focused Mainly in West & Central Beirut Area



Slide 21 of John Edward Philips's PowerPoint presentation – exhibit P1118

2267. The top ten cells used by the Red mobiles were in west Beirut.⁴⁷¹² Five were clustered around Quraitem Palace—Mr Hariri's residence in 2004 and 2005⁴⁷¹³—while the other five were clustered around the crime scene and Parliament.⁴⁷¹⁴ Nearly 50 per cent of the Red mobiles' activity was concentrated in these areas.⁴⁷¹⁵

⁴⁷¹² Gary Platt, T. 26 July 2016, p. 26; *see also* exhibit P795, slides 121-122.

⁴⁷¹³ Alfa cells MOVPIK1, CONCOR2, CARLTO3, RAOUCH3 and CARACA3. *See also* exhibit P1783 (Expert report of Gary Platt - Chronology), pp 436-437, where the first four cells are listed among those providing coverage within a 500-metre radius of Quraitem Palace, and the fifth cell is listed among those providing coverage within a 500-1000 metre radius of it.

⁴⁷¹⁴ MRAICI2, PHENMB1, ZOUKAK1, ETOILE1 and PORT2. Gary Platt, T. 26 July 2016, p. 26; exhibit P795, slides 121-122. *See also* exhibit P1783, pp 438, 440, where the first three cells above are listed among those providing coverage within a 500-metre radius of the crime scene, and the last two cells are listed among those providing coverage within a 500-metre radius of the Parliament.

⁴⁷¹⁵ Gary Platt, T. 26 July 2016, p. 27.

2268. The Red mobiles were also active in ‘South Beirut’.⁴⁷¹⁶ Most of this activity occurred on one day—Monday, 31 January 2005.⁴⁷¹⁷ Therefore, Red mobiles were not used as frequently in the southern suburbs of Beirut as the other networks—Green, Blue and Yellow.⁴⁷¹⁸ Red mobiles also were active in the Zouk-Mosbeh and Faraya areas, on three days: Friday 14 January, Friday 28 January and Saturday 12 February 2005.⁴⁷¹⁹ Most of the cells activated by the Red mobiles were along the road from Beirut to Faqra Villa—one of Mr Hariri’s residences.⁴⁷²⁰ This specific mobile activity is analysed below in the overall chronology leading to the attack.⁴⁷²¹

2269. Meanwhile, according to Mr Platt, Red mobiles were active in the Tripoli area only on four days,⁴⁷²² two of which were for initialisation and re-crediting purposes.⁴⁷²³ The topping up took place in Tripoli on Wednesday 2 February 2005, between 18:41 and 19:25, in a sequential manner.⁴⁷²⁴ According to Mr Platt, this was consistent with a single person or group topping up the mobiles.⁴⁷²⁵ For two pairs of Red mobiles (Red 636 and Red 741, Red 893 and Red 946), their recharge cards were in sequential order and sold by the same dealer.⁴⁷²⁶

⁴⁷¹⁶ Gary Platt, T. 26 July 2016, pp 27-29; *see also* exhibit P795, slide 123; exhibit P795.1 (Slide 123 from exhibit P795, annotated by Mr Platt).

⁴⁷¹⁷ Gary Platt, T. 26 July 2016, pp 28-30.

⁴⁷¹⁸ Gary Platt, T. 26 July 2016, pp 29-30.

⁴⁷¹⁹ Gary Platt, T. 26 July 2016, p. 31.

⁴⁷²⁰ Gary Platt, T. 26 July 2016, p. 31; exhibit P795, slide 125.

⁴⁷²¹ *See* chapter X ‘Chronology of network mobile activity before Mr Hariri’s assassination on Monday 14 February 2005’.

⁴⁷²² On 4 and 14 January 2005 and 2 and 11 February 2005, Gary Platt, T. 26 July 2016, pp 30-31. For the Red mobiles’ call sequence tables, exhibit P1197, calls 1, 42-43; exhibit P1198, calls 1-2, 33-40; exhibit P1199, calls 1, 14-17, 60; exhibit P1200, calls 1-2, 6; exhibit P1201, calls 1-2, 7; exhibit P1202, calls 1-3, 31; exhibit P1203, calls 1, 24-26, 80; exhibit P1204, calls 1, 58, 107-112. All the Red mobiles activated cells in the Tripoli area on 4 January and 2 February 2005. Two mobiles, Red 636 and Red 678, also activated cells in that area on 11 February 2005. Red 652 activated cells in the Tripoli area on 14 January 2005.

⁴⁷²³ Gary Platt, T. 26 July 2016, pp 30-31; *see also* exhibit P795, slide 124.

⁴⁷²⁴ Gary Platt, T. 15 April 2016, pp 71-72; John Edward Philips, T. 31 August 2016, p. 66; exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 494; exhibit P1114 (Expert report of John Edward Philips – Red mission phones), para. 6.3.7.1; exhibits P1197-P1204. *See also* exhibit P795, slide 108.

⁴⁷²⁵ Gary Platt, T. 15 April 2016, p. 72.

⁴⁷²⁶ Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 492, 494; exhibit P785 (Alfa recharge information for 44 mobiles), pp 2, 4-7.

Serial Number	Date	Time	Phone	Dealer
33207466038	02/02/2005	19:14:02	Red 741	AS TECH
33207466039	02/02/2005	19:14:53	Red 636	AS TECH
33207466441	02/02/2005	19:24:03	Red 662	AS TECH
33207477452	02/02/2005	18:41:07	Red 946	POINTEL
33207477453	02/02/2005	18:48:49	Red 893	POINTEL
33207498668	02/02/2005	19:07:03	Red 652	CELLTEC
33207495054	02/02/2005	19:07:12	Red 678	CELLTEC

Table regarding 2 February 2005 topping up from Gary Platt's Network Analysis report – exhibit P796.1, p. 58

2270. Red 893 received a text message from Alfa on 2 February 2005, while the other Red mobiles received a message the following day. According to Mr Platt, this was consistent with the other mobiles being switched off after being topped up, which supports the existence of a 'covert organizational management process'.⁴⁷²⁷

4. Closure of the network

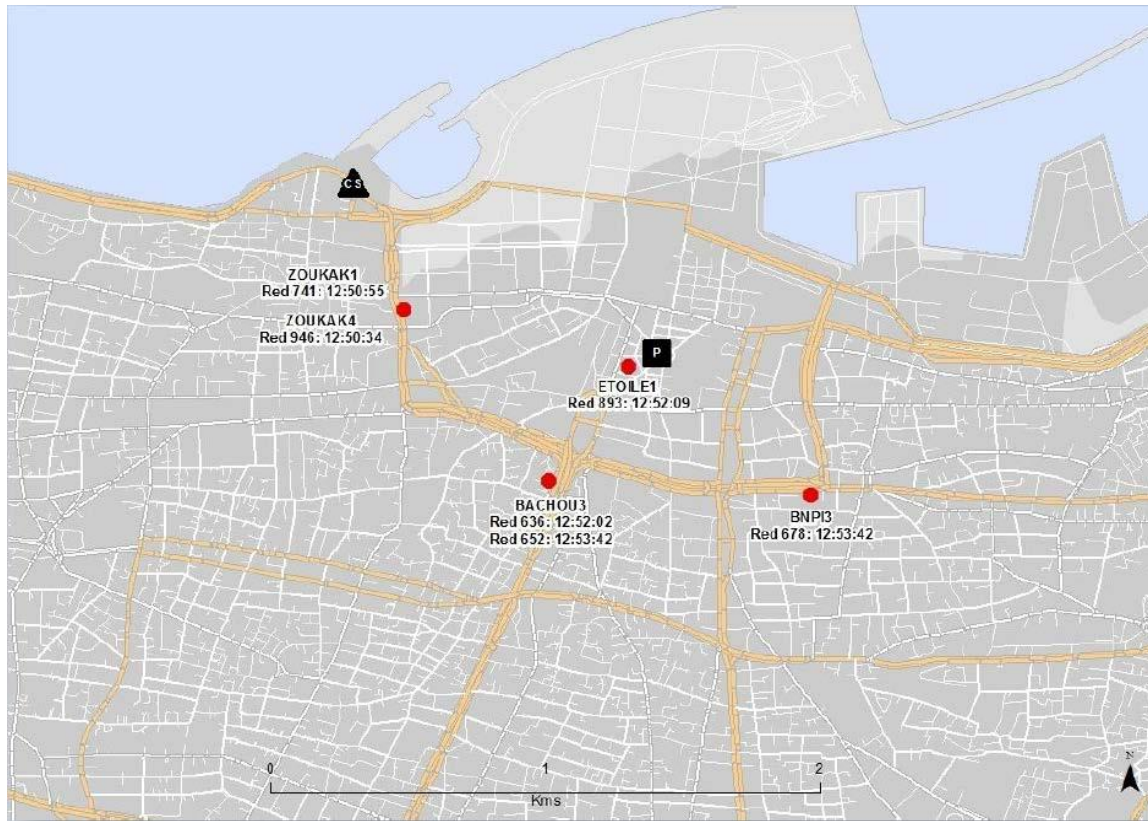
2271. Two Red mobiles—Red 572 and Red 662, the 'spare mobiles'—were shut down on Thursday 3 February 2005.⁴⁷²⁸ The remaining six mobiles all ceased activity between 12:50 and 12:54 on Monday 14 February 2005, immediately before the attack.⁴⁷²⁹ Their final calls activated cells close to the crime scene and Parliament.⁴⁷³⁰

⁴⁷²⁷ Gary Platt, T. 15 April 2016, pp 72, 75, T. 26 July 2016, p. 15; exhibit P1198 (Call sequence table for Red 893), p. 2. Having reviewed the call sequence tables for the other seven Red mobiles (exhibits P1197 and P1199-P1204), the Trial Chamber notes that six of them received a text message from Alfa service code 1456 the day after, on 3 February 2005. Based on the relevant call sequence table (exhibit P1199), Red 652 did not receive any text messages from 1456 the day after or on any other date. On 3 February, Red 652 made a second call to number 1456, exhibit P1199 (Call sequence table for Red 652), p. 3.

⁴⁷²⁸ Gary Platt, T. 15 April 2016, pp 70-71; exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 484; exhibits P1197 (Call sequence table for Red 741), P1198 (Call sequence table for Red 893), P1199 (Call sequence table for Red 652), P1200 (Call sequence table for Red 572), P1201 (Call sequence table for Red 662), P1202 (Call sequence table for Red 946), P1203 (Call sequence table for Red 636), P1204 (Call sequence table for Red 678); exhibit P795 (Network analysis presentation), slide 106.

⁴⁷²⁹ Exhibit P1114 (Expert report of John Edward Philips - Red mission phones), pp 2, 10, para. 6.2.6; John Edward Philips, T. 31 August 2016, p. 47, T. 2 September 2016, p. 56, T. 25 April 2017, p. 85.

⁴⁷³⁰ Gary Platt, T. 26 July 2016, p. 32. The relevant five cells for the last six calls were: ZOUKAK1, ZOUKAK4, ETOILE1, BACHOU3 and BNPI3. Gary Platt, T. 26 July 2016, p. 32; exhibit P795, slide 126.



Slide 126 with Red mobiles' final calls on 14 February 2005 from Gary Platt's Network analysis presentation – exhibit P795

2272. The Red mobiles' SIM cards and handsets were not used after 14 February 2005.⁴⁷³¹ According to Mr Platt, this shows that their reason for being active ceased on that day. Also, not being used again prevented the mobiles from being traced.⁴⁷³²

2273. All Red Network mobiles were deactivated from operation on the Alfa network on 17 March 2005.⁴⁷³³ The costs associated with the Red SIM cards and handsets were at least USD

⁴⁷³¹ Gary Platt, T. 26 July 2016, pp 8, 32, T. 15 April 2016, pp 56, 70-71.

⁴⁷³² Gary Platt, T. 26 July 2016, p. 8.

⁴⁷³³ Exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 490; exhibit P792 (SIM cards' activation and deactivation dates).

1,150,⁴⁷³⁴ and the recharge cards for topping up cost between USD 200 and 384.⁴⁷³⁵ Their total remaining credit when deactivated was approximately USD 495.18.⁴⁷³⁶

Phone	Time of CSP Activation 21 Dec 2004	Time of First Use 4 Jan 2005	Time of Credit Recharge 2 Feb 2005	Time and Date of Last Activity	Time of CSP Deactivation 17 Mar 2005
Red 893	06:44:34	14:15:29	18:41:32	12:52:09 14 Feb 2005	06:34:07
Red 662	06:41:36	14:17:05	19:25:21	15:25:53 3 Feb 2005	06:32:56
Red 652	06:41:36	14:18:03	19:08:11	12:53:42 14 Feb 2005	06:32:52
Red 636	06:44:29	14:20:39	19:14:04	12:52:02 14 Feb 2005	06:33:17
Red 946	06:41:33	14:19:02	18:42:20	12:50:34 14 Feb 2005	06:32:07
Red 678	06:41:35	14:21:24	19:08:32	12:53:42 14 Feb 2005	06:32:30
Red 572	06:44:32	14:28:42	19:24:36	15:30:34 3 Feb 2005	06:22:47
Red 741	06:44:31	14:30:02	19:14:02	12:50:55 14 Feb 2005	06:33:38

Table from Gary Platt's Network Analysis Report – exhibit P796.1, p. 57

5. Anonymity

2274. The SIM cards for the Red mobiles were not sold to the people listed on the cards' subscriber forms.⁴⁷³⁷ Witness PRH553, who owned a mobile store in Tripoli, completed the forms

⁴⁷³⁴ Gary Platt, T. 15 April 2016, p. 77. *See also* exhibit P795, slide 110. This amount does not take into account three additional handsets.

⁴⁷³⁵ Gary Platt, T. 15 April 2016, pp 76-77; exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 522; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 276, stating that Alfa recharge cards were sold per USD 25, 36 or 48. *See also* exhibit P795, slide 110.

⁴⁷³⁶ Gary Platt, T. 15 April 2016, p. 78; exhibit P789 (Credit balance at time of deactivation for 14 mobiles); exhibit P792, p. 1; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 522-526; exhibit P1114 (Expert report of John Edward Philips – Red mission phones), para. 6.3.16; exhibit P787 (Alfa information on USD value for unit of credit); exhibit P1194 (Statement of Witness PRH707, 25 January 2016), para. 18, p. 5. *See also* exhibit P795, slide 111.

⁴⁷³⁷ Witness PRH553, T. 8 September 2015, p. 88; exhibit P370 (Statement of Jawdat Ahmad), paras 14-16; exhibit P371 (Statement of Abd-al-Hadi El-Abdallah), paras 13-14; exhibit P372 (Statement of Mohammed Hamawi), paras 11-13; exhibit P373 (Statement Khaled Yakhni), paras 13-15; exhibit P374 (Statement of Mervat Hamcho), paras 13-14; exhibit P375 (Statement of Fayza Rafaayah); exhibit P376 (Statement of Wassim Abdo), paras 13-16; exhibit P404; exhibit P464 (Statement of Ahmed Srour), paras 14-15; exhibit P554 (Statement of Zeyad Obeid), paras 17-22; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 511, 531, 550, 568, 587, 604, 623, 642, 658; exhibit P797 (Extract from Alfa subscriber database), rows 1, 3, 5, 7, 9, 12 on p. 1, row 1 on p. 5, row 20 on p. 6.

with information from previous customers of his shop or from customers of nearby mobile shops in Tripoli.⁴⁷³⁸ He testified that very rarely were valid identity documents used to purchase SIM cards.⁴⁷³⁹ Shops, including his, illegally used the same documents, attaching them to multiple application forms.⁴⁷⁴⁰ They did so because Alfa provided an incentive of two or three USD to pre-paid SIM card wholesalers for every completed subscriber application form submitted with an identification document.⁴⁷⁴¹ The date on the eight Red mobile application forms—Wednesday 12 January 2005—was when Witness 553 completed the forms, but was not necessarily the date that he sold the SIM cards.⁴⁷⁴² He did not know who bought the eight SIM cards used in the Red mobiles,⁴⁷⁴³ and it was possible that the SIM cards were bought by the same person or by different people.⁴⁷⁴⁴

2275. The users of the Red mobiles did not use several common mobile features. No text messages were sent from any Red mobile.⁴⁷⁴⁵ The only text messages they received were Alfa service messages, except for one text message that Mr Platt described as a misdial.⁴⁷⁴⁶ There were also no voicemails, and call forwarding was not used.⁴⁷⁴⁷

For Red 741, *compare* chapter IX ‘Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine’, (B) (2) (f) ‘Red 741’.

⁴⁷³⁸ Gary Platt, T. 26 July 2016, p. 6; Witness PRH553, T. 8 September 2015, pp 65-73; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 510-511; exhibit P404.

⁴⁷³⁹ Witness PRH553, T. 8 September 2015, pp 50-52, 66-68; *see also* exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 510; Saadeddine El-Ajouz, T. 31 August 2015, p. 50 (a number of shops or points of sale just put identification cards that were incorrect or false to obtain the incentive that Alfa was paying for every identification card).

⁴⁷⁴⁰ Witness PRH553, T. 8 September 2015, pp 48, 50-53, 66-68, 73, 77; exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 510.

⁴⁷⁴¹ Witness PRH553, T. 8 September 2015, pp 46-48, 52-53, 90-91; exhibit P1194 (Statement of Witness PRH707, 25 January 2016), para. 26; Witness PRH707, T. 19 April 2016, pp 43-44, T. 17 February 2016, p. 23. *See also* Saadeddine El-Ajouz, T. 31 August 2015, pp 48-49; Jihad Tannir, T. 2 September 2015, pp 8, 17, 19.

⁴⁷⁴² Witness PRH553, T. 8 September 2015, pp 67, 70, 74-75.

⁴⁷⁴³ Witness PRH553, T. 8 September 2015, p. 88.

⁴⁷⁴⁴ Witness PRH553, T. 9 September 2015, pp 16-17.

⁴⁷⁴⁵ Exhibit P1114 (Expert report of John Edward Philips - Red mission phones), paras 6.3.15.33, 6.3.15.37, 6.3.16; exhibit P1118 (PowerPoint presentation on common mission phones, John Edward Philips), slide 17; exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 501.

⁴⁷⁴⁶ Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 501, 506.

⁴⁷⁴⁷ Exhibit P1114 (Expert report of John Edward Philips – Red mission phones), paras 6.3.15.33, 6.3.15.37, 6.3.16; exhibit P1118, slide 17.

2276. All transactions that the investigators could identify for the Red mobiles were cash only,⁴⁷⁴⁸ for example, the purchase of handsets for the Red mobiles. Therefore, no financial trail—such as bank or credit card details—was left.⁴⁷⁴⁹ Also, all Red mobiles were pre-paid.⁴⁷⁵⁰

2277. The Red mobiles were active in Beirut and the Zouk-Mosbeh and Faraya areas, while their purchase, initialisation and re-crediting occurred in Tripoli. According to Mr Platt, this was done to create a false trail.⁴⁷⁵¹

2278. Mr Platt considered that the covert nature of the Red mobiles is evidenced by the volume of calls between them, the lack of calls to third parties and the lack of text messages sent by Red mobiles. Together with the limited time the network was used, ‘it’s a clear indication of network phones operating in the covert fashion during that operational period for an operational purpose which clearly ceased on the 14th of February’.⁴⁷⁵²

6. Submissions

2279. The Prosecution submits that the complexity of the attack, the gravity of the objective and the inevitability that the use of the Red mobiles would be forensically associated with the crime rendered the use of a ‘mission phone’ imperative. It required nothing less than a dedicated mobile telephone network adopting extreme measures to ensure its provenance and complete anonymity of its users. The Red network operated as a classic, paradigmatic ‘mission phone’ network adopting extreme measures of covertness. It is a compelling fit for the exceptional profile required to execute the crime.⁴⁷⁵³

2280. A series of elements in the Red network’s behaviour reflect a strong degree of coordination and cohesion and show that it was overseen and operated by an organised and well-resourced entity. These include: that the eight mobiles were purchased, set-up and topped up together; the handsets were swapped in the first days of use, showing that SIMs and handsets were gathered, separated and redistributed after use; the principal six mobiles only contacted each other on 11

⁴⁷⁴⁸ Mr Platt explained that they could not identify, for example, the point of sale of the top-up recharge cards. Gary Platt, T. 26 July 2016, p. 6; *see also* exhibit P1118, slide 17.

⁴⁷⁴⁹ Gary Platt, T. 26 July 2016, p. 6.

⁴⁷⁵⁰ Exhibit P1114 (Expert report of John Edward Philips – Red mission phones), p. 4.

⁴⁷⁵¹ Gary Platt, T. 15 April 2016, pp 75-76; exhibit P1118, slide 134.

⁴⁷⁵² Gary Platt, T. 26 July 2016, p. 9.

⁴⁷⁵³ Prosecution final trial brief, paras 366, 449-451.

days; USD 1,150-1,334 were spent for this limited use and a call credit of USD 495.18 remained when they were disposed. They operated as a group with a specific focus in limited areas, namely West or Central Beirut and Faraya or Mosbeh area. The calls were frequent, short, coordinated and focused into limited blocks of time. The final day of use on 14 February 2005 shows a high degree of synchronicity and a coordinated shut down.⁴⁷⁵⁴

2281. The Red network was the most covert of the four networks. A series of measures requiring a high degree of discipline and focus were adopted to ensure their users' anonymity. They included: pre-paid subscriptions with no (or incorrect) subscriber details and untraceable cash-only transactions. The mobile administration (purchase, set-up, repair and top-up) occurred in Tripoli, a location remote from the mobiles' areas of use and their users' base area in Dahyieh; no text messages were sent. No call forwarding or voice mail was used; all calls were made within the network. Calls were principally restricted to daytime hours. Calls were prohibited from use in the vicinity of the users' base area in the heart of Dahyieh, except when following Mr Hariri to that location on 31 January and 12 February 2005. Mobiles were switched off when not required. And there was a coordinated disposal of SIMs and handsets following the execution of their purpose.⁴⁷⁵⁵

2282. The Ayyash Defence submits that Mr Platt found that the Red mobiles were 'covert' without explaining the basis for this conclusion.⁴⁷⁵⁶

2283. The Sabra Defence submits that Mr El-Ajouz, the owner and general manager of Power Group, was linked to the sale of the Red mobile SIM cards and was a member of Al-Ahbash.⁴⁷⁵⁷ The issue of Al-Ahbash's possible role in the attack on Mr Hariri is addressed in analysing the false claim of responsibility.⁴⁷⁵⁸

2284. In an in-court mid-trial summary, the Sabra Defence submitted that the Red mobiles were bought to create a false lead.⁴⁷⁵⁹ According to the Sabra Defence, there is no evidence that they did surveillance and there was no need to do it as Mr Hariri was killed on a road he 'would use

⁴⁷⁵⁴ Prosecution final trial brief, para. 350.

⁴⁷⁵⁵ Prosecution final trial brief, para. 349.

⁴⁷⁵⁶ Ayyash Defence final trial brief, para. 332.

⁴⁷⁵⁷ Sabra Defence final trial brief, para. 555. *See also* Decision on admission of Sabra Defence documents of 28 March 2018, paras 14, 47.

⁴⁷⁵⁸ *See* chapter XII 'Claim of responsibility for the attack on Rafik Hariri', (I) 'Possible involvement of *al-Ahbash* in Mr Hariri's assassination'.

⁴⁷⁵⁹ Submissions, T. 10 November 2016, pp 41-43.

literally all the time’.⁴⁷⁶⁰ The only explanation for their use was to leave a trace of their ‘presence around Mr Hariri in the weeks leading up to the assassination to be discovered after the attack’.⁴⁷⁶¹

2285. In particular, according to the Sabra Defence, the Red mobiles were activated and or recredited near the village of Minieh to set up a group of six Australian pilgrims who resided there during part of January and February 2005.⁴⁷⁶² The six pilgrims were in fact suspected for Mr Hariri’s assassination ‘within no time’ after the attack.⁴⁷⁶³ The Sabra Defence also submitted that the Red mobiles were bought—on Thursday 30 December 2004—by Mr Raed Fakhreddine on behalf of his uncle Tareq, who was linked to ‘an entire group of persons of interest’.⁴⁷⁶⁴ The Sabra Defence did not reiterate these submissions in its final trial brief.

2286. The Defence of the four Accused otherwise did not challenge the Prosecution’s argument that the Red mobiles formed a covert network or the facts presented in support of this conclusion.

7. Findings

2287. Based on Mr Philips’s and Mr Platt’s evidence, the Trial Chamber finds that the Red mobiles formed a covert network from Tuesday 4 January 2005 to Monday 14 February 2005.

2288. The evidence that all eight Red mobiles operated in a highly organised manner. Ninety-nine percent of communications by the Red mobiles—excluding service numbers—were with each other is compelling. They called one another on only 11 days between Friday 14 January and Monday 14 February 2005. Their periods of inactivity coincided, such as between Tuesday 4 and Friday 14 January 2005. Their primary areas of use were West and Central Beirut. Five handsets used by Red mobiles were purchased from the same store on the same date, 30 December 2004. All their SIM cards were close in sequence and likely bought in the same area. Users swapped handsets within the group of mobiles regularly and multiple times.

2289. The Red mobiles were all initialised on the provider network at the same time and place, in the Tripoli area on Tuesday 4 January 2005, within minutes of each other. Similarly, all the mobiles were topped up with additional credit in the Tripoli area on Wednesday 2 February 2005,

⁴⁷⁶⁰ Submissions, T. 10 November 2016, p. 49.

⁴⁷⁶¹ Submissions, T. 10 November 2016, p. 49. *See also* Gary Platt, T. 26 July 2016, p. 96.

⁴⁷⁶² Submissions, T. 10 November 2016, p. 42; Gary Platt, T. 26 July 2016, pp 79-80, 83.

⁴⁷⁶³ Submissions, T. 10 November 2016, p. 42.

⁴⁷⁶⁴ Submissions, T. 10 November 2016, pp 41-42; Gary Platt, T. 26 July 2016, p. 79.

within a 45-minute period. The principal six Red mobiles all made their last calls at the same time, on Monday 14 February 2005, just before Mr Hariri's assassination. All the Red mobiles were deactivated from operation on the Alfa network on 17 March 2005. Their handsets and SIM cards were never used again.

2290. The Trial Chamber notes further evidence—that some Red mobiles displayed sequential patterns for their IMEI numbers, their handsets were basic models, the voice calls between Red mobiles were of short duration and they all operated on the Alfa network—that may be less compelling but nevertheless provides additional support that the Red mobiles were part of a network.

2291. Further, the Red mobile users consistently acted in ways designed to preserve their anonymity. The SIM card subscribers for the Red mobiles did not provide their actual identities. The SIM card subscriptions were pre-paid, and only cash was used for transactions where the payment methods could be identified. The Red mobiles sent no text messages to each other and did not use voice mail or call forwarding. Users engaged in various transactions—purchasing handsets and SIM cards, initialising and topping up the mobiles—in the Tripoli area, far from their regular area of use in Beirut. Users also avoided night-time calls that could reveal where they lived. The total remaining credit of approximately USD 500 when the Red mobiles were deactivated is of lesser weight in comparison, but nevertheless provides some additional evidence of covertness.

2292. The Trial Chamber therefore concludes that the eight Red mobiles operated together as a covert network. Their possible connection and common mission with the other networks is addressed below.⁴⁷⁶⁵

E. Blue network

2293. The Prosecutor pleaded that the Blue network of 15 mobiles was used to prepare for the attack, including surveillance of Mr Hariri between 18 October 2004 and Monday 14 February 2005. These Blue mobiles communicated almost exclusively with each other and sent almost no text messages.⁴⁷⁶⁶

⁴⁷⁶⁵ See sub-section (G) 'The networks' common mission'.

⁴⁷⁶⁶ Amended consolidated indictment, paras 15 (c), 19 (b).

2294. The Blue mobiles were almost equally divided between the Alfa (seven) and the Touch (eight) provider networks.⁴⁷⁶⁷

2295. Mr Philips and Mr Platt analysed 15 mobiles to determine whether they could be classified as a network for purposes of the attack: Blue 233, Blue 235, Blue 322, Blue 324, Blue 428, Blue 501, Blue 585, Blue 610, Blue 742, Blue 813, Blue 817, Blue 864, Blue 940, Blue 965 and Blue 967.⁴⁷⁶⁸ Three other Blue mobiles—Blue 338, Blue 349 and Blue 354—were activated in March 2005, after the assassination, and are not linked to the attack.⁴⁷⁶⁹

2296. The role of the Blue mobiles in the attack on Mr Hariri is analysed in detail in the chronology of surveillance leading to the attack in chapter X ‘Chronology of network mobile activity before Mr Hariri’s assassination on Monday 14 February 2005’.

1. Setting up the network

2297. The Prosecution acknowledged that there is no evidence regarding the purchase of the handsets of the Blue mobiles.⁴⁷⁷⁰

2298. As to the purchase of the SIM cards, the card for Blue 428 was sold on 16 December 2003, while the cards for both Blue 742 and Blue 940 were bought on 25 December 2003.⁴⁷⁷¹ The SIM card subscription forms for Blue 610, Blue 585, Blue 233 and Blue 965 were dated, respectively, 17 December 2003, 17 October 2004, 21 December 2004 and 11 January 2005.⁴⁷⁷² The date fields in the SIM card forms for Blue 235, Blue 322 and Blue 324 were blank.⁴⁷⁷³ There was no information on the points of sale or dates of purchase for the SIM cards for Blue 501, Blue 813, Blue 817, Blue 864 and Blue 967.⁴⁷⁷⁴

⁴⁷⁶⁷ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), pp 2-3, 7-8, paras 6.1.1.1-6.1.1.2; John Edward Philips, T. 31 August 2016, p. 83.

⁴⁷⁶⁸ Gary Platt, T. 14 April 2016, pp 83-84, 90; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 750, 752-753, 755, 761; exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), pp 2, 18, para. 6.1.1.2. *See also* exhibit P795 (Network analysis presentation), slide 74.

⁴⁷⁶⁹ Gary Platt, T. 14 April 2016, pp 90-91; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 749-750, 759-761; exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), p. 339.

⁴⁷⁷⁰ Prosecution submissions, T. 4 April 2016, p. 23.

⁴⁷⁷¹ Exhibit P467 (Subscriber documentation for Blue network mobiles), ERN 60131823 (the identification form for Blue 428 shows the date of purchase of 16 December 2003); exhibit P558 (Statement of Michel Maarawi), ERNs 60294946-60294947, 60294959-60294960.

⁴⁷⁷² Exhibit P467, ERNs 60131627-60131628, SI-0001711, SI-0001713, SI-0001705.

⁴⁷⁷³ Exhibit P467, ERNs SI-0001704, SI-0001710, SI-0001712.

⁴⁷⁷⁴ Exhibit P792 (Alfa SIM cards’ activation and deactivation dates).

2299. Seven Blue mobiles, all on the Alfa network—Blue 610, Blue 813, Blue 817, Blue 864, Blue 428, Blue 742 and Blue 940—were activated on 9 December 2003 and first used on 17 and 25 December 2003.⁴⁷⁷⁵

	Date and time first used	Contact	Cell used for first 'call'
Blue 610	17.12.03 @ 14:37:32 hrs	1456	SFEIR2
Blue 428	17.12.03 @ 14:38:08 hrs	1456	SFEIR2
Blue 813	17.12.03 @ 01:16:24 hrs	1456	HADATH3
Blue 817	17.12.03 @ 01:22:35 hrs	1456	SFEIR2
Blue 864	17.12.03 @ 01:18:43 hrs	1456	SFEIR2
Blue 742	25.12.03 @ 10:58:52 hrs	1456	BRAJNE1
Blue 940	25.12.03 @ 10:57:18 hrs	1456	BRAJNE1

Table 3 of John Edward Philips's Blue Mission Phones report – exhibit P1115, p. 36

2300. Three Blue mobiles, from the Touch network—Blue 585, Blue 324 and Blue 322—were activated on 23 September and 4 October 2004⁴⁷⁷⁶ and first used on 18 October 2004. The remaining Blue mobiles on the Touch network—Blue 965, Blue 233, Blue 235, Blue 501 and Blue 967—were activated in December 2004 and first used between 7 and 12 January 2005.⁴⁷⁷⁷

⁴⁷⁷⁵ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), p. 8, paras 6.4.1.2, 6.4.1.8, 6.4.3.2, 6.7.2.1-6.7.2.2, 7.1; exhibit P792; exhibit P2137 (Metadata about Blue 428); John Edward Philips, T. 31 August 2016, p. 113; Gary Platt, T. 14 April 2016, pp 82, 86; *see also* exhibit P558.

⁴⁷⁷⁶ Exhibit P1101 (Touch list of activation and deactivation dates), p. 1. Blue 585 was sold to dealer 'Elite' on 1 October 2004 and Blue 324 and Blue 322 were sold to dealer 'MIG' on 8 October 2004.

⁴⁷⁷⁷ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), paras 6.4.2.3, 6.4.2.6, 6.4.3.4-6.4.3.6, 6.7.3.1-6.7.3.2, 6.7.4.3-6.7.4.4, 7.1; exhibit P1101, p. 1; John Edward Philips, T. 31 August 2016, pp 98, 113; Gary Platt, T. 14 April 2016, pp 86-87.

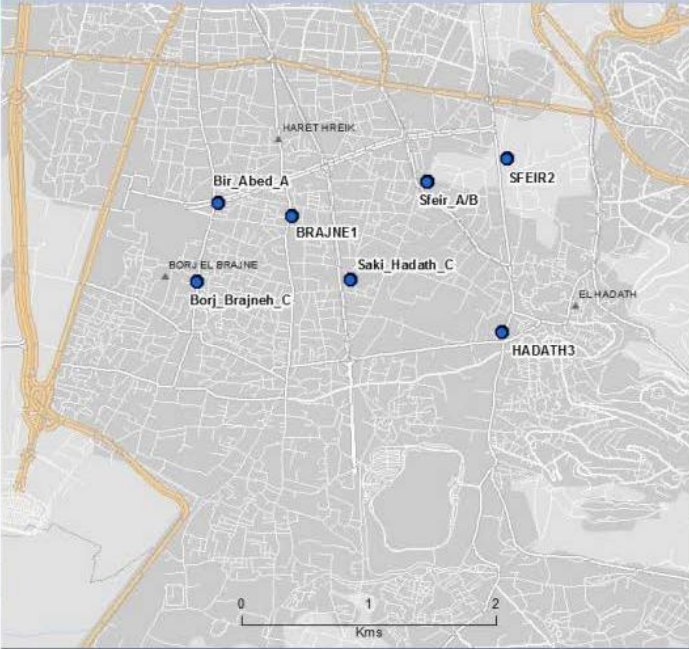
Mobile phone number	Date and time first used	Contact	Cell used for first 'call'
Blue 585	18.10.04 @ 14:09:12 hrs	1344	Saki Hadath_C
Blue 324	18.10.04 @ 14:01:02 hrs	1344	Sfeir_A
Blue 322	18.10.04 @ 14:05:17 hrs	1344	Sfeir_B
Blue 965	07.01.05 @ 14:43:37 hrs	1343	Sfeir_B
Blue 233	10.01.05 @ 14:00:15 hrs	Blue 235	Borj_El_Barajneh_C
Blue 235	09.01.05 @ 00:32:37 hrs	Blue 813	Sfeir_A
Blue 501	12.01.05 @ 17:32:20 hrs	1000	Sfeir_B
Blue 967	10.01.05 @ 12:52:01 hrs	Blue 235	Bir Abed_A

Table 4 of John Edward Philips's Blue Mission Phones report – exhibit P1115, p. 37

2301. The Blue mobiles were all used for the first time in the same area of the southern suburbs of Beirut.⁴⁷⁷⁸

⁴⁷⁷⁸ Gary Platt, T. 14 April 2016, pp 86-88; exhibit P795 (Network analysis presentation), slide 70.

Phone Number	Date	Cell
3197610	17 Dec 03	SFEIR2
3197817	17 Dec 03	SFEIR2
3198864	17 Dec 03	SFEIR2
3193428	17 Dec 03	SFEIR2
3196813	17 Dec 03	HADATH3
3198940	25 Dec 03	BRAJNE1
3196742	25 Dec 03	BRAJNE1
3067324	18 Oct 04	Sfeir_A, Sfeir_B
3067322	18 Oct 04	Sfeir_B, Saki_Hadath_C
3043585	18 Oct 04	Saki Hadath_C, Sfeir_A
3846965	7 Jan 05	Sfeir_B
3071235	9 Jan 05	Sfeir_A
3020967	10 Jan 05	Bir Abed_A
3071233	10 Jan 05	Borj_El_Barajneh_C
3079501	12 Jan 05	Sfeir_B



Slide 70 with Blue mobiles' initialisations from Gary Platt's Network analysis presentation – exhibit P795

2302. With regard to MSISDN numbers, Blue 322 and Blue 324 are close (3067322 and 3067324), as are Blue 233 and Blue 235 (3071233 and 3071235).⁴⁷⁷⁹ As for any IMEI sequences, Mr Philips's evidence was that three Nokia 1100s used by the Blue mobiles were relatively close to one another, with their numbers ending in 029255, 029288 and 029324.⁴⁷⁸⁰

2. Equipment

2303. Seventeen different handsets were used for the 15 Blue mobiles: 16 Nokias and one Motorola.⁴⁷⁸¹ All handsets were basic models.⁴⁷⁸²

⁴⁷⁷⁹ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), p. 7, para. 6.3.3.5.

⁴⁷⁸⁰ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), p. 8, para. 6.5.4.2.

⁴⁷⁸¹ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), pp 5, 7, paras 6.5.2.3-6.5.2.4, 6.5.2.8, 6.5.2.13-6.5.2.14, 6.5.2.16, 6.5.6, 7.1. Mr Philips excluded the period after 30 September 2005 for his analysis, exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), para. 6.5.2.1.

⁴⁷⁸² Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), p. 7, paras 6.5.2.8, 6.5.2.13, 6.5.2.15, 6.5.2.20, 6.5.6, 7.1.

2304. Several handsets were swapped among eight Blue mobiles. Mr Platt commented that this was evidence of group management and connectivity.⁴⁷⁸³ Mr Platt noted that, in addition, four Yellow mobiles shared handsets with the Blue ones.⁴⁷⁸⁴ The following table sets out which mobiles shared handsets:

Phone	Handset							
	IMEI 352512007481350	IMEI 352512003271860	IMEI 352501005611540	IMEI 35430800605570	IMEI 355383000292550	IMEI 355383000303740	IMEI 352512006812340	IMEI 445000077717840
Blue 235 [S12]					X			X
Blue 501 [S13]					X			X
Blue 322 [S14]	X			X				
Blue 428 [S18]	X	X	X					
Blue 742 [S19]	X		X	X		X	X	
Blue 349	X							
Blue 813	X	X	X			X		
Blue 940	X						X	
Blue 965	X					X		X
Yellow 457 [S6]								X
Yellow 933 [S8]								X
Yellow 024 [S9]								X
Yellow 932 [S21]							X	

Table regarding handset use from Gary Platt's Network Analysis Report – exhibit P796.1, p. 128

3. Usage

2305. The seven Alfa Blue mobiles activated in December 2003 were effectively inactive until December 2004, except for regular top-ups and limited calls between the Blue mobiles, the Yellow

⁴⁷⁸³ Exhibit P790 (IMEI information for Alfa numbers); Gary Platt, T. 26 July 2016, p. 47. Mr Platt actually identified nine Blue mobiles that swapped handsets, but one (Blue 349) was only activated in March 2005, after the attack. Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 787, 789.

⁴⁷⁸⁴ Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 788-789, 935, 956, 1097.

mobiles and unattributed numbers.⁴⁷⁸⁵ According to Mr Platt, these mobiles being kept active through monthly topping up was evidence of organisational structure.⁴⁷⁸⁶

2306. According to Mr Platt, during the initial phase of the network from 18 October until 22 December 2004, Blue 322, Blue 324 and Blue 585 only called each other. They operated as an open-ended triangle, namely Blue 322 was in contact with Blue 585, and Blue 585 was in contact with Blue 324 only. There were no calls between Blue 322 and Blue 324 until 22 December 2004.⁴⁷⁸⁷ The network then expanded with three more mobiles—Blue 610, Blue 817 and Blue 864—in December 2004.⁴⁷⁸⁸ By Saturday 15 January 2005, the nine other Blue mobiles had joined.⁴⁷⁸⁹

2307. Mr Philips, however, provided a different account of the network's expansion. On 23 December 2004, the seven Alfa Blue mobiles started calling each other as well as the three Touch Blue mobiles.⁴⁷⁹⁰ The remaining five Blue mobiles started making calls in January 2005 and contacted the other Blue mobiles.⁴⁷⁹¹

2308. According to Mr Philips, all 15 Blue mobiles formed part of a closed-user group over the period between Wednesday 12 January 2005 and Tuesday 15 February 2005.⁴⁷⁹² His report stated that, from 21 December 2004 until 15 February 2005, there were 1,450 calls between the

⁴⁷⁸⁵ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), paras 6.7.2.5, 7.1; John Edward Philips, T. 31 August 2016, p. 113; Gary Platt, T. 14 April 2016, pp 82, 100; *see also* exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 754; exhibit P795 (Network analysis presentation), slide 69.

⁴⁷⁸⁶ Gary Platt, T. 14 April 2016, pp 82, 83-86, T. 15 April 2016, pp 18-19.

⁴⁷⁸⁷ Gary Platt, T. 14 April 2016, pp 81-83, 88-89; *see also* exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 752, 756; exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), paras 6.7.3.4-6.7.3.5, 7.1; exhibit P795, slides 65, 71.

⁴⁷⁸⁸ Gary Platt, T. 14 April 2016, p. 89; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 752, 757; *see also* exhibit P795, slide 72.

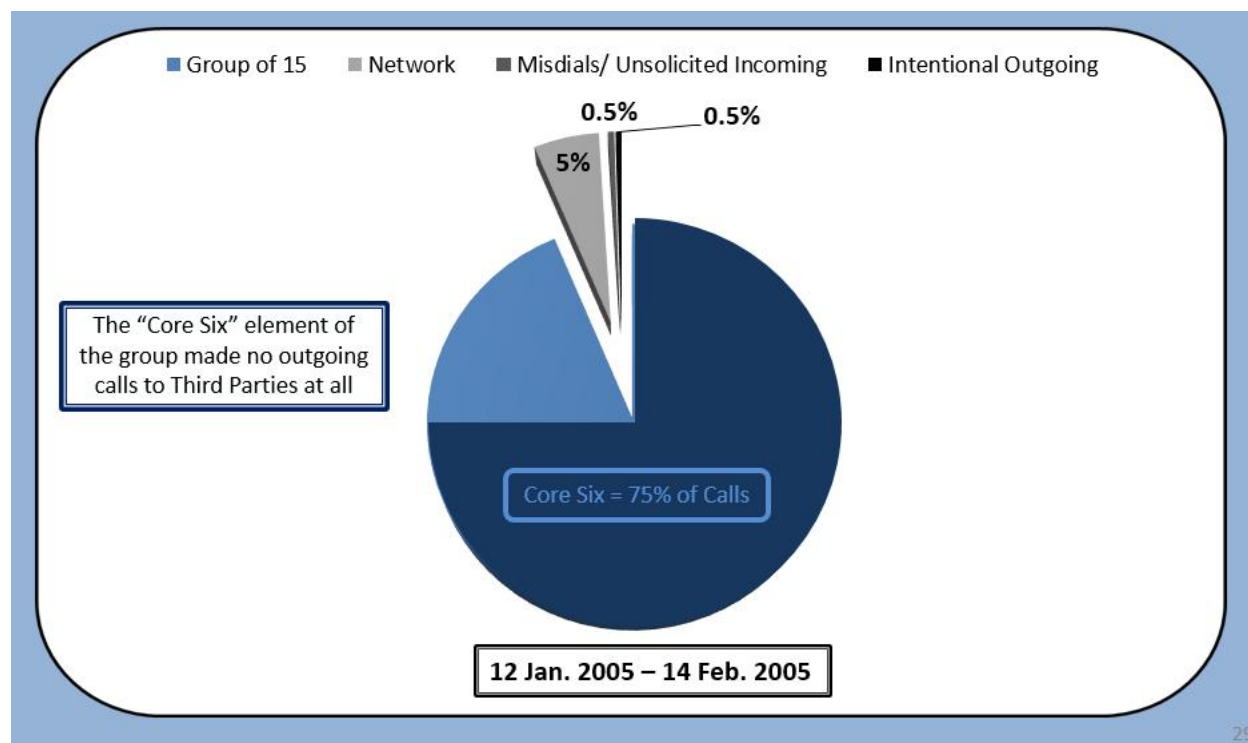
⁴⁷⁸⁹ Gary Platt, T. 14 April 2016, pp 83, 90; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 752-753, 758; *see also* exhibit P795, slide 73.

⁴⁷⁹⁰ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), paras 6.7.3.6-6.7.3.7, 7.1; John Edward Philips, T. 31 August 2016, p. 114.

⁴⁷⁹¹ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), section 6.7.4.

⁴⁷⁹² Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), pp 2-3, 9, 18; John Edward Philips, T. 31 August 2016, pp 83-84.

15 mobiles.⁴⁷⁹³ Blue mobiles called each other 94 per cent of the time, network calls amounted to five per cent and all other calls totalled one per cent.⁴⁷⁹⁴



Slide 29 of John Edward Philips's PowerPoint presentation – exhibit P1118

2309. In his network report, Mr Platt's analysis of the Blue mobiles' activity focused on a larger period: from when the first group of three Blue mobiles were consistently used in October 2004 until the Blue mobiles' final activity in September 2005.⁴⁷⁹⁵ Not taking into account contacts with service numbers, Mr Platt found that approximately 97 per cent of communications within the Blue mobile group was with other Blue mobiles during this period.⁴⁷⁹⁶

2310. In his testimony, Mr Platt focused instead on the period from 18 October 2004 to Monday 14 February 2005. During this period, the Blue mobiles were involved in 1,799 calls: 86 per cent (1,549 calls) were Blue-to-Blue network calls; one per cent (21 calls) were Blue network calls

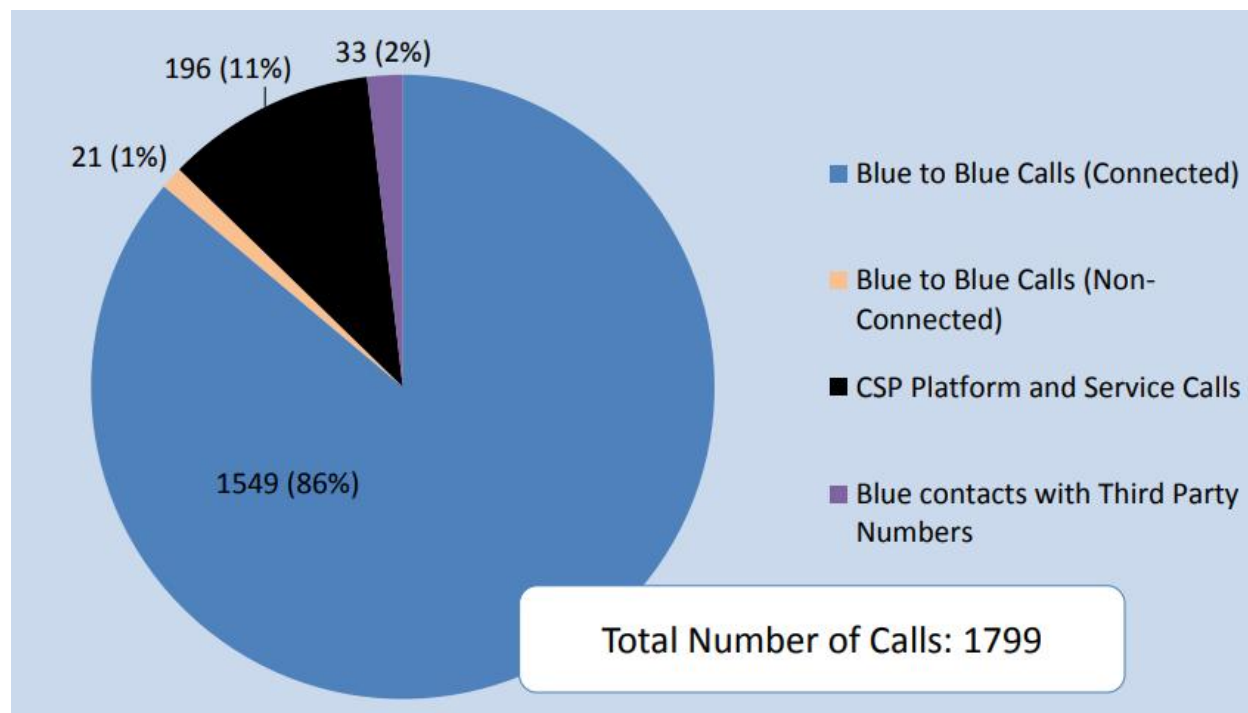
⁴⁷⁹³ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), para. 6.9.62.58, p. 286 (table 173), *see also* pp 8, 289.

⁴⁷⁹⁴ John Edward Philips, T. 31 August 2016, pp 48, 85-86; exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), p. 8.

⁴⁷⁹⁵ Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 749, 756-761, 780-786.

⁴⁷⁹⁶ In the report, Mr Platt does not specify the total number of calls analysed. Exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 780.

which did not connect with the intended Blue mobile users; 11 per cent (196 calls) were calls or text messages from communication service providers or from the internet—such as advertisements;⁴⁷⁹⁷ and two per cent (33 calls) were contacts with third party numbers.⁴⁷⁹⁸ Mr Platt testified that 79 per cent of calls involving the Blue mobiles between 18 October 2004 and 14 February 2005 occurred after 7 January 2005.⁴⁷⁹⁹ According to Mr Platt, the Blue Network was ‘largely closed’.⁴⁸⁰⁰



Slide 85 from Gary Platt’s Network analysis presentation – exhibit P795

2311. Almost all, 91 per cent, of the Blue mobile activations occurred in the Beirut area.⁴⁸⁰¹ Similarly, the list of top ten cells activated by Blue mobiles included eight locations in the southern suburbs of Beirut and two in western Beirut.⁴⁸⁰² The top three cells were the same, and in the same

⁴⁷⁹⁷ Gary Platt, T. 15 April 2016, pp 38-39. *See also* Gary Platt, T. 6 April 2016, pp 39-41.

⁴⁷⁹⁸ Gary Platt, T. 15 April 2016, pp 38-40. *See also* exhibit P795, slide 85.

⁴⁷⁹⁹ In his network report, where Mr Platt’s analysis of the Blue mobiles’ activity focused on the larger period between October 2004 and September 2005. He listed the monthly average number of all Blue mobiles’ calls. This shows a significant increase in the number of calls also between May and August 2005. Gary Platt, T. 15 April 2016, pp 43-44; exhibit P796. 1 (Network analysis report – updated 8 February 2018), para. 781; *see also* exhibit P795, slide 88.

⁴⁸⁰⁰ Gary Platt, T. 14 April 2016, p. 84.

⁴⁸⁰¹ Gary Platt, T. 15 April 2016, p. 49; *see also* exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 792; exhibit P795, slide 90.

⁴⁸⁰² These were MOVPIK1 and CARACA3; *see also* exhibit P795, slides 91-92.

order, as those of the Yellow mobiles, namely Alfa's SFEIR2, and Touch's Sfeir_B and Sfeir_A.⁴⁸⁰³

2312. Nearly four per cent of Blue mobile activations occurred in the Zouk-Mosbeh and Faraya areas, where some mobiles activated the cell masts 'which congregated around the main routes to the Faqra villa'.⁴⁸⁰⁴ Activity in this location was limited to between 25 December 2004 and 28 January 2005.⁴⁸⁰⁵ Mr Platt testified that the Yellow mobiles were also active in these areas in December 2004.⁴⁸⁰⁶

2313. One per cent of usage occurred in the area between Jounieh and Tripoli over a few days between Tuesday 28 December 2004 and Wednesday 2 February 2005.⁴⁸⁰⁷ This percentage and period are similar to the Yellow mobile activations in the same area.⁴⁸⁰⁸ Mr Platt commented that the activity in the Tripoli and Faraya areas for a limited time in late December was unusual, given their prior areas of use in the southern suburbs of Beirut or south Lebanon.⁴⁸⁰⁹

2314. Finally, almost four per cent of Blue mobile activations occurred in south Lebanon and less than one per cent were in the Baalbek and in the Bekaa valley areas.⁴⁸¹⁰ Similar activity by Yellow mobiles in Baalbek is analysed below.⁴⁸¹¹

2315. From January 2004 through January 2005, the seven Alfa Blue mobiles had credit added on a group basis, meaning they were topped up together—in groups of five and two—from the same distributor on the same date, time and location in the southern suburbs of Beirut, using

⁴⁸⁰³ Gary Platt, T. 15 April 2016, p. 49; *see also* exhibit P795, slides 91-92.

⁴⁸⁰⁴ Gary Platt, T. 15 April 2016, pp 47-49, 51-52; *see also* exhibit P795, slides 90, 94.

⁴⁸⁰⁵ Gary Platt, T. 15 April 2016, p. 51.

⁴⁸⁰⁶ Gary Platt, T. 15 April 2016, p. 48.

⁴⁸⁰⁷ Gary Platt, T. 15 April 2016, pp 46-47, 50-51. *See also* exhibit P795, slides 90, 93.

⁴⁸⁰⁸ Gary Platt, T. 15 April 2016, pp 46-47.

⁴⁸⁰⁹ Gary Platt, T. 15 April 2016, p. 54.

⁴⁸¹⁰ Gary Platt, T. 15 April 2016, pp 47-49, 51-52; *see also* exhibit P795, slide 90. In his network report, when describing the Blue network's area of operation, Mr Platt mentioned 'a significant usage in the Baalbek area', without explaining this further, exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 792. As noted above, in the report, Mr Platt's analysis of the Blue mobiles' activity focused on the larger period between October 2004 and September 2005. The different period of consideration explains the difference in Mr Platt's evidence about the Blue mobiles' usage in the Baalbek area. This is consistent with Mr Philips's evidence that 'movement in the latter half of 2005, particularly from June onwards, by many Blue phones, also includes an area ~ 67 kilometres north-east around Baalbek, an area only seemingly visited during the *period of specific interest* by [Blue 864] on 18th January 2005', exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), p. 5. *See also* exhibit P795, slides 90, 94.

⁴⁸¹¹ *See* sub-section (F) (3) 'Usage'.

sequentially numbered top-up vouchers.⁴⁸¹² These Blue mobiles' recharge cards were also in sequential order with those used by some Yellow mobiles. According to Mr Platt, this showed connectivity between the Blue and Yellow mobiles⁴⁸¹³ and was evidence of group management and organisation.⁴⁸¹⁴

2316. After January 2005, the process changed to single user top-ups.⁴⁸¹⁵ Some mobiles continued to recharge on the same days, but the times and locations changed. This coincided with the seven Alfa Blue mobiles joining the network over December 2004 and January 2005, which Mr Platt interpreted to mean that they were given to a user after being maintained for almost 12 months.⁴⁸¹⁶

2317. One mobile—Blue 610—was dominant in terms of call volume and usage areas.⁴⁸¹⁷ There were also five other 'core' mobiles: Blue 817, Blue 864, Blue 585, Blue 324 and Blue 233.⁴⁸¹⁸ These six mobiles were involved in 75 per cent of all Blue mobile calls from 21 December 2004 to Tuesday 15 February 2005,⁴⁸¹⁹ and over 90 per cent of their calls were among themselves.⁴⁸²⁰ Between Thursday 27 January and Monday 14 February 2005, their call activity increased

⁴⁸¹² Gary Platt, 15 April 2016, pp 2-6; exhibit P795, slides 79-80; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 772-775; exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), p. 6, paras 6.6.8.1, 7.1. Alfa provided the Prosecution with information on the recharge cards and recharge dates for the seven Blue mobiles, whereas in 2004 and 2005, Touch did not retain recharge data. Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 763, 777; exhibit P826 (Witness PRH705's statement of 16 November 2015), para. 312.

⁴⁸¹³ Gary Platt, T. 14 April 2016, pp 94-99, T. 15 April 2016, pp 2-5, 9-18, 20-21, T. 26 July 2016, pp 39-42, 45; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 766, 769, 772, 775, 778-779. *See also* exhibit P795, slides 78-80.

⁴⁸¹⁴ Gary Platt, T. 15 April 2016, pp 12, 14, 16-18; exhibit P785 (Alfa recharge information for 44 mobiles); exhibit P786 (Alfa recharge information for Blue 428).

⁴⁸¹⁵ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), p. 6, para. 6.6.8.6.

⁴⁸¹⁶ Gary Platt, T. 15 April 2016, p. 6; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 770, 776.

⁴⁸¹⁷ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), p. 8.

⁴⁸¹⁸ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), pp 3-4, 9; John Edward Philips, T. 31 August 2016, p. 84; Gary Platt, T. 14 April 2016, p. 91; *see also* exhibit P795, slide 75.

⁴⁸¹⁹ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), p. 4; John Edward Philips, T. 31 August 2016, pp 88-89; *see also* exhibit P795, slide 75. According to Mr Platt, in the slightly different period, 14 January to 14 February 2005, these six mobiles made 'approximately 73 per cent of all Blue-to-Blue calls'. Gary Platt, T. 14 April 2016, pp 81, 91.

⁴⁸²⁰ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), p. 4. According to Mr Platt, 99.57 per cent of all the communications on Blue 233 from 10 January 2005 to 21 September 2005—the period in which Mr Ayyash allegedly used Blue 233—were with other Blue mobiles. Blue 233's most common contact was Blue 610. Further, between 18 October 2004 and 15 September 2005, the percentages of the Blue-to-Blue contact of the other five Blue mobiles of the 'Principal Six', varied from 97 to 99.74 per cent. Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 805, 814, 833, 853, 872, 890, 908; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 393.

substantially, while that of the remaining nine Blue mobiles decreased to a minimum.⁴⁸²¹ Mr Platt stated that these six ‘core’ mobiles were not only the most active in terms of call volume, but also the most mobile, in terms of locations.⁴⁸²² The six ‘core’ Blue mobiles’ top cell site activations shifted towards western Beirut from 27 January through 14 February 2005.⁴⁸²³ After 14 February 2005, the group of six mobiles merged back into the larger group in terms of call activity and cell site activations.⁴⁸²⁴

2318. Mr Platt noted that 96 per cent of all Blue-to-Blue calls were shorter than two minutes, even though the mobiles had plenty of credit and could have made longer calls.⁴⁸²⁵ He added that five contacts were common to two or more Blue mobiles.⁴⁸²⁶ Also, some Blue mobiles had common contacts with some Yellow mobiles, the Protel Company and the Great Prophet Hospital in Beirut.⁴⁸²⁷

4. Closure of the network

2319. After Monday 14 February 2005, the level of activity of Blue-to-Blue calls dropped extensively.⁴⁸²⁸ The Blue mobiles stayed in operation until October 2005, when all except two—Blue 813 and Blue 742⁴⁸²⁹—were deactivated by the provider networks.

⁴⁸²¹ John Edward Philips, T. 31 August 2016, pp 103-104.

⁴⁸²² Gary Platt, T. 14 April 2016, pp 91-92.

⁴⁸²³ John Edward Philips, T. 31 August 2016, pp 106-107; exhibit P1118 (PowerPoint presentation on common mission phones, John Edward Philips), slide 38.

⁴⁸²⁴ John Edward Philips, T. 31 August 2016, pp 85, 100, 107-108.

⁴⁸²⁵ Gary Platt, T. 15 April 2016, pp 45-46; *see also* exhibit P795, slide 89.

⁴⁸²⁶ Exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 782.

⁴⁸²⁷ Gary Platt, T. 15 April 2016, p. 41. *See also* exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 784-785, 980.

⁴⁸²⁸ Gary Platt, T. 15 April 2016, pp 43-44. The graph of the Blue network activity in exhibit P795 (Network analysis presentation), slide 88, only covers the period between 18 October 2004 and 14 February 2005. Mr Platt’s report shows the monthly ‘average percentage of contact between Blue mobiles and the average number of all calls/SMS of Blue mobiles between October 2004 and September 2005’. According to the report, the average number of calls decreased in March and April 2005 to increase again, however, in the months of May to July 2005. The average percentage of Blue contacts did not decrease significantly in the months following February 2005. Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 780-781.

⁴⁸²⁹ Mr Platt testified that only one Blue mobile, Blue 742, was still active after the Blue network ceased to exist, in 2010. However, his report states that ‘the majority of the Blue Phones were deactivated by Alfa and Touch between 30 September and 14 November 2005’. Blue 813 was the only mobile deactivated after October 2005, on 14 November 2005. Mr Platt also noted that a SIM card replacement was requested for this mobile in the name of Ghamlouch—the named subscriber of the line—whom the Prosecution was unable to locate or interview. Mr Platt underlined that this person was also the named subscriber of Yellow 294. According to Mr Platt, while the Lebanese Ministry of Interior stated that this ‘is a real person’, they have not been located since 2005, and ‘disappeared essentially’. Gary Platt,

Mobile	Last date of use	Network
Blue 585	15.09.05	MTC
Blue 324	15.09.05	MTC
Blue 817	16.09.05	Alfa
Blue 610	21.09.05	Alfa
Blue 864	21.09.05	Alfa
Blue 233	21.09.05	MTC
Blue 235	21.09.05	MTC
Blue 501	21.09.05	MTC
Blue 967	24.09.05	MTC
Blue 428	01.10.05	Alfa
Blue 940	01.10.05	Alfa
Blue 322	01.10.05	MTC
Blue 965	01.10.05	MTC
Blue 813	26.10.05	Alfa
Blue 742	??	Alfa

Table 191 of John Edward Philips's Blue Mission Phones report – exhibit P1115, p. 340

T. 15 April 2016, pp 22, 25, 27-30; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 798, 1004, 1043-1044; exhibit P467 (Subscriber documentation for Blue network mobiles), ERN 60131891.

Mobile	Network	Date of deactivation	Credit balance at deactivation	Reason for deactivation
Blue 610	Alfa	30.10.05	\$US 443	No reason provided
Blue 813	Alfa	14.11.05	\$US 828	No reason provided
Blue 817	Alfa	11.10.05	\$US 582	No reason provided
Blue 864	Alfa	11.10.05	\$US 603	No reason provided
Blue 428	Alfa	24.10.05	\$US 35	No reason provided
Blue 742	Alfa	still op as of 2010	n/a	
Blue 940	Alfa	12.10.05	\$US 668	No reason provided
Blue 585	MTC	23.10.05	\$US 242.01	No top-up
Blue 324	MTC	19.10.05	\$US 282.52	No top-up
Blue 322	MTC	04.10.05	\$US 186.17	No top-up
Blue 965	MTC	13.10.05	n/a	No top-up
Blue 233	MTC	21.10.05	\$US 88.14	No top-up
Blue 235	MTC	16.10.05	\$US 153	No top-up
Blue 501	MTC	19.10.05	\$US 90.29	No top-up
Blue 967	MTC	15.10.05	\$US 85.88	No top-up

Table 196 of John Edward Philips's Blue Mission Phones report – exhibit P1115, p. 347

2320. Mr Platt commented that the shutdown in ‘this sort of uniform fashion’—as it occurred over a couple of weeks—reflected an organised process.⁴⁸³⁰ Mr Philips’s report stated that the credit balance was more than USD 4,000.⁴⁸³¹ In his report, Mr Platt stated that the approximate amount left over on the Blue mobiles was USD 4,703.10.⁴⁸³²

⁴⁸³⁰ Gary Platt, T. 15 April 2016, p. 25. According to Mr Platt’s report, however, for the Blue mobiles the Alfa records did not contain the reasons for deactivation and Touch records provided the reason as ‘expiry date’, exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 798, 811, 846, 866, 885, 903, 921, 943, 963, 983, 1025, 1043, 1062, 1083; exhibit P792 (Alfa SIM cards’ activation and deactivation dates); exhibit P1101 (Touch list of activation and deactivation dates); exhibit P2137 (Metadata about Blue 428).

⁴⁸³¹ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), pp 5-6, 8, paras 6.12.1.5-6.12.1.6; *see also* exhibit P1101, p. 1; exhibit P792; exhibit P2137.

⁴⁸³² In another passage of the report, Mr Platt stated that the total amount left was USD 5,160. Mr Platt testified that the Blue mobiles had approximately USD 5,000 credit remaining on the mobiles, Gary Platt, T. 15 April 2016, pp 21-24; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 799-803, 1213; *see also* exhibit P795, slide 81. Mr Platt also testified that there was no Alfa or Touch record of any attempt to be refunded or to have the money transferred to another mobile. Having noted this apparent inconsistency in remaining credit, the Trial Chamber has calculated the amount of credit left on the Blue mobiles based on the information received from Alfa and Touch (on the amount of credits, either in USD or on the number of units. Based on Alfa information, there was a slight, non-significant variation in the value of each unit depending on the value of the relevant Alfa scratch card). The Trial Chamber has found that the amount left was of approximately USD 4,702 without including the amount of credit on Blue 742 at that time, as that mobile was not deactivated by 2005, exhibit P789 (Credit balance at time of deactivation for 14 mobiles); exhibit P787 (Alfa explanation of USD value for unit of credit); exhibit P788 (Credit balance for Blue 742); exhibit P1093.7 (Annex 13 to Witness PRH705’s statement of 16 December 2015); exhibit P1194 (Statement of Witness PRH707, 25 January 2016), para. 18, p. 5; exhibit P826 (Witness PRH705’s statement of 16 November

2321. Mr Philips surmised that continued use of the Blue mobiles after 14 February 2005 could be explained because another mission had to be undertaken.⁴⁸³³ According to Mr Platt, ‘whoever was organizing and managing the Blue network’ was fairly satisfied that they ‘were still covert enough to be used as an organizational set of phones’. But, in his view, by October 2005, it was decided they could no longer be used. They were not covert enough for whatever reason.⁴⁸³⁴

2322. Mr Philips noted in his report that the Blue mobiles’ long period of operation was unusual in the context of ‘mission’ mobiles.⁴⁸³⁵

5. Anonymity

2323. Mr Platt commented that it was impossible to trace the subscriber of any of the Blue mobiles as being the true user.⁴⁸³⁶ No subscriber details were provided for four Blue mobiles—Blue 817, Blue 864, Blue 501 and Blue 967.⁴⁸³⁷ For six mobiles—Blue 233, Blue 324, Blue 322, Blue 742, Blue 940 and Blue 965—those whose names were on the subscriber forms provided evidence that they never purchased these SIM cards.⁴⁸³⁸ In three cases—Blue 585, Blue 235 and Blue 813—the subscriber could not be located,⁴⁸³⁹ yet for one of these, the person was not in Lebanon at the time of purchase.⁴⁸⁴⁰ Two mobiles were subscribed under the same name, and a counterfeit document was provided with the applications.⁴⁸⁴¹

2015), para. 313, stating that, in 2004 and 2005, it was not possible to transfer pre-paid credit from one Touch Magic line to another.

⁴⁸³³ John Edward Philips, T. 31 August 2016, p. 100.

⁴⁸³⁴ Gary Platt, T. 14 April 2016, p. 92.

⁴⁸³⁵ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), p. 4.

⁴⁸³⁶ Gary Platt, T. 15 April 2016, p. 31.

⁴⁸³⁷ Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 791, 884, 902, 942, 1024; exhibit P797 (Extract from Alfa subscriber database).

⁴⁸³⁸ Blue 742 and Blue 940 were subscribed under the same name. Exhibit P467 (Subscriber documentation for Blue network mobiles), ERNs SI-0001710, SI-0001712-SI-0001713, SI-0001705; exhibit P574 (Statement of Witness PRH702), paras 10-14; exhibit P567 (Statement of Witness PRH094), paras 10-15; exhibit P573 (Statement of Witness PRH090), paras 10-15; exhibit P566 (Statement of Witness PRH493), ERNs 60289075, 60289079-60289081; exhibit P555 (Statement of Hatem Yaghi), paras 6-11; Witness PRH090, T. 2 September 2015, pp 80-81; exhibit P797; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 791, 810, 867, 962, 1005, 1063, 1084. For Blue 233 and Blue 322, *compare* chapter IX ‘Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine’, (B) (2) (c) ‘Blue 322’ and (d) ‘Blue 233’.

⁴⁸³⁹ Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 791, 828, 922, 1044; exhibit P467 (Subscriber documentation for Blue network mobiles), ERN SI-0001704; exhibit P797.

⁴⁸⁴⁰ The named subscriber of Blue 585. Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 791, 826, 828; exhibit P467, ERN SI-0001711; exhibit P399 (Ministry of Interior information about travel of individuals); exhibit P400 (Entry/exit records), p. 2.

⁴⁸⁴¹ Mr Platt’s report states that ‘In two cases, the identification card was determined to be counterfeit (Blue 610 and Blue 428)’. Exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 791. It appears from the

2324. There were only two text messages between the Blue mobiles between 21 December 2004 and 15 February 2005 and no voice mails.⁴⁸⁴² Outside of this period, the Blue mobiles engaged in more SMS activity.⁴⁸⁴³

2325. The mobiles were all pre-paid.⁴⁸⁴⁴ All traceable transactions were made in cash.⁴⁸⁴⁵

2326. According to Mr Platt, the set-up, formation, cessation, financing and maintenance of the Blue mobiles were evidence of their organisation as a network, whereas the nature of the mobiles' subscriber details, their financing and activity demonstrated that this network was covert.⁴⁸⁴⁶

6. Submissions

2327. The Prosecution submits that the Blue network was used to coordinate preparations for the attack, including surveillance.⁴⁸⁴⁷ The Blue network's cohesion is demonstrated by the following: purchases of SIM cards was coordinated. The network was setup around the same time in the same area. Top-ups were coordinated in same areas using sequential recharge cards; the coordinated shut down of the network; coordinated patterns of call intensity with an increase in call frequency leading up to 14 February 2005 with an immediate decrease thereafter; and regular top-ups despite very limited use with unusually high credit balance at time of the network's shutdown.⁴⁸⁴⁸ The Blue mobiles' 'low forensic visibility' enabled the adoption of less rigorous operating

sections on Blue 610 and Blue 428—subscribed under the same name—that a driver's licence and a civil status extract were provided with the respective applications (the dates of purchase appearing on them are, respectively, 17 and 16 December 2003). The Lebanese Ministry of Interior and Municipalities stated that the driver's licence was counterfeit, exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 848, 985; exhibit P467, ERNs 60131626-60131631, 60131819-60131823; exhibit P398 (Authenticity of driver's license number), pp 5, 19; exhibit P397 (Document from civil status directorate and letter from Directorate General for Political and Refugees Affairs), ERN 60144933.

⁴⁸⁴² Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), p. 9, para. 6.10.17.19; John Edward Philips, T. 31 August 2016, pp 91-92; Gary Platt, T. 15 April 2016, p. 38. Mr Platt stated that the content of both text messages—which Blue 967 sent to Blue 235—was '9000301'. Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 926, 1029, fn. 244. Mr Platt stated that he has reviewed available SMS content from Touch. However, no document containing the content of these SMSs has been admitted into evidence.

⁴⁸⁴³ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), p. 339 (table 190).

⁴⁸⁴⁴ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), pp 2-3, 5, 7-8, paras 6.1.1.1-6.1.1.2; *see also* John Edward Philips, T. 31 August 2016, p. 83.

⁴⁸⁴⁵ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), p. 9; John Edward Philips, T. 31 August 2016, p. 92; Gary Platt, T. 15 April 2016, p. 38, T. 26 July 2016, p. 38.

⁴⁸⁴⁶ Gary Platt, T. 15 April 2016, pp 52-55; *see also* exhibit P795 (Network analysis presentation), slides 67, 69-70, 77-82, 84.

⁴⁸⁴⁷ Prosecution final trial brief, para. 359.

⁴⁸⁴⁸ Prosecution final trial brief, para. 361.

measures.⁴⁸⁴⁹ Nonetheless, the Blue network adopted a high degree of covertness and discipline to ensure their users' anonymity. Measures that were adopted were: pre-paid subscriptions; false or no subscriber details; virtually complete closed-user group activity; and almost no use of text messaging.⁴⁸⁵⁰

2328. It can be inferred from the fact that false or misleading documents were used that mobile subscribers provided no documents. If they had supplied them, the mobile dealers would have used them to obtain their incentives from the network providers. However, because the providers offered an incentive program to the mobile dealers, the fact that incorrect documents were sent to the providers is not an act that the Prosecution attributed to the Accused themselves.⁴⁸⁵¹

2329. According to the Sabra Defence, the practice of providing incorrect subscription forms in the purchase of lines was sweeping and broad and was not limited to any alleged criminal activity. There was no evidence that the forms linked to the Blue mobiles were provided by the buyers of the lines themselves, as they may have been kept by the relevant shops—as Witness 553 did for the Red mobiles—and then attached to the lines when the seller filled out the relevant forms.⁴⁸⁵²

7. Findings

2330. The Trial Chamber finds that at least the six 'core' Blue mobiles formed a network and that they operated covertly from some time in December 2004 until Monday 14 February 2005.

2331. The timing as to the Blue mobiles' registration and first use on the provider networks helps to show that there was an organised set up of a Blue network. The seven Alfa Blue mobiles were activated and first used in December 2003. Blue 322, Blue 324 and Blue 585 were activated in September or October 2004, and then all first used in October 2004. Five Blue mobiles registered on the provider network on various dates in December 2004 and were first used in January 2005. All the mobiles were first used in the same area in the southern suburbs of Beirut. These various sub-groups reflect to some degree an organisational hand behind them.

⁴⁸⁴⁹ Prosecution final trial brief, para. 359.

⁴⁸⁵⁰ Prosecution final trial brief, para. 360.

⁴⁸⁵¹ Prosecution submissions, T. 15 April 2016, pp 33-35.

⁴⁸⁵² Sabra Defence submissions, T. 15 April 2016, pp 35-36.

2332. The levels of inactivity and activity also corresponded among the Blue mobiles. The mobiles were effectively inactive until December 2004, with the exception of three mobiles calling each other as an open-ended triangle from 18 October until 22 December 2004. They had a heightened burst of activity with almost 80 per cent of all calls taking place between Friday 7 January and Monday 14 February 2005 with activity then dropping off precipitously. This is strong evidence that the various mobiles coordinated with each other.

2333. The most compelling evidence of their organisation is the closed user group among the Blue mobiles. Excluding service communications, the Blue mobiles communicated exclusively with each other 97 or 99 per cent of the time, according to Mr Platt's and Mr Philips's respective calculations. The Trial Chamber finds that the percentages of Blue-to-Blue contacts reflect near exclusive communications among the Blue mobiles.

2334. The recharging process for the seven Alfa Blue mobiles between January 2004 and January 2005—involving the mobiles being topped up together at the same time and location, using sequential charge cards—also weighs in favour of an organisational process. So too does the handset swapping among eight Blue mobiles and the fact that the Blue mobiles were almost always used in Beirut.

2335. Another strong indicator is the activity of the six 'core' Blue mobiles—Blue 233, Blue 324, Blue 585, Blue 610, Blue 817 and Blue 864. These six mobiles accounted for 75 per cent of all Blue mobile activity between December 2004 and February 2005, moved together as a group to activate cells in western Beirut and had exclusive communications with each other, apart from service calls.

2336. Other evidence—including sequential patterns for some Blue mobiles' IMEI and MSISDN numbers, the use of basic handset models and nearly all Blue mobile voice calls lasting less than two minutes—also weighs in favour of the Blue mobiles being part of a network.

2337. The Trial Chamber has considered that—unlike the Red and Green networks—the Blue mobiles did not cease activity around the time of the attack. Instead, they stayed in operation until October 2005. Three new Blue mobiles even joined the network after the attack, in March and April 2005. Mr Philips and Mr Platt gave evidence on the possible existence of multiple missions

or operational purposes. Nevertheless, the mobiles' failure to cease operations after the attack may weigh against a finding of a network connected to the 14 February 2005 attack.

2338. Similarly, the purchase of the Blue mobiles' handsets and SIM cards provides little support that they formed part of a network. It is true that two pairs of Blue mobiles—Blue 428 with Blue 610, and Blue 742 with Blue 940—were subscribed under the same names, at the same shop. But for the other Blue mobiles, the purchases ranged from December 2003 to January 2005, or there was no information available. This evidence therefore is insufficient to conclude that the purchase of the Blue mobiles was coordinated.

2339. In terms of covertness, no correct subscriber details were provided for any of the Blue mobiles. Cash was used to make mobile-related payments. There was virtually no text messaging and no voice mails. Thousands of dollars of credit remained when the Blue mobiles were deactivated in October and November 2005.

2340. The Trial Chamber received evidence that mobile dealers submitted incorrect subscriber information to a network provider to qualify for the provider's incentive program. However, it also received evidence of a counterfeit document being submitted for two Blue mobile subscription applications and of named subscribers in six Blue mobile applications never having purchased the SIM cards. This adds to the other evidence, such as the closed user group, demonstrating the Blue mobile users' commitment to secrecy.

2341. In conclusion, the Trial Chamber finds that the virtually exclusive communications within the mobile group, the coordinated activities of the six 'core' mobiles and the lack of subscriber details all point to the existence of a covert Blue network of 15 mobiles, or, at the very least, six 'core' mobiles. Their possible connection and common mission with the other networks is addressed below.⁴⁸⁵³

F. Yellow network

2342. The Prosecutor pleads in the amended consolidated indictment that the Yellow network consisted of 13 mobiles used between 1 September 2004 and Friday 7 January 2005. Four of these mobiles were used by members of the assassination team for preparation of the attack, including

⁴⁸⁵³ See sub-section (G) 'The networks' common mission'.

for surveillance of Mr Hariri. The call activity of these four mobiles involved contact almost exclusively with other Yellow mobiles.⁴⁸⁵⁴

2343. While the Yellow network originally had 18 mobiles, only 13⁴⁸⁵⁵ operated within the network by 18 October 2004.⁴⁸⁵⁶ Mr Platt therefore examined the following 13 mobiles: Yellow 024, Yellow 078, Yellow 120, Yellow 170, Yellow 294, Yellow 425, Yellow 457, Yellow 513, Yellow 618, Yellow 669, Yellow 763, Yellow 932 and Yellow 933. He focused particularly on Yellow 024, Yellow 294, Yellow 457 and Yellow 933, because, in his view, the users of these mobiles were involved in most of the surveillance and contacts.⁴⁸⁵⁷

2344. The activity of the Yellow mobiles as it concerns the attack on Mr Hariri is detailed in the analysis of the chronology of events leading to his assassination in chapter X ‘Chronology of network mobile activity before Mr Hariri’s assassination on Monday 14 February 2005’.

1. Setting up the network

2345. The Yellow mobiles were activated by the service providers over a period of several years, from 1999 to 2003.⁴⁸⁵⁸ Specifically, Yellow 024 was subscribed on 20 June 2002, Yellow 457 in July or August 2002 and Yellow 294 on 15 January 2003.⁴⁸⁵⁹ Mr Platt also gave evidence that

⁴⁸⁵⁴ Amended consolidated indictment, para. 15 (d); Prosecution pre-trial brief, paras 6, 29.

⁴⁸⁵⁵ Gary Platt, T. 6 April 2016, pp 27, 29; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1100-1101. Mr Platt explained that, when he says Yellow ‘phones’ (which are referred to here as ‘mobiles’), he means to refer to ‘the SIM cards and the handsets combined’. During the period considered, in fact, none of the Yellow handsets changed. Gary Platt, T. 6 April 2016, pp 26-27, 29. The Trial Chamber notes, however, that Mr Platt testified that several Yellow mobile users swapped handsets with each other and with other mobiles, *see* para. 2348, below.

⁴⁸⁵⁶ Yellow 920, Yellow 488, Yellow 576 and Yellow 960 had ceased communications with other Yellow mobiles by 1 February 2004 and Yellow 809 by June 2004. In his report, Mr Platt stated that 13 Yellow mobiles were used between 1 September 2004 and 7 January 2005. Mr Platt’s testimony, for the reasons noted above (para. 2), focused on the period starting on 18 October 2004. Gary Platt, T. 6 April 2016, p. 29; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1100-1101, 1111-1112.

⁴⁸⁵⁷ Gary Platt, T. 25 January 2017, p. 47, T. 26 January 2017, pp 14-15; exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 1103.

⁴⁸⁵⁸ Gary Platt, T. 6 April 2016, p. 26; exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 1107.

⁴⁸⁵⁹ Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1131, 1151, 1193; exhibit P467 (Alfa active identification form for Yellow 457), ERN 60138225; exhibit P562 (Statement of Rania Keserwany); exhibit P797 (Extract from Alfa subscriber database), p. 5, ERN D0472168.

Yellow 933 was activated on 26 July 2002;⁴⁸⁶⁰ however, the cited evidence refers to a different mobile.⁴⁸⁶¹

2346. The 13 Yellow mobiles were a mixture of Alfa (seven) and Touch (six) mobiles.⁴⁸⁶²

2347. The Prosecution acknowledged that there was no evidence on the location or timing of the purchase of the Yellow mobile handsets, and that the SIM card purchases did not demonstrate an organisational process.⁴⁸⁶³

2. Equipment

2348. According to Mr Platt, several Yellow mobile users swapped handsets with each other, with Blue mobiles and with personal mobiles 170 and 165.⁴⁸⁶⁴ Also, handsets used by Yellow 294 and Yellow 933 were later used by former Yellow mobiles, namely Yellow mobiles that continued contact with each other after the Yellow network ended.⁴⁸⁶⁵ The following table shows how handsets were swapped:

⁴⁸⁶⁰ Exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 1171.

⁴⁸⁶¹ Exhibit P1101 (Touch list of activation and deactivation dates), citing number ‘3871933’ and not Yellow 933’s MSISDN ‘3971933’.

⁴⁸⁶² Mr Platt explained that lines beginning with digits 31 to 35 were from the Alfa network, and those beginning with 30 and 36 to 39 were from the Touch network. The Alfa mobiles were Yellow 078, Yellow 120, Yellow 294, Yellow 513, Yellow 457, Yellow 669 and Yellow 763, and the Touch mobiles were Yellow 024, Yellow 170, Yellow 425, Yellow 618, Yellow 932 and Yellow 933. Gary Platt, T. 6 April 2016, pp 16, 30, 37; *see also* exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1131, 1171, 1193.

⁴⁸⁶³ Prosecution submissions, T. 4 April 2016, pp 7, 11.

⁴⁸⁶⁴ Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1122-1124; exhibit P790 (IMEI information for Alfa numbers).

⁴⁸⁶⁵ Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1128, 1143-1144, 1187. Mr Platt also cited examples of handset swapping within the network during periods of use preceding those that he focused on in his oral testimony (18 October 2004 - 7 January 2005). Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1186, 1208.

Handset																
Phone	IMEI 35111110002249	IMEI 35077110813824	IMEI 352512003358620	IMEI 350006406758760	IMEI 350605103850111	IMEI 350841202236470	IMEI 49051820497471	IMEI 4488354123459909	IMEI 350882102448240	IMEI 445000077717840	IMEI 351350403560360	IMEI 35084580728978	IMEI 350777101644560	IMEI 350604102645490	IMEI 352522000225550	IMEI 350845809701980
Yellow 294 [AYYASH]									X		X					
Yellow 457 [S6]												X	X			
Yellow 933 [S8]									X		X					
Yellow 024 [S9]												X		X		
Yellow 932 [S21]		X								X						
Yellow 078																X
Yellow 120	X	X	X	X												
Yellow 170													X			
Yellow 425					X	X	X	X	X							
Yellow 513									X							
Yellow 618																X
Yellow 669														X	X	
Yellow 763																X
Yellow 809	X		X	X												
Yellow 576	X				X	X										
Yellow 488	X					X		X								
Yellow 920	X															
PMP 165 [AYYASH]	X					X	X									
PMP 170 [AYYASH]															X	
Blue 235 [S12]										X						
Blue 501 [S13]										X						
Blue 965												X				

Table with handset use from Gary Platt's Network Analysis Report – exhibit P796.1, p. 197

3. Usage

2349. The Yellow mobiles started operating as a network from 2002 onwards—when they started communicating with each other—until January 2005.⁴⁸⁶⁶ Mr Platt's testimony focused on their activity during the period 18 October 2004 to Friday 7 January 2005, while his report focused on

⁴⁸⁶⁶ Gary Platt, T. 6 April 2016, pp 26-27, 29; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1108-1109.

a different starting date, Tuesday 1 February 2004.⁴⁸⁶⁷ He testified that this was relevant to the chronology of events and coincided with the evolution of the Blue network, with which the Yellow network had strong connectivity.⁴⁸⁶⁸

2350. Mr Platt commented that the Yellow network was ‘pretty active’, with two peaks in activity—on 13 November 2004 and around 19 to 21 December 2004. According to Mr Platt, the Yellow network calls then gradually decreased, consistent with the network ending by Friday 7 January 2005.⁴⁸⁶⁹

2351. Between 18 October 2004 and Wednesday 12 January 2005, the Yellow mobiles were involved in 2,296 calls. Of these, 63 per cent (1,436 calls) were Yellow-to-Yellow calls. Fifteen per cent (342 calls) were service calls to or from the network and messages generated from the internet—such as advertisements.⁴⁸⁷⁰ Twenty-two per cent (513 calls) were calls with third parties.⁴⁸⁷¹ Finally, four calls were described as ‘transition Yellow’, as they occurred between 7 January 2005—when the last Yellow call occurred—and 12 January 2005—when all the users of the Yellow mobiles changed.⁴⁸⁷² These calls were service calls and calls to third parties.⁴⁸⁷³

⁴⁸⁶⁷ Or 12 January 2005, as including the period between 7 January 2005—when the last Yellow call occurred—and 12 January 2005—when all the users of the Yellow mobiles changed. Gary Platt, T. 6 April 2016, pp 26, 28, 34, 36, 43; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1099, 1109; *see also* exhibit P795, slides 6, 13, 16. Mr Platt, in a passage of his testimony, mistakenly indicated the period as between October 2004 and February 2005. From the rest of his evidence, it is clear that the period considered was up to 12 January 2005 only. Gary Platt, T. 6 April 2016, pp 37-43.

⁴⁸⁶⁸ Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 777-778, 1218-1219. Mr Platt identified 14 mobiles as being part of the network in that period, noting however that Yellow 809 was last used in June 2004 (exhibit P1251 (Call sequence table for Yellow 809)). It is not clear whether, in Mr Platt’s network report, the ‘transition’ period between 7 and 12 January 2005—also discussed in his testimony—is taken into account for calculating the monthly average percentage of Yellow contacts for January 2005. Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1099, 1109-1110, 1113-1114.

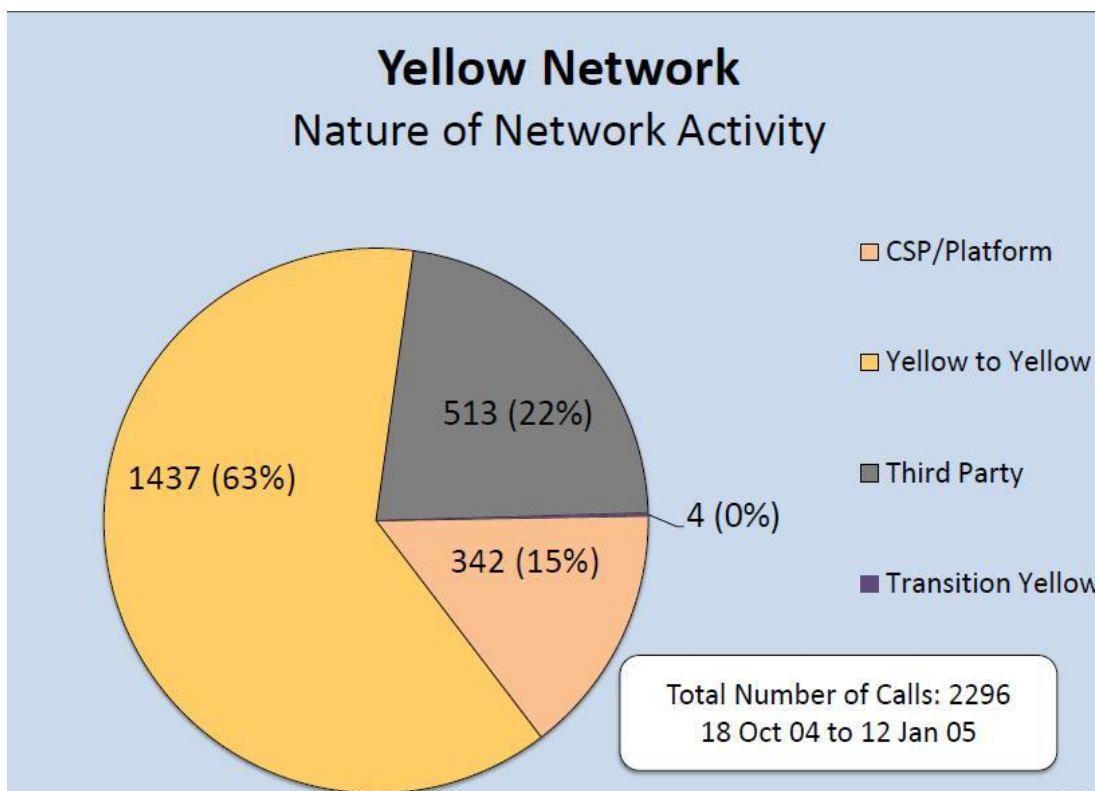
⁴⁸⁶⁹ Gary Platt, T. 6 April 2016, p. 46; *see also* exhibit P795, slide 18.

⁴⁸⁷⁰ Gary Platt, T. 6 April 2016, pp 39-41; *see also* exhibit P795, slide 16.

⁴⁸⁷¹ Gary Platt, T. 6 April 2016, p. 42; *see also* exhibit P795, slide 16.

⁴⁸⁷² *See* sub-section (F) (4) ‘Closure of the network’, below.

⁴⁸⁷³ Gary Platt, T. 6 April 2016, p. 43; *see also* exhibit P795, slide 16.



Slide 16 of Gary Platt's Network analysis presentation - exhibit P795

2352. Mr Platt also examined the activity of four Yellow mobiles more closely. Yellow 294 was involved in 552 calls from 29 May 2004 to 7 January 2005.⁴⁸⁷⁴ Of these, 88 per cent were with other Yellow mobiles and more than 82 per cent of Yellow 457's calls, from 1 February 2004 to 10 January 2005, were with Yellow mobiles.⁴⁸⁷⁵ Over 95 and 90 per cent, respectively, of Yellow 933's and Yellow 024's calls from 1 February 2004 to 6 January 2005 were also with other Yellow mobiles.⁴⁸⁷⁶

2353. According to Mr Platt, the 'quite high' percentage of calls between Yellow mobiles shows the organisational process behind the network.⁴⁸⁷⁷

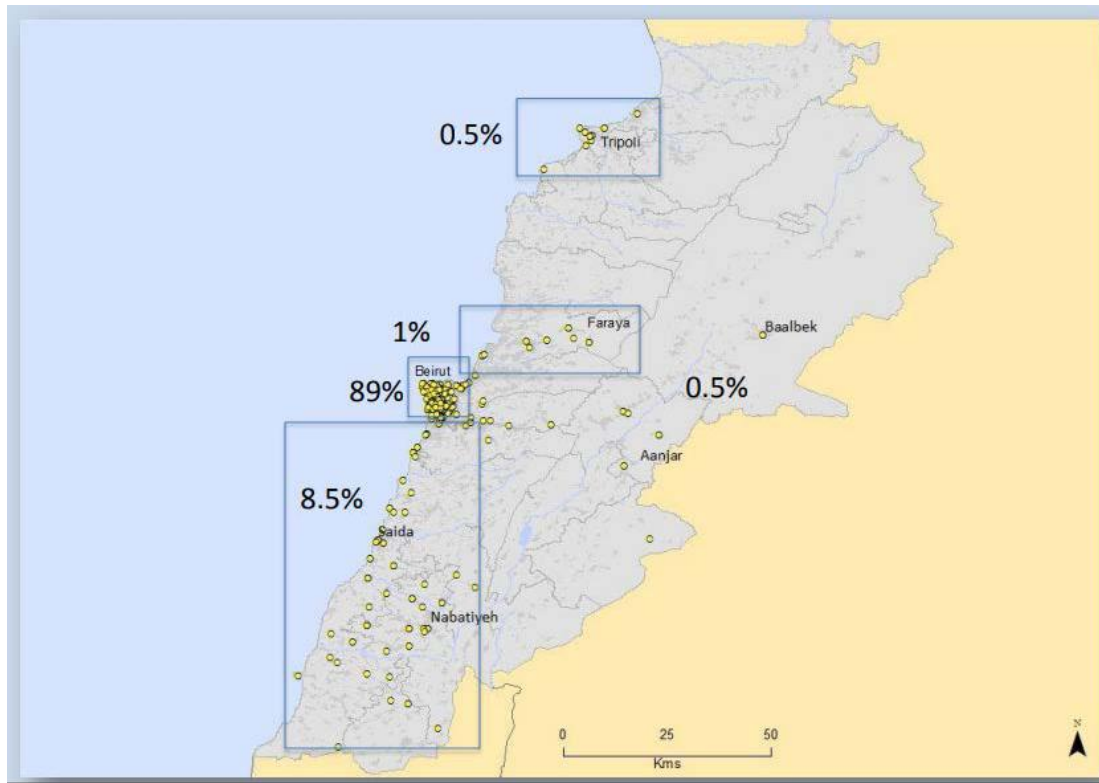
⁴⁸⁷⁴ This is the attribution period for Yellow 294. Exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 1135; *see also* exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 369.

⁴⁸⁷⁵ Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1135, 1157.

⁴⁸⁷⁶ Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1178, 1199.

⁴⁸⁷⁷ Gary Platt, T. 6 April 2016, pp 44, 54-55.

2354. Between October 2004 and February 2005, the Yellow mobiles primarily operated in Beirut. Eighty-nine per cent of the calls activated cell towers located there.⁴⁸⁷⁸



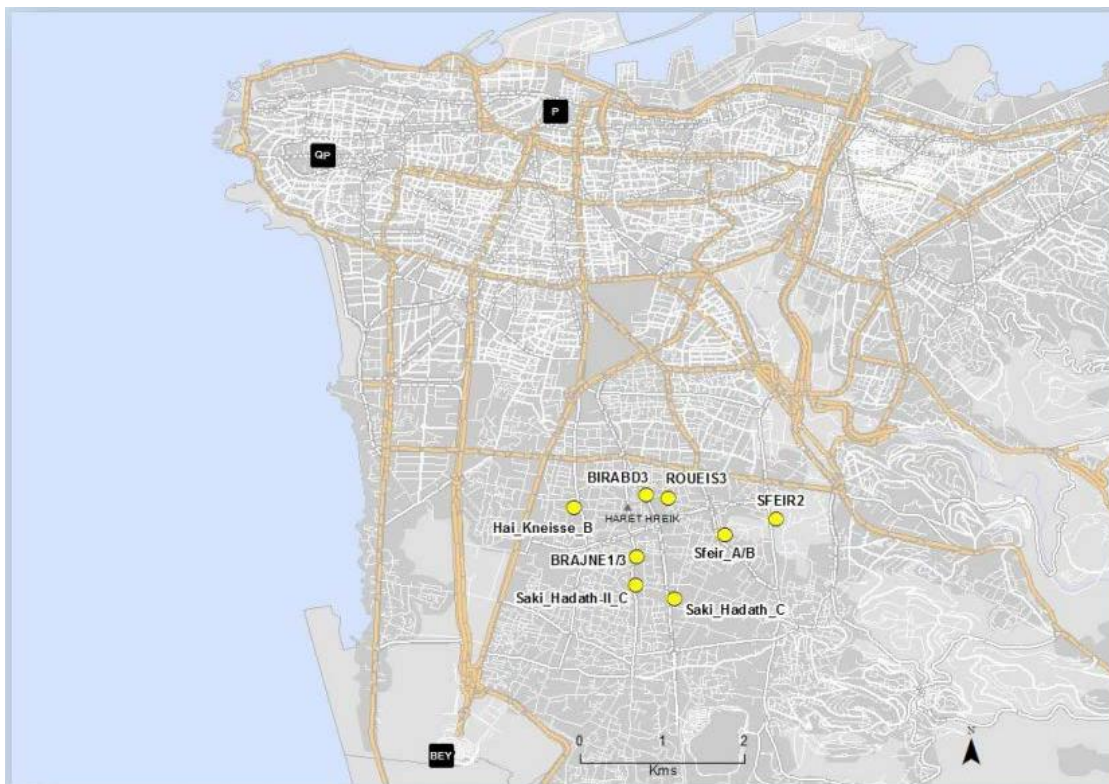
Slide 20 with Yellow mobiles' activity from Gary Platt's Network analysis presentation – exhibit P795

2355. The top ten cells—which represented about 56 per cent of all activity—were located in the southern suburbs of Beirut.⁴⁸⁷⁹ The top three cells were SFEIR2, Sfeir_B and Sfeir_A.⁴⁸⁸⁰

⁴⁸⁷⁸ Gary Platt, T. 6 April 2016, pp 49-50; *see also* exhibit P795, slides 20-21.

⁴⁸⁷⁹ Gary Platt, T. 6 April 2016, pp 51-52; *see also* exhibit P795, slide 25.

⁴⁸⁸⁰ Gary Platt, T. 6 April 2016, pp 50-51.



Slide 22 with top Yellow mobiles' cells from Gary Platt's Network analysis presentation – exhibit P795

2356. The second highest level of activity—8.5 per cent—was in South Lebanon. The majority took place on weekends. Call activity occurred also in the Tripoli (0.5 per cent), Faraya (one per cent) and Baalbek and Anjar (0.5 per cent) areas, where it was limited to a few days.⁴⁸⁸¹ The activity in Anjar took place on 28 and 29 September 2004.⁴⁸⁸²

2357. Mr Platt commented that 'the normal lifestyle' of these mobiles reflected spending time in Beirut and going to the countryside or south Lebanon in the weekends—as a lot of people in Lebanon do.⁴⁸⁸³ This pattern of lifestyle changed around late December 2004 into early January 2005, when a few Yellow mobiles—only on a certain number of days—frequented the Zouk-

⁴⁸⁸¹ Gary Platt, T. 6 April 2016, pp 49-54; *see also* exhibit P795, slide 24.

⁴⁸⁸² Gary Platt, T. 17 January 2017, pp 103-110, T. 18 January 2017, pp 6-15; exhibit P1784, pp 68-74, 88-98.

⁴⁸⁸³ Gary Platt, T. 6 April 2016, p. 55.

Mosbeh and Faraya areas. This was unusual, however, it linked with mobile activity on the other networks, and it coincided with the Yellow network coming to an end around 7 January 2005.⁴⁸⁸⁴

2358. On seven occasions between January 2004 and October 2004, the top-up cards used to add credit to various Yellow mobiles displayed a sequential order. For example, in August and September 2004, recharge cards with serial numbers ending in 070 and then 075 through 078 were used to top up five Yellow mobiles.⁴⁸⁸⁵

Scratch Card Serial Number	Date Used	Time Used	Phone	Distributor Name
33206049 <u>070</u>	08/09/2004	12:14:48	Yellow 294	OMTS
33206049 <u>075</u>	21/08/2004	08:32:16	Yellow 513	OMTS
33206049 <u>076</u>	04/09/2004	13:41:18	Yellow 669	OMTS
33206049 <u>077</u>	18/08/2004	08:34:35	Yellow 120	OMTS
33206049 <u>078</u>	10/08/2004	12:00:16	Yellow 669	OMTS

Slide 11 with recharge card numbers from Gary Platt's Network analysis presentation – exhibit P795

2359. According to Mr Platt, this showed that the mobiles had an 'organizational process behind them in their financing'.⁴⁸⁸⁶ Also, Yellow mobiles on some occasions used top-up cards that were in sequential orders with those used by Blue mobiles.⁴⁸⁸⁷ The Prosecution was unable to obtain details of the shops where the recharging cards were purchased.⁴⁸⁸⁸

2360. According to Mr Platt, in addition to contacting each other, users of the Yellow mobiles also shared other contacts.⁴⁸⁸⁹ Every Yellow mobile was in contact with Yellow 294.⁴⁸⁹⁰ Twelve

⁴⁸⁸⁴ Gary Platt, T. 6 April 2016, pp 55-56.

⁴⁸⁸⁵ Gary Platt, T. 6 April 2016, pp 33-34; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1104-1106; exhibit P785 (Alfa recharge information for 44 mobiles), pp 1, 22-23, 25, 26, 28. *See also* exhibit P795, slide 11.

⁴⁸⁸⁶ Gary Platt, T. 6 April 2016, pp 33, 54-55.

⁴⁸⁸⁷ Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 766, 769, 775, 778, 1104-1106; exhibit P785.

⁴⁸⁸⁸ Gary Platt, T. 6 April 2016, p. 33.

⁴⁸⁸⁹ Gary Platt, T. 6 April 2016, pp 42-43, 47; exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 1102.

⁴⁸⁹⁰ Exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 1116.

of them were also in contact with Protel,⁴⁸⁹¹ a Beirut communications company,⁴⁸⁹² and eight with the Al-Rassoul Al-Aazam or ‘Great Prophet’ Hospital.⁴⁸⁹³ These contacts only were in one direction: the Yellow mobiles called them and not vice versa.⁴⁸⁹⁴ Some Blue mobiles also had contacts with Protel and the Great Prophet Hospital.⁴⁸⁹⁵

2361. Two Yellow mobiles—Yellow 457 and Yellow 120—were also in contact with Blue 428 in May 2004, before the Blue network was operative.⁴⁸⁹⁶ Yellow 425 and Yellow 809 were in contact with Purple 018,⁴⁸⁹⁷ and Yellow 425 was also in contact with personal mobile 165.⁴⁸⁹⁸

4. Closure of the network

2362. The Yellow network ceased operations in a staggered period from 30 December 2004 to Wednesday 12 January 2005.⁴⁸⁹⁹ The last Yellow-to-Yellow call occurred on Friday 7 January 2005.⁴⁹⁰⁰ Some Yellow mobiles continued to be used after that day, but primarily for service or third party calls.⁴⁹⁰¹

2363. According to Mr Platt, after 7 January 2005, ‘handset and contact patterns changed significantly’.⁴⁹⁰² Instead of not being used—like mobiles in other networks—many Yellow

⁴⁸⁹¹ Two numbers associated with the Protel Company. Exhibit P1630 (Subscriber note for landline 361); exhibit P1635 (Subscriber note for landline 362). A third number was subscribed to Protel. Exhibit P2136 (Subscriber note for landline 360); exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 18.

⁴⁸⁹² Gary Platt, T. 26 July 2016, p. 46.

⁴⁸⁹³ Gary Platt, T. 6 April 2016, pp 42-43, 47; exhibit P1606 (Subscriber note for landline 206); *see also* exhibit P795, slide 19. In his report, Mr Platt considered the larger period between 1 February 2004 and 7 January 2005. Twelve Yellow mobiles were in contact with the ‘Great Prophet’ Hospital, whereas 14 Yellow mobiles were in contact with Protel. Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1102, 1119-1120.

⁴⁸⁹⁴ Gary Platt, T. 6 April 2016, p. 47.

⁴⁸⁹⁵ Gary Platt, T. 15 April 2016, p. 41; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 784-785, 980.

⁴⁸⁹⁶ Gary Platt, T. 6 April 2016, pp 47-48; exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 1121. The common contact predated 18 October 2004, the start date for the period Mr Platt focused on.

⁴⁸⁹⁷ Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1115, 1118; exhibit P1953 (Attribution report of Andrew Donaldson regarding Mr Sabra), annex B, pp 9, 15, ranks 307 and 447.

⁴⁸⁹⁸ Exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 1117; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex E (contact list of personal mobile 165), p. 2, rank 37.

⁴⁸⁹⁹ Gary Platt, T. 6 April 2016, pp 34, 36; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1111, 1126, 1214; exhibits P517, P1240-P1250 and P1252.

⁴⁹⁰⁰ Gary Platt, T. 6 April 2016, pp 28, 34. For the last calls on 7 January 2005, *see* exhibit P1240 (Call sequence table for Yellow 294), p. 53, calls 1575-1577; exhibit P1242 (Call sequence table for Yellow 425), p. 29, calls 865, 867-868; exhibit P1243 (Call sequence table for Yellow 932), p. 52, calls 1536-1538.

⁴⁹⁰¹ Gary Platt, T. 6 April 2016, p. 34.

⁴⁹⁰² Gary Platt, T. 6 April 2016, p. 34; exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 1126.

mobiles appeared to be redistributed among new users.⁴⁹⁰³ By 12 January 2005, the 13 users of the Yellow mobiles had changed.⁴⁹⁰⁴ Three of the Yellow mobiles continued contact with each other after the shutdown of the Yellow network: Yellow 933, Yellow 078 and Yellow 170—the latter becoming personal mobile 170 attributed to Mr Ayyash.⁴⁹⁰⁵

5. Anonymity

2364. Mr Platt only addressed the subscriber history of four Yellow mobiles. For Yellow 024 and Yellow 933, no subscriber details were supplied.⁴⁹⁰⁶ Where they were supplied (Yellow 294 and Yellow 457), the Prosecution was unable to locate and interview the relevant individuals.⁴⁹⁰⁷ According to Mr Platt, ‘the lack of subscriber information’⁴⁹⁰⁸ and ‘the fact that we are unable to locate or confirm the identity of the subscribers’ is ‘characteristic of an attempt to be a covert network’.⁴⁹⁰⁹

2365. The Trial Chamber also received evidence that Witness PRH107, whose identification card was submitted to Alfa for the subscription of Yellow 763,⁴⁹¹⁰ never owned a mobile and had no idea why Alfa possessed their identification as a subscriber for that line.⁴⁹¹¹

⁴⁹⁰³ Gary Platt, T. 6 April 2016, p. 35; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1166, 1189, 1210.

⁴⁹⁰⁴ Gary Platt, T. 6 April 2016, pp 28, 35; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1166, 1189, 1210.

⁴⁹⁰⁵ Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1127-1128; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 207-229, 246. For example, after it changed users, ‘former Yellow 933’ continued to contact other ‘post Yellow phones’ in 2005, namely personal mobile 170 and ‘former Yellow 078’. Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1170, 1175, 1190.

⁴⁹⁰⁶ Gary Platt, T. 6 April 2016, p. 36; exhibit P796.1 (Network analysis report – updated 8 February 2018) (Network analysis report – updated 8 February 2018), paras 1171, 1193; exhibit P1101 (Touch list of activation and deactivation dates).

⁴⁹⁰⁷ Gary Platt, T. 6 April 2016, p. 36; exhibit P467 (Alfa active identification form for Yellow 457), ERN 60138225; exhibit P562 (Statement of Rania Keserwany); *see also* exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1125, 1131, 1151; exhibit P797 (Extract from Alfa subscriber database), pp 4-5, ERNs D0472167-D0472168.

⁴⁹⁰⁸ Gary Platt, T. 6 April 2016, p. 44.

⁴⁹⁰⁹ Gary Platt, T. 6 April 2016, p. 54.

⁴⁹¹⁰ Exhibit P797, p. 6, ERN D0472169.

⁴⁹¹¹ The witness stated that ‘the only place’ where he used a copy of his identification was ‘social security’. Exhibit P564 (Witness PRH107’s statement), paras 6-11, ERN 60302658. The Trial Chamber also admitted into evidence the subscriber notes for Yellow 170 and Yellow 669, exhibits P1471 and P886.

2366. Only two text messages were sent among the Yellow mobiles.⁴⁹¹² Mr Platt testified that this showed ‘some form of discipline of usage’.⁴⁹¹³ Also, all 13 Yellow mobiles used pre-paid billing.⁴⁹¹⁴

2367. Mr Platt classified the Yellow network as ‘semi covert’, meaning that there were ‘elements of covertness’ but not the same high level of covertness as displayed by, for instance, the Green network.⁴⁹¹⁵ A semi-covert network like the Yellow mobiles would be chosen for surveillance tasks because there was an operational need at the time.⁴⁹¹⁶ He testified that, on 21 December 2004, Yellow mobiles were used probably because it was decided that the risk of being detected was minimal, given that it was almost two months before the attack.⁴⁹¹⁷

6. Submissions

2368. The Prosecution submits that, while not characterised as a ‘mission phone’ network, the behaviour of the Yellow network conveys unusual elements of co-ordination, cohesion and focus indicative of an organised entity. These were the co-ordinated addition of Alfa credit using sequential or near sequential recharge cards over a ten-month period until October 2004; the network was shut down in a coordinated manner in the first week of January 2005. There was a cohesive pattern of call locations, including a high concentration of network calls in the same specific area of Dahyieh until the network’s disbandment on 7 January 2005, thereby mirroring the concentration of Blue network calls. There was a high concentration of calls amongst the four members of the ‘Principal Six’ using the Yellow network: Mr Ayyash, S6, S8 and S9. The focus of call activity in the Anjar area and then west Beirut between the Yellow mobiles of Mr Ayyash, S8 and S9 on 28 and 29 September 2004 was unusual. Finally there was an unusual focus of

⁴⁹¹² Yellow 294 received two text messages from Yellow 513 on 12 November 2004. The Prosecution does not have the content of these text messages. Yellow mobiles also received text messages from service numbers. Gary Platt, T. 6 April 2016, p. 37; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1134, 1156, 1176, 1198; exhibit P1240 (Call sequence table for Yellow 294), p. 47; exhibit P1249 (Call sequence table for Yellow 513), p. 65.

⁴⁹¹³ Gary Platt, T. 6 April 2016, p. 37.

⁴⁹¹⁴ Gary Platt, T. 6 April 2016, pp 16, 37, T. 14 April 2016, p. 95; *see also* exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1131, 1171, 1193.

⁴⁹¹⁵ Gary Platt, T. 6 April 2016, pp 38, 55.

⁴⁹¹⁶ Gary Platt, T. 25 January 2017, pp 66-67.

⁴⁹¹⁷ Gary Platt, T. 25 January 2017, p. 67. Mr Platt described the call activity that took place on 21 December 2004. Exhibit P1793 (Chronology PowerPoint presentation – 20 December 2004 to 31 December 2004), slides 9-75.

network call activity in the Zouk-Mosbeh and Faraya area over the last week of December 2004.⁴⁹¹⁸

2369. The Prosecution argues that, given the Yellow network's limited role and the fact that it shut down in early January 2005, any forensic association with the attack was very remote, and consequently the need for high coactiveness was correspondingly low.⁴⁹¹⁹ Nevertheless, the Yellow network retained significant elements of coactiveness, albeit not to the same level as the three other networks and was therefore classified as 'semi-covert'. The following features ensured that users remained unidentifiable. First, the mobiles retained pre-paid subscriptions whose subscribers were either unrecorded, false or untraceable. Second, approximately 80 per cent of the calls were made within the network,⁴⁹²⁰ and the remainder did not risk identifying the users. Third, only two text messages were sent out of 1,437 communications. Fourth, the users left no identifiable financial trail.⁴⁹²¹

2370. The Prosecution also submitted that the shutdown of the Yellow network significantly coincided with the first important period of the false claim preparation: the so-called COLA phase, of activations of Mr Oneissi's and Mr Sabra's attributed Purple mobiles near the Arab University mosque in Beirut, which ran from Wednesday 29 December 2004 to Friday 7 January 2005. According to the Prosecution, the shutdown occurred because operational security was tightened in anticipation of preparation for the assassination.⁴⁹²²

2371. No Defence counsel specifically addressed the Prosecution's arguments on the Yellow network's features nor contested that the Yellow mobiles formed a covert network.

⁴⁹¹⁸ Prosecution final trial brief, para. 365.

⁴⁹¹⁹ Prosecution final trial brief, para. 363.

⁴⁹²⁰ The Prosecution relies on the percentages calculated in Mr Platt's report for the period 1 February 2004 to 12 January 2005. Prosecution final trial brief, para. 364, referring to exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1110, 1113, which state that the average rate of Yellow-to-Yellow contact ranged from 77.5 to 86.38 per cent per month, excluding service numbers. The Prosecution final trial brief refers to the Network Analysis Presentation (exhibit P795, slide 16), where a shorter period between 18 October and 12 January 2005 is analysed and the contacts with service numbers are also considered. The percentage identified there for Yellow-to-Yellow calls is 63 (the percentage of calls with service numbers and internet is 15 per cent).

⁴⁹²¹ Prosecution final trial brief, para. 364.

⁴⁹²² Prosecution final trial brief, para. 611.

7. Findings

2372. The Trial Chamber finds that at least four Yellow mobiles—Yellow 024, Yellow 294, Yellow 457 and Yellow 933—operated as a network and that they did so in a covert manner from October 2004 until Friday 7 January 2005.

2373. During the period considered by Mr Platt—18 October 2004 to Wednesday 12 January 2005—Yellow-to-Yellow mobile contact represented 63 per cent of the communications. This is a relatively high percentage that shows an organisational process behind the mobiles. The call activity of four Yellow mobiles in particular—Yellow 294, Yellow 457, Yellow 933 and Yellow 024—involved nearly exclusive contact with other Yellow mobiles, further demonstrating their coordination.

2374. The Yellow mobiles had similar patterns in their areas of use, primarily in Beirut and then in other locations for just a few days, like Tripoli and Faraya. Even in these more distant locations, a few Yellow mobiles activated cells around the same time, showing a level of coordination. Further evidence of their coordination is the use of top-up cards in sequential order for Yellow Alfa mobiles on several occasions between January 2004 and October 2004. However, the Trial Chamber did not receive evidence of sequential topping up during the period Mr Platt focused on, namely 18 October 2004 to 7 January 2005.

2375. The Trial Chamber has considered that—unlike the mobiles in the three other networks⁴⁹²³—the Yellow mobiles may have changed users. Further, three mobiles continued contact with each other after the end of the Yellow network on 12 January 2005. The shutdown of the network is therefore of limited significance in establishing whether the mobiles were part of a network.

2376. The Trial Chamber has also taken into consideration that the Yellow network did not display many of the features of the other networks.⁴⁹²⁴ For example, the Yellow mobiles were not activated over a short period but rather over several years, from 1999 to 2003. Similarly, there is no evidence that the handsets or SIM cards were purchased in a coordinated manner. It is not clear

⁴⁹²³ Green, Red and Blue.

⁴⁹²⁴ See sub-sections (C) ‘Green network’, (D) ‘Red network’ and (E) ‘Blue network’.

whether the Yellow mobiles shared the same make and model of handsets or whether they used a basic model.

2377. Mr Platt classified the Yellow network as ‘semi covert’, because it was ‘on the lower end of the scale’ of covertness. However, the Trial Chamber considers that a network either is or is not covert, based on Mr Philips’s and Mr Platt’s evidence as to the general characteristics of a mobile network. A label of ‘semi-covert’ therefore does not assist the Trial Chamber in its analysis of the Yellow mobiles.

2378. Instead, the Trial Chamber has focused on the relevant covert factors of the Yellow mobiles. They used pre-paid subscriptions, only two text messages were sent by Yellow mobiles and no actual subscribers were identified, at least for the four Yellow mobiles highlighted by Mr Platt.

2379. The Prosecution also argued that the Yellow mobile users left no identifiable financial trail. However, the evidence referred to only shows that the Prosecution could not obtain details of the shops that sold the Yellow mobile recharging cards. So this factor does not weigh in favour of the network’s covertness.

2380. As with the organisational factors, the Trial Chamber notes the absence of several covert factors that were present for the other networks.⁴⁹²⁵ The Trial Chamber received no evidence that the Yellow mobiles’ area of main use was geographically remote from where they were purchased and topped up. It is unclear whether the Yellow mobiles used voice mails and call forwarding.

2381. The Yellow network therefore presents the weakest case as a covert network among the four networks, as the Prosecution acknowledges. Nevertheless, given the large percentage of Yellow-to-Yellow calls, the similarity in the locations where they were used, the avoidance of text messages and the lack of subscriber details for some mobiles, the Trial Chamber concludes that at least the four ‘core’ Yellow mobiles operated as a form of covert network between October 2004 and Friday 7 January 2005. Their possible connection and common mission with the other networks is addressed immediately below.⁴⁹²⁶

⁴⁹²⁵ See sub-sections (C) ‘Green network’, (D) ‘Red network’ and (E) ‘Blue network’.

⁴⁹²⁶ See sub-section (G) ‘The networks’ common mission’.

G. The networks' common mission

2382. The Prosecutor pleaded in the amended consolidated indictment that the mobile groups were interconnected. The assassination team used six Blue and Red mobiles, including on the day of the attack.⁴⁹²⁷ Further, the networks were all operated by the same entity.⁴⁹²⁸

2383. Mr Philips examined only the Green, Red and Blue networks and analysed whether they had a common mission.⁴⁹²⁹ Mr Platt analysed all four networks to see if they were interconnected.⁴⁹³⁰

1. Common characteristics among the networks

2384. Mr Philips and Mr Platt pointed out several commonalities between the networks to demonstrate that they were interconnected and engaged in a common mission.

2385. According to Mr Philips, the first is that the Green, Red and Blue networks shared common periods of use.⁴⁹³¹ Between 18 October and 10 November 2004, the Blue and Green network mobiles made a small number of calls followed by a period of inactivity for both networks which lasted until 20 December 2004.⁴⁹³² From Tuesday 21 December 2004 until the beginning of January 2005 the Blue and Green mobiles were again active.⁴⁹³³ From Monday 3 January to Monday 10 January 2005, the calling rate among the Blue mobiles dropped and this was accompanied by an absence of Green mobile calls.⁴⁹³⁴

2386. During the following period—until Monday 17 January 2005—Green mobile activity resumed, Blue 233 and Blue 501 were first used, and the Red mobiles were first used in Beirut.⁴⁹³⁵ Between Tuesday 18 and Wednesday 26 January 2005, Blue mobile activity increased, the Green mobiles continued their low level of activity and the Red mobiles were active on a single day.⁴⁹³⁶

⁴⁹²⁷ Amended consolidated indictment, paras 14, 15 (c), 19, 39.

⁴⁹²⁸ Prosecution final trial brief, para. 366.

⁴⁹²⁹ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), p. 2.

⁴⁹³⁰ Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1215-1220.

⁴⁹³¹ John Edward Philips, T. 1 September 2016, pp 3-5, 18-19; exhibit P1118 (PowerPoint presentation on common mission phones, John Edward Philips), slides 49-51.

⁴⁹³² John Edward Philips, T. 1 September 2016, pp 29-30; exhibit P1118, slide 52.

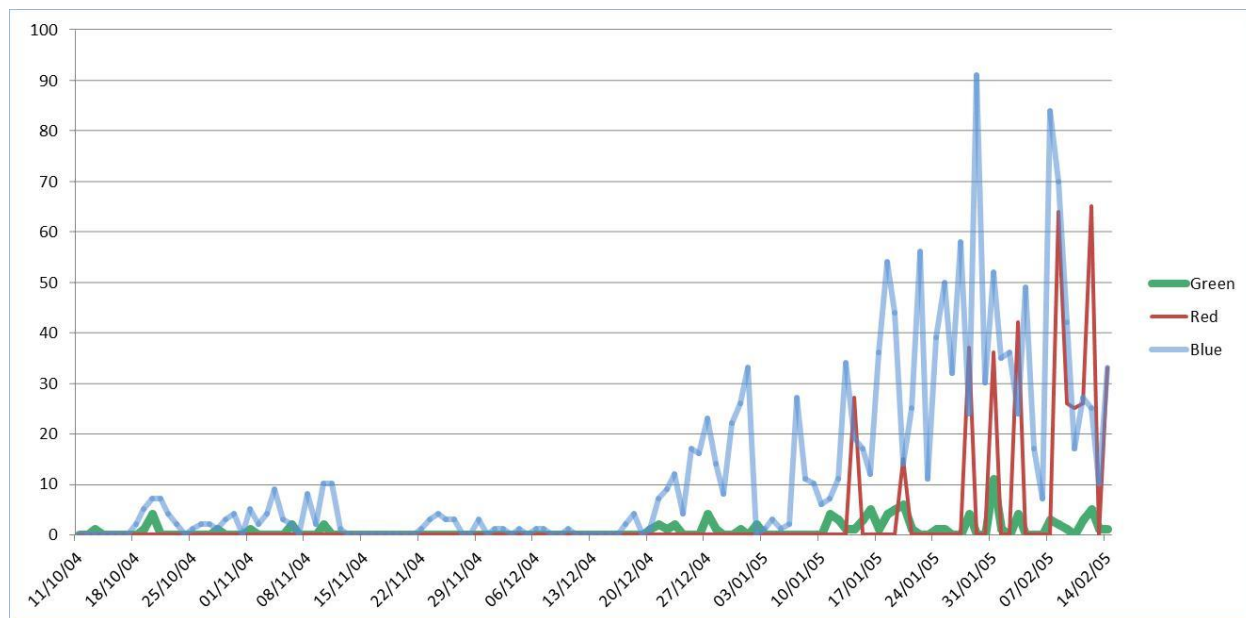
⁴⁹³³ John Edward Philips, T. 1 September 2016, pp 32-34; exhibit P1118, slide 52.

⁴⁹³⁴ John Edward Philips, T. 1 September 2016, p. 34; exhibit P1118, slide 52.

⁴⁹³⁵ John Edward Philips, T. 1 September 2016, p. 35; exhibit P1118, slide 52.

⁴⁹³⁶ John Edward Philips, T. 1 September 2016, pp 36-37; exhibit P1118, slide 52.

Finally, from Thursday 27 January until Monday 14 February 2005, the use of Red, Green and Blue mobiles peaked.⁴⁹³⁷ Indeed, the peaks of the Green mobiles in the first part of February 2005 correlate with the top five peaks of the Red mobiles' activity. The calling rate of the Green mobiles doubled as an average over this period, as shown in the following table:⁴⁹³⁸



Slide 52 with Green, Red and Blue networks' activity from John Edward Philips's PowerPoint presentation – exhibit P1118

2387. Second, the days of use between the Green, Blue and Red networks largely overlapped. Between Friday 14 January and Monday 14 February 2005, the Red mobiles were active on 11 days, the Green mobiles on 21 days and the Blue mobiles on all 31 days.⁴⁹³⁹ The Green mobiles were in use on ten of the 11 days when the Red mobiles were used.⁴⁹⁴⁰

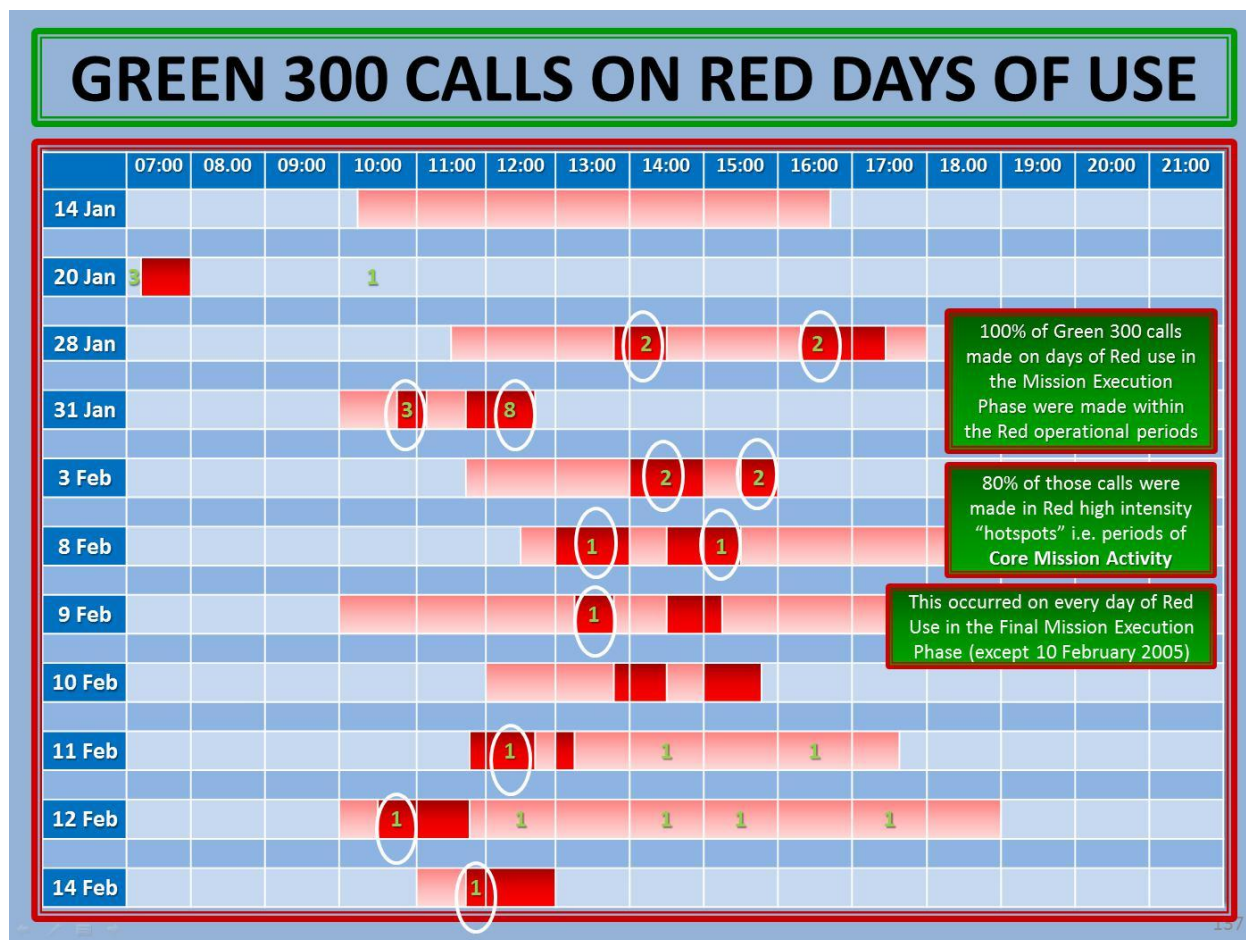
⁴⁹³⁷ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 5.3.1.1-5.3.1.8, 5.3.5.2; John Edward Philips, T. 1 September 2016, p. 24; exhibit P1118, slides 50-52.

⁴⁹³⁸ John Edward Philips, T. 1 September 2016, pp 24-25, 38; exhibit P1118, slides 49-52; exhibit P1211 (Call sequence table of Green 023), pp 5-6; exhibit P1207 (Call sequence table of Green 300), p. 5.

⁴⁹³⁹ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 5.4.1.1, 5.2.7.1, 5.2.18.5, 5.4.8.4, 5.4.8.16-5.4.8.17; exhibit P1118, slide 49.

⁴⁹⁴⁰ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), para. 5.3.1.8; John Edward Philips, T. 1 September 2016, p. 8; exhibit P1118, slide 49.

2388. Also, all calls between Green 300 and Green 023 on days when Red mobiles were active took place during the Red mobiles' operational periods.⁴⁹⁴¹ Eighty per cent of these Green calls occurred during periods of high call intensity between Red mobiles.⁴⁹⁴² From Friday 28 January until Monday 14 February 2005, the only day of Red mobile activity that was not accompanied by Green mobile activity was on Thursday 10 February 2005, when Red 741 was also inactive.⁴⁹⁴³ This overlap is shown in the following table:



Slide 137 of John Edward Philips's PowerPoint presentation – exhibit P1118

⁴⁹⁴¹ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 6.9.2.11-6.9.2.12; John Edward Philips, T. 6 September 2016, pp 24-26; exhibit P1118, slides 136-137.

⁴⁹⁴² Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 6.9.2.11-6.9.2.12; John Edward Philips, T. 6 September 2016, pp 25-26; exhibit P1118, slide 137.

⁴⁹⁴³ John Edward Philips, T. 1 September 2016, pp 9, 11, T. 6 September 2016, p. 26; exhibit P1118, slide 49.

2389. By contrast, when the Red mobiles were in use, the six core Blue mobiles were involved in 187 calls, usually at the start and end of the Red mobile call periods. The six core Blue mobiles were rarely used during the Red mobiles' times of use.⁴⁹⁴⁴

2390. Third, Mr Philips gave evidence that, when the Green, Red and Blue networks were in central and west Beirut between Friday 14 January and Monday 14 February 2005, they frequently activated common cells.⁴⁹⁴⁵ The Alfa cells in central Beirut most frequently used by the six core Blue mobiles were also frequently used by the Red mobiles.⁴⁹⁴⁶ The Blue and Green mobiles' most commonly activated cells between 13 October 2004 and Monday 14 February 2005 were in the same area in Dahyieh, in the southern suburbs of Beirut.⁴⁹⁴⁷ The cells in central Beirut most commonly used by Green 023 and Green 300 during this period were among the cells in central Beirut most frequently used by the Red mobiles and the six core Blue mobiles.⁴⁹⁴⁸ This is shown on the map below prepared by Mr Philips:

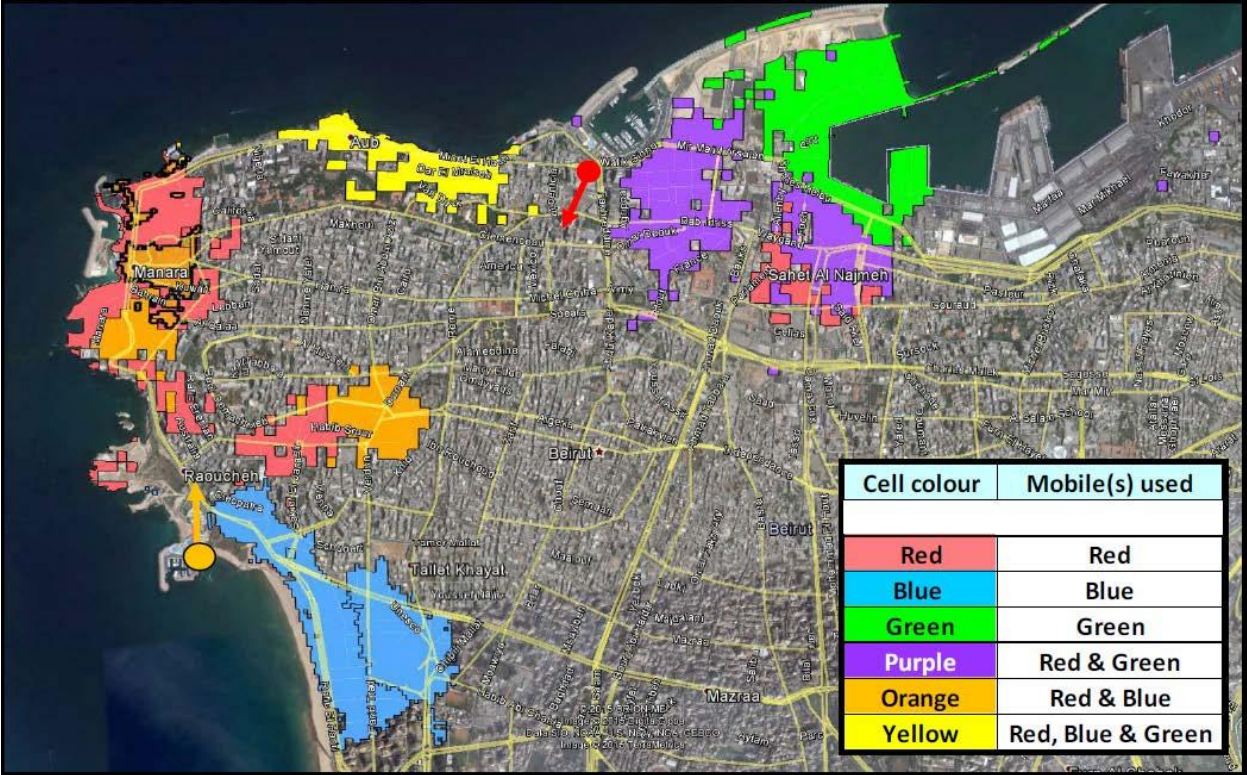
⁴⁹⁴⁴ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 5.4.1.6, 5.4.2.2, 5.4.8.6.

⁴⁹⁴⁵ John Edward Philips, T. 1 September 2016, pp 40-44; exhibit P1118, slides 55-58.

⁴⁹⁴⁶ Three of the six core Blue mobiles were on the Touch network. Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 5.3.2.2, 5.3.2.7-5.3.2.10, 5.3.5.3, 6.8.1.6, p. 37 (map 3A), p. 39 (map 14A).

⁴⁹⁴⁷ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 5.2.11.1, 5.4.8.11, 6.2.3.1-6.2.3.54, 6.2.4.5-6.2.4.9, 6.4.3.1-6.4.4.13, 6.5.2.1-6.5.2.34; John Edward Philips, T. 1 September 2016, pp 46, 55-59; exhibit P1118, slides 60-64.

⁴⁹⁴⁸ John Edward Philips, T. 6 September 2016, pp 55-56; exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 5.3.2.2-5.3.2.3, 5.3.2.5, 5.3.2.7-5.3.2.10, 5.3.5.3, 6.8.1.6, pp 37-39 (maps 3A, 7A, 10A, 14A).



Map 23A with top cells from 14 January to 14 February 2005 for Green, Red and Blue networks from Expert report of John Edward Philips—Common Mission Phones – exhibit P1117, p. 47

2391. Mr Platt agreed that, over the period of their existence, the networks shared common geographical areas of use.⁴⁹⁴⁹ The Blue and Green mobiles were initialised in the same general area between Hadath and Haret Hreik in southern Beirut.⁴⁹⁵⁰ The Yellow and Blue mobiles were active in Tripoli on five days when Red SIM cards and handsets were purchased, repaired, initialised or recharged.⁴⁹⁵¹ All four networks were active in the Zouk-Mosbeh and Faraya areas between December 2004 and February 2005 with co-location between some network mobiles on some days.⁴⁹⁵²

2392. Further, the top three cells activated by the Blue mobiles were the same, and in the same order, as those of the Yellow mobiles, namely SFEIR2, Sfeir_B and Sfeir_A.⁴⁹⁵³ One per cent of Blue mobile activity occurred in the area near Jounieh and Tripoli over a few days between 28

⁴⁹⁴⁹ Gary Platt, T. 26 July 2016, pp 35-36, 48-50; exhibit P795 (Network analysis presentation), slides 137-138.
⁴⁹⁵⁰ Gary Platt, T. 26 July 2016, p. 48; exhibit P795, slide 136.
⁴⁹⁵¹ Gary Platt, T. 26 July 2016, pp 49-63; exhibit P795, slides 137-143.
⁴⁹⁵² Gary Platt, T. 15 April 2016, pp 47-48, 51-52; see also exhibit P795, slides 90, 94, 144-147.
⁴⁹⁵³ Gary Platt, T. 15 April 2016, p. 49; see also exhibit P795, slides 91-92.

December 2004 and 2 February 2005;⁴⁹⁵⁴ this percentage and period was similar to the Yellow mobiles' activations in the same area.⁴⁹⁵⁵

2393. The fourth commonality is that the Green, Red and Blue networks were linked through common users. In Mr Philips's view, each user of the six core Blue mobiles also used one of the six Red mobiles,⁴⁹⁵⁶ and the user of Blue 233 and Red 741 also used Green 300.⁴⁹⁵⁷

2394. Mr Philips examined the call data records of the six core Red and Blue mobiles between Tuesday 4 January 2005 and Monday 14 February 2005 to determine whether each pair had a single user. This evidence is summarised below, with the exception of the single user analysis for Red 741 and Blue 233, which is addressed in analysing the attribution of network mobiles to Mr Ayyash.⁴⁹⁵⁸ Mr Philips's methodology in relation to single user analysis is analysed below chapter IX 'Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine', (A) 'Single user analysis'.

2395. Mr Philips testified that he would expect few instances of co-location between the Blue and Red network mobiles because they were used at different times and in different locations.⁴⁹⁵⁹ In addition to co-location, Mr Philips also took into account the movement of the network mobiles.⁴⁹⁶⁰

2396. Mr Philips found:

- For Red 636 and Blue 585 (attributed by the Prosecution to Subject 5): 11 pairs of calls, three of which were activating cells with overlapping coverage, and seven of which were activating cells that were at a distance that, in Mr Philips's opinion, could be travelled in the time between the calls and one instance of dislocation;⁴⁹⁶¹

⁴⁹⁵⁴ Gary Platt, T. 15 April 2016, pp 46-47, 50-51. *See also* exhibit P795, slides 90, 93.

⁴⁹⁵⁵ Gary Platt, T. 15 April 2016, pp 46-47.

⁴⁹⁵⁶ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 5.3.3.1-5.3.3.5, 5.3.5.4-5.3.5.5, p. 40 (table 20A); John Edward Philips, T. 6 September 2016, pp 55-56.

⁴⁹⁵⁷ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), para. 5.3.5.6, p. 40 (table 20A).

⁴⁹⁵⁸ *See* chapter IX 'Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine', (B) 'Salim Jamil Ayyash'.

⁴⁹⁵⁹ John Edward Philips, T. 1 September 2016, p. 96, T. 26 April 2017, pp 87-88.

⁴⁹⁶⁰ John Edward Philips, T. 26 April 2017, p. 88.

⁴⁹⁶¹ Of the 11 pairs, three pairs of calls were within ten minutes of each other. Exhibit P1112 (Expert report of John Edward Philips – Single user analysis, Suspects 4, 5, 6, 7 and 8), p. 4, paras 7.1.1.1-7.1.11.1.

- For Red 678 and Blue 610 (attributed by the Prosecution to Subject 6): 44 pairs of calls, 18 of which activated the same cell, and 25 activated cells that were at a distance that, in Mr Philips's opinion, could be travelled in the time between the calls and one instance of dislocation;⁴⁹⁶²
- For Red 946 and Blue 324 (attributed by the Prosecution to Subject 7): there were 13 pairs of calls. One pair activated cells with overlapping coverage. Nine activated cells that were at a distance that, in Mr Philips's opinion, could be travelled in the time between the calls. One activated cells that may preclude co-location and there were two instances of dislocation;⁴⁹⁶³
- For Red 893 and Blue 817 (attributed by the Prosecution to Subject 8): there were 40 pairs of calls. Fourteen activated the same cell. Twenty-five activated cells at a distance that, Mr Philips concluded, could be travelled in the time between the calls, and there was one instance of dislocation;⁴⁹⁶⁴ and
- For Red 652 and Blue 864 (attributed by the Prosecution to Subject 9): there were 21 pairs of calls. Five of these connected to the same cell. Sixteen connected to cells within a distance that, Mr Philips thought, could be travelled in the time between these calls.⁴⁹⁶⁵

2397. Mr Philips identified a number of call pairs that would preclude the respective Red and Blue mobiles from being co-located. All but one involved Red 636, Red 946 and Red 678

⁴⁹⁶² Of the 44 pairs, 20 pairs of calls were within ten minutes of each other. Exhibit P1112 (Expert report of John Edward Philips – Single user analysis, Suspects 4, 5, 6, 7 and 8), paras 7.2.39.1-7.2.63.2; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), paras 6.4.29.1-6.4.30.4, 6.4.51.1-6.4.51.9, 6.4.58.1-6.4.58.5, 6.4.69.1-6.4.71.4; *see also* exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 6.6.6.6, 6.6.6.8, 6.6.10.1, where Mr Philips counted sequences of calls instead of pairs.

⁴⁹⁶³ Of the 13 calls, five call pairs were within ten minutes of each other. Exhibit P1112 (Expert report of John Edward Philips – Single user analysis, Suspects 4, 5, 6, 7 and 8), paras 7.3.1.1-7.3.11.1. In relation to the instance which may preclude co-location, on 14 January 2005, at 12:25:19, Blue 324 activated Sfeir_B. At 12:27:53, Red 946 activated EE3, which was approximately 5.75 kilometres from Sfeir_B. Blue 324 again activated Sfeir_B at 12:33:23. Exhibit P1112 (Expert report of John Edward Philips – Single user analysis, Suspects 4, 5, 6, 7 and 8), para. 7.3.2.1.

⁴⁹⁶⁴ Of the 40, 22 call pairs were within ten minutes of each other. Exhibit P1112 (Expert report of John Edward Philips – Single user analysis, Suspects 4, 5, 6, 7 and 8), paras 7.4.5.1-7.4.26.2; exhibit P1113, paras 6.4.91.1-6.4.92.5, 6.4.103.1-6.4.104.6; *see also* exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 6.6.8.6 and 6.6.8.8, where Mr Philips counted sequences of calls instead of pairs.

⁴⁹⁶⁵ Of the 21, seven call pairs were within ten minutes of each other. Exhibit P1112 (Expert report of John Edward Philips – Single user analysis, Suspects 4, 5, 6, 7 and 8), paras 7.5.5.1-7.5.14.2; exhibit P1113, paras 6.4.116.1-6.4.116.7, 6.4.119.1-6.4.120.9; exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), para. 6.6.9.7.

activating cells in the Tripoli area either on Tuesday 4 January 2005 or on Wednesday 2 February 2005.⁴⁹⁶⁶ Mr Philips noted that these activations occurred either when the Red mobiles were still being set up in the Tripoli area or when they were topped up there and that these ‘dislocations’ were likely deliberate.⁴⁹⁶⁷ One ‘dislocation’—involving Red 893 and Blue 817—occurred in Beirut, on Monday 31 January 2005.⁴⁹⁶⁸ Mr Philips testified that a possible explanation for the ‘dislocation’ is that another user inadvertently took Red 893 from its usual user.⁴⁹⁶⁹

2398. There were no calls between any of the Red and Blue network mobiles, but there was one overlapping call between Red 893 and Blue 817, on 31 January 2005.⁴⁹⁷⁰

2399. The fifth identified common feature is that the Green, Red and Blue networks either ceased operating or significantly altered their calling patterns around the same time. Green 023 and Green 300 made their final call on Monday 14 February 2005 at 11:58.⁴⁹⁷¹ The Red mobiles ceased operating on that same day between 12:50 and 12:54.⁴⁹⁷² As for the six core Blue mobiles, after

⁴⁹⁶⁶ On 4 January 2005, at 14:00, Blue 585 activated Sfeir_B in Beirut’s south. At 14:20, Red 636 activated TOURBO1, which was approximately 77 kilometres from Sfeir_B. Exhibit P1112 (Expert report of John Edward Philips – Single user analysis, Suspects 4, 5, 6, 7 and 8), para. 7.1.1.1. On 4 January 2005, at 14:00:11, Blue 324 activated Raouche_B. At 14:19:02, Red 946 activated TOURBO1, which was approximately 75 kilometres from Raouche_B. At 14:43:59, Red 946 activated MINIEH2. At 15:03:08, Blue 324 activated Sfeir_B, which was approximately 80 kilometres from MINIEH2. Exhibit P1112 (Expert report of John Edward Philips – Single user analysis, Suspects 4, 5, 6, 7 and 8), paras 7.3.1.1-7.3.1.2. On 2 February 2005, at 19:08, Red 678 activated TOURBO3. At 19:35, Blue 610 activated BRAJNE1, which was approximately 73 kilometres from TOURBO3. Exhibit P1112 (Expert report of John Edward Philips – Single user analysis, Suspects 4, 5, 6, 7 and 8), para. 7.2.49.1; exhibit P1113, paras 6.4.60.1-6.4.60.4.

⁴⁹⁶⁷ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 6.6.5.5, 6.6.5.8, 6.6.6.6, 6.6.6.9, 6.6.7.5, 6.6.10.6-6.6.10.8.

⁴⁹⁶⁸ At 09:54:54, Red 893 activated RAOUCH1 and ended the call 92 seconds later on KRAYTM1. At 09:56:14, Blue 817 activated CBOURJ1, which was about 5.25 kilometres from RAOUCH1 and about the same distance from KRAYTM1. Exhibit P1112 (Expert report of John Edward Philips – Single user analysis, Suspects 4, 5, 6, 7 and 8), para. 7.4.6.1; exhibit P1113, paras 6.4.90.1-6.4.90.5; exhibit P1118, slide 73; John Edward Philips, T. 1 September 2016, pp 96-97.

⁴⁹⁶⁹ Mr Philips thought that when S6, using Red 678, called Red 893 at 09:54, S6 realised that Red 893 was in the wrong hands and, using Blue 610, called S8 on its Blue mobile—Blue 817—at 10:10 to alert S8 of this. Blue 610 called Blue 817 again at 10:52, 11:08 and 11:10. At 11:07 and 11:16, Red 893 activated BIRABD1, the same cell that Blue 817 activated at 11:10. This led Mr Philips to conclude that Red 893 and Blue 817 had been ‘reunited’. John Edward Philips, T. 1 September 2016, pp 100-102; exhibit P1118, slide 73.

⁴⁹⁷⁰ The call overlapped by 12 seconds. Mr Philips listed one further overlapping call, which occurred on 12 February 2005. Red 893 had an incoming call that ended at 10:08:20. Blue 817 had an incoming call at 10:08:37. Mr Philips stated that this call overlapped by 17 seconds. The Trial Chamber has reviewed the two calls and determined that there was no overlap. Exhibit P1112 (Expert report of John Edward Philips – Single user analysis, Suspects 4, 5, 6, 7 and 8), paras 7.5.14.9-7.5.14.11, 7.1.12.9-7.1.12.11, 7.2.63.9-7.2.63.11, 7.3.12.9-7.3.12.11, 7.4.26.9, 7.4.26.11.

⁴⁹⁷¹ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 5.3.5.7, 6.10.2.1.

⁴⁹⁷² Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 5.3.5.8, 6.10.2.1.

14 February 2005, they were involved in significantly fewer calls and activated fewer cells in central and west Beirut.⁴⁹⁷³

2400. Mr Platt also testified about the networks' coordinated and complementary operating periods. The Yellow network ceased around the same time when the Blue network expanded to 15 mobiles.⁴⁹⁷⁴

2401. According to Mr Platt, the Green, Blue, Red and Yellow networks also shared common features demonstrating that they were connected.⁴⁹⁷⁵ All four networks had an element of covertness 'in varying degrees'. The Green and Red networks were at the higher level, the Yellow one 'at the bottom' and the Blue 'slightly below' the Green and Red networks.⁴⁹⁷⁶ The networks displayed similar covert traits, including false subscriber details, limited use of text messages, limited number of third-party calls and cash payments.⁴⁹⁷⁷

2402. Mr Platt also testified that all four networks were well-financed with recharging in bulk and substantial credit remaining when the mobiles were shut down.⁴⁹⁷⁸ Yellow mobiles on some occasions used top-up cards with numbers that were close in sequence to those used by Blue mobiles.⁴⁹⁷⁹ Also, in some instances, Blue and Yellow mobiles were recharged close in time and location.⁴⁹⁸⁰ Handsets were swapped between Yellow and Blue mobile users,⁴⁹⁸¹ Blue and Yellow mobiles shared some common contacts, like Protel and the Great Prophet Hospital,⁴⁹⁸² and there were two calls between Yellow and Blue mobiles.⁴⁹⁸³

⁴⁹⁷³ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 5.3.4.3, 5.3.5.9, 5.3.4.4-5.3.4.11, 6.10.2.3.

⁴⁹⁷⁴ Gary Platt, T. 26 July 2016, pp 36-37.

⁴⁹⁷⁵ Gary Platt, T. 26 July 2016, pp 68-70, 75; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1215-1220.

⁴⁹⁷⁶ Gary Platt, T. 26 July 2016, pp 35, 38.

⁴⁹⁷⁷ Gary Platt, T. 26 July 2016, p. 70.

⁴⁹⁷⁸ Gary Platt, T. 26 July 2016, pp 37, 69-71.

⁴⁹⁷⁹ Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 766, 769, 775, 778, 1104-1106; exhibit P785 (Alfa recharge information for 44 mobiles).

⁴⁹⁸⁰ Gary Platt, T. 26 July 2016, pp 39-42; exhibit P795, slides 132-133.

⁴⁹⁸¹ Gary Platt, T. 26 July 2016, pp 46-47; exhibit P795, slide 135.

⁴⁹⁸² Gary Platt, T. 15 April 2016, p. 41, T. 26 July 2016, pp 45-46. *See also* exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 784-785, 980.

⁴⁹⁸³ Gary Platt, T. 26 July 2016, p. 45; exhibit P795, slide 134. These contacts took place in May 2004, before the Blue and Yellow networks were operative. Gary Platt, T. 6 April 2016, pp 47-48; exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 1121.

2. The roles of the various networks

2403. Mr Philips concluded that the purpose of the Red mobiles was to insulate the mission from their users' area of residence and therefore the identity of the users.⁴⁹⁸⁴ Given their high forensic profile, the discovery of the Red mobiles by investigators was inevitable. They were used in the area of the crime scene at the time immediately preceding the crime and ceased use after the crime.⁴⁹⁸⁵ Hence, the users of the Red mobiles took extreme care to limit their traceability, which meant that the anonymity of the users of the Red mobiles was protected the most.⁴⁹⁸⁶

2404. For example, the Red mobiles were expected to have the same base area as the corresponding group of six core Blue mobiles, given the common users between the two groups.⁴⁹⁸⁷ Yet the Red mobiles rarely connected to cells in the southern suburbs of Beirut, and never in the areas of main concentration of call activity for the Blue and Green mobiles.⁴⁹⁸⁸ The Red mobiles were also never used in south Lebanon.⁴⁹⁸⁹ According to Mr Philips, the users of the Red mobiles made a deliberate effort to register and top-up the Red mobiles far from the main area of use and base area of the Blue and Green mobiles.⁴⁹⁹⁰ No such attempts to administer the mobiles away from their base area were made for the Blue or Green mobiles.⁴⁹⁹¹ The Red mobiles also left a lesser 'footprint' as they were restricted in times and locations of use; this indicates that they were used for a very specific purpose.⁴⁹⁹²

2405. The limitations on the use of the Red mobiles created a need for the Blue mobiles, which could be used more generally.⁴⁹⁹³ The characteristics of the Blue mobiles suggest that they were at the bottom of the hierarchy.⁴⁹⁹⁴ They provided general support, particularly during the mission

⁴⁹⁸⁴ John Edward Philips, T. 5 September 2016, p. 77; exhibit P1118 (PowerPoint presentation on common mission phones, John Edward Philips), slides 125, 131.

⁴⁹⁸⁵ John Edward Philips, T. 5 September 2016, pp 77, 81-82, 79; exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), para. 5.4.8.18; exhibit P1118, slide 127.

⁴⁹⁸⁶ John Edward Philips, T. 5 September 2016, p. 78, T. 6 September 2016, pp 19-21; exhibit P1118, slides 126-127, 134; exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 5.4.4.3, 5.4.8.15, 5.7.1.4, 5.8.1.3, 6.6.10.7-6.6.10.8.

⁴⁹⁸⁷ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), para. 5.4.3.3.

⁴⁹⁸⁸ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), para. 5.4.8.12.

⁴⁹⁸⁹ John Edward Philips, T. 6 September 2016, p. 16; exhibit P1118, slide 133.

⁴⁹⁹⁰ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 5.4.4.3, 5.7.1.4, 5.8.1.3, 6.6.10.7-6.6.10.8; John Edward Philips, T. 6 September 2016, pp 19-21; exhibit P1118, slide 134.

⁴⁹⁹¹ John Edward Philips, T. 6 September 2016, p. 22.

⁴⁹⁹² Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 5.6.2.4, 5.6.2.13.

⁴⁹⁹³ John Edward Philips, T. 2 September 2016, pp 70-71, 83.

⁴⁹⁹⁴ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), para. 5.6.2.11.

set-up phase between 18 and 26 January 2005,⁴⁹⁹⁵ and their use may have extended to more than one mission.⁴⁹⁹⁶

2406. Also, the six core Blue mobiles, which had fewer anonymity safeguards, were used for a general purpose because the Red mobiles could only be used at limited times and in limited areas, while the Blue mobiles were used for calls to Dahyieh, even during times when the Red mobiles were operational.⁴⁹⁹⁷ Further, the Blue mobiles were not associated with the crime and so there was no need to safeguard their base area.⁴⁹⁹⁸ Thus, the Blue mobiles were also used to conceal the mission base area from association with the mission.⁴⁹⁹⁹

2407. According to Mr Philips, the Green mobiles were ‘the mission command group’, in particular, Green 023 and Green 300.⁵⁰⁰⁰ These two members of the Green group were part of the mission command with a single link, that is, a ‘hotline’ or a dedicated communications link between them.⁵⁰⁰¹

2408. The Green mobiles also provided a communication path between ‘mission command’ and ‘field command’ which was available at all times and locations.⁵⁰⁰² The ‘command element’ used this communication sparingly to leave only a light ‘footprint’ and avoid association with the Red mobiles.⁵⁰⁰³ A ‘single chain of command’ via an ‘exclusive channel’ led to the user of Green 300—the ‘Mission Field Commander’—who also, in Mr Philips’s view, used Blue 233 and Red 741.⁵⁰⁰⁴ In this way, Green 300 formed a ‘common thread’ linking the Blue and Red mobiles with Green 023.⁵⁰⁰⁵ This mobile is attributed to Mr Ayyash.

⁴⁹⁹⁵ John Edward Philips, T. 2 September 2016, pp 70, 85-87, 94-95; exhibit P1118, slides 111-112.

⁴⁹⁹⁶ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), para. 5.6.2.11.

⁴⁹⁹⁷ John Edward Philips, T. 6 September 2016, pp 15-16; exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 5.4.8.22-5.4.8.23, 5.4.8.25-5.4.8.26; exhibit P1118, slide 132.

⁴⁹⁹⁸ John Edward Philips, T. 2 September 2016, pp 82-83; exhibit P1118, slide 106.

⁴⁹⁹⁹ John Edward Philips, T. 2 September 2016, pp 85-87.

⁵⁰⁰⁰ John Edward Philips, T. 2 September 2016, p. 48; *see also* exhibit P1116 (Expert report of John Edward Philips – Green mission phones), pp 4, 11-12.

⁵⁰⁰¹ John Edward Philips, T. 2 September 2016, pp 69-70, T. 20 April 2017, p. 40, T. 25 April 2017, pp 107-108.

⁵⁰⁰² Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 5.4.8.27-5.4.8.28, 5.4.8.30-5.4.8.31.

⁵⁰⁰³ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), para. 5.4.8.32; John Edward Philips, T. 2 September 2016, pp 58-59, 74.

⁵⁰⁰⁴ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 5.6.2.5, 5.6.2.17.

⁵⁰⁰⁵ John Edward Philips, T. 2 September 2016, pp 46-47, 70, T. 6 September 2016, p. 56.

2409. Green 023⁵⁰⁰⁶ and Green 300 also initiated ‘hierarchical call flows’, namely Green mobile activity that was followed by Blue or Red mobile activity,⁵⁰⁰⁷ during exceptional Blue mobile activity in the mission set-up phase and later during Red mobile activity in the ‘mission execution phase’.⁵⁰⁰⁸ Mr Philips identified examples of these hierarchical call flows between Green and Blue mobiles on 18, 19 and 25 January 2005.⁵⁰⁰⁹ Hierarchical call flows between Green and Red mobiles occurred on Friday 28 January 2005,⁵⁰¹⁰ Monday 31 January 2005,⁵⁰¹¹ Thursday 3 February 2005,⁵⁰¹² Tuesday 8 February 2005,⁵⁰¹³ Friday 11 February 2005,⁵⁰¹⁴ Saturday 12 February 2005⁵⁰¹⁵ and Monday 14 February 2005.⁵⁰¹⁶

2410. Blue 233 also demonstrated a leadership role, because its movement, call patterns and the fact that this user allegedly had a Green mobile indicate that they managed the groups of Blue and Red mobile users.⁵⁰¹⁷ Blue 233 was the dominant mobile during the mission set-up phase. It had contact with 13 of possible 14 Blue mobiles. It was the only mobile that was active every day between Wednesday 12 January and Monday 14 February 2005. Blue 233 had the highest call volume during the mission set-up phase. It was inextricably linked to mobile activity in Baalbek, Anjar, Tripoli and north-east of the airport and had the most contact with the ‘Blue base mobile’ (Blue 501).⁵⁰¹⁸

2411. As set out more fully in analysing the chronology of events in the lead-up to the attack,⁵⁰¹⁹ the Yellow mobiles were active at the same place and around the same time, namely Tripoli on

⁵⁰⁰⁶ John Edward Philips, T. 6 September 2016, pp 52-53; exhibit P1118, slide 148.

⁵⁰⁰⁷ John Edward Philips, T. 5 September 2016, pp 13, 55.

⁵⁰⁰⁸ John Edward Philips, T. 5 September 2016, pp 2-3.

⁵⁰⁰⁹ John Edward Philips, T. 5 September 2016, pp 6-9, 12-16, 18, 20-27, 30-31, 35-36, 55-58, 69-71; exhibit P1118, slides 113-115, 117-118, 120-122.

⁵⁰¹⁰ John Edward Philips, T. 6 September 2016, pp 27-30; exhibit P1118.2 (Amended slide 139 of exhibit P1118).

⁵⁰¹¹ John Edward Philips, T. 6 September 2016, pp 37-38; exhibit P1118, slide 140.

⁵⁰¹² John Edward Philips, T. 6 September 2016, pp 38-40; exhibit P1118, slide 141.

⁵⁰¹³ John Edward Philips, T. 6 September 2016, pp 40-41; exhibit P1118, slide 141.

⁵⁰¹⁴ John Edward Philips, T. 6 September 2016, p. 41; exhibit P1118, slide 141.

⁵⁰¹⁵ John Edward Philips, T. 6 September 2016, pp 41-42; exhibit P1118, slide 142.

⁵⁰¹⁶ John Edward Philips, T. 6 September 2016, p. 43; exhibit P1118, slide 143.

⁵⁰¹⁷ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 5.5.2.4, 5.6.2.14; John Edward Philips, T. 2 September 2016, pp 74-75, T. 6 September 2016, pp 60, 63-66; exhibit P1118, slides 101-102, 153.

⁵⁰¹⁸ John Edward Philips, T. 5 September 2016, pp 40-46; exhibit P1118, slides 117-118; John Edward Philips, T. 6 September 2016, pp 56-58; exhibit P1118, slide 152. Absent other evidence, the Trial Chamber was unable to conclude that Blue 501 could be qualified as the ‘Blue base mobile’ and what, if anything, the significance of any limited movement of that mobile was.

⁵⁰¹⁹ See chapter X ‘Chronology of network mobile activity before Mr Hariri’s assassination on Monday 14 February 2005’.

Tuesday 28 December 2004 and Tuesday 4 January 2005, that the Red SIM cards were likely purchased and first registered on the provider network. According to Mr Platt, this demonstrated connectivity among the networks.⁵⁰²⁰ They were also active at times and places close to Mr Hariri and his residences, such as Haret Hreik during Mr Hariri's meeting with Mr Nasrallah on 21 December 2004, the Faqra area in late December 2004 and Quraitem Palace in late December 2004 and January 2005.⁵⁰²¹ Mr Platt testified that the Yellow mobile activity in Faqra at the same time and place as Blue mobile activity there showed connectivity between the networks.⁵⁰²²

3. The common mission

2412. Mr Philips concluded that the common mission was likely a serious incident which occurred on Monday 14 February 2005 around 12:54 in the afternoon, most probably to the north of central Beirut.⁵⁰²³

2413. Mr Philips examined the location and timing of calls for clues about the mission for which the mobiles were used.⁵⁰²⁴ In particular, he considered that the location of the last calls 'would normally be expected to be in the general area of the scene of the crime.'⁵⁰²⁵ That is because mobiles would only be used if, and as long as, they are fundamental to the commission of a crime as they can be traced and lead to the identification of the users.⁵⁰²⁶ Once the mission has been executed, any further use would unnecessarily risk discovery by investigators and the identification of the users.⁵⁰²⁷

2414. Because the Red mobiles had the strongest protections of their users' anonymity, they were the group most likely chosen to conduct the mission.⁵⁰²⁸ Therefore, the area of use of the Red mobiles, in central and west Beirut, was anticipated to be associated with the intended 'target' of

⁵⁰²⁰ Gary Platt, T. 26 July 2016, pp 57, 62-63.

⁵⁰²¹ See chapter X 'Chronology of network mobile activity before Mr Hariri's assassination on Monday 14 February 2005'.

⁵⁰²² Gary Platt, T. 26 July 2016, p. 72.

⁵⁰²³ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), para. 5.8.1.48.

⁵⁰²⁴ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 5.7.1.1, 5.8.1.4.

⁵⁰²⁵ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), para. 5.7.1.5.

⁵⁰²⁶ John Edward Philips, T. 2 September 2016, p. 49; exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 5.7.1.2-5.7.1.3.

⁵⁰²⁷ John Edward Philips, T. 2 September 2016, p. 49.

⁵⁰²⁸ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 5.4.8.15, 5.6.2.4, 5.6.2.13; John Edward Philips, T. 5 September 2016, p. 78; exhibit P1118 (PowerPoint presentation on common mission phones, John Edward Philips), slides 126-127.

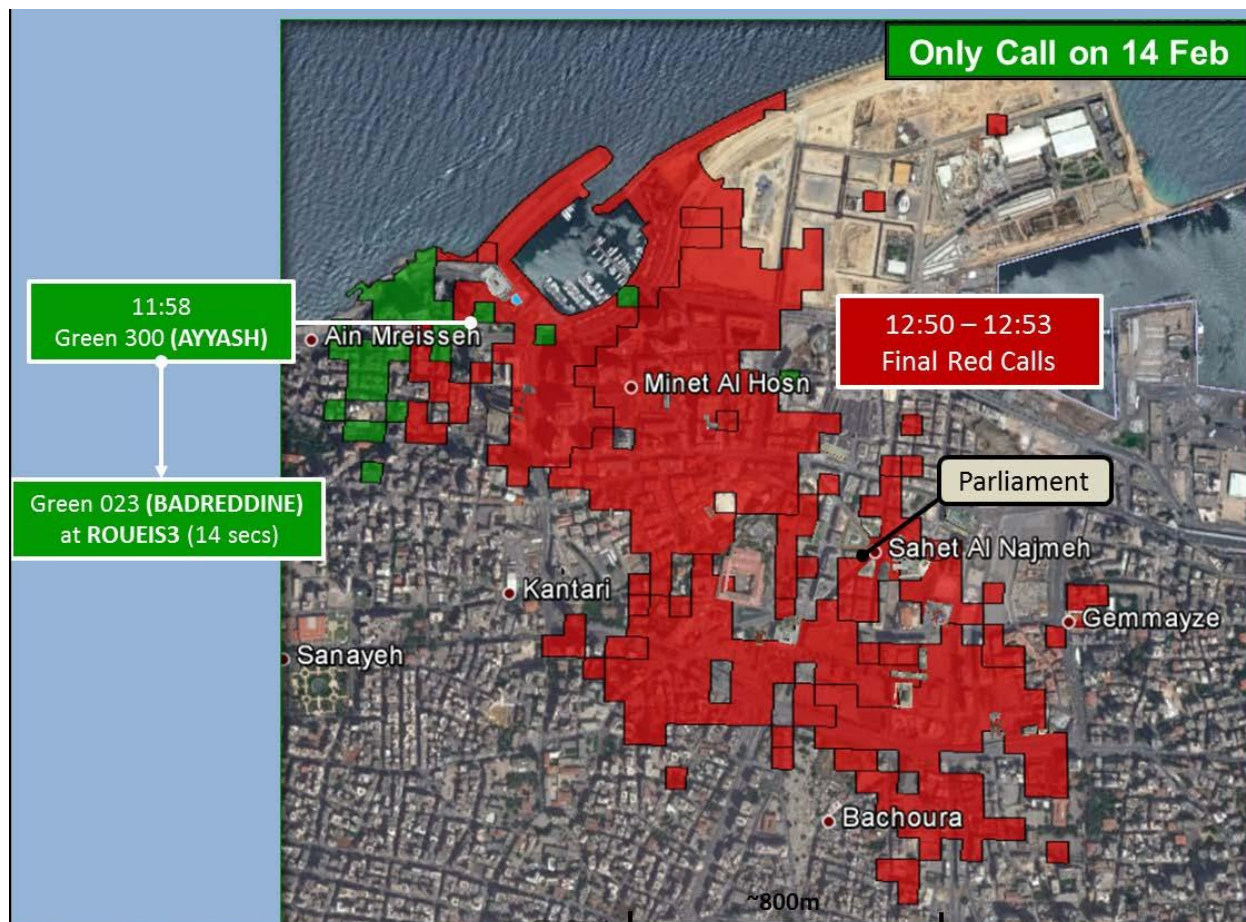
the mission.⁵⁰²⁹ In particular, all of the Red mobiles' last calls were around the same time, and all activated cells were within two kilometres of the St Georges Hotel on *Rue Minet el Hosn* in central Beirut.⁵⁰³⁰

2415. Similarly, almost an hour before the Red mobiles' last call, Green 023 and Green 300 last called each other, when Green 300 activated the MRAICI1 and PHENMB1 cells north-east of central Beirut, close to the crime scene.⁵⁰³¹ The final calls of the Red and Green mobiles are shown on the following map:

⁵⁰²⁹ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), para. 5.4.8.16.

⁵⁰³⁰ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 5.7.1.5, 5.7.1.10; John Edward Philips, T. 2 September 2016, pp 56-57; exhibit P1118, slide 93.

⁵⁰³¹ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 5.7.1.6-5.7.1.7; exhibit P1207 (Call sequence table of Green 300).



Slide 94 with final Green and Red calls from John Edward Philips's PowerPoint presentation – exhibit P1118

2416. Approximately one hour before the explosion, Green 300, Blue 233 and Red 741 activated cells in the Parliament and crime scene area.⁵⁰³² No other Blue mobile activated cells in the same area around this time.⁵⁰³³

4. Submissions

2417. The Prosecution submits that the behavioural features of the Green, Red and Blue networks, as identified through Mr Philips's expert analysis, collectively demonstrate that these networks were engaged in a common purpose.⁵⁰³⁴ These features were: first, the common periods of existence, patterns of use and fluctuations in call intensity; second, the common areas of use in

⁵⁰³² Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 5.5.2.6-5.5.2.7.

⁵⁰³³ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), para. 5.7.1.9.

⁵⁰³⁴ Prosecution final trial brief, paras 393-394.

Tripoli, the area around Zouk-Mosbeh and Faraya, the area around Quraitem Palace, the Parliament and the crime scene location and the coastal road connecting these locations; third, a convergence of final calls; fourth, their complementary roles and functions; and fifth, hierarchical call flows between Green 023, Green 300 and Green 071.⁵⁰³⁵ The Prosecution also notes steps taken by the Yellow network users to further the common purpose, such as the presence of Yellow mobiles during the purchase and set-up of the Red mobiles, surveillance of Mr Hariri and his residences in late December 2004 and hierarchical call flows to Yellow mobiles.⁵⁰³⁶

2418. The Red mobiles' primary function was to facilitate the execution of the crime. Their ancillary function was first to insulate the other networks, which were associated with Dahyieh, from discovery by investigators, and second, to create a false association between the covert network and the Tripoli area.⁵⁰³⁷ The Prosecution submits that the Blue mobiles were a freer form of communication used in the preparation of the mission during the mission set-up phase and later as alternative mobiles when the Red mobiles were not or could not be used, as was the case for calls to and from Dahyieh.⁵⁰³⁸ The Green mobiles provided a communication channel between the user of Green 023, who controlled and directed the other covert networks, and the users of Green 300 and Green 071 whose role was to effect and execute the two limbs of the conspiracy, namely, the assassination and the false claim.⁵⁰³⁹

2419. The Prosecution also argues that, in the months preceding the attack, the four mobile networks—Red, Green, Blue and Yellow—shared common characteristics of covertness, organisation, discipline and generous resourcing to a lesser or greater degree.⁵⁰⁴⁰ In addition, several other features among the four networks support the conclusion that they belonged to one and the same entity. These include: common administration like handset swapping, common contacts and inter-contacts, common areas of use and common users.⁵⁰⁴¹

2420. In particular, the expert analysis of the Green, Red and Blue networks demonstrates that, in addition to their coordinated activities, the networks shared a number of exceptional features

⁵⁰³⁵ Prosecution final trial brief, paras 395-499.

⁵⁰³⁶ Prosecution final trial brief, paras 363, 387, 405, 417-418, 426, 428-431, 497 (i)-(ii).

⁵⁰³⁷ Prosecution final trial brief, paras 446-467.

⁵⁰³⁸ Prosecution final trial brief, paras 468-490.

⁵⁰³⁹ Prosecution final trial brief, paras 491, 498-499.

⁵⁰⁴⁰ Prosecution final trial brief, para. 343.

⁵⁰⁴¹ Prosecution final trial brief, paras 366-392.

aimed at concealing the identities of their users. These included: pre-paid subscriptions with false, missing, or untraceable subscriber information; further, all, or nearly all, calls being made within each network; also, no, or nearly no, text messages exchanged. Tellingly, the Green and Red networks ceased operation on the day of the attack.⁵⁰⁴² They conveyed such a high degree of covertness, cohesion and focus that they have been classified as ‘mission phone groups’—a rare phenomenon associated with serious, complex and sophisticated criminal activity.⁵⁰⁴³ The characteristics of the ‘mission phone groups’ mirror the qualities required to prepare for, coordinate and execute an attack of the complexity, magnitude and sophistication that took place on Monday 14 February 2005.⁵⁰⁴⁴

2421. The Ayyash Defence submits that Mr Philips’s evidence is unreliable regarding the roles or functions of the networks, the roles and functions of individual mobiles within the networks and the hierarchy between the networks. According to the Ayyash Defence, as Mr Philips based his conclusions on content-less mobile calls and call patterns without any accompanying methodology, they therefore carry limited weight because they are speculative and uncorroborated.⁵⁰⁴⁵

2422. Moreover, the Prosecution presented no methodology for how one could determine the hierarchies and roles of mobiles, or a standard against which one could measure what is normal or unusual behaviour in Lebanon or anywhere else.⁵⁰⁴⁶

5. Findings

2423. The Trial Chamber finds that the Green, Red, Blue and Yellow networks were interconnected and coordinated with each other.

2424. As Mr Philips’s analysis shows, the Green, Red and Blue mobiles shared key characteristics: their peak use coincided in the month before the explosion on 14 February 2005. The Green 023, Green 300 and the Red mobiles ceased operating immediately before the explosion. The core six Blue mobiles significantly changed their use after the explosion. One user

⁵⁰⁴² Prosecution final trial brief, para. 13.

⁵⁰⁴³ Prosecution final trial brief, para. 344.

⁵⁰⁴⁴ Prosecution final trial brief, para. 345.

⁵⁰⁴⁵ Ayyash Defence final trial brief, paras 286-290.

⁵⁰⁴⁶ Ayyash Defence final trial brief, para. 290.

had mobiles of each of the three networks.⁵⁰⁴⁷ At least two users had both Red and Blue mobiles.⁵⁰⁴⁸ The Red and Blue mobiles frequently activated cells in the same area of west Beirut. The Green 023, Green 300 and the Red mobiles frequently activated common cells in the northern part of central Beirut. Green 023 and Green 300 also frequently made calls during periods of Red mobile activity.

2425. Mr Philips and Mr Platt reached similar conclusions. Mr Platt concluded from common features between the Green, Blue, Red and Yellow networks, such as their covertness and method of financing, that they were connected. Yellow and Blue mobiles were especially linked, through coordinated top-ups, exchange of handsets, common contacts and direct calls.

2426. The Trial Chamber accordingly finds that:

- three Green mobiles—Green 023, Green 071 and Green 300—operated as a covert network from 13 October 2004 until Monday 14 February 2005;
- eight Red mobiles—Red 572, Red 636, Red 652, Red 662, Red 678, Red 741, Red 893 and Red 946—operated as a covert network from Tuesday 4 January 2005 until Monday 14 February 2005;
- At least six ‘core’ Blue mobiles—Blue 233, Blue 324, Blue 585, Blue 610, Blue 817 and Blue 864—operated as a covert network from December 2004 until Monday 14 February 2005; and
- At least four ‘core’ Yellow mobiles—Yellow 024, Yellow 294, Yellow 457 and Yellow 933—operated as a type of covert network from October 2004 until Friday 7 January 2005.

⁵⁰⁴⁷ Mr Ayyash, *see* chapter IX ‘Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine’, (B) (2) ‘Network mobiles’.

⁵⁰⁴⁸ Apart from Mr Ayyash, the Trial Chamber is satisfied that Red 678 and Blue 610 were used by the same person, but the co-location evidence is insufficient to establish that the remainder of the pairs of mobiles also had a single user beyond reasonable doubt.

H. Purple group of mobiles

1. Introduction

2427. The three Accused, Mr Merhi, Mr Oneissi and Mr Sabra are alleged to have prepared and carried out the false claim of responsibility for the attack on Mr Hariri. They are alleged to have communicated for this purpose via their personal mobiles. The Prosecution termed the three mobiles as the ‘Purple Phones’. This group of three mobiles is additional to the four colour-coded closed networks—the Blue, Red, Yellow and Green networks—that were allegedly involved in different ways in the attack.

2428. In the amended consolidated indictment, the Prosecutor pleads that ‘from at least 1 January 2003 until 16 February 2005’ these mobiles ‘were used to communicate amongst each other and to communicate with others outside the group. Purple Phones were used to coordinate the false claim of responsibility’.⁵⁰⁴⁹ The three mobiles, Purple 095, Purple 018 and Purple 231 were pre-paid mobiles on the Alfa network.⁵⁰⁵⁰ The Prosecution attributed Purple 231 to Mr Merhi, Purple 095 to Mr Oneissi and Purple 018 to Mr Sabra.⁵⁰⁵¹

2429. The Prosecutor pleads that between 22 December 2004 and 17 January 2005, as part of the preparations to assassinate Mr Hariri, Mr Oneissi and Mr Sabra—using the Purple mobiles and under Mr Merhi’s coordination—were involved in profiling, identifying and selecting Mr Ahmad Abu Adass as the scapegoat for making the false claim of responsibility for the attack.⁵⁰⁵² This included recruiting him for his future role in the videoed false claim of responsibility that was broadcast after the attack on Monday 14 February 2005.⁵⁰⁵³

⁵⁰⁴⁹ Amended consolidated indictment, para. 15 (e); Prosecution’s updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), paras 6, 31, 33, 38, 66, 113, 115, 118-119, 149; Prosecution pre-trial submissions (Merhi case), annex A, paras 6, 23, 25, 30, 104, 106, 109-110; Prosecutor’s opening statement, T. 16 January 2014, pp 52-53, 101-102; Prosecutor’s opening statement regarding Hassan Habib Merhi, T. 18 June 2014, pp 38-40.

⁵⁰⁵⁰ Exhibit P900 (Subscriber note for Purple 231); exhibit P905 (Subscriber note for Purple 018); exhibit P914 (Subscriber note for Purple 095).

⁵⁰⁵¹ Amended consolidated indictment, para. 18; Prosecution’s updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), paras 31, 54-58; Prosecution pre-trial submissions (Merhi case), annex A, paras 23, 33; Prosecutor’s opening statement, T. 16 January 2014, p. 77; Prosecutor’s opening statement regarding Hassan Habib Merhi, T. 18 June 2014, p. 27.

⁵⁰⁵² Amended consolidated indictment, paras 23, 48 (c) (i); Prosecutor’s opening statement, T. 16 January 2014, pp 52-53, 100-101, 104-106; Prosecutor’s opening statement regarding Hassan Habib Merhi, T. 18 June 2014, pp 41-47.

⁵⁰⁵³ Amended consolidated indictment, para. 48 (c) (i).

2430. According to the Prosecution, the Purple mobiles' communications during the so-called 'COLA phase'⁵⁰⁵⁴ establish Mr Merhi's, Mr Oneissi's and Mr Sabra's involvement in what the Prosecution termed as the 'Mohammed deceit'. This relates to Mr Oneissi's alleged pleaded role as a person identifying as the 'Mohammed' who approached Mr Abu Adass in the Arab University Mosque in January 2005.⁵⁰⁵⁵

2431. Specifically, calls of the Purple and Green mobiles from Wednesday 12 to Saturday 15 January 2005—the Green mobiles were allegedly used by Mr Merhi and Mr Badreddine—showed the alleged preparation for what the Prosecution's case evolved to describe as the 'abduction' of Mr Abu Adass. The activity of Mr Merhi's and Mr Badreddine's Green mobiles and the inactivity of the Purple mobiles on Sunday 16 January 2005, the day on which Mr Abu Adass left his home for the last time, showed their involvement in his disappearance. In addition, the activity of the three Purple mobiles on Monday 17 January 2005 aligned with calls to the Abu Adass family landline.⁵⁰⁵⁶

2432. Mr Merhi, Mr Oneissi and Mr Sabra are also alleged to have participated in delivering the video to Al-Jazeera for broadcast soon after the attack. The timing and the location of the Purple mobiles following the attack 'corresponded very closely' with the calls to the news agencies delivering the false claim.⁵⁰⁵⁷ After years of continuous use, on Tuesday 15 February 2005, Purple 231, and the following day, Purple 095 and Purple 018 ceased use.⁵⁰⁵⁸

⁵⁰⁵⁴ The Prosecution used this term to refer to the ten days between Wednesday 29 December 2004 and Friday 7 January 2005 when Mr Sabra's attributed Purple 018 and Mr Oneissi's Purple 095 were most active connecting to the three COLA cells and those adjacent to it near the Arab University Mosque. Prosecution final trial brief, paras 727-736. *See also* Prosecution's updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), paras 118-119; Prosecution pre-trial submissions (Merhi case), annex A, paras 109-110.

⁵⁰⁵⁵ Prosecution final trial brief, paras 509-518; Prosecution's updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), paras 122, 124-130; Prosecution pre-trial submissions (Merhi case), annex A, paras 113, 115-121.

⁵⁰⁵⁶ Prosecution final trial brief, paras 505, 533-548, 736, 1170, 1183-1184. The Prosecution also relies on: evidence of the pattern of the Purple mobiles' use; Mr Merhi's attributed Green mobile's communications; expert evidence on the Green network mobiles and Mr Merhi's attributed Green mobile's communications with Mr Badreddine; the Purple mobiles' activity during the relevant time, and after the attack on 14 February 2005; the video containing the claim of responsibility; that the claim was false; and the cessation of use of the Green, Red and Purple mobiles, Prosecution final trial brief, paras 1170, 1184; Prosecution's updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), paras 37-38, 125, 128; Prosecution pre-trial submissions (Merhi case), annex A, paras 29-32; Prosecutor's opening statement, T. 16 January 2014, pp 101-103; Prosecutor's opening statement regarding Hassan Habib Merhi, T. 18 June 2014, pp 27, 50, 53-59, 63, 68-69.

⁵⁰⁵⁷ Amended consolidated indictment, para. 44; Prosecution final trial brief, para. 505 (viii).

⁵⁰⁵⁸ Amended consolidated indictment, paras 46-47; Prosecution's updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), para. 165; Prosecution pre-trial submissions (Merhi case), annex A, para. 156; Prosecutor's

2433. In contrast to the four colour-coded closed networks, the Purple mobiles are alleged neither to be network mobiles nor covert in nature.⁵⁰⁵⁹ They were used for personal purposes such as to call family and friends and for ‘normal’ non-covert communications.

2434. Purple 231 received its last call on Tuesday 15 February 2005 and was not used again, and Purple 095 and Purple 018 were last used on Wednesday 16 February 2005.⁵⁰⁶⁰

2. Evidence

(a) Purple 231—attributed to Hassan Habib Merhi

2435. Purple 231 and Purple 095 were both subscribed under the name of Ibrahim Imad. Purple 231 was activated on the Alfa network on 14 December 2002.⁵⁰⁶¹ The Prosecutor attributed the mobile to Mr Merhi from 19 December 2002 until 15 February 2005.⁵⁰⁶² It was deactivated on 11 March 2005, after its last use on 15 February 2005.⁵⁰⁶³

2436. During the attribution period of around 26 months it had 3,367 voice calls and SMS.⁵⁰⁶⁴ In the indictment period of 22 December 2004 to 14 February 2005, Purple 231 had 313 calls and texts.⁵⁰⁶⁵ On Monday 14 February 2005, it had nine calls and received one text; seven of the calls—all between 14:03 and 17:24—were with Purple 018.⁵⁰⁶⁶

2437. Purple 231 most frequently used Alfa’s SFEIR3 and BRAJNE2 cells in southern Beirut during the time that the Prosecution attributes it to Mr Merhi.⁵⁰⁶⁷ Of its 314 calls and text messages

opening statement regarding Hassan Habib Merhi, T. 18 June 2014, pp 27, 67; Prosecution final trial brief, paras 505 (ix), 582-584.

⁵⁰⁵⁹ See chapter XII ‘Claim of responsibility for the attack on Rafik Hariri’, (H) ‘The non-covert nature of the use of the Purple mobiles’.

⁵⁰⁶⁰ Exhibit P527 (Call sequence table of Purple 231), p. 117; exhibit P1221 (Call sequence table of Purple 018), p. 292; exhibit P1223 (Call sequence table of Purple 095), p. 281; Prosecution pre-trial submissions (Merhi case), annex A, para. 33; Prosecutor’s opening statement regarding Hassan Habib Merhi, T. 18 June 2014, p. 27.

⁵⁰⁶¹ However, neither the IMEI numbers nor the IMSI numbers of the two Purple mobiles are close in sequence to show that they were purchased together. Exhibit P900; exhibit P914; exhibit P527; exhibit P1221; Prosecution’s updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), para. 32; Prosecution pre-trial submissions (Merhi case), annex A, para. 24.

⁵⁰⁶² Amended consolidated indictment, para. 18; Prosecution pre-trial submissions (Merhi case), annex A, para. 33.

⁵⁰⁶³ Exhibit P527, p. 117; exhibit P900.

⁵⁰⁶⁴ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 360; exhibit P527, which also contains non-sequential entries.

⁵⁰⁶⁵ Exhibit P527, pp 106-117.

⁵⁰⁶⁶ Exhibit P527, pp 116-117.

⁵⁰⁶⁷ From 19 December 2002 to 15 February 2005. This excludes calls for which cell data was not available, namely cell site data for incoming calls or text messages until 1 August 2004, and end cell data until 1 October 2004. Exhibit

between 22 December 2004 and 15 February 2005, Purple 231 activated SFEIR3 178 times and BRAJNE2 82 times either at the start or at the end of the call.⁵⁰⁶⁸ It did not connect to any of the sixteen Alfa cells providing the predicted best server coverage within a 500-metre radius of the Arab University Mosque.⁵⁰⁶⁹ On 14 February 2005, it activated SFEIR3 for all ten contacts, including seven with Purple 018.⁵⁰⁷⁰

2438. Mr Donaldson described Purple 231 as having the characteristics of a ‘work-related mobile’ used for a specific purpose.⁵⁰⁷¹ In his evidence, however, he also used the term ‘cadre mobile’—something that was not in his attribution report on Mr Merhi—to describe Purple 231 and other mobiles that had a contact profile that included Hezbollah officials and MPs, and people subject to INTERPOL red notices.⁵⁰⁷²

2439. He explained that the term ‘cadre’ also distinguished these types of mobiles from, for example, Purple 018 and Purple 095, which did not have these characteristics.⁵⁰⁷³ When asked about the origin of the term he explained that a deceased Lebanese official had introduced it to him.⁵⁰⁷⁴ He described these ‘cadre mobiles’ as having no pattern of family contacts, contacting switchboards and having as their identifiable contacts men aged 20 to 50. Further, these mobiles had little SMS content and the numbers were rarely provided as business contacts.⁵⁰⁷⁵ People

P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 67-71, 144-149; Andrew Donaldson, T. 29 June 2017, pp 26-30; exhibit P527, pp 1-89; exhibit P1961 (PowerPoint presentation regarding Mr Merhi, Andrew Donaldson), slides 48-50. Regarding the missing Alfa cell data, *see also* Gary Platt, T. 7 February 2017, pp 64-65; Prosecution final trial brief, para. 540.

⁵⁰⁶⁸ Exhibit P527, pp 106-117.

⁵⁰⁶⁹ Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1273; exhibit P527, pp 106-117.

⁵⁰⁷⁰ Exhibit P527, pp 106-117.

⁵⁰⁷¹ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 66; Andrew Donaldson, T. 3 July 2017, pp 31-32, T. 4 July 2017, p. 13.

⁵⁰⁷² Andrew Donaldson, T. 3 July 2017, pp 28-29, 31-33.

⁵⁰⁷³ Andrew Donaldson, T. 3 July 2017, p. 23.

⁵⁰⁷⁴ When the Presiding Judge asked who the official was, Prosecution lead counsel intervened and made a claim under Rule 118 against revealing this information. Rule 118 prohibits the disclosure of information without the provider's consent if the information was provided on a confidential basis ‘and which affects the security interests of a State’. When asked how Rule 118 applied, the Prosecution responded, ‘Your Honour, the extent to which we would say 118 applies is that the names of any of the Lebanese officials should remain confidential’. Nothing more was said on this. The Trial Chamber finds it difficult to understand how Lebanese State security interests could be affected by revealing the name of a deceased official who apparently had explained the meaning of a ‘cadre phone’ to Mr Donaldson. T. 3 July 2017, pp 28-30.

⁵⁰⁷⁵ Andrew Donaldson, T. 3 July 2017, pp 28-29.

identified in open sources as ‘cadres of Hezbollah’—including Mr Badreddine and others he examined during the investigation—had the same contact profile.⁵⁰⁷⁶

2440. Mr Donaldson observed that Purple 231 presented some of these characteristics, which suggests that it may have been a ‘non-personal’ mobile.⁵⁰⁷⁷ The majority of its contacts were unattributed and among them were Hezbollah officials or MPs. Family contacts were absent, and the contacts were ‘generally men of a similar generation’.⁵⁰⁷⁸

(b) Purple 018—attributed to Assad Hassan Sabra

2441. Purple 018 was activated on the Alfa network on 8 November 2001 without any subscriber details.⁵⁰⁷⁹ It ceased use on Wednesday 16 February 2005 and was deactivated on 8 March 2005. This mobile had 8,379 contacts over the period that the Prosecution attributed it to Mr Sabra, namely, from 22 November 2001 to 16 February 2005.⁵⁰⁸⁰

2442. Between 1 August 2004 and 16 February 2005, Purple 018 most frequently activated SFEIR2, HARA2 and BRAJNE3, in south Beirut.⁵⁰⁸¹ Between 22 December 2004 and 14 February 2005, Purple 018 made 438 calls, of which it connected to SFEIR2 for 88, HARA2 for 78, SFEIR3 for 60, ROUEIS3 for 29 and BRAJNE3 for 27.⁵⁰⁸²

2443. From Wednesday 22 December 2004 to Friday 7 January 2005, it activated one of the sixteen adjacent cells within a 500-metre radius of the Arab University Mosque either at the start or at the end of a call 70 times. This included 54 activations of the three COLA cells.⁵⁰⁸³

⁵⁰⁷⁶ Andrew Donaldson, T. 3 July 2017, pp 23, 31-32.

⁵⁰⁷⁷ Andrew Donaldson, T. 3 July 2017, p. 36.

⁵⁰⁷⁸ Andrew Donaldson, T. 3 July 2017, p. 22. Mr Donaldson also acknowledged that ‘he clearly cannot say that this was a work phone for Mr Merhi’ and that he could not be specific about the nature of Purple 231 as he did not have enough information on Mr Merhi. Andrew Donaldson, T. 3 July 2017, p. 23.

⁵⁰⁷⁹ Exhibit P905.

⁵⁰⁸⁰ Exhibit P1221; Amended consolidated indictment, para. 18; Prosecution’s updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), para. 55.

⁵⁰⁸¹ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 52.

⁵⁰⁸² Exhibit P1221, pp 277-292.

⁵⁰⁸³ It activated CBOURJ3 for seven calls, CHATIL1 for three calls, CHATIL3 for one call, COLA1 for four calls, COLA2 for eleven calls, COLA3 for 39 calls, MAKASS2 for two calls, MAZRAA2 for one call, NASSER1 for one call and OUZAI4 for one call. Purple 018 had 182 calls in this period. Exhibit P1221, pp 277-283.

2444. On Monday 14 February 2005, Purple 018 connected to various cells in Beirut including SFEIR3, SPEARS3, BNPI3, GHOBAl3, ETOILE2 and MARTYR1.⁵⁰⁸⁴ ETOILE2, MARTYR1 and BNPI3 were adjacent to BACHOU3, the cell that provided the predicted best server coverage to the tree where the false claim video was placed.⁵⁰⁸⁵ On Monday 14 February 2005, it had 18 calls and received one text. Seven of the calls were with Purple 231, and five with Purple 095.⁵⁰⁸⁶

(c) Purple 095—attributed to Hussein Hassan Oneissi

2445. Purple 095, like Purple 231, and as noted above, was subscribed under the name of Ibrahim Imad. It was activated on the Alfa network on 28 December 2002. It was not used after Wednesday 16 February 2005 and was deactivated on 17 March 2005.⁵⁰⁸⁷

2446. The Prosecutor attributed it to Mr Oneissi from 9 January 2003 until Wednesday 16 February 2005.⁵⁰⁸⁸ During this period, it had 8,140 contacts, voice calls and SMS.⁵⁰⁸⁹ In the indictment period, from Wednesday 22 December 2004 to Monday 14 February 2005, it had 803 contacts—voice calls and texts.⁵⁰⁹⁰ On Monday 14 February 2005, it had 11 calls, and received seven SMS, of which five calls, between 15:54 and 16:02, were with Purple 018.⁵⁰⁹¹

2447. From 1 August 2004 until 16 February 2005, SFEIR3, BRAJNE2 and SFEIR3 in southern Beirut were Purple 095's most frequently activated cells.⁵⁰⁹² For its contacts from 22 December 2004 to 16 February 2005, it connected to BRAJNE2 for 223 calls, SFEIR3 for 165 calls, and SFEIR3 for 116 calls at the start or at the end of the call.⁵⁰⁹³

2448. From Wednesday 22 December 2004 to Friday 7 January 2005, it used one of the sixteen adjacent Alfa cells within a 500-metre radius of the Arab University Mosque for 35 calls. This was

⁵⁰⁸⁴ It activated SFEIR3 for four calls, SPEARS3 for four calls, BNPI3 for three calls, GHOBAl3, ETOILE2 and MARTYR1 each for two calls. Exhibit P1221, pp 291-292.

⁵⁰⁸⁵ Exhibit P592.1 (Electronic Presentation of Evidence software). *See* paras 5585-5588.

⁵⁰⁸⁶ Exhibit P1221, pp 291-292.

⁵⁰⁸⁷ Exhibit P914.

⁵⁰⁸⁸ Amended consolidated indictment, para. 18; Prosecution's updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), para. 54.

⁵⁰⁸⁹ Exhibit P1223.

⁵⁰⁹⁰ Exhibit P1223, pp 253-281.

⁵⁰⁹¹ Exhibit P1223, pp 280-281.

⁵⁰⁹² Exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 41; Andrew Donaldson, T. 25 August 2017, pp 12-13.

⁵⁰⁹³ Exhibit P1223, pp 253-281.

out of 238 calls and SMS in that period. It activated COLA2 for seven calls and COLA3 for fourteen calls.⁵⁰⁹⁴

2449. On Monday 14 February 2005, for more than half of its calls Purple 095 activated BNPI3, which provided best server coverage close to the tree where the false claim video was lodged.⁵⁰⁹⁵

(d) Characteristics of the group of Purple mobiles

2450. Apart from contacting each other, the Purple mobiles' most frequently contacted numbers included their respective user's family members and associates.

2451. Specifically, Purple 231's most frequent contact was Mr Merhi's brother-in-law, Mr Yahya Beydoun.⁵⁰⁹⁶ Purple 095 had the most calls with Mr Oneissi's mother, Ms Fatima Darwish.⁵⁰⁹⁷ Purple 018's most frequent contacts included Mr Sabra's father, and his wife, Ms Hala Salloum's, aunt's and grandfather's numbers.⁵⁰⁹⁸ Unlike the users of the network mobiles, Purple mobile users sent and received text messages.⁵⁰⁹⁹ No texts between the users of the three mobiles were in evidence.

2452. The Prosecution, in its opening statements, submitted that the three Purple mobiles—while not forming a closed network—conformed to a calling pattern similar to the Green network. This meant that Mr Merhi was in contact with both Mr Sabra and Mr Oneissi but there were 'virtually no calls between Mr. Sabra and Mr. Oneissi using the Purple Phones'.⁵¹⁰⁰ The call patterns, however, changed significantly in late December 2004. Prosecution counsel explained: 'Why? I expect the evidence to show the answer to be Ahmad Abu Adass'.⁵¹⁰¹ The Prosecution, at the close

⁵⁰⁹⁴ It activated CBOURJ3 for four calls, CHATIL1 for two calls, COLA2 for seven calls, COLA3 for 14 calls, MAZRAA2 for two calls, OUZAI1 for five calls and RAMLET1 for one call. Exhibit P1223, pp 253-261.

⁵⁰⁹⁵ On 14 February 2005, Purple 095 had 18 calls; for ten, including to receive service text messages, it connected to BNPI3. Exhibit P1223, pp 280-281.

⁵⁰⁹⁶ See para. 3462. See also Prosecution's updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), para. 58; Prosecution pre-trial submissions (Merhi case), annex A, para. 33.

⁵⁰⁹⁷ See para. 3723. See also Prosecution's updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), para. 54; Prosecution pre-trial submissions (Merhi case), annex A, para. 49.

⁵⁰⁹⁸ See para. 3847. See also Prosecution's updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), para. 55; Prosecution pre-trial submissions (Merhi case), annex A, para. 50.

⁵⁰⁹⁹ Exhibit P1222 (Call sequence table of Purple 095 with SMS content); exhibit P523 (SMS call sequence table of Purple 018); exhibit 3D429 (SMS call sequence table of Purple 231).

⁵¹⁰⁰ Prosecutor's opening statement, T. 16 January 2014, p. 103.

⁵¹⁰¹ Prosecutor's opening statement, T. 16 January 2014, pp 77, 102-103; Prosecutor's opening statement regarding Hassan Habib Merhi, T. 18 June 2014, pp 39-40, 44-47, 67-68.

of the case, however, did not repeat this argument from the opening submissions, nor submit that this had been established.

2453. The Prosecution's cell site expert, Mr Philips, did not analyse the characteristics of the Purple mobiles. The Trial Chamber allowed the Prosecution investigator, Mr Platt, to provide expert opinion evidence—within the defined area of his expertise—on their role.⁵¹⁰² Prosecution analyst Mr Andrew Donaldson also provided overview evidence regarding their subscription, contact and geographic profiles and usage. He attributed them to Mr Merhi, Mr Oneissi and Mr Sabra. He wrote three reports in which he positively concluded that each of the three was using the mobile attributed to them, describing it as single use attribution.⁵¹⁰³

2454. Mr Platt explained that the Purple mobiles did not present the characteristics of 'mission' mobiles. They were not used in a covert fashion or for any covert work such as surveillance.⁵¹⁰⁴ In his view, the Purple mobiles' activity around the Arab University Mosque was quite limited and static, coinciding with the 'cultivation of the Subjects at the mosque' and they were used there on an 'irregular basis'.⁵¹⁰⁵ This distinguishes their activity from Mr Hariri's surveillance, which occurred in 'unique locations, operating in close proximity of him ... and following him'.⁵¹⁰⁶

2455. According to Mr Platt, this was not coincidental. Rather it was consistent with the users' involvement in the crime, as the three Accused simultaneously and abruptly discarded their Purple mobiles, which they had been using for years, in the days after the attack.⁵¹⁰⁷

⁵¹⁰² As the Prosecution did not ask its cell site expert, Mr Philips, to analyse Purple 018 and Purple 095, it mainly relied upon Mr Platt's analysis and opinion evidence. The Trial Chamber declared Mr Platt qualified to provide expert opinion on matters connected with the surveillance of criminal networks, and the identification and organisation of covert communication networks, including evidence on Purple mobiles. Decision on expertise (Mr Platt); Decision clarifying Mr Platt's area of expertise.

⁵¹⁰³ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi); exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra); exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi).

⁵¹⁰⁴ Gary Platt, T. 7 February 2017, pp 60, 62, T. 14 February 2017, pp 89-90.

⁵¹⁰⁵ Gary Platt, T. 7 February 2017, p. 60, T. 14 February 2017, pp 89-90.

⁵¹⁰⁶ Gary Platt, T. 7 February 2017, p. 60.

⁵¹⁰⁷ Gary Platt, T. 7 February 2017, pp 60-63, T. 9 February 2017, pp 66-67, T. 14 February 2017, p. 90, T. 15 March 2017, pp 79-81, T. 21 March 2017, p. 33. See chapter XII 'Claim of responsibility for the attack on Rafik Hariri', (H) 'The non-covert nature of the use of the Purple mobiles'.

(e) Discovery of Purple mobiles

2456. The alleged role of the Purple mobiles in Mr Hariri's assassination was apparently not discovered until 2008. The UNIIIC only found the Purple mobiles when it obtained new relevant information in November 2008, long after the ISF and UNIIIC had discovered the roles of the colour-coded network mobiles. Mr Donaldson explained that this was because of 'the extremely low forensic visibility' of their use.⁵¹⁰⁸

3. Submissions

2457. The submissions of the Parties regarding the Purple mobiles' activities are considered in detail below in the analysis of the claim of responsibility for the attack on Mr Hariri on 14 February 2005. A brief summary suffices here.

2458. The Prosecution argues that the Purple mobiles used the COLA and some adjacent cells, which provided coverage to the area near the Arab University Mosque area, in an 'extraordinary' fashion over the ten-day period from 29 December 2004 until 7 January 2005. This was when 'Mohammed' in the mosque approached candidates for making the false claim of responsibility.⁵¹⁰⁹

2459. During this so-called 'COLA phase', there was an exceptional increase in contact between Purple 095 and Purple 018.⁵¹¹⁰ The Prosecution final trial brief states that their 'use of the COLA cells over this period was an exceptional activity for each of these two phones and not part of their regular usage patterns'.⁵¹¹¹ The mobiles using the COLA cells, Purple 018 and 095, also had contact on each day with Mr Merhi's Purple 231 while they were in the mosque area, or shortly before or afterwards.⁵¹¹²

2460. The evidence of their presence around the mosque, according to the Prosecution, must be taken with the Purple mobiles connecting to cells near the payphones used to make the calls to

⁵¹⁰⁸ Andrew Donaldson, T. 19 September 2017, pp 16-22, T. 29 September 2017, p. 57; exhibit 5D418 (Investigator notes – Finding the Communication Networks), para. 44 (b); exhibit P2122 (Interview of Wissam Al-Hassan, 16 June 2012), pp 125-126, 146.

⁵¹⁰⁹ Prosecution final trial brief, paras 533-543. The heading to this section of the final trial brief is 'Extraordinary Purple Phone Activity Over the Ten Days Until 7 January 2005 (the COLA Phase)'.

⁵¹¹⁰ Prosecution final trial brief, paras 544-548.

⁵¹¹¹ Prosecution final trial brief, para. 535.

⁵¹¹² Prosecution final trial brief, para. 534; Prosecution closing submissions, T. 21 September 2018, pp 82-83.

Reuters and Al-Jazeera, and the tree where the video was placed, on the afternoon of Monday 14 February 2005.⁵¹¹³

2461. The Prosecution argues that the contact profile of Purple 231, which included men of similar age to Mr Merhi, people affiliated with Hezbollah, including Mr Ayyash, Mr Oneissi, Mr Sabra and Mr Ali Ammar, suggests that it may be a ‘non-personal phone’ and ‘was used by a cadre of Hezbollah’.⁵¹¹⁴

2462. The Merhi Defence responded that the Prosecution cannot determine the nature of Purple 231 and there is no evidence that Mr Merhi was a Hezbollah ‘cadre’.⁵¹¹⁵ Purple 231’s contact profile is not probative of its ‘specific purpose’ and Mr Donaldson did not offer any evidence to support this claim.⁵¹¹⁶ Mr Donaldson’s evidence and the Prosecution case are inconsistent in this regard.⁵¹¹⁷

2463. The Merhi Defence submits that no reliable inferences can be drawn from the behaviour of the Purple mobiles during the ‘COLA phase’, as the cell data from before 1 October 2004 is incomplete. It is therefore impossible to establish that the activity of the Purple mobiles was exceptional during a ‘COLA phase’ period, when the data for the remainder of their attribution period is incomplete.⁵¹¹⁸ Further, throughout the amended consolidated indictment period, neither Purple 231 nor Green 071 activated cells near the mosque. The activity of the other two Purple mobiles around the mosque was not exceptional.⁵¹¹⁹

2464. Pointing to the general limitation of the expressed accuracy of sixty to seventy per cent of Alfa’s predicted best server coverage area maps, the Oneissi and Sabra Defence argue that the cell site data is incomplete, and that therefore the Prosecution’s inferences that the Purple mobiles’ activity was exceptional are speculative.⁵¹²⁰

⁵¹¹³ See more detailed submissions set out in chapter XII ‘Claim of responsibility for the attack on Rafik Hariri’.

⁵¹¹⁴ Prosecution final trial brief, paras 120-123; Prosecution closing submissions, T. 12 September 2018, pp 48-49.

⁵¹¹⁵ Merhi Defence final trial brief, paras 296-304.

⁵¹¹⁶ Merhi Defence final trial brief, paras 305-312.

⁵¹¹⁷ Merhi Defence final trial brief, paras 297, 312.

⁵¹¹⁸ Merhi Defence final trial brief, paras 498-500.

⁵¹¹⁹ Merhi Defence final trial brief, paras 492, 494-497.

⁵¹²⁰ Oneissi Defence final trial brief, paras 181-188, 191-195; Sabra Defence final trial brief, paras 588-589, 600-601.

2465. The Oneissi Defence submits that even had Mr Oneissi been in the mosque area, this could have been for ‘non-criminal purposes’, and the Prosecution failed to conduct adequate investigations into whether Mr Oneissi had any link to the Tariq-El-Jdideh area, the mosque’s locality.⁵¹²¹ Further, the presence of Purple 095 in the area was not ‘exceptional’, as the Prosecution claims.⁵¹²² In its final trial brief, the Oneissi Defence summarised:

The Prosecution allegation amounts to the following: because (on the available data) 095 activated the COLA cells on five days before 22 December 2004, Mr. Oneissi was only ever in Tariq-el-Jdideh on five days before 22 December 2004. This assertion is clearly invalid; it is impossible to ascertain how often Mr. Oneissi was present in Tariq-el-Jdideh. Clearly it is possible that Mr. Oneissi was present in Tariq-el-Jdideh without using a mobile phone; people do not use their mobile in every neighbourhood they visit.⁵¹²³

2466. The Sabra Defence submits that the ‘sudden and unusual use’—on the Prosecution’s case—of the COLA cells by the Purple mobiles during the ‘COLA phase’ cannot conclusively establish that their presence in the area was directly connected with the preparation of Mr Abu Adass’s abduction.⁵¹²⁴ Additionally, the Prosecution failed to consider reasonable alternatives for the elevated contact frequency between Purple 018 and Purple 095 during the ‘COLA phase’ and to consider reasonable alternatives for the presence of Purple mobiles in Tariq-El-Jdideh.⁵¹²⁵

4. Findings

2467. The Prosecution pleaded that the Purple mobiles, by virtue of their usage, were personal and non-closed user group mobiles. The Trial Chamber received extensive evidence that the Purple mobiles were everyday non-covert mobiles. This was in contrast to evidence concerning the colour-coded ‘network mobiles’ which formed communication networks and ‘mission phones’. As a part of a special type of mobile network these mobiles are dedicated to a specific objective or mission that is covert and almost always ‘nefarious’.⁵¹²⁶

⁵¹²¹ Oneissi Defence final trial brief, paras 207-209.

⁵¹²² Oneissi Defence final trial brief, paras 189-195.

⁵¹²³ Oneissi Defence final trial brief, para. 190.

⁵¹²⁴ Sabra Defence final trial brief, para. 615.

⁵¹²⁵ Sabra Defence final trial brief, paras 600-606, 616-618.

⁵¹²⁶ Gary Platt, T. 4 April 2017, p. 25.

2468. The Purple mobiles, by contrast, were used for personal purposes such as to call family and friends and for ‘normal’ non-covert communications. They did not have the characteristics of ‘mission phones’ and were not used covertly.⁵¹²⁷

2469. This is uncontested. The Defence challenges relate to the attribution of the Purple mobiles to Mr Merhi, Mr Oneissi and Mr Sabra, the roles of the Purple mobiles in the conspiracy and other crimes charged and the Prosecution’s allegations that the Accused used their personal mobiles to participate in it.⁵¹²⁸ The Defence also attacked the underlying reliability of the Prosecution’s cell site evidence, and particularly Mr Donaldson’s analysis. There were also no text messages in evidence between the three mobiles that could have shed some light on the nature of their communications.

2470. The evidence establishes that the users of the three Purple mobiles knew each other. The call data records, as extracted into call sequence tables, show 397 contacts between the three Purple mobiles between 26 December 2002 and 22 December 2004. The latter date is that pleaded for the entry of Mr Merhi, Mr Oneissi and Mr Sabra into the conspiracy charged in count one of the amended consolidated indictment and from which their pleaded role in counts six to nine commences.

2471. In the overall period, there were 170 contacts between Mr Oneissi’s Purple 095 and Mr Merhi’s Purple 231, 190 between Mr Sabra’s attributed Purple 018 and Mr Merhi’s Purple 231 and 36 between Mr Oneissi’s Purple 095 and Mr Sabra’s attributed Purple 018.

2472. Between 22 December 2004 and 14 February 2005, however, there were 93 contacts between the three mobiles, which represents a statistical increase over the period. This is broken down into:

- one call between Purple 231 and Purple 095 on 22 December 2004;⁵¹²⁹

⁵¹²⁷ Gary Platt, T. 7 February 2017, pp 60, 62.

⁵¹²⁸ *See for example*, Merhi Defence final trial brief, paras 191-200, 277, 533-534; Oneissi Defence final trial brief, paras 23-42, 171-172, 553, 574-576, 668-669; Sabra Defence final trial brief, paras 192-419, 469-478, 481-482, 492, 494, 499-500, 504, 513, 518.

⁵¹²⁹ Exhibit P527, p. 106; exhibit P1223, p. 253.

- ten calls between the three between 23 and 28 December 2004;⁵¹³⁰
- 52 calls between 29 December 2004 and 7 January 2005;⁵¹³¹
- 18 calls between 8 January and 13 February 2005;⁵¹³² and
- 12 calls in the afternoon of 14 February 2005. Seven were between Purple 018 and Purple 231, and five were between Purple 018 and Purple 095.⁵¹³³

2473. These communications were concentrated between Wednesday 29 December 2004 and Friday 7 January 2005, and then again on Monday 14 February 2005.

2474. The cell site and call data records show Purple 018's and Purple 095's areas of usage during the so-called 'COLA phase', namely, between 29 December 2004 and 7 January 2005 and the seven preceding days.

2475. In this period, Purple 018 connected to one of the sixteen cells near the Arab University Mosque, including the three COLA cells, for about 38.5 per cent of its calls.⁵¹³⁴ For Purple 095 this ratio was less, around 14.7 per cent.⁵¹³⁵ The connections to the cells near the mosque coincided with an increased frequency in the contacts between the three mobiles.

2476. The Trial Chamber, however, underlines that the call data records before August 2004 are incomplete. Until that date there were no records of where Alfa mobiles were when they received calls, meaning that it is impossible to know if or how many times these mobiles connected to the COLA and adjacent cells before then.

2477. There were also no end cell records available until 1 October 2004, which signifies that only the cells to which a mobile connected at the start of a call was recorded. Thus, if a Purple mobile had connected to a cell near enough to a COLA or adjacent cell and in a call of sufficient

⁵¹³⁰ Exhibit P527, pp 106-107; exhibit P1223, pp 254-256; exhibit P1221, p. 278.

⁵¹³¹ Exhibit P527, pp 107-109; exhibit P1223, pp 257-261; exhibit P1221, pp 279-283.

⁵¹³² Exhibit P527, pp 109-112, 114; exhibit P1223, pp 262, 264-265, 267-270; exhibit P1221, pp 284-285, 287-288.

⁵¹³³ Exhibit P527, pp 116-117; exhibit P1223, pp 280-281; exhibit P1221, pp 291-292. The last contact of Purple 231 and Purple 095 occurred on 26 January 2004. Exhibit P527, p. 112; exhibit P1223, p. 270.

⁵¹³⁴ Purple 018 connected to one of these cells for 70 of its 182 calls.

⁵¹³⁵ Purple 095 connected to these cells for 35 of its 238 calls.

length to travel there during the call, whether it connected to a COLA or adjacent cell as the call's end cell is unknowable.

2478. Further, and similarly, SMS cell site records are only available for Alfa mobiles from 1 August 2004. This means that there is no record before that date of where the mobile was when it sent or received text messages. A mobile could have received or sent a text from any of the COLA or adjacent cells without a record of this cell activation.

2479. In this respect, the Oneissi Defence submission extracted above at paragraph 2465 has some strength and applies equally to Purple 018, attributed to Mr Sabra. Purple 018 had 8,379 contacts (calls and SMS) between 22 November 2001 and 16 February 2005, a period of 1,184 days, at an average of just over seven per day. Purple 095's equivalent figure, between 9 January 2003 and 16 February 2005 is of 8,139 calls and texts over 770 days, making an average of around 10.5 per day.

2480. There is no evidence of whether the users of these mobiles always carried them, and even if they did, they could pass daily through the Tariq-El-Jdideh area without activating the COLA or adjacent cells. Or they could pass through and send and receive texts, before 1 August 2004, without a recorded cell activation.

2481. During the so-called 'COLA phase', the two Purple mobiles were also frequently in contact with Mr Merhi's Purple 231, which was always away from the mosque area, and was mostly connecting to SFEIR3 in southern Beirut. The cells that Purple 018 and 095 activated during the twelve calls between the Purple mobiles over the afternoon of 14 February 2005, relatively close in time to the calls from payphones to Reuters and Al-Jazeera and the video collection, are described and examined in more detail below in assessing the evidence related to the claim of responsibility for the attack on Mr Hariri.⁵¹³⁶

2482. Whether these contacts between the three Purple mobiles were 'unusual' or 'highly concentrated and exceptional' or represented a 'dramatic increase', or 'dramatic fall' in their communications, as the Prosecution contends,⁵¹³⁷ depends on the context of the calls and connecting them to some pleaded events for which there is positive evidence. The evidence of the

⁵¹³⁶ See chapter XII 'Claim of responsibility for the attack on Rafik Hariri'.

⁵¹³⁷ Prosecution final trial brief, paras 543-548, 732-736.

Purple mobiles' attribution to Mr Merhi, Mr Oneissi and Mr Sabra, the mobiles' contact profiles, call patterns and the specific pleaded roles of the three men in the preparation and the delivery of the claim of responsibility for the attack on 14 February 2005, and the Parties' related submissions are analysed below.⁵¹³⁸

2483. The Trial Chamber has found regarding the Accused's and Mr Badreddine's alleged associations with Hezbollah that it received insufficient evidence about Mr Merhi to conclude that he was a Hezbollah supporter.⁵¹³⁹ It follows, that the Prosecution's submission that Purple 231 'may be a "non-personal phone"' and 'was used by a cadre of Hezbollah' has not been established.

2484. The simultaneous discarding of the Purple mobiles over the two days after the attack has similarities to what expert evidence described as 'the closure of a network' for covert reasons. The Trial Chamber is satisfied that, at least on first impression, the Purple mobiles share this characteristic with network or 'mission' mobiles. As Mr Platt stated, after a crime, and to lower the likelihood of an investigation identifying their users, such mobiles may simultaneously cease operations.⁵¹⁴⁰

2485. However, while simultaneously ceasing activity is an organisational characteristic of a covert network, the Purple mobiles were otherwise not used covertly. This is unlike covert users who distance themselves from their mobiles to prevent their identification. The Trial Chamber has therefore examined the evidence in its totality to reach its conclusions as to whether discarding the three personal Purple mobiles is an inference available from the evidence that is only consistent with the guilt of any of the three Accused.⁵¹⁴¹

2486. The Trial Chamber finds that the users of Purple 018, Purple 095 and Purple 231 knew each other and communicated regularly between 26 December 2002 and 14 February 2005. The 397 contacts between the three mobiles between 26 December 2002 and 21 December 2004, and

⁵¹³⁸ See chapter IX 'Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine', (C) 'Hassan Habib Merhi', (D) 'Hussein Hassan Oneissi—Purple 095' and (E) 'Assad Hassan Sabra—Purple 018', and chapter XII 'Claim of responsibility for the attack on Rafik Hariri'.

⁵¹³⁹ See para. 762.

⁵¹⁴⁰ Gary Platt, T. 7 February 2017, pp 60-63, T. 9 February 2017, pp 66-67.

⁵¹⁴¹ See chapter XII 'Claim of responsibility for the attack on Rafik Hariri', (H) 'The non-covert nature of the use of the Purple mobiles'.

the 93 in the relevant indictment period, namely, from 22 December 2004 to 14 February 2005, demonstrate this. Twelve of these were on Monday 14 February 2005.

2487. It is statistically correct that the concentration of calls between the three increased during the relevant indictment period. In this 55-day period, there were 93 calls, as opposed to 397 over the preceding period of just under two years, or 726 days. Statistically, over the period, and just taking the base figures, the calls increased from an average of around one every two days to around 1.6 per day. Or, using another calculation, it increased from around three and a half contacts a week to around 13 a week over a seven-week period. In raw terms, this represented a more than threefold increase in contacts.

2488. The Prosecution's primary submission, noted above, that the activations of the COLA cells 'was not part of their regular usage patterns' is only partially accurate. While the incomplete cell site records show that there were more activations in the relevant indictment period by Purple 018 and Purple 095 than before, the Prosecution did not present an analysis of the mobile users' typical use patterns and how their usage differed during the relevant indictment period. There was no evidence of Mr Merhi's, Mr Oneissi's and Mr Sabra's occupations, social or family activities, or their typical daily routines from which call patterns could be discerned, and thus whether there were significant deviations from these. The Prosecution in this respect did not produce a unique geographical signature for any of the three Accused. Without this, 'regular usage patterns' are difficult to discern.

2489. Thus to interpret the raw data showing an increase in activations of the COLA and adjacent cells in the relevant indictment period, the calls must be seen in the overall context and connected to provable events. These include whether the Prosecution has proved that Mr Oneissi was 'Mohammed', that Mr Oneissi and Mr Sabra participated in Mr Abu Adass's disappearance and preparing the false claim video and that they made the four calls to Reuters and Al-Jazeera on the afternoon of Monday 14 February 2005. The findings on each of these are set out separately.

IX. ATtribution OF MOBILE TELEPHONES TO THE ACCUSED AND MUSTAFA AMINE BADREDDINE

A. Single user analysis

1. Introduction

2490. The case against the four Accused—and proving Mr Badreddine’s pleaded role in the conspiracy charged—depends upon the Prosecution successfully proving that they were using specified mobiles. The result of this is termed ‘attribution’. Proving this attribution of specified personal mobiles is the first step towards cell site co-location analysis, which attempts to determine whether they were also simultaneously using certain colour-coded network mobiles and their attributed personal mobiles. If they were, the next step is determining whether they participated in committing the crimes charged.

2491. The Prosecutor in the amended consolidated indictment defines ‘attribution’ and ‘co-location’ as:

Attribution is evidence that supports the assertion that a SIM card (telephone number) was used by a specific person (the phone user) during a particular time period. Attribution evidence may include, but is not limited to: subscriber information, witness statements, other forms of documentary evidence and analysis of Call Data Records, including co-location analysis.

Co-location analysis is used as a form of attribution evidence where multiple phones are attributed to a single user. It is an analytical technique designed to determine whether an identified person consistently uses two or more phones, at least one of which is a mobile phone.⁵¹⁴²

2492. This part of the Prosecution case is factually very complicated. Neither the Accused nor Mr Badreddine had mobile subscriptions in their own names, which could have made the attribution analysis easier. It appears that the Lebanese investigating authorities, and then the UNIIIC and the Prosecution, worked ‘backwards’—as they had to—by first identifying the patterns of mobile use in suspected closed networks that appeared to be connected with the

⁵¹⁴² Amended consolidated indictment, para. 14 (b)-(c).

surveillance, and or assassination of Mr Hariri, and then attempting to find mobiles that were co-locating with these identified network mobiles. They then had to identify who was using the mobiles that appeared to be co-locating with the network mobiles.

2493. From there, as none of the co-locating non-network mobiles were registered in either Mr Badreddine's or an Accused person's name, the investigators closely examined the circumstances surrounding their use to attempt to find their users. The UNIIIC and the Prosecution engaged in a complex and time-consuming inquiry checking for everything that could be gleaned from the 'associations' of a targeted mobile, attempting to determine who was using it, to connect it with a suspect, or to identify a potential new suspect.

2494. This inquiry included analysing each mobile's pattern of use—such as where it was used, who it was in contact with and how often and who its contacts contacted. This included examining SMS content and anything else connecting it with its user, such as whether it was used as a contact number in official and commercial dealings. In its vast investigation, the Prosecution used a combination of sources for this: checking official records, commercial documents, scrutinising the use patterns of the mobiles of contacts of the suspect mobiles and contacting numerous people who may have had contact with the five suspects—and presumably other suspects who were not charged, such as Subjects 5 to 9.

2495. Describing the efforts expended in this, the Prosecution, in its final trial brief, explained that:

The attribution analysis was captured in five reports authored by Prosecution analyst Andrew DONALDSON, where he attributes the usage of both non-network and network phones to the Accused and to BADREDDINE. Each report analyses thousands of calls between many mobile telephones, SMS content, witness statements and testimonies, extracts from official Lebanese records, and various documents including university, medical and subscriber records.

The Prosecution relies on the co-location analysis of PHILIPS and of DONALDSON, which shows that **AYYASH**, **MERHI** and **BADREDDINE** each used multiple phones, including non-network and network phones.⁵¹⁴³

2496. Apart from Mr Donaldson, the Prosecution's cell site expert, Mr J. E. Philips, analysed the calls and cell use of the personal mobiles attributed to Mr Ayyash, Mr Merhi and Mr Badreddine, as well as the network mobiles, to offer an opinion as to whether, where relevant, a personal and a network mobile had a single user.

2497. The Prosecutor relied upon Mr Donaldson's non-expert cell site opinions in submitting indictments for confirmation. The Prosecutor filed no expert cell site evidence in the supporting materials accompanying his initial indictments in 2011, nor in the amendments filed in 2012. The Prosecution case, however, relied upon cell site evidence and specifically in proving that Mr Ayyash and Mr Badreddine were using the pleaded network mobiles. The attribution was based on proving that these mobiles were co-locating with their personal mobiles, and additionally for Mr Ayyash, with the Red and Blue mobiles.

2498. For Mr Oneissi and Mr Sabra, the case against them relied upon cell site evidence of their personal, Purple colour-coded, mobiles activating cells in places relevant to the indictment in January 2005 and on the afternoon of Monday 14 February 2005.

2499. The Prosecution engaged Mr Philips as a cell site expert in mid-2012, and he produced his first report in September 2012, a general report entitled, 'Cell site analysis as applied to GSM networks'. He produced his first report on an Accused, Mr Ayyash, in October 2012, followed by one on Mr Badreddine in November 2012, and one on 'Suspects 4, 5, 6, 7 & 8' in December 2012. In respect of Mr Merhi, against whom an indictment was submitted in June 2013, Mr Philips produced his first report, mid-trial, in September 2014.

⁵¹⁴³ Prosecution final trial brief, paras 83-84.

2. Mr J. E. Philips's evidence

(a) Single user analysis

2500. Mr Philips, as noted above, came into the case well after it was indicted. He prepared eleven reports and revisions relevant to single user analysis and co-location.⁵¹⁴⁴ He prepared specific reports for Mr Ayyash, Mr Badreddine and Mr Merhi—who he (initially) knew as respectively Suspects 1, 2 and 3—and a combined report for Subjects 4, 5, 6, 7 and 8. He also prepared a revised report that took end cell data into account, for Suspects 1, 2, 4, 5, 6, 7 and 8. Additionally, he used slides in his testimony in court to facilitate understanding of his methodology and reports.⁵¹⁴⁵

2501. He explained that single user analysis is a forensic technique used to determine whether a single person was using two or more mobiles, or alternatively that they were not being used by the same person.⁵¹⁴⁶ The analysis has two components. The first is to demonstrate that use of the mobiles in question is 'consistent with co-location', either together geographically or that the distance that they are apart 'could be travelled in the time between the calls'.⁵¹⁴⁷ The second is that the calling patterns of the mobiles should be consistent with single person use.⁵¹⁴⁸

⁵¹⁴⁴ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction); exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash); exhibit P1112 (Expert report of John Edward Philips – Single user analysis, Suspects 4, 5, 6, 7 and 8); exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review); exhibit P1114 (Expert report of John Edward Philips – Red mission phones); exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones); exhibit P1116 (Expert report of John Edward Philips – Green mission phones); exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones); exhibit P1936 (Expert report of John Edward Philips – Single user analysis in relation to Blue 322, Blue 324 and Blue 585); exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine); exhibit P1938 (Expert report of John Edward Philips – Single user analysis with end cell review, Suspect 3, Mr Merhi); exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi).

⁵¹⁴⁵ Exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips).

⁵¹⁴⁶ John Edward Philips, T. 19 April 2017, pp 85-86; exhibit P1935, slide 4.

⁵¹⁴⁷ John Edward Philips, T. 19 April 2017, pp 93-94; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), para. 10.4.9.1.1.7; exhibit P1935, slide 10.

⁵¹⁴⁸ John Edward Philips, T. 19 April 2017, pp 94-97; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), para. 10.4.9.1.3.2; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), paras 3.1.2.4-3.1.2.5; exhibit P1112 (Expert report of John Edward Philips – Single user analysis, Suspects 4, 5, 6, 7 and 8), paras 3.1.2.4-3.1.2.5; exhibit P1935, slide 12; exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), paras 3.1.2.4-3.1.2.5; exhibit P1938 (Expert report of John Edward Philips – Single user analysis with end cell review, Suspect 3, Mr Merhi), paras 3.1.2.4-3.1.2.5.

(b) General cell site techniques for attribution and co-location analysis

2502. Mr Philips, in his general report, described the attribution and co-location techniques that are used in cell site analysis to attribute mobile usage to a specific user. He emphasised that associating a mobile with someone and attributing it to that person are different concepts. They are ‘quite different and association of a mobile phone with a person is normally not sufficient to qualify that that mobile phone was being used by the suspect at the time of the incident’.⁵¹⁴⁹

2503. He explained the sources that could be used to attribute a specified mobile to a person. These include mobile number registration details, and this is mainly for post-paid (account) mobiles, as networks maintain subscriber data such as full name, full address, home and work telephone and the mobile’s IMSI and SIM numbers. There are also text messages, payment methods, data stored on the handset and SIM, contacts stored in the mobile, voice memos, personal photographs and videos stored on the mobile, memo pads, music, diaries, contacts with institutions such as doctors, dentists, banks, insurance companies and so on that may record contacts or calls, voicemails and voicemail greetings, credit card usage and swapping two SIMs between a handset. SMS content can also illustrate the mobile user’s activity at the time of the messages.⁵¹⁵⁰

2504. Mr Philips referred to an example of two mobiles that have different SIMs and which the cell siting demonstrates are obviously being used by two separate people. However, ‘when the IMEIs in the two sets of call data records suddenly swap’, it shows that ‘the users of the two mobiles quite likely know one another’. This means that ‘they probably meet up within the timeframe determined by the call data records’ and ‘in a location determined by *Cell Site Analysis*’ of the two mobiles phones.’⁵¹⁵¹ In other words, swapping handsets between SIMs indicates that the previously separate users of the different mobiles likely know each other.

2505. ‘Cell utilisation analysis’ examines the use of cells by mobiles of interest and shows the geographical concentrations of calls.⁵¹⁵² This can associate the user(s) with presence at a location of interest, depending on the time period over which the cell use occurs. Mr Philips explained that:

⁵¹⁴⁹ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 134.

⁵¹⁵⁰ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 134-141.

⁵¹⁵¹ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 140-141.

⁵¹⁵² See generally exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 150-157.

Use of a mobile phone, and the provision of all data records with cell information per call, provides a geographical footprint of the movements of the user of the mobile phone over the period of interest - as long as calls regularly occur.⁵¹⁵³

2506. Patterns of calls, including the absence of calls, correspond to a person's capability to make them. The location and timing of calls reflect the 'locations of common use'. Mr Philips provided the example of the mobile user who 'will typically get up in the morning, having normally slept at the place of abode, may go out to work, meet friends for recreational purposes'. The user's pattern of movement, as shown by the calls made and received during this period, can present a 'unique geographical signature' as long as they occur over a period.⁵¹⁵⁴

2507. Mr Philips's report explained the concept of co-location, including tests to determine whether the mobiles were together or could have been used by one person or two.⁵¹⁵⁵

Co-location is a term attributed to 2 (or more) mobile phones being cell sited in the same area as one another and/or travelling in consonance i.e. travelling over the same route over the same time period such that the users of the mobile phones could be together.

This can be employed to show that either the 2 mobile phones are being used by 2 separate people, and therefore the 2 people are travelling together, or that the 2 mobile phones are being used by a single person.⁵¹⁵⁶

2508. In other words, a single person could be using two or more mobiles if (a) certain calls by the respective mobiles are registered in the same cell coverage area, and (b) other less proximate calls are made within a distance that could be travelled within the time separation between the calls.⁵¹⁵⁷ In his testimony, Mr Philips further defined co-location as a forensic technique—based on analysing call data records and geography—used to prove that a single person was simultaneously using different mobiles.⁵¹⁵⁸

⁵¹⁵³ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 151.

⁵¹⁵⁴ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 151.

⁵¹⁵⁵ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 142-150.

⁵¹⁵⁶ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 142, paras 10.4.9.1.1.1-10.4.9.1.1.2.

⁵¹⁵⁷ John Edward Philips, T. 19 April 2017, pp 93-94; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 143, para. 10.4.9.1.1.7; exhibit P1935, slide 10.

⁵¹⁵⁸ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), paras 3.1.1.1.3-3.1.1.4; John Edward Philips, T. 19 April 2017, p. 85.

2509. These definitions appear not to be in dispute in the proceedings. The dispute concerns the reliability in general and specific senses of the Prosecution's cell site evidence, and hence whether it can establish beyond reasonable doubt that the Accused and Mr Badreddine were using certain mobiles.

2510. Mr Philips also explained that analysing the mobile numbers in contact with a mobile of interest is not essential to cell siting, meaning the cell to which a mobile is connecting. Rather, it is an attribution technique within cell site reports.⁵¹⁵⁹ 'In order to provide a pattern of significance, the period of analysis has to occur over a selected period'.⁵¹⁶⁰ A period of only a few days is often insufficient to represent a pattern indicative of a particular activity.⁵¹⁶¹

2511. He observed that cell siting may be meaningless unless a specific mobile can be attributed to someone through cell site analysis. Attribution is essential to support the cell site analysis. In this sense, the work of attributing a mobile to a named person is relatively limited in scope and mainly relates to analysing the cells that the mobile is using. Mr Philips noted that although each piece of attribution evidence in isolation may not be conclusive, compounding several of them can provide conclusive evidence.⁵¹⁶²

(c) Mr Philips's methodology

2512. In analysing the call data records, Mr Philips used two 'time criteria'—a set time-period within which a series of calls is analysed—to attempt to determine whether a mobile potentially had a single user.⁵¹⁶³

2513. These were of calls on different mobiles occurring within five minutes of one another, and two calls of interest happening within 60 minutes.⁵¹⁶⁴

2514. He explained that when the call data records show two alleged single user mobiles making successive calls within five minutes, the mobiles should be in the same area, relatively close

⁵¹⁵⁹ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis, p. 157, paras 10.4.11.1.1.1-10.4.11.1.1.6.

⁵¹⁶⁰ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 157, para. 10.4.11.1.1.3.

⁵¹⁶¹ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 157, paras 10.4.11.1.1.3, 10.4.1.1.1.5, *see generally* pp 157-162, using a case study in illustration.

⁵¹⁶² Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 133-134.

⁵¹⁶³ John Edward Philips, T. 20 April 2017, p. 8.

⁵¹⁶⁴ John Edward Philips, T. 20 April 2017, pp 8-11; exhibit P1935, slides 21-24.

together and, therefore, potentially co-locating. The rationale is that if a single user was using both mobiles, they would be in the same location, or one close to it, within that five minute period.⁵¹⁶⁵

2515. In light of Lebanon's geographical size, Mr Philips selected a period of 60 minutes for his comparisons.⁵¹⁶⁶ For the purposes of the analysis, each set of calls—such as between a 'mobile 1' and a 'mobile 2', and a 'mobile 3' and a 'mobile 4'—is described as a 'pair of calls'; both Mr Philips and Mr Donaldson used this term.

2516. Mr Philips explained that a certain distance can be travelled between two places in the time between two successive calls. His analysis, however, does not specify with precision how much time is needed to travel between them. This is because the time of the calls does not necessarily represent the mobile users' time of departure from, and arrival into, the cell registering the calls.⁵¹⁶⁷ He explained why:

So when we have two adjacent calls, one in Beirut, one in Tripoli, the time it takes to travel between the two is most probably less than the difference between the two times of the calls. And that relates to all cell siting. Two adjacent calls are not necessarily the last time it's in one area and the first time it's in the next area.⁵¹⁶⁸

2517. Mr Philips also used a 'distance criterion' for his analysis of cells providing common coverage, contiguous cells and cells apart from one another.⁵¹⁶⁹ The following three slides entitled 'same cell', 'overlapping cell' and 'contiguous cell', from his presentation, exhibit P1935, illustrate this:

⁵¹⁶⁵ John Edward Philips, T. 20 April 2017, pp 8-9; exhibit P1935, slide 22.

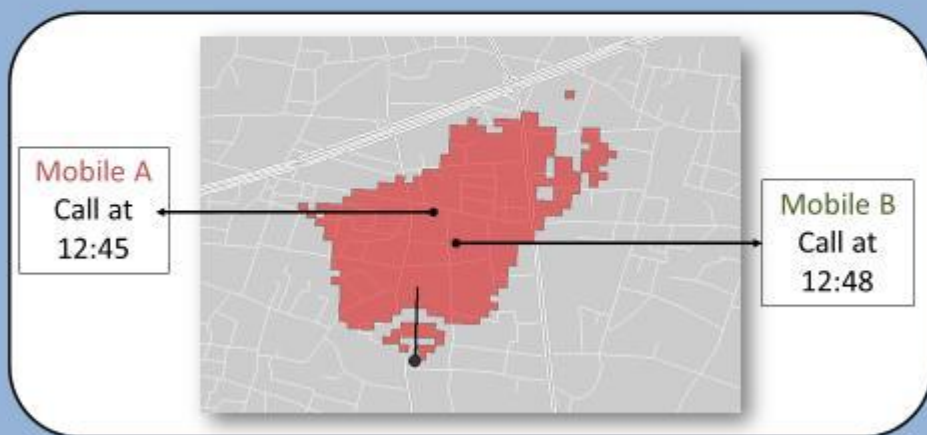
⁵¹⁶⁶ John Edward Philips, T. 20 April 2017, pp 9-11, T. 26 April 2017, p. 69; exhibit P1935, slides 23-24.

⁵¹⁶⁷ John Edward Philips, T. 20 April 2017, p. 12.

⁵¹⁶⁸ John Edward Philips, T. 20 April 2017, p. 12.

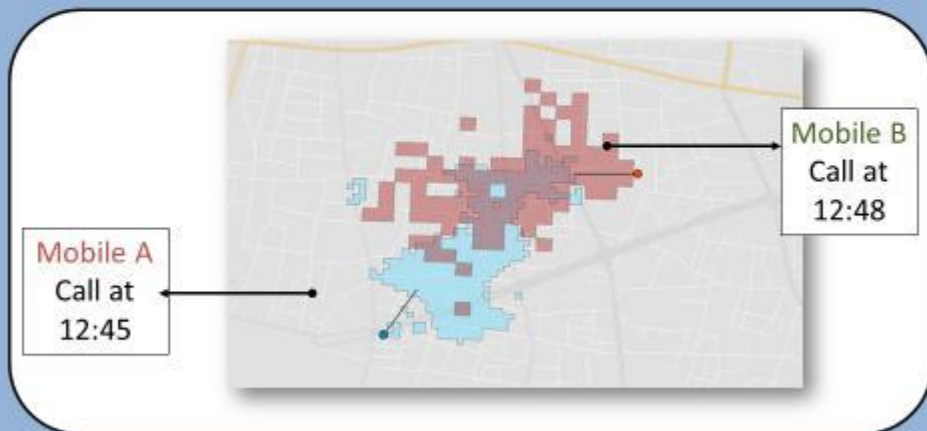
⁵¹⁶⁹ John Edward Philips, T. 20 April 2017, pp 12-13; exhibit P1935, slide 25.

i. a) Same Cell

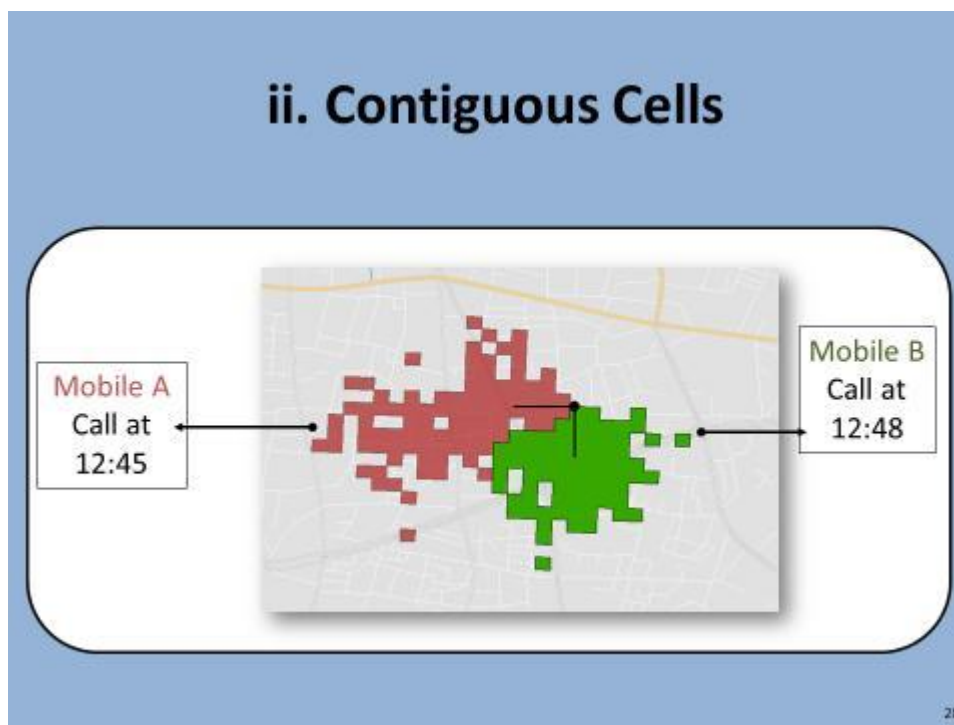


26

i. b) Overlapping Cells



27



*Exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips),
slides 26-28*

2518. Mr Philips explained that when two mobiles use the same cell on the same network, or cells on different networks that have overlapping coverage, they are within an area of common coverage.⁵¹⁷⁰ His report states that, 'Over any cellular network, there will be many areas of best server coverage, each relating to a different cell and, hopefully, providing contiguous coverage over an entire area'.⁵¹⁷¹ 'Contiguous' in this context 'means cells that are touching/adjoining such that at certain locations they have a common best server coverage boundary.'⁵¹⁷² He explained that cells apart from one another are cells that are separated in terms of cell coverage.⁵¹⁷³

2519. He also stated that determining whether multiple mobiles had a single user also relies upon them not being dislocated, meaning that the mobiles are a distance apart which could not be travelled in the time between two successive calls.⁵¹⁷⁴

⁵¹⁷⁰ John Edward Philips, T. 20 April 2017, p. 12; exhibit P1935, slides 26-27.

⁵¹⁷¹ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 68, para. 6.5.1.1.1.3.

⁵¹⁷² Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 68, para. 6.5.1.1.1.3, fn. 13.

⁵¹⁷³ John Edward Philips, T. 20 April 2017, p. 13; exhibit P1935, slide 29.

⁵¹⁷⁴ John Edward Philips, T. 20 April 2017, p. 14.

2520. As determining the route taken by the mobile telephone user and the actual distance travelled is impractical, Mr Philips measured the distance between the centres of the best server coverage of the relevant cells in a straight line.⁵¹⁷⁵ To do this, he relied on Alfa's and Touch's predicted best server coverage maps.⁵¹⁷⁶ He used these maps and the measured distance between the cells to perform his geographical analysis, or 'cell utilisation'.

2521. In general, Mr Philips used the cell masts the mobiles connected to upon initially making or receiving a call, the 'first cell ID'.⁵¹⁷⁷ Later, he supplemented his analysis by including the cell mast to which a mobile connected at the end of a call, the 'last cell ID' or 'end cell ID' and explained whether this additional analysis had an impact on the location of the mobile's user.⁵¹⁷⁸

2522. Mr Philips also analysed Alfa's and Touch's call data records to determine whether calls were made between target mobiles, and if calls overlapped in time. He explained the significance of call patterns. As a general proposition, when one person uses two or more mobiles, calls between them, and calls overlapping in time on them, are unlikely.⁵¹⁷⁹ However, overlapping calls do not necessarily exclude that the same person is using the mobiles. When this occurs, the mobiles have to be using the same or an adjacent cell. Or, when on different networks, those that overlap in predicted best coverage.⁵¹⁸⁰

⁵¹⁷⁵ John Edward Philips, T. 20 April 2017, p. 14, T. 26 April 2017, pp 69-70; exhibit P1935, slides 29-31.

⁵¹⁷⁶ See paras 369, 1573, 1661.

⁵¹⁷⁷ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), paras 5.5.1.1-5.5.1.2.

⁵¹⁷⁸ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), paras 5.5.1.5-5.5.1.9; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review); John Edward Philips, T. 24 April 2017, pp 64-67, 72-83. See also exhibit P1935, slides 494-500, 504-510, 512-515.

⁵¹⁷⁹ John Edward Philips, T. 19 April 2017, pp 96-97, T. 20 April 2017, pp 38-39; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), para. 10.4.9.1.3.2; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), paras 3.1.2.4-3.1.2.5; exhibit P1112 (Expert report of John Edward Philips – Single user analysis, Suspects 4, 5, 6, 7 and 8), paras 3.1.2.4-3.1.2.5; exhibit P1935, slide 12; exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), paras 3.1.2.4-3.1.2.5; exhibit P1938 (Expert report of John Edward Philips – Single user analysis with end cell review, Suspect 3, Mr Merhi), paras 3.1.2.4-3.1.2.5.

⁵¹⁸⁰ John Edward Philips, T. 19 April 2017, pp 94-97, T. 20 April 2017, pp 39-43; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), para. 10.4.9.1.3.2; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), paras 3.1.2.4-3.1.2.5; exhibit P1112 (Expert report of John Edward Philips – Single user analysis, Suspects 4, 5, 6, 7 and 8), paras 3.1.2.4-3.1.2.5; exhibit P1935, slide 12; exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), paras 3.1.2.4-3.1.2.5; exhibit P1938 (Expert report of John Edward Philips – Single user analysis with end cell review, Suspect 3, Mr Merhi), paras 3.1.2.4-3.1.2.5.

2523. Mr Philips assessed the call data records and combined these with a geographical analysis. He emphasised that cell site analysis alone cannot determine with certainty whether two or more mobiles co-locate; it is merely a possibility.⁵¹⁸¹ He explained this as, the greater the number of examples combining potential co-location and movement in concert, and the lesser the instances of dislocation, the higher the degree of probability that a single person is using two or more mobiles.⁵¹⁸²

(d) Mr Philips's conclusions

2524. From evaluating the call data records of calls on the different mobiles, Mr Philips assigned what he described as 'pairs' of calls into one of the following four categories.

2525. These are: 'could be co-located', 'would not preclude co-location', 'may preclude co-location' and 'would preclude co-location'.⁵¹⁸³ Unlike Mr Donaldson, in his reports, Mr Philips did not positively state that any of the pairs of calls analysed meant that the two mobiles *were* co-locating, or that they had a single user.

2526. The first category is 'could be co-located'. It involves situations where two or more mobiles activate the same cell on the same network or, if they are on different networks, overlapping cells.⁵¹⁸⁴

2527. The second category is 'would not preclude co-location'. This refers to where two different mobiles activate cells which are apart from one another and it is possible to travel the distance between the cells within the time between the calls.⁵¹⁸⁵

2528. Mr Philips's third category was 'may preclude co-location', occurring where a possibility of dislocation exists.⁵¹⁸⁶ In this category, either the mobiles purportedly used by a single person are geographically apart or there are other factors, such as signal behaviour.⁵¹⁸⁷

⁵¹⁸¹ John Edward Philips, T. 20 April 2017, pp 20, 60-61, T. 26 April 2017, pp 75-76.

⁵¹⁸² John Edward Philips, T. 20 April 2017, pp 21, 27, 60-61.

⁵¹⁸³ Exhibit P1935, slide 42. *See also* John Edward Philips, T. 20 April 2017, pp 20, 36-37, 57-59, T. 26 April 2017, pp 75-78.

⁵¹⁸⁴ John Edward Philips, T. 20 April 2017, p. 36, T. 26 April 2017, pp 76-78; exhibit P1935, slide 42.

⁵¹⁸⁵ John Edward Philips, T. 20 April 2017, p. 36; exhibit P1935, slide 42.

⁵¹⁸⁶ Exhibit P1935, slide 42.

⁵¹⁸⁷ John Edward Philips, T. 20 April 2017, p. 37.

2529. One example, of different mobiles that the Prosecution attributed to Mr Badreddine, was of two calls on different mobiles occurring eight seconds apart but activating two cells with masts almost five kilometres apart—a distance that is physically impossible to travel on land, but with the possibility of connection depending on the surface area of the actual cell coverage. The two cell masts, however, faced each other across a bay. Mr Philips explained that although it is unlikely that a person travelled that distance in that time, co-location may not be precluded because signals may travel unimpeded across water, and thus may cover an area outside of the network’s predicted best server coverage.⁵¹⁸⁸

2530. This is illustrated in the following in-court extract from the electronic presentation of evidence showing Mr Badreddine’s personal mobiles 944 and 663 connecting to cells across a bay between Beirut and Tripoli:

⁵¹⁸⁸ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), paras 7.4, 7.4.1.5, explaining, ‘However, the best server coverage from both these cells is extensive and fragmented away from the main best server coverage areas, some of which can be seen to provide best server coverage areas very close together, and this may not preclude the mobiles from being co-located. The 2 cells also “face” one another across water where there is limited path loss and so the signals from both cells may extend further than anticipated’; *see also* John Edward Philips, T. 20 April 2017, pp 36-37, T. 21 April 2017, pp 17-21; exhibit P1935, slides 42, 206-208; exhibit P1940 (Electronic presentation of evidence snapshot related to exhibit P1935, slides 206-208).

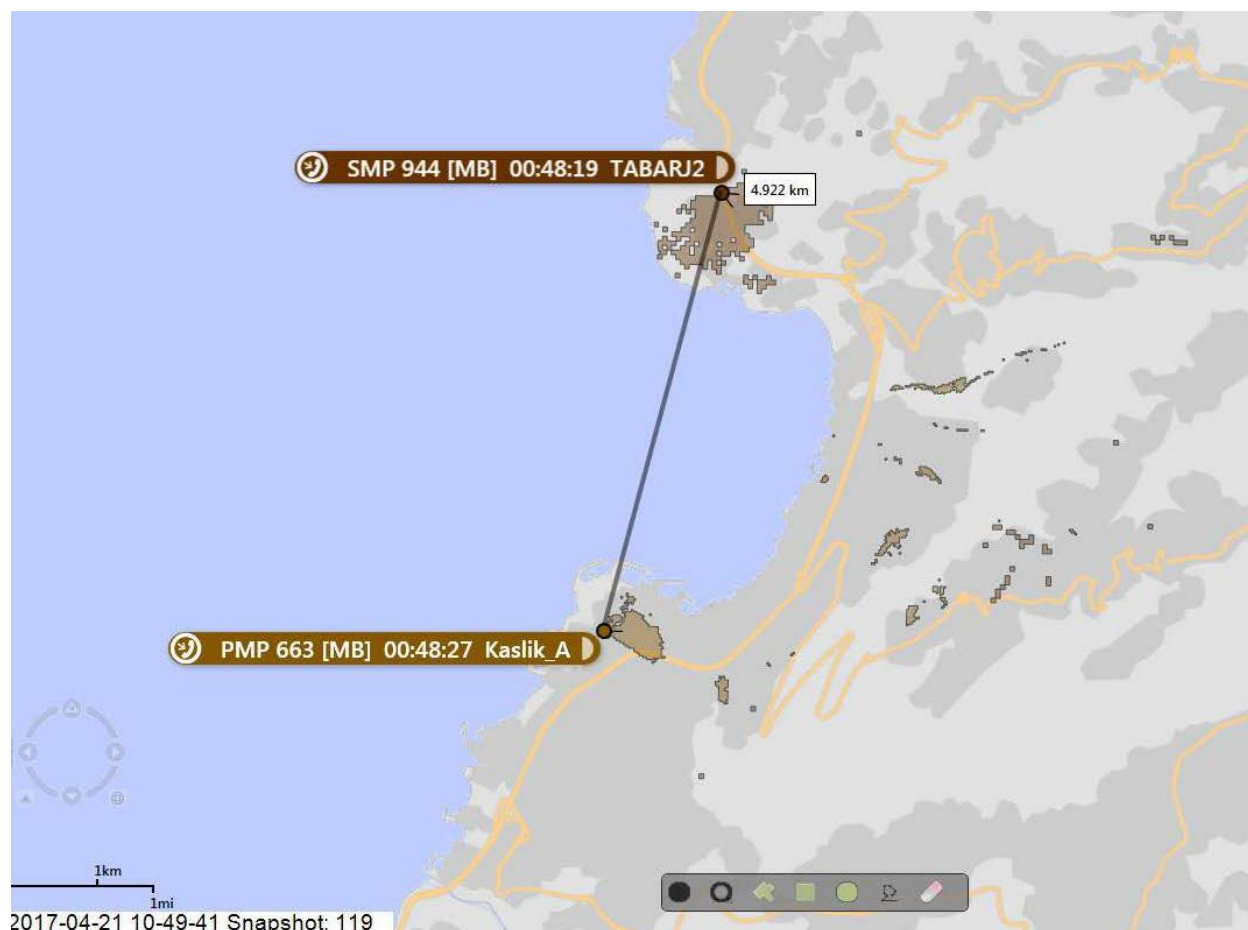


Exhibit P1940 (Electronic presentation of evidence snapshot related to exhibit P1935, slides 206-208)

2531. The fourth category, ‘would preclude co-location’, refers to a geographical separation between the cell masts the mobiles connect to that could not possibly be travelled in the time between the calls.⁵¹⁸⁹ To illustrate, Mr Philips referred to successive calls 23 minutes apart on cells 77 kilometres distant.⁵¹⁹⁰

2532. Determining with precision the location of a mobile can become even more problematic when a mobile is travelling in a vehicle. Mr Philips explained as an example how two vehicles

⁵¹⁸⁹ John Edward Philips, T. 21 April 2017, pp 48-49; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), para. 10.4.9.5.1.2; *see also* exhibit P1935, slide 42.

⁵¹⁹⁰ As an example, exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), p. 88, referring to mobiles attributed to Mr Ayyash, namely Red 741 and Yellow 294, and two calls that ‘are separated, in time, by ~23 minutes and use cells TOURBO1 and HADATH3, the centres of the main areas of best server coverage of which are ~77 Km apart, and so would preclude the mobiles from being co-located’.

travelling in opposite directions on the same road and approaching the same point ‘could be using cells for calls where, if they were static, do not provide best server coverage and would not be used for calls’,⁵¹⁹¹ meaning ‘that 2 mobile phones, at the same location, will use different cells i.e. the best serving cell for any calls’.⁵¹⁹²

2533. Put simply, someone standing in the street could connect to the cell providing predicted best server coverage for the street. The mobiles in use in two vehicles coming from opposite directions and passing the pedestrian, however, could still be connecting to different, more distant cells that they had connected to before while driving through other areas providing predicted best server coverage to these more distant cells.

2534. Mr Philips identified the factors that could diminish the probability of coincidental patterns, and hence establish a probability of a sufficient degree—for the purpose of criminal proceedings—that the mobiles had a single user.⁵¹⁹³ These are the period of use, the call frequency and the mobile’s movement. In this case, he analysed a long period of mobile use, namely between September 2004 and mid-February 2005, where mobiles could have co-located and have call patterns suggesting single use. The frequency of calls includes having a high number of calls. Finally, there is the extensive movement of the mobiles.⁵¹⁹⁴

2535. Mr Philips also explained that ‘the more people that live in a particular area, the more chance there is of a coincidence of calling’, and:

to remove the element of coincidence, the more calls there should be and the more geographical movement there should be by both users of the phones. Two people using a cell site over a period of days, and only using a cell site, may simply be regarded as coincidence. And if there is 10.000 of those, the chance of coincidence goes up.⁵¹⁹⁵

2536. In his reports and his testimony, Mr Philips did not positively state that mobiles were co-locating and hence had a single user. He was prepared only to offer qualified opinions as to possibilities.

⁵¹⁹¹ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 76, para. 6.5.3.2.1.26.

⁵¹⁹² Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 76, para. 6.5.3.2.1.29.

⁵¹⁹³ John Edward Philips, T. 20 April 2017, pp 26-27.

⁵¹⁹⁴ John Edward Philips, T. 20 April 2017, pp 26-27, T. 26 April 2017, pp 74-75.

⁵¹⁹⁵ John Edward Philips, T. 25 August 2015, p. 78.

3. Mr Andrew Donaldson's evidence and methodology

2537. Unlike Mr Philips, Mr Donaldson is not an expert in co-location analysis. Mr Donaldson, in anticipation of his testimony, had prepared an 'attribution report' for each Accused and for Mr Badreddine. They were summary reports with an accompanying analytical overview, in which he appeared to reach positive conclusions as to whether specified mobiles were co-locating and, hence, attributable to Mr Ayyash, Mr Merhi or Mr Badreddine.⁵¹⁹⁶

2538. The Prosecutor relied upon Mr Donaldson's evidence to prove his case attributing mobiles to the four Accused and Mr Badreddine when he submitted the indictment and subsequent amendments.

2539. Until 20 June 2016, Mr Donaldson's name was on the Prosecution's witness list as an intended expert witness. The Prosecution then decided not to call him as an expert witness. However, shortly before Mr Donaldson was due to testify—not as an expert, but as a Prosecution in-house analyst who would provide non-expert opinion evidence—the Ayyash and Merhi Defence challenged his expertise and sought the exclusion from evidence of parts of his attribution reports. The Trial Chamber held a *voir dire* hearing, in relation to Mr Donaldson's expertise and methodology, before deciding upon the application.⁵¹⁹⁷

2540. The Defence challenged Mr Donaldson's capacity to provide opinion evidence on co-location and therefore possible attribution. The Trial Chamber, in deciding the Defence challenge, set out the basis for hearing and considering Mr Donaldson's evidence, while permitting him to give some non-expert opinion evidence.

2541. It is convenient to extract the main points in the decision, as these have governed how the Trial Chamber has treated Mr Donaldson's evidence. In the decision, the Trial Chamber noted and held the following:

Mr Donaldson is not testifying as an expert. His five reports provide an overview of the Prosecution's evidence and, in this respect in some places, more resemble a Prosecution final trial brief than an expert report. Much of the content of his five reports evidence is

⁵¹⁹⁶ Decision on opinion evidence (Mr Donaldson), paras 8, 71.

⁵¹⁹⁷ Andrew Donaldson, T. 8 May 2017, pp 20-69.

therefore more in the nature of summary evidence, but with an accompanying analytical overview.⁵¹⁹⁸

Mr Donaldson has performed a comprehensive review of the Prosecution's cell-site and attribution evidence, and has collated and analysed it.⁵¹⁹⁹

It is self-evident that cell site analysis alone—without more—is insufficient to categorically conclude with 100% certainty that one person was using more than one mobile at a given time. Proof beyond reasonable doubt, however—based upon analysing call data records, calling patterns, calling contacts, and the geographical locations of mobiles, in combination with other evidence, in other words, analysing the totality of the evidence against an Accused person—is a different matter.⁵²⁰⁰

Mr Donaldson, in the Trial Chamber's view, is sufficiently qualified by his experience in the area to proffer an opinion on co-location and therefore possible attribution, but that any opinion must be suitably qualified in a manner similar to that of Mr Philips. The Trial Chamber will therefore not accept Mr Donaldson's opinions as unqualified conclusions. It will not allow him to categorically conclude, as he appears to have done in his three reports, that there was co-location, and hence attribution of personal and network mobiles to Mr Ayyash, Mr Merhi or Mr Badreddine.⁵²⁰¹

Mr Donaldson may therefore provide an opinion, based upon his experience in analysing call data records and other cell site evidence, as to whether co-location is possible on the evidence he has reviewed. He is not entitled to conclude that there was co-location and hence single user attribution of personal and network mobiles. Mr Philips, the expert, would not go that far, and that determination is for the Trial Chamber's alone.⁵²⁰²

Using Mr Philips's terminology, Mr Donaldson may therefore provide an opinion as to whether the evidence he has reviewed entitles him to provide an opinion in respect of certain mobiles, for example, as to whether mobiles 'could be co-located', 'would not

⁵¹⁹⁸ Decision on opinion evidence (Mr Donaldson), para. 71.

⁵¹⁹⁹ Decision on opinion evidence (Mr Donaldson), para. 86.

⁵²⁰⁰ Decision on opinion evidence (Mr Donaldson), para. 81.

⁵²⁰¹ Decision on opinion evidence (Mr Donaldson), para. 91.

⁵²⁰² Decision on opinion evidence (Mr Donaldson), para. 93.

preclude co-location’, ‘may preclude co-location’ and ‘would preclude colocation’, and thus whether this is consistent with a mobile having a single user.⁵²⁰³

The probative value of any opinion from Mr Donaldson as to whether co-location is possible is therefore a matter of the weight for the Trial Chamber when it assesses the totality of the evidence. The Trial Chamber is cognisant that Mr Philips is an expert in cell site analysis whereas Mr Donaldson is not, and will take this into account in assessing the opinions of the two witnesses and attributing the necessary weight to the evidence of either. The Trial Chamber will bear in mind the technical limitations of Mr Donaldson’s evidence, and in this respect, he must point out to the Trial Chamber any aspects of his three reports in which he has offered an opinion on co-location, in which he must defer to Mr Philips’ expertise.⁵²⁰⁴

The Trial Chamber will allow the Prosecution to lead the evidence but the witness, Mr Andrew Donaldson, must properly explain his methodology and qualify his opinions. The Trial Chamber will then carefully scrutinise any such opinion and, in evaluating his evidence as a whole, give it the appropriate weight.⁵²⁰⁵

2542. Mr Donaldson’s reports have assisted the Trial Chamber to piece together the evidence on co-location and attribution. However, it is the Trial Chamber’s role—as the trier of fact—to decide upon co-location and attribution and, thus, it has not accepted Mr Donaldson’s unqualified conclusions on these matters.⁵²⁰⁶ The Trial Chamber also held in the decision that:

It is therefore apparent that better legal oversight of the structure and content of the three reports could have been provided. In particular, Mr Donaldson’s reports should not have expressed unqualified conclusions about co-location, and most particularly, the methodology underlying the expression of any opinion should have been properly explained.⁵²⁰⁷

2543. The Trial Chamber has accordingly treated Mr Donaldson’s evidence with the caution expressed in the extracts from the decision quoted above.

⁵²⁰³ Decision on opinion evidence (Mr Donaldson), para. 94.

⁵²⁰⁴ Decision on opinion evidence (Mr Donaldson), para. 96.

⁵²⁰⁵ Decision on opinion evidence (Mr Donaldson), para. 1.

⁵²⁰⁶ Decision on opinion evidence (Mr Donaldson), paras 72, 86, 89-91, 93.

⁵²⁰⁷ Decision on opinion evidence (Mr Donaldson), para. 83.

2544. Mr Donaldson, like Mr Philips, employed a co-location analysis as part of his work of attributing telephone numbers to Mr Ayyash, Mr Merhi and Mr Badreddine. However, his methodology differed in some respects.

2545. In his explanatory report, ‘Co-location Analysis – Methodology’—prepared at the Trial Chamber’s direction before it would receive his testimony—Mr Donaldson explained the technique as one he used when all other means of attribution had been exhausted:⁵²⁰⁸

Co-location analysis, as applied in my attribution reports, is the technique of analysing cell site records of multiple phones at a cell site sector level to establish if they continuously:

- Use the same sector at the same time;
- Use adjacent sectors close in time;
- Move in concert in a logical manner; and
- Are found at the same time in distinctive areas, for example places remote from most frequently used sectors that would indicate common travel. The greater the distance from home, the more distinctive the area may be considered if it is uncommon. Larger time gaps may be afforded more weight in these circumstances due to the coincidence of two phones travelling to unusual areas at the same time.⁵²⁰⁹

2546. He explained that he conducted a call-by-call review of two mobiles of interest, which involved an examination of the times that the mobiles were used ‘to determine whether the data would allow meaningful inferences to be derived from their respective locations.’⁵²¹⁰ His analysis focused ‘upon the points when the use “swaps” from one to the other close in time’,⁵²¹¹ providing the following example:

If, for instance, Phone A is used at 9am and Phone B is only used at 9pm, there would be no way of using this information alone to rule out one or the other of two possibilities: (1) the phones being used by a single user or (2) by separate users.

⁵²⁰⁸ Exhibit P1948.2 (‘Co-location Analysis – Methodology’ report of Andrew Donaldson), paras 1, 3.

⁵²⁰⁹ Exhibit P1948.2, para. 2.

⁵²¹⁰ Exhibit P1948.2, para. 6.

⁵²¹¹ Exhibit P1948.2, para. 6 (b).

Both inferences would be equally valid, all other factors aside. If, however, **Phone A** is used at 9am and **Phone B** is used at 9:10am, the two phones would be suitable for further testing whether **Phone A** and **Phone B** could have been used by a single user. This is because such short time differences impose limits on how far apart these phones could be to be used by a single person. A much longer time difference between calls in a country the size of Lebanon would not normally rule out one user travelling from e.g. one end of the country to the other to make the calls.⁵²¹²

(a) Definitions, terminology and step-by-step process

2547. In his reports, Mr Donaldson interchangeably used the terms ‘co-location analysis’ and ‘single user analysis’.⁵²¹³ He also used the expression ‘anomaly’.⁵²¹⁴ In his evidence, however, he clarified that his reports should be read by replacing ‘co-location’ with ‘positive indicator’, and ‘anomaly’ with ‘negative indicator’.⁵²¹⁵ He explained that his use of ‘anomaly’ may differ from how Mr Philips used it, but neither of them used it as a term of art.⁵²¹⁶ Mr Donaldson used ‘anomaly’ to mean mobile use which is ‘negative’ to testing the theory that a single person had control of an identified mobile.⁵²¹⁷

2548. Mr Donaldson defined ‘co-location analysis’ as the technique of analysing cell site records of multiple mobiles at a cell site sector level to establish if they continuously:

- Use the same sector at the same time;
- Use adjacent sectors close in time;
- Move in concert in a logical manner, or as one would expect. For example, repetitive erratic movements may be considered illogical; and

⁵²¹² Exhibit P1948.2, para. 6 (b), fn. 4 qualifies that the term ‘location is used here to refer to a cell sector, which is as precise a location as can be identified from CDRs alone. “Location” in my analysis does not represent the precise point location of a phone’.

⁵²¹³ Andrew Donaldson, T. 20 June 2017, p. 79.

⁵²¹⁴ Exhibit P1948.1 (PowerPoint presentation on ‘Analysing cell site use: multiple phones’, Andrew Donaldson), slide 14; Andrew Donaldson T. 21 June 2017, p. 9.

⁵²¹⁵ Andrew Donaldson, T. 21 June 2017, p. 9.

⁵²¹⁶ Andrew Donaldson, T. 21 June 2017, pp 38-39.

⁵²¹⁷ Andrew Donaldson, T. 21 June 2017, p. 38.

- Are found at the same time in distinctive areas, such as those remote from the most frequently used sectors that would indicate common travel. The larger the distance, the more distinctive an uncommon area may be considered. The larger the time gaps the more significance they may be afforded.⁵²¹⁸

2549. In explaining his methodology, Mr Donaldson stated that he used ‘a variety of tools and sources’. These included: call data records and call sequence tables; locations of cell towers, their sectoring and predicted best server coverage of cell sectors; and Google Earth for topographical information, such as elevation data and the presence of hilly terrain.⁵²¹⁹

2550. Mr Donaldson explained that as a first step he used cell dumps to identify a ‘candidate mobile’ for co-location analysis with the target mobile.⁵²²⁰ He would identify two or more instances, at disparate locations, where the target mobile consistently used a cell for a protracted period—for example, 30 to 90 minutes.⁵²²¹ He would then look at which other mobiles were also using cell sectors in those locations at those times, to see which mobiles were common to all of them.⁵²²²

2551. Mr Donaldson explained that any candidate mobiles identified through cell dumps would be tested against the target mobile, following a methodical review of *all* calls within the attribution period.⁵²²³

2552. If conducting a co-location analysis on more than two mobiles, Mr Donaldson would first establish co-location for one, then a second, and, if the results were ‘consistently positive with little or no negative indicators over a protracted period’, the records of these two mobiles would be merged and the records of a third, unattributed mobile possibly co-located would be compared with the merged records of the first two mobiles.⁵²²⁴

⁵²¹⁸ Exhibit P1948.2, para. 2; Andrew Donaldson, T. 20 June 2017, p. 86.

⁵²¹⁹ Exhibit P1948.2, para. 4.

⁵²²⁰ Andrew Donaldson, T. 20 June 2017, p. 79. Cell dumps are defined and explained in Mr Philips’s report, exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 105-107.

⁵²²¹ Andrew Donaldson, T. 20 June 2017, pp 79-80; exhibit P1948 (PowerPoint presentation on ‘Analysing attribution’, Andrew Donaldson), slide 36.

⁵²²² Andrew Donaldson, T. 20 June 2017, pp 80-81; exhibit P1948, slides 37-39.

⁵²²³ Exhibit P1948.2, paras 5-6; Andrew Donaldson, T. 20 June 2017, pp 81-82, 85, 90-99, 100-104, T. 21 June 2017, pp 2-4, 6-8, 14-15, 32; exhibit P1948, slide 40.

⁵²²⁴ Exhibit P1948.2, para. 10; Andrew Donaldson, T. 20 June 2017, p. 82.

(b) 'Positive indicators', 'negative indicators' and overall assessment

2553. Mr Donaldson explained that he would consider that two mobiles were held by the same person if there were numerous positive indicators and just one or two negatives ones.⁵²²⁵ Candidate mobiles could usually be quickly ruled out due to a high incidence of negative indicators, and it was very rare to find extensive positive indicators and no negative indicators between analysed mobiles.⁵²²⁶

2554. Positive indicators were successive calls by the two mobiles that demonstrate that they could be in the same location in that single instance.⁵²²⁷ Examples are the use of: the same cell sector within five minutes, adjacent sectors within ten minutes, opposing cell sectors at a similar time and successive cell sectors in a logical sequence.⁵²²⁸ Using the same sector two hours apart would be a neutral indicator, and using one ten kilometres and two minutes apart would be looked at as a possible negative indicator.⁵²²⁹

2555. Negative indicators were instances where, as a matter of logic, two mobiles' use showed that they could not have been held by the same person, such as when the distance between the locations of two successive calls could not have been travelled in the time elapsed between them, or calling behaviour which would be illogical for a single user.⁵²³⁰ Illogical behaviour would be anything that would not make sense, including overlapping contacts between the analysed mobiles, or movements which would be possible but illogical of a single user.⁵²³¹ Seeing such instances consistently would suggest another explanation for any identified positive indicators.⁵²³²

2556. Mr Donaldson sought to list any negative indicators in his reports, providing an explanation for those which he was able and identifying that some examples were without explanation where 'it is clear that the phones could not have been used by the same person'.⁵²³³ He reported instances of negative indicators by giving information about the calls, including the times and the cell towers

⁵²²⁵ Andrew Donaldson, T. 20 June 2017, p. 82; *see also* exhibit P1948.2, para. 6 (c).

⁵²²⁶ Andrew Donaldson, T. 20 June 2017, pp 82-83.

⁵²²⁷ Exhibit P1948.2, para. 11.

⁵²²⁸ Exhibit P1948.2, p. 6; Andrew Donaldson, T. 20 June 2017, p. 84, T. 21 June 2017, p. 6; exhibit P1948.1, slide 13.

⁵²²⁹ Andrew Donaldson, T. 20 June 2017, p. 84.

⁵²³⁰ Exhibit P1948.2, para. 14; Andrew Donaldson, T. 21 June 2017, p. 7; exhibit P1948.1, slide 13.

⁵²³¹ Andrew Donaldson, T. 21 June 2017, p. 7; exhibit P1948.1, slide 13.

⁵²³² Andrew Donaldson, T. 21 June 2017, p. 7.

⁵²³³ Andrew Donaldson, T. 21 June 2017, pp 7, 10-11.

used, often accompanied by a map.⁵²³⁴ If the data permitted, he also provided an explanation.⁵²³⁵ Many could be explained through simple logic.⁵²³⁶

2557. Mr Donaldson referred to what he (confusingly) called ‘swaps’⁵²³⁷ made within ten minutes of one another, or ‘close in time calls’, as ‘the most valuable points to scrutinise in co-location analysis because anomalies are readily apparent, giving the example of unrealistic travel time’.⁵²³⁸

2558. He noted that all ‘swaps’ could offer positive or negative indicators of co-location based on logical inferences, thus the ‘overall assessment is a qualitative summation of each call swap’.⁵²³⁹ While the process could be replicated by anyone using the same data, the overall assessment on co-location may differ between analysts.⁵²⁴⁰

2559. To identify such explanations, he would first look at calls outside the ‘swap’ for ambiguous geographic anomalies, such as a pair of calls using cell towers which were too far apart for the distance to be travelled in the intervening time, but then one minute later one of the mobiles using the same cell as the other.⁵²⁴¹

2560. Mr Donaldson would defer to the telephone company or a cell site expert on how such a situation may have occurred, but in their absence would ‘use any means’ at his disposal to try to reconcile his ‘understanding of the mandated changes in assessment’.⁵²⁴² In the absence of a third call in this scenario, or where he was unsure as to whether something should be characterised as a negative indicator, he would do cell dumps to see if any single mobile had made the same movement in the same amount of time to support a positive assessment of the original pair of calls.⁵²⁴³

⁵²³⁴ Andrew Donaldson, T. 21 June 2017, pp 10-11; exhibit P1948.2, para. 15.

⁵²³⁵ Andrew Donaldson, T. 21 June 2017, p. 32.

⁵²³⁶ Andrew Donaldson, T. 21 June 2017, pp 10-11; exhibit P1948.2, para. 15.

⁵²³⁷ Mr Donaldson used the term ‘swap’ to mean that a single user was using different mobiles, by switching from one to the other, within a specified time period, Andrew Donaldson, T. 20 June 2017, p. 90. Mr Philips, by contrast, in exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 140-142, used the term to denote a user switching a SIM from one handset to another. Mr Donaldson’s use of the term ‘swap’ was confusing, imprecise and counter-intuitive.

⁵²³⁸ Exhibit P1948.2, para. 7.

⁵²³⁹ Exhibit P1948.2, para. 7.

⁵²⁴⁰ Exhibit P1948.2, paras 8, 21.

⁵²⁴¹ Exhibit P1948.2, paras 16-17; Andrew Donaldson, T. 21 June 2017, pp 32-34.

⁵²⁴² Exhibit P1948.2, para. 18; Andrew Donaldson, T. 21 June 2017, p. 33.

⁵²⁴³ Exhibit P1948.2, para. 19; Andrew Donaldson, T. 21 June 2017, p. 33.

2561. Another example of an explanation for a seemingly negative indicator would be a demonstrable change in one of the mobiles' use during and limited to that time—such as calling only one number which was not a contact before or afterwards.⁵²⁴⁴

2562. Mr Donaldson explained that he did not provide subjective commentary on whether a given positive or negative indicator was more significant than another. Instead, he set out what the call data records showed regarding the timing and location of calls.⁵²⁴⁵

2563. After analysing these 'swaps', Mr Donaldson assessed the relationships between the relevant mobiles.⁵²⁴⁶ It was the sum of positive indicators and the absence of negative indicators which led to any assessment on co-location.⁵²⁴⁷ This was in addition to the distribution of positive indicators among different times of day, different days of the week and in different locations.⁵²⁴⁸

2564. Moreover, the more distinctive the geographic pattern of use—such as travelling a long distance away from commonly used cells—the more time could elapse between calls within a 'swap' while remaining relevant to the analysis.⁵²⁴⁹ He would also look at how the mobiles moved. For example, whether in a logical manner, such as along the route to a distinctive area even if the calls were not close in time. Or, conversely, 'illogically', for example repeatedly moving from one side of a city to another. The analysed mobiles should also not be in contact with one another, and have distinct contact profiles.⁵²⁵⁰

2565. Mr Donaldson emphasised 'the importance of the sum of the "swaps" in the overall assessment', stating that he would not assess two mobiles as having a single user if the records only showed negative indicators which he could explain.⁵²⁵¹ He specified that the higher the number and or quality of positive indicators, and the lower the number of negative indicators, the greater his degree of confidence would be in the conclusion. However, he emphasised that, as not all positive indicators are the same, each assessment is made on a case-by-case basis.⁵²⁵²

⁵²⁴⁴ Exhibit P1948.2, para. 15.

⁵²⁴⁵ Andrew Donaldson, T. 21 June 2017, p. 36.

⁵²⁴⁶ Exhibit P1948.2, para. 20.

⁵²⁴⁷ Exhibit P1948.2, para. 11.

⁵²⁴⁸ Exhibit P1948.2, paras 11-12.

⁵²⁴⁹ Exhibit P1948.2, para. 13.

⁵²⁵⁰ Andrew Donaldson, T. 20 June 2017, p. 85; exhibit P1948.1, slide 2.

⁵²⁵¹ Exhibit P1948.2, para. 20.

⁵²⁵² Andrew Donaldson, T. 20 June 2017, pp 87-88.

(c) Mr Donaldson's reporting of results

2566. Mr Donaldson provided two forms of what he described as his 'reporting' the results of his analysis. These were call-by-call and empirical. Mr Donaldson stated that the ideal means of reporting the findings of co-location analysis would be to set out the information in tables, maps and text, which permit the reader to observe the mobiles moving in concert, and form their own view, without undertaking all of the steps and procedures undertaken by the analyst.⁵²⁵³

2567. Mr Donaldson did not map every day of calls relating to mobiles identified as those of Mr Ayyash and Mr Badreddine.⁵²⁵⁴ He therefore prepared an 'empirical' report to demonstrate his observations for both the mapped and unmapped days 'so the reader could look at a neutral measure and see that all days demonstrated the same observable patterns of positive indicators that the sample days did'.⁵²⁵⁵

(d) Weaknesses in the methodology

2568. Mr Donaldson also attempted to show the weaknesses of the methodology of using the distance between cell towers for his co-location analysis.⁵²⁵⁶ Ultimately, he explained why he believed that his methodology regarding the distance between the cell towers—supplemented by his subjective analysis—was the fairest reporting method.⁵²⁵⁷

2569. While it could both under-represent and over-represent the actual distances, Mr Donaldson considered that it was neutral with regard to all parties and produced the most accurate results to describe what he saw when reviewing the information subjectively.⁵²⁵⁸ He chose this method because of the breadth of the undertaking in setting out each call. The veracity of his empirical

⁵²⁵³ Exhibit P1948.2, para. 21; Andrew Donaldson, T. 21 June 2017, p. 5.

⁵²⁵⁴ Exhibit P1948.2, paras 22-24 (call-by-call reporting for Mr Ayyash); exhibit P1948.1, paras 26-29 (call-by-call reporting for Mr Badreddine).

⁵²⁵⁵ Exhibit P1948.2, para. 30.

⁵²⁵⁶ Andrew Donaldson, T. 21 June 2017, pp 39-40, 42; exhibit P1948, slides 43-45 (identifying limitations in knowing with certainty where, within a predicted coverage area, a mobile is actually used); Andrew Donaldson, T. 21 June 2017, pp 40-41; exhibit P1948, slide 46 (discussing the impact of comparing rural area cell towers and city cell sectors on predicted best coverage areas); Andrew Donaldson, T. 21 June 2017, pp 4-5, 26; exhibit P1948.2, para. 35 (acknowledging factors which could lead to misrepresentation of the distance between areas of cell sector coverage which prohibited identifying where callers were actually located); Andrew Donaldson, T. 21 June 2017, p. 26 (determining why particular methodology was excluded as potentially increasing rather than decreasing the accuracy of findings).

⁵²⁵⁷ Andrew Donaldson, T. 21 June 2017, p. 26.

⁵²⁵⁸ Exhibit P1948.2, para. 36; Andrew Donaldson, T. 21 June 2017, pp 42-43.

reporting method could be tested with reference to examples given in various slide presentations overlaying the call-by-call and empirical methods.⁵²⁵⁹

4. Submissions

(a) Prosecution's general submissions

2570. The Prosecution relies on Mr Philips's and Mr Donaldson's co-location analyses to attribute network mobiles to Mr Ayyash, Mr Merhi and Mr Badreddine. It submits generally that their analyses prove that a single person was simultaneously using two or more specified mobiles.⁵²⁶⁰

2571. On Mr Philips's methodology generally, the Prosecution submits that he 'analysed and mapped each sequence where two or more mobile phones attributed to an Accused were used within one hour' of each other. This was to determine whether a mobile could have travelled the distance between the centres of the predicted best coverage areas in the intervening time.⁵²⁶¹

2572. Mr Philips's co-location findings simply show that mobiles were not used in locations between which a single user could not travel. To conclude that the mobiles had a single user and were not co-locating coincidentally, the co-location findings must be read in conjunction with where and how the mobiles actually moved.⁵²⁶²

2573. For each of Mr Philips's four categories of 'could be co-located', 'would not preclude co-location', 'may preclude co-location' and 'precludes co-location', the Prosecution points out that he provided mapped examples and a statistical overview of his findings. He also provided 'technical explanations in cases of unusual call activity, for example, where radio signals would have been affected by topography or stretches of water'.⁵²⁶³

2574. Mr Philips's categorisations, according to the Prosecution, 'have nothing to do with statistical probability' that two mobiles were used.⁵²⁶⁴ Rather, it 'reflects the statistics for individual pairs of calls over time' and simply shows that mobiles were not used in locations

⁵²⁵⁹ Exhibit P1948.2, paras 36-37.

⁵²⁶⁰ Prosecution final trial brief, paras 82, 84.

⁵²⁶¹ Prosecution final trial brief, para. 85.

⁵²⁶² Prosecution closing submissions, T. 12 September 2018, pp 64-66, 83, 90.

⁵²⁶³ Prosecution final trial brief, para. 85.

⁵²⁶⁴ Prosecution closing submissions, T. 12 September 2018, p. 65.

between which a single user could not travel.⁵²⁶⁵ The Prosecution went on to clarify that in his analysis of any individual pair of calls, when mobiles ‘hit the same cell sector within one hour’, Mr Philips could not conclude that the mobiles were together.⁵²⁶⁶

2575. The Prosecution recognises that co-location analysis ‘is not a scientific measurement to which we can say with a level of scientific certainty a result’.⁵²⁶⁷ Mr Philips had explained that:

the most important elements to consider to remove the possibility of a coincidence of two phones being used by two different people ... are the period of calls, the frequency and the movement of the mobile phones. And the greater these factors, the less likely that the consistency of co-location could be explained by chance. This is how we remove the possibility of a coincidence.⁵²⁶⁸

2576. Accordingly, the Trial Chamber is not asked to make any findings based on the distribution of the categorisations alone, but to consider this in conjunction with evidence of where and how the mobiles moved.⁵²⁶⁹

2577. In closing submissions, Prosecution counsel explained:

And the only thing that this shows is that it shows that phones move in a relative manner and are located in the same areas over a period of time and over various distances in such a way that it cannot be explained by coincidence. But this is not a scientific assessment. This is more, Your Honours, a common-sense assessment, that looking at a repetition of these incidents cannot be explained by coincidence.⁵²⁷⁰

2578. The Prosecution highlighted that according to Mr Philips, the categorisation ‘would not preclude co-location’ is ‘a very positive indicator of co-location’⁵²⁷¹ and further argued that it is the ‘category that we might see the most compelling signs that two phones are actually used by the same person when we consider that they could move together’.⁵²⁷²

⁵²⁶⁵ Prosecution closing submissions, T. 12 September 2018, pp 64-65.

⁵²⁶⁶ Prosecution closing submissions, T. 12 September 2018, p. 82.

⁵²⁶⁷ Prosecution closing submissions, T. 12 September 2018, p. 85.

⁵²⁶⁸ Prosecution closing submissions, T. 12 September 2018, p. 83.

⁵²⁶⁹ Prosecution closing submissions, T. 12 September 2018, pp 66, 85.

⁵²⁷⁰ Prosecution closing submissions, T. 12 September 2018, p. 85.

⁵²⁷¹ Prosecution closing submissions, T. 12 September 2018, p. 65.

⁵²⁷² Prosecution closing submissions, T. 12 September 2018, p. 66.

2579. Of the fact that Mr Philips was essentially ‘shielded’ from the Prosecution’s work—this being the subject of united and strong Defence criticism—the Prosecution submitted that:

the Prosecution saw value in having Philips as an outside expert who could speak to the activity of the phones without having prior knowledge of the Prosecution’s case theory, especially in the light of the pro-Prosecution bias allegations that were made in various Defence briefs against Mr Donaldson.⁵²⁷³

2580. Prosecution counsel also stated that Mr Philips had never before ‘had the opportunity to work with data covering such a wide period’.⁵²⁷⁴

2581. Regarding Mr Donaldson’s methodology, the Prosecution pointed out that he assessed every pair of calls between relevant mobiles attributed to Mr Ayyash, Mr Merhi and Mr Badreddine during the attribution periods. For pairs of calls occurring within ten minutes, he used the distance between the cell towers and the time between the calls to determine whether the calls ‘could have been made by a single user’, and provided mapped examples and a statistical overview of his findings.⁵²⁷⁵

2582. In response to the Defence challenges to Mr Donaldson’s ability to perform co-location analysis, the Prosecution argued that Mr Philips’s work confirmed his analysis, noting that their respective analyses independently reached the same conclusions.⁵²⁷⁶

2583. Further, Mr Philips had stated that for single user analysis, the accuracy of predicted best coverage areas did not matter for determining whether mobiles moved together. This undercut the Defence challenges to the reliability of the underlying data.⁵²⁷⁷

⁵²⁷³ Prosecution closing submissions, T. 12 September 2018, p. 60.

⁵²⁷⁴ Prosecution closing submissions, T. 12 September 2018, p. 90.

⁵²⁷⁵ Prosecution final trial brief, para. 86.

⁵²⁷⁶ Prosecution closing submissions, T. 12 September 2018, p. 77.

⁵²⁷⁷ Prosecution closing submissions, T. 12 September 2018, pp 90-91.

(b) Defence submissions

i. Ayyash Defence

2584. The Ayyash Defence submits that single user analysis has significant limitations.⁵²⁷⁸ According to Mr Philips, it consists of both co-location analysis and call pattern analysis.⁵²⁷⁹ While co-location shows a ‘potential relationship’ between two mobiles, single user analysis takes this analysis further to ‘determine (to the degree possible) that a single person could be using multiple phones’.⁵²⁸⁰

2585. The Trial Chamber should not presume that two mobiles were together just because they co-located.⁵²⁸¹ Mr Philips explained that his analysis could not show that mobiles were actually travelling together, as it only showed ‘the absence of dislocation’.⁵²⁸² Mr Philips used the phrases ‘consistent with’ and ‘every possibility’ in his single user analysis conclusions ‘in recognition of the inability to make absolute conclusions regarding use by a single person’.⁵²⁸³

2586. The Ayyash Defence pointed to Mr Philips’s recognition that mobiles could appear to travel together even if used by business associates who also live at the same location. In this example, therefore, while the evidence might be consistent with the use of multiple mobiles by a single person, that same evidence is ‘also consistent with use by multiple, acquainted persons’.⁵²⁸⁴

2587. It also contrasts the limitations that Mr Philips identified with Mr Donaldson’s failure to recognise these limitations of co-location analysis, pointing to his lack of expertise in telecommunications or cell site analysis.⁵²⁸⁵ The Trial Chamber noted that Mr Donaldson made positive conclusions about co-location, although he had acknowledged that co-location cannot be used to determine that mobiles were physically together.⁵²⁸⁶ Indeed, Mr Donaldson maintained that he was not providing an opinion at all on co-location, instead believing that he could reach

⁵²⁷⁸ Ayyash Defence final trial brief, para. 293.

⁵²⁷⁹ Ayyash Defence final trial brief, para. 291.

⁵²⁸⁰ Ayyash Defence final trial brief, para. 294.

⁵²⁸¹ Ayyash Defence final trial brief, para. 295.

⁵²⁸² Ayyash Defence final trial brief, paras 295-296.

⁵²⁸³ Ayyash Defence final trial brief, paras 297.

⁵²⁸⁴ Ayyash Defence final trial brief, para. 297.

⁵²⁸⁵ Ayyash Defence final trial brief, paras 298, 301; Ayyash Defence closing submissions, T. 17 September 2018, p. 73.

⁵²⁸⁶ Ayyash Defence final trial brief, para. 298.

conclusions on single user analysis based on common sense and his past experience of working with call data records and looking at mobile movement.⁵²⁸⁷ Given the Trial Chamber's own concerns about his conclusions, it should disregard Mr Donaldson's opinions.⁵²⁸⁸

2588. Both Mr Philips and Mr Donaldson failed to take into account the unreliability of the data underlying their work, which further reduces the weight to be given to their co-location analyses.⁵²⁸⁹ Mr Philips stated that using best server coverage plots is preferable for analysing close-in-time calls, meaning that the 'appropriacy' of the coverage data must be considered. He stated that best server coverage plots are an estimation and should be used as such, and did not know why a passage setting this out was removed from an earlier draft of his report.⁵²⁹⁰

2589. Mr Philips was also not made aware of the full scope of the limitations of the data he worked with, such as the lack of certain contemporaneous data from Alfa and the fact that shape files were constructed using data from multiple years and lacking reliability hallmarks. He was also not given information about Mr Ayyash potentially being outside of Lebanon for the 2005 Hajj.⁵²⁹¹

2590. Mr Philips was therefore unable to address the limitations in the underlying data. Due to his lack of expertise, Mr Donaldson could not even take these limitations into account as part of his analysis. These factors reduce the weight which, the Ayyash Defence argues, should be given to their single user analyses.⁵²⁹²

2591. Mr Philips's and Mr Donaldson's methodologies were also flawed, further reducing the weight to be accorded to their conclusions. Mr Philips was not familiar with Lebanese mobile networks, which potentially renders his assumptions invalid.⁵²⁹³ Mr Donaldson lacked the

⁵²⁸⁷ Ayyash Defence final trial brief, para. 299.

⁵²⁸⁸ Ayyash Defence final trial brief, paras 298-300, *citing* Decision on opinion evidence (Mr Donaldson), para. 82.

⁵²⁸⁹ Ayyash Defence final trial brief, para. 302; Ayyash Defence closing submissions, T. 17 September 2018, pp 70-72.

⁵²⁹⁰ Ayyash Defence final trial brief, paras 302-303.

⁵²⁹¹ Ayyash Defence final trial brief, paras 304-305; Ayyash Defence closing submissions, T. 17 September 2018, pp 71-72.

⁵²⁹² Ayyash Defence final trial brief, para. 306.

⁵²⁹³ Ayyash Defence final trial brief, para. 308.

knowledge to carry out his analysis, which depended on certain assumptions about how mobile networks operate.⁵²⁹⁴

2592. When assessing co-location, neither accounted for travel routes, Lebanese traffic patterns, weather or time of day.⁵²⁹⁵ Mr Philips measured the distance between the centres of the best server coverage areas—which he determined just by looking at them—whereas Mr Donaldson measured the distance between cell towers.⁵²⁹⁶ While Mr Donaldson used a time interval of ten minutes between calls, Mr Philips opted for five and 60 minute intervals, based on a discussion with Mr Donaldson, but later conceded that the larger interval was ‘probably inappropriate’ while continuing to rely upon it.⁵²⁹⁷

2593. Mr Donaldson’s methodology set no threshold for establishing co-location, and his lack of expertise limits the probative value of his opinions.⁵²⁹⁸ His experience in analysing cell site evidence is limited to his work with the Prosecution.⁵²⁹⁹ The Trial Chamber determined that Mr Donaldson must qualify and explain the basis for his conclusions.⁵³⁰⁰ Despite this, Mr Donaldson repeatedly concluded that mobiles ‘moved in concert’—without qualifying or explaining the term—and based his opinions on whether mobiles behaved as ‘one would expect’ without explaining how he determined what ‘one would expect’.⁵³⁰¹ As he failed to explain the basis for his opinions, the Trial Chamber should give them no weight.⁵³⁰²

2594. Mr Philips’s evidence is also unreliable and entitled to little or no weight.⁵³⁰³ He failed to apply his own principles to his analysis, for example, concluding that mobiles attributed to Subject 7 had a single user even though there were very limited instances of co-location, and claiming, incorrectly, that instances of dislocation have been explained. In court, the relevant dates were changed to exclude the dislocations.⁵³⁰⁴

⁵²⁹⁴ Ayyash Defence final trial brief, para. 309.

⁵²⁹⁵ Ayyash Defence final trial brief, paras 310-311, 317.

⁵²⁹⁶ Ayyash Defence final trial brief, paras 310-311.

⁵²⁹⁷ Ayyash Defence final trial brief, para. 312.

⁵²⁹⁸ Ayyash Defence final trial brief, paras 313-314.

⁵²⁹⁹ Ayyash Defence final trial brief, para. 315.

⁵³⁰⁰ Ayyash Defence final trial brief, para. 316.

⁵³⁰¹ Ayyash Defence final trial brief, para. 317.

⁵³⁰² Ayyash Defence final trial brief, paras 317-318.

⁵³⁰³ Ayyash Defence final trial brief, paras 318, 326.

⁵³⁰⁴ Ayyash Defence final trial brief, paras 319-322.

2595. Another example is his speculation on the reason for the dislocation of Subject 8's attributed mobiles, which differed from Mr Platt's speculated reasons for the same incident.⁵³⁰⁵ This shows the unreliability of co-location analysis, as dislocations are merely speculated about and written off, based on little more than mobile activity and a desire to fit the facts to the Prosecution's narrative.⁵³⁰⁶

2596. Mr Philips's and Mr Donaldson's co-location analyses should therefore be given no weight, as they applied poor methodologies to poor data.⁵³⁰⁷

2597. Finally, the Ayyash Defence disagreed with the Prosecution's assertion that single user analysis is an important part of attribution, submitting that single user analysis merely shows a link between personal and network mobiles, and this is only significant if the personal mobiles are attributed first.⁵³⁰⁸ Further, the amended consolidated indictment defined attribution as determining the specific person who used a mobile during a particular time period.⁵³⁰⁹ Mr Philips had underlined the importance of showing use, rather than just association between a person and a mobile, and the Prosecution must prove this beyond reasonable doubt.⁵³¹⁰ The Trial Chamber must first assess evidence in this area individually, before it looks at it holistically.⁵³¹¹

ii. Merhi Defence

2598. The Merhi Defence submits that the flaws in the Prosecution's telecommunications evidence result in reduced reliability in terms of the possible co-locations of mobiles.⁵³¹² It also reiterates that Mr Donaldson lacks the necessary expertise for co-location analysis, meaning that his evidence thereon should be given no weight.⁵³¹³

⁵³⁰⁵ Ayyash Defence final trial brief, paras 323-325.

⁵³⁰⁶ Ayyash Defence final trial brief, para. 325.

⁵³⁰⁷ Ayyash Defence final trial brief, para. 327; Ayyash Defence closing submissions, T. 17 September 2018, pp 117-118.

⁵³⁰⁸ Ayyash Defence closing submissions, T. 17 September 2018, pp 93-94, 118.

⁵³⁰⁹ Ayyash Defence closing submissions, T. 17 September 2018, p. 93.

⁵³¹⁰ Ayyash Defence closing submissions, T. 17 September 2018, pp 94-95.

⁵³¹¹ Ayyash Defence closing submissions, T. 17 September 2018, pp 95, 114.

⁵³¹² Merhi Defence final trial brief, para. 271.

⁵³¹³ Merhi Defence final trial brief, paras 190, 201-204.

2599. Despite the Trial Chamber's finding that Mr Donaldson lacked expertise in this area and must qualify his opinions, Mr Donaldson concluded, based on co-location, that mobiles were used by a single person. The Trial Chamber should give this no weight.⁵³¹⁴

2600. The Prosecution also withheld from Mr Philips necessary contextual information about the case and allegations against the Accused, even when he requested it.⁵³¹⁵ For example, he was only given selected materials regarding the attribution of Green 071 to Purple 231's user (alleged to be Mr Merhi) and was unaware of how the Prosecution selected the two candidate mobiles.⁵³¹⁶ He was unable to test this selection and to perform cell dumps to exclude other candidate mobiles.⁵³¹⁷ This absence of information prevented him from excluding other reasonable possibilities regarding Green 071's attribution; the Trial Chamber should therefore give his opinion no weight.⁵³¹⁸

2601. Mr Philips himself was critical of having to work in a vacuum, with certain information not being provided to him—such as Mr Merhi's address, traffic density on certain roads and travel times—which would have affected his analysis.⁵³¹⁹ The Prosecution also asked Mr Philips to remove certain sections from his report, such as a discussion of the possibility of call data record manipulation.⁵³²⁰

2602. In addition, Mr Donaldson did not properly explain his methodology for selecting Purple 231 as the only candidate mobile for single user analysis with Green 071, as he merely stated that cell dumping was only used to confirm the choice after it was made.⁵³²¹ The Trial Chamber therefore cannot assess the probative value and weight to be given to that attribution, or whether other reasonable possible attributions were 'rigorously excluded' by the Prosecution.⁵³²²

2603. In any event, Mr Donaldson's cell dump methodology is 'deficient and incomplete', requiring 'three cumulative hypotheses'. These are: three calls at different times, two mobiles using the same cells and doing so within a set time, here, of an hour and a half after the call of

⁵³¹⁴ Merhi Defence final trial brief, paras 202-204.

⁵³¹⁵ Merhi Defence final trial brief, para. 206, *see generally* paras 205-210.

⁵³¹⁶ Merhi Defence final trial brief, paras 202-204.

⁵³¹⁷ Merhi Defence final trial brief, paras 206-208.

⁵³¹⁸ Merhi Defence final trial brief, paras 209-211.

⁵³¹⁹ Merhi Defence closing submissions, T. 18 September 2018, pp 113-115, 119-120.

⁵³²⁰ Merhi Defence closing submissions, T. 19 September 2018, pp 4-8.

⁵³²¹ Merhi Defence final trial brief, paras 223-224.

⁵³²² Merhi Defence final trial brief, paras 225-226.

interest. This method eliminates many potential candidates from the outset, for example because it excludes calls outside the relevant period, and does not account for use of neighbouring cells.⁵³²³ And it only selects the ‘candidate or candidates who appear in the three dumps’.⁵³²⁴ His chosen methodology thus eliminates many potential candidates from the outset.⁵³²⁵

2604. The Merhi Defence argues that Mr Philips expressed concerns about the accuracy of the cell dumps made by Mr Donaldson.⁵³²⁶ While Mr Philips used a different cell dump methodology, namely looking at calls one hour before and one hour after the call of interest—which he viewed as yielding more complete results than those conducted by Mr Donaldson—this was not applied by the Prosecution in this case.⁵³²⁷

2605. Finally, flaws in the underlying telecommunications evidence, including the lack of contemporaneous cell coverage data and limitations of optimal coverage, rendered inferences about co-locations less reliable.⁵³²⁸ Mr Philips’s evidence on coverage maps was theoretical only, as it did not take certain peculiarities of the Lebanese mobile networks into account, such as changes in building topography, directed retry and congestion levels.⁵³²⁹ He also did not travel to Lebanon for his work on this case.⁵³³⁰

iii. Oneissi Defence

2606. The Prosecution’s case against Mr Oneissi does not rely on co-location analysis. There is only one pleaded mobile attributed to Mr Oneissi, Purple 095. Accordingly, the Oneissi Defence’s submissions focus on the more traditional aspects of attribution and on the weight generally to be given to the evidence of Mr Philips and Mr Donaldson.

2607. The Oneissi Defence disputes that the attribution evidence links Mr Oneissi to Purple 095, with particular criticism of Mr Donaldson’s analysis, arguing that his ‘pro-Prosecution bias – whether conscious or otherwise – negatively affects his credibility and by extension, the reliability

⁵³²³ Merhi Defence final trial brief, paras 228-229.

⁵³²⁴ Merhi Defence final trial brief, para. 227.

⁵³²⁵ Merhi Defence final trial brief, paras 228-229.

⁵³²⁶ Merhi Defence final trial brief, para. 230.

⁵³²⁷ Merhi Defence final trial brief, paras 230-234.

⁵³²⁸ Merhi Defence final trial brief, para. 271; Merhi Defence closing submissions, T. 18 September 2018, p. 112, T. 19 September 2018, pp 14-16.

⁵³²⁹ Merhi Defence closing submissions, T. 18 September 2018, pp 113-116, 120, T. 19 September 2018, pp 3-4, 14.

⁵³³⁰ Merhi Defence closing submissions, T. 18 September 2018, p. 114.

of his evidence’.⁵³³¹ Mr Donaldson’s analysis was susceptible to confirmation bias, as the Prosecution’s case depended upon the attribution of mobiles to the Accused persons, thus placing Mr Donaldson under ‘immense pressure’ to attribute mobile 095 in accordance with the Prosecution’s theory of the case.⁵³³² It also criticised his qualifications, submitting that:

DONALDSON’s lack of expertise in cell site analysis – which includes attribution – ‘naturally limits the probative value of any opinion he can express thereon’. DONALDSON had no formal training in attribution techniques. He had never testified in relation to attribution of mobile phones before; nor had he ever written an attribution report that was used as evidence. Virtually all of his experience in attribution comes within the context of the investigation into Hariri’s assassination and this case. His ability to attribute mobile phones is here being tested for the first time.⁵³³³

2608. Whereas the Prosecution was required to prove that Mr Oneissi was using Purple 095 for every call and SMS relied upon, Mr Donaldson had conceded that he could not attribute every call on Purple 095 to Mr Oneissi ‘nor could he determine who actually used 095 at a given point’.⁵³³⁴

2609. The Oneissi Defence points out that Mr Donaldson’s attribution analysis was not peer reviewed by the expert Mr Philips and argues that in light of all of the issues raised, the Trial Chamber should disregard his non-expert evidence and conclusions.⁵³³⁵

2610. The Oneissi Defence further submits that Mr Philips’s evidence should be given little or no weight due to the fact that the Prosecution isolated him from the investigation and did not provide him with sufficient information, including of deficiencies in Alfa’s records, such as that the Prosecution was relying upon a 2010 reconstitution of 2005 values for the cells.⁵³³⁶

iv. Sabra Defence

2611. Similar to the case against Mr Oneissi, the case against Mr Sabra does not rely on co-location analysis. There is only one pleaded mobile attributed to Mr Sabra, Purple 018.

⁵³³¹ Oneissi Defence final trial brief, para. 20; *see also* paras 21-22.

⁵³³² Oneissi Defence final trial brief, paras 19-20.

⁵³³³ Oneissi Defence final trial brief, para. 15 (footnotes omitted).

⁵³³⁴ Oneissi Defence final trial brief, paras 13-14.

⁵³³⁵ Oneissi Defence final trial brief, paras 16-17, 119.

⁵³³⁶ Oneissi Defence final trial brief, paras 118-127.

Accordingly, the Sabra Defence's submissions focus on attribution generally and the weight that can be given to the evidence of Mr Philips and Mr Donaldson.

2612. The Sabra Defence in its final trial brief attacked the Prosecution's attribution evidence, pointing out that it suffers from the fact that it 'cannot be certain that a person to whom a mobile is attributed was actually using it at any specific time'. Mr Donaldson had accepted 'that all that could be done is assess who had control over the phone', and it is not possible 'to attribute every call, without intercepts or testimony of the person to whom the specific phone was in contact' and the Prosecution had produced neither.⁵³³⁷

2613. The Sabra Defence also attacked Mr Donaldson's credibility and methodology, stating that:

Rather than relying on the underlying evidence or engaging a recognised expert, the Prosecution based their entire case in relation to the attribution of **Purple-018** on DONALDSON who displays neither the independence nor the competence to assume this responsibility.⁵³³⁸

Further:

DONALDSON was permitted to provide non-expert opinion evidence, despite his admitted lack of technical expertise in analysing the predicted coverage, because he "comprehensive[ly] review[ed]" the Prosecution's evidence, had analysed each piece of evidence underlying his conclusions and opinions, and has ten-years of experience in working with Lebanese CDRs. However, this does not endow DONALDSON with sufficient knowledge or experience for his conclusions to assist the Chamber.⁵³³⁹

2614. His evidence also 'was selective, incomplete and speculative and, as he confirmed, only focused on evidence that was in support of the Prosecution case'.⁵³⁴⁰ Hence, in assessing the attribution evidence, the Trial Chamber 'is not assisted by expert evidence as there is no specialised

⁵³³⁷ Sabra Defence final trial brief, para. 111.

⁵³³⁸ Sabra Defence final trial brief, para. 192 (footnotes omitted).

⁵³³⁹ Sabra Defence final trial brief, para. 87 (footnotes omitted).

⁵³⁴⁰ Sabra Defence final trial brief, para. 90.

knowledge, skill or training available to a witness who can assist the Chamber to understand or determine an issue in dispute'.⁵³⁴¹

5. The Trial Chamber's approach to single user analysis

(a) General observations

2615. The Trial Chamber has considered and recognised the general limitations of the telecommunications evidence as set out in chapter VII 'Reliability of telecommunications evidence'. As single user analysis and co-location analysis depend on its reliability, underlying deficiencies might affect the results of the analysis. The Trial Chamber has been conscious of this in its co-location and single user analysis.

2616. The Parties do not disagree that co-location analysis provides only a possibility that multiple mobiles were together or that they had a single user, and hence their attribution to someone. Determining the possibility of co-location is only the first step towards concluding that multiple mobiles had a single user (or, alternatively, not).

2617. In this case, the Prosecution's case against the four Accused and its allegations against Mr Badreddine rely solely on circumstantial telecommunications evidence, and connecting these to other provable pleaded events, such as Mr Hariri's movements.⁵³⁴² The only evidence of where a mobile may have been comes from the cell site and call data records, as there was no evidence, such as reliable GPS information, placing their pleaded mobiles in any specific location.

2618. Since the exact location of a mobile cannot be determined from cell site evidence alone, conclusions as to whether a mobile user can travel the necessary distance between cell coverage areas will be based on approximations. How reliable these approximations are is unknowable in the absence of information of the starting and end point of the travel. But this of course depends upon the time between the calls of interest; a lengthy period over which this occurs can make co-location more likely. Another factor is that mobiles may connect to the same cell mast if they are not both within its predicted best server coverage area.⁵³⁴³ An additional consideration is that

⁵³⁴¹ Sabra Defence final trial brief, para. 113.

⁵³⁴² With the possible exception of the pleaded allegations and limited evidence that Mr Oneissi was 'Mohammed', which could be considered as direct identification evidence, at least on the pleading in the amended consolidated indictment.

⁵³⁴³ *For example*, John Edward Philips, T. 20 April 2017, pp 19-20.

determining whether mobiles are co-locating is only possible when they are used, namely, when they make or receive a call or send or receive a text message.

2619. The ultimate issue is whether, from examining the patterns of call use of target mobiles over a period, conclusions may be drawn as to co-location. Whether this has been established beyond reasonable doubt in the case of specific mobiles and Accused persons must be assessed on a call-by-call basis but only when the calls—and viewed in the totality of all calls and texts to and from relevant mobiles—are assessed in the light of the totality of the evidence. This includes linking the calls and the location of the mobile to any pleaded and provable events.

2620. The Trial Chamber is firmly of the view that Mr Donaldson did not have the necessary technical qualifications or experience to provide opinions that it could rely on in finding, based on co-location, that the Accused were using the pleaded network mobiles. This is of course apart from obvious examples for which no specialised technical experience is needed, as is noted below. Mr Donaldson could not explain instances of dislocation and had no experience in this field. He should never have been asked to express these opinions in reports that were to be used in either confirming the indictments or in court proceedings.

2621. It is also difficult to understand why, in the years between the Special Tribunal's establishment on 1 March 2009 and Mr Philips producing the first draft of his general cell site report on 1 August 2012—which was thirteen months after the first four Accused were indicted and almost 19 months after the initial indictment was submitted—the Prosecution had not engaged a cell site expert who could produce a report for the Pre-Trial Judge's use in examining the material supporting the indictments. The Pre-Trial Judge had only Mr Donaldson's reports to guide him in his task.

2622. This fact alone probably explains why Mr Donaldson went much further than he was entitled to in expressing views well outside his area of expertise, and, additionally, encroaching on the Trial Chamber's ultimate fact-finding role. For without it, the Prosecutor would have had no cell site 'analysis' from which the Pre-Trial Judge could form a view that there was a *prima facie* case against the Accused, and thus confirm the indictments against them. Mr Donaldson should never have been placed in such a position, which of course resulted in his attempting to defend it under Defence cross-examination in court.

(b) Methodology and Trial Chamber's approach to evaluating this evidence

2623. The Trial Chamber has carefully examined the methodology of attributing a single user to multiple mobiles through cell site co-location analysis. It has cautiously evaluated the differing methodologies employed by Mr Philips and Mr Donaldson in reaching their conclusions. These are outlined in detail above.

2624. Regarding the Trial Chamber's methodology, in its decision on the scope of Mr Donaldson's evidence, it explained that:

The Prosecution must ... first establish that the personal mobiles can be attributed to Mr Ayyash, Mr Merhi and Mr Badreddine, and then that these mobiles co-located with the network mobiles, and thus that the network mobiles can be attributed to the three. Co-location is not relevant in Mr Oneissi's and Mr Sabra's cases.⁵³⁴⁴

2625. The Trial Chamber has therefore examined separately the existence of the pleaded colour coded networks allegedly used by Mr Ayyash, Mr Merhi and Mr Badreddine, and the evidence attributing other mobiles to these three, and to Mr Oneissi and Mr Sabra. The possibility of co-location and hence whether the network and personal mobiles had a single user, and therefore whether the Trial Chamber can be convinced beyond reasonable doubt of this, follows as the next step.

2626. Both Mr Philips and Mr Donaldson set out in considerable detail what they did. The most significant difference in their approaches, in the Trial Chamber's view, is that Mr Philips, as the Prosecution's cell site expert, declined to positively conclude whether two mobiles were co-locating and whether they had a single user. He stated quite correctly that in the absence of anything other than cell site evidence he could not do so.

2627. By contrast, Mr Donaldson who is a non-expert, positively asserted in his attribution reports that the Accused were using specified mobiles. He also concluded from his examination of the cell site evidence that mobiles he attributed to Mr Ayyash, Mr Merhi and Mr Badreddine were co-locating with pleaded network mobiles.

⁵³⁴⁴ Decision on opinion evidence (Mr Donaldson), para. 6.

2628. Cell site evidence alone, as Mr Philips pointed out, cannot with certainty establish that two mobiles had a single user. The Trial Chamber observed in its decision on the Defence challenge to Mr Donaldson's evidence that in some obvious instances—and using only cell site evidence—no particular technical skills are needed to determine whether two mobiles may or may not be co-locating, and have a single user. Two mobiles that always use the same or adjacent cells, and two mobiles connecting to cells too far apart to have travelled the distance in the time required to have made the calls, are obvious examples. In fact, it fell within the Trial Chamber's functions to assess both co-location and attribution evidence to conclude that multiple mobiles have a single user.

2629. In considering Mr Philips's and Mr Donaldson's co-location analyses, the Trial Chamber has factored in their respective expertise and methodologies. It has considered that some Defence criticisms of their methodologies have merit, and the witnesses themselves conceded this in court during cross-examination.

2630. Generally though, because of the imprecise nature of much of the cell site evidence, the Trial Chamber cannot positively find that there is a 'best' methodology for its evaluation. Much will depend on the specific circumstances of the case. In this case both Mr Philips and Mr Donaldson were relying upon and analysing data from events occurring years before. Both Mr Philips—by virtue of his expertise as a cell site expert—and Mr Donaldson as a result of his years of experience in examining cell site data in the UNHCR and the Office of the Prosecutor, employed methodologies that they believed best-suited the task. Neither approach of course is problem-free, and especially in view of the imprecision of some of the data.

2631. To attribute network mobiles to Mr Ayyash, Mr Merhi and Mr Badreddine, the Prosecution has had to rely on its single user analysis, based on co-location. The Trial Chamber has therefore carefully assessed, for each mobile, the totality of the evidence and the Defence challenges to its reliability.

2632. In relation to the attribution of personal mobiles, the Trial Chamber has considered the evidence in its totality. This includes assessing the combination of the underlying documents used to establish that an Accused or Mr Badreddine was the mobile's user. These are, among other things, registration documents, text messages, handset swapping, geographic profiling, database entries, contacts of the mobiles and when the mobiles were used as contact numbers.

2633. The Trial Chamber has largely accepted Mr Philips's methodology, while factoring in the limitations of the underlying data. In its view, he carefully and as neutrally as he could set out the factors weighing in favour and against two mobiles having a single user. The Trial Chamber has accepted Mr Philips's cell site expertise and relied on him for certain technical explanations but has made its own decisions in relation to what could in the specific circumstances be inferred from instances of possible co-location.

2634. The Trial Chamber has viewed Mr Donaldson's non-expert co-location analysis with considerably more caution than that of Mr Philips.

2635. Mr Donaldson of course had an overview of the evidence that Mr Philips could not have, as the Prosecution had effectively segregated Mr Philips from the case, and even the names of its suspects. So in this sense Mr Donaldson was able to 'join some of the dots' by virtue of his detailed knowledge of all of the pieces of evidence the investigation put together to attempt to prove mobile attribution. For example, the mobile registration details, the contacts of each mobile, SMS content, the use of the numbers as business and official contacts and so on.

2636. The Trial Chamber has carefully assessed each of what Mr Donaldson described as attribution points in determining their relative strengths and weaknesses. In this respect, his evidence was helpful in assisting the Trial Chamber in compiling and considering the underlying evidence in reaching conclusions on attribution. It has used his reports primarily for their useful summary overview of the evidence. The Trial Chamber has noted his opinions as to whether attribution or single use has been established and has used his analysis to guide it to the evidence.

2637. In its decision on Mr Donaldson's evidence, the Trial Chamber held that his lack of formal expertise on co-location or cell site analysis naturally limited the probative value of any opinion he expressed on either and, particularly on co-location. While this of itself did not prevent him—based upon his extensive professional experience in the area—from providing one on either topic,⁵³⁴⁵ the weight to be given to his opinions, rather than its expression, is of more concern to the Trial Chamber's analysis of the evidence.

⁵³⁴⁵ Decision on opinion evidence (Mr Donaldson), para. 70.

2638. The Trial Chamber in fact has rejected Mr Donaldson's conclusions in respect of two critical mobiles, namely Green 071 and Purple 018. The Trial Chamber could not agree with Mr Donaldson's conclusions attributing Green 071 to Mr Merhi based on his opinion that it was co-locating with Purple 231. The Trial Chamber is of the view, as set out in analysing the attribution of Green 071, that the evidence is insufficient to establish this. Similarly, although not based on co-location, and for the reasons set out in analysing whether Purple 018 had Mr Sabra as a single user, the Trial Chamber does not agree with Mr Donaldson's conclusions and has found that both Mr Sabra and his wife were its users.

2639. Overall, the Trial Chamber has no reason to doubt the careful analytical approach of Mr Philips. Mr Donaldson also devoted an enormous amount of time to his analysis. Where both Mr Philips and Mr Donaldson performed a co-location analysis, the Trial Chamber has preferred that of Mr Philips. This is primarily because Mr Philips had superior technical expertise and hence took a more qualified approach to his conclusions. Mr Donaldson's analysis was often a statistical exercise and he did not have the same technical skills as Mr Philips. Where only Mr Donaldson did this co-location analysis the Trial Chamber considered his evidence cautiously in light of its limitations.

2640. In some instances, the Trial Chamber has reached the same ultimate conclusion as Mr Donaldson as to attribution based on single user analysis, but at no point did it simply adopt any of his conclusions. Rather, it used his evidence as a starting point for its own analysis and conclusions.⁵³⁴⁶

(c) Methodology—calculating possible travel times between cells

2641. To calculate distances and therefore possible travel times between cells to which target mobiles connected, Mr Philips used a straight line between the geographical centres of the predicted best coverage areas of the respective cells, while Mr Donaldson measured the distance between the cell towers.

⁵³⁴⁶ *For example*, the Trial Chamber's analysis in relation to Yellow 669 in sub-section B (2) (a) 'Yellow 669'. The Trial Chamber's findings regarding the attribution of Yellow 669 to Mr Ayyash are based on the preponderance of evidence.

2642. There is some merit in the Ayyash Defence's criticisms about distances being measured in straight lines, and that Mr Donaldson and Mr Philips should have considered other factors, such as road travel and traffic. In a sense, Mr Philips's decision to use the distance between the centres of cell areas is arbitrary, as is shown by Mr Donaldson's deliberate rejection of this methodology. In another sense, Mr Donaldson's is likewise just as arbitrary.

2643. Using either method, the actual travel time needed to cover the theoretical distance may have been higher than any average travel calculated on a distance in a straight line. But it also could be lower. Miscalculations of either naturally could distort the statistical results. In this respect, Mr Philips's and Mr Donaldson's analyses might have yielded fewer 'positive' results had they been able to include such factors.

2644. But both had to choose a method to calculate whether travel was possible between cell areas to determine whether co-location was possible. The evidence is clear that almost all cells have fragmented predicted best server coverage areas.⁵³⁴⁷ All urban cells have some areas of overlapping coverage with other cells. Imprecision is therefore inherent in attempting to ascertain co-location—when it involves mobile movement between cells—without knowing precisely where a mobile was, and what the traffic conditions were when the relevant pairs of calls occurred.

2645. It would have been impossible for Mr Philips or Mr Donaldson, working from the cell site data years after the calls were made, to have factored in contemporaneous travel or traffic conditions. But even if they had such information, without more, they could not have known how the targeted mobile user got between the different cells—with all the attendant variables such as the mode of transport, the route taken and whether the travel was direct or included deviations or breaks—and hence how long it took. This applies even if there is only one viable route between two locations.

2646. In these circumstances, the Trial Chamber cannot fault either for choosing their own approximation methods. They both carefully considered how this could best be done. The ultimate issue is how this may have affected the reliability of their methodologies and hence conclusions.

⁵³⁴⁷ Mr Philips explained in his report, exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), pp 71, 76, that it is normal for cells to have fragmented coverage areas.

This can only be resolved on a call-by-call basis, and then only in the context of the totality of the calls and any patterns that emerge from analysing them.

2647. For this reason, the Trial Chamber has closely scrutinised every pair of calls where Mr Philips has concluded of two or more mobiles that they ‘could be co-located’ or the circumstances ‘would not preclude co-location’. It has similarly carefully examined Mr Donaldson’s conclusions.

(d) Mr Philips’s lack of familiarity with Lebanon

2648. The Defence challenged the reliability of Mr Philips’s analysis based in part on his lack of familiarity with Lebanon and its telecommunications system and set-up. The Trial Chamber, having carefully reviewed the relevant evidence, does not share that concern. Mr Philips was using a combination of static telecommunications business records in the form of call data records, and cell site evidence, which is of course subject to interpretation. Hence, the need for an expert witness to assess it. Nothing was put before the Trial Chamber to demonstrate that Mr Philips’s lack of familiarity with a specific location, namely Lebanon, would diminish the reliability of his analysis as a cell site expert of the relevant data.

2649. The Trial Chamber received evidence from the representatives of the two Lebanese telecommunications providers, Touch and Alfa,⁵³⁴⁸ on the network planning tools that configured the predicted server coverage maps on which Mr Philips relied. This evidence has convinced the Trial Chamber that the methodology involved in network planning tools, such as Asset’s Aircom, is essentially the same in the UK—where Mr Philips gained most of his experience. Nothing in the Defence submissions has persuaded the Trial Chamber otherwise. The principles of radio coverage, including its propagation, coverage and measurement are no different in Lebanon than anywhere else. While Lebanon’s topography of course is unique—and he considered this in his analysis—the techniques in cell site analysis are the same as in the UK.

⁵³⁴⁸ Witnesses 705 and 707.

(e) Mr Philips's 'isolation' from the Prosecution and Mr Donaldson's credibility

2650. Regarding the Defence's submissions on the reliability of Mr Philips's and Mr Donaldson's evidence, and specifically Mr Philips's 'isolation' from certain information known to the Prosecution and Mr Donaldson's association with the Prosecution, the Trial Chamber considered and rejected those submissions in chapter III 'Assessment of evidence', D (1) (b) (ii) 'Witness independence and association with Parties' and chapter VII 'Reliability of telecommunications evidence', I (6) 'Findings on cell site analysis'.

2651. The opposite, however, applied to Mr Donaldson, who, conversely, was not just deeply embedded in the Prosecution's work, but his analytical work appears to have been central to its case theory on the attribution of mobiles to the four Accused and Mr Badreddine. Inevitably, his employment in the Office of the Prosecutor will have coloured his objectivity, and here to the point that he offered opinions outside of his expertise.

2652. As the Trial Chamber pointed out in its decision permitting his evidence, Mr Donaldson should not have expressed definitive opinions as to attribution and single use. Moreover, the responsibility was that of the Prosecution to ensure that Mr Donaldson did not go too far in his analysis and especially in his opinions and conclusions. The Trial Chamber has expressly factored this into its considerations.

(f) Conclusion—eliminating coincidence

2653. To positively find beyond reasonable doubt that multiple mobiles had a single user, the Trial Chamber must consider a number of factors relating to call patterns and geographic profiling. In doing this it must negative the reasonable possibility that the patterns of potential co-location, and hence single use, can be explained by mere coincidence.

2654. The Trial Chamber has carefully considered and accepts the factors that Mr Philips identified that could raise patterns of use from mere coincidence to proof beyond reasonable doubt. These are the length of the period of the possible co-location, the frequency of the calls and the extensive movements of the multiple mobiles. These factors must also be analysed on a call-by-call basis and in the totality of all communications involving the target mobiles.

2655. The Trial Chamber has carefully factored in the limitations of the telecommunications evidence and single user analysis when determining whether the network mobiles can be attributed to Mr Ayyash, Mr Merhi or Mr Badreddine. Specifically, it has closely considered the factors Mr Philips identified when determining whether it is the only reasonable conclusion from the evidence that they used the mobiles. Determining whether instances of co-location are coincidental or follow a pattern to the extent that the only reasonable conclusion is that the mobiles have a single user, is call and situation specific.

2656. In this respect, the Trial Chamber has also carefully noted Mr Philips's evidence about eliminating the possibility of coincidence in densely populated urban areas where many thousands of mobile users may consistently use the same cells. This could be contrasted to a sparsely populated rural environment where, for instance, a small number of mobile users are active, and coincidence may therefore be much more easily eliminated.

2657. The Trial Chamber has carefully analysed each alleged instance of co-location before determining what could be concluded with regard to the mobiles' attribution to the Accused and Mr Badreddine.

B. Salim Jamil Ayyash

2658. Salim Jamil Ayyash was born on 10 November 1963 in Nabatiyeh, Lebanon.⁵³⁴⁹ He married Ms Fatimah Hajj, who was born in 1966, and they had three children.⁵³⁵⁰ He bought an apartment in Hadath, Beirut in March 2002. He also used a family residence in Harouf in southern Lebanon, near Nabatiyeh. He worked for the Lebanese Civil Defence at the Al-Doueir station, near Harouf, until February 2002, and then until November 2004, was the Head of the Markaba station, before transferring back to Al-Doueir.

2659. The Prosecutor pleaded in the amended consolidated indictment that Salim Jamil Ayyash, with the other three Accused, Hassan Habib Merhi, Hussein Hassan Oneissi and Assad Hassan Sabra, a named co-conspirator, Mustafa Amine Badreddine, and five other unidentified subjects⁵³⁵¹ participated in a conspiracy aimed at committing a terrorist act to assassinate the

⁵³⁴⁹ Exhibit P1034 (Family personal status extract), p. 3.

⁵³⁵⁰ Exhibit P1034, p. 5.

⁵³⁵¹ Namely Subjects 5, 6, 7, 8 and 9.

former Lebanese Prime Minister, Mr Rafik Hariri.⁵³⁵² Mr Ayyash and Mr Badreddine coordinated the surveillance of Mr Hariri in the preparation for the attack, the purchase of a truck, a Mitsubishi Canter, which concealed a large quantity of explosives, and participated in the carrying out of the assassination.⁵³⁵³

2660. The Prosecution endeavoured to prove Mr Ayyash's participation in the conspiracy, and in the other four counts charged—including committing a terrorist act by means of an explosive device—through his use of network mobiles and linking their location to Mr Hariri's movements. The Prosecutor alleges that Mr Ayyash used the network mobiles, Blue 233 and Yellow 294, in preparing for the attack—including the surveillance of Mr Hariri—and a Red network mobile, Red 741, to observe Mr Hariri's movements and locations linked to him, and to coordinate the attack on 14 February 2005.⁵³⁵⁴ According to the Prosecutor, Mr Ayyash used his Green network mobile, Green 300, to communicate with Mr Badreddine regarding aspects of the preparation and coordination of the assassination.⁵³⁵⁵

2661. Although it was not pleaded in the amended consolidated indictment,⁵³⁵⁶ the Prosecution alleges in its final trial brief that in the early phase of the surveillance, Mr Ayyash used another Blue network mobile, Blue 322.⁵³⁵⁷ As it is not formally pleaded against Mr Ayyash, the Trial Chamber has made no findings against him in relation to his alleged use of this mobile.

2662. There was some contested evidence that Mr Ayyash was performing the Hajj in January 2005 at a time when the Prosecution alleges that he was in Lebanon using his network and personal mobiles. The Prosecution concedes that it has no case against Mr Ayyash if indeed he were in Saudi Arabia at the time. It was uncontested that he performed the Hajj in January 2004.

2663. To prove that he did not leave Lebanon in January 2005, the Prosecution called evidence that Mr Ayyash was using a network mobile, Yellow 669, from 23 December 2003 to 18 April 2004. This was to prove—through comparing calling patterns—that he left Lebanon at the end of January 2004 to perform the Hajj pilgrimage in Saudi Arabia, but stayed in Lebanon in January

⁵³⁵² Amended consolidated indictment, paras 3 (a), (e), 15 (a), 48.

⁵³⁵³ Amended consolidated indictment, paras 20-42.

⁵³⁵⁴ Amended consolidated indictment, paras 15 (a), (c), (d), 18, 19 (a), 22, 30, 32-36, 38-39.

⁵³⁵⁵ Amended consolidated indictment, paras 15 (b), 18, 21, 24, 26, 32 (b), 34, 36 (b), 37-38, 39 (a).

⁵³⁵⁶ It pleads that Subject 14 used Blue 322.

⁵³⁵⁷ Prosecution final trial brief, para. 214.

2005.⁵³⁵⁸ Mr Ayyash's alleged use of Yellow 669 is also not pleaded in the amended consolidated indictment.

2664. The Prosecutor further alleges that Mr Ayyash used his personal mobile 091 to contact Mr Merhi who was responsible for the preparation of the false claim for the attack, and that he was the user of personal mobiles 165, 091, 935 and 170.⁵³⁵⁹

2665. The anonymous nature of network mobiles, such as Yellow 669, Yellow 294, and the covert network mobiles Blue 233, Blue 322, Green 300 and Red 741, makes it harder to identify their user(s) through subscriber records, text messages or other documents.⁵³⁶⁰

2666. To attribute network mobiles to Mr Ayyash by geographic profile and co-location analysis, the Prosecution first sought to establish that he used two landlines, 696 and 851, and four personal mobiles, 165, 935, 170 and 091. This was based on numerous pieces of evidence, including witness statements and testimony, subscriber records, SMS contents, university records, insurance reports, bank records and passport applications.⁵³⁶¹

2667. The Trial Chamber received extensive evidence from the Prosecution analyst, Mr Andrew Donaldson, on the attribution of mobiles to Mr Ayyash. His attribution reports on each Accused and Mr Badreddine—containing the sources he relied upon—assisted the Trial Chamber to better understand how to piece together the evidence relating to the attribution of landlines, personal and network mobiles. The Trial Chamber, however, attached limited probative value to Mr Donaldson's overview summary evidence but used it primarily as a guide to identifying the underlying evidence.

2668. Mr Donaldson also offered his non-expert opinion evidence based on co-location analysis of the network mobiles. The Trial Chamber has assessed its weight in light of the totality of the evidence, and in particular that of Mr J. E. Philips's expert opinion on single user analysis.

⁵³⁵⁸ Prosecution final trial brief, paras 211, 300.

⁵³⁵⁹ Amended consolidated indictment, paras 3 (d), 18, 19 (c), 31, 37.

⁵³⁶⁰ For the Trial Chamber's findings regarding the Green, Red and Blue mobile networks, *see* chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles', paras 2232-2246, 2287-2292, 2330-2341, 2372-2381. *See also* exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 3.

⁵³⁶¹ Andrew Donaldson, T. 18 July 2017, pp 12-13.

1. Personal mobiles and landlines

2669. The Prosecution relies on Mr Ayyash's personal mobiles and the landlines of his two residences to prove that he was using the pleaded network mobiles. The Prosecution led evidence of Mr Ayyash and his family using landlines at an apartment in Hadath in Beirut and at a residence near Nabatiyeh in south Lebanon. The Prosecution has used the contacts of these landlines to argue that they were used by Mr Ayyash.

(a) Mr Ayyash's work for the Lebanese Civil Defence

2670. The Lebanese Civil Defence service falls within the Ministry of Interior and Municipalities. Its responsibility is humanitarian and rescue operations, including firefighting, working with the Fire Brigade or the Army, and responding to medical emergencies like car accidents or cardiac arrests.⁵³⁶²

2671. According to his employment records there, dating from March 1995, Mr Ayyash started working for the Civil Defence on 5 January 1986 after having had two years of education at the American University in Beirut. His education was specified as 'Year 2 Pharmacy', with the speciality of 'Technical Pharmacist'. As of March 1995 his job description was 'First Technical Assistant'.⁵³⁶³

2672. By order of the Director General of the Civil Defence, Brigadier-General Sarwiche Hobeika, on 30 August 2002, Mr Ayyash was transferred, with immediate effect, from the 'Douair Station' to be the 'Chief of Markaba'. Instructions going with the new posting included:

3. Teams are to be formed by the chief of the station. Report on implementation.
4. The chief of the station and the heads of teams are required to train and qualify volunteers from the town and its surroundings for possible assistance. They must be under 25 years old and not exceed 25 persons in total.⁵³⁶⁴

2673. On around 21 July 2004, Mr Ayyash requested permission to resign as the Chief of Markaba Station. The referral of the request stated:

⁵³⁶² T. 6 March 2017, pp 49-50 (closed session); exhibit P1911, pp 18-19; exhibit P1912, p. 13.

⁵³⁶³ Exhibit P1159 (Mr Ayyash's employee record at the Civil Defence), pp 1-3 (ERNs 60178464-60178466).

⁵³⁶⁴ Exhibit P1160 (Memorandum of appointments), p. 1.

Attached herewith the resignation request sent by the Chief of Markaba Station Salim Jamil Ayyash since he is not being able to continue performing his duties. He insisted on his request knowing that he was asked to be patient.⁵³⁶⁵

2674. Three months later, on 29 October 2004, the Director-General approved the request, and transferred Mr Ayyash, as from 1 November 2004, to a new post, with the title of 'El-Doueir/Operations'.⁵³⁶⁶

2675. From these official Lebanese records, the Trial Chamber can conclude that Mr Ayyash worked at the Al-Doueir Station⁵³⁶⁷ until 30 August 2002. He was then the Chief of the Markaba Station from 30 August 2002 until 1 November 2004, when he returned to work at the Al-Doueir Station.

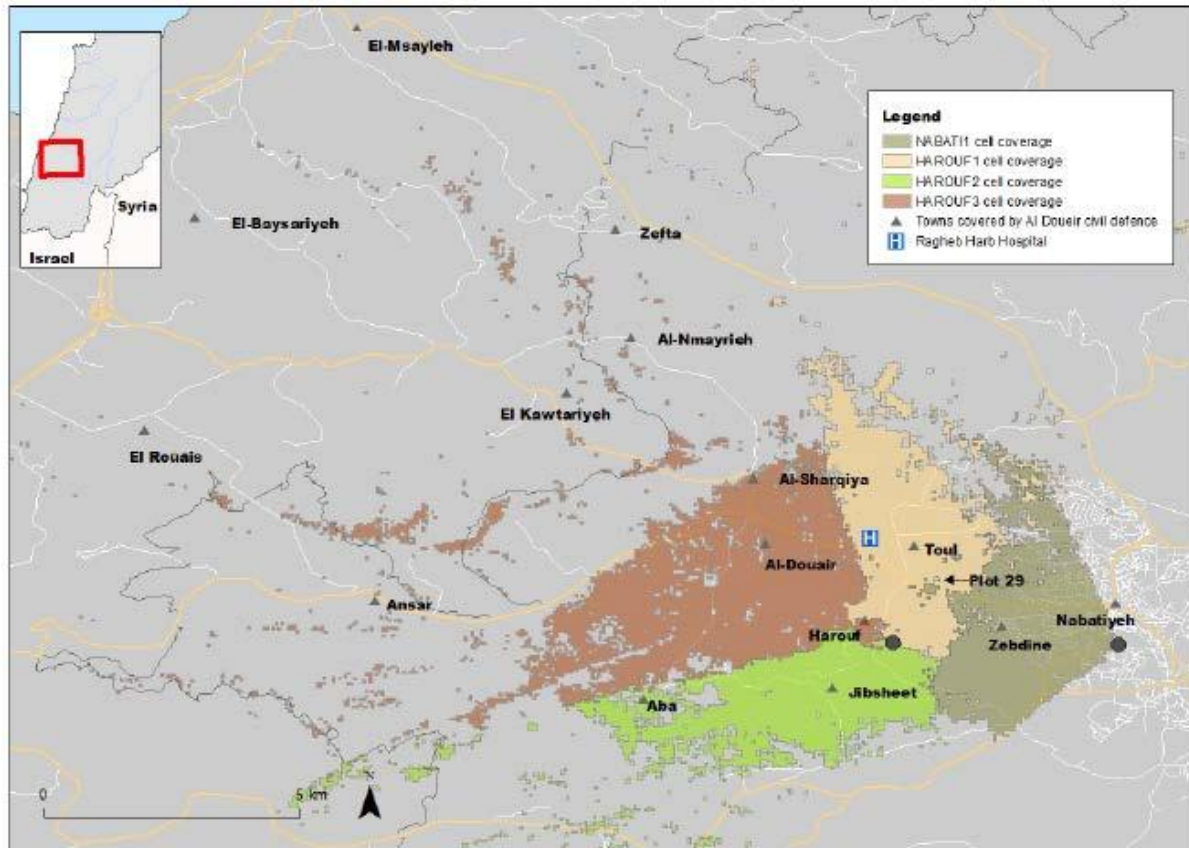
2676. In his report, Prosecution analyst Mr Andrew Donaldson mapped the Alfa and Touch cell sectors which provided predicted best coverage to the village of Al Doueir and the surrounding villages which were served by the Al-Doueir Civil Defence station, namely El-Sharqieh, Harouf, Jibsheel, Toul, Ansar and Aba.⁵³⁶⁸

⁵³⁶⁵ Exhibit P1162 (Civil Defence order transferring Mr Ayyash to the Doueir station), p. 2.

⁵³⁶⁶ Exhibit P1162, p. 1.

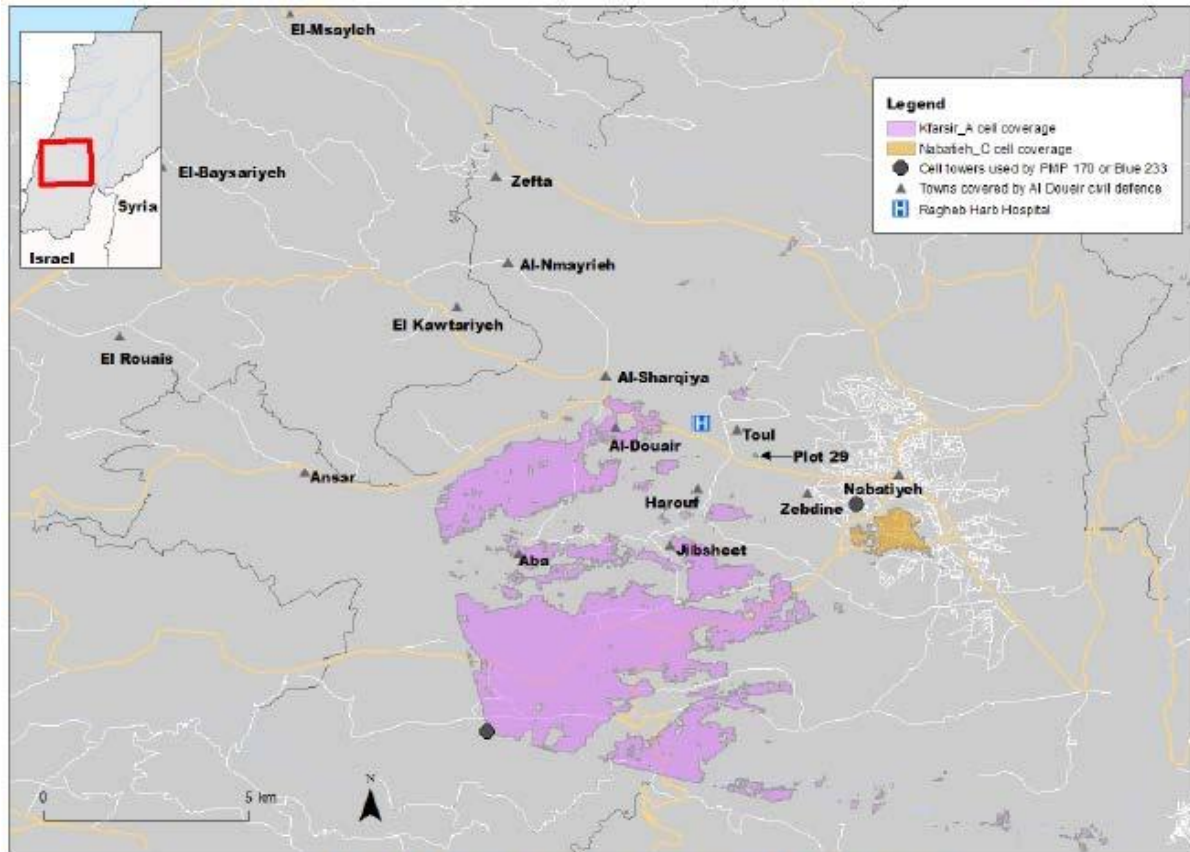
⁵³⁶⁷ The transliteration in English produces different spellings of the name.

⁵³⁶⁸ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 649, pp 258-259; exhibit P1911, p. 18 (ERN 60178535).



Map: Civil Defence Doueir Station and ALFA Cell Towers

Attribution report of Andrew Donaldson regarding Mr Ayyash—exhibit P2026.2, p. 258



Map: Civil Defence Doueir Station and MTC Cell Towers

Attribution report of Andrew Donaldson regarding Mr Ayyash—exhibit P2026.2, p. 258

2677. There was no direct evidence of the precise location of the Markaba Station. The predicted best server coverage area for Markaba village is Markaba_C, with Markaba_A and Markaba_B lying adjacent to it. Alfa cell MHAIBI1 also provides coverage to the area.

(b) Landline 696—Ayyash family residence in Hadath, Beirut

i. Land Registry, telephone and electricity subscription records

2678. On 14 March 2002, Mr Ayyash bought an apartment in Hadath, in south Beirut. It is described in the Lebanese Land Registry documents as ‘Real Estate Zone: Al-Hadath number: 2 Number of the inclusive real estates: 177 Block: B Section: 15’.⁵³⁶⁹

⁵³⁶⁹ Exhibit P637 (Land title certificate), pp 2-3.

2679. Thirteen months later, on 8 April 2003, he arranged for an electricity subscription (connection) for the property.⁵³⁷⁰ The following week, on 14 April 2003, he applied for a landline, number 696, for this apartment.⁵³⁷¹ And on that day the telecommunications company, Ogero, requested Bank Audi S.A.L. to direct debit Mr Ayyash's account for all charges for this landline.⁵³⁷² The landline was activated the following day,⁵³⁷³ and Mr Ayyash had it deactivated on 20 October 2007.⁵³⁷⁴ Mr Ayyash cancelled an automatic payment by Bank Audi for his electricity subscription on 12 March 2005.⁵³⁷⁵

2680. The Land Registry records Mr Ayyash as owning the apartment during the period of the landline subscription, and throughout the period relevant to the amended consolidated indictment, namely from Thursday 11 November 2004 to Monday 14 February 2005.⁵³⁷⁶ Immediately below is a map prepared by a Prosecution analyst, Mr Andrew Fahey, showing the location of the Hadath apartment, referred to on the map as 'Plot 177':⁵³⁷⁷

⁵³⁷⁰ Exhibit P639 (Electricity subscription), pp 1-2.

⁵³⁷¹ Exhibit P637, pp 2-3; exhibit P1636 (Subscription record for landline 696), pp 1-2, 14. The application was made for the address Beirut, El-Hadath, Jammous-Tabaja building-own property, 3rd floor, exhibit P1636, p. 2.

⁵³⁷² Exhibit P2087 (Direct debit documents from Audi Bank S.A.L.), pp 1-3.

⁵³⁷³ Exhibit P1636, p. 14.

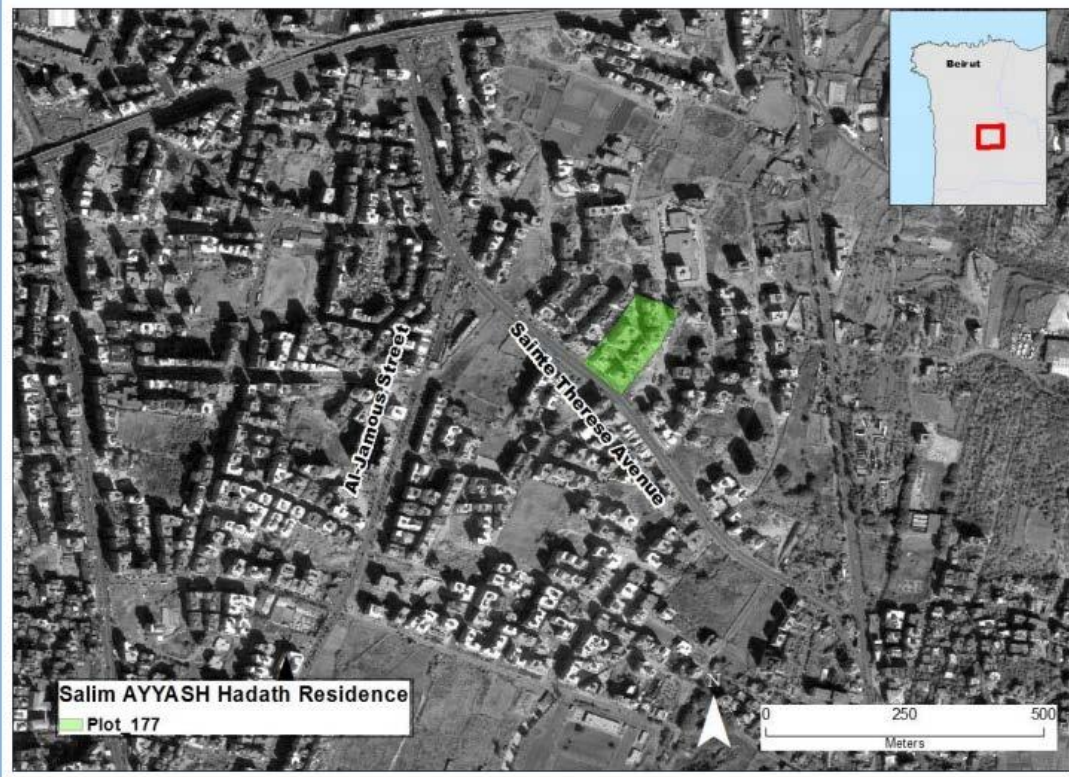
⁵³⁷⁴ Exhibit P1636, pp 9-10, 14.

⁵³⁷⁵ Exhibit P2113 (Automatic payment cancellation form), p. 1. There was no evidence of a date of deactivation.

⁵³⁷⁶ Exhibit P637, pp 2-3.

⁵³⁷⁷ Exhibit P662 (Statement of Andrew Fahey), paras 10-38, pp 33, 37, 40, 43, 46. *See also* exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 23.

Hadath Residence



Slide 6 of Mr Donaldson's PowerPoint presentation—exhibit P2025

ii. Landline 696 as a contact for Mr Ayyash and his family

2681. Mr Ayyash's passport application, submitted on 17 October 2007, lists landline 696 as his contact number.⁵³⁷⁸ Ms Zeinab Ayyash and Ms Fatima Hajj, Mr Ayyash's daughter and wife,⁵³⁷⁹ both listed landline 696 as their telephone number in their passport applications.⁵³⁸⁰ The application for Ms Zeinab Ayyash was lodged on 17 August 2004⁵³⁸¹ and the application for Ms Fatima Hajj on 23 October 2007.⁵³⁸²

⁵³⁷⁸ Exhibit P1532 (Mr Ayyash's Lebanese passport application), pp 2, 4 (ERN 59002775).

⁵³⁷⁹ Exhibit P1034 (Family personal status extract), pp 5-6.

⁵³⁸⁰ Exhibit P1531 (Ms Zeinab Ayyash's Lebanese passport application), p. 2 (ERN 59002801); exhibit P1533 (Ms Fatima Hajj's Lebanese passport application), p. 2 (ERN 59002763).

⁵³⁸¹ Exhibit P1531, p. 2 (ERN 59002801).

⁵³⁸² Exhibit P1533, p. 6 (ERN 59002764).

2682. Witness PRH078, a service provider to the Ayyash family, stated that landline 696 was listed as the telephone contact number for Ms Fatima Hajj in the client database.⁵³⁸³

iii. Contacts of landline 696

2683. Mr Donaldson analysed all mobile and telecard contacts of this landline. The Prosecution created a call sequence table for landline 696⁵³⁸⁴ based on call data records provided by the Lebanese mobile telecommunications service providers, Alfa and Touch, for calls involving a mobile, and relying on call data records received from Ogero in relation to Kalam card and telecard calls.⁵³⁸⁵

2684. No records were kept at the time of landline to landline calls, and Mr Donaldson noted the call sequence table provides only a partial profile of this landline's use.⁵³⁸⁶ The call sequence table records 845 incoming and outgoing calls between 29 August 2004 and 31 December 2005.⁵³⁸⁷

2685. To visualise the contact profile of landline 696 and of other telephone numbers allegedly associated with Mr Ayyash, the Prosecution, based on Lebanese official family status extracts, prepared an extended Ayyash family tree.⁵³⁸⁸

2686. Mr Donaldson analysed the underlying evidence, and in his attribution report, listed that landline 696 had repeated contact with.⁵³⁸⁹

⁵³⁸³ Exhibit P707 (Statement of Witness PRH078), pp 10, 34-42 (ERNs 60305681, 60305705-60305713).

⁵³⁸⁴ Exhibit P1978 (Call sequence table for landline 696). The Trial Chamber admitted into evidence another call sequence table for landline 696 with the same date range which also includes landline-to-landline calls. Although this call sequence table (CST-185) was tendered by the Prosecution, marked for identification as P522 MFI, and then subsequently withdrawn, the Trial Chamber admitted it as exhibit P522 for the Ayyash Defence. The Ayyash Defence used it during Mr Donaldson's cross-examination. The Ayyash Defence submitted that if there is a call data record that was generated and stored by Ogero it was a reliable record of that call taken at that point in time. Relying on the Ogero witnesses' evidence, the Ayyash Defence argued that the call data records Ogero generated for testing landlines meet the *prima facie* reliability test, and the incompleteness of the data is a matter of weight, T. 5 October 2017, pp 59-61.

⁵³⁸⁵ Andrew Donaldson, T. 18 July 2017, pp 15-17; exhibit P1977 (Witness statement of Kei Kamei), paras 8-13, annex A; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 30; exhibit P1777 (Consolidated witness statement on behalf of Ogero with annexes 1-9), paras 14-18, 21, 27-29, 76, 79, 83; Witness PRH709, T. 11 January 2017, pp 22-23, 33-36, 39-45; Toufic Chebaro, T. 12 January 2017, p. 16; Witness PRH711, T. 10 January 2017, pp 48-56, 58-59.

⁵³⁸⁶ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 29-30.

⁵³⁸⁷ Exhibit P1978, pp 1-31.

⁵³⁸⁸ Exhibit P1955 (Ayyash family tree); exhibit P1954 (Chart of additional Ayyash family links). *See also* exhibit P2025 (PowerPoint presentation regarding Mr Ayyash, Andrew Donaldson), slide 5.

⁵³⁸⁹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 34, 36-39 (b); exhibit P1978.

- a telephone possibly used by Mr Ayyash's son,⁵³⁹⁰ Mr Ali Salim Ayyash.⁵³⁹¹ This number (ending in 097) is noted on a motorcycle registration form for Mr Ali Salim Ayyash, dated 15 October 2006.⁵³⁹² Landline 696 had nine contacts with this number;
- Mr Ayyash's brother,⁵³⁹³ Mr Ali Ayyash.⁵³⁹⁴ This number (ending in 888) was subscribed in Mr Ali Ayyash's name.⁵³⁹⁵ Two vehicles were also registered under his name with this number.⁵³⁹⁶ Landline 696 had five contacts with it;
- Mr Ayyash's sister-in-law, Ms Bassima Hajj,⁵³⁹⁷ who is his wife's sister.⁵³⁹⁸ This number (ending in 854) was used for Ms Hajj's and her son Mr Mehdi Mohammed Badreddine's passport applications.⁵³⁹⁹ Landline 696 had 45 contacts with this number;
- two numbers used by Mr Mohammed Badreddine,⁵⁴⁰⁰ Ms Bassima Hajj's husband.⁵⁴⁰¹ Numbers ending in 777 and 989 were subscribed in his name.⁵⁴⁰² Both numbers were associated with an email account for Mr Badreddine in his role with the Middle East Imports and Exports Company.⁵⁴⁰³ Landline 696 had three contacts with number 777 and five contacts with number 989;

⁵³⁹⁰ Exhibit P1034, p. 22.

⁵³⁹¹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 36 (f).

⁵³⁹² Exhibit P1738 (Statement of vehicle details), p. 2. The number is also present on a bill of sale dated 18 January 2007 under Mr Ayyash's name and therefore may have had more than one user, exhibit P1736 (Bill of sale for Dodge Durango).

⁵³⁹³ Exhibit P1034, p. 3.

⁵³⁹⁴ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 36 (g).

⁵³⁹⁵ Exhibit P866 (Subscriber note for mobile 888).

⁵³⁹⁶ Exhibit P1739 (Extract from vehicle registration database); exhibit P1740 (Extract from vehicle registration database).

⁵³⁹⁷ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 36 (b).

⁵³⁹⁸ Exhibit P1034, p. 28.

⁵³⁹⁹ Exhibit P1036 (Personal status extracts and certificates), p. 8 (ERN 60252257); exhibit P1537 (Ms Bassima Hajj's Lebanese passport application, pp 2, 6; exhibit P1538 (Mr Mehdi Badreddine's Lebanese passport application), p. 2. The number is also listed in the database of a towing company under Mr Ali Ayyash and in the passport application of Mr Ali Ayyash's son, exhibit P1034, p. 11; exhibits P1516 (Mr Ahmad Ayyash's Lebanese passport application), P1844 (Extract from towing company's customer database).

⁵⁴⁰⁰ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 36 (l), (n).

⁵⁴⁰¹ Exhibit P1036, p. 4.

⁵⁴⁰² Exhibits P921 (Subscriber note for mobile 777), P1421 (Subscriber note for mobile 989).

⁵⁴⁰³ Exhibit P2074, pp 1-4, 6-7, 9, 12-13, 16-20, 22-46. Furthermore, the number ending in 777 was listed as the contact number for Mr Badreddine in two commercial customer databases, exhibits P1858, P2046. The number ending in 989 is also noted on a document for the registration of a vehicle by the Middle East Imports and Exports Company, exhibit P1742. Mr Badreddine's son, Mr Mehdi Badreddine, is listed under the telephone number ending in 989 on a telephone subscriber note, exhibit P1036, p. 8; exhibit P1423 (Subscriber note for mobile 946).

- Mr Mehdi Badreddine,⁵⁴⁰⁴ the son of Mr Mohammed Badreddine and Ms Bassima Hajj.⁵⁴⁰⁵ This number (ending in 946) was subscribed in the name of Mehdi Badreddine.⁵⁴⁰⁶ It also appears as the contact number for Mr Mehdi Badreddine and his sister, Ms Fatima Badreddine, in university records.⁵⁴⁰⁷ Landline 696 had four contacts with this number;
- Mr Wassef Qdeih,⁵⁴⁰⁸ the cousin of Mr Ayyash's wife, Ms Fatima Hajj.⁵⁴⁰⁹ This number (ending in 630) was listed on Mr Qdeih's Hajj travel application.⁵⁴¹⁰ It was also listed for his wife, Ms Salam Houmani, on a Hajj travel application.⁵⁴¹¹ Landline 696 had four contacts with this number;
- Mr Mohammed Ayyash,⁵⁴¹² Mr Ayyash's brother.⁵⁴¹³ This number (ending in 913) is attributed to Mr Mohammed Ayyash by two witnesses.⁵⁴¹⁴ The number was subscribed under his name on 11 April 2007, after initially being subscribed for a different user in 1996.⁵⁴¹⁵ Landline 696 had three contacts with this number;
- Mr Hussein Zaarour,⁵⁴¹⁶ the brother of Mr Ayyash's brother-in-law, Mr Ali Zaarour.⁵⁴¹⁷ Mr Hussein Zaarour owned a car showroom frequented by Mr Ayyash for business purposes, as Mr Ayyash sold cars through this showroom.⁵⁴¹⁸ This number (ending in 333)

⁵⁴⁰⁴ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 36 (o).

⁵⁴⁰⁵ Exhibit P1036, p. 8.

⁵⁴⁰⁶ Exhibit P1423.

⁵⁴⁰⁷ Exhibits P981 (List of students from Business and Computer College University), P982 (List of students from Lebanese International University); exhibit P1036, p. 8.

⁵⁴⁰⁸ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 36 (p).

⁵⁴⁰⁹ Exhibit P1031, p. 3; exhibit P1033 (Family personal status extract), p. 1 (ERN 60291498); exhibit P1034, p. 28.

⁵⁴¹⁰ Exhibit P1686 (Extract from the 1427 Hajj list of applicants).

⁵⁴¹¹ Exhibit P1033, p. 3 (ERN 60291499); exhibit P1687 (Extract from 1427 Hajj list of applicants).

⁵⁴¹² Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 36 (q).

⁵⁴¹³ Exhibit P1034, p. 3.

⁵⁴¹⁴ Exhibit P697 (Statement of Witness PRH050), para. 15 (p. 10); exhibit P1864 (Witness statement of Pierre Abou-Atmeh), para. 11 (p. 8).

⁵⁴¹⁵ Exhibits P883 (Alfa subscriber note for mobile 913); exhibit P868. Furthermore, three companies recorded this number as the number for Mr Mohammed Ayyash in their databases. Exhibit P1835 (Subscriber record for number 913), p. 2; exhibit P1837 (Subscriber record for number 913); exhibit P1841 (Extract from subscriber database for number 913). In the database of the Beirut Arab University for the years 2003-2006, this number is listed under the name of Ms Marwa Mohammad Ayyash, the daughter of Mr Mohammad Ayyash. Exhibit P958 (Record from *Université Libanaise* related to number 913); exhibit P1034, p. 9. In both the vehicle registration database and the database of a tow-truck company, it is listed under Ms Afifeh Nouredine, the wife of Mr Mohammed Ayyash. Exhibit P1034, p. 9; exhibit P1744, p. 2; exhibit P1833.

⁵⁴¹⁶ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 37 (a).

⁵⁴¹⁷ Exhibit P1034, pp 3, 19-20.

⁵⁴¹⁸ Exhibit P1863 (Statement of Witness PRH535), paras 12-16.

is subscribed in Mr Hussein Zaarour's name and was used in two of his passport applications.⁵⁴¹⁹ Landline 696 had 55 contacts with this number;

- Mr Ghaleb Jaber,⁵⁴²⁰ who operated a car mechanic shop next to the Ayyash family's former tool shop, and knew Mr Ayyash.⁵⁴²¹ His number (ending in 617) was stored in a customer database under the name Ghaleb Jaber.⁵⁴²² A bill of sale between Mr Jaber and Mr Ayyash for a Toyota Camry contains this number under Mr Jaber's details.⁵⁴²³ Landline 696 had 27 contacts with this number.

Mr Jaber might not have been exclusive user of this number. It was associated with or listed as the contact number for others, including Mr Ayyash, but always in connection with cars, suggesting that Mr Jaber's 'car repair shop' may have been noted as a contact for some vehicle related purposes;⁵⁴²⁴

- Witness PRH697,⁵⁴²⁵ an acquaintance of Mr Ayyash.⁵⁴²⁶ He gave investigators his mobile number.⁵⁴²⁷ Landline 696 had two contacts with this number;
- a mobile number that received two calls from Blue 233.⁵⁴²⁸ This number—ending in 401—was subscribed under the name Faraj Saed Lakkis and also appeared in a company's customer database under this name.⁵⁴²⁹ Landline 696 had one contact with this number;

⁵⁴¹⁹ Exhibit P1462 (Subscriber note for mobile 333); exhibit P1522 (Mr Hussein Zaarour's passport application), p. 2; exhibit P1523 (Mr Hussein Zaarour's Lebanese passport application), p. 2. Other documentary material includes vehicle registrations and the university record of his daughter, Ms Fatima Zaarour, exhibit P976 (List of students from *Université Libanaise*); exhibit P1737 (Vehicle registration for Hussein Zaarour), p. 3; exhibit P1746 (Vehicle registration for Hussein Zaarour), p. 1.

⁵⁴²⁰ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 37 (c).

⁵⁴²¹ Exhibit P1968 (Evidence of Witness PRH697), pp 53-55; exhibit P697 (Statement of Witness PRH050), para. 44.

⁵⁴²² Exhibit P1850 (Extract from subscriber database for number 617).

⁵⁴²³ Exhibit P1749 (Bill of sale for Toyota Camry), pp 1, 4. Furthermore, invoices link number 617 to Mr Jaber, exhibits P1750 (Vehicle importation documents for Ghaleb Jaber), P1751 (Vehicle importation documents for Ghaleb Jaber).

⁵⁴²⁴ Exhibit P1396 (Bill of sale for BMW 523i), p. 3, listing mobile 617 as Mr Ayyash's contact; exhibit P1854 (Extract from customer database for mobile 617), p. 1, listing number 617 as Mr Lotfi Ayyash's contact; exhibit P1860 (Statement of Witness PRH270), pp 34, 44, 48-49, 51-52, stating that Mr Ghaleb Jaber had a 'car repair shop' in Harouf, and that number 617 may have belonged to someone else.

⁵⁴²⁵ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 37 (d).

⁵⁴²⁶ Exhibit P1968 (Evidence of Witness PRH697), pp 23, 53-56.

⁵⁴²⁷ Exhibit P1968 (Evidence of Witness PRH697), p. 9.

⁵⁴²⁸ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 39 (b). See para. 3101.

⁵⁴²⁹ Exhibit P1469 (Subscriber note for mobile 401); exhibit P1828 (Extract from subscriber database for mobile 401).

- Mr Ayyash's attributed personal mobile 935.⁵⁴³⁰ Landline 696 had 58 contacts with it; and
- Mr Ayyash's attributed personal mobile 091.⁵⁴³¹ Landline 696 had 13 contacts with it.

2687. The Lebanese General Directorate of General Security stated that the official Lebanese border records show that Ms Fatima Hajj and Ms Zeinab Ayyash travelled to Iran from Lebanon on 1 September 2004 and returned on 12 September 2004.⁵⁴³²

2688. Between 29 August and 6 September 2004 landline 696 called four different Iranian numbers 24 times, eight of which were answered.⁵⁴³³ None of these Iranian numbers have been attributed to anyone.⁵⁴³⁴

iv. Submissions

2689. The Prosecution submits that Mr Ayyash owned an apartment in Hadath where he used landline 696.⁵⁴³⁵ The attribution of landline 696 to Mr Ayyash is supported by a collection of documents, witness statements, travel records and landline 696's contact profile.⁵⁴³⁶ Proving that Mr Ayyash directly used landline 696 would assist the Prosecution in attributing the mobiles to Mr Ayyash.⁵⁴³⁷

2690. The Ayyash Defence submits that the Prosecution's evidence falls short of proving that landline 696 was used by Mr Ayyash.⁵⁴³⁸ Similarly, the Prosecution has not proved that Mr Ayyash lived in Hadath, and—relevantly to the geographical profile of his alleged mobiles—in which of

⁵⁴³⁰ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 38 (a). *See* sub-section (B) (1) (f) 'Personal mobile 935'.

⁵⁴³¹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 38 (b). *See* sub-section (B) (1) (g) 'Personal mobile 091'.

⁵⁴³² Exhibit P1025 (Lebanese entry and exit records), p. 3.

⁵⁴³³ Exhibit P1978, pp 1-3.

⁵⁴³⁴ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 681.

⁵⁴³⁵ Prosecution final trial brief, paras 215-216.

⁵⁴³⁶ Prosecution final trial brief, paras 216-217.

⁵⁴³⁷ Prosecution closing submissions, T. 12 September 2018, p. 91.

⁵⁴³⁸ Ayyash Defence final trial brief, paras 501-504.

the several buildings in the land plot he lived.⁵⁴³⁹ At most, the Prosecution's evidence demonstrates that landline 696 was associated with Mr Ayyash and his family.⁵⁴⁴⁰

v. Findings

2691. The Trial Chamber finds that Mr Ayyash owned the Hadath property and had a clear association with landline 696 between 14 April 2003 and 20 October 2007.

2692. The Lebanese Land Registry records prove that Mr Ayyash was the registered owner of the apartment. Thirteen months after its purchase, he arranged for an electricity account, and the following week had a landline installed, and arranged for all periodic payments associated with both to be directly debited from his bank account. He deactivated his landline subscription four and a half years later, in October 2007. These pieces of evidence strongly associate Mr Ayyash with the property.

2693. Additionally, Mr Ayyash, his wife and their daughter used the number as their contact in their passport applications. As did Ms Hajj to a service provider.

2694. The call sequence table for the landline show that it regularly received calls from telecards, and made and received numerous mobile calls, between 29 August 2004 and 31 December 2005, including 71 with mobiles 091 and 935 that are attributed to Mr Ayyash. Even factoring in that landline to landline calls were not recorded, this shows sustained occupation of the apartment in the period.

2695. In the Trial Chamber's experience, owner residents of residential property tend to buy the property and then, in their own names, pay for electricity and telephone subscriptions. This provides strong evidence that Mr Ayyash lived there during the period in which he was paying for the utility subscriptions.

2696. Combined with the use of the number 696 as a contact for the Ayyash family, this satisfies the Trial Chamber that Mr Ayyash lived there from at least April 2003 until at least 2007. The evidence, however, cannot establish exactly when he was in the apartment. This is with the

⁵⁴³⁹ Ayyash Defence final trial brief, paras 481, 483-484; Ayyash Defence closing submissions, T. 17 September 2018, pp 98-99.

⁵⁴⁴⁰ Ayyash Defence final trial brief, para. 505; Ayyash Defence closing submissions, T. 17 September 2018, pp 98-99.

exception that where his attributed personal mobiles are calling the landline or are somewhere else, or he is using a network mobile elsewhere, he will not have been at home.

(c) Landline 851—Ayyash family residence in Harouf, Nabatiyeh

2697. In 1997, Mr Ayyash's father became the registered owner of a property in Harouf. Landline 851 was connected to the property in 1992. Documents, including a landline subscription record, Lebanese Civil Defence documents and bank and insurance documents, link Mr Ayyash to landline 851. Landline 851 was also in contact with members and acquaintances of the Ayyash family.

i. Land Registry, telephone and electricity subscription records

2698. On 8 July 1997, Mr Jamil Dakhil Ayyash, who was Mr Ayyash's father⁵⁴⁴¹ became the owner of a property in Harouf in southern Lebanon.

2699. It is described in Lebanese Land Registry documents as 'Real Estate Zone: Zebdeen, Number: 105', Nabatiyeh, in the Jabal-El-Abed area, 'Number of the Real Estate With Inclusions: 29'. The registry documents describe it as 'a land with two buildings erected on it, one of which comprises a two power rooms and a garage. The second building is composed of four floors.'⁵⁴⁴² Mr Ayyash's father died in 1999.⁵⁴⁴³

2700. On 16 June 1992, before Mr Ayyash senior apparently purchased the property, landline 851 was activated for the 'Nabatiyeh, Nabatiyeh Zebdine/ Qaleet-El-Marj', 'Jamil Ayyash' building.⁵⁴⁴⁴ On 17 or 18 December 1998, there was a 'transfer to the new network'. The applicant for the transfer was Salim Jamil Ayyash.⁵⁴⁴⁵ On 13 September 2003, 'Salim Jamil Ayyash' requested the cancellation of some and the activation of other services for this telephone number and paid the relevant fees.⁵⁴⁴⁶ The invoices for the landline subscription continued to be paid until

⁵⁴⁴¹ Exhibit P1034 (Family personal status extract), p. 3.

⁵⁴⁴² Exhibit P633 (Extract from real estate register), pp 1, 3 (ERNs 60197546-60197547).

⁵⁴⁴³ Exhibit P1034 (Family personal status extract), p. 3.

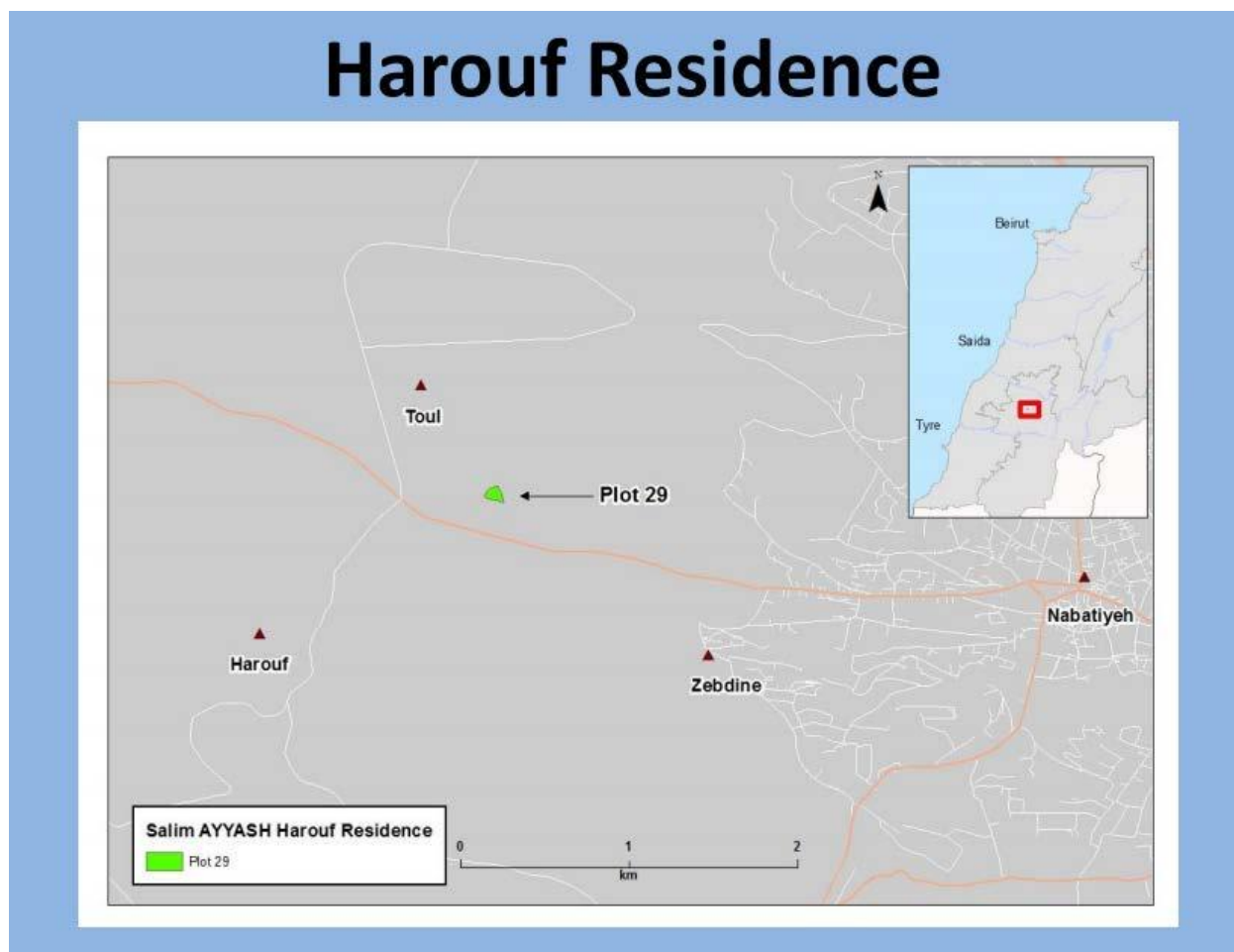
⁵⁴⁴⁴ Exhibit P1627 (Ogero subscriber note for landline 851), pp 1-2, 7-8. *See also* exhibit P1631 (Billing record for landline 851).

⁵⁴⁴⁵ Exhibit P1627, pp 1, 7-8. *See also* exhibit P1631, p. 1.

⁵⁴⁴⁶ Exhibit P1627, pp 1-3, 6-8. *See also* exhibit P1631, pp 1-2.

13 May 2010.⁵⁴⁴⁷ A copy of Mr Ayyash's identity card is attached to the Ogero records relating to this landline.⁵⁴⁴⁸

2701. A map extract showing the location of the Harouf residence, situated just north of the Tyre-Nabatiyeh road between Zebdine and Harouf, and close to the village of Toul, is below:⁵⁴⁴⁹



Slide 9 of Mr Donaldson's PowerPoint presentation—exhibit P2025

2702. *Electricité du Liban* records show that Salim Jamil Ayyash arranged for an electricity subscription in the village of Zebdine, Nabatiyeh District in 2002 for 'Registration certificate Property No. 29', but it had no maps outside of Greater Beirut.⁵⁴⁵⁰ Prosecution analyst, Mr Andrew

⁵⁴⁴⁷ Exhibit P1631, pp 1-5.

⁵⁴⁴⁸ Exhibit P1631, pp 4-5.

⁵⁴⁴⁹ Exhibit P2025, slide 9. *See also* exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 17; exhibit P662 (Statement of Andrew Fahey), paras 39-53, pp 51, 53, 56.

⁵⁴⁵⁰ Exhibit P635 (*Electricité du Liban* letter related to Mr Ayyash), pp 3-4 (ERNs 60248543-60248544).

Fahey, mapped the property from the real estate records and concluded that Harouf was approximately 1.5 kilometres to the south west of Plot 29, while Zebdine was approximately 1.5 kilometres to its south east.⁵⁴⁵¹

ii. Landline 851 as a contact for Mr Ayyash and his family

2703. Mr Ayyash's contact details are on signed bank documents. The documents are account statements, a request for online banking and a request for opening a credit account with 'Bank Audi S.A.L – Audi Saradar Group'. One document is dated 31 May 2006. Mr Ayyash's contact details are provided as follows: 'Building: Ayyash; Street: Al-Marj; Area: Harouf; City: Nabatiyeh; Telephone: 03/767165, 07/761851'.⁵⁴⁵²

2704. An employee record from the Civil Defence Directorate dated 1 March 1995, similarly lists 'Salim Ayyash' as living in the Toul area of Harouf, El-Nabatiyeh with telephone number 851. The document records the following address details:⁵⁴⁵³

b. Current Address:

Governorate: El-Nabatiyeh	District: El-Nabatiyeh
Town / City: Harouf	Area: Toul
Street: -----	Name of Owner or Building: his father
Floor: First	Phone Number: 761851

2705. The number also appears as the contact number for 'Salim Jamil Ayyash' on a contract dated 23 February 2005 for the purchase of a Toyota Camry and on a 2004 Hajj application.⁵⁴⁵⁴

2706. Further, Witness PRH050 stated that Mr Ayyash had a life insurance policy with 'Alico' as of 2000 and that his policy noted his home telephone number as '07761851'.⁵⁴⁵⁵

⁵⁴⁵¹ Exhibit P662 (Statement of Andrew Fahey), paras 48-49.

⁵⁴⁵² Exhibit P1027 (Mr Ayyash's contract with Audi Bank), pp 1, 14, 16, 22, 24-25, 28-30.

⁵⁴⁵³ Exhibit P1159 (Mr Ayyash's employee record at the Civil Defence), p. 1.

⁵⁴⁵⁴ Exhibit P1749, pp 1, 4; exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), ERN 60255954.

⁵⁴⁵⁵ Exhibit P697 (Statement of Witness PRH050), cover page, paras 8, 20.

iii. Contacts of landline 851

2707. According to Mr Donaldson's analysis,⁵⁴⁵⁶ landline 851 was in contact with:

- a mobile linked to Mr Ayyash's brother Ali 19 times;⁵⁴⁵⁷
- a mobile linked to Mr Ayyash's brother Mohammed six times;⁵⁴⁵⁸
- a mobile linked to Mr Ayyash's brother Loutfi ten times. That number, ending in 852, was subscribed in the name of 'Lotfi Ayach' and a customer database and bill-collecting company recorded him under this number;⁵⁴⁵⁹
- a mobile possibly used by Mr Ayyash's brother-in-law, Mr Hassan Cheaito, four times. The number, ending in 229, is subscribed in the name of 'Hassan Husse Cheayto';⁵⁴⁶⁰
- a mobile linked to Mr Ayyash's relative, Mr Wassef Qdeih, four times;⁵⁴⁶¹
- a mobile linked to Mr Ayyash's nephew, Mr Mehdi Mohammed Badreddine, four times;⁵⁴⁶²
- a mobile associated with Mr Ayyash's son, Ali, three times;⁵⁴⁶³
- a mobile associated with Mr Ayyash's brother, Ali, and brother-in-law, Mr Ali Zaarour, four times. The number, ending in 222, was subscribed to Mr Ali Ayyash's wife. It is listed in a club database as contact for Mr Ali Ayyash and a business partner of Mr Ali Zaarour recognised the number as his, and stated that Mr Zaarour and Mr Ali Ayyash worked together;⁵⁴⁶⁴

⁵⁴⁵⁶ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 57-60; exhibit P1979 (Call sequence table for landline 851).

⁵⁴⁵⁷ See para. 2686, mobile ending in 888.

⁵⁴⁵⁸ See para. 2686, mobile ending in 913.

⁵⁴⁵⁹ Exhibits P867 (Alfa subscriber note for mobile 852), P1829 (Company record for mobile 852), P1840 (Extract from subscriber database for number 852); exhibit P1034, p. 3.

⁵⁴⁶⁰ Exhibit P884 (Alfa subscriber note for mobile 229); exhibit P1034, p. 17.

⁵⁴⁶¹ See para. 2686, mobile ending in 630.

⁵⁴⁶² See para. 2686, mobile ending in 946.

⁵⁴⁶³ See para. 2686, mobile ending in 097.

⁵⁴⁶⁴ Exhibits P879 (Alfa subscriber note for mobile 222); exhibit P1832; exhibit P1034, pp 3, 19-20; exhibit P1862 (Statement of Witness PRH511), pp 9-10, 25.

- two mobiles associated with Mr Ayyash's sister-in-law's husband, Mr Mohammed Badreddine, four times;⁵⁴⁶⁵
- a mobile linked to Mr Ayyash's sister-in-law, Ms Bassima Al-Hajj, twice;⁵⁴⁶⁶
- a mobile linked to Mr Ayyash's relative and business associate, Mr Hussein Zaarour, four times;⁵⁴⁶⁷
- a mobile linked to Mr Ayyash's business associate, Mr Ghaleb Jaber, nine times;⁵⁴⁶⁸ and
- Mr Ayyash's attributed personal mobile 935, three times.⁵⁴⁶⁹

2708. The Prosecution created a call sequence table for this landline⁵⁴⁷⁰ based on call data records provided by Alfa and Touch, and relying on call data records received from Ogero in relation to Kalam card and telecard calls.⁵⁴⁷¹ Mr Donaldson analysed this call sequence table, but noted that it provides only a partial profile of this landline's use.⁵⁴⁷² The Trial Chamber received into evidence for the Ayyash Defence another call sequence table for landline 851 with the same date range, as exhibit 1D446, which includes some landline-to-landline calls that Ogero generated for testing landlines. This call sequence table, however, did not include certain calls which are present in the Prosecution's call sequence table, exhibit P1979.⁵⁴⁷³

2709. According to Mr Donaldson, landline 851 is attributable to Mr Ayyash and his family from at least 1 September 2004 to 31 December 2005.⁵⁴⁷⁴ Mr Donaldson concluded this from the

⁵⁴⁶⁵ See para. 2686, mobiles ending in 989 and 777.

⁵⁴⁶⁶ See para. 2686, mobile ending in 854.

⁵⁴⁶⁷ See para. 2686, mobile ending in 333.

⁵⁴⁶⁸ See para. 2686, mobile ending in 617.

⁵⁴⁶⁹ See sub-section (B) (1) (f) 'Personal mobile 935'.

⁵⁴⁷⁰ Exhibit P1979.

⁵⁴⁷¹ Andrew Donaldson, T. 18 July 2017, pp 15-17, 20; exhibit P1977 (Statement of Kei Kamei), paras 8-13, annex A; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 53; exhibit P1777 (Consolidated witness statement on behalf of Ogero with annexes 1-9), paras 14-18, 21, 27-29, 76, 79, 83; Witness PRH709, T. 11 January 2017, pp 22-23, 33-36, 39-45; Toufic Chebaro, T. 12 January 2017, p. 16; Witness PRH711, T. 10 January 2017, pp 48-56, 58-59.

⁵⁴⁷² Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 53; Andrew Donaldson, T. 18 July 2017, p. 22.

⁵⁴⁷³ For example, the following three calls between the landline and a mobile number ending in 888 were not included in exhibit 1D446 but were present in exhibit P1979: on 24 October 2004, at 14:46, on 11 November 2004, at 16:33, and on 15 November 2004 at 16:31, exhibit P1979, pp 7-9, exhibit 1D446 (Call sequence table for landline 851), pp 7, 9.

⁵⁴⁷⁴ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 50, 62.

documents and witness statements above and from landline 851's contacts during the period.⁵⁴⁷⁵ Due to the limited availability of call data records from Ogero, landline-to-landline calls for 2004 and 2005 being excluded, the period of attribution is narrower than the subscription period.⁵⁴⁷⁶

iv. Submissions

2710. The Prosecution submits that attributing landline 851 to Mr Ayyash helps to attribute mobiles to him because the address was in an area covered by the most commonly used cells of Mr Ayyash's mobiles.⁵⁴⁷⁷ Number 851 was subscribed on 19 June 1992 under the name of Salim Jamil Ayyash for the Harouf residence.⁵⁴⁷⁸ Among its most frequent contacts were telephone numbers attributable to Mr Ayyash's family members and associates.⁵⁴⁷⁹

2711. The Ayyash Defence submits that while the evidence demonstrates that the Harouf residence was linked to Mr Ayyash, it does not prove that Mr Ayyash actually lived there.⁵⁴⁸⁰ This is particularly so as there is documentary evidence linking Mr Ayyash to additional addresses.⁵⁴⁸¹

v. Findings

2712. The Trial Chamber received no direct evidence of Mr Ayyash's actual daily residence or his specific whereabouts, apart from through using his attributed personal mobiles, and potentially his attributed network mobiles. Mr Ayyash worked nearby for the Civil Defence in Nabatiyeh at the Al-Doueir station until 30 August 2002. He then transferred to Markaba as the Head of Post, before returning to the Nabatiyeh station in 'Operations', from 1 November 2004.⁵⁴⁸² Nabatiyeh and Markaba are around thirty kilometres apart in southern Lebanon.

⁵⁴⁷⁵ Andrew Donaldson, T. 18 July 2017, p. 21; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 51, 55.

⁵⁴⁷⁶ Andrew Donaldson, T. 18 July 2017, pp 15-16, 20; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 53.

⁵⁴⁷⁷ Prosecution final trial brief, paras 211, 215.

⁵⁴⁷⁸ Prosecution final trial brief, para. 218.

⁵⁴⁷⁹ Prosecution final trial brief, para. 219.

⁵⁴⁸⁰ Ayyash Defence final trial brief, paras 481, 483-484, 501, 505; Ayyash Defence closing submissions, T. 17 September 2018, pp 98-99.

⁵⁴⁸¹ Ayyash Defence final trial brief, paras 488-491, 493; Ayyash Defence closing submissions, T. 17 September 2018, pp 99-100; F3746, Ayyash Defence Submission of Material Referenced in Closing Arguments, 8 October 2018, annex A, p. 12.

⁵⁴⁸² Exhibit P1162, p. 1.

2713. Mr Ayyash's late father remained as the registered owner of the property as of May 2010, almost eleven years after his death. The landline had been subscribed in his son Salim Jamil Ayyash's name since 1998. The electricity subscription, since 2002, was also in his son's name.

2714. The same reasoning concerning payment of utility bills set out above in relation to the Hadath apartment also applies here, namely, that common experience is that those owning or using the property pay for the services, such as water, electricity, gas, telephone etc.

2715. Mr Ayyash used the landline number as a contact number for: his work, an insurance policy, his 2004 Hajj application and to buy a vehicle. Both the number and the address were listed at his work as his personal contact details. These documents provide compelling evidence that Mr Ayyash was regularly using the property.

2716. The call sequence table for landline 851, between 1 September 2004 and 31 December 2005, shows 498 calls from telecards, and calls to and from mobile numbers. Notwithstanding that there were no records available for landline to landline calls during that period, its daily use—*for these calling purposes*—was much more irregular than that of landline 696 in Hadath in Beirut. There are some weeks where no calls are recorded. This suggests, but does not prove, that this residence was a secondary one used by Mr Ayyash and his family. Numerous contacts of this landline were with Ayyash family members. There were even two calls to landline 851 from Mr Ayyash's attributed mobile, 935—on 19 and 24 November 2004—and one from it to mobile 935, on 5 September 2004.

2717. The Trial Chamber is therefore satisfied that Mr Ayyash made or received some of the calls involving landline 851. It finds that he used landline 851 from at least 1 September 2004 to 31 December 2005, and therefore—like at Hadath—he was using this property as a residence, and most likely as a second home, during this period.

(d) Personal mobile 165

2718. Various documents, including passport applications, medical records and bank documents, link the Ayyash family to mobile 165. Furthermore, the SIM card of mobile 165 was used on three different occasions in Mr Ayyash's BMW. The mobile was in contact with many of Mr Ayyash's

family members, his employer and his business associates. Moreover, the mobile frequently activated cell masts covering Mr Ayyash's Harouf and Hadath residences and his work place.

i. Evidence

2719. A Touch subscriber note records that number 165 was activated as a pre-paid SIM on 10 February 2000, without any identification of the subscriber.⁵⁴⁸³

2720. Mr Andrew Donaldson attributed mobile number 165 to Mr Ayyash from 23 April 2002 to 18 April 2004.⁵⁴⁸⁴ Call data records for number 165 are only available from 23 April 2002.⁵⁴⁸⁵ The last call to mobile 165 occurred on 18 April 2004.⁵⁴⁸⁶ The number was deactivated the following day.⁵⁴⁸⁷

a. Bank documents

2721. The telephone contact of Mr Ayyash's wife, Fatima, is listed as '03/767165' on two *Banque Libano-Française* documents, dated 6 October 2000 and 26 May 2004.⁵⁴⁸⁸ On three 'Bank Audi' documents, two of which are dated, namely 31 May 2006 and 26 May 2004, Mr Ayyash's telephone number is listed as '03767165'.⁵⁴⁸⁹ The documents include client profiles, requests to open bank accounts and an application to register in a loan program.

b. Landline application

2722. On 14 April 2003, Mr Ayyash applied for a landline subscription for his apartment in Hadath, giving his contact number as mobile number 165.⁵⁴⁹⁰ On 20 October 2007, he sought the

⁵⁴⁸³ Exhibit P1479 (Touch subscriber note for mobile 165).

⁵⁴⁸⁴ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 73, 75.

⁵⁴⁸⁵ Andrew Donaldson, T. 18 July 2017, pp 32-33; exhibit P1254 (Call sequence table of mobile 165); exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 76.

⁵⁴⁸⁶ Andrew Donaldson, T. 18 July 2017, pp 32-33; exhibit P1254, p. 195; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 78.

⁵⁴⁸⁷ Andrew Donaldson, T. 18 July 2017, pp 32-33; exhibit P1101 (Touch list of activation and deactivation dates), p. 1; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 78.

⁵⁴⁸⁸ Exhibit P1026 (*Banque Libano-Française* documents related to Ms Fatima Hajj), pp 1, 3-4.

⁵⁴⁸⁹ Exhibit P1027, pp 10, 30, 37, 48 (ERNs 60145416, 60145436, 60145443, 60145454). At p. 10, the telephone number is listed with the prefix '01' instead of '03'. The Trial Chamber considers this to be a clerical error in light of the other documents.

⁵⁴⁹⁰ Andrew Donaldson, T. 18 July 2017, p. 35; exhibit P1636, pp 2-3, 6.

deactivation of the Hadath property landline. Number 165 appeared on the form as the contact number.⁵⁴⁹¹

c. Passport application

2723. On 10 February 2003, Mr Ayyash applied for a passport for his son Ali, then aged 16, providing '767165' as a 'mobile' contact number.⁵⁴⁹²

d. Hajj participation entry

2724. A 2004 Hajj list of applicants records Mr Abdo Mustafa Hariri's mobile number as '03/767165'.⁵⁴⁹³ He is married to Mr Ayyash's niece, Tamara.⁵⁴⁹⁴

e. Service providers and appointments

2725. Mr Ayyash, his wife and his daughter were registered with mobile number 165 at a service provider in Beirut.⁵⁴⁹⁵ Mobile 165 activated a Touch cell providing predicted best server coverage to the service provider's office and an adjacent cell on two days when Mr Ayyash's family had appointments with the service provider.⁵⁴⁹⁶ Number 165 was also in contact with the service provider.⁵⁴⁹⁷ One additional cell activation occurred in the area of the service provider's office on the day when one of the calls took place.⁵⁴⁹⁸ Mobile 165 activated the two cells on other occasions within the attribution period.⁵⁴⁹⁹

2726. Mr Ayyash's wife was a registered client at another service provider, listing mobile 165 and landline 696 as her contact numbers.⁵⁵⁰⁰ Mobile 165 was in contact with the telephone number

⁵⁴⁹¹ Exhibit P1636, pp 9-10.

⁵⁴⁹² Exhibit P1530 (Mr Ali Salim Ayyash's Lebanese passport application), pp 1-2, 4.

⁵⁴⁹³ Andrew Donaldson, T. 6 October 2017, pp 11, 13; exhibit 1D449.

⁵⁴⁹⁴ Exhibit P1034, pp 3, 15, 24.

⁵⁴⁹⁵ Exhibit P1030 (LAU document related to mobile 165), p. 1; exhibit P2084 (Letter from LAU), p. 2.

⁵⁴⁹⁶ Andrew Donaldson, T. 18 July 2017, pp 37-38; exhibit P663 (Statement of Andrew Fahey), annex 1, location no. 121; exhibit P1122 (ArcView shape files Touch); exhibit P1030, p. 1; exhibit P2084, p. 2; exhibit P1254, pp 5, 112; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 592, 595.

⁵⁴⁹⁷ Exhibit P1030, p. 1; exhibit P1254, pp 68, 77, 89; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 593-594.

⁵⁴⁹⁸ Andrew Donaldson, T. 18 July 2017, pp 37-38; exhibit P1030, p. 1; exhibit P2084, p. 2; exhibit P1254, p. 89; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 594.

⁵⁴⁹⁹ Exhibit P1254, pp 86, 78, 89, 149, 164.

⁵⁵⁰⁰ Exhibit P707 (Statement of Witness PRH078), pp 16, 40-50 (ERNs 60305681, 60305705-60305713); exhibit P707.1 (Interview of Witness PRH078), pp 35-36; exhibit P1034, p. 5; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 597.

of this service provider and activated a cell that provided predicted best server coverage for their office on a day in 2004 when Mr Ayyash's wife had an appointment there.⁵⁵⁰¹ The mobile activated the same cell on a number of other dates.⁵⁵⁰²

f. Handset use

2727. IMEI 44666207202575 is a handset fitted in a BMW model 523i vehicle.⁵⁵⁰³ The BMW was owned by Mr Ayyash between 12 February 2002 and 30 December 2004.⁵⁵⁰⁴ The SIM card used with mobile 165 was used in the BMW's handset on three different dates, namely 23 November 2002, 1 September 2003 and 6 September 2003.⁵⁵⁰⁵

2728. The mobile 165 SIM was used with the following handsets during the attribution period:

- IMEI 35011210115681, its main handset from 23 April 2002 to 20 October 2003;
- IMEI 33216953301219, on 15 February 2003;
- IMEI 35084120223647, on 16 February and 13 August 2003; this handset was also used with Yellow 425, between 1 May 2003 and 21 April 2004, and with Yellow 576, from 17 September 2002 to 3 January 2003;
- IMEI 35111110002249, between 16 February 2003 and 20 February 2003; this handset was also used with the following Yellow network mobile numbers:
 - Yellow 809, from 25 August to 21 September 2003;
 - Yellow 120, on 12 and 13 May 2004;
 - Yellow 576, on 30 January 2003;

⁵⁵⁰¹ Andrew Donaldson, T. 18 October 2017, p. 52; exhibit P707.1 (Interview of Witness PRH078), pp 54, 59, 66; exhibit P1254, pp 14, 16, 18, 21-23, 40; exhibit P663 (Statement of Andrew Fahey), annex 1, location no. 90; exhibit P1122; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 598-601.

⁵⁵⁰² Exhibit P1254, pp 12, 14, 18, 40, 83, 87, 104, 134, 149, 167, 169-170, 192.

⁵⁵⁰³ Exhibit P1405 (Photographs of BMW 523i), pp 6, 23-24; exhibit P1407 (Statement of Toby Smith), paras 11, 14.

⁵⁵⁰⁴ Exhibits P1396, P1398 (Vehicle registration for BMW 523i), P1400 (Vehicle registration for BMW 523i), P1402 (Vehicle inspection report for BMW 523i), P1403 (Bill of sale for BMW 523i). The Ayyash Defence does not dispute this, Ayyash Defence final trial brief, para. 358.

⁵⁵⁰⁵ Exhibit P1102 (Touch list of IMEI numbers), p. 1.

- Yellow 488, between 30 January and 23 December 2003; and
- Yellow 920, from 29 March to 5 May 2003;
- IMEI 35077710149188, from 28 July to 9 August 2003;
- IMEI 35250400115602, its main handset between 21 October 2003 and 13 April 2004;
- IMEI 49051820497471, from 29 January to 7 February 2004; this handset was also used with Yellow 425, between 22 November and 22 December 2004;
- IMEI 35077810830627, on 10 March 2004; and
- IMEI 35251200135371, between 13 and 18 April 2004.⁵⁵⁰⁶

g. Contact profile

2729. According to Mr Donaldson's analysis, during the attribution period number 165 was in contact with 632 other numbers some 5,795 times, including with:⁵⁵⁰⁷

- a mobile linked to Mr Ayyash's brother Loutfi 307 times;⁵⁵⁰⁸
- a mobile associated with Mr Ayyash's sister-in-law, Ms Bassima Al-Hajj, 281 times;⁵⁵⁰⁹
- landline 851 of Mr Ayyash's Harouf residence 271 times;⁵⁵¹⁰
- a landline number linked to Mr Ayyash's father-in-law, Mr Abdel-Hassan Ahmed Moussa Al-Hajj, 173 times. The number, ending in 612, is subscribed to Mr Abdel-Hassan Ahmed Moussa Al-Hajj and was used for passport applications for three of his children;⁵⁵¹¹

⁵⁵⁰⁶ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 80-81, 84-86; Andrew Donaldson, T. 18 July 2017, p. 53.

⁵⁵⁰⁷ Andrew Donaldson, T. 18 July 2017, pp 39-45; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 90-97, annex E, pp 386-401; exhibit P1254. *See also* exhibit P2025, slides 32-38.

⁵⁵⁰⁸ *See* para. 2707, mobile ending in 852.

⁵⁵⁰⁹ *See* para. 2686, mobile ending in 854; Andrew Donaldson, T. 18 July 2017, pp 39-40.

⁵⁵¹⁰ *See* sub-section (B) (1) (c) 'Landline 851—Ayyash family residence in Harouf, Nabatiyeh'.

⁵⁵¹¹ Exhibit P1034, pp 5-6; exhibit P1526 (Mr Mohammed Abdel Hassan El-Hajj's Lebanese passport application), p. 1; exhibit P1527 (Mr Mohammed Abdel Hassan El-Hajj's Lebanese passport application), p. 2; exhibit P1534 (Ms Fatme Abdul Hassan Haje's Lebanese passport application), p. 1; exhibit P1628 (Ogero subscriber note for landline 612).

- a landline number linked to Mr Ayyash's brother Mohammed 173 times. The number, ending in 584, is subscribed to Mr Ayyash's father's former tool shop, where Mohammed worked. Invoices and family passport applications also link this number to Mohammed or at least the Ayyash family;⁵⁵¹²
- a mobile number linked to Mr Ayyash's brother Mohammed 148 times;⁵⁵¹³
- a landline number subscribed to Mr Ayyash's father and used on a bank document for Mr Ayyash and a patient record for Mr Ayyash's wife 84 times;⁵⁵¹⁴
- a mobile linked to Mr Ayyash's brother Ali 80 times;⁵⁵¹⁵
- a landline number subscribed to Mr Ayyash's sister-in-law's husband, Mr Mohammad Abdallah Jarady, 62 times. The number, ending in 833, was subscribed to Mr Mohammad Abdallah Jarady, appeared on his wife's passport application and on university documents for him and his wife;⁵⁵¹⁶
- landline 696 of Mr Ayyash's Hadath residence 62 times;⁵⁵¹⁷
- a mobile number linked to Mr Ayyash's brother-in-law, Mr Saleh Qassem Harb, 47 times. The number, ending in 700, was subscribed to Mr Harb and used in a Hajj application for him, however the number was also used in Hajj applications for Ms Alia Khalil Sreij and Mr Ali Mohammed Tarhini;⁵⁵¹⁸

⁵⁵¹² Exhibit P697 (Statement of Witness PRH050), para. 12 (p. 9); exhibit P1034, p. 3; exhibit P1517 (Mr Mohammed Jamil Ayyash's Lebanese passport application), p. 2; exhibit P1518 (Ms Fatima Jamil Ayash's Lebanese passport application), p. 2; exhibit P1519 (Mr Hussein Cheaito's Lebanese passport application), p. 2; exhibit P1530, p. 2; exhibit P1623 (Ogero subscriber note for number 584); exhibit P1864 (Witness statement of Pierre Abou-Atmeh), para. 15 (p. 8), pp 15-16, 21, 26-34, 36, 38-40; exhibit P1867 (Statement of Witness PRH520), para. 48 (p. 13).

⁵⁵¹³ See para. 2686, mobile ending in 913.

⁵⁵¹⁴ Number ending in 696, exhibit P1027, p. 2 (ERN 60145417); exhibit P1030, p. 1; exhibit P1034, p. 3; exhibit P1624 (Ogero subscriber note for number 696). This is not landline 696 which is dealt with in sub-section B (1) (b) 'Landline 696—Ayyash family residence in Hadath, Beirut'.

⁵⁵¹⁵ See para. 2686, mobile ending in 888.

⁵⁵¹⁶ Exhibits P964-P970, P1619 (Ogero subscriber note for number 833); exhibit P1034, pp 6, 28; exhibit P1535 (Ms Nidal Abdel-Hassan Al-Hajj's Lebanese passport application), p. 2.

⁵⁵¹⁷ See sub-section B (1) (b) 'Landline 696—Ayyash family residence in Hadath, Beirut'.

⁵⁵¹⁸ Exhibits P873 (Alfa subscriber note for mobile 700), P1684-P1685, P1688 (Extract from Mr Ibrahim Itani's 2005 Hajj application); exhibit P1034, pp 3, 13.

- a landline number linked to Mr Ayyash's sister Bassima and her husband 47 times. This number, ending in 620, was subscribed to Bassima's husband and was used to register a vehicle for Bassima, used in passport applications for Bassima and her daughter, used in Hajj applications for Bassima and her husband and found in university documentation for Bassima's daughter;⁵⁵¹⁹
- a landline number linked to Mr Ayyash's brother-in-law, Mr Mohammed Abdel Hassan Al-Hajj, 46 times. This number, ending in 504, was subscribed to Mr Mohammed Abdel Hassan Al-Hajj;⁵⁵²⁰
- another mobile number linked to Mr Saleh Qassem Harb, 43 times. The number, ending in 900, appears on four consecutive Hajj applications for Mr Harb;⁵⁵²¹
- a mobile number linked to Mr Ayyash's brother Ali and his brother-in-law, Mr Ali Zaarour, 43 times;⁵⁵²²
- a number subscribed to Mr Ayyash's brother-in-law, Mr Mohammed Amine Badreddine, 41 times;⁵⁵²³
- another number linked to Mr Mohammed Amine Badreddine 27 times;⁵⁵²⁴
- a number linked to Mr Ayyash's relative Mr Wassef Qdeih 21 times;⁵⁵²⁵
- another number associated with Mr Mohammed Amine Badreddine and his family 18 times;⁵⁵²⁶

⁵⁵¹⁹ Exhibits P977-P978, P1621 (Ogero subscriber note for number 620), P1678-P1679; exhibit P1034, pp 3, 15; exhibit P1514 (Ms Bassima Ayyash's Lebanese passport application), p. 2; exhibit P1515, p. 2; exhibit P1741 (Vehicle registration for Bassima Ayyash), pp 1, 3.

⁵⁵²⁰ Exhibit P1034, pp 5-6; exhibit P1632.

⁵⁵²¹ Exhibits P1680-P1683.

⁵⁵²² See para. 2707, mobile ending in 222.

⁵⁵²³ Mobile ending in 909, exhibit P1034, pp 5-6; exhibit P1036, p. 1; exhibit P1416 (Subscriber note for number 909).

⁵⁵²⁴ See para. 2686, mobile ending in 777.

⁵⁵²⁵ See para. 2686, mobile ending in 630.

⁵⁵²⁶ See para. 2686, mobile ending in 989.

- a landline linked to Mr Ayyash's brother Ali five times. The number, ending in 099, is subscribed to Ali, was used in passport applications for Ali and his son and registered in a service provider's database for Ali's wife;⁵⁵²⁷
- a landline linked to Mr Ayyash's brother-in-law, Mr Hassan Hussein Cheaito, four times. The number, ending in 742, is subscribed to Mr Cheaito and was used in Lebanese university records for his daughter;⁵⁵²⁸
- a number linked to Mr Ayyash's brother-in-law Mr Ali Zaarour six times. The number, ending in 433, is subscribed to Mr Ali Zaarour and was used in his passport application;⁵⁵²⁹
- a landline of the Civil Defence in Nabatiyeh 196 times. Mr Ayyash was employed by the Civil Defence and worked in Nabatiyeh, at the Al-Doueir station, until 30 August 2002 and again from 1 November 2004. In between, he worked at the Markaba station;⁵⁵³⁰
- a mobile linked to Mr Ayyash's business associate Mr Ghaleb Jaber 192 times;⁵⁵³¹
- a mobile linked to Mr Ayyash's business associate Mr Hussein Zaarour 147 times;⁵⁵³²
- the mobile of Mr Ayyash's insurance agent five times. The insurance agent confirmed that this was his number, ending in 849;⁵⁵³³
- a mobile of an acquaintance of Mr Ayyash five times. The acquaintance confirmed that this was his number, ending in 515;⁵⁵³⁴

⁵⁵²⁷ Exhibit P1030, p. 1; exhibit P1034, pp 3, 11; exhibit P1520 (Mr Ali Ayyash's Lebanese passport application), p. 2; exhibit P1521 (Mr Adam Ali Ayyash's Lebanese passport application), p. 2; exhibit P1620 (Subscriber note for number 099). Exhibit P1521 adds a '0' at the end of the telephone number. In light of the other documents, the Trial Chamber considers this to be a clerical mistake.

⁵⁵²⁸ Exhibits P972-P975; exhibit P1618 (Ogero subscriber note for number 742); exhibit P1034, pp 3, 17.

⁵⁵²⁹ Exhibit P1034, pp 3, 19; exhibit P1524 (Mr Ali Zaarour's Lebanese passport application), p. 1; exhibit P1617 (Ogero subscriber note for number 433).

⁵⁵³⁰ Number ending in 125, exhibits P1633 (Ogero subscriber note for landline 125), P1159, P1160 (Memorandum of appointments), P1162 (Civil Defence order transferring Mr Ayyash to the Doueir station).

⁵⁵³¹ See para. 2686, mobile ending in 617.

⁵⁵³² See para. 2686, mobile ending in 333.

⁵⁵³³ Exhibit P697 (Statement of Witness PRH050), para. 7 (p. 9).

⁵⁵³⁴ Exhibit P2126 (Interview of Witness PRH028), p. 17.

- a mobile linked to Mr Ayyash's niece's husband's uncle, Mr Abdallah Ali Safieddine, three times. The number, ending in 894, was used in Mr Safieddine's passport application, insurance documentation and in university documents for his son;⁵⁵³⁵
- a mobile of a service provider for Mr Ayyash's wife eight times. The service provider confirmed that this was her number, ending in 940;⁵⁵³⁶
- a landline of a service provider for the Ayyash family four times. The service provider confirmed that this was his number, ending in 061;⁵⁵³⁷ and
- a mobile ending in 401—that received two calls from Blue 233 and had one contact with landline 696—four times.⁵⁵³⁸

2730. Mr Donaldson could not exclude that Mr Ayyash's family members may have occasionally used mobile 165.⁵⁵³⁹

h. Geographic profile

2731. The top most frequently used cell sectors of mobile 165 were: Bir Abed_C (16.58 per cent), which is south of Ghobeiry, Sfeir_A (11.27 per cent), which is situated between Haret Hreik and Hadath and 'Bir Abed 'A' (10.45 per cent), also south of Ghobeiry.⁵⁵⁴⁰

2732. Until the end of January 2003, the most frequent cell sectors were Bir Abed_C, Bir Abed_A and Nabatieh_C, which is south-east of Sidon. Thereafter, the most frequent cell sectors were

⁵⁵³⁵ Exhibit P693 (Statement of Ghassan Saab), para. 10 (p. 8); exhibit P979 (List of students from Lebanese International University); exhibit P1032 (Family personal status extracts), pp 9-10, 12, 41; exhibit P1528 (Mr Abdallah Safieddine's Lebanese passport application), p. 2.

⁵⁵³⁶ Exhibit P707 (Statement of Witness PRH078), p. 17.

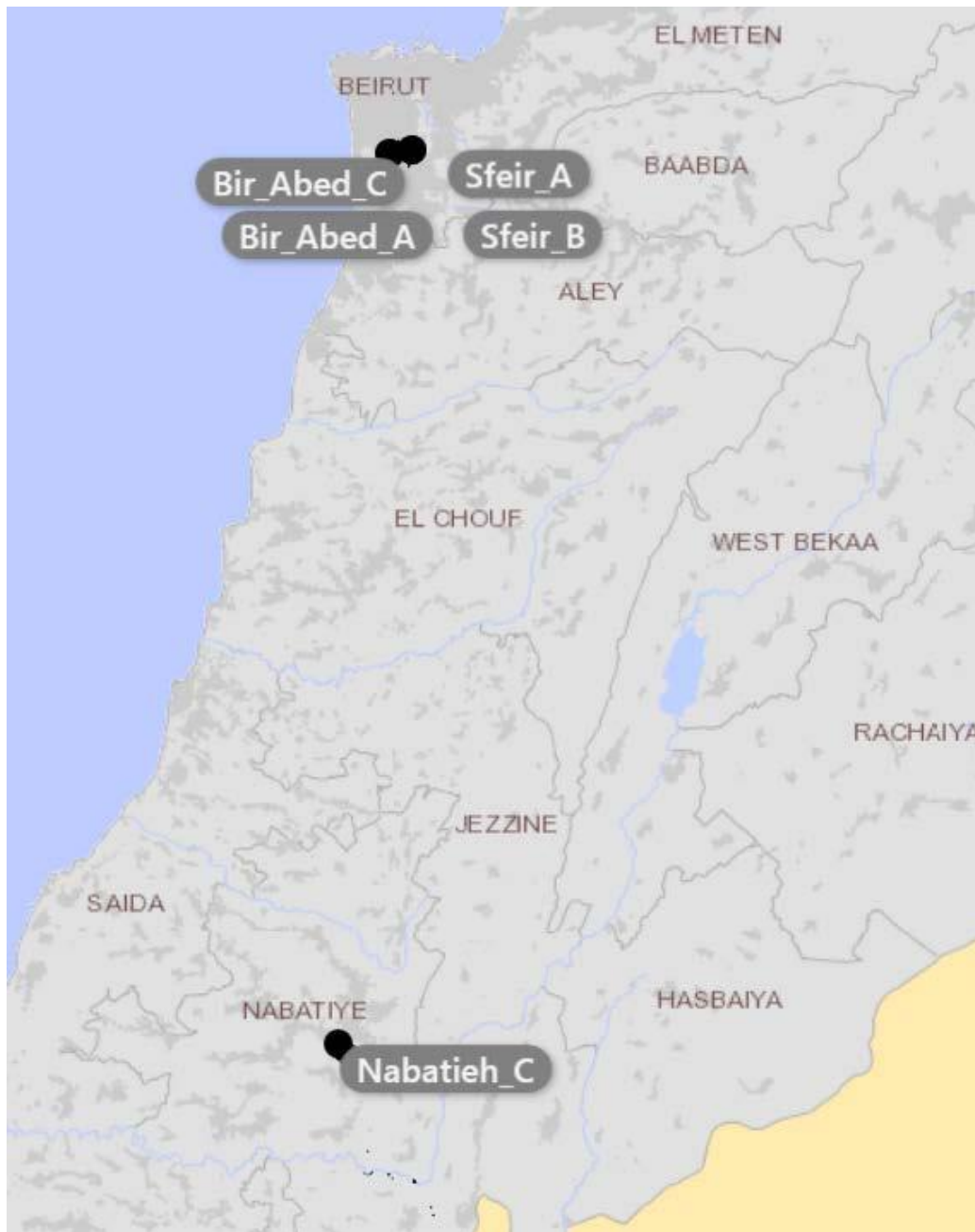
⁵⁵³⁷ Exhibit P2084, p. 2.

⁵⁵³⁸ Mobile 165 had contacts with nine Yellow mobiles (including Yellow 294) with some of which it shared handsets, exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 80, 84-86, 93; Andrew Donaldson, T. 18 July 2017, pp 45-47, 53.

⁵⁵³⁹ Andrew Donaldson, T. 6 October 2017, pp 18-19.

⁵⁵⁴⁰ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 98.

Sfeir_A, Nabatieh_C and Sfeir_B.⁵⁵⁴¹ Touch's Sfeir_A and Sfeir_B cells were in the area of Mr Ayyash's Hadath residence.⁵⁵⁴²



Geographic location of mobile 165's most frequently activated cells from exhibit P592.1

⁵⁵⁴¹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 99-100.

⁵⁵⁴² Exhibit P662 (Statement of Andrew Fahey), paras 10-38, pp 33, 37, 40, 43, 46; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 102; exhibit P592.1 (Electronic Presentation of Evidence Software).

2733. Plot 29, according to Touch's coverage maps, falls within the predicted best coverage of Nabatieh_D, which is adjacent to Nabatieh_C. Touch's engineers, however, had conducted drive tests in 2006 on the road between Harouf and Nabatiyeh and discovered that Nabatieh_C actually provided the best coverage along that road. Touch provided the test results to the Prosecution.⁵⁵⁴³ Plot 29 lies a few hundred metres from the road. Mr Donaldson explained this in his report.⁵⁵⁴⁴

2734. The drive test result is reproduced on the Touch map below. Plot 29 is to the north of the green line in between Harouf and Zebdine. The green line represents Nabatieh_C's best coverage, while the red line to its right shows Nabatieh_D's best coverage. The drive test map is annexed to the statement of Witness 705, the Touch representative who testified.⁵⁵⁴⁵

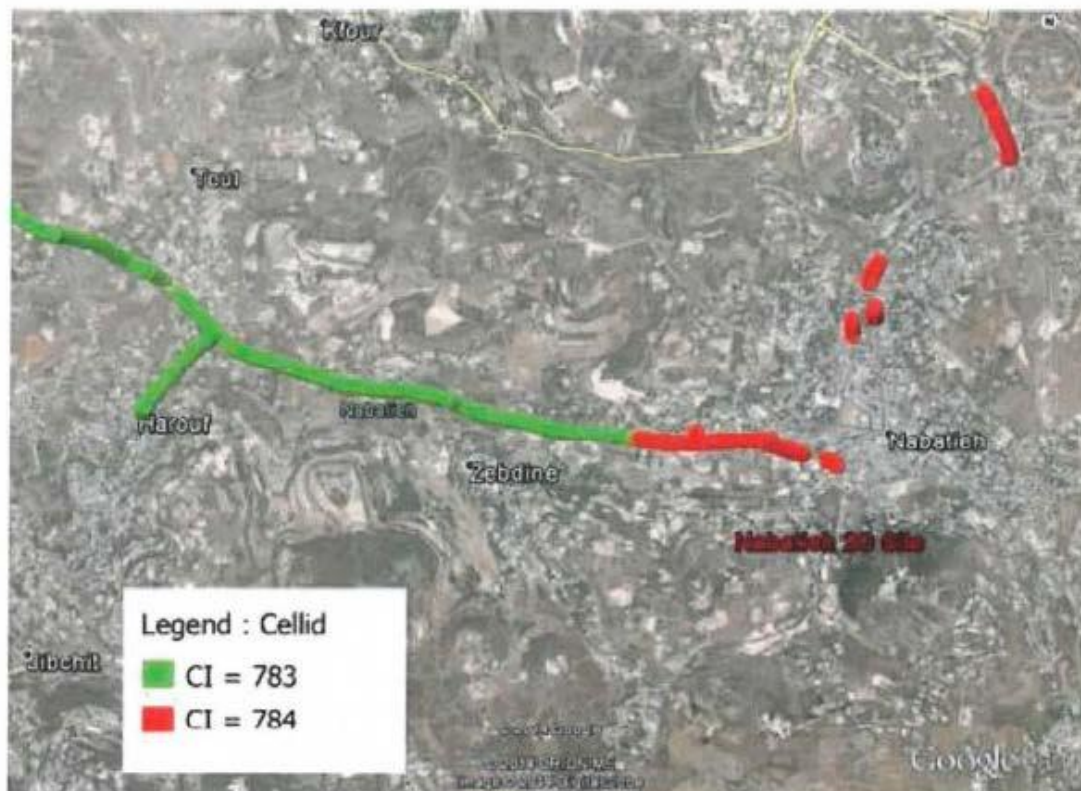
⁵⁵⁴³ Exhibit P826.15 (Annex 25 (2) to Witness PRH705's statement of 16 November 2015).

⁵⁵⁴⁴ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 103-107.

⁵⁵⁴⁵ Exhibit P826.15 (Annex 25 (2) to Witness PRH705's statement of 16 November 2015).

2014/RFA0034/LEB.AnD

- 1- Kindly note that there is a known or identifiable cause. In the below image we have loaded the 2G Best server plot of a 2G drive test conducted in 21/08/2006 into Google earth to show where Nabatieh Sector C (CI=783) and Sector D (CI=784) were observed as the best server. It is clear from the drive test that Nabatieh Sector C (CI=783) was serving near Harouf Area.



In the below image we have loaded the same drive test but showing the best server receive level. It is clear that at that time Harouf was suffering from Bad 2G coverage and even though Nabatieh Sector C was serving near Harouf Area the receive level was relatively low. Moreover, the Area topography shows that Nabatieh Sector C was the best server in that area because of multiple signal reflections and not be direct line of site, since the Nabatieh Sector C Antenna orientation was 180 degrees and was not directed to Harouf Area. This also explains why the Predicted coverage shows that Nabatieh Sector D is the dominant in Harouf Area not Nabatieh Sector C. The predicted coverage model used was not a ray trace model so it does not take into consideration multi-path reflection.

*Exhibit P826.1 (Annex 25 (2) to Witness PRH705's statement of 16 November 2015), p. 1—
Touch's drive tests near Harouf, 21 August 2006*

2735. The Nabatieh_C cell sector provided best server coverage for Mr Ayyash's residence in Harouf.⁵⁵⁴⁶

2736. Based on this pattern, Mr Donaldson suggested that the user of number 165 moved residences in February 2003.⁵⁵⁴⁷ Mobile 165 further activated the Markaba cells (Markaba_A, Markaba_B and Markaba_C) 186 times between January 2003 and April 2004 when Mr Ayyash was employed at the Civil Defence's Markaba station.⁵⁵⁴⁸ The predicted best server coverage area for Markaba village is Markaba_C, with Markaba_A and Markaba_B lying adjacent to it.⁵⁵⁴⁹ Markaba is less than two kilometres from the Syrian border.

ii. Submissions

2737. According to the Prosecution, attributing personal mobiles, including number 165, to Mr Ayyash is necessary to attribute a number of network mobiles to him.⁵⁵⁵⁰

2738. The Prosecution submits that Mr Ayyash was the user of number 165 from 23 April 2002 to 18 April 2004. Its attribution to him is demonstrated by documents, the use of an integrated handset of a BMW 523i registered in Mr Ayyash's name and the mobile's contact profile.⁵⁵⁵¹ It also connected to cells near Mr Ayyash's residences in Hadath and Harouf, and to cells near the two service providers to his family at the relevant times, as well as being in contact with these service providers.⁵⁵⁵²

2739. The Ayyash Defence submits that at best the evidence shows an association of this number with the Ayyash family but falls short of demonstrating any use by Mr Ayyash.⁵⁵⁵³

⁵⁵⁴⁶ Exhibit P662 (Statement of Andrew Fahey), paras 39-53, pp 51, 53, 56; exhibit P826.15 (Annex 25 (2) to Witness PRH705's statement of 16 November 2015; exhibit P1254; exhibit P1867 (Statement of Witness PRH520), para. 20; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 103-107, 233; John Edward Philips, T. 21 April 2017, pp 60-61, T. 25 April 2017, p. 74; Andrew Donaldson, T. 18 July 2017, pp 57-59.

⁵⁵⁴⁷ Andrew Donaldson, T. 18 July 2017, pp 53-56.

⁵⁵⁴⁸ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 639; exhibits P1159-P1160, P1162. The Markaba Civil Defence station is 200-300 metres from a shop on the main road in Markaba, exhibit P1981 (Statement of Witness PRH437), para. 29 (p. 11).

⁵⁵⁴⁹ Exhibit P663 (Statement of Andrew Fahey), annex 1, location no. 88; exhibit P1122.

⁵⁵⁵⁰ Amended consolidated indictment, paras 16, 18-19; Prosecution final trial brief, para. 248.

⁵⁵⁵¹ Prosecution final trial brief, paras 221-224; Prosecution closing submissions, T. 12 September 2018, p. 93.

⁵⁵⁵² Prosecution final trial brief, paras 225-226.

⁵⁵⁵³ Ayyash Defence final trial brief, paras 531, 541, 545-546, 576.

2740. First, many of the documents relied upon by the Prosecution fall outside the attribution period.⁵⁵⁵⁴ Secondly, regarding the BMW's handset, the Prosecution presented no evidence that Mr Ayyash actually used the BMW during the attribution period.⁵⁵⁵⁵ Thirdly, no reliable conclusion can be drawn from the contact profile due to the Prosecution only sparsely presenting evidence from number 165's alleged contacts.⁵⁵⁵⁶ Fourthly, in relation to the cells that number 165 connected to and its call activity, there is no evidence on Mr Ayyash's whereabouts, thus rendering this cell site evidence useless with regard to attributing it to him.⁵⁵⁵⁷

2741. Finally, the Prosecution failed to prove that Nabatieh_C provided the predicted best server coverage for the Harouf residence. Nabatieh_D, not Nabatieh_C, provides coverage to Plot 29, and does not feature within mobile 165's most commonly used cells.⁵⁵⁵⁸

iii. Findings

2742. The evidence associating this mobile with Mr Ayyash is overwhelming. The documents assessed and reviewed incontrovertibly associate mobile number 165 with the Ayyash family.

2743. The service provider evidence, the landline application and the passport application for his son, which he signed, specifically link Mr Ayyash with this mobile. The BMW was registered in Mr Ayyash's name, and the SIM number 165 was used three times in its integrated handset. There is of course no direct evidence that it was Mr Ayyash himself who made or received the three calls. However, when viewed in the context of the totality of the evidence of mobile 165's use, there is a very strong circumstantial case that it was Mr Ayyash.

2744. The 2004 Hajj application also connects the mobile with Mr Ayyash's family, and Mr Ayyash himself travelled to Saudi Arabia for the Hajj that year, as is analysed below.

⁵⁵⁵⁴ Ayyash Defence final trial brief, paras 527, 530.

⁵⁵⁵⁵ Ayyash Defence final trial brief, paras 549-550.

⁵⁵⁵⁶ Ayyash Defence final trial brief, paras 551-558; Ayyash Defence closing submissions, 17 September 2018, pp 106-108.

⁵⁵⁵⁷ Ayyash Defence final trial brief, paras 533-546, 559-572, 575; Ayyash Defence closing submissions, 17 September 2018, p. 98.

⁵⁵⁵⁸ Ayyash Defence final trial brief, paras 567-571; Ayyash Defence closing submissions, 17 September 2018, p. 100.

2745. To attribute mobile 165 to Mr Ayyash, the Prosecution also relies on its geographic profile evidence, 186 cell activations in Markaba at a time when Mr Ayyash was employed there, and that the cells most frequently activated included those near two of Mr Ayyash's residences.

2746. On the Trial Chamber's own calculation based on the mobile's call sequence table,⁵⁵⁵⁹ number 165 activated the cell servicing the Harouf residence 462 times. Of those, 58 per cent occurred on the weekend. Adding early morning, before 09:00, and evening activations, namely, after 18:00, it reaches 71 per cent.

2747. In Hadath, number 165 activated the cells providing coverage to the apartment 692 times. Twenty-seven per cent were activations early morning, before 09:00, or in the evening, after 18:00. Adding weekend activations makes it 44 per cent.

2748. The Trial Chamber is satisfied that the mobile activated cells in the vicinity of Mr Ayyash's Harouf and Hadath residences, as well as in the vicinity of Markaba village while he was stationed at the Markaba Civil Defence station. However, there is no evidence linking these cell activations with his presence at his residence or at his workplace on particular days or times of day.

2749. The Ayyash Defence also challenged which cell provided the best coverage to the Harouf residence, Plot 29. The Touch drive tests in 2006 revealed that Nabatieh_C provided the best coverage on the Nabatiyeh-Harouf road. Plot 29, from its location on the maps in evidence, appears to be several hundred metres from this road where Nabatieh_C was shown to provide the best coverage, as opposed to Nabatieh_D.

2750. The Trial Chamber has carefully examined the cell coverage maps and the drive test map and results. It has put these within the context of Mr Philips's general cell site evidence, and the specific evidence he gave on these particular drive tests and the coverage of the two cells.⁵⁵⁶⁰ Mr Philips explained the potential coverage of the two cells near Harouf, to the Trial Chamber's satisfaction, demonstrating how someone using a mobile at or near the Harouf residence could connect to either Nabatieh_C or Nabatieh_D. This included that this could have been caused by

⁵⁵⁵⁹ Exhibit P1254.

⁵⁵⁶⁰ J. E. Philips, T. 25 April 2017, pp 68-75.

multiple signal reflections from nearby hills that may not have been accounted for in the prediction tools.

2751. Regarding the contact profile, the contacts of mobile 165 could certainly directly link the number to Mr Ayyash. But those the Prosecution interviewed did not. The witnesses the Prosecution contacted in this respect were obviously close to Mr Ayyash, or his family, and could be seen to have good motivation not to recognise the number. Moreover, in these circumstances it is perfectly permissible for the Prosecution to attempt to prove its attribution to Mr Ayyash through other, circumstantial, evidence.

2752. While the Prosecution attributed only 30 out of the 632 contact numbers to Mr Ayyash's family and acquaintances, these 30 are almost half of all its calls. In addition, they rank among its top contacts. As with the documents reviewed above, an association with the Ayyash family is obvious from the contact profile.

2753. The Trial Chamber specifically considered that number 165 could have been Mr Ayyash's wife's mobile number due to her name appearing on documents listing this number and several contacts being from her side of the family. However, it considered that number 165 was in contact with Mr Ayyash's business associates, his insurance agent and the Nabatiyeh Civil Defence station.

2754. While contact with the Nabatiyeh Civil Defence station could also support that number 165 was Mr Ayyash's wife's mobile, in the sense of her calling her husband at work, the call sequence table of number 165 demonstrates that the calls to and from the Nabatiyeh Civil Defence station continued when Mr Ayyash had left Nabatiyeh and worked at Markaba.⁵⁵⁶¹ Mr Ayyash, as the former head of the Nabatiyeh station, would presumably have had greater reason than his wife to call his former Civil Defence station, while still employed by the Civil Defence.

⁵⁵⁶¹ Exhibit P1254, pp 13, 20-21, 24-26, 30-31, 33-36, 40, 42, 50, 52, 60, 63, 67, 75, 78, 80, 83, 86, 88-90, 95, 97, 103-104, 107-111, 113-116, 118-127, 129, 132, 134-138, 140, 142-143, 145, 147-155, 157, 161, 165, 172-176, 178-179, 182-183, 185-187, 189, 191-193, 195. Mr Ayyash was employed by the Civil Defence and worked in Nabatiyeh (the Al-Doueir station) until 30 August 2002 and again as of 1 November 2004. In between, he worked at the Markaba station, exhibits P1159-P1160, P1162.

2755. At the same time, the Trial Chamber cannot exclude that Mr Ayyash's wife or close family members may have occasionally used this mobile. The evidence does not suggest, however, that any such use rose to the level of a common, family mobile.

2756. The Trial Chamber is therefore satisfied that Mr Ayyash was the principal user of mobile 165 during the attribution period from at least 23 April 2002 to 18 April 2004. However, as set out below, during the 2004 Hajj, more specifically from at least 29 January to the morning on 8 February 2004, someone other than Mr Ayyash used it.⁵⁵⁶²

(e) Personal mobile 170

2757. Mobile 170 was used with the same handset throughout its attribution period. It also appeared on documents and made calls after Mr Ayyash's Toyota Camry was involved in an accident.

2758. The number was in contact with a business associate, a family member and an acquaintance of Mr Ayyash. Moreover, the most frequently connected cells of mobile 170 covered Mr Ayyash's Hadath and Harouf residences. Number 170 also connected to a cell covering the location of a service provider on days when Mr Ayyash's wife, Ms Fatima Hajj, had appointments there. Mobile 170 also made calls to Iranian numbers when Ms Hajj and her daughter were in Iran.

i. Evidence

2759. Touch's subscriber note for this mobile show that it was activated as a pre-paid SIM on 17 July 2002, without any identification of the subscriber.⁵⁵⁶³

2760. The Prosecution attributes mobile 170 to Mr Ayyash from 7 January to 26 November 2005.⁵⁵⁶⁴ Mr Donaldson provided evidence that this attribution period rests on a change of handset on 7 January 2005 and a change in the cells the mobile connected to, and frequent contacts on 26 November 2005.⁵⁵⁶⁵

⁵⁵⁶² Sub-section B (2) (g) 'The 2005 Hajj' (iii) 'Findings'.

⁵⁵⁶³ Exhibit P1471 (Subscriber note for mobile 177).

⁵⁵⁶⁴ Prosecution final trial brief, para. 239.

⁵⁵⁶⁵ Andrew Donaldson, T. 22 August 2017, pp 81, 83; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 207, 209-217, 241-242. *See also* exhibit P1262 (Call sequence table of mobile 170).

a. Handset—Yellow 669

2761. Mobile 170 was used with a handset with IMEI 35252200022555⁵⁵⁶⁶ during the attribution period.⁵⁵⁶⁷ This handset had been used by Yellow 669 until 6 January 2005.⁵⁵⁶⁸ Attributing Yellow 669 to Mr Ayyash may assist to attribute mobile 170 to him.

2762. However, Mr Donaldson attributed Yellow 669 to Mr Ayyash from 23 December 2013 until 18 April 2004 only.⁵⁵⁶⁹ The attribution of Yellow 669 to Mr Ayyash is analysed below in sub-section (B) (2) (a) ‘Yellow 669’.

b. Toyota Camry accident

2763. On 25 May 2005, a Toyota Camry owned and insured by Mr Ayyash had a car accident in Beirut.⁵⁵⁷⁰ An insurance claim document has a copy of the car registration attached with number 170 handwritten on the back of it.⁵⁵⁷¹

2764. On 27 May 2005, mobile 170 called number 445—used by the owner of Monaco Garage, which was responsible for repairing the Camry—and number 849, Mr Ayyash’s insurance agent.⁵⁵⁷²

c. Contact profile

2765. According to Mr Donaldson’s analysis, during the attribution period number 170 was in contact with 122 numbers some 1,489 times, including with:

⁵⁵⁶⁶ Mr Philips explained that it is only the first 14 digits which actually constitute an IMEI, with any additional digits representing other features, such as a software version number, exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), paras 5.1.4.1.1.9-5.1.4.1.1.11.

⁵⁵⁶⁷ Andrew Donaldson, T. 22 August 2017, pp 84-85; exhibit P1262; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 219.

⁵⁵⁶⁸ Andrew Donaldson, T. 22 August 2017, pp 84-85; exhibit P889 (IMEI data for four numbers); exhibit P1248 (Call sequence table of Yellow 669), pp 71-92; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 220.

⁵⁵⁶⁹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 267-280.

⁵⁵⁷⁰ Andrew Donaldson, T. 23 August 2017, pp 26-27; exhibit P689 (Documents related to Toyota Camry accident), pp 3 (ERN 60294964), 10-11 (ERNs 60294971-60294972); exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 226. *See also* exhibit P2025, slides 211-212.

⁵⁵⁷¹ Andrew Donaldson, T. 22 August 2017, pp 81-82; exhibit P689, pp 3-6; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 226, 243.

⁵⁵⁷² Exhibit P689, pp 1, 9; exhibit P1262, p. 23. *See also* para. 2729.

- a mobile linked to Mr Ayyash's relative and business associate, Mr Hussein Zaarour, 187 times;⁵⁵⁷³
- a mobile linked to Mr Ayyash's relative, Mr Abdallah Safieddine, 21 times;⁵⁵⁷⁴ and
- a mobile linked to an acquaintance of Mr Ayyash,⁵⁵⁷⁵ twice.⁵⁵⁷⁶

2766. Witnesses whose telephone numbers were in contact with mobile 170 during its attribution period, did not recognise personal mobile 170.⁵⁵⁷⁷

d. Mr Ayyash's daughter's visit to Iran

2767. Mr Ayyash's daughter travelled to Iran from 17 to 24 August 2005.⁵⁵⁷⁸ Mobile 170 made four calls to Iranian numbers on 20 and 21 August 2005.⁵⁵⁷⁹

e. Mr Ayyash's wife's appointments at a service provider

2768. Mr Ayyash's wife is a registered client at a service provider's institution.⁵⁵⁸⁰ She visited it a number of times in 2004 and 2005, including on 13 February 2005 and 29 June 2005.⁵⁵⁸¹ Mobile 170 activated the Touch cell providing predicted best server coverage to the service provider's office when she had appointments there.⁵⁵⁸²

⁵⁵⁷³ See para. 2707, mobile ending in 333.

⁵⁵⁷⁴ See para. 2729, mobile ending in 894.

⁵⁵⁷⁵ See para. 2729, mobile ending in 515.

⁵⁵⁷⁶ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 228, 231, annex E, pp 413-416.

⁵⁵⁷⁷ Exhibit P2126 (Interview of Witness PRH028), p. 25 (ERN 60140591_TS_D_AR_EN_02); exhibit P697 (Statement of Witness PRH050), pp 11 (ERN 60302455), 32 (ERN 60302476); exhibit P1408 (Statements of Naim Aoun), pp 23 (ERN 60308031), 29 (ERN 60308037); exhibit P1262.

⁵⁵⁷⁸ Exhibit P1024; exhibit P1034, p. 5.

⁵⁵⁷⁹ Exhibit P1262, p. 43. See also exhibit P1966 (List of country codes), p. 8.

⁵⁵⁸⁰ Exhibit P707 (Statement of Witness PRH078), pp 32-34, 40-41; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 597.

⁵⁵⁸¹ Exhibit P707.1 (Interview of Witness PRH078), pp 4, 38-39, 46, 52.

⁵⁵⁸² Exhibit P707.1 (Interview of Witness PRH078), pp 4, 38-39, 46, 52; Andrew Donaldson, T. 18 October 2017, p. 52; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 598, 602, 604; exhibit P1262, pp 7, 31; exhibit P663 (Statement of Andrew Fahey), annex 1, location no. 90; exhibit P1122.

f. Geographic profile

2769. The cells that mobile 170 most frequently connected to were Touch's Sfeir_A (15.04 per cent), Sfeir_B (14.24 per cent) and Nabatiyeh_C (9.6 per cent).⁵⁵⁸³ Touch's Sfeir_A and Sfeir_B cells were in the area of Mr Ayyash's Hadath residence.⁵⁵⁸⁴

2770. The coverage of Nabatiyeh_C, as opposed to Nabatiyeh_D, is analysed in the findings relating to personal mobile 165, immediately above.

ii. Submissions

2771. According to the Prosecution, attributing mobile 170 to Mr Ayyash helps to attribute network mobiles to him.⁵⁵⁸⁵

2772. Mr Ayyash used mobile 170 from 7 January 2005 to 26 November 2005.⁵⁵⁸⁶ Number 170 was used in the same handset⁵⁵⁸⁷ as Yellow 669, also attributed to Mr Ayyash.⁵⁵⁸⁸

2773. During the attribution period, the cells most frequently connected to by this number were near Mr Ayyash's homes in Hadath and Harouf.⁵⁵⁸⁹ Further, its contact profile demonstrates its distinct covert purpose and that Mr Ayyash was its user.⁵⁵⁹⁰ Number 170 is also connected to calls relating to Mr Ayyash's Toyota Camry's accident. The vehicle was insured and owned by Mr Ayyash, and the number handwritten on a copy of the vehicle's registration document.⁵⁵⁹¹ The number was also in contact with Iranian numbers when Mr Ayyash's daughter was in Iran and it activated a cell providing predicted best server coverage to a service provider's office on two days when Mr Ayyash's wife had appointments there.⁵⁵⁹²

⁵⁵⁸³ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 232.

⁵⁵⁸⁴ Exhibit P662 (Statement of Andrew Fahey), paras 10-38, pp 33, 37, 40, 43, 46; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 102, 118; exhibit P592.1.

⁵⁵⁸⁵ Amended consolidated indictment, paras 16, 18-19; Prosecution final trial brief, paras 248-249.

⁵⁵⁸⁶ Prosecution final trial brief, para. 239; Prosecution closing submissions, T. 12 September 2018, p. 79.

⁵⁵⁸⁷ That is, the same actual telephone, as can be seen by the identical IMEI.

⁵⁵⁸⁸ Prosecution final trial brief, paras 241, 304-308.

⁵⁵⁸⁹ Prosecution final trial brief, para. 242.

⁵⁵⁹⁰ Prosecution final trial brief, para. 243.

⁵⁵⁹¹ Prosecution final trial brief, para. 245; Prosecution closing submissions, T. 12 September 2018, pp 96, 99.

⁵⁵⁹² Prosecution final trial brief, paras 246-247; Prosecution closing submissions, T. 12 September 2018, pp 94-95.

2774. The Ayyash Defence submits that the Prosecution's evidence is not persuasive with regard to the contention that Mr Ayyash used number 170 at any point during the relevant period.⁵⁵⁹³

2775. To link this mobile to Mr Ayyash, Mr Donaldson relies on a single document, a copy of the Toyota Camry's car registration document, on which number 170 is handwritten on the back, but there is no evidence that he provided it as his contact number.⁵⁵⁹⁴ Most contacts of this mobile were unattributed, and three contacts did not recognise this number.⁵⁵⁹⁵ Cell activations in the area of the service provider and calls related to the car accident and to Iran do not assist in attributing this number to Mr Ayyash in January and February 2005, as each event occurred months after.⁵⁵⁹⁶

iii. Findings

2776. Mr Ayyash's Toyota Camry was involved in an accident in Beirut on 25 May 2005. Two days later, mobile 170 called the garage where it was repaired, and Mr Ayyash's insurance agent. Given that the Toyota Camry was registered in Mr Ayyash's name and that he was the insurance beneficiary, the Trial Chamber considers this evidence compelling.

2777. With regard to the numbers in contact with mobile 170, the Trial Chamber considers that only a small number of contacts⁵⁵⁹⁷ and calls⁵⁵⁹⁸ out of the total showed some known connection to Mr Ayyash. The majority concern unknown people, in the sense that the Trial Chamber received no evidence as to who they were. Under these circumstances, the contact profile alone provides limited assistance in attributing mobile 170 to Mr Ayyash.

2778. For completeness, based on the mobile's call sequence table, the Trial Chamber has calculated the activations of cells near Mr Ayyash's residences. Mobile 170 activated Sfeir_A and Sfeir_B cells near the Hadath residence 386 times. Of those, around 14 per cent were on the weekend, and around 43 per cent in the mornings, before 09:00, and in the evenings after 18:00.

⁵⁵⁹³ Ayyash Defence final trial brief, para. 669; Ayyash Defence closing submissions, T. 17 September 2018, p. 110.

⁵⁵⁹⁴ Ayyash Defence final trial brief, paras 654, 656; Ayyash Defence closing submissions, T. 17 September 2018, p. 115.

⁵⁵⁹⁵ Ayyash Defence final trial brief, paras 658-662; Ayyash Defence closing submissions, T. 17 September 2018, pp 110-111.

⁵⁵⁹⁶ Ayyash Defence final trial brief, paras 666-668.

⁵⁵⁹⁷ Namely three out of 122.

⁵⁵⁹⁸ Namely 210 out of 1,489.

2779. In Harouf, mobile number 170 activated the Nabatiyeh_C cell 143 times. Fifty-six per cent of these activations occurred on weekends, and 23 per cent were early morning, before 09:00, or evening activations after 18:00. However, the Trial Chamber received no direct evidence of when Mr Ayyash was at one of his two residences.

2780. Both calls to Iran on 20 and 21 August 2005, when Mr Ayyash's daughter was there, and the activation of cells in the area of a service provider's office when Mr Ayyash's wife had appointments there on 13 February 2005 and 29 June 2005, taken together, are consistent with attributing mobile 170 to Mr Ayyash.

2781. With regard to the handset also used by Yellow 669, this could assist in defining the starting point of any attribution period of number 170 to Mr Ayyash, but, only if Yellow 669 is attributed to Mr Ayyash until 6 January 2005. Mr Donaldson does not suggest this. According to his evidence, Mr Ayyash's use of Yellow 669 stopped in April 2004.

2782. The Trial Chamber has considered this evidence in its totality; in particular, the calls to the garage and to Mr Ayyash's insurance agent in May 2005 shortly after the car accident, cell activations in the area of a service provider when Mr Ayyash's wife had appointments there and calls to Iranian numbers in August 2005 when Mr Ayyash's daughter was in Iran. The Trial Chamber is therefore satisfied that Mr Ayyash used number 170 between 13 February and 21 August 2005.

2783. The Trial Chamber also considered that mobile 170 was used in the same handset throughout the attribution period.⁵⁵⁹⁹ In addition, the contact and geographic profile before, during and after the period of 13 February to 21 August 2005 was consistent. The most frequent contact appears on the call sequence table from 21 January to 14 October 2005. The most frequently used cells appear on the call sequence table from 7 January to 12 November 2005.

2784. Under these circumstances, the Trial Chamber is satisfied that mobile 170 was used by Mr Ayyash throughout the attribution period, namely from 7 January to 26 November 2005. Mr Ayyash's wife or close family members may also have occasionally used mobile 170. The

⁵⁵⁹⁹ See sub-section B (1) (e) 'Personal mobile 170' (i) (f) 'Handset use'.

evidence, however, does not come close to establishing that it was a common, family mobile. The Trial Chamber is satisfied that Mr Ayyash was its principal user.

(f) Personal mobile 935

2785. The attribution of personal mobile 935 to Mr Ayyash between 31 May 2004 and 13 January 2005 comes from documents showing Mr Ayyash's ownership of a BMW vehicle; documentary, witness and telecommunications evidence relating to an accident on 20 November 2004 involving this vehicle; and the mobile number's handset use, contact profile and geographic profile.

i. Evidence

2786. Personal mobile 935 was activated on the Alfa network on 24 April 2004, subscribed in the name of 'Hassan Emile Hodroj',⁵⁶⁰⁰ and was deactivated on 21 October 2005.⁵⁶⁰¹ The Lebanese General Directorate of Personal Status of the Ministry of the Interior and Municipalities found no exact match for 'Hussein (or Hassan) Emile Hadraj' in its records.⁵⁶⁰²

a. BMW bills of sale and related evidence

2787. Most of the evidence underlying the attribution of personal mobile 935 to Mr Ayyash concerns a BMW 523i vehicle with number (licence) plate 132951/N which he owned between 12 February 2002 and 20 December 2004.

2788. A bill of sale dated 12 February 2002 documents its sale to 'Salim Jamil Ayyash'.⁵⁶⁰³ It has the number of mobile 935 hand-written on it below the section containing the personal details of the seller and buyer—approximately mid-way between the two—in different coloured ink to that used for the buyer's and seller's details and signatures.⁵⁶⁰⁴

2789. The form is filled in handwriting and has designated spaces for writing the seller's and buyer's numbers.⁵⁶⁰⁵ A mobile number ending in 617 is hand-written as Mr Ayyash's contact

⁵⁶⁰⁰ Exhibit P877 (Subscription contract for mobile 935), p. 2 (SI-0001722, Part 1).

⁵⁶⁰¹ Exhibit P885 (Alfa subscriber note for mobile 935), p. 1.

⁵⁶⁰² Exhibit P397 (Document from civil status directorate and letter from Directorate General for Political and Refugees Affairs), p. 5 (ERN 60144934).

⁵⁶⁰³ Exhibit P1396, p. 3.

⁵⁶⁰⁴ Exhibit P1396, p. 3; Andrew Donaldson, T. 19 July 2017, pp 5-6, T. 6 October 2017, pp 24-25.

⁵⁶⁰⁵ Exhibit P1396, p. 3.

number in the relevant space, in what appears to be the same colour ink used to fill in the seller's and the buyer's personal details.⁵⁶⁰⁶ This mobile number is linked to Mr Ayyash's business associate.⁵⁶⁰⁷

2790. A second bill of sale, dated 20 December 2004, documents the BMW's sale by Mr Ayyash.⁵⁶⁰⁸ Mobile 935 is hand-written on it, below and slightly to the left of the section containing the seller's details, in slightly darker ink than that used for the seller's and buyer's details and signatures.⁵⁶⁰⁹ The form, which is completed in handwriting, has no designated spaces for writing the seller's and buyer's respective telephone numbers, unlike, for example, the designated spaces for writing their respective residential addresses. No other telephone number appears on the document.⁵⁶¹⁰

2791. Mr Najib Al-Kharrat, who until 2004 was the head of the Lebanese Private Vehicle Registration Department in Dekwaneh, explained that a vehicle was then registered when the owner brought documents proving ownership to one of eight Vehicle Registry Offices.⁵⁶¹¹

2792. Ownership transfer, evidenced by a deed of sale, must also be registered by the buyer and seller, or someone who has a power of attorney to represent them.⁵⁶¹² A deed of sale records the buyer's and seller's personal details and is signed by both and by a Vehicle Registry employee, but it may be filled in by an employee, who also takes a stencil of the vehicle's chassis number.⁵⁶¹³ The registered owner is issued with a registration card proving ownership.⁵⁶¹⁴ A hard-copy file of the documents relevant to each registered vehicle is created and maintained in the area office, and is accessible to that office's employees. The vehicle owner gets access to the file if ownership is

⁵⁶⁰⁶ Exhibit P1396, p. 3; Andrew Donaldson, T. 19 July 2017, pp 5-6, T. 6 October 2017, pp 24-25.

⁵⁶⁰⁷ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 141 (a); *see also* para. 2686.

⁵⁶⁰⁸ Exhibit P1403, p. 1.

⁵⁶⁰⁹ Exhibit P1403, p. 1; Andrew Donaldson, T. 19 July 2017, pp 7-8. In court, Mr Donaldson noted that his attribution report unintentionally mischaracterised the two bills of sale by stating that personal mobile 935 appeared as Mr Ayyash's contact number on them, exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 141 (a), (d); Andrew Donaldson, T. 6 October 2017, pp 24-25, 27. It appears that the signature corresponding to Mr Ayyash's details on this bill of sale does not match the signature corresponding to his details on the 2002 bill of sale; however, the signature on the 2004 bill of sale does appear to match that on the accident declaration form, exhibit P1396, p. 3; exhibit P1403, p. 1; exhibit P604.1 (Car accident declaration), p. 2.

⁵⁶¹⁰ Exhibit P1403, p. 1.

⁵⁶¹¹ Exhibit P1411 (Statements of Najib Al-Kharrat), pp 2 (ERN 60302431) (para. 1), 8 (ERN 60302437) (paras 6-8).

⁵⁶¹² Exhibit P1411 (Statements of Najib Al-Kharrat), p. 8 (ERN 60302437) (para. 8).

⁵⁶¹³ Exhibit P1411 (Statements of Najib Al-Kharrat), pp 8 (ERN 60302437) (paras 8-9), 9 (ERN 60302438) (para. 10).

⁵⁶¹⁴ Exhibit P1411 (Statements of Najib Al-Kharrat), p. 9 (ERN 60302438) (para. 10).

going to be transferred, but the file is returned once the transfer is complete.⁵⁶¹⁵ Since 1998, all registration documents have been computerised at the regional offices, and stored automatically in a centralised database in Dekwaneh.⁵⁶¹⁶

2793. The Prosecution also relies on the following documents, together with the bills of sale obtained from the Directorate General of the Traffic, Truck and Vehicle Management Authority of the Lebanese Ministry of the Interior and Municipalities:

- copies of identification documents of the parties to the 2002 and 2004 bills of sale;⁵⁶¹⁷
- a 12 February 2002 receipt for the payment of the BMW's registration fees by 'Salim Jamil Ayyash';⁵⁶¹⁸
- a vehicle registration certificate for the BMW, owned by 'Salim Jamil Ayyash' as of 12 February 2002;⁵⁶¹⁹
- a vehicle registration card listing 'Salim Jamil Ayyash' as the BMW's owner;⁵⁶²⁰
- a 5 April 2003 receipt for the payment of car inspection fees by 'Salim Jamil Ayyash';⁵⁶²¹ and
- a vehicle inspection report for the BMW, listing 'Salim Jamil Ayyash' as the owner.⁵⁶²²

b. BMW accident of 20 November 2004

2794. Late in the evening of 20 November 2004, the BMW was involved in an accident at Al-Rmeileh—north of Sidon on the main road to Beirut—for which Mr Ayyash made an insurance claim.

2795. This involved the usual required documents, namely an accident declaration, an accident expert report and documents relating to vehicle repairs, some of which list mobile 935 alongside

⁵⁶¹⁵ Exhibit P1411 (Statements of Najib Al-Kharrat), p. 9 (ERN 60302438) (para. 11).

⁵⁶¹⁶ Exhibit P1411 (Statements of Najib Al-Kharrat), p. 3 (ERN 60318030) (para. 9).

⁵⁶¹⁷ Exhibits P1397 (Identity cards of parties to bill of sale), P1404 (Identity cards of parties to bill of sale).

⁵⁶¹⁸ Exhibit P1401 (Registration fees by Mr Ayyash).

⁵⁶¹⁹ Exhibit P1400.

⁵⁶²⁰ Exhibit P1398.

⁵⁶²¹ Exhibit P1399 (Car inspection fees by Mr Ayyash).

⁵⁶²² Exhibit P1402.

Mr Ayyash's name. Mobile 935 also appears next to details of this accident in the database of the tow-truck company called to the scene. Mr Donaldson also highlighted a number of calls made by mobile 935 around the time of the accident, for which it activated cells providing coverage to the accident site's vicinity.

Insurance policy

2796. An insurance policy for the BMW, under the name of 'Ayache Salim Jamil', running from 18 February 2004 has a landline number ending in 584 appearing on it. It was signed on behalf of the insurance company.⁵⁶²³

Accident declaration

2797. A car accident declaration dated 23 November 2004, for the insured 'Salim Ayach', policy number 73349, lists personal mobile 935 as the driver's mobile number. On it, the driver's name is left blank, the driver's relationship to the insured is listed as 'himself' and the insured's telephone number is left blank.⁵⁶²⁴ There is a signature in the space for the driver's signature, but none in the space for the insured's signature. The 'Details of accident' section is filled in using the third person singular—stating that 'as he was trying to overtake, his vehicle skidded'—and lists the site of the accident as 'Al-Rmeileh'.⁵⁶²⁵ The expert's name is listed as 'Mahmoud Assi'.⁵⁶²⁶

2798. According to Mr Assi, ordinarily the insured person goes to the insurance company office to fill in a declaration after an accident, but a relative, friend or broker can also make the declaration on their behalf.⁵⁶²⁷

⁵⁶²³ The insurance policy number is listed as 1/MTR-1/73349, exhibit P604.14 (Motor policy for BMW 523i), p. 1. See also exhibit P604.9 (Motor policy for BMW 523i), whose page 1 is a copy of the same insurance policy, without a signature on behalf of the insurance company, but with additional stamps and hand-writing; moreover, page 2 of this exhibit is an additional page headed 'Underwriting Sheet', listing 'Ayache Salim Jamil' as the holder. See also Mahmoud Assi, T. 1 October 2015, pp 65-68.

⁵⁶²⁴ Exhibit P604.1, p. 1.

⁵⁶²⁵ Exhibit P604.1, p. 2.

⁵⁶²⁶ Exhibit P604.1, p. 1.

⁵⁶²⁷ Mahmoud Assi, T. 1 October 2015, pp 10-12; exhibit P697 (Statement of Witness PRH050), pp 43 (ERN 60302487) (para. 10), 44 (ERN 60302488) (para. 16). Mr Assi furthermore stated that this accident declaration may have been dated three days after the accident as it occurred on a Saturday night and the following Monday was a public holiday in Lebanon, meaning that 23 November 2005 may have been the first day when the insurance company's offices would have been open, Mahmoud Assi, T. 1 October 2015, p. 59.

2799. Witness 50 thought that the client ‘could not have written the car accident declaration’.⁵⁶²⁸ Five people at the relevant insurance company could have made the declaration and one of them must have written it.⁵⁶²⁹ Mr Assi explained that an insurance company employee fills in the declaration based on questions posed to the declarant, who signs it.⁵⁶³⁰ Therefore, the ‘driver’s’ signature on the form could be that of the client, a broker or another person.⁵⁶³¹ Although the form usually remains in the insurance company’s office, it may be given to the garage or broker for the client to complete and send back.⁵⁶³² The telephone number appearing on the declaration is usually that of the insured or driver.⁵⁶³³ Moreover, he explained that, although he had arranged the insurance policy relevant to the accident declaration, his business partner ‘Matta Sakr’ was listed on the accident declaration because he is the broker.⁵⁶³⁴

2800. With regard to Mr Assi’s name appearing on the declaration as the accident expert although the relevant report, described below, was authored by ‘Hussein Ahmad El-Kalash’, Mr Assi explained that the insurance company provides insured people with lists of car accident experts.⁵⁶³⁵ His name appears at the top of the list for the area of the accident, and a client would usually call the expert at the top of the list.⁵⁶³⁶

2801. Moreover, call sequence tables show that, at 22:17 on 20 November 2004, personal mobile 935 called a mobile number that Witness 50 identified as his own.⁵⁶³⁷ Although Witness 50 knew ‘Selim Ayyash’ personally and identified him in a photograph shown to him during his interview,⁵⁶³⁸ he did not remember this accident and, when shown related documents, he stated

⁵⁶²⁸ Exhibit P697 (Statement of Witness PRH050), pp 43 (ERN 60302487) (paras 6, 8, 10), 44 (ERN 60302488) (para. 11).

⁵⁶²⁹ Exhibit P697 (Statement of Witness PRH050), pp 43 (ERN 60302487) (para. 10), 44 (ERN 60302488) (para. 11).

⁵⁶³⁰ Mahmoud Assi, T. 1 October 2015, p. 10.

⁵⁶³¹ Mahmoud Assi, T. 1 October 2015, p. 10.

⁵⁶³² Mahmoud Assi, T. 1 October 2015, p. 22.

⁵⁶³³ Mahmoud Assi, T. 1 October 2015, p. 16.

⁵⁶³⁴ Exhibit P697 (Statement of Witness PRH050), pp 12 (ERN 60302456) (para. 52), 45 (ERN 60302489) (para. 24).

⁵⁶³⁵ Mahmoud Assi, T. 1 October 2015, pp 17, 49.

⁵⁶³⁶ Mahmoud Assi, T. 1 October 2015, pp 17-18, 49.

⁵⁶³⁷ Exhibit P1261 (Call sequence table of mobile 935), p. 80; exhibit P697 (Statement of Witness PRH050), p. 9 (ERN 60302453) (para. 7).

⁵⁶³⁸ Exhibit P697 (Statement of Witness PRH050), pp 9 (ERN 60302453) (paras 3, 8), 12 (ERN 60302456) (para. 57), 27 (ERN 60302471) (para. 5), 28 (ERN 60302472) (paras 15, 17), 43 (ERN 60302487) (paras 5-6), 70 (ERN 60302514) (para. 5). The photograph, originally identified by ERN 60098038, was initially attached to a 2008 UNIIIC investigator’s note about potential persons of interest, but no accompanying information was provided (the provenance of the photograph or the name of the person appearing in it). This was the photograph shown to Witness 50 during his interview. Subsequently, a similar photograph (with differences in colour darkness and aspect ratio) was scanned in 2011 by Prosecution investigator, Witness PRH539, at the Lebanese Ministry of the Interior and

that he had not prepared any of them.⁵⁶³⁹ He also did not remember whether Mr Ayyash ever called him, did not recognise mobile 935, nor had a mobile number for Mr Ayyash saved in his mobile or paperwork.⁵⁶⁴⁰

2802. The witness had hundreds of calls each day and could not remember specific calls, nor all of his clients' names and numbers.⁵⁶⁴¹ Although he had asked Mr Ayyash for a number several times, Mr Ayyash told Witness 50 to contact him by calling his brother, Mohammed.⁵⁶⁴² However, Witness 50 stated that clients may call him at the time of an accident, even late at night, and he would ask them to call an expert to the scene.⁵⁶⁴³ Clients may also call him if they cannot contact an expert.⁵⁶⁴⁴ Witness 50 did not know Mr Kalash, and would not have provided his name to Mr Ayyash if asked, as he would have recommended one of his friends instead.⁵⁶⁴⁵ He would, however, call Mr Assi as an expert for an accident in southern Lebanon.⁵⁶⁴⁶

2803. Call sequence tables also show that, immediately following the call to Witness 50, at 22:21, mobile 935 called a number that Mr Assi identified as his own.⁵⁶⁴⁷ This was the only call between these two mobile numbers.⁵⁶⁴⁸ Mr Assi did not know Mr Ayyash, did not recognise the Prosecution's photograph of Mr Ayyash and did not remember whether he was contacted at the time of the accident.⁵⁶⁴⁹

Municipalities, as part of an undated ID application for 'Salim Ayyash'. When tendering the initial version of the photograph into evidence as a photograph shown to another witness (Mr Mahmoud Assi), Prosecution counsel detailed the process of scanning the ID application in 2011 as an explanation of the provenance of the photograph initially attached to the 2008 UNIIIC investigator's note, exhibit P606 (Photograph shown to Mahmoud Assi), exhibit P691, p. 1, exhibit P686 (Statement of Witness PRH686), pp 16 (ERN 60312033) (para. 26), 17 (ERN 60312033); Prosecution submissions, T. 1 October 2015, pp 73-75. The Trial Chamber is satisfied that the photograph shown to the witness is of Mr Ayyash.

⁵⁶³⁹ Exhibit P697 (Statement of Witness PRH050), p. 43 (ERN 60302487) (paras 7-10).

⁵⁶⁴⁰ Exhibit P697 (Statement of Witness PRH050), pp 10 (ERN 60302454) (paras 16-17), 29 (ERN 60302473) (para. 32), 30 (ERN 60302474) (paras 40, 48), 44 (ERN 60320488) (paras 12, 15).

⁵⁶⁴¹ Exhibit P697 (Statement of Witness PRH050), pp 31 (ERN 60302475) (para. 52), 44 (ERN 60302488) (para. 21), 45 (ERN 60302489) (para. 26).

⁵⁶⁴² Exhibit P697 (Statement of Witness PRH050), pp 10 (ERN 60302454) (para. 14), 29 (ERN 60302473) (para. 33).

⁵⁶⁴³ Exhibit P697 (Statement of Witness PRH050), pp 44 (ERN 60320488) (paras 17, 19, 23), 45 (ERN 60302489) (para. 25).

⁵⁶⁴⁴ Exhibit P697 (Statement of Witness PRH050), p. 44 (ERN 60320488) (paras 17, 19).

⁵⁶⁴⁵ Exhibit P697 (Statement of Witness PRH050), p. 44 (ERN 60320488) (para. 20).

⁵⁶⁴⁶ Exhibit P697 (Statement of Witness PRH050), p. 45 (ERN 60302489) (para. 27).

⁵⁶⁴⁷ Exhibit P1261, p. 80; exhibit P605 (Annotated list of numbers used with Mahmoud Assi).

⁵⁶⁴⁸ Exhibit P1262, p. 80.

⁵⁶⁴⁹ Exhibit P606; Mahmoud Assi, T. 1 October 2015, pp 49-50, 72-73, 76.

2804. When contacted about a car accident, he would not ask for the caller's name, but only for insurance and accident details, such as its location.⁵⁶⁵⁰ In the circumstances of the accident of 20 November 2004, namely that it occurred far from his location and late at night, if contacted by a client he would ordinarily call another accident expert—or ask the client to do so—in order to avoid delays.⁵⁶⁵¹ Mr Kalash is an accident expert who lived and worked in the area of the accident, whom Mr Assi would call when accidents were too far for him to attend.⁵⁶⁵²

2805. Call sequence tables also show that, immediately after calling Mr Assi's mobile number, mobile 935 received a call at 22:40 from a mobile number that Mr Assi identified as belonging to Mr Kalash.⁵⁶⁵³

2806. Finally, Mr Donaldson testified that the accident expert report, damage estimate request and tow-truck company database—all three of which are described below—may contain information that was provided once to the insurance company and then replicated on the other three documents.⁵⁶⁵⁴

Accident expert's report

2807. Mr Kalash's accident expert report states that he attended the scene of the BMW accident of 20 November 2004 at El-Ramlieh on the Sidon-Beirut highway, and lists 'Salim Jamil Ayyash' as the vehicle's owner and driver, with mobile 935.⁵⁶⁵⁵

2808. When an accident occurs, the car owner or driver calls an accident expert, who then attends the scene, identifies the driver, determines responsibility for the accident, takes copies of the driver's license, car registration documents and insurance documents, and then drafts a report and sends it to the relevant insurance company with copies of the documents.⁵⁶⁵⁶ The fax number in the header of the expert report dated 3 December 2004 corresponds to Mr Assi's office fax, which

⁵⁶⁵⁰ Mahmoud Assi, T. 1 October 2015, pp 49-50, 76.

⁵⁶⁵¹ Mahmoud Assi, T. 1 October 2015, pp 18-20, 46-47.

⁵⁶⁵² Mahmoud Assi, T. 1 October 2015, p. 48.

⁵⁶⁵³ Exhibit P1261, p. 80; Mahmoud Assi, T. 1 October 2015, p. 52, referring to a mobile number appearing on the accident expert report (exhibit P604.2 (Accident expert report), p. 4).

⁵⁶⁵⁴ Andrew Donaldson, T. 19 July 2017, pp 9, 12, T. 6 October 2017, p. 49.

⁵⁶⁵⁵ Exhibit P604.2, p. 1; exhibits P604.11 (Accident expert report), P604.12 (Insurance expert damage report), P604.13 (Extract from accident expert report), which are faxed copies of the three pages of the expert report found at exhibit P604.2, pp 1-3; Mahmoud Assi, T. 1 October 2015, pp 56-57.

⁵⁶⁵⁶ Mahmoud Assi, T. 1 October 2015, pp 7-9, 20, 45; exhibit P697 (Statement of Witness PRH050), pp 29 (ERN 60302473) (paras 24-25), 44 (ERN 60320488) (paras 18, 20).

Mr Kalash used occasionally.⁵⁶⁵⁷ In Mr Assi's opinion, this expert report did not need to be very detailed as it concerned a minor accident.⁵⁶⁵⁸

Tow-truck company database

2809. Personal mobile 935 also appears in an extract from a tow-truck company's customer database as the telephone number associated with an accident on 20 November 2004 involving the BMW, and listing the name 'Salim Ayach'.⁵⁶⁵⁹ Witness PRH474 stated that the database recorded a car's type and registration plate number, insurance policy number, owner's name, location and place to be transferred to, and the number for communicating with the owner.⁵⁶⁶⁰ It was updated by the company's five customer service employees.⁵⁶⁶¹

2810. Staff would receive a call from a client. They would then take the necessary information, record it on the computer and assign a tow-truck driver to assist. The driver would then call the customer's mobile number without the call being answered, and the customer would call the driver back to communicate his location. The driver would transport the car to the destination specified by the client, and the driver would call the company (without the call being answered) to indicate arrival at the final destination.⁵⁶⁶² Witness 474 identified six telephone numbers used by the company,⁵⁶⁶³ none of which, according to the call sequence tables, were in contact with personal mobile 935 at the time of the accident.⁵⁶⁶⁴

2811. The call sequence tables do, however, show that mobile 935 made four calls, between 22:41 and 23:02 on 20 November 2004, to the mobile number that Witness PRH086, a tow-truck driver, identified as the one he used for work calls.⁵⁶⁶⁵ Further, the company's office staff or owner would allocate work to him by calling this mobile.⁵⁶⁶⁶

⁵⁶⁵⁷ Mahmoud Assi, T. 1 October 2015, p. 56.

⁵⁶⁵⁸ Mahmoud Assi, T. 1 October 2015, p. 51.

⁵⁶⁵⁹ Exhibit P690 (Extract from customer database), p. 1. *See also* exhibit P1821 (Statement of Witness PRH474).

⁵⁶⁶⁰ Exhibit P1821 (Statement of Witness PRH474), pp 3, 7.

⁵⁶⁶¹ Exhibit P1821 (Statement of Witness PRH474), p. 4.

⁵⁶⁶² Exhibit P1821 (Statement of Witness PRH474), p. 4.

⁵⁶⁶³ Exhibit P1821 (Statement of Witness PRH474), p. 6.

⁵⁶⁶⁴ Exhibit P1261.

⁵⁶⁶⁵ Exhibit P698 (Statements of Witness PRH086), pp 2 (ERN 60308751) (para. 1), 8 (ERN 60308757) (paras 5, 7, 10, 12); exhibit P1261, p. 80. Specifically, personal mobile 935 called Witness 86's mobile number at 22:41, 22:43, 22:52 and 23:02.

⁵⁶⁶⁶ Exhibit P698 (Statements of Witness PRH086), p. 9 (ERN 60308758) (paras 14, 20).

2812. He would occasionally go to its office to collect his salary or repair his vehicle.⁵⁶⁶⁷ In November 2004, he was covering Khalde and South Lebanon 24 hours per day.⁵⁶⁶⁸ In 2004, he would transport between five and 12 vehicles per 24-hour shift.⁵⁶⁶⁹ He did not recall the BMW accident or recognise the vehicle when shown photographs during his interview in 2010.⁵⁶⁷⁰ He did not recognise the name ‘Selim Ayyash’, or the person in an identity card application photograph the Prosecution says is Mr Ayyash.⁵⁶⁷¹ When he would pick up a vehicle involved in a night-time accident, its driver would usually travel in the ‘transporter’ with him to accompany the vehicle, but another person could also accompany the vehicle on behalf of its owner or driver.⁵⁶⁷²

Damage estimate request

2813. Mobile 935 is listed as ‘Mr. Salim Ayyash’s’ number, as the BMW’s owner, on a damage estimate request from the insurer to a garage, dated 23 November 2004. ‘Mahmoud Assi’ is again listed as the accident expert.⁵⁶⁷³ Mr Assi explained that, following an accident, the car is inspected by the insurance company, a damage estimate request is completed by an employee—after the accident declaration is filled in but before the expert report is sent—and then the car is sent to a garage chosen by the owner or insurance company.⁵⁶⁷⁴

2814. Witness 50 stated that a client either takes their car directly to the owner of the garage mentioned in this document, or the client takes the car to the insurance company which then takes it to this or another garage, following which the garage sends the paperwork to the insurance company.⁵⁶⁷⁵

2815. A mobile number for Mr Naim Aoun—who sometime after 2004 took ownership of the garage listed in the damage estimate request—was provided by both Mr Assi and Mr Aoun

⁵⁶⁶⁷ Exhibit P698 (Statements of Witness PRH086), p. 9 (ERN 60308758) (para. 14).

⁵⁶⁶⁸ Exhibit P698 (Statements of Witness PRH086), p. 9 (ERN 60308758) (paras 15-17).

⁵⁶⁶⁹ Exhibit P698 (Statements of Witness PRH086), p. 9 (ERN 60308758) (para. 19).

⁵⁶⁷⁰ Exhibit P698 (Statements of Witness PRH086), pp 9 (ERN 60308758) (para. 23), 10 (ERN 60308759) (para. 24).

⁵⁶⁷¹ Exhibit P698 (Statements of Witness PRH086), ERN 60308759 (paras 26-27).

⁵⁶⁷² Exhibit P698 (Statements of Witness PRH086), ERN 60308759 (para. 29).

⁵⁶⁷³ Exhibit P604.4 (Request for assessment of damage), p. 1.

⁵⁶⁷⁴ Mahmoud Assi, T. 1 October 2015, pp 9, 57-62.

⁵⁶⁷⁵ Exhibit P697 (Statement of Witness PRH050), p. 29 (ERN 60302473) (paras 26-29).

himself.⁵⁶⁷⁶ Mr Aoun did not recognise mobile 935, but remembered a former client of his with the family name Ayyash who imported cars, and whom Witness 50 would send to Mr Aoun's garage for repairs.⁵⁶⁷⁷ Mr Aoun stated of an ID card application photograph the Prosecution states is of Mr Ayyash, that this 'may be someone from the Ayyash family'.⁵⁶⁷⁸ Call sequence tables show that personal mobile 935 was in contact with Mr Aoun's mobile number between 23 November 2004—the date appearing on the accident declaration and on the damage estimate request—and 30 December 2004.⁵⁶⁷⁹

2816. In 2010, Witness 50 was shown records of calls on 23 and 24 November 2004 involving his number, personal mobile 935 and telephone numbers linked to Mr Ayyash's brother and that of Mr Aoun, but could not remember these calls or who was using mobile 935. He also could not remember calls from this mobile to his number on 1 and 3 December 2004.⁵⁶⁸⁰

Calls made by mobile 935 at the time of the accident

2817. The site of the accident was within the predicted best server coverage area of cell BRAMIE1.⁵⁶⁸¹ In his report, Mr Donaldson set out the calls made and received by mobile 935 around the time of the accident, and the cells it activated during these calls.⁵⁶⁸²

2818. At 22:17, mobile 935 called Witness 50, activating cell ZAYNEH2, which is adjacent to BRAMIE1 and, at 22:21, it called the car accident expert, Mr Assi, while activating cell

⁵⁶⁷⁶ Exhibit P605; Mahmoud Assi, T. 1 October 2015, pp 68-69; exhibit P1408 (Statements of Naim Aoun), pp 2 (ERN 60308010) (para. 1), 9 (ERN 60308017) (paras 4, 6).

⁵⁶⁷⁷ Exhibit P1408 (Statements of Naim Aoun), p. 10 (ERN 60308018) (paras 9-10). The witness was initially unsure about knowing a 'Selim Ayyash' specifically and did not have a person 'by the name Ayyash in [his] phone book', exhibit P1408 (Statements of Naim Aoun), p. 10 (ERN 60308018) (para. 12). He then said that he remembers the name 'Selim Ayyash' or 'Ibrahim Ayyash', likely as one of Witness 50's clients, exhibit P1408 (Statements of Naim Aoun), p. 10 (ERN 60308018) (para. 17).

⁵⁶⁷⁸ Exhibit P1408 (Statements of Naim Aoun), p. 11 (ERN 60308019) (para. 18).

⁵⁶⁷⁹ Exhibit P1261, pp 81, 85-87, 89-90, 94. Specifically, the two mobile numbers were in contact on 23 November, and 2, 6, 9, 17, 18 and 30 December 2004.

⁵⁶⁸⁰ Exhibit P697 (Statement of Witness PRH050), p. 31 (ERN 60302475) (paras 51, 53-54, 57, 63), ERN 60302488 (paras 12-14, 21).

⁵⁶⁸¹ Exhibit P663 (Statement of Andrew Fahey), p. 14; exhibit P1123 (ArcView shape files Alfa); exhibit P592.1. In his report, Mr Donaldson stated that the three cell towers activated by personal mobile 935 during these calls are located in the wider area of the accident, providing a map showing the site of the accident and the cell location to the north and north-east of the accident location, without mapping the cell's coverage, exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 617, p. 253 (map).

⁵⁶⁸² Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 151, 617, 627.

ZAYNEH2.⁵⁶⁸³ At 22:40, it received a call from Mr Kalash, activating cell SIBLIN3, which is adjacent to BRAMIE1.⁵⁶⁸⁴

2819. At 22:41 and 22:43, it called Witness 86, activating cell BARJA2—coverage of which is to the north of and not adjacent to that of BRAMIE1—and cell SIBLIN3, respectively.⁵⁶⁸⁵ At 22:44, it received a call from Mr Kalash, activating cell SIBLIN3.⁵⁶⁸⁶ At 22:52 and 23:02, it called Witness 86, activating cell SIBLIN3 both times.⁵⁶⁸⁷ Finally, at 23:06, it called Witness 50, activating cell ZAYNEH2.⁵⁶⁸⁸ Mr Donaldson demonstrated these cells activated by mobile 935 in the following slide:

⁵⁶⁸³ Andrew Donaldson, T. 19 July 2017, p. 73; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 610-611; exhibit P1261, p. 80.

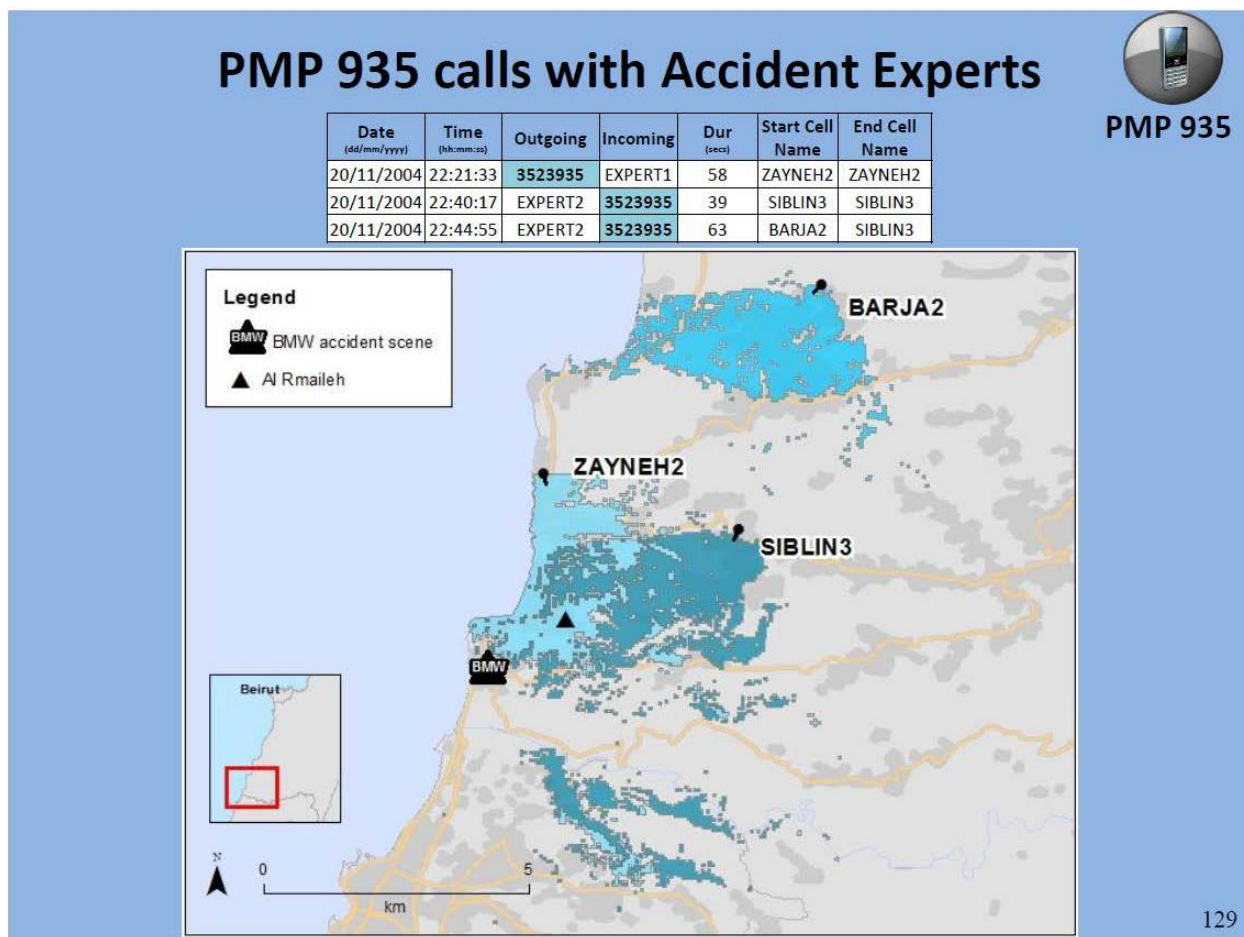
⁵⁶⁸⁴ Andrew Donaldson, T. 19 July 2017, pp 73-74; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 612; exhibit P1261, p. 80; exhibit P1123; exhibit P592.1.

⁵⁶⁸⁵ Andrew Donaldson, T. 19 July 2017, pp 76-77; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 613; exhibit P1261, p. 80; exhibit P1123; exhibit P592.1.

⁵⁶⁸⁶ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 614; exhibit P1261, p. 80.

⁵⁶⁸⁷ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 615; exhibit P1261, p. 80.

⁵⁶⁸⁸ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 616; exhibit P1261, p. 80.



Slide 129 of Mr Donaldson's PowerPoint presentation—exhibit P2025

Additional evidence concerning the accident

2820. The Trial Chamber also admitted the following documents related to the BMW accident, which the Prosecution had obtained from the insurance company:

- copies of a driver's license in the name of 'Salim Ayyash', which was valid at the time of the accident, and a 2003 vehicle registration document with the number '132951 N',⁵⁶⁸⁹
- a 'disclaimer and waiver' document undersigned by 'Salim Jamil Ayyash' in relation to the accident on 20 November 2004,⁵⁶⁹⁰

⁵⁶⁸⁹ Exhibit P604.10 (Mr Ayyash's driver's license and vehicle registration for BMW 523i). *See also* Mahmoud Assi, T. 1 October 2015, p. 68.

⁵⁶⁹⁰ Exhibit P604.8 (Declaration of waiver by Mr Ayyash). *See also* Mahmoud Assi, T. 1 October 2015, p. 65.

- an invoice dated 20 December 2004 for repair work done by the garage, and two undated invoices for the purchase of car parts;⁵⁶⁹¹
- a payment order from the insurance company to Mr Aoun, noting 30 December 2004 as the payment date and ‘payment to garage’ as the payment type;⁵⁶⁹² and
- photographs of a vehicle and vehicle parts.⁵⁶⁹³

2821. Mr Aoun stated that, once a car is repaired, the records of an accident, including photographs of the car, are sent to the insurance company.⁵⁶⁹⁴ He also remembered and recognised his handwriting and signature on an invoice sent from his garage to the insurance company relevant to the BMW accident.⁵⁶⁹⁵

2822. Mr Mohammed Nassereddine managed Mr Aoun’s garage.⁵⁶⁹⁶ He could not recall mobile 935, but knew a ‘Selim Ayyash’ who had first been sent to him by a broker for a car repair, had car insurance with the insurance company to which the 2004 accident declaration was made and whose Volvo vehicle he had repaired several times.⁵⁶⁹⁷ He identified ‘Selim Ayyash’ in Mr Ayyash’s ID card application photograph.⁵⁶⁹⁸

c. Additional witness evidence regarding mobile 935

2823. Witness PRH028, who is a relative of the Accused, Mr Merhi, recognised Salim Ayyash in an ID card application photograph, had had telephone contact with him, knew him and members of his family and provided evidence about Mr Ayyash’s work as a car dealer and involvement with

⁵⁶⁹¹ Exhibits P604.5 (Invoice from garage for BMW 523i), P604.6 (Invoice to Monaco garage for BMW 523i), P604.7 (Invoice for car parts for BMW 523i). *See also* Mahmoud Assi, T. 1 October 2015, pp 62-65.

⁵⁶⁹² Exhibit P604.15 (Auto policy for BMW 523i).

⁵⁶⁹³ Exhibits P604.3 (Photographs of a vehicle), P604.16 (Photographs of a vehicle and spare parts). *See also* Mahmoud Assi, T. 1 October 2015, pp 55-56.

⁵⁶⁹⁴ Exhibit P1408 (Statements of Naim Aoun), p. 10 (ERN 60308018) (para. 13).

⁵⁶⁹⁵ Exhibit P1408 (Statements of Naim Aoun), pp 2 (ERN 60318007) (para. 8), 6 (ERN 60318011).

⁵⁶⁹⁶ Exhibit P1409 (Statements of Mohammed Nassereddine), pp 2 (ERN 60307133) (para. 1), 9 (ERN 60307140) (paras 3, 6), 26 (ERN 60307157) (paras 5, 7); exhibit P1408 (Statements of Naim Aoun), p. 9 (ERN 60308017) (para. 8).

⁵⁶⁹⁷ Exhibit P1409 (Statements of Mohammed Nassereddine), pp 9 (ERN 60307140) (paras 8-9, 12-13), 10 (ERN 60307141) (paras 14, 17).

⁵⁶⁹⁸ Exhibit P1409 (Statements of Mohammed Nassereddine), p. 11 (ERN 60307142) (para. 38).

his family's hardware shops.⁵⁶⁹⁹ He did not recognise personal mobile 935, nor was it saved in his own mobile.⁵⁷⁰⁰

2824. He would contact Mr Ayyash through Mr Ayyash's brother Mohammed's shop, by asking Mohammed to tell Mr Ayyash to call him, or by getting a mobile or landline number for Mr Ayyash.⁵⁷⁰¹ He no longer recalled or had a record of these numbers.⁵⁷⁰² The Trial Chamber admitted this statement into evidence under Rule 158, after finding that the witness was 'unavailable'. This was after unsuccessful attempts were made to serve the witness with three summonses to appear for testimony.⁵⁷⁰³

2825. Witness 78, a service provider for members of Mr Ayyash's family, also did not recognise personal mobile 935.⁵⁷⁰⁴ The witness was interviewed in 2010, over four years after the last appointment.⁵⁷⁰⁵

d. Attribution period

2826. Mr Donaldson attributed personal mobile 935 to Mr Ayyash from 31 May 2004 to 13 January 2005, relying on some of the documents set out above, its handset (IMEI) use, its contact and geographic profiles and other points of attribution.⁵⁷⁰⁶ He stated that the most frequent contacts and most frequently activated cells were consistent throughout the attribution period, giving examples of one single contact and one single cell.⁵⁷⁰⁷

2827. Mr Donaldson also stated that, from 15 January 2005, mobile 935 started being used with an IMEI other than IMEI 35250500226958, and its most frequent contacts profile changed.⁵⁷⁰⁸

2828. During the attribution period of 31 May 2004 to 13 January 2005, mobile 935 had contact with 313 different numbers, while from 15 January to 31 March 2005 it had only 128 contacts, and

⁵⁶⁹⁹ Exhibit P2126 (Interview of Witness PRH028), pp 25-37, 74.

⁵⁷⁰⁰ Exhibit P2126 (Interview of Witness PRH028), pp 23-24.

⁵⁷⁰¹ Exhibit P2126 (Interview of Witness PRH028), pp 29-30.

⁵⁷⁰² Exhibit P2126 (Interview of Witness PRH028), p. 30.

⁵⁷⁰³ Rule 158 decision Witness PRH028. The Trial Chamber issued three summonses for the witness to appear in court. None were served on him and the unsuccessful attempts to do so are detailed in the decision.

⁵⁷⁰⁴ Exhibit P707 (Statement of Witness PRH078), pp 27 (ERN 60305692), 40 (ERN 60305705), 74 (ERN 60305739) (para. 8).

⁵⁷⁰⁵ Exhibit P707 (Statement of Witness PRH078), p. 43 (ERN 60305708).

⁵⁷⁰⁶ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 120-121.

⁵⁷⁰⁷ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 126-128.

⁵⁷⁰⁸ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 125, 130.

only 22 contacts, excluding ‘service and platform numbers’, were common between the two periods.⁵⁷⁰⁹

2829. Mr Donaldson, in his attribution report, added that the rankings of the most common contacts changed between two periods, namely, the attribution period of 31 May 2004 to 13 January 2005, and from 15 January to 31 March 2005. He noted that one number went from being the seventh most frequent contact to having just one contact. Further, between 15 January and 31 March 2005, there were no more contacts with six of the top ten most frequent contacts during the attribution period.⁵⁷¹⁰

2830. In addition, Mr Donaldson stated that the cell usage changed in these two different periods. He noted some similarity in cell activations but also some distinct usage, citing the sole example of a cell accounting for 24 per cent of activations during the attribution period but only 0.1 per cent in the subsequent period.⁵⁷¹¹ Mr Donaldson thought that an explanation for these changes within a subscription period would be that mobile 935 was passed on to another user.⁵⁷¹²

e. Handset use

2831. At the end of 2004 or beginning of 2005, a former car dealer, Mr Midian Bou Karroum, purchased a marine blue BMW 523, number plate 132951 N, from someone with the same name as the buyer listed on the 2004 bill of sale.⁵⁷¹³ In 2010, he allowed a Prosecution investigator, Mr Toby Smith, to photograph this vehicle, which contained a non-removable built-in original handset.⁵⁷¹⁴ Mr Smith photographed the vehicle and the handset displaying IMEI 44666207202575; one photograph is immediately below.⁵⁷¹⁵

⁵⁷⁰⁹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 131.

⁵⁷¹⁰ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 132.

⁵⁷¹¹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 130, 133.

⁵⁷¹² Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 134.

⁵⁷¹³ Exhibit P1406 (Statements of Midian Bou Karroum), pp 1 (ERN 60312.312), 10 (ERN 60312321) (paras 12-13), 11 (ERN 60312322) (paras 14-16).

⁵⁷¹⁴ Exhibit P1406 (Statements of Midian Bou Karroum), pp 11 (ERN 60312322) (para. 22), 13 (ERN 60312324) (para. 42); exhibit P1407 (Statement of Toby Smith), p. 3 (ERN 60283399) (para. 12).

⁵⁷¹⁵ Exhibit P1407 (Statement of Toby Smith), pp 3 (ERN 60283399) (paras 11, 13), 4 (ERN 60283400) (para. 16); exhibit P1406 (Statements of Midian Bou Karroum), p. 3 (ERN 60312314) (para. 10); exhibit P1405.



Exhibit P1405 (Photographs of BMW 523i), p. 17

2832. In his report, Mr Donaldson highlighted this handset as one of two used with number 935 during the attribution period, on 16, 28 and 29 September 2004.⁵⁷¹⁶

2833. In addition, he stated that IMEI 35250500226958 was consistently the main handset used with number 935 during the attribution period. The use started on 29 May 2004, or at the latest on 1 August 2004, and ended on 13 January 2005; later that day, the handset started being used with

⁵⁷¹⁶ Exhibit P1261, pp 51, 58; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 136 (b), 138, 152 (a); exhibit P1405, pp 16-21, 23-25.

personal mobile 091.⁵⁷¹⁷ Regarding handset use from 1 August 2004, the Prosecution relies on the IMEI recorded in call data records.⁵⁷¹⁸ Before this date, it relies on Alfa's records.⁵⁷¹⁹ Alfa's representative, Witness 707, explained that before August 2004 IMEI data was filtered out from the call data records and retained in a separate file.⁵⁷²⁰

f. Contact profile

2834. Mr Donaldson's report also sets out mobile 935's contacts, highlighting its top 31 most frequently contacted numbers during the attribution period. He linked thirteen of these to Mr Ayyash's relatives or professional contacts, and one to someone whose relationship with Mr Ayyash is not in evidence, but who was also in contact with Blue 233.

2835. The remaining seventeen numbers on the list were not linked to anyone. Mr Donaldson also set out the dates between which each of the 31 most contacted numbers, both attributed and unattributed, were in contact with personal mobile 935 during the attribution period.⁵⁷²¹ Many of these date ranges span almost the entirety of the attribution period, for example, the top ranked business contact was in touch with mobile 935 from 7 June 2004 to 12 January 2005, while the top ranked family contact was in touch with it from 9 June 2004 to 11 January 2005.⁵⁷²²

2836. Mr Donaldson, moreover, highlighted the following contacts during the attribution period, between mobile 935 and numbers linked to Mr Ayyash's family members:

- 108 contacts (ranked fifth) with landline 696, the number of Mr Ayyash's Hadath residence;⁵⁷²³

⁵⁷¹⁷ Andrew Donaldson, T. 18 July 2017, pp 79-81, T. 22 August 2017, p. 19; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 125, 137, 152 (b); exhibit P1256 (Call sequence table for mobile 091), p.1; exhibit P1261, pp 23-97; exhibit P890 (IMEI data for mobile 935).

⁵⁷¹⁸ *For example*, exhibit P1261, p. 23 and following.

⁵⁷¹⁹ Exhibit P890.

⁵⁷²⁰ Witness PRH707, T. 29 January 2016, pp 117-120; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 95.

⁵⁷²¹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 146.

⁵⁷²² Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 146, in particular entries 1 and 5 in the table of contacts.

⁵⁷²³ *See* para. 2686; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 143 (a).

- 94 contacts (ranked sixth) with a mobile number, ending in 852, linked to Mr Ayyash's brother, Mr Loutfi/Lotfi Ayyash;⁵⁷²⁴
- 73 contacts (ranked seventh) with a mobile number, ending in 854, linked to Mr Ayyash's sister-in-law, Ms Basima Hajj;⁵⁷²⁵
- 70 contacts (ranked joint eighth) with a mobile number, ending in 913, linked to Mr Ayyash's brother, Mr Mohammed Ayyash;⁵⁷²⁶
- 70 contacts (ranked joint eighth) with a landline number—ending in 696 but not the landline number of Mr Ayyash's Hadath residence—which is linked to Mr Ayyash's family;⁵⁷²⁷
- 38 contacts (ranked 16th) with a mobile number, ending in 989, linked to the husband of Mr Ayyash's sister-in-law Ms Bassima Hajj—Mr Mohammed Badreddine—and his family;⁵⁷²⁸
- 37 contacts (ranked 17th) with a mobile number, ending in 630, linked to Mr Ayyash's relative, Mr Wassef Qdeih;⁵⁷²⁹
- 30 contacts (ranked 22nd) with a mobile number, ending in 222, linked to Mr Ayyash's family;⁵⁷³⁰

⁵⁷²⁴ See above, at para. 2707; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 58 (l), 143 (b).

⁵⁷²⁵ See above, at para. 2686; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 36 (b), 143 (c).

⁵⁷²⁶ See above, at para. 2686; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 36 (q), 143 (d).

⁵⁷²⁷ See above, at para. 2729; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 91 (g), 143 (e). Mr Donaldson erroneously stated that this contact's rank is 'ninth', whereas it appears as joint eighth in annex E to his report, exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex E, p. 402 (ERN D0537561).

⁵⁷²⁸ See above, at para. 2686; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 36 (n), 143 (g).

⁵⁷²⁹ See above, at para. 2686; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 36 (p), 143 (f). Mr Donaldson erroneously stated that this contact's rank is 'sixteenth', whereas it appears as 17th in annex E to his report, exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex E, p. 402 (ERN D0537561).

⁵⁷³⁰ See above, at para. 2707; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 58 (q), 143 (h).

- 16 contacts (ranked joint 34th) with a mobile number, ending in 888, linked to Mr Ayyash's brother, Mr Ali Ayyash;⁵⁷³¹
- ten contacts (ranked joint 50th) with a mobile number, ending in 777, linked to Mr Ayyash's brother-in-law, Mr Mohammed Badreddine;⁵⁷³²
- nine contacts (ranked joint 55th) with a landline number, ending in 612, linked to Mr Ayyash's late father-in-law, Mr Abd Al-Hassan Moussa Hajj;⁵⁷³³
- nine contacts (ranked joint 55th) with a landline number, ending in 742, linked to Mr Ayyash's brother-in-law, Mr Hussein Cheaito;⁵⁷³⁴
- eight contacts (ranked joint 66th) with landline 851, attributed to Mr Ayyash's Harouf residence;⁵⁷³⁵
- seven contacts (ranked joint 71st) with a mobile number, ending in 771, attributed to two brothers, Mr Ali and Mr Abdo Mustafa Hariri, the latter being married to Mr Ayyash's niece, Ms Tamara Ayyash. The mobile number was subscribed in the name of 'Youssef Fadi Youssef', appears on a passport application for 'Ali Hariri', appears in a vehicle registration database as the telephone number for 'Ali Mustafa Hariri' and was listed on the university records of 'Ali Hariri' and 'Abdo Hariri';⁵⁷³⁶

⁵⁷³¹ See above, at para. 2686; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 36 (g), 143 (i), annex E, p. 402 (ERN D0537561).

⁵⁷³² See above, at para. 2686; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 36 (l), 143 (j), annex E, p. 403 (ERN D0537562).

⁵⁷³³ See above, at para. 2729; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 91 (d), 143 (k), annex E, p. 403 (ERN D0537562).

⁵⁷³⁴ See above, at para. 2729; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 91 (u), 143 (l), annex E, p. 403 (ERN D0537562).

⁵⁷³⁵ See above, at para. 2707; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 143 (m), annex E, p. 403 (ERN D0537562).

⁵⁷³⁶ Exhibit P1034, pp 3, 15, 24, 26; exhibit P880 (Touch subscriber note for mobile 771); exhibit P1529 (Mr Ali Hariri's Lebanese passport application), p. 2 (ERN 59002992); exhibit P1745 (Mr Ali Hariri's vehicle registration record), p. 3 (ERN 60297276); exhibit P959 (Record from *Université Libanaise* related to number 771); exhibits P960 (Record from *Université Libanaise* related to number 771), P961 (Record from *Université Libanaise* related to number 771), P962 (Record from *Université Libanaise* related to number 771), P963 (Record from *Université Libanaise* related to number 771); exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 143 (n), annex E, p. 403 (ERN D0537562).

- seven contacts (ranked joint 77th) with a landline number, ending in 833, linked to Mr Ayyash's sister-in-law, Ms Nidal Abdel-Hassan Al-Hajj, and her husband, Mr Mohammed Abdallah Jaradah;⁵⁷³⁷
- six contacts (ranked joint 78th) with a landline number, ending in 584, linked to the business of Mr Ayyash's brother, Mr Mohammed Ayyash;⁵⁷³⁸
- four contacts (ranked joint 94th) with a mobile number, ending in 900, linked to Mr Ayyash's brother-in-law, Mr Saleh Qassem Harb;⁵⁷³⁹ and
- three contacts (ranked joint 106th) with a landline number, ending in 099, linked to Mr Ayyash's brother, Mr Ali Ayyash.⁵⁷⁴⁰

2837. Mr Donaldson also listed the contacts, during the attribution period, between mobile 935 and numbers he linked to Mr Ayyash's acquaintances and associates, namely:

- 289 contacts (ranked first) with a mobile number, ending in 617, linked to Mr Ayyash's business associate, Mr Ghaleb Jaber;⁵⁷⁴¹
- 219 contacts (ranked second) with a mobile number, ending in 333, linked to Mr Ayyash's relative and business associate, Mr Hussein Zaarour;⁵⁷⁴²
- 43 contacts (ranked 14th) with a mobile number, ending in 894, linked to Mr Ayyash's relative, Mr Abdallah Safieddine;⁵⁷⁴³

⁵⁷³⁷ See above, at para. 2729; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 91 (i), 143 (p), annex E, p. 403 (ERN D0537562).

⁵⁷³⁸ See above, at para. 2729; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 91 (e), 143 (o), annex E, p. 404 (ERN D0537563).

⁵⁷³⁹ See above, at para. 2729; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 91 (n), 143 (q), annex E, p. 404 (ERN D0537563).

⁵⁷⁴⁰ See above, at para. 2729; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 91 (t), 143 (r), annex E, p. 405 (ERN D0537564).

⁵⁷⁴¹ See above, at para. 2686; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 37 (c), 144 (a).

⁵⁷⁴² See above, at para. 2686; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 37 (a), 144 (b).

⁵⁷⁴³ See above, at para. 2729; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 92 (g), 144 (c). This contact is ranked as the '13th' in para. 144 (c) of Mr Donaldson's report, whereas it appears as 14th in annex E of the report, exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex E, p. 402 (ERN D0537561).

- 31 contacts (ranked 21st) with a landline number, ending in 125, of the Civil Defence in Nabatiyeh;⁵⁷⁴⁴
- 19 contacts (ranked 29th) with a landline number, ending in 830, subscribed to Mr Ayyash's associate, Mr Ghaleb Jaber;⁵⁷⁴⁵
- 13 contacts (ranked joint 40th) with a mobile number, ending in 445, subscribed to 'Naim Abdo Aoun', at whose garage Mr Ayyash's BMW was repaired following the 20 November 2004 accident; Mr Aoun himself, as well as Witnesses 50, 258 and Mr Mahmoud Assi, also provided it as Mr Aoun's number;⁵⁷⁴⁶
- 12 contacts (ranked joint 44th) with a mobile number, ending in 849, belonging to Mr Ayyash's insurance agent;⁵⁷⁴⁷
- five contacts (ranked joint 88th) with a mobile number, ending in 515, used by an acquaintance of the Ayyash brothers;⁵⁷⁴⁸ and
- two contacts (ranked joint 133rd) with a landline number, ending in 203, belonging to the Civil Defence in Doueir. Mr Ayyash was employed by the Civil Defence in Markaba in early 2004 and was transferred to the Civil Defence in Doueir in October 2004. The landline number was subscribed to 'Civil Defense Centre – Douair' and was given as its telephone number by a witness.⁵⁷⁴⁹

⁵⁷⁴⁴ See above, at para. 2729; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 92 (a), 144 (d), 637.

⁵⁷⁴⁵ Exhibit P1629 (Subscriber note for mobile 830); exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 37 (c), 144 (e). See also above, at para. 2686.

⁵⁷⁴⁶ Exhibit P1408 (Statements of Naim Aoun), pp 2 (ERN 60318007) (paras 1, 8), 6 (ERN 60318011); exhibit P1409 (Statements of Mohammed Nassereddine), p. 9 (ERN 60307140) (para. 3), ERN 60307157 (para. 7); exhibit P1466 (Subscriber note for mobile 445); Mahmoud Assi, T. 1 October 2015, pp 68-69; exhibit P605; exhibit P697 (Statement of Witness PRH050), p. 29 (ERN 60302473) (para. 31); exhibit P1410 (Statements of Witness PRH258), p. 24 (ERN 60307480) (para. 21); exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 144 (g), annex E, p. 403 (ERN D0537562).

⁵⁷⁴⁷ See above, at para. 2729; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 92 (d), 144 (h), annex E, p. 403 (ERN D0537562).

⁵⁷⁴⁸ See above, at para. 2729; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 92 (e), 144 (i), annex E, p. 404 (ERN D0537563).

⁵⁷⁴⁹ Exhibit P1622; exhibit P1911, ERN 60178535_TS_D_EN_AR (p. 16); exhibit P1890 (Civil Defence documents relating to Mr Ayyash), pp 1-4; exhibit P1162, pp 1-2; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 144 (j), annex E, p. 405 (ERN D0537564).

2838. Finally, Mr Donaldson highlighted these additional telephone numbers, which personal mobile 935 had contact with during the attribution period:

- six contacts (ranked joint 78th) with Witness 78's mobile number, ending in 940;⁵⁷⁵⁰ and
- one contact (ranked joint 176th) with a landline number, ending in 061, linked to a staff member of the Lebanese American University.⁵⁷⁵¹

g. Geographic profile

2839. Mr Donaldson set out personal mobile 935's geographic profile, consisting of the cells it most frequently activated during the attribution period.⁵⁷⁵²

2840. He mapped the predicted coverage of the five known⁵⁷⁵³ most frequently activated cells during the attribution period against the location of Mr Ayyash's Hadath and Harouf residences. This showed that the top and fourth ranked cells—Alfa's SFEIR2 and HAROUF1, respectively—covered the locations of, and areas surrounding, the Hadath and Harouf residences, respectively, and that the second, third and fifth ranked cells—NABATI1, HADATH1 and SFEIR3, respectively—covered areas adjacent to these two cells.⁵⁷⁵⁴

2841. He mapped Plot 29 and the Alfa cells NABATI1 and the adjacent HAROUF1 on a map showing that both cells potentially provide coverage to the Harouf residence:

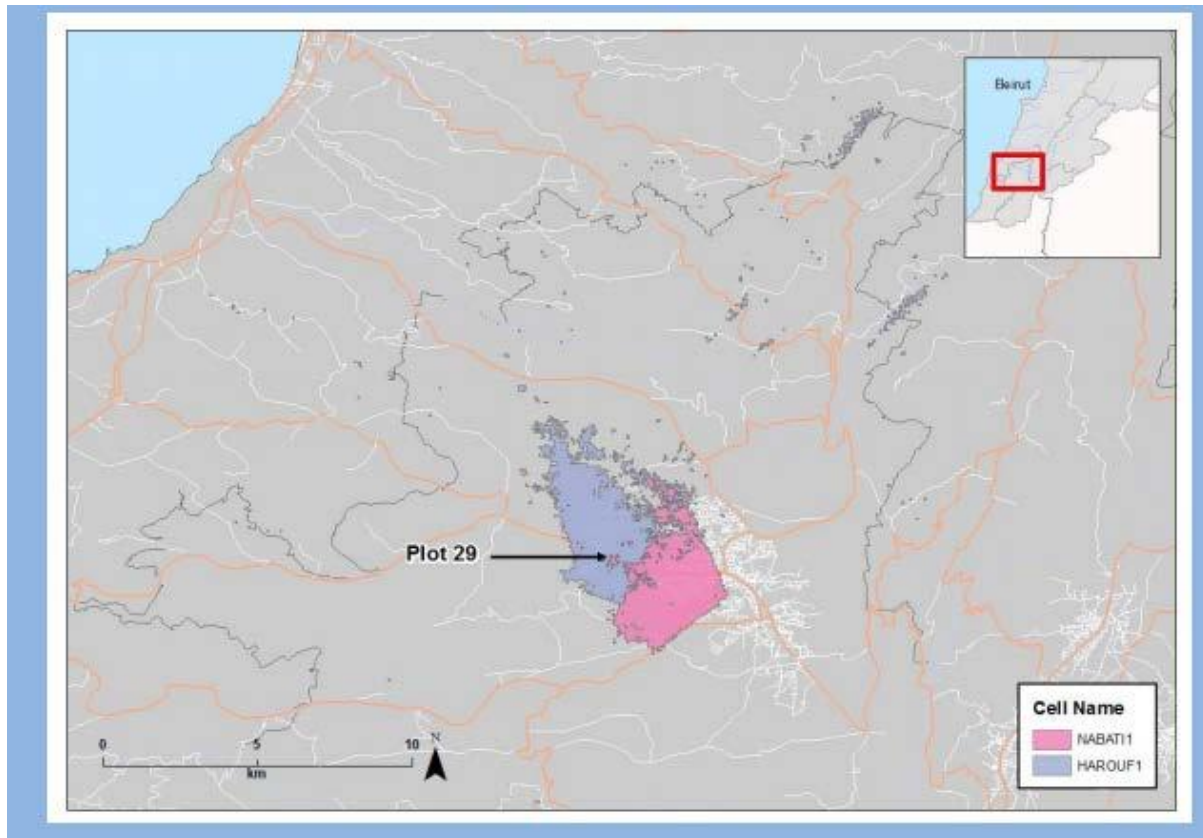
⁵⁷⁵⁰ See above, at para. 2729; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 145 (a), annex E, p. 404 (ERN D0537563).

⁵⁷⁵¹ See above, at para. 2729; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 145 (b), annex E, p. 408 (ERN D0537567); exhibit P2084.

⁵⁷⁵² Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 147.

⁵⁷⁵³ Mr Donaldson noted that before 1 August 2004 cell information for incoming calls was not available, meaning that the category of 'unknown cell' ranks as the second most activated cell during the attribution period; this cell category is therefore not considered as one of the top five known most activated cells during the attribution period, discussed above, Andrew Donaldson, T. 19 July 2017, p. 30; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 147.

⁵⁷⁵⁴ Andrew Donaldson, T. 19 July 2017, pp 30-33; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 147-149, p. 79 (map).



Slide 98 of Mr Donaldson's PowerPoint presentation—exhibit P2025

2842. In addition, Mr Donaldson noted that personal mobile 935 activated MHAIBI1—located near the village of Markaba—during Mr Ayyash's employment at the Markaba Civil Defence station. The last activation was on 30 October 2004, the final day he was stationed there before being transferred to the Doueir station.⁵⁷⁵⁵

2843. According to the evidence, the coordinates of Markaba village do not fall within the predicted best coverage area of any cell, but the cells adjacent to this area are MHAIBI1, MAAROB1 and GHASSA2.⁵⁷⁵⁶

2844. Call data records show that mobile 935 activated MAAROB1 on 29 December 2004, 7 January 2005, 17 January 2005 (three times), 20 February 2005 and 30 March 2005. It activated

⁵⁷⁵⁵ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 153-154, 640-642.

⁵⁷⁵⁶ Exhibit P663 (Statement of Andrew Fahey), annex 1, location no. 88; exhibit P1123 (ArcView shape files Alfa). As there is no evidence showing the location of the Markaba station itself, rather than the coordinates of the village, it is unclear whether the Markaba station fell within the area for which there is no predicted best cell coverage or whether it fell within the predicted best coverage of one of the three cells.

GHASSA2 on 17 June 2004 (three times), 8 September 2004, and on 6 November 2004.⁵⁷⁵⁷ In other words, while one of the three relevant cells was no longer activated after Mr Ayyash was transferred to another station, the remaining two cells continued to be activated after this date. It is therefore unclear why Mr Donaldson relied on the activation pattern of only one of these three cells, and overlooked the remaining two.

h. Single user analysis of personal mobiles 170 and 935

2845. For completeness, the Trial Chamber has reviewed the evidence of the Prosecution cell site expert, Mr Philips, on single user analysis of mobiles 170 and 935.⁵⁷⁵⁸

2846. The two mobiles shared seven days of overlapping attribution period, from Friday 7 to Thursday 13 January 2005.⁵⁷⁵⁹ Mr Philips analysed four shared days of activity, between 10 and 13 January 2005, and identified six pairs of close-in-time calls, made within an hour.⁵⁷⁶⁰ He concluded that mobiles 170 and 935 could be co-located for five pairs,⁵⁷⁶¹ and that co-location was not precluded for one pair.⁵⁷⁶²

2847. The possible co-locations occurred in south Beirut, and the mobiles connected to cells with overlapping predicted best server coverage, such as SFEIR2 and Hadath_C, Hazmiyeh_2_B and HADATH3, Sfeir_A, Sfeir_B and SFEIR2, ROUEIS3 and Hai_El-Kneisseh_B. The time lapse between the call pairs varied from two-and-a-half to 21 minutes.⁵⁷⁶³

⁵⁷⁵⁷ Exhibit P1261, pp 3, 46, 75, 93, 96, 100, 109, 114.

⁵⁷⁵⁸ Mr Philips's single user analysis encompassed a period from 30 September 2004 to 14 February 2005. The attribution period of Mr Ayyash's mobile 165 ended before, on 18 April 2004. *See* sub-section (B) (1) (d) (iii) 'Findings'.

⁵⁷⁵⁹ Mobile 935's attribution period to Mr Ayyash is from 31 May 2004 to 13 January 2005. The attribution period of mobile 170 spans from 7 January to 26 November 2005. *See* sub-sections (B) (1) (e) (iii) 'Findings' and (B) (1) (f) (iii) 'Findings'.

⁵⁷⁶⁰ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 90, 94-96, 101; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 28-30; exhibit P1259 (Call sequence table of ten numbers—Mr Ayyash), pp 333-334.

⁵⁷⁶¹ On 10, 11 and 13 January 2005.

⁵⁷⁶² Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 90, 94-96, 101; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 28-30; exhibit P1259, pp 333-334.

⁵⁷⁶³ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 90, 94-96, 101; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 28-30; exhibit P1259, pp 333-334.

2848. The combined call sequence table shows five more close-in-time call pairs of the mobiles, on 7, 8 and 9 January 2005, which Mr Philips did not examine.⁵⁷⁶⁴

2849. On Friday 7 January 2005 at 16:08, mobile 935 activated MIKAEL3 for a 53-second call, and at 16:23 mobile 170 used Hadath_C.⁵⁷⁶⁵ Using the electronic presentation of evidence software, the Trial Chamber measured around 940 metres between the closest and over 2,650 metres between the farthest points of the predicted best server coverage areas of these cells.⁵⁷⁶⁶



Distances between the closest and farthest points of coverage areas of Alfa's MIKAEL3 and Touch's Hadath_C cells

2850. Although Mr Philips did not provide an expert opinion for this call pair, he categorised cell activations with similar parameters as falling within 'would not preclude co-location'. For example, on 28 December 2004 at 12:49, Yellow 294 connected to Alfa's GHOBAl1 cell to

⁵⁷⁶⁴ Exhibit P1259, pp 331-332. Save for four early morning calls on 7 January on Yellow 294, none of the network mobiles had any calls on those three days. This could be a possible explanation for not including these calls in Mr Philips's report.

⁵⁷⁶⁵ Exhibit P1259, p. 331.

⁵⁷⁶⁶ Exhibit P592.1.

receive a 58-second call from another Yellow mobile, and approximately 13 minutes later mobile 935 activated PORT1.⁵⁷⁶⁷ Mr Philips found that the estimated distance between the centres of the two cells' best server coverage areas, 4.25 kilometres 'as the crow flies', could be travelled and would not preclude the mobiles from co-locating.⁵⁷⁶⁸

2851. He expressed the same opinion with respect to a call pair of Blue 233, using Hazmiyeh_2_B, and mobile 170, connecting to BorjBrajneh-II_B that occurred on 2 February 2005 within just over three minutes. He estimated that the distance between the centres of the cells' predicted best server coverage areas was 2.5 kilometres.⁵⁷⁶⁹

2852. The Trial Chamber's analysis using the electronic presentation of evidence software showed that for the remaining four call pairs mobiles 170 and 935 connected to cells with some overlap in their respective predicted best server coverage areas:

- on 7 January 2005 at 20:33 mobile 170 activated Borj_Rahhal_B. At 20:38 mobile 935 used ZRARIE2 north-east to Tyre in south Lebanon;
- on 8 January 2005 at 12:08 mobile 935 used HADATH1 at the end of a call. At 12:24, mobile 170 connected to Hazmiyeh_2_B. At 13:12, mobile 170 activated Ayn_Sikkeh_C, at 13:28 mobile 935 used CBOURJ1; and
- on 9 January 2005 at 15:09 mobile 935 activated HADATH1, and at 15:12 mobile 170 connected to Hadath_C.⁵⁷⁷⁰

2853. As a general approach, Mr Philips considered such cell activations as possible co-locations.⁵⁷⁷¹ Additionally, there were no calls between the two mobiles and no overlapping calls in these seven days.⁵⁷⁷²

⁵⁷⁶⁷ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), p. 79; exhibit P1259, p. 326.

⁵⁷⁶⁸ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 31, 79.

⁵⁷⁶⁹ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), p. 208; exhibit P1259, p. 354.

⁵⁷⁷⁰ Exhibit P1259, pp 331-332; exhibit P592.1.

⁵⁷⁷¹ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), p. 31.

⁵⁷⁷² Exhibit P1261, pp 96-97; exhibit P1262, p. 1.

ii. Submissions

2854. The Prosecution submits that Mr Ayyash used personal mobile 935 between 31 May 2004 and 13 January 2005 based on the following factors.⁵⁷⁷³ First, the mobile number was listed on documents relating to the purchase and sale of his BMW in 2002 and 2004, and to an accident on 20 November 2004 involving this vehicle.⁵⁷⁷⁴ Second, mobile 935 used the same handset which was then used with mobile 091, and on three days while Mr Ayyash owned the vehicle, personal mobile 935 was used with its integrated handset.⁵⁷⁷⁵ Third, personal mobile 935 was in contact with Mr Ayyash's family, associates, acquaintances, employer and service providers, and landline 696—the number of Mr Ayyash's Hadath residence—was its top landline contact.⁵⁷⁷⁶

2855. Finally, the cells to which mobile 935 most frequently connected were near Mr Ayyash's Hadath and Harouf residences, and mobile 935 activated cells providing coverage to Mr Ayyash's workplace at the Markaba Civil Defence station only while he was stationed there and never thereafter.⁵⁷⁷⁷ Mobile 935 was also used in the area and at the time of the BMW accident on 20 November 2004 to contact those who were relevant to the accident documentation.⁵⁷⁷⁸

2856. The Ayyash Defence argues that the evidence does not show beyond reasonable doubt that Mr Ayyash used mobile 935 during this period.⁵⁷⁷⁹ There is no evidence on how it came to be written on the 2002 BMW bill of sale—dated two years before personal mobile 935 was activated—in a different coloured ink and outside the section containing Mr Ayyash's personal details.

2857. Moreover, Mr Donaldson conceded that he had unintentionally misconstrued mobile 935 as Mr Ayyash's contact number on this document.⁵⁷⁸⁰ There is also no evidence of how the number of mobile 935 came to be handwritten in the middle of the 2004 BMW bill of sale.⁵⁷⁸¹ In particular,

⁵⁷⁷³ Prosecution final trial brief, para. 227; Prosecution closing submissions, T. 12 September 2018, p. 79.

⁵⁷⁷⁴ Prosecution final trial brief, paras 228-229; Prosecution closing submissions, T. 12 September 2018, pp 95-96, 99.

⁵⁷⁷⁵ Prosecution final trial brief, paras 230, 234; Prosecution closing submissions, T. 12 September 2018, pp 93-94.

⁵⁷⁷⁶ Prosecution final trial brief, para. 231; Prosecution closing submissions, T. 12 September 2018, pp 93-94, 99.

⁵⁷⁷⁷ Prosecution final trial brief, para. 232; Prosecution closing submissions, T. 12 September 2018, pp 97-99.

⁵⁷⁷⁸ Prosecution closing submissions, T. 12 September 2018, pp 95, 97-99.

⁵⁷⁷⁹ Ayyash Defence final trial brief, para. 634.

⁵⁷⁸⁰ Ayyash Defence final trial brief, paras 579-580; Ayyash Defence closing submissions, T. 17 September 2018, p. 114.

⁵⁷⁸¹ Ayyash Defence final trial brief, paras 581-583; Ayyash Defence closing submissions, T. 17 September 2018, pp 114-115.

as there is no evidence that Mr Ayyash was present at its signing, it cannot be inferred that he had provided the mobile number.⁵⁷⁸²

2858. The Ayyash Defence also submits that, although the handset used with mobile 935 was subsequently used with mobile 091, this does not assist in attributing either of them to Mr Ayyash, and there is no evidence on the handset's purchase or connection with Mr Ayyash.⁵⁷⁸³ The only other handset used with mobile 935 during this period was the integrated BMW handset, but there is no evidence that Mr Ayyash was in the BMW on those days.⁵⁷⁸⁴

2859. It also challenges the Prosecution's conclusions from mobile 935's contact list, in tendering the evidence of just five people named in the list, one of whom stated that 'possibly' Mr Ayyash or another person called him from that number.⁵⁷⁸⁵ This was while both that witness and the others did not mention the number, did not recognise it, nor had it saved in their telephone and or remembered having contact with it.⁵⁷⁸⁶ Further, its geographic profile does not show that Mr Ayyash used mobile 935, and the cell activations in the Markaba station area while he was employed there do not assist in attributing personal mobile 935 to him in the absence of work attendance records.⁵⁷⁸⁷

2860. The Ayyash Defence also argues that, as there is no evidence of how mobile 935 came to be on the 2004 car accident documents, for several reasons it should not be assumed that Mr Ayyash provided it. First, the authorship of the accident declaration form is in question. Secondly, the reliability of the expert report is also questionable—given the less serious nature of the accident—as is its source of information, which may have come from the insurance company. Thirdly, the damage estimate document may reproduce data from the insurance company. Fourthly, the contents of the towing company database may have come from the insurance company, and the tow-truck driver who assisted at the scene did not recognise Mr Ayyash.⁵⁷⁸⁸

⁵⁷⁸² Ayyash Defence final trial brief, para. 583.

⁵⁷⁸³ Ayyash Defence final trial brief, para. 589.

⁵⁷⁸⁴ Ayyash Defence final trial brief, paras 588, 590.

⁵⁷⁸⁵ Ayyash Defence final trial brief, paras 591-592, 594; Ayyash Defence closing submissions, T. 17 September 2018, pp 108-109.

⁵⁷⁸⁶ Ayyash Defence final trial brief, paras 593-597.

⁵⁷⁸⁷ Ayyash Defence final trial brief, paras 602-604.

⁵⁷⁸⁸ Ayyash Defence final trial brief, paras 605-618.

2861. Furthermore, as none of those who had contact with mobile 935 on the day of the accident could recognise it or connect it to Mr Ayyash personally, and there is no evidence of the calls' contents, it cannot be excluded that another person was using it at the accident scene while riding in the car with Mr Ayyash.⁵⁷⁸⁹

iii. Findings

2862. Mr Ayyash's BMW was involved in an accident late in the evening of 20 November 2004 at Al-Rmeileh, on the highway between Sidon and Beirut. Mr Ayyash, as the insured owner, submitted to his insurer a 'Car Accident Declaration' with his insurance claim. The 'Details of Accident' are hand-written and state that, 'As I was trying to negotiate a bend on Al-Rmeileh Road, my vehicle skidded and hit the pavement'.⁵⁷⁹⁰ The telephone number given was mobile 935. The insurer's accident expert report listed Mr Ayyash as the BMW's owner and driver.

2863. The evidence that Mr Ayyash was driving his own vehicle when it 'skidded and hit the pavement' is overwhelming. The Trial Chamber accordingly finds that he was the driver that night.

2864. Mobile 935 was used in the BMW's fixed handset three times in 2002 and 2003 when Mr Ayyash owned the vehicle. On the night of the accident, mobile 935 called the tow truck driver four times from cells either providing coverage to the scene, or nearby, namely on a tower more than five kilometres away from the scene of the accident, BARJA2. The predicted best coverage of that cell, BARJA2, was not adjacent to that of the cell providing best coverage to the accident scene, BRAMIE1. However, the next call activated a cell, SIBLIN3, adjacent to the one covering the accident site. The general cell site evidence of the cell site expert, Mr Philips, is that this can occur.

2865. Mobile 935 is also in the tow-truck company's data base in connection with the towing of the BMW that night. It is listed on four documents relating to the insurance claim for the accident; the number is linked to Mr Ayyash, as the insurance policy beneficiary. The evidence connecting mobile 935 to the accident, and hence Mr Ayyash and his vehicle, is also overwhelming. The Trial Chamber therefore finds that Mr Ayyash was using mobile 935 that night.

⁵⁷⁸⁹ Ayyash Defence final trial brief, paras 619-626.

⁵⁷⁹⁰ Exhibit P604.1 (Car accident declaration), p. 2.

2866. To explain further, the BMW bills of sale have limitations to their probative value, given where number 935 is on the documents, the different coloured ink in which it is written and the fact that the 2002 document precedes the activation of personal mobile 935. However, the former motor transport official, Mr Al-Kharrat, gave evidence that a bill of sale would be made available to the vehicle owner or a person acting on their behalf at the time of a subsequent sale. Personal mobile 935 may therefore have been added to the 2002 bill of sale in 2004, in the blank space remaining on the document.

2867. Whether Mr Ayyash completed the accident declaration himself is irrelevant. The salient point is that mobile 935 was provided as his contact number on this document. The obvious question is why this mobile number would have been provided as the contact number for the BMW's owner, if it was not in fact the owner's. In addition, the accident expert, Mr Mahmoud Assi, explained why he may have been incorrectly listed on the declaration as the accident expert, and Witness 50 explained that the broker's name is correctly completed on the document.

2868. Moreover, contrary to the Ayyash Defence's contention, Mr Assi's evidence did not undermine the reliability of mobile 935 being provided as Mr Ayyash's contact number in the expert report. Rather, he merely explained that the expert report may lack detail, given the less serious nature of the accident. Mr Assi also explained that an accident expert gathers relevant information from the driver at the scene, undermining the argument that the information may have come from the insurance company.

2869. Further, mobile 935 was provided as the contact number to the insurance company in the accident declaration dated 23 November 2004, whereas Mr Kalash's number had already called mobile 935 at the time of the accident on 20 November 2004, and mobile 935 had called Mr Kalash's number on 22 November 2004. Why would Mr Kalash call this number if the BMW driver was not using it?

2870. Finally, Witness 474 testified that a client calling the towing company at the time of the accident, would provide a contact number, therefore undermining the argument that the information contained in the towing company database originates from the insurance company. On the other hand, the call sequence tables do not show mobile 935 contacting, at the time of the accident, any of the towing company's telephone numbers, but they do show a number of calls

made by mobile 935 to the company's tow truck driver. Again, why would someone using mobile 935 call a tow truck driver to tow a car away after an accident, if it was not their vehicle involved in the accident?

2871. Based on Mr Assi's evidence, the Trial Chamber is persuaded that the information contained in the damage estimate request may duplicate information provided to the insurance company, and therefore that this document cannot additionally corroborate other evidence to attribute personal mobile 935 to Mr Ayyash.

2872. The mobile's subscriber contract alone does not assist in attribution.

2873. The Trial Chamber is also not persuaded that the absence of witness evidence stating that mobile 935 was used by Mr Ayyash precludes its attribution to him, in light of the other strong circumstantial evidence that he was using it. There is no reason, for example, why the service provider Witness 78 would know, let alone remember, such a number that was recorded in the client data base.

2874. Mr Donaldson's report highlights mobile 935's frequent contact with Mr Ayyash's relatives and associates, but also fails to link a considerable proportion of contact telephone numbers, importantly those towards the top of the contact rankings, with anyone. Moreover, while some information is given in Mr Donaldson's report about the date ranges during which the main 31 contacts were in contact with mobile 935 during the attribution period, the consistency or patterns of contact within these date ranges are not set out. The Trial Chamber finds that the contact profile is indicative, but not determinative, of mobile 935 being attributed to Mr Ayyash.

2875. Regarding mobile 935's geographic profile, the Trial Chamber is satisfied that it regularly activated cells in the area of Mr Ayyash's two residences, Harouf and Hadath.⁵⁷⁹¹

2876. The mobile also connected to cells in the area of Markaba village while Mr Ayyash was stationed at the Markaba Civil Defence station. However, there is no direct evidence showing that Mr Ayyash was at his workplace or at one of his two residences on particular days or times of day.

⁵⁷⁹¹ See sub-sections B (1) (b) 'Landline 696—Ayyash family residence in Hadath, Beirut' and (B) (1) (c) 'Landline 851—Ayyash family residence in Harouf, Nabatiyeh'.

In addition, the Prosecution's argument that the mobile ceased to activate cells around the Markaba station after Mr Ayyash's transfer to another station is not supported by the evidence.

2877. Alfa's records on mobile 935's IMEI numbers and call data records show that mobile 935 was used with IMEI 35250500226958 consistently from 29 May 2004 until 13 January 2005. However, the Trial Chamber is not satisfied that Mr Donaldson's report shows a different contact and geographic profile for mobile 935 after the attribution period. There is no evidence about the ownership or use of the handset. In addition, number 935 was used—on three different days—with the Motorola handset in Mr Ayyash's BMW, when he owned this vehicle. This handset use may assist in attributing personal mobile 935 to Mr Ayyash.

2878. Consistent with its approach to assessing the totality of the evidence, the Trial Chamber has carefully considered Mr Philips's evidence regarding the single user analysis of personal mobiles.

2879. The Trial Chamber has found above that Mr Ayyash was mobile 170's principal user from 7 January to 26 November 2005.⁵⁷⁹² It shared seven days of activity with mobile 935, from 7 to 13 January 2005. Mr Philips analysed six pairs of calls on four days, from 10 to 13 January 2005, and concluded that the two mobiles possibly co-located for five pairs and their co-location would not be precluded for another call pair.

2880. Notwithstanding that the Trial Chamber does not have Mr Philips's technical expertise to ascertain further potential co-locations, it is satisfied that the cell activations of mobiles 170 and 935 did not show dislocation in the seven days of common activity, which may have been inconsistent with the two mobiles' having the same user.

2881. Based on the totality of the evidence, in particular the cumulative weight of the consistent IMEI use, and consistent contact and geographic profiles, the Trial Chamber is satisfied that the attribution period spans from 31 May 2004 to 13 January 2005.

2882. The Trial Chamber cannot exclude that Mr Ayyash's wife or close family members may have occasionally used mobile 935. Yet, the evidence shows that any such use did not rise to a level that would make mobile 935 a common, family mobile. The Trial Chamber has examined

⁵⁷⁹² See paras 2776-2784.

the totality of the evidence as to who was using mobile 935 and is satisfied that the only reasonable conclusion is that it was Mr Ayyash. The Trial Chamber therefore finds that Mr Ayyash was its principal user.

(g) Personal mobile 091

2883. The Prosecution attributes personal mobile 091 to Mr Ayyash in early 2005 for just under two months, from 13 January until 6 March 2005. The evidence of its attribution comes from a bill of lading listing it alongside Mr Ayyash's name, and geographic and contact profiles, including contact with a service provider to Mr Ayyash's wife, Ms Hajj.

2884. It also rests on three instances where contacts called mobile 935—used by Mr Ayyash immediately before he started using mobile 091—before going on to call personal mobile 091 later that day. And, further, on personal mobile 091's successive IMEI use with mobile 935, and similarities between mobile 091's contact and geographic profiles and those of mobiles 935 and 165. The Trial Chamber has found that Mr Ayyash previously used these two mobiles.

i. Evidence

a. Documents

2885. Touch's subscriber records show that mobile 091 was activated as a pre-paid mobile number, without a named subscriber, on its network on 18 December 2004 and was not deactivated. By 2010, the subscriber name was recorded as 'Mahmoud Mohamad Hamdan'.⁵⁷⁹³

2886. The Trial Chamber also admitted into evidence a bill of lading, dated 15 March 2005,⁵⁷⁹⁴ for the import of a 1999 Dodge Durango vehicle from the United States.⁵⁷⁹⁵ It lists 'Saleem Ayash' together with a post office box number in a textbox headed 'Consignee (complete name and address)', while the textbox immediately underneath is headed 'Notify party (complete name and

⁵⁷⁹³ Exhibit P829 (Touch subscriber note for mobile 091), ERNs D0375503, D0456604; exhibit P1101, p. 1; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 166, p. 82 (table of subscriber details).

⁵⁷⁹⁴ This is nine days after the attribution period. Andrew Donaldson, T. 22 August 2017, p. 20.

⁵⁷⁹⁵ Exhibit P1395 (Bill of lading related to Mr Ayyash).

address)’ and contains the words ‘same as consignee’ and lists mobile 091 as the contact number.⁵⁷⁹⁶

b. Witness evidence

2887. Witness 78 is a service provider whose number appears on mobile 091’s contact profile.⁵⁷⁹⁷ The witness stated that Mr Ayyash’s wife, ‘Fatima Abdel-Hassan Hajj’, was registered as a client with the business, that mobile 165 and landline 696 were recorded as her contact numbers and that she had an appointment on Sunday 13 February 2005.⁵⁷⁹⁸ However, the witness did not recognise the mobile number.⁵⁷⁹⁹

2888. Witnesses 28, 50 and PRH270, whose telephone numbers were in contact with mobile 091 during its attribution period, also did not recognise personal mobile 091.⁵⁸⁰⁰ As noted above concerning mobile 935, the evidence of Witness 28 was received under Rule 158.

c. Mr Andrew Donaldson’s analysis

2889. Mr Donaldson attributed mobile 091 to Mr Ayyash from 13 January 2005—the date on which it made its first call following its activation on 18 December 2004—until 6 March 2005.⁵⁸⁰¹

2890. The SIM for mobile 091 was used with the handset IMEI 35250500226958 between 13 January and 10 March 2005. This was four days after the end of the attribution period. This IMEI had previously been the main handset used with mobile 935—also attributed by the Prosecution to Mr Ayyash—until earlier on 13 January 2005.⁵⁸⁰² The Trial Chamber, in the subsection immediately above, has found that Mr Ayyash was the principal user of that mobile.

⁵⁷⁹⁶ Exhibit P1395. *See also* exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 187.

⁵⁷⁹⁷ Exhibit P707 (Statement of Witness PRH078), p. 17 (ERN 60305682); exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex E, p. 411; exhibit P1256.

⁵⁷⁹⁸ Exhibit P707 (Statement of Witness PRH078), pp 40-42 (ERNs 60305705-60305707), 44 (ERN 60305709); exhibit P707.1 (Statement of Witness PRH078), p. 4 (ERN 60137993).

⁵⁷⁹⁹ Exhibit P707 (Statement of Witness PRH078), pp 27-28 (ERNs 60305692-60305693).

⁵⁸⁰⁰ Exhibit P2126 (Interview of Witness PRH028), pp 17, 24-25 (ERN 60140591_TS_D_AR_EN_02); exhibit P697 (Statement of Witness PRH050), pp 9 (ERN 60302453) (para. 7), 31 (ERN 60302475) (paras 59, 61); exhibit P1860 (Statement of Witness PRH270), pp 22, 45-46 (ERNs 60304225, 60304248-60304249); exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex E, pp 410-412; exhibit P1256.

⁵⁸⁰¹ Andrew Donaldson, T. 22 August 2017, p. 19; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 137, 164, 167-168.

⁵⁸⁰² Andrew Donaldson, T. 22 August 2017, p. 19; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 171, 179-181, 196.

2891. During the additional four days of use with the same IMEI after the attribution period, mobile 091 received just one call, on the morning of 7 March 2005, and then exclusively made calls to the Touch service number.⁵⁸⁰³

2892. Mr Donaldson, without explanation, compared the attribution period to a post-attribution period ending on 31 December 2005, but neglecting to clarify whether the beginning of this post-attribution period is 7 or 11 March 2005. He stated that, during this post-attribution period, personal mobile 091 was used with three different IMEIs and displayed different contact and geographic profiles to those of the attribution period. Mr Donaldson stated that one explanation for these changes would be that the mobile number was passed on to another user.⁵⁸⁰⁴

2893. In addition, during the attribution period, nine text messages were sent from mobile 091, all of them on 20 January 2005 to a mobile ending in 888 attributed to Mr Ayyash's brother, Ali.⁵⁸⁰⁵ The text messages' contents do not explicitly identify mobile 091's user.⁵⁸⁰⁶ Mr Donaldson does not address seven text messages *received* by personal mobile 091 during the attribution period, nor were their contents tendered into evidence.⁵⁸⁰⁷

2894. Mr Donaldson relied on the following contacts, during the attribution period of 13 January to 6 March 2005, between personal mobile 091 and mobile and landline numbers which he linked to members of Mr Ayyash's family:

- 26 contacts, ranked fourth, with the same mobile number ending in 888 to which the nine text messages were sent, and which is linked to Mr Ayyash's brother, Mr Ali Ayyash;⁵⁸⁰⁸
- 15 contacts, ranked sixth, with a mobile number ending in 854, linked to Mr Ayyash's sister-in-law, Ms Bassima Al-Hajj;⁵⁸⁰⁹

⁵⁸⁰³ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 172.

⁵⁸⁰⁴ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 172-177.

⁵⁸⁰⁵ See above, at para. 2686; exhibit P1253 (SMS call sequence table for mobile 091); exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 182-186.

⁵⁸⁰⁶ Exhibit P1253; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 182-184, 186.

⁵⁸⁰⁷ Exhibit P1256, pp 1, 3, 5-6, 9. The seven text messages were received on 13, 21, 26, 27 and 28 (twice) January and 10 February 2005.

⁵⁸⁰⁸ See above, at para. 2686; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 189 (a); exhibit P1256.

⁵⁸⁰⁹ See above at para. 2686; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 189 (b); exhibit P1256.

- 13 contacts, ranked seventh overall and ranked as the top landline contact, with landline 696, linked to Mr Ayyash's Hadath residence;⁵⁸¹⁰
- 11 contacts, jointly ranked eighth, with a mobile number ending in 989, linked to Mr Ayyash's brother-in-law, Mr Mohammed Badreddine, and his family;⁵⁸¹¹
- eight contacts, jointly ranked 12th, with a mobile number ending in 630, linked to Mr Ayyash's relative, Mr Wassef Qdieh;⁵⁸¹²
- five contacts, jointly ranked 16th, with a mobile number ending in 913, linked to Mr Ayyash's brother, Mr Mohammed Ayyash;⁵⁸¹³
- three contacts, ranked 21st, with a mobile number ending in 040, subscribed to Mr Mohamed Amine Badreddine and whose subscriber registration form lists, as an alternative telephone number, a telephone number attributed to Ms Bassima Al-Hajj; Mr Ayyash is married to 'Fatmeh Hajj', who has a sister named 'Bassima Hajj', who in turn is married to 'Mohammed Badreddine'; the mobile number ending in 040 is subscribed to 'Badreddine Mohammad',⁵⁸¹⁴ This mobile number is linked to the same person as mobile number 989;
- two contacts, jointly ranked 29th, with a landline number ending in 124, linked to Mr Ayyash's sister, Ms Hayat Ayyash, and her husband Mr Saleh Qassem Harb. Mr Ayyash has a sister named 'Hayat Ayyash', who is married to 'Saleh Harb' and with whom she has a daughter named 'Zeina Harb' and a son named 'Hussam Harb'. The landline number was subscribed to 'Saleh Harb', appears on the 1428 (2007)⁵⁸¹⁵ Hajj

⁵⁸¹⁰ See above, at para. 2686; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 189 (c), 202; exhibit P1256.

⁵⁸¹¹ See above, at para. 2686; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 189 (d); exhibit P1256.

⁵⁸¹² See above, at para. 2686; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 189 (e); exhibit P1256.

⁵⁸¹³ See above, at para. 2686; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 189 (f); exhibit P1256. Mr Donaldson erroneously stated that this contact was ranked 17th, whereas in annex E to his report it is jointly ranked 16th, exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex E, p. 410 (ERN D0537569).

⁵⁸¹⁴ See above, at para. 2686; exhibit P1034, pp 5-6; exhibit P1036, pp 4, 8; exhibit P871; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 36 (b), 189 (g); exhibit P1256.

⁵⁸¹⁵ Exhibit P1671 (Statement of Ibrahim Itani), p. 2 (ERN 60228681) (para. 6).

application of ‘Saleh Qassem Harb’, appears on passport applications for ‘Saleh Harb’, ‘Zeina Harb’ and ‘Houssam Harb’ and was attributed by Witness PRH520 to ‘Saleh Harb’;

Mr Donaldson erroneously stated that this witness attributed the number to Mr Saleh Harb and his wife Ms Hayat Ayyash. The landline number also appears on a 1424 (2004)⁵⁸¹⁶ Hajj application for ‘Rosa Hasan Diab’ and on two 1425 (2005)⁵⁸¹⁷ Hajj applications for ‘Ali Abdallah Birjawi’ and ‘Naziha Salim Sweidan’;⁵⁸¹⁸

- one contact, jointly ranked 36th, with a landline number ending in 696—but which is different from the telephone number for Mr Ayyash’s Hadath residence, dealt with above—linked to the Ayyash family;⁵⁸¹⁹
- one contact, jointly ranked 36th, with a mobile number ending in 852, subscribed to Mr Loutfi Jamil Ayyash, which is Mr Ayyash’s brother’s name;⁵⁸²⁰
- one contact, jointly ranked 36th, with a landline number ending in 584, linked to the business of Mr Ayyash’s brother, Mohammed;⁵⁸²¹
- one contact, jointly ranked 36th, with a landline number ending in 742, linked to Mr Ayyash’s brother-in-law, Mr Hassan Cheaito;⁵⁸²²

⁵⁸¹⁶ Exhibit P1668 (Statement of Ibrahim Itani), p. 6 (ERN 60147255) (para. 35 (a)).

⁵⁸¹⁷ Exhibit P1667 (Statement of Ibrahim Itani), p. 3 (ERN 60128949B) (para. 13).

⁵⁸¹⁸ Exhibit P1034, pp 3, 13; exhibit P1616 (Ogero subscriber note for landline 124); exhibit P1674 (Extract from 1428 Hajj application related to landline 124); exhibit P1511 (Mr Saleh Qassem Harb’s Lebanese passport application), p. 2 (ERN 59002978); exhibit P1512 (Ms Zeina Harb’s Lebanese passport application), p. 2 (ERN 59002988); exhibit P1513 (Mr Hussam Saleh Harb’s Lebanese passport application), p. 2 (ERN 59002958); exhibit P1867 (Statement of Witness PRH520), p. 11 (ERN 60313583) (para. 27); exhibits P1675-P1677; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 189 (h), annex E, p. 410 (ERN D0537569); exhibit P1256.

⁵⁸¹⁹ See above, at para. 2729; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 189 (i); exhibit P1256. In annex E to his report, Mr Donaldson erroneously stated that this contact was jointly ranked 38th, whereas according to the information provided in the table the correct ranking is joint 36th, exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex E, p. 411 (ERN D0537570).

⁵⁸²⁰ See above, at para. 2707; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 189 (j); exhibit P1256. In annex E to his report, Mr Donaldson erroneously stated that this contact was jointly ranked 38th, whereas according to the information provided in the table the correct ranking is joint 36th, exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex E, p. 411 (ERN D0537570).

⁵⁸²¹ See above, at para. 2729; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 189 (k); exhibit P1256. In annex E to his report, Mr Donaldson erroneously stated that this contact was jointly ranked 38th, whereas according to the information provided in the table the correct ranking is joint 36th, exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex E, p. 411 (ERN D0537570).

⁵⁸²² See above, at para. 2729; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 189 (l); exhibit P1256. In annex E to his report, Mr Donaldson erroneously stated that this contact was jointly ranked

- one contact, jointly ranked 36th, with a landline number ending in 833, linked to Mr Ayyash's sister-in-law, Ms Nidal Abdel-Hassan Al-Haj, and her husband Mr Mohammed Abdallah Jaradah;⁵⁸²³
- one contact, jointly ranked 36th, with a landline number ending in 099, linked to Mr Ayyash's brother, Ali, to whom the above-mentioned mobile number ending in 888 is also linked;⁵⁸²⁴
- one contact, jointly ranked 36th, with a mobile number ending in 222, linked with the Ayyash family;⁵⁸²⁵ and
- one contact, jointly ranked 36th, with a mobile number ending in 894, linked to Mr Ayyash's relative, Mr Abdallah Safieddine.⁵⁸²⁶

2895. Mr Donaldson also relied on the following contacts, during the attribution period, between mobile 091 and mobile numbers he attributed to Mr Ayyash's acquaintances and associates:

- 43 contacts, ranked first, with a mobile number ending in 333, linked to Mr Ayyash's relative and business associate, Mr Hussein Zaarour;⁵⁸²⁷

38th, whereas according to the information provided in the table the correct ranking is joint 36th, exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex E, p. 411 (ERN D0537570).

⁵⁸²³ See above, at para. 2729; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 189 (m); exhibit P1256. In annex E to his report, Mr Donaldson erroneously stated that this contact was jointly ranked 38th, whereas according to the information provided in the table the correct ranking is joint 36th, exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex E, p. 411 (ERN D0537570).

⁵⁸²⁴ See above, at para. 2729; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 189 (n); exhibit P1256. In annex E to his report, Mr Donaldson erroneously stated that this contact was jointly ranked 38th, whereas according to the information provided in the table the correct ranking is joint 36th, exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex E, p. 411 (ERN D0537570).

⁵⁸²⁵ See above, at para. 2707; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 189 (o); exhibit P1256. In annex E to his report, Mr Donaldson erroneously stated that this contact was jointly ranked 38th, whereas according to the information provided in the table the correct ranking is joint 36th, exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex E, p. 412 (ERN D0537571).

⁵⁸²⁶ See above, at para. 2729; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 190 (e); exhibit P1256. In annex E to his report, Mr Donaldson erroneously stated that this contact was jointly ranked 38th, whereas according to the information provided in the table the correct ranking is joint 36th, exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex E, p. 411 (ERN D0537570).

⁵⁸²⁷ See above, at para. 2686; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 190 (a); exhibit P1256.

- 23 contacts, ranked fifth, with a mobile number ending in 617, linked to Mr Ayyash's business associate, Mr Ghaleb Jaber;⁵⁸²⁸
- one contact, jointly ranked 36th, with a mobile number ending in 515, used by an acquaintance of the Ayyash brothers;⁵⁸²⁹ and
- one contact, jointly ranked 36th, with a mobile number ending in 849, linked to Mr Ayyash's insurance agent.⁵⁸³⁰

2896. In addition, Mr Donaldson highlighted one contact between mobile 091 and a mobile number ending in 940, linked to Witness 78 (jointly ranked 36th).⁵⁸³¹

2897. In total, the contacts Mr Donaldson relied on account for 45.07 per cent of the contacts involving personal mobile 091—namely incoming and outgoing calls and text messages—during the attribution period, that is, 160 out of 355.⁵⁸³²

2898. He also listed mobile 091's top 35 contacts during the attribution period, which additionally highlighted: nine contacts (ranked 11th) with Purple 231, which the Prosecution attributes to Mr Merhi, and three contacts (jointly ranked 21st) with mobile 935, which the Prosecution alleges was no longer used by Mr Ayyash at that time.⁵⁸³³ Finally, he stated that, during the attribution period, the most frequent contacts were 'consistent'.⁵⁸³⁴ Mr Donaldson cited no evidence for this last assertion, and gave just one contact as an example.

⁵⁸²⁸ See above, at para. 2686; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 190 (b); exhibit P1256.

⁵⁸²⁹ See above, at para. 2729; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 190 (c); exhibit P1256. In annex E to his report, Mr Donaldson erroneously stated that this contact was jointly ranked 38th, whereas according to the information provided in the table the correct ranking is joint 36th, exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex E, p. 412 (ERN D0537571).

⁵⁸³⁰ See above, at para. 2729; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 190 (d); exhibit P1256. In annex E to his report, Mr Donaldson erroneously stated that this contact was jointly ranked 38th, whereas according to the information provided in the table the correct ranking is joint 36th, exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex E, p. 411 (ERN D0537570).

⁵⁸³¹ See above, at para. 2729; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 191 (a); exhibit P1256.

⁵⁸³² Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex E, pp 410-412 (ERNS D0537569-D0537571); exhibit P1256.

⁵⁸³³ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 192; exhibit P1256.

⁵⁸³⁴ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 169.

2899. Mr Donaldson additionally compared the contact profile of mobile 091 with those of mobiles 935 and 165, suggesting that these show that the three mobiles had the same user, who moved from one mobile number to another over time.⁵⁸³⁵ He also highlighted mobile 091's contacts with Saudi Arabian numbers and their correlation with when Mr Ayyash's family allegedly travelled there for the 2005 Hajj, and mobile 091's lack of co-location with the other personal and network mobiles on the day of Mr Ayyash's family's return to Lebanon from the Hajj.⁵⁸³⁶

2900. Mr Donaldson also relied on mobile 091's geographic profile during the attribution period, listing the main ten cells, two of which are jointly ranked fifth.⁵⁸³⁷ He stated in his report that the 'top five cell towers are identical to those depicted already for [personal mobile 165]' and 'similar' to those used by mobile 170.⁵⁸³⁸ By citing a paragraph of his report which deals with the second portion of personal mobile 165's attribution period only,⁵⁸³⁹ Mr Donaldson implicitly pointed out that this is only a partial cell tower use comparison between the two personal mobiles.

2901. However, his suggestion that the top five cells are common between the two compared geographic profiles is questionable for two reasons. First, Mr Donaldson does not mention that there are two cells in mobile 091's profile which are jointly ranked fifth, but only one of which also appears in the top five for the second attribution period of mobile 165, while the other, Saki Hadath_C, is ranked seventh in mobile 165's geographic profile. Secondly, by stating that the two top five lists are 'identical', Mr Donaldson fails to specify that the order in which the cells appear in each respective ranking is different.⁵⁸⁴⁰ The Trial Chamber has therefore carefully weighed his comparison between the two geographic profiles.

2902. As highlighted above concerning mobile 165, four of the main five cells cover the area of Mr Ayyash's Hadath residence, while the remaining cell, Nabatieh_C—according to the Touch drive tests—provides coverage of the Harouf area⁵⁸⁴¹ in the vicinity of Mr Ayyash's second

⁵⁸³⁵ Andrew Donaldson, T. 22 August 2017, pp 22-23.

⁵⁸³⁶ Andrew Donaldson, T. 22 August 2017, pp 23-32; *see above*, at para. 2765.

⁵⁸³⁷ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 193.

⁵⁸³⁸ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 194, 256-259.

⁵⁸³⁹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 194.

⁵⁸⁴⁰ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 99, 102, 194.

⁵⁸⁴¹ Exhibit P826.15 (Annex 25 (2) to Witness PRH705's statement of 16 November 2015).

residence at Harouf.⁵⁸⁴² Together, the five cells account for 62.26 per cent of mobile 091's use during the attribution period.⁵⁸⁴³ In addition, Mr Donaldson stated that the most frequently used cells were 'consistent' during the attribution period.⁵⁸⁴⁴

2903. Mr Donaldson also highlighted two additional points of attribution. First, mobile 091 called Witness 78's number at 12:32 on 13 February 2005, the day on which the witness's records show that Mr Ayyash's wife, Ms Fatima Al-Hajj, had an appointment with the witness and the same day when mobile 170, also attributed by the Prosecution to Mr Ayyash, activated, at 17:40, a cell providing coverage to the area of the witness's business premises.⁵⁸⁴⁵ Second, he highlighted three occasions on which different numbers called mobile 935—that the Trial Chamber has found that Mr Ayyash used immediately before he began using mobile 091—and then later called personal mobile 091.

2904. These were on 17 January 2005 at 11:41 and 12:27, on 21 January 2005 at 14:56 and 14:57 and on 25 January 2005 at 14:09 and 14:12.⁵⁸⁴⁶

2905. Mr Donaldson stated that these could be explained by the callers having been unaware that mobile 935's user had changed, and calling personal mobile 091 upon discovering the user's new mobile number.⁵⁸⁴⁷ He also stated that these series of calls may suggest that the user changed from mobile 935 to mobile 091.⁵⁸⁴⁸

d. Single user analysis of personal mobiles 170 and 091

2906. Mr Philips analysed the call activities of mobiles 170 and 091 from Thursday 13 January 2005 to Monday 14 February 2005. He identified 80 pairs of calls between personal mobiles 091 and 170, on a total number of 23 days between 13 January and 11 February 2005.⁵⁸⁴⁹

⁵⁸⁴² See above, at para. 2729; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 204.

⁵⁸⁴³ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 193.

⁵⁸⁴⁴ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 170.

⁵⁸⁴⁵ See above, at para. 2729; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 195, 602.

⁵⁸⁴⁶ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 197.

⁵⁸⁴⁷ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 198, 206.

⁵⁸⁴⁸ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 206.

⁵⁸⁴⁹ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 103, 106, 109-114, 119-120, 132-133, 136, 144-146, 152, 156-160, 164, 167-177, 179-180, 183-185, 187-189, 194-196, 218-220, 222-225, 228-229, 245-246, 249, 258-259; exhibit P1259 (Call sequence table of ten numbers—Mr Ayyash), pp 334-362.

For 31 pairs of calls, Mr Philips found that the two mobiles could have co-located,⁵⁸⁵⁰ and their co-location would not have been precluded for 43 pairs of calls.⁵⁸⁵¹

2907. Fifteen possibly co-locating pairs of calls occurred within five minutes with the mobiles connecting to identical Touch cells, Hadath_C, Airport_B, Airport-II_C, Nabatiyeh_C, Saki Hadath-II_A, Mar Mikhael_C, Sfeir_B and Manara_B.⁵⁸⁵² A further four occurred within ten minutes in south Beirut and at the airport.⁵⁸⁵³

2908. Mr Philips testified that the two personal mobiles and network mobiles moved together.⁵⁸⁵⁴ He demonstrated their common movements on Tuesday 18 January 2005 from south Beirut to the south of Saida, to north Beirut and back to south Beirut; on Monday 24 January 2005 from south Beirut to the Nabatieh area and back; and on Friday 11 February 2005 from south Beirut to the west coast of Beirut and the personal mobiles' possible co-location on the Manara_B cell.⁵⁸⁵⁵

2909. According to Mr Philips's expert report, the two mobiles' activating Touch's Ansar_A and Nabatiyeh_C cells at 12:42 and 12:43 on 24 January 2005 may preclude their co-location, but the cells' fragmented predicted best server coverage may place this call pair in the 'would not preclude co-location' category.⁵⁸⁵⁶ Mr Philips's expert report demonstrates these calls in the map below.

⁵⁸⁵⁰ On 13, 15, 16, 21-22, 24-27 January and 3-4, 8, 11 February 2005. Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 103, 109-110, 112-114, 117, 144-146, 152, 156-160, 167-168, 170, 173-174, 179-180, 218-220, 229, 246; exhibit P1259, pp 335-336, 342-349, 355-356, 358, 361.

⁵⁸⁵¹ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 103, 106, 111, 119-120, 132-133, 136, 156-160, 164, 169, 172-177, 179-180, 183, 194-196, 218-219, 222-225, 228, 245-246, 258-259.

⁵⁸⁵² Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 109-110, 112-114, 144-146, 156-160, 167-168, 173-174, 179-180, 218-219, 229, 249.

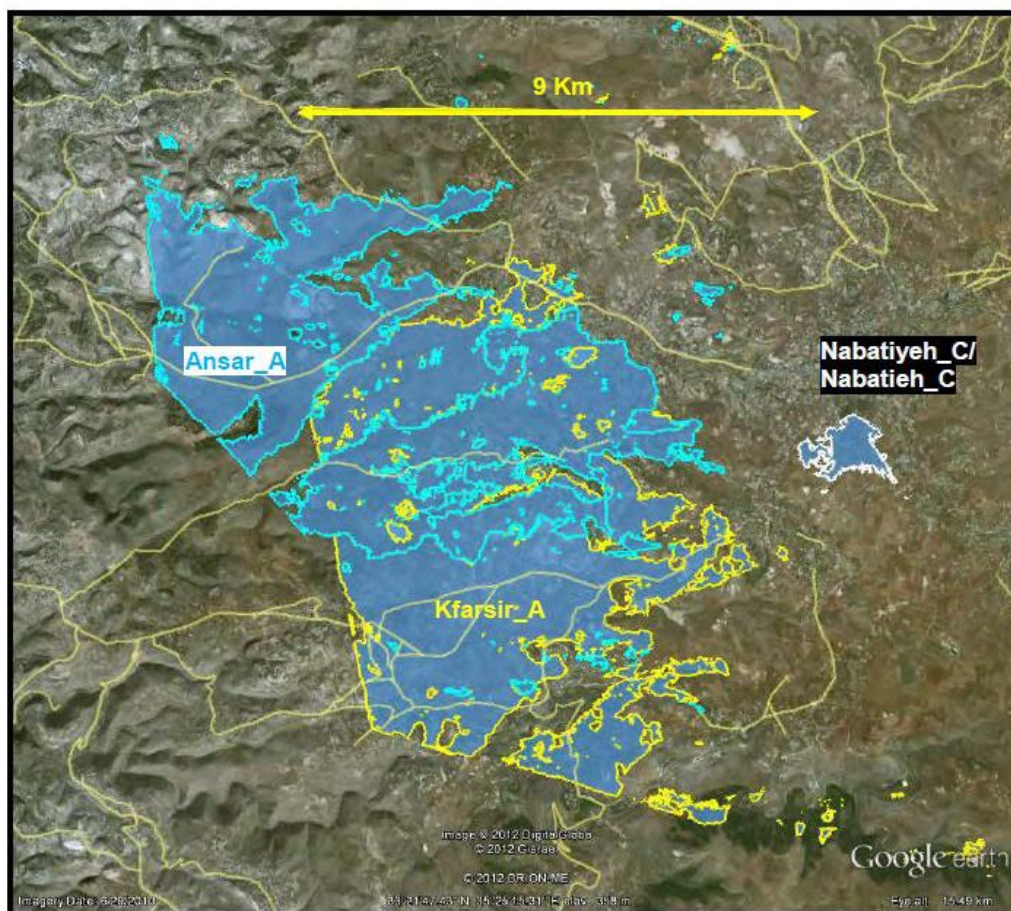
⁵⁸⁵³ Activating Airport_B, Sfeir_A, Sfeir_B and Nabatiyeh_C. Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 113, 117, 156, 220.

⁵⁸⁵⁴ This is summarised in the sub-section (B) (2) (f) e. 'Single user analysis', below.

⁵⁸⁵⁵ John Edward Philips, T. 21 April 2017, pp 40-41, 43-46, 49-56, 61-62, 67-72, 88-91. *See also* exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips), slides 253-285, 287-322, 357-360.

⁵⁸⁵⁶ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 156-157; exhibit P1259, p. 345.

24/01/2005	12:39:14	888	3020091	N/A	Voice	8	352505002269582	783	Nabatieh_C
24/01/2005	12:39:48	888	3020091	N/A	Voice	79	352505002269582	7251	Kfarsir_A
24/01/2005	12:42:19	3831170	816	N/A	Voice	35	352522000225553	7281	Ansar_A
24/01/2005	12:43:09	888	3020091	N/A	Voice	21	352505002269582	783	Nabatieh_C

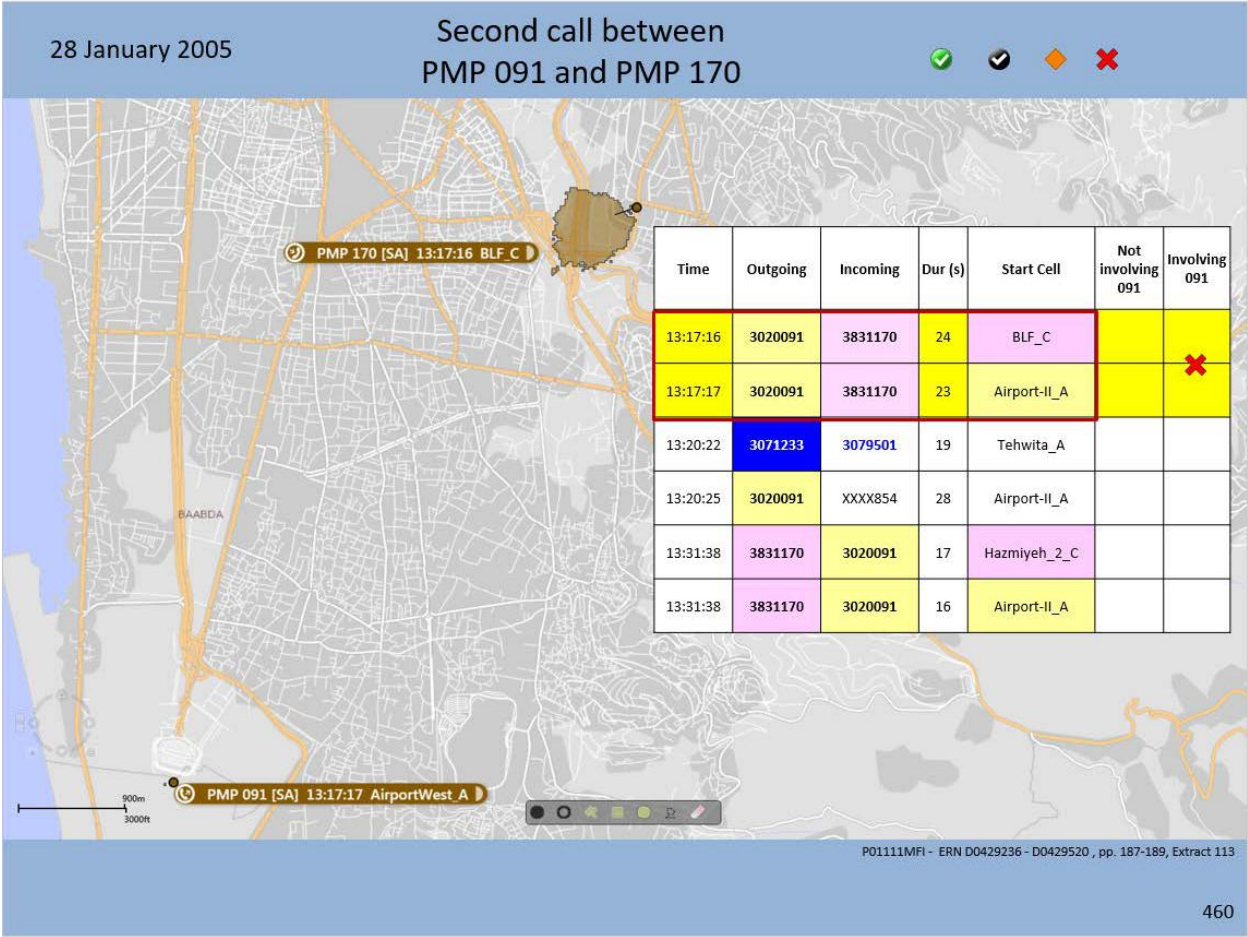


Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash—exhibit P1111, p. 156

2910. Mr Philips testified that documents received from Touch in response to a Prosecution request for assistance explained that, based on drive tests conducted on 21 August 2006, the predicted best server coverage areas of the cell sectors used during the two calls, Ansar_A and Nabatieh_C, may have both been picked up in the Harouf area, meaning that the two mobiles involved in these calls may not have in fact been dislocated.⁵⁸⁵⁷

⁵⁸⁵⁷ John Edward Philips, T. 21 April 2017, pp 55-61, T. 25 April 2017, pp 64-75; exhibit P826.14 (Annex 25 (1) to Witness PRH705's statement of 16 November 2015); exhibit P826.15.

2911. In the afternoon of Friday 28 January 2005, mobile 091 separated from mobile 170. At 12:24, mobile 091 connected to BorjBrajneh-II_B for an 88-second call and at 12:25 mobile 170 activated Hadat_2_C, which according to Mr Philips may have precluded the two mobiles’ co-location.⁵⁸⁵⁸ Between 13:11 and 14:20, mobile 091, connecting to one of Touch’s airport cells, had four calls with mobile 170, which was moving north in Beirut.⁵⁸⁵⁹ One set of the dislocating cell activations is depicted in Mr Philips’s slide below:



*Exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips),
slide 460*

⁵⁸⁵⁸ John Edward Philips, T. 24 April 2017, pp 36-39, 47-53, 56-59; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 184-185, 187-190, 204. *See also* exhibit P1935, slide 451.

⁵⁸⁵⁹ John Edward Philips, T. 24 April 2017, pp 49-51; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 184-185, 187-190, 204; exhibit P1259, p. 350. *See also* exhibit P1935, slides 457-470.

2912. Both Mr Philips and Mr Donaldson were of the view that for this period mobile 091 may have been given to someone else who went to the airport.⁵⁸⁶⁰ This is analysed in detail below.⁵⁸⁶¹

ii. Submissions

2913. The Prosecution submits that Mr Ayyash used personal mobile 091 from 13 January to 6 March 2005.⁵⁸⁶² It relies on the following factors. First, personal mobile 091's use of IMEI 35250500226958 from 16:43 on the same day on which personal mobile 935 was last used with that IMEI. Second, the cell towers it most frequently activated were near Mr Ayyash's Hadath and Harouf homes.

2914. Third, landline 696—of Mr Ayyash's Hadath residence—was its top landline contact, and its contacts were also with Mr Ayyash's family members, associates and acquaintances. Fourth, it had contact with the telephone of Witness 78's business number on the day when Ms Hajj, the client, had an appointment there.⁵⁸⁶³ Fifth, it was listed as Mr Ayyash's contact number on the bill of lading, dated 15 March 2005—after the end of the attribution period—to import the Dodge Durango.⁵⁸⁶⁴

2915. The Ayyash Defence submits that the evidence does not show beyond reasonable doubt that Mr Ayyash used mobile 091 during the attribution period.⁵⁸⁶⁵ Although Mr Donaldson had highlighted the importance of dates for attribution, he had no explanation for the bill of lading being dated after the end of this attribution period.⁵⁸⁶⁶ Moreover, personal mobile 091 is not listed under 'Consignee' alongside Mr Ayyash's name and address, but rather under 'Notify Party' and there is no evidence that Mr Ayyash provided the number for this document, especially in light of Mr Donaldson's testimony that vehicle traders in Lebanon used multiple contact numbers.⁵⁸⁶⁷

⁵⁸⁶⁰ John Edward Philips, T. 24 April 2017, pp 61-62; Andrew Donaldson, T. 22 August 2017, pp 25, 31-33, T. 24 August 2017, pp 22-24; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 558-564, 572, annex D, pp 368-369.

⁵⁸⁶¹ See sub-sections (B) (2) (f) e. 'Single user analysis' and (B) (2) (g) 'The 2005 Hajj'.

⁵⁸⁶² Prosecution final trial brief, para. 233.

⁵⁸⁶³ Prosecution final trial brief, paras 233-237; Prosecution closing submissions, T. 12 September 2018, pp 93-94.

⁵⁸⁶⁴ Prosecution final trial brief, para. 238. The Prosecution states that the 15 March 2005 bill of lading is dated '7 days after the end of the attribution period'; however, the attribution period is actually listed as 6 March 2005, meaning that the bill is actually dated nine days after the end of the attribution period.

⁵⁸⁶⁵ Ayyash Defence final trial brief, paras 635, 651.

⁵⁸⁶⁶ Ayyash Defence final trial brief, para. 637; Ayyash Defence closing submissions, T. 17 September 2018, p. 115.

⁵⁸⁶⁷ Ayyash Defence final trial brief, paras 637-638. At the transcript reference given by the Ayyash Defence, Mr Donaldson did not state that a vehicle trader would use a variety of contact telephone numbers; he actually stated

2916. Furthermore, mobile 091's contact profile is of little assistance in attributing the mobile number to Mr Ayyash, as the Prosecution only tendered the evidence of four witnesses who were on this list. Only one was in the top 30 of the most frequent contacts and the remaining three did not recognise mobile 091.⁵⁸⁶⁸

2917. In addition, neither mobile 091's geographic profile nor its comparison to that of mobile 165 demonstrate that Mr Ayyash used mobile 091. This is because, first, mobile 091's main five cell towers only match the top five most frequently used cell towers of the second part of personal mobile 165's attribution period, rather than its entire attribution period, as Mr Donaldson suggested. Secondly, in any event, this comparison only shows a geographic association between the two mobile numbers.⁵⁸⁶⁹

2918. Finally, the Ayyash Defence challenges the three additional attribution points on which Mr Donaldson relied.⁵⁸⁷⁰ It submits that, in the absence of further contextual information, personal mobile 091 calling Witness 78 on the day when Mr Ayyash's wife had an appointment with the witness does not assist in attributing it to Mr Ayyash.⁵⁸⁷¹

2919. In addition, as Mr Donaldson conceded, the IMEI connection between mobiles 091 and 935 does not show that Mr Ayyash used either of them.⁵⁸⁷² Finally, the three instances where a mobile called mobile 935 and then called mobile 091, which Mr Donaldson suggested was because the user of mobile 935 became the user of mobile 091, do not show that Mr Ayyash used either of them.⁵⁸⁷³

iii. Findings

2920. The Trial Chamber has found that Mr Ayyash was the principal user of mobile 935 from Monday 31 May 2004 to Thursday 13 January 2005. Until 14:42 on 13 January 2005, Mr Ayyash

that a vehicle trader may provide his telephone number as a contact number for his clients and that where a multitude of vehicles were registered in the same name using the same telephone number, Mr Donaldson would look at whether that person was a vehicle trader, Andrew Donaldson, T. 5 October 2017, p. 70.

⁵⁸⁶⁸ Ayyash Defence final trial brief, paras 639-645; Ayyash Defence closing submissions, T. 17 September 20108, pp 109-110.

⁵⁸⁶⁹ Ayyash Defence final trial brief, para. 646.

⁵⁸⁷⁰ Ayyash Defence final trial brief, para. 647.

⁵⁸⁷¹ Ayyash Defence final trial brief, para. 648.

⁵⁸⁷² Ayyash Defence final trial brief, para. 649.

⁵⁸⁷³ Ayyash Defence final trial brief, para. 650.

used the SIM for number 935 in a particular mobile handset.⁵⁸⁷⁴ Mobile 935 never used that handset again. From two hours later on the same day, from 16:43, mobile 091 was used with the same handset. And this continued until 22:37 on 6 March 2005.⁵⁸⁷⁵

2921. To state it more clearly, mobile 935 and mobile 091 consecutively used the same handset, from 13 January 2005.

2922. This is highly persuasive evidence that the same handset user had simply put a new SIM in it, namely, number 091. Especially when this user continued to activate more or less the same cells and to have contact with more or less the same numbers.

2923. On 15 March 2005, Mr Ayyash imported a Dodge Durango; he used the number 091 as his contact number for this. This is nine days after the attribution period. Why he would provide this number if it was not his, at around that time, is unexplained. Using this mobile number on the form also clearly associates Mr Ayyash with the number in March 2005.

2924. The mobile's contact profile—45.07 per cent of which were contacts with numbers attributed to Mr Ayyash's relatives and business associates, including the contact with Witness 78 which coincided with Mr Ayyash's wife's appointment—also provides strong evidence that Mr Ayyash was personal mobile 091's user.

2925. Notably, 62.26 per cent of mobile 091's cell activations were to cells in the area of Mr Ayyash's two residences.⁵⁸⁷⁶ This is notwithstanding the lack of direct evidence as to when he was actually at them.

2926. Mr Donaldson's analysis on the mobiles' common most frequently used cells is not inconsistent with their having a single user. However, the comparison is based on partial data, and because most of these cells are in south Beirut, the result is geographically insufficiently distinctive to weigh in favour of attribution to Mr Ayyash.

⁵⁸⁷⁴ With the IMEI number 35250500226958 or 3525050022695827.

⁵⁸⁷⁵ Andrew Donaldson, T. 22 August 2017, p. 19; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 171, 179-181, 196.

⁵⁸⁷⁶ See sub-sections B (1) (b) 'Landline 696—Ayyash family residence in Hadath, Beirut' and B (1) (c) 'Landline 851—Ayyash family residence in Harouf, Nabatiyeh'.

2927. The Trial Chamber finds Mr Philips's evidence on mobile 091's possible co-location and common movement with mobile 170 particularly convincing. Between 13 January and 11 February 2005, mobile 091 had 31 instances of possible co-locations with Mr Ayyash's personal mobile 170,⁵⁸⁷⁷ of which 15 occurred within five minutes, and four within ten minutes. A further 43 pairs of cell activations would not preclude the mobiles from co-locating. The frequency of the two mobiles' possible co-location weighs strongly in favour of finding that at least in this period mobile 170 and mobile 091 had a single user. The mobiles' common movements as demonstrated by Mr Philips support this finding.

2928. Cell activations at 12:42 and 12:43 on Monday 24 January 2005 may have precluded the mobiles' co-location. However, the Trial Chamber is satisfied with Mr Philips's explanation, relying also on Touch's drive tests, that due to the fragmented predicted best server coverage of Touch's Ansar_A and Nabatiyeh_C cells, co-location would in fact not be precluded.

2929. Similar to the other three personal mobiles, the Trial Chamber cannot exclude that at times Mr Ayyash's wife or other family members may have occasionally used mobile 091. Mr Philips's and Mr Donaldson's evidence was that from 12:24 to 15:02 on Friday 28 January 2005 mobile 091 separated from mobile 170, and may have been given to someone other than Mr Ayyash.⁵⁸⁷⁸ This may be so for several hours that day. However, this alone cannot cast doubt on the strong circumstantial evidence that Mr Ayyash was otherwise its principal user.

2930. Based on the totality of the evidence the Trial Chamber is therefore satisfied that personal mobile 091 had the same principal user as personal mobile 170 between 13 January and 6 March 2005, and that user was Mr Ayyash.

2. Network mobiles

2931. To find Mr Ayyash criminally culpable, the Trial Chamber must be satisfied beyond reasonable doubt that he was using the network mobiles that the Prosecutor, in the amended consolidated indictment, alleges that he was using in activities related to the pleaded conspiracy and the other charges.

⁵⁸⁷⁷ See paras 2776-2784.

⁵⁸⁷⁸ The Trial Chamber assessed the evidence further in the sections below and found this explanation reasonable. See sub-sections (B) (2) (f) (iii) 'Findings' and (B) (2) (g) (iii) 'Findings'.

2932. The Trial Chamber has carefully reviewed Mr Philips's expert evidence on single user analysis and has considered Prosecution analyst Mr Andrew Donaldson's opinion evidence on the possible co-location of mobiles.

2933. As a result, it is satisfied beyond reasonable doubt that Mr Ayyash was the user of network mobiles Green 300, Red 741, Blue 233 and Yellow 294 for certain periods between 29 May 2004 and 14 February 2005. As set out above, the Green, Red and six 'core' Blue mobiles, including 233, operated in covert networks. With the exception of the four 'core' Yellow mobiles, such as 294, which also operated as a form of covert network, these mobiles were involved in the assassination of the former Lebanese prime minister, Mr Rafik Hariri, in Beirut, Lebanon on Monday 14 February 2005.⁵⁸⁷⁹

2934. The Trial Chamber is also satisfied that Mr Ayyash used Blue 322 between 18 October 2004 and 27 December 2004, and that, based on the preponderance of evidence, he was the principal user of Yellow 669 from 23 December 2003 to 18 April 2004. However, as his alleged use of Blue 322 was not pleaded as it should have been, the Trial Chamber has made no findings against Mr Ayyash in respect of his use of that mobile.

2935. The Trial Chamber has also found that Mr Ayyash did not leave Lebanon in January 2005 to perform the Hajj pilgrimage. Had he travelled to Saudi Arabia at the time, it would have excluded him as the single user of these mobiles

(a) Yellow 669

2936. The Prosecution attributes Yellow 669 to Mr Ayyash from 23 December 2003 to 18 April 2004. To prove that Mr Ayyash was using it, the Prosecution relies on cell site evidence to prove its co-location with Mr Ayyash's personal mobile 165, and its SIM card's use in the handset of Mr Ayyash's personal mobile 170. The Trial Chamber has found above that Mr Ayyash was the principal user of both of these mobiles.

2937. The significance of Yellow 669 to the case is its relevance to the Prosecution's contention that in 2004 Mr Ayyash travelled to perform the Hajj pilgrimage in Mecca, but remained in

⁵⁸⁷⁹ See chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles'.

Lebanon during the 2005 Hajj. Had he been outside of Lebanon in January 2005, he could not have been the single user of the network mobiles used in Lebanon in that period.

2938. Mr Ayyash's use of that mobile is not pleaded in the amended consolidated indictment. Nor is it mentioned in the Prosecutor's two final pre-trial briefs. In opening the case against the first four Accused, the Prosecution's lead counsel stated of this mobile—in referring to network activity in Tripoli in the area near to where the Mitsubishi Canter was purchased and Beirut on the afternoon of 4 January 2005—only that:

Shortly after that activation at 1500, Yellow subject 6 also connected with a cell site in the area of the dealership, where he called one of his colleagues in South Beirut on Yellow 669. Less than two minutes after that call, Yellow S6 switched to his Blue Phone to call Blue S7 who was in South Beirut.⁵⁸⁸⁰

2939. The Prosecution analyst, Mr Donaldson, in his attribution report on Mr Ayyash, extensively analysed Yellow 669, concluding that it co-located with Mr Ayyash's personal mobile 165.

i. Evidence

a. Subscriber details

2940. Yellow 669 was a pre-paid line on the Alfa network, activated on 16 July 2002; it had no deactivation date and was subscribed in the name of 'Moustapha Akdaniz'.⁵⁸⁸¹

b. Attribution period

2941. Mr Donaldson attributes Yellow 669 to Mr Ayyash from 23 December 2003 to 18 April 2004.⁵⁸⁸² He stated that Yellow 669's use was consistent from its activation date until December 2003.⁵⁸⁸³ It made two calls to a service number, 1456, on 19 December 2003, and was next used on 23 December 2003. From that date its contact and cell tower usage patterns changed, including increased contact with mobiles outside of the Yellow network. This continued until May 2004.⁵⁸⁸⁴

⁵⁸⁸⁰ Prosecutor's opening statement, T. 17 January 2014, p. 8 (Mr G. Cameron).

⁵⁸⁸¹ Exhibit P886 (Alfa subscriber note for Yellow 669), p. 1; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), p. 111 (table of subscriber details); Andrew Donaldson, T. 18 July 2017, p. 60.

⁵⁸⁸² Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 263, 266, 279-280, 314; Andrew Donaldson, T. 18 July 2017, p. 61. *See also* exhibit P2025, slide 54.

⁵⁸⁸³ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 267-268, 270.

⁵⁸⁸⁴ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 267-270; exhibit P1248, p. 33.

Based on these changes, Mr Donaldson attributed this mobile to Mr Ayyash between 23 December 2003 and 18 April 2004.⁵⁸⁸⁵

2942. In particular, Mr Donaldson noted Yellow 669's geographic profile changing from 23 December 2003, while before then its top known activated cells were BRAJNE3 and BRAJNE1. From 23 December 2003 until 18 April 2004 its most commonly activated SFEIR2 and SFEIR3.⁵⁸⁸⁶

2943. Coinciding with this change in its cell activation, Mr Donaldson also observed the appearance of new contacts.⁵⁸⁸⁷ Yellow 669 remained in contact with these mobiles only until May 2004.⁵⁸⁸⁸ As set out below, some of Yellow 669's contacts were common to Mr Ayyash's personal mobiles and landlines, such as mobile 429, which was also in contact with his personal mobiles 165, 935 and 170, and an Iranian number ending in 447, which was also in contact with landline 696.⁵⁸⁸⁹

2944. According to Mr Donaldson, Yellow 669's contact and geographic profile changed again in May 2004.⁵⁸⁹⁰ However, as mobile 165's attribution period ended on 18 April 2004, after this date a co-location analysis between Yellow 669 and mobile 165 was not possible.⁵⁸⁹¹

⁵⁸⁸⁵ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 272; Andrew Donaldson, T. 18 July 2017, p. 61.

⁵⁸⁸⁶ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 271; Andrew Donaldson, T. 18 July 2017, p. 61.

⁵⁸⁸⁷ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 269; Andrew Donaldson, T. 18 July 2017, p. 61.

⁵⁸⁸⁸ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 269; exhibit P1248, pp 33-34, 39, 41, 44, 59.

⁵⁸⁸⁹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 270; exhibit P1248, pp 34-38, 45, 47, 50, 60-62.

⁵⁸⁹⁰ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 273-276.

⁵⁸⁹¹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 277-280; Andrew Donaldson, T. 18 July 2017, p. 61.

c. Handset and SIM card details

2945. Yellow 669 was used with IMEI 35252200022555 from 25 December 2003 to 6 January 2005—which extends beyond 18 April 2004.⁵⁸⁹² From the following day, the handset with this IMEI was used with Mr Ayyash’s mobile 170.⁵⁸⁹³

d. Contact profile

2946. Mr Donaldson noted that, between 23 December 2003 and 18 April 2004, Yellow 669 had contact with 77 mobile and landline numbers and was involved in 517 calls.⁵⁸⁹⁴ Nine of these contacts were other Yellow network mobiles, four of which were Yellow 669’s top four contacts, comprising 260 of the 517 calls (50.2 per cent).⁵⁸⁹⁵ Mr Donaldson gave evidence that, relative to the network discipline of other covert mobiles, Yellow 669 had many contacts outside of the Yellow network.⁵⁸⁹⁶

2947. The contact numbers of Yellow 669 and Mr Ayyash’s personal mobiles overlapped significantly.⁵⁸⁹⁷ Forty of Yellow 669’s contacts were also contacts of one or more of Mr Ayyash’s four personal mobiles, namely mobiles 165, 170, 935 and 091.⁵⁸⁹⁸

2948. Of Yellow 669’s main 32 contacts, 19 were also contacts of more than one of Mr Ayyash’s personal mobiles.⁵⁸⁹⁹ Nine of its main 11 contacts were common to more than one of these personal

⁵⁸⁹² Exhibit P886, p. 1; exhibit P889; exhibit P1248, p. 92; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 281-283; Andrew Donaldson, T. 18 July 2017, p. 61. From 12 August 2002 until 25 December 2003 (i.e., the first few days of the attribution period), Yellow 669 was used with IMEI 350845809753860, exhibit P889.

⁵⁸⁹³ Exhibit P1262, p. 1; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 219-220, 283; Andrew Donaldson, T. 18 July 2017, p. 61. *See also* exhibit P2025, slides 54-55. Only the first 14 digits of the IMEIs appearing in the call sequence tables of the respective mobiles match each other for the relevant dates; however, in a separate report Mr Philips explained that it is only the first 14 digits which actually constitute an IMEI, with any additional digits representing other features, such as a software version number, exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), paras 5.1.4.1.1.9 - 5.1.4.1.1.11.

⁵⁸⁹⁴ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 285; exhibit P1248, pp 33-50.

⁵⁸⁹⁵ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 286-289, 315; exhibit P1248, pp 33-50; Andrew Donaldson, T. 18 July 2017, p. 62. *See also* exhibit P2025, slide 57.

⁵⁸⁹⁶ Andrew Donaldson, T. 18 July 2017, pp 62, 64; exhibit P2028 (Direction of Yellow 669’s calls). *See* chapter VIII ‘Nature and purpose of colour-coded mobile networks and Purple group of mobiles’, (F) ‘Yellow network’.

⁵⁸⁹⁷ Andrew Donaldson, T. 18 July 2017, p. 65.

⁵⁸⁹⁸ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 288; *see also* para. 316, where Mr Donaldson mistakenly stated that there were a total of 76 contacts only. Andrew Donaldson, T. 18 July 2017, p. 65. *See also* exhibit P2025.4 (Corrected slides), slide 1.

⁵⁸⁹⁹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 289. Mr Donaldson stated in the text of this paragraph that this referred to the top 30 contacts and in the footnote to this paragraph, he explained

mobiles.⁵⁹⁰⁰ Mr Donaldson identified only three of these 32 contacts by name; he described their relationship to Mr Ayyash as ‘unknown’.⁵⁹⁰¹ They are Mr Ahmed Mohammed Badreddine, Mr Wafik Safa⁵⁹⁰² and the Protel Company.⁵⁹⁰³

2949. Mr Donaldson provided the following examples:

- Yellow 669’s sixth most frequent contact, with 23 calls, was also in contact with personal mobile 165 (five calls), mobile 935 (one call) and mobile 170 (five calls);
- Yellow 669’s seventh most frequent contact, with 21 calls, was also in contact with mobile 165 (30 calls), mobile 935 (19 call) and mobile 170 (27 calls); and
- mobiles ending in 515, 222 and 333, which were in contact with Yellow 669 once each, were linked to Mr Ayyash’s family, associates or acquaintances, and were high-ranking contacts of the mobiles attributed to Mr Ayyash.⁵⁹⁰⁴

2950. For Mr Donaldson, a shared contact profile would usually be a ‘negative indicator’ of the mobiles having a single user, as it would raise the question of why someone would carry two mobiles.⁵⁹⁰⁵

that it involves 33 numbers ranking equally. *See also* exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 316, where Mr Donaldson stated that two thirds of Yellow 669’s top 30 contacts were also contacts of personal mobiles attributed to Mr Ayyash. Andrew Donaldson, T. 18 July 2017, p. 65. *See also* exhibit P2025.4, slide 1.

⁵⁹⁰⁰ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 289. *See also* Andrew Donaldson, T. 18 July 2017, pp 65, 68. *See also* exhibit P2025.4, slide 1. Both misstate the proportion of common contacts between the mobiles by referring to a ‘top ten’.

⁵⁹⁰¹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 290.

⁵⁹⁰² The head of the central unit for liaison and coordination in Hezbollah, exhibit P2091 (Letter from Judge Said Mirza, Public Prosecutor at the Court of Cassation), p. 1.

⁵⁹⁰³ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 290; exhibit P928 (Alfa subscriber note for mobile 100); exhibit P1748 (Vehicle registration documents); exhibit P2102 (Statement of Witness PRH040), para. 61 (p. 17) (ERN 60302958); exhibit P1329 (Call sequence table of mobile 505 with SMS content); exhibit P1635 (Subscriber note for landline 362). *See also* exhibit P1393 (Extract from Mr Jamil El-Sayyed’s handwritten telephone notebook), with respect to Mr Wafik Safa’s mobile number.

⁵⁹⁰⁴ Andrew Donaldson, T. 18 July 2017, pp 66-67, 69-70. *See also* exhibit P2025, slide 59; exhibit P2025.4, slide 2. Specifically, Mr Donaldson stated that mobile 333, linked to Mr Ayyash’s associate, Mr Hussein Zaarour, was the second highest contact for personal mobile 935; and that mobile 222, associated with the Ayyash family, was the 22nd most frequent contact of mobile 935 with 30 calls.

⁵⁹⁰⁵ Andrew Donaldson, T. 18 July 2017, pp 70-71.

e. Geographic profile

2951. Mr Donaldson assessed the geographic profile for Yellow 669 solely on the start cells activated during its outgoing calls, as this information was not available for incoming calls.⁵⁹⁰⁶ There were 200 calls—199 incoming and one outgoing—for which the initially activated cell was not recorded.⁵⁹⁰⁷ This left 317 calls during the attribution period for which the start cell information was available.

2952. Mr Donaldson's report stated that the end cell data, obtained at a later date, did not substantively change Yellow 669's geographic profile.⁵⁹⁰⁸ He compared the 317 known start cells to their respective end cells, finding that in 82.97 per cent of instances they were the same.⁵⁹⁰⁹

2953. Regarding the geographic profile, he used two comparative methodologies, namely looking at the start and end cells cumulatively, or replacing the start cell with the end cell information. Using both methodologies, the top four most used cells remained unchanged. The remaining cells in the top ten also stayed the same but with slight changes in ranking. Mr Donaldson added, however, that cell HAROUF1 entered the top ten using the first methodology and that cells HAROUF1 and MHAIBI1 entered the top ten using the second methodology.⁵⁹¹⁰

2954. Mr Donaldson noted that MHAIBI1 offered predicted best server coverage to the Markaba village area.⁵⁹¹¹ Mr Ayyash was employed at the Markaba Civil Defence station in late 2003 and early 2004 for the entirety of Yellow 669's attribution period.⁵⁹¹² Mr Donaldson used this as an additional point to attribute Yellow 669 to Mr Ayyash.⁵⁹¹³

⁵⁹⁰⁶ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 291, 296; Andrew Donaldson, T. 18 July 2017, p. 71.

⁵⁹⁰⁷ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 293. Mr Donaldson stated that there were 200 incoming calls, however, the 12:41 call on 6 April 2004, for which start cell information is not available, was in fact an outgoing call, exhibit P1248, p. 47.

⁵⁹⁰⁸ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 296, annex C, para. 3.

⁵⁹⁰⁹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex C, para. 21.

⁵⁹¹⁰ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex C, para. 22.

⁵⁹¹¹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 311-312, 320; exhibit P1248, pp 33, 35, 39-40, 43.

⁵⁹¹² See sub-section (B) (1) (f) (iii) 'Findings'.

⁵⁹¹³ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 311-312, 320.

2955. During the 317 outgoing calls, the most used cells were SFEIR2,⁵⁹¹⁴ SFEIR3⁵⁹¹⁵ and HADATH1.⁵⁹¹⁶ These are all near Mr Ayyash's Hadath residence. The seventh most used cell was NABATH1,⁵⁹¹⁷ which is in the area of his Harouf residence.⁵⁹¹⁸

2956. Yellow 669's attribution period of 23 December 2003 to 18 April 2004 coincides with the final 97 days of the attribution period of Mr Ayyash's personal mobile 165, namely 23 April 2002 to 18 April 2004.⁵⁹¹⁹

2957. The five most frequently used cells of his personal mobile 165 between 1 February 2003 and 18 April 2004, were Sfeir_A, Sfeir_B, Hadath_C, Hazmiyeh-II_B and Nabatieh_C. Four of these are near the Hadath residence and one is near the Harouf house.⁵⁹²⁰ This is demonstrated by the following slide which compares Yellow 669 and personal mobile 165:

⁵⁹¹⁴ Activated 85 times, or 26.8 per cent of the 317 calls.

⁵⁹¹⁵ Activated 25 times, or 7.9 per cent of the 317 calls.

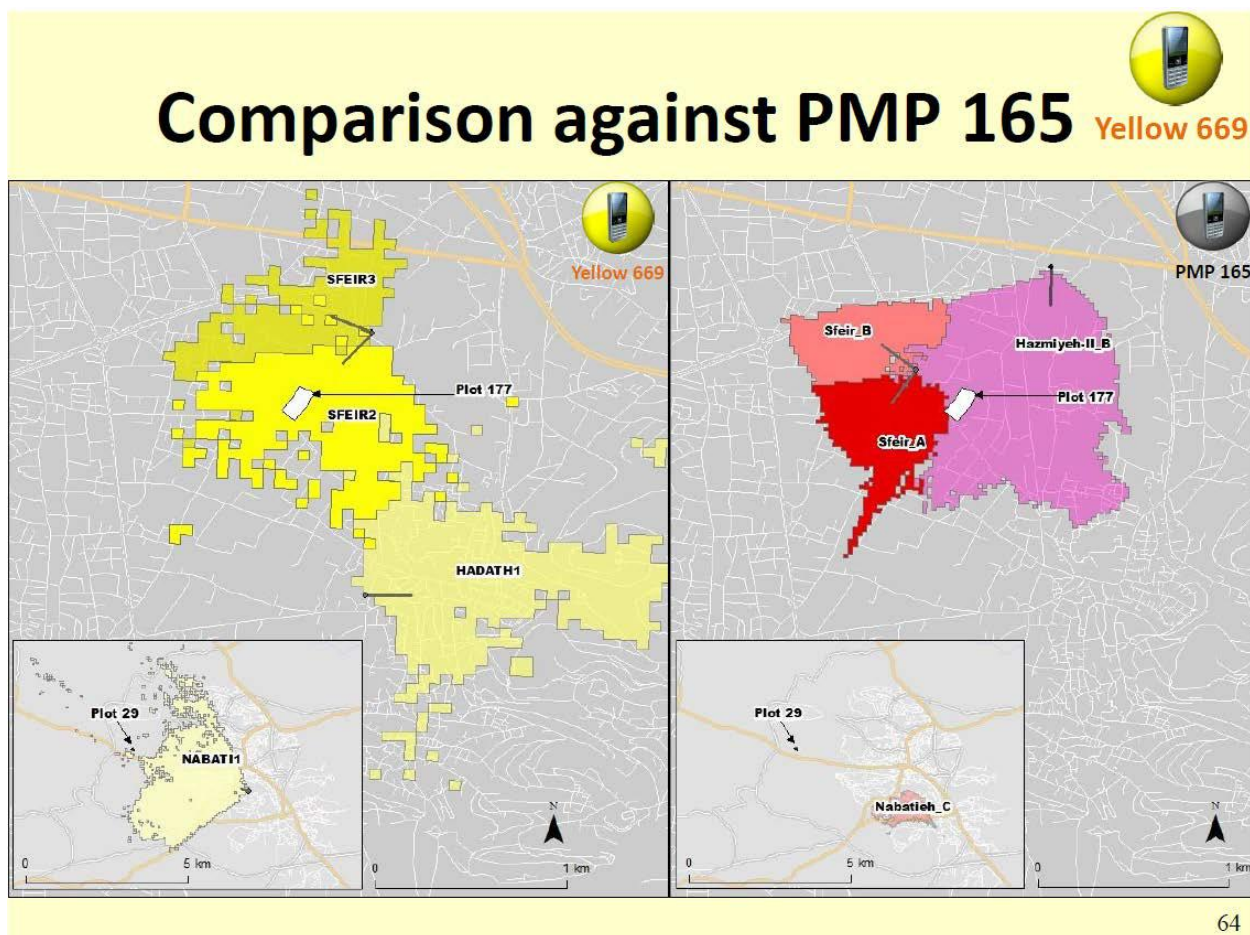
⁵⁹¹⁶ Activated 14 times, or 4.4 per cent of the 317 calls.

⁵⁹¹⁷ Activated ten times, or 3.2 per cent of the 317 calls.

⁵⁹¹⁸ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 293, 317; Andrew Donaldson, T. 18 July 2017, pp 71, 73-74. *See also* exhibit P2025, slides 62-63.

⁵⁹¹⁹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 297-298, 319; Andrew Donaldson, T. 18 July 2017, p. 75. *See also* exhibit P2025, slide 65.

⁵⁹²⁰ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 99, 103-107, 295; Andrew Donaldson, T. 18 July 2017, p. 74. *See also* exhibit P2025, slide 64.



Slide 64 of Mr Donaldson's PowerPoint presentation—exhibit P2025

2958. Mr Donaldson concluded that the two mobiles shared a similar geographic profile. He acknowledged that a day-by-day comparison of their use was needed to confirm that the two mobiles belonged to a person with access to these two homes.⁵⁹²¹ However, the shared geographic profile was, in his view, an initial positive indicator.⁵⁹²²

2959. The NABICH3 cell in eastern Lebanon was Yellow 669's fourth most used cell.⁵⁹²³ But Yellow 669 used it for 20 calls⁵⁹²⁴ on three particular days in February 2004.⁵⁹²⁵ Mr Donaldson

⁵⁹²¹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 318; Andrew Donaldson, T. 18 July 2017, pp 74-75.

⁵⁹²² Andrew Donaldson, T. 18 July 2017, pp 74-75.

⁵⁹²³ Activated 14 times, or 4.4 per cent of the 317 calls, exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 294.

⁵⁹²⁴ Including when NABICH3 appears as an end cell in the call sequence table, exhibit P1248, pp 39-41.

⁵⁹²⁵ 18, 20 and 26 February 2004.

testified that Mr Ayyash may not have routinely frequented the area of the cell.⁵⁹²⁶ For this reason, this cell is not in Mr Ayyash's other Alfa mobiles', namely mobile 935's and Yellow 294's, ten most used cells.⁵⁹²⁷ In fact, the NABICH3 cell does not appear in these mobiles' call data during the time when they are attributed to Mr Ayyash.⁵⁹²⁸

f. Co-location with personal mobile 165

2960. Mr Donaldson provided evidence that the primary means of attributing Yellow 669 to Mr Ayyash is through its co-location with mobile 165.⁵⁹²⁹

2961. Mr Donaldson performed his own co-location analysis by calculating the distance between the cell towers the two mobiles activated. He did this because the two mobiles were using different networks, Alfa and Touch, and would not have activated the same cell sectors.⁵⁹³⁰

2962. He analysed the combined call sequence table of the two mobiles during the 97 days of their overlapping attribution period. He concluded that when the two mobiles were used close-in-time, they appeared to move in concert throughout the entire period.⁵⁹³¹

2963. Specifically, mobile 165 and Yellow 669 were used within ten minutes of one another 85 times, for only 59 of which was there available start cell information for Yellow 669. All 59 were between 07:00 and midnight.⁵⁹³² Mr Donaldson found that of the 59 call pairs 54 per cent concerned cell towers which were less than one kilometre apart, 31 per cent connected to cell towers which were between one and two kilometres apart, nine per cent which were between two

⁵⁹²⁶ Andrew Donaldson, T. 18 July 2017, p. 72.

⁵⁹²⁷ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 294; Andrew Donaldson, T. 18 July 2017, pp 72-73.

⁵⁹²⁸ Exhibit P1261, pp 1-97; exhibit P1240 (Call sequence table of Yellow 294), pp 33-53.

⁵⁹²⁹ Andrew Donaldson, T. 18 July 2017, p. 60. The two mobiles were not in contact with each other, exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 299, 319; Andrew Donaldson, T. 18 July 2017, p. 75; exhibit P1254; exhibit P1248.

⁵⁹³⁰ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 301; Andrew Donaldson, T. 18 July 2017, pp 71, 76.

⁵⁹³¹ Andrew Donaldson, T. 18 July 2017, p. 75; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 319. *See also* exhibit P2025, slide 65.

⁵⁹³² Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 302-303; Andrew Donaldson, T. 18 July 2017, pp 75-76.

and five kilometres apart, three per cent were between five and ten kilometres apart and three per cent, namely, once, were between ten and 20 kilometres distant.⁵⁹³³

2964. Mr Donaldson incorporated the impact of the end cell information on his co-location analysis in his report where he discussed six examples of possible co-location of the two mobiles.⁵⁹³⁴ However, he did not update the part of his report setting out when the two mobiles were used within ten minutes of one another. Nor the percentages of these calls which were within the various cell tower distance ranges. In other words, neither in his report nor in his testimony did he consider the remaining 26 pairs of calls made within ten minutes for which start cell data was unavailable, which rendered his analysis incomplete.⁵⁹³⁵ The Trial Chamber therefore conducted its own analysis of the admitted cell data including the end cells as is set out below.

2965. Mr Donaldson highlighted the following six days which, in his opinion, show when the mobiles could have co-located:⁵⁹³⁶

12 January 2004

2966. Mr Donaldson stated that the two mobiles were active in south Beirut for the entire day.⁵⁹³⁷ At 12:36, mobile 165 activated Touch's Saki Hadath_C, and Yellow 669 activated Alfa's HARA2 at the end of a call at 12:37.⁵⁹³⁸ This is illustrated on the following map, where plot 177 is Mr Ayyash's Hadath residence:

⁵⁹³³ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 302-303; Andrew Donaldson, T. 18 July 2017, p. 76. *See also* exhibit P2025, slide 66.

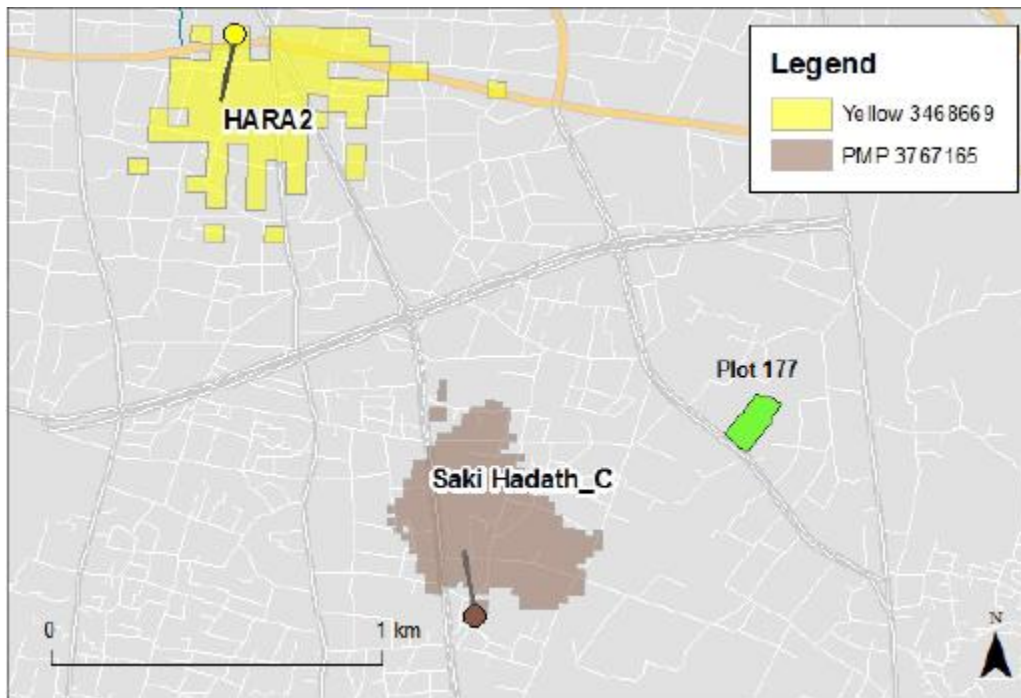
⁵⁹³⁴ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 304-310, annex C, para. 4.

⁵⁹³⁵ Andrew Donaldson, T. 18 July 2017, pp 75-76.

⁵⁹³⁶ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 304.

⁵⁹³⁷ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 305.

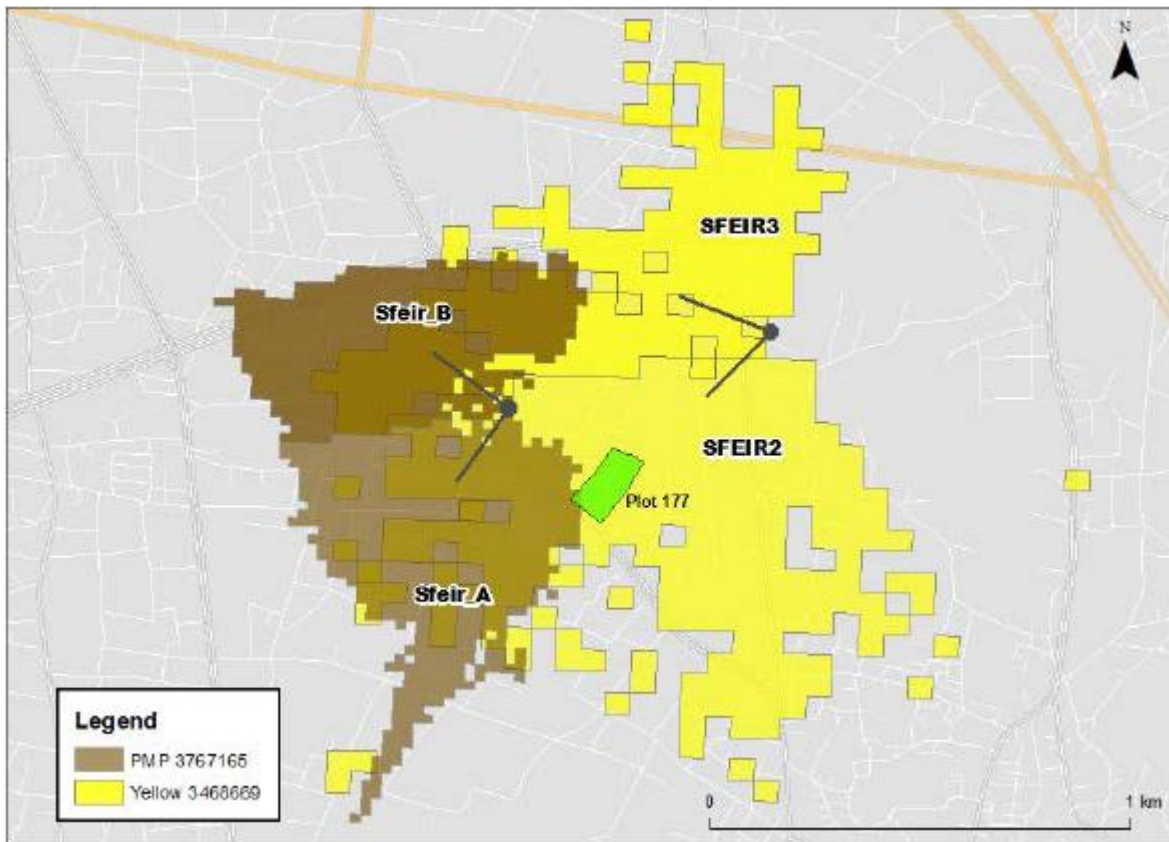
⁵⁹³⁸ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 305; exhibit P1254, p. 173; exhibit P1248, p. 35.



Attribution report of Andrew Donaldson regarding Mr Ayyash—exhibit P2026.2, p. 123

2967. Later, at 14:17, mobile 165 activated Touch's Sfeir_A, and at 14:19 Yellow 669 activated Alfa's SFEIR2, and again at the end of a 14:23 call. At 14:23, mobile 165 also activated cell Sfeir_B, and, at 14:27, Yellow 669 activated SFEIR3 followed by SFEIR2 at the end of that call.⁵⁹³⁹ Mr Donaldson showed this on the following map:

⁵⁹³⁹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 305; exhibit P1254, p. 173; exhibit P1248, p. 36.

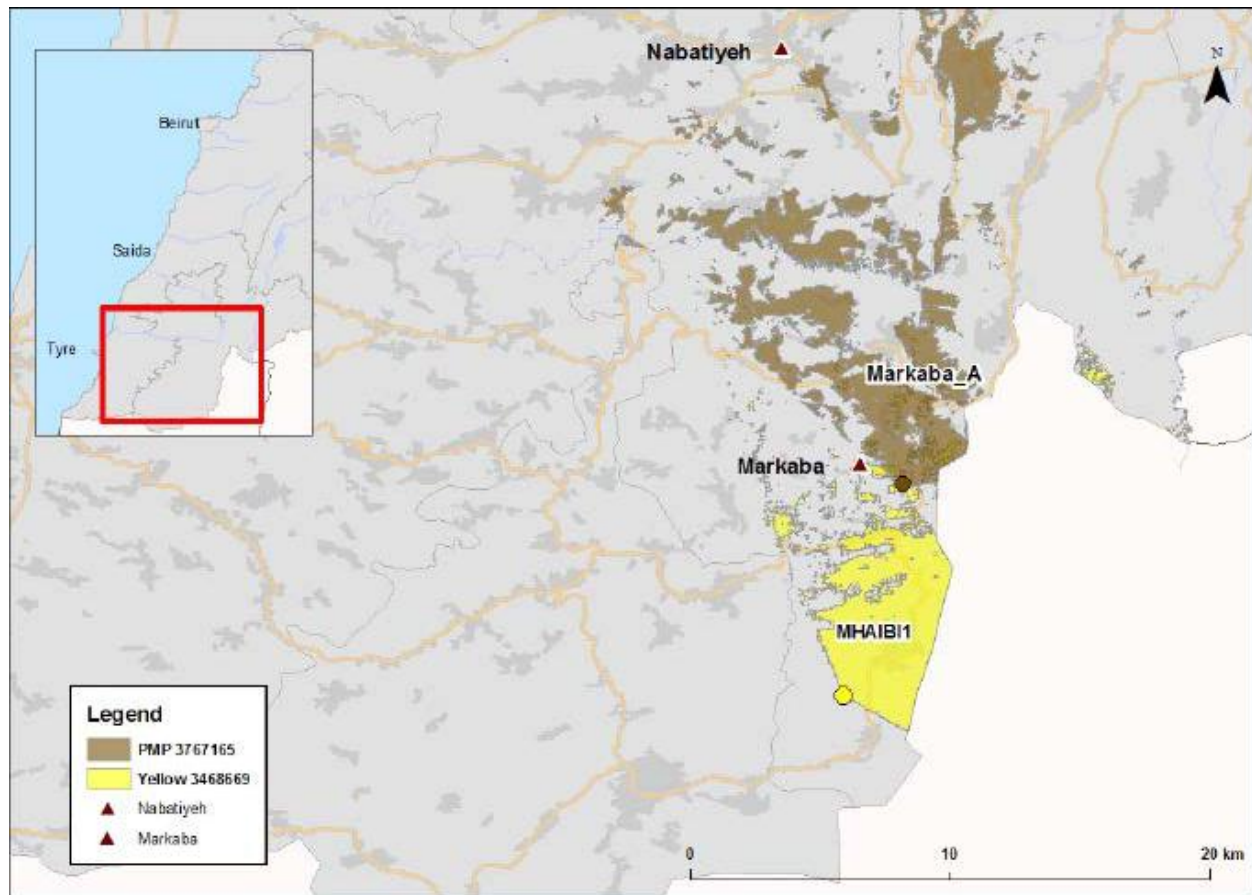


Attribution report of Andrew Donaldson regarding Mr Ayyash—exhibit P2026.2, p. 124

17 February 2004

2968. Mr Donaldson stated that, in the morning, mobile 165 was used in south Beirut, and both mobiles were used in the area of Markaba, south Lebanon, from midday until late afternoon, specifically, at 14:09, mobile 165 activated Touch's Markaba_A, and, at the end of a 14:13 call, Yellow 669 activated Alfa's MHAIBI1.⁵⁹⁴⁰ He provided the following map of these two calls:

⁵⁹⁴⁰ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 306; exhibit P1254, p. 180; exhibit P1248, p. 39.

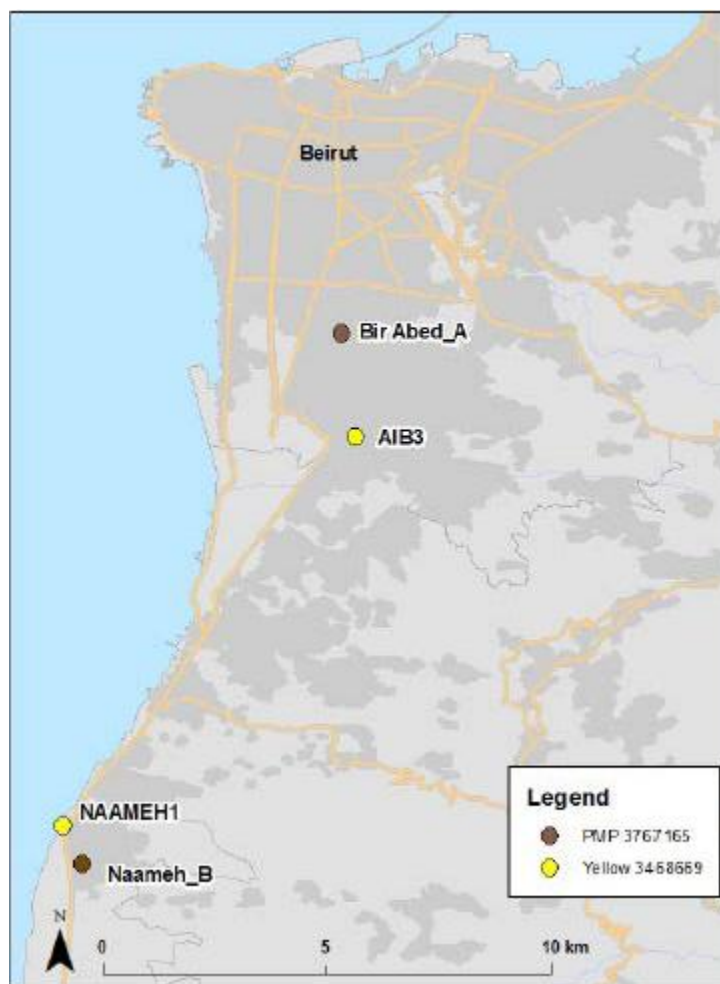


Attribution report of Andrew Donaldson regarding Mr Ayyash—exhibit P2026.2, p. 125

2969. At 16:06, Yellow 669 activated Alfa's NABATI3 and, at 16:43, mobile 165 activated Touch's Naameh_B and Yellow 669 activated Alfa's NAAMEH1, followed by AIB3 at the end of this call, which lasted for five minutes and 38 seconds.⁵⁹⁴¹ At 17:07, mobile 165 activated Touch's Bir Abed_A.⁵⁹⁴² Mr Donaldson showed these three calls on the following map:

⁵⁹⁴¹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 306; exhibit P1254, p. 180; exhibit P1248, p. 39.

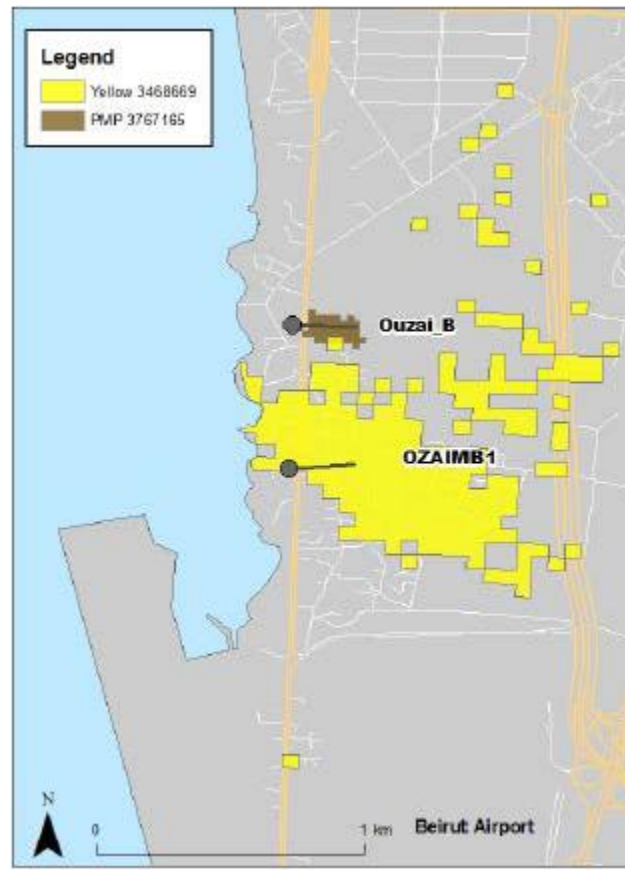
⁵⁹⁴² Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 306; exhibit P1254, p. 180. *See also* Annex F of the judgment, row 26.



Attribution report of Andrew Donaldson regarding Mr Ayyash—exhibit P2026.2, p. 126

2970. Finally, at 22:38, Yellow 669 activated Alfa's OZAIMB1, and at 22:41, mobile 165 activated Touch's Ouzai_B.⁵⁹⁴³ These calls were depicted on the following diagram in Mr Donaldson's report:

⁵⁹⁴³ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 306; exhibit P1254, p. 180; exhibit P1248, p. 39.



Attribution report of Andrew Donaldson regarding Mr Ayyash—exhibit P2026.2, p. 127

21 February 2004

2971. On 21 February 2004, the two mobiles activated cell towers in the Markaba area.⁵⁹⁴⁴ Mr Donaldson highlighted calls at 12:11, of Yellow 669 activating Alfa's MHAIBI1, and at 12:29, of mobile 165 activating Touch's Markaba_A. He also noted that mobile 165 activated Touch's Sultaniye_A—a cell south of Nabatieh offering some predicted best server coverage around Markaba—at 12:44, and Yellow 669 activated Alfa's HAROUF2 at the end of a 13:12 call. Mobile 165 activated Touch's Saida-4_B at 14:41, and Yellow 669 activated Alfa's HADATH1 at 22:19.⁵⁹⁴⁵

⁵⁹⁴⁴ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 307.

⁵⁹⁴⁵ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 307; exhibit P1254, p. 181; exhibit P1248, p. 40.

26 February 2004

2972. Mr Donaldson stated that, on 26 February 2004, the two mobiles were active in south Beirut in the morning. Then, between 13:42 and 14:07, Yellow 669 activated cell towers along the route from Beirut to east Lebanon. Both mobiles then activated cell towers in the Nabi Chit area of Bekaa for over three hours. In the evening, both mobiles activated cell towers on the route back to Beirut from Bekaa, and ended the day in south Beirut at 23:47.⁵⁹⁴⁶

2973. Regarding cell activations in Bekaa, Mr Donaldson highlighted a 14:48 Yellow 669 call activating Alfa's NABICH3, followed by a 14:52 mobile 165 call activating Touch's Nabi Chiit_A.⁵⁹⁴⁷

2974. Yellow 669 then activated NABICH3 during six calls—at 15:19, 15:38, 16:02, 16:07, 16:19 and 16:22.⁵⁹⁴⁸

2975. At 16:41 and 16:43, mobile 165 activated Nabi Chiit_C, and at 16:45 Yellow 669 activated NABICH3 again.⁵⁹⁴⁹

2976. At 17:17, Yellow 669 activated Alfa's NABICH2, and at 17:25 and 17:27 it activated NABICH3, followed by mobile 165 activating Touch's Nabi Chiit_A at 17:32. Yellow 669 activated NABICH3 again, at the end of a 17:50 call, at 18:27, mobile 165 activated Nabi Chiit_A, and at 18:32 Yellow 669 activated NABICH3.⁵⁹⁵⁰

2977. Finally, Yellow 669 activated NABICH3—at 18:36, 18:44 and at the end of an 18:53 call—and NABICH2 at 18:39.⁵⁹⁵¹ Mr Donaldson mapped Nabi Chiit_A, Nabi Chiit_C and NABICH3 as follows, but did not include NABICH2:

⁵⁹⁴⁶ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 308.

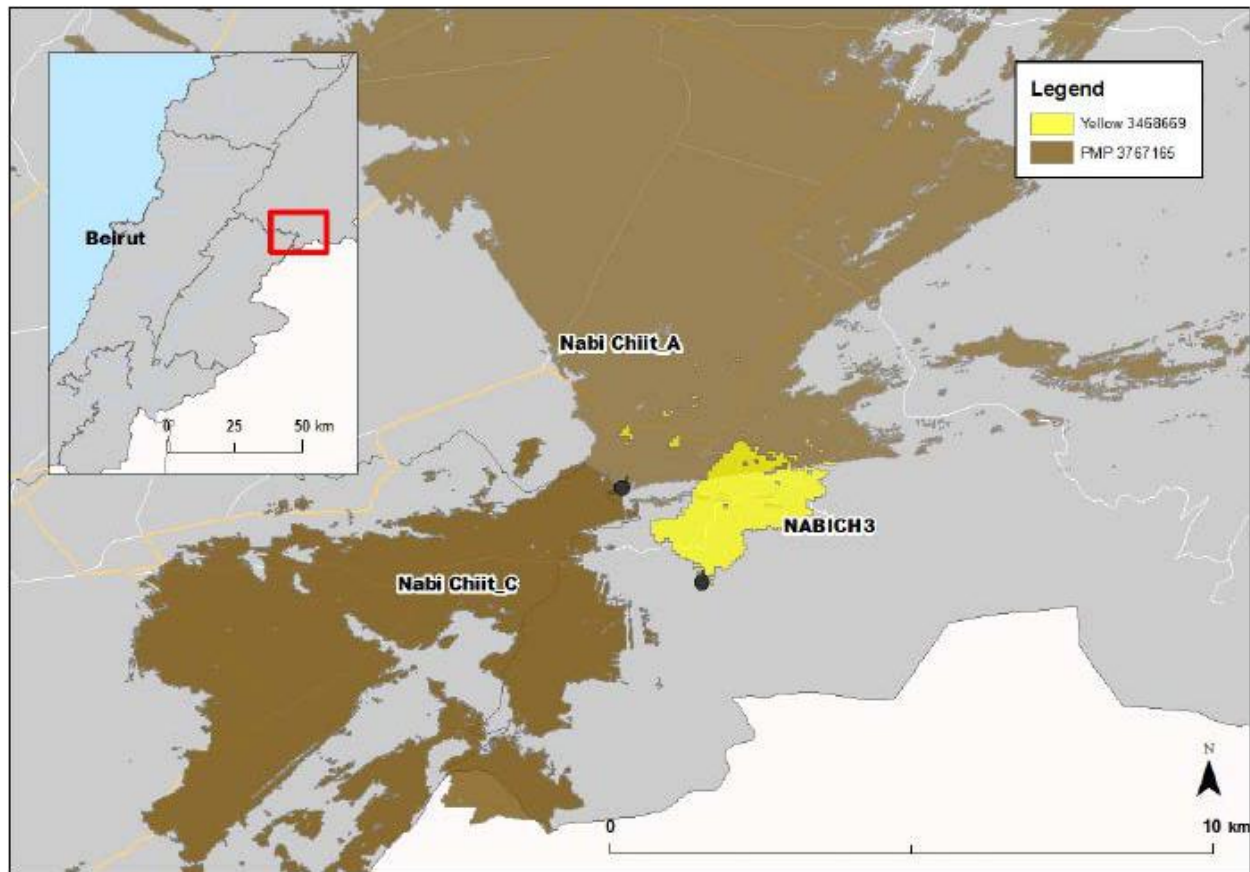
⁵⁹⁴⁷ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 308; exhibit P1254, p. 181; exhibit P1248, p. 41.

⁵⁹⁴⁸ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 308; exhibit P1248, p. 41.

⁵⁹⁴⁹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 308; exhibit P1254, p. 182; exhibit P1248, p. 41.

⁵⁹⁵⁰ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 308; exhibit P1254, p. 182; exhibit P1248, p. 41.

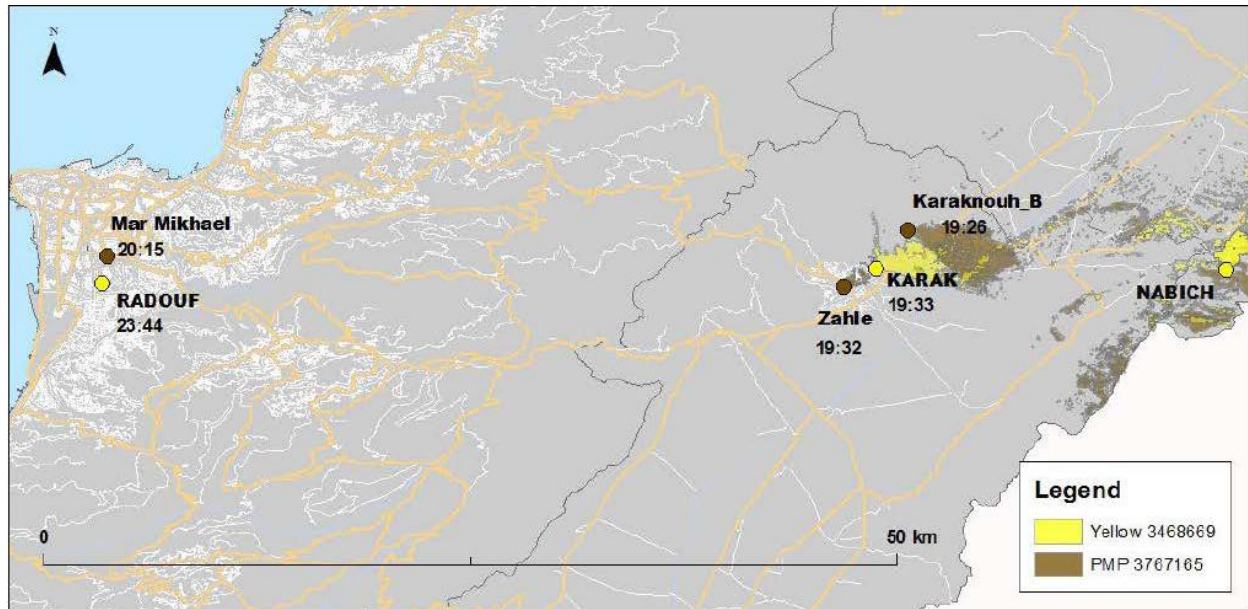
⁵⁹⁵¹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 308; exhibit P1248, p. 41.



Attribution report of Andrew Donaldson regarding Mr Ayyash—exhibit P2026.2, p. 129

2978. In the evening, as the mobiles were leaving Bekaa, mobile 165's calls at 19:26 and 19:32 activated Touch's Karaknough_B and Zahle_A, respectively, followed by Yellow 669 activating Alfa's KARAK1 at 19:33. Then, at 20:15, mobile 165 activated Touch's Mar Michael_C, and at the end of a 23:44 call Yellow 669 activated Alfa's RADOUF3.⁵⁹⁵² Mr Donaldson demonstrated these in the map below:

⁵⁹⁵² Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 308; exhibit P1254, p. 182; exhibit P1248, p. 41.



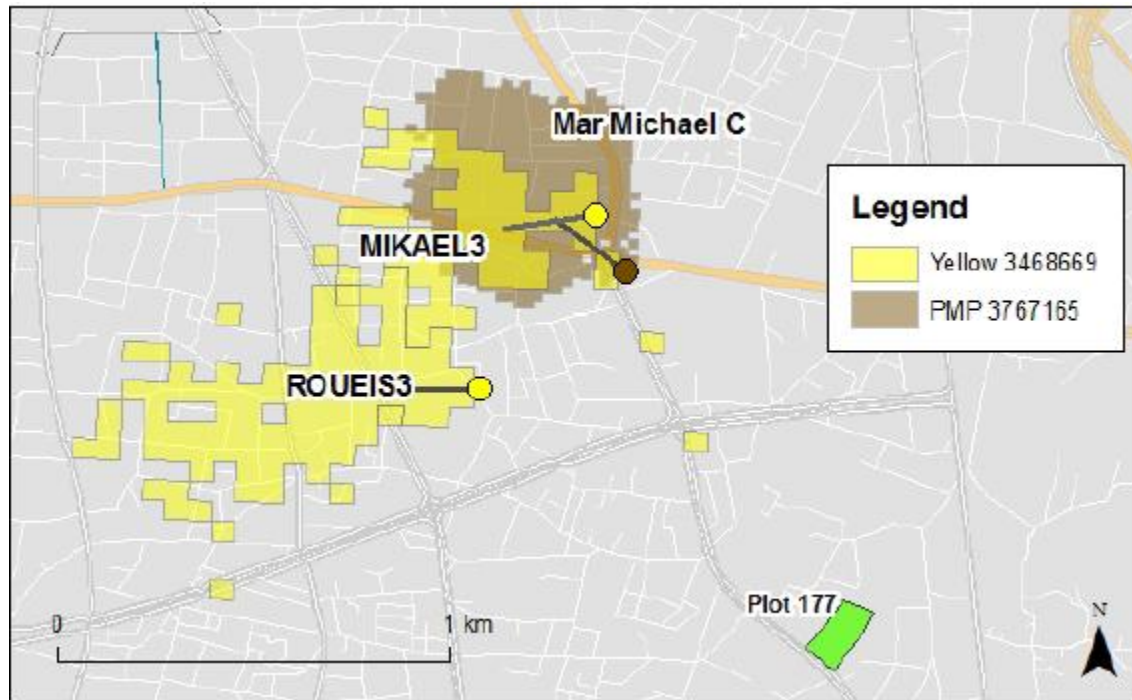
Attribution report of Andrew Donaldson regarding Mr Ayyash—exhibit P2026.2, p. 130

10 April 2004

2979. On 10 April 2004, both mobiles activated cell towers in south Beirut in the morning, and in the afternoon they activated cell towers near Mr Ayyash's home.⁵⁹⁵³ Mr Donaldson highlighted that Yellow 669 activated Alfa's MIKAEL3 at 11:56 and mobile 165 activated Touch's Mar Michael_C at 12:03. Yellow 669 then activated Alfa's ROUEIS3 at the end of a call at 12:09.⁵⁹⁵⁴ The predicted best server coverage of these cells was as follows:

⁵⁹⁵³ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 309.

⁵⁹⁵⁴ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 309; exhibit P1254, p. 194; exhibit P1248, p. 48.



Attribution report of Andrew Donaldson regarding Mr Ayyash—exhibit P2026.2, p. 131

2980. Mobile 165 activated Touch's Sfeir_A at 13:58, and Yellow 669 activated Alfa's SFEIR2 at the end of a call at 14:16.⁵⁹⁵⁵

2981. Finally, Mr Donaldson highlighted the following calls:⁵⁹⁵⁶

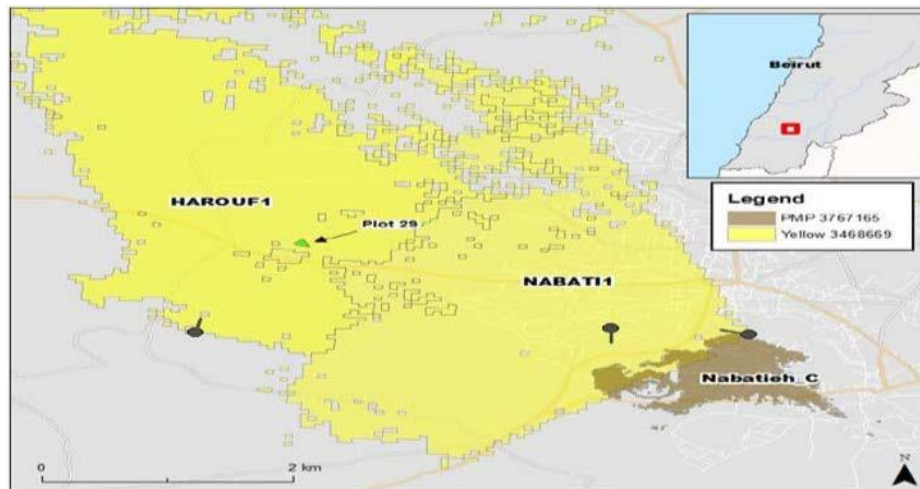
- at 17:08, mobile 165 connected to Touch's Nabatieh_C;
- at 17:11, 17:12 and the end of a call at 17:35, Yellow 669 activated Alfa's HAROUF1;
- at 17:41, mobile 165 activated Nabatieh_C;
- at the end of a call at 17:45 and at 18:27, Yellow 669 activated Alfa's NABATI1;
- at 18:30, mobile 165 activated Nabatieh_C;
- at 19:01, Yellow 669 activated NABATI1;

⁵⁹⁵⁵ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 309; exhibit P1254, p. 194; exhibit P1248, p. 48.

⁵⁹⁵⁶ See also Annex F of the judgment, rows 74-75, 78.

- at 20:04, 20:22 and 20:23, mobile 165 connected to Nabatieh_C; and
- at the end of calls at 20:25 and 20:34, Yellow 669 activated HAROUF1.⁵⁹⁵⁷

2982. The map below shows the predicted best server coverage of these cells:



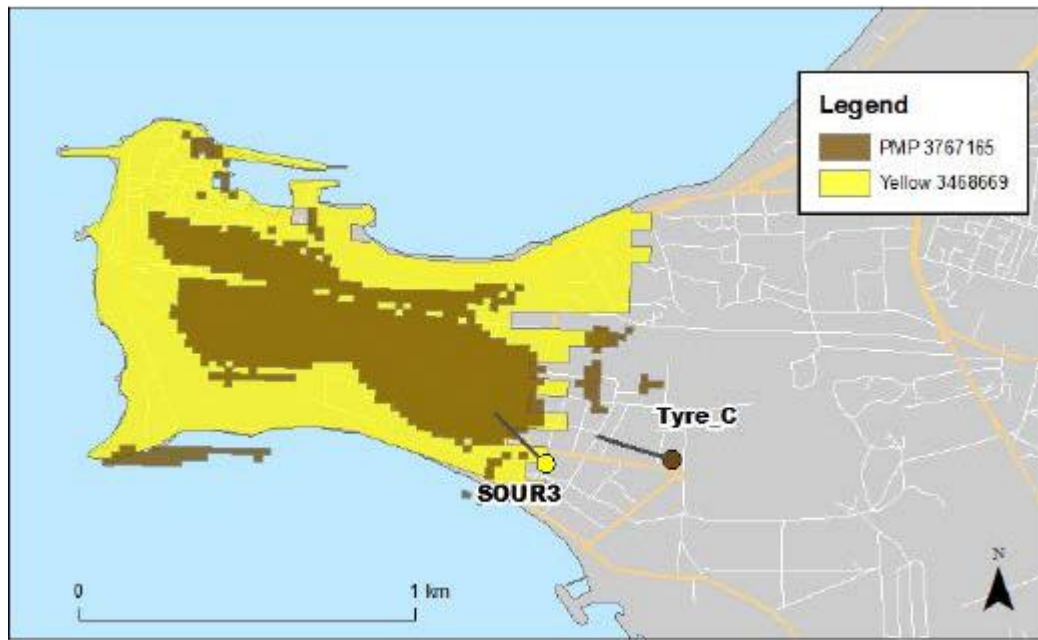
Attribution report of Andrew Donaldson regarding Mr Ayyash—exhibit P2026.2, p. 132

14 April 2004

2983. On 14 April 2004, both mobiles activated cell towers in the Sour area of south Lebanon in the morning, before moving to south Beirut and Mr Donaldson highlighted that, at 09:06, mobile 165 activated Touch's Tyre_C, and, at 09:13, Yellow 669 connected to Alfa's SOUR3.⁵⁹⁵⁸ As demonstrated in the map below, these cells have overlapping predicted best server coverage:

⁵⁹⁵⁷ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 309; exhibit P1254, p. 194; exhibit P1248, pp 48-49.

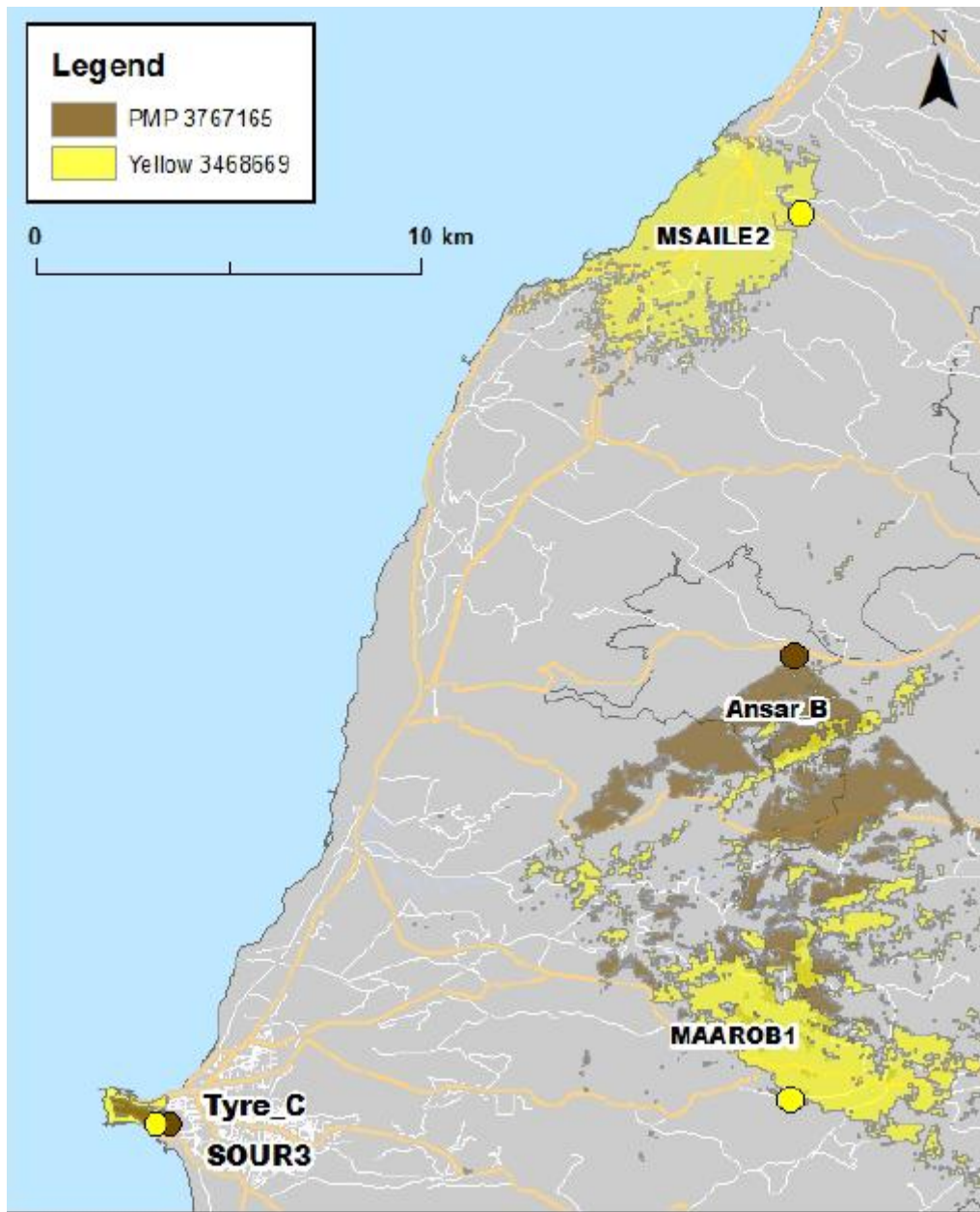
⁵⁹⁵⁸ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 310; exhibit P1254, p. 195; exhibit P1248, p. 49.



Attribution report of Andrew Donaldson regarding Mr Ayyash—exhibit P2026.2, p. 133

2984. A little over an hour later, at 10:16, Yellow 669 connected to Alfa's MAAROB1, in south Lebanon, the tower of which is located around 15 kilometres from Tyre. A few minutes later, at 10:20 and then again at 10:47, mobile 165 connected to Touch's Ansar_B, which is slightly to MAAROB1's north and overlaps with its predicted coverage. In the late afternoon, at the end of a call at 16:14, Yellow 669 activated Alfa's MSAILE2. This cell was on the coast south of Beirut, not far from the MAAROB1's and Ansar_B's coverage areas.⁵⁹⁵⁹ These were mapped in Mr Donaldson's report:

⁵⁹⁵⁹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 310; exhibit P1254, p. 195; exhibit P1248, p. 49.



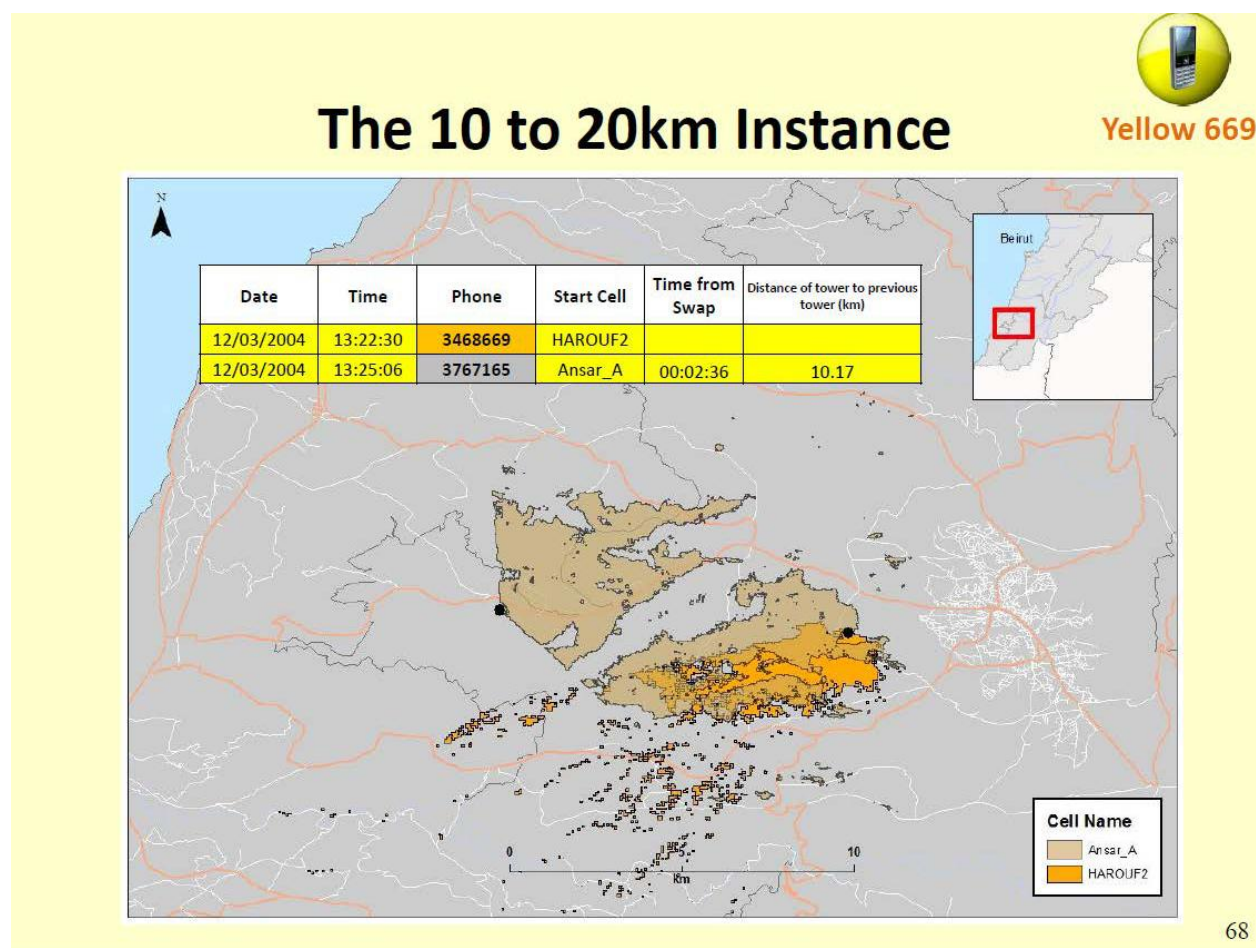
Attribution report of Andrew Donaldson regarding Mr Ayyash—exhibit P2026.2, p. 134

2985. That night, mobile 165 activated Touch's Sfeir_A in southern Beirut at 20:06. Yellow 669 connected to the following three cells in southern Beirut: Alfa's HADATH3 at 21:33, SFEIR2 at the end of a call at 21:45 call and HADATH1 at the end of a call made at 22:32.⁵⁹⁶⁰

⁵⁹⁶⁰ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 310; exhibit P1254, p. 195; exhibit P1248, p. 49.

12 March 2004 – the single instance falling within the 10-20 kilometre category

2986. In his testimony, Mr Donaldson addressed the one time when the two mobiles made calls within ten minutes using cell towers between ten and 20 kilometres apart.⁵⁹⁶¹ On 12 March 2004, at 13:22, Yellow 669 activated Alfa's HAROUF2. Three minutes later, at 13:25, mobile 165 connected to Touch's Ansar_A.⁵⁹⁶² Mr Donaldson explained that, although the cell towers are 10.17 kilometres apart, the predicted best server coverage of the cells overlaps, as the map below shows.⁵⁹⁶³



Slide 68 of Mr Donaldson's PowerPoint presentation—exhibit P2025

⁵⁹⁶¹ Andrew Donaldson, T. 18 July 2017, p. 76.

⁵⁹⁶² Andrew Donaldson, T. 18 July 2017, p. 77; exhibit P1254, p. 185; exhibit P1248, p. 44.

⁵⁹⁶³ Andrew Donaldson, T. 18 July 2017, p. 77.

g. Additional analysis carried out by the Trial Chamber

2987. Using the same principles of analysis that Mr Philips explained in some detail, the Trial Chamber conducted its own analysis to better understand the instances identified in Mr Donaldson's analysis where the two mobiles were involved in calls starting within ten minutes of each other. This included the 26 pairs of calls that Mr Donaldson did not consider. The Trial Chamber examined for itself the start and end cell information, and start and end time for each of the 85 pairs of calls.⁵⁹⁶⁴ These are set out in Annex F to the judgment based on the call sequence tables of the two mobiles.

2988. Although employing Mr Philips's analysis methodology as closely as possible on these 85 pairs of calls, the Trial Chamber did not engage in the much more extensive exercise of analysing all call pairs which were within 60 minutes of one another, as Mr Philips would have done had he been tasked by the Prosecution with analysing the potential co-location of these two mobiles.

2989. As an example of this methodology, on 27 December 2003, Yellow 669 participated in a call lasting from 10:59:48 to 11:01:20, activating Alfa's MIKAEL2 at both the beginning and the end of the call. Mobile 165 had a call five minutes later, from 11:06:44 to 11:07:13, activating Touch's BLF_B at the beginning of the call.⁵⁹⁶⁵ BLF_B is located just outside of Beirut, to the south-east. From the call data available for each pair of calls, the Trial Chamber looked at the cell sector use which occurred closest in time to one another. In this example, this meant considering the use of MIKAEL2 at 11:01:20 and the use of BLF_B at 11:06:44.

2990. The Trial Chamber then considered whether the two relevant cell sector coverage areas overlapped. For those that did not overlap, the Trial Chamber used the electronic presentation of evidence software to plot the approximate distance between the points on the coverage areas of the two cell sectors which were closest together and those which were furthest apart. In other words, the shortest and the longest distance that a single user would have to travel between calls. This was

⁵⁹⁶⁴ These occurred on 25, 27 (twice), 29 (thrice), 30 December 2003; 1, 6, 8, 9 (thrice), 11, 12 (four times), 15, 16, 26 January 2004; 3, 8, 13, 17 (thrice), 18, 20, 24, 25, 26 (six times), 27 February 2004; 2 (twice), 3 (twice), 10, 11 (five times), 12, 13 (twice), 15, 22 (thrice), 23, 26, 27 (twice), 30 (four times), 31 March 2004; and 1, 2 (thrice), 3 (twice), 9, 10 (seven times), 13, 14 (twice), 16 (twice), 17 (twice) April 2004, exhibit P1259 (Call sequence table of ten numbers—Mr Ayyash), pp 169-212.

⁵⁹⁶⁵ Exhibit P1259, p. 171; annex F of the judgment, rows 2-3.

measured in the same manner as the Parties did in tendering their own maps into evidence at trial, namely using a straight line.

2991. The Trial Chamber then calculated the average between these two distances. It used this measurement in place of Mr Philips's use of the distance between the centre points of the coverage areas of two cell sectors. The Trial Chamber considered that it lacked the expertise to determine the centre point of each coverage area simply by looking at it on a map, in the way Mr Philips had done.

2992. For these non-overlapping cell sector coverage areas, the Trial Chamber then calculated the speed of travel which a single user would have had to attain to traverse this average distance in the available time. It did this by dividing the average distance measured in kilometres by the time measured in hours. In the example given above, the average distance was determined to be 1.974 kilometres and the available time was five minutes and 24 seconds. The necessary speed of travel was therefore calculated to be 21.93 kilometres per hour.

2993. Using this methodology, the Trial Chamber found that, of the 85 pairs of calls, 60 involved the two mobiles using cells with overlapping predicted best server coverage areas.⁵⁹⁶⁶ Seven of these involved calls which also overlapped in time.⁵⁹⁶⁷

2994. A further 15 pairs involved distances which could be travelled in the available time at a speed of less than 85 kilometres per hour,⁵⁹⁶⁸ and eight pairs involving distances which could not be travelled in the available time—in other words, requiring a speed of 97.9 kilometres per hour or above.⁵⁹⁶⁹ For the remaining two pairs, there was insufficient cell site coverage information to determine whether they were overlapping, or alternatively to measure and calculate the relevant distances and necessary speeds of travel.⁵⁹⁷⁰

⁵⁹⁶⁶ Annex F of the judgment, rows 1-2, 4-5, 7, 9-14, 16-20, 22-23, 25, 27, 30-31, 33, 35-38, 40-42, 44-55, 57, 60-65, 69, 72, 76-77, 79-85.

⁵⁹⁶⁷ These occurred on 27 December 2003, 12 January 2004 (twice), 3, 11 and 30 March 2004, and 3 April 2004, exhibit P1259, pp 169-212; annex F of the judgment, rows 2, 16-17, 42, 45, 63, 69.

⁵⁹⁶⁸ Annex F of the judgment, rows 3, 6, 8, 15, 21, 29, 32, 39, 43, 56, 58, 66, 70-71, 73.

⁵⁹⁶⁹ Annex F of the judgment, rows 24, 26, 59, 67-68, 74-75, 78.

⁵⁹⁷⁰ Annex F of the judgment, rows 28, 34; exhibit P1248, p. 39; exhibit P1254, p. 182. First, this concerned a pair of calls on 18 February 2004, for which cell sector coverage information for KSARA1, used by Yellow 669 at 16:23, was unavailable from the evidence, Prosecution submissions, T. 16 February 2017, pp 15-16, 48-49, 72-73; exhibit P1893 (Alfa cells with best server coverage, Beirut-Anjar road). Second, for a pair of calls on 26 February 2004 (with calls starting at 16:43 and 16:45), there was no cell coverage information accessible in the Electronic Presentation of

2995. The eight pairs of calls are set out as follows:

- On Friday 13 February 2004, after connecting to Touch's Merwanieh_A, south-east of Sidon, at 13:22,⁵⁹⁷¹ mobile 165 received a text message, at 13:53, activating Barja_C north, north-east of Sidon.⁵⁹⁷² Just under five minutes later, Yellow 669 connected to Alfa's KHALDE3, south of Beirut, while receiving a call from Yellow 618.⁵⁹⁷³ The average distance between the coverage areas of Barja_C and KHALDE3 is about 11.9 kilometres, and the speed to travel that distance would have been 145.7 kilometres per hour 'as the crow flies'.⁵⁹⁷⁴ Both cells provide predicted best server coverage to the coastal highway.⁵⁹⁷⁵ For a subsequent call, at 14:10, Yellow 669 connected to CBOURJ3 in southern Beirut.⁵⁹⁷⁶
- On Thursday 17 February 2004, at 16:06, Yellow 669 activated Alfa's NABATI3 for a call to an US number.⁵⁹⁷⁷ At 16:43, mobile 165 activated Touch's Naameh_B while receiving a call from one of its frequent contacts, mobile 617, linked to Mr Jaber and his car mechanic shop.⁵⁹⁷⁸ Within a minute, Yellow 669 activated Alfa's NAAMEH1, followed by AIB3 at the end of this call, which lasted for five minutes and 38 seconds.⁵⁹⁷⁹

This call was made to mobile 222, which is linked to Mr Ayyash's brother, Ali, and brother-in-law, Mr Ali Zaarour.⁵⁹⁸⁰ At 17:07, mobile 165 activated Touch's Bir Abed_A.⁵⁹⁸¹ The

Evidence software for cell sector Nabi Chiit_C, that mobile 165 used and, although this coverage information was accessible in the ArcView software, the latter's function for measuring distances is not enabled, nor is a scale provided for the maps it displays.

⁵⁹⁷¹ This was a text message from mobile 061, which had twelve contacts with mobile 165 in its attribution period. Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex E, p. 388.

⁵⁹⁷² It was a text message from mobile 234, which had fifteen contacts with mobile 165 in its attribution period. Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex E, p. 387.

⁵⁹⁷³ Exhibit P1259, p. 184; exhibit P592.1 (Electronic Presentation of Evidence Software).

⁵⁹⁷⁴ Annex F of the judgment, row 24.

⁵⁹⁷⁵ Exhibit P592.1.

⁵⁹⁷⁶ It was a call from Yellow 763 to Yellow 669. Exhibit P1259, p. 184.

⁵⁹⁷⁷ The same number was in contact with Mr Ayyash's personal mobile 935 twice on 20 September 2004. Exhibit P1259, p. 275; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 289.

⁵⁹⁷⁸ See para. 2686.

⁵⁹⁷⁹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 306; exhibit P1259, p. 186.

⁵⁹⁸⁰ The same number, 222, was also in contact with Mr Ayyash's family landline 851, and personal mobiles 935 and 091. See para. 2707.

⁵⁹⁸¹ This was a call to mobile 197, which is unattributed but a common contact with Mr Ayyash's mobile 935. Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 306; exhibit P1259, p. 186. For contacts between mobile 935 and mobile 197, *for example* exhibit P1259, pp 226, 251; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex E, p. 404.

average distance between Touch's Naameh_B and Alfa's NAAMEH1 cells is about 10.8 kilometres and the time lapse between the call pair is 51 seconds.⁵⁹⁸² Mr Donaldson's view was that the mobiles were travelling in concert. This is discussed above in paragraphs 2968-2969.

- On Sunday 27 March 2004, mobile 165 and Yellow 669 activated Nabatieh_C and HAROUF3 around seven minutes apart. At 17:19, mobile 165 received a call from landline 696 attributed to Mr Ayyash's family;⁵⁹⁸³ at 17:26, Yellow 669 called Yellow 425.⁵⁹⁸⁴ The average distance between the two cell sectors' coverage areas, about 17.6 kilometres, would have required an average speed of 149.8 kilometres per hour speed to travel.⁵⁹⁸⁵ However, drive tests conducted in 2006 on the road between Harouf and Nabatiyeh showed that Nabatieh_C actually provided the best coverage along that road.⁵⁹⁸⁶ Mr Philips explained that this could have been caused by multiple signal reflections from nearby hills that may not have been accounted for in the prediction tools.⁵⁹⁸⁷
- On Saturday 2 April 2004, at 09:23, Yellow 669—connecting to MIKAEL2 in southern Beirut—called Yellow 457. At 09:29, mobile 165 activated BorjBrajneh-II_A (south-west of MIKAEL2).⁵⁹⁸⁸ At 09:31, calling Yellow 425, Yellow 669 used MEA1, near the airport. According to the Trial Chamber's additional analysis, the average distance between the BorjBrajneh-II_A and MEA1 cells would have required an average travelling speed of around 97.9 kilometres per hour.⁵⁹⁸⁹
- At 09:34, Yellow 669 called unattributed mobile 093 and connected to MATAR6, south of the airport, at the start, and KHALDE1, further south, at the end of a call. At 09:43, mobile 165 used Barja_C, south of Beirut.⁵⁹⁹⁰ Based on the Trial Chamber's analysis, the average

⁵⁹⁸² Annex F of the judgment, row 26.

⁵⁹⁸³ See paras 2691-2696.

⁵⁹⁸⁴ Exhibit P1259, p. 203.

⁵⁹⁸⁵ Annex F of the judgment, row 59.

⁵⁹⁸⁶ See above, at paras 2731-2734.

⁵⁹⁸⁷ J. E. Philips, T. 25 April 2017, pp 68-75.

⁵⁹⁸⁸ This occurred while receiving a call from an unattributed mobile 496, which had 32 contacts with mobile 165 and one with mobile 935. Exhibit P1259, p. 205; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex E, pp 386, 408.

⁵⁹⁸⁹ Annex F of the judgment, row 67.

⁵⁹⁹⁰ The call was from an unattributed mobile, which had no other contact with mobile 165, or with other personal mobiles attributed to Mr Ayyash. Exhibit P1259, p. 205; exhibit P592.1.

distance between KHALDE1 and Barja_C would have required an average travelling speed of about 117.6 kilometres per hour to travel in seven and a half minutes.⁵⁹⁹¹ Both cells provide predicted best server coverage to the coastal highway.⁵⁹⁹²

- On Sunday 10 April 2004, at 17:08, mobile 165 connected to Touch's Nabatieh_C for a call to mobile 333—a common contact of landlines 696 and 851, and mobiles 170, 935 and 091—attributed to Mr Hussein Zaarour.⁵⁹⁹³ At 17:11, Yellow 669 called the same number, activating HAROUF1.⁵⁹⁹⁴
- Within a minute, at 17:12, and then at 17:35, Yellow 669 had two calls with Yellow 457, activating Alfa's HAROUF1 throughout. Receiving a call from Mr Zaarour's mobile at 17:41, mobile 165 activated Nabatieh_C. At 17:45, Yellow 669 received a call from Yellow 457, activating Alfa's NABATI1 at the end of the call.⁵⁹⁹⁵
- In the evening, at 18:27, Yellow 669 used NABATI1.⁵⁹⁹⁶ At 18:30, receiving a call from one of its frequent contacts, mobile 909—attributed to Mr Ayyash's brother-in-law, Mr Mohammed Amine Badreddine⁵⁹⁹⁷—mobile 165 activated Nabatieh_C. At 19:01, Yellow 669 activated NABATI1 for a call to mobile 617 linked to Mr Jaber and his 'car repair shop'.⁵⁹⁹⁸ At 20:04, 20:22 and 20:23, mobile 165 had three incoming calls connecting to Nabatieh_C, one from mobile 333 linked to Mr Hussein Zaarour, and two from mobile 854 linked to Mr Ayyash's sister-in-law, Ms Bassima Al-Hajj.⁵⁹⁹⁹ At 20:25 and 20:34, Yellow 669 received calls from Yellow 763 and mobile 333 linked to Mr Hussein Zaarour, activating HAROUF1 at the end of both calls.⁶⁰⁰⁰

Based on the Trial Chamber's analysis, the average distance between Touch's Nabatiyeh_C and Alfa's HAROUF1 cells between the three pairs of calls at 17:08-17:11, 17:35-17:41,

⁵⁹⁹¹ Annex F of the judgment, row 68.

⁵⁹⁹² Exhibit P592.1.

⁵⁹⁹³ See para. 2686.

⁵⁹⁹⁴ Exhibit P1259, p. 209.

⁵⁹⁹⁵ Exhibit P1259, p. 209.

⁵⁹⁹⁶ It was a call to unattributed mobile 444, which had sixteen contacts with Yellow 669 in its attribution period. Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 290.

⁵⁹⁹⁷ See para. 2729.

⁵⁹⁹⁸ See para. 2686.

⁵⁹⁹⁹ See para. 2686.

⁶⁰⁰⁰ Exhibit P1259, p. 209.

and 20:23-20:25, would have required an average speed of about 402.8, 280.8 and 254.4 kilometres per hour, respectively.⁶⁰⁰¹ However, as discussed above, Mr Philips provided evidence, based on Touch's drive test, that the Nabatiyeh_C cell provided some coverage in the Harouf area.⁶⁰⁰² Additionally, Mr Donaldson demonstrated above, in paragraphs 2979-2982, that the two mobiles were travelling together.

2996. The Trial Chamber, like Mr Donaldson in his report, also considered the distance between the cell towers used by the mobiles during the 85 pairs of calls. The Trial Chamber, however, used both the start and end cell information available and was therefore able to analyse all 85 pairs. Of these:

- 42 pairs involved cell towers up to a kilometre apart;⁶⁰⁰³
- 21 involved cell towers between one and two kilometres apart;⁶⁰⁰⁴
- 12 involved cell towers between two and five kilometres apart;⁶⁰⁰⁵
- five involved cell towers between five and ten kilometres apart;⁶⁰⁰⁶
- four involved cell towers between ten and 20 kilometres apart;⁶⁰⁰⁷ and
- one pair involved cell towers between 20 and 21 kilometres apart.⁶⁰⁰⁸

ii. Submissions

2997. The attribution of Yellow 669 to Mr Ayyash between 23 December 2003 and 18 April 2004 is relevant to the Prosecution's contention that Mr Ayyash left Lebanon in 2004 to perform the Hajj pilgrimage in Mecca, Saudi Arabia, but remained in Lebanon during the 2005 Hajj.

⁶⁰⁰¹ Annex F of the judgment, rows 74-75, 78.

⁶⁰⁰² See above, at paras 2731-2734.

⁶⁰⁰³ Annex F of the judgment, rows 2, 4, 9, 11-12, 16-19, 22-23, 26-27, 30, 38, 40, 43-45, 50-56, 60-62, 64-65, 69, 72-73, 76-77, 79-80, 82-85.

⁶⁰⁰⁴ Annex F of the judgment, rows 5-6, 8, 13-15, 20, 33-37, 39, 46-48, 57, 63, 66, 70-71.

⁶⁰⁰⁵ Annex F of the judgment, rows 3, 7, 21, 29, 31-32, 58-59, 67, 74-75, 78.

⁶⁰⁰⁶ Annex F of the judgment, rows 10, 25, 28, 42, 49.

⁶⁰⁰⁷ Annex F of the judgment, rows 1, 24, 81.

⁶⁰⁰⁸ Annex F of the judgment, row 41.

2998. The Prosecution concedes that if Mr Ayyash had travelled to Saudi Arabia in January 2005, he could not have continued the normal use in Lebanon of mobiles attributed to him.⁶⁰⁰⁹

2999. It attributes Yellow 669 to Mr Ayyash from 23 December 2003 until at least 18 April 2004.⁶⁰¹⁰ A handset used with Yellow 669—IMEI35252200022555—was subsequently used with his personal mobile 170 from 7 January 2005.⁶⁰¹¹

3000. In addition, forty of Yellow 669's 77 contacts, including all of its top ten most frequent contacts, coincided with those of at least one of Mr Ayyash's personal mobiles. Further, some of Yellow 669's contacts were closely linked to Mr Ayyash, such as one of his car trade associates and someone who bought vehicles from him.⁶⁰¹² Yellow 669 most frequently activated cells near Mr Ayyash's homes in Hadath and Harouf.⁶⁰¹³

3001. Finally, Yellow 669 never contacted personal mobile 165. When the two mobiles were used within ten minutes of one another, 54 per cent of those calls activated cell towers less than one kilometre apart. And 31 per cent of those calls activated cell towers less than two kilometres away from each other.⁶⁰¹⁴

3002. The Ayyash Defence made no specific submissions with regard to Yellow 669, but argued generally that the Prosecution failed to attribute the network mobiles to Mr Ayyash, as in attributing them it relied primarily on their unreliable co-location with the personal mobiles, whose attribution to Mr Ayyash had in turn not been proven.⁶⁰¹⁵

iii. Findings

3003. To commence, the Prosecutor did not plead in the amended consolidated indictment, nor in his two final pre-trial briefs, that Mr Ayyash was using Yellow 669.

3004. As a matter of law, and to provide notice to an Accused of the case against them, material facts, not evidence, have to be pleaded. The Trial Chamber considers that Mr Ayyash's potential

⁶⁰⁰⁹ Prosecution final trial brief, para. 282.

⁶⁰¹⁰ Prosecution final trial brief, para. 304.

⁶⁰¹¹ Prosecution final trial brief, para. 305.

⁶⁰¹² Prosecution final trial brief, para. 306.

⁶⁰¹³ Prosecution final trial brief, para. 307.

⁶⁰¹⁴ Prosecution final trial brief, para. 308.

⁶⁰¹⁵ Ayyash Defence final trial brief, paras 670-671.

use of this mobile until April 2004—which is almost seven months before the period pleaded indictment period—which commenced on 11 November that year, was not a material fact that required pleading in an indictment.

3005. However, if the Prosecution was intending to use this fact against Mr Ayyash, even if only to negate that he travelled for the Hajj in January 2005, this should have been set out clearly in the pre-trial briefs and the opening statements. Notwithstanding this, as it is not a material fact and is a matter of evidence, the Ayyash Defence was on notice of it through Mr Donaldson’s analysis of it in his attribution report, and in particular its annex A entitled ‘Telephone usage 28-01-04 to 08-02-04’ which explains the significance of Yellow 669. This is not of course where such an explanation should be. It should be upfront in a pre-trial brief.

3006. For these reasons, the Trial Chamber is satisfied that it can make positive findings in respect of Mr Ayyash’s use of the mobile and that no substantive point about a lack of notice has arisen.

3007. The Trial Chamber has found that Mr Ayyash was the principal user of personal mobile 165 between 23 April 2002 and 18 April 2004, and of personal mobile 170 from 7 January to 26 November 2005.

3008. Yellow 669’s SIM was used with handset IMEI 35252200022555 from 25 December 2003 to Thursday 6 January 2005. From Friday 7 January 2005, Mr Ayyash’s personal mobile 170 used the same handset. This strongly associates Mr Ayyash with Yellow 669.

3009. Yellow 669’s subscription and contact profile reveals little of the identity of its user. Mr Donaldson concluded that Yellow 669’s shared contacts with other mobiles attributed to Mr Ayyash would normally be a negative indicator of a single user of these mobiles. This is because multiple mobiles are not ordinarily needed to contact the same people. However, Yellow 669 shared contacts not only with Mr Ayyash’s personal mobile 165, with which it had an overlapping attribution period, but also with mobiles 935 and 170, of which Mr Ayyash was the principal user at a later stage.

3010. The Trial Chamber is not convinced that Yellow 669’s cell activations in the area of locations relevant to Mr Ayyash support the mobile’s attribution to him, as it has received no reliable evidence as to his presence at his two residences or at the Markaba Civil Defence station.

3011. The comparison of the five most frequently used cells by Yellow 669 and mobile 165, although not inconsistent with the two having the same user, is based on partial cell data. Further, four of these cells are in south Beirut, and are therefore geographically insufficiently distinctive to allow for relevant inferences to be drawn. However, the Trial Chamber considered in favour of attribution the fact that Yellow 669's handset was later used with mobile 170.⁶⁰¹⁶

3012. The Trial Chamber received evidence from Mr Philips that overlapping calls do not necessarily exclude that the mobiles had a single user. Exceptionally this may occur, and it is not inconsistent with a single user if the mobiles activate the same cell or adjacent cells, or—when they are on different networks—cells with overlapping predicted best server coverages.⁶⁰¹⁷ Therefore, the seven instances of calls overlapping in time do not preclude a conclusion that the two mobiles were used by the same person during the 97 days, given that during these calls the mobiles activated cells with overlapping predicted best server coverage areas.⁶⁰¹⁸ Additionally, the mobiles were never in contact with each other.

3013. Mr Donaldson's examples demonstrating the common movements of the two mobiles weigh in favour of a finding that they had a single user. The movements of the mobiles on 12 and 26 February, and 14 April 2004 in the different areas of Lebanon, outside the areas of most frequently used cells in Beirut, are particularly persuasive.

3014. However, the Trial Chamber has considered Mr Donaldson's co-location analysis of Yellow 669 and mobile 165 with caution. It carefully reviewed his evidence and, additionally, it has considered the cell activations of 26 additional examples of close-in-time call pairs that Mr Donaldson did not analyse, and carried out its own further analysis of all 85 pairs of calls.

3015. The Trial Chamber emphasises that it does not have Mr Philips's technical expertise to ascertain potential co-location, but is of course required to determine whether it is satisfied that two or more mobiles had a single user. The Trial Chamber followed Mr Philips's basic methodology and carried out a basic analysis of cell activations and time between pairs of calls. Some rudimentary methods of determining potential co-location do not require any particular advanced technical expertise, such as when two mobiles sequentially make or receive calls which

⁶⁰¹⁶ See paras 2761-2762.

⁶⁰¹⁷ See sub-section (A) 'Single user analysis', above.

⁶⁰¹⁸ See sub-section (A) 'Single user analysis', above.

connect to the same cell or—when the mobiles are from different network providers—to cells with overlapping predicted best server coverages.

3016. By employing this method, the Trial Chamber found that 60 of the 85 pairs involved the use of cell sectors whose predicted best server coverage overlapped. That is straightforward.

3017. For further fifteen pairs, the average distances between the coverage areas of the cells connected each time could be travelled in the time available, in some cases at walking speed, and in some instances at speeds of between 6.4 and 83.3 kilometres per hour in a vehicle.

3018. Although the Trial Chamber does not have the necessary expertise to determine general traffic conditions in Lebanon, at its most basic, and using Mr Philips's terminology, it would appear that this does not preclude co-location of the two mobiles in any of these instances. The Trial Chamber stresses that, on the issue of co-location, it is not substituting its technical expertise for that of Mr Philips, but rather has performed this additional analysis on the evidence it has received to ascertain whether co-location was *possible* for these two mobiles, where this was not exhaustively explored by the Prosecution.

3019. The Trial Chamber has further identified eight pairs of calls involving distances which would have required an average speed exceeding 90 kilometres per hour to travel 'as the crow flies'. For four of these pairs, Mr Donaldson illustrated on maps how the mobiles travelled in tandem from areas located to the south of Beirut to southern Beirut on Thursday 17 February 2004, and in the area of Nabatiyeh on Sunday 10 April 2004. Further, the numbers that mobile 165 and Yellow 669 contacted during these cell activations are linked to Mr Ayyash's family and business associates.

3020. In particular, on 17 February 2004, Yellow 669 called a mobile linked to Mr Ayyash's brother, Ali, and brother-in-law, Mr Ali Zaarour while using NAAMEH1. Mobile 165 connecting to Naameh_B received a call from mobile 617 linked to Mr Jaber's car repair shop. Before and after these calls, the two mobiles had calls with numbers which were also in contact with Mr Ayyash's mobile 935.

3021. On Sunday 10 April 2004, at 17:08 and at 17:11, both mobile 165 and Yellow 669 called mobile 333 linked to Mr Hussein Zaarour, the brother of Mr Ayyash's brother-in-law,

Mr Ali Zaarour. Later, mobile 165 had contacts with Mr Ayyash's brother-in-law, Mr Mohammed Badreddine, a number linked to Mr Jaber and his car workshop, Mr Hussein Zaarour, and received calls from Mr Ayyash's sister-in-law, Ms Bassima Al-Hajj. Yellow 669 had contacts with other Yellow mobiles.

3022. The mobiles' calls with Mr Ayyash's family, including Mr Hussein Zaarour, and Mr Donaldson's evidence on the two mobiles' common movements cumulatively support the inference that—notwithstanding the 10.8 kilometres average distance between the predicted best server coverage areas of NAAMEH1 and Naameh_B, and their activations within 51 seconds—Mr Ayyash was using Yellow 669 for the calls with his family and business associate. Regarding number 617 associated with Mr Jaber, the Trial Chamber received evidence that multiple people may have used this number.

3023. For three pairs of calls on 10 April 2004, analysed above, mobile 165 and Yellow 669 activated Nabatieh_C and HAROUF1 separated by periods of time ranging from around three to five minutes. Similar cell activations occurred on Sunday 27 March 2004, when mobiles 165 and Yellow 669 activated Nabatiyeh_C and HAROUF3 around seven minutes apart. Based on the average distance between the predicted coverage areas of the two cells, this may have been inconsistent with one person using the mobiles.

3024. However, the Trial Chamber received evidence from Mr Philips about the potential coverage of the Nabatiyeh_C and Nabatiyeh_D cells near Harouf. This is based on Touch's drive tests in 2006 on the road between Harouf and Nabatiyeh, which discovered that Nabatieh_C actually provided the best coverage along that road. The Trial Chamber has been satisfied with Mr Philips's explanation as to how someone using a mobile near Harouf could connect to either Nabatieh_C or Nabatieh_D.⁶⁰¹⁹

3025. On Friday 13 February 2004, from 13:22 to 14:10, the cell activation pattern of mobile 165 and Yellow 669 seems to show movement of the mobiles from Sidon to Beirut. On Saturday 2 April 2004, similar travel emerges but in the opposite direction from southern Beirut

⁶⁰¹⁹ See sub-section (B) (1) (d) 'Personal mobile 165'.

(MIKAEL2, BorjBrajneh-II_A) to near the airport (MEA1, MATAR6) and further south (KHALDE1, Barja_C).

3026. Alfa's KHLADE1 and KHLADE3 and Touch's Barja_C provide predicted coverage to a highway on Lebanon's western coast connecting Sidon and Beirut, which may explain the calculated speed to travel the average distance between the KHALDE and the Barja cells within the time between calls (145.7 and 117.6 kilometres per hour). However, the Trial Chamber did not receive any evidence from either Mr Philips or Mr Donaldson, which would allow it to conclude that the two mobiles may have been travelling in concert. Furthermore, Yellow 669 contacted numbers which are either unattributed or anonymous Yellow mobiles.

3027. In conclusion, the Trial Chamber notes that mobile 165 and Yellow 669 connected to overlapping cells within ten minutes between 25 December 2003 and 8 February 2004 eighteen times, between 17 February and 27 March 2004 twenty-five times, between 30 March and 2 April 2004 six times, and between 3 and 17 April 2004 eleven times, which strongly support the inference that the two mobiles had a common user.⁶⁰²⁰ The two mobiles' activations of overlapping cells within ten minutes on 60 occasions in Yellow 669's attribution period from 23 December 2003 to 18 April 2004 weigh in favour of finding that Mr Ayyash was the principle user of that mobile.

3028. However, without Mr Philips's expert opinion regarding cell activations on 13 February and 2 April 2004, the evidence is insufficient to support a finding on single use beyond reasonable doubt. The Trial Chamber finds, based on the preponderance of the evidence, namely the common movement and the number of overlapping cell activations, that it is more likely that Mr Ayyash was Yellow 669's principal user. As set out below, during the 2004 Hajj, more specifically from at least 29 January to the morning of 8 February 2004, for four calls to an Alfa service number someone other than Mr Ayyash used it.⁶⁰²¹

3029. The attribution of Yellow 669 is relevant to Mr Donaldson's comparison of this mobile's dormant state between 28 January and 8 February 2004 to the activities of network mobiles Blue 233, Red 741 and Green 300 between 15 and 28 January 2005, to support the Prosecution's

⁶⁰²⁰ Annex F of the judgment.

⁶⁰²¹ See sub-section (B) (2) (g) (iii) 'Findings', below.

assertion that Mr Ayyash travelled to Mecca to perform the Hajj pilgrimage in 2004, but remained in Lebanon during the Hajj in 2005.

3030. However, even if someone other than Mr Ayyash used Yellow 669, it does not affect the Trial Chamber's findings regarding the attribution of Yellow 294, Blue 233, Green 300 and Red 741 to Mr Ayyash.

(b) Yellow 294

3031. The Prosecution attributes Yellow 294 to Mr Ayyash from 29 May 2004 to 7 January 2005. This mobile is alleged to have been used in preparations for the attack on Mr Hariri, including surveillance of him.⁶⁰²² The Prosecution uses the mobile's contact and geographical profile, and its co-location with Mr Ayyash's personal mobile 935, to prove that he was using it.

i. Evidence

a. Subscriber details

3032. Yellow 294 was a pre-paid Alfa mobile that was activated on 15 January 2003 and deactivated on 5 May 2005.⁶⁰²³ The subscriber's name was 'Ghamlouch Abdel Majid' with the address of Jamous Street, Khalil Building 2nd floor, Beirut.⁶⁰²⁴ According to Mr Gary Platt, the Prosecution could not find and interview Mr Abdel Majid.⁶⁰²⁵

b. Attribution period

3033. Mr Andrew Donaldson attributed Yellow 294 to Mr Ayyash from 29 May 2004 to 7 January 2005. During this period the mobile's contact and geographical profiles were consistent, and it used one handset. Before and after this period, the mobile was used with different handsets, and the most frequently used cells were mostly distinct from those it activated during the

⁶⁰²² Amended consolidated indictment, para. 15 (d).

⁶⁰²³ Exhibit P887 (Alfa subscriber note for Yellow 294); exhibit P797 (Extract from Alfa subscriber database), p. 4 (ERN D0472167). *See also* exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 321, p. 136 (table of subscriber details); exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1131-1132.

⁶⁰²⁴ Exhibit P887; exhibit P797, p. 4 (ERN D0472167). *See also* exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 322, p. 136 (table of subscriber details); exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 1131.

⁶⁰²⁵ Exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 1131; Gary Platt, T. 6 April 2016, p. 36.

attribution period. After 7 January 2005, Yellow 294 was no longer in contact with any of the Yellow network mobiles that it had been in contact with during the attribution period.⁶⁰²⁶

c. Contact profile

3034. According to Mr Donaldson, Yellow 294 was in contact with 13 other Yellow network mobiles, which accounted for 85 per cent of its 615 calls.⁶⁰²⁷ Mr Platt also examined Yellow 294's activity and found that, excluding contact with service numbers, it was involved in 552 calls during the attribution period. Eighty-eight per cent or 522 of those calls, were with other Yellow network mobiles.⁶⁰²⁸ Every other Yellow network mobile was in contact with Yellow 294.⁶⁰²⁹

3035. Outside of the contacts with the Yellow network mobiles, Yellow 294 was in contact with two landlines ending in 361 and 362, subscribed to the Protel company.⁶⁰³⁰ According to Mr Donaldson, Yellow 294 called these two landlines 59 times during the attribution period, accounting for 9.6 per cent of all of Yellow 294's calls. These two landlines were also in contact with Mr Ayyash's personal mobiles 935, 165 and 170, and Yellow 669.⁶⁰³¹

3036. Mr Platt noted that Yellow 294 also called Al-Rassoul Al-Aazam Hospital, known in English as the Great Prophet Hospital, twice during the attribution period.⁶⁰³²

3037. Yellow 294 received text messages from service numbers and from Yellow 513 on 12 November 2004; however, according to Mr Platt, the Prosecution does not have the content of these messages.⁶⁰³³

⁶⁰²⁶ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 323-329.

⁶⁰²⁷ Exhibit P1240, pp 33-53; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 334.

⁶⁰²⁸ Exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 1135-1138.

⁶⁰²⁹ Exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 1116.

⁶⁰³⁰ Exhibit P1630 (Subscriber note for landline 361); exhibit P1635; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 335; exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 1141.

⁶⁰³¹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 290, 335-336; Andrew Donaldson, T. 19 July 2017, pp 34-39.

⁶⁰³² Exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 1142; exhibit P1606 (Subscriber note for landline 206).

⁶⁰³³ Exhibit P1240, p. 47; exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 1134.

d. Geographic profile

3038. Mr Donaldson attributed Yellow 294 to Mr Ayyash predominantly through its geographical profile and co-location analysis.⁶⁰³⁴ He considered two additional attribution points, namely that the mobile ceased to use the cells providing the predicted best server coverage for the Civil Defence station in Markaba at the time of Mr Ayyash's transfer to Doueir on 1 November 2004, and the mobile's activity on 20 November 2004, when Mr Ayyash had a car accident.⁶⁰³⁵

3039. Mr Donaldson explained that the cell towers most frequently used by Yellow 294 and personal mobile 935—SFEIR2 and NABATI1—were identical.⁶⁰³⁶ HADATH1 and different cell sectors of HAROUF and SFEIR ranked in the first five most often activated cells for Yellow 294 and mobile 935.⁶⁰³⁷

3040. Yellow 294's most frequently used cell towers were in the area of Mr Ayyash's residences in Hadath and Harouf.⁶⁰³⁸

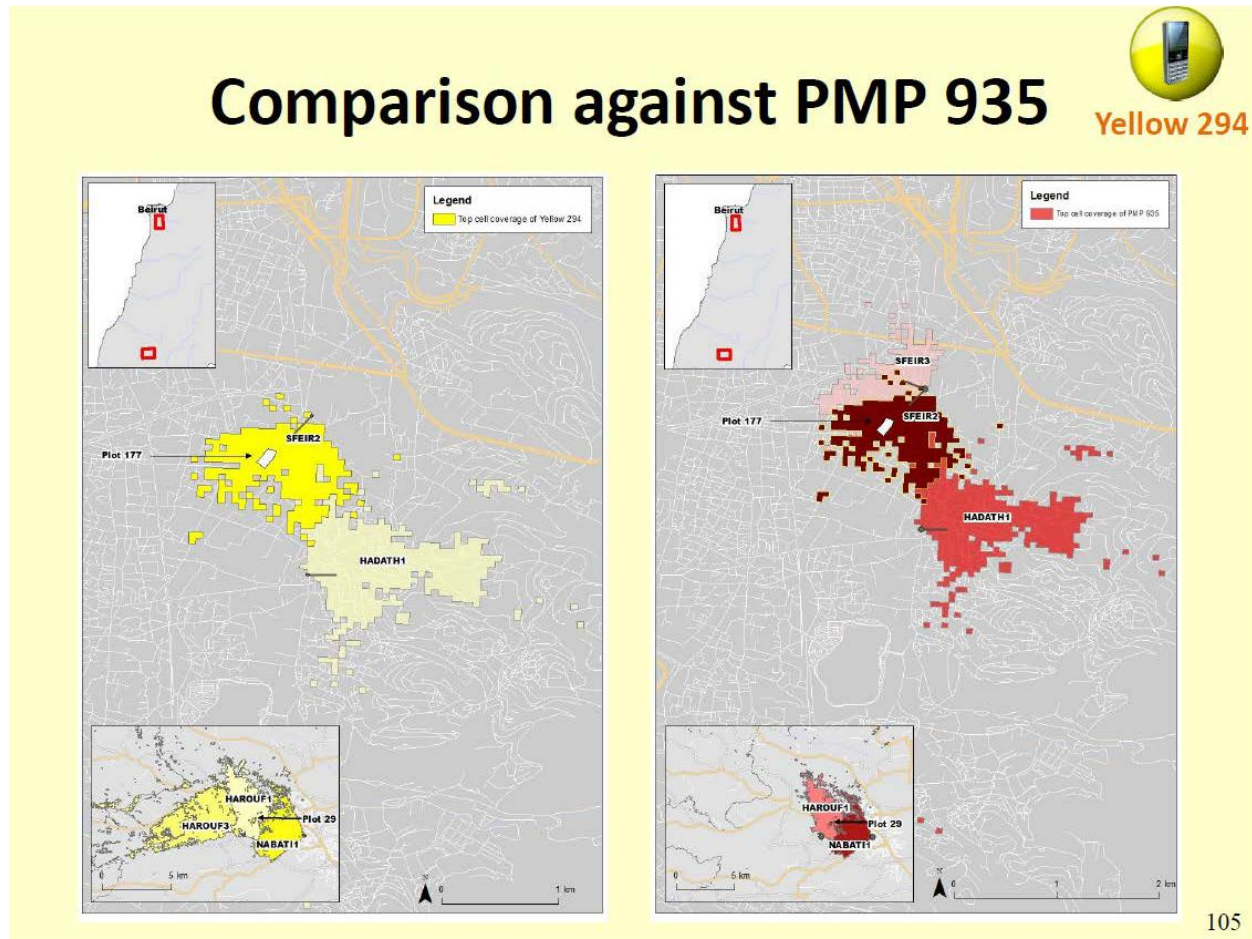
⁶⁰³⁴ Andrew Donaldson, T. 19 July 2017, p. 34.

⁶⁰³⁵ Andrew Donaldson, T. 19 July 2017, p. 34.

⁶⁰³⁶ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 339-340.

⁶⁰³⁷ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 340.

⁶⁰³⁸ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 373, 696; Andrew Donaldson, T. 19 July 2019, pp 39-41.



Slide 105 of Mr Donaldson's PowerPoint presentation—exhibit P2025

3041. Mr Donaldson provided evidence that both mobile 935 and Yellow 294, among other mobiles, were active while Mr Ayyash was employed at the Markaba Civil Defence station between December 2003 and 30 October 2004.⁶⁰³⁹ Yellow 294 and mobile 935 activated MHAIBI1—located in the area of the village of Markaba—with its last activation on 30 October 2004, which was the final day he was stationed there before his transfer to the Doueir station.⁶⁰⁴⁰ During the five months when Mr Ayyash was at the Markaba Civil Defence station and

⁶⁰³⁹ Andrew Donaldson, T. 19 July 2017, pp 59-60; exhibit P1160; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 637-642.

⁶⁰⁴⁰ Andrew Donaldson, T. 19 July 2017, p. 60; exhibit P1162; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 153-154, 640-642.

which coincided with the attribution period, Yellow 294 activated MHAIBI1 12 times while mobile 935 activated MHAIBI1 35 times, primarily between September and October 2004.⁶⁰⁴¹

3042. Mr Donaldson considered that Mr Ayyash's accident involving his BMW served as a further attribution point for Yellow 294. This mobile and mobile 935 were both used on 20 November 2004 after Mr Ayyash had an accident in his BMW.⁶⁰⁴² Further evidence about the accident is above in sub-section (B) (1) (f) 'Personal mobile 935'. Mr Donaldson stated, from analysing the relevant call sequence tables on the day of the accident, that Yellow 294 had a series of calls with Yellow 457 and Yellow 932, interposed in time with calls made to and received from mobile 935, activating cells in the area of the accident.⁶⁰⁴³

3043. Cell activations of Yellow 932 show that after receiving a call from Yellow 294 at 22:20 it moved from south Beirut to the area of the accident, first using Naameh_B then Rmalleh_C. By 00:35, Yellow 294 had moved to Furn al Shebak, near Beirut Airport, where the tow truck company had a depot, and Yellow 932 was back in south Beirut.⁶⁰⁴⁴ Mr Donaldson testified that this is consistent with Mr Ayyash collecting his vehicle from that depot.⁶⁰⁴⁵ He demonstrated these calls in the following map:

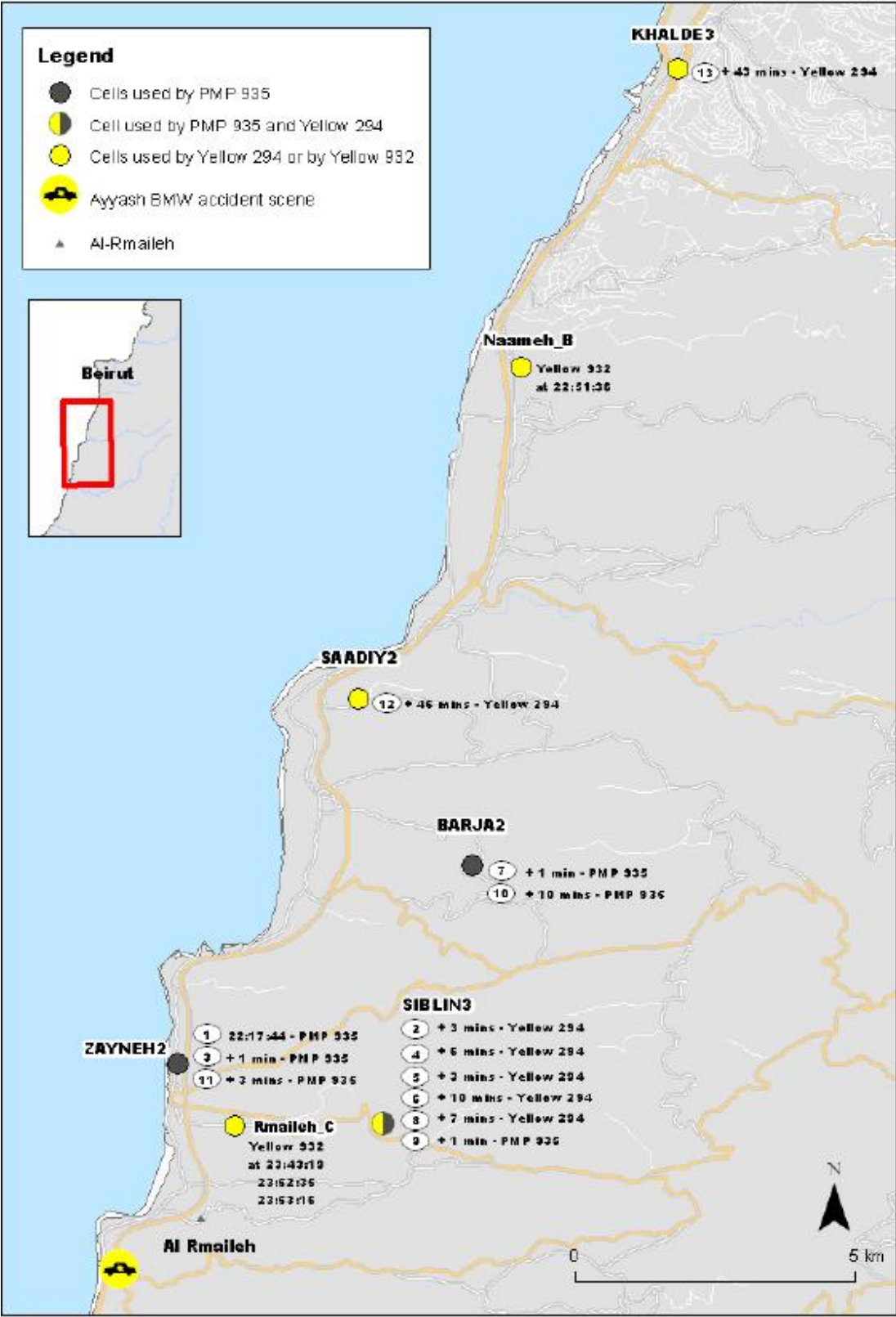
⁶⁰⁴¹ Exhibit P1240, pp 37, 39-40, 43-44; exhibit P1261, pp 4, 9-10, 13, 21, 43, 52, 54, 60, 64, 68, 73.

⁶⁰⁴² Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 618; Andrew Donaldson, T. 19 July 2017, pp 73-74, 80-81.

⁶⁰⁴³ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 619-627.

⁶⁰⁴⁴ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 618-627; exhibit P1240, p. 48; exhibit P1243 (Call sequence table of Yellow 932), p. 48; exhibit P698 (Statements of Witness PRH086), p. 8 (ERN 60308757), para. 11; Andrew Donaldson, T. 19 July 2017, pp 80-82.

⁶⁰⁴⁵ Andrew Donaldson, T. 19 July 2017, p. 82.



Attribution report of Andrew Donaldson regarding Mr Ayyash—exhibit P2026.2, p. 253

e. Single user analysis—Yellow 294 and mobile 935

3044. Yellow 294's attribution period to Mr Ayyash of 29 May 2004 to 7 January 2005 overlapped with that of Mr Ayyash's mobile 935, namely of 31 May 2004 to 13 January 2005.⁶⁰⁴⁶

3045. It also partly shared its attribution period with that of Blue 322 (18 October 2004 to 27 December 2004) and Green 300 (30 September 2004 to 14 February 2005).⁶⁰⁴⁷ The single user analysis of Yellow 294 and mobile 935 is set out below. The single user analysis of Yellow 294 with Blue 322 and Green 300 is set out at paragraphs 3084-3096, 3173-3189 below.

3046. Further, Mr Philips analysed one pair of calls of Yellow 294 and Red 741 on 4 January 2005. The Trial Chamber however will not consider this evidence because Red 741's attribution period started on 14 January 2005, and therefore did not overlap with that of Yellow 294.⁶⁰⁴⁸

3047. Yellow 294 was never in contact with personal mobile 935 during the relevant period.⁶⁰⁴⁹ There was one overlapping call involving both mobiles, on 19 October 2004. Yellow 294 called Yellow 932 from 16:01:45 to 16:03:14, while mobile 935 called a mobile number, ending in 617, linked to Mr Ayyash's business associate, Mr Ghaleb Jaber and his car mechanic's shop, at 16:02:26 for 26 seconds.⁶⁰⁵⁰ Both mobiles activated MIKAEL3, which is in the Hadath area.⁶⁰⁵¹

3048. Mr Philips analysed 44 pairs of calls in relation to Yellow 294 and mobile 935 on 14 days between September 2004 and January 2005. These were: 1, 9 and 19 October; 6 and 10 November;⁶⁰⁵² 21-23, 27-29 and 31 December 2004; and 2 and 4 January 2005.⁶⁰⁵³ Mr Philips

⁶⁰⁴⁶ See sub-section (B) (1) (f) (iii) 'Findings'.

⁶⁰⁴⁷ See sub-sections (B) (2) (c) (iii) 'Findings' and (B) (2) (e) (iii) 'Findings'.

⁶⁰⁴⁸ See sub-section (B) (2) (f) (iii) 'Findings'.

⁶⁰⁴⁹ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 57, 66, 86, 203-206; exhibit P1240, pp 33-53; exhibit P1261, pp 1-97; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 345; Andrew Donaldson, T. 19 July 2017, p. 42.

⁶⁰⁵⁰ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 52, 57; exhibit P1259 (Call sequence table of ten numbers—Mr Ayyash), p. 294. See above, at para. 2686.

⁶⁰⁵¹ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), p. 52; exhibit P1259, p. 294.

⁶⁰⁵² In Mr Philips's analysis of the calls involving Yellow 294 and mobile 935 on 10 November 2004, there is one additional pair of calls which occur within one hour of each other where the users activate cells SFEIR2 and HADATH1—which Mr Philips does not comment on. Therefore, the Trial Chamber has not included it in the relevant statistics for the single user analysis for these two mobiles, exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), p. 64.

⁶⁰⁵³ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 40-41, 46, 48-49, 52-53, 60-64, 68, 71-74, 76, 78-81, 83-84, 87-89; exhibit P1259, pp 282-283, 288-289, 294-295, 301-304, 322-330.

determined that 17 of the analysed pairs were in the category of ‘could be co-located’⁶⁰⁵⁴ and 27 fell in the category of ‘would not preclude co-location’.⁶⁰⁵⁵ On eight occasions, the two mobiles activated the same cells, SFEIR2, NABATI1, MIKAEL3, ROUEIS3, HARA3, MAAROB1, RAHHAL1 and RADOUF3, within less than five minutes, and on an additional five occasions, they used identical cells within ten minutes.⁶⁰⁵⁶

3049. For example, the map and call sequence table extract below show two pairs of calls on 1 October 2004 involving Yellow 294 and mobile 935 (calls 1 and 2 and calls 4 and 5) and the cells activated during the calls by both mobiles. Mr Philips explained that the first pair of calls was separated by approximately 9.75 minutes and used cells HADATH1 and SCHARL2, which had some contiguous best server coverage, and thus ‘would not preclude the mobiles from being co-located’. Mr Philips concluded that calls 4 and 5, made within 8.75 minutes of each other and activating the same cell, SFEIR2, ‘could be co-located’.⁶⁰⁵⁷

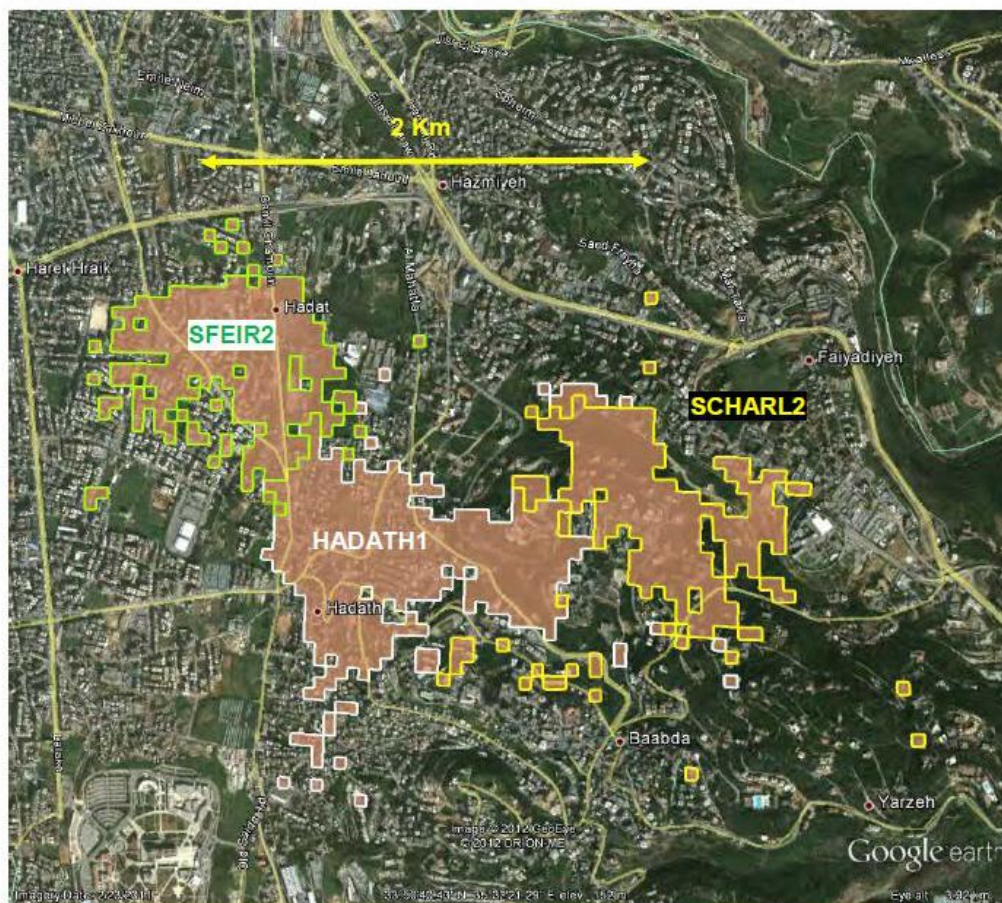
⁶⁰⁵⁴ On 1, 9, 19 October, 10 November, 21, 23, 28-29 December 2004, and 2 January 2005.

⁶⁰⁵⁵ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 40-41, 46, 48-49, 52-53, 60-64, 68, 71-74, 76, 78-81, 83-84, 87-89; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 21-27; John Edward Philips, T. 21 April 2017, pp 27-28, 33-34, 37-39, T. 24 April 2017, p. 27.

⁶⁰⁵⁶ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 40-41, 49, 52-53, 64, 68, 73-74, 76, 79-83, 87; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 21-27.

⁶⁰⁵⁷ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), p. 40.

01/10/2004	15:01:44	3345457	3205294	N/A	Voice	21	35135040356036	01F7	HADATH1
01/10/2004	15:11:35	668	3523935	3488888	SMS	0	352505002269580	0442	SCHARL2
01/10/2004	15:11:38	179	3523935	3488888	SMS	0	352505002269580	0442	SCHARL2
01/10/2004	15:13:34	463	3523935	96596000303	SMS	0	352505002269580	0410	SFEIR2
01/10/2004	15:22:26	3205294	3971933	N/A	Voice	19	35135040356036	0410	SFEIR2



*Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash—
exhibit P1111, p. 40*

3050. Mr Philips analysed another example of possible co-location between Yellow 294 and mobile 935, as well as Green 300, on 29 December 2004. The calls shown in the map below occurred in a period under 59 minutes and all activated the same cell, RAHHAL1, and therefore Mr Philips concluded the mobiles could be co-located over this period.⁶⁰⁵⁸ Mr Donaldson provided evidence that the cells that the three mobiles activated, RAHHAL1 and MAAROB1, were not

⁶⁰⁵⁸ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), p. 83; John Edward Philips, T. 21 April 2017, pp 38-39; exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips), slides 246-249.

among their most frequently used cells, which he considered consistent with the three mobiles carried by the same person on that day.⁶⁰⁵⁹

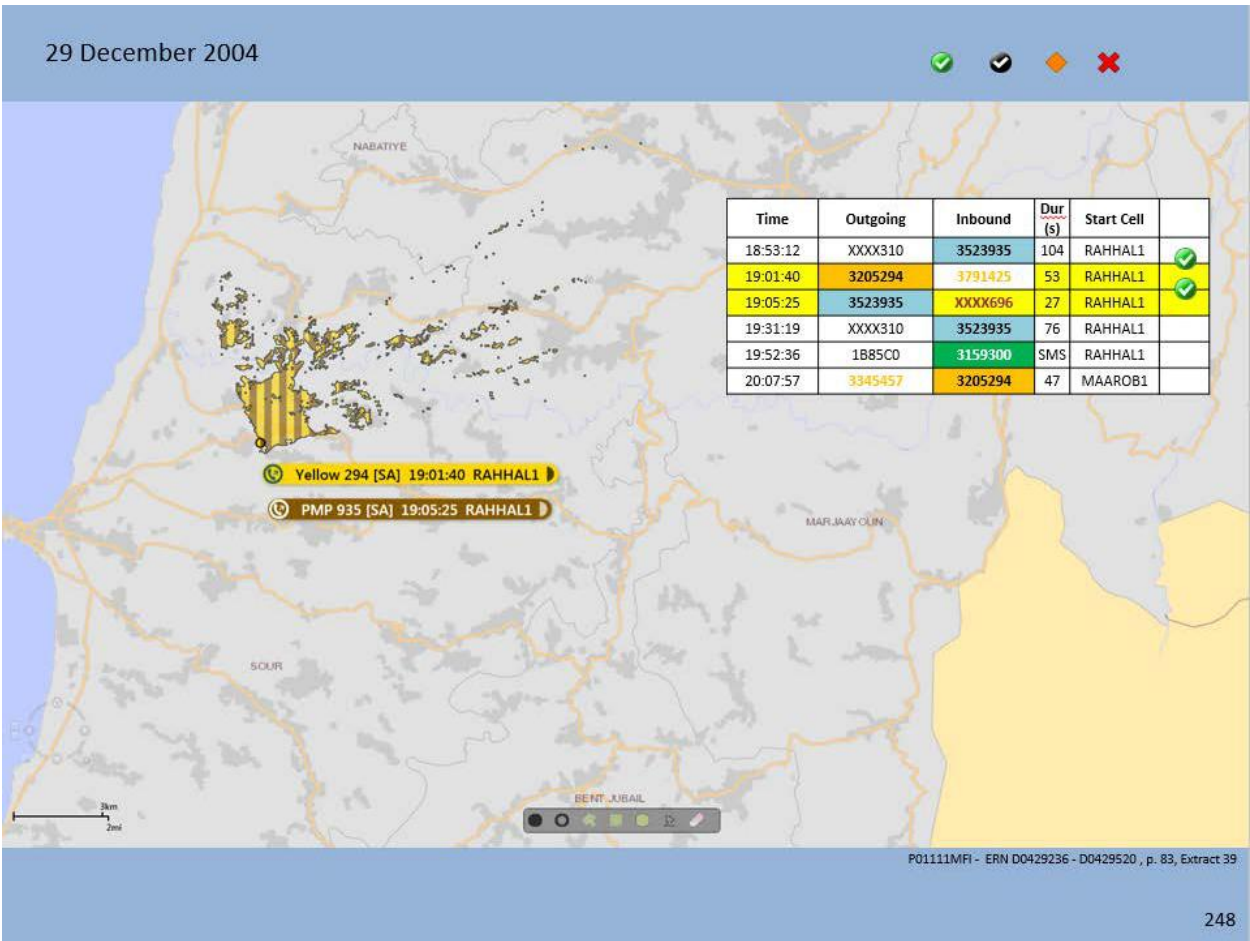


Exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips), slide 248

3051. Mr Donaldson analysed a broader period shared between Yellow 294 and mobile 935, namely between 31 May 2004 and 7 January 2005,⁶⁰⁶⁰ whereas Mr Philips’s analysis spans from September 2004 to January 2005.⁶⁰⁶¹ Mr Donaldson gave evidence that there were 137 days on

⁶⁰⁵⁹ Andrew Donaldson, T. 24 August 2017, pp 38-39; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 494, annex D, p. 346. See also exhibit P2025.1 (Additional co-location presentation, Andrew Donaldson), slides 37-39.

⁶⁰⁶⁰ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 343-344, 375.

⁶⁰⁶¹ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 14-15, 34-89, 203-206.

which the two mobiles were both used.⁶⁰⁶² On 163 occasions where the mobiles were used within ten minutes of each other, 52 per cent of the calls activated the same cell, 16 per cent activated cell towers less than one kilometre apart and another 16 per cent activated cell towers less than two kilometres apart.⁶⁰⁶³

3052. Mr Donaldson concluded that Yellow 294 moved in concert with mobile 935 on at least 135 of the 137 days.⁶⁰⁶⁴ In his report, he highlighted nine days of common movements of Yellow 294 and mobile 935, on 18-19, 25-26, 30 December 2004, 1, 3, and 5-6 January 2005, and illustrated these mobiles' travels from Harouf to Beirut on 19 December 2004, and from Keserwan, to the north of Beirut, to Harouf, in the south, on 26 December 2004.⁶⁰⁶⁵

3053. Mr Donaldson noted two potential inconsistencies.⁶⁰⁶⁶ On 18 August 2004 at 19:15:19 and 19:15:57, Yellow 294 activated AITAT2, south-east of Beirut, and one minute later, at 19:16:58, and then again at 19:18:35, mobile 935 used a cell mast 12.7 kilometres away in west Beirut, more specifically the CARACA2 cell.⁶⁰⁶⁷ However, at 19:21:53, the same mobile used RNAMAN3, which provided predicted best server coverage adjacent to AITAT2. Then, at 19:26:16, mobile 935 connected to MANSOU3.⁶⁰⁶⁸ The following map created in the electronic presentation of evidence software demonstrates these calls:

⁶⁰⁶² Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 348; Andrew Donaldson, T. 19 July 2017, pp 41-42.

⁶⁰⁶³ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 348, 377; Andrew Donaldson, T. 19 July 2017, p. 43.

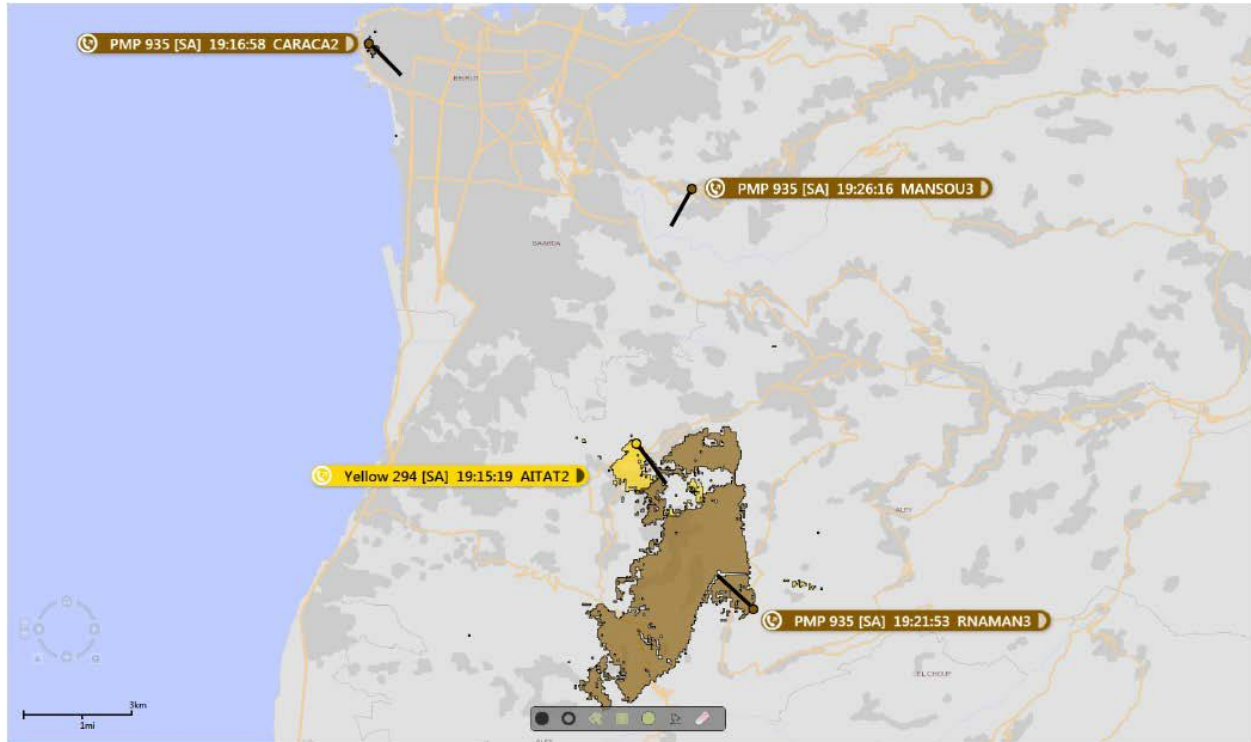
⁶⁰⁶⁴ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 351, annex D, pp 303-312; Andrew Donaldson, T. 19 July 2017, p. 51.

⁶⁰⁶⁵ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash) paras 352-362, annex D, pp 303-312; Andrew Donaldson, T. 24 August 2017, pp 30-32, 36-38. *See also* exhibit P2025.1, slides 10-35.

⁶⁰⁶⁶ Andrew Donaldson, T. 19 July 2017, pp 42-43; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 351, 376.

⁶⁰⁶⁷ Andrew Donaldson, T. 19 July 2017, p. 51; exhibit P1259 (Call sequence table of ten numbers—Mr Ayyash), p. 251; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 351.

⁶⁰⁶⁸ Andrew Donaldson, T. 19 July 2017, pp 51-52, T. 20 July 2017, pp 62-63, T. 22 August 2017, pp 6-7; exhibit P1259, p. 251; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 351. *See also* exhibits P2108 (Maps of calls on 18 August 2004 by Yellow 294 and mobile 935), P2108.1 (Maps of calls on 18 August 2004 by Yellow 294 and mobile 935), p. 7.



Maps of calls on 18 August 2004 by Yellow 294 and mobile 935—exhibit P2108.1, p. 1

3054. According to Mr Donaldson, the distance between CARACA2 and RNAMAN3 could not be travelled in four minutes.⁶⁰⁶⁹ He could not explain these cell activations, but added that before it occurred, the two mobiles were using the same cell (MIKAEL3), and cells in close proximity (MIKAEL3 and HARA2) for calls made not more than 20 minutes apart.⁶⁰⁷⁰ As the azimuths of MANSOU3 and RNAMAM3 were generally facing each other in a rural and mountainous area, Mr Donaldson did not find these cell activations anomalous, but acknowledged that this determination falls within Mr Philips's expertise. Mr Philips, however, did not provide evidence about this specific occurrence.⁶⁰⁷¹

3055. Call data records of mobile 935 show a similar inconsistency on 13 November 2004, namely that mobile 935 appeared to have travelled 27 kilometres, the distance between two cell

⁶⁰⁶⁹ Andrew Donaldson, T. 19 July 2017, pp 52-53.

⁶⁰⁷⁰ Andrew Donaldson, T. 19 July 2017, pp 52-55, 57-58, T. 20 July 2017, pp 62-63; exhibit P1259, p. 250. *See also* exhibit P2108; exhibit P2108.1, pp 5-6.

⁶⁰⁷¹ Andrew Donaldson, T. 19 July 2017, pp 52-53, T. 22 August 2017, pp 6-7; exhibit P2108.1, p. 7. *See also* exhibit P2109 (Google earth maps including topography). Alfa did not provide the predicted best server coverage of MANSOU3, Andrew Donaldson, T. 22 August 2017, p. 7. As Mr Philips analysed calls between 30 September 2004 and 14 February 2005, he therefore did not testify on this anomaly.

masts, BAYDAR1 and HARA1, that it used for two calls five minutes apart from each other, at 18:57 and 19:02.⁶⁰⁷² Meanwhile, Yellow 294 used the HARA1 cell at 18:59:40.⁶⁰⁷³ Mr Donaldson could not explain these cell activations.⁶⁰⁷⁴ However, he demonstrated that the mobiles were using the same cells for close-in-time calls made some 20 minutes earlier and within minutes after this ostensible anomaly.⁶⁰⁷⁵

ii. Submissions

3056. The Prosecution submits that Mr Ayyash was the user of Yellow 294 from 29 May 2004 to 7 January 2005.⁶⁰⁷⁶ The primary method for attributing Yellow 294 to Mr Ayyash is through co-location analysis with mobile 935.⁶⁰⁷⁷ Other evidence supporting the attribution of the network mobiles to Mr Ayyash includes comparison of geographic profiles with the personal mobiles and handset analyses.⁶⁰⁷⁸

3057. The Prosecution argues that the pattern of use of Yellow 294 and mobile 935 shows a ‘striking correspondence’ to two known events in Mr Ayyash’s life. These are, first, that both mobiles activated cells providing coverage to Mr Ayyash’s workplace at the Markaba Civil Defence station only while he was stationed there and never thereafter.⁶⁰⁷⁹ And, second, that the mobiles were also used in the area and at the time of the BMW accident on 20 November 2004.⁶⁰⁸⁰

⁶⁰⁷² Andrew Donaldson, T. 19 July 2017, pp 53-54, T. 22 August 2017, p. 17; exhibit P1261, p. 76; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 351.

⁶⁰⁷³ Andrew Donaldson, T. 19 July 2017, pp 53-54; exhibit P1240, p. 47; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 351. *See also* exhibit P2110 (Maps of calls on 13 and 14 November 2004 by Yellow 294 and mobile 935), pp 3-4.

⁶⁰⁷⁴ Andrew Donaldson, T. 19 July 2017, p. 54.

⁶⁰⁷⁵ Andrew Donaldson, T. 19 July 2017, pp 55-56, T. 22 August 2017, p. 17; exhibit P1259, p. 305. *See also* exhibit P2110, pp 2-4. These close-in-times calls were made within three minutes and five minutes, respectively.

⁶⁰⁷⁶ Prosecution final trial brief, para. 267.

⁶⁰⁷⁷ Prosecution final trial brief, paras 210, 270-274.

⁶⁰⁷⁸ Prosecution final trial brief, para. 212.

⁶⁰⁷⁹ Prosecution final trial brief, paras 232, 271-274; Prosecution closing submissions, T. 12 September 2018, pp 97-99.

⁶⁰⁸⁰ Prosecution final trial brief, paras 271, 275-280; Prosecution closing submissions, T. 12 September 2018, pp 95, 97-99.

3058. The Ayyash Defence submits that the evidence cannot attribute mobile 935 to Mr Ayyash beyond reasonable doubt.⁶⁰⁸¹ Therefore, it argues, the co-location evidence did not establish that Mr Ayyash was the user of Yellow 294.⁶⁰⁸²

iii. Findings

3059. The subscriber information and the contact profile do not assist in identifying the user of Yellow 294. The mobile operated as part of a network.⁶⁰⁸³

3060. Yellow 294's geographical profile shared common features with that of Mr Ayyash's personal mobile 935. The Trial Chamber has found that he was its principal user between 31 May 2004 and 13 January 2005.

3061. The common geographical features are the most frequently connected cells around Mr Ayyash's registered residences in Hadath and Harouf, cells in Markaba when Mr Ayyash was employed there, and cells activated on 20 November 2004 in an area where Mr Ayyash had a car accident. However, some caution must be exercised here as the similarities shown in the two mobiles' most frequently used cells are based on partially available cell data.

3062. Mr Philips concluded that the two mobiles may have co-located or that the calls would not preclude co-location on 14 days between Friday 1 October 2004 and Tuesday 4 January 2005. The 17 instances of possible co-location on nine days favour, in the Trial Chamber's view, that the two mobiles had a single user. This is also supported by the eight pairs of calls that activated the same cells within five minutes, and the five pairs of calls using identical cells within ten minutes. Furthermore, Mr Donaldson's analysis also supports this conclusion.

3063. The calling patterns are also consistent with a single person using Yellow 294 and mobile 935. In particular, there were no contacts between the two mobiles and only one instance of an overlapping call on Tuesday 19 October 2004—where mobile 935 made an outgoing call while Yellow 294 was still on an ongoing call—for an overlapping period of 26 seconds.

⁶⁰⁸¹ See paras 2856-2861.

⁶⁰⁸² Ayyash Defence final trial brief, paras 670-671; Ayyash Defence closing submissions, T. 17 September 2018, pp 98-103, 116-118.

⁶⁰⁸³ See chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles', (F) (7) 'Findings'.

3064. However, Mr Philips acknowledged that even a few instances of overlapping calls could be consistent with a single person using both mobiles, and the mobiles used the same cells for these calls. The odd cell activations on Wednesday 18 August and Saturday 13 November 2004 that Mr Donaldson noted do not appear as dislocation of the two mobiles. On both days, only one mobile alone, mobile 935, as opposed to two, activated distant cells within a short time. As such, these activations do not impact the single user analysis of Yellow 294 and mobile 935.

3065. The Trial Chamber is therefore satisfied that a single person used Yellow 294 and mobile 935 in their overlapping period of use. Based on the cumulative weight of the consistent handset use and consistent contact and geographic profiles, the Trial Chamber is also satisfied with Mr Donaldson's determination of Yellow 294's attribution period.

3066. The Trial Chamber has found that mobile 935's principal user from Sunday 1 August 2004 to Thursday 13 January 2005 was Mr Ayyash.⁶⁰⁸⁴ The number of possible co-locations, especially those that involved calls made within short periods, and or occurred outside Beirut, eliminates the possibility of any coincidence that someone else other than the principal user of mobile 935 used Yellow 294.

3067. The Trial Chamber therefore finds that the only reasonable inference based on the evidence is that Mr Ayyash was the user of Yellow 294 from Saturday 29 May 2004 to Friday 7 January 2005. It is therefore satisfied of this beyond reasonable doubt.

(c) Blue 322

3068. Blue 322, according to the amended consolidated indictment, was used by Subject 14 for preparations for the attack on Mr Hariri, including some surveillance.⁶⁰⁸⁵ The Prosecution's final trial brief, however, states that while Subject 14 was its user as of Thursday 6 January 2005, Mr Ayyash used it between Monday 18 October 2004 and Monday 27 December 2004.⁶⁰⁸⁶

⁶⁰⁸⁴ See sub-section (B) (1) (f) (iii) 'Findings'.

⁶⁰⁸⁵ Amended consolidated indictment, paras 15 (c), 18.

⁶⁰⁸⁶ Prosecution final trial brief, annex E, p. 2; Prosecution closing submissions, T. 11 September 2018, p. 31. *See also* exhibit P1936 (Expert report of John Edward Philips – Single user analysis in relation to Blue 322, Blue 324 and Blue 585), p. 3; John Edward Philips, T. 21 April 2017, pp 27, 42.

3069. To prove that Mr Ayyash was using it, the Prosecution relied on its co-location with his personal mobile 935 and Yellow 294.

i. Evidence

a. Subscriber details

3070. According to Touch's records, Blue 322 was activated on 4 October 2004 and deactivated on 5 October 2005.⁶⁰⁸⁷ The person whose name and identification documents were used on the subscriber form stated that he never purchased this SIM card.⁶⁰⁸⁸

b. Attribution period

3071. The Prosecution final trial brief states that while Subject 14 was its user as of 6 January 2005, Mr Ayyash used it between 18 October 2004 and 27 December 2004.⁶⁰⁸⁹ The Trial Chamber received evidence that Blue 322 was first used on 18 October 2004.⁶⁰⁹⁰ According to Mr Philips, the mobile became inactive after 27 December 2004, and until that date, it is consistent with having the same user as mobile 935 and Yellow 294.⁶⁰⁹¹

c. Single user analysis

3072. Blue 322 (18 October 2004 to 27 December 2004) shared attribution periods with Mr Ayyash's mobile 935 (31 May 2004 to 13 January 2005) and Yellow 294 (29 May 2004 to 7 January 2005), as well as Green 300 (30 September 2004 to 14 February 2005).⁶⁰⁹² The attribution period of Blue 322 does not overlap with that of Yellow 669, Blue 233 and Red 741.⁶⁰⁹³ The evidence on co-location of Blue 322 and Green 300 is analysed in paragraph 3161 below.⁶⁰⁹⁴

⁶⁰⁸⁷ Exhibit P1101, p. 1.

⁶⁰⁸⁸ Exhibit P467 (Subscriber documentation for Blue mobiles), ERN SI-0001710; exhibit P573 (Statement of Witness PRH090), paras 10-15; Witness PRH090, T. 2 September 2015, pp 80-81.

⁶⁰⁸⁹ Prosecution final trial brief, annex E, p. 2; Prosecution closing submissions, T. 11 September 2018, p. 31. *See also* exhibit P1936 (Expert report of John Edward Philips – Single user analysis in relation to Blue 322, Blue 324 and Blue 585), p. 3; John Edward Philips, T. 21 April 2017, pp 27, 42.

⁶⁰⁹⁰ *See* chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles', (E) 'Blue network'.

⁶⁰⁹¹ John Edward Philips, T. 21 April 2017, pp 27, 42; exhibit P1936 (Expert report of John Edward Philips – Single user analysis in relation to Blue 322, Blue 324 and Blue 585), p. 3. Mr Philips also found it consistent with sharing a user with Green 300 during this period. This part of the evidence will be addressed below.

⁶⁰⁹² *See* sub-sections (B) (1) (f) (iii) 'Findings' and (B) (2) (b) (iii) 'Findings'.

⁶⁰⁹³ *See* sub-sections (B) (2) (a) (iii) 'Findings', (B) (2) (c) (iii) 'Findings' and (B) (2) (f) (iii) 'Findings'.

⁶⁰⁹⁴ *See* sub-section (B) (2) (e) (iii) 'Findings'.

3073. Mr Philips, after analysing, mid-trial, the possible co-location of Blue 322, Green 300, Yellow 294 and personal mobile 935, concluded:

Over the period 18th October to 27th December 2004, mobile 3067322 was found to be consistent with being used by the same user as mobiles 3159300, 3205294 and 3523935, and no exceptions were found when 3067322, and any other of the 3 aforementioned mobile phones, were precluded from being co-located.⁶⁰⁹⁵

Blue 322 and mobile 935

3074. Mr Philips analysed 36 pairs of calls in relation to Blue 322 and mobile 935 on 22 days. These days were: 18-23, 25, 27 October, 3, 5, 10, 17, 29 November, and 17-18, 21-27 December 2004.

3075. Mr Philips determined that 26 of the analysed pairs fell into the category of ‘could be co-located’ and the remaining ten ‘would not preclude co-location’.⁶⁰⁹⁶ The 26 pairs of calls falling into Mr Philips’s first category were separated by between one and 56 minutes. Five of these were within five minutes,⁶⁰⁹⁷ and six within ten minutes.⁶⁰⁹⁸

3076. As an example, the call sequence table extract and map below represent three pairings—calls 1 and 2, calls 2 and 3 and calls 4 and 5—of mobile 935 and Blue 322 with their cell activations on the afternoon of Wednesday 20 October 2004. In this example, Mr Philips concluded that the first two pairings could co-locate, while the third ‘does not preclude co-location’.

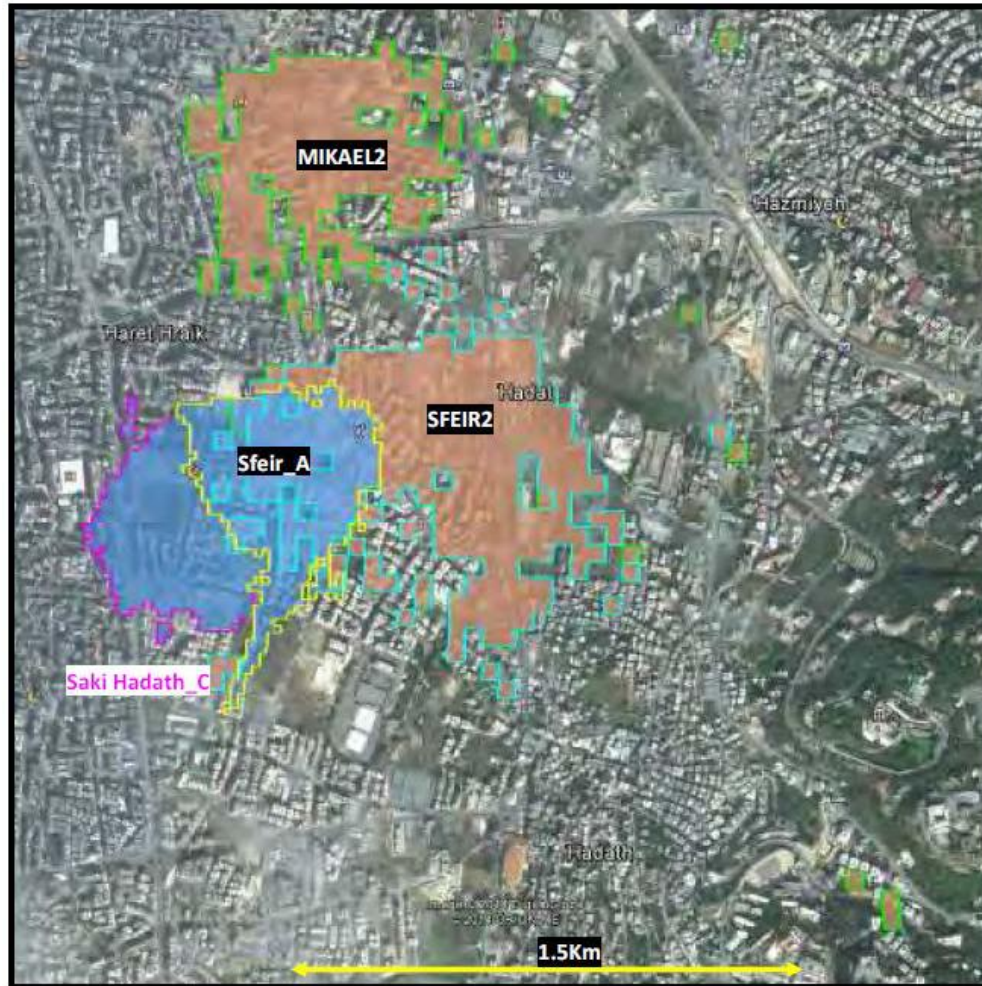
⁶⁰⁹⁵ Exhibit P1936 (Expert report of John Edward Philips – Single user analysis in relation to Blue 322, Blue 324 and Blue 585), p. 3.

⁶⁰⁹⁶ Exhibit P1936 (Expert report of John Edward Philips – Single user analysis in relation to Blue 322, Blue 324 and Blue 585), pp 79-89, 91, 94-99, 102, 104-105, 108-109, 111, 113-114, 116, 118.

⁶⁰⁹⁷ Exhibit P1936 (Expert report of John Edward Philips – Single user analysis in relation to Blue 322, Blue 324 and Blue 585), pp 94, 97, 105, 108, 114.

⁶⁰⁹⁸ Exhibit P1936 (Expert report of John Edward Philips – Single user analysis in relation to Blue 322, Blue 324 and Blue 585), pp 87, 89, 99, 104-105, 109.

20/10/2004	14:55:55	3523935	██████████668	Voice	117	352505002269580	0410	SFEIR2
20/10/2004	15:10:24	3067322	3043585	Voice	42	3543080060557008	3543	Saki Hadath C
20/10/2004	16:04:27	3523935	██████████852	Voice	23	352505002269580	0410	SFEIR2
20/10/2004	16:20:33	██████████913	3523935	Voice	77	352505002269580	042B	MIKAEL2
20/10/2004	16:57:37	3043585	3067322	Voice	58	3543080060557008	4051	Sfeir A



Expert report of John Edward Philips – Single user analysis in relation to Blue 322, Blue 324 and Blue 585—exhibit P1936, p. 83

Blue 322 and Yellow 294

3077. Mr Philips analysed 13 pairs of calls in relation to Blue 322 and Yellow 294 on ten days, namely on 19, 23, 25, 27 October, 3 November, 17, 22-23, 25 and 27 December 2004. He determined that seven of the analysed pairs fell in the category of ‘could be co-located’ and

qualified six as ‘would not preclude co-location’.⁶⁰⁹⁹ Possibly co-locating call pairs occurred one to 36 minutes apart, and the two mobiles connected to Alfa’s SFEIR2, MIKAEL2, ROUEIS2, HARA1 cells, and Touch’s Sfeir_A, Sfeir_B, Hai Kneisse_C cells.⁶¹⁰⁰

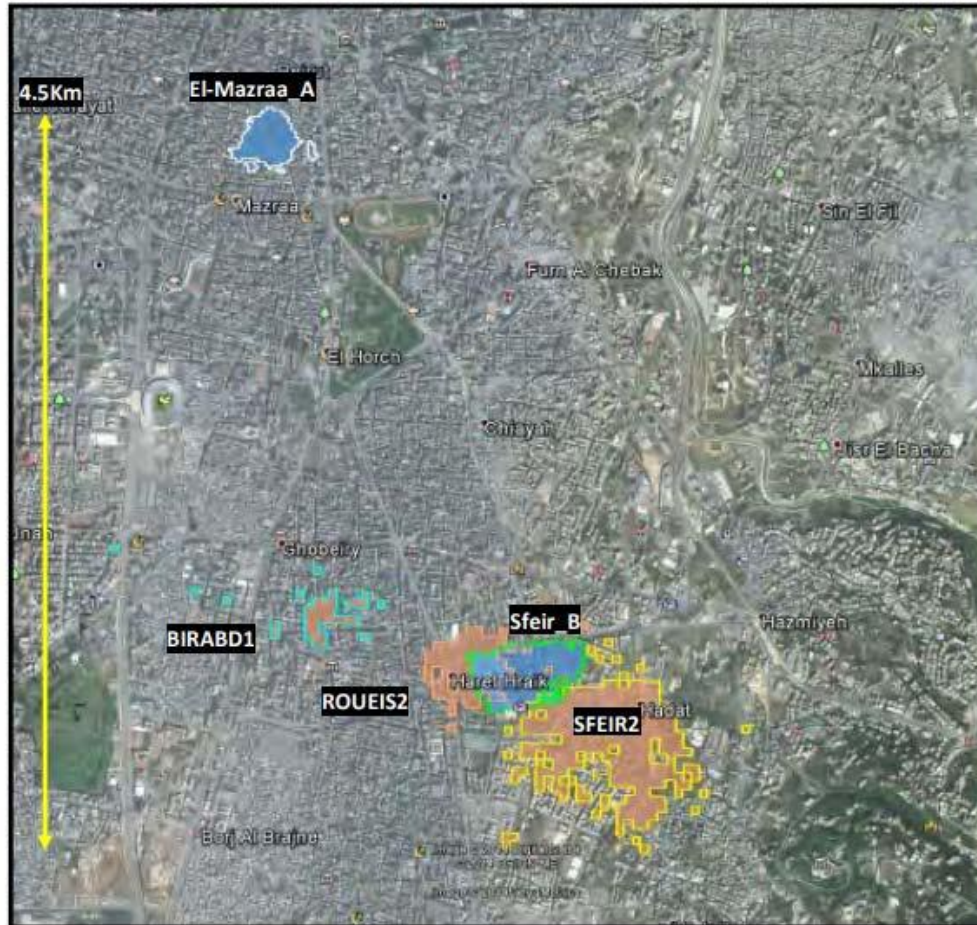
3078. The extract from Mr Philips’s expert report on single user analysis including Blue 322 illustrates four pairs of calls of the two mobiles made within 34 minutes. Mr Philips categorised calls 1 and 2 and calls 2 and 3 as ‘would not preclude co-location’ and calls 3 and 4 and calls 4 and 5 as ‘may be co-located’.⁶¹⁰¹

⁶⁰⁹⁹ Exhibit P1936 (Expert report of John Edward Philips – Single user analysis in relation to Blue 322, Blue 324 and Blue 585), pp 81, 88, 90-91, 95, 102, 106-107, 111, 114, 117.

⁶¹⁰⁰ Exhibit P1936 (Expert report of John Edward Philips – Single user analysis in relation to Blue 322, Blue 324 and Blue 585), pp 89-91, 95, 106-107, 111, 117.

⁶¹⁰¹ Exhibit P1936 (Expert report of John Edward Philips – Single user analysis in relation to Blue 322, Blue 324 and Blue 585), p. 106.

22/12/2004	00:13:36	3205294	3345457	Voice	43	35135040356036	04CD	BIRABD1
22/12/2004	00:31:30	3067324	3067322	Voice	26	3543080060557008	1361	El-Mazraa A
22/12/2004	00:36:08	3345457	3205294	Voice	37	35135040356036	020A	ROUEIS2
22/12/2004	00:37:24	3067322	3043585	Voice	70	3543080060557008	4052	Sfeir B
22/12/2004	00:47:24	3205294	3379513	Voice	25	35135040356036	0410	SFEIR2



Expert report of John Edward Philips – Single user analysis in relation to Blue 322, Blue 324 and Blue 585—exhibit P1936, p. 106

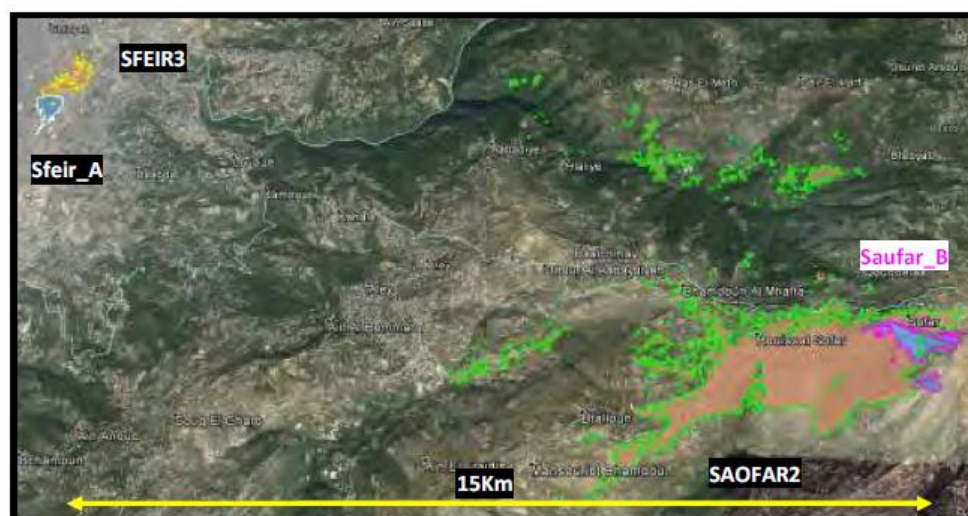
Overall pattern

3079. Blue 322 was never in contact with mobile 935 and Yellow 294 and there were no instances of overlapping calls.⁶¹⁰²

⁶¹⁰² Exhibit P1936 (Expert report of John Edward Philips – Single user analysis in relation to Blue 322, Blue 324 and Blue 585), pp 92-93, 100-101, 119-120.

3080. According to Mr Philips, mobile 935 and Blue 322 possibly co-located in areas of south Beirut and ‘well away from it’, which in his view showed ‘collective movement’.⁶¹⁰³ One example of this ‘collective movement’ is set out below and relates to both mobiles connecting first to SFEIR3/Sfeir_A and then to SAOFAR2/Saufar_B on Wednesday 3 November 2004.

03/11/2004	15:09:47	668	3523935	Voice	37	352505002269580	0411	SFEIR3
03/11/2004	15:31:37	3067322	3043585	Voice	31	3543080060557008	4051	Sfeir_A
03/11/2004	15:57:34	247	3523935	Voice	44	352505002269580	00B0	SAOFAR2
03/11/2004	15:58:47	3067322	3043585	Voice	46	3543080060557008	6182	Saufar_B



Expert report of John Edward Philips – Single user analysis in relation to Blue 322, Blue 324 and Blue 585—exhibit P1936, p. 94

3081. Mr Philips’s overall conclusion was that the instances of possible co-location of the three mobiles, Blue 322, mobile 935 and Yellow 294, were consistent with having the same user from Monday 18 October to Monday 27 December 2004. Following a ten-day gap in its activity, starting from January 2005, it stopped co-locating with mobile 935, and did not co-locate with Mr Ayyash’s two personal mobiles 091 and 170 and then had 18 calls with Blue 233, which is also attributable to Mr Ayyash.⁶¹⁰⁴

⁶¹⁰³ John Edward Philips, T. 21 April 2017, pp 35-37. See also exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips), slides 235-238.

⁶¹⁰⁴ John Edward Philips, T. 21 April 2017, pp 27, 42; exhibit P1936 (Expert report of John Edward Philips – Single user analysis in relation to Blue 322, Blue 324 and Blue 585), pp 3-5.

ii. Submissions

3082. The Prosecution submits that Mr Ayyash was the user of Blue 322 from 18 October to 27 December 2004.⁶¹⁰⁵ It is an important mobile for the Prosecution's case regarding the early surveillance of Mr Hariri during this period.⁶¹⁰⁶

3083. As with the other network mobiles, the Ayyash Defence submits that the primary means for attribution of all network mobiles is co-location analysis, which it submits is unreliable. No other evidence links Mr Ayyash to the network mobiles. As such, attribution of the network mobiles is wholly dependent on the attribution of the personal mobiles. As the Prosecution failed in the attribution of personal mobiles, attribution to him of network mobiles also fails.⁶¹⁰⁷

iii. Findings

3084. The amended consolidated indictment does not plead that Mr Ayyash was using mobile Blue 322. It is attributed in the pleading document to Subject 14. Similarly, the Prosecutor's two pre-trial briefs do not connect this network mobile with Mr Ayyash. The Prosecution also did not refer to this mobile in opening the case against the first four Accused, or five months later in opening the case against Mr Merhi. Mr Donaldson's attribution report, however, attributes it, in a table, to Subject 14.⁶¹⁰⁸ He did not attribute it to Mr Ayyash in his report. No indictment was confirmed on the basis that Mr Ayyash was using this mobile at any time.

3085. The lengthy report of Mr Garry Platt, the Prosecution's expert on criminal telecommunications networks, refers throughout to 'S14' as its user, even during the period when the Prosecution's final trial brief asserts that Mr Ayyash was using it, namely, from Monday 18 October to Monday 27 December 2004.⁶¹⁰⁹

3086. Mr Philips did not analyse it in his first report as a mobile that was possibly co-locating with mobiles attributed to 'Suspect 1', namely, Mr Ayyash, that he completed on 19 October 2012, well after the case was indicted.⁶¹¹⁰ However, in a subsequent report that he completed mid-trial,

⁶¹⁰⁵ Prosecution final trial brief, para. 214.

⁶¹⁰⁶ Prosecution closing submissions, T. 12 September 20018, pp 100-101.

⁶¹⁰⁷ Ayyash Defence final trial brief, paras 670-671.

⁶¹⁰⁸ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 393

⁶¹⁰⁹ Exhibit P1783 (Expert report of Gary Platt – Chronology), *for example*, paras 79, 90, 92, 98, 102, 107, 110, 116, 122.

⁶¹¹⁰ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash).

on 9 July 2014, he analysed possible co-location between mobiles Blue 322, Blue 324 and Blue 585 with those possibly used by Mr Ayyash, as ‘Suspect 1’.⁶¹¹¹ He concluded that the use of Blue 322 with Green 300, Yellow 294 and the personal mobile 935 was consistent with them having the same user, between 18 October and 27 December 2004.

3087. Yet at the end of the trial, despite the lack of formal notice of what is obviously a material fact that must be proved beyond reasonable doubt against an Accused person, the Prosecution submits that Mr Ayyash was using this mobile. Its final trial brief refers eight times to Mr Ayyash using it. It is unclear when, if at all, counsel for Mr Ayyash were put on formal notice of this change in the Prosecution’s case. Clearly they must have known of it from whenever the Prosecution disclosed Mr Philips’s new report to them, sometime mid-trial. They did not take the point of a lack of notice in their final trial brief. No application was made to amend the indictment.

3088. The Trial Chamber will therefore proceed to analyse this mobile only because evidence has been presented of its use and its use is pleaded in the amended consolidated indictment, but by Subject 14.

3089. The Trial Chamber, ultimately, has been unable to find that the conspiracy pleaded in count one of the amended consolidated indictment was in existence at the time when the Prosecution, at the end of the trial, was arguing that Mr Ayyash was using this mobile. The effect of this is that analysing Blue 322 will not affect the result of the case nor prejudice Mr Ayyash’s right to a fair trial through lacking formal notice of a slight, albeit material, change in the Prosecutor’s case against him.

3090. The subscriber information of Blue 322 is inconclusive in determining the mobile’s user. As a result, the only other relevant evidence before the Trial Chamber is its possible co-location with other mobiles.

3091. The attribution period of Blue 322—18 October until 27 December 2004—does not overlap with the attribution periods of six of the other nine mobiles that the Prosecution seeks to attribute to Mr Ayyash. These six mobiles are mobile 091, mobile 165, mobile 170, Blue 233,

⁶¹¹¹ Exhibit P1936 (Expert report of John Edward Philips – Single user analysis in relation to Blue 322, Blue 324 and Blue 585).

Yellow 669 and Red 741. Accordingly, any co-location analysis is limited to mobile 935, Yellow 294 and Green 300.

3092. There were a total of 26 possible co-locations between Blue 322 and mobile 935, and an additional seven with Yellow 294.⁶¹¹²

3093. Blue 322 and mobile 935 had five possibly co-locating call pairs made within five minutes and six made within ten minutes. The high number of possible co-locations weighs in favour of a finding of a single user, especially when considering that a significant number of the paired calls took place within ten minutes of one another and that the possible co-locations occurred both in areas of south Beirut and outside of it. The absence of dislocations during the attribution period also weighs in favour of a finding of a single user. There were no calls between these mobiles and no overlapping calls. This too is consistent with these mobiles having a single user.

3094. The number of instances when Blue 322 and Yellow 294 could have co-located—taken in isolation—does not persuade the Trial Chamber that the two mobiles had one user. However, considering its findings that Yellow 294 and mobile 935 had a single user, and Blue 322 also shared the user with mobile 935, the Trial Chamber can be satisfied that Blue 322 and Yellow 294 shared a user. The Trial Chamber has found that mobile 935's principal user and Yellow 294's user was Mr Ayyash. Accordingly, the user of Blue 322 was also Mr Ayyash.

3095. The evidence reveals that Blue 322 was not used before 18 October 2004, and had a ten-day gap in its activity after 27 December 2004. According to Mr Philips, Blue 322, Yellow 294 and 935 were consistent with having the same user from 18 October to 27 December 2004. From Thursday 6 January 2005 its cell activations were not consistent with that of mobile 935, nor of Mr Ayyash's following personal mobiles, 091 and 170.

3096. For these reasons, the Trial Chamber could be satisfied that Mr Ayyash used Blue 322 from Monday 18 October until Monday 27 December 2004. As noted above, this is outside the period for which the Trial Chamber has found the existence of the pleaded conspiracy. However, as the Prosecutor did not allege in the amended consolidated indictment that Mr Ayyash was using this mobile, the Trial Chamber has not made any findings to this effect against him.

⁶¹¹² There were also three possible co-locations with Green 300.

(d) Blue 233

3097. The Prosecutor pleads in the amended consolidated indictment that Blue 233 was used for preparations in the attack on Mr Hariri, including surveillance.⁶¹¹³ The Prosecution attributes Blue 233 to Mr Ayyash for a period of eight and half months in 2005, from Monday 10 January to Wednesday 21 September 2005.

i. Evidence

a. Subscriber details

3098. Blue 233 was a pre-paid Touch mobile that was activated on Thursday 16 December 2004 and deactivated on Friday 21 October 2005.⁶¹¹⁴ The named subscriber on the subscription form for Blue 233⁶¹¹⁵ stated that they did not use or recognise Blue 233, and that several details on the form were incorrect.⁶¹¹⁶

b. Attribution period

3099. The Prosecution attributes Blue 233 to Mr Ayyash from Monday 10 January to Wednesday 21 September 2005, namely the dates on which Blue 233's first and last calls were made.⁶¹¹⁷ This is based on Blue 233's consistent contact and geographic profiles throughout this period.⁶¹¹⁸

c. Contact profile

3100. Mr Donaldson found that 97 per cent of Blue 233's calls were with all the other Blue mobiles.⁶¹¹⁹ According to Mr Platt, 99 per cent of Blue 233's calls were with other Blue mobiles,

⁶¹¹³ Amended consolidated indictment, para. 15 (c).

⁶¹¹⁴ Andrew Donaldson, T. 23 August 2017, pp 27, 36; exhibit P467 (Subscriber documentation for Blue mobiles), ERN SI-1713, p. 3; exhibit P1101, p. 1; exhibit P1472 (Touch subscriber note for Blue 233); exhibit P2062.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), p. 157 (table of subscriber details).

⁶¹¹⁵ The named subscriber's ID was submitted with the subscription form. Exhibit P467, (ERN SI-1713), pp 3-4. *See also* exhibit P574 (Statement of Witness PRH702), para. 9.

⁶¹¹⁶ The witness recognised their signature on the form, but did not recognise the other handwriting on it. The address listed on the form was where they used to live, but not at the time when the form was signed. The first name listed on the form was not the witness's correct first name. Exhibit P574 (Statement of Witness PRH702), paras 9-10. *See also* exhibit P2062.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 381.

⁶¹¹⁷ Andrew Donaldson, T. 23 August 2017, p. 36; exhibit P1238 (Call sequence table of Blue 233), pp 1, 32; exhibit P2062.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 71 (vii), 379, 382, 386-387, 424.

⁶¹¹⁸ Andrew Donaldson, T. 23 August 2017, p. 36; exhibit P2062.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 382-387.

⁶¹¹⁹ Andrew Donaldson, T. 23 August 2017, p. 28; exhibit P2062.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 384, 391, 393, 425. *See also* exhibit P2025, slide 216.

after excluding service communications.⁶¹²⁰ Blue 233 had contacts with two Touch service numbers.⁶¹²¹

3101. Blue 233's other contacts were two calls made to mobile 401⁶¹²² on 30 June 2005 and a call received from the Al-Hayat Hospital on 29 June 2005.⁶¹²³ According to Mr Donaldson, mobile 401 also had contacts with Mr Ayyash's landline 696 and his personal mobiles 165 and 935.⁶¹²⁴

d. Geographic profile

3102. Mr Donaldson explained that the five main cells activated by Blue 233 and mobiles 091 and 165 were the same, Sfeir_A, Nabatiyeh_C, Sfeir_B, Hadath_C and Hazmiyeh-II_B. The top four cells for Blue 233 were those of mobile 170. Blue 233's most frequently used cell towers were near Mr Ayyash's residences in Hadath and Harouf.⁶¹²⁵

⁶¹²⁰ Exhibit 796.1 (Network analysis report – updated 8 February 2018), para. 814.

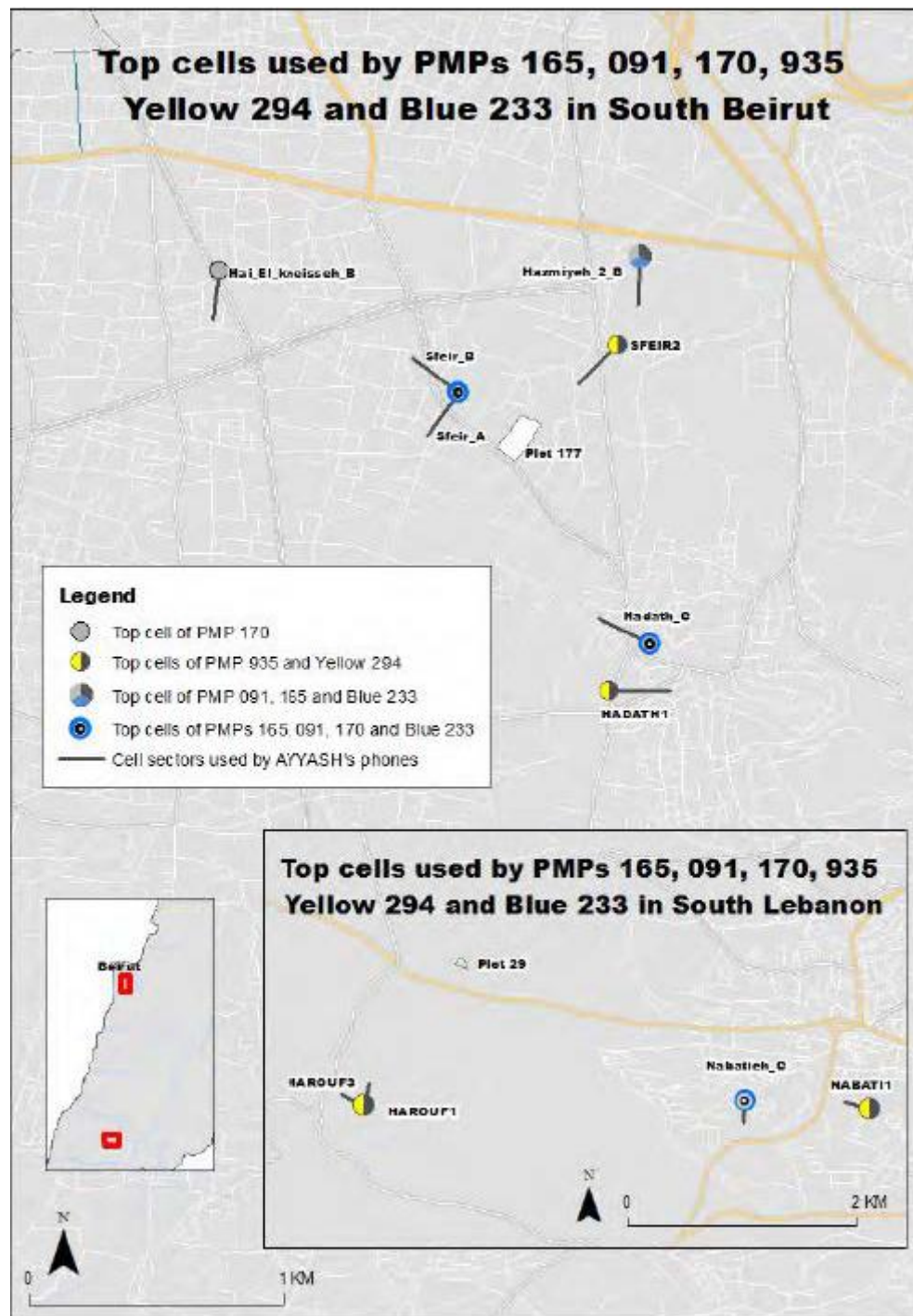
⁶¹²¹ Exhibit P1238, pp 1, 7, 9-12, 15-16, 20, 32; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 393.

⁶¹²² This number was subscribed under the name Faraj Saed Lakkis and also appeared in a company's customer database under this name. *See* para. 2686.

⁶¹²³ Andrew Donaldson, T. 23 August 2017, pp 28, 31; exhibit P1238, p. 26; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 392, 426. *See also* exhibit P1634 (Subscriber note for number 202). Mr Donaldson testified that there was no indication that the call from the hospital was a misdial, Andrew Donaldson, T. 23 August 2017, p. 31.

⁶¹²⁴ Andrew Donaldson, T. 23 August 2017, pp 29-30; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 392(b), 699. *See also* exhibit P2025, slide 217.

⁶¹²⁵ Andrew Donaldson, T. 23 August 2017, pp 29-30, 32-33; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 395, 427-428, 696. *See also* exhibit P2025, slides 219-221.



Attribution report of Andrew Donaldson regarding Mr Ayyash—exhibit P2026.2, p. 162

3103. A member of Mr Ayyash's family had scheduled appointments at Witness PRH078's office on 29 June and 23 July 2005. On both dates, Blue 233 activated a cell near this office. On 29 June 2005, within one minute of each other, mobile 170 and Blue 233 activated the same cell near this

office.⁶¹²⁶ Mr Donaldson testified that Blue 233 should be attributed to Mr Ayyash based on its geographic profile, its co-location with his three personal mobiles and its use near the office where Mr Ayyash's family member had scheduled appointments.⁶¹²⁷

e. Single user analysis

3104. Blue 233, used from Monday 10 January to Wednesday 21 September 2005, had overlapping attribution periods, according to the Prosecution, with Mr Ayyash's:

- personal mobile 091, attributed to him from 13 January to 6 March 2005;
- personal mobile 170, attributed to him from 7 January to 26 November 2005;
- personal mobile 935, for three days in its attribution period between 31 May 2004 and 13 January 2005;
- Green 300, whose attribution period is from 30 September 2004 to 14 February 2005; and
- Red 741, from 14 January to 14 February 2005.

3105. Differing attribution periods did not permit co-location analysis with mobile 165, Yellow 669 and Yellow 294.⁶¹²⁸ Co-location analysis of Blue 233 with Green 300 and Red 741 is set out elsewhere, in relation to the Green and Red network mobiles.

Blue 233 and mobile 091

3106. Mr Donaldson noted that Blue 233 was never in contact with mobile 091.⁶¹²⁹ There were three overlapping calls involving both mobiles, on 28 and 29 January and 9 February 2005.⁶¹³⁰

⁶¹²⁶ Andrew Donaldson, T. 23 August 2017, pp 33-36; exhibit P707 (Statement of Witness PRH078), ERNs 60305706-60305707; exhibit P707.1 (Interview of Witness PRH078), ERN 60137993; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 420, 431, 597-598, 604-605, 699. *See also* exhibit P2025, slides 222-224.

⁶¹²⁷ Andrew Donaldson, T. 23 August 2017, p. 28.

⁶¹²⁸ *See* sub-sections (B) (1) (d) (iii) 'Findings', (B) (2) (a) (iii) 'Findings' and B) (2) (b) (iii) 'Findings'.

⁶¹²⁹ Andrew Donaldson, T. 23 August 2017, pp 37-38; exhibit P1238; exhibit P1256; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 398, 429.

⁶¹³⁰ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 187-188, 195-196, 204-205, 240, 276.

3107. On Friday 28 January 2005, the two mobiles used cells that were around six kilometres apart, at times which would preclude their co-location.⁶¹³¹ On this occasion, mobile 091, using the Airport-II cells, also dislocated from Green 300, Red 741 and mobile 170. This is analysed elsewhere.⁶¹³²

3108. For the overlapping calls on Saturday 29 January and Wednesday 9 February, Blue 233 and mobile 091 used the same cell, Mar Michael_B, or cells with some contiguous coverage, Haret_Hreik_A and Mic_Mcharrafieh, all of which were in the southern suburbs of Beirut. On this basis, Mr Philips found that the two may have co-located.⁶¹³³

3109. According to Mr Donaldson, Blue 233 and 091 were both active on 42 days.⁶¹³⁴ In his report Mr Donaldson demonstrated 12 days of the mobiles' possible co-location, on 13, 16, 22-23, 26-27, 29-30 January, 4-6 and 10 February 2005, and found no inconsistencies as to their potential co-location.⁶¹³⁵

3110. Mr Philips concluded that, based on his analysis of pairs of calls, Blue 233 may have co-located 29 times with mobile 091, the calls would not preclude co-location 61 times and the calls would preclude co-location three times; all three instances occurred on Friday 28 January 2005.⁶¹³⁶ Ten pairs of possibly co-locating calls used the same cells, such as Sfeir_A, Sfeir_B, Hadath_C, Nabatiyeh_C and Mar Michael_C, within five minutes and an additional nine pairs of these calls were made within 15 minutes.⁶¹³⁷ In his report, Mr Philips concluded that Blue 233 possibly co-located with mobile 091 in January and February 2005.⁶¹³⁸

⁶¹³¹ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 187-188; exhibit P1259 (Call sequence table of ten numbers—Mr Ayyash), p. 350.

⁶¹³² The evidence regarding mobile 091's separation from Blue 233, and other mobiles, is summarised in sub-sections (B) (2) (f) 'Red 741' and (B) (2) (g) 'The 2005 Hajj', below.

⁶¹³³ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 195-196, 204-205; exhibit P1259, pp 352, 359; John Edward Philips, T. 20 April 2017, pp 42-43.

⁶¹³⁴ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 397 (b).

⁶¹³⁵ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 408-419, annex D, pp 313-325. *See also* Andrew Donaldson, T. 24 August 2017, pp 46-51; exhibit P2025.1, slides 64-92.

⁶¹³⁶ John Edward Philips, T. 24 April 2017, pp 80-82; exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips), slides 459, 463, 515.

⁶¹³⁷ This excludes overlapping calls. These occurred on 13, 18, 20-22, 27-28 January and 1 February 2005, exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 103, 114, 121-122, 141, 145, 150, 154, 156-157, 179-181, 183, 207, 216-217, 256-259.

⁶¹³⁸ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 203, 275.

Blue 233 and mobile 170

3111. Mr Donaldson explained that it was important to first establish that mobile 170 belonged to Mr Ayyash before examining Blue 233, because both were used for a long period in 2005, thus providing a wide window for comparison.⁶¹³⁹

3112. Blue 233 was never in contact with mobile 170.⁶¹⁴⁰ On 3 February 2005, one pair of calls, an outgoing and an incoming, overlapped on the mobiles by a second.⁶¹⁴¹ The centres of the best server coverage of the cells activated by the mobiles were about 1.5 kilometres apart, which, according to Mr Philips, would not preclude the two from being co-located.⁶¹⁴²

3113. According to Mr Donaldson, Blue 233 and mobile 170 shared 137 days of use and of these, he demonstrated the mobiles' possible co-location on 12 days, on 10, 13, 16, 22-23, 26-27, 29 January, 4-6 and 10 February 2005, and found no inconsistencies regarding potential co-location.⁶¹⁴³

3114. Mr Philips concluded that, based on his analysis of pairs of calls, Blue 233 may have co-located 28 times with mobile 170, and the calls would not preclude co-location 54 times.⁶¹⁴⁴ Of the 28 possible co-locating calls, 11 occurred within five minutes of one another on cells Sfeir_A, Hai_El_Kneisseh_B, Hadath_C, Hadat_2_C, Nabatiyeh_C, Borj_Brajneh_2_C and Hazmiyeh_2_C.⁶¹⁴⁵ A further seven pairs of possibly co-locating calls activated within 15 minutes Hai_El_Kneisseh_B, Airport_B, Nabatiyeh_C, Sfeir_B and Hadath_C.⁶¹⁴⁶ In his report,

⁶¹³⁹ Andrew Donaldson, T. 23 August 2017, p. 28.

⁶¹⁴⁰ Andrew Donaldson, T. 23 August 2017, pp 37-38; exhibit P1238 (Call sequence table of Blue 233); exhibit P1262; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 398, 429.

⁶¹⁴¹ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), p. 276; exhibit P1259, p. 355.

⁶¹⁴² Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 216-217; exhibit P1259, p. 355.

⁶¹⁴³ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 397, 407-414, 416-419, annex D, pp 313-320, 322-325. *See also* Andrew Donaldson, T. 24 August 2017, pp 46-51; exhibit P2025.1, slides 64-92.

⁶¹⁴⁴ John Edward Philips, T. 24 April 2017, pp 80-82; exhibit P1935, slide 515.

⁶¹⁴⁵ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 102, 106-107, 132, 154, 158-159, 167, 184-185, 187-188, 223, 245, 268.

⁶¹⁴⁶ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 108, 114, 158-159, 226, 246-247.

Mr Philips concluded that Blue 233 possibly co-located with mobile 170 in January and February 2005.⁶¹⁴⁷

3115. Mr Donaldson examined three instances where it appeared that Blue 233 and mobile 170 did not move in concert.

3116. On 12 June 2005, Blue 233 activated the cell Saadiyat_A (at the coast) at 13:57. Eight minutes later, mobile 170 activated the cell Ayn_Sikkeh_B (near the airport), 16 kilometres away, while according to Mr Donaldson, it was possible to travel between the two locations in just eight minutes. Also, some of the predicted cell coverage for Saadiyat_A was relatively close to that of Ayn_Sikkeh_B, namely one to two kilometres away.⁶¹⁴⁸ The two cells' predicted best server coverage is depicted in the map created by the Trial Chamber using the electronic presentation of evidence software, exhibit P592.1:

⁶¹⁴⁷ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 203, 275.

⁶¹⁴⁸ Andrew Donaldson, T. 23 August 2017, pp 41-43. *See also* exhibit P2025, slides 227-228.



Predicted best server coverage areas of Touch's Saadiyat_A and Ain_Sikkeh_B cells created from exhibit P592.1

3117. On 23 June 2005, Blue 233 activated the cell Nabatiyeh_C, in southern Lebanon at 14:21 and one minute later mobile 170 activated the cell Shamaa_A, at the coast, 36 or 37 kilometres

away.⁶¹⁴⁹ Mr Donaldson gave evidence that this was a dislocation and anomaly for Blue 233 and demonstrated it on the following map.⁶¹⁵⁰



Mapped calls for mobile 170 and Blue 233 on 23 June 2005—exhibit P2111, p. 4

3118. On 29 June 2005, Blue 233 activated the cell Marjayoun_C in southern Lebanon at 15:42. Blue 233 then activated the cell Sultaniyeh_A (24 kilometres away) at 15:43, one minute after mobile 170 also activated Sultaniyeh_C.⁶¹⁵¹ In Mr Donaldson's view, the Touch network was 'relatively sparse' in that area in 2005, and it was plausible that the mobiles were together.⁶¹⁵² These cells had small isolated pockets of coverage, as shown on the map below, that may have been only several kilometres apart:⁶¹⁵³

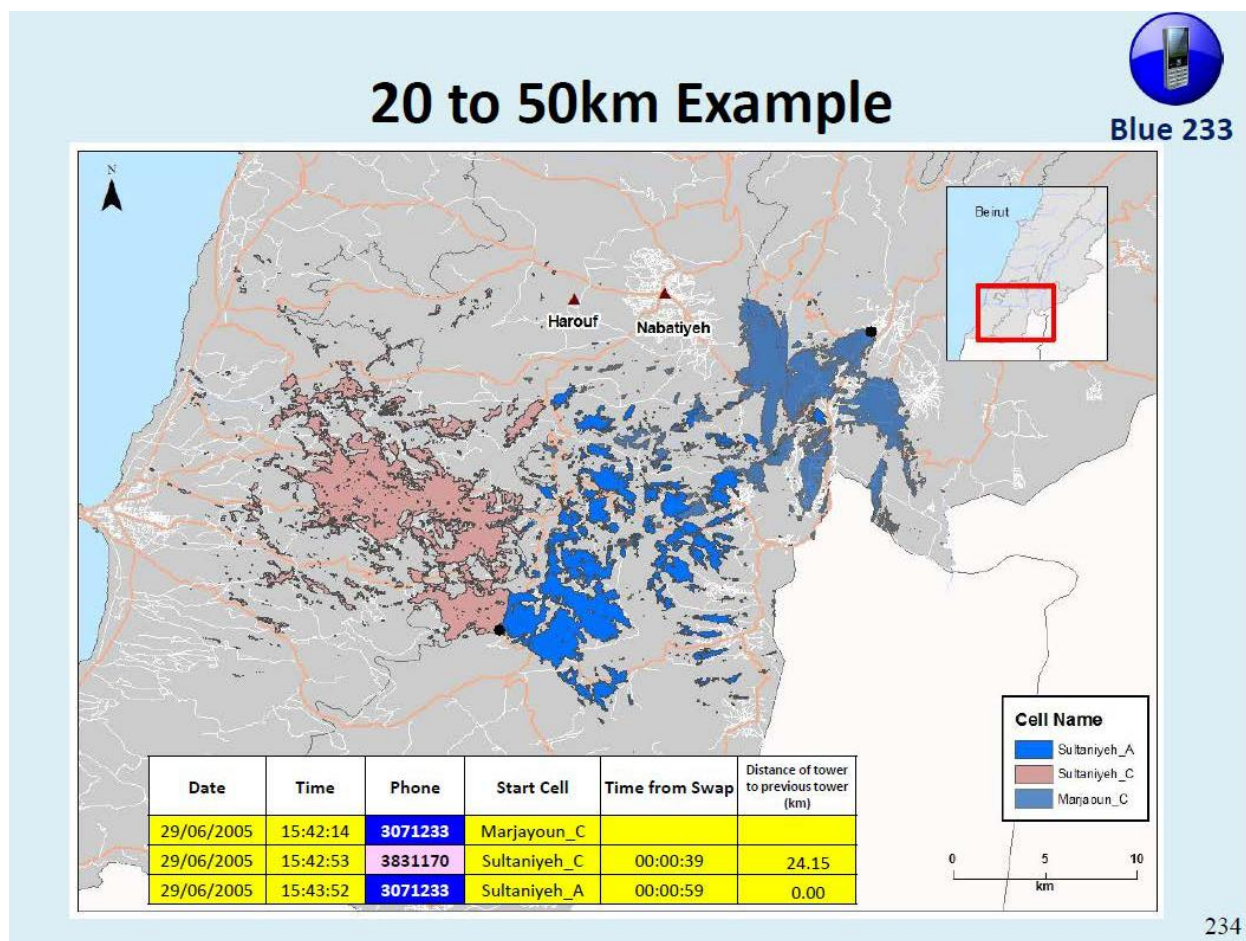
⁶¹⁴⁹ Andrew Donaldson, T. 23 August 2017, pp 40-45, 61; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 404 (b); exhibit P2111 (Mapped calls for mobile 170 and Blue 233 on 23 June 2005), pp 4-5. *See also* exhibit P2025, slides 229-231.

⁶¹⁵⁰ Andrew Donaldson, T. 23 August 2017, pp 40-45; exhibit P2111, pp 4-5.

⁶¹⁵¹ Andrew Donaldson, T. 23 August 2017, pp 40, 51-55; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 404 (c). *See also* exhibit P2025, slides 232-234.

⁶¹⁵² Andrew Donaldson, T. 23 August 2017, pp 52, 55; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 404 (c).

⁶¹⁵³ Andrew Donaldson, T. 23 August 2017, pp 52, 54. *See also* exhibit P2025, slide 234.



Slide 234 of Mr Donaldson's PowerPoint presentation—exhibit P2025

Blue 233 and mobile 935

3119. Blue 233 was never in contact with mobile 935.⁶¹⁵⁴ There were no overlapping calls involving both mobiles.⁶¹⁵⁵

3120. Mr Donaldson analysed the activity of Blue 233 and mobile 935 on 10, 12 and 13 January 2005 and found no inconsistencies as to their potential co-location.⁶¹⁵⁶

⁶¹⁵⁴ Exhibit P1238; exhibit P1261; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 398, 429; Andrew Donaldson, T. 23 August 2017, pp 37-38.

⁶¹⁵⁵ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 204-205, 276.

⁶¹⁵⁶ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 407-408, 498, annex D, pp 313-314, 350; Andrew Donaldson, T. 24 August 2017, pp 42-43. *See also* exhibit P2025.1 (Additional co-location presentation, Andrew Donaldson), slides 48-50.

3121. Mr Philips concluded in his report that, based on his analysis of pairs of calls, Blue 233 may have co-located with mobile 935 one time,⁶¹⁵⁷ and the calls would not preclude co-location five times.⁶¹⁵⁸

Overall pattern

3122. Mr Philips highlighted in his testimony that on at least eight dates in January and February 2005, including on Monday 14 February 2005, Blue 233's movement was consistent with other mobiles attributable to Mr Ayyash.⁶¹⁵⁹ Mr Philips examined 181 pairs of calls involving Blue 233 and mobiles 091, 170 and 935 and found that, save for three pairs of calls on Friday 28 January 2005, when mobile 091 separated from Blue 233 using cells at the Beirut Airport, the mobiles possibly co-located or their co-location would not be precluded.⁶¹⁶⁰

3123. According to Mr Donaldson, from January to September 2005, Blue 233 and at least one other personal mobile attributable to Mr Ayyash were used on 145 days.⁶¹⁶¹ On at least 142 of these days, he found that Blue 233 moved together with another personal mobile attributed to Mr Ayyash.⁶¹⁶² Mr Donaldson calculated that, on these days, Blue 233 was used within ten minutes of mobiles 091, 170 or 935 on 233 times.⁶¹⁶³ Of these, 51 per cent were on the same cell tower or a cell likely located in the same building or position, 18 per cent were over two kilometres apart, 17 per cent were less than two kilometres apart and 14 per cent were less than one kilometre apart.⁶¹⁶⁴

⁶¹⁵⁷ This occurred on 11 January 2005, when mobile 935 activated Alfa's SABRA1/HARA3 and Blue 233 used Touch's Haret_Hreik_2_A. Both SABRA1 and HARA3 had overlapping best server coverage with Haret_Hreik_2_A. Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 96-97; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 28-29.

⁶¹⁵⁸ John Edward Philips, T. 24 April 2017, pp 80-82; exhibit P1935, slide 515.

⁶¹⁵⁹ These dates are: 18, 24, 28 January, 2, 8, 11, 12 and 14 February 2005. Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 125-134, 155-162, 183-193, 208-211, 229-239, 248-267; 270-274; John Edward Philips, T. 21 April 2017, pp 40-63, 67-78, 81-85, 88-97, T. 24 April 2017, pp 6-16, 18-23, 30-32, 36-39, 47-62. *See also* exhibit P1935, slides 253-427, 436-440.

⁶¹⁶⁰ John Edward Philips, T. 24 April 2017, pp 80-82. *See also* exhibit P1935, slide 515.

⁶¹⁶¹ Andrew Donaldson, T. 23 August 2017, pp 36-37; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 401, 429. *See also* exhibit P2025, slide 225.

⁶¹⁶² Andrew Donaldson, T. 23 August 2017, p. 38. However, in his report, Mr Donaldson stated that it was 145 days, exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 404. *See also* exhibit P2025, slide 225.

⁶¹⁶³ Andrew Donaldson, T. 23 August 2017, p. 38. *See also* exhibit P2025, slide 225.

⁶¹⁶⁴ Andrew Donaldson, T. 23 August 2017, pp 39-41. *See also* exhibit P2025, slide 226. By contrast, in his report, Mr Donaldson calculated it at 42 per cent in the same sector, 23 per cent less than one kilometre, 17 per cent less than

3124. In his report, Mr Donaldson closely analysed 13 days of possible co-location.⁶¹⁶⁵ Almost all involved cells in the southern suburbs of Beirut.⁶¹⁶⁶ Mr Donaldson prepared a list of 15 examples where Blue 233 had moved together with at least one personal mobile outside the southern suburbs—between 17 January and 13 July 2005—such as in Bachoura, on the coast road north of Beirut, in Nabatiyeh, west and north-west Beirut and Baalbek.⁶¹⁶⁷

3125. Mr Donaldson testified that after the attack on Monday 14 February 2005, Blue 233 did not go to a significant number of what he described as unusual locations. Instead, there were frequent trips between the southern suburbs of Beirut and the Nabatiyeh area during which Blue 233 and mobile 170 moved together.⁶¹⁶⁸ He noted that there were no co-locations with other relevant mobiles for Blue 233 near Quraitem Palace.⁶¹⁶⁹

ii. Submissions

3126. The Prosecution submits that the primary method for attributing Mr Ayyash's network mobiles, including Blue 233, is through co-location analysis with personal mobiles, here 091, 170 and 935.⁶¹⁷⁰ Other evidence supporting the attribution of the network mobiles includes comparing geographic profiles, analysing handsets and reviewing mobile behaviours *vis-à-vis* events in Mr Ayyash's life.⁶¹⁷¹ Hierarchical call flows also show Mr Ayyash used Blue 233 and other network mobiles.⁶¹⁷²

3127. More specifically, Blue 233 had near-exclusive communication with other Blue network mobiles. Blue 233 was active near Mr Ayyash's residences, activating the same cells as mobile 091, and near the office where Mr Ayyash's family member had appointments. Blue 233's use overlapped for 145 days with other mobiles attributed to Mr Ayyash, and Blue 233 moved with these mobiles on 142 days. Nearly every time that Blue 233 was used within ten minutes of another

two kilometres and 18 per cent over two kilometres, exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 401.

⁶¹⁶⁵ Andrew Donaldson, T. 23 August 2017, p. 41; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 407-419, annex D, pp 313-325.

⁶¹⁶⁶ Andrew Donaldson, T. 23 August 2017, p. 63.

⁶¹⁶⁷ Andrew Donaldson, T. 24 August 2017, pp 10-13; exhibit P2025.2 (Chart of possible co-location of Blue 233 outside south Beirut).

⁶¹⁶⁸ Andrew Donaldson, T. 23 August 2017, p. 62.

⁶¹⁶⁹ Andrew Donaldson, T. 23 August 2017, pp 61-63.

⁶¹⁷⁰ Prosecution final trial brief, para. 210.

⁶¹⁷¹ Prosecution final trial brief, para. 212.

⁶¹⁷² Prosecution final trial brief, para. 497, fn. 1009.

mobile attributable to Mr Ayyash, the two mobiles activated the same cell tower, or cell towers up to two kilometres apart. Finally, Blue 233 called mobile 401, which was in contact with Mr Ayyash's landline 696 and his personal mobiles 165 and 935.⁶¹⁷³

3128. The Ayyash Defence notes that Mr Donaldson found Blue 233, among other mobiles, was active near Witness 78's office. It submits that this mobile 'lack[s] any corresponding evidence' supporting its attribution to Mr Ayyash.⁶¹⁷⁴ The Ayyash Defence also generally challenges the attribution of network mobiles, including Blue 233, to Mr Ayyash.⁶¹⁷⁵

iii. Findings

3129. Similarly to the other network mobiles, the named subscriber for Blue 233 is not Mr Ayyash. However, the person listed as the subscriber neither used nor recognised it.

3130. The Trial Chamber has found that Blue 233 was part of a covert network of mobiles, and that using a false identity for a mobile subscription was a common feature of covert mobiles.⁶¹⁷⁶ The Trial Chamber therefore finds that the evidence of its named subscriber neither assists nor weighs against attributing this mobile to Mr Ayyash. The Trial Chamber instead primarily focused on the activity of Blue 233 and that of the two personal mobiles for which it has already found that Mr Ayyash was the principal user, namely mobiles 091 and 170.⁶¹⁷⁷

3131. The attribution periods of Blue 233 and a third personal mobile of Mr Ayyash's, mobile 935, overlapped only for four days, namely Monday 10 to Thursday 13 January 2005. Logically, the potential for close-in-time calls is diminished. Mr Philips found one occurrence of possible co-location. Mr Donaldson stated that during the four days shared there was no inconsistency regarding their potential co-location.⁶¹⁷⁸ On its own, this is insufficient to find that Blue 233 and mobile 935 had the same user. However, this is addressed further in analysing Green 300, as both

⁶¹⁷³ Prosecution final trial brief, paras 263-266; Prosecution closing submissions, T. 12 September 2018, pp 79, 92, 94, 96-97.

⁶¹⁷⁴ Ayyash Defence final trial brief, paras 545-546.

⁶¹⁷⁵ Ayyash Defence final trial brief, paras 670-671.

⁶¹⁷⁶ See chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles', (E) 'Blue network'.

⁶¹⁷⁷ See sub-sections (B) (1) (e) (iii) 'Findings' and (B) (1) (g) (iii) 'Findings'.

⁶¹⁷⁸ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 407-408, annex D, pp 313-314.

mobile 935 and Blue 233 had substantial overlapping attribution periods with that Green network mobile. This is also consistent with assessing the totality of the evidence.

3132. Mr Philips and Mr Donaldson agreed that, based on the cell activations, Blue 233 consistently moved together with mobiles 091 and 170. Mr Philips's overall conclusion was that Blue 233 possibly co-located with mobiles 091 and 170 in January and February 2005. Of the 29 times it possibly co-located with mobile 091, it did so ten times within five minutes and nine times within 15 minutes.

3133. Mr Philips highlighted that for every pair of calls that he analysed, Blue 233 may have co-located with mobile 091, or the calls would not preclude co-location, except for one day, on Friday 28 January 2005, when mobile 091 was active at the airport. But even then, Blue 233 moved consistently throughout Beirut with the other mobiles, strengthening the inference that they had the same user. Mr Donaldson noted the same discrepancy on 28 January 2005 and observed that Blue 233's activity was otherwise consistent with the activity of the three personal mobiles throughout January and February 2005. The Trial Chamber addressed the dislocation of mobile 091 from the other mobiles elsewhere.⁶¹⁷⁹

3134. Mr Philips found that Blue 233's calls overlapped three times with those of mobile 091 and once with mobile 170. The Trial Chamber finds that these few examples of overlapping calls are of miniscule import in light of the number of call pairs⁶¹⁸⁰ analysed by Mr Philips. Further, as Mr Philips explained, even a few instances of overlapping calls could be consistent with a single person using both mobiles, particularly when the mobiles involved used the same cell, adjacent cells or cells with overlapping predicted best server coverages.⁶¹⁸¹ There were no contacts between Blue 233 and the two personal mobiles, which is also consistent with a single person using Blue 233 and mobiles 091 and 170.

3135. The activations of cells providing coverage to Mr Ayyash's two residences provides some limited support to his using these mobiles, notwithstanding the lack of direct evidence of when he

⁶¹⁷⁹ See sub-sections (B) (2) (f) 'Red 741' and (B) (2) (g) 'The 2005 Hajj'.

⁶¹⁸⁰ Mr Philips analysed 181 pairs of calls between Blue 233 and mobiles 091, 170 and 935. This also includes one close-in-time call pair with mobile 935.

⁶¹⁸¹ John Edward Philips, T. 19 April 2017, p. 97, T. 20 April 2017, p. 43; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), p. 2.

was at either of them. Blue 233 shared the most frequently used cells with Mr Ayyash's other mobiles on the Touch network, mobiles 091 and 165, and partly with mobile 170. This may not be inconsistent with the mobiles sharing the same user, however, four of the five most frequently activated cells were in south Beirut, which is geographically not sufficiently distinctive to provide this comparison enough weight.

3136. The Trial Chamber finds that the close-in-time use of Blue 233 with Mr Ayyash's mobiles 170 and 091 provides a sufficient number of examples of possible co-locations—28 with mobile 170 and 29 with mobile 091—to eliminate the possibility that these mobiles did not have a common user. The high frequency of calls also produced a significant number of co-locating call pairs that occurred within five or 15 minutes. This means that the user of the mobiles activated the same cells with different mobiles within a short period, further excluding coincidental call patterns. The common movement of these mobiles further confirms a finding on a single user.

3137. Mr Philips's analysis of Blue 233's activity in relation to the activity of mobiles 091 and 170 covered a significant period, namely January and February 2005. It involved a high number of calls and movement of these mobiles throughout Beirut and Lebanon. Mr Philips highlighted these factors as helping to show that multiple mobiles had a single user.⁶¹⁸² The Trial Chamber finds this evidence compelling in proving that Mr Ayyash used Blue 233.

3138. Based on this, the Trial Chamber finds that Blue 233 and personal mobile 170 had a single user. Except for the afternoon of Friday 28 January 2005, the same person used Blue 233 and personal mobile 091. On the totality of the evidence, the only reasonable inference available is that the user of these mobiles was Mr Ayyash.

3139. Mr Donaldson concluded that Blue 233's attribution period started on 10 January and ended on 21 September 2005 consistent with its first and last calls, and consistency in its contact and geographic profiles, including connecting to a cell near a service provider's office when Mr Ayyash's wife had an appointment there in June and July 2005. However, neither he nor Mr Philips set out Blue 233's possible co-locations with personal mobiles 091 and 170 after Monday 14 February 2005. Mr Donaldson demonstrated two inconsistencies including Blue 233

⁶¹⁸² See sub-section (A) 'Single user analysis', above.

in the mobile's activity after this date: an actual dislocation between Blue 233 and mobile 170 on 23 June 2005, and a possible dislocation on 29 June 2005.

3140. Mr Philips found that Blue 233 possibly co-located and moved together with other mobiles, including personal mobiles, from Tuesday 11 January to Monday 14 February 2005. The Trial Chamber relied on Mr Philips's evidence to determine the period of Blue 233's attribution to Mr Ayyash. It need not analyse its use beyond that date.

3141. The Trial Chamber is therefore satisfied beyond reasonable doubt that Mr Ayyash was the user of Blue 233 from Monday 10 January to Monday 14 February 2005.

(e) Green 300

3142. The Prosecutor pleads that Mr Ayyash was using Green 300, from Thursday 30 September 2004 to Monday 14 February 2005, as one of three mobiles that were used to monitor and coordinate the preparation for the attack on Mr Hariri. This included the preparation of the false claim of responsibility and, on Monday 14 February 2005, monitoring the physical perpetration of the attack.⁶¹⁸³

3143. The Prosecution seeks to prove its attribution to Mr Ayyash through its co-location with his personal and network mobiles. Green 300 was only in contact with one other mobile, namely Green 023, which Mr Badreddine was using during the same period.

i. Evidence

a. Subscriber details

3144. Green 300 was an Alfa post-paid mobile which was activated and purchased on 13 August 2004 and deactivated on 23 August 2005.⁶¹⁸⁴ The subscription contract shows that the subscriber was Mr Chafik Abd al-Rahman Ayach, a student living on Hachem Street, in Beirut.⁶¹⁸⁵

⁶¹⁸³ Amended consolidated indictment, para. 15 (b).

⁶¹⁸⁴ Exhibit P405 (Alfa subscription of 18 Green mobiles), ERNs 60105088, 60105090; exhibit P792 (Alfa SIM cards' activation and deactivation dates).

⁶¹⁸⁵ Exhibit P405, ERN 60105088.

3145. The Trial Chamber, however, received evidence that the civil registration number appearing on the contract belonged to a person with a different name, deceased since 1979.⁶¹⁸⁶ The Lebanese Civil Status Directorate and the General Directorate of Political Affairs and Refugees had no records for Mr Ayach.⁶¹⁸⁷

b. Attribution period and contact profile

3146. The Prosecution attributes Green 300 to Mr Ayyash from Thursday 30 September 2004 to Monday 14 February 2005.⁶¹⁸⁸

3147. Mr Donaldson determined the start date of the period based on a change in the mobile's contact profile.⁶¹⁸⁹ The first call, an incoming Alfa service text message, appears on 17 August 2004 in the call sequence table of Green 300.⁶¹⁹⁰ For a week, it had no contact with other mobiles.⁶¹⁹¹ Then, from 25 August to 26 September 2004, it exchanged calls with four other Green network mobiles, followed by three days of inactivity.⁶¹⁹²

3148. From 30 September 2004, the only contact Green 300 had was with Green 023, save for four incoming voice calls⁶¹⁹³ and four Alfa service text messages.⁶¹⁹⁴ The two Green network mobiles limited their communication to voice calls only and never exchanged text messages.⁶¹⁹⁵ Green 300 was used with one handset from its first call on 17 August 2004, throughout the

⁶¹⁸⁶ Exhibit P1964 (Records of national identity card and civil status extract), ERNs 60185080-60185083.

⁶¹⁸⁷ Exhibit P397, pp 2-3.

⁶¹⁸⁸ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 444, 449-453.

⁶¹⁸⁹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 449; Andrew Donaldson, T. 23 August 2017, pp 65-67.

⁶¹⁹⁰ Exhibit P1207 (Call sequence table of Green 300), p. 1; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 446. *See also* exhibit P1192 (Statement of Witness PRH707, 11 November 2015), paras 261, 281.

⁶¹⁹¹ Exhibit P1207, p. 1.

⁶¹⁹² These Green network mobiles were Green 023, Green 992, Green 032 and Green 290. Exhibit P1207, pp 1-2; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 447-448. *See also* chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles', (C) 'Green network'.

⁶¹⁹³ On 1 October 2004, Green 300 received calls from Green 032 and Green 290. On 4 and 11 October 2004, it received further calls from a landline and another mobile, the users of which are unidentified, exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 460.

⁶¹⁹⁴ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 449, 458-460, 467-468 (d); exhibit P1207; Andrew Donaldson, T. 23 August 2017, pp 65-66. *See also* chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles', (C) 'Green network'.

⁶¹⁹⁵ Exhibit P1207; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 457. *See also* chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles', (C) 'Green network'.

attribution period, to its last at 11:58 on 14 February 2005, an hour before the attack on Mr Hariri.⁶¹⁹⁶

c. Geographic profile

3149. Mr Donaldson testified that Green 300's user could be determined from its geographic profile, namely the cell sectors most frequently activated, and its co-location and movement in concert with other mobiles independently attributable to Mr Ayyash.⁶¹⁹⁷

3150. According to Mr Donaldson, Green 300's most frequently activated cells were in the southern suburbs of Beirut. SFEIR2 was the most used for 17 calls, followed by HADATH1 which was activated for eight calls.⁶¹⁹⁸ It used both cells in daytime and at night.⁶¹⁹⁹ These cell towers provided the predicted best server coverage 'in the proximity' of Mr Ayyash's residence in Hadath, and were in the five most frequently used cells of Mr Ayyash's personal mobile 935 and Yellow 294.⁶²⁰⁰ The mobile also activated MRAICI2 and PORT2, in northern Beirut, and MIKAEL3 for five calls each.⁶²⁰¹ It only used these cells during the day, between 10:49 and 17:07.⁶²⁰²

⁶¹⁹⁶ Exhibit P1207; Andrew Donaldson, T. 23 August 2017, p. 66. A query in the Prosecution's structured query language (SQL) database showed that for the period of 1 September 2004 to the end of 2007, the handset with IMEI 352957009089150 was not used with any other number in Lebanon, exhibit P1967 (Witness statement of Christian Carnus regarding examination of Red and Green handset usage), paras 2 (b), 17, 22.

⁶¹⁹⁷ Andrew Donaldson, T. 23 August 2017, p. 65.

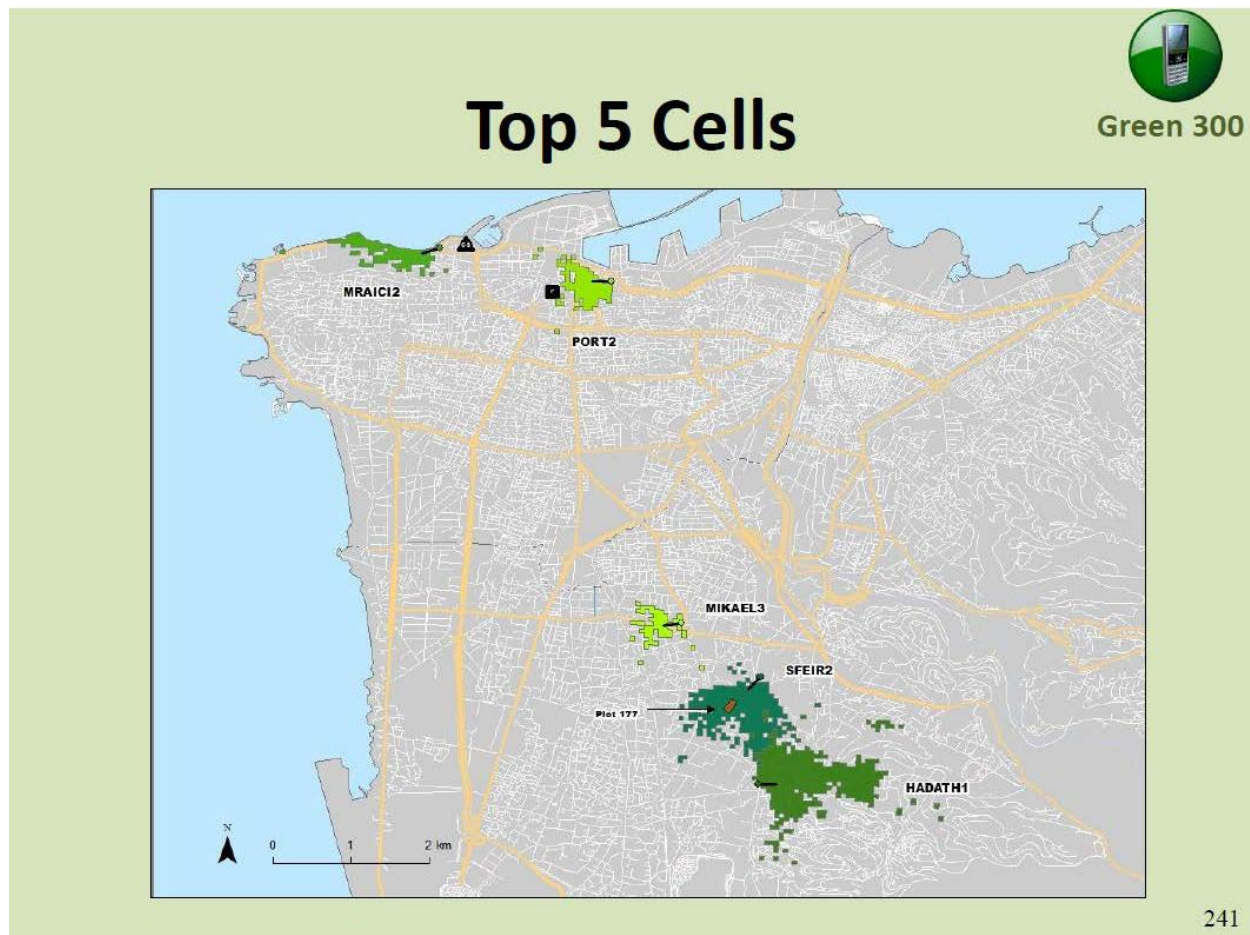
⁶¹⁹⁸ Exhibit P1207; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 461, 464, annex C, paras 9-11; Andrew Donaldson, T. 23 August 2017, pp 68-69. *See also* exhibit P2025, slides 339-342.

⁶¹⁹⁹ Exhibit P1207; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 462; Andrew Donaldson, T. 23 August 2017, pp 68-69. *See also* exhibit P2025, slides 339-342.

⁶²⁰⁰ Andrew Donaldson, T. 23 August 2017, pp 68-69. *See also* exhibit P2025, slides 339-342, 463.

⁶²⁰¹ Exhibit P1207; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 461, 464, annex C, paras 9-11; Andrew Donaldson, T. 23 August 2017, pp 68-69. *See also* exhibit P2025, slides 339-342.

⁶²⁰² Exhibit P1207, pp 3-5; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 462; Andrew Donaldson, T. 23 August 2017, pp 68-69. *See also* exhibit P2025, slides 339-342.



Slide 241 of Mr Donaldson's PowerPoint presentation—exhibit P2025

d. Single user analysis

3151. Based on a consolidated call sequence table, Mr Philips identified and analysed pairs of calls made within 60 minutes on Green 300 and any of the other relevant mobiles, Red 741, Blue 233, Blue 322, Yellow 294 and mobiles 935, 170 and 091, within their respective common periods of activity from 30 September 2004 to 14 February 2005.⁶²⁰³ The evidence related to the single user analysis of Green 300 and Red 741 is analysed below, at paragraphs 3207 to 3242.

⁶²⁰³ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 14-15. Although the Prosecution did not plead in the amended consolidated indictment that Mr Ayyash used Blue 322, Mr Philips included it in his single user analysis. Exhibit P1936 (Expert report of John Edward Philips – Single user analysis in relation to Blue 322, Blue 324 and Blue 585), pp 2-5.

Green 300 and mobile 935

3152. Mr Philips analysed 25 pairs of calls with respect to Green 300 and personal mobile 935 on 17 days between 30 September 2004 and 13 January 2005, when they were active together.⁶²⁰⁴ Mr Philips concluded that for ten pairs of calls, Green 300 and mobile 935 could be co-located.⁶²⁰⁵ Of these, two pairs occurred within five minutes of the calls activating identical cells, MEA1 and SFEIR2.⁶²⁰⁶ The time lapse between an additional three pairs of calls was between five and 15 minutes.⁶²⁰⁷ For these calls, the mobiles activated MHABI1, SFEIR2 and PORT1.⁶²⁰⁸ The longest time between a pair of calls within this category was 37 minutes with both mobiles activating SFEIR2.⁶²⁰⁹

3153. Mr Philips determined that 15 pairs of calls fell in the category of ‘would not preclude co-location’.⁶²¹⁰ Some of these cell activations occurred away from the southern suburbs of Beirut, on MHABI1 in south Lebanon, near the border with Israel, on MEA1 near the Beirut airport, activating PORT1 in north Beirut and on RAHHAL1 in south Lebanon.⁶²¹¹ Both Mr Philips and

⁶²⁰⁴ These days were 30 September, 1, 4, 7, 9, 11, 13, 19-20, 28 October, 10 November, 20, 23, 27-29 December 2004 and 12 January 2005. Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 34, 42-44, 47, 50-52, 54-56, 64, 67, 75, 78-80, 83, 100, 280-281; exhibit P1259 (Call sequence table of ten numbers—Mr Ayyash), pp 282-334. *See also* exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips), slides 512, 514-515.

⁶²⁰⁵ These pairs of calls occurred on 9, 11, 13, 20, 28 October, 10 November, 23, 28-29 December 2004 and 12 January 2005. For these calls the two mobiles used MHABI1, SFEIR2, MIKAEL2, MEA1, PORT1, RAHHAL1 and HAROUF3. John Edward Philips, T. 21 April 2017, pp 27-28; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 47, 50-51, 54, 56, 64, 75, 79-80, 83, 100; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 18, 20-21, 24, 29.

⁶²⁰⁶ On 28 October and 10 November 2004, exhibit P1259, pp 299, 303. These exclude an overlapping call on 20 October 2004.

⁶²⁰⁷ On 9, 13 October and 28 December 2004, exhibit P1259, pp 288, 291, 326.

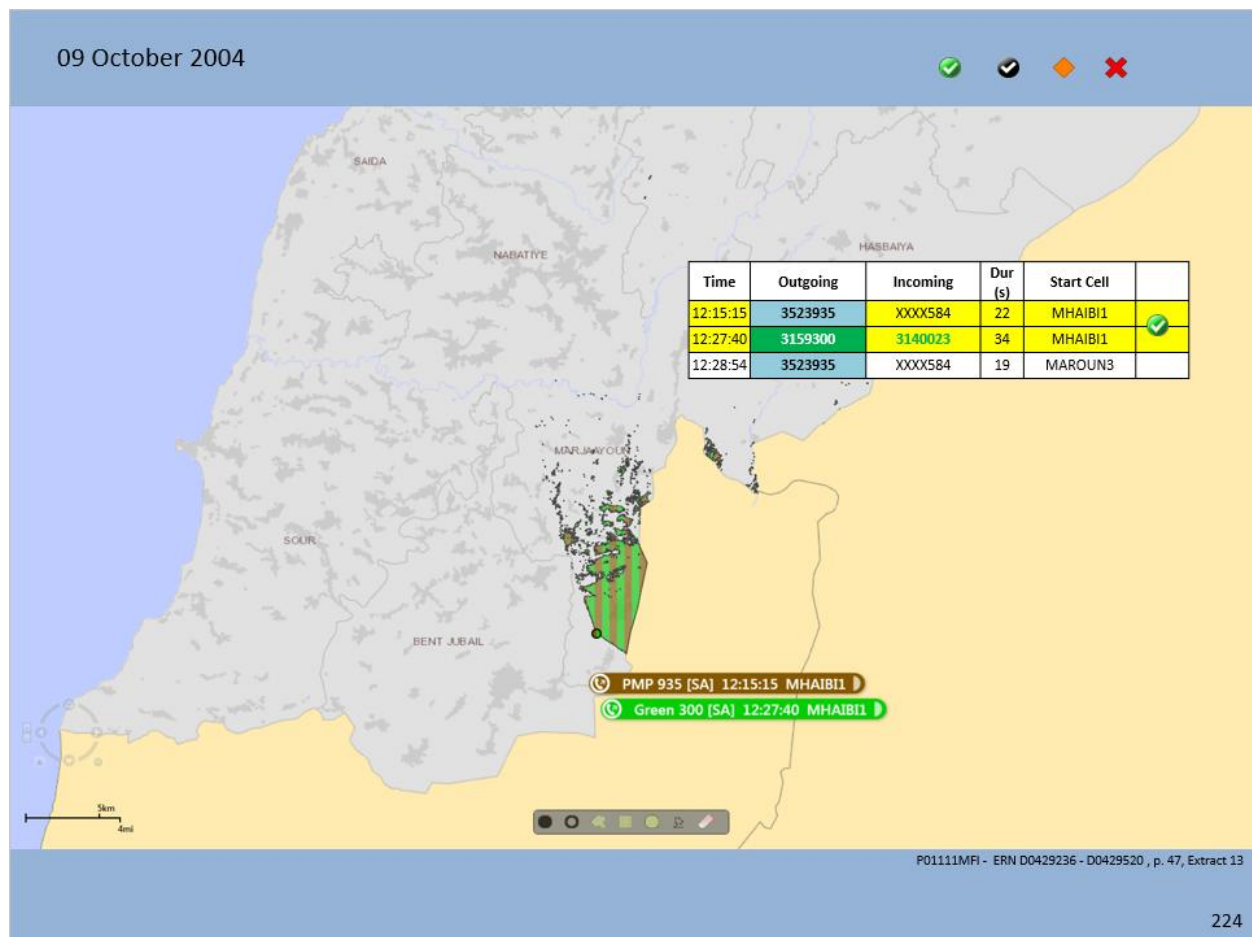
⁶²⁰⁸ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 47, 51, 79-80; exhibit P1259, pp 288, 291, 326.

⁶²⁰⁹ On 23 December 2004, exhibit P1259, p. 324.

⁶²¹⁰ John Edward Philips, T. 21 April 2017, pp 27-32, T. 24 April 2017, p. 82; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 34, 42-44, 47, 50-52, 54-56, 64, 67, 75, 78-80, 83, 100, 280-281; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 18, 20-21, 24-25, 29; exhibit P1939 (Statement of Helena Habraken), paras 8-13. *See also* exhibit P1935, slides 225-227, 514-515.

⁶²¹¹ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 47, 56, 78-80, 83; John Edward Philips, T. 21 April 2017, pp 27-32, 39-40; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 480, 485, 493-494, annex D, pp 331, 336, 345-346. *See also* exhibit P1939 (Statement of Helena Habraken), paras 8-13; exhibit P1935, slides 223, 250. Yellow 294 also co-located with Green 300 when using PORT1 and RAHHAL1. Mr Philips demonstrated through cell activations in south Lebanon that on 9 October 2004 Yellow 294 moved in concert in a northerly direction with mobile 935, and the two activated the same cell, NABATI1, for calls one minute apart. John Edward Philips, T. 21 April 2017, pp 33-34; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), p. 49; exhibit P1259, p. 289. *See also* exhibit P1935, slides 229-233.

Mr Donaldson demonstrated the possible co-location of Green 300 with mobile 935 activating Alfa's MHABI1 cell near the Israeli border, and mobile 935's movement in tandem with Yellow 294 to the area from Alfa's HAROUF and NABATI cells.⁶²¹² The following map is from Mr Philips's slide presentation depicting the mobiles' co-location on 9 October 2004 in the predicated best server coverage area of MHABI1:



*Exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips),
slide 224*

⁶²¹² John Edward Philips, T. 21 April 2017, pp 27-32; Andrew Donaldson, T. 24 August 2017, pp 26-29; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 480, annex D, p. 331; exhibit P1939 (Statement of Helena Habraken), paras 8-13. *See also* exhibit P1935, slides 220-227; exhibit P2025.1 (Additional collocation presentation, Andrew Donaldson), slides 2-9.

3154. On 20 October 2004, Green 300 and mobile 935 had incoming calls at 12:27 and 12:28 which overlapped for 27 seconds, but the two mobiles were using the same cell, MIKAEL2.⁶²¹³

Green 300 and mobile 091

3155. Green 300 had no overlapping calls with mobile 091 during their common period of activity, namely from 13 January to 14 February 2005.⁶²¹⁴

3156. Mr Philips identified ten pairs of calls for Green 300 and personal mobile 091 on seven days within this period.⁶²¹⁵ Mr Philips concluded that for four of these pairs the two mobiles activated cells with overlapping predicted best server coverage, such as PORT2 and HQ_B, SFEIR2 and Sfeir_B, MEA1 and Ouzaii-II_A, and therefore possibly co-located.⁶²¹⁶ He categorised four pairs as ‘would not preclude co-location’.⁶²¹⁷

3157. Mr Philips observed an anomaly with respect to mobile 091 and excluded its co-location with Green 300 and the other mobiles, Blue 233, Red 741 and mobile 170, for a period between 13:11 and 15:02 on 28 January 2005.⁶²¹⁸

⁶²¹³ Exhibit P1259, p. 295; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), p. 57.

⁶²¹⁴ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 204-205, 276; exhibit P1259, pp 334-364.

⁶²¹⁵ These days were 17-18, 20, 24, 28 January, 8 and 11 February 2005. Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 124, 126-128, 130, 142, 161-162, 187, 189, 236, 256; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 31-32, 34; exhibit P1259, pp 337-338, 341, 345, 350, 359, 361. This is the Trial Chamber’s own calculation based on Mr Philips’s expert reports, exhibits P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review). Mr Philips calculated nine close-in-time pairs of calls for the two mobiles, exhibit P1935, slide 514.

⁶²¹⁶ On 18 and 24 January and 11 February 2005. John Edward Philips, T. 21 April 2017, pp 46, 49-50, 69, 96. *See also* exhibit P1935, slides 265-266, 315, 376.

⁶²¹⁷ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 124, 126-128, 130, 142, 161-162, 187, 189, 236, 256; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 31-32, 34. *See also* exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 501.

⁶²¹⁸ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 184-185, 187-190, 204; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 37; John Edward Philips, T. 24 April 2017, pp 36-39, 47-53, 56-59. *See also* exhibit P1935, slides 443-500.

Green 300 and mobile 170

3158. Mr Philips analysed seven pairs of calls for Green 300 and mobile 170 on five days.⁶²¹⁹ He found that for two pairs of calls, made within 31 and 48 minutes, the two mobiles may have co-located on cells with overlapping predicted best server coverage, Alfa's SFEIR2 and Touch's Sfeir_A, and Alfa's HADATH1 and Touch's Hadath_C,⁶²²⁰ and their co-location would not be precluded for five calls.⁶²²¹ Overlapping calls did not occur between Green 300 and mobile 170.⁶²²²

Green 300 and Yellow 294

3159. Mr Philips analysed 18 pairs of calls made on Green 300 and Yellow 294 on 11 days from 30 September 2004 to 7 January 2005.⁶²²³ The two mobiles used identical cells for seven pairs of calls, five of which occurred within five minutes using SFEIR2, HADATH3, ROUEIS3, GHOBAl1 and PORT1, and therefore could be co-located, according to Mr Philips.⁶²²⁴

⁶²¹⁹ On 11, 15, 18, 25 January and 13 February 2005. Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 92-94, 114-115, 126-127, 268-269; exhibit P1259, pp 333, 336, 338, 346, 363-364. Mr Philips's slide presentation on single user analysis, exhibit P1935 on slide 514, erroneously shows that he analysed nine close-in-time pairs of calls for Green 300 and personal mobile 170, however based on his reports, exhibits P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash) and P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), the Trial Chamber calculated seven.

⁶²²⁰ On 11 January and 13 February 2005.

⁶²²¹ John Edward Philips, T. 24 April 2017, p. 82; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 92-94, 114-115, 126-127, 268-269; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 31-32. *See also* exhibit P1935, slides 514-515.

⁶²²² Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 204-205, 276-277; exhibit P1259; John Edward Philips, T. 24 April 2017, pp 50-55; exhibit P1935, slides 459, 467, 471.

⁶²²³ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 35, 37-39, 42, 45, 65, 67, 69-70, 77-80, 83, 85; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 21-22. Mr Philips's slide presentation on single user analysis, exhibit P1935 on slide 514, erroneously shows that the overall number of analysed call pairs of the two mobiles was 16.

⁶²²⁴ These days were: 30 September, 1 October, 10 November, 22 and 28 December 2004. Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 35, 37, 42, 65, 70, 79-80; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 21. The five pairs of calls made within five minutes occurred on 30 September, 1 October, 10 November, 22 and 28 December 2004, exhibit P1259, pp 282-283, 303, 323, 326.

3160. Mr Philips found that for the remaining 11 pairs of calls the time and distance separating the two mobiles would not preclude their co-location.⁶²²⁵ There were no overlapping calls between them.⁶²²⁶

Green 300 and Blue 322

3161. Mr Philips analysed three pairs of calls for Green 300 and Blue 322 on a total of three days, 19 October, 23 December and 27 December 2004. Mr Philips determined that the three analysed pairs could mean that the mobiles co-located.⁶²²⁷ For these pairs the mobiles used cells with overlapping predicted best server coverage, such as Touch's Sfeir_A and Sfeir_B, and Alfa's SFEIR2 and SFEIR3.⁶²²⁸ He explained that the two mobiles were never in contact with each other and had no calls that overlapped in time.⁶²²⁹

Green 300 and Blue 233

3162. Green 300 had 20 pairs of close-in-time calls, meaning they were made within 60 minutes, with Blue 233.⁶²³⁰ On six days, for 11 pairs of calls, Green 300 and Blue 233 used cells with some overlapping best server coverage, such as PORT3 and CoastRoad_C, MIKAEL3 and Mar Michael_B, SIMON2 and Ouzai_2_A. This meant that the two mobiles possibly co-located.⁶²³¹ Of these, four pairs of calls occurred within five minutes,⁶²³² and three pairs of calls within 15 minutes.⁶²³³ The longest time lapse between these pairs was 26 minutes.⁶²³⁴ The mobiles'

⁶²²⁵ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 38-39, 42, 45, 67, 69, 77-78, 83, 85; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 22.

⁶²²⁶ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 36, 57, 66, 86, 204-205.

⁶²²⁷ Exhibit P1936 (Expert report of John Edward Philips – Single user analysis in relation to Blue 322, Blue 324 and Blue 585), pp 80, 109-110, 117. Mr Philips's PowerPoint presentation on single user analysis, exhibit P1935 on slide 514, is incorrect with respect to the number of analysed call pairs of the two mobiles.

⁶²²⁸ Exhibit P1936 (Expert report of John Edward Philips – Single user analysis in relation to Blue 322, Blue 324 and Blue 585), pp 80, 109-110, 117.

⁶²²⁹ Exhibit P1936 (Expert report of John Edward Philips – Single user analysis in relation to Blue 322, Blue 324 and Blue 585), pp 92-93, 100-101, 119-120.

⁶²³⁰ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 114, 124, 126-130, 165, 139-142, 165-166, 193, 199-202, 204-205, 256-257, 276; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 31-34, 39.

⁶²³¹ These days were 18-19, 25, 28, 31 January and 11 February 2005. Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 128-129, 135, 139-140, 165-166, 193, 199-200, 256-257; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 33, 39.

⁶²³² On 19, 28 and 31 January 2005, exhibit P1259, pp 340, 351, 353.

⁶²³³ On 18, 25 January and 11 February 2005, exhibit P1259, pp 338, 346, 361.

⁶²³⁴ On 11 February 2005, exhibit P1259, p. 361.

geographic location for the remaining nine pairs of calls would not preclude that they co-located, according to Mr Philips.⁶²³⁵

3163. Mr Philips considered the presence and movement of Green 300, Blue 233 and mobile 091 in north Beirut, near the St Georges Marina, in the afternoon on 18 January 2005.⁶²³⁶ Within 20 minutes the three mobiles used cells which had overlapping predicted best server coverage or were adjacent, Alfa's PORT2 and PORT3, and Touch's CoastRoad_B and CoastRoad_C.⁶²³⁷ These are call pairs 3-4 and 5-6 in the call sequence table extract below. Mr Philips concluded that, on these occasions, Green 300 possibly co-located with Blue 233 and mobile 091, and the other cell activations would not preclude the mobiles' co-location.⁶²³⁸

⁶²³⁵ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 114, 124, 126-130, 140-142, 201-202; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 31-34.

⁶²³⁶ Exhibit P1935, slides 268-273.

⁶²³⁷ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 128-129; John Edward Philips, T. 21 April 2017, pp 50-51. *See also* exhibit P1935, slides 270-271.

⁶²³⁸ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 128-130; John Edward Philips, T. 21 April 2017, pp 50-51. *See also* exhibit P1935, slide 274.

18/01/2005	16:14:17	938	3020091	N/A	Voice	158	352505002269582	3271	RiadSolh_A
18/01/2005	16:17:23	3079501	3071233	N/A	Voice	62	355383000293240	3893	Minaa_el_hosson_C
18/01/2005	16:49:09	3140023	3159300	N/A	Voice	23	352957009089150	041D	PORT3
18/01/2005	16:56:30	3071233	3079501	N/A	Voice	58	355383000293240	1073	CoastRoad_C
18/01/2005	17:00:45	854	3020091	N/A	Voice	256	352505002269582	1072	Coast Road_B
18/01/2005	17:07:23	3140023	3159300	N/A	Voice	68	352957009089150	041C	PORT2
18/01/2005	17:08:32	3071235	3071233	N/A	Voice	89	355383000293240	1071	CoastRoad_A
18/01/2005	17:55:58	3971933	3831170	N/A	Voice	23	352522000225553	3893	Minaa_el_hosson_C

Map 01



*Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash—
exhibit P1111, p. 128*

3164. Mr Donaldson's evidence was that Alfa's PORT and Touch's CoastRoad cell towers were 100 metres apart. He concluded that the above sequence of calls demonstrates common movement of Green 300 with Blue 233 and mobile 091 in an area not frequented by the personal mobile.⁶²³⁹

⁶²³⁹ Andrew Donaldson, T. 24 August 2017, pp 43-46; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 501, annex D, p. 354. See also exhibit P2025.1, slides 57-63.

3165. On Friday 11 February 2005, for just over two hours, Green 300 used overlapping cells with Blue 233 and mobile 091. Mr Philips provided evidence that save for the last call pair in the following call sequence table extract the respective mobiles, including Green 300 and Blue 233, possibly co-located.⁶²⁴⁰ The map shows the predicted best server coverage areas of the activated cells, Touch's Ouzaii_II_A and Sfeir_A, and Alfa's MEA1 and SIMON2.

11/02/2005	14:33:05	3071233	3198864	N/A	Voice	84	355383000293240	2961	Ouzaii_2_A
11/02/2005	14:48:13	3140023	3159300	N/A	Voice	28	352957009089150	03E8	MEA1
11/02/2005	14:58:35	333	3020091	N/A	Voice	78	352505002269582	2961	Ouzaii-II_A
11/02/2005	15:43:33		3020091	N/A	Voice	75	352505002269582	2961	Ouzaii-II_A
11/02/2005	15:53:21	3198864	3071233	N/A	Voice	44	355383000293240	2961	Ouzaii_2_A
11/02/2005	16:19:19	3140023	3159300	N/A	Voice	55	352957009089150	0121	SIMON2
11/02/2005	16:38:50	3197610	3071233	N/A	Voice	68	355383000293240	2961	Ouzaii_2_A
11/02/2005	17:38:33		3020091	N/A	Voice	10	352505002269582	4051	Sfeir_A



*Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash—
exhibit P1111, p. 256*

⁶²⁴⁰ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 256-257; John Edward Philips, T. 21 April 2017, pp 96-97. See also exhibit P1935, slides 373-380.

3166. The expert did not identify overlapping calls between the two mobiles but noted that they operated on different networks, and for two calls received by these mobiles on 18 January 2005, while one used Alfa's PORT 2 and the other Touch's CostRoad_A, the time adjustment on any of the networks might change this conclusion.⁶²⁴¹

Overall pattern

3167. Mr Philips analysed 83 pairs of calls over four and a half months involving Green 300, personal mobiles 091, 170 and 935, and network mobiles Yellow 294, Blue 322 and Blue 233.⁶²⁴² For 37 pairs of calls Green 300 possibly co-located with one of the other mobiles,⁶²⁴³ mostly with Blue 233 (11 times) and mobile 935 (ten times). Mr Philips illustrated common movements of these mobiles on six days, 9 October, 29 December 2004, 18, 24 January, 11 and 14 February 2005.⁶²⁴⁴ On 28 January 2005, there were two pairs of calls when Green 300 did not co-locate with mobile 091, which is summarised in detail below.⁶²⁴⁵

3168. According to Mr Donaldson, from 30 September 2004 to 14 February 2005, Green 300 and one of the other mobiles attributable to Mr Ayyash, namely personal mobiles 935, 091, 170, Yellow 294 and Blue 233, were used on 43 days.⁶²⁴⁶ On these days, Green 300 was used within

⁶²⁴¹ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 204-205.

⁶²⁴² This is on the Trial Chamber's own calculation of analysed call pairs of Green 300, mobile 935, 091, 170, Yellow 294, Blue 322 and Blue 233 based on Mr Philips's expert reports, exhibits P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), P1936 (Expert report of John Edward Philips – Single user analysis in relation to Blue 322, Blue 324 and Blue 585), and P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review).

⁶²⁴³ Ten times with mobile 935, exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 47, 50-51, 54, 56, 64, 75, 79-80, 83, 100; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 20-21, 24, 29; four times with mobile 091, exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 126-130, 161-162, 256; twice with mobile 170, exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 94, 268-269; seven times with Yellow 294, exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 35, 37, 42, 65, 70, 79-80, 83; three times with Blue 322, exhibit P1936 (Expert report of John Edward Philips – Single user analysis in relation to Blue 322, Blue 324 and Blue 585), pp 80, 109-110, 117; 11 times with Blue 233, exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 129, 135, 139-140, 165-166, 193, 199-200, 256-257, exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 33, 39.

⁶²⁴⁴ John Edward Philips, T. 21 April 2017, pp 40-63, 67-78, 81-85, 88-97, T. 24 April 2017, pp 6-16, 18-23, 30-32, 36-39, 47-62. *See also* exhibit P1935 slides 253-427, 436-440.

⁶²⁴⁵ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 187-189, 204.

⁶²⁴⁶ Andrew Donaldson, T. 23 August 2017, pp 71-72; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 466. Mr Donaldson did not analyse the call and geographic patterns of the other Blue network mobile, Blue 322.

ten minutes of these mobiles 30 times.⁶²⁴⁷ Of these, 30 per cent were on the same Alfa cell sector, 40 per cent of the activations were on cell towers less than one kilometre apart, ten per cent were on cell towers more than one but less than two kilometres apart and ten per cent of the activations occurred on cell towers that were more than two but less than five kilometres apart.⁶²⁴⁸

3169. In his report, Mr Donaldson highlighted these mobiles' possible co-locations on 33 days between 30 September 2004 and 13 February 2005.⁶²⁴⁹ He concluded that the mobiles moved in concert across Lebanon, but mainly within Beirut, with the exception of a limited period in the afternoon on 28 January 2005, when mobile 091 separated from the other mobiles.⁶²⁵⁰ Notwithstanding this dislocation, Mr Philips and Mr Donaldson found the evidence on Green 300 consistent with having the same user as the other mobiles.⁶²⁵¹

ii. Submissions

3170. The Prosecution submits that Mr Ayyash was the user of Green 300 from 30 September 2004 to 14 February 2005 and that the name under which it was subscribed does not exist in Lebanon.⁶²⁵²

3171. The most frequently activated cell tower of Green 300, SFEIR2, provided predicted best server coverage for Mr Ayyash's residence in Hadath.⁶²⁵³ It is also the most frequently activated cell tower of mobiles 935 and Yellow 294. Cell towers in north Beirut commonly used by Green 300 and Red 741 were only activated during the day.⁶²⁵⁴ The Green network mobile was used for 43 days over four and a half months and on each of those days, save for 28 January 2005, it moved in concert with the other mobiles.⁶²⁵⁵

⁶²⁴⁷ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 470.

⁶²⁴⁸ Andrew Donaldson, T. 23 August 2017, pp 71-72; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 470.

⁶²⁴⁹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 474-508, annex D, pp 326-363.

⁶²⁵⁰ Andrew Donaldson, T. 23 August 2017, p. 72; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 470 (d), 472, 559. *See also* exhibit P2025, slide 244.

⁶²⁵¹ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), p. 3; Andrew Donaldson, T. 23 August 2017, p. 72. *See also* John Edward Philips, T. 24 April 2017, pp 87-89, T. 26 April 2017, pp 96-97.

⁶²⁵² Prosecution final trial brief, para. 260; Prosecution closing submissions, T. 12 September 2018, p. 78.

⁶²⁵³ Prosecution final trial brief, para. 261; Prosecution closing submissions, T. 12 September 2018, pp 92-93.

⁶²⁵⁴ Prosecution final trial brief, para. 261.

⁶²⁵⁵ Prosecution final trial brief, para. 262.

3172. The Ayyash Defence argues that the Prosecution did not present any evidence connecting Mr Ayyash to the network mobiles.⁶²⁵⁶ The primary means for the attribution of network mobiles is through co-location analysis, which is unreliable, and through attribution of the personal mobiles to Mr Ayyash, which the Prosecution failed to establish.⁶²⁵⁷

iii. Findings

3173. As the Trial Chamber has already found, Green 300 was part of a covert network comprised of three Alfa mobiles, all purchased using false identification documents.⁶²⁵⁸ From 30 September 2004 to 14 February 2005, its user had calls only with one other mobile, Green 023.

3174. Green 300 made and received 100 calls on 43 days. On Mr Donaldson's evidence, the mobile had a link with Mr Ayyash's residence in Hadath, as it used SFEIR2 and HADATH1, in day time and at night, for 25 per cent of its calls. Mr Ayyash had a registered residence in Hadath, and he made and received some of the calls involving landline 696. However, in the absence of direct evidence on this point, the Trial Chamber could not determine when he was present there.⁶²⁵⁹

3175. The commonalities in the geographic profile with mobile 935 and Yellow 294 for 25 calls in south Beirut do not assist in attributing Green 300 to Mr Ayyash, although they are not inconsistent with it.

3176. The Trial Chamber is satisfied that Green 300 did not change user from 30 September 2004 to 14 February 2005. This is shown in its contact profile in that it called and received calls from only one number, Green 023, and its use of the same handset.

3177. It made its final call on 14 February 2005, one hour before the attack on Mr Hariri, using—at the end of that call—PHENMB1, Alfa's temporary relay cell, placed on the back of a truck across the road from the Phoenicia Hotel facing in the hotel's direction and close to the scene of the attack.⁶²⁶⁰

⁶²⁵⁶ Ayyash Defence final trial brief, paras 670-671.

⁶²⁵⁷ Ayyash Defence final trial brief, paras 292, 670-671; Ayyash Defence closing submissions, T. 17 September 2018, pp 117-118.

⁶²⁵⁸ See chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles', (C) 'Green network'.

⁶²⁵⁹ See sub-section (B) (1) (b) (v) 'Findings'.

⁶²⁶⁰ See in para. 3234, below.

3178. To determine if it had a common user with the other mobiles, and whether its user was Mr Ayyash, the Trial Chamber has carefully examined Mr Donaldson's co-location analysis of Green 300 with respect to mobiles 935, 091, 170, Yellow 294 and Blue 233. It has also examined Mr Philips's evidence on single user analysis involving the same mobiles. On the Prosecution's request, Mr Philips included Blue 322 in his analysis despite the Prosecutor, in the amended consolidated indictment, having not attributed this mobile to Mr Ayyash.

3179. During the period analysed by Mr Philips, from Thursday 30 September 2004 to Thursday 13 January 2005, the two Alfa mobiles, Green 300 and Mr Ayyash's personal mobile 935, possibly co-located ten times. The first was on Saturday 9 October 2004 and the last on Wednesday 12 January 2005. For five instances this occurred within 15 minutes. The two mobiles also showed common movements and activated common cells as far as Lebanon's border with Israel. Cells that the mobiles used for further 15 pairs of calls would not preclude that they co-located.

3180. On Wednesday 20 October 2004, Green 300 and mobile 935 had incoming calls that overlapped in time. According to Mr Philips, a few overlapping calls would not exclude the mobiles having one single user, but when it occurs, the mobiles must activate the same cell, adjacent cells or cells with overlapping predicated best server coverage. For these overlapping calls, Green 300 and mobile 935 were using the same cell, MIKAEL2. This therefore, using Mr Philips's terminology, does not preclude that the two mobiles had the same user.

3181. Green 300 and Yellow 294 were two Alfa mobiles. According to Mr Philips, the two mobiles could have co-located seven times, on 30 September, 1 October, 10 November, 22, 28 and 29 December 2004. Each time they activated the same cells, such as SFEIR2, ROUEIS3, HADATH3, GHOBAIL and PORT1. On five occasions, they used the same cells within five minutes. Mr Philips identified a further eleven times where the mobiles' cell activations would not preclude their co-location. The two mobiles did not have overlapping calls.

3182. Further, the Trial Chamber has found that both Yellow 294 and Green 300 shared a common user in their respective overlapping attribution periods with mobile 935.⁶²⁶¹ The total number of possible co-locations of the three mobiles on Mr Philips's evidence was 34. Additionally, the three mobiles activated cells 55 times that, in Mr Philips's opinion, could be

⁶²⁶¹ See sub-sections (B) (1) (f) (iii) 'Findings', (B) (2) (b) (iii) 'Findings' and (B) (2) (e) (iii) 'Findings'.

travelled within the time between the calls, thus not precluding their co-location. Based on the cumulative weight of this evidence, the Trial Chamber is satisfied that Green 300, Yellow 294 and mobile 935 had a single user during their respective attribution periods. Mr Donaldson's co-location analysis of Green 300 supports this finding.⁶²⁶²

3183. Green 300 and Blue 233 operated on different networks, on Alfa and Touch respectively. From mid-January to Friday 11 February 2005, the two mobiles had 20 pairs of close-in-time calls. For 11, they used cells with some overlapping best server coverage which is consistent with the two possibly co-locating. Of these, four pairs of calls occurred within five minutes, three pairs of calls within 15 minutes and the longest time span between two calls was 26 minutes. The cells used for nine pairs of calls would not preclude their co-location. As an additional factor, supporting a finding on single user, the two mobiles also moved in tandem on two days, Tuesday 18 January near the St Georges Marina and on Friday 11 February 2005 north to the Beirut airport, as demonstrated by Mr Philips.

3184. Green 300 and mobile 091 had seven days of common activity from which Mr Philips could analyse pairs of calls. He found four occasions when the Green network mobile possibly co-located with mobile 091. These occurred on Tuesday 18, Monday 24 January and Friday 11 February 2005. Cell activations for a further four pairs of calls would not, according to Mr Philips, preclude their co-location. He noted mobile 091's geographical separation from Green 300 and the other mobiles for about two hours in the afternoon of Friday 28 January 2005, and excluded that the mobiles were used by one person in this period. This is further assessed in the following sections below.⁶²⁶³

3185. Similarly, Green 300 and mobile 170 made seven close-in-time calls on five days. Of the seven, Mr Philips identified only two occurrences when the mobiles possibly co-located, on Tuesday 11 January and on Sunday 13 February 2005, and five incidences that would not preclude their co-location.

3186. Green 300's attribution period, from Thursday 30 September 2004 to Monday 14 February 2005, includes in its entirety the attribution period of Blue 322, which—as specified in the

⁶²⁶² See paras 3048-3050, 3167-3169.

⁶²⁶³ See sub-sections (B) (2) (f) 'Red 741' and (B) (2) (g) 'The 2005 Hajj'.

Prosecution's final trial brief—spans from 18 October to 27 December 2004. Mr Donaldson did not analyse Blue 322's geographic profiles and activities. According to Mr Philips, the two mobiles may have co-located on three occasions activating overlapping cells on Alfa's and Touch's Sfeir towers. However, as the Prosecutor did not allege in the amended consolidated indictment that Mr Ayyash was using this mobile, the Trial Chamber has not made any findings to this effect against him.

3187. The Trial Chamber has found that Mr Ayyash was the principal user of personal mobiles 935, 091 and 170.⁶²⁶⁴ It found that he used network mobiles Yellow 294 and Blue 233.⁶²⁶⁵ Based on this, the Trial Chamber is satisfied that the cumulative occurrences of possible co-locations between these mobiles and their common movements over a period of four and a half months excludes that Green 300 had a separate user.

3188. The totality of the evidence and taking the instances of possible co-locations across the different mobiles that are independently attributed to Mr Ayyash together, the Trial Chamber is satisfied that this pattern is beyond mere coincidence and leads to the only reasonable conclusion available from the evidence that these mobiles had a common user. This user was Mr Ayyash. This does not include the time when mobile 091's cell activations in the area of the Beirut Airport in the afternoon of Friday 28 January 2005 excluded its co-location with mobile 170, Blue 233 and Green 300, as discussed below.

3189. The Trial Chamber, for these reasons, is satisfied beyond reasonable doubt that Mr Ayyash was the user of Green 300 from Thursday 30 September 2004 until Monday 14 February 2005.

(f) Red 741

3190. Red 741, according to the Prosecutor in the amended consolidated indictment, was one of six Red mobiles used by the 'assassination team, consisting of **AYYASH** and five other unidentified individuals (**S5, S6, S7, S8** and **S9**) for carrying out the assassination of **HARIRI**'.⁶²⁶⁶

⁶²⁶⁴ See sub-sections (B) (1) (e) (iii) 'Findings', (B) (1) (f) (iii) 'Findings' and (B) (1) (g) (iii) 'Findings'.

⁶²⁶⁵ See sub-sections (B) (2) (b) (iii) 'Findings' and (B) (2) (d) (iii) 'Findings'.

⁶²⁶⁶ Amended consolidated indictment, para. 15 (a).

3191. The Prosecution attempted to prove that Mr Ayyash was using it through its co-location with Mr Ayyash's personal mobiles 091 and 170, and the network mobiles Blue 233 and Green 300.

i. Evidence

a. Subscriber details

3192. According to Alfa's subscription documentation, Red 741 was activated on 21 December 2004 and deactivated on 17 March 2005.⁶²⁶⁷ The subscriber's name was Fayza Refaayeh with the address of Al-Mina, Port Said Street, Tripoli.⁶²⁶⁸ According to an 'Alfa Active' identification form, the SIM card was purchased on 12 January 2005.⁶²⁶⁹

3193. Ms Fayza Refaayeh stated that around January 2005 her husband, Mr Jawdat Ahmad, bought a SIM card with a number ending in 234 for their family, using her ID card.⁶²⁷⁰ Ms Refaayeh did not recognise number Red 741 as having been used by her family. A number of details on the 'Alfa Active' identification form were incorrect and the handwriting and signature were neither hers nor her husband's.⁶²⁷¹ Mr Ahmad stated that he purchased a SIM with a number ending in 234 in late December 2004.⁶²⁷² Mr Ahmad otherwise confirmed his wife's evidence.

b. Attribution period

3194. Mr Donaldson determined the attribution period of Red 741 to Mr Ayyash as from 14 January to 14 February 2005.⁶²⁷³ While there was a call on 4 January 2005, this was merely one to charge credit.⁶²⁷⁴ As can be seen from Red 741's call sequence table, this call also was made in a handset not used during the attribution period, suggesting a different user.⁶²⁷⁵ The first call was

⁶²⁶⁷ Exhibit P797, p. 1.

⁶²⁶⁸ Exhibit P404 (Alfa identification forms – eight Red mobiles), ERNs 60131507-30131508; exhibit P797, p. 1.

⁶²⁶⁹ Exhibit P404, p. 1.

⁶²⁷⁰ Exhibit P375 (Statement of Fayza Refaayeh), paras 7, 9-10, 12 (pp 7-8).

⁶²⁷¹ Exhibit P375 (Statement of Fayza Refaayeh), para. 17 (p. 8).

⁶²⁷² Exhibit P370 (Statement of Jawdat Ahmad), paras 7, 9 (p. 7).

⁶²⁷³ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 528, 535.

⁶²⁷⁴ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 529-530; exhibit P1197 (Call sequence table of Red 741), p. 1. *See* chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles', (D) 'Red network'.

⁶²⁷⁵ Exhibit P1197. *See* chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles', (D) 'Red network'.

made on 14 January 2005.⁶²⁷⁶ The final call involving Red 741 was made on 14 February 2005 at 12:50, a few minutes before the attack on Mr Hariri, when it activated ZOUKAK1, a cell providing coverage between the crime scene and Parliament.⁶²⁷⁷

c. Contact profile

3195. During the attribution period, Red 741 had contact with six other Red network mobiles and contacted the Alfa customer service numbers four times.⁶²⁷⁸ Further, it received an SMS from a number ending in 747 on 14 January 2005.⁶²⁷⁹ This number belonged to Mr Hassan Hamza Zaarour and his family.⁶²⁸⁰ Mr Zaarour stated that he had intended to send an SMS to a similar number and had simply mistyped it.⁶²⁸¹ It had no other contacts.

d. Geographic profile

3196. According to Mr Donaldson, Red 741's most frequently activated cells were on the north coast of Beirut, MRAICI2, ZOUKAK1 and PORT2, and in the Mosbeh area, MOSBEH2 and RIMAL1.⁶²⁸²

e. Single user analysis

3197. Red 741 had an overlapping attribution period with that of personal mobiles 091 and 170, Blue 233 and Green 300.⁶²⁸³ Single user analysis between Red 741 and personal mobiles 165, 935, and network mobiles Blue 322, Yellow 669 and Yellow 294 was therefore not possible.⁶²⁸⁴

⁶²⁷⁶ Exhibit P1197, p. 1; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 531.

⁶²⁷⁷ Exhibit P1197, p. 5; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 534. *See also* exhibit P1123 (ArcView shape files Alfa).

⁶²⁷⁸ Exhibit P1197; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 543.

⁶²⁷⁹ Exhibit P1197, p. 1.

⁶²⁸⁰ Exhibit P956 (Statement of Hassan Zaarour), para. 16 (p. 3).

⁶²⁸¹ Exhibit P956 (Statement of Hassan Zaarour), paras 19-23 (pp 3-4).

⁶²⁸² Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 545-549; Andrew Donaldson, T. 23 August 2017, pp 76-77, 79. This is based on the start cell data. When considering the end cell data, the first three most frequented cells, namely MRAICI2, ZOUKAK1 and MOSBEH2, remained the same, according to Mr Donaldson, exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex C, paras 5-7.

⁶²⁸³ *See* paras 2784, 2930, 3141, 3189; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 550.

⁶²⁸⁴ *See* paras 2756, 2881-2882, 3027-3028, 3067, 3096.

Red 741 and mobile 091

3198. Mr Philips analysed 18 pairs of calls in relation to Red 741 and mobile 091 on five days, 28 January, 2, 3, 8 and 11 February 2005.⁶²⁸⁵ Mr Philips determined that six of the pairs fell in the category of ‘could be co-located’,⁶²⁸⁶ five in the ‘would not preclude co-location’ category,⁶²⁸⁷ and seven in ‘would preclude co-location’.⁶²⁸⁸ The dislocation of these two mobiles from the others are discussed below in paragraphs 3237-3240.

3199. For four call pairs, the two mobiles possibly co-located within five minutes, once within 12 minutes, and another time within 25 minutes, each time using cells along the coast in Beirut.⁶²⁸⁹

3200. Red 741 was never in contact with mobile 091.⁶²⁹⁰ There were two pairs of overlapping calls between Red 741 and mobile 091, both on 28 January 2005: first Red 741 had an outgoing call from 14:17:05 to 14:18:02, while mobile 091 had an incoming call from 14:18:01 to 14:18:18; next while mobile 091 had an incoming call from 14:56:30 to 14:56:56, Red 741 started an outgoing call at 14:56:31 that lasted until 14:56:53.⁶²⁹¹ As discussed below, these calls occurred at a time when the two mobiles dislocated. Red 741 activated Alfa cells in the Mosbeh area and mobile 091 used Touch’s Airport_II_C.⁶²⁹²

⁶²⁸⁵ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 187-190, 209-210, 212, 234-237, 249, 251-253; exhibit P1259 (Call sequence table of ten numbers—Mr Ayyash). *See also* exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips), slides 512, 514-515.

⁶²⁸⁶ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 234-235, 249, 251-253; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 46.

⁶²⁸⁷ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 187-189, 212, 236-237, 251.

⁶²⁸⁸ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 187-190, 209-210; John Edward Philips, T. 24 April 2017, p. 82.

⁶²⁸⁹ Red 741 connected to Alfa’s MANARA1, CARACA3, MRAICI2, MOVPIK1/RAMLET3 and BHVOUT1, mobile 091 used respective overlapping Touch cells, Riviera_A, Manara_B, BayView_C and Unesco_B. Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 234-235, 249, 251-253 exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 46.

⁶²⁹⁰ Exhibit P1197; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 551.

⁶²⁹¹ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), p. 205; exhibit P1259, pp 350-351.

⁶²⁹² Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 187-188, 190; exhibit P1259, pp 350-351.

Red 741 and mobile 170

3201. Red 741 had four pairs of calls made within an hour with mobile 170 on three days, 14 January, 9 and 14 February 2005.⁶²⁹³ Mr Philips determined that these pairs fell into the category of ‘would not preclude co-location’.⁶²⁹⁴ Red 741 was never in contact with mobile 170, and there were no overlapping calls in relation to these two mobiles.⁶²⁹⁵

Red 741 and Blue 233

3202. Mr Philips analysed 19 pairs of calls in relation to Red 741 and Blue 233 on nine days, 14, 28, 31 January, 3, 8, 9, 11, 12 and 14 February 2005. He found that seven of the analysed pairs were in the category of ‘could be co-located’⁶²⁹⁶ and 12 fell in the category of ‘would not preclude co-location’.⁶²⁹⁷

3203. As both mobiles belonged to closed networks,⁶²⁹⁸ there were no calls between Red 741 and Blue 233.⁶²⁹⁹ The mobiles had one instance of an overlapping call, when, on 31 January 2005, Red 741 had an outgoing call from 10:54:10 to 10:54:46 and Blue 233 had an incoming call from 10:54:19 to 10:54:28.⁶³⁰⁰ According to Mr Philips, however, the mobiles possibly co-located.⁶³⁰¹

3204. On the basis that the mobiles operated on different networks and that the network times may not have been harmonised, Mr Philips stated that there were two additional instances of

⁶²⁹³ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 104, 244, 270-272; exhibit P1259, pp 335, 360, 364.

⁶²⁹⁴ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 104, 244, 270-272; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 45.

⁶²⁹⁵ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 204-205, 276; exhibit P1197.

⁶²⁹⁶ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 199-200, 231-233, 262, 270-272; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 47.

⁶²⁹⁷ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 104-105, 192, 199-200, 216, 231-233, 242, 252-253, 260, 262, 270-272.

⁶²⁹⁸ See chapter VIII ‘Nature and purpose of colour-coded mobile networks and Purple group of mobiles’, (D) ‘Red network’ and (E) ‘Blue network’.

⁶²⁹⁹ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 204, 276; exhibit P1197.

⁶³⁰⁰ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 199-200, 205; exhibit P1259, p. 353.

⁶³⁰¹ Red 741 connected to PORT2 at the start and ETOILE3 at the end of this call, Blue 233 used CoastRoad_C. Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 119-200; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 39; exhibit P1259, p. 353.

possible overlap, namely on Monday 31 January and Saturday 12 February.⁶³⁰² On 31 January 2005, Blue 233—connecting to CoastRoad_C—had an incoming call at 10:53:14 finishing at 10:53:53. Red 741—using PORT2 at the start of the call—had an outgoing call at 10:54:10.⁶³⁰³ Mr Philips found that the two mobiles possibly co-located as the two cells had ‘extensive best server coverage overlap’.⁶³⁰⁴

3205. On Saturday 12 February, Red 741—using RAOUCH3 at the start and RAOUCH1 at the end of the call—had an incoming call between 11:41:59 and 11:43:00. Blue 233—activating Touch’s Fadlallah_C cell—had an incoming call between 11:43:09 and 11:43:32 and because these cells had some overlapping predicted best server coverage, according to Mr Philips, Red 741 and Blue 233 may have co-located.⁶³⁰⁵

3206. Of the remaining possibly co-locating call pairs, two occurred within two minutes on 8 February 2005, Red 741 using ETOILE1 and Blue 233 connecting to Coast-Road_C, and on 14 February 2005, Red 741 activating ETOILE1 and Blue using Riad_El_Soloh_B.⁶³⁰⁶ The time lapse between two pairs of calls was between six and a half and 13 minutes.⁶³⁰⁷

Red 741 and Green 300

3207. On eight days from 14 January to 14 February 2005, Red 741 and Green 300 had 42 pairs of calls.⁶³⁰⁸ Mr Philips identified 26 pairs of calls on seven days when the two mobiles could be co-located.⁶³⁰⁹ Of these pairs, 13 occurred within three minutes, and the two mobiles used identical

⁶³⁰² Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 205, 276.

⁶³⁰³ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 199-200, 205; exhibit P1259, p. 353.

⁶³⁰⁴ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 199-200.

⁶³⁰⁵ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 262, 276; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 47; exhibit P1259, p. 362.

⁶³⁰⁶ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 231-232, 270-272; exhibit P1259, pp 358, 364.

⁶³⁰⁷ Both occurred on 8 February 2005: at 12:11 Blue 233 used Riad_El_Soloh_A and at 12:24 Red 741 used ETOILE1; at 12:26 Blue 233 activated Minah_el-hosson_A for a 44-second call and at 12:33 Red 741 used ZOUKAK1. Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 213-232; exhibit P1259, p. 358.

⁶³⁰⁸ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 187, 189, 191-192, 199-202, 213-216, 234, 236-237, 242-243, 252, 260-263, 265-266, 270, 272-273; exhibit P1259, pp 350-351, 353, 355, 359-364.

⁶³⁰⁹ These days were: 28, 31 January, 3, 8, 9, 12 and 14 February 2005. Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 187, 191-192, 199-202, 213-216, 234, 236-237, 242-243,

cells, such as BASTA3, MRAICI1, MRAICI2, MANARA2, MOSBEH2 and NDU2.⁶³¹⁰ An additional five pairs of calls took place within 15 minutes.⁶³¹¹

3208. Mr Philips illustrated the possible co-location of Red 741 and Green 300 on 8 February 2005.⁶³¹² At 13:39, Red 741 first activated CARACA1 in west Beirut. The call sequence table of Red 741 shows that at the end of this 25-second call, the mobile activated the MANARA2 cell, which was activated by Green 300 a minute later. Three minutes later Red 741 was still on this cell.⁶³¹³ Mr Philips concluded that the two mobiles could have co-located.⁶³¹⁴

252, 260-263, 265-266, 270, 272-273; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 38-41, 43-49.

⁶³¹⁰ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 187, 191, 199, 201-202, 214, 216, 234, 260, 265, 270, 272; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 40, 43, 47-49; exhibit P1259, pp 350-351, 353, 355, 359, 362-363, 364. These exclude three overlapping calls between the two mobiles which occurred on 31 January, 3 and 12 February 2005.

⁶³¹¹ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 191, 214-215, 242-243; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 44-45; exhibit P1259, pp 351, 355, 360.

⁶³¹² John Edward Philips, T. 21 April 2017, pp 78, 81-82; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 234-235; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 43-44. *See also* exhibit P1935, slides 339-342.

⁶³¹³ Exhibit P1259, p. 359.

⁶³¹⁴ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), p. 234; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 43; John Edward Philips, T. 21 April 2017, pp 78, 81-82.

08/02/2005	13:39:02	3125636	3123741	N/A	Voice	25	355047005900580	0400	CARACA1
08/02/2005	13:40:26	3159300	3140023	N/A	Voice	67	352957009089150	010D	MANARA2
08/02/2005	13:43:20	3123741	3129893	N/A	Voice	30	355047005900580	010D	MANARA2
08/02/2005	13:44:02	3123741	3129678	N/A	Voice	54	355047005900580	010C	MANARA1
08/02/2005	13:45:30	617	3020091	N/A	Voice	74	352505002269582	3881	Riviera_A
08/02/2005	13:48:32	3129893	3123741	N/A	Voice	12	355047005900580	010C	MANARA1



*Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash—
exhibit P1111, p. 234*

3209. Mr Philips concluded that cell activations for a further 16 pairs of calls would not be inconsistent with the two mobiles co-locating.⁶³¹⁵

3210. Three overlapping calls occurred. The first on 31 January 2005, when seconds before the end of an outgoing call on Green 300, Red 741 had a one-second incoming call from Red 652 and

⁶³¹⁵ John Edward Philips, T. 24 April 2017, p. 82; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 187, 189, 191-192, 199-202, 213-216, 234, 236-237, 242-243, 252, 260-263, 265-266, 270, 272-273; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 38-41, 43-49. *See also* exhibit P1935, slide 515.

three days later, before Red 741 ended its outgoing call, Green 300 had an outgoing call.⁶³¹⁶ Finally, on 12 February 2005, Red 741 received an eight-second call while Green 300 was in the process of a call.⁶³¹⁷ The mobiles used the same cells for all three overlapping calls.⁶³¹⁸

3211. Mr Philips explained that Red 741 and Green 300 did not operate over extensive periods.⁶³¹⁹ From 14 January to 14 February 2005 there were nine days when both mobiles were active.⁶³²⁰ Calls on Green 300 occurred in the intense period of Red 741's use, and therefore the chance of overlapping calls was high.⁶³²¹

Overall pattern

3212. In his report, Mr Donaldson closely analysed sequences of calls on 11 days between Friday 14 January and Monday 14 February 2005 that Red 741 shared with the other mobiles attributable to Mr Ayyash, personal mobiles 091, 170, and network mobiles Blue 233 and Green 300.⁶³²²

3213. According to Mr Donaldson, on the days of common use Red 741 was used within ten minutes with one of the other mobiles 55 times, in 33 per cent of those the mobiles shared the same Alfa sector.⁶³²³ For 31 per cent of the calls the mobiles activated cell towers that were less than one kilometre apart, and for 15 per cent they connected to cell towers that were more than one

⁶³¹⁶ Exhibit P1259, p. 355; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 201, 205, 216, 276.

⁶³¹⁷ Exhibit P1259, p. 363; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 266, 276; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 48.

⁶³¹⁸ Exhibit P1259, pp 353, 355, 363; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 201, 205, 216, 266, 276; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 48. *See also* John Edward Philips, T. 20 April 2017, pp 42-43; exhibit P1935, slide 43.

⁶³¹⁹ John Edward Philips, T. 20 April 2017, p. 41.

⁶³²⁰ On 20, 28, 31 January, 3, 8-9, 11-12, 14 February 2005. Exhibit P1259, pp 340, 350-351, 353, 355, 359-364; John Edward Philips, T. 20 April 2017, p. 41.

⁶³²¹ John Edward Philips, T. 20 April 2017, p. 41.

⁶³²² On 14, 20, 28, 31 January, 2, 3, 8, 9, 11, 12 and 14 February 2005. Andrew Donaldson, T. 23 August 2017, pp 77-78; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 550, 565-580, annex D, pp 364-385.

⁶³²³ Besides Red 741, Green 300 and Blue 233 were Alfa mobiles. Personal mobiles 091 and 170 operated on the Touch network. Andrew Donaldson, T. 24 August 2017, p. 15; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 554.

kilometre but less than two kilometres apart.⁶³²⁴ The sequential use of the mobiles occurred between 10:00 and 19:00 and mainly in north Beirut.⁶³²⁵

3214. Twenty-two per cent of the calls connected to cell towers which were more than two kilometres away from each other.⁶³²⁶ He concluded that Red 741 had the same user as Green 300, Blue 233, mobile 091 and mobile 170, and it was Mr Ayyash.⁶³²⁷ He added that on 2 February 2005 Mr Ayyash ‘did not have control of Red 741’.⁶³²⁸

Mobiles moving in concert

3215. Mr Philips testified that common movement of mobiles over a common time frame supports the inference that the mobiles had a single user.⁶³²⁹ Based on call sequence tables or combined call sequence table and his reports on single user analysis,⁶³³⁰ he showed on his slides the movement of mobiles on a number of selected days by mapping the cells they activated for sequential calls.⁶³³¹ Regarding mobiles 935, 091, 170, Yellow 294, Blue 233, Blue 322, Red 741 and Green 300, he demonstrated nine days of common movement, namely on 9 October, 3 November, 29 December 2004, 18, 24 January, 8, 11, 12 and 14 February 2005.⁶³³²

3216. To illustrate, in the morning on 24 January 2005, personal mobiles 091 and 170, and Blue network mobile 233 moved from south Beirut to Nabatiyeh.⁶³³³ For seven calls from 10:45 to 14:41, the three mobiles dominantly used Touch’s Nabatiyeh_C cell, where the three mobiles

⁶³²⁴ Andrew Donaldson, T. 24 August 2017, p. 15; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 554.

⁶³²⁵ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 555-556.

⁶³²⁶ Andrew Donaldson, T. 24 August 2017, p. 15; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 554 (d).

⁶³²⁷ Andrew Donaldson, T. 24 August 2017, p. 16.

⁶³²⁸ Andrew Donaldson, T. 24 August 2017, pp 16, 19; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 557, where Mr Donaldson noted that, on 4 January 2005, Red 741 separated from Yellow 294 and mobile 935. However, this falls outside the attribution period of the Red mobile.

⁶³²⁹ John Edward Philips, T. 19 April 2017, p. 94.

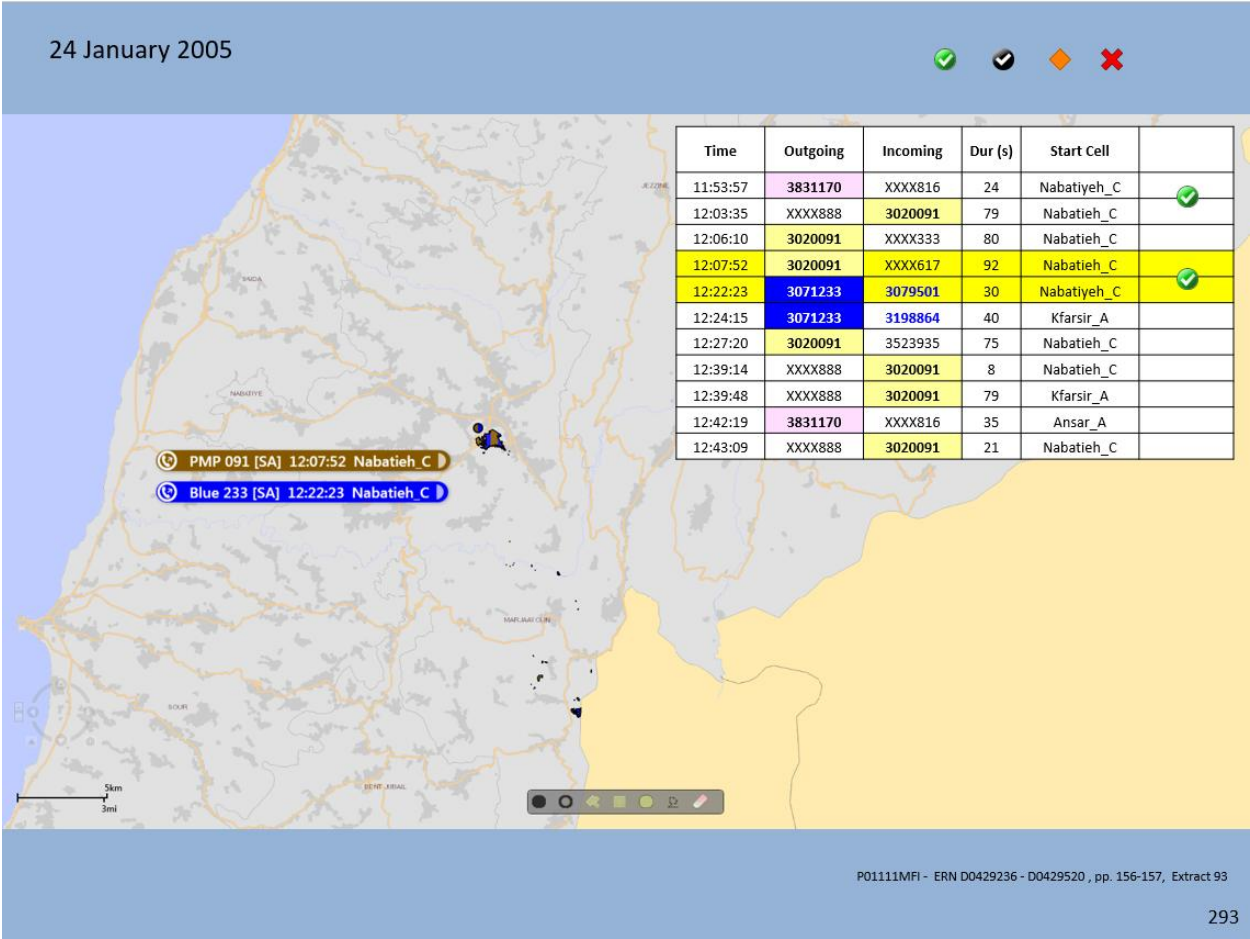
⁶³³⁰ Exhibits P1259, P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review).

⁶³³¹ Exhibit P1935.

⁶³³² Exhibit P1935, slides 218-427. Mr Philips, at the Prosecution’s request, included Blue 322 in his single user analysis despite the Prosecutor not pleading that it was Mr Ayyash’s in the amended consolidated indictment.

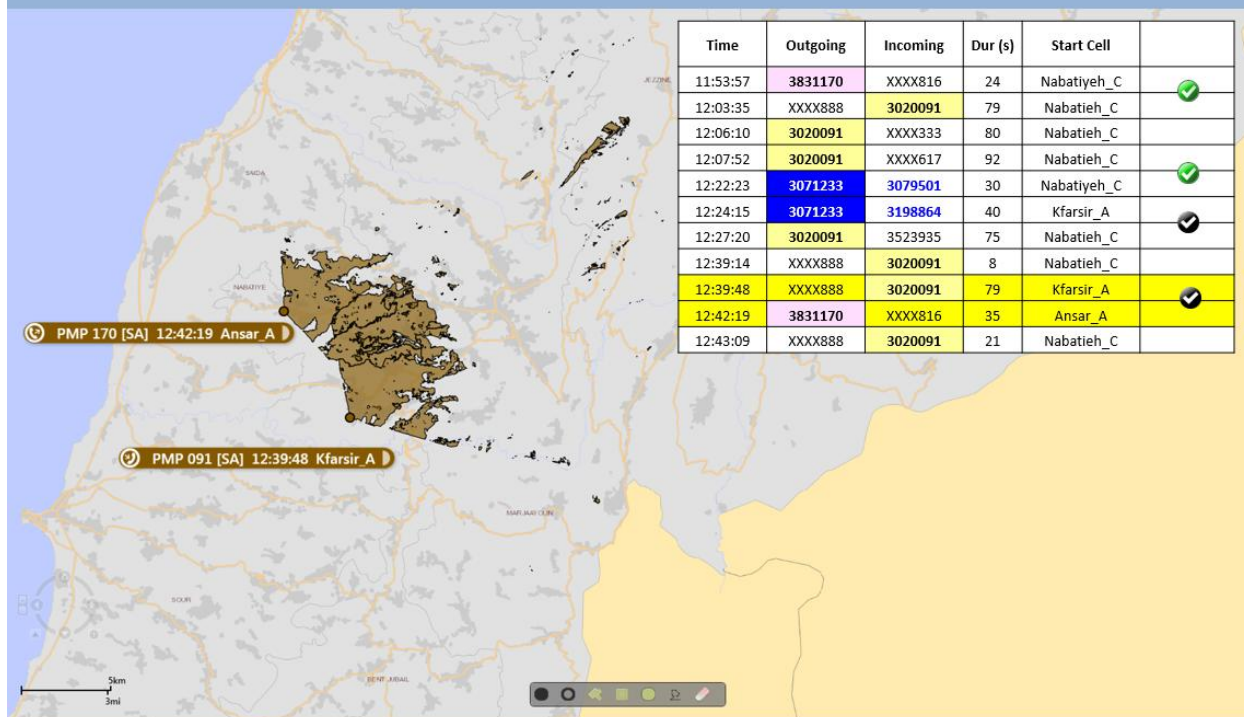
⁶³³³ John Edward Philips, T. 21 April 2017, pp 53-54; exhibit P1259 (Call sequence table of ten numbers—Mr Ayyash), pp 344-345. *See also* exhibit P1935, slides 287-307. Personal mobile 091 activated Hadath_C for its last call at 23:18 on 23 January 2005, personal mobile 170 used Hazmiyeh_2_B for its first call on 24 January 2005 and Blue 233 used Sfeir_A at 08:57 the same day, exhibit P1259, p. 344.

possibly co-located, but they also used Kfarsir_A and Ansar_A.⁶³³⁴ Mr Philips demonstrated this on the slides below:

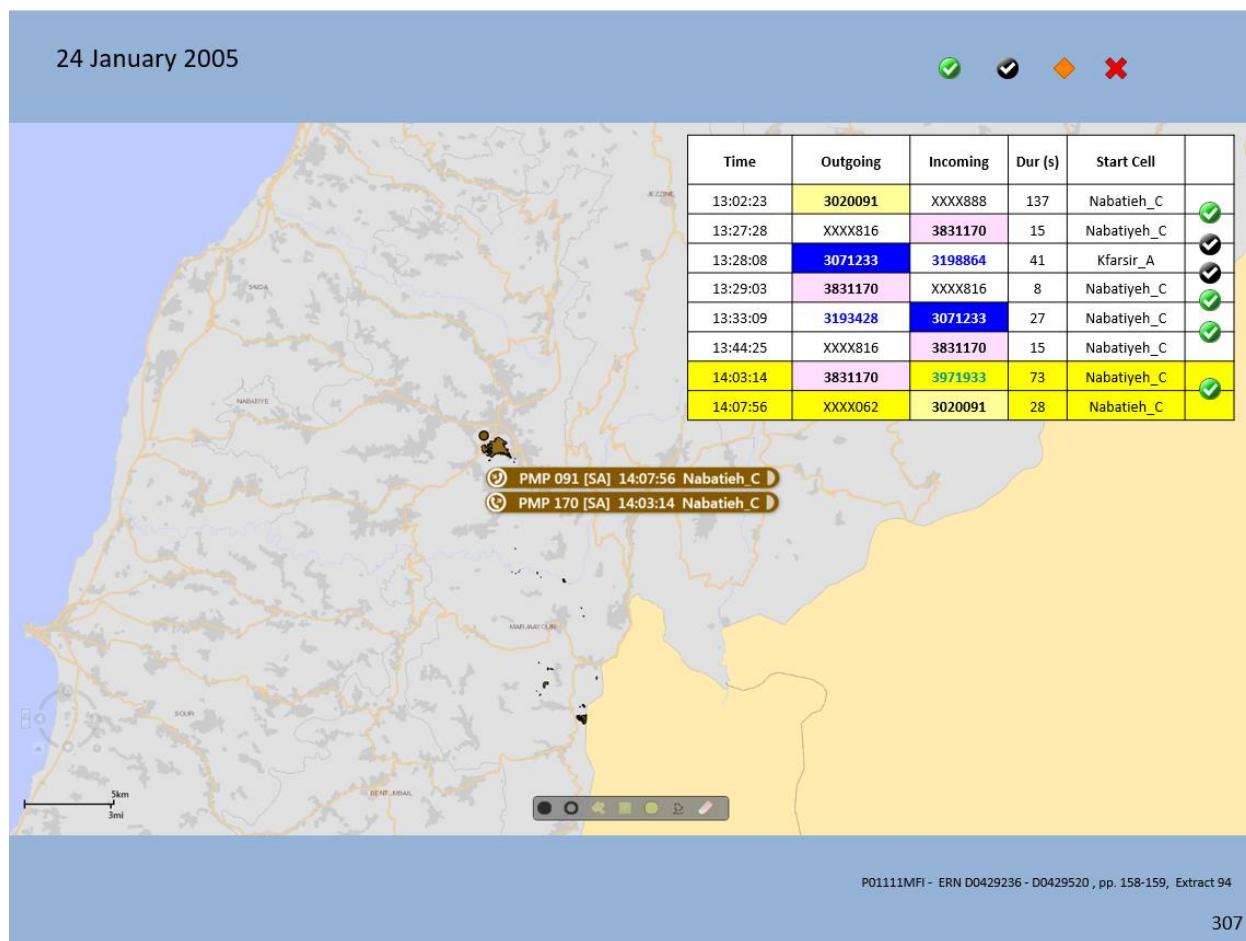


⁶³³⁴ John Edward Philips, T. 21 April 2017, pp 53-54, 61-62; exhibit P1259, pp 344-345. *See also* exhibit P1935, slides 287-308.

24 January 2005



P01111MFI - ERN D0429236 - D0429520 , pp. 156-157, Extract 93



*Exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips),
slides 293, 298, 307*

3217. Mr Philips explained that Kfasir_A, Ansar_A and Nabatieh_C have fragmented best server coverage away from the main areas of best server coverage.⁶³³⁵ Relying on a response to a request for assistance—in which Touch informed the Prosecution that a drive test conducted on 21 August 2006 had shown that Nabatieh_C provided the best server coverage in the Harouf area—⁶³³⁶ and as detailed above, Mr Philips explained that these cell activations did not preclude the mobiles' possible co-location.⁶³³⁷

⁶³³⁵ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 156-157.

⁶³³⁶ Exhibit P826.15.

⁶³³⁷ John Edward Philips, T. 21 April 2017, pp 55-56, 60-61, T. 25 April 2017, pp 67-75. *See also* exhibit P1935, slides 295-299.

3218. By 16:01, personal mobile 170 moved to south Beirut, where, for the remaining part of the day, mobile 091, Blue 233 and Green 300 also activated cells, some of which had contiguous or overlapping predicted best server coverage, such as Sfeir_A and Hazmiyeh_2_B, SFEIR2 and Sfeir_B.⁶³³⁸

3219. On Tuesday 8 February 2005, personal mobiles 091 and 170, and network mobiles Blue 233, Green 300 and Red 741, showed common movement.⁶³³⁹ From 10:11 to 10:58, Blue 233 and personal mobile 170 activated two adjacent Touch cells in south Beirut, Sfeir_A and Sfeir_B.⁶³⁴⁰ At 11:02, mobile 170 started to move north using Mar Michael_C, the same cell which mobile 091 used at 11:05 and three minutes later, mobile 091 moved further north to the Chiyah_A cell.⁶³⁴¹

3220. Meanwhile, Blue 233 travelled north and activated Riad_El_Soloh_A for calls from 11:58 to 12:11, and CoastRoad_C at 12:25.⁶³⁴² At 12:24, Red 741 received its first call of the day on Alfa's ETOILE1 cell, which has overlapping predicted best server coverage with Touch's Riad_El_Soloh_A and CoastRoad_C, consistent with these network mobiles' possible co-location in this area, as depicted in Mr Philips's following two slides.⁶³⁴³

⁶³³⁸ John Edward Philips, T. 21 April 2017, pp 67-72; exhibit P1259, pp 345-346. *See also* exhibit P1935, slides 310-322.

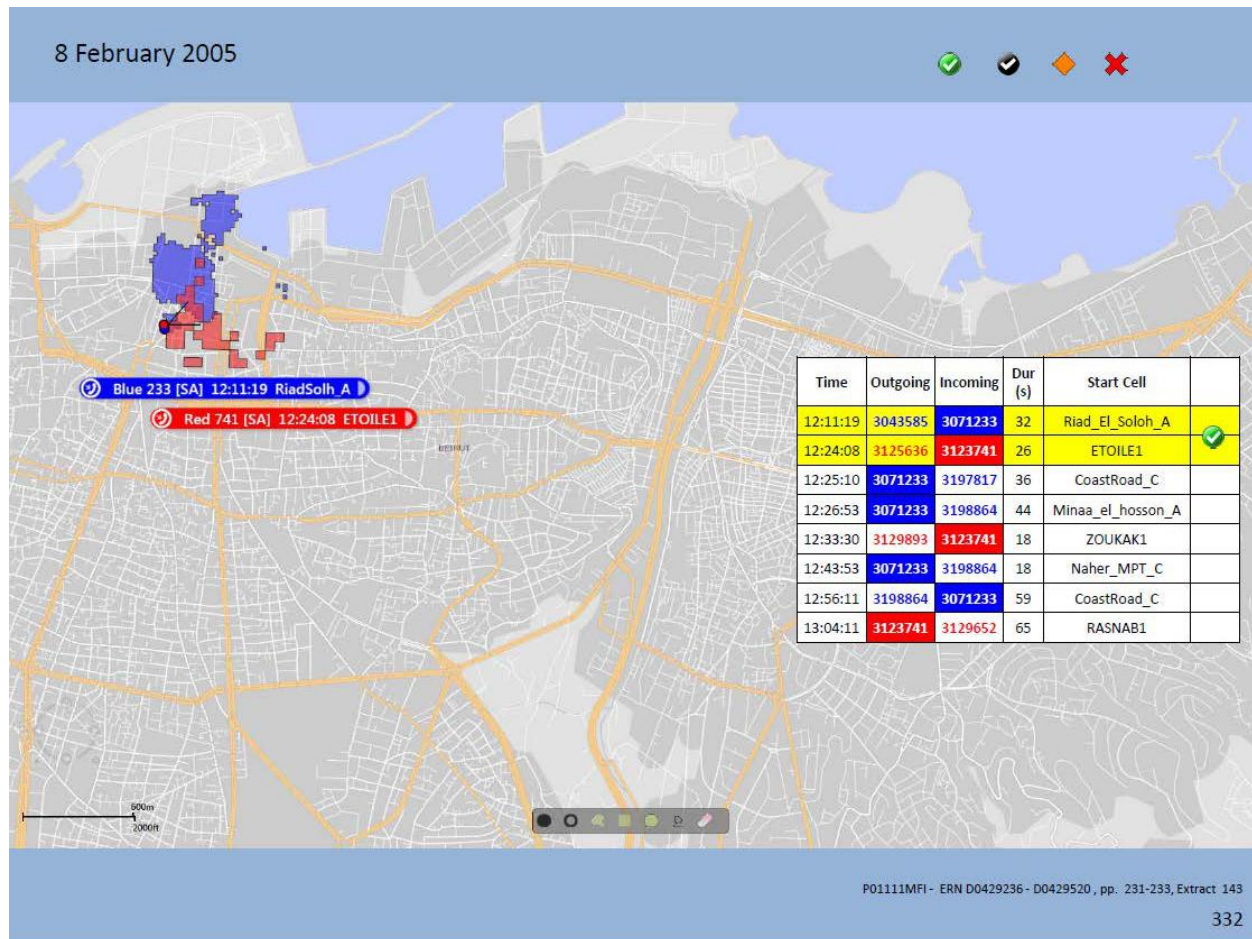
⁶³³⁹ John Edward Philips, T. 21 April 2017, p. 73. *See also* exhibit P1935, slides 323-355.

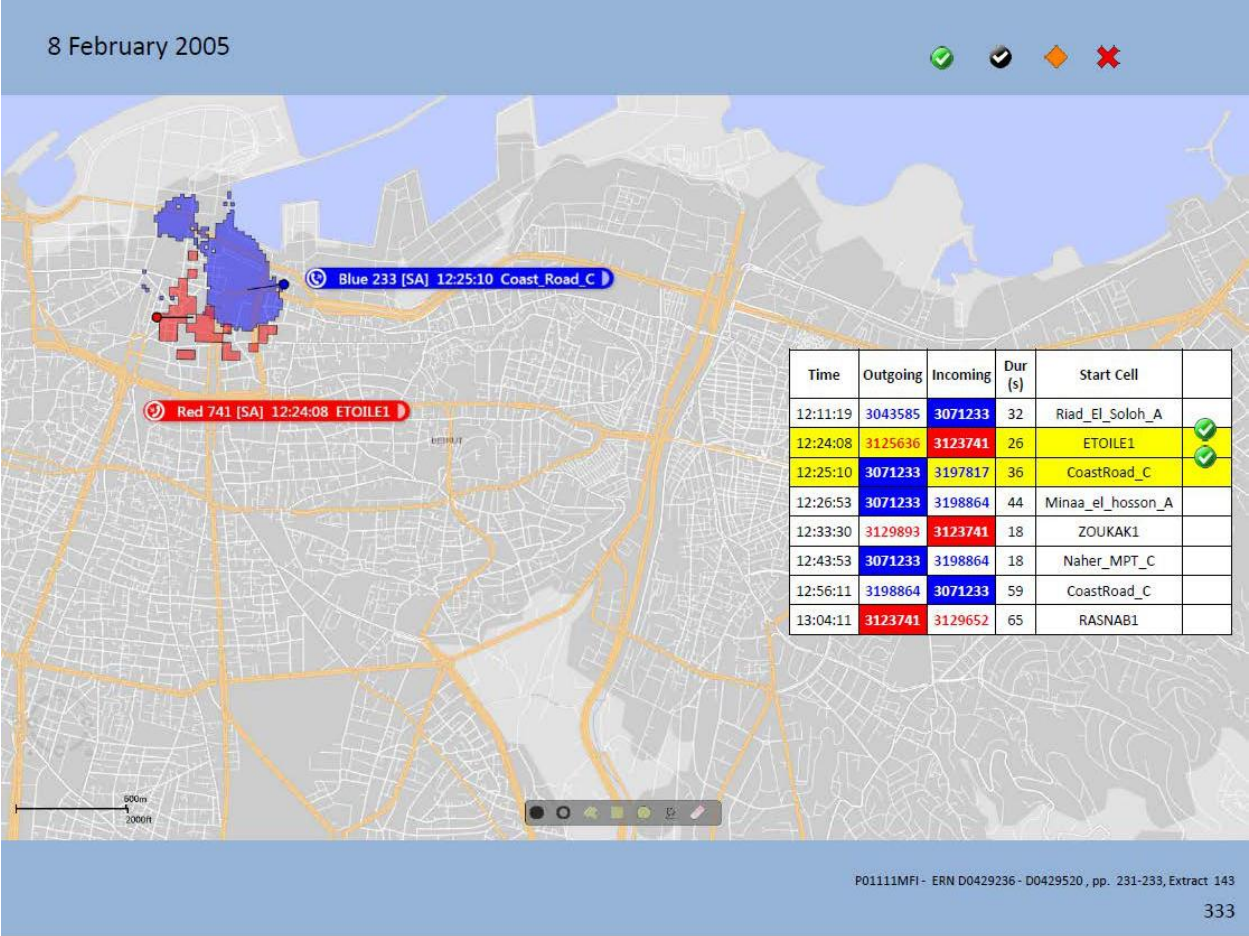
⁶³⁴⁰ John Edward Philips, T. 21 April 2017, p. 73; exhibit P1259, p. 358. *See also* exhibit P1935, slides 324-325.

⁶³⁴¹ John Edward Philips, T. 21 April 2017, p. 74; exhibit P1259, p. 358. *See also* exhibit P1935, slides 326, 328-329.

⁶³⁴² John Edward Philips, T. 21 April 2017, pp 74, 76; exhibit P1259, p. 358. *See also* exhibit P1935, slides 330-331.

⁶³⁴³ John Edward Philips, T. 21 April 2017, pp 75-77; exhibit P1259, p. 358. *See also* exhibit P1935, slides 332-333.

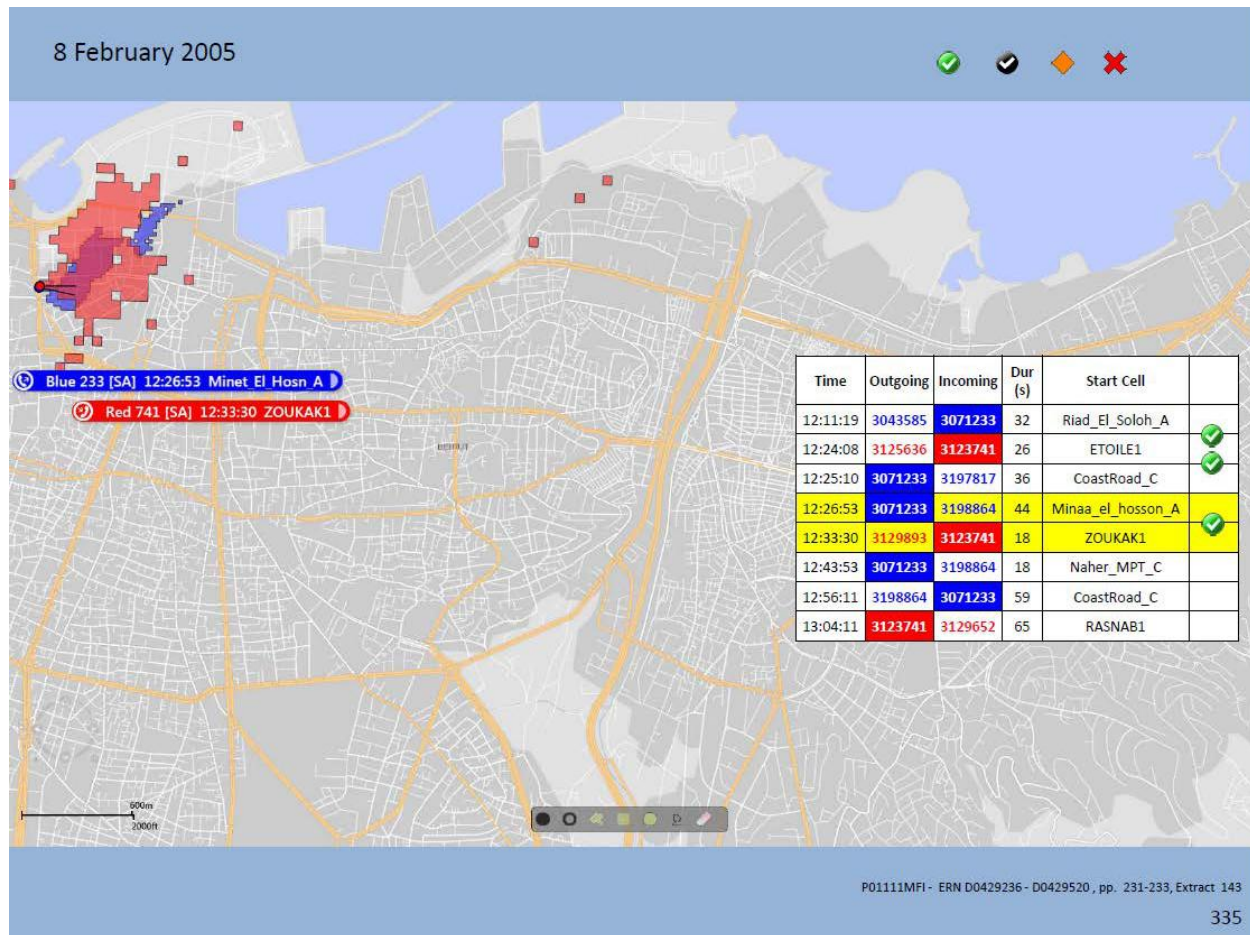




*Exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips),
slides 332-333*

3221. In the next ten minutes, Blue 233, using Minet_El-Hosn_A, and Red 741, activating ZOUKAK1, showed a westerly movement and another possible co-location, as illustrated in the following slide.⁶³⁴⁴

⁶³⁴⁴ John Edward Philips, T. 21 April 2017, p. 77; exhibit P1259, p. 358. See also exhibit P1935, slide 335.



*Exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips),
slide 335*

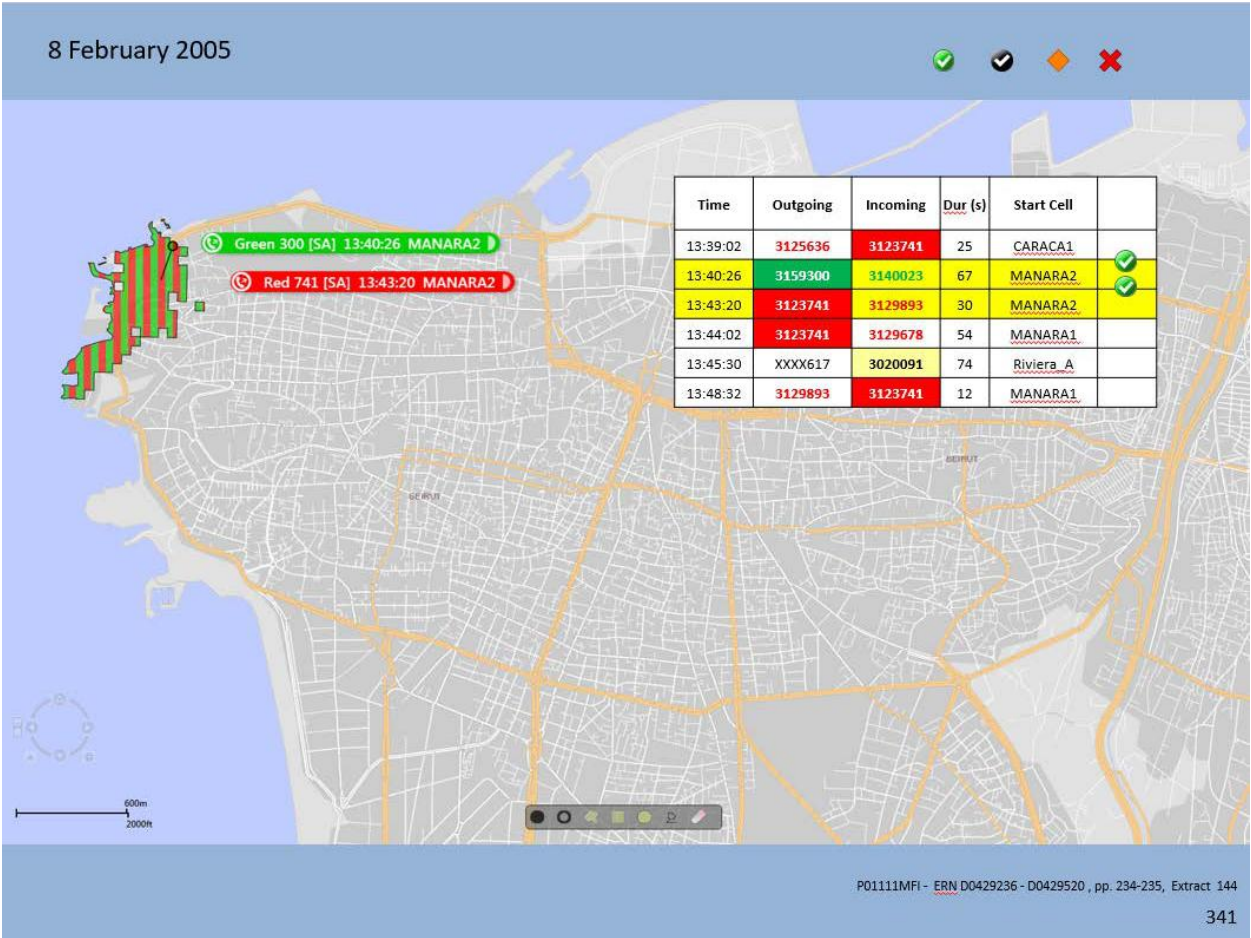
3222. At 12:43, Blue 233 moved to Naher_MPT_C to the east. By 12:56 it was back in the predicted best server coverage area of CoastRoad_C, and made no calls until 16:32.⁶³⁴⁵

3223. At 13:04, Red 741 activated RASNAB1, which is to the south of CoastRoad_C, before it moved to CARACA1, MANARA1 and MANARA2 in north-west Beirut.⁶³⁴⁶ Activating the MANARA cells, it possibly co-located for four pairs of calls made within minutes with Green 300, which activated MANARA2, and personal mobile 091, which used Riviera_A that had

⁶³⁴⁵ John Edward Philips, T. 21 April 2017, p. 77; exhibit P1259, pp 358-359. *See also* exhibit P1935, slides 336-337.

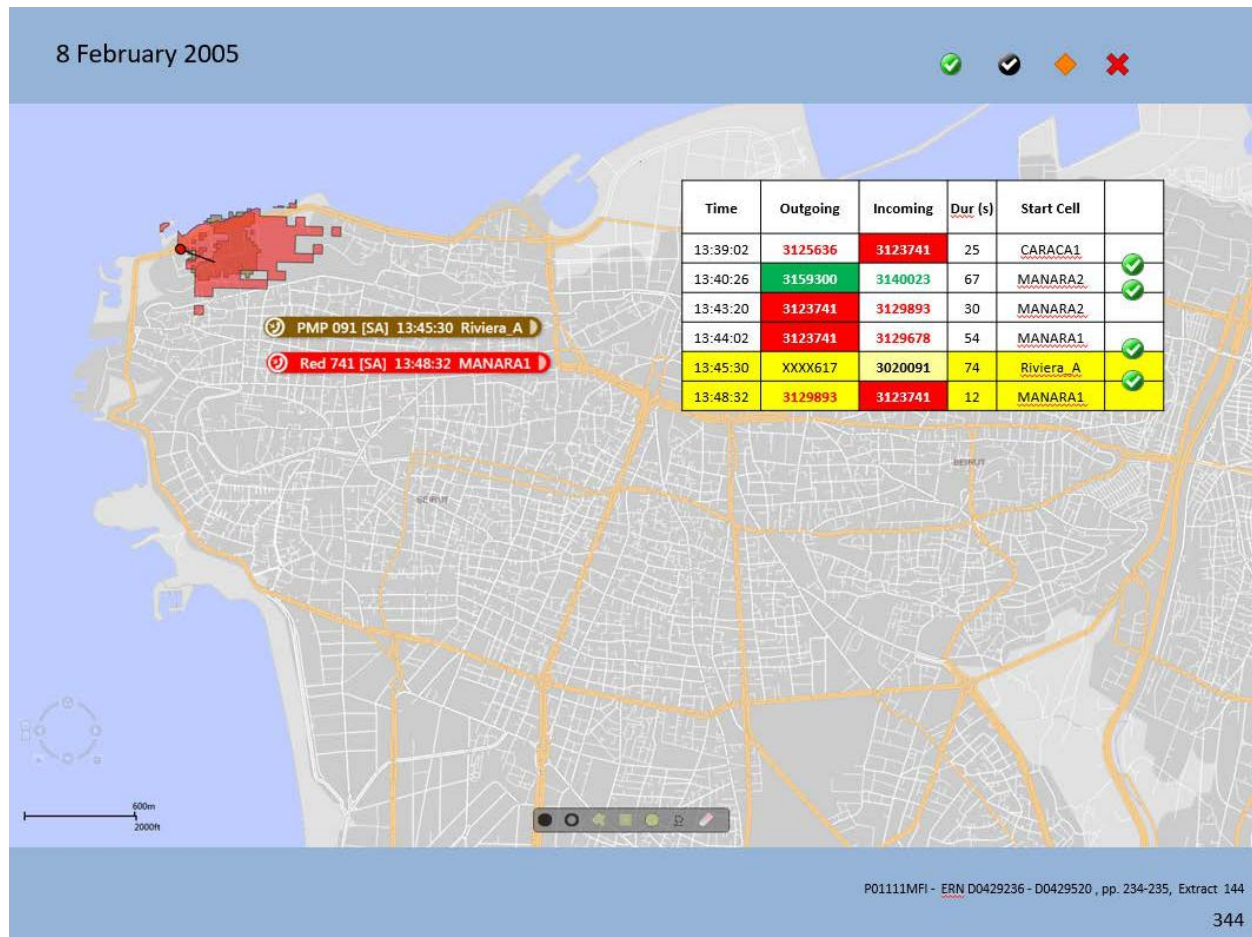
⁶³⁴⁶ John Edward Philips, T. 21 April 2017, p. 77; exhibit P1259, pp 358-359. *See also* exhibit P1935, slides 336-337.

overlapping predicted best server coverage with MANARA1.⁶³⁴⁷ Mr Philips illustrated these possible co-locations in the following slides.⁶³⁴⁸



⁶³⁴⁷ John Edward Philips, T. 21 April 2017, pp 77-78, 81-83; exhibit P1259, pp 358-359; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 234-235; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 43-44. *See also* exhibit P1935, slides 338-344.

⁶³⁴⁸ The end cells Red 741 used for the calls at 13:39 and at 14:43 were MANARA2 and MANARA1, respectively, exhibit P1259, p. 359; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), p. 234; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 43.



*Exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips),
slides 341, 344*

3224. Next, at 13:52, Red 741 activated ZOUKAK1, which it had used earlier that day and from 14:39 to 15:19, personal mobile 091, Green 300 and Red 741 moved south using Ras Nabah_A, BRAJNE3 and CHIAH1, respectively.⁶³⁴⁹ By 16:02, mobile 091 moved again to the coast in the north activating BayView_C.⁶³⁵⁰ At 16:32, Blue 233 activated Bir_El_Abed_A, and at 17:12 mobile 091 used Haret_Hreik_A in south Beirut.⁶³⁵¹

3225. Blue 233 and mobile 091 were active in south Beirut from 20:55 to 23:32 activating Hadath_C, Hazmiyeh_2_B and Sfeir_A, respectively.⁶³⁵²

⁶³⁴⁹ John Edward Philips, T. 21 April 2017, p. 83; exhibit P1259, p. 359. *See also* exhibit P1935, slides 345-348.

⁶³⁵⁰ John Edward Philips, T. 21 April 2017, p. 83; exhibit P1259, p. 359. *See also* exhibit P1935, slide 349.

⁶³⁵¹ John Edward Philips, T. 21 April 2017, pp 83-84; exhibit P1259, p. 359. *See also* exhibit P1935, slides 350-351.

⁶³⁵² John Edward Philips, T. 21 April 2017, pp 84-85; exhibit P1259, p. 359. *See also* exhibit P1935, slides 352-355.

3226. Further, on Friday 11 February 2005, at 09:30, Blue 233 activated Hadath_C in south Beirut, and 12 minutes later mobile 091 used a contiguous cell, Sfeir_A.⁶³⁵³ Before midday, mobiles 170, 091 and Red 741 connected to overlapping cells Manara_B and CARACA3, then BayView_C and MRAICI2 in west Beirut.⁶³⁵⁴ In the early afternoon, Red 741 used PORT2 and PORT3 near the St Georges Marina, which had been activated by Green 300 a minute earlier.⁶³⁵⁵ After 13:00, Red 741 moved south along the coast, first using MOVPIK1 at the start and RAMLET3 at the end of a call, and then BHOVOUT1.⁶³⁵⁶

3227. RAMLET3 and BHOVOUT1 shared predicted best server coverage with Unesco_B used by mobile 091 12 minutes earlier.⁶³⁵⁷ For five calls from 13:40 to 16:38, Blue 233 and mobile 091 used Ouzai_II_A, north of Beirut airport, a cell with overlapping best server coverage with MEA1 and SIMON2 which were activated by Green 300 for two calls within this period.⁶³⁵⁸

3228. At 17:38, mobile 091 was back in south Beirut using Sfeir_A, and so was mobile 170 at 22:00 followed by Blue 233 at 22:30 using Hadath_C and Sfeir_A, respectively.⁶³⁵⁹ These cell activations are mapped in the following slides:⁶³⁶⁰

⁶³⁵³ John Edward Philips, T. 24 April 2017, pp 9-12; exhibit P1259, p. 361. *See also* exhibit P1935, slides 357-358.

⁶³⁵⁴ John Edward Philips, T. 24 April 2017, pp 9-12; exhibit P1259, p. 361. *See also* exhibit P1935, slides 359-364.

⁶³⁵⁵ John Edward Philips, T. 24 April 2017, pp 9-12; exhibit P1259, p. 361. *See also* exhibit P1935, slides 365-367.

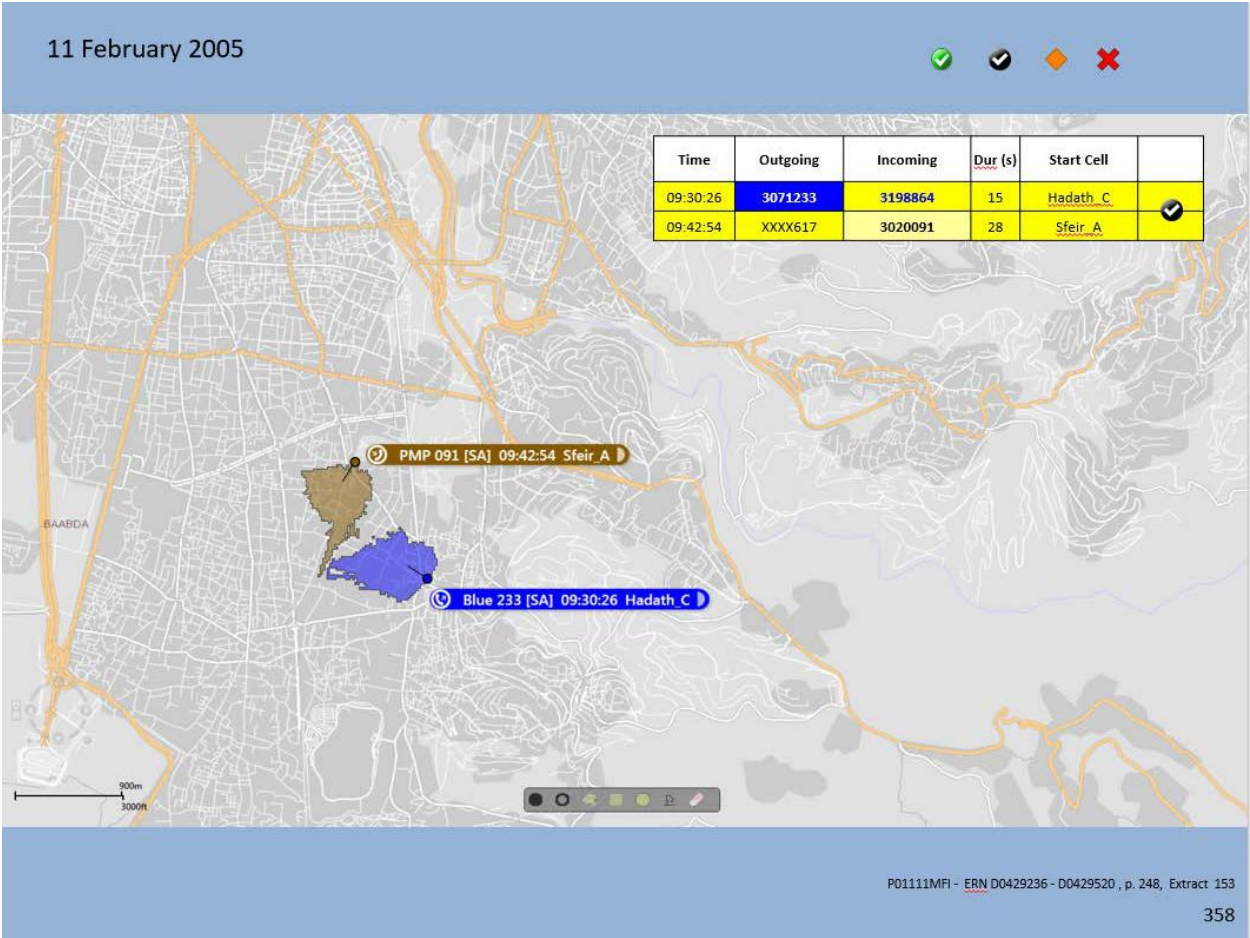
⁶³⁵⁶ Exhibit P1259, p. 361; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 252-253; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 46.

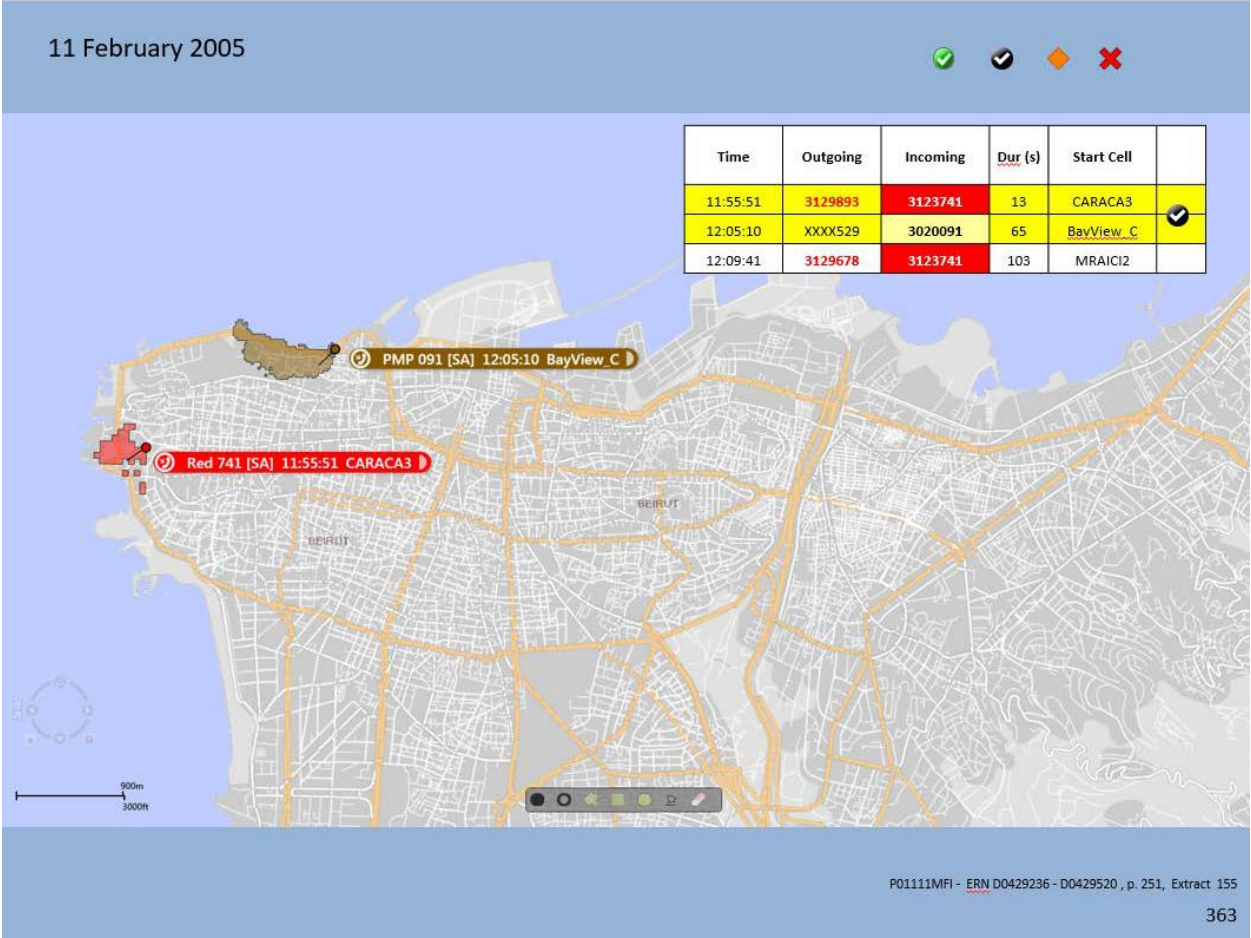
⁶³⁵⁷ John Edward Philips, T. 24 April 2017, pp 9-12; exhibit P1259, p. 361; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 252-253; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 46. *See also* exhibit P1935, slides 369-371.

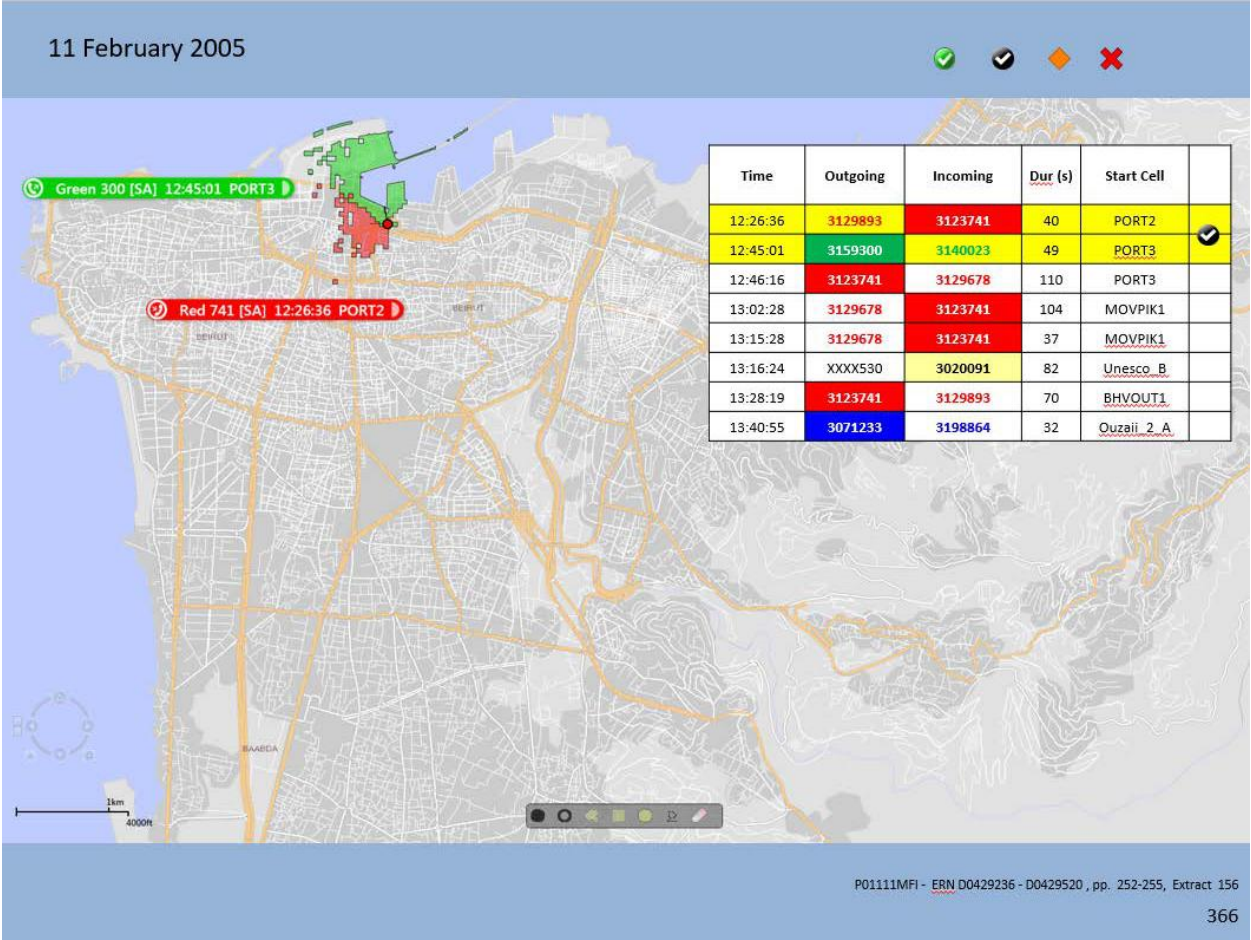
⁶³⁵⁸ John Edward Philips, T. 24 April 2017, pp 9-12; exhibit P1259, p. 361. *See also* exhibit P1935, slides 372-379.

⁶³⁵⁹ John Edward Philips, T. 24 April 2017, pp 9-12; exhibit P1259, pp 361-362. *See also* exhibit P1935, slides 380-388.

⁶³⁶⁰ Slides 366 and 371 do not include the end cells, PORT2 and RAMLET3, that Green 300 and Red 741 used for their respective calls at 12:45 and 13:15. When considering these end cells, Mr Philips modified his expert opinion with respect to the possible co-location of Green 300 and Red 741, and that of Red 741 and mobile 091. He concluded that Green 300's cell activation at the end of the 12:45 call, using PORT2, would not preclude the mobile's co-location with Red 741, which used PORT3 at 12:46. At the end of its call at 13:15 Red 741 used RAMLET3, which had overlapping predicted best server coverage with Unesco_B used by mobile 091 less than 30 seconds later, and therefore the two mobiles could have co-located according to Mr Philips, exhibit P1259, p. 361; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 252-253; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 46.







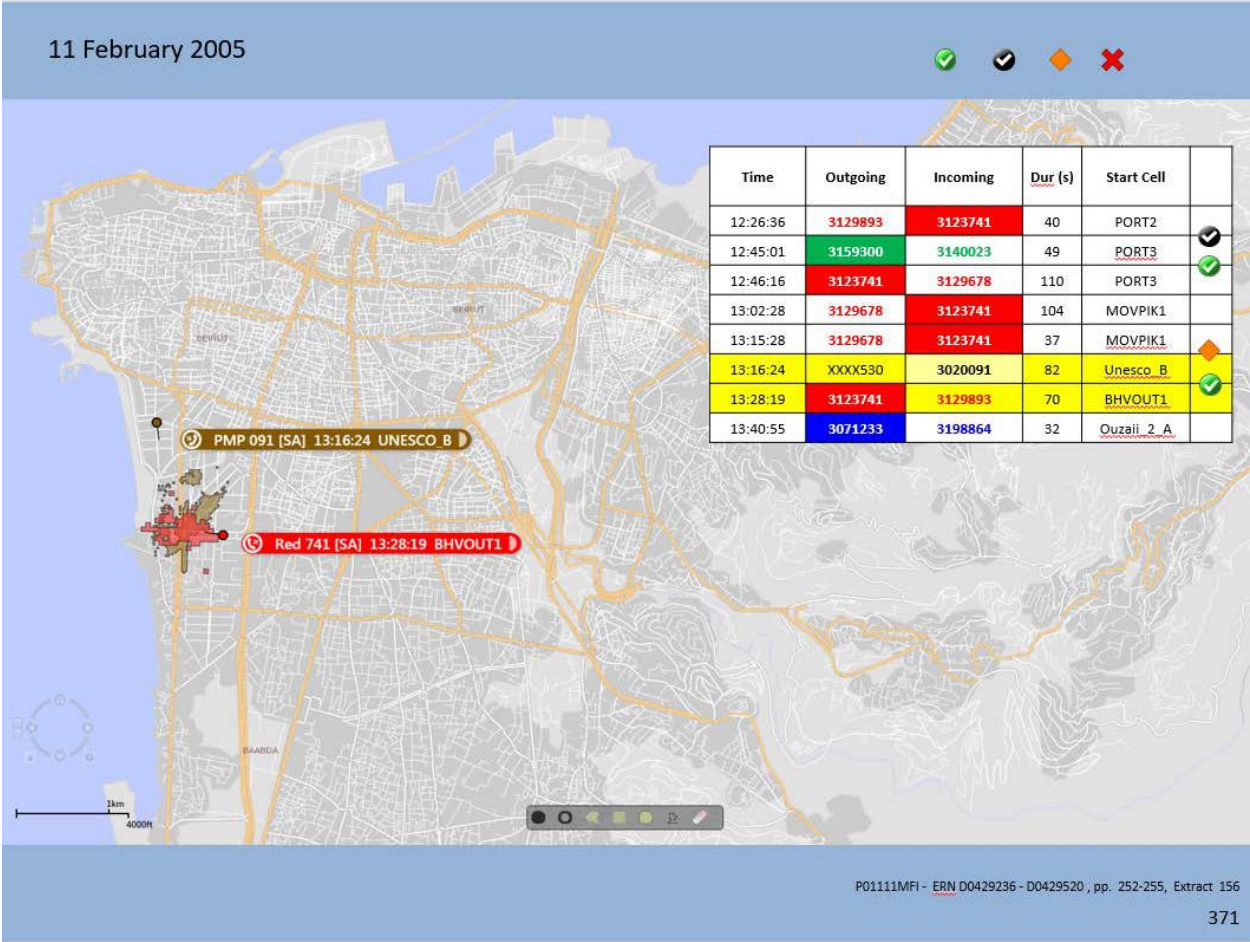


Exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips), slides 358, 363, 366, 371

3229. On Saturday 12 February 2005, at 10:32, Blue 233 activated Sfeir_B in south Beirut and from 10:41 to 10:44, Red 741 used Alfa’s cells in south-east Beirut, BACHA2 and ALFA2, then started to move north activating HOTELD2 at 10:49 and JUSTIS1 at 11:14.⁶³⁶¹ Green 300 activated SASSIN1 for a call at 10:51.⁶³⁶² The following slide demonstrates their vicinity:

⁶³⁶¹ John Edward Philips, T. 24 April 2017, pp 13-14; exhibit P1259, p. 362. See also exhibit P1935, slides 390-395.
⁶³⁶² John Edward Philips, T. 24 April 2017, p. 14; exhibit P1259, p. 362. See also exhibit P1935, slide 394.

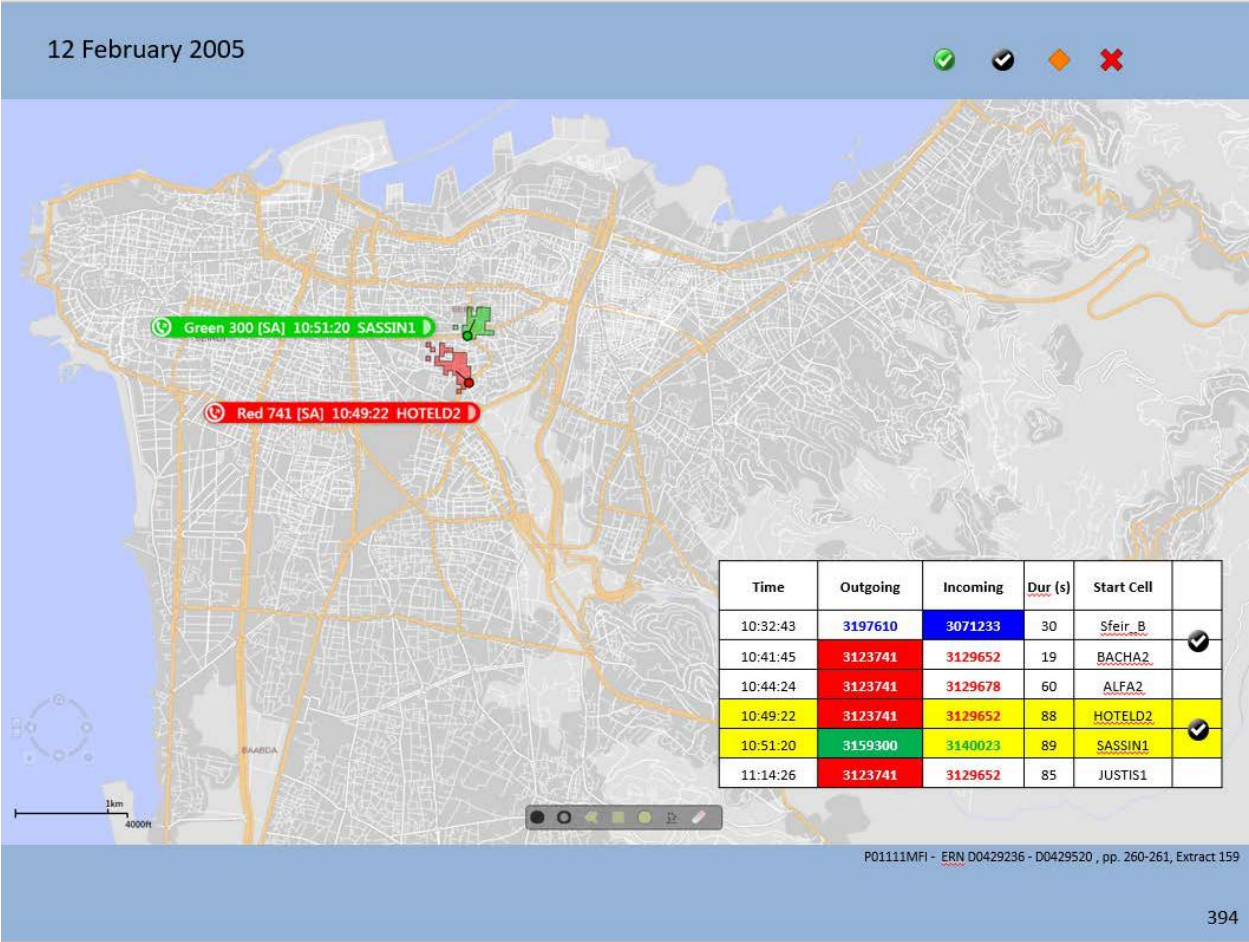
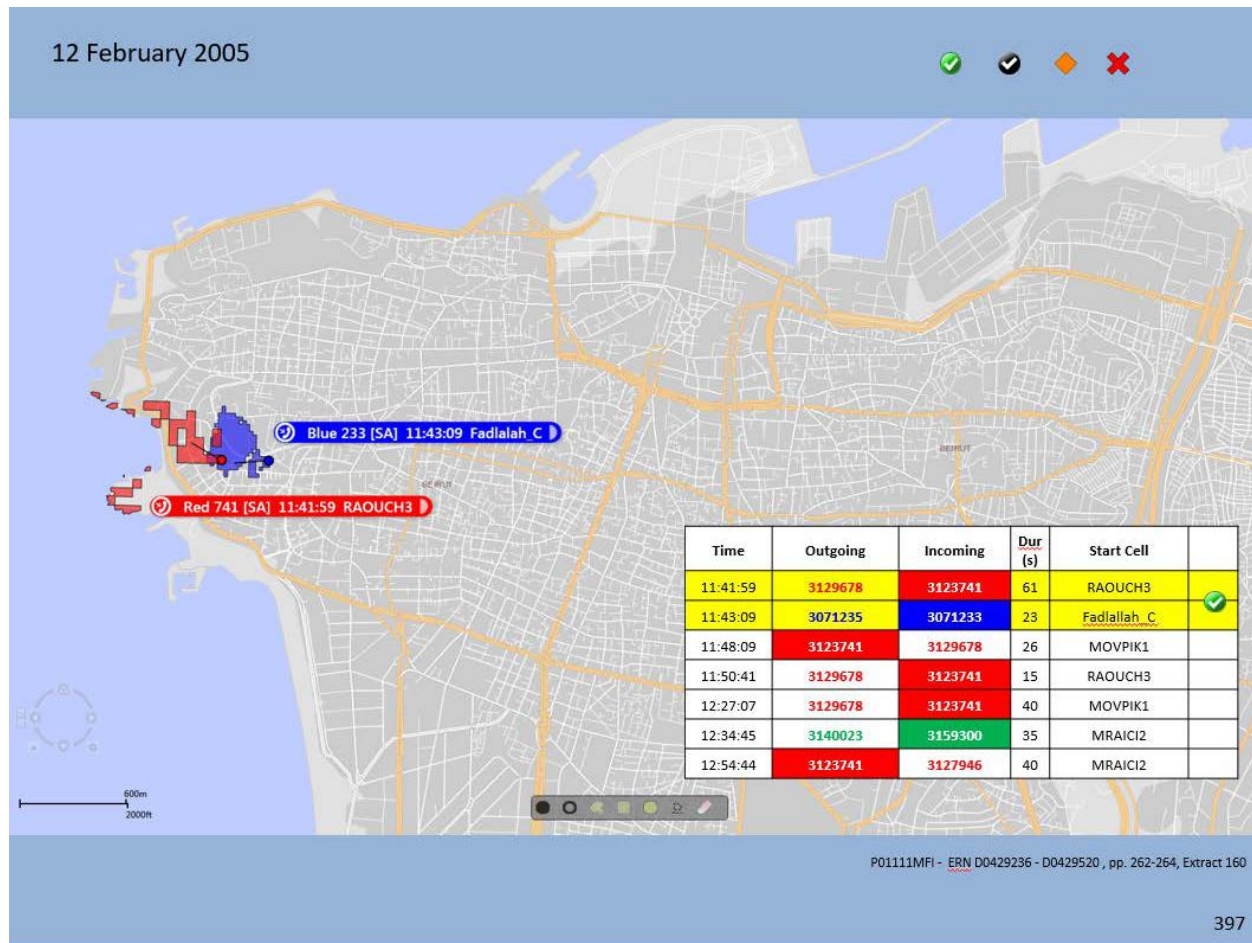


Exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips), slide 394

3230. By 11:41, Red 741 moved to west Beirut using RAOUCH3, and, as shown below, possibly co-located with Blue 233, which used Touch’s Fadlallah_C cell seconds later.⁶³⁶³

⁶³⁶³ John Edward Philips, T. 24 April 2017, p. 14; exhibit P1259, p. 362. See also exhibit P1935, slide 397.

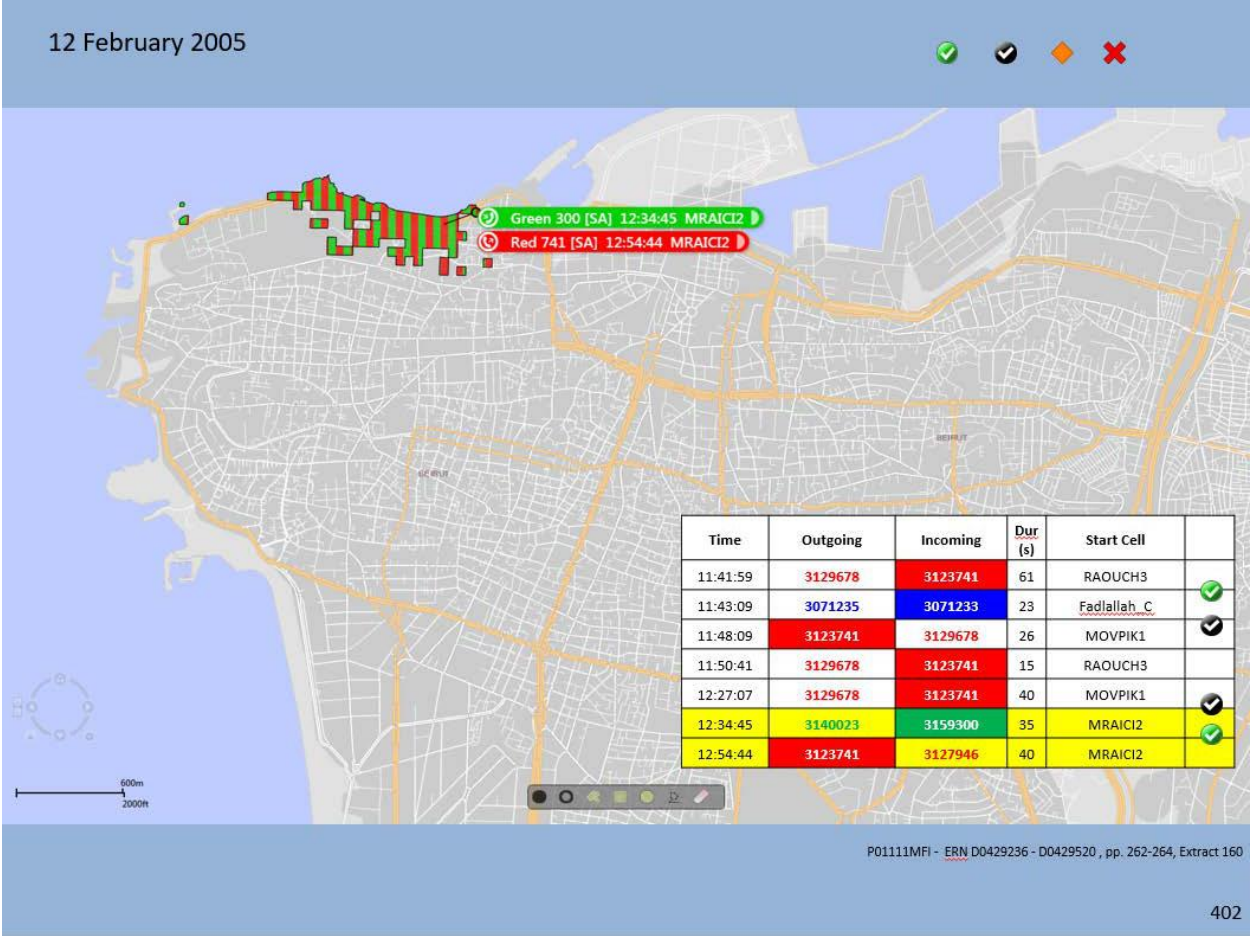


*Exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips),
slide 397*

3231. By 12:54, Red 741 moved from the predicted best server coverage area of RAOUCH3 and MOVPIK1 in west Beirut to the northern coast of the city, and activated MRAICI2, the same cell that Green 300 had used 20 minutes earlier.⁶³⁶⁴ In the afternoon, from 13:54 to 17:12, both network mobiles moved to Mosbeh and Rimal, north-east of Beirut, activating MOSBEH2 and RIMAL1.⁶³⁶⁵ The network mobiles' possible co-locations and movements are demonstrated in the following slides:

⁶³⁶⁴ John Edward Philips, T. 24 April 2017, p. 15; exhibit P1259, p. 363. *See also* exhibit P1935, slides 403-408.

⁶³⁶⁵ John Edward Philips, T. 24 April 2017, pp 14-16; exhibit P1259, p. 363. *See also* exhibit P1935, slides 398-408; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 265-266; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 48. Mr Donaldson too demonstrated Red 741's and Green 300's common movement to Mosbeh, Andrew Donaldson, T. 24



August 2017, pp 57-60; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 579, annex D, pp 381-383; exhibit P2025.1, slides 107-121.

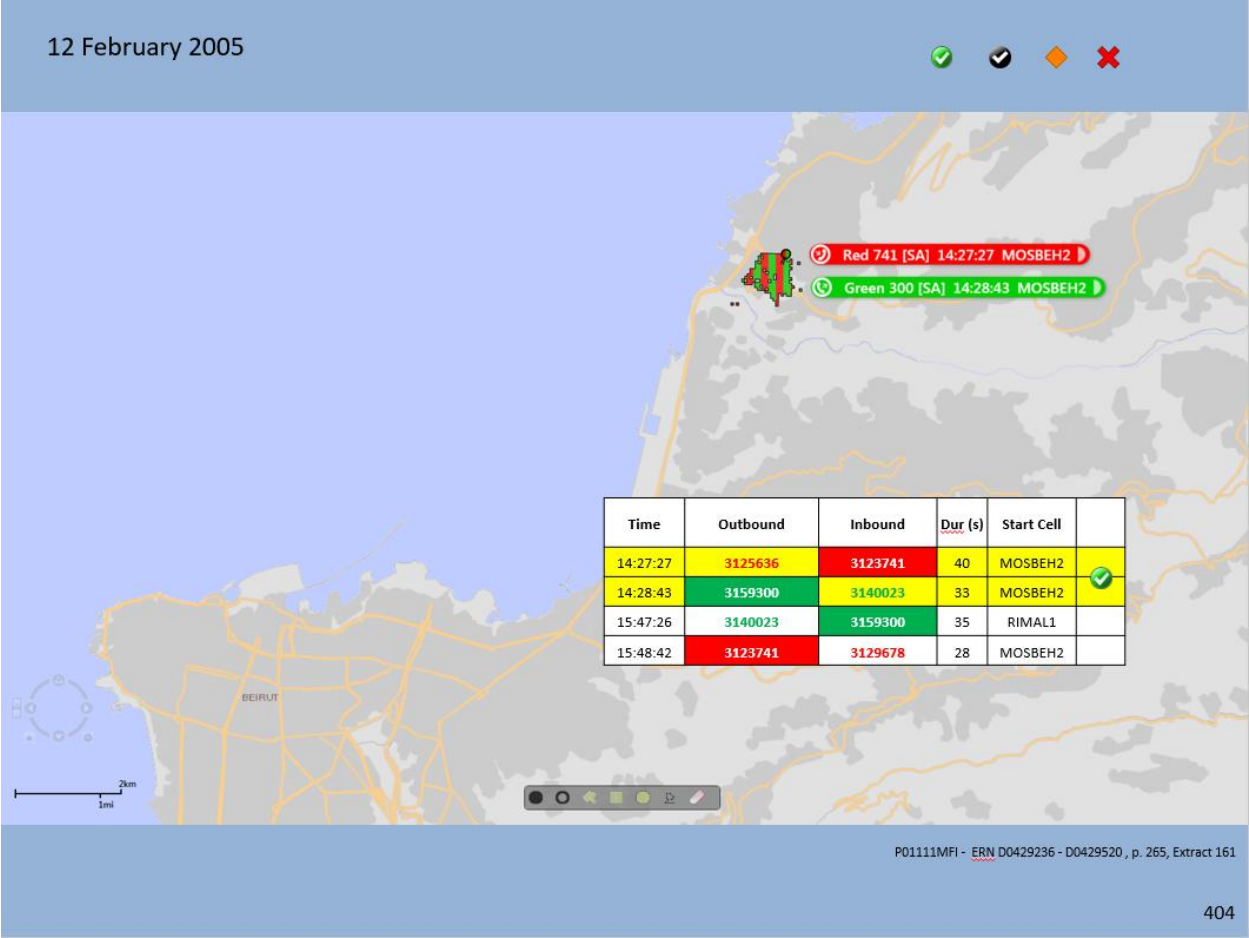
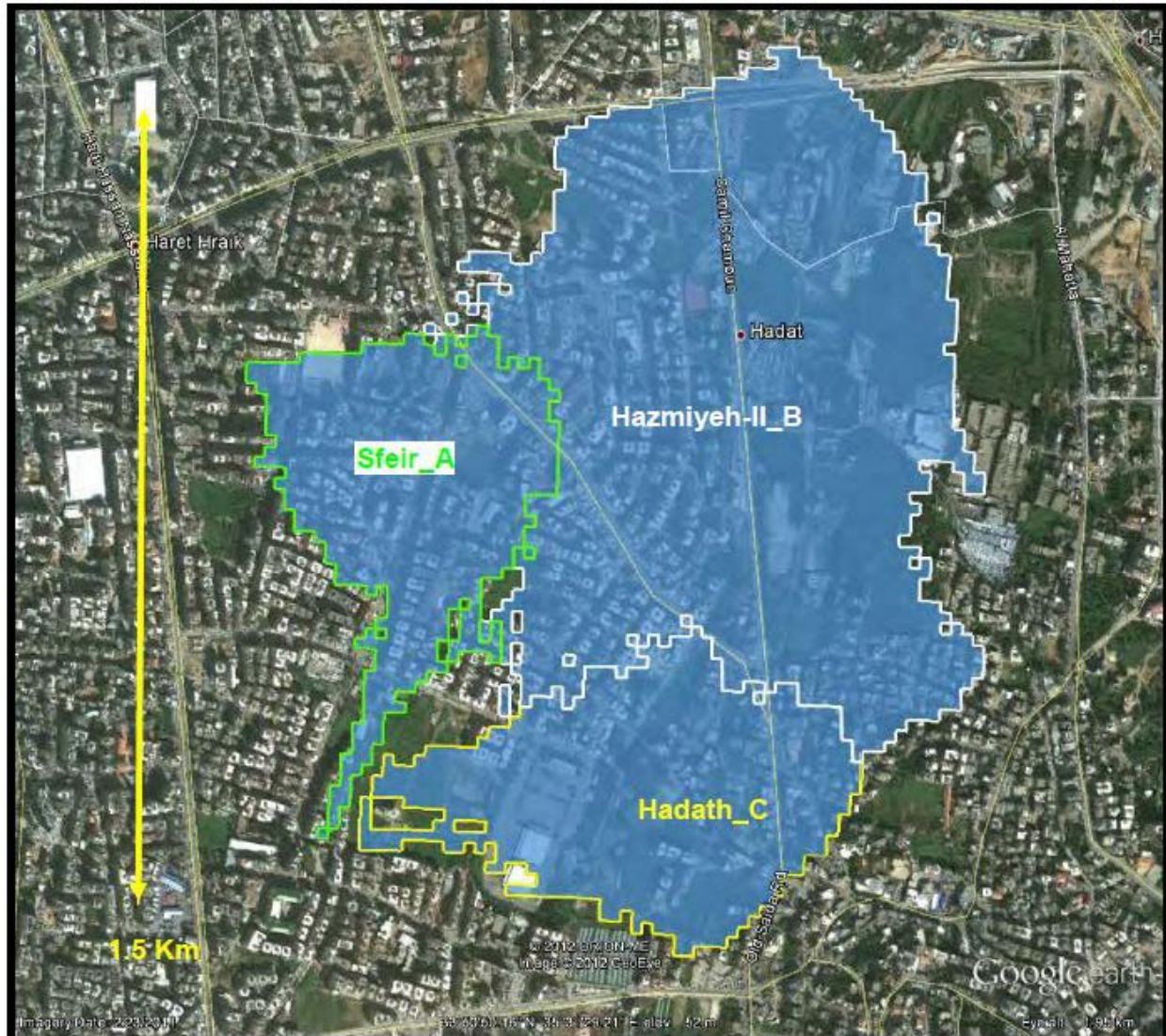


Exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips), slides 402, 404

3232. For its last call of the day at 17:48, Red 741 used MOVPIK1 in west Beirut.⁶³⁶⁶ From 19:00 to 20:42, Blue 233 and mobile 091 activated Touch’s cells in south Beirut, Sfeir_A, Hadath_C and Hazmiyeh-II_B, as shown in the map below.⁶³⁶⁷

⁶³⁶⁶ Exhibit P1259, p. 363.
⁶³⁶⁷ John Edward Philips, T. 24 April 2017, p. 16; exhibit P1259, p. 363; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), p. 267. See also exhibit P1935, slides 409-412.



*Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash—
exhibit P1111, p. 267*

3233. On Monday 14 February 2005, Blue 233 and mobile 170 used contiguous cells, Tabbet_el_Dahra_C and Bir_hassan_B, respectively, for calls made seconds apart and 20 minutes later, mobile 170 moved in a northerly direction to Ras_Nabah_A.⁶³⁶⁸ At 11:35, Blue 233 activated Riad_El_Soloh_B in north Beirut, which had overlapping predicted best server coverage with

⁶³⁶⁸ John Edward Philips, T. 24 April 2017, pp 18-19; exhibit P1259, p. 364; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 270-271. *See also* exhibit P1935, slides 415-417.

ETOILE1—near the Parliament—used by Red 741 two minutes earlier.⁶³⁶⁹ At 11:47, Blue 233 used Coast_Road_C near the St Georges Marina, a minute later Red 741 used PHENMB1, south-west of the marina, across the Phoenicia Hotel with a 150-metre radius coverage.⁶³⁷⁰

3234. For four calls in the following 16 minutes, Red 741 used PHENMB1, ZOUKAK1, ZOUKAK4 and MRAICI1.⁶³⁷¹ Green 300 also used MRAICI1 at the start of its last call at 11:58, and PHENMB1 at the end of this call.⁶³⁷² The Red network mobile remained in this area, using ZOUKAK1, BEACH1 and PHENMB1, until its last call at 12:50:55 on ZOUKAK1.⁶³⁷³ The electronic presentation of evidence map below depicts the locations and predicted best server coverage areas of Alfa's and Touch's cells that mobile 170, Blue 233, Green 300 and Red 741 connected to while travelling from south to the coast in north Beirut:

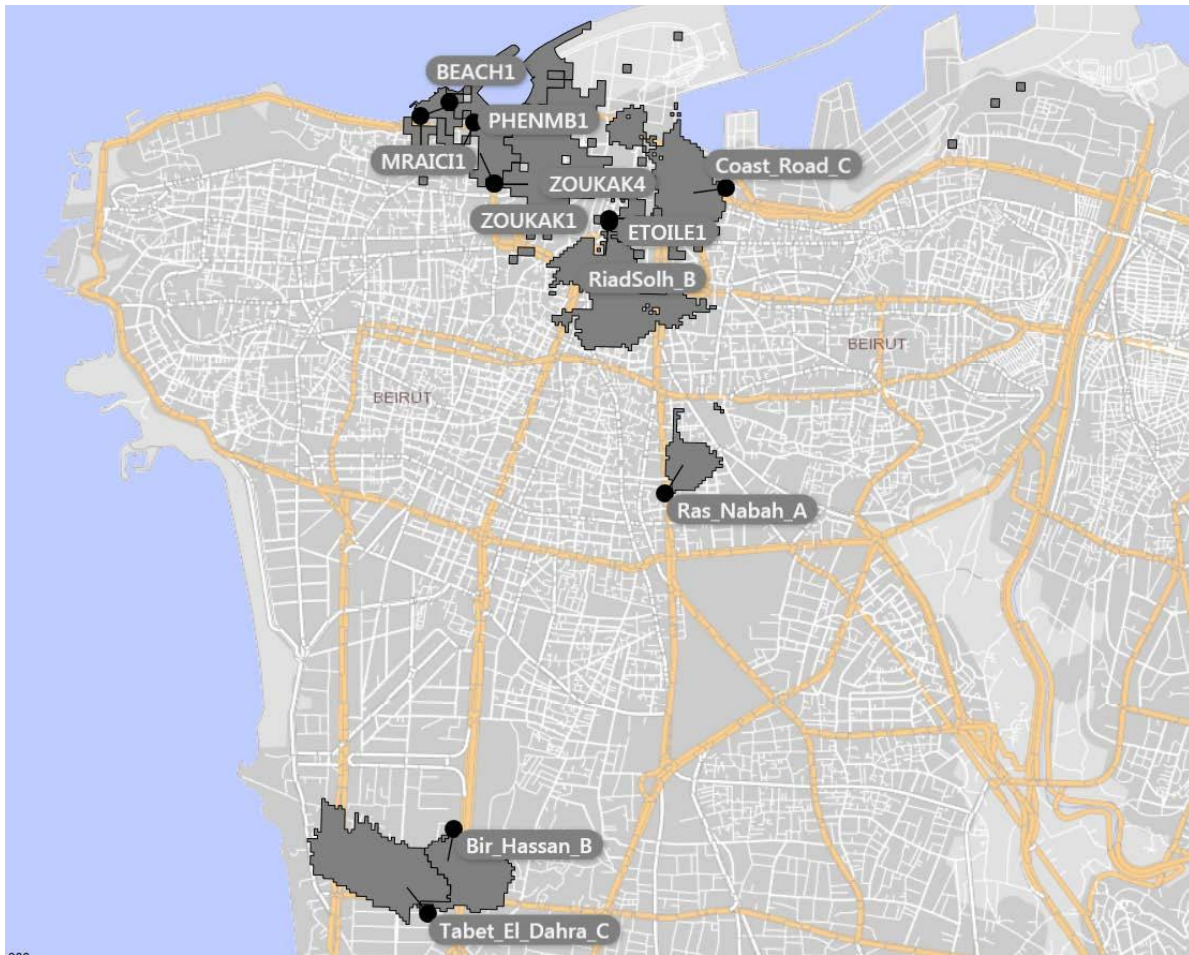
⁶³⁶⁹ John Edward Philips, T. 24 April 2017, pp 18-19; exhibit P1259, p. 364; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 270-272. *See also* exhibit P1935, slide 418.

⁶³⁷⁰ John Edward Philips, T. 24 April 2017, pp 19-20; exhibit P1259, p. 364; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 270-272; exhibit P777 (Annex 5 to Witness PRH707's statement), p. 5. *See also* exhibit P1935, slides 419-420; exhibit 2D71 (Information regarding Alfa's relay station PHENMB1); exhibit 2D72 (Satellite photo showing the distance between the crater and PHENMB1); exhibits P330-P332 (Photographs of the portable mobile telephone base station, annotated by Ali Diab).

⁶³⁷¹ John Edward Philips, T. 24 April 2017, pp 19-20; exhibit P1259, p. 364; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 270-273; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 49. *See also* exhibit P1935, slides 420-425.

⁶³⁷² John Edward Philips, T. 24 April 2017, pp 20-21; exhibit P1259, p. 364; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 270-273; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 49. *See also* exhibit P1935, slides 424-425. Mr Donaldson also gave evidence about the movements of Blue 233, Green 300 and Red 741 on 14 February 2005 in the coastal area in north Beirut, Andrew Donaldson, T. 24 August 2017, pp 65-68; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 580, annex D, pp 384-385; exhibit P2025.1, slides 124-129.

⁶³⁷³ Exhibit P1259, p. 364.



Alfa and Touch cells used by mobile 170, Blue 233, Red 741 and Green 300 between 10:50 and 12:50 on 14 February 2005 created from exhibit P592.1

3235. Mobile 091 was active only in the evening on this day activating Hadath_C, which had adjacent predicted best server coverage with Sfeir_A, used by Blue 233 ten minutes earlier.⁶³⁷⁴

3236. Mr Philips concluded that ‘the possibility that these mobiles were not used by the same user in certain instances would appear to be very remote.’⁶³⁷⁵ He and Mr Donaldson, however, acknowledged that if the user were out of Lebanon for two weeks in the analysed period of mobile activities it would exclude that person as the single user of these mobiles.⁶³⁷⁶

⁶³⁷⁴ John Edward Philips, T. 24 April 2017, pp 21-23; exhibit P1259, p. 364; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 270-273; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 49. *See also* exhibit P1935, slides 426-427.

⁶³⁷⁵ John Edward Philips, T. 24 April 2017, pp 87-89, T. 26 April 2017, pp 96-97.

⁶³⁷⁶ John Edward Philips, T. 26 April 2017, p. 98; Andrew Donaldson, T. 22 August 2017, p. 35.

Dislocation of mobile 091 and Red 741 from the other mobiles

3237. Mr Philips and Mr Donaldson identified and examined the same instances of cell activations which precluded that mobile 091 and Red 741 co-located with the other mobiles. These occurred on Friday 28 January and Wednesday 2 February 2005, respectively.

3238. Mr Philips concluded that mobile 091's activation of Touch's BorjBrajneh-II_B cell at 12:24 on Friday 28 January 2005 for an 88-second call may preclude its co-location with mobile 170 which used Touch's Hadat_2_C when it received a text message at 12:25, and excluded its co-location with Green 300, Blue 233 and Red 741 for a period between 13:11 and 15:02.⁶³⁷⁷ While using cells near the airport, mobile 091 had four calls with mobile 170, between 13:11 and 14:20, which was moving to the north of Beirut,⁶³⁷⁸ and from 13:20 to 14:56 it had overlapping calls with Blue 233, using Tehwita_A to the north-east of the airport, and Red 741, activating MOSBEH2.⁶³⁷⁹ However, in this period the other mobiles, Green 300, Blue 233, Red 741 and mobile 170, continued to co-locate and move in concert in the Mosbeh area.⁶³⁸⁰

3239. The following three slides extracted from Mr Philips's evidence on single user analysis for Mr Ayyash illustrate mobile 091's dislocation and overlapping calls and the other four mobiles' possible co-location in the same period.⁶³⁸¹

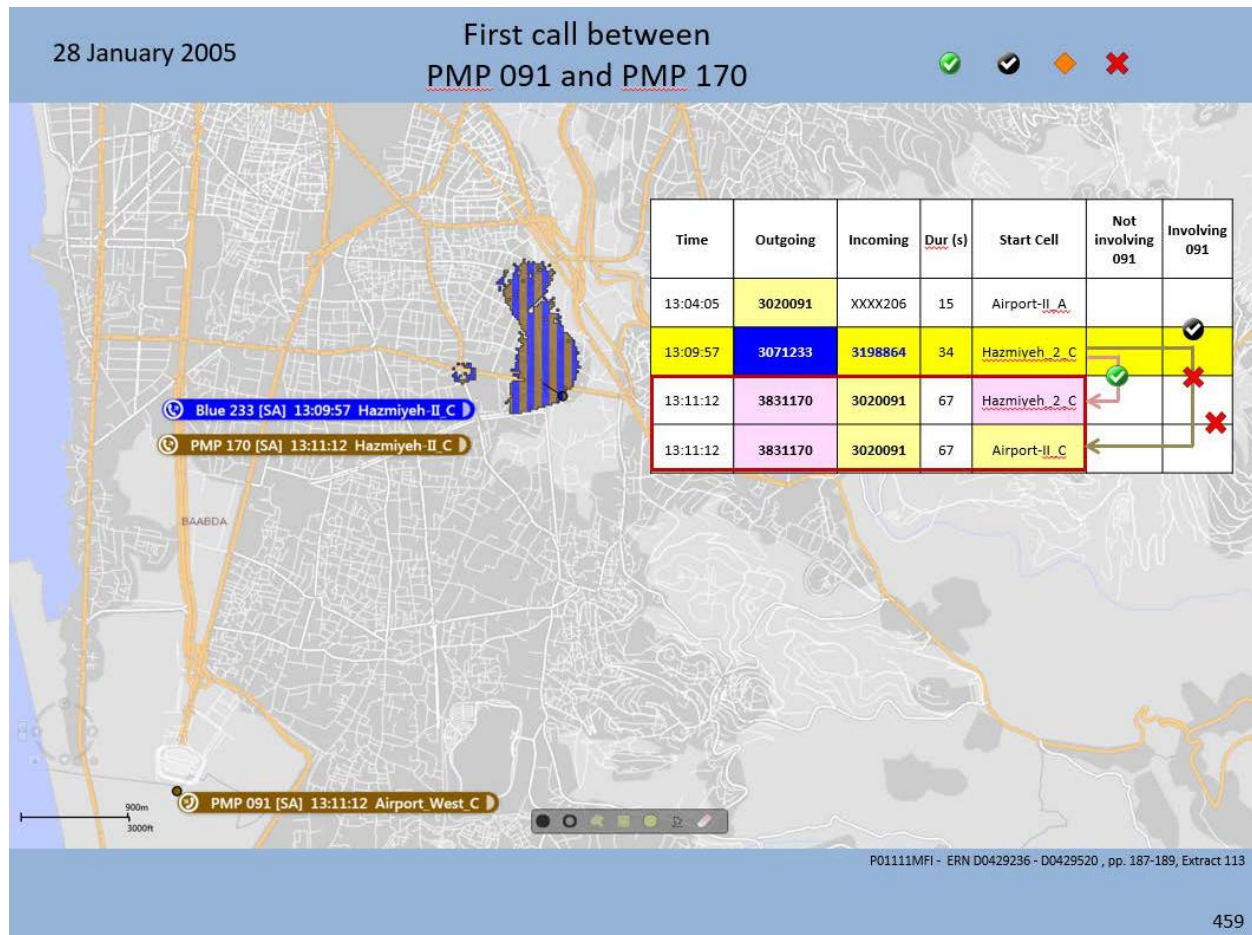
⁶³⁷⁷ John Edward Philips, T. 24 April 2017, pp 36-39, 47-53, 56-59; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 184-185, 187-190, 204; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 37. *See also* exhibit P1935, slides 443-500.

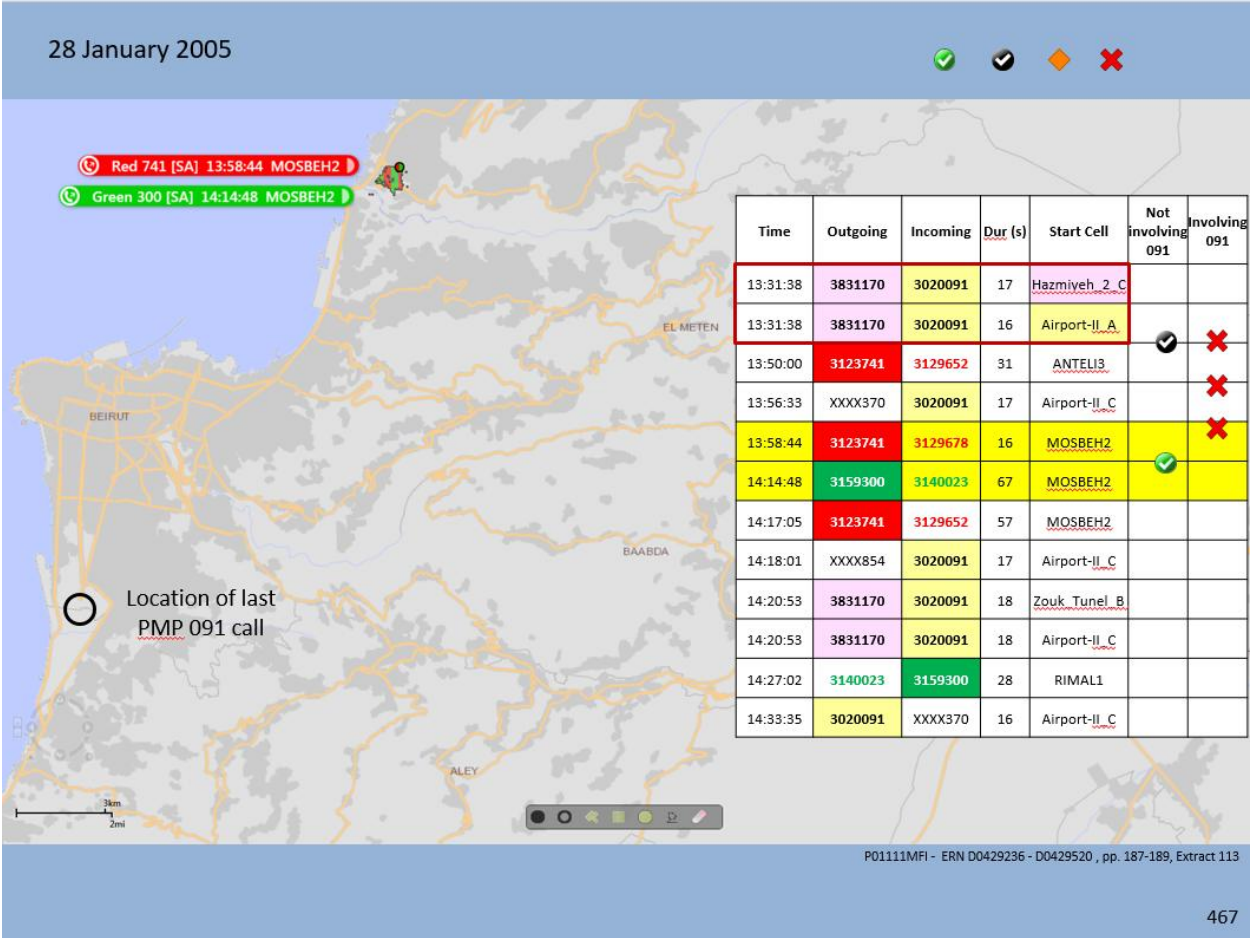
⁶³⁷⁸ John Edward Philips, T. 24 April 2017, pp 49-51; exhibit P1259, p. 350. *See also* exhibit P1935, slides 457-470.

⁶³⁷⁹ Exhibit P1259, pp 350-351. *See also* exhibit P1935, slides 463, 469.

⁶³⁸⁰ John Edward Philips, T. 24 April 2017, pp 61-62; Andrew Donaldson, T. 22 August 2017, pp 25, 31-33; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 561.

⁶³⁸¹ John Edward Philips, T. 24 April 2017, pp 50-55; exhibit P1935, slides 459, 467, 471.





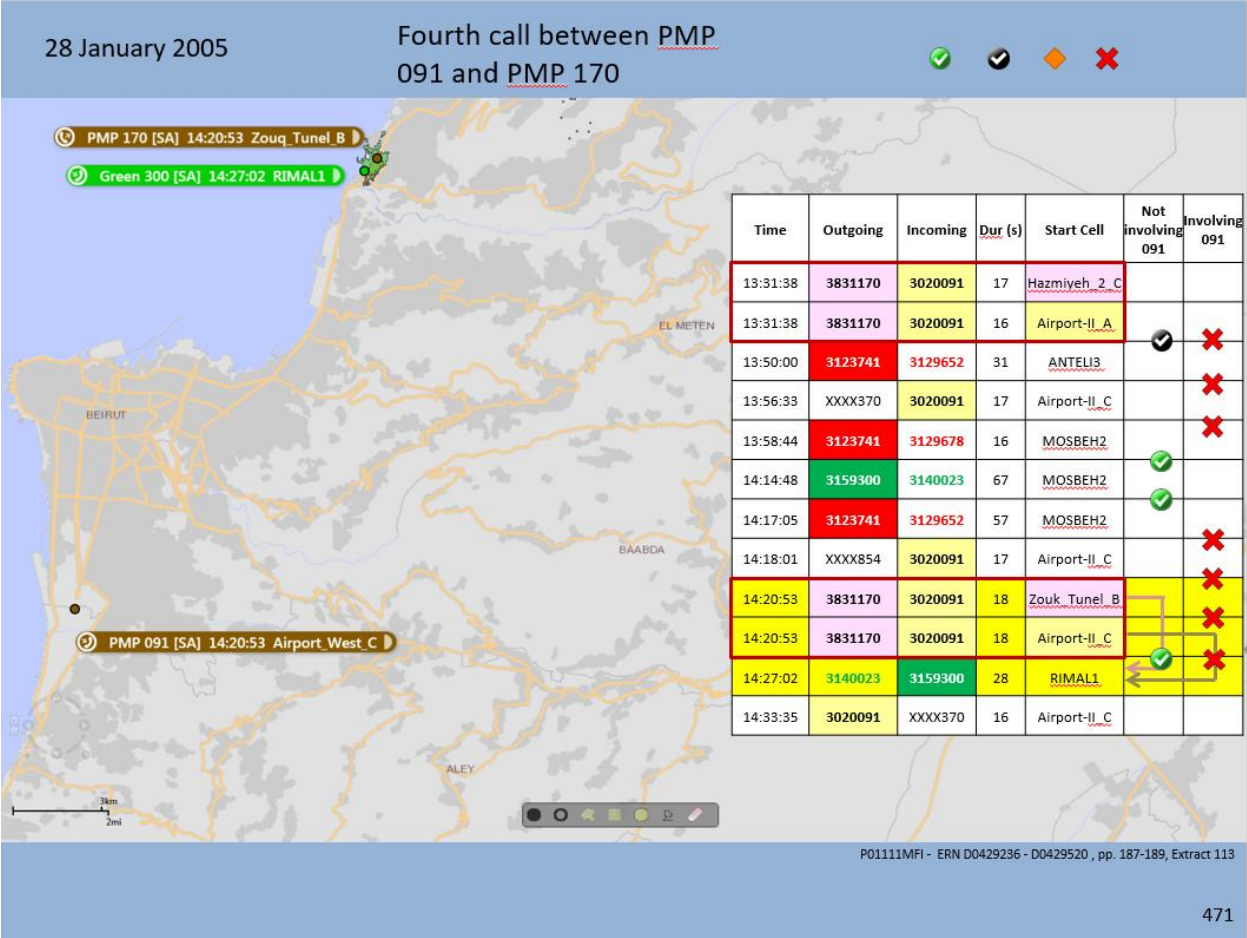
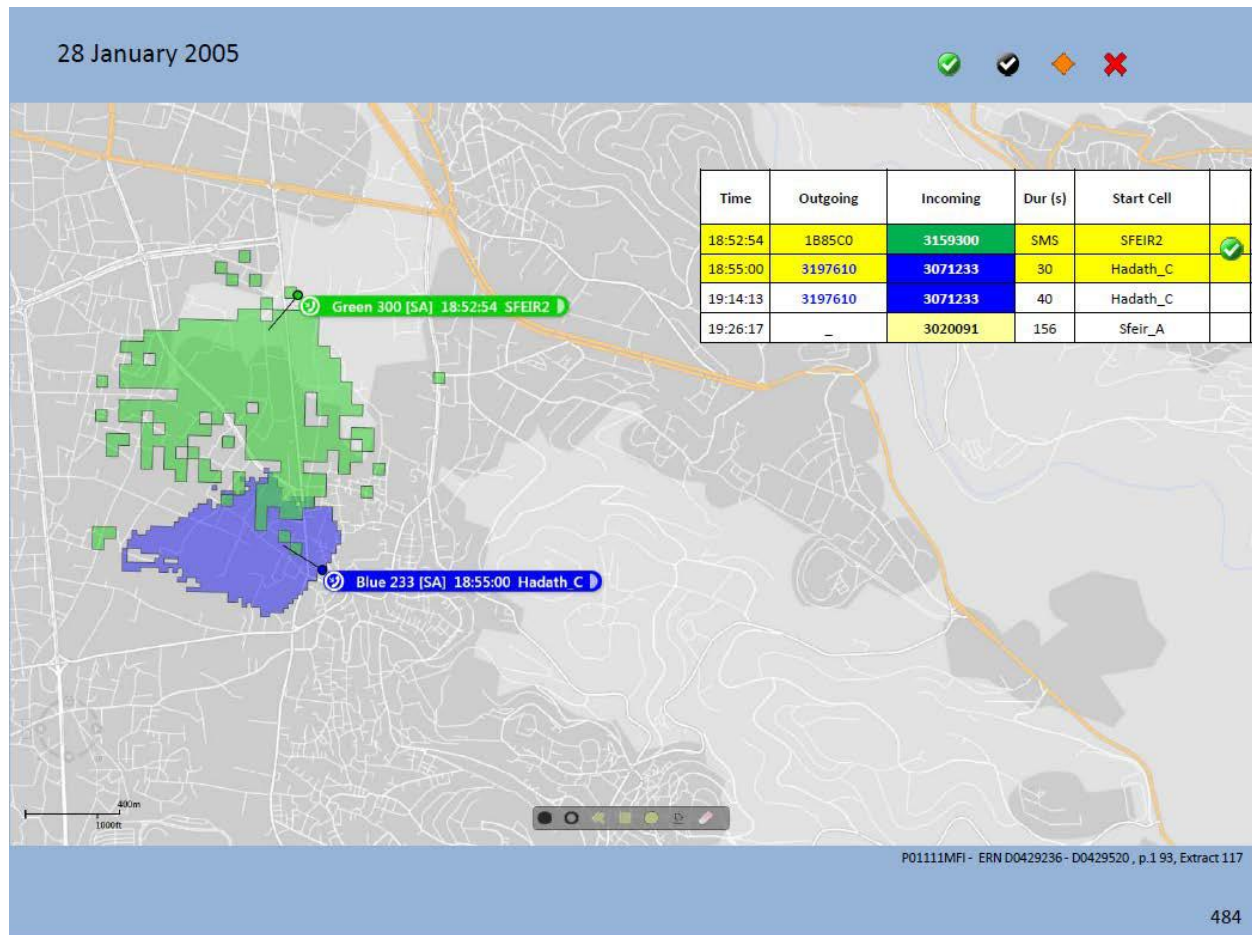


Exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips), slides 459, 467 and 471

3240. According to Mr Philips and Mr Donaldson, for this period of the day mobile 091 may have been given to someone else who went to the airport, while Blue 233, Red 741, Green 300 and mobile 170 travelled to the area of Mosbeh and Rimal, north-east of Beirut.⁶³⁸² In the evening, however, mobile 091 returned to south Beirut, as did Blue 233 and Green 300, as depicted in the following slides:⁶³⁸³

⁶³⁸² John Edward Philips, T. 24 April 2017, pp 61-62; Andrew Donaldson, T. 22 August 2017, pp 25, 31-33, T. 24 August 2017, pp 22-24; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 558-564, 572, annex D, pp 368-369.

⁶³⁸³ John Edward Philips, T. 24 April 2017, p. 62. See also exhibit P1935, slides 484-486.



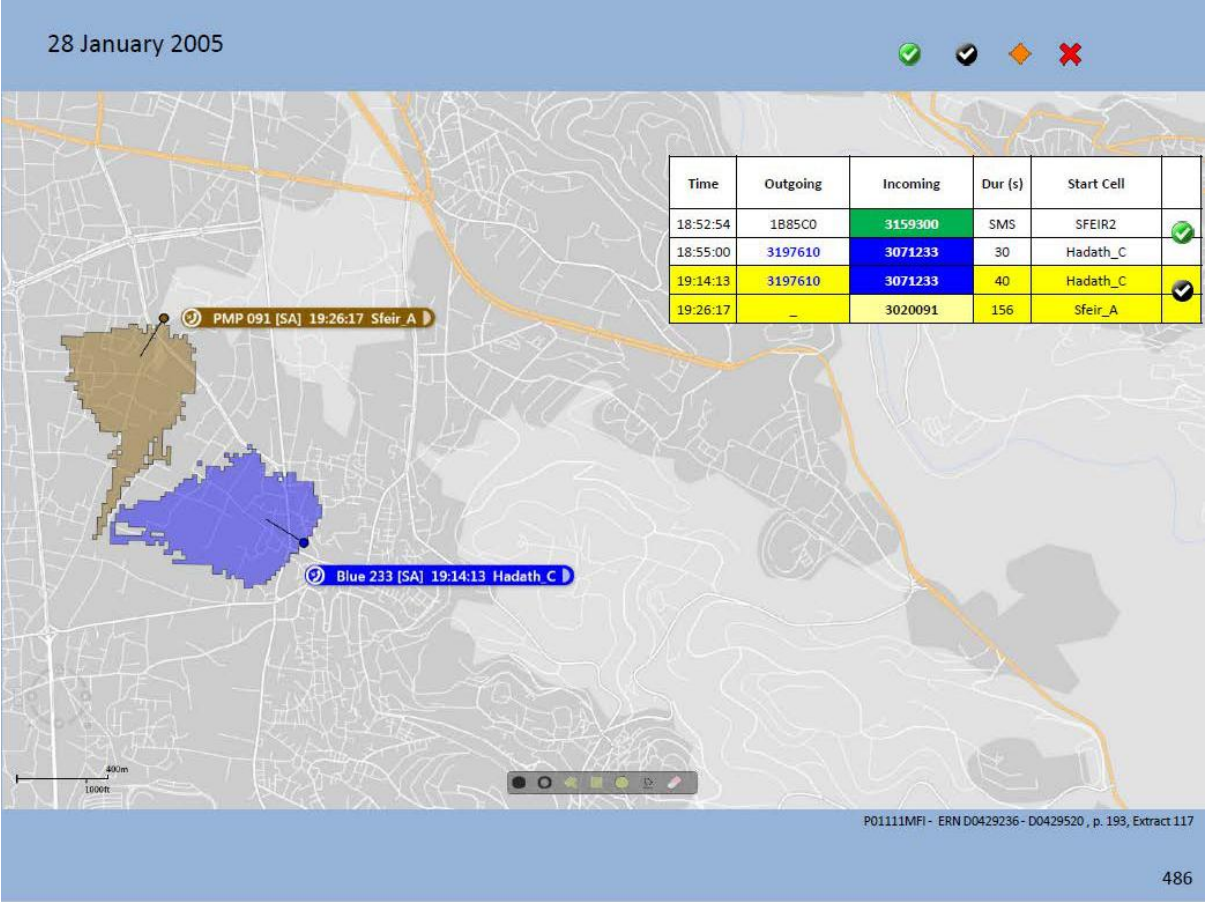
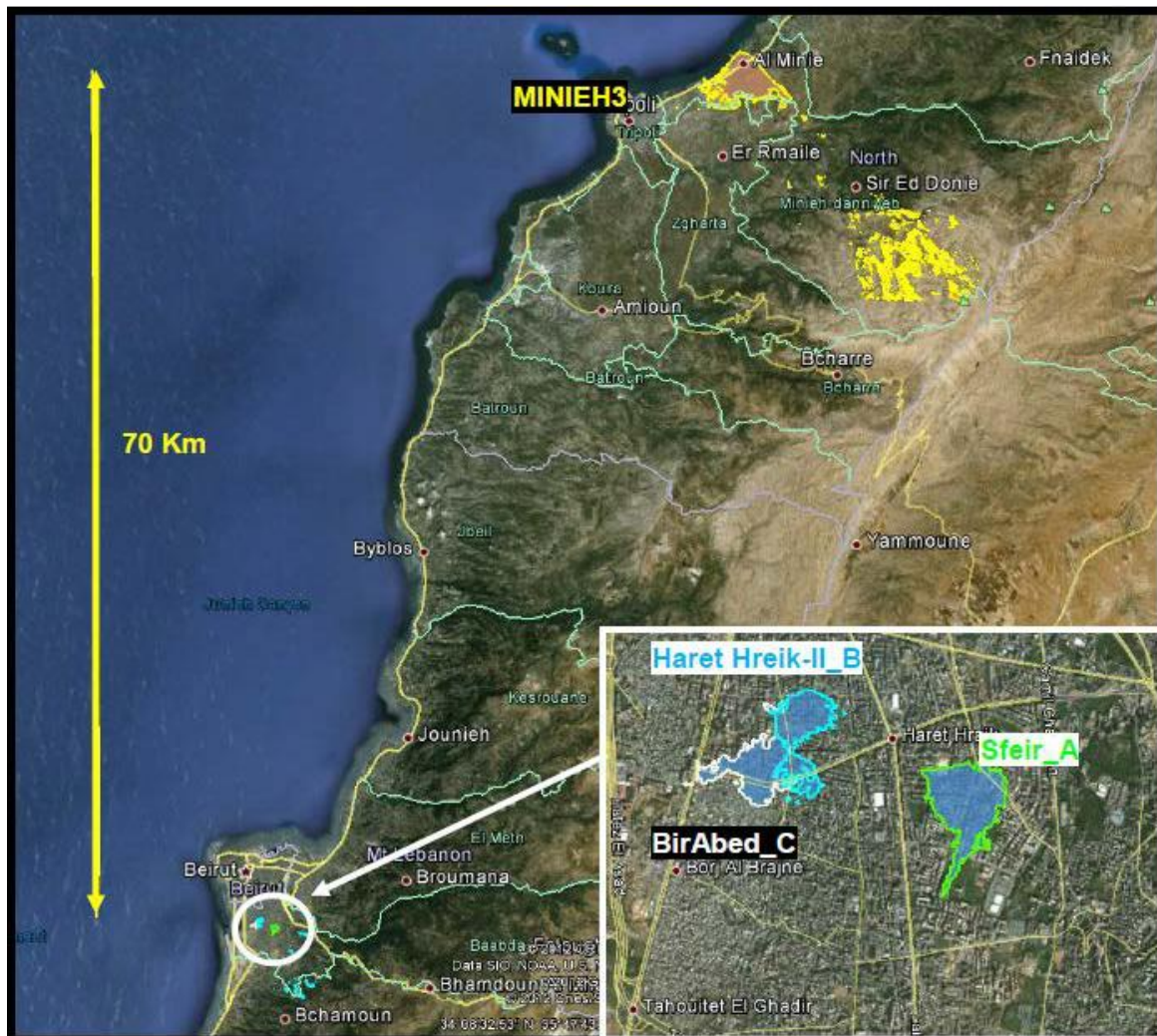


Exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips), slides 484, 486

3241. Mr Philips observed that on Wednesday 2 February 2005, for calls to an Alfa service number at 19:14 and at 19:15, Red 741 activated Alfa’s MINIEH3 cell north-east of Tripoli, and separated from mobile 091, which activated Touch’s Haret Hreik-II_B and Bir Abed_C cells in south Beirut 36 minutes before and three minutes after the Red mobile’s calls.⁶³⁸⁴ The following map depicts the mobiles’ separation from each other:

⁶³⁸⁴ John Edward Philips, T. 24 April 2017, pp 30-31; exhibit P1259, p. 354; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 209-210. See also exhibit P1935, slides 437-439.



*Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash—
exhibit P1111, p. 209*

3242. The Trial Chamber heard evidence, including from Mr Philips, that Red network mobiles were topped up in Tripoli on this day between 18:41 and 19:25, in a sequential manner.⁶³⁸⁵

⁶³⁸⁵ John Edward Philips, T. 24 April 2017, pp 31-32. See also Andrew Donaldson, T. 24 August 2017, pp 15-16, 19, 24-25; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 574.

ii. Submissions

3243. The Prosecution submits that Mr Ayyash was the user of Red 741 from Friday 14 January to Monday 14 February 2005. The person whose name was used to subscribe Red 741, Ms Refaayeh, never actually bought that SIM card.⁶³⁸⁶

3244. With respect to mobile 091's separation from mobile 170, Blue 233, Green 300 and Red 741 in the afternoon of 28 January 2005, the Prosecution argues that before and after this occurrence, the mobiles were grouped together. In this period, mobile 091 moved to and remained stationary at Beirut International Airport, which is consistent with Mr Ayyash lending this mobile to a person who would have been asked to pick up Mr Ayyash's family travelling back from the Hajj pilgrimage in Saudi Arabia on that day.⁶³⁸⁷

3245. The Ayyash Defence submits that the primary means for attribution of all network mobiles is co-location analysis, which it submits is unreliable. The attribution of the network mobiles to Mr Ayyash is wholly dependent on the attribution of the personal mobiles to him. As the Prosecution failed in the attribution of personal mobiles, attribution to network mobiles also fails.⁶³⁸⁸

iii. Findings

3246. The contact profile of Red 741 and its subscriber information are inconclusive as to who was using the mobile. Further, both Mr Philips and Mr Platt noted that the geographic profiles of the Red mobiles were distinct from those of the other network mobiles, as most of their cell activations occurred in western Beirut.⁶³⁸⁹ As a result, the only evidence the Trial Chamber has to determine this relates to its possible co-location with other mobiles.

3247. The attribution period of Red 741—Friday 14 January until Monday 14 February 2005—does not overlap with the attribution periods of personal mobiles 165 and 935, and network mobiles Yellow 669 and Yellow 294. Nor does it overlap with the attribution period of Blue 322 that was specified in the Prosecution's final trial brief, but not pleaded in the amended consolidated

⁶³⁸⁶ Prosecution final trial brief, para. 257.

⁶³⁸⁷ Prosecution final trial brief, paras 256 (c), 314; Prosecution closing submissions, T. 13 September 2018, pp 7-11.

⁶³⁸⁸ Ayyash Defence final trial brief, paras 670-671.

⁶³⁸⁹ See chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles', (D) (3) 'Usage'.

indictment. Accordingly, any co-location analysis was limited to personal mobiles 091 and 170, Blue 233 and Green 300.

3248. Red 741 and Green 300 were active together on eight days on which they had 42 pairs of close-in-time calls. On seven days, 28 and 31 January, 3, 8, 9, 11, 12 and 14 February 2005, the two Alfa mobiles' cell activations showed possible co-location 26 times. Based on the combined call sequence table, the mobiles used identical cells 13 times for calls not more than three minutes apart. For the remaining 16 pairs of calls their cell activations would not preclude their co-location, and the two mobiles did not dislocate.

3249. Cell activations show that the two mobiles moved together in west Beirut and in the area of Mosbeh. The Trial Chamber finds that the frequency of possible co-locations and the common movement of the mobiles weigh strongly in favour of finding that Green 300 and Red 741 were used by the same person.

3250. Red 741 and Green 300 had three overlapping calls, which could be a factor against the same person using them. However, Mr Philips acknowledged that exceptionally this may occur and on its own would not necessarily exclude that the mobiles had a single user. The Trial Chamber notes Mr Philips's evidence that these calls occurred in the intense period of Red 741's use, and for all three overlapping calls the two mobiles used the same cell sectors.

3251. Red 741 had six possible co-locations with mobile 091 and seven with Blue 233. Excluding the overlapping calls, Red 741 possibly co-located with mobile 091 within one to 25 minutes, and with Blue 233 within two to 13 minutes. Although it did not co-locate with mobile 170, on their three days of common use, the mobiles' cell activations for four pairs of calls would not preclude their co-location. Mr Philips demonstrated considerable common movements of these mobiles which points towards a single user. Additionally, the Trial Chamber has found that—save for when mobile 091 dislocated from the other mobiles in the afternoon on 28 January 2005—mobiles 091 and 170, and Blue 233 were used by the same person as Green 300, and it was Mr Ayyash.

3252. The Trial Chamber received evidence that on Friday 28 January 2005 between 12:24 and 15:02 mobile 091 using cells in the airport area dislocated from Red 741, Green 300, Blue 233 and mobile 170, while these four continued to move together north-east of Beirut. Calls between the mobiles and overlapping calls, while dislocating, exclude that the same person was then using

them. Mr Philips and Mr Donaldson both concluded that during the dislocation a different person may have taken mobile 091 to the airport. The Trial Chamber finds this explanation reasonable in the context of its conclusions at paragraphs 3409-3410 below that Mr Ayyash did not travel to the Hajj in January 2005.

3253. Mobile 091 also dislocated from Red 741 on Wednesday 2 February 2005. The Trial Chamber has received evidence that on this day the Red network mobiles were topped up in Tripoli. Logically, whoever was topping up a group or network of mobiles took the mobiles from their individual users to Tripoli. That therefore does not exclude that Red 741 and mobile 091 generally had the same single user.

3254. With these exceptional periods in mind, the Trial Chamber is satisfied beyond reasonable doubt, based on the totality of the evidence, that Red 741 also had the same user as the other mobiles analysed above. That user was Mr Ayyash from Friday 14 January to Monday 14 February 2005.

3255. The Trial Chamber is therefore satisfied beyond reasonable doubt that Mr Ayyash was the user of Red 741 from Friday 14 January to Monday 14 February 2005.

(g) The 2005 Hajj

3256. The presence or absence of Mr Ayyash in Lebanon during the Hajj in January 2005 (year 1425 in the *Hijri* calendar) is central to the attribution of relevant mobile numbers to him.⁶³⁹⁰

3257. Had he travelled to the Kingdom of Saudi Arabia, it would exclude him as the single user of mobiles attributed to him at least during that period.⁶³⁹¹ The Prosecution concedes this by stating that Mr Ayyash ‘could not have continued normal use in Lebanon of the mobiles’ had he travelled to Mecca in January 2005.⁶³⁹² In addition, that period—the second half of January 2005—is a significant period in relation to the preparation of the attack on Mr Hariri.

3258. The Prosecution submits that Mr Ayyash had initially intended to travel to Saudi Arabia between 15 and 28 January 2005 to perform the Hajj pilgrimage. However, he cancelled his trip

⁶³⁹⁰ Andrew Donaldson, T. 22 August 2017, p. 35, T. 3 October 2017, pp 38-39, T. 18 October 2017, p. 29.

⁶³⁹¹ John Edward Philips, T. 26 April 2017, p. 98; Andrew Donaldson, T. 22 August 2017, p. 35.

⁶³⁹² Prosecution final trial brief, para. 282.

and instead remained in Lebanon. In his place, someone else using the name ‘Salim Jamil Ayyash’ and his Hajj passport travelled to Saudi Arabia.⁶³⁹³

3259. To confirm Mr Ayyash’s presence in Lebanon in this period, Mr Andrew Donaldson compared the call and geographical patterns of mobiles that the Prosecution attributed to him in the Hajj periods in 2004, when he travelled to Mecca, and 2005, when he did not, according to the Prosecution. The Ayyash Defence, on the other hand, argues that Mr Ayyash left Lebanon and travelled to Saudi Arabia in January 2005 for the Hajj.⁶³⁹⁴

3260. The Trial Chamber received extensive evidence concerning the Hajj application and passport requirements, air travel procedures and records and Lebanese Civil Defence attendance, leave and payment practices. Records show that Mr Ayyash received Hajj passports and travel visas in two consecutive years, and he requested time off work to perform the Hajj in 2004 and 2005. Lebanese and Saudi Arabian entry and exit records and flight manifests also bear his name.

3261. However, the Trial Chamber heard testimony that casts doubt on the integrity of the Beirut airport security procedures with respect to the identification of pilgrims during the 2004 and 2005 Hajj seasons. Further, Mr Ayyash’s leave application for the 2005 Hajj was cancelled and he received the ‘commute compensation’ for the cost of travelling to work, which had been deducted when his original leave was approved.

i. Evidence

a. Hajj application, passport and travel

3262. The Trial Chamber heard evidence from Mr Ibrahim Itani, the Religious Affairs Co-ordinator for the *Al-Mustaqbal* Party⁶³⁹⁵ and the Executive Director of the Hajj Committee, on the Hajj application procedures in 2004 and 2005 and the role of the Hajj Committee.⁶³⁹⁶ Anyone wishing to perform the Hajj pilgrimage to Mecca had to submit an application for a Hajj passport to the General Security Directorate, the *Sûreté Générale*, before the published due date through a

⁶³⁹³ Prosecution final trial brief, paras 281, 285, 289; Prosecution closing submissions, T. 13 September 2018, p. 3.

⁶³⁹⁴ Ayyash Defence final trial brief, para. 373; Ayyash Defence closing submissions, T. 17 September 2018, p. 27.

⁶³⁹⁵ *Al-Mustaqbal* or Future Party was headed by Mr Rafik Hariri, then by his son, Mr Saad Hariri, Marwan Hamade, T. 9 December 2014, p. 19; exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 5.

⁶³⁹⁶ Ibrahim Itani, T. 12 December 2016, p. 23; exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), paras 5-7; exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), ERNs 60128950-60128966, 60128969-60128984.

moarref, a liaison of a certified travel agency.⁶³⁹⁷ Applications for the 2005 Hajj were due between 14 August and 13 October 2004.⁶³⁹⁸

3263. The application required potential pilgrims to provide information including their name, date and place of birth, current address, travel agency information, health status and their pilgrim category. It also required the personal information and signatures of two witnesses and a *mukhtar*. Next to the *mukhtar*'s signature was also a stamp.⁶³⁹⁹ Along with the application, the pilgrim had to supply an ID card, a civil registry ID stating the religious group the applicant belonged to, a certificate proving the relationship between the applicant and any accompanying family members and a certificate of a *sheikh* from a religious authority.⁶⁴⁰⁰ The pilgrim had to provide four photographs, one for the Hajj application, two for the passport and the remaining one as reserve to keep by the Hajj Committee until the completion of the Hajj.⁶⁴⁰¹

3264. Some restrictions applied to female pilgrims under the age of 45 who were required to be accompanied by a *mahram*, either her husband or a male kin.⁶⁴⁰² Both the woman and the *mahram* had to complete separate Hajj applications, which included the other's name, to allow the Hajj Committee to choose both the woman and the *mahram* to travel together instead of accepting one application and denying the other.⁶⁴⁰³ Applications from anyone under 18 were rejected.⁶⁴⁰⁴ A minor may have travelled on the Hajj only if their name was on a parent's Hajj application, or if they received a travel visa directly from the Saudi Arabian government and travelled using their national passport.⁶⁴⁰⁵

⁶³⁹⁷ Exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), paras 13, 23; exhibit P1668 (Witness statement of Ibrahim Itani, 30 June 2010), paras 8-9; exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), para. 7.

⁶³⁹⁸ Ibrahim Itani, T. 12 December 2016, p. 37; exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 13; exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), para. 10.

⁶³⁹⁹ For example, exhibit 1D293 (Mr Ayyash's 2005 Hajj application and passport), p. 1.

⁶⁴⁰⁰ Ibrahim Itani, T. 12 December 2016, p. 36; exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 15.

⁶⁴⁰¹ Ibrahim Itani, T. 12 December 2016, p. 36; exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 15; exhibit P1668 (Witness statement of Ibrahim Itani, 30 June 2010), paras 22, 24.

⁶⁴⁰² Ibrahim Itani, T. 12 December 2016, p. 55; exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 20; exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), para. 37.

⁶⁴⁰³ Ibrahim Itani, T. 12 December 2016, p. 55.

⁶⁴⁰⁴ Exhibit P1667 (Witness statements of Ibrahim Itani), para. 21; exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), para. 12.

⁶⁴⁰⁵ Ibrahim Itani, T. 12 December 2016, p. 76; exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 22.

3265. The *moarref* took the application to the *Sûreté Générale*, which produced the Hajj passport and sent it, together with the application, to the Hajj Committee.⁶⁴⁰⁶ The Hajj Committee then decided who was chosen for the pilgrimage.⁶⁴⁰⁷

3266. The Hajj passport was a document perforated in the middle which had two identical sides with the pilgrim's name and the photo.⁶⁴⁰⁸ In 2005, the personal information in the Hajj passports was handwritten, and it was the sole means of identification required from the pilgrims at Beirut Airport.⁶⁴⁰⁹

3267. The Saudi Arabian government set an annual quota of pilgrims allowed to travel from each country based on that country's population.⁶⁴¹⁰ Under normal circumstances, 6,000 Lebanese were allowed to travel on Hajj, half of whom were Shiite and half Sunni and there was a quota for 1,500 Palestinians and 500 for the representatives of the Hajj Committee which was shared with ministers and MPs and pilgrims under their sponsorship.⁶⁴¹¹ Between 2002 and 2004, the Saudi government allowed a higher quota for Lebanon of 20,000 pilgrims, 'due to the intervention of then Prime Minister Hariri'.⁶⁴¹² The 2005 quota was 17,000.⁶⁴¹³

3268. The Hajj Committee selected people wishing to travel based on age and whether they had travelled before.⁶⁴¹⁴ Older applicants and those who had never travelled were given priority.⁶⁴¹⁵

⁶⁴⁰⁶ Ibrahim Itani, T. 12 December 2016, pp 36-37; exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 16; exhibit P1668 (Witness statement of Ibrahim Itani, 30 June 2010), para. 9.

⁶⁴⁰⁷ Exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 8; exhibit P1668 (Witness statement of Ibrahim Itani, 30 June 2010), para. 9; exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), para. 13.

⁶⁴⁰⁸ Ibrahim Itani, T. 12 December 2016, p. 37; exhibit P1668 (Witness statement of Ibrahim Itani, 30 June 2010), para. 22.

⁶⁴⁰⁹ Exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), paras 17, 33.

⁶⁴¹⁰ Exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), paras 8-9.

⁶⁴¹¹ Ibrahim Itani, T. 12 December 2016, pp 50-51; exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 9.

⁶⁴¹² Ibrahim Itani, T. 12 December 2016, p. 83; exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 10.

⁶⁴¹³ Ibrahim Itani, T. 12 December 2016, p. 83.

⁶⁴¹⁴ Ibrahim Itani, T. 12 December 2016, pp 39-40, 82; exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 19; exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), paras 7, 12.

⁶⁴¹⁵ Ibrahim Itani, T. 12 December 2016, pp 39-40, 82; exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), paras 19, 21; exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), para. 12.

3269. MPs belonging to the Loyalty to the Resistance Bloc, or Hezbollah, could travel to the Hajj every year.⁶⁴¹⁶ Each Hezbollah MP could sponsor one or two escorts annually.⁶⁴¹⁷ The sponsor and the sponsored did not have to travel together during the Hajj.⁶⁴¹⁸ Occupants of certain posts, such as prime minister or speaker of Parliament, could sponsor as many people as they liked and could do so even if they did not plan to perform the Hajj themselves that year.⁶⁴¹⁹

3270. In 2005, the Hajj passports and a CD containing the names of those selected to go on Hajj were hand delivered to the Beirut Embassy of the Kingdom of Saudi Arabia.⁶⁴²⁰ In very rare cases, someone who was chosen by the Hajj Committee was declined a travel visa by the Kingdom of Saudi Arabia because they had been blacklisted.⁶⁴²¹

3271. Approximately one month before the travel date, at the start of *Shawwal*, the month occurring directly after Ramadan in the Islamic calendar, the Hajj Committee released the list of approved Hajj pilgrims.⁶⁴²² For the 1425 Hajj, the list should have been posted in the middle of December 2004 and the Committee waited as long as possible to release the list of accepted pilgrims in case they received additional names from the Saudi authorities.⁶⁴²³ The selected pilgrims were not allowed to make their own arrangements—this could only be done through approved travel agencies—so the registered travel agencies began booking flights and accommodations for the pilgrims only once the list was released.⁶⁴²⁴ Even when selected, about five per cent of approved pilgrims chose not to travel.⁶⁴²⁵

⁶⁴¹⁶ Exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), para. 41.

⁶⁴¹⁷ Ibrahim Itani, T. 12 December 2016, pp 38, 41, 50; exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 43; exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), para. 40.

⁶⁴¹⁸ Exhibit P1668 (Witness statement of Ibrahim Itani, 30 June 2010), para. 34.

⁶⁴¹⁹ Exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), paras 43-44.

⁶⁴²⁰ Ibrahim Itani, T. 12 December 2016, p. 40; exhibit P1668 (Witness statement of Ibrahim Itani, 30 June 2010), para. 10.

⁶⁴²¹ Ibrahim Itani, T. 12 December 2016, p. 42; exhibit P1668 (Witness statement of Ibrahim Itani, 30 June 2010), para. 10.

⁶⁴²² Ibrahim Itani, T. 12 December 2016, p. 42; exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), paras 7, 11-13.

⁶⁴²³ Ibrahim Itani, T. 12 December 2016, p. 42; exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), para. 11.

⁶⁴²⁴ Exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), paras 23-24; exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), para. 11.

⁶⁴²⁵ Ibrahim Itani, T. 12 December 2016, p. 69; exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 32.

3272. In the days before the pilgrims were due to travel, the Hajj Committee provided the Hajj passports to the travel agents, who were responsible for giving the passports to the pilgrims via the *moarref*.⁶⁴²⁶ Pilgrims received only one of the identical sides of the Hajj passport at the airport, the other remained with the Committee.⁶⁴²⁷ The *moarref* was responsible for each group of pilgrims, which could range from 11 to 19, but was generally 13, and one *sheikh* accompanied approximately every *hamla*, a group of 50 pilgrims.⁶⁴²⁸

3273. In 2005, the Hajj Committee also provided ID cards containing a scanned copy of the pilgrim's photograph, that each pilgrim had to wear throughout the trip.⁶⁴²⁹ However, Mr Itani stated that in 2005 the ID card 'was not really used', it did not have serial numbers and could easily be altered by rescanning it with a different photograph.⁶⁴³⁰

3274. In 2005, pilgrims could only travel on Hajj by air via direct flights on MEA or Saudi Arabian Airlines between Beirut and Medina or Jeddah.⁶⁴³¹ When the pilgrims entered the airport, internal airport security checked each to ensure that the pilgrim had a passport, meaning either a Hajj travel document or a national passport with a Saudi visa.⁶⁴³² They did not check the details, but only that everyone had a passport.⁶⁴³³ From there, the pilgrims went through internal airport security for bag and body scanning.⁶⁴³⁴

3275. Next, everyone approached the airline counter for check-in and to receive their boarding passes.⁶⁴³⁵ The *moarref* gave the check-in attendant the passports of those he was responsible for. The attendant checked everyone in as a group and handed the passports and boarding passes back

⁶⁴²⁶ Ibrahim Itani, T. 12 December 2016, p. 42, T. 13 December 2016, pp 11-12; exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 24; exhibit P1668 (Witness statement of Ibrahim Itani, 30 June 2010), para. 14.

⁶⁴²⁷ Ibrahim Itani, T. 12 December 2016, p. 43, T. 13 December 2016, pp 11-12; exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 24; exhibit P1668 (Witness statement of Ibrahim Itani, 30 June 2010), paras 14, 22.

⁶⁴²⁸ Ibrahim Itani, T. 12 December 2016, p. 47; exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 25; exhibit P1668 (Witness statement of Ibrahim Itani, 30 June 2010), paras 11-13, 31.

⁶⁴²⁹ Ibrahim Itani, T. 12 December 2016, pp 46-47; exhibit P1668 (Witness statement of Ibrahim Itani, 30 June 2010), para. 20.

⁶⁴³⁰ Exhibit P1668 (Witness statement of Ibrahim Itani, 30 June 2010), para. 25.

⁶⁴³¹ Exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), paras 26-27; exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), para. 9.

⁶⁴³² Ibrahim Itani, T. 12 December 2016, pp 45, 48.

⁶⁴³³ Ibrahim Itani, T. 12 December 2016, p. 45.

⁶⁴³⁴ Ibrahim Itani, T. 12 December 2016, pp 43-44.

⁶⁴³⁵ Ibrahim Itani, T. 12 December 2016, pp 43-44.

to the *moarref* as a group and then distributed the passports and boarding passes to each pilgrim.⁶⁴³⁶ Finally, the pilgrims passed through the *Sûreté Générale* to have their passports stamped.⁶⁴³⁷ Pilgrims used their Hajj passport as the only means of identification to go through immigration.⁶⁴³⁸ This should have been done one-by-one.⁶⁴³⁹ The passports were checked one final time at the boarding gate to ensure that they had a Lebanese exit stamp.⁶⁴⁴⁰

3276. According to information MEA representatives provided to the Prosecution, during the normal check-in procedure, the attendant registered every passenger and entered their details in the flight manifest. The crew received a copy of the manifest once final checks were complete, while another copy remained with the MEA dispatcher and—with the flight coupons—was sent to the MEA's finance department.⁶⁴⁴¹

3277. To control the group and to keep count, the *moarref* took the Hajj passports from the pilgrims once they had boarded the plane.⁶⁴⁴² When they landed, the *moarref* gave the pilgrims their passports to go individually through Saudi Arabian immigration.⁶⁴⁴³ Next, the *moarref* again collected the Hajj passports and provided them to the office of the *motawef*, which was responsible for the movement of all pilgrims and kept the passports for the duration of the trip and gave them back to the pilgrims when they returned to the airport.⁶⁴⁴⁴

3278. Once back in Lebanon, pilgrims were supposed to hand their Hajj passport back to the *Sûreté Générale* as they passed through customs, but this did not always occur.⁶⁴⁴⁵ The *Sûreté Générale* returned the Hajj passports to the Hajj Committee at the end of the pilgrimage. Based on

⁶⁴³⁶ Ibrahim Itani, T. 12 December 2016, p. 44.

⁶⁴³⁷ Ibrahim Itani, T. 12 December 2016, pp 43-45.

⁶⁴³⁸ Ibrahim Itani, T. 12 December 2016, pp 44, 48; exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 33; exhibit P1668 (Witness statement of Ibrahim Itani, 30 June 2010), para. 15.

⁶⁴³⁹ Ibrahim Itani, T. 12 December 2016, p. 43; exhibit P1668 (Witness statement of Ibrahim Itani, 30 June 2010), para. 15.

⁶⁴⁴⁰ Ibrahim Itani, T. 12 December 2016, pp 43, 45.

⁶⁴⁴¹ Exhibit 1D303 (Investigator notes on meeting with MEA), para. 5.

⁶⁴⁴² Ibrahim Itani, T. 12 December 2016, p. 45; exhibit P1668 (Witness statement of Ibrahim Itani, 30 June 2010), para. 16.

⁶⁴⁴³ Ibrahim Itani, T. 12 December 2016, pp 48-49; exhibit P1668 (Witness statement of Ibrahim Itani, 30 June 2010), para. 17. In 2005, it took approximately six hours to pass through Jeddah Airport which included passing through passport checks and waiting for the travel coaches, exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), para. 22.

⁶⁴⁴⁴ Ibrahim Itani, T. 12 December 2016, p. 46; exhibit P1668 (Witness statement of Ibrahim Itani, 30 June 2010), paras 17-18.

⁶⁴⁴⁵ Ibrahim Itani, T. 12 December 2016, pp 47, 82; exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), paras 28, 38; exhibit P1668 (Witness statement of Ibrahim Itani, 30 June 2010), para. 30.

the returned passports, the Committee recorded whether the pilgrim did go to the pilgrimage, and checked the identification page against that removed at the beginning of the trip, to ensure a match.⁶⁴⁴⁶ If not, the Committee reported it to the *Sûreté Générale*.⁶⁴⁴⁷

3279. The Committee was responsible for keeping a record of every application, regardless of whether it had been granted or rejected, and whether the applicant had travelled on the Hajj.⁶⁴⁴⁸ The Hajj Committee maintained the original Hajj documents for a year before it scanned and stored them in electronic format.⁶⁴⁴⁹ It destroyed the original hardcopies after scanning.⁶⁴⁵⁰

3280. The application procedure used in 2004 and 2005 has since changed. Pilgrims now travel with their national passport and do not get a special Hajj travel document.⁶⁴⁵¹ The Saudi Arabian authorities receive the photographs and visas of the pilgrims electronically.⁶⁴⁵²

b. Exceptions to general Hajj procedures

3281. Although the Hajj Committee denied applications submitted outside of the application period, Mr Itani stated that in 2005 around 15 people received Hajj passports after the application window had closed.⁶⁴⁵³ However, this was the only exception to the normal procedure for issuing Hajj passports in 2005 and the Hajj Committee only found out about the late issuances after the pilgrims had returned to Lebanon and their passports were returned to the Committee with the others. These Hajj passports were issued after the application period because the *Sûreté Générale* went directly to the Saudi Embassy and not to the Hajj Committee.⁶⁴⁵⁴

⁶⁴⁴⁶ Ibrahim Itani, T. 12 December 2016, pp 37, 47, 82; exhibit P1668 (Witness statement of Ibrahim Itani, 30 June 2010), para. 22.

⁶⁴⁴⁷ Ibrahim Itani, T. 12 December 2016, p. 37; exhibit P1668 (Witness statement of Ibrahim Itani, 30 June 2010), para. 22.

⁶⁴⁴⁸ Ibrahim Itani, T. 12 December 2016, pp 37, 39, 82; exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 18.

⁶⁴⁴⁹ Ibrahim Itani, T. 12 December 2016, p. 47; exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 31.

⁶⁴⁵⁰ Ibrahim Itani, T. 12 December 2016, pp 47-48; exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 31.

⁶⁴⁵¹ Exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 12.

⁶⁴⁵² Exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 36.

⁶⁴⁵³ Exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), paras 13, 40.

⁶⁴⁵⁴ Exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), paras 34, 40.

3282. According to Mr Itani, ‘there is always a possibility for manipulation’ of the Hajj passports and the most common was someone falsifying their date of birth to fulfil the age requirement. Pilgrims had also tried to change their photograph.⁶⁴⁵⁵

3283. Upon request by Prosecution investigators, Mr Itani checked the Hajj Committee records for the exact number of forged Hajj passports reported to the *Sûreté Générale* between 2002 and 2007. In 2002, eight cases were reported; two in 2003; one in 2004; none in 2005; 18 in 2006; and one in 2007.⁶⁴⁵⁶

3284. Mr Itani stated that, because of the high number of pilgrims travelling it was not possible for the security personnel at the entry and exit points to study every single face carefully. It was common practice for the travel agents to collectively present the Hajj documents of all of their clients and for the *Sûreté Générale* officer to simply perform a headcount and stamp the presented documents as a group.⁶⁴⁵⁷ Mr Itani added that in the Hajj season ‘the people at the Security General don’t match photos and names’ and that ‘they’ll check the passport as fast as they can, stamp it, and go ahead’.⁶⁴⁵⁸ As a result, it was ‘possible for someone to use the Hajj travel document of someone who looked similar’ and travel in their place.⁶⁴⁵⁹

3285. Further, on some occasions a pilgrim’s Hajj application may have been denied, yet entry and exit records showed them travelling to Saudi Arabia.⁶⁴⁶⁰ Mr Itani explained that the pilgrim might have received a travel visa directly from the Saudi Embassy.⁶⁴⁶¹ These pilgrims were beyond the Hajj Committee’s control and therefore its responsibility.⁶⁴⁶² In 2005, the Committee was unable to tell if someone had previously travelled on the Hajj using their own passport.⁶⁴⁶³

⁶⁴⁵⁵ Exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 34; exhibit P1668 (Witness statement of Ibrahim Itani, 30 June 2010), para. 23.

⁶⁴⁵⁶ Exhibit P1669 (Witness statement of Ibrahim Itani, 12 July 2010), para. 9.

⁶⁴⁵⁷ Exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 35.

⁶⁴⁵⁸ Ibrahim Itani, T. 12 December 2016, p. 44.

⁶⁴⁵⁹ Exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 35.

⁶⁴⁶⁰ Exhibit P1668 (Witness statement of Ibrahim Itani, 30 June 2010), para. 33.

⁶⁴⁶¹ Exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 39; exhibit P1668 (Witness statement of Ibrahim Itani, 30 June 2010), para. 33; exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), para. 35.

⁶⁴⁶² Exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 41; exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), para. 35.

⁶⁴⁶³ Ibrahim Itani, T. 13 December 2016, p. 11.

3286. A pilgrim could also be flagged by the Hajj Committee as having ‘not travelled’ while simultaneously being marked in the *Sûreté Générale* database as ‘travelled’.⁶⁴⁶⁴ The Committee recorded whether a pilgrim had travelled after reviewing the Hajj documents at the end of the pilgrimage.⁶⁴⁶⁵ Those who had been issued Hajj passports but did not return them were marked in the database as having travelled.⁶⁴⁶⁶

3287. Mr Itani acknowledged that in 2005, if a pilgrim did not return their Hajj passport, the Hajj Committee could not have determined whether they had travelled, or had not left Lebanon.⁶⁴⁶⁷ The Committee’s database did not record those who had received travel visas directly from the Saudi Embassy.⁶⁴⁶⁸

3288. Finally, Mr Itani stated that although women under 45 were culturally expected to travel with their *mahram*, sometimes ‘a woman can use her husband’s passport and travel without him’.⁶⁴⁶⁹ Notwithstanding that the wife’s visa and passport would say—according to Mr Itani—that she was with her husband even if she travelled with someone else, there was no definite way to check whether the person travelling with the woman was her husband or not.⁶⁴⁷⁰ The Hajj Committee would only become aware if somebody complained that their passport had been used by someone else. In those cases, the Committee compared the photographs and referred the matter to the *Sûreté Générale* to investigate.⁶⁴⁷¹

c. Mr Ayyash’s Hajj application, passport and travel

3289. An application for performing the Hajj pilgrimage in January 2005 was submitted in the name of Mr Salim Jamil Ayyash in 2004.⁶⁴⁷² Mr Itani testified that although the month on the

⁶⁴⁶⁴ Exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 37.

⁶⁴⁶⁵ Ibrahim Itani, T. 12 December 2016, pp 47, 82, T. 13 December 2016, p. 9; exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 37.

⁶⁴⁶⁶ Ibrahim Itani, T. 13 December 2016, p. 9; exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 38.

⁶⁴⁶⁷ Ibrahim Itani, T. 13 December 2016, pp 9-10.

⁶⁴⁶⁸ Exhibit P1667 (Witness statement of Ibrahim Itani, 12 March 2010), para. 39.

⁶⁴⁶⁹ Ibrahim Itani, T. 12 December 2016, p. 60.

⁶⁴⁷⁰ Ibrahim Itani, T. 12 December 2016, pp 60-62.

⁶⁴⁷¹ Ibrahim Itani, T. 12 December 2016, p. 62.

⁶⁴⁷² Exhibit 1D293, p. 1.

application was unclear, it was most likely submitted in October, as opposed to November, since the application period for the 2005 Hajj closed in October 2004.⁶⁴⁷³

3290. Mr Ayyash's application includes a fingerprint, a signature and his photograph. It also states that he is the *mahram* of his wife, Ms Fatima Hajj, and includes her personal data. The application bears a signature and a stamp of a travel agency. Two witnesses signed the application certifying that 'the applicant's nationality and photo are valid'. On the application, a *mukhtar* certified the validity of the personal information included, in particular the photograph, the thumbprint, the signature, the address, the identification details and the nationality of the applicant. Next to the *mukhtar*'s signature was a stamp.⁶⁴⁷⁴

3291. An application for Mr Ayyash's wife was also submitted for the 1425 Hajj and her application contained a photograph, a right thumbprint and a signature.⁶⁴⁷⁵ It also stated 'woman accompanied by a Mahram' for the pilgrim category and included Mr Ayyash's name.⁶⁴⁷⁶ Her application also had the stamp of and the signature on behalf of a travel agency, two witnesses' signatures and the *mukhtar*'s and a stamp next to it.⁶⁴⁷⁷

3292. The Trial Chamber received into evidence the scanned copies of Mr Ayyash's and his wife's 2005 Hajj passports issued by the *Sûreté Générale*. The passports have their holders' photographs and show their personal data including the place and the year of birth, civil register number and nationality. The *Sûreté Générale*'s stamp print on the passport runs over on the photographs, which appear to have been glued onto the documents. The right edge of the passports shows where the documents have been perforated. The passport number is printed on and perforated in the document. Neither of the passports states that Ms Hajj and Mr Ayyash, as her *mahram*, were travelling together.⁶⁴⁷⁸

⁶⁴⁷³ Ibrahim Itani, T. 12 December 2016, pp 54, 60.

⁶⁴⁷⁴ Exhibit 1D293, p. 1.

⁶⁴⁷⁵ Exhibit 1D294 (Ms Ayyash's 2005 Hajj application and passport), p. 1; Ibrahim Itani, T. 12 December 2016, pp 64-65; exhibit 1D294, p. 1.

⁶⁴⁷⁶ Ibrahim Itani, T. 12 December 2016, pp 55, 64-65; exhibit 1D294, p. 1.

⁶⁴⁷⁷ Exhibit 1D294, p. 1.

⁶⁴⁷⁸ Exhibit 1D293, p. 2; exhibit 1D294, p. 2.



Mr Ayyash's 2005 Hajj passport photograph — extract from exhibit 1D293

3293. Pilgrims who had never travelled on the Hajj were prioritised over those who had. However, Mr Itani explained ‘that there are no restrictions if a person is chosen by the members of parliament or political blocs despite having travelled before’.⁶⁴⁷⁹ The Trial Chamber received into evidence a letter from the Loyalty to the Resistance Bloc to the Head of the Pilgrimage Affairs Committee detailing those sponsored to travel by MPs for the 2005 Hajj which includes both Mr Ayyash and his wife.⁶⁴⁸⁰ Mr Itani stated that although Mr Ayyash had performed the Hajj the year before, his 2005 Hajj application was granted, and Mr Ayyash and his wife received the Hajj passports, because Mr Ayyash was sponsored by an MP.⁶⁴⁸¹

3294. An extract from the *Sûreté Générale*'s records shows the name of Mr Ayyash and his Hajj passport number exiting Lebanon for Saudi Arabia via the airport on 15 January 2005.⁶⁴⁸² Similar

⁶⁴⁷⁹ Exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), paras 10, 50.

⁶⁴⁸⁰ Exhibit P1673 (Lists of persons sponsored by the Loyalty to the Residence Bloc to the President regarding the Hajj pilgrimages in years 2004 to 2011), p. 12.

⁶⁴⁸¹ Exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), paras 48, 50; exhibit P1673, pp 10-13; exhibit 1D293, p. 2; exhibit 1D294, p. 2. Mr Ayyash was also sponsored to travel for the 2004 (1424) Hajj Pilgrimage by MP Ibrahim Bayan of the Loyalty to the Resistance Bloc, exhibit P1673, p. 6.

⁶⁴⁸² Exhibit 1D295 (Extract from Lebanese entry/exit records regarding Mr Ayyash).

documents also show Mr Ayyash's wife and daughter, Ms Zeinab Ayyash, leaving Lebanon for Saudi Arabia via the Beirut Airport on the same date.⁶⁴⁸³

3295. Further, the list of checked-in passengers and the flight manifest for flight ME2303 dated 15 January 2005 lists Mr Ayyash, his wife and his daughter.⁶⁴⁸⁴ Finally, correspondence from the Saudi Arabian Ministry of the Interior's Permanent Counter-Terrorism Committee to the Prosecution confirmed that Mr Ayyash and his wife arrived in Saudi Arabia on 16 January 2005.⁶⁴⁸⁵ It further states that no photographs or fingerprints for either Mr Ayyash or his wife were found because their travel took place before the Saudi Arabian government implemented its fingerprinting system for those entering the country.⁶⁴⁸⁶ As for Mr Ayyash's daughter, the Saudi Arabian Ministry was only able to locate information for the 2004 Hajj, not for 2005.⁶⁴⁸⁷

3296. After examining the Hajj applications and the entry and exit records, Mr Itani stated that because Ms Zeinab Ayyash was not included on Mr Ayyash's Hajj application, as she should have been as a minor, aged 15 at the time, and was travelling on her national passport as opposed to a Hajj passport, she must have been granted an entry visa courtesy of the Saudi Embassy.⁶⁴⁸⁸

3297. Due to the large number of flights to and from Saudi Arabia during the Hajj period, no automated flight manifest exists for the return flights from the Hajj on 28 January 2005.⁶⁴⁸⁹ Representatives from MEA explained that instead of a flight manifest, they provided the Special Tribunal with a passenger flight status list.⁶⁴⁹⁰ A passenger flight status list is different from a flight manifest in that it was created by retrieving passengers' names based on 'flight coupons' archived by the company's finance department as opposed to being automatically generated during the check-in procedure.⁶⁴⁹¹

⁶⁴⁸³ Exhibit 1D296 (Extract from Lebanese entry/exit records regarding Ms Fatima Hajj); exhibit 1D298 (Extract from Lebanese entry/exit records regarding Mr Ayyash's daughter).

⁶⁴⁸⁴ Exhibit 1D297 (List of checked-in passengers for flight ME2302 on 15 January 2005), p. 4; exhibit 1D301 (ME2302 flight manifest of 15 January 2005 and ME3015 passenger flight status list of 28 January 2005), pp 1, 8 (ERNs 60129625, 60129632).

⁶⁴⁸⁵ Exhibit 1D302 (Correspondence from the Saudi Arabian Ministry of Interior), pp 2, 5-6.

⁶⁴⁸⁶ Exhibit 1D302, pp 3, 6.

⁶⁴⁸⁷ Exhibit 1D302, p. 5.

⁶⁴⁸⁸ Ibrahim Itani, T. 12 December 2016, pp 76-77, T. 13 December 2016, pp 10-11; exhibit 1D298.

⁶⁴⁸⁹ Exhibit 1D303, para. 6.

⁶⁴⁹⁰ Exhibit 1D303, para. 7.

⁶⁴⁹¹ Exhibit 1D303, para. 3.

3298. The same records that showed Mr Ayyash, his wife and daughter leaving Lebanon on 15 January 2005 also show them returning to Lebanon from Saudi Arabia via the Beirut International Airport on 28 January 2005.⁶⁴⁹² The memorandum from the Saudi Arabian Ministry of the Interior's Permanent Counter-Terrorism Committee confirms that the departure of Mr Ayyash and his wife for Lebanon at 10:44 on 28 January 2005 matches computerised records.⁶⁴⁹³ Additionally, the passenger flight status list for flight ME3015 from Medina to Beirut on 28 January 2005 shows the name of Mr Ayyash, his wife and his daughter.⁶⁴⁹⁴ The Hajj Committee's records note that Mr Ayyash and Ms Hajj travelled on the 2005 Hajj.⁶⁴⁹⁵

d. Evidence from the Lebanese Civil Defence

3299. At the time, Mr Ayyash worked for the Lebanese Civil Defence in Doueir, in south Lebanon.⁶⁴⁹⁶ Civil Defence is under the supervision of the Ministry of Interior and Municipalities of Lebanon and carries out humanitarian and rescue operations.⁶⁴⁹⁷ Civil Defence typically does firefighting—in conjunction with the Fire Brigade or Army—and responds to medical emergencies such as car accidents or cardiac arrests.⁶⁴⁹⁸

3300. In 2005, the Civil Defence in Doueir had three teams of two members, and volunteers worked there in their spare time and each team worked for 48 hours and then had 96 hours off to allow them to rest and or attend their other jobs.⁶⁴⁹⁹

3301. Team members were supposed to remain at the station for the duration of their shift, but a team member could leave for an hour or two with the supervisor's special permission.⁶⁵⁰⁰ However, an employee who wanted to take longer than a couple of hours off work, had to write to the head of the regional station requesting leave.⁶⁵⁰¹ The head of the regional station would transfer the leave request cable to the Directorate in Beirut for a decision.⁶⁵⁰² When a Civil Defence

⁶⁴⁹² Exhibits 1D295, 1D296, 1D298.

⁶⁴⁹³ Exhibit 1D302, p. 3.

⁶⁴⁹⁴ Exhibit 1D301, p. 3 (ERN 60129969, at rows 40-41, 44). *See also* exhibit 1D299 (Passengers list), p. 6.

⁶⁴⁹⁵ Ibrahim Itani, T. 12 December 2016, pp 81-84, 92; exhibit 1D300 (Hajj Committee's records 20367 and 20368 for Mr and Ms Ayyash).

⁶⁴⁹⁶ T. 6 March 2017, p. 51 (closed session); exhibit P1911, pp 25-27.

⁶⁴⁹⁷ T. 6 March 2017, pp 49-50 (closed session).

⁶⁴⁹⁸ T. 6 March 2017, pp 49-50 (closed session); exhibit P1911, pp 18-19; exhibit P1912, p. 13.

⁶⁴⁹⁹ T. 6 March 2017, pp 53-54 (closed session); exhibit P1911, pp 19, 21-23; exhibit P1912, pp 12, 22-23.

⁶⁵⁰⁰ T. 6 March 2017, p. 70 (closed session); exhibit P1911, pp 29, 36.

⁶⁵⁰¹ T. 6 March 2017, pp 70, 78-79 (closed session).

⁶⁵⁰² T. 6 March 2017, pp 78-79 (closed session); exhibit P1912, p. 30.

employee was away from work on leave, commute compensation for the travel expenses to work and the emergency allowance, which was 50 per cent of the salary, were deducted from his salary.⁶⁵⁰³

3302. The attendance policy of the Doueir station included that at the beginning of each shift each employee had to sign the attendance sheet in the station supervisor's presence and those ending their 48 hours shift signed out and those beginning their shift signed in.⁶⁵⁰⁴ In theory, no one should sign the attendance sheet for anyone but himself.⁶⁵⁰⁵ The supervisor should mark absences on the attendance sheet.⁶⁵⁰⁶ If the employee was not present by 09:00 to 09:30, the supervisor would then take the attendance sheet back into his locked office and send a cable reporting the absence to the head of the regional station in Nabatiyeh.⁶⁵⁰⁷

3303. Although the shift change occurred at 08:00, because it was part of the supervisor's job to stop by the Nabatiyeh Regional Station each morning to see if there were any cables or missions he needed to take back to his station, the supervisor may not have arrived at the station until after a shift change.⁶⁵⁰⁸ As a result, the supervisor would leave the attendance sheet outside of his office before he left the night before and collect it when he returned to work the next morning, meaning that the Civil Defence employees would sign it in his absence.⁶⁵⁰⁹ Team members would sign in and out for each other.⁶⁵¹⁰

3304. If anyone was absent, the supervisor of the station should have marked the absence on the attendance sheet, prepared a memorandum and sent it to the regional station at Nabatiyeh specifying the absence.⁶⁵¹¹ This process was important for two reasons. First, allowances and compensations were deducted for the days of absence and the following rest days.⁶⁵¹² The supervisor was responsible for the station and would have got in trouble if he said that someone

⁶⁵⁰³ T. 6 March 2017, p. 76 (closed session); exhibit P1911, pp 41, 75; exhibit P1912, pp 33-34, 42.

⁶⁵⁰⁴ Exhibit P1911, pp 29, 35, 38.

⁶⁵⁰⁵ Exhibit P1911, pp 27, 35, 37-38.

⁶⁵⁰⁶ Exhibit P1911, p. 73, ERNs 60178542-60178543.

⁶⁵⁰⁷ T. 6 March 2017, p. 58 (closed session); exhibit P1911, pp 29-30, 35, 38-39, 73-74.

⁶⁵⁰⁸ T. 6 March 2017, pp 53-55 (closed session); exhibit P1911, pp 62-63.

⁶⁵⁰⁹ T. 6 March 2017, pp 57-58 (closed session).

⁶⁵¹⁰ Exhibit P1911, pp 59-60, 77-79, ERNs 60170438, 60178539, 60175853, 60170396.

⁶⁵¹¹ Exhibit P1911, pp 29-30, 35, 73-74.

⁶⁵¹² Exhibit P1911, p. 75; exhibit P1912, pp 24-25.

was on duty when they were not.⁶⁵¹³ Second, the supervisor had to substitute the absent staff or call a volunteer to assist the team on duty.⁶⁵¹⁴

3305. On 11 January 2005, Mr Ayyash submitted a ten-day leave application from 16 to 25 January 2005 to perform the Hajj.⁶⁵¹⁵ On 14 January 2005, the Director General of the Civil Defence granted ten days paid leave for Mr Ayyash.⁶⁵¹⁶ It included his base salary but excluded emergency allowance and commute compensation and the Director General's decision required the Chief of the Nabatiyeh Regional Station to assign a substitute during Mr Ayyash's absence.⁶⁵¹⁷

3306. Mr Ayyash's leave application, however, was later cancelled and the reason given was that Mr Ayyash was unable to 'obtain the required entry visas'.⁶⁵¹⁸ To cancel his leave, Mr Ayyash would have had to have spoken in person with the supervisor of his station and the supervisor would then have had to have informed the regional station that Mr Ayyash was not taking leave to avoid Mr Ayyash losing his allowances.⁶⁵¹⁹

3307. In a letter dated 24 January 2005, the Chief of Nabatiyeh Regional Station informed the General Director of the Civil Defence that Mr Ayyash had not benefitted from the authorised leave and he was still in 'actual service'.⁶⁵²⁰ When asked to comment on certain attendance sheets, a witness was sure that Mr Ayyash was in Doueir working on 18, 19, 24 and 25 January 2005.⁶⁵²¹

⁶⁵¹³ Exhibit P1911, pp 31, 69.

⁶⁵¹⁴ T. 6 March 2017, p. 45; exhibit P1911, p. 31.

⁶⁵¹⁵ Exhibit P1163 (Letter from Chief of Nabatiyeh Regional Station to Director General of the Civil Defence regarding Mr Ayyash's leave application); exhibit P1912, pp 29-30, ERNs 60255334, 60243639.

⁶⁵¹⁶ Exhibit P1164 (Decision of the Director General of the Civil Defence granting ten days paid leave starting on 16 January 2005 to Mr Ayyash to perform the Hajj in Mecca).

⁶⁵¹⁷ Exhibit P1911, pp 41, 75; exhibit P1912, pp 33-34, 42, ERNs 60255335, 60243638; exhibit P1164.

⁶⁵¹⁸ T. 6 March 2017, pp 73-75 (closed session); exhibit P1165 (Letter from Chief of Nabatiyeh Regional Station to Director General of the Civil Defence cancelling Mr Ayyash's leave application); exhibit P1166 (Decision of the Director General of the Civil Defence cancelling Mr Ayyash's leave); exhibit P1912, p. 35, ERNs 60255336-60255337, 60243636-60243637.

⁶⁵¹⁹ Exhibit P1912, pp 35-36, ERNs 60255336, 60243637.

⁶⁵²⁰ Exhibit P1165; exhibit P1912, ERNs 60255336, 60243637.

⁶⁵²¹ Exhibit P1911, pp 63-69. However, one of the attendance sheets shown to the witness, at ERN 60178551, was dated 19 May 2005. Exhibit P1911, ERNs 60178548-60178551, 60170401-60170402, 60170407-60170408. Because the attendance system was not monitored closely, the Prosecution does not rely on the attendance records from the Doueir station, T. 28 September 2016, p. 22, T. 22 August 2017, p. 74.

Four to six volunteers' signatures also appear on the attendance sheets on several days, including 18, 24 and 25 January 2005.⁶⁵²²

3308. Finally, although Mr Ayyash would have only missed four actual work days while performing the Hajj, rest days also counted when calculating leave time which is why he originally requested ten days leave.⁶⁵²³ The Lebanese Ministry of Finance's official records show that it reimbursed Mr Ayyash for the previously deducted commute compensation, 42,000 LBP,⁶⁵²⁴ because he did not benefit from his leave.⁶⁵²⁵

e. The 2004 Hajj

3309. The evidence regarding Mr Ayyash's 2004 Hajj application, passport and travel is relevant to Mr Donaldson's analysis as to how Mr Ayyash's attributed mobiles behaved when he travelled on the Hajj, in 2004, and when he did not, on the Prosecution's case, in 2005.

3310. For the 1424 Hajj in 2004, the Hajj database included two applications for Mr Ayyash.⁶⁵²⁶ The first application was rejected, but the second was granted because an MP belonging to the Loyalty to the Resistance Bloc sponsored Mr Ayyash.⁶⁵²⁷ Due to flaws in the *Sûreté Générale*'s system, Mr Itani stated that it is possible that Mr Ayyash received two Hajj passports for that year. In an effort to avoid such mistakes in 2005 the Hajj Committee introduced a system to check applications.⁶⁵²⁸

3311. Mr Ayyash's wife, Ms Hajj, also successfully submitted an application for the 1424 Hajj. As with Mr Ayyash, her application stated that she was an MP's companion for the trip.⁶⁵²⁹ Upon review of the entries of Ms Hajj's 1424 and 1425 Hajj applications in the Committee's database, Mr Itani was of the view that 'this is a different picture from the wife who travelled in 1424

⁶⁵²² Volunteers' signatures appear on the attendance sheets of 1, 6-7, 12-13, 18, 24-25, 30-31 January, 5-6, 11-12, 17, 23-24 February 2005. Exhibit P1911, ERNs 60178538-60178540, 60178542-60178547, 60178548-60178550, 60178552-60178556.

⁶⁵²³ Exhibit P1912, pp 32-33.

⁶⁵²⁴ Forty-two thousand LBP was equivalent to around 28 USD at the time of the reimbursement, in March 2005, and still is.

⁶⁵²⁵ T. 6 March 2017, p. 76 (closed session); exhibit P1167 (Lebanese Ministry of Finance adjustment form); exhibit P1912, pp 41-42.

⁶⁵²⁶ Exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), paras 46-48, ERNs 60255954-60255955, 60251933-60251934.

⁶⁵²⁷ Exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), paras 46-47, 50; exhibit P1673, p. 6.

⁶⁵²⁸ Exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), para. 48.

⁶⁵²⁹ Exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), ERNs 60255956, 60251932.

although she has the same personal details'.⁶⁵³⁰ The witness explained that the 1425 application could have been for a second wife of Mr Ayyash or that one of the applications was fake.⁶⁵³¹

3312. Further, Mr Ayyash requested and was granted leave from his work, then at the Markaba Civil Defence station, to perform the 2004 Hajj, and the 15-day leave request was submitted on 17 January 2004 for the leave period starting on 25 January 2004 and was granted on 18 January 2004.⁶⁵³² A letter from the Nabatiyeh Civil Defence station sent to the General Directorate dated 14 February 2004 states that Mr Ayyash resumed work on 10 February 2004 following his leave.⁶⁵³³

3313. The Lebanese entry and exit records show Mr Ayyash travelling to Saudi Arabia leaving at 16:50 on 28 January 2004 and returning to Lebanon at 08:38 on 8 February 2004.⁶⁵³⁴ However, the Ministry had no record of travel for Mr Ayyash's wife during that period.⁶⁵³⁵

3314. Within this period, two withdrawals from Mr Ayyash's USD bank account occurred at automatic teller machines located in Mecca.⁶⁵³⁶ These withdrawals were recorded on 29 January 2004 for USD 26.94, that involved a USD 2.84 fee, and on 31 January 2004 for USD 107.74, costing USD 3.11.⁶⁵³⁷

f. Comparison of mobile telephone activities

3315. Calls made and received with Lebanese mobiles roaming outside of Lebanon appear in the call data records of the telecommunication companies.⁶⁵³⁸ Prosecution analyst Mr Andrew Donaldson stated in his report that if the user leaves their mobile behind and gives it

⁶⁵³⁰ Exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), para. 51, ERNs 60255947, 60196227, 60255956, 60251932.

⁶⁵³¹ Exhibit P1672 (Witness statement of Ibrahim Itani, 16 April 2012), para. 51.

⁶⁵³² Exhibit P1890 (2004 Civil Defence records), pp 3-4.

⁶⁵³³ Exhibit P1890, p. 1.

⁶⁵³⁴ Exhibit P2083 (Lebanese entry and exit records), ERN 60265990.

⁶⁵³⁵ Exhibit P2083, ERNs 60265989, 60265993-60265995.

⁶⁵³⁶ Exhibit P1027, ERN 60145410; exhibit P2114 (Response of *Banque du Liban* to Prosecution requests for assistance).

⁶⁵³⁷ Exhibit P1027, ERN 60145410; exhibit P2114.

⁶⁵³⁸ For roaming call data records, *see* paras 1718, 1772. Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex B, para. 13.

to someone else while travelling, its call records may show different patterns with respect to the direction and duration of calls, and telephone numbers contacted.⁶⁵³⁹

3316. To confirm that Mr Ayyash remained in Lebanon in January 2005, Mr Donaldson compared call patterns of mobiles that the Prosecution attributed to him during the 2004 and 2005 Hajj periods, and in the periods immediately preceding and following the 2004 and 2005 Hajj pilgrimages.

3317. Based on Lebanese entry and exit records, Mr Ayyash left Lebanon for the 1424 Hajj at 16:50 on 28 January and returned at 08:38 on 8 February 2004.⁶⁵⁴⁰ Mr Donaldson observed a decrease in the calls made and received on Mr Ayyash's personal mobile 165 from 28 January to 8 February 2004 compared to the number of calls before and after.⁶⁵⁴¹ It had 26 calls in eight days between the times and dates on the Lebanese entry and exit records.⁶⁵⁴² The call sequence table of this mobile shows that, bar eight days, it was active every day before and after the 2004 Hajj period.⁶⁵⁴³ On the Trial Chamber's own calculation, there was an average of 57 calls each week on that mobile in the 92 weeks from 23 April 2002, the start of its attribution period, to 27 January 2004, inclusive.⁶⁵⁴⁴

3318. Mobile 165 had no calls after 15:55 on 28 January 2004.⁶⁵⁴⁵ For its calls on and after 29 January 2004, it used a different handset until 7 February 2004 and from 8 February 2004, it was again used with its old handset.⁶⁵⁴⁶

3319. During the 2004 Hajj period, on 1 and 2 February 2004, this mobile received calls from a Saudi Arabian number and exchanged calls with a number ending 617, a mobile linked to

⁶⁵³⁹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex B, paras 13, 21, 24, 36.

⁶⁵⁴⁰ Exhibit P2083, ERN 60265990.

⁶⁵⁴¹ Personal mobile 165 made and received 26 voice and SMS calls to and from 12 numbers between 16:50 on 28 January 2004 and 08:38 on 8 February 2004. Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex A, paras 13-14, 38 (a); exhibit P1254, pp 177-178; Andrew Donaldson, T. 22 August 2017, pp 50-51.

⁶⁵⁴² Exhibit P1254, pp 177-178; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex A, para. 29; Andrew Donaldson, T. 22 August 2017, pp 50-51.

⁶⁵⁴³ Exhibit P1254. The days when mobile 165 had no calls were 27 July, 17, 18 August, 20, 21 December 2002, 21 April, 25, 29 May, 11 August, and 15 October 2003, exhibit P1254, pp 29, 37, 73, 108, 114-115, 133, 152.

⁶⁵⁴⁴ Exhibit P1254, pp 1-177.

⁶⁵⁴⁵ Exhibit P1254, p. 177.

⁶⁵⁴⁶ Exhibit P1254, pp 177-178; Andrew Donaldson, T. 22 August 2017, pp 49-50.

Mr Ayyash's business associate, Mr Ghaleb Jaber.⁶⁵⁴⁷ The evidence also shows that this number may have belonged to Mr Jaber's car workshop, and multiple people may have used it.⁶⁵⁴⁸

3320. In this period, mobile 165 activated a limited number of cells, mostly in the area of Mr Ayyash's Hadath residence.⁶⁵⁴⁹ On 1 February 2004, it activated Touch's Jabal Safi_B cell, having never done so before or after.⁶⁵⁵⁰ Of the numbers in contact with his mobile 165 during these 12 days, three were not in contact with it outside this period.⁶⁵⁵¹

3321. As shown in Mr Donaldson's table below, from Mr Ayyash's exiting Lebanon on 28 January to his returning on 8 February 2004, Yellow 669 made only four calls using Alfa's SFEIR2 and SFEIR3, all of which were to an Alfa service number.⁶⁵⁵² Its regular calling pattern resumed on 8 February 2004.⁶⁵⁵³

⁶⁵⁴⁷ Exhibit P1254, pp 177-178; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex A, paras 15, 29. *See* para. 2729.

⁶⁵⁴⁸ *See* para. 2686.

⁶⁵⁴⁹ Of the 26 calls in total, it activated Sfeir_A and Sfeir_B, its top cells, for 17, Saki Hadath_A, Hadath_A, Hadath_B and Hadath_C for six calls. Andrew Donaldson, T. 22 August 2017, pp 50-51; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex A, paras 17-21, 23, 25, 29, 38 (c); exhibit P1254, pp 177-178. *See* sub-section (B) (1) (b) 'Landline 696—Ayyash family residence in Hadath, Beirut'.

⁶⁵⁵⁰ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex A, paras 27, 29; exhibit P1254, p. 177.

⁶⁵⁵¹ From one of these three numbers, ending in 701, 042 and 141, personal mobile 165 had an incoming call. Andrew Donaldson, T. 22 August 2017, pp 50-51; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex A, paras 15-16, 38 (a); exhibit P1254.

⁶⁵⁵² Andrew Donaldson, T. 22 August 2017, p. 52; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex A, paras 32-34, 36, 38 (a), (d); exhibit P1248, p. 37; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), paras 270, 282. The IMEI number was not available for the period before 1 August 2004 in the Alfa call data records, Andrew Donaldson, T. 22 August 2017, p. 53; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 95.

⁶⁵⁵³ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex A, paras 35-36, 38 (d).

Call No	Date (dd/mm/yyyy)	Time (hh:mm:ss)	Outgoing	Incoming	Dur (secs)	IMEI	Cell name
1061	28/01/2004	09:06:15	██████005	3468669	7	N/A	N/A
1062	28/01/2004	14:52:16	3468669	3345457	13	N/A	SFEIR2
Entry-Exit	28/01/2004	16:50	Exiting Lebanon at 16:50				
1063	28/01/2004	20:52:22	3468669	1456	22	N/A	SFEIR3
1064	03/02/2004	16:59:52	3468669	1456	24	N/A	SFEIR3
1065	06/02/2004	10:58:50	3468669	1456	26	N/A	SFEIR2
1066	07/02/2004	09:04:50	3468669	1456	65	N/A	SFEIR2
Entry-Exit	08/02/2004	08:38	Entering Lebanon at 08:38				
1067	08/02/2004	10:06:49	3468669	██████906	152	N/A	NABATI1
1068	08/02/2004	13:51:23	3468669	3345457	59	N/A	NABATI1
1069	08/02/2004	14:20:47	3791425	3468669	48	N/A	N/A
1070	08/02/2004	18:56:16	3468669	██████906	369	N/A	SFEIR2

Extract from Andrew Donaldson's attribution report regarding Mr Ayyash—exhibit P2026.2

3322. According to Mr Donaldson, the explanation for the decline in the number of calls, the change in mobile 165's handset, the relatively static cell tower activations during the 2004 Hajj period and the resumption of regular calls thereafter is that the regular user left mobile 165's SIM card with a family member or a close associate while travelling abroad.⁶⁵⁵⁴

3323. The attribution periods of mobile 165 and Yellow 669 ended on 18 April 2004.⁶⁵⁵⁵ At the end of 2004 and the beginning of 2005, Mr Ayyash used personal mobiles 935, 170, 091 and network mobiles Yellow 294, Blue 233, Green 300 and Red 741.⁶⁵⁵⁶ To detect any change in these mobiles' activities, Mr Donaldson analysed their overall call patterns ten weeks before, during and ten weeks after the 2005 Hajj, namely from 1 November 2004 to 9 April 2005.⁶⁵⁵⁷

3324. However, none of these mobiles' attribution periods encompassed the entirety of this 22-week period. The attribution period of personal mobile 935 and Yellow 294 ended in the days

⁶⁵⁵⁴ Andrew Donaldson, T. 22 August 2017, pp 50-54; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex A, paras 39-40. *See also* exhibit P2025, slides 176, 178.

⁶⁵⁵⁵ *See* paras 2756, 3027-3028.

⁶⁵⁵⁶ *See* paras 2784, 2881-2882, 2930, 3067, 3141, 3189, 3255.

⁶⁵⁵⁷ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex B, paras 7-8, 10.

before Saturday 15 January 2005,⁶⁵⁵⁸ and that of mobiles 170 and 091, Blue 233 and Red 741 started only days before.⁶⁵⁵⁹ Green 300 was the sole mobile that was attributable to Mr Ayyash ten weeks before the Hajj period, but it stopped its activities on Monday 14 February 2005.⁶⁵⁶⁰ The Trial Chamber found that Mr Ayyash was the user of Blue network mobile 233 until Monday 14 February 2005, as opposed to until 21 September 2005 as the Prosecution argued.⁶⁵⁶¹

3325. This leaves personal mobile 170 as the only personal mobile that the Trial Chamber found was attributed to Mr Ayyash in the ten weeks after Friday 28 January 2005.⁶⁵⁶²

3326. The manifest for flight ME2303 from Beirut to Jeddah on 15 January 2005 shows that Mr Ayyash checked in at 19:10.⁶⁵⁶³ The passenger flight status list for flight ME3015 from Medina to Beirut on Friday 28 January 2005 has his name as a passenger,⁶⁵⁶⁴ and a response to a request for assistance, addressed to the Kingdom of Saudi Arabia, confirms Mr Ayyash's departure from Saudi Arabia 'aboard Lebanese airline flight No. (ME1015) on 17/12/1425 AH corresponding to 28 January 2005 CE at 10:44.' It is unclear from the evidence if this is the time of stamping of his passport, or the scheduled or actual departure of the flight. Based on the source of the information, namely the Saudi Arabian Ministry of Interior's Permanent Counter-Terrorism Committee, it is likely that the time marks the passport stamping.⁶⁵⁶⁵

3327. Mr Donaldson observed an increase in the activities of mobiles active in this period without a change in the direction or the duration of calls.⁶⁵⁶⁶ Save for Red 741, the mobiles' most frequently used cell towers continued to be in the area of Mr Ayyash's Hadath and Harouf residences.⁶⁵⁶⁷

⁶⁵⁵⁸ Personal mobile 935's attribution period runs from 31 May 2004 to 13 January 2005. Yellow 294's attribution period spans from 29 May 2004 to 7 January 2005. *See* paras 2881-2882, 3027-3067.

⁶⁵⁵⁹ The attribution periods of these mobiles are as follows: personal mobile 170 from 7 January to 26 November 2005, personal mobile 091 from 13 January to 6 March 2005, Blue 233 from 10 January to 14 February 2005, and Red 741 from 14 January to 14 February 2005. *See* paras 2784, 2930, 3141, 3255.

⁶⁵⁶⁰ Green 300's attribution period spans from 30 September 2004 to 14 February 2005. *See* para. 3189.

⁶⁵⁶¹ *See* paras 3097, 3099, 3139, 3141.

⁶⁵⁶² *See* para. 2784.

⁶⁵⁶³ Exhibit 1D297, p. 4.

⁶⁵⁶⁴ Exhibit 1D301, p. 3 (ERN 60129969, at rows 40-41, 44). *See also* exhibit 1D299, p. 6.

⁶⁵⁶⁵ Exhibit 1D302, p. 3.

⁶⁵⁶⁶ Andrew Donaldson, T. 22 August 2017, pp 68-69; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex B, paras 8, 10, 19-20, 22-24, 26-27, 54 (a)-(b).

⁶⁵⁶⁷ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex B, paras 30-35, 54 (d); exhibit P1238 (Call sequence table of Blue 233), pp 1-7; exhibit P1256, pp 1-5; exhibit P1262, pp 2-5. *See also* exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex C, para. 1.

3328. According to Mr Donaldson:

The Doueir Civil Defence station is located close to Salim AYYASH's Harouf Residence. The proximity between the Civil Defence station and his residence means that the same cell towers may best serve both locations.⁶⁵⁶⁸

3329. Because the Prosecution decided not to rely on the Doueir Civil Defence station's attendance records and for the station's geographical vicinity to Mr Ayyash's Harouf residence, Mr Donaldson took the view that a cell site analysis of the mobiles on days when Mr Ayyash had to work, 18, 19, 24 and 25 January 2005, would not assist the determination of his whereabouts.⁶⁵⁶⁹

3330. He added, however, that Blue 233 and mobile 170 activated cells Addoussiyeh_A, Saida_3_C and Aabra_A in south Lebanon between 10:38 and 10:51 on Tuesday 18 January 2005, and these two mobiles and mobile 091 used Nabatiyeh_C from 10:45 to 14:41 on 24 January 2005.⁶⁵⁷⁰

3331. In his view, this meant that a sign-in and or a partial day at work at the Doueir station was plausible on those days on the basis that Mr Ayyash was the user of these mobiles.⁶⁵⁷¹ Further, activation of cells around Mr Ayyash's Harouf residence and the Doueir station were consistent in the week before, during and in the weeks after the Hajj.⁶⁵⁷²

3332. According to Mr Donaldson, there was no change in the IMEI numbers of mobiles 170, 091, Blue 233, Green 300 and Red 741, meaning that the same handsets were used with each mobile.⁶⁵⁷³ In fact, Red 741 was active on Tuesday 4 and Friday 14 January 2005 before the 2005

⁶⁵⁶⁸ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 650.

⁶⁵⁶⁹ Andrew Donaldson, T. 22 August 2017, pp 70-74. *See also* Procedural matters, T. 28 September 2016, p. 22; exhibit P1911, pp 63-69, ERNs 60178548-60178550, 60170401, 60170407-60170408.

⁶⁵⁷⁰ Andrew Donaldson, T. 22 August 2017, pp 70-74; exhibit P1259 (Call sequence table of ten numbers—Mr Ayyash), p. 338.

⁶⁵⁷¹ Although Nabatiyeh_C may also serve Mr Ayyash's residence in Harouf, Andrew Donaldson, T. 23 August 2017, pp 3-5, 8; exhibit P1259, pp 338, 344-345.

⁶⁵⁷² Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex B, para. 35.

⁶⁵⁷³ Andrew Donaldson, T. 22 August 2017, p. 76; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex B, paras 28, 54 (c); exhibit P1207, pp 2-5; exhibit P1238, pp 1-11; exhibit P1262, pp 1-52; exhibit P1256, pp 1-12. *See also* exhibit P2025, slide 185. Personal mobile 091 was used with a handset that had been used with mobile 935 until 13 January 2005. The two mobiles, and mobile 165, had shared contacts with service providers, Mr Ayyash's landlines, his family members, Civil Defence contacts and car trade associates, Andrew Donaldson, T. 22 August 2017, pp 19, 41-46; exhibit P1256, p. 5; exhibit P1261, p. 97. *See also* exhibit P2025, slide 141.

Hajj period.⁶⁵⁷⁴ It used two different handsets on these two days.⁶⁵⁷⁵ It then used a third handset throughout the remaining part of its activity from Thursday 20 January to Monday 14 February 2005.⁶⁵⁷⁶

3333. Regular contacts, family members and business associates remained in contact with Mr Ayyash's personal mobiles.⁶⁵⁷⁷ Additionally, mobile 091 had daily contacts with four Saudi Arabian numbers during this period.⁶⁵⁷⁸ It was in contact with two of these numbers only in this period, more precisely from 19:26 on Sunday 16 January to 11:32 Beirut time on Friday 28 January 2005.⁶⁵⁷⁹ One of these numbers exchanged 27 calls with mobile 091.⁶⁵⁸⁰ The other two Saudi numbers called mobile 091 on five days, 14, 15, 18, 28 and 30 January 2005.⁶⁵⁸¹ The Prosecution did not bring any evidence as to who were the users of these numbers.⁶⁵⁸²

3334. On Saturday 15 January 2005, from 19:12 to 20:03, Blue 233 and mobiles 091 and 170 activated the Airport_B cell which had two areas of best server coverage around the Beirut airport, and for one call at 19:39 mobile 091 used Airport-II_C, an indoor cell.⁶⁵⁸³ This coincided with the check-in time.⁶⁵⁸⁴ Nine minutes later, it activated Airport_B, used by mobile 170 at 19:49 and by Blue 233 at 20:03.⁶⁵⁸⁵

⁶⁵⁷⁴ Exhibit P1197, p. 1.

⁶⁵⁷⁵ Exhibit P1197, p. 1. During the setting up of the Red network mobiles, handset swapping occurred among Red mobiles. *See* chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles', (D) (1) 'Setting up the network'.

⁶⁵⁷⁶ Exhibit P1197.

⁶⁵⁷⁷ Andrew Donaldson, T. 22 August 2017, pp 39, 75-76; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex B, paras 38, 40-42, 54 (e).

⁶⁵⁷⁸ Andrew Donaldson, T. 22 August 2017, p. 23; exhibit P1256, pp 1-5; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 192. None of these four Saudi numbers is the same as the one that mobile 165 had contacts with in 2004, exhibit P1254, p. 177.

⁶⁵⁷⁹ Exhibit P1256, pp 1-5; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 192. The two Saudi Arabian numbers are ending in 824 and 355.

⁶⁵⁸⁰ Exhibit P1256, pp 1-5; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 192. This was number 824.

⁶⁵⁸¹ Exhibit P1256, pp 1-5; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 192. These two Saudi Arabian numbers were ending in 938 and 387.

⁶⁵⁸² Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 192.

⁶⁵⁸³ Exhibit P1259 (Call sequence table of ten numbers—Mr Ayyash), p. 336; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 112-114.

⁶⁵⁸⁴ *See* para. 3326.

⁶⁵⁸⁵ Exhibit P1259, p. 336; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), p. 114.

3335. According to Mr Donaldson, save for Friday 28 January 2005, the mobiles continued their possible co-location during and after the 2005 Hajj period, as in the days before.⁶⁵⁸⁶ To illustrate, Blue 233, mobile 091 and mobile 170 used the same or adjacent Touch cells on 13, 22, 23, 26, 27, 29 January, 6 and 10 February 2005 for pairs of sequential calls made within ten minutes.⁶⁵⁸⁷ Green 300 activated identical, overlapping or neighbouring cells with Red 741, Blue 233 and Mr Ayyash's personal mobiles 091 and 170 on 11, 12, 18, 19, 25, 28, 31 January, 3, 8, 11, 12 and 14 February 2005.⁶⁵⁸⁸

3336. Mr Philips found that Blue 233 and mobiles 170 and 091 possibly co-located every day between 15 and 28 January 2005⁶⁵⁸⁹ for a total of 55 pairs of calls made within one hour.⁶⁵⁹⁰ On four days, Green 300 also possibly co-located with Blue 233 and mobile 091 with respect to eight pairs of calls.⁶⁵⁹¹

3337. Due to their respective attribution periods,⁶⁵⁹² all possible co-locations with mobile 935 and Yellow 294 occurred before Saturday 15 January 2005. Based on Mr Philips's evidence from 30 September 2004 to mid-January 2005, Yellow 294 and mobile 935 possibly co-located for 17 pairs of calls on nine days. These were 1, 9, 19, October, 10 November, 21, 23, 28-29 December 2004 and 2 January 2005. Blue 233 and mobile 935 possibly co-located for one pair of calls;⁶⁵⁹³ Green 300 with mobile 935⁶⁵⁹⁴ and Yellow 294⁶⁵⁹⁵ for 17 pairs of calls on 14 days.⁶⁵⁹⁶

⁶⁵⁸⁶ Andrew Donaldson, T. 22 August 2017, pp 45-46, 76-77; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), annex B, paras 43-44, 50-52, 54.

⁶⁵⁸⁷ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 408, 410-414, 418-419, 501; exhibit P1259, pp 334, 343-344, 347-349, 351-352, 357, 360.

⁶⁵⁸⁸ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 497-498, 501-502, 505, 572-573, 575-576, 578-580; exhibit P1259, pp 333-334, 338, 340, 346, 350-351, 353-356, 358, 360-363, 364.

⁶⁵⁸⁹ More precisely from 19:12 on 15 January 2005 when mobile 091 activated the Airport_B cell to it activating Airport_II_A again at 15:02 on 28 January 2005.

⁶⁵⁹⁰ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 112-190, 203-206; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 31-34. *See above*, at paras 2906-2908, 3106-3118.

⁶⁵⁹¹ Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 126-130, 135, 139-140, 161-162, 165-166; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 32-33. *See above*, at paras 3155-3157, 3162-3166.

⁶⁵⁹² Mobile 935 from 31 May 2004 to 13 January 2005; Yellow 294 from 29 May 2004 to 7 January 2005.

⁶⁵⁹³ On 11 January 2005.

⁶⁵⁹⁴ On 9, 11, 13, 20, 28 October, 10 November, 23, 28-29 December 2004, and 12 January 2005.

⁶⁵⁹⁵ On 30 September, 1 October, 10 November, 22 and 28 December 2004.

⁶⁵⁹⁶ *See* paras 3044-3050, 3119-3121, 3152-3154, 3159-3160.

3338. During the 2005 Hajj period, Red 741 was active only on Thursday 20 and Friday 28 January 2005.⁶⁵⁹⁷ On 20 January, it made no close-in-time sequential calls with any of the other network mobiles or personal mobiles that Mr Donaldson or Mr Philips could have analysed.⁶⁵⁹⁸ On 28 January 2005, Red 741, Green 300, Blue 233 and personal mobile 170 travelled from south Beirut to the Zouk Mosbeh area north of Beirut while mobile 091 activated cell towers at the Beirut airport between 12:57 and 15:06.⁶⁵⁹⁹ While at the airport, mobile 091 had four calls with mobile 170.⁶⁶⁰⁰ According to Mr Donaldson, a possible explanation for this anomaly is that another person used mobile 091 during this period.⁶⁶⁰¹

3339. Mr Philips noted that cell activations by mobiles 170 and 091 at 12:42 and 12:43 on 24 January 2005 may preclude their co-location, but also explained that the fragmented best server coverage of one of the cells may not preclude these two mobiles from being co-located.⁶⁶⁰²

3340. Mr Philips also observed that at 12:24 and 12:25 on 28 January 2005 mobile 091 may not have been co-locating with mobile 170, and excluded mobile 091's co-location with Green 300, Blue 233 and Red 741 for specific periods between 13:11 and 15:02.⁶⁶⁰³ During this period, mobile 091 had four calls with mobile 170 between 13:11 and 14:20,⁶⁶⁰⁴ and from 13:20 to 14:56 it had overlapping calls with Blue 233 and Red 741.⁶⁶⁰⁵

3341. As set out in paragraph 3240 above, Mr Philips and Mr Donaldson concluded that for this period of the day mobile 091 may have been given to someone else who went to the airport, while Blue 233, Red 741, Green 300 and mobile 170 travelled to the area of Mosbeh and Rimal, north-

⁶⁵⁹⁷ Exhibit P1197, p. 1.

⁶⁵⁹⁸ Exhibit P1259 (Call sequence table of ten numbers—Mr Ayyash), pp 342-344.

⁶⁵⁹⁹ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 558, 560-561, 572; exhibit P1259, pp 350-351.

⁶⁶⁰⁰ Exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 563; exhibit P1256, p. 6; exhibit P1262, p. 5.

⁶⁶⁰¹ Andrew Donaldson, T. 22 August 2017, p. 77; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), para. 564.

⁶⁶⁰² Exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 156-157.

⁶⁶⁰³ John Edward Philips, T. 24 April 2017, pp 36-39, 47-53, 56-59; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash), pp 184-185, 187-190, 204; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 37. *See also* exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips), slides 443-500.

⁶⁶⁰⁴ John Edward Philips, T. 24 April 2017, pp 49-51; exhibit P1259, p. 350. *See also* exhibit P1935, slides 457-470.

⁶⁶⁰⁵ Exhibit P1259, pp 350-351. *See also* exhibit P1935, slides 463, 469.

east of Beirut.⁶⁶⁰⁶ In the evening, however, mobile 091 returned to south Beirut, as did Blue 233 and Green 300.⁶⁶⁰⁷

3342. After 28 January 2005, Red 741, Green 300, Blue 233 and mobiles 091 and 170 continued their possible co-locations.⁶⁶⁰⁸ Red 741 with Green 300,⁶⁶⁰⁹ Blue 233⁶⁶¹⁰ and mobile 091⁶⁶¹¹ for 34 pairs of calls; Green 300 with Blue 233,⁶⁶¹² mobile 091⁶⁶¹³ and 170⁶⁶¹⁴ for four pairs of calls; Blue 233 with mobiles 091⁶⁶¹⁵ and 170⁶⁶¹⁶ for 13 pairs of calls.⁶⁶¹⁷

3343. Based on the contrast between the behaviour of the respective mobiles during the 2004 and 2005 Hajj periods, and that Green 300, Red 741, Blue 233 and Mr Ayyash's personal mobiles 091 and 170 did not break their regular activities, Mr Donaldson concluded that Mr Ayyash travelled to Mecca in 2004 but did not leave Lebanon in 2005.⁶⁶¹⁸

3344. Both Mr Philips and Mr Donaldson acknowledged that if the user was out of Lebanon for these two weeks it would exclude that person, Mr Ayyash, as the single user of these mobiles.⁶⁶¹⁹ Mr Donaldson added that the alternative to this is that a person other than Mr Ayyash:

- lived in a village near Nabatiyeh, moved to Hadath from the same region that Mr Ayyash had lived before;
- transferred from Markaba to Doueir at the same time as Mr Ayyash;
- had extensive contacts with his family, business associates and workplace, and called foreign countries when Mr Ayyash's family was away;

⁶⁶⁰⁶ John Edward Philips, T. 24 April 2017, pp 61-62.

⁶⁶⁰⁷ John Edward Philips, T. 24 April 2017, p. 62. *See also* exhibit P1935, slide 486.

⁶⁶⁰⁸ *See paras* 3106-3118, 3155-3158, 3162-3166, 3198-3206.

⁶⁶⁰⁹ On 31 January, 3, 8-9, 12 and 14 February 2005.

⁶⁶¹⁰ On 31 January, 8, 12 and 14 February 2005.

⁶⁶¹¹ On 8 and 11 February 2005.

⁶⁶¹² On 31 January and 11 February 2005.

⁶⁶¹³ On 11 February 2005.

⁶⁶¹⁴ On 13 February 2005.

⁶⁶¹⁵ On 1, 3, 6, 9 and 11 February 2005.

⁶⁶¹⁶ On 6-7, 9-10 and 13 February 2005.

⁶⁶¹⁷ *See paras* 3106-3118, 3155-3158, 3162-3166, 3198-3206.

⁶⁶¹⁸ Andrew Donaldson, T. 22 August 2017, pp 77-78. *See also* exhibit P2025, slides 186-187.

⁶⁶¹⁹ John Edward Philips, T. 26 April 2017, p. 98; Andrew Donaldson, T. 22 August 2017, p. 35.

- had their telephone numbers provided for Mr Ayyash on documents, such as the bill of lading of a 1999 Dodge Durango and the car registration of Mr Ayyash's Toyota Camry with mobile 170 handwritten on the back and attached to an insurance claim in connection with an accident involving that vehicle;
- used cells near two service providers at the time of Ayyash family-related appointments;
- was present at Mr Ayyash's car accident, and had access to the telephone in his BMW; and
- left Lebanon for the Hajj in 2004 at the same time as Mr Ayyash, and did not participate in the pilgrimage in 2005.⁶⁶²⁰

ii. Submissions

3345. The Prosecution submits that Mr Ayyash did not travel to Saudi Arabia between Saturday 15 and Friday 28 January 2005 to perform the Hajj pilgrimage,⁶⁶²¹ but instead stayed in Lebanon so that he could coordinate the preparation and set up of the attack on Mr Hariri.⁶⁶²² Mr Ayyash applied to attend the 2005 Hajj pilgrimage, was sponsored, was issued a Hajj passport⁶⁶²³ and requested leave from work.⁶⁶²⁴

3346. The preparation for the attack on Mr Hariri was not meant to accelerate until late January 2005, but Mr Hariri's refusal to accept Syrian 'electoral deposits'⁶⁶²⁵ on Sunday 9 January demanded that the plan accelerate sooner.⁶⁶²⁶ Therefore, according to the Prosecution, although

⁶⁶²⁰ Andrew Donaldson, T. 22 August 2017, pp 79-80, T. 18 October 2017, pp 46-54.

⁶⁶²¹ Prosecution final trial brief, para. 281; Prosecution closing submissions, T. 13 September 2018, pp 3-11.

⁶⁶²² Prosecution final trial brief, para. 758.

⁶⁶²³ Prosecution final trial brief, para. 283.

⁶⁶²⁴ Prosecution final trial brief, para. 284; Prosecution closing submissions, T. 12 September 2018, pp 115-116 (private session).

⁶⁶²⁵ Prosecution witnesses described the 'electoral deposits' as candidates that the Syrian Government imposed on Mr Hariri by insisting that he included them in his electoral list. They were seen as loyal to Syria rather than to Mr Hariri's Future Movement. *See* para. 472.

⁶⁶²⁶ Prosecution final trial brief, paras 737, 750.

Mr Ayyash had been granted a travel visa,⁶⁶²⁷ he cancelled his work leave for the 2005 Hajj⁶⁶²⁸ and was instead present in Lebanon.⁶⁶²⁹

3347. The Prosecution submits that someone other than Mr Ayyash may have travelled to Saudi Arabia for the 2005 Hajj using Mr Ayyash's Hajj passport while Mr Ayyash remained in Lebanon.⁶⁶³⁰ To support this claim, the Prosecution compares Mr Ayyash's mobile activity in the 2004 Hajj period with its activity in the 2005 Hajj period.⁶⁶³¹ When he did go, mobiles attributed to Mr Ayyash⁶⁶³² had a drastic change in use during the 2004 Hajj period including a significant decline in call volume,⁶⁶³³ whereas the activity of five mobiles attributed to Mr Ayyash⁶⁶³⁴ remained constant during the 2005 Hajj period.⁶⁶³⁵

3348. Furthermore, consistent with Mr Ayyash using his mobile 091 in Lebanon to contact family members in Saudi Arabia, this was the only period when mobile 091 was in daily contact with Saudi numbers.⁶⁶³⁶ Mobile 091's separation from the other mobiles in the afternoon on Friday 28 January 2005, is consistent with Mr Ayyash lending this mobile to a person who would have been asked to pick up Mr Ayyash's family travelling back from Saudi Arabia on that day.⁶⁶³⁷ Additionally, due to the increased airport activity from Hajj travellers, airport security and documentation was done in a group, as opposed to an individualised manner, allowing for someone other than Mr Ayyash to travel using Mr Ayyash's Hajj passport, which may have as well been manipulated.⁶⁶³⁸

3349. The Prosecution argues that the only reasonable inference available on the totality of the evidence is that Mr Ayyash continued normal use of his mobiles during the Hajj period.⁶⁶³⁹ Relying

⁶⁶²⁷ Prosecution final trial brief, para. 285.

⁶⁶²⁸ Prosecution final trial brief, para. 285; Prosecution closing submissions, T. 12 September 2018, pp 115-118 (private session), T. 13 September 2018, p. 10.

⁶⁶²⁹ Prosecution final trial brief, para. 288; Prosecution closing submissions, T. 12 September 2018, pp 116, 118-119 (private session), T. 13 September 2018, pp 10-11.

⁶⁶³⁰ Prosecution final trial brief, para. 289; Prosecution closing submissions, T. 13 September 2018, pp 3-6, 11-12, 16.

⁶⁶³¹ Prosecution final trial brief, para. 300.

⁶⁶³² Prosecution final trial brief, paras 304-308.

⁶⁶³³ Prosecution final trial brief, paras 309-310; Prosecution closing submissions, T. 12 September 2018, pp 102-104.

⁶⁶³⁴ Prosecution closing submissions, T. 13 September 2018, pp 7-8.

⁶⁶³⁵ Prosecution final trial brief, para. 312; Prosecution closing submissions, T. 12 September 2018, pp 101-102, 104, T. 13 September 2018, pp 7-10.

⁶⁶³⁶ Prosecution closing submissions, T. 13 September 2018, p. 9.

⁶⁶³⁷ Prosecution final trial brief, paras 256 (c), 314; Prosecution closing submissions, T. 13 September 2018, pp 7-11.

⁶⁶³⁸ Prosecution closing submissions, T. 13 September 2018, pp 3-4, 11, 16.

⁶⁶³⁹ Prosecution final trial brief, para. 316.

on Mr Donaldson's testimony, the Prosecution adds that the alternative, that the mobiles had another user, would be premised on unsustainable propositions.

3350. These are, as noted above, the user having: residences in the same areas; regularly activating cell sectors in the area of Mr Ayyash's workplace in Markaba; and stopping activating those cells when Mr Ayyash was transferred to Doueir; contacting Mr Ayyash's family members, acquaintances, Iranian numbers when Mr Ayyash's family travelled there; having access to the handset in Mr Ayyash's BMW; being in the area where Mr Ayyash had an accident with his BMW on 20 November 2004; having contact with the tow truck driver, the insurance broker and the accident expert; contacting the insurance broker and the garage with respect to the accident involving Mr Ayyash's Toyota Camry; drastically limiting the usage of mobiles in Lebanon in the period when Mr Ayyash travelled to the Hajj in 2004; but not changing their use when Mr Ayyash would have travelled to Saudi Arabia from Saturday 15 to Friday 28 January 2005; and providing Mr Ayyash's mobile numbers as contacts on a plethora of documents from at least 2003 to 2005.⁶⁶⁴⁰

3351. The Ayyash Defence submits that Mr Ayyash was not in Lebanon from 15 to 28 January 2005, and instead was in Saudi Arabia performing the Hajj pilgrimage.⁶⁶⁴¹ In support, it details the integrity of the Hajj selection process,⁶⁶⁴² including the requirement of sponsorship to travel,⁶⁶⁴³ the stringent application process for the 2005 Hajj⁶⁶⁴⁴ and the special requirements for women.⁶⁶⁴⁵ Moreover, the Hajj passports were reliable and the specific purpose of their design was to increase security.⁶⁶⁴⁶

3352. Additionally, the Ayyash Defence emphasises the integrity of airport and immigration security measures in Beirut and Saudi Arabia.⁶⁶⁴⁷ Finally, official Lebanese and Saudi Arabian

⁶⁶⁴⁰ Prosecution final trial brief, para. 315.

⁶⁶⁴¹ Ayyash Defence final trial brief, para. 373; Ayyash Defence closing submissions, T. 17 September 2018, p. 27.

⁶⁶⁴² Ayyash Defence final trial brief, paras 374-375; Ayyash Defence closing submissions, T. 17 September 2018, pp 28-30.

⁶⁶⁴³ Ayyash Defence final trial brief, paras 376-377.

⁶⁶⁴⁴ Ayyash Defence final trial brief, paras 378-383; Ayyash Defence closing submissions, T. 17 September 2018, p. 29.

⁶⁶⁴⁵ Ayyash Defence final trial brief, paras 387-388.

⁶⁶⁴⁶ Ayyash Defence final trial brief, paras 389-394; Ayyash Defence closing submissions, T. 17 September 2018, p. 29.

⁶⁶⁴⁷ Ayyash Defence final trial brief, paras 397-405; Ayyash Defence closing submissions, T. 17 September 2018, pp 30-36.

records corroborate Mr Ayyash's travel, including exit and entry movements of Mr Ayyash and lists of passengers checked in for the flights to and from Saudi Arabia that include Mr Ayyash's name.⁶⁶⁴⁸

3353. The Prosecution's assertion that someone else travelled as Mr Ayyash for the 2005 Hajj is groundless and the Prosecution failed to identify who supposedly travelled in his place.⁶⁶⁴⁹ In response to Mr Donaldson's testimony that the Hajj passport, entry and exit records and flight manifest are merely a 'repeated record of the Hajj passport having travelled' as opposed to three independent records, the Ayyash Defence submits that the cumulative effect of the integrity of the Hajj selection process, reliability of the Hajj passports, Beirut and Saudi Arabian airport security and Lebanese official records more than verifies that Mr Ayyash travelled on the 2005 Hajj.⁶⁶⁵⁰

3354. The Ayyash Defence also questions the reliability of the Lebanese Civil Defence evidence led by the Prosecution.⁶⁶⁵¹ Finally, the Prosecution's comparison of the 2004 Hajj with the 2005 Hajj does not prove that Mr Ayyash did not travel during the 2005 Hajj.⁶⁶⁵² The Prosecution's and Mr Donaldson's logic regarding the alternative user of the mobiles is based on arbitrary premises and unfounded assumptions.⁶⁶⁵³

3355. The Prosecution no longer attributes personal mobile 165 and Yellow 669 to Mr Ayyash in 2005, therefore its comparison of the mobile activities during the two Hajj periods is irrelevant.⁶⁶⁵⁴ The attribution period of personal mobile 935 and Yellow 294 ended by mid-January 2005, and that of personal mobiles 091, 170, Blue 233 and Red 741 started in January 2005, leaving Green 300 as the sole mobile that was active before, during and after the 2005 Hajj.⁶⁶⁵⁵

⁶⁶⁴⁸ Ayyash Defence final trial brief, paras 406-407; Ayyash Defence closing submissions, T. 17 September 2018, pp 27, 36-37.

⁶⁶⁴⁹ Ayyash Defence final trial brief, para. 413; Ayyash Defence closing submissions, T. 17 September 2018, pp 27, 37-41.

⁶⁶⁵⁰ Ayyash Defence final trial brief, para. 414; Ayyash Defence closing submissions, T. 17 September 2018, pp 38-40, 43.

⁶⁶⁵¹ Ayyash Defence final trial brief, paras 422-433, 437-442; Ayyash Defence closing submissions, T. 17 September 2018, pp 45-46.

⁶⁶⁵² Ayyash Defence final trial brief, paras 444-446; Prosecution closing submissions, T. 17 September 2018, pp 44-45, 93-94.

⁶⁶⁵³ Ayyash Defence final trial brief, paras 703, 705.

⁶⁶⁵⁴ Ayyash Defence final trial brief, paras 447-448.

⁶⁶⁵⁵ Ayyash Defence final trial brief, para. 448.

iii. Findings

3356. The Trial Chamber received extensive evidence regarding whether Mr Ayyash travelled to Saudi Arabia in January 2005 to perform the Hajj pilgrimage or remained in Lebanon.

3357. The application for a Hajj passport at the relevant time required the applicants to provide their personal information, ID card, civil registry identification stating the religious affiliation certified by a *sheikh* and a certificate to prove relationship between the applicant and an accompanying family member. The application form required the signatures of two witnesses and the *mukhtar*.

3358. Mr Ayyash's and his wife's applications to perform the Hajj pilgrimage in January 2005 included their fingerprints, signatures and photographs. The application forms included signatures from two witnesses certifying their nationality and the validity of the photographs. Additionally, a *mukhtar* certified the validity of their personal data including their photographs, thumbprints, signatures and places of residence.

3359. Notwithstanding these safeguards, upon reviewing Ms Fatima Hajj's applications, Mr Itani, the Executive Director of the Hajj Committee, noted a difference between the photographs on Ms Hajj's 2004 and 2005 applications. He was of the view that the 2005 application may have been for a second wife of Mr Ayyash or that one of the applications was fake.

3360. It is undisputed that the Hajj Committee approved Mr Ayyash's and his wife's applications for the 2004 and 2005 Hajj pilgrimage and issued Hajj passports for them. The Hajj Committee would normally have denied their applications with respect to the 2005 Hajj, giving priority to those who had not travelled on the Hajj before. However, a Loyalty to the Resistance Bloc MP sponsored them in both years, meaning that they could travel on two consecutive years.

3361. The personal data on Mr Ayyash's and his wife's 2005 Hajj passports were handwritten. The stamp print of the *Sûreté Générale* runs over their photographs, which appear to have been glued onto the documents. Hajj passports, it would appear, were not sufficiently protected against falsification. Nevertheless, for the travelling pilgrims these documents were the sole means of

identification at the Lebanese and Saudi Arabian airports. The Hajj Committee may have been able to detect misuse of the Hajj passport only if the pilgrim returned it after the travel.

3362. The Hajj Committee issued the Hajj passports to the *moarref* through the certified travel agents, and the evidence establishes that pilgrims were not handed their passports before entering Beirut Airport on the day of travel. However, the Trial Chamber heard evidence that Hajj passports could be manipulated, specifically with respect to the date of birth and the photographs. The evidence does not establish whether Mr Ayyash's passport had been altered. In 2005, the Hajj Committee did not report any such case to the *Sûreté Générale*, and in any event the original Hajj passports were destroyed one year after their return. However, the evidence establishes sufficient deficiencies in the process to raise doubts with respect to the rigour of the identification process at the respective airports during the Hajj seasons at the time when this was the only required identification document to pass through immigration.

3363. The Trial Chamber acknowledges that the Beirut Airport security procedures, entry and exit records and flight records support that Mr Ayyash travelled to Saudi Arabia with his wife in 2005. Their daughter also apparently travelled using her national passport.

3364. The *Sûreté Générale*'s official records show Mr Ayyash with his wife and daughter exiting Lebanon for Saudi Arabia on 15 January and returning on 28 January 2005 via the Beirut Airport. Correspondence with Saudi Arabian Ministry of Interior's Permanent Counter-Terrorism Committee attests to the arrival of Mr Ayyash and his wife in Jeddah on 15 January, and their departure from Medina on 28 January 2005. The Saudi authorities however did not record their daughter's entry and exit. This factor casts some doubt on the reliability of these records.

3365. The Trial Chamber heard evidence that in 2005, 17,000 pilgrims may have travelled to Saudi Arabia from Lebanon over a few weeks. During the 2005 Hajj, pilgrims could only travel to Medina or Jeddah in Saudi Arabia via direct flights on one of two approved airlines. This meant that the airports and these airlines experienced a considerable increase in traffic.

3366. Security at the entrance of Beirut Airport checked whether the pilgrims had a passport but not the details. Mr Itani's evidence was that the travel agent in charge of a group of pilgrims collected their passports, commonly presented them to the *Sûreté Générale* as a group and the *Sûreté Générale* merely took a headcount, collectively stamped the passports and let everyone

through. Mr Itani also said that due to the extensive increase in air travel, it would have been almost impossible at that time for the *Sûreté Générale* to have inspected each individual passport with the scrutiny needed to match the photograph to the face.

3367. Similarly, it was not unusual for the *moarref* to present the Hajj passports as a group to the flight check-in attendants. The final passport check occurred at the boarding gate to ensure they had a Lebanese exit stamp.

3368. As outlined in the assessment of evidence section, at paragraphs 364-365, official records, such as Lebanese and Saudi entry and exit records, are presumed to have *prima facie* reliability by virtue of their nature, however, their authenticity or reliability may be challenged or rebutted. Although Lebanese entry and exit records show Mr Ayyash leaving Lebanon on Saturday 15 January and returning on Friday 28 January 2005, these may have been generated based on the Hajj passports presented collectively to the *Sûreté Générale*. This diminishes their reliability in determining whether Mr Ayyash actually left Lebanon for the 2005 Hajj.

3369. Because she was then aged 38, Mr Ayyash's wife had to travel with a *mahram*. According to their Hajj applications, her *mahram* was Mr Ayyash. Contrary to Mr Itani's testimony, however, this was not included in their Hajj passports, the only identification document used by the pilgrims at the airports. It may eventually have enabled Ms Hajj to travel without her husband. Based on Mr Itani's testimony, a wife could use her husband's passport and travel without him. Notwithstanding that Ms Hajj's visa to Saudi Arabia may have included that Mr Ayyash was her *mahram*, Mr Itani stated that there was no definite way to check whether a person travelling with a woman was her husband. Although sponsored by the Loyalty to the Resistance Bloc, Mr Ayyash did not have to travel with his sponsor.

3370. The list of checked-in passengers and the flight manifest for flight ME2303 show that Mr Ayyash, his wife and daughter boarded the flight from Beirut to Jeddah on 15 January. Mr Itani evidence was that the check-in attendants received the passports from the *moarref* and checked the pilgrims in as a group. Therefore, these records, too, appear to have been generated based on the collective handling of the pilgrims' passports, rather than as passengers boarding a flight or checking in for one.

3371. According to Mr Itani's evidence, the practice was that the *moarref* collected the pilgrims' passports after boarding the plane and gave them back to allow them to go individually through Saudi Arabian immigration. Fingerprint and photograph procedures to verify the travellers' identity entering Saudi Arabia were not in place in 2005. Saudi entry and exit records, therefore, may only show that Mr Ayyash's Hajj passport passed through the immigration but cannot verify the identity of its bearer. Ms Zeinab Ayyash's name appears on the flight manifest of checked-in passengers for flight ME2303 from Beirut to Jeddah on Saturday 15 January, and the passenger flight status list for flight ME3015 from Medina to Beirut on Friday 28 January 2005. Lebanese entry and exit records show her leaving Lebanon for Saudi Arabia on 15 January 2005. According to Mr Itani, she travelled on her national passport because as a minor, aged 15 at the time, she should have been included in her father's Hajj application. The Saudi authorities, however, did not record her entering and exiting Saudi Arabia on those dates. This is a further factor diminishing the reliability of the records.

3372. While performing the Hajj in 2005 in Saudi Arabia, some pilgrims received special identification cards with their photographs on it. However, Mr Itani stated that these were not secure, as the photograph could have easily been replaced and the document rescanned.

3373. The passenger flight status list shows that Mr Ayyash, his wife and daughter were on the MEA flight from Medina to Beirut on Friday 28 January 2005. With respect to the return flight, an automated flight manifest of checked-in passengers was not available because of the large number of flights to and from Saudi Arabia during the Hajj period. The list was created retroactively based on 'flight coupons' archived by the flight company's finance department. This record therefore adds no real weight in determining whether Mr Ayyash was actually on the flight.

3374. The Hajj Committee database entry recorded that Mr Ayyash travelled on the Hajj in 2005. The Committee recorded that the pilgrim travelled if the returned Hajj passport bore entry and exit stamps. It also marked pilgrims as having 'travelled' if the pilgrim was issued a Hajj passport, but did not return it at the end of the trip. This evidence therefore does not assist the Trial Chamber's determination as the Hajj Committee may have recorded Mr Ayyash's travel even if it did not receive his Hajj passport after completing his pilgrimage.

3375. In summary, the Trial Chamber finds that there were flaws in the identification process at Beirut Airport in the 2005 Hajj season.

3376. This in turn reduces the reliability of the Lebanese entry and exit records related to the Hajj pilgrimage and hence one inference that Mr Ayyash, his wife and daughter left Lebanon on 15 January and returned on 28 January 2005. Similarly, the lack of a fingerprinting system for those entering Saudi Arabia, and the inconsistency of the Saudi and Lebanese entry and exit records and the lists of flight passengers with respect to Mr Ayyash's daughter further diminishes the reliability of these records. The MEA's 'collective' check-in process was not designed to check the identity of each travelling pilgrim, and therefore did not produce reliable records as to who actually boarded the flights.

3377. Turning to the Civil Defence records, Mr Ayyash requested time off work from Sunday 16 to Tuesday 25 January 2005 to perform the Hajj. On Friday 14 January 2005, the Director General of the Civil Defence approved ten days of paid leave for Mr Ayyash. This excluded his entitlements to emergency allowance and commute compensation.

3378. The leave Mr Ayyash had previously sought from work to perform the 2005 Hajj was cancelled on Monday 24 January 2005, nine days after he was due to travel to Saudi Arabia on Saturday 15 January 2005. The reason for the cancellation was that Mr Ayyash had not received the required Saudi visa. This contradicts the evidence that the Hajj Committee granted his Hajj application and the *Sûreté Générale* issued a Hajj passport for him.

3379. The Trial Chamber heard testimony that Mr Ayyash would have had to have personally come to the station to cancel his leave. Whether this in fact occurred does not affect the reliability of the letter from the Chief of the Nabatiyeh Regional Station and the decision of the Director General of the Civil Defence cancelling Mr Ayyash's leave.

3380. The general procedure at the Doueir station required the supervisor to inform the Nabatiyeh Regional Station of employees' absences to deduct allowances and compensations for the days of absence. Conversely, it would have been equally important to communicate leave cancellations so that payments were reimbursed to the employee or not deducted from the salary. Civil Defence employees at Doueir worked their 48-hour shifts in teams of two, with a few volunteers also present, making it obvious to the supervisor if someone was absent.

3381. According to the Lebanese Ministry of Finance's records, the commute compensation that was deducted from Mr Ayyash's pay when his leave request was granted, and the amount, equivalent to around USD 28, was paid to him upon the cancellation of his leave. Organisations, especially governments, have a business interest in ensuring that payment is only provided for work completed. The Trial Chamber finds that Mr Ayyash's leave cancellation and reimbursement provide support for the contention that he remained in Lebanon and was present at work.

3382. Further, based on the Civil Defence attendance sheets, Mr Ayyash's name was signed in at work during his leave on Tuesday 18, Monday 24 and Tuesday 25 January 2005.⁶⁶⁵⁶ However, the Trial Chamber heard evidence that questioned the integrity of the attendance sign-in procedure. This included that signing in was not closely monitored and employees could sign the attendance sheets for each other. According to the attendance records, volunteers were also present in the Doueir station on these three days, but other days too.

3383. Their presence therefore does not mean that Mr Ayyash was away from the station. The station supervisor may also have stepped in for absent staff but the attendance sheets on those three days did not record any such replacement. Moreover, the Prosecution did not rely on the attendance records.

3384. As Mr Donaldson acknowledged, on 18, 19, 24 and 25 January 2005 the cell site activations of Mr Ayyash's attributed mobiles, personal mobiles 091, 170, Blue 233, Red 741 and Green 300, were inconclusive as to whether they were used in Doueir or in Harouf.

3385. The Trial Chamber finds that mobile activity patterns are probative as to whether a mobile or a set of mobiles changed user. It, therefore, carefully considered Mr Donaldson's evidence with respect to the mobiles' activities in the 2004 and 2005 Hajj periods, and for completeness it carefully reviewed Mr Philips's single user analysis based on the co-location of the mobiles.

3386. That Mr Ayyash travelled to Saudi Arabia to perform the Hajj pilgrimage from Wednesday 28 January to Sunday 8 February 2004 seems to be uncontested. Nevertheless, the Trial Chamber has considered the related evidence.

⁶⁶⁵⁶ One of the attendance sheets received into evidence was dated 19 May 2005 as opposed to January. Exhibit P1911, ERN 60178551.

3387. Sponsored by the Loyalty to the Resistance Bloc, both Mr Ayyash and his wife received Hajj passports in 2004. Mr Ayyash applied for and was granted 15 days of leave from his workplace, then at the Markaba Civil Defence station, from 25 January 2004, and resumed work on 10 February 2004. According to the Lebanese entry and exit records he left Lebanon on 28 January and returned on 8 February 2004, but no such record was available with respect to his wife.

3388. As set out before, the Trial Chamber found the Lebanese entry and exit records related to the Hajj travels unreliable. On its face, therefore, nothing makes this evidence more reliable with respect to the 2004 Hajj pilgrimage. The Trial Chamber must, therefore, examine the other evidence relevant as to whether Mr Ayyash travelled to Saudi Arabia in this period.

3389. On 29 and 31 January 2004, Mr Ayyash's USD account shows cash withdrawals at automatic teller machines in Mecca. The Trial Chamber finds this consistent with Mr Ayyash's presence in Mecca, at least on these days.

3390. According to the Civil Defence records, Mr Ayyash requested leave to travel to Saudi Arabia on 27 January 2004. The Director General of the Civil Defence granted Mr Ayyash's leave application, and he resumed work on 10 February 2004. The Trial Chamber has not received any evidence that would make these records unreliable.

3391. The Trial Chamber has found that Mr Ayyash was the principal user of mobile 165.⁶⁶⁵⁷

3392. Mobile 165's activity decreased in the period when Mr Ayyash's exit and entry from Lebanon were recorded in 2004. This mobile only ever contacted three particular numbers in this 12-day period. The mobile used cells mainly near Mr Ayyash's residence in Hadath. For one call, it activated Jabal Safi_B, which it never used before or after. The call sequence table of the mobile shows a change in the IMEI number, meaning that the SIM card was used in a different handset from 29 January to 7 February 2004. From its first call on 8 February 2004, it was used again with the same handset as before. The Trial Chamber finds these factors indicative of mobile 165 having had a different user between 29 January and 8 February 2004.

⁶⁶⁵⁷ See para. 2756.

3393. Throughout its attribution period, mobile 165 had 192 contacts with a mobile linked to Mr Jaber. This number, 617, was its fifth most frequently contacted number, following Mr Ayyash's brother, Loutfi, sister-in-law, Ms Bassima Al-Hajj, Mr Ayyash's Harouf residence landline and the Nabatiyeh Civil Defence landline.⁶⁶⁵⁸ The evidence also shows that this number may have belonged to Mr Jaber's car mechanic shop, and multiple people may have used it.⁶⁶⁵⁹ Mobile 165's contacts with this number and the two calls with an unattributed Saudi number in the 2004 Hajj period, therefore, do not assist the Trial Chamber's determination as to who could have used this mobile during these 11 days.

3394. The Trial Chamber has also found that, based on the preponderance of the evidence, it is more likely that Mr Ayyash was the principal user of Yellow 669.⁶⁶⁶⁰ The Yellow mobile was generally inactive in this period. It made four calls to an Alfa service number activating SFEIR2 and SFEIR3.

3395. Mobile 165 and Yellow 669 remained in Lebanon during the 2004 Hajj period. The change in the handset of mobile 165, and that Yellow 669 became generally inactive from 28 January to 8 February 2004 cumulatively support the finding that they were used by a person other than Mr Ayyash, from at least 29 January to the morning on 8 February 2004. The call patterns and cell usage of the two mobiles during the 2004 Hajj period confirm this finding.

3396. The Civil Defence records, specifically three letters from the Chief of Nabatiyeh Regional Station, dated 17, 30 January and 14 February 2004, informing the Director General of the Civil Defence that Mr Ayyash requested leave, that he travelled to Saudi Arabia on 27 January 2004 and that he resumed work on 10 February 2004, and the Director General's decision of 19 January 2004 granting leave for Mr Ayyash, further corroborate this finding, and support that Mr Ayyash was not in Lebanon from at least 29 January to 8 February 2004.

3397. Mobiles 170, 091, Blue 233 and Green 300, which were active in 2005, continued to use the same handsets. Additionally, the Trial Chamber received evidence that the Red network mobiles, including Red 741, were initialised on the Alfa network on 4 January 2005 in Tripoli, and

⁶⁶⁵⁸ See para. 2686.

⁶⁶⁵⁹ See para. 2686.

⁶⁶⁶⁰ See para. 3028.

inactive until 14 January 2005.⁶⁶⁶¹ Red 741 used two different handsets on these two days, which were also used with Red 572, Red 636 and Red 893 respectively, as handset swapping was regular among the Red network mobiles, including in the initialisation period.⁶⁶⁶² However, from Thursday 20 January to its last call on Monday 14 February 2005, Red 741 used the same handset. Conversely, Blue 322 was used with the same handset following its attribution period to Mr Ayyash, after 27 December 2004.

3398. However, Mr Donaldson did not analyse this mobile, and moreover, as noted above, the Prosecutor did not plead in the amended consolidated indictment that Mr Ayyash was using Blue 322.

3399. According to Mr Donaldson, regular contacts continued to communicate with these personal mobiles. He noted an increase in the mobiles' call activities and no change in the direction and the duration of calls during the 2005 Hajj period compared to the mobiles' activities ten weeks before and ten weeks after. The Trial Chamber, however, finds his analysis in this respect difficult to follow because none of the seven mobiles⁶⁶⁶³ that he analysed was active ten weeks before, during and ten weeks after the 2005 Hajj period. Additionally, the Trial Chamber found that Mr Ayyash used Blue 233 from 11 January to 14 February 2005, a shorter period than that considered by Mr Donaldson.

3400. Unlike Yellow 669 during the 2004 Hajj period, network mobiles Blue 233 and Green 300 did not become inactive in January 2005. Further, Red 741 commenced its activities on 14 and 20 January 2005.

3401. Mr Philips did not observe a change in Blue 233's, Green 300's and Red 741's activities in the 2005 Hajj period which could have been consistent with these mobiles having had a different user. Both Mr Philips and Mr Donaldson found that Blue 233 and mobiles 170 and 091 had possible co-location every day between 15 and 28 January 2005 for a total of 55 pairs of calls made within an hour. Green 300 also co-located with Blue 233 and mobile 091.

⁶⁶⁶¹ See chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles', (D) (1) 'Setting up the network'.

⁶⁶⁶² See chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles', (D) (2) 'Equipment'.

⁶⁶⁶³ Personal mobiles 935, 091, 170, Yellow 294, Blue 233, Green 300 and Red 741.

3402. Save for mobile 091's separation from the other mobiles in the afternoon on 28 January, these mobiles had no cell activations that would exclude their co-location. Mr Philips analysed common movements of these mobiles, including during the 2005 Hajj. He, therefore, was of the view that 'the possibility that these mobiles were not used by the same user in certain instances would appear to be very remote.' Mr Donaldson did not observe any difference with respect to the mobiles' most frequently used cells.

3403. The Trial Chamber has found that Mr Ayyash was the principal user of personal mobiles 170 and 091, and he used Blue 233, Green 300 and Red 741. It has found that another person used mobile 091 in the afternoon on 28 January 2005, when this mobile activated cells near the Beirut Airport.

3404. The Trial Chamber is satisfied that the five mobiles did not have a user other than Mr Ayyash during the 2005 Hajj period, except for the limited duration of mobile 091's separation from the other mobiles on 28 January 2005. This is based on the evidence demonstrating that there were no changes in their normal behaviour during the 2005 Hajj. The mobiles continued to co-locate and move in tandem in their respective attribution periods, had calls with their regular contacts and did not change their geographic profile. Mr Donaldson's comparison of the mobiles' activities during the 2004 and the 2005 Hajj periods provides some limited support to this finding.

3405. Personal mobiles 170 and 091 did not change handsets, as opposed to mobile 165, which did for the duration of the 2004 Hajj. This weighs in favour of the Trial Chamber's finding that there was no change in their user in this period.

3406. Blue 233, Green 300 and Red 741—like Yellow 669 in 2004—did not change their IMEI numbers during the 2005 Hajj period. Handset swapping is consistent with the covert nature of the Blue and Red network mobiles. That it did not occur in this short period does not affect the Trial Chamber's finding that Blue 233 and Red 741 were covert network mobiles.⁶⁶⁶⁴

3407. The Trial Chamber notes the contacts with Saudi Arabian numbers on Mr Ayyash's mobiles in early February 2004, and on mobile 091 in January 2005. However, the Trial Chamber received no evidence as to who the users of these Saudi numbers were and their relationship with

⁶⁶⁶⁴ See chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles' for further details.

Mr Ayyash. Therefore, these calls have no probative value with respect to Mr Ayyash's whereabouts in January 2005.

3408. In January 2005, Mr Ayyash's USD and Lebanese pound current accounts were not debited through cash withdrawals. This neither confirms nor excludes whether Mr Ayyash was in Mecca in January 2005.

3409. After careful consideration of the totality of the evidence, the Trial Chamber's overall assessment of the evidence and findings are as follows:

- Mr Ayyash and his wife, Ms Fatima Hajj, received Hajj passports to perform the pilgrimage in two consecutive years, 2004 and 2005;
- Bar for the stamp print of the *Sûreté Générale* running over Mr Ayyash's and Ms Hajj's photographs on their 2005 Hajj passports, these documents were insufficiently safeguarded from falsification. Most commonly, the date of birth was manipulated to meet the age requirement, but photographs were also replaced;
- Notwithstanding this, if a Lebanese pilgrim, like Mr Ayyash, had a Hajj passport, it was the only required means of identification at the Lebanese and Saudi Arabian airports;
- The Hajj Committee reported some cases of forged Hajj passports to the *Sûreté Générale* between 2002 and 2007, but none in 2005;
- Based on the evidence, it cannot be established that Mr Ayyash's 2005 Hajj passport was falsified, or that his passport photograph was changed;
- However, the deficiencies of the Hajj travel document raise doubts with respect to the rigour of the identification process at the Lebanese and Saudi Arabian airports during the 2004 and 2005 Hajj seasons when this was the sole document required for a pilgrim to pass through immigration;
- Mr Ayyash's and his wife's 2005 Hajj passports did not include that Ms Hajj's *mahram* was Mr Ayyash, and there was no definitive way to check if the person travelling with the woman was her husband;

- However, there is no direct evidence to support the Prosecution's submission that someone else using Mr Ayyash's passport accompanied his wife and daughter on the 2005 pilgrimage;
- A wife could use her husband's Hajj passport and travel without him;
- Additionally, it was common practice that the *Sûreté Générale* checked and stamped the Hajj passports collectively and merely made a head count. In 2005, 17,000 pilgrims may have travelled from Lebanon to Saudi Arabia within a period of weeks via the direct flights of two approved airlines, MEA and the Saudi Arabian Airlines. This caused a considerable increase in traffic at the Beirut Airport, which meant that the pilgrims were not properly identified by the *Sûreté Générale*;
- Further, it diminished the reliability of the Lebanese entry and exit records that showed that Mr Ayyash, Ms Fatima Hajj and Ms Zeinab Ayyash left Beirut on 15 January and returned on 28 January 2005;
- The practice in 2004 and 2005 was that the security at the entrance of the Beirut Airport, check-in attendants and the passport check at the boarding gate did not check the pilgrim's identity;
- In 2004 and 2005, check-in attendants commonly checked the pilgrims in as a group for their flights and handed the Hajj passports and the boarding passes back to the *moarref* as a group;
- Pilgrims' names were therefore entered in the flight manifests on the basis of a collective check-in, as opposed to a thorough passenger-by-passenger review;
- Although the flight manifest of checked-in passengers for the flight on 15 January 2005 from Beirut to Jeddah included the names of Mr Ayyash, Ms Hajj and their daughter, the practice of checking in pilgrims diminishes the reliability of the record to the point that it loses its probative value;
- Saudi Arabian entry and exit records show Mr Ayyash arriving with his wife in Jeddah on 15 January and departing on 28 January 2005. However, the records do not include

their daughter, whose name appeared on the Lebanese entry and exit records leaving for Saudi Arabia, and on the flight records of passengers arriving in Jeddah and leaving from Medina on those days;

- The absence of any rigorous identification process at Beirut Airport in the 2004 and 2005 Hajj seasons, the collective check-in procedure, the lack of fingerprinting system for those entering Saudi Arabia and the inconsistencies of the Saudi entry and exit records with Lebanese records diminish their reliability. They are thus insufficient to prove that Mr Ayyash, his wife and daughter travelled to Saudi Arabia from 15 to 28 January 2005;
- The Hajj Committee's database recorded whether pilgrims participated in the Hajj based on the entry and exit stamps in their Hajj passports, if they were returned at the end of the travel, or on assumption, if they were not. Therefore, the entry showing that Mr Ayyash travelled on the Hajj in 2005 does not prove that he actually did;
- On 11 January 2005, Mr Ayyash submitted a leave application, and on 14 January 2005 the Director General of the Civil Defence granted him ten days paid leave starting on 16 January 2005;
- Because he worked—at the Doueir Civil Defence station at that time—for 48 hours and had 96 hours off, rest days also counted when his leave time was calculated and for this period he was not entitled to emergency allowance and commute compensation;
- In his absence, his supervisor was responsible for calling volunteers to assist or step in his place;
- On 24 January 2005, the Chief of the Nabatiyeh Regional Station informed the General Director of the Civil Defence in writing that Mr Ayyash had not benefited from the authorised leave and had been in service. In a decision, dated 12 February 2005, the General Director cancelled Mr Ayyash's leave;

- As a consequence, Mr Ayyash was reimbursed for the deducted commute compensation, 42,000 LBP (around 28 USD);
- Mr Ayyash should have personally sought the cancellation of his leave, but the Trial Chamber received no proof if he in fact did;
- Nevertheless, the Trial Chamber regards the cancellation of Mr Ayyash's leave and the reimbursement of his commute compensation as evidence which supports the conclusion that Mr Ayyash did not leave Lebanon to perform the Hajj in January 2005;
- Mr Ayyash's name is signed on the attendance sheets of the Doueir station on 18, 24 and 25 January 2005. Volunteers also signed in on these and other days;
- Signing in to work at the Doueir station was not closely monitored, and signing in for others was possible. The attendance sheets therefore lack the necessary reliability to determine whether Mr Ayyash was in fact present at Doueir to work his shifts in the second half of January 2005. The presence or absence of volunteers does not alter the Trial Chamber's findings;
- Due to the geographical vicinity of the Doueir station to Mr Ayyash's residence in Harouf, cell site activations on days by Blue 233 and mobile 170 when he was expected to work do not assist in determining if Mr Ayyash was present in Doueir;
- Mobile activity patterns are probative as to whether a mobile or a set of mobiles changed user;
- Lebanese entry and exit records show Mr Ayyash leaving at 16:50 on 28 January 2004 and returning to Lebanon at 08:38 on 8 February 2004, but there are no records for Ms Hajj. For reasons set out in paragraphs 3363-3365, 3368, 3375 above, the Trial Chamber did not find this evidence reliable;
- However, on 29 and 31 January 2004, there were two cash withdrawals at automatic teller machines in Mecca from Mr Ayyash's USD account. This is probative of Mr Ayyash's presence in Mecca, on these two days;

- On 18 January 2004, the Director General of the Civil Defence granted Mr Ayyash 15 days fully paid leave. He resumed work on 10 February 2004. The Trial Chamber finds this evidence reliable;
- Mr Ayyash's personal mobile 165 was used in a different handset from 29 January to 7 February 2004, and with its old handset from 8 February 2004. In this period, mobile 165 had three new contacts, and one unusual cell activation using Jabal Safi_B. These factors are indicative of the mobile having a different user between 29 January and 8 February 2004;
- Contacts with mobile 617, which may have belonged to Mr Ghaleb Jaber's car mechanic shop, and with an unattributed Saudi number in this period do not assist the Trial Chamber's determination as to who was using these mobiles in these 11 days;
- Yellow 669, which was more likely Mr Ayyash's, became inactive. It made four calls to an Alfa service number activating SFEIR2 and SFEIR3;
- The change in mobile 165's handset and Yellow 669's behaviour cumulatively support a finding that these mobiles were used by a person other than Mr Ayyash from at least 29 January to the morning of 8 February 2004. The call patterns and cell usage confirm this finding, and that the two mobiles remained in Lebanon;
- The letters from the Chief of Nabatiyeh Regional Station on 17, 30 January and 14 February 2004, the Director General's decision granting leave for Mr Ayyash and the withdrawal from his USD bank account in Mecca support that Mr Ayyash was not in Lebanon from at least 29 January to 8 February 2004;
- Mr Ayyash's network mobiles, Blue 233 and Green 300 remained active during the 2005 Hajj, and Red 741 started its network activities;
- The mobiles continued to co-locate and move in tandem in the period analysed by Mr Philips, including the 2005 Hajj;
- Regular contacts continued to communicate with these mobiles, and there was no change in their geographical profile;

- In contrast with personal mobile 165's handset change during the 2004 Hajj, personal mobiles 170 and 091 continued to use the same handset before and after the 2005 Hajj;
- These are the factors that satisfied the Trial Chamber that mobiles 091, 170, Blue 233, Green 300 and Red 741 did not have a user other than Mr Ayyash in the period of the 2005 Hajj, except for the duration of mobile 091's separation from the other mobiles on 28 January 2005; and
- Calls with unattributed Saudi Arabian numbers on personal mobile 091, and the absence of ATM withdrawals on Mr Ayyash's USD and LBP accounts in January 2005 neither confirm nor counter whether Mr Ayyash performed the 2005 Hajj in Mecca.

3410. The Trial Chamber consequently finds that Mr Ayyash did not leave Lebanon between Saturday 15 and Friday 28 January 2005.

(h) Overall findings

3411. In summary, based on the evidence and analysis above, the Trial Chamber finds beyond reasonable doubt that Mr Ayyash was the user of the following network mobiles:

- Yellow 294—from 29 May 2004 to 7 January 2005;
- Blue 233—from 11 January to 14 February 2005;
- Green 300—from 30 September 2004 to 14 February 2005; and
- Red 741—from 14 January to 14 February 2005.

3412. The Trial Chamber is also satisfied beyond reasonable doubt that Mr Ayyash was the principal user of the following personal mobiles for the following periods:

- mobile 165—from 23 April 2002 to 18 April 2004;
- mobile 170—from 7 January to 26 November 2005;
- mobile 091—from 13 January to 6 March 2005; and
- mobile 935—from 31 May 2004 to 13 January 2005.

3413. It is also satisfied that he was using Blue 322, from 18 October to 27 December 2004, but because this was not pleaded against him in the amended consolidated indictment, the Trial Chamber has made no findings against Mr Ayyash arising from his use of this mobile.

3414. The preponderance of evidence establishes that Mr Ayyash was the principal user of Yellow 669 from 23 December 2003 to 18 April 2004, but the Trial Chamber cannot be satisfied of this to the high standard of beyond reasonable doubt.

C. Hassan Habib Merhi

3415. Hassan Habib Merhi was born on 12 December 1965 in Beirut.⁶⁶⁶⁵ He married Ms Rima Toufaily on 23 March 1984.⁶⁶⁶⁶ They have four sons, Mohamad Merhi, born in 1987, Ali Merhi, in 1991, Hussein Merhi, in 1995, and Habib Al Mahdi Merhi, in 2000.⁶⁶⁶⁷

3416. The Prosecutor alleges that Mr Merhi was using two mobiles, namely the Green network mobile, Green 071, and his personal mobile, Purple 231, to further his pleaded role in the conspiracy that was aimed at committing a terrorist act in assassinating Mr Hariri by means of a large explosive device.

3417. In relation to the Purple mobiles, the Prosecutor, in the amended consolidated indictment, pleads that Mr Merhi was the user of Purple 231, one of the three ‘Purple phones’, ‘used from at least 1 January 2003 until 16 February 2005’. Mr Merhi, and the other two Accused, Mr Oneissi and Mr Sabra used their personal mobiles, respectively Purple 095 and Purple 018, ‘colour-coded “**Purple Phones**”’, in relation to preparations for the attack’. The three mobiles ‘were used to coordinate the false claim of responsibility’. The Prosecutor also pleads a ‘history of contact between **ONEISSI, SABRA and MERHI**’ between January 2003 and 16 February 2005, and between Mr Merhi and Mr Ayyash on their personal mobiles, between 4 December 2003 and 6 February 2005.⁶⁶⁶⁸

3418. Regarding Green 071, the Prosecutor, in the amended consolidated indictment, pleads that the three Green network mobiles, Mr Badreddine’s Green 023, Mr Ayyash’s Green 300 and Mr Merhi’s Green 071 were used from at least 30 September 2004 until 14 February 2005,⁶⁶⁶⁹ and:

The Green Network was a coordination network used exclusively by three co-conspirators – Mustafa BADREDDINE, **AYYASH**, and **MERHI** – to exchange information regarding all aspects of the conspiracy and coordinate the acts done in furtherance of the conspiracy. For example, the **Green Network** was used by Mustafa BADREDDINE to monitor, and together with **AYYASH**, coordinate the surveillance of HARIRI in preparation for the

⁶⁶⁶⁵ Exhibit P1052, pp 3-4 (ERN 60236913).

⁶⁶⁶⁶ Exhibit P1057 (Marriage certificate Hassan Merhi and Rima Toufaily), p. 1.

⁶⁶⁶⁷ Exhibit P1055 (Personal status extract), p. 1.

⁶⁶⁶⁸ Amended consolidated indictment, paras 15 (e), 16, 17, 19 (d); Prosecution’s updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), para. 115; Prosecution pre-trial submissions (Merhi case), annex A, para. 106.

⁶⁶⁶⁹ Amended consolidated indictment, para. 15 (b).

attack and the purchase of the van that was used for the attack. Mustafa BADREDDINE also used the **Green Network** to monitor the physical perpetration of the attack. In addition, the **Green Network** was used by Mustafa BADREDDINE to monitor, and together with **MERHI**, coordinate the preparation of the false claim of responsibility.⁶⁶⁷⁰

3419. To prove that Mr Merhi was using Purple 231 at the time relevant to the charges against him, from 22 December 2004 until 14 February 2005, Prosecution analyst Mr Andrews Donaldson prepared a report entitled, ‘Evidence of Telephone Attribution Hassan Habib Merhi’ in which he analysed the use of Purple 231, the Green network mobile, Green 071 and a personal mobile 091. He concluded that Purple 231 and Green 071 were attributable to Mr Merhi and another, referred to as personal mobile 6091, was attributable to Mr Merhi’s family.⁶⁶⁷¹

3420. Mr Donaldson concluded that Purple 231 was ‘attributable to’ Mr Merhi from at least 19 December 2002 until 15 February 2005 and that Green 071 was ‘attributable’ to Mr Merhi from 29 September 2004 until 7 February 2005.⁶⁶⁷²

3421. The Prosecution also used its cell site expert, Mr J. E. Philips for cell site analysis of Purple 231, Green 071 and a further mobile, the ‘Grey mobile’ that came to light during the trial. Mr Philips prepared two reports specifically related to Mr Merhi whom he knew as ‘Suspect 3’.⁶⁶⁷³

3422. In his first report, exhibit P1938, Mr Philips concluded that mobiles Green 071 and Purple 231, ‘are consistent with being used by the same person over the period analysed’.⁶⁶⁷⁴ In an updated report, exhibit P2120, in which he also analysed possible co-location of these two mobiles together with the Grey mobile, he concluded that the calling characteristics of the three mobiles ‘are such that they very strongly support the proposition that they could be used by a single person’.⁶⁶⁷⁵

3423. Mr Donaldson and Mr Philips worked with incomplete cell site data. Records were available of the cells to which Purple 231, an Alfa SIM, connected when it made calls from 19

⁶⁶⁷⁰ Amended consolidated indictment, para. 19 (a).

⁶⁶⁷¹ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 1.

⁶⁶⁷² Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 9, 15.

⁶⁶⁷³ Exhibit P1938 (Expert report of John Edward Philips – Demonstration of single person use of multiple mobile phones using cell site analysis, Suspect 3, Mr Merhi); exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi).

⁶⁶⁷⁴ Exhibit P1938 (Expert report of John Edward Philips – Demonstration of single person use of multiple mobile phones using cell site analysis Suspect 3), p. 3.

⁶⁶⁷⁵ Exhibit P2120, p. 4.

December 2002. Until 1 August 2004, no cell site data was available for incoming calls or texts, namely, of the cell to which an Alfa mobile connected when it received calls, and received or sent text messages.⁶⁶⁷⁶ The location of the mobile in these circumstances was unknown. End cell data for voice calls was available from 1 October 2004 onwards.⁶⁶⁷⁷ Records were available during the attribution period for Touch mobiles such as mobile 6091 of the cell activated for calls and for sending and receiving texts.

1. Summary of evidence

3424. The case that Mr Merhi was using either Purple 231 or Green 071 is circumstantial. The Prosecution at first sought to establish that he was using Purple 231 by adducing evidence that Mr Merhi and his family were using the personal mobile 6091, and then comparing the geographical and contact profiles of the two mobiles. From this, it then sought to demonstrate that Purple 231 and Green 071 were co-locating in a manner proving that the two mobiles had a single user, namely Mr Merhi.

3425. In opening the case against Mr Merhi, Prosecution counsel stated, in summary form, how Purple 231 and Green 071 could be attributed to him:

And the analytical process in attributing Green 071 to Mr. Merhi primarily rests upon the attribution to him of Purple 231, enhanced by data related to a third phone, a family phone, ending in the digits 091.

There is considerable documentary evidence connecting the family phone, 091, to the Merhi family, including to Mr. Merhi himself. It is, for instance, the number provided by Mr. Merhi on his income tax form, which he signed. There are many other documents with that number connected to the Merhi family and to Mr. Merhi, and I expect that you'll find the evidence attributing that phone to the Merhi family to be very strong. But it's not the position of the Prosecution that that family phone was used by Mr. Merhi exclusively.⁶⁶⁷⁸

⁶⁶⁷⁶ Andrew Donaldson, T. 29 June 2017, pp 21-22, 25; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 67; exhibit P527 (Call sequence table of Purple 231), pp 1-69.

⁶⁶⁷⁷ Mr Donaldson did not explicitly note this in exhibit P1962.1, but this is evident in the call sequence table of Purple 231. Exhibit P527. *See also* Gary Platt, T. 7 February 2017, pp 64-65; Prosecution final trial brief, para. 540.

⁶⁶⁷⁸ Prosecutor's opening statement regarding Hassan Habib Merhi, T. 18 June 2014, pp 67-68.

3426. During the trial, with the discovery of the Grey mobile, the Prosecution's case shifted from its initial reliance on mobile 6091 to using co-location between the Grey mobile, Purple 231 and Green 071 to prove that Mr Merhi was using Purple 231 and Green 071 as charged. The Prosecution produced direct evidence that Mr Merhi was the sole user of the Grey mobile. From this it led expert evidence from Mr Philips seeking to show that Purple 231, Green 071 and the Grey mobile were co-locating in a manner that the three mobiles must have a single user.

3427. Two mobiles ending in 091 feature in the case, one attributed to the Merhi family and one attributed as Mr Ayyash's personal mobile. Although the Prosecution has referred to both as mobile '091', the Trial Chamber—in order to distinguish it from Mr Ayyash's personal mobile—has added its preceding number '6' to it, and has therefore referred to it as 'mobile 6091'.

(a) The Merhi family

3428. Mr Merhi's parents, Mr Habib Ali Merhi and Ms Latifa Abbas, married in 1961 in Beirut,⁶⁶⁷⁹ and had eight children.⁶⁶⁸⁰ Their youngest son, Mr Youssef Merhi, died on 10 March 2004.⁶⁶⁸¹ From May 1975 until the 2006 war with Israel, Mr Habib Ali Merhi leased a house on Daccache Street, Bir-El-Abed in Haret Hreik, which is real estate 'plot 1416'. His family lived there.⁶⁶⁸² The Prosecution, using Lebanese official documents, prepared a Merhi family tree.⁶⁶⁸³

(b) Mr Merhi's residence

3429. The Prosecution produced evidence that Mr Merhi and his family lived in Bourj-El-Barajneh, in Beirut.

3430. On 3 July 2001, according to Lebanese Land Registry records, Mr Merhi bought a three-bedroom apartment on the seventh floor of a building in Bourj-El-Barajneh. This is identified as real estate 'plot 2501'. According to the same records, he sold it on 26 December 2005.⁶⁶⁸⁴

⁶⁶⁷⁹ Exhibit P1050 (Personal status extracts and certificates), pp 20-21 (ERN 60236911); exhibit P1051 (Personal status extracts and certificates), p. 1.

⁶⁶⁸⁰ Exhibit P1051, p. 1.

⁶⁶⁸¹ Exhibit P1051, p. 1; exhibit P1052 (Birth and death certificates), pp 17-18 (ERN 60236920).

⁶⁶⁸² Exhibit P651 (Real estate documents for parcels 1416 and 2501), pp 18-20, 24-28 (ERNs 60230417-60230419, 60230423-60230426); exhibit P705 (Statement of Witness PRH688), paras 17-18; *see also* exhibit P652 (Contract of sale and real estate certificate for real estate number 1416); exhibit P1753 (Vehicle registration for Rima Toufaili).

⁶⁶⁸³ Exhibit P1958. *See also* exhibit P1961 (PowerPoint presentation regarding Mr Merhi, Andrew Donaldson), slide 7.

⁶⁶⁸⁴ Exhibit P647 (Contract of sale and real estate certificate of Hassan Habib Merhi), pp 1-3.

However, an information sheet issued by the Lebanese Directorate General for Real Estate Affairs, dated 4 September 2010, stated that Mr Merhi was still the owner of plot 2501 as of that date.⁶⁶⁸⁵ Using official Lebanese Land Registry maps, Prosecution analyst, Mr Andrew Fahey, mapped plot 2501 onto maps of Beirut,⁶⁶⁸⁶ as shown on the extract from his statement below:



3431. The apartment is close to, about a kilometre from, his parents' home in Haret Hreik, which Mr Fahey also mapped.⁶⁶⁸⁷

3432. The building was heavily damaged during the war with Israel in July 2006. Some documents link Mr Merhi to this address, including a 'Rebuild Lebanon' application submitted to

⁶⁶⁸⁵ Exhibit P646 (Real estate information sheet for Hasan Habib Merhi), p. 1.

⁶⁶⁸⁶ Exhibit P662 (Statement of Andrew Fahey), paras 54-65, annex 3.

⁶⁶⁸⁷ Exhibit P662 (Statement of Andrew Fahey), paras 81-99, annex 4.

the Ministry of the Displaced in September 2006,⁶⁶⁸⁸ electricity subscription records dated 30 July 2001⁶⁶⁸⁹ and an undergraduate application to the University of Balamand in Lebanon in the name of Mr Merhi's son, Mohammad Hasan Merhi, dated 29 July 2005.⁶⁶⁹⁰

3433. The building is known as the Gardenia building; it has nine residential floors and some commercial premises, including a gym. The reconstruction of the building, badly damaged by the Israeli bombing, was completed in 2009. In an interview in January 2012, Witness PRH647 stated after seeing Mr Merhi's passport application photograph, that he was 70 to 80 per cent sure—but as a consequence of the photograph's poor quality—that this person lived in the building in 2010 to 2012. He lived on the seventh floor east, and had the family name Merhi. The witness believed that this person had lived there before the 2006 war.⁶⁶⁹¹ However, when questioned about this in court almost four years later, he no longer remember and stated, 'But before 2006, I don't recall seeing him'.⁶⁶⁹²

3434. According to Lebanese Land Registry records, Mr Merhi also bought land in Ain Qana in southern Lebanon on 3 May 2003.⁶⁶⁹³

2. Personal mobile 6091

3435. The Prosecution, through Mr Donaldson, attributes mobile 6091 to Mr Merhi's family from 1 January 2003 until at least 31 December 2007.⁶⁶⁹⁴ It was a Touch 'Magic' line, activated as a pre-paid subscription on 7 October 2000 and deactivated on 12 April 2012.⁶⁶⁹⁵ No personal details of the subscriber were recorded.⁶⁶⁹⁶

3436. An income tax form, a 'Rebuild Lebanon' claim, university records and medical records list mobile 6091 alongside the names of Merhi family members. Mr Donaldson also examined

⁶⁶⁸⁸ Exhibit P651, pp 4, 9.

⁶⁶⁸⁹ Exhibit P649 (*Électricité du Liban* documents in the name of Hasan Habib Merhi), pp 1-2 (ERN 60183393).

⁶⁶⁹⁰ Exhibit P1007 (Undergraduate application to University of Balamand, Mohammad Hasan Merhi), p. 2 (ERN 60290903).

⁶⁶⁹¹ Exhibit P703 (Statement of Witness PRH647), pp 28, 35-36, 39-40, 60-73; Witness PRH647, T. 9 November 2015, pp 19-20, 25-34, 36. The statement was admitted under Rule 156, T. 9 November 2015, p. 19.

⁶⁶⁹² Witness PRH647, T. 9 November 2015, p. 34.

⁶⁶⁹³ Exhibit P2016 (Land registry documents in relation to plot 352); exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 345; *see also* exhibit P646, p. 1.

⁶⁶⁹⁴ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 84

⁶⁶⁹⁵ Exhibit P1489 (Touch subscriber note for mobile 6091), p. 1; exhibit P1101, p. 1; exhibit P826 (Witness PRH705's statement of 16 November 2015), para. 275.

⁶⁶⁹⁶ Exhibit P1489, p. 1.

mobile 6091's geographic profile, its contact profile and text message content, and concluded that they link mobile 6091 to members of the Merhi family.

3437. Witness PRH688 knew Mr Merhi's father Habib Ali Merhi, who had leased property for a clothing shop, and recognised a photograph of Mr Merhi as one of his sons, but not Haidar.⁶⁶⁹⁷

(a) Attribution period

3438. Mr Donaldson attributes mobile 6091, from 1 January 2003 to 31 December 2007, to the Merhi family and predominantly to Mr Merhi's wife, although multiple people had access to it, and in particular their children.⁶⁶⁹⁸ Call data records available to the Prosecution were from 1 January 2003 until 12 April 2012, when mobile 6091 was deactivated.⁶⁶⁹⁹ Mr Donaldson identified consistent frequent contacts during the attribution period, and consistent frequently used cells between 1 January 2003 and 13 July 2006.⁶⁷⁰⁰ He selected 31 December 2007 as the end of the attribution period to 'try and prevent going into the records of 2008'.⁶⁷⁰¹

(b) Documents

i. Income tax form

3439. An income tax form in the name of 'Hasan Habib Merhi', civil registration number 1126, civil registration place 'Zqaq el-Blat', lists the telephone number as 03/686091.⁶⁷⁰² The personal address is listed as: 'Building: Hoteit & Abou Taaam'; 'Floor: 7'; 'Street: Abyad'; 'District: Baabda'; 'Area – Town: Bourj el-Barajneh'. The date is illegible.⁶⁷⁰³

⁶⁶⁹⁷ Exhibit P705 (Statement of Witness PRH688), paras 37-38. In court he stated that he barely remembered what Mr Habib Ali Merhi's children looked like, so many years afterwards. Witness PRH688, T. 10 November 2015, pp 18, 27.

⁶⁶⁹⁸ Andrew Donaldson, T. 28 June 2017, p. 40, T. 29 June 2017, p. 24; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 86-88.

⁶⁶⁹⁹ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 87, p. 33; exhibit P1101 (Touch list of activation and deactivation dates), p. 1; exhibit P1264 (Call sequence table of mobile 6091), p. 1.

⁶⁷⁰⁰ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 88-91; *see also* Andrew Donaldson, T. 28 June 2017, p. 52.

⁶⁷⁰¹ Andrew Donaldson, T. 28 June 2017, p. 52.

⁶⁷⁰² Exhibit P2013 (Income tax form Hasan Habib Merhi), p. 1; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 94 (c); Andrew Donaldson, T. 28 June 2017, pp 59-61.

⁶⁷⁰³ On 30 June 2017, the Trial Chamber admitted into evidence a certified copy of the form, obtained from the Lebanese Ministry of Finance in 2012; Procedural matters, T. 30 June 2017, p. 43; exhibit P2013, p. 1. The date may be legible on the original form, but this was not tendered into evidence.

ii. 'Rebuild Lebanon' claim

3440. The number 03/686091 is handwritten on an undertaking and receipt bearing Mr Merhi's name, relating to the 'Rebuild Lebanon' recovery project following the 2006 war with Israel.⁶⁷⁰⁴ It came from the General Secretariat of the Council of Ministers.⁶⁷⁰⁵ The document is signed and dated 18 September 2007, and contains Mr Merhi's personal details, including his place and year of birth, 'Beirut 1965', 'register' place and number, 'Zqaq-El-Blat 1126', and area and parcel number, 'Bourj-El-Barajneh/Baabda_27/2501'.⁶⁷⁰⁶

3441. The document is a receipt acknowledging that 'Hasan Habib Merhi' received 35 million Lebanese pounds, as the first part of the aid granted to him. An English translation, prepared for Mr Donaldson's court slides, is below:⁶⁷⁰⁷

Name: Hasan Habib Merhi	Date: 18/09/2007
Signature: [signed]	
<u>Receipt</u>	
On 18/09/2007, I received from the HRC through the CFD a check bearing number 192371, dated 8/6/2007 issued in my favor from the BDL for 35,000,000 LBP – thirty-five million Lebanese Pounds only. This amount is the first payment of the aid granted to me as per the above undertaking.	
Name: [blank]	Signature: [signed]
[Handwritten phone No. 03/686091]	
Footnote 212	

Exhibit P1961 (PowerPoint presentation regarding Mr Merhi, Andrew Donaldson), slide 20

iii. University of Balamand documents

3442. An application dated 29 July 2005 in the name of Mr Merhi's son, 'Mohammad Hasan Merii', for admission to the University of Balamand, provided the number 03/686091.⁶⁷⁰⁸ It

⁶⁷⁰⁴ Exhibit P2014 (Rebuild Lebanon claim Hasan Habib Merhi), p. 1; Decision on admission of attribution documents for Mr Merhi, para. 4.

⁶⁷⁰⁵ Decision on admission of attribution documents for Mr Merhi, para. 4.

⁶⁷⁰⁶ Exhibit P2014, p. 1; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 94 (d); Andrew Donaldson, T. 28 June 2017, p. 61.

⁶⁷⁰⁷ Exhibit P1961, slide 20, copy of exhibit P2014.

⁶⁷⁰⁸ Exhibit P1007, pp 2-3, 5 (ERNs 60290903-60290904, 60290906); exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 94 (f); Andrew Donaldson, T. 28 June 2017, p. 63.

contains the applicant's personal details, including date of birth, family registration number, 1126, mother's maiden name, Rima Khalil Tofaily, and home address of Gardinia Bldg, 7-East, Hay Al-Abyad, Al-Roweiss, Beirut.⁶⁷⁰⁹

3443. Another application, dated 4 June 2008, in the name of Mr Merhi's son, 'Ali Hassan Merhi', for admission to the University of Balamand, lists telephone number 03686091.⁶⁷¹⁰ The document contains the applicant's personal details, including his date of birth family registration number, mother's maiden name, and home address of Al-Nargis (2), Al-Gamous, Beirut.⁶⁷¹¹ This document post-dates Mr Donaldson's attribution period for mobile 6091.⁶⁷¹²

3444. A receipt for student fees at the University of Balamand in Lebanon in the name 'merii mohamed hassan' notes the number 03/686091. The dates 5 August 2005, 21 September 2005 and 22 September 2005 are written on the payment slip.⁶⁷¹³

iv. Medical records

3445. Patient registration forms in the names of Mr Merhi's sons, 'Mereey Hassan Hussein', dated 3 December 1999, 'Mereey Hassan Ali', undated, and 'Mereey Hassan Mouhamad', dated 13 December 1999, note the number 03686091. On each form 'Roueiss' is written in the address field. While the fields for the patient's date of birth is blank on all three of the forms, the age of the patient is noted as four years for Hussein, nine years for Ali and 12 years for Mouhamad,⁶⁷¹⁴ which is consistent with the ages of Mr Merhi's children around December 1999.⁶⁷¹⁵

⁶⁷⁰⁹ Exhibit P1007, pp 2-3 (ERNs 60290903-60290904).

⁶⁷¹⁰ Exhibit P1008 (Information from University of Balamand on Mohammed Hasan Merhi and Ali Hasan Merhi), pp 8-9 (ERNs 60277998-60277999); exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 94 (e); Andrew Donaldson, T. 28 June 2017, p. 62.

⁶⁷¹¹ Exhibit P1008, pp 8-9 (ERNs 60277998-60277999).

⁶⁷¹² Andrew Donaldson, T. 28 June 2017, p. 62.

⁶⁷¹³ Exhibit P1008, p. 31, ERN 60278021; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 94; Andrew Donaldson, T. 28 June 2017, pp 63-64.

⁶⁷¹⁴ Exhibit P2017 (Medical forms for Mr Merhi's children), pp 3, 5, 9 (ERNs 60315531, 60315533, 60315537). The forms required that the 'last' name be provided first in the sequence, and that the 'first' name be provided last in the sequence. Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 94 (h)-(j); Andrew Donaldson, T. 28 June 2017, pp 64-67. In his report, Mr Donaldson incorrectly states that all three of the forms are undated, and in court incorrectly stated that dates of birth are provided for the first and third form. As stated above, the first and third forms are dated while the second is not, and dates of birth are not provided on any of the three forms.

⁶⁷¹⁵ Exhibit P1055, p. 1.

(c) Geographic profile

3446. Within the attribution period of 1 January 2003 to 31 December 2007, Mr Donaldson identified a period of consistent cell sector use between 1 January 2003 and 13 July 2006,⁶⁷¹⁶ falling approximately one and half years short of the end of the attribution period itself. The cell sector most frequently activated by mobile 6091 between 1 January 2003 and 13 July 2006 was Touch's Saquiet_Hadath_2_A (64.55 per cent),⁶⁷¹⁷ which provided predicted best server coverage to plot 2501 in Bourj-Barajneh, that the Prosecution alleges was Mr Merhi's home.⁶⁷¹⁸ This was cell predominantly used throughout the day.⁶⁷¹⁹

3447. The second most frequently activated cell was Sarba_B (5.88 per cent), which covered a rural area that included the village of Ain Qana.⁶⁷²⁰ Also among mobile 6091's ten most frequently used cells were Anquoun_A (1.21 per cent) in south Lebanon and Katermaya_B (2.02 per cent), north-east of Saida.⁶⁷²¹ These cells' use was most pronounced at weekends, although activations occurred throughout the week.⁶⁷²² On the basis of these activations, Mr Donaldson concluded that the user of mobile 6091 was able to spend not only weekends in south Lebanon, but also some weekdays.⁶⁷²³

3448. The third most frequently activated cell was Haret Hreik_B (3.77 per cent), which provided predicted best server coverage to Mr Merhi's parents' home, plot 1416.⁶⁷²⁴

⁶⁷¹⁶ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 142; Andrew Donaldson, T. 28 June 2017, p. 68.

⁶⁷¹⁷ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 142-144; Andrew Donaldson, T. 28 June 2017, pp 67-68.

⁶⁷¹⁸ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 142; exhibit P1122 (ArcView shape files Touch); Andrew Donaldson, T. 28 June 2017, pp 69-70; exhibit P1961 (PowerPoint presentation regarding Mr Merhi, Andrew Donaldson), slides 27-28.

⁶⁷¹⁹ Exhibit P1961, slide 52; Andrew Donaldson, T. 29 June 2017, pp 34-35; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 144.

⁶⁷²⁰ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 142-143, p. 56; Andrew Donaldson, T. 28 June 2017, pp 67-68, 70; exhibit P1961, slides 29-30.

⁶⁷²¹ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 142-143, p. 56. The cell tower of Anquoun_A was approximately 9.7 kilometres north-west of Ain Qana. The closest distance between Ain Qana and this cell's predicted best server coverage was approximately 600 metres, exhibit P1122. The cell tower of Katermaya_B was approximately 9.8 kilometres north-east of Saida. The closest distance between Saida and this cell's predicted best server coverage was approximately 3.8 kilometres, exhibit P1122.

⁶⁷²² Exhibit P1961, slide 53; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 142-143, 150; Andrew Donaldson, T. 29 June 2017, pp 39-41.

⁶⁷²³ Andrew Donaldson, T. 29 June 2017, pp 40-41.

⁶⁷²⁴ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 142-143, p. 55; exhibit P1122; Andrew Donaldson, T. 28 June 2017, pp 71-72; exhibit P1961, slide 31; exhibit P651, pp 18-20, 24-28, ERNs

3449. In his report, Mr Donaldson prepared a map showing the most frequently activated Touch cells providing coverage around Mr Merhi's and his father's residences. Mr Merhi's residence is marked as plot 2501, and his father's is plot 1416:

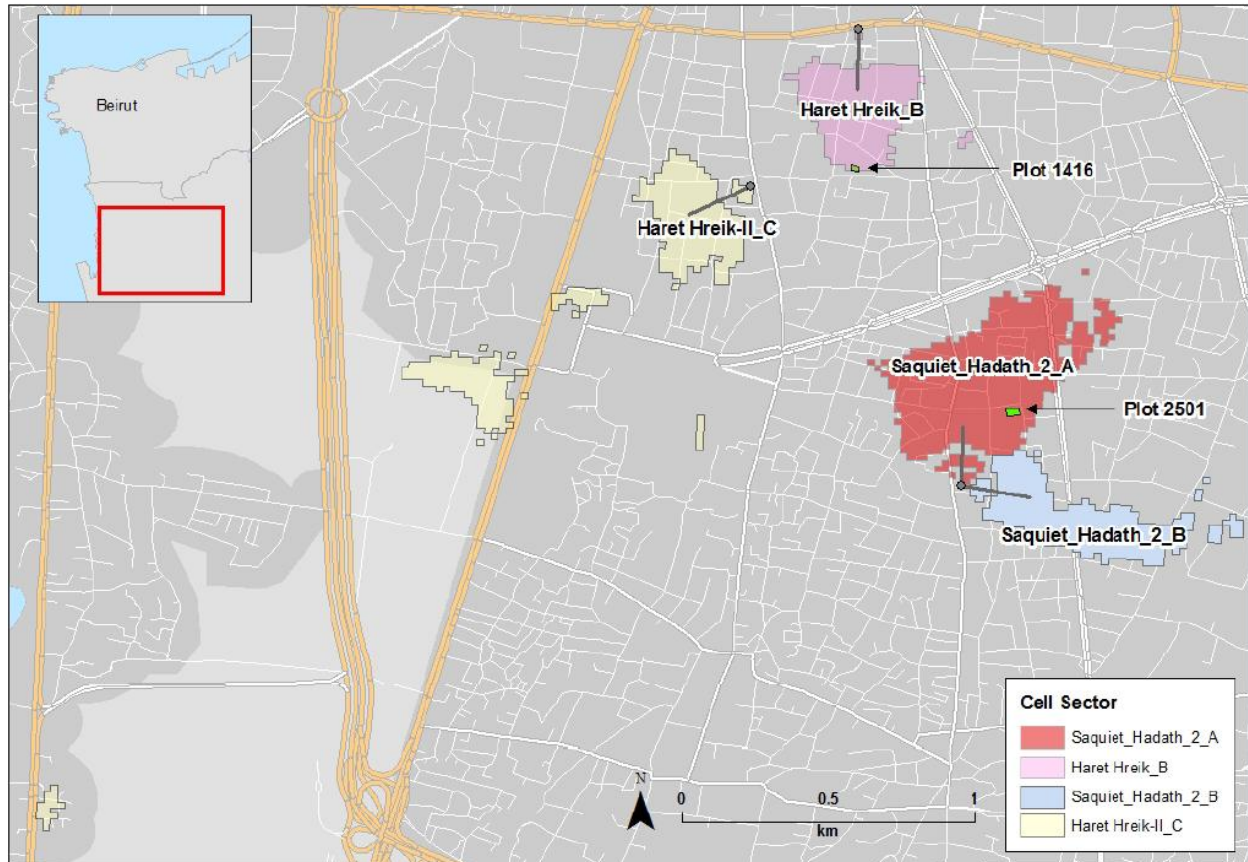


Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), p. 55

(d) Contact profile

3450. According to Mr Donaldson, during the attribution period mobile 6091 had contact:

- 2,554 times (ranked first) with a mobile number linked to Ms Alia Khalil Toufaily, who is also known as Alya Kanso or Qanso, Mr Merhi's wife's sister.⁶⁷²⁵ The number, ending in

60230417-60230419, 60230423-60230426; exhibit P705 (Statement of Witness PRH688), paras 17-18; *see also* exhibit P652; exhibit P662 (Statement of Andrew Fahey), paras 81-99; exhibit P1753.

⁶⁷²⁵ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 106-107; exhibit P1059 (Family personal status extract), pp 11-14, 51 (ERNs 60246880-60246881 60246903).

844, was subscribed to Hassan Kanso,⁶⁷²⁶ Ms Alia Khalil Toufaily's husband.⁶⁷²⁷ A customer database lists this number for 'Alya Kanso'.⁶⁷²⁸ The mobile ending in 844 had frequent contact with the mobile ending in 759 which was linked to Mr Hassan Kanso;⁶⁷²⁹

- 584 times (ranked second) with a mobile linked to Mr Merhi's brother-in-law, Mr Yahya Beydoun, who is married to Mr Merhi's sister.⁶⁷³⁰ Witness PRH028 stated that the mobile ending in 515 was Mr Beydoun's.⁶⁷³¹ The number was subscribed in the name of 'Yehya Baydoun',⁶⁷³² and was listed under his name in a business customer database, three bank account application forms, one of which was a joint application, and a vehicle registration record.⁶⁷³³
- 564 times (ranked third) with a mobile linked to Mr Merhi's son, Mr Mohammed Merhi.⁶⁷³⁴ The number, ending in 031, was subscribed in the name of 'Mohammad Merhi'.⁶⁷³⁵ It is handwritten on a payment slip from the University of Balamand which lists the name 'Mohamad Merhi'.⁶⁷³⁶ The number is also written on a student medical record form from the University of Balamand for 'Mohammad Hasan Merii',⁶⁷³⁷

⁶⁷²⁶ Exhibit P1487 (Touch subscriber note for mobile ending in 844 concerning a request for assistance dated 8 June 2010), p. 1; *see also* exhibit P1493 (Touch subscriber note for mobile ending in 844 concerning a request for assistance dated 17 October 2007), p. 1, which does not record any personal details for the subscriber.

⁶⁷²⁷ Exhibit P1059, pp 36-37 (ERN 60246893).

⁶⁷²⁸ Exhibit P1853 (Extract from subscriber database for mobile ending in 844), p. 1; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 107.

⁶⁷²⁹ Exhibit P1268 (Call sequence table of mobile ending in 844).

⁶⁷³⁰ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 33, 113; exhibit P2126 (Interview of Witness PRH028), p. 10; exhibit P1062 (Marriage certificate of Yahya Beydoun and Wafaa Merhi), pp 1-2; exhibit P1051, p. 1.

⁶⁷³¹ Exhibit P2126 (Interview of Witness PRH028), pp 17-18.

⁶⁷³² Exhibit P892 (Subscriber note for mobile ending in 515), p. 1.

⁶⁷³³ Exhibit P1830 (Extract from subscriber database for mobile ending in 515); exhibit P2002 (Bank account application), p. 1; exhibit P2003 (Bank account application), pp 1-2; exhibit P2004 (Bank account application), pp 1-2; exhibit P1743 (Vehicle registration for Yahya Beydoun), p. 2.

⁶⁷³⁴ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 114; exhibit P1055, p. 1.

⁶⁷³⁵ Exhibit P899 (Subscriber note for mobile ending in 031 in response to request for assistance dated 24 April 2010), p. 1. A pre-dated subscriber note recorded a different name for the same period, exhibit P896 (Subscriber note for mobile ending in 031 in response to request for assistance dated 9 November 2005), p. 1.

⁶⁷³⁶ Exhibit P1008, p. 44 (ERN 60278034).

⁶⁷³⁷ Exhibit P1007, p. 6 (ERN 60290907).

- 177 times (ranked seventh) with a mobile linked to Mr Merhi's sister, Ms Wafa Habib Merhi.⁶⁷³⁸ The number, ending in 131, was subscribed in the name of 'Wafaa Merhi'.⁶⁷³⁹ Witness 28 told Prosecution investigators that this was Ms Wafa Habib Merhi's mobile number.⁶⁷⁴⁰ The number is also listed under her name on a passport application,⁶⁷⁴¹ a vehicle registration⁶⁷⁴² and in a subscriber database;⁶⁷⁴³
- 126 times (ranked tenth) with a mobile linked to Mr Hassan Kanso, whose wife (Alia Toufaily) is the sister of Mr Merhi's wife (Rima Toufaily).⁶⁷⁴⁴ The number, ending in 759, was subscribed to Hassan Kanso.⁶⁷⁴⁵ A list of applicants for the 2003 Hajj recorded it as the contact number for Hasan Kanso.⁶⁷⁴⁶ A customer database recorded the number for 'Hasan Kanso'.⁶⁷⁴⁷ A vehicle registration in the name of 'Alia Khalil Toufaily' also lists the number.⁶⁷⁴⁸ The list of applicants for the 2003 Hajj also lists the number for Leila Dagher,⁶⁷⁴⁹ the mother of Mr Hassan Qanso.⁶⁷⁵⁰ A customer database lists the number for 'Hassan Dagher';⁶⁷⁵¹
- 124 times (ranked 11th) with a mobile linked to Mr Merhi's father, Mr Habib Ali Merhi.⁶⁷⁵² The number, ending in 211, was provided for 'Habib Ali Merhi' in a passport application and a claim made pursuant to the 'Rebuild Lebanon' recovery project.⁶⁷⁵³ A passport

⁶⁷³⁸ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 35, 116; exhibit P1051, p. 1.

⁶⁷³⁹ Exhibit P891 (Subscriber note for mobile ending in 131), p. 1.

⁶⁷⁴⁰ Exhibit P2126 (Interview of Witness PRH028), pp 10, 20.

⁶⁷⁴¹ Exhibit P2089 (Passport application of Wafaa Merhi), p. 2 (ERN 60236981).

⁶⁷⁴² Exhibit P1754 (Vehicle registration for Wafaa Merhi), p. 3 (ERN 60297414).

⁶⁷⁴³ Exhibit P1839 (Extract from subscriber database for mobile ending in 131), p. 1.

⁶⁷⁴⁴ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 109-111; exhibit P1059, pp 13-14, 36-37, 51 (ERNs 60246881, 60246893, 60246903); exhibit P1057, p. 1.

⁶⁷⁴⁵ Exhibit P1481 (Subscriber note for mobile ending in 759), p. 1.

⁶⁷⁴⁶ Exhibit P1722 (Extract from 1423 Hajj list of applicants), p. 1; exhibit P1670 (Statement of Ibrahim Itani), paras 6-7.

⁶⁷⁴⁷ Exhibit P1856 (Extract from subscriber database for mobile ending in 759), p. 1.

⁶⁷⁴⁸ Exhibit P1757 (Vehicle registration for Alia Khalil Toufaily), pp 3, 8 (ERNs 60297428, 60297431).

⁶⁷⁴⁹ Exhibit P1723 (Extract from 1423 Hajj list of applicants), p. 1.

⁶⁷⁵⁰ Exhibit P1059, p. 36 (ERN 60246893).

⁶⁷⁵¹ Exhibit P1845 (Extract from towing company's customer database for mobile ending in 759), p. 1.

⁶⁷⁵² Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 38, 117-118; exhibit P1051, p. 1.

⁶⁷⁵³ Exhibit P1564 (Passport application for Habib Ali Merhi), p. 2 (ERN 60236945); exhibit P651, p. 20 (ERN 60230419).

application in the name of ‘Latifa Abbas’, Mr Habib Merhi’s wife,⁶⁷⁵⁴ also lists the number;⁶⁷⁵⁵

- 116 contacts (ranked 14th) with a landline linked to Mr Ahmad Nasser, the husband of Mr Merhi’s sister (Nawal Habib Merhi).⁶⁷⁵⁶ The number, ending in 140, was subscribed to Ahmad Nasser;⁶⁷⁵⁷
- 115 contacts (ranked 15th) with a mobile linked to several members of Mr Merhi’s family.⁶⁷⁵⁸ No subscriber details are recorded for the number, which ended in 932.⁶⁷⁵⁹ It was recorded on a list of students at the Lebanese University for two of Mr Merhi’s nephews and one of his nieces: Ali Toufaily, Hasan Toufaily and Zeinab Toufaily;⁶⁷⁶⁰
- 101 times (ranked 18th) with a mobile linked to Mr Merhi’s sister, Ms Nawal Habib Merhi, and her family.⁶⁷⁶¹ The number, ending in 479, was subscribed anonymously.⁶⁷⁶² It was provided for ‘Nawal Habib Merhi’ in a passport application.⁶⁷⁶³ A list of students at the Lebanese University records the number for ‘Maya Ahmad Nasser’⁶⁷⁶⁴ and ‘Amani Ahmad Nasser’.⁶⁷⁶⁵ The number was recorded on a subscriber note in the name of ‘Ali Ahmad Nasser’ as an alternative number.⁶⁷⁶⁶ Ms Maya Ahmad Nasser, Ms Amani Ahmad Nasser and Mr Ali Ahmad Nasser are children of Ms Nawal Habib Merhi;⁶⁷⁶⁷

⁶⁷⁵⁴ Exhibit P1051, p. 1.

⁶⁷⁵⁵ Exhibit P1565 (Copies of passport applications of 40 individuals), p. 2 (ERN 60236948).

⁶⁷⁵⁶ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 120-121; exhibit P1054 (Copy of marriage certificate of Ahmad Nasser and Nawal Merhi), pp 1-2 (ERN 60236927); exhibit P1051, p. 1; exhibit P1050, pp 48-49 (ERN 60236927).

⁶⁷⁵⁷ Exhibit P1641 (Subscriber note for landline ending in 140), p. 1; exhibit P1051, p. 1; exhibit P1050, pp 46-48 (ERNS 60236925-60236927).

⁶⁷⁵⁸ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 122-124.

⁶⁷⁵⁹ P894 (Subscriber note for mobile ending in 932), p. 1.

⁶⁷⁶⁰ Exhibit P1005 (Extract from list of students at the Lebanese University), pp 1-2 (ERN 60247755); exhibit P1059, pp 34-35, 50-51 (ERNS 60246892, 60246902-60246903).

⁶⁷⁶¹ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 42, 125; exhibit P1051, p. 1.

⁶⁷⁶² Exhibit P1491 (Subscriber note for mobile ending in 479), p. 1.

⁶⁷⁶³ Exhibit P1567 (Passport application of Nawal Merhi), p. 2 (ERN 60236954).

⁶⁷⁶⁴ Exhibit P1000 (Extract from list of students at the Lebanese University), p. 1; exhibit P1001 (Extract from list of students at the Lebanese University), p. 1; exhibit P1002 (Extract from list of students at the Lebanese University), p. 1; exhibit P1003 (Extract from list of students at the Lebanese University), p. 1.

⁶⁷⁶⁵ Exhibit P1004 (Extract from list of students at the Lebanese University), p. 1.

⁶⁷⁶⁶ Exhibit P1492 (Subscriber note for mobile ending in 518), p. 1.

⁶⁷⁶⁷ Exhibit P1050, p. 46 (ERN 60236925).

- 93 times (ranked 19th) with a mobile linked to Mr Samer Atwi.⁶⁷⁶⁸ In 2011, Mr Atwi's daughter (Nour Atwi) married Mr Merhi's son (Mohammed Hassan Merhi).⁶⁷⁶⁹ The number, ending in 543, was subscribed in the name of 'Samer Hasan Atwe'.⁶⁷⁷⁰ It was recorded for Samer Atwi in two passport applications.⁶⁷⁷¹ A vehicle registration recorded the number for Samer Atwi.⁶⁷⁷² A customer database recorded the number for 'Samer Atwi'.⁶⁷⁷³ Lists of applicants for the Hajj in 2003, 2004, 2005 (Hajj 1425 and Hajj 1426), 2006 and 2007 recorded this number for Samer Atwi or Samer Atweh.⁶⁷⁷⁴ The number was also listed on applications for the Hajj in 2003 for 'Amina Ali Atwi',⁶⁷⁷⁵ 'Mohammed Mahmoud Rteil',⁶⁷⁷⁶ 'Jamal Mohammed Hussein Aachi',⁶⁷⁷⁷ and the Hajj in 2004 in relation to 'Qassem Ali Qassas';⁶⁷⁷⁸
- 81 times (ranked 20th) with a mobile ending in 590, which was subscribed to 'Issa Khalil Tofili' from 24 October 2007.⁶⁷⁷⁹ Before this date, the number was subscribed anonymously with an activation date of 22 January 2005.⁶⁷⁸⁰ Mr Merhi's wife's brother is Mr Issa Khalil Toufaili;⁶⁷⁸¹
- 53 times (ranked 27th) with a mobile linked to a service provider.⁶⁷⁸² The number, ending in 345, was subscribed in his name.⁶⁷⁸³ Lists of applicants to attend the Hajj in 2005 and

⁶⁷⁶⁸ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 37, 126.

⁶⁷⁶⁹ Exhibit P1060 (Copies of family personal status extract and birth and marriage certificates), p. 7 (ERN 60270877); exhibit P1061 (Family personal status extract and marriage certificate), pp 4-6 (ERNS 60267042-6026743); exhibit P1049 (Family personal status extract for Hassan Habib Merhi), p. 1 (ERN 60246403).

⁶⁷⁷⁰ Exhibit P1482 (Subscriber note for mobile ending in 543), p. 1.

⁶⁷⁷¹ Exhibit P1571 (Passport application of Samer Atwi), p. 2 (ERN 60276990); exhibit P1572 (Passport application of Samer Atwi), p. 2 (ERN 60276992).

⁶⁷⁷² Exhibit P1758 (Vehicle registration for Samer Atwi), p. 3 (ERN 60297421).

⁶⁷⁷³ Exhibit P1851 (Extract from subscriber database for mobile ending in 543), p. 1.

⁶⁷⁷⁴ Exhibit P1706 (Extract from list of applicants for 1423 Hajj), p. 1; exhibit P1707 (Extract from list of applicants for 1424 Hajj), p. 1; exhibit P1708 (Extract from list of applicants for 1425 Hajj), p. 1; exhibit P1709 (Extract from list of applicants for 1426 Hajj), p. 1; exhibit P1710 (Extract from list of applicants for 1427 Hajj), p. 1; exhibit P1711 (Extract from list of applicants for 1428 Hajj), p. 1.

⁶⁷⁷⁵ Exhibit P1712 (Extract from list of applicants for 1423 Hajj), p. 1.

⁶⁷⁷⁶ Exhibit P1713 (Extract from list of applicants for 1423 Hajj), p. 1.

⁶⁷⁷⁷ Exhibit P1714 (Extract from list of applicants for 1423 Hajj), p. 1.

⁶⁷⁷⁸ Exhibit P1715 (Extract from list of applicants for 1424 Hajj), p. 1.

⁶⁷⁷⁹ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 127; exhibit P1483 (Subscriber note for mobile ending in 590), p. 1.

⁶⁷⁸⁰ Exhibit P1486 (Subscriber note for mobile ending in 590), p. 1.

⁶⁷⁸¹ Exhibit P1059, p. 51 (ERN 60246903).

⁶⁷⁸² Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 135-138.

⁶⁷⁸³ Exhibit P901 (Subscriber note for mobile ending in 345), p. 1.

2007 recorded the number for him.⁶⁷⁸⁴ A list of applicants for the 2005 Hajj also recorded the number for another person, with matching address and sequential passport numbers compared to the entry for the service provider', and which Mr Donaldson describes as the service provider's wife.⁶⁷⁸⁵ A vehicle registration recorded the number for the service provider.⁶⁷⁸⁶ Two customer databases recorded the number for him.⁶⁷⁸⁷ A Lebanese professional association also recorded the number for him on a list of registered service providers.⁶⁷⁸⁸ Documents record him as a service provider for Mr Merhi's children;⁶⁷⁸⁹

- 43 times with a mobile linked to Mr Merhi's brother, Mr Abbas Habib Merhi.⁶⁷⁹⁰ This number, ending in 744, was listed in a passport application in the name of 'Abbas Habib Merhi'.⁶⁷⁹¹ *Credit Libanaise's* customer records list a number ending in 74[...] (last digit illegible) for 'Abbas Habib Merhi';⁶⁷⁹²
- 17 times with a mobile linked to Mr Zakaria Rammal, the husband of Mr Merhi's sister, Ms Mervat Merhi.⁶⁷⁹³ The number, ending in 407, was subscribed to Ahmad Awad from 13 July 2006.⁶⁷⁹⁴ In 2007, the number was provided on a passport application in the name of 'Zakaria Mohamad Ali Rammal';⁶⁷⁹⁵

⁶⁷⁸⁴ Exhibit P1724 (Extract from list of applicants for 1426 Hajj), p. 1 (ERN D0352968); exhibit P1726 (Extract from list of applicants for 1428 Hajj), p. 1.

⁶⁷⁸⁵ Exhibit P1725 (Extract from list of applicants for 1426 Hajj), p. 1; Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 35 (a).

⁶⁷⁸⁶ Exhibit P1759 (Vehicle registration for Ali Hussein Cheaitani), p. 1.

⁶⁷⁸⁷ Exhibit P1852 (Extract from customer database for mobile ending in 345), p. 1; Exhibit P1836 (Extract from subscriber database for mobile ending in 345), p. 1.

⁶⁷⁸⁸ Exhibit P1847 (Extract from list of medical practitioners at Lebanese Doctor Syndicate), p. 1.

⁶⁷⁸⁹ Exhibit P2017, pp 3, 5, 9 (ERNs 60315531, 60315533, 60315537); exhibit P1055, p. 1; exhibit P1007, pp 6-7 (ERNs 60290907-60290908).

⁶⁷⁹⁰ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 36, 128; exhibit P1051, p. 1.

⁶⁷⁹¹ Exhibit P1574 (Passport application of Abbas Merhi), p. 2 (ERN 60244432).

⁶⁷⁹² Exhibit P2000 (Banking client documents), p. 1 (ERN 60255087).

⁶⁷⁹³ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 40, 129; exhibit P1050, pp 19, 42-43 (ERNs 60236910, 60236922); exhibit P1053 (Marriage certificate of Zakaria Rammal and Mervat Merhi), pp 1-2; exhibit P1051, p. 1.

⁶⁷⁹⁴ Exhibit P1490 (Subscriber note for mobile ending in 407), p. 1; *see also* an earlier subscriber note which did not record any personal details of the subscriber for the same subscription period, exhibit P1485 (Subscriber note for mobile ending in 407), p. 1.

⁶⁷⁹⁵ Exhibit P1566 (Passport application for Zakaria Rammal), pp 2, 11-12 (ERNs 60236998, 60237000).

- 11 times with a landline linked to Mr Merhi's father, Mr Habib Ali Merhi.⁶⁷⁹⁶ The number, ending in 953, was subscribed to 'Habib Ali Merhi'.⁶⁷⁹⁷ It was listed in passport applications for 'Hassan Habib Merhi'⁶⁷⁹⁸ and 'Rima Khalil Tofaili' or 'Rima Khalil Toufaili'.⁶⁷⁹⁹ It was recorded on a list of applications for the Hajj in 2003 for Mr Merhi's brother, 'Mohammed Haidar Habib Merhi',⁶⁸⁰⁰ and on a passport application of Mr Mohammed Haidar Merhi's wife, 'Fatme Khatoun'.⁶⁸⁰¹ The number was also listed on passport applications for 'Ghadir El Kontar El Hussein El Moussawi', the wife of Mr Abbas Merhi, Mr Merhi's brother,⁶⁸⁰² 'Hussein Hassan Merhi', Mr Merhi's son⁶⁸⁰³ 'Mohamad Haidar Habib Merhi', Mr Merhi's brother,⁶⁸⁰⁴ 'Abbas Habib Merhi', Mr Merhi's brother⁶⁸⁰⁵ and 'Rakia Merhi', Mr Merhi's niece.⁶⁸⁰⁶ The number was also recorded for 'Abbas Habib Merhi' in account documentation from Trans-Orient Bank in 1997,⁶⁸⁰⁷ and in a customer database for the name 'Abass Habib Mouraai';⁶⁸⁰⁸
- Nine times with a mobile linked to Mr Zakaria Rammal, Mr Merhi's brother in law, married to his sister Ms Mervat Merhi.⁶⁸⁰⁹ The number, ending in 753, is subscribed to Zakaria Rammal.⁶⁸¹⁰ It was provided on applications for the Hajj in 2005 for Zakaria Rammal,⁶⁸¹¹

⁶⁷⁹⁶ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 38, 119.

⁶⁷⁹⁷ Exhibit P1637 (Subscriber note for mobile ending in 953), p. 1.

⁶⁷⁹⁸ Exhibit P1568 (Passport application of Hassan Habib Merhi), p. 2 (ERN 60236957).

⁶⁷⁹⁹ Exhibit P1557 (Passport application of Rima Tofaili), p. 2 (ERN 60244429); exhibit P1569 (Passport application of Rima Toufaili), p. 2 (ERN 60236960).

⁶⁸⁰⁰ Exhibit P1052, p. 7 (ERN 60236915); exhibit P1051, p. 1; exhibit P1717 (Extract from list of 1423 Hajj applicants), p. 1.

⁶⁸⁰¹ Exhibit P1056 (Copy of marriage certificate of Mohammed Merhi and Fatima Khatoun), p. 1; exhibit P1570 (Passport application of Fatme Khatoun), p. 2 (ERN 60236990).

⁶⁸⁰² Exhibit P1563 (Passport applications of Ghadir Hussein El Kontar El Hussein El Moussawi), p. 2 (ERN 60237007); exhibit P1058 (Marriage certificate of Abbas Merhi and Ghadir El-Kantar El-Husseini El-Moussawi), p. 1; exhibit P1051, p. 1.

⁶⁸⁰³ Exhibit P1559 (Passport application of Hussein Hassan Merhi), p. 2 (ERN 60236975); exhibit P1055, p. 1.

⁶⁸⁰⁴ Exhibit P1560 (Passport application of Mohamad Haidar Merhi), p. 2 (ERN 60236987); exhibit P1051, p. 1.

⁶⁸⁰⁵ Exhibit P1562 (Passport application of Abbas Merhi), p. 2 (ERN 60237001); exhibit P1051, p. 1.

⁶⁸⁰⁶ Exhibit P1561 (Passport application of Rakia Merhi), p. 2 (ERN 60236996); exhibit P1049, p. 2 (ERN 60246404); exhibit P1051, p. 1.

⁶⁸⁰⁷ Exhibit P2001 (Account details for Abbas Habib Merhi from Trans-Orient Bank), p. 1.

⁶⁸⁰⁸ Exhibit P1834 (Screen shot of a customer database), p. 1.

⁶⁸⁰⁹ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 40-41, 130; exhibit P1050, p. 41; exhibit P1053, p. 1; exhibit P1051, p. 1.

⁶⁸¹⁰ Exhibit P1639 (Subscriber note for mobile ending in 753), p. 1.

⁶⁸¹¹ Exhibit P1718 (Extract from list of applicants for 1425 Hajj), p. 1.

‘Mirvat Habib Merhi’⁶⁸¹² and Amira Baalbaki, Mr Zakaria Rammal’s mother,⁶⁸¹³ and on an application for the Hajj in 2006 in the name of ‘Zakaria Mohammed Ali Rammal’,⁶⁸¹⁴

- once with a mobile linked to Mr Merhi’s niece, Ms Maya Ahmad Nasser, who is the daughter of Mr Merhi’s sister, Nawal Merhi.⁶⁸¹⁵ The number, ending in 964, was subscribed to ‘Maya Ahmad Naser’.⁶⁸¹⁶ It was recorded for ‘Maya Ahmad Nasser’ in a database from the Lebanese University;⁶⁸¹⁷
- once with Purple 231, which the Prosecution attributes to Mr Merhi;⁶⁸¹⁸ and
- once with a mobile linked to Mr Ali Ammar.⁶⁸¹⁹ The number, ending in 725, was subscribed to ‘Ali Ammar’.⁶⁸²⁰ Mr Marwan Hamade’s appointment book records this number for ‘MP Ali Ammar’.⁶⁸²¹ A witness stated that this number belonged to Mr Ali Ammar.⁶⁸²² Another witness had the number’s last six digits recorded in his telephone contact book with the name ‘Ali Ammar (MP)’.⁶⁸²³ The number was recorded for ‘Ali Fadl Ammar’ in applications for the Hajj in 2005 (Hajj 1426) and the Hajj in 2007.⁶⁸²⁴ It was also listed on the list of applicants for the Hajj in 2007 for ‘Mohammed Mehdi Ali Ammar’, also listing the same civil registry number as that given for Mr Ali Ammar in the list of applicants for the Hajj in 2007.⁶⁸²⁵ The ‘Arab Decision’ online portal recorded the number for ‘His Excellency Deputy Ali Fadl Ammar’, member of Parliament and of the ‘Hizbollah Party’.⁶⁸²⁶

⁶⁸¹² Exhibit P1719 (Travel document application for Hajj pilgrimage), p. 1 (ERN 60220147).

⁶⁸¹³ Exhibit P1720 (Extract from list of applicants for 1425 Hajj), p. 1; exhibit P1050, pp 41-42 (ERNS 60236921-60236922).

⁶⁸¹⁴ Exhibit P1721 (Travel document application for Hajj pilgrimage), p. 1 (ERN D60220146).

⁶⁸¹⁵ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 131-132; exhibit P1050, p. 46 (ERN 60236925); exhibit P1054, pp 1-2 (ERN 60236927); exhibit P1051, p. 1.

⁶⁸¹⁶ Exhibit P1488 (Subscriber note for mobile ending in 964), p. 1.

⁶⁸¹⁷ Exhibit P1006 (Extract from list of students at the Lebanese University), p. 1.

⁶⁸¹⁸ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 133. *See* para. 3616.

⁶⁸¹⁹ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 43, 134.

⁶⁸²⁰ Exhibit P1450 (Subscriber note for mobile ending in 725), p. 1.

⁶⁸²¹ Exhibit P2099 (Appointment book of Marwan Hamade), p. 1 (ERN 60072903).

⁶⁸²² Exhibit P2126 (Interview of Witness PRH028), pp 39-40.

⁶⁸²³ Exhibit P2093 (Investigator’s note attaching telephone book of Nahib Sahyouni), p. 34 (ERN 60062022).

⁶⁸²⁴ Exhibit P1704 (Extract from list of applicants for 1428 Hajj), p. 1; exhibit P1703 (Extract from list of applicants for 1426 Hajj), p. 1.

⁶⁸²⁵ Exhibit P1705 (Extract from list of applicants for 1428 Hajj), p. 1.

⁶⁸²⁶ Exhibit P2101 (Screenshot of Arab Decision website), p. 1; *see also* exhibit P1107 (Statement of Witness PRH045, 12 August 2010), para. 42 (ERN 60180574); exhibit P2126 (Interview of Witness PRH028), pp 39-40.

(e) Text messages

3451. According to Mr Donaldson's analysis, mobile 6091's text messages show that the number was used by the Merhi family, specifically Mr Merhi's sons—Mohammed, Ali and Hussein—and their mother, and the various instances in which the senders introduced themselves suggest that the number was used by several people.⁶⁸²⁷

3452. Between 19 January 2005 and 29 December 2007, several text messages were sent from mobile 6091 in which the senders identified themselves as 'Mohamad', 'Mohammed', 'Ali', 'Ali Merhi' and 'Merhi'.⁶⁸²⁸ Between 28 July 2006 and 24 September 2006, mobile 6091 received several text messages addressed to 'Ali' and 'Hussein/Hassan'.⁶⁸²⁹

3453. On 28 August 2007, a text message was sent from mobile 6091 in which the sender stated that 'my phone is with my mother and I have hers'.⁶⁸³⁰ On 29 December 2007, a text message was sent from mobile 6091 in which the sender introduced himself as 'Ali Merhi' and stated that 'this is my number (mom's)'.⁶⁸³¹

3. Purple 231

3454. Purple 231 was activated as a pre-paid 'Alfa Active' subscription on 14 December 2002 and deactivated on 11 March 2005.⁶⁸³² The customer name is recorded as 'Imad Ibrahim',⁶⁸³³ which is the same name used to subscribe Purple 095, that is attributed to the Accused, Mr Oneissi.⁶⁸³⁴

3455. The attribution of Purple 231 to Mr Merhi rests on evidence from Mr Donaldson about the mobile's geographic and contact profile, and evidence from Mr Philips about its co-location with the Grey mobile. In his report, and under the heading, 'Co-location between Green 3150071 and

⁶⁸²⁷ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 99-102.

⁶⁸²⁸ Exhibit P1269 (SMS content for mobile 6091), pp 1-137; Andrew Donaldson, T. 28 June 2017, pp 73-77; exhibit P1961, slides 35-40.

⁶⁸²⁹ Exhibit P1269 (SMS content for mobile 6091), pp 5-9.

⁶⁸³⁰ Exhibit P1269, p. 73.

⁶⁸³¹ Exhibit P1269, p. 137.

⁶⁸³² Exhibit P900, p. 1; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 19.

⁶⁸³³ Exhibit P900, p. 1.

⁶⁸³⁴ P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 10.

3575231' Mr Donaldson also positively concluded that Green 071 was co-locating with Purple 231.⁶⁸³⁵

3456. The Trial Chamber, as noted at paragraphs 2626-2628, in allowing Mr Donaldson to provide opinion evidence, held that he should not have drawn this conclusion. Rather, he could only offer an opinion as to whether co-location was possible, but to do this he had to explain why, including setting out his methodology.

3457. Mr Donaldson testified that Purple 231 and mobile 6091 activated the same cells outside of Beirut on four occasions. He also linked Purple 231's cell site activity to events concerning Mr Merhi and his family. Purple 231 activated cells at Beirut International Airport when Mr Merhi's wife and son departed on a flight to Iran and returned a week later. Purple 231 activated a cell in south Lebanon on a day in May 2003 when Mr Merhi purchased land in south Lebanon. Purple 231 also activated cells near Mr Merhi's parents' home before Mr Merhi's brother's funeral procession, and was inactive during the procession and during a condolence service four days later. Purple 231 was also in contact with a furniture retailer who, the Prosecution alleges, sold an item of furniture to Mr Merhi.

(a) Attribution period

3458. Mr Donaldson attributes Purple 231 to Mr Merhi from 19 December 2002 to 15 February 2005.⁶⁸³⁶ This start date was chosen because call data records are only available from 19 December 2002.⁶⁸³⁷ The last activity of Purple 231 was on 15 February 2005.⁶⁸³⁸

3459. Mr Donaldson considered that Purple 231's frequent contacts and frequently used cells were consistent over the attribution period.⁶⁸³⁹ Purple 231 used the same SIM card throughout the

⁶⁸³⁵ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 14, 205-238, 247.

⁶⁸³⁶ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 17, 20.

⁶⁸³⁷ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 21.

⁶⁸³⁸ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 24; exhibit P527 (Call sequence table for Purple 231), p. 117.

⁶⁸³⁹ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 22-23; Andrew Donaldson, T. 29 June 2017, p. 78; exhibit P1961, slide 66.

attribution period and the same IMEI from 1 August 2004—the date from which IMEI information is available—until 15 February 2005.⁶⁸⁴⁰

(b) Geographic profile

3460. The cells most frequently activated by Purple 231 between 19 December 2002 and 15 February 2005 were:

- SFEIR3 (29.1 per cent), which was adjacent to BRAJNE2 and covered an area north-east of Mr Merhi's home in Bourj-El-Barajneh;
- BRAJNE2 (16.13 per cent), which provided predicted best server coverage to Mr Merhi's home; ROUEIS2 (4.16 per cent), which was adjacent to BRAJNE2 (to its north) and to ROUEIS3 (to its south-east); and
- ROUEIS3 (3.21 per cent), which provided predicted best server coverage to Mr Merhi's parents' home.⁶⁸⁴¹

⁶⁸⁴⁰ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 26-28; exhibit P900 (Subscriber note for Purple 231), p. 1; exhibit P527, pp 69-117.

⁶⁸⁴¹ Exhibit P1123 (ArcView shape files Alfa); exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 67-70, 72. Cell use information is not available for SMS or inbound calls before 1 August 2004. The unavailable data accounts for 25.06 per cent of activations. Mr Donaldson stated that his analysis of the end cell information did not substantively change the geographic profile.

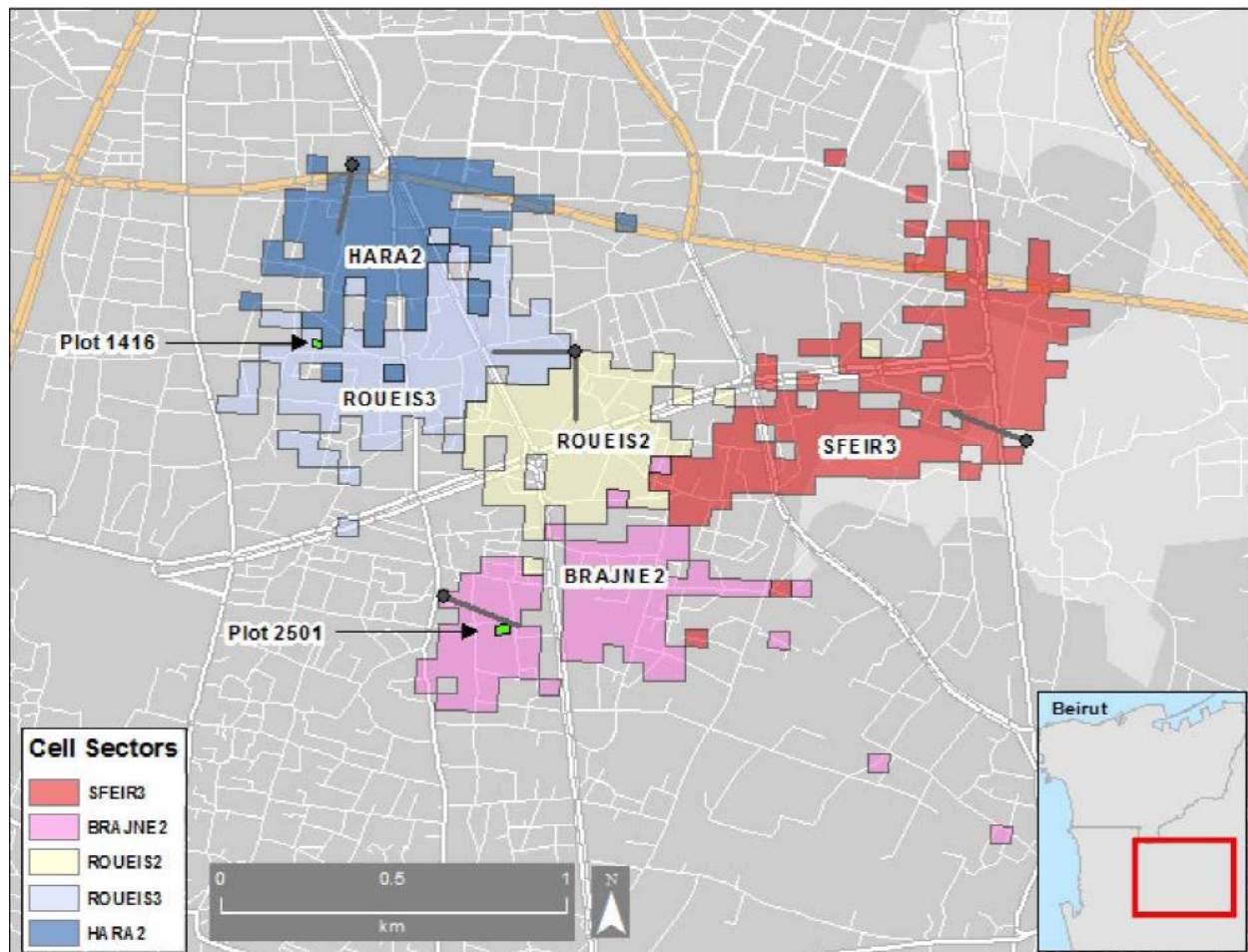


Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), p. 30

3461. Mr Donaldson noted that SFEIR3 was Purple 231's most frequently used cell from Mondays to Saturdays between 10:00 and 20:00. Outside of this, BRAJNE2 was the most frequently activated cell.⁶⁸⁴² Mr Donaldson therefore concluded that the user of Purple 231 lived in the area of BRAJNE2 and had daytime commitments in the area of SFEIR3.⁶⁸⁴³ Furthermore, Purple 231 frequently activated ANQOUN2 (a total of 69 activations or 2.05 per cent), primarily

⁶⁸⁴² Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 68, 144-149; Andrew Donaldson, T. 29 June 2017, pp 26-32, T. 30 June 2017, p. 51; exhibit P1961, slides 48-50.

⁶⁸⁴³ Andrew Donaldson, T. 29 June 2017, p. 30, T. 30 June 2017, p. 51, T. 4 July 2017, pp 13-16.

at weekends.⁶⁸⁴⁴ This cell provided coverage to the town of Ain Qana.⁶⁸⁴⁵ According to records from the Land Registry of Lebanon, Mr Merhi owned land in Ain Qana from 2003.⁶⁸⁴⁶

(c) Contact profile

3462. According to Mr Donaldson, during the attribution period, Purple 231 was in contact:

- 674 times (ranked first) with a mobile ending in 515, linked to Mr Merhi's brother-in-law, Mr Yahya Beydoun, who was married to Mr Merhi's sister, Wafaa Habib Merhi;⁶⁸⁴⁷
- 292 times (ranked second) with a mobile ending in 744, linked to Mr Merhi's brother, Mr Abbas Habib Merhi;⁶⁸⁴⁸
- 213 times (ranked fourth) with Purple 018, attributed by the Prosecution to Mr Assad Hassan Sabra;⁶⁸⁴⁹
- 194 times (ranked seventh) with Purple 095, attributed by the Prosecution to Mr Hussein Hassan Oneissi;⁶⁸⁵⁰
- 146 times (ranked eighth) with a mobile ending in 543, linked to Mr Samer Atwi, whose daughter married Mr Merhi's son in 2011;⁶⁸⁵¹
- 139 and 60 times respectively (ranked ninth and fifteenth respectively) with two mobiles linked to Mr Merhi's brother, Mr Mohammed Haider Habib Merhi.⁶⁸⁵² The first number, ending in 072, was subscribed in the name of 'Chiraz Ibrahim' from 11 March 2003.⁶⁸⁵³ After analysing the contact and geographic profile of this number, Mr Donaldson set the

⁶⁸⁴⁴ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 67, 71; Andrew Donaldson, T. 29 June 2017, pp 38-41, T. 4 July 2017, pp 13-14; exhibit P1961, slides 53, 72.

⁶⁸⁴⁵ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 149-154.

⁶⁸⁴⁶ Exhibit P2016, pp 1-7 (ERNs 60183843-60183849); exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 345; *see also* exhibit P646, p. 1.

⁶⁸⁴⁷ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 33; *see above*, at para. 3450.

⁶⁸⁴⁸ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 36; *see above*, at para. 3450.

⁶⁸⁴⁹ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 44; *see below*, at para. 4038.

⁶⁸⁵⁰ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 44; *see chapter IX 'Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine', (D) 'Hussein Hassan Oneissi', (3) 'Findings', below.*

⁶⁸⁵¹ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 37; *see above*, at para. 3450.

⁶⁸⁵² Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), annex A, paras 1-41.

⁶⁸⁵³ Exhibit P893 (Subscriber note for mobile ending in 072), p. 1.

attribution period as 19 March 2003 to 5 September 2004.⁶⁸⁵⁴ Mr Donaldson concluded, based on call data records, that Mr Mohammed Haider Habib Merhi began using the second number, ending in 472, from around 20 August 2004.⁶⁸⁵⁵ Mr Donaldson testified that the two mobiles had common top contacts, similar geographic profiles and for 16 days activated cells in a way that is consistent with a single user.⁶⁸⁵⁶ Mobile 472 also changed its handset at that time.⁶⁸⁵⁷ Account information from *Électricité du Liban* from September 2003 shows that Mohammed Haidar Habib Merhi lived at plot 177, El-Hadath, Sfeir, a property owned by ‘Adham Tabaja’;⁶⁸⁵⁸

The most used cell at night for mobiles 072 and 472 was SFEIR2; the predicted best server coverage of this cell covered this property.⁶⁸⁵⁹ The numbers had frequent contact with members of the immediate family of Mr Mohammed Haidar Habib Merhi, including two brothers-in-law, two brothers, a sister and his father.⁶⁸⁶⁰ A text message received by mobile 072 was addressed to ‘Haidar’;⁶⁸⁶¹

- 115 times (ranked tenth) with a mobile ending in 725, linked to Mr Ali Ammar, a Hezbollah Member of Parliament;⁶⁸⁶²
- 15 times (ranked 22nd) with mobile 165, attributed by the Prosecution to Mr Salim Jamil Ayyash;⁶⁸⁶³
- ten times (ranked joint 26th) with mobile 935, attributed by the Prosecution to Mr Salim Jamil Ayyash;⁶⁸⁶⁴

⁶⁸⁵⁴ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), annex A, para. 3.

⁶⁸⁵⁵ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), annex A, para. 4; exhibit P2011 (Subscriber note for mobile ending in 472), p. 1.

⁶⁸⁵⁶ Andrew Donaldson, T. 30 June 2017, pp 35-36; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), annex A, paras 5-11.

⁶⁸⁵⁷ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), annex A, para. 4.

⁶⁸⁵⁸ Exhibit P1994 (Account information from *Électricité du Liban*), p. 5 (ERN 60310920).

⁶⁸⁵⁹ Andrew Donaldson, T. 30 June 2017, pp 31-32; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 12-19.

⁶⁸⁶⁰ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), annex A, paras 20-27.

⁶⁸⁶¹ Exhibit P1972 (SMS content for mobile ending in 072), p. 1.

⁶⁸⁶² Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 43; *see above*, at para. 3450.

⁶⁸⁶³ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 44; *see chapter IX* ‘Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine’, (B) (1) (d) (iii) ‘Findings’.

⁶⁸⁶⁴ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 44; *see chapter IX* ‘Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine’, (B) (1) (f) (iii) ‘Findings’.

- five times with a mobile ending in 131, linked to Mr Merhi's sister, Ms Wafa Habib Merhi;⁶⁸⁶⁵
- three times each with two landlines linked to a business co-owned by Mr Yahya Beydoun.⁶⁸⁶⁶ A witness told Prosecution investigators that the number ending in 589 is a landline for the company and the number ending in 495 is a fax number.⁶⁸⁶⁷ Subscriber records, vehicle registration records and bank documents corroborate this;⁶⁸⁶⁸
- three times with a landline ending in 953, linked to Mr Merhi's father, Mr Habib Ali Merhi;⁶⁸⁶⁹
- once with mobile 6091, attributed to the Merhi family;⁶⁸⁷⁰
- once with a mobile ending in 753, linked to Mr Merhi's brother-in-law, Mr Zakaria Rammal,⁶⁸⁷¹ and
- once with a mobile ending in 479, linked to Mr Merhi's sister, Ms Nawal Habib Merhi.⁶⁸⁷²

3463. Mr Donaldson concluded from the contact profile of Purple 231 that this mobile was used for a specific purpose and was likely a work-related mobile.⁶⁸⁷³ Mr Donaldson testified that this purpose may have been shared by Mr Merhi's brothers and brothers-in-law, but not his father or sisters.⁶⁸⁷⁴ He noted that the majority of Purple 231's frequent contacts were men of a similar age

⁶⁸⁶⁵ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 35; *see above*, at para. 3450.

⁶⁸⁶⁶ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 34; exhibit P2126 (Interview of Witness PRH028), pp 14-15.

⁶⁸⁶⁷ Exhibit P2126 (Interview of Witness PRH028), p. 19.

⁶⁸⁶⁸ Exhibit P1638 (Subscriber note for landline ending in 589), p. 1; exhibit P1640 (Subscriber note for landline ending in 495), p. 1; exhibit P1755 (Documents relating to vehicle registration), p. 3 (ERN 60297401); exhibit P1756 (Extract from vehicle registration database), p. 1; exhibit P2005 (*Credit Libanais* bank form), p. 1 (ERN 60255105); exhibit P2004, pp 1-2 (ERNS 60255108-60255109).

⁶⁸⁶⁹ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 38; *see above*, at para. 3450.

⁶⁸⁷⁰ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 39; *see above*, at para. 3435.

⁶⁸⁷¹ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 40-41; *see above*, at para. 3450.

⁶⁸⁷² Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 42; *see above*, at para. 3450.

⁶⁸⁷³ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), annex A, para. 66; Andrew Donaldson, T. 3 July 2017, p. 31, T. 4 July 2017, p. 13.

⁶⁸⁷⁴ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), annex A, para. 66; Andrew Donaldson, T. 29 June 2017, pp 60-61.

to Mr Merhi.⁶⁸⁷⁵ Only four members of Mr Merhi's family were among the top 30 contacts.⁶⁸⁷⁶ He contrasted this with mobile 6091's contact profile, which included more women and more members of Mr Merhi's family.⁶⁸⁷⁷

3464. Mr Donaldson highlighted that Purple 231's only contact with Mr Merhi's father, his sisters, one of his brothers-in-law and mobile 6091 occurred in a two-week period in September and October 2003.⁶⁸⁷⁸ All of these calls were outbound.⁶⁸⁷⁹ This period also coincided with an unusually high frequency of activations of ZAHARAN1 in south Lebanon.⁶⁸⁸⁰ Several members of Mr Merhi's family also activated cells in this area during the week following 21 September 2003, which led Mr Donaldson to conclude that the activity could be consistent with an exceptional family event.⁶⁸⁸¹

(d) SMS content

3465. Mr Donaldson's report referred to the text message content of Purple 231 for the period 1 February 2004 to 11 March 2005.⁶⁸⁸² A Prosecution analyst, Ms Helen Green, reviewed the thirteen SMS messages in the call sequence table for Purple 231 and found nothing revealing the identity of the user.

3466. Three texts were message delivery notices, four had no legible content and one was a cash/advertising message. The remaining five were from the same number, mobile 474. The Prosecution interviewed the sender, who stated that she was sending them to someone else.⁶⁸⁸³ Two of these messages contained obvious romantic content.

⁶⁸⁷⁵ Andrew Donaldson, T. 29 June 2017, pp 56-57, 60-61, 83, T. 3 July 2017, pp 22-23, 28; exhibit P1961, slides 56-57.

⁶⁸⁷⁶ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), annex A, para. 66.

⁶⁸⁷⁷ Andrew Donaldson, T. 29 June 2017, pp 57, 60-61, 83; exhibit P1961, slides 56-57; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), annex A, para. 66.

⁶⁸⁷⁸ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), annex A, paras 42, 48-49; Andrew Donaldson, T. 29 June 2017, pp 67-69; exhibit P1961, slides 59-60, 62.

⁶⁸⁷⁹ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), annex A, paras 42, 45; Andrew Donaldson, T. 29 June 2017, pp 70, 74.

⁶⁸⁸⁰ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), annex A, paras 43-44, 46-47, 49, 59; Andrew Donaldson, T. 29 June 2017, pp 67-68, 71; exhibit P1961, slides 61-63.

⁶⁸⁸¹ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), annex A, paras 50-63, 65; Andrew Donaldson, T. 29 June 2017, pp 70-75; exhibit P1961, slides 59-64.

⁶⁸⁸² Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 29.

⁶⁸⁸³ Exhibit P2019 (statement of Helen Green), paras 16-19. Mr Donaldson testified that once mobile 474 was attributed to a taxi-driver, they lost importance. Andrew Donaldson, T. 29 June 2017, p. 47.

(e) Funeral of Youssef Habib Merhi, 10 March 2004

3467. As an additional attribution point, Mr Donaldson referred to the funeral of Mr Merhi's brother, Youssef Habib Merhi, who died on Wednesday 10 March 2004.⁶⁸⁸⁴ His funeral procession was reported to have started from his parents' home in Haret Hreik with a burial ceremony that day at 15:00 in Ghobeiry. Hezbollah's official website announced that same day describing him as someone 'who was killed today during his duty of Jihad'.⁶⁸⁸⁵ Another media source, *Al-Intiqad*, described him as a martyr known as 'Jawad' and noted that Hezbollah officials and three of its MPs attended the memorial ceremony.⁶⁸⁸⁶

3468. Mr Donaldson noted that mobile 6091 activated Touch's HaretHreik_B cell, which provides predicted best server coverage to Mr Merhi's parents' address at 13:00 and 13:29. At 14:13 Purple 231 activated HARA2, the Alfa cell providing coverage. The two mobiles were then inactive until after 19:00. Similarly, during a commemoration ceremony at around 15:00 on 14 March 2004 in Bir Hassan, south Beirut, the two mobiles were inactive.⁶⁸⁸⁷

(f) Other characteristics—possible 'Hezbollah cadre' mobile

3469. Mr Donaldson in his report described Purple 231 as having the characteristics of a 'work-related mobile', used for a specific purpose.⁶⁸⁸⁸ In court he used the term 'cadre mobile' to describe Purple 231 and other mobiles with a contact profile that included Hezbollah officials and MPs. This term distinguished these mobiles from, for example, Purple 018 and Purple 095.⁶⁸⁸⁹ This is further analysed in the overview of the Purple mobiles at paragraphs 2438-2439.

3470. These mobiles had no pattern of family contacts and their identifiable contacts were primarily men between aged 20 and 50. There was little SMS content and the numbers were rarely provided as business contacts.⁶⁸⁹⁰ Hezbollah cadres, including Mr Badreddine, and others had the same contact profile.⁶⁸⁹¹ Purple 231 had some of these characteristics, suggesting it may have been

⁶⁸⁸⁴ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 353-370.

⁶⁸⁸⁵ Exhibits P2100, P2097.

⁶⁸⁸⁶ Exhibit P2097.

⁶⁸⁸⁷ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 367-371.

⁶⁸⁸⁸ Exhibit P1962.1, para. 45; Andrew Donaldson, T. 3 July 2017, pp 31-32, T. 4 July 2017, p. 13.







⁶⁸⁸⁹ Andrew Donaldson, T. 3 July 2017, p. 23.

⁶⁸⁹⁰ Andrew Donaldson, T. 3 July 2017, pp 28-29.

⁶⁸⁹¹ Andrew Donaldson, T. 3 July 2017, pp 23, 31-32.

a ‘non-personal’ mobile.⁶⁸⁹² Most contacts were unattributed and among them were Hezbollah officials or MPs. Family contacts were absent, and the contacts were ‘generally men of a similar generation’.⁶⁸⁹³

3471. In comparing the contact profiles of Purple 231 and mobile 6091, Mr Donaldson used the following slides in his testimony:⁶⁸⁹⁴

Example of Contacts			
Mobile 091		Purple 231	
	Sister of MERHI wife	2,254	0
	Sister of MERHI	177	5
	Husb. of wife's sister	126	0
	Father of MERHI	124*	3
	Nieces / nephews of MERHI wife	115	0
	Brother MERHI wife <small>(sub)</small>	81	0

⁶⁸⁹² Andrew Donaldson, T. 3 July 2017, p. 36.

⁶⁸⁹³ Andrew Donaldson, T. 3 July 2017, p. 22.

⁶⁸⁹⁴ Exhibit P1961, slides 56-57.



Mobile 091	Purple 231
0	 Hussein Hassan ONEISSI 194
14	 Hassan Assad SABRA 213
1	 Ali AMMAR MP 115
43	 Abbas MERHI 292
54	 Mohammed Haidar MERHI 199
3	 Salim AYYASH 25

(g) Common travel in Lebanon—Purple 231 and mobile 6091

3472. To find an association between Purple 231 and mobile 6091, Mr Donaldson analysed their movements and patterns.

3473. He found four instances of common travel in Lebanon for mobiles Purple 231 and 6091. The first two are on 20 June 2004. At 18:38 and 20:41 respectively, Purple 231 and mobile 6091 activated adjacent cells in the far south of Lebanon,⁶⁸⁹⁵ and then on 27 August 2004, at 17:46 and 18:00 respectively, Purple 231 and mobile 6091 activated cells in east Lebanon, near the Syrian border.⁶⁸⁹⁶

⁶⁸⁹⁵ Mobile 6091 activated Ain_Ebel_B at 11:43 and Ain_Ebel_A at 20:41. Purple 231 activated MAROUN1 at 18:38, which was adjacent to Ain_Ebel_B. Exhibit P527, p. 62; exhibit P1264, p. 78; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 319-321; exhibits P1122-P1123.

⁶⁸⁹⁶ Mobile 6091 activated Majdel_Anjar_A at 18:00 and Majdel_Anjar_B at 18:05. These cells are situated along the Syrian border. Purple 231 activated CHTAUR3 at 17:46. This cell is east of Majdel_Anjar_A and Majdel_Anjar_B. Exhibit P527, p. 79; exhibit P1264, p. 88; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 322-326; exhibits P1122-P1123.

3474. The third occurred on 10 October 2004, when at 15:33 and 15:39 respectively, Purple 231 and mobile 6091 activated cells in an area about six kilometres south-west of Mr Merhi's home.⁶⁸⁹⁷ The fourth was on 6 November 2004, when at 19:31 and 19:37 respectively, Purple 231 and mobile 6091 activated cells in south Lebanon, south of Saida.⁶⁸⁹⁸

(h) Beirut International Airport

3475. Another relevant instance was when Mr Merhi's wife, Rima Toufaily, and Mr Merhi's son, Hussein Merhi, travelled to Iran from Beirut International Airport on 29 September 2004.⁶⁸⁹⁹

3476. They went through passport control at 18:16.⁶⁹⁰⁰ At 17:20 and 17:26, Purple 231 activated Alfa's MEA1 and MEA2.⁶⁹⁰¹ MEA2 provided predicted best server coverage to the airport. MEA1 was adjacent to MEA2.⁶⁹⁰² At 17:34, mobile 6091 activated Touch's Borj_Brajneh_2_B, north of the airport, and at 17:55 Hai_El_kneisseh_A, north of Mr Merhi's home.⁶⁹⁰³ At 18:28, Purple 231 activated ROUEIS3 and MIKAEL3, both of which were north of Mr Merhi's home.⁶⁹⁰⁴ The Grey mobile was inactive on this day.⁶⁹⁰⁵

⁶⁸⁹⁷ Purple 231 activated JAMHOU2 at 15:33. At 15:39, mobile 6091 activated Kahhaleh_B. The shortest distance between Mr Merhi's home and the predicted best server coverage is approximately 6.1 kilometres. Exhibit P527, p. 91; exhibit P1264, p. 95; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 332-337; exhibits P1122-P1123.

⁶⁸⁹⁸ Purple 231 activated MSAILE2 between 19:29 and 19:31. This cell mast is approximately nine kilometres south of Saida. Mobile 6091 activated Addoussiyeh_A at 19:37. This cell mast is approximately 4.7 kilometres south of Saida. The cell covers the coastal road south of Saida. Exhibit P527, p. 96; exhibit P1264, p. 98; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 338-344; exhibits P1122-P1123.

⁶⁸⁹⁹ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 287, 290-293; exhibit P1997 (Records of entry to and exit from Lebanon), p. 1; exhibit P1557, pp 3, 9 (ERNs 60244429-60244430).

⁶⁹⁰⁰ Exhibit P1997, p. 1.

⁶⁹⁰¹ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 300; exhibit P527, p. 88.

⁶⁹⁰² Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 300, 302; exhibit P1123.

⁶⁹⁰³ Exhibit P1264, p. 93; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 303; exhibit P1122.

⁶⁹⁰⁴ Exhibit P527, pp 88-89; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 304.

⁶⁹⁰⁵ Exhibit P2144, p. 36.

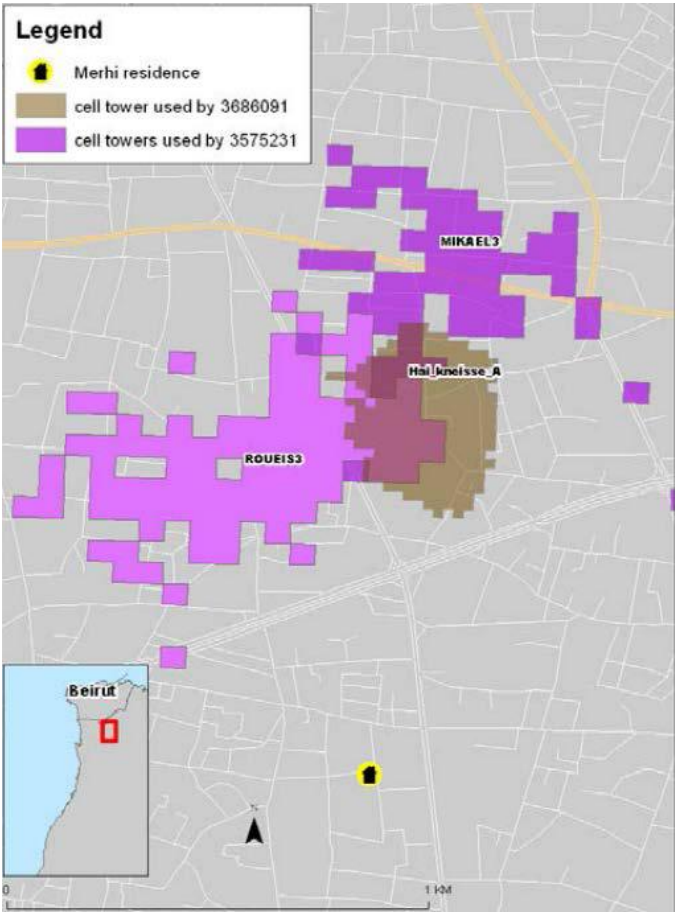
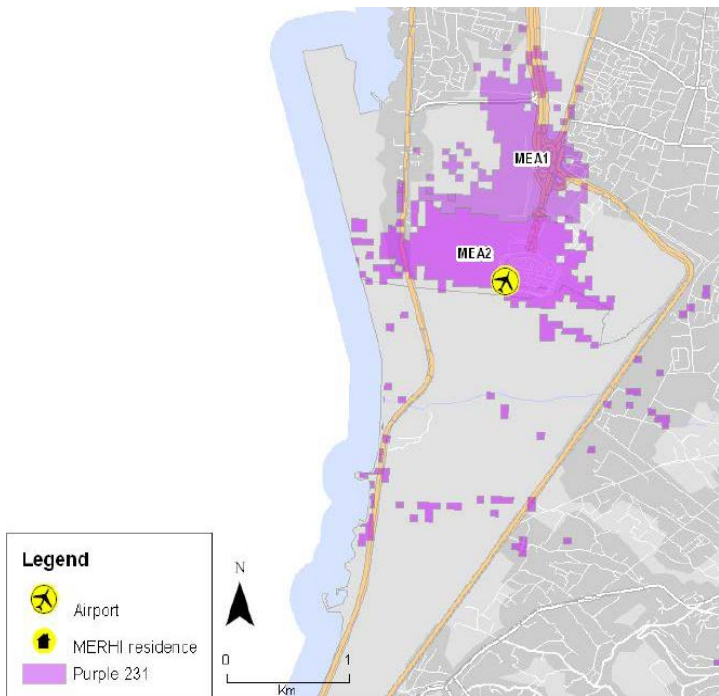


Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), pp 105-106

3477. Mr Donaldson found that between 29 September and 6 October 2004, during Ms Toufaily's absence, Purple 231 and mobile 6091 were used every day.⁶⁹⁰⁶ Mobile 6091 received five calls for which there was no information regarding the caller. Mr Donaldson explained that this may be because the calls originated from outside Lebanon.⁶⁹⁰⁷

3478. On 6 October 2004, Ms Toufaily and Mr Hussein Merhi returned to Beirut International Airport. They passed through passport control at 18:07.⁶⁹⁰⁸ At 17:02, Purple 231 activated SFEIR3, east of Mr Merhi's home.⁶⁹⁰⁹ At 17:48, mobile 6091 activated Airport_West_A, located in the area of the airport.⁶⁹¹⁰

3479. At 17:57, mobile 6091 received a call from a number, ending in 883, which was included on an application to the Hajj of 2004 in the name of Sobhi Mohammed Saqr.⁶⁹¹¹ Sobhi Mohammed Saqr, with the same date of birth as on the Hajj application, travelled on the same flights as Rima Tofaily and Hussein Merhi, departing Beirut International Airport on 29 September 2004 and returning on 6 October 2004.⁶⁹¹² During this call, mobile 6091 activated Airport_West_C and mobile 883 activated Airport_M1, in the area of the airport.⁶⁹¹³

3480. At 17:58 and 17:59, Purple 231 activated MATAR2, which covered the airport.⁶⁹¹⁴ At 18:11, mobile 6091 activated Airport_West_C.⁶⁹¹⁵ At 18:42, mobile 6091 activated

⁶⁹⁰⁶ Exhibit P527, pp 88-91; exhibit P1264, pp 93-94; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 307.

⁶⁹⁰⁷ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 307; exhibit P2117 (Explanation from Touch regarding missing telephone number information), p. 1.

⁶⁹⁰⁸ Exhibit P1997, p. 1; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 308.

⁶⁹⁰⁹ Exhibit P527, p. 90; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 310.

⁶⁹¹⁰ Exhibit P1264, p. 94; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 310.

⁶⁹¹¹ Exhibit P1264, p. 94; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 310; exhibit P1727 (Extract from list of applicants for 1424 Hajj), p. 1.

⁶⁹¹² Exhibit P2010 (Records of entry to and exit from Lebanon), p. 1; exhibit P1996 (Records of entry to and exit from Lebanon), p. 1; exhibit P1997, p. 1; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 290, 292-293, 309.

⁶⁹¹³ Exhibit P1264, p. 94; exhibit P1270 (Call sequence table for mobile ending in 883), p. 1.

⁶⁹¹⁴ Exhibit P527, p. 90; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 310; exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi), p. 44.

⁶⁹¹⁵ Exhibit P1264, p. 94; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 313.

Ayn_Sikkeh_B, north of the airport.⁶⁹¹⁶ At 18:54, Purple 231 activated SFEIR2, east of Mr Merhi's home.⁶⁹¹⁷

3481. While Mr Merhi's wife and son were away, the Grey mobile was used every day between 1 and 6 October. On 6 October 2004, the Grey mobile was inactive from 17:12,⁶⁹¹⁸ coinciding with his family's return.

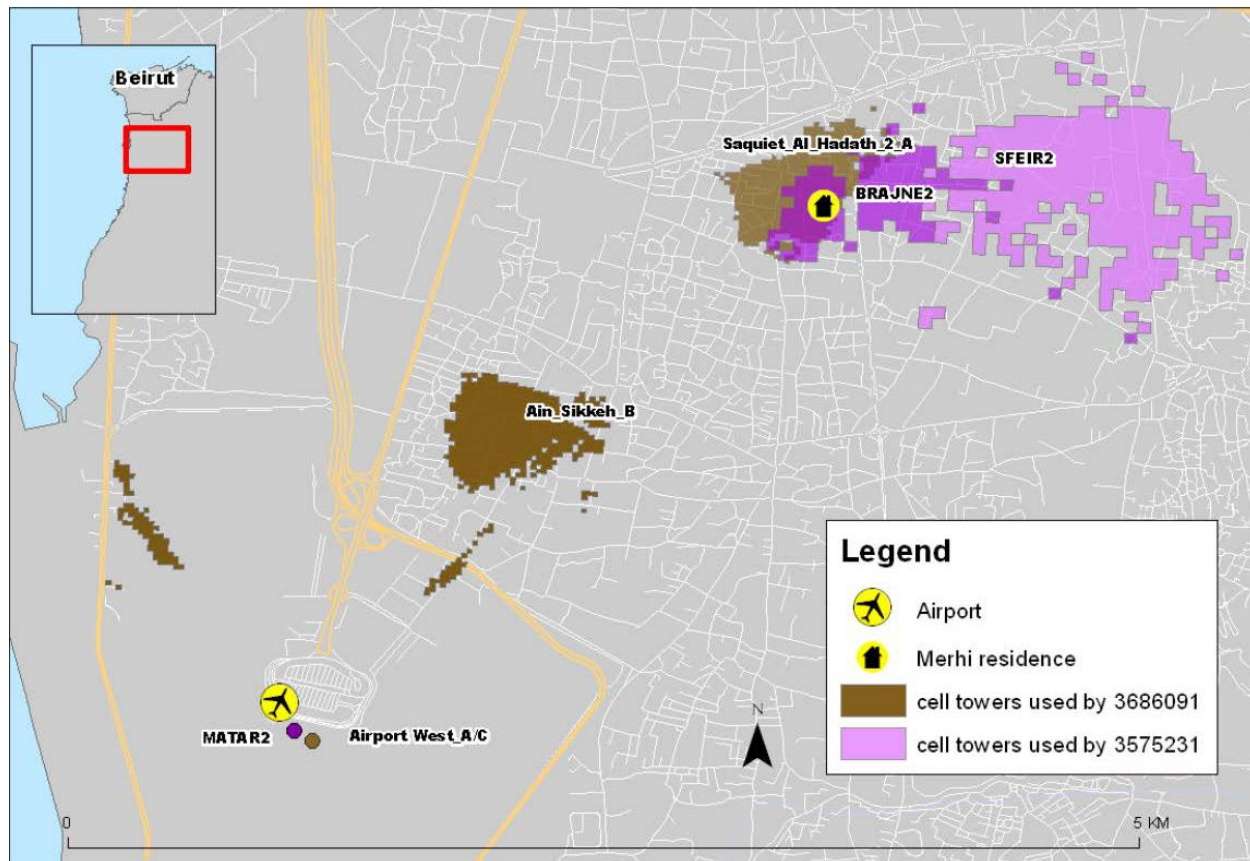


Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), p. 110

⁶⁹¹⁶ Exhibit P1264, p. 94; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 313; exhibit P1122.

⁶⁹¹⁷ Exhibit P527, p. 90; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 315; exhibit P1123.

⁶⁹¹⁸ Exhibit P2144, pp 36-37.

(i) Land purchase in Ain Qana

3482. According to Lebanese Land Registry records, Mr Merhi entered into a contract to purchase land in Ain Qana on 3 May 2003.⁶⁹¹⁹ At 10:55 that day, Purple 231 activated NABATI3, which provided coverage to the town of Nabatiyeh in south Lebanon.⁶⁹²⁰ Mobile 6091 activated cells in south Lebanon throughout the day, including Sarba_B at 09:54, 10:51, 12:03, 12:50, 13:20 and 22:04; this cell provided coverage to the wider area of Ain Qana.⁶⁹²¹

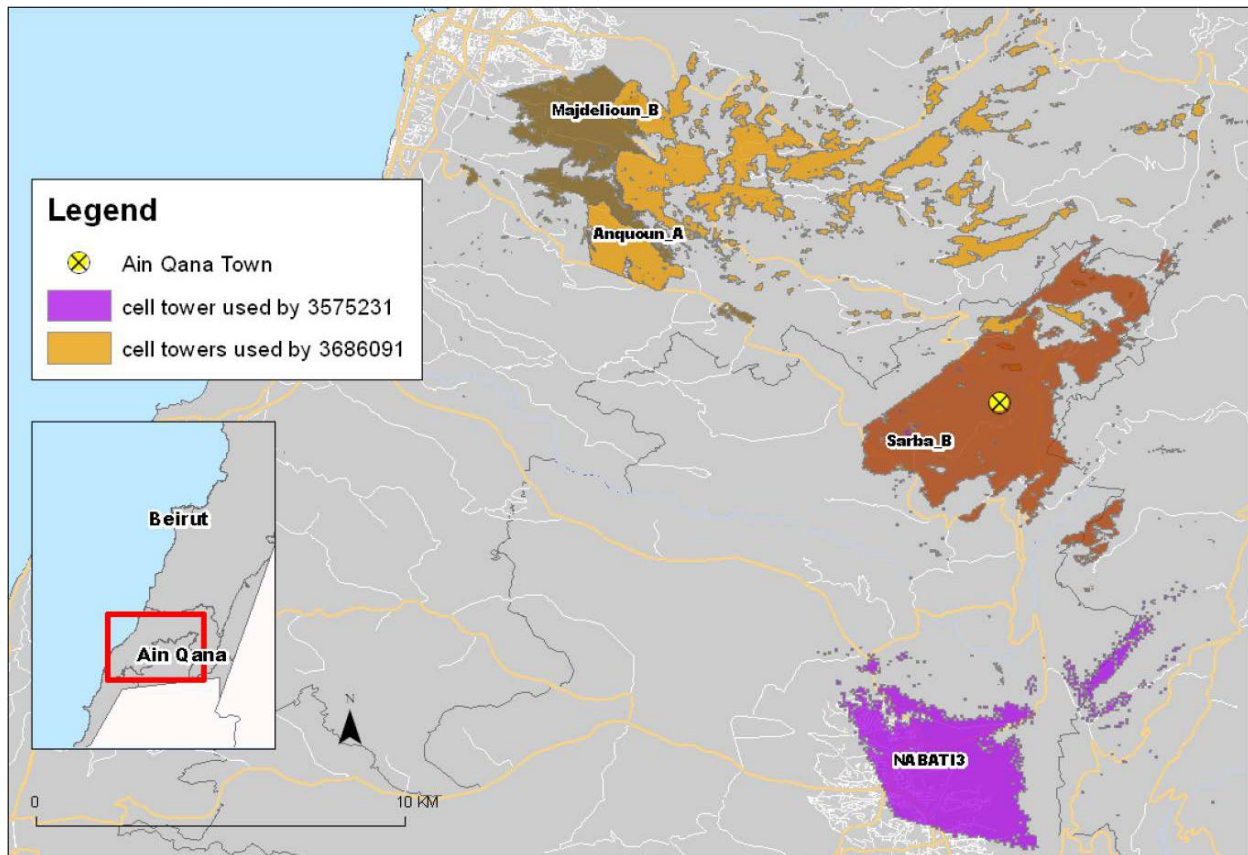


Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), p. 114

⁶⁹¹⁹ Exhibit P2016, pp 1-7 (ERNs 60183843-60183849); exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 345.

⁶⁹²⁰ Exhibit P527, p. 7; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 349; exhibit P1123.

⁶⁹²¹ Exhibit P1264, p. 19; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 350-351.

(j) Furniture deliveries

3483. In November 2004 a mattress was delivered to the Merhi family home. Due to an incorrect size a new one was delivered in its place two days later. Mobile 6091 was used as the contact numbers for the delivery, while Purple 231 twice called the delivery company to arrange the first delivery and the replacement delivery. The delivery was to Hassan Merhi.⁶⁹²²

3484. Mohammed Assi Trading Establishment, in Dahyieh, sold the relevant product.⁶⁹²³ The manufacturer sometimes delivered products purchased through retailers like Mohammed Assi directly to the customer's residential address.⁶⁹²⁴

3485. On 22 November 2004, at 17:15, Purple 231 called a mobile number 734 of Mohammed Assi.⁶⁹²⁵ Three and a half minutes later, this number called Purple 231.⁶⁹²⁶ The next day, at 9:38, mobile 6091 received a call from a landline ending in 167 of the company's showroom in Haret Hreik.⁶⁹²⁷

3486. The manufacturer's records show that 'Aassi Mohammad' placed an order for some items on 23 November 2004, for delivery the following day to 'El-Roueiss, Hay Al-Abiad, above Qaser-El-Riyada Gym, Gardenia building, Sixth floor, El-Hajj Hasan Merhi'. The contact number on the order was mobile 6091 with a remark to 'call before arriving'.⁶⁹²⁸

3487. On 24 November 2004, between 9:15 and 10:13, mobile 6091 activated Touch's Saquiet_Hadath_2_A, which provided predicted best server coverage to Mr Merhi's home.⁶⁹²⁹ At 10:45, mobile 6091 called a number, ending in 695, used by the manufacturing company's delivery

⁶⁹²² Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 251-286

⁶⁹²³ Witness PRH651, T. 2 October 2015, pp 5, 9-10, 60; exhibit P607 (Photocopy of advertisement leaflet), p. 1.

⁶⁹²⁴ Witness PRH651, T. 2 October 2015, pp 5-6.

⁶⁹²⁵ Exhibit P527, p. 100; exhibit P607, p. 1; exhibit P672 (Subscriber note for mobile ending in 734), p. 1; Witness PRH651, T. 2 October 2015, p. 12.

⁶⁹²⁶ Exhibit P527, p. 100.

⁶⁹²⁷ Exhibit P1264, p. 100.

⁶⁹²⁸ Exhibit P608 (Computer printout for order dated 23 November 2004), p. 1; exhibit P609 (Invoice for order dated 24 November 2004), p. 1; exhibit P610 (Invoice list for deliveries on 24 November 2004), p. 1; Witness PRH651, T. 2 October 2015, pp 10, 15-18, 21-28.

⁶⁹²⁹ Exhibit P1264, p. 100; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 266; exhibit P1122.

drivers.⁶⁹³⁰ During this call, mobile 695 activated ALEY2, outside Beirut.⁶⁹³¹ Mobile 6091 activated Mar_Michael_B.⁶⁹³² The cell tower for Mar_Michael_B is approximately 1.3 kilometres north of the cell tower for Saquiet_Hadath_2_A.⁶⁹³³ At 11:45 and 11:51, mobile 695 activated Alfa's BRAJNE2, which provided predicted best server coverage to Mr Merhi's home.⁶⁹³⁴ Mobile 6091 did not make any calls around this time.⁶⁹³⁵

3488. A delivery note for the order dated 24 November 2004 specifies that the item was returned to the company because of its size.⁶⁹³⁶ The note bears a signature, above which the name 'Hassan Merhy' is handwritten.⁶⁹³⁷

3489. At 11:58 and 12:01 on 24 November 2004, Purple 231 called the trading company on number 734.⁶⁹³⁸ Sixteen minutes later, at 12:17, this number called Purple 231. Purple 231 activated BRAJNE2 for these three calls.⁶⁹³⁹

3490. The manufacturer's records show that Mohammed Assi placed a second order on 24 November 2004, for delivery on 26 November 2004 to the same address. A note reads: 'instead of a mattress which was returned size 180'. Another reads: 'Merhi. Call before delivering 03/686091'.⁶⁹⁴⁰ There is a corresponding invoice and entry on a list of deliveries for 26 November

⁶⁹³⁰ On this day, mobile 695 was in contact with the delivery driver's landline. The number was also in contact with three other numbers which were recorded against orders allocated to this driver. Exhibit P1264, p. 100; exhibit P1265 (Call sequence table for mobile ending in 695), p. 1; exhibit P702 (Statement of Witness PRH649), paras 18, 24 (ERN 60310659); exhibit P677 (Subscriber note for landline ending in 779), p. 1; exhibit P610, p. 1 (ERN 60240067); exhibit P628 (List of telephone numbers used by delivery drivers), p. 1; exhibit P621 (Computer printout for order dated 23 November 2004), p. 1 (ERN 60238404); exhibit P623 (Computer printout for order dated 23 November 2004), p. 1 (ERN 60238406); exhibit P627 (Computer printout for order dated 19 November 2004), p. 1 (ERN 60238410); Witness PRH651, T. 2 October 2015, pp 47, 51, 56-58.

⁶⁹³¹ Exhibit P1265, p. 1; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 268; exhibit P1123.

⁶⁹³² Mobile 6091 activated this cell two more times at 10:48 and 10:59. Exhibit P1264, pp 100-101.

⁶⁹³³ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 267; exhibit P1122.

⁶⁹³⁴ Exhibit P1265, p. 1; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 268; exhibit P1123.

⁶⁹³⁵ Mobile 6091 activated Mar_Michael_B at 10:59. Its next call was at 13:42 when it activated Saquiet_Hadath_2_A, exhibit P1264, p. 101. Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 269.

⁶⁹³⁶ Exhibit P611 (Delivery note dated 24 November 2004), p. 1 (ERN SI-0011324.01).

⁶⁹³⁷ Exhibit P611, p. 1 (ERN SI-0011324.01); Witness PRH651, T. 2 October 2015, pp 25-28.

⁶⁹³⁸ Exhibit P527 (Call sequence table for Purple 231), p. 101; exhibit P607, p. 1; exhibit P672, p. 1; Witness PRH651, T. 2 October 2015, p. 12.

⁶⁹³⁹ Exhibit P527, p. 101.

⁶⁹⁴⁰ Exhibit P612 (Computer printout for order dated 24 November 2004), p. 1; Witness PRH651, T. 2 October 2015, pp 31-32.

2004.⁶⁹⁴¹ A delivery note for this order dated 26 November 2004 bears a signature, above which ‘Hassan Merhy’ is handwritten.⁶⁹⁴²

3491. The delivery drivers used another mobile, ending in 684.⁶⁹⁴³ On 26 November 2004, at 14:52, it called mobile 6091,⁶⁹⁴⁴ activating HARA3.⁶⁹⁴⁵ Mobile 6091 activated Touch’s Saquiet_Hadath_2_A.⁶⁹⁴⁶ At 15:22 and 15:23, number 684 activated SFEIR3, which was adjacent to BRAJNE2.⁶⁹⁴⁷ Two minutes later, at 15:25, Purple 231 activated BRAJNE2.⁶⁹⁴⁸

3492. The delivery drivers, when questioned about the two deliveries two months short of eight years later, could remember nothing about them from the delivery notes.⁶⁹⁴⁹

4. The ‘Grey mobile’

3493. The Prosecution’s pre-trial briefs outlining its case against Mr Merhi referred only to three mobiles, Purple 231, Green 071 and the personal mobile 6091.⁶⁹⁵⁰ They did not refer to the Grey mobile. This mobile came to light only towards the end of the trial when the Merhi Defence itself put the mobile and its call sequence table into evidence, as a mobile that was potentially co-locating with Green 071, and thus providing an alternative user for Green 071.

3494. Consequently, the Prosecution did a cell dump for three mobiles, namely, Purple 231, Green 071 and the Grey mobile and had its expert, Mr Philips, prepare a revised report, examining

⁶⁹⁴¹ Exhibit P613 (Invoice for order dated 26 November 2004), p. 1 (ERN 60240076); Witness PRH651, T. 2 October 2015, pp 33-35; exhibit P614 (Invoice list for deliveries on 26 November 2004), p. 1 (ERN 60240072).

⁶⁹⁴² Exhibit P615 (Delivery note dated 26 November 2004), p. 1 (ERN SI-0011324.03); Witness PRH651, T. 2 October 2015, pp 36-37.

⁶⁹⁴³ Exhibit P628, p. 1; exhibit P679 (Subscriber note for mobile ending in 684), p. 1; Witness PRH651, T. 2 October 2015, pp 57-58; exhibit P701 (Statement of Witness PRH650), para. 22 (ERN 60309885).

⁶⁹⁴⁴ On the same day, this mobile was used to call the landline of the delivery driver who had been assigned to deliver the replacement order. Exhibit P701 (Statement of Witness PRH650), para. 16 (ERN60309884); exhibit P680 (Subscriber note for landline ending in 021), p. 1; exhibit P1267 (Call sequence table of mobile ending in 684), p. 1; exhibit P1264, p. 101.

⁶⁹⁴⁵ Exhibit P1267, p. 1.

⁶⁹⁴⁶ Exhibit P1264, p. 101; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 282; exhibit P1122.

⁶⁹⁴⁷ Exhibit P1267, p. 1; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 282; exhibit P1123.

⁶⁹⁴⁸ Exhibit P527, p. 101.

⁶⁹⁴⁹ Exhibit P701 (Statement of Witness PRH650), para. 18; exhibit P702 (Statement of Witness PRH649), paras 21, 23. Witness PRH649 did not know anyone of the name, ‘Hassan Merhy’.

⁶⁹⁵⁰ Prosecution’s updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), paras 56-59; Prosecution pre-trial submissions (Merhi case), annex A, paras 31-34.

the three mobiles. In his initial report, exhibit P1938, in examining just Purple 231 and Green 071, Mr Philips had analysed 940 calls, of which only 22 were relevant, in 16 ‘extracts’.

3495. However, after adding the Grey Phone to this analysis in his revised report, exhibit P2120, Mr Philips examined 1832 calls and found relevant 190 extracts, involving 266 pairs of calls. He found that 168 ‘could be co-located’, and the other 98 fell into the category, ‘would not preclude co-location’.⁶⁹⁵¹ In other words, with the addition of the Grey mobile, the number of relevant pairs of calls increased by 244, a more than tenfold rise.

3496. The Trial Chamber also received evidence from a witness who recognised a photograph of Mr Merhi as the user of the Grey mobile. Also relevant to the attribution of the Grey mobile are its contact profile and text message content.

(a) Subscriber details

3497. According to Alfa subscription documents, the Grey mobile was subscribed to ‘Labban Mostapha’ on 5 November 2003 and disconnected on 11 May 2005.⁶⁹⁵² The subscriber record notes other details:⁶⁹⁵³

Date of Birth	20-FEB-2047
Address Line 1	R ZKAK BLAT I ZEIN
Address Line 2	829401
City	ZKAK BLAT BEY

(b) Contact with the Grey mobile

3498. Someone consistently contacted the Grey mobile and recognised a photograph of Mr Merhi as the Grey mobile’s user, but not under that name. The user was using a name different to Hassan Merhi.⁶⁹⁵⁴ The photograph came from an application for an identity card in the name of ‘Hasan Habib Merhi’, date of birth 12 December 1965, place of birth Beirut, register number 1126,

⁶⁹⁵¹ Exhibit P2120, pp 3-4.

⁶⁹⁵² Exhibit P2149 (Subscriber note for the Grey mobile), p. 1.

⁶⁹⁵³ Exhibit P2149, p. 1.

⁶⁹⁵⁴ Exhibit P2138, para. 50.

mother's name 'Latifa Abbas', address 'Haret-Hreik, Daccache street, Mohammed Selman Karim Bldg, 1st floor'.⁶⁹⁵⁵ The photograph was also attached to a passport application in Hassan Habib Merhi's name with matching personal details. The photograph was endorsed by a *mukhtar* on 24 August 2007, as one of Mr Merhi.⁶⁹⁵⁶

3499. Someone knew the person in the photograph between 1996 and 2008.⁶⁹⁵⁷ His birthday, like Mr Merhi's, was on 12 December.⁶⁹⁵⁸ Someone also identified text messages sent to the Grey mobile between February 2004 and April 2005.⁶⁹⁵⁹

(c) Contact profile

3500. Call data records show that between 21 February 2004 and 15 April 2005, the Grey mobile had 2,077 calls and SMS messages.⁶⁹⁶⁰ The content of 649 text messages involving the Grey mobile between 21 February 2004 and 16 April 2005 are in evidence.⁶⁹⁶¹ The Grey mobile was almost exclusively in contact with one mobile, three Alfa service numbers (111, 1456 and 1454),⁶⁹⁶² and two landlines.⁶⁹⁶³

3501. The cells activated by the Grey mobile were overwhelmingly in south Beirut in the vicinity of Mr Merhi's residence.

5. Single user analysis—Purple 231 and the Grey mobile

3502. Mr Philips analysed the call data and cell site records of the Grey mobile and Purple 231. He found that the two were never in contact with each other, and there were no overlapping calls.⁶⁹⁶⁴

⁶⁹⁵⁵ Exhibit P683 (Identity card application form of Mr Merhi), p. 1.

⁶⁹⁵⁶ Exhibit P1568, pp 2, 5 (ERN 60236957).

⁶⁹⁵⁷ Exhibit P2138, paras 34, 36, 38-39, 41, 43.

⁶⁹⁵⁸ T418, p. 76 (closed session); exhibit P2138, para. 16.

⁶⁹⁵⁹ Exhibit P2139, paras 9, 11-12, annex C; exhibit P2148 (Client database extract), p. 1.

⁶⁹⁶⁰ Exhibit P2144 (Call sequence table for Grey mobile), pp 1-70.

⁶⁹⁶¹ Exhibit P2147 (SMS content for Grey mobile), pp 1-56.

⁶⁹⁶² Exhibit P1192 (Statement of Witness PRH707, 11 November 2015), paras 281-282.

⁶⁹⁶³ Exhibit P2144, pp 1-70; exhibit P2147, pp 1-56; exhibit P2139, para. 11; exhibit P2138, para. 10; exhibit P2142 (Subscriber note for landline in contact with Grey mobile), p. 1; exhibit P2143 (Subscriber note for a second landline in contact with Grey mobile), p. 1.

⁶⁹⁶⁴ Exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi), pp 4, 38, 190.

3503. He analysed 226 instances when Purple 231 and the Grey mobile activated cells within one hour of each other. He determined that on 147 occasions Purple 231 and the Grey mobile activated the same cell, that he described as ‘could be co-located’, and on 79 occasions the two mobiles activated different cells but within a distance that could have been travelled in the time between the calls, meaning that they were in the category of ‘would not preclude co-location’. There were no pairs of calls which fell into the categories ‘may preclude co-location’ or ‘would preclude co-location’.⁶⁹⁶⁵

3504. Mr Philips highlighted occasions when Purple 231 and the Grey mobile activated cells close in time away from the main area of concentration in Bourj Brajneeh and Haret Hreik. On 23 December 2004, for example, at 15:49, the Grey mobile activated PORT2 in north Beirut. Four minutes later, Purple 231 also activated PORT2. At 15:55, the Grey mobile activated ETOILE1, which was adjacent to PORT2.⁶⁹⁶⁶

3505. Two days later, on 25 December 2004, at 20:04, the Grey mobile activated SABRA2. Forty minutes later Purple 231 also activated that cell,⁶⁹⁶⁷ which was approximately three kilometres north of the airport.⁶⁹⁶⁸

3506. On 10 February 2005, at 17:48, Purple 231 activated SFEIR3. At 18:46, the Grey mobile activated RADOUF3. At 19:07, Purple 231 activated GHADIR3.⁶⁹⁶⁹ A map prepared by Mr Philips, below, shows the distances between the coverage areas of these three cells:

⁶⁹⁶⁵ On pages 3 to 4 of his report, Mr Philips states that 79 pairs of calls fall into the category “would not preclude”; on page 177 he states that 80 calls fall into this category. The Trial Chamber has reviewed the individual call pairs in the report and concludes that the table on pages 3 to 4 of Mr Philips’s report is correct. Exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi), pp 4-5, 177.

⁶⁹⁶⁶ Exhibit P1123; exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi), p. 103; John Edward Philips, T. 9 November 2017, p. 44.

⁶⁹⁶⁷ Exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi), p. 107; John Edward Philips, T. 9 November 2017, p. 48.

⁶⁹⁶⁸ Exhibit P1123.

⁶⁹⁶⁹ Exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi), p. 167; John Edward Philips, T. 9 November 2017, p. 56.

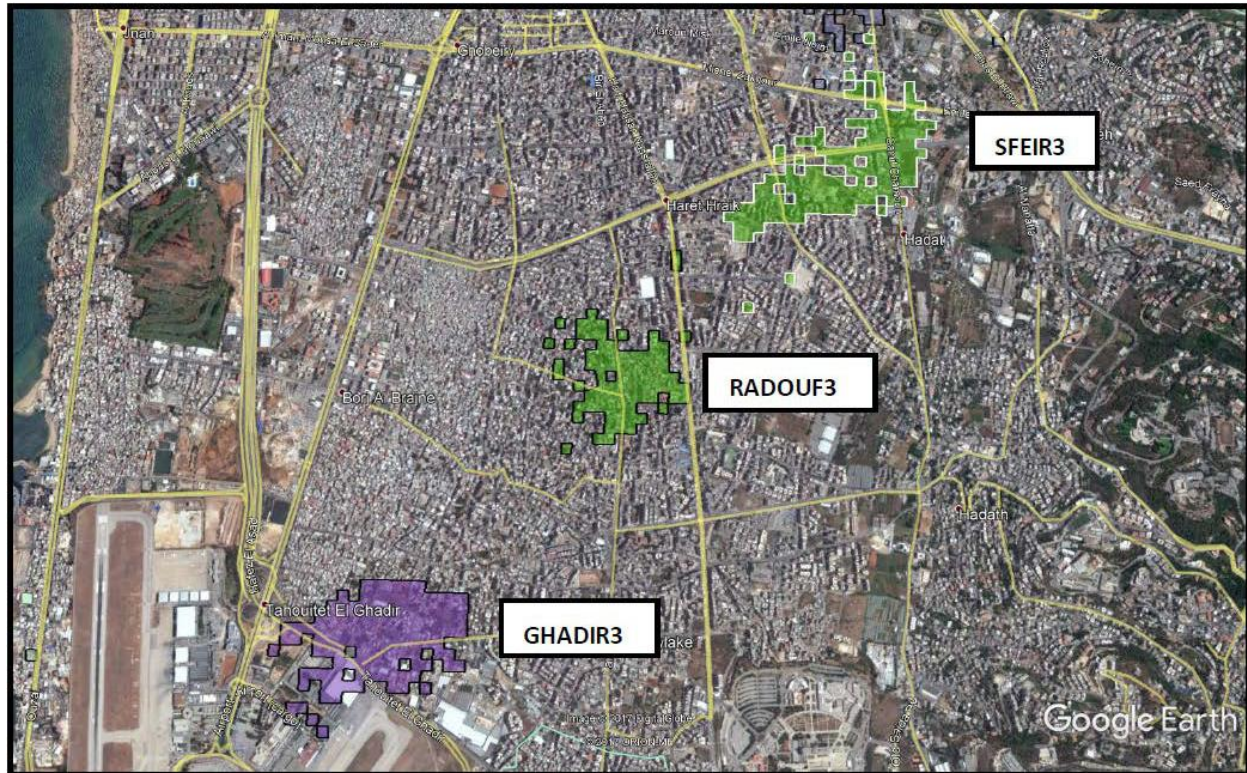


Exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi), p. 167

3507. Three days later, on 13 February 2005, at 13:58 and 14:55 respectively, Purple 231 and the Grey mobile both activated MAROUN3 in south Lebanon, approximately 26.5 kilometres south-east of Tyre.⁶⁹⁷⁰ A map from Mr Philips's report shows the cell and its proximity to Tyre:

⁶⁹⁷⁰ Exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi), p. 170; John Edward Philips, T. 9 November 2017, pp 57-58.

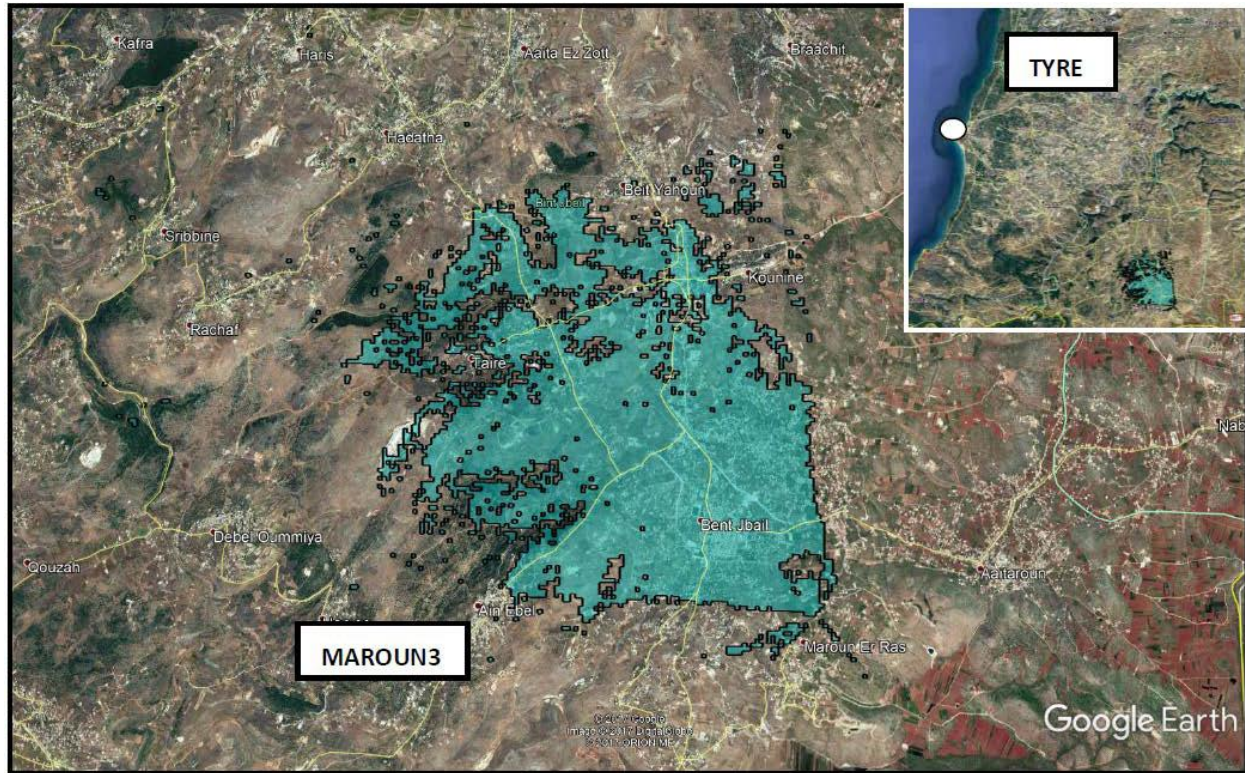


Exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi), p. 170

3508. Mr Philips identified one possible dislocation between Purple 231 and the Grey mobile, on 28 December 2004.

3509. On that day, Purple 231 activated SFEIR3 in south Beirut at 15:00. Two minutes later, the Grey mobile activated BOSTAN2, which was 7.25 kilometres east of SFEIR3. However, less than one minute later the Grey mobile also activated SFEIR3.⁶⁹⁷¹

3510. Mr Philips testified that the Grey mobile likely picked up the signal from BOSTAN2 within the area of SFEIR3, which is an example of ‘anomalous propagation’ that can occur when a signal projects across water or hilly terrain.⁶⁹⁷² He therefore concluded that there was no dislocation

⁶⁹⁷¹ Exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi), p. 114.

⁶⁹⁷² John Edward Philips, T. 9 November 2017, pp 49-51.

between the two mobiles.⁶⁹⁷³ The map below from his report demonstrates the distance between their coverage areas:



Exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi), p. 114

3511. Mr Donaldson did not analyse the Grey mobile as its existence was unknown to him and the Prosecution when he prepared his report and testified in court.

6. Green 071

3512. The attribution of Green 071 to Mr Merhi rests primarily on Mr Philips's analysis of Green 071's co-location with Purple 231 and its co-location with the Grey mobile. The Trial Chamber has also received evidence from Mr Donaldson about Green 071's geographic profile. As noted above, at paragraphs 3419-3420, Mr Donaldson concluded in his attribution report that Mr Merhi was its single user and that it was co-locating with Purple 231. There was no evidence directly connecting this mobile with Mr Merhi.

(a) Subscriber details

3513. The SIM Green 071 was activated as an Alfa post-paid subscription on 15 July 2004 and was deactivated on 23 August 2005.⁶⁹⁷⁴ The subscriber's name was 'Assaf Jamal Mohammad' with the address of 'Al Abyad Street, Fwaz Building, Haret Huriek, Beirut'. The contract for Green

⁶⁹⁷³ Exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi), pp 4, 115, 118, 177; John Edward Philips, T. 9 November 2017, pp 49-51.

⁶⁹⁷⁴ Exhibit P797 (Extract from Alfa subscriber database), p. 2 (ERN D0472165); Witness PRH707, T. 17 February 2016, p. 27.

071's subscription is dated 9 July 2004.⁶⁹⁷⁵ An 'Individual Civil Status Extract' was submitted as proof of identity.⁶⁹⁷⁶ The Lebanese Directorate General of Civil Status had no records for the name listed on the identity document.⁶⁹⁷⁷

(b) Attribution period

3514. Mr Donaldson fixed the attribution period for Green 071 from 24 September 2004 until 7 February 2005.⁶⁹⁷⁸ Call data records are available from 26 July 2004.⁶⁹⁷⁹ From that date until 4 August 2004, Green 071's only contact was with an Alfa service number.⁶⁹⁸⁰ Between 5 and 23 August 2004, Green 071 was inactive.⁶⁹⁸¹ The first call not involving a service number occurred on 24 August 2004.⁶⁹⁸² Green 071's last activity was on 7 February 2005.⁶⁹⁸³

3515. Mr Donaldson thus identified 'a window of potential attribution' from 24 August 2004 until 7 February 2005.⁶⁹⁸⁴ Over this period, Green 071 used the same SIM card and handset.⁶⁹⁸⁵

3516. However, Mr Donaldson concluded that Green 071's contact and geographic profile changed from 24 September 2004, and he adjusted the attribution period accordingly.⁶⁹⁸⁶ Mr Donaldson acknowledged that before 24 September 2004, Green 071's movement was inconsistent with Purple 231.⁶⁹⁸⁷

⁶⁹⁷⁵ Exhibit P405 (Alfa subscription of 18 Green mobiles), p. 1 (ERN 60105004).

⁶⁹⁷⁶ Exhibit P405, p. 3 (ERN 60105006).

⁶⁹⁷⁷ Exhibit P1964 (Records of national identity card and civil status extract), pp 3, 6 (ERNs 60185080, 60185082); exhibit P397 (Document from civil status directorate and letter from Directorate General for Political and Refugees Affairs), pp 2-3 (ERNs 60144932-60144933).

⁶⁹⁷⁸ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 170, 180.

⁶⁹⁷⁹ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 181.

⁶⁹⁸⁰ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 181; exhibit P1205 (Call sequence table for Green 071), p. 1; exhibit P1192 (Statement of Witness PRH707, 11 November 2015), para. 281.

⁶⁹⁸¹ Exhibit P1205, p. 1; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 181.

⁶⁹⁸² Exhibit P1205, p. 1; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 181; Andrew Donaldson, T. 3 July 2017, p. 39.

⁶⁹⁸³ Exhibit P1205, p. 9; Andrew Donaldson, T. 3 July 2017, p. 39.

⁶⁹⁸⁴ Andrew Donaldson, T. 3 July 2017, p. 39.

⁶⁹⁸⁵ IMSI 415010410094920, IMEI 352957007326210; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 175, 192-194; exhibit P1205, pp 1-9; exhibit P797, p. 2 (ERN D0472165).

⁶⁹⁸⁶ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 182-191; Andrew Donaldson, T. 3 July 2017, p. 39; exhibit P1961, slides 104-105.

⁶⁹⁸⁷ Exhibit P1961, slide 105; Andrew Donaldson, T. 28 June 2017, pp 46-47, T. 3 July 2017, pp 39, 50-51, 55.

(c) Contact profile

3517. From 24 August 2004 to 20 September 2004, Green 071 was involved in 190 calls with four mobiles, including five calls with Green 023.⁶⁹⁸⁸ All four mobiles were subscribed using false identity documents.⁶⁹⁸⁹ On 21, 22 and 23 September 2004, Green 071 was inactive.⁶⁹⁹⁰

3518. During the attribution period from 24 September 2004 to 7 February 2005, Green 071 was involved in 43 calls and received three service SMS messages.⁶⁹⁹¹ Green 071's only contact during this period was with Green 023, except for two inbound calls on 24 September 2004 and 1 October 2004. Both calls were from numbers which were among Green 071's previous contacts. The first call, from Green 026, lasted 12 seconds. The second, from Green 290, lasted ten seconds.⁶⁹⁹²

(d) Geographic profile

3519. Between 24 August and 20 September 2004, Green 071 never activated SFEIR3 or BRAJNE2; conversely, these were the top two cells during the attribution period.⁶⁹⁹³

3520. ROUEIS3, HARA2 and MIKAEL2 were in the top five most frequent cells both before and after 24 September 2004, but Green 071 only activated these three cells seven times during the attribution period, compared to activating SFEIR3 and BRAJNE2 30 times during the same period.⁶⁹⁹⁴

3521. Green 071's most frequently activated cells during the attribution period were SFEIR3 (20 activations, 43.48 per cent), BRAJNE2 (ten activations, 21.74 per cent), HARA2 (three activations, 6.52 per cent), MIKAEL2 (two activations, 4.35 per cent) and ROUEIS3 (two activations, 4.35 per cent).⁶⁹⁹⁵ Fourteen out of 20 activations of SFEIR3 occurred between 10:00

⁶⁹⁸⁸ Exhibit P1205, pp 1-7; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 182.

⁶⁹⁸⁹ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 184; exhibit P797, pp 1-2 (ERNs D0472164-D0472165); exhibit P397, pp 3, 5 (ERNs 60144933-60144934).

⁶⁹⁹⁰ Exhibit P1205, p. 7; Andrew Donaldson, T. 3 July 2017, pp 46-47.

⁶⁹⁹¹ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 196; exhibit P1205, pp 7-9.

⁶⁹⁹² Exhibit P1205, pp 7-9; exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 187-188, 196; Andrew Donaldson, T. 3 July 2017, pp 48-49.

⁶⁹⁹³ Andrew Donaldson, T. 3 July 2017, pp 47-48; exhibit P1961, slides 105-106; exhibit P1945 (Additional slides on attribution of Green 071), slide 2.

⁶⁹⁹⁴ Exhibit P1961, slide 105; exhibit P1945, slide 2.

⁶⁹⁹⁵ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 198; exhibit P1961, slides 109-114; Andrew Donaldson, T. 3 July 2017, pp 61-65.

and 20:00. By contrast, eight out of ten activations of BRAJNE2 occurred between 20:00 and 10:00.⁶⁹⁹⁶ Mr Donaldson noted that Purple 231 also activated SFEIR3 more frequently during the day, and BRAJNE2 more frequently at night.⁶⁹⁹⁷

3522. During the attribution period, Green 071 activated cells outside of its main area of concentration in Bourj Brajneeh and Haret Hreik five times.⁶⁹⁹⁸

7. Single user analysis—whether Green 071, Purple 231 and the Grey mobile had a single user

3523. Mr Philips analysed all calls and cell activations by Green 071, Purple 231 and the Grey mobile between 29 September 2004 and 15 February 2005. There were 1832 calls that were put onto a combined call sequence table of the three mobiles. Purple 231 and the Grey mobile each had over 48 per cent of the calls, while Green 071 had around 2.5 per cent of them.⁶⁹⁹⁹

3524. Mr Philips's overall conclusion was that the 'calling characteristics of the three mobiles 'are such that they very strongly support the proposition that they could be used by a single person'.⁷⁰⁰⁰ And:

The analysis undertaken, contains a total of 266 pairs of calls of which ~63% use the same cell for adjacent-within-one hour time calls, whilst the balance of ~37% cells were within distances which could be travelled within the time separation of the 2 calls.

These are 2 very positive factors that would point towards the potential use of the 3 mobile phones by a single person.

Since these 2 'components' collectively account for 100% of the calls, there are patently no exceptions to this where the 3 mobile phones could not be used by a single person.⁷⁰⁰¹

⁶⁹⁹⁶ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 201; Andrew Donaldson, T. 3 July 2017, p. 64.

⁶⁹⁹⁷ Andrew Donaldson, T. 3 July 2017, p. 64.

⁶⁹⁹⁸ On 25 September 2004, Green 071 activated ANQOUN2 in south Lebanon. On 27 September 2004, Green 071 activated MEA2, which covered the airport. On 23 December 2004, Green 071 activated WARDIE3 (end cell WARDIE2), between Quraitem Palace and Parliament in Beirut. On 15 January 2005, Green 071 activated SALOUM2 (end cell SINFIL3) in east Beirut. On 16 January 2005, Green 071 activated SABRA3 north of the airport. Exhibit P1205, pp 7-9; exhibit P1961, slide 109; Andrew Donaldson, T. 3 July 2017, pp 60-61; exhibit P1123.

⁶⁹⁹⁹ Exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi), p. 175.

⁷⁰⁰⁰ Exhibit P2120, p. 4.

⁷⁰⁰¹ Exhibit P2120, p. 190.

3525. The top ten cells activated by Green 071, Purple 231 and the Grey mobile combined, between 24 September 2004 and 15 February 2005, were all in the southern suburbs of Beirut.⁷⁰⁰²

Cell	Times used	% util
SFEIR3	829	45.25%
BRAJNE2	541	29.53%
ROUEIS3	45	2.46%
MIKAEL2	32	1.75%
ROUEIS2	30	1.64%
SFEIR2	30	1.64%
BRAJNE1	22	1.20%
HADATH3	18	0.98%
HARA2	18	0.98%
BIRABD3	13	0.71%

Exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi), p. 19, table 05/03

3526. Mr Philips produced a map in Google Earth which illustrates the concentration of six of the top ten most frequently used cells in Bourj Brajneeh and Haret Hreik. They are all contiguous, and some have pockets of coverage in other cell areas:

⁷⁰⁰² Exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi), pp 18-19, table 05/03; John Edward Philips, T. 9 November 2017, pp 33-34.

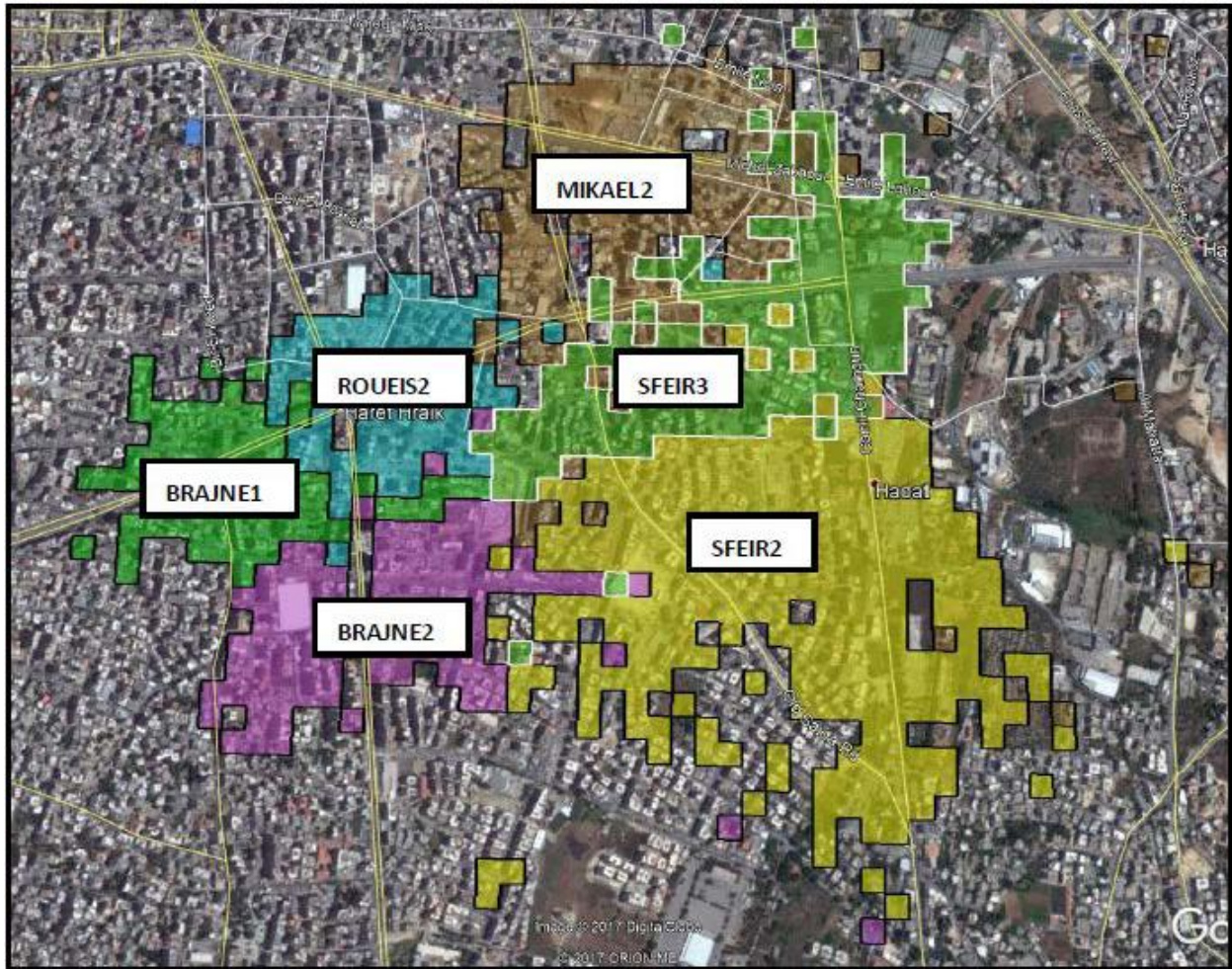


Exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi), p. 21, map 05/02

3527. Another map shows the same six cells but with the addition of HARA2, ROUEIS3, BIRABD3 and HADATH3 in south Beirut:

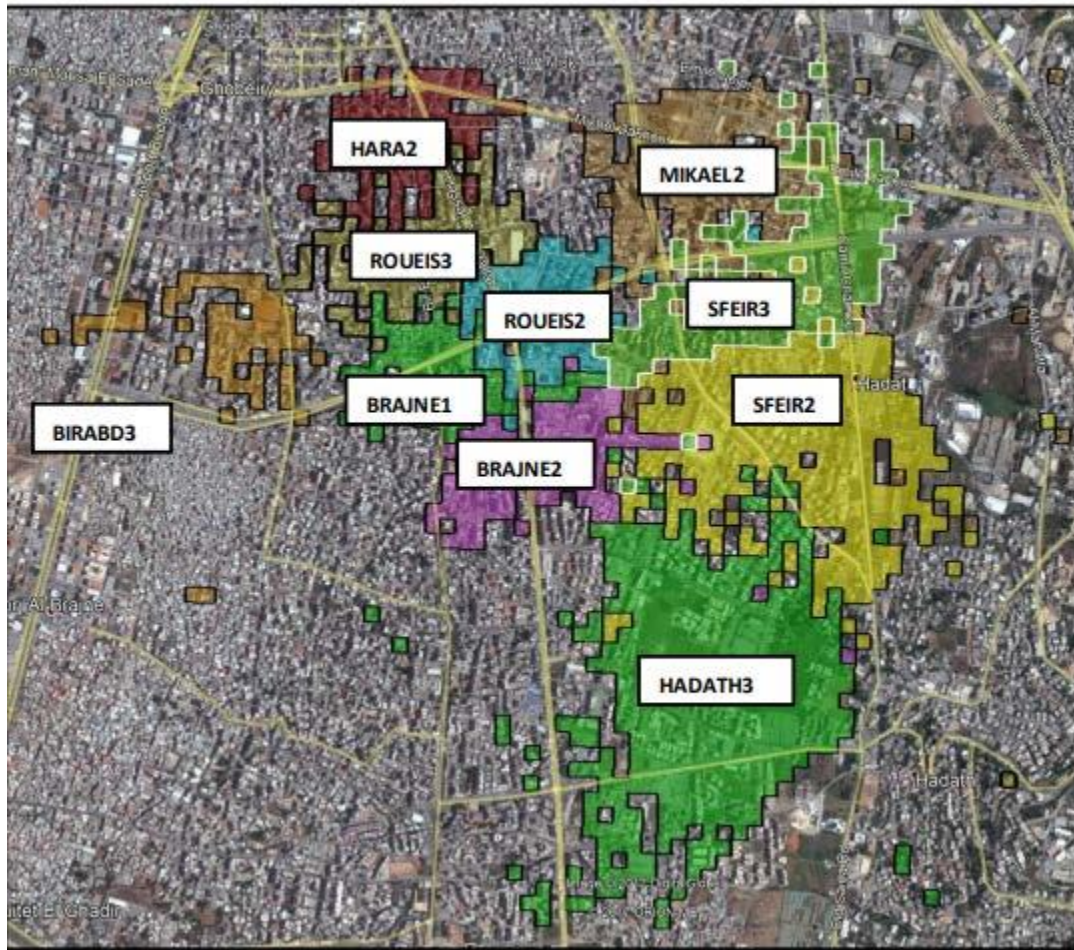


Exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi), p. 22, map 05/03

(a) Green 071 and Purple 231

3528. Both Mr Donaldson and Mr Philips provided evidence on the possible co-location of Green 071 and Purple 231.

3529. Mr Donaldson positively concluded that the two mobiles were co-locating. The Trial Chamber, here, reiterates that Mr Donaldson is not an expert on co-location or cell site analysis, which limits the probative value of his opinion on co-location and hence a single user.⁷⁰⁰³ In ruling

⁷⁰⁰³ Decision on opinion evidence (Mr Donaldson), para. 70; *see* sub-section (A) ‘Single user analysis’, (5) ‘The Trial Chamber’s approach to single user analysis’, above.

on a Defence objection to receiving Mr Donaldson's opinion evidence, the Trial Chamber held that it would not accept Mr Donaldson's unqualified opinion that two mobiles had a single user.⁷⁰⁰⁴

3530. Mr Donaldson, in his attribution report, noted that Green 071 was never in contact with Purple 231.⁷⁰⁰⁵ Green 071 and Purple 231 had one overlapping call on 30 September 2004. The overlapping time was one second.⁷⁰⁰⁶

3531. According to Mr Donaldson, Green 071 and Purple 231 had 22 days of common activity.⁷⁰⁰⁷ He analysed the activity of Green 071 and Purple 231 on 24 September, 25 September, 28 September, 29 September, 30 September, 7 October 2004, 2 January, 12 to 15 January (inclusive) and 7 February 2005 and found no inconsistencies as to their potential co-location.⁷⁰⁰⁸

3532. Mr Donaldson testified that on ten occasions Green 071 and Purple 231 activated cells within ten minutes of each other. Of those, the two mobiles activated the same cell seven times; the remaining three activations involved cell towers less than one kilometre apart.⁷⁰⁰⁹

3533. When extending the time between calls to 20 minutes, Mr Donaldson identified 16 pairs of calls between Green 071 and Purple 231. For 56 per cent of these pairs of calls, the two mobiles activated the same cell. For the remaining pairs of calls, the distance between the cell towers activated by two mobiles was less than one kilometre for 25 per cent, between one and two kilometres for seven per cent, between two and five kilometres for six per cent, and between ten and 20 kilometres for six per cent.⁷⁰¹⁰ Mr Donaldson concluded that Green 071 and Purple 231 had a single user.⁷⁰¹¹

⁷⁰⁰⁴ Decision on opinion evidence (Mr Donaldson), paras 90-97; *see* sub-section (A) 'Single user analysis', (5) 'The Trial Chamber's approach to single user analysis', above.

⁷⁰⁰⁵ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 208; exhibit P1205, pp 1-9.

⁷⁰⁰⁶ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 209, 222; exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi), p. 38; John Edward Philips, T. 9 November 2017, pp 39-40.

⁷⁰⁰⁷ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 205-206.

⁷⁰⁰⁸ Mr Donaldson found no relevant pairs of calls on 26 September, 27 September, 1 October, 2 October, 4 October 2004 and 20 January 2005. Mr Donaldson found 'little additional information' on 6 November, 9 November, 23 December and 27 December 2004. Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), paras 213-238, 247.

⁷⁰⁰⁹ Andrew Donaldson, T. 3 July 2017, pp 96-97; exhibit P1961, slide 119.

⁷⁰¹⁰ Andrew Donaldson, T. 3 July 2017, p. 97; exhibit P1961, slide 120.

⁷⁰¹¹ Andrew Donaldson, T. 28 June 2017, p. 40; *see also* exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 247.

3534. Mr Philips, as the cell site expert, analysed 26 instances in which Green 071 and Purple 231 activated cells within one hour of each other.⁷⁰¹²

3535. Out of these 26 pairs of calls, Mr Philips determined based on the start cell information that on 13 occasions the two mobiles activated the same cell and thus ‘could be co-located’. On 13 occasions the two mobiles activated different cells but within a distance that could have been travelled in the time between the calls, thus falling into the category of ‘would not preclude co-location’. There were no pairs of calls which fell into the categories ‘may preclude co-location’ or ‘would preclude co-location’.⁷⁰¹³ After including end cell information in his analysis, he determined that there were 14 instances in the first category and 12 instances in the second.⁷⁰¹⁴

3536. On Saturday 25 September 2004, Purple 231 and Green 071 activated the same cell in the south of Lebanon.

3537. At 14:21, 15:53 and 17:02 Purple 231 activated ANQOUN2.⁷⁰¹⁵ Anqoun is about 50 kilometres south of Beirut, depending upon how the distance is measured. Two hours later, at 19:18, Green 071 activated the same cell.⁷⁰¹⁶ At 20:12, Purple 231 activated NAAMEH1 to the north of ANQOUN2.⁷⁰¹⁷ The centres of the predicted best server coverage of the two cells, according to Mr Philips, are approximately 29 kilometres apart.⁷⁰¹⁸ At 20:28, Green 071 activated ROUEIS3 in south Beirut.⁷⁰¹⁹ At 20:45, Purple 231 activated BRAJNE2 in south Beirut.⁷⁰²⁰ ANQOUN2 and NAAMEH1 are shown in the map Mr Philips prepared for his court testimony:

⁷⁰¹² Exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi), pp 25-27, 30, 32-36, 46, 110, 120, 131-132, 135, 137, 140, 177.

⁷⁰¹³ On pages 3 to 4 of his report, Mr Philips states that the ratio between these four categories is 13:13:0:0; on page 177 he states that it is 13:12:0:0. Exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi), pp 3-4, 177. The Trial Chamber has reviewed the individual call pairs in the report and concludes that the table on pages 3 to 4 of Mr Philips’s report is correct.

⁷⁰¹⁴ John Edward Philips, T. 20 April 2017, pp 66-67, T. 24 April 2017, p. 71; exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips), slides 77, 502-503.

⁷⁰¹⁵ Exhibit P527, p. 86.

⁷⁰¹⁶ Exhibit P1205, p. 7.

⁷⁰¹⁷ Exhibit P527, p. 86.

⁷⁰¹⁸ Exhibit P2120, p. 27.

⁷⁰¹⁹ Exhibit P1205, p. 7.

⁷⁰²⁰ Exhibit P527, p. 86.

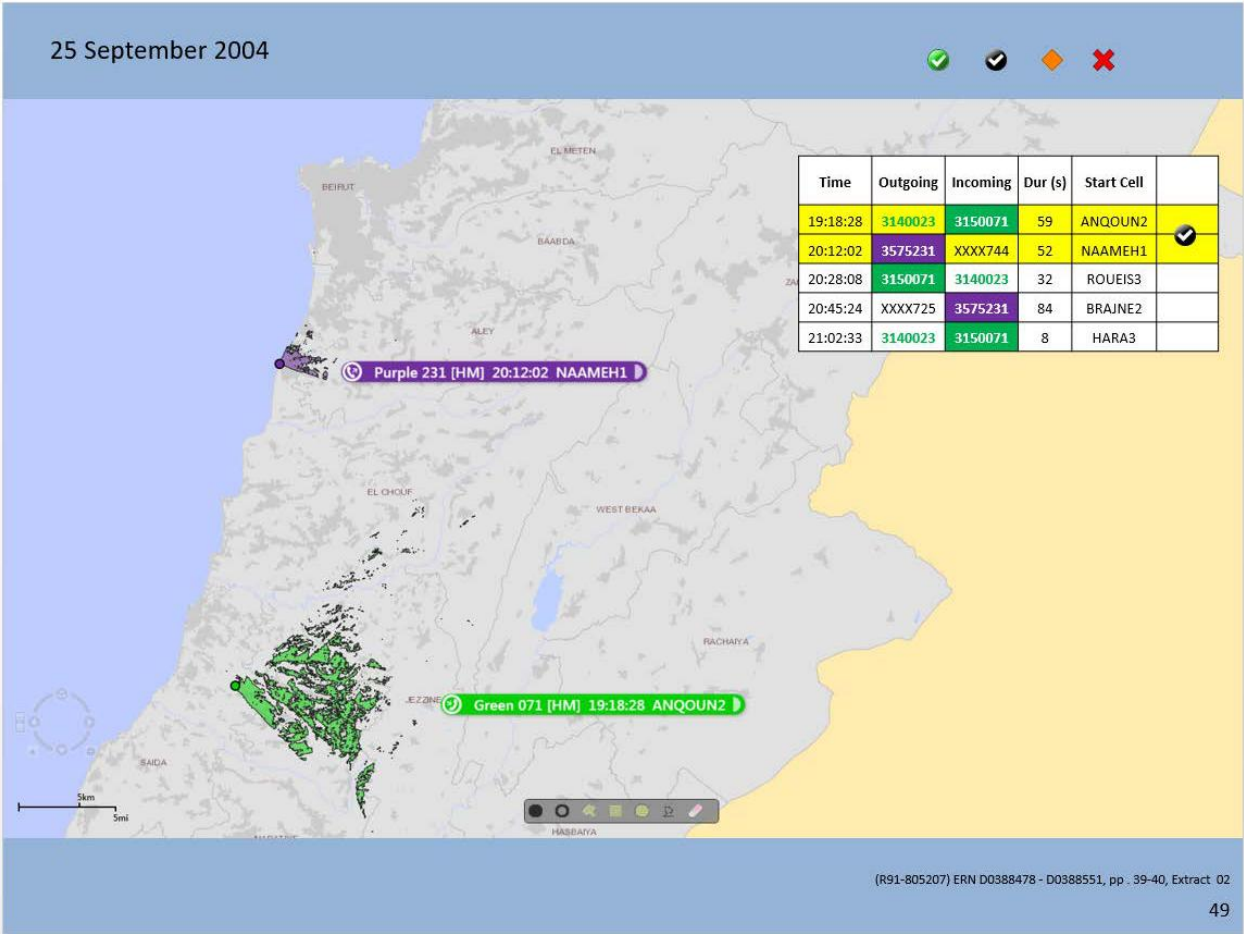


Exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips), slide 49

3538. In his statistical analysis, Mr Philips did not note the common activation by Purple 231 and Green 071 of ANQOUN2 on 25 September 2004 because Green 071 activated the cell more than one hour after Purple 231.

3539. Mr Philips and Mr Donaldson nevertheless testified that the common activation of a cell which was far away from south Beirut and cell use that shows aligned movement of mobiles over time is a ‘positive indicator’ for single user analysis, or does not preclude co-location.⁷⁰²¹

⁷⁰²¹ John Edward Philips, T. 20 April 2017, pp 53-55, T. 9 November 2017, pp 35-37; exhibit P1935, slides 48-52; Andrew Donaldson, T. 3 July 2017, pp 71-73, T. 4 July 2017, pp 3-6; exhibit P1961.1 (Additional PowerPoint presentation regarding Mr Merhi, Andrew Donaldson), slides 2-11; exhibit P2021 (Result of a cell dump analysis for travel between NAAMEH1 and ANQOUN2).

3540. On 12 January 2005, Purple 231 and Green 071 both activated SFEIR3 at 12:54 and 13:27 respectively. Later that day, Green 071 and Purple 231 both activated BRAJNE2 at 20:20 and 20:22 respectively.⁷⁰²²

3541. Three days later, on 15 January 2005 at 18:41, Purple 231 activated ZALKA1 in north-east Beirut. At 18:51:07, Green 071 activated SALOUM2, approximately 4.42 kilometres south-east of ZALKA1. At the end of this call, which lasted 31 seconds, Green 071 activated SINFIL3, 440 metres south of SALOUM2.⁷⁰²³ At 18:52:38, Purple 231 also activated SINFIL3.⁷⁰²⁴ These three cells are shown on the map below from Mr Philips's report:

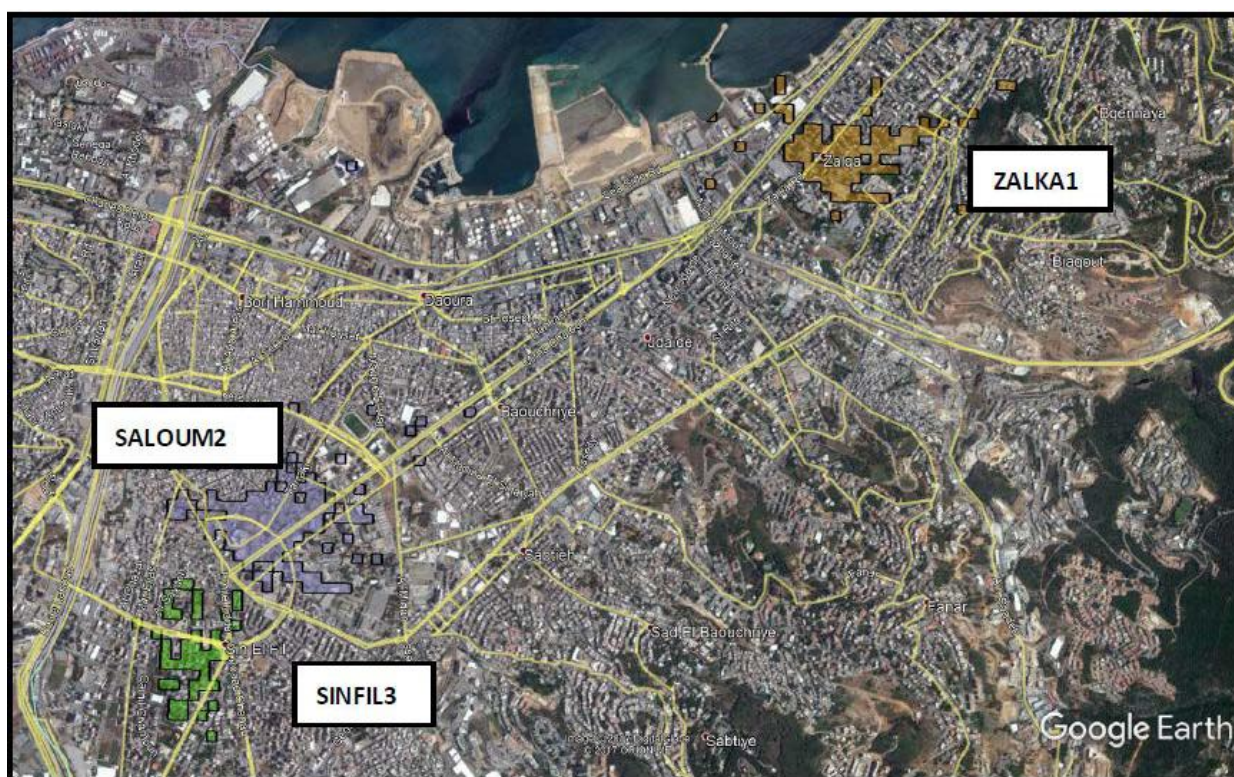


Exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi), p. 140

⁷⁰²² John Edward Philips, T. 20 April 2017, pp 64-65; exhibit P1935, slides 70-73; Andrew Donaldson, T. 3 July 2017, pp 82-84; exhibit P1961.1, slides 13-17; exhibit P1264, p. 8; exhibit P527, p. 110.

⁷⁰²³ These were the distances between the cell towers, *see* above, at para. 2641.

⁷⁰²⁴ Exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi), p. 140; John Edward Philips, T. 20 April 2017, pp 65-68, T. 9 November 2017, pp 53-54; exhibit P1935, slides 75-77; Andrew Donaldson, T. 3 July 2017, pp 84-86; exhibit P1961.1, slides 18-21; exhibit P1264, p. 9; exhibit P527, p. 110.

(b) Green 071 and the Grey mobile

3542. Mr Philips analysed 14 instances of Green 071 and the Grey mobile activating cells within one hour of each other.⁷⁰²⁵

3543. Out of these 14 pairs of calls, Mr Philips determined that Green 071 and the Grey mobile activated the same cell eight times, meaning that they could be co-located. On six occasions they activated cells at a distance which, in Mr Philips's assessment, could be travelled in the time between the calls, under the category, 'would not preclude co-location'. There were no instances where co-location may have been precluded or would have been precluded.⁷⁰²⁶

8. Submissions

(a) Prosecution

3544. The Prosecution submits that Mr Merhi was the user of the Grey mobile at least from 21 February 2004 until 16 April 2005. This is based on the evidence of the witness who was the Grey mobile's primary contact, as well as corroborating evidence in the form of the contact profile and the Grey mobile's text message content.⁷⁰²⁷

3545. Purple 231 is attributable to Mr Merhi at least from 19 December 2002 to 15 February 2005.⁷⁰²⁸ Its contact profile comprised men of a similar age to Mr Merhi, including Mr Ayyash, Mr Oneissi, Mr Sabra, Mr Ali Ammar and Mr Merhi's brothers, with calls to other family members being limited to a two week period.⁷⁰²⁹

3546. The Prosecution also referred to the call records and documents relating to the furniture delivery in November 2004,⁷⁰³⁰ Mr Merhi's brother's funeral and Mr Merhi's wife's trip to Iran

⁷⁰²⁵ Exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi), pp 25-27, 29-30, 42, 66, 110, 120, 142, 144, 165.

⁷⁰²⁶ Exhibit P2120 (Expert report of John Edward Philips – Revised single user analysis, Suspect 3, Mr Merhi), pp 3-4, 177.

⁷⁰²⁷ Prosecution final trial brief, paras 134-139; Prosecution closing submissions, T. 12 September 2018, pp 47, 71-76 (closed session).

⁷⁰²⁸ Prosecution final trial brief, paras 120-123; Prosecution closing submissions, T. 12 September 2018, p. 42.

⁷⁰²⁹ Prosecution final trial brief, paras 120-123; Prosecution closing submissions, T. 12 September 2018, pp 48-49.

⁷⁰³⁰ Prosecution final trial brief, paras 124-133; Prosecution closing submissions, T. 12 September 2018, p. 50.

with their son.⁷⁰³¹ Co-location with the Grey mobile further strengthens the attribution of Purple 231 to Mr Merhi.⁷⁰³²

3547. Mr Merhi, according to the Prosecution, was the user of Green 071 between 24 September 2004 and 7 February 2005.⁷⁰³³ A change in user of Green 071 occurred around 21 to 23 September 2004, which is reflected in changes to its contact and geographic profiles, and in Green 071 starting to co-locate with Purple 231 after this date.⁷⁰³⁴

3548. Green 071, Purple 231 and the Grey mobile had a similar geographic profile, including commonly used cells, in particular BRAJNE2, which provided coverage to Mr Merhi's home.⁷⁰³⁵

3549. From 24 September 2004 to 15 February 2005, Green 071, Purple 231 and the Grey mobile had a single user.⁷⁰³⁶ When used close in time, the mobiles either activated the same or overlapping cell sectors, or cell sectors at distances which could be travelled in the intervening time, such that it would not preclude them being used by a single person.⁷⁰³⁷ Furthermore, all three mobiles showed common use of cells outside of the main area of concentration in south Beirut, particularly in south Lebanon.⁷⁰³⁸ There were no inconsistencies in the single user analysis between Green 071, Purple 231 and the Grey mobile.⁷⁰³⁹

3550. Finally, Green 071 was never in contact with Purple 231 or the Grey mobile.⁷⁰⁴⁰

(b) Merhi Defence

3551. The Merhi Defence submitted that the Prosecution had not proved that Mr Merhi was using the three mobiles attributed to him.

3552. The Prosecution did not prove his residence. No-one positively identified him, and in particular the identification photograph relating to his residence in the Gardenia Building is

⁷⁰³¹ Prosecution closing submissions, T. 12 September 2018, p. 51.

⁷⁰³² Prosecution closing submissions, T. 12 September 2018, pp 60-62.

⁷⁰³³ Prosecution final trial brief, paras 140-144; Prosecution closing submissions, T. 12 September 2018, p. 42.

⁷⁰³⁴ Prosecution final trial brief, paras 140-144; Prosecution closing submissions, T. 12 September 2018, pp 42-46.

⁷⁰³⁵ Prosecution final trial brief, paras 146-148; Prosecution closing submissions, T. 12 September 2018, pp 58-59.

⁷⁰³⁶ Prosecution final trial brief, paras 149-150, 155; Prosecution closing submissions, T. 12 September 2018, p. 61.

⁷⁰³⁷ Prosecution final trial brief, para. 151; Prosecution closing submissions, T. 12 September 2018, pp 61-62.

⁷⁰³⁸ Prosecution final trial brief, paras 152-153; Prosecution closing submissions, T. 12 September 2018, pp 62, 67-68.

⁷⁰³⁹ Prosecution final trial brief, para. 154.

⁷⁰⁴⁰ Prosecution final trial brief, para. 149.

weak.⁷⁰⁴¹ The Prosecution had not proved that the photograph in evidence was actually that of Mr Merhi, as it is an undated identity card application photograph of poor quality.⁷⁰⁴² Witness 647 did not positively identify Mr Merhi as the man living in the Gardenia Building between 2001 and 2006.⁷⁰⁴³ The Prosecution could not positively prove that Mr Merhi lived there before 2010.⁷⁰⁴⁴ Witness 688's evidence about Mr Merhi's father's sons has no probative value as he did not positively identify Mr Merhi from a photograph.⁷⁰⁴⁵

3553. Further, regarding the Grey mobile, the person who regularly called it did not identify Mr Merhi by the name Hassan Habib Merhi, but by another.⁷⁰⁴⁶ The Prosecution failed to investigate that other name and that the named person is not Mr Merhi.⁷⁰⁴⁷

3554. The Merhi Defence submits that the Prosecution has not proven the attribution of Green 071 and Purple 231 to Mr Merhi beyond reasonable doubt.⁷⁰⁴⁸

3555. In relation to Purple 231, the Merhi Defence submits that the SMS content of Purple 231 is a factor weighing against attributing Purple 231 to Mr Merhi, because the users of Purple 231 and mobile 474 clearly knew each other.⁷⁰⁴⁹

3556. Further, the lack of contact between mobile 6091 and Purple 231 is a negative indicator for the attribution of Purple 231 to Mr Merhi. This is particularly because there was only one call between the two mobiles, in September 2003, and if mobile 6091 was used by Mr Merhi's wife, more contact would have been expected between the mobiles.⁷⁰⁵⁰

3557. The furniture delivery in November 2004 does not prove that Mr Merhi was the user of Purple 231. The Prosecution's theory on this is flawed because none of the documents bear the number Purple 231 and no one, including the delivery drivers, recognised Mr Merhi from a photograph. Witness 651 was not even there. The Prosecution did not ask the delivery drivers to

⁷⁰⁴¹ Merhi Defence final trial brief, paras 157-158.

⁷⁰⁴² Merhi Defence final trial brief, paras 159-161, referring to exhibit P683.

⁷⁰⁴³ Merhi Defence final trial brief, paras 162-165.

⁷⁰⁴⁴ Merhi Defence final trial brief, para. 166.

⁷⁰⁴⁵ Merhi Defence final trial brief, para. 167.

⁷⁰⁴⁶ Merhi Defence final trial brief, paras 169-172.

⁷⁰⁴⁷ Merhi Defence final trial brief, paras 173-186.

⁷⁰⁴⁸ Merhi Defence final trial brief, paras 212-362; Merhi Defence closing submissions, T. 18 September 2018, p. 91.

⁷⁰⁴⁹ Merhi Defence final trial brief, paras 313-314.

⁷⁰⁵⁰ Merhi Defence final trial brief, paras 315-326.

identify from photographs who took delivery of the items. Also, the furniture was delivered to the sixth floor of the building when Mr Merhi allegedly lived on its seventh floor.⁷⁰⁵¹

3558. The Prosecution also failed to explain the significance of SFEIR3, Purple 231's dominant cell.⁷⁰⁵² The only evidence about Mr Merhi's profession was tendered by the Defence, stating that he became an associate in 1994 in a company 'MEIDCO' that was set up in El-Ghobeiri, in 1993. Mr Donaldson, however, had not seen the document and thus did not consider this in analysing Mr Merhi's daily movements, although he acknowledged that it might have been useful in analysing Mr Merhi's professional activities.⁷⁰⁵³ The Prosecution 'failed to establish Mr Merhi's daily activities in cell sector SFEIR3' and in 'the absence of any indication of the possible links between Merhi and SFEIR3, the Chamber's findings must be the one most favourable to the accused'.⁷⁰⁵⁴

3559. The Prosecution failed to prove attribution of Green 071.⁷⁰⁵⁵ It failed to consider the reasonable possibility that Green 071's user did not have another 'coloured' mobile, as for example with its case regarding Mr Badreddine, to whom the Prosecution attributed personal and sequential mobiles and a Green one, but not a Purple, Red, Blue or Yellow mobile. Mr Donaldson attempted to attribute Green 071 to a mobile that had already been identified as suspicious, 'to the exclusion of all other phones that might constitute a reasonable possibility'.⁷⁰⁵⁶

3560. Mr Donaldson's methodology was flawed and he never explained the methodology used to determine that Purple 231 was the only viable candidate for co-location.⁷⁰⁵⁷ He was vague and said that he had confined himself to an analysis of 'intelligent candidates'.⁷⁰⁵⁸

3561. The Prosecution provided no explanation of Mr Donaldson's methodology, meaning that the Trial Chamber cannot assess the probative value and the weight to be given to the attribution, 'as it cannot test or judge its limitations, its shortcomings or its inaccuracies'. The methodology

⁷⁰⁵¹ Merhi Defence final trial brief, paras 327-332.

⁷⁰⁵² Merhi Defence final trial brief, paras 333-336.

⁷⁰⁵³ Merhi Defence final trial brief, para. 335, referring to exhibit 3D442, and Mr Donaldson's testimony, T. 29 September 2017, p. 90, T. 3 October 2017, pp 19-20. The company is actually 'MEDCO', not 'MEIDCO', namely Middle East Idea Company S.A.R.L. (MEDCO).

⁷⁰⁵⁴ Merhi Defence final trial brief, para. 336.

⁷⁰⁵⁵ Merhi Defence final trial brief, paras 218-235.

⁷⁰⁵⁶ Merhi Defence final trial brief, paras 221-222.

⁷⁰⁵⁷ Merhi Defence final trial brief, paras 223-234.

⁷⁰⁵⁸ Merhi Defence final trial brief, para. 224.

the Prosecution used for cells dumps is flawed and produced results that were too limited, making it ‘impossible to discover other numbers offering an alternative to Purple 231’.⁷⁰⁵⁹

3562. Mr Donaldson’s cell dumps were inadequate, and using the methodology he employed for the Red network analysis required three cumulative hypotheses, namely, three calls at different times, whether the two mobiles used the same cells, and within one and a half hours after the call of interest. He would only select candidates falling within the three cell dumps. But this ‘method is deficient and incomplete’, and it eliminates numerous potential candidates from the outset. The chances that the mobile of interest and the potential candidate made three calls in three different cells in two hours are very small.⁷⁰⁶⁰

3563. Further, Mr Philips confirmed that Mr Donaldson’s methodology was ‘inappropriate’. Mr Philips explained how a cell dump, even of an hour before and after, although ‘likely to give more complete results than Donaldson’s methodology, poses a problem in that it excludes all other potential candidates who did not make any calls in the given cell and in the set time frame’.⁷⁰⁶¹ Two mobiles may have a single user and not activate the same cell in a fixed time of plus or minus an hour.⁷⁰⁶² Further, ‘an absence of activation can also constitute an absence of incompatibility in terms of co-location’, thus, the more the period is broadened ‘the greater the chance of selecting all the potential viable candidates’.⁷⁰⁶³

3564. Moreover, the Prosecution has failed to prove beyond reasonable doubt that Green 071 and Purple 231 had a single user.⁷⁰⁶⁴ The so-called change of user on 24 September 2004 is essential to attribute Green 071 to Purple 231’s user.⁷⁰⁶⁵ However, the Prosecution’s case was replete with ambiguity, and Mr Donaldson himself admitted that the evidence was not unequivocal.⁷⁰⁶⁶

3565. There was no change of IMEI which would be expected with a change of user. Mr Philips had said that it was unusual for a ‘mission phone’ to be recycled, namely, to pass it on without a

⁷⁰⁵⁹ Merhi Defence final trial brief, paras 225-226.

⁷⁰⁶⁰ Merhi Defence final trial brief, paras 227-229.

⁷⁰⁶¹ Merhi Defence final trial brief, para. 230, and heading, ‘The expert Philips confirmed that Donaldson’s methodology is inappropriate’.

⁷⁰⁶² Merhi Defence final trial brief, para. 231.

⁷⁰⁶³ Merhi Defence final trial brief, paras 232-233.

⁷⁰⁶⁴ Merhi Defence final trial brief, paras 236-279, and heading, ‘The Prosecution fails to prove beyond reasonable doubt its single user theory for Green 071 and Purple 231’.

⁷⁰⁶⁵ Merhi Defence final trial brief, para. 237.

⁷⁰⁶⁶ Merhi Defence final trial brief, paras 238-239.

change of IMEI or SIM.⁷⁰⁶⁷ The argument that there was a three day gap in use between 21 and 23 September 2004, thus indicating a change in user, is ‘absurd’ in light of Green 071’s numerous periods of inactivity.⁷⁰⁶⁸

3566. It was also illogical that Green 026 and Green 290 would call Green 071 in error after 24 September 2004, if they had been part of a common group before, as the previous user would have told them to stop calling Green 071.⁷⁰⁶⁹

3567. The progressive reduction in the number of contacts post 24 September 2004 does not demonstrate a change in user, because the user is in contact with Green 023, attributed to Mr Badreddine, before and after that date. Green 071 has registered ‘a reduction in contacts because the users of certain phones have no further phone activity. Green 071 does not initiate this change in its contact profile, it is subject to it’.⁷⁰⁷⁰ And the geographical profile before and after that date do not differ significantly.⁷⁰⁷¹

3568. The reduction in the use of the SFEIR3 and BRAJNE2 cells is of little significance as this occurred only from October 2004 onwards. The Prosecution is unable to exclude the reasonable possibility that the user of Green 071 simply moved house. The cells activated are not far apart and in south Beirut.⁷⁰⁷² The ‘alleged change of user of Green 071 defies all logic. It is contrary to and incompatible with the theory of the mission phone advanced by Philips and Platt.’⁷⁰⁷³

3569. There is therefore a reasonable possibility that it did not change user. In the alternative, the Prosecution failed to prove the change as of 24 September 2004 and not as of a later date. Mr Philips concluded that it was a mission phone as of 13 October 2004. But on the Prosecution’s theory more than half of its 46 calls (26) were before that date.⁷⁰⁷⁴

⁷⁰⁶⁷ Merhi Defence final trial brief, para. 241.

⁷⁰⁶⁸ Merhi Defence final trial brief, para. 242.

⁷⁰⁶⁹ Merhi Defence final trial brief, para. 246.

⁷⁰⁷⁰ Merhi Defence final trial brief, para. 247.

⁷⁰⁷¹ Merhi Defence final trial brief, para. 248.

⁷⁰⁷² Merhi Defence final trial brief, paras 249-250.

⁷⁰⁷³ Merhi Defence final trial brief, para. 251.

⁷⁰⁷⁴ Merhi Defence final trial brief, paras 252-259.

3570. The Prosecution also did not rule out that Green 071 changed user more than once. It was more logical that Green 071 and Purple 231 had different users.⁷⁰⁷⁵

3571. Furthermore, Green 071's and Purple 231's cell activations on 25 September 2004, when both activated ANQOUN2 in south Lebanon in the afternoon and then moved to Beirut, show that the mobiles had separate users.⁷⁰⁷⁶ On that day, Purple 231 had activated ANQOUN2 at 14:21, 15:53 and 17:02, while Green 071 had activated it two hours later at 19:18. Purple 231 then activated NAAMEH1 in south Beirut at 20:12, followed by Green 071 activating ROUEIS3 at 20:28.⁷⁰⁷⁷

3572. The distance between the ANQOUN and NAAMEH towers is 27 kilometres, but Mr Donaldson did not know whether it was possible to travel that distance in 53 minutes, nor what the road conditions or traffic density were that day. Mr Donaldson did not know precisely where the mobiles were and ANQOUN2 has an area of approximately 100 square kilometres. This means that there is a reasonable possibility that the actual distance travelled to activate the two towers was far greater than the 27 kilometres between them, and could not have been travelled in 53 minutes between the two calls.⁷⁰⁷⁸

3573. Using the Prosecution's electronic presentation of software, the Merhi Defence had prepared maps of the likely movements of Purple 231 and Green 071 between 20:28 and 23:48.⁷⁰⁷⁹ Two of these, exhibits 3D430.2 and 3D430.3 show a more logical movement than Mr Donaldson's, 'indicating that different users probably used Green 071 and Purple 231' that day.⁷⁰⁸⁰ The two exhibits are extracted below:

⁷⁰⁷⁵ Merhi Defence final trial brief, paras 260-262.

⁷⁰⁷⁶ Merhi Defence final trial brief, paras 262-268.

⁷⁰⁷⁷ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 214.

⁷⁰⁷⁸ Merhi Defence final trial brief, paras 267-268.

⁷⁰⁷⁹ Exhibit 3D430 (Map showing movement of Green 071 and Purple 231 on 25 September 2004); exhibit 3D430.1 (Interactive map showing movement of Green 071 and Purple 231 on 25 September 2004); exhibit 3D430.2 (Alternative interactive map showing movement of Green 071 and Purple 231 on 25 September 2004); exhibit 3D430.3 (Alternative map showing movement of Green 071 and Purple 231 on 25 September 2004).

⁷⁰⁸⁰ Merhi Defence final trial brief, para. 264.

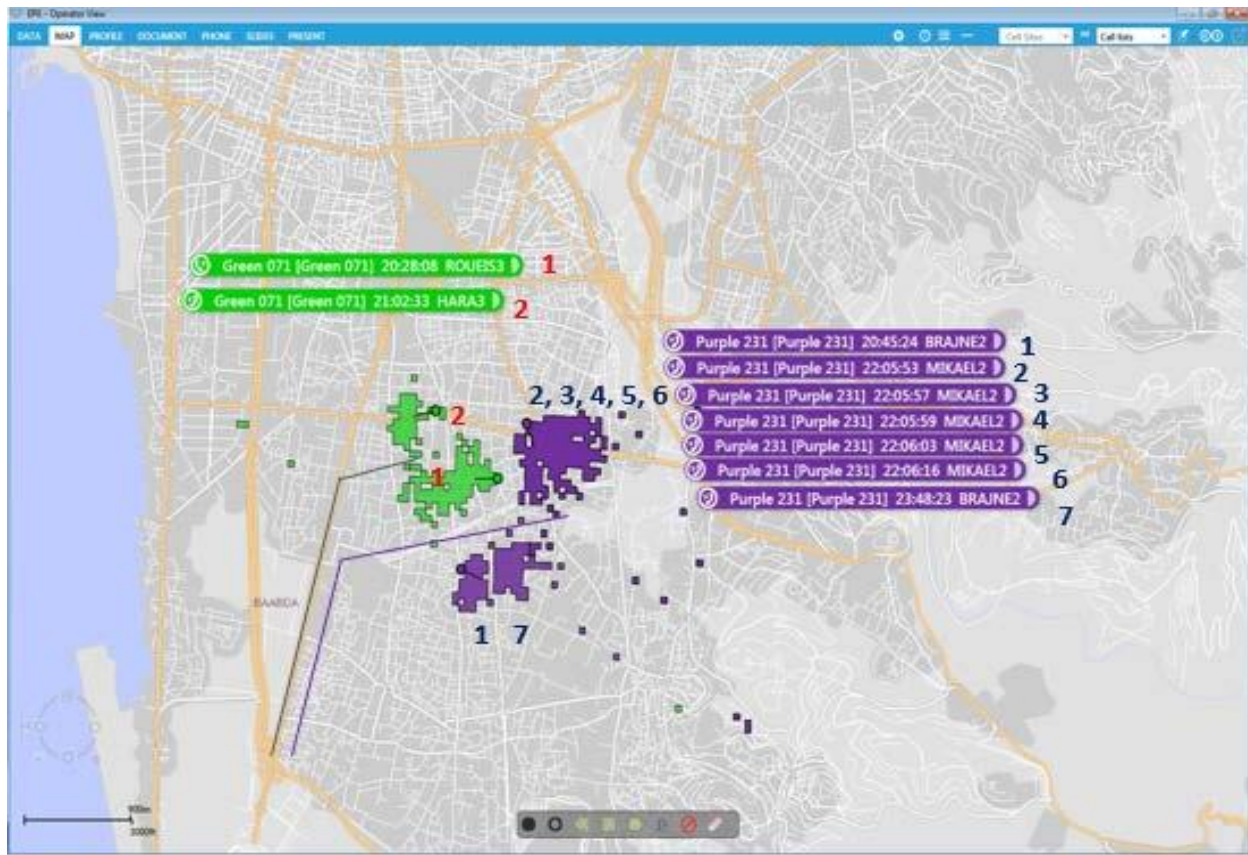


Exhibit 3D430.2 (Alternative interactive map showing movement of Green 071 and Purple 231 on 25 September 2004)

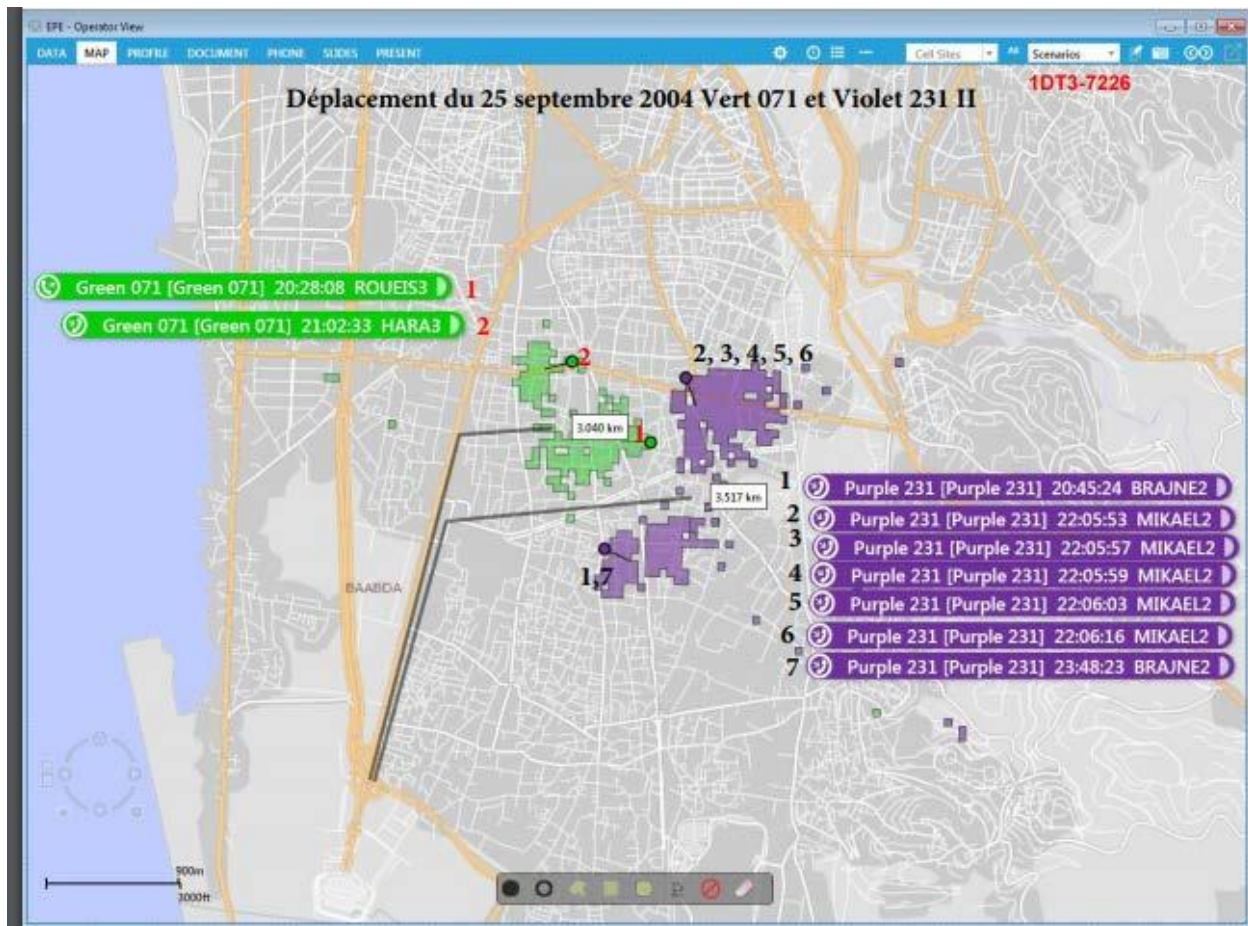


Exhibit 3D430.3 (Alternative map showing movement of Green 071 and Purple 231 on 25 September 2004)

3574. The Merhi Defence also highlights that the attribution of Green 071 is based on minimal data.⁷⁰⁸¹ Purple 231 and Green 071 behaved differently, which leads to the conclusion that they had different users.⁷⁰⁸² Finally, Green 071 co-located with mobiles other than Purple 231.⁷⁰⁸³

⁷⁰⁸¹ Merhi Defence final trial brief, paras 269-272.

⁷⁰⁸² Merhi Defence final trial brief, paras 273-279.

⁷⁰⁸³ Merhi Defence final trial brief, paras 280-287.

3575. The Merhi Defence also challenges the reliability of the predicted best server coverage of BRAJNE2 which the Prosecution alleges included Mr Merhi's home,⁷⁰⁸⁴ and the methodologies of Mr Donaldson and Mr Philips regarding attribution of Green 071 and Purple 231 generally.⁷⁰⁸⁵

3576. The attribution of Purple 231 was based essentially on third party contacts without attribution, and there was an absence of primary sources, including SMS messages.⁷⁰⁸⁶ Mr Donaldson was selective in choosing extracts of documents and failing to include contradictory statements or testimonies. Relying on the ICTY in *Martić* as legal authority, where an ICTY Trial Chamber had attached no weight to a Prosecution analyst's views, conclusions and analyses, the Merhi Defence submits that this Trial Chamber should likewise place no weight on his attribution method.⁷⁰⁸⁷

3577. Mr Donaldson's 'attribution of Green 071 is based entirely on expertise for which he is not recognised'.⁷⁰⁸⁸ He 'based almost his entire attribution of Green 071 to Purple 231 on the alleged co-location between the two', and went too far. His opinion should be rejected. No weight should be given to his report or testimony.⁷⁰⁸⁹

3578. Regarding Mr Philips, his opinion was 'vitiating by the lack of relevant information he received' from the Prosecution, and he was thus unable to provide a reasoned opinion on the attribution of the two mobiles to Mr Merhi.⁷⁰⁹⁰ Mr Philips was not told that the Prosecution alleged a change in users of Green 071 and Green 023, nor does he know how Green 071 was attributed to Purple 231 nor the method used to do this.⁷⁰⁹¹ This filtering affected the results, including his conclusions attributing Green 071 to Mr Merhi.⁷⁰⁹² Mr Philips's opinion has no value and no weight should be given to it.⁷⁰⁹³

⁷⁰⁸⁴ Merhi Defence final trial brief, paras 337-359; Merhi Defence closing submissions, T. 19 September 2018, pp 8-13.

⁷⁰⁸⁵ Merhi Defence final trial brief, paras 189-211, 223-235; Merhi Defence closing submissions, T. 19 September 2018, pp 13-16.

⁷⁰⁸⁶ Merhi Defence final trial brief, paras 191-192.

⁷⁰⁸⁷ Merhi Defence final trial brief, paras 198-199, referring to *Martić* Trial Judgment, para. 35.

⁷⁰⁸⁸ Merhi Defence final trial brief, heading at para. 201.

⁷⁰⁸⁹ Merhi Defence final trial brief, paras 203-204.

⁷⁰⁹⁰ Merhi Defence final trial brief, para. 205.

⁷⁰⁹¹ Merhi Defence final trial brief, para. 207.

⁷⁰⁹² Merhi Defence final trial brief, para. 209.

⁷⁰⁹³ Merhi Defence final trial brief, para. 211.

9. Findings

(a) Introduction

3579. In opening its case against Mr Merhi, Prosecution counsel described him as a ‘grey man’ operating in the shadows, submitting that:

Mr. Merhi was born in Beirut on the 12th of December, 1965, and was 39/40 during the material time. He was married with five children and lived in South Beirut. There is no evidence that he was employed and there is no evidence as to the source of his income. There are no records of any bank accounts in his name or in the names of his wife or children in Lebanon. He is known to pay for items such as school and university fees for his children in cash or by banker’s drafts for which no bank account is required.

In my opening statement in January I referred to Mr. Merhi as someone having many things in common with his co-conspirators, a grey man who understood how to operate in the shadows without drawing attention to himself and who is trusted by his co-conspirators with whom he shared many common and strong bonds.⁷⁰⁹⁴

3580. The Trial Chamber is unaware of any evidence that Mr Merhi was habitually known to pay for things in cash or by banker’s drafts. There was no evidence of Mr Merhi’s work, beyond a corporate document produced by the Merhi Defence showing that in August 1994 Mr Merhi became a partner, via the transfer of shares, in Middle East Idea Company S.A.R.L. (MEDCO), a company founded in August 1993. An abstract of the company’s memorandum of association listed as its objects that:

The Company shall engage in the organization and holding of all types of exhibitions, design, enhancement, implementation and execution of general engineering and commercial projects, import and export, commercial representation, advertising and insurance services, property development and the purchase and sale of real estate.⁷⁰⁹⁵

3581. This is of course neither evidence of an occupation nor its location. And Mr Merhi assumed his interest in the company in August 1994, some ten years before the attribution period in the amended consolidated indictment.

⁷⁰⁹⁴ Prosecutor’s opening statement regarding Hassan Habib Merhi, T. 18 June 2014, p. 69 (Mr Cameron).

⁷⁰⁹⁵ Exhibit 3D442.

3582. The Trial Chamber received strong proof that Mr Merhi owned real estate in Beirut and in Ain Qana. It also received into evidence Mr Merhi's passport application, dated 17 October 2009, attached to which was an officially certified photograph. Nothing was placed before the Trial Chamber to suggest that this official document contained any errors. An undated identity card application in the same name, stamped and signed by the *mukhtar* of El-Bachoura, and accompanied by the same photograph (plus finger and thumb prints), is also in evidence. In this sense, the Prosecution's opening statement may somewhat overstate Mr Merhi's apparent invisibility.

3583. The Trial Chamber can only find that Mr Merhi was using Green 071 if it is satisfied beyond reasonable doubt that he was also using Purple 231 and or the Grey mobile. This can only be established on the Prosecution's case by its evidence that the three mobiles were co-locating in such a fashion that the only reasonable conclusion available from the evidence is that the mobiles were together with a single user.

3584. To establish that Mr Merhi was using Purple 231 the Prosecution presented evidence of its usage patterns and compared it with mobile 6091 which is attributed to the Merhi family. The evidence for a single user of Purple 231 and Green 071, which is based solely on co-location and cell activations, is not strong. It is, however, strengthened by the addition of the Grey mobile, for which the evidence that Mr Merhi was its user is undeniable.

(b) Mobile 6091

3585. The evidence linking the Merhi family to mobile 6091 is overwhelming. The evidence associating Mr Merhi and his family with living at plot 2501 in Bourj-El-Barajneh from about 30 July 2001 onwards is also strong. From this date, the electricity to plot 2501 was subscribed in Mr Merhi's name. Witness 647 and some documents also tie Mr Merhi to this address until 2012.

3586. The evidence establishes that members of the Merhi family used mobile 6091 from 1 January 2003 to 31 December 2007. The number was included on administrative documents which named Mr Merhi, namely, an income tax form and a 'Rebuild Lebanon' claim from September 2007. The number is associated with the names of Mr Merhi's children on documents from the University of Balamand from July to September 2005 and June 2008, and a service provider's records from December 1999.

3587. Mr Merhi's home lies within the predicted best server coverage of mobile 6091's most frequently activated cell, Touch's Saquiet_Hadath_2_A, which accounted for 64.55 per cent of activations. This can be consistent with normal experience of mobile usage. The predicted best server coverage of the second most frequently activated cell, Sarba_B, which accounted for 5.88 per cent of activations, included the town of Ain Qana where Mr Merhi also owned a property from May 2003. Mobile 6091 also frequently activated other cells in this area, particularly at weekends. The call sequence table for the number has 10,209 entries for voice calls and SMS between 1 January 2003 and 31 December 2007.

3588. Its contact profile provides compelling evidence of the mobile's use by the Merhi family. During the attribution period, it was in contact 2,554 times with a number linked to the sister of Mr Merhi's wife, 584 times with the husband of Mr Merhi's sister and 564 times with Mr Merhi's son. Many other frequently contact numbers are linked to members of Mr Merhi's family. Text messages show that the mobile was used by Mr Merhi's children but belonged primarily to their mother. That Mr Merhi's wife was not the exclusive user of mobile 6091 is evident from the continued use of this mobile while she was in Iran between 29 September and 6 October 2004.

3589. The furniture delivery in November 2004 to the Merhi family home associates both mobiles 6091 and Purple 231 with the furniture, the address, the delivery and each other. The same people taking delivery of the furniture, under the name 'El-Hajj Hassan Merhi' to El-Roueiss, Hay Al-Abiad, above Qaser-El-Riyada Gym, Gardenia building, Sixth floor', were using both mobile 6091 and Purple 231. Purple 231 twice called the delivery company, once to arrange the initial delivery and the second time to arrange for a replacement item. Purple 6091 was given as the contact number. The evidence associating the four things on this particular occasion: name, address and the two mobile numbers, is incontrovertible.

3590. The Merhi Defence submission that the evidence of the furniture delivery does not prove that Mr Merhi was using Purple 231 is correct to the extent that this piece of evidence alone does not do so. But when taken in combination with other pieces of evidence it assumes some strength.

3591. The obvious question arising is of what other explanation could there be for someone using Purple 231 to twice organise the furniture delivery to someone called Hassan Merhi at the Merhi family residence, giving the number mobile 6091, and signing the invoice as Hassan Merhi, other

that it was Mr Merhi. The Trial Chamber can see no other inference available from the evidence. Further, the failure of busy delivery drivers to remember anything—and based on reviewing delivery records when interviewed at least eight years later—about delivering a mattress to an apartment, including who may have been present when the furniture was delivered, is hardly surprising.

3592. The Trial Chamber can therefore safely conclude that mobile 6091 was used by the Merhi family during both the attribution and the pleaded indictment period.

(c) The Grey mobile

3593. The evidence that Mr Merhi was using the Grey mobile is unequivocal. It was essentially a mobile used by Mr Merhi to contact only one person over a lengthy period, of at least eight years. Mr Merhi was identified from a passport application photograph and numerous texts. The fact that Mr Merhi was not known by the name ‘Hassan Habib Merhi’ and therefore was not identified by that name, as submitted by the Merhi Defence, is irrelevant. Although he was using a different name, it was the same person.

3594. The evidence provides direct and unambiguous proof that Mr Merhi was using the Grey mobile. The Merhi Defence neither cross-examined anyone about this nor challenged the identification of him from a passport application photograph. Contrary to the Merhi Defence’s submissions, the Prosecution had no need to attempt to locate someone of the name that Mr Merhi was using once he had already been positively identified from a photograph and text messages. There was no investigative failure by the Prosecution in this respect.

3595. The Trial Chamber finds that Mr Merhi used the Grey mobile from 21 February 2004 to 16 April 2005. This covers the indictment period of Thursday 11 November 2004 to Monday 14 February 2005. The named subscriber for the Grey mobile is not Mr Merhi, but the subscriber record includes patently false information that is contradicted by reliable evidence. This evidence, it is emphasised, was not challenged by the Merhi Defence. Counsel for Mr Merhi chose not to challenge it when they had the opportunity to do so. Presumably this was a forensic decision to the effect that doing so would not advance the Merhi Defence case.

3596. A further piece of evidence pointing to its use by Mr Merhi is its geographic profile in that its predominant cell activations were near Mr Merhi's residence in south Beirut.

(d) Purple 231

3597. Purple 231 was subscribed under the name 'Imad Ibrahim'. There was no evidence of whether this person existed, but names were not required for pre-paid Alfa subscriptions, and the Trial Chamber received much evidence of subscriber names and details not matching the reality of who was actually using the mobile.

3598. The furniture delivery to the Merhi family residence on 24 and 26 November 2004, as noted immediately above, provides convincing evidence linking Mr Merhi to Purple 231. Someone twice called the furniture deliverer from that number to have deliveries made to the Merhi residence. The name 'Hasan Merhi' was noted. The deliverer called the number back. The deliverer then passed on the details to the manufacturer, including the customer's name, Hasan Merhi, and the mobile contact number 6091. This provides a strong association between Mr Merhi and Purple 231 during the pleaded indictment period. This alone, of course, cannot prove that this mobile was Mr Merhi's, nor that he was its single user. It can only associate Mr Merhi with the mobile.

3599. On 20 June, 27 August, 10 October and 6 November 2004, Purple 231 and mobile 6091 activated cells in similar locations outside of Beirut, including remote locations in south Lebanon. While Mr Merhi was not the exclusive user of mobile 6091, the common travel nevertheless provides some reasonable circumstantial evidence linking him to Purple 231.

3600. When Mr Merhi's wife and son travelled to Iran in September 2004, Purple 231 activated cells serving Beirut International Airport less than one hour before they went through passport control. When they returned on 6 October 2004, Purple 231 activated an internal airport cell less than ten minutes before they passed passport control. Around the same time, mobile 6091 received a call from a number linked to Mr Sobhi Mohammed Sakr, who travelled on the same flights as Mr Merhi's wife and son, consistent with them travelling together. Mobile 6091 also activated a cell that covered the airport at this time.

3601. On 3 May 2003, the day when Mr Merhi purchased land in Ain Qana, Purple 231 activated NABATI3, which provided coverage to the town of Nabatiyeh, south of Ain Qana.

3602. The Trial Chamber has considered whether other members of Mr Merhi's family, particularly his wife and children, may have used Purple 231.

3603. However, the geographic and contact profiles of Purple 231 work against this. Purple 231's geographic profile can be distinguished from mobile 6091, the family mobile. Purple 231's most frequent cell was SFEIR3 during the day—from 10:00 to 20:00—and BRAJNE2 on Sundays and at night, from 20:00 to 10:00.

3604. Mr Philips concluded, based on this, that Purple 231's user lived in BRAJNE2's predicted coverage area and may have worked in SFEIR3's. By contrast, mobile 6091's most frequent cell was BRAJNE2 throughout the day. The Trial Chamber agrees that Mr Philips's conclusion is a plausible explanation, although it notes that it has no evidence of whether or where or when Mr Merhi worked.

3605. The call sequence table for Purple 231's calls and SMS messages has 3,212 entries between 19 December 2002 and 15 February 2005. Its top two most frequent contacts were Mr Merhi's brother-in-law, with 674 contacts, and Mr Merhi's brother, with 292 contacts. The sixth was with the Alfa helpline with 209 contacts. Purple 231 also had 204 contacts with Purple 018 used by Mr Sabra, 194 with Purple 095 used by Mr Oneissi, 15 with mobile 165 used by Mr Ayyash and ten with mobile 935 used by Mr Ayyash. The only contact with Mr Merhi's father, his sisters and mobile 6091 were outbound calls in a two-week period in September and October 2003.

Co-location with the Grey mobile

3606. Mr Merhi used the Grey mobile almost exclusively to communicate with one person. The Trial Chamber is convinced beyond reasonable doubt that he was its sole user during its attribution period. The issue is whether the Prosecution has proved that it co-located with Purple 231 in such a manner that the only reasonable conclusion is that Mr Merhi was the single user of both mobiles.

3607. Mr Philips analysed the cell site evidence and concluded that Purple 231 and the Grey mobile activated the same cell within one hour of each other 147 times. On a further 79 occasions

these two mobiles activated cells which in Mr Philips's assessment could be travelled within the time between the calls and therefore would not preclude co-location.

3608. Significantly, he identified only one instance, on Tuesday 28 December 2004, when Purple 231 and the Grey mobile may have dislocated. However, given that the Grey mobile activated SFEIR3 one minute after activating BOSTAN2, he convincingly explained that the Grey mobile likely picked up the signal of BOSTAN2, outside of Beirut, while it was in the area of SFEIR3 in south Beirut. Having carefully reviewed the totality of Mr Philips's evidence, the Trial Chamber accepts this explanation.

3609. To summarise Mr Philips's conclusions on possible co-location between the Grey mobile and Purple 231, he found:

- in September 2004, seven instances of 'could be co-located', and two of 'would not preclude' co-location;
- in October 2004, 29 instances of 'could be co-located', and 11 of 'would not preclude' co-location;
- in November 2004, 24 instances of 'could be co-located', and 19 of 'would not preclude' co-location;
- in December 2004, 31 instances of 'could be co-located', and 19/20 of 'would not preclude' co-location and 1 to 0 of 'would preclude'. This was on 28 December, with an explanation for this immediately above;
- in January 2005, 33 instances of 'could be co-located', and 21 of 'would not preclude' co-location; and
- in February 2005, 23 instances of 'could be co-located', and six of 'would not preclude' co-location.

3610. This totals 225/226 instances when the mobiles either could co-locate or Mr Philips concluded that co-location was not precluded. A significant number of these pairs of calls—namely a call between Purple 231 and another number, either preceded or followed by a call from the Grey mobile to another number—either activated the same cell, such as SFEIR3 or BRAJNE2,

or an adjacent cell. Mr Philips's calculation criteria was of the calls occurring within an hour of each other, and connecting to cells in which the distance between the centre of their predicted best server coverage plots could be travelled within the time between the calls.

3611. Mr Philips's analysis has provided convincing evidence that the two mobiles could be co-locating. Added to this is the direct and compelling evidence that Mr Merhi was using the Grey mobile, and the strong circumstantial evidence connecting him with Purple 231. When these three strands of evidence are considered in their totality, the Trial Chamber is satisfied the only conclusion reasonably available is that Mr Merhi was using the two mobiles and that they were co-locating for that reason. The Trial Chamber is of the view that this confluence of circumstances is beyond coincidence. Therefore, and considering this evidence in its totality, the Trial Chamber finds that Mr Merhi was using both Purple 231 and the Grey mobile. The Trial Chamber is therefore satisfied beyond reasonable doubt that Mr Merhi was using Purple 231. The strongest piece of evidence comes from that identifying the Grey mobile as Mr Merhi's.

3612. The issue then is whether he was the single user of both mobiles. The evidence that the Grey mobiles was his and his alone is overwhelming. Purple 231 was often used close in time and geographical proximity to the Grey mobile.

3613. The user of this mobile was evidently not someone who was using it to send texts. The SMS messages sent from mobile 474 were clearly intended for someone else. There is no other plausible explanation on the evidence. However, there were numerous texts between the Grey mobile and one other mobile, demonstrating the differences between the two mobiles. The Trial Chamber cannot make any findings on whether Purple 231 had the alleged characteristics of a 'cadre' mobile, as Mr Donaldson suggested. It has no comparative evidence from which it could draw such a conclusion.

3614. The Trial Chamber has carefully examined Purple 231's call sequence table, and has found no usage patterns suggesting that Mr Merhi was not its user. Further, the Trial Chamber has seen no evidence from which it could conclude that someone other than Mr Merhi was using Purple 231 that would displace this conclusion.

3615. The Trial Chamber has closely scrutinised the calls involving both mobiles in the indictment period, and a strong pattern emerges of the two mobiles being frequently used in the

same cell within a short period of time. When this is considered with the evidence associating Mr Merhi with Purple 231 and the unchallenged evidence that he was exclusively using the Grey mobile, it leads to one conclusion, namely, that Mr Merhi was the single user of both mobiles in that period.

3616. The Trial Chamber is therefore satisfied beyond reasonable doubt that Mr Merhi was the single user of Purple 231 in the pleaded indictment period, namely from Wednesday 22 December 2004 to Monday 14 February 2005.

(e) Green 071

3617. On the Prosecution's case, Green 071 is attributed to Mr Merhi from 24 September 2004 until 7 February 2005. Beyond its geographical profile and its apparent co-location with Purple 231 and the Grey mobile, no evidence connects Mr Merhi with Green 071. The fact that Green 071 was contacting Green 023, which in turn was contacting Green 300—a mobile attributed to Mr Ayyash, whose personal mobiles Purple 231 was contacting—cannot be used to prove that Mr Merhi was using Green 071.

3618. The Alfa subscription records do not assist in attributing Green 071 because it was subscribed using a false identity document. Green 071's contacts before the attribution period, Green 300 and Green 023, were also subscribed with false identities.

3619. Whether Mr Merhi was using Green 071 rests solely upon its co-location with Purple 231 and the Grey mobile. There is some reasonable evidence that the three mobiles *could* be co-locating.

3620. Whether this is sufficient to find that the three—which includes Green 071—had a single user, however, is a different issue and is the next, and ultimate, step. The challenge is determining this based on the extremely limited number of Green mobile calls, a mere 43, over a four and a half months period, and then on only 23 days, of which 22 had possible candidate calls for co-location. Complicating this is the smaller number of calls within the indictment period itself, of only fourteen candidate calls made on nine days in the 43-day period from 27 December 2004 until Monday 7 February 2005 inclusive.

3621. Mr Philips, unlike Mr Donaldson, would never categorically state, based on cell site evidence alone, that two or more mobiles *had* a single user. That is the Trial Chamber's role as the fact-finder. To determine this, the Trial Chamber must have first found that Mr Merhi was the single user of Purple 231 and the Grey mobile at all relevant times.

3622. Mr Donaldson, however, in his report and under the heading, **CO-LOCATION BETWEEN GREEN 3150071 AND 3575231**, boldly asserted that Purple 231 and Green 071 were co-locating and hence had a single user in Mr Merhi.⁷⁰⁹⁶ Of Green 071, he concluded that this 'number is attributable through co-location and geographic profile to the user of 3575231, which in turn is attributable to Hassan Habib Merhi'.⁷⁰⁹⁷ But the evidence of this is weak as it comes from only 23 calls over 22 separate days.

3623. And, regarding the Merhi Defence's arguments based on *Martić* that Mr Donaldson's evidence has no probative value, the Trial Chamber, for the reasons expressed at paragraphs 2623-2647 has given little weight to Mr Donaldson's conclusions on whether Purple 231 and Green 071 had a single user.⁷⁰⁹⁸

3624. The Trial Chamber therefore must closely examine Green 071's geographic profile and co-location with other two mobiles for evidence supporting its attribution to Mr Merhi.

i. Possible change in user between Monday 20 and Friday 24 September 2004

3625. The starting point is the Prosecution's argument that the mobile changed user in September 2004. Mr Donaldson analysed Green 071's geographic and contact profiles and concluded that its user changed between Monday 20 and Friday 24 September 2004. This was based on a change in cell site activation and calls before and after those dates. His view was that its geographical profile

⁷⁰⁹⁶ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), pp 75-90, and para. 179.

⁷⁰⁹⁷ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 240.

⁷⁰⁹⁸ The relevant passage at para. 35 in the *Martić* Trial Judgment, though, is probably distinguishable on its facts. In *Martić*, the analyst was an organiser of and participant in several Prosecution missions to examine documents in the Croatian State Archives. In his testimony and statement he 'presented views on and drew conclusions from the information contained in the documents although he neither possesses expertise in this area nor personal knowledge of the information'. This is footnoted to a Prosecution filing acknowledging that the witness 'lacks expertise'. Mr Donaldson, on the other hand, was actively involved in analysing the evidence in the case, seeking to draw analytical conclusions, and had the requisite expertise to do this, but up to a point.

after 24 September became more consistent with Purple 231's. The Merhi Defence, on the other hand, suggests that if he is wrong on this, the two mobiles did not have a single user.

3626. From Friday 24 September 2004, Mr Donaldson observed a reduction in the number of mobiles contacted, a reduced call volume and a change in the main cells activated. Of significance was that Green 071 never activated SFEIR3 or BRAJNE2 before 24 September 2004. These two cells, however, became Green 071's top two cells during the attribution period, from 24 September onwards. These factors in combination, in his view, establish that Green 071 changed user between 20 and 24 September 2004.

3627. In his report, Mr Donaldson stated that the 'beginning of this attribution period marks an observable change in the number's contacts and geographical profile'.⁷⁰⁹⁹ The Trial Chamber partly accepts his evidence on this point. The mobile was clearly communicating with other mobiles within a closed network, and Green 071's calling and cell activation patterns did change from 24 September 2004. But not as significantly as Mr Donaldson suggests.

3628. Looking at its contact geographical profile, ROUEIS3, HARA2 and MIKAEL2 were in the five most activated cells both before and after 20 September. After 20 September, Green 071 activated these three cells for a combined seven times, while it activated SFEIR3 20 times and BRAJNE2 10 times. Between 3 August and 20 September 2004, by contrast, there were 50 activations of ROUEIS2, 33 of HARA2 and 24 of MIKAEL2.

3629. But Green 071 was involved in only 43 calls (plus three incoming service texts) after 24 September 2004, making a total of 46 cell activations, including end cell. The top five cells activated both before and after that date, as the Merhi Defence points out, were all in south Beirut. The network coverage maps show that these six cells are all contiguous and cover an area of around less than two square kilometres. This is shown on the two Google Earth maps extracted above, that show some evident cell coverage overlap.

⁷⁰⁹⁹ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 180.

3630. In this respect, it is important here to reiterate Mr Philips's words of caution expressed in his report on the possible co-location of the three mobiles:

It must be remembered that the best coverage plots are computer predictions of the areas over which any cell is estimated to provide best server coverage.

There will also be areas outside of the best server coverage plot where the cell also provides some best server coverage, but are not shown, and also some areas within the plot where the cell does not provide the best server coverage.⁷¹⁰⁰

3631. This change in geographical profile alone could not prove a change in user, especially as there is no evidence of where in the cell the mobile was when activating it, and because of the contiguous and overlapping nature of the cells activated. Mr Philips also testified that the coverage of cells extends beyond the networks' best server coverage plots. The Trial Chamber therefore does not find the marginally altered geographical profile—based on 46 later cell activations on 23 days over four and a half months—particularly persuasive.

3632. Similarly, the change in the contact profile, of itself too, cannot prove a change in user. Between 24 August and 20 September 2004 Green 071 had 190 contacts. These were exclusively with Green 026, 080, 290 and 023, and receiving service SMS.

3633. However, from Friday 24 September onwards, with the exception of two brief inbound calls from Green 026 and Green 290—respectively, on 24 September and 1 October 2004—it communicated exclusively with Green 023. Its first call with Green 023 was on 25 August 2004 and it had four further calls with that number before 24 September 2004. Its remaining 51 calls with Green 023 were between Friday 24 September and Monday 7 February 2005.

3634. Before Monday 20 September 2004, Green 071 communicated with Green 026, Green 280, Green 290 and Green 023. It did so after that date as well, but made and received far fewer calls and almost all were with Green 023. Taking this fact alone, of itself it could suggest a change of user. Or, just as plausibly, the user could have stopped communicating with the other mobiles, based on whatever the reason was for the network's existence.

⁷¹⁰⁰ Exhibit P2120, p. 14, paras 3.2.2.4-3.2.2.5.

3635. Putting the two profiles, geographical and contact, together shows that something changed after 20 September 2004. As noted, a change in user is one possibility; another is a change in the reason for contacting others in the closed network. Or the user, as the Merhi Defence suggests, could simply have moved house. And the number 071—that is the Alfa network SIM 071—did not change handset as shown by using the same IMEI. Further, the Prosecution presented no evidence of who could have been an alternate user of Green 071 before 20 September 2005 based on analysing call patterns, and co-location with any ‘non-network’ mobiles.

3636. The Trial Chamber is of the view that the case for a change in user from Monday 20 September 2004, while credible, is not that strong. However, it does not necessarily logically follow, as the Merhi Defence suggests, that if mobile’s user did not change from 24 September, then Mr Merhi could not have been its single user. The Trial Chamber had no evidence of Green 071’s possible co-location with any other mobiles before 20 September, whose geographical and contact profile it could examine, in order to draw a firm conclusion that its user had changed from that date.

ii. Co-location between Green 071 and Purple 231, and Green 071 and the Grey mobile

3637. Without the Grey mobile any connection between Green 071 and Purple 231 is very weak. It is based on 22 calls over a period of less than five months, in which the cell site expert Mr Philips could place it no higher than having consistency ‘with being used by the same person over the period analysed’. Consistency certainly does not equate to proof beyond reasonable doubt, and without the Grey mobile, the Trial Chamber would be unable to reach that threshold of proof.

3638. The most convincing evidence for attributing Green 071 to Mr Merhi is of cell activations that were close in time to some of those of Mr Merhi’s two personal mobiles, Purple 231 and the Grey mobile. These, in Mr Philips’s view, are consistent with co-location. Or, as he put it in his report, the calling characteristics are such as to ‘very strongly support the proposition that they *could* be being used by a single person’ (*italics* added). Mr Philips did not say ‘*were* being used by a single person’.

3639. Examining the attribution period, Green 071 was involved in only 43 calls and receiving three service SMS. But the mobile was active, in the sense of making calls, and receiving calls and

texts on only 23 days. On 22 of these days Purple 231 was also active. The Grey mobile was active on all but three of the 23 days, namely 28, 29 and 30 September 2004. Sunday 16 January 2005 was the only day on which Purple 231 did not activate any cells, while on that day, the Grey mobile received two texts and made one call between 18:36 and 18:37, activating SFEIR3.

3640. The Trial Chamber, as explained above, is satisfied that Mr Merhi was using the Grey mobile and Purple 231. Based on this finding, the Trial Chamber can move to compare, in a manner that Mr Philips could not—as he could not make such a determination—whether Green 071 was co-locating with those two mobiles. And if so, whether the three mobiles had Mr Merhi as their single user.

3641. The list below shows the total number of possible co-locations between Green 071 and either of the two personal mobiles that Mr Merhi was using. Regarding the possible co-location of Purple 231 and Green 071, Mr Philips concluded in summary that there were:

- in September 2004, seven instances of ‘could be co-located’, and nine of ‘would not preclude’ co-location;
- in October 2004, one instance of ‘could be co-located’, and one of ‘would not preclude’ co-location;
- in November 2004, no instances of either;
- in December 2004, one instance of ‘would not preclude’ co-location;
- in January 2005, five instances of ‘could be co-located’, and two of ‘would not preclude’ co-location; and
- in February 2005, no instances of either.

3642. Mr Philips also concluded, in summary form, regarding possible co-location between the Grey mobile and Green 071, that there were:

- in September 2004, two instances of ‘could be co-located’, and three of ‘would not preclude’ co-location;

- in October 2004, one instance of ‘would not preclude’ co-location;
- in November 2004, two instances of ‘could be co-located’;
- in December 2004, one instance of ‘would not preclude’ co-location;
- in January 2005, three instances of ‘could be co-located’, and one of ‘would not preclude’ co-location; and
- in February 2005, one instance of ‘could be co-located’.

3643. In totality, he identified 40 examples over the wider attribution period of 24 September 2004 to 7 February 2005.

3644. During the more confined indictment period of Thursday 11 November 2004 to Monday 14 February 2005, Mr Philips found only nine instances where the two sets of mobiles—namely, the Grey mobile and Green 071, and Purple 231 and the Grey mobile—‘could be co-located’ and five in the category of ‘would not preclude’ co-location. These fourteen calls are broken down into two on 27 December, eleven in January 2005, and one on Green 071’s last day of use, 7 February 2005.

3645. The sample size in the indictment period was tiny—a mere fourteen calls made on nine days in a 43-day period—comprised of one day in December 2004, seven in January 2005 and one in February 2005. The vast majority of possible co-locations that Mr Philips analysed involved not Green 071, but rather the Grey mobile and Purple 231. This is as opposed to the three being together or in their other possible combinations of Green 071 and the Grey mobile, and Green 071 and Purple 231.

3646. Mr Philips found that on 26 occasions in the attribution period Green 071 activated cells within one hour of Purple 231. Fourteen of these activated the same cell and the other 12 activated cells that, in Mr Philips’s opinion, could be travelled within the time between the calls. Mr Philips did not identify any pairs of calls that were inconsistent with the mobiles having a single user.

3647. Mr Donaldson, by contrast, analysed pairs of calls within ten minutes of each other and found seven instances when Green 071 and Purple 231 activated the same cell. On three occasions these two mobiles activated cell towers which were less than one kilometre apart.

3648. Furthermore, he concluded that Green 071's geographic profile was similar to Purple 231's. SFEIR3 and BRAJNE2 were the top two cells activated for Green 071 and Purple 231. Both mobiles, in his view, tended to use SFEIR3 during the day and BRAJNE2 at night. For Green 071, 14 out of 20 activations of SFEIR3 occurred between 10:00 and 20:00. Eight out of ten activations of BRAJNE2 occurred between 20:00 and 10:00. Similarly, SFEIR3 was the top cell activated for Purple 231 between 10:00 and 20:00 from Monday to Saturday, whereas BRAJNE2 was the top cell outside of those hours. Mr Merhi's home falls within the predicted best server coverage of BRAJNE2. His thesis was that the mobiles' single user lived in the BRAJN2 cell area and worked in that of SFEIR2.

3649. This assessment, however, does not really hold for Green 071's 20 activations of SFEIR3. Of its 20 activations of that cell, eight were before midday—including one at 00:29 on 29 September—seven were between midday and 18:00, and the remaining five occurred after 18:00. Thus, eleven of the 20 occurred between 18:00 and 06:00.

3650. Of Green 071's ten activations of BRAJNE2 from 24 September 2004 onwards, six were in the evening (after 19:18), and four were in the morning (between 06:19 and 10:45). This is more consistent with Mr Donaldson's theory, but does not explain the SFEIR3 activations 'out of hours', so to speak.

3651. The Trial Chamber accordingly does not see the same pattern here as argued by Mr Donaldson, which suggest activations of BRAJNE2 in the evening when Mr Merhi was at home, and his activating SFEIR3 when he was out working somewhere else. No real pattern has emerged for Green 071's activations of SFEIR3 from which positive conclusions one way or another can be drawn.

3652. The Trial Chamber has examined the pairs of calls identified by Mr Philips as falling into the two categories of 'could be co-located' and 'would not preclude co-location'. These are:

- In September 2004:
 - 1) on 24 September, between 17:35 and 17:47, and activating SFEIR3, Purple 231 made a call, Green 071 received a call and the Grey mobile received a call;

- 2) on 25 September, at 19:18 and activating ANQOUN2 in south Lebanon, Green 071 received a call. At 20:12, activating NAAMEH1 which lies between that cell and Beirut, Purple 231 made a call; the geographical centres of the two cells are about 29 kilometres apart.

At 20:28, Green 071 made a call, activating ROUEIS3 in south Beirut. Activating BRAJNE2, Purple 231 received a call at 20:45. At 20:50, and activating the same cell, the Grey mobile made a call. Twelve minutes later, at 21:02, Green 071 received a call, activating HARA3, whose geographical centre is about 1.5 kilometres from BRAJNE2's;

- 3) on 26 September, in the evening and within a five minute period, both Green 071 and the Grey mobile made calls, activating adjoining cells in Haret Hreik;
- 4) on 27 September, in the morning and within seven minutes, Green 071 received a call and the Grey mobile made a call, activating SFEIR3;
- 5) on 28 September, and within 42 minutes, Green 071 and Purple 231 activated SFEIR3 and MATAR6, cells that are around five kilometres apart. Almost six hours later, from 14:07 to 16:20, both activated SFEIR3 six times. Between 18:48 and 19:33 the two mobiles activated SFEIR2 and SFEIR3 five times;
- 6) on 29 September, Green 071 and Purple 231 activated SFEIR2 and SFEIR3 three times over an hour and ten minutes, mid-afternoon;
- 7) on 30 September, Green 071 and Purple 231 activated BRAJNE2 within two minutes in the late evening;

- In October 2004:

- 8) on 4 October, Green 071 activated ROUEIS3 at 14:07 for a call, and at 14:52, activating nearby SFEIR3, the Grey mobile received a call. The cells' geographical centres are about 1.25 kilometre distant; and
- 9) on 7 October, Green 071 and Purple 231 activated SFEIR3 in calls five minutes apart from 14:09, followed by Purple 231 activating nearby HADATH3 at 15:07.

- In November 2004:

10) on 6 November, Green 071 and the Grey mobile activated BRAJNE2 to make calls two minutes apart, at 10:34 and 10:36; and

11) on 9 November, Green 071 and the Grey mobile activated SFEIR3 to receive texts at 14:55 and 15:23.

- In December 2004:

12) on 27 December, Green 071 made a call and activated BRAJNE2 at 09:56. At 10:22, 26 minutes later, the Grey mobile received a text and activated BIRABD3. The geographical centres of these cells are around 1.2 kilometres apart.

- In January 2005:

13) on Sunday 2 January, at 19:14 the Grey mobile made a call, and at 19:18 Green 071 made a call, with both activating BRAJNE2;

14) on Wednesday 12 January, at 20:20 Green 071 received a call, and at 20:22, Purple 231 made a call, with both mobiles activating BRAJNE2;

15) on Thursday 13 January, at 19:48 and 19:50 and both activating SFEIR3, Purple 231 received and Green 071 made a call;

16) on Friday 14 January, Green 071 and Purple 231 activated BRAJNE2 in making calls four minutes apart, at 19:55 and 19:59;

17) on Saturday 15 January, Purple 231 activated ZALKA1 to receive a text at 18:41, Green 071 made a call and activated SALOUM2 at 18:51, followed by Purple 231 making a call at 18:52, activating SINFIL3. The geographical centres of ZALKA1 and SALOUM2 are about 3.5 kilometres apart, and there is about 750 metres between those of SALOUM2 and SINFIL3; and

18) on Thursday 20 January, in a period of 55 minutes from 06:01, and activating SFEIR3, Green 071 made a call, the Grey mobile received and sent a text, and Green 071 received a call. Later, at 14:38 and 14:47, activating HARA2 and

BRAJNE2 respectively, Green 071 received a text, and the Grey mobile made a call. The cell centres are around 1.25 kilometres apart.

- In February 2005:

19) on Monday 7 February, activating BRAJNE2 at 10:45, Green 071 made a call, and 58 minutes later the Grey mobile received a service SMS.

3653. For these activations, the Trial Chamber has only added in the activation of either the Grey mobile or Purple 231 that was the closest in time to one of Green 071's cell activations. This is because the combination of all three is unnecessary for analysing the possible co-location of Green 071 with either of Mr Merhi's personal mobiles. For analytical purposes, as Mr Merhi was using both personal mobiles, it does not matter which co-locates with Green 071, nor in what order.

3654. The Trial Chamber is of the view that the Prosecution could not establish co-location between Purple 231 and Green 071 without the Grey mobile. Similarly, the Prosecution could not rely only on a combination of the cell activations of Green 071 and the Grey mobile to prove that they were co-locating and had a single user. Only the combination of the Grey mobile and Green 071, and Purple 231 and Green 071, could prove that Mr Merhi's personal mobiles were co-locating with the Green network mobile.

3655. On one hand, it is clear that on some days there is a reasonable case that Green 071 co-located with either the Grey mobile or Purple 231 or both. Activations of the same cell within minutes—by the three different mobiles—provide examples of this. But on the other hand the sample size is very small, and over a relatively lengthy period for the number of activations involved, and does not factor in the quantity of mobile connections, numbering in the thousands, in that area of Beirut at the time.

3656. To illustrate, on 24 September 2004, 28 September 2004 in the afternoon, 29 September 2004, 30 September 2004, 7 October 2004, 9 November 2004 and 12 January 2005, Green 071 had close-in-time calls with Purple 231 and or the Grey mobile that fit the pattern identified by Mr Donaldson. Between 10:00 and 20:00 the mobiles activated SFEIR3. Between 20:00 and 10:00 they activated BRAJNE2.

3657. This, however, is also consistent with two people living and working in the same areas and may not necessarily lead to the conclusion that the mobiles had a single user, especially given that many people may live and work in these areas of Beirut. As Mr Philips and Mr Donaldson both acknowledged, to conclude that two mobiles had a single user, there must be a diversity of examples of co-location combined with movement.⁷¹⁰¹ Indeed, Mr Donaldson testified—and based upon his years of analysing Lebanese call data and cell site records—that for ‘just a single sector in Beirut you will have thousands of numbers used within the same hour.’⁷¹⁰²

3658. Also weighing against the attribution of Green 071 to Mr Merhi is the small number of calls available for analysis. Further, their cell activations were concentrated in Bourj Brajneeh and Haret Hreik in Beirut. Only on five occasions, did Green 071 activate cells outside this main area of concentration. However, when Green 071 activated BRAJNE2 or SFEIR3 outside the ‘usual’ hours identified by Mr Donaldson, on at least five occasions Purple 231 or the Grey mobile also activated the same cell at the ‘unusual’ time.⁷¹⁰³

3659. There was also little movement of Green 071 from which co-location could be concluded. The most ‘extreme’ example of movement is the activation on 25 September 2004 of ANQOUN2, some 50 or so kilometres south of Beirut. The only other two movements out of southern Beirut, were first in activating MEA2, which provides coverage to the airport, on 27 September 2004, and second in activating WARDIE3 and WARDIE2 in central Beirut in the same call on 23 December 2004. The movement of this mobile, with those three exceptions, was confined to the same cluster of cells in south Beirut.

3660. Mr Philips emphasised that it is the combination of: the period of calls, the frequency of calls and the movement of the mobiles, which allows a conclusion of single user attribution based on co-location. Here, the element of real movement is lacking. The ANQOUN2 activation on 25 September provides the only example when either Purple 231 or the Grey mobile were used in a

⁷¹⁰¹ John Edward Philips, T. 20 April 2017, p. 60; Andrew Donaldson, T. 4 July 2017, pp 8-11.

⁷¹⁰² Andrew Donaldson, T. 4 July 2017, p. 9.

⁷¹⁰³ This occurred on 27 September 2004, 6 November 2004, 2 January 2005, 20 January 2005 and 7 February 2005. Similar activity occurred on 13 and 14 January 2005, but at times that were more consistent with the periods identified by Mr Donaldson.

manner that made co-location possible by virtue of the common movements of the mobiles. Otherwise the common activations were of cells in a confined area in southern Beirut.

3661. The Trial Chamber must exercise any evidential doubt in an Accused's favour. So the ultimate question is whether the patterns of use are such that the only conclusion reasonably available from the evidence is that the reason that Green 071 and Purple 231, and Green 071 and the Grey mobile appeared to be co-locating is that they had a single user in Mr Merhi.

3662. It is useful here to compare the activations of the network and personal mobiles attributed to Mr Ayyash and to Mr Badreddine and their co-location and hence whether single-user attribution can be concluded. There is a qualitative difference between those the Prosecution attributes to the other two in both the number of calls and the movements of the mobiles.

3663. Green 300 is attributed to Mr Ayyash. But compared to Green 071, Red 741, which is also attributed to him, had 83 candidate calls on ten days in the 32-days from 14 January to 14 February 2005 inclusive. Mr Philips calculated 39 possible co-locations of Red 741 with Green 300, Blue 233 or Mr Ayyash's personal mobile 091. Green 300 had 94 candidate calls on 29 days between 22 November 2004 and 14 February 2005. It had 34 possible co-locations with Mr Ayyash's personal mobiles 935, 170, 091, and with the network mobiles, Yellow 294 and Blue 233. Blue 233 had 181 candidate calls every day on 36 days from 10 January to 14 February 2005. It had 58 possible co-locations with Mr Ayyash's personal mobiles 935, 170, 091. This is far more than the calls attributed to Mr Merhi.

3664. Regarding Mr Badreddine and Green 023, Mr Philips analysed 1,421 calls over a selected 15 days. He concluded that on these days Green 023 had 55 possible co-locations with one of Mr Badreddine's other mobiles, broken down into 42 with personal mobile 663, nine with sequential mobile 944 and four with personal mobile 354. He concluded that Green 023 may have co-located with these other mobiles on fourteen days, on 28, 29, 30 September, 1, 20 October 2004, 11, 12, 15, 18, 19, 28, 31 January, 11 and 12 February 2005. Thirty-one of the possibly co-locating call pairs occurred within five minutes. Further, cell activations of another 41 pairs of calls with mobiles 663 and 944, in his view, would not have precluded the mobiles' co-location with Green 023.

3665. On the element of movement, Green 023, frequently moved well outside of its most used cells in southern Beirut over the 15 days analysed. On five days, Mr Philips found movement from which there was possible co-location of Green 023 with Mr Badreddine's personal mobiles including activating the same cells within a short period. This included its movements between Beirut and the Jounieh area, 20 kilometres to its north. This provided strong evidence of common movement between the personal mobiles attributed to Mr Badreddine and the Green network mobile, 023.

3666. In the Trial Chamber's view there is insufficient evidence to make a finding to the high standard of beyond reasonable doubt that Mr Merhi was using Green 071. There were an inadequate number of calls, and significantly, a lack of movement from which it could positively conclude that Green 071 was co-locating with either Purple 231 or the Grey mobile in a manner in which the two personal mobiles, plus Green 071, had a single user. The main distinction between Green 071 on the one hand, and Green 300 and Green 023 on the other, is that these latter two mobiles had far more calls and much greater movement from which conclusions of co-location and thus their having a single user could be drawn.

3667. While the Grey mobile and Purple 231 had a single user in Mr Merhi, there is insufficient evidence to reach the high standard of beyond reasonable doubt that Mr Merhi was also using Green 071.

(f) Conclusion

3668. The evidence that Mr Merhi was using the Grey mobile is incontrovertible. The evidence was not challenged by the Defence.

3669. Purple 231 is associated with Mr Merhi, primarily through the furniture delivery to his home in November 2004, and the similarity of its contact and geographical profile with mobile 6091. Its top two contacts were his brother in law and his brother. Its geographical profile is consistent with Mr Merhi's residence in south Beirut. The four highlighted instances of common travel in Lebanon, between Purple 231 and mobile 6091, also provide support to Mr Merhi being its user. Additionally, there is no evidence connecting it with anyone else.

3670. The evidence establishes the co-location of Purple 231 and the Grey mobile. The only reasonable conclusion in these circumstances is that they had a single user in Mr Merhi.

3671. The evidence of Purple 231's and Green 071's geographical profiles and cell activations, however, is insufficient to establish that Mr Merhi was the single user of Green 071. Adding the cell activations of the Grey mobile does not alter this conclusion. The sample size, and the lack of common movement between Green 071 and the other two mobiles, is too small to establish beyond reasonable doubt that Mr Merhi was the single user of Green 071.

D. Hussein Hassan Oneissi—Purple 095

3672. Hussein Hassan Oneissi, formerly known as Hussein Hassan Issa, was born on 11 February 1974, and married to Hala Bachir, whose date of birth is 30 November 1976. They entered into a marital contract in June 1999 in Baabda, and as of June 2012 had three children.⁷¹⁰⁴

3673. The Prosecutor, in the amended consolidated indictment, pleads that Mr Oneissi used one of three 'Purple phones', which 'were used from at least 1 January 2003 until 16 February 2005'. Mr Merhi, Mr Oneissi and Mr Sabra allegedly used their personal mobiles, "'colour-coded **Purple Phones**", in relation to preparations for the attack'. The three mobiles 'were used to coordinate the false claim of responsibility'. A 'history of contact between **ONEISSI, SABRA** and **MERHI**' between January 2003 and 16 February 2005, is also pleaded.⁷¹⁰⁵

3674. The Prosecution relies upon the analysis of Mr Andrew Donaldson to prove that Mr Oneissi was using Purple 095 at the time relevant to the charges against him, namely, between 22 December 2004 and 14 February 2005. Mr Donaldson prepared a report, 'Evidence of Telephone Attribution Hussein Hassan Oneissi', in which he concluded that Purple 095 was attributable to Mr Oneissi from at least 9 January 2003 until 16 February 2005.⁷¹⁰⁶

3675. Mr Donaldson was working with incomplete cell site data. Records were available of the cells to which Purple 095 connected when it made calls from 9 January 2003 onwards. Mr

⁷¹⁰⁴ Exhibit P1066 (Family civil status register extract for Hassan Oneissi), p. 2; exhibit P1069 (Lebanese marriage certificate of Hussein Issa to Hala Bachir and family personal status extract from the Residents' Records of the 1932 Census).

⁷¹⁰⁵ Amended consolidated indictment, paras 15 (e), 16-17, 19 (d); Prosecution's updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), para. 115.

⁷¹⁰⁶ Exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 1.

Donaldson, however, had no cell site data until 1 August 2004 for incoming calls or texts, namely, of the cell to which a mobile connected when it received calls, and received or sent text messages.⁷¹⁰⁷ This means that the location of the mobile was unknown. Further, the end cell data for voice calls was available only from 1 October 2004.⁷¹⁰⁸

1. Summary of evidence

3676. Purple 095 is the SIM used in at least four consecutive handsets between 31 July 2004 and 16 February 2005. It was a pre-paid Alfa Active mobile subscription. It was activated on 28 December 2002 and deactivated on 17 March 2005, after its last use on Wednesday 16 February 2005.⁷¹⁰⁹ Like Purple 231, attributed to Mr Merhi, Purple 095 was subscribed in the name of the unknown Ibrahim Imad.⁷¹¹⁰

3677. The attribution of Purple 095 to Mr Oneissi, according to Mr Donaldson, is based on Purple 095's call data records, cell site records, contact and geographic profile and documents and witness evidence relating to Mr Oneissi's change of name, his familial relationships, residence and use of professional services throughout the attribution period.⁷¹¹¹

3678. For Mr Donaldson, Purple 095 was a personal mobile that Mr Oneissi used 'to call family members prominently', and was provided as contact number on a number of documents along with a name.⁷¹¹² He acknowledged that Mr Oneissi's wife may have used it on occasions.⁷¹¹³ His assessment was that:

The use of Purple 095, to me, is very typical, normal personal phone use. It's used to call family members prominently. It is provided on regular occasions alongside a name. This

⁷¹⁰⁷ Exhibit P1223 (Call sequence table of Purple 095), pp 1-194; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 12; Andrew Donaldson, T. 21 June 2017, pp 99-100.

⁷¹⁰⁸ Mr Donaldson did not note this in his report, exhibit P1949, but it is apparent in Purple 095's call sequence table, exhibit P1223. *See also* Gary Platt, T. 7 February 2017, pp 64-65; Prosecution final trial brief, para. 540.

⁷¹⁰⁹ Exhibit P914 (Subscriber note for Purple 095); exhibit P1223 (Call sequence table of Purple 095); Andrew Donaldson, T. 21 June 2017, pp 89-92.

⁷¹¹⁰ Exhibits P914, P900 (Subscriber note for Purple 231). Different addresses were given for Mr Imad in the two subscriptions. Purple 231 was activated on 14 December 2002.

⁷¹¹¹ Exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), paras 1, 4-8, 11, 15-19.

⁷¹¹² Andrew Donaldson, T. 21 June 2017, pp 74-75.

⁷¹¹³ Andrew Donaldson, T. 25 August 2017, p. 59, T. 18 October 2017, pp 74-80.

doesn't, to me, have many traits of somebody who is trying to hide their phone number. It appears to be a perfectly normal phone to me.⁷¹¹⁴

3679. Regarding its discovery, Mr Donaldson testified that the Lebanese ISF identified Purple 095 as a 'suspect phone' and provided this information to the UNIIIC. This was in November 2008. The ISF believed that it had identified Hussein Hassan Issa as its user. Mr Donaldson stated that he and his team sought to independently test its veracity and collect all relevant information about the mobile and its user.⁷¹¹⁵

3680. The evidence underlying the attribution of Purple 095 to Mr Oneissi comes from business and official documents, the testimony of one witness who provided services to Mr Oneissi as Mr Hussein Hassan Issa, and the mobile's contact and geographical profile. Mr Donaldson in his report and testimony analysed this evidence. The Trial Chamber has assessed Mr Donaldson's evidence in light of the underlying evidence. It has not, as explained elsewhere,⁷¹¹⁶ simply accepted Mr Donaldson's assertion in his report that this 'number was attributable to' Mr Oneissi from at least 9 January 2003 to 16 February 2005.

3681. During the attribution period, Purple 095 had 195 contacts with Purple 231, used by Mr Merhi, and 82 with Purple 018, attributed to Mr Sabra.⁷¹¹⁷

(a) Documentary evidence

i. Judicial decision 'correcting' the family name to Oneissi from Issa, January 2004

3682. All documents bar one underlying Mr Donaldson's attribution of Purple 095 to Mr Oneissi relate to Mr Hussein Hassan 'Issa'. The sole exception comes from the Civil Court of Jwaya, that on 12 January 2004, issued seven decisions correcting the family name of Mr Hussein Hassan Issa,

⁷¹¹⁴ Andrew Donaldson, T. 21 June 2017, p. 74.

⁷¹¹⁵ Andrew Donaldson, T. 21 June 2017, pp 74-79. *See also* Andrew Donaldson, T. 25 August 2017, p. 67, T. 19 September 2017, pp 17-22; exhibit 5D414 (Information from ISF regarding Purple 095); exhibit 5D418 (Investigator Notes – Finding the Communication Networks). The UNIIIC received information from the ISF on 22 November 2008, that it believed that 'they may have identified the user of the telephone 3598095, who the ISF hypothesise may have placed the Abu Adass tape in the tree at Riad Al Solh Square. The ISF believe the user may be Hussein Hassan ISSA', exhibit 5D414.

⁷¹¹⁶ *See* sub-section (A) 'Single user analysis', (5) (b) 'Methodology and Trial Chamber's approach to evaluating this evidence'.

⁷¹¹⁷ Exhibit P1223; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 31.

and his six brothers, from ‘Issa’ to ‘Oneissi’. This was based upon an error incorrectly registering the name of their father, Mr Hassan Ali Issa, as Issa instead of Oneissi.⁷¹¹⁸

3683. Consequently, on the Prosecution’s case, Hussein Hassan Issa and Hussein Hassan Oneissi are the same person, namely, Mr Oneissi, and the names are interchangeable.⁷¹¹⁹

ii. Subscription for Purple 095

3684. An extract from Alfa’s subscriber database provides the same subscriber names for Purple 095 and Purple 231, namely Ibrahim Imad.⁷¹²⁰

3685. Mr Donaldson explained that he had found from his years of experience, and his wide range of inquiries in attempting to identify the users of many numbers, that Lebanese mobile subscriptions frequently do not provide the actual user’s identity. Generally speaking, although a subscription for a number could be in one name, ten documents could consistently attribute it to another person. Therefore, in his view, other documents are more reliable than the mobile subscription. He would therefore defer to them in attributing a mobile number to a particular person.⁷¹²¹

3686. Similarly, his experience of reviewing mobile records revealed that, often, mobile subscriptions are not updated. On multiple occasions, for example, he had seen a father subscribing three lines and then passing them to his children. Thus, the mobiles’ named subscriber never used them.⁷¹²²

3687. Hence, in Mr Donaldson’s view, subscriber notes in isolation must be considered with caution.⁷¹²³

⁷¹¹⁸ The court had corrected their father’s family name on 25 March 2002. Exhibit P1876 (Judicial decisions by the Civil Court of Jwaya), pp 25-27 (ERNs 60216331-60216333); exhibit P1066.

⁷¹¹⁹ Exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 7.

⁷¹²⁰ Exhibit P914; exhibit P900; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 10; Andrew Donaldson, T. 21 June 2017, pp 89-90.

⁷¹²¹ Andrew Donaldson, T. 22 June 2017, p. 47.

⁷¹²² Andrew Donaldson, T. 22 June 2017, pp 47-48.

⁷¹²³ Andrew Donaldson, T. 22 June 2017, p. 46.

iii. Bank documents

3688. The Trial Chamber received into evidence documents from four banks bearing Hussein Issa's name.

a. Application to Audi Bank

3689. The first set of documents relates to the Audi Bank. On 15 January 2003, an application was made to open a joint bank account at 'Bank Audi S.A.L.' signed by Hussein Issa and Ms Fatima Darwish, to which is annexed a contract to open a joint account. Al-Hadath, Al-Jamous Street, Building Ahmad Abbas, 7th floor is listed as the applicants' address. Purple 095 is listed as a contact number with another number, ending in 188.⁷¹²⁴ Fatima Darwish is Mr Oneissi's mother.⁷¹²⁵

3690. Hussein Issa opened another account with Audi Bank in the following month, on 25 February 2003. As in the application of 15 January 2003, Purple 095 is listed with mobile 188 as the contact numbers, and Hadath / Jamous, Building Ahmad Abbas, as the address. Attached to the application is a copy of Mr Issa's identity card, which lists his date and place of birth as 11 February 1974, Beirut.⁷¹²⁶

b. Application to the Lebanese Canadian Bank

3691. The second bank is the Lebanese Canadian Bank. In June 2010, it produced an application from the 'rightful economic holder Mr. Bilal Mohammed Kheireddine and/or Mr. Hussein Hassan Issa', to open a joint bank account at the Lebanese Canadian Bank S.A.L., dated 1 March 2004, with a contract to open and activate credit accounts at the bank.⁷¹²⁷

3692. In the client form, Purple 095 is listed as the contact number and Al-Jamous Street, Ahmad Abbas Building, 7th floor as the address. The form also contains information concerning Mr Issa's deposits with Audi Bank.⁷¹²⁸

⁷¹²⁴ Exhibit P1877 (Application and contract to open a joint account at Bank Audi S.A.L.), p. 1.

⁷¹²⁵ Exhibit P1066. *See also* exhibit P1876, ERN 60216337; exhibit P1877, p. 11. Ms Darwish's family name is also spelt 'Darwich' in English translations. Nothing turns on this as these are common transliterations of the same Arabic name.

⁷¹²⁶ Exhibit P1878 (Application to open an account at Bank Audi S.A.L.), pp 1, 5.

⁷¹²⁷ Exhibit P1879 (Application and contract to open a credit account at the Lebanese Canadian Bank S.A.L.).

⁷¹²⁸ Exhibit P1880 (Lebanese Canadian Bank S.A.L. Know Your Client form), p. 1.

3693. The bank also stated that it had an account in the name of ‘Mr. Hussein Hassan Issa and / or Kheireddine Bilal Ahmad at our branch in Al-Chiyah’, that was closed on 31 August 2004.⁷¹²⁹ Although Mr Kheireddine’s given names differ on the documents, the account number is the same.

c. Loan application to Bank Saderat Iran and related evidence

3694. The third bank, Bank Saderat Iran, provided an undated loan application in the name of and signed by Hussein Issa, listing Purple 095 as his contact number, with the same address as in the other applications.⁷¹³⁰ It was at the bank’s El-Ghobeiri Branch, and was for the purchase of a newly built apartment in Hadath.

3695. On the application, Mr Issa’s occupation was listed as a freelance accountant earning approximately USD 800 per month, while his wife, Hala’s, was also listed as an accountant, working at ‘FVF’ in Bir-El-Abed, and earning a USD 400 salary. He had had five years of work as a freelance accountant.

3696. According to two bills, signed by Hussein Issa, in favour of Bank Saderat Iran, the bank provided loans of USD 23,800 and USD 500, totalling USD 24,300.⁷¹³¹

3697. The loan was processed on 21 July 2003, and was of USD 18,467 for the ownership of ‘Real Estate 233, Section G/24’ in El-Hadath. The title deed was submitted for the transaction. The loan was repaid in monthly deposits on Mr Issa’s bank account at the El-Ghobeiri Branch, without any cash withdrawals.⁷¹³²

3698. The relevant documents also include a title deed on divided co-ownership, dated 7 October 2002, issued by the Secretariat of the Land Registry of Baabda, Real Estate Zone El-Hadath, concerning land registry plot number 233, real estate number G/24. The property was divided into lots between Hassan Hussein Ali and Ahmad Abass. At the top of the document, the name ‘Hussein Issa’ is handwritten.⁷¹³³ Who wrote it and when is unknown.⁷¹³⁴

⁷¹²⁹ Exhibit P1879, p. 1.

⁷¹³⁰ Exhibit P641 (Bank Saderat Iran loan application form and loan bills), ERN 60276504.

⁷¹³¹ Exhibit P641, ERN 60276506. Bills 021090/2001 and 022211/2001.

⁷¹³² Exhibit P641, ERN 60276501.

⁷¹³³ Exhibit P641, ERN 60276502.

⁷¹³⁴ Prosecution submissions, T. 21 June 2017, pp 83, 85-87, T. 22 June 2017, p. 7.

3699. The loan application was accompanied by an undated loan guarantee to Bank Saderat Iran from Mr Ahmad Abbas for Mr Hussein Issa.⁷¹³⁵

3700. Mr Abbas is a construction developer specialising in apartment building. He stated that Real Estate number 233, section G/24, which is also known as the Ahmad Abbas and Sons Building (his company name) was part of a project he developed in Hadath between 1999 and 2002. This building complex has seven blocks and is just beside the *Lycée des Arts*. Building G would usually be the seventh building in a complex. He had sold approximately 3,000 apartments since 1990. By 2002 he had sold all the apartments.⁷¹³⁶

3701. Mr Abbas did not know Mr Issa, but he did not rule out that he might have seen him, but without remembering him, as he had had some 3,000 clients.⁷¹³⁷ Generally, his clients would provide an irrevocable power of attorney to the bank, the contract would be signed, the bank would pay the remaining amount to him and the client would repay the loan to the bank. Mr Abbas would also provide a loan guarantee to the bank for the client. The client would not be involved in the loan guarantee process.⁷¹³⁸ Mr Abbas was uncertain if his office had any records regarding Mr Issa but that any would be similar to the Real Estate Directorate's.⁷¹³⁹

d. Application to Blom Bank S.A.L.

3702. The fourth bank is the Blom Bank S.A.L., where, on 13 September 2004, Hussein Hassan Issa opened an account at its Rmeil branch. Purple 095 is again listed as his contact number with a landline, ending in 555. The address is the same as for the previous applications, of Al-Hadath, Al-Jamous, Ahmad Abbas Building, but with some additional information, namely, 'near *Lycée des Arts*, Residence Hussein Issa'.⁷¹⁴⁰

3703. Mr Issa's place and date of birth is also the same, namely 11 February 1974, Beirut.⁷¹⁴¹ The place of register is Shhour, Tyre.⁷¹⁴²

⁷¹³⁵ Exhibit P641, ERN 60276505.

⁷¹³⁶ Exhibit P645 (Witness statement of Ahmad Abbas), paras 9, 11, 13-16.

⁷¹³⁷ Exhibit P645 (Witness statement of Ahmad Abbas), para. 20.

⁷¹³⁸ Exhibit P645 (Witness statement of Ahmad Abbas), paras 18-19.

⁷¹³⁹ Exhibit P645 (Witness statement of Ahmad Abbas), paras 20-21.

⁷¹⁴⁰ Exhibit P642 (Banking records from Blom Bank S.A.L.), pp 3, 5, 13.

⁷¹⁴¹ Exhibit P642, p. 3.

⁷¹⁴² Exhibit P642, p. 9.

3704. The same address, namely ‘Street: Near *Lycée des Arts*, Region: Al-Hadath; City: Tyre, Building: Ahmad Abbas’ appears in another related document, Mr Issa’s client information form. The address is listed both as his residential and postal address. The type of residence is the ‘resident’s own property’. Purple 095 is listed as the mobile number together with the same landline number 555.⁷¹⁴³

3705. In the client form, Mr Issa listed that he is an employee, an accountant, at *Al Nachat* Institution, in the field of work of ‘Trade of carpet and Moquette’, and since 1998.⁷¹⁴⁴

3706. Mr Donaldson testified that the company listed as the employer is a carpet shop, which Mr Oneissi’s brother, Ahmad, had run in Tyre since 1998. In Mr Donaldson’s view, the information listing an address in Beirut—Near *Lycée des Arts* Street in Al-Hadath—in another city, Tyre, is confusing.⁷¹⁴⁵

iv. Other documents

3707. A ten-day temporary circulation permit for a Mitsubishi Lancer, issued on 10 September and expiring on 20 September 2004, was issued in the name of Hussein Hassan Issa.⁷¹⁴⁶ The related receipt, issued by the Registration Department of the Traffic and Motor Vehicle Authority at the Lebanese Ministry of Interior, lists Mr Oneissi as the vehicle’s owner as of 20 September 2004. This document also records Purple 095 in the owner’s address field, together with the address Al-Hadath, Al-Jamous Street.⁷¹⁴⁷ This is the same address as that listed in the temporary circulation permit, although the names of the buildings differ: one lists ‘Hussein Issa Building’ and the other shows ‘Hassan Abbas Building’.⁷¹⁴⁸

3708. Similarly, a related, undated certificate—but with the handwritten number 4795/2004, ‘2004’ seemingly indicating its year of issue—issued by the Haret Hreik *mukhtar* lists the

⁷¹⁴³ Exhibit P642, pp 9-10.

⁷¹⁴⁴ Exhibit P642, pp 3, 9.

⁷¹⁴⁵ Andrew Donaldson, T. 21 June 2017, pp 96-97. *See also* exhibit P1950 (PowerPoint presentation regarding Mr Oneissi, Andrew Donaldson), slide 22.

⁷¹⁴⁶ Exhibit P1883 (Temporary circulation permit for Mitsubishi Lancer owned by Hussein Hassan Issa), p. 1.

⁷¹⁴⁷ Exhibit P1883, pp 1, 5-6.

⁷¹⁴⁸ Exhibit P1883, pp 1, 6.

residential address of Mr Hussein Hassan Issa as Al-Hadath, Hassan Abbas Building, Al-Jamous Street, 7th floor, next to *Lycée des Arts*.⁷¹⁴⁹

3709. Mr Hussein Hassan Issa is also identified as the buyer in an undated sales deed and related documents concerning a Mitsubishi Lancer. His place of residence is Al-Hadath, Al-Jamous street, Hassan Abbas Building. Purple 095 is listed as his residence number.⁷¹⁵⁰

3710. The Oneissi Defence tendered into evidence documents concerning the ownership of real estate by Mr Ayyash, Mr Oneissi, Mr Sabra and Mr Badreddine. A document entitled ‘Information Card on Real Estate Ownership’, issued on 9 November 2011 by the Director General of Real Estate Affairs on the request of the Lebanese Public Prosecution Office at the Court of Cassation, states that Mr Oneissi did not own real estates, according to ‘information transferred until 4 November 2011’. The document does not specify to which period it refers.⁷¹⁵¹

3711. The document also states that Ms Hala Bachir owned real estate number 523, section 10, Real Estate Zone Haret-Hreik, Baabda District.⁷¹⁵² This same information is in another set of documents, issued by the Secretariat of the Land Registry, Baabda. These describe Ms Bachir owning the property as of 25 May 2006, and include a real estate insurance contract, a sales contract, a record of ending of a real estate insurance contract, real estate register, additional real estate register and a real estate certificate.⁷¹⁵³ Mr Oneissi’s name is not mentioned in the documents.

3712. Marriage certificate records and family personal status records identify Ms Hala Bachir as Mr Oneissi’s wife.⁷¹⁵⁴ She is also listed as Mr Issa’s wife in the application, with Mr Kheireddine, to the Lebanese Canadian Bank to open a joint bank account.⁷¹⁵⁵

⁷¹⁴⁹ Exhibit P1883, p. 4.

⁷¹⁵⁰ Exhibit P1760 (Bill of sale of motor vehicle to Hussein Hassan Issa), p. 1.

⁷¹⁵¹ Exhibit 4D380 (Information from Land Registry of Lebanon), pp 1, 10.

⁷¹⁵² Exhibit 4D380, pp 11, 21.

⁷¹⁵³ Exhibit 4D381 (Documents from Land Registry of Lebanon), pp 2-18.

⁷¹⁵⁴ Exhibit P1069, pp 1-2.

⁷¹⁵⁵ Exhibit P1880, p. 1.

(b) Telecommunications evidence

i. Handset usage

3713. Purple 095's call sequence table shows that this SIM used handset IMEI 351350102829960 between 31 July 2004 and 12 November 2004, handset IMEI 350998806249760 between 12 November 2004 and 5 December 2004, handset IMEI 351347202381110 for four days between 6 December 2004 and 9 December 2004 and handset IMEI 350998806249760 for the remainder of the attribution period.⁷¹⁵⁶

3714. Mr Donaldson explained that change of handset usage in itself does not entail a change in a mobile's user. A handset change should not be considered in isolation, but should be assessed holistically in light of other facts, such as whether it coincided with a mild to strong change in contacts and or geography. This was not the case with Purple 095's contact and geographic profile, which remained consistent throughout the attribution period. In particular, Purple 095's call data records did not show any erratic behaviour throughout the attribution period that would suggest a change in its user.⁷¹⁵⁷

ii. SMS content

3715. The Trial Chamber also viewed some SMS content for Purple 095 between 1 February 2004, from when records were available, and 16 February 2005. Mr Donaldson reviewed Purple 095's SMS records to identify any content consistent with Mr Oneissi as its user. The records are of 21 entries, two of which contain identifying information of either the sender or the recipient. Both are incoming texts.⁷¹⁵⁸

3716. The first SMS is from 20 June 2004, written in mixed English and Arabic, the recipient of which is 'Hossin'. It mentions two other names, Abbas and Hajji Om Ali. It reads in full:

Salam alikom how are u hossin, abbas tell me he send money for me if u please can sendt
with alhaji om ali and he asked about the home,if u see it? thank u.

⁷¹⁵⁶ Exhibit P1223, pp 194 and following; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 21.

⁷¹⁵⁷ Andrew Donaldson, T. 25 August 2017, pp 90-91, *see also* T. 21 June 2017, pp 91-92.

⁷¹⁵⁸ Exhibit P1222 (Call sequence table of Purple 095 with SMS content), p. 1. According to its call sequence table, exhibit P1223, Purple 095 sent and received 722 text messages, including service SMS.

This was translated into English as:

Peace be with you. how are u Hussein, Abbas told me that he sent money for me if you could please send it with hajji Om Ali and he asked about the home, if you saw it? thank you.

3717. Mr Donaldson considered this SMS as the only relevant one,⁷¹⁵⁹ explaining that it appears to provide Mr Oneissi's name, a name consistent with his brother Abbas's name and potentially a reference to his mother.⁷¹⁶⁰ Mr Donaldson explained that the term 'Hajji Om Ali', given that Mr Oneissi's eldest brother is Ali, may refer to a woman whose eldest son is Ali, that is, Mr Oneissi's mother.⁷¹⁶¹

3718. The second SMS, received on 28 December 2004, is from a boutique selling lingerie, children's wear and make-up, wishing its recipient a 'Happy New Year'.⁷¹⁶²

3719. Mr Donaldson acknowledged that the absence of outgoing SMS content did not assist in having a complete picture for identifying Purple 095's user.⁷¹⁶³

3720. A call sequence table of another Alfa mobile, mobile 755, shows incoming text messages between 25 November 2005 and 31 December 2008 addressed to both Mr Oneissi and his wife, Ms Bachir.⁷¹⁶⁴ Mr Donaldson agreed that mobile 755 may have been a shared mobile.⁷¹⁶⁵ He noted, however, the absence of text messages addressed to Ms Bachir in the SMS content of Purple 095.⁷¹⁶⁶

⁷¹⁵⁹ Exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), paras 24-25; Andrew Donaldson, T. 22 June 2017, pp 20-21, T. 25 August 2017, pp 84, 87.

⁷¹⁶⁰ Andrew Donaldson, T. 22 June 2017, pp 20-21, T. 25 August 2017, pp 87-88; exhibit P1066.

⁷¹⁶¹ Andrew Donaldson, T. 22 June 2017, p. 20, T. 25 August 2017, pp 84, 87; exhibit P1066.

⁷¹⁶² Exhibit P1222, p. 1.

⁷¹⁶³ Andrew Donaldson, T. 25 August 2017, pp 85-87.

⁷¹⁶⁴ Exhibit 4D467 (Call sequence table of mobile 755 with SMS content).

⁷¹⁶⁵ Andrew Donaldson, T. 18 October 2017, pp 74-78.

⁷¹⁶⁶ Andrew Donaldson, T. 18 October 2017, pp 78-80.

iii. Contact profile

3721. Mr Donaldson's report lists Purple 095's contact profile, in particular its top 30 ranking numbers.⁷¹⁶⁷ These also include ten Lebanese,⁷¹⁶⁸ one Swiss⁷¹⁶⁹ and one Saudi Arabian⁷¹⁷⁰ numbers. The Prosecution brought no evidence as to who used these numbers.⁷¹⁷¹ The mobile's call sequence table also shows 265 contacts with an unidentified number marked as '0', as the sixth most frequent contact.⁷¹⁷²

3722. Purple 095's call sequence table demonstrates that its most frequent contact throughout the attribution period is with a number attributable to Mr Oneissi's mother, Ms Fatima Darwish. Mr Donaldson's report used this in his attribution analysis.⁷¹⁷³ Mr Donaldson did not identify a number used by Ms Bachir before 16 February 2005.⁷¹⁷⁴ Apart from Ms Darwish, among the most frequent contacts of Purple 095 are three of Mr Oneissi's brothers, Ahmad, Mounir and Mohammed, his sisters Alia and Jamila and some of his in-laws.⁷¹⁷⁵ The Prosecution tendered a family tree of the Oneissi family into evidence.⁷¹⁷⁶

a. Fatima Darwish—Mr Oneissi's mother

3723. Purple 095's call sequence table, as identified by Mr Donaldson, shows 747 contacts between Purple 095 and a number ending in 188, attributable to Ms Darwish.⁷¹⁷⁷ The documents attributing number 188 to Ms Darwish include Mr Oneissi's and Ms Darwish's joint application of 15 January 2003 to open a joint account with Audi Bank, and a registration form at the Lebanese

⁷¹⁶⁷ Exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), paras 26-27, 31, annex A.

⁷¹⁶⁸ These numbers end in 987, 119, 254, 679, 550, 652, 885 and 070, and also include Associate Purple mobiles 251 and 375.

⁷¹⁶⁹ Number 080.

⁷¹⁷⁰ Number 226.

⁷¹⁷¹ Andrew Donaldson, T. 22 June 2017, pp 21-22; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 31; exhibit P1223.

⁷¹⁷² Exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 31; exhibit P1223.

⁷¹⁷³ Exhibit P1223; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), paras 28 (a), 31.

⁷¹⁷⁴ Andrew Donaldson, T. 25 August 2017, pp 55-56.

⁷¹⁷⁵ Exhibit P1223; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), paras 28 (b)-(d), (i)-(r), 50.

⁷¹⁷⁶ Exhibit P1951, compiled from official Lebanese Government records.

⁷¹⁷⁷ Exhibit P1223; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 28 (a).

Ministry of Finance to liquidate Mr Oneissi's father's, Mr Hasan Ali Oneissi's, estate following his death in August 2005.⁷¹⁷⁸

3724. Number 188 was subscribed anonymously. In the Alfa subscription note for this number, the field 'Customer name' lists a number instead of a name.⁷¹⁷⁹ The same number was listed both as the home and work number in the name of Ali Hasan Issa in Touch's subscriber database, dated 29 September 2009.⁷¹⁸⁰ A Lebanese official family civil status register extract lists Ali Hassan Issa as Mr Oneissi's brother.⁷¹⁸¹

b. Ahmad (Ahmed) Hassan Oneissi—Mr Oneissi's brother

Number ending in 795

3725. The second most frequent contact of Purple 095, according to the telecommunications evidence, and as set out in Mr Donaldson's report, is with a number ending in 795, attributable to one of Mr Oneissi's brothers, Mr Ahmad Hassan Oneissi.⁷¹⁸² Purple 095 had 695 contacts with this number.⁷¹⁸³

3726. Among the documents supporting the attribution of this number to Mr Oneissi's brother are Mr Ahmad Oneissi's and his wife's—Ms Basima Youssef Darwish's—passport applications, both dated 20 January 2003,⁷¹⁸⁴ Mr Ahmad Oneissi's undated Hajj application⁷¹⁸⁵ and the Lebanese Ministry of Finance registration form for estate liquidation, where this number is listed in the name of 'Ahmed Hassan Oneissi'.⁷¹⁸⁶ This number is subscribed in the name of another of Mr Oneissi's brothers, Mr Abbas Hassan Issa.⁷¹⁸⁷

⁷¹⁷⁸ Exhibit P1882 (Information on Hussein Hassan Oneissi's registration at the Ministry of Finance for liquidation of his father's legacy); exhibit P1877, p. 1.

⁷¹⁷⁹ Exhibit P913 (Subscriber note for number ending in 188).

⁷¹⁸⁰ Exhibit P1503 (Subscriber note for number ending in 350).

⁷¹⁸¹ Exhibit P1066.

⁷¹⁸² Exhibit P1223; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 28 (b); exhibit P1066.

⁷¹⁸³ Exhibit P1223; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 28 (b).

⁷¹⁸⁴ Exhibit P1581 (Ahmad Hassan Issa's Lebanese passport application), pp 2, 6; exhibit P1575 (Basima Youssef Darwish's Lebanese passport application), pp 2, 6.

⁷¹⁸⁵ Exhibit P1728 (Extract from the 1426 Hajj list of applicants).

⁷¹⁸⁶ Exhibit P1882.

⁷¹⁸⁷ Exhibit P911 (Subscriber note for number ending in 795); exhibit P1066.

3727. The same number is listed in a similar name to that of Ms Basima Darwish—Nasima Darwish—in a company’s customer database.⁷¹⁸⁸

3728. In an application for a joint savings account for Ms Basima Darwish and Mr Hussein Hassan Issa, dated 11 November 2008, number 795 is listed for both applicants.⁷¹⁸⁹

Landline 111

3729. Purple 095 was also in contact with a landline number ending in 111, subscribed to his brother Ahmad.⁷¹⁹⁰ This number was listed in the name of Mr Oneissi’s brother, Abbas, on a vehicle bill of sale, dated 2 September 2004.⁷¹⁹¹

3730. Mr Donaldson’s report noted that both numbers, 795 and 111, are listed as Mr Oneissi’s work numbers, along with Purple 095, in his client information form at Blom Bank.⁷¹⁹²

Landline 555

3731. Landline number ending in 555, subscribed in the name of Mr Oneissi’s brother, Ahmad, was also in contact with Purple 095 six times between January 2003 and May 2004.⁷¹⁹³ The same number is listed in Mr Ahmad Hassan Issa’s name, with number 795 in his passport application, dated 20 January 2003.⁷¹⁹⁴

3732. Number 555 was provided for Mr Oneissi’s sister, Ms Mona Hasan Issa, on a bill of sale for a vehicle in 2008.⁷¹⁹⁵

⁷¹⁸⁸ Exhibit P1848 (Extract from a private sales company customer database).

⁷¹⁸⁹ Exhibit P1881 (Application to open a joint account at Fransabank S.A.L).

⁷¹⁹⁰ Exhibit P1223; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 28 (c); exhibit P1651 (Subscriber note for landline 111).

⁷¹⁹¹ Exhibit P1763 (Vehicle registration documents, Abbas Hasan Issa), ERN 60297533; Andrew Donaldson, T. 22 June 2017, p. 40.

⁷¹⁹² Exhibit P642, p. 10; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 28 (c) (ii).

⁷¹⁹³ Exhibit P1653 (Subscriber note for landline 555); exhibit P1223, pp 1, 20, 109, 116, 132, 161; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 28 (d).

⁷¹⁹⁴ Exhibit P1581, p. 2.

⁷¹⁹⁵ Exhibit P1761 (Vehicle registration documents, Mona Hasan Issa), p. 3; exhibit P1066.

c. Mohammed Kamel Issa—Mr Oneissi's nephew

3733. Another number, ending in 677, with which Purple 095 communicated 235 times, is subscribed in the name of 'Issa Mohamad Kamel'.⁷¹⁹⁶ Mr Donaldson noted that Mr Oneissi has a nephew named Mr Mohammed Kamel Issa.⁷¹⁹⁷

d. Mounir Hassan Issa (Oneissi)—Mr Oneissi's brother—and related family members

Number ending in 154

3734. Purple 095 had 207 contacts with a number ending in 154, attributable to another of Mr Oneissi's brothers, Mr Mounir Hassan Issa.⁷¹⁹⁸ This number was the ninth most frequent contact.⁷¹⁹⁹ The evidence supporting attribution of number 154 includes its subscriber notes, which identify Mr Mounir Hassan Issa as its subscriber,⁷²⁰⁰ an extract from a customer database, where this number is linked with 'Mounir Ounayssi',⁷²⁰¹ and client forms listing number 154 in the name of Mr Mounir Oneissi.⁷²⁰² This number is also listed as Mr Mounir Oneissi's number in the Lebanese Ministry of Finance registration form for estate liquidation.⁷²⁰³

3735. This number is on a bill of sale, issued by the Lebanese Ministry of Interior, Traffic and Motor Vehicle Registration Department, dated 11 January (no year), listing Mr Mounir Oneissi as the seller of a Renault Express. The company El-Diwane (Mounir, Mustafa and Co.) also appears in the bill of sale. Number 154 is listed as the buyer's number.⁷²⁰⁴ Number 154 was also provided

⁷¹⁹⁶ Exhibit P912 (Subscriber note for number ending in 677); exhibit P1223.

⁷¹⁹⁷ Exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 28 (e); exhibit P1064 (Family civil status register extract for Kamel Mohammed Issa); Andrew Donaldson, T. 22 June 2017, p. 41. The father of Mr Mohammed Kamel Issa is called Mr Kamel Mohammed Issa, who is Mr Oneissi's brother-in-law. *See also* exhibit P1951 (Oneissi family links chart).

⁷¹⁹⁸ Exhibit P1223; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 28 (f); exhibit P1066.

⁷¹⁹⁹ Andrew Donaldson, T. 22 June 2017, p. 42; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 28 (f).

⁷²⁰⁰ Exhibit P1505 (Subscriber notes for number ending in 154).

⁷²⁰¹ Exhibit P1843 (Extract from a private sales company customer database).

⁷²⁰² Exhibit P1846 (Extract from the customer database of telemarketing company Rainbow Systems of Lebanon); exhibit P1827 (Extract from a publishing house customer database), where the family name appears both as 'Eeneyka' and as 'Ouneissi'.

⁷²⁰³ Exhibit P1882.

⁷²⁰⁴ Exhibit P1764 (Vehicle registration documents, Mounir Oneissi), p. 3.

as a contact for Mr Mounir Oneissi's wife, Ms Nayla Mohammed Issa, in a passport application, and for his daughter in a vehicle sales contract.⁷²⁰⁵

Number ending in 898

3736. The telecommunications evidence shows that Purple 095 also had a few limited communications with numbers attributable to Mr Mounir Oneissi's wife and children.⁷²⁰⁶ As noted in Mr Donaldson's report and as reflected by Purple 095's call sequence table, there were five contacts with number 898 attributable to three of Mounir's children, Diala, Faten and Faisal.⁷²⁰⁷

3737. The attribution of number 898 is supported by a subscriber note in the name of 'Dyala Mounir Onaissi',⁷²⁰⁸ and documents relating to vehicle registration, including a bill of sale, where number ending in 898 is listed in Ms Diala Mounir Oneissi's name.⁷²⁰⁹

3738. Mr Donaldson also attributed this number to Mr Mounir Oneissi's other two children, Faten and Faisal. This was on the basis of: extracts from the Lebanese University's lists of students listing number ending in 898 in Ms Faten Oneissi's name for the academic years 2005-2006 and 2006-2007⁷²¹⁰ and a passport application by Mr Faisal Mounir Oneissi, dated 10 August 2006, where number ending in 898 is listed as the applicant's number.⁷²¹¹

Landline 081

3739. Purple 095 had one contact with a landline number ending in 081 attributable to Mr Mounir Oneissi's wife, daughter, Faten, and son, Mohammed.⁷²¹² Supporting its attribution, the Trial Chamber admitted a subscriber note in the name of Mr Mounir Oneissi's wife, Ms Nayla

⁷²⁰⁵ Exhibit P1576 (Nayla Mohammed Issa's Lebanese passport application), p. 2; exhibit P1766 (Vehicle registration documents, Daewoo Prince, Diala Mounir Oneissi); exhibit P1067 (Family civil status register extract for Mounir Oneissi).

⁷²⁰⁶ Exhibit P1223; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 28 (g).

⁷²⁰⁷ Exhibit P1223, pp 125-126, 248, 274; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 28 (g); exhibit P1067.

⁷²⁰⁸ Exhibit P1508 (Subscriber note for number ending in 898).

⁷²⁰⁹ Exhibit P1765 (Vehicle registration documents, Citroën C3 Pluriel, Diala Mounir Oneissi), ERN 60297565.

⁷²¹⁰ Exhibit P1009 (Extract from the Lebanese University's list of students for academic year 2005-2006); exhibit P1010 (Extract from the Lebanese University's list of students for academic year 2006-2007).

⁷²¹¹ Exhibit P1577 (Faisal Mounir Issa's Lebanese passport application), p. 2.

⁷²¹² Exhibit P1223, p. 280; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 28 (h); exhibit P1067.

Mohammed Issa.⁷²¹³ It also received extracts from the Lebanese University's lists of students listing number 081 in Ms Faten Oneissi's name for the 2004-2005 academic year,⁷²¹⁴ and from the Lebanese International University in the name of 'Mohammad Moneir Onaisi' for 2003-2006 with the same number.⁷²¹⁵

Number ending in 695

3740. Another number, ending in 695, subscribed to 'Mounir Hasan Hissa' between August 2004 and February 2005 was in contact 57 times with Purple 095.⁷²¹⁶

e. Bilal Khayreddine (Kheireddine)

3741. The telecommunications evidence shows that Purple 095 had 195 contacts with a number ending in 176.⁷²¹⁷ This number is attributable to Mr Bilal Khayreddine (also transliterated as Kheireddine), based on banking documents. As noted above, he had a joint bank account with Mr Oneissi at the Lebanese Canadian Bank. He provided number 176 in his client information.⁷²¹⁸

f. Jamila Hassan Issa—Mr Oneissi's sister

3742. Throughout the attribution period, Purple 095 had 181 contacts with a number attributable to Ms Jamila Hassan Issa,⁷²¹⁹ who according to the family civil status register is Mr Oneissi's sister.⁷²²⁰ The number ending in 728 was provided by Ms Jamila Issa in a passport application⁷²²¹ and is also listed in the name of 'Jamile Eeisa' in a tow-truck company's customer database.⁷²²²

⁷²¹³ Exhibit P1655 (Subscriber note for number ending in 081).

⁷²¹⁴ Exhibit P1011 (Extract from the Lebanese University's list of students for academic year 2004-2005).

⁷²¹⁵ Exhibit P1012 (Extract from the Lebanese International University's list of students).

⁷²¹⁶ Exhibit P1223; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 28 (n); exhibit P915 (Subscriber note for number ending in 695).

⁷²¹⁷ Exhibit P1223; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 29 (b).

⁷²¹⁸ Exhibit P1880, p. 5.

⁷²¹⁹ Exhibit P1223; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 28 (j).

⁷²²⁰ Exhibit P1066.

⁷²²¹ Exhibit P1578 (Jamila Hasan Issa's Lebanese passport application).

⁷²²² Exhibit P1855 (Extract from a tow-truck company's customer database).

g. Mohammed Hassan Oneissi—Mr Oneissi's brother

Number 566

3743. Another number, ending in 566, with which Purple 095 communicated 134 times is attributable to Mr Oneissi's brother, Mr Mohammed Hassan Oneissi.⁷²²³ According to family personal status records, he is married to Ms Zeinab Hussein Khashab.⁷²²⁴

3744. Mr Donaldson testified that number 566's subscriber history was one of the more complicated subscriptions.⁷²²⁵ This number was initially subscribed to 'Mohamad Hassan Issa', from June 1996 to December 2002.⁷²²⁶ Subsequently, throughout Purple 095's attribution period, it was subscribed to 'Zeynab Husse Khachab', until June 2003⁷²²⁷ and then until June 2006 to Abboud Zeinab Hussein Khachab.⁷²²⁸ In 2009, it was subscribed to 'Mohamad Hassan Onaisse'.⁷²²⁹

3745. Number 566 is listed in Mr Mohammed Oneissi's name in the registration form at the Lebanese Ministry of Finance for the liquidation of Mr Oneissi's father's estate⁷²³⁰ and in a form related to the purchase and registration of a vehicle in November 2006.⁷²³¹

Landline 322

3746. Another number, a landline ending in 322 subscribed in the name of Mr Oneissi's brother Mohammed, had six contacts with Purple 095.⁷²³²

3747. Mr Donaldson drew a distinction between a mobile number and a landline number subscription, explaining that a landline's subscriber is usually resident at the landline's address. Hence, Mr Donaldson considered landline contacts more reliable because of the generally high

⁷²²³ Exhibit P1223; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 28 (k).

⁷²²⁴ Exhibit P1065 (Family personal status extract for Mohammed Hassan Oneissi).

⁷²²⁵ Andrew Donaldson, T. 22 June 2017, p. 45.

⁷²²⁶ Exhibit P917 (Subscriber note for number ending in 566).

⁷²²⁷ Exhibit P919 (Subscriber note for number ending in 566).

⁷²²⁸ Exhibit P918 (Subscriber note for number ending in 566).

⁷²²⁹ Exhibit P916 (Subscriber note for number ending in 566).

⁷²³⁰ Exhibit P1882.

⁷²³¹ Exhibit P1762 (Vehicle registration documents, Mohammed Hasan Oneissi), pp 1, 3.

⁷²³² Exhibit P1654 (Subscriber note for landline 322); exhibit P1223, pp 5-6, 25; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 28 (l).

correlation between the name and the identified users, which is not necessarily the case with mobile subscriptions.⁷²³³

3748. Mr Donaldson had experienced only limited examples of a landline subscription being used beyond the family. This was unlike mobile subscriptions, which frequently do not provide the actual user's identity.⁷²³⁴ Also, a property is needed for the landline's installation.⁷²³⁵

h. Alia Hassan Issa—Mr Oneissi's sister

3749. Purple 095 had 67 contacts with a number attributable to another member of Mr Oneissi's family, his sister, Ms Alia Hassan Issa.⁷²³⁶ The attribution evidence includes Ms Issa's Hajj registration⁷²³⁷ and the registration form at the Lebanese Ministry of Finance for the liquidation of Mr Oneissi's father's estate.⁷²³⁸ Both documents list the number ending in 837 in Ms Alia Hasan Issa's name.

3750. The same number is also listed in the names of Mr Hassan Abdel Karim Jaber and Ms Najjat Abdel Karim Jaber in their university registrations.⁷²³⁹ According to Ms Najjat Jaber's university registration form, the student's father's name is Abdel Karim and the family name is Jabr. Ms Alia Issa is listed as Ms Najjat Jaber's mother.⁷²⁴⁰

i. Mazen Hasan Bachir and Hasan Hussein Bachir—
Mr Oneissi's brother-in-law and father-in-law

3751. An official family personal status extract lists Mr Hasan Hussein Bachir as the father of Mr Oneissi's wife and Mr Mazen Hasan Bachir as her brother.⁷²⁴¹

⁷²³³ Andrew Donaldson, T. 22 June 2017, p. 46.

⁷²³⁴ Andrew Donaldson, T. 22 June 2017, pp 46-47.

⁷²³⁵ Andrew Donaldson, T. 22 June 2017, p. 48.

⁷²³⁶ Exhibit P1223; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 28 (m); exhibit P1066.

⁷²³⁷ Exhibit P1729 (Extract from the 1428 Hajj list of applicants).

⁷²³⁸ Exhibit P1882.

⁷²³⁹ Exhibit P1015 (Extract from the Lebanese International University's list of students for academic year 2004-2005); exhibit P1013 (Extract from the Lebanese University's list of students for academic year 2004-2005).

⁷²⁴⁰ Exhibit P1013.

⁷²⁴¹ Exhibit P1068 (Family personal status extract for Hasan Hussein Bachir); exhibit P1069.

Numbers ending in 727 and 376

3752. The telecommunications evidence shows that Purple 095 was in frequent communication, 204 times, with a post-paid number ending in 727 subscribed to Mr Mazen Hasan Bachir.⁷²⁴² The call data records also show 42 contacts between Purple 095 and a number ending in 376.⁷²⁴³ This number is subscribed to ‘Hassan Husein Bachir’⁷²⁴⁴ and appears as Mr Bachir’s contact number in documents related to the purchase and registration of a vehicle, dated 4 February 2008.⁷²⁴⁵ Mr Mazen Bachir provided the same number in his passport application, dated 22 February 2010.⁷²⁴⁶

Number ending in 953

3753. In February 2005 Purple 095 had five contacts with another number, which may be linked to Mr Oneissi’s brother-in-law, Mr Mazen Bachir.⁷²⁴⁷ This number, ending in 953, was subscribed to ‘Mazen Hasan Bachir’ on 26 January 2005.⁷²⁴⁸

j. Rabih Hassan Bachir—Mr Oneissi’s brother-in-law

Number ending in 895

3754. Purple 095 had 25 contacts with a number, ending in 895,⁷²⁴⁹ which throughout Purple 095’s attribution period was subscribed as an anonymous prepaid Touch number.⁷²⁵⁰ Subsequently, in August 2005, it was subscribed to Mr Rabih Hasan Bachir, Mr Oneissi’s brother-in-law.⁷²⁵¹

3755. Given his experience in examining subscription records, Mr Donaldson explained that this is a typical example of an updated subscription record. He noted that both subscriptions are

⁷²⁴² Exhibit P1501 (Subscriber note for number ending in 727).

⁷²⁴³ Exhibit P1223; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 28 (o).

⁷²⁴⁴ Exhibit P1507 (Subscriber notes for number ending in 376).

⁷²⁴⁵ Exhibit P1767 (Vehicle registration documents, Hasan Hussein Bachir), ERNs 60297588-60297589, 60297596.

⁷²⁴⁶ Exhibit P1579 (Mazen Hassan Bachir’s Lebanese passport application), p. 2.

⁷²⁴⁷ Exhibit P1223, pp 279-281; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 28 (r).

⁷²⁴⁸ Exhibit P1506 (Subscriber note for number ending in 953).

⁷²⁴⁹ Exhibit P1223, pp 4, 10-11, 63-64, 82, 94-96, 127, 166, 183, 198-199, 225, 248, 266; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 28 (p).

⁷²⁵⁰ Exhibit P1502 (Subscriber note for number ending in 895).

⁷²⁵¹ Exhibit P1504 (Subscriber note for number ending in 895); exhibit P1068; exhibit P1069.

relevant, explaining that in this instance number 895's calls ran up to the date of its re-subscription and then proceeded immediately, meaning the number was never returned to Touch for redistribution.⁷²⁵²

Landline 731

3756. In 2003, Purple 095 had eight contacts with a landline number, ending in 731, subscribed as of 4 August 2003 in the name of Mr Rabih Hasan Bachir.⁷²⁵³ The same number is his contact number in his passport application, dated 21 October 2005, in a vehicle sales contract, dated 7 September 2006, and related documents.⁷²⁵⁴

k. Witness 67—Mr Oneissi's service provider

3757. Purple 095's call sequence table shows 65 contacts with three numbers associated with Witness 67, who provided professional services to Mr Issa between 15 January 2003 and 28 January 2005.⁷²⁵⁵ Purple 095 had 44 contacts with one of the witness's business's landline numbers and 20 contacts with the other.⁷²⁵⁶ Purple 095 also had one contact with Witness 67's mobile.⁷²⁵⁷

3758. The Trial Chamber received Witness 67's business card into evidence, which displays the three telephone numbers. Two were his office numbers. The third was his personal mobile number since 1990 or 1992, including between 2000 and 2005, used for personal and professional purposes.⁷²⁵⁸

⁷²⁵² Andrew Donaldson, T. 22 June 2017, p. 49.

⁷²⁵³ Exhibit P1223, pp 74, 77, 87-88, 90, 95; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 28 (q); exhibit P1652 (Subscriber note for number ending in 731).

⁷²⁵⁴ Exhibit P1580 (Rabih Hassan Bachir's Lebanese passport application); exhibit P1768 (Vehicle registration documents, Rabih Hasan Bachir), pp 6-7.

⁷²⁵⁵ Exhibit P1223, pp 2, 270; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 29 (a).

⁷²⁵⁶ Exhibit P1223; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 29 (a), (i)-(ii).

⁷²⁵⁷ Exhibit P1223, p. 188; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 29 (a), (iii).

⁷²⁵⁸ Exhibit P599 (Copy of Witness PRH067's business card); Witness PRH067, T. 30 September 2015, pp 20-22.

(c) Witness 67's testimony and related evidence

3759. Witness 67 provided services to Mr Oneissi as Mr Issa between January 2000 and August 2004.⁷²⁵⁹ Mr Oneissi—registered in Witness 67's business records as Houssein Hasan Issa—had 49 appointments at Witness 67's business between 3 January 2003 and 21 August 2004.⁷²⁶⁰

3760. Mr Issa became Witness 67's client around the end of 1999 and at the beginning of 2000. His last appointment was on 21 August 2004. Mr Issa's personal details, which included his name, date of birth and contact number, were initially recorded on paper. In 2000, the business switched to electronic records and Mr Issa's details were transferred to the electronic system.⁷²⁶¹

3761. The only contact telephone number provided by Mr Issa was Purple 095. The call data records show numerous communications with Witness 67's two office numbers from January 2003 to January 2005,⁷²⁶² and one incoming call from the witness's mobile number in July 2004.⁷²⁶³

3762. Witness 67's business recorded appointment dates without times.⁷²⁶⁴ The witness, however, remembered that Mr Issa would come to his office mostly in the afternoon because Mr Issa was taking morning classes at the Arab University.⁷²⁶⁵ Once, he attended an appointment with his wife 'and that was not usual'. The witness also 'learned that he wasn't working'.⁷²⁶⁶

3763. After their last appointment on 21 August 2004, Witness 67's office continued to call Mr Issa either to make a new appointment or to discuss unpaid bills for the services provided to him.⁷²⁶⁷ Usually, his secretaries contacted the clients, but if there was a problem or if the witness had to ask private questions, the secretary would pass the call to the witness.⁷²⁶⁸

⁷²⁵⁹ Witness PRH067, T. 30 September 2015, pp 26-27, 42; exhibit P602 (Business records concerning the client Hussein Hasan Issa).

⁷²⁶⁰ Exhibit P602, pp 1-2, 8-9.

⁷²⁶¹ Witness PRH067, T. 30 September 2015, pp 23-27, 42; exhibit P602.

⁷²⁶² Exhibit P1223, pp 2, 6-8, 46, 81-83, 85-87, 89-91, 96, 98-100, 103, 105, 108, 110, 121, 127, 132, 160, 164-166, 169, 171, 174, 183, 185, 187-188, 194, 196, 200-203, 210, 213, 222, 235, 237, 244, 246, 259, 270.

⁷²⁶³ Exhibit P1223, p. 188.

⁷²⁶⁴ Witness PRH067, T. 30 September 2015, p. 31.

⁷²⁶⁵ Witness PRH067, T. 30 September 2015, pp 31, 39, 42-43.

⁷²⁶⁶ Witness PRH067, T. 30 September 2015, p. 39.

⁷²⁶⁷ Witness PRH067, T. 30 September 2015, pp 31-32, 50-51.

⁷²⁶⁸ Witness PRH067, T. 30 September 2015, pp 21, 47-48.

3764. After 21 August 2004, 12 calls were made from Witness 67's office to Purple 095, ten between August and November 2004 and two in January 2005.⁷²⁶⁹

3765. Witness 67 'immediately' recognised a photograph of Mr Oneissi as that of his client Mr Issa, from a photo board of twelve people that Prosecution investigators showed him.⁷²⁷⁰ Mr Donaldson used Witness 67's evidence as a further attribution point allowing him to test the information in the documents and the call data records attributing Purple 095 to Mr Oneissi.⁷²⁷¹

(d) Geographic profile

3766. Mr Donaldson compiled a geographic profile for Purple 095 based on Mr Oneissi's address as provided in various documents under the name Issa, the location of Mr Oneissi's appointments with Witness 67 and Purple 095's most frequently used cell sectors.⁷²⁷²

3767. Mr Donaldson, however, conceded that Purple 095's geographic profile, taken in isolation, did not rule out that the mobile had more than one user, or that its user was not Mr Oneissi.⁷²⁷³

i. Mr Oneissi's address

3768. Mr Donaldson's geographical profile for Purple 095 was based on documents providing addresses for Hussein Issa. His report identifies the following addresses within the attribution period, in particular between 15 January 2003 and 13 September 2004:

- Al-Hadath, Al-Jamous Street, Ahmad Abbas Building, 7th floor;
- El-Hadath, El-Jamous, Ahmad Abass, 7th floor;
- Al-Jamous, Al-Jamous Street, Ahmad Abbas Building, 7th floor;

⁷²⁶⁹ Exhibit P1223, pp 202-203, 210, 213, 222, 235, 237, 244, 246, 259, 270.

⁷²⁷⁰ Witness PRH067, T. 30 September 2015, pp 40-41, 44-45, 50-51; exhibit P602, p. 1; exhibit P603 (Extract of photo board shown to Witness PRH067 on 28 August 2010).

⁷²⁷¹ Andrew Donaldson, T. 22 June 2017, p. 52.

⁷²⁷² Exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), paras 32-41, 44-45, 47-48; Andrew Donaldson, T. 21 June 2017, pp 83, 98-100, T. 22 June 2017, pp 9-18, 52-55, T. 25 August 2017, pp 9-23, 30-48. *See also* exhibit P1950, slides 26-31, 47-48; exhibit 4D324 (Graph of incomplete cell data regarding Purple 095); exhibit 4D378 (Google Earth satellite image of Al-Jamous street, Beirut); exhibit 4D379 (Map of home address and most frequently used cells, page 25 of Mr Donaldson's draft attribution report regarding Mr Oneissi).

⁷²⁷³ Andrew Donaldson, T. 25 August 2017, pp 18-19.

- Tyre-Shhour – Issa Property;
- Al-Hadath, Hussein Issa Building, Al-Jamous Street and Al-Hadath, Hassan Abbas Building, Al-Jamous Street; and
- Al-Hadath, Al-Jamous, near *Lycée des Arts*, Ahmad Abbas Building, Residence Hussein Issa.⁷²⁷⁴

3769. Another address associated with Mr Oneissi, but after the attribution period, is Real Estate number 523, section 10, Haret-Hreik, Baabda, that his wife, Ms Hala Bachir, purchased in 2006.⁷²⁷⁵

3770. Regarding the property in Al-Jamous Street, Mr Donaldson referred to a Bank Saderat Iran transaction to purchase Real Estate number 233, section G/24 in the El-Hadath area, but he could not identify which building was the seventh or ‘G’.⁷²⁷⁶

3771. A Prosecution analyst, Mr Andrew Fahey, compared the locations of Real Estate number 233. He found that it was less than ten metres from the *Lycée des Arts* and 60 metres from Al-Jamous Street.⁷²⁷⁷ The Prosecution did not find a landline registered either to Mr Oneissi or linked to plot G/24.⁷²⁷⁸

ii. Most frequently used cell sectors

3772. Mr Donaldson explained that Alfa’s call data for the period before 31 July 2004 reflects cell data only for outbound calls, and cell ID was also often absent for this period.⁷²⁷⁹ Therefore, in the table of Purple 095’s most frequently used cells below he denoted the missing cell data for

⁷²⁷⁴ Exhibit P1877, p. 1; exhibit P641, ERN 60276504; exhibit P1880, p. 1; exhibit P1884 (Information from Special Investigation Commission Fighting Money Laundering *Banque du Liban*), ERN 60238125; exhibit P1883, pp 1, 6; exhibit P642, p. 3; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 32 (c)-(h).

⁷²⁷⁵ Exhibit P644 (Real estate insurance contract of Hala Hasan Bachir), p. 5; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 32 (i).

⁷²⁷⁶ Exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 34.

⁷²⁷⁷ Exhibit P662 (Statement of Andrew Fahey), paras 113-121, pp 87-93 (annex 5).

⁷²⁷⁸ Andrew Donaldson, T. 25 August 2017, pp 60-61.

⁷²⁷⁹ Exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), paras 12, 36; Andrew Donaldson, T. 21 June 2017, pp 99-100, T. 22 June 2017, pp 10-11, T. 25 August 2017, pp 9-13.

3,728 calls as ‘N/A’.⁷²⁸⁰ In other words, the cell site information is incomplete before 1 August 2004. The table of cell activations is below:

Rank Order	Cell Name	Total	Percentage
1	N/A	3,728	45.80%
2	SFEIR2	694	8.53%
3	BRAJNE2	605	7.43%
4	SFEIR3	582	7.15%
5	ROUEIS2	217	2.67%
6	HARA2	170	2.09%
7	BRAJNE1	153	1.88%
8	MIKAEL2	146	1.79%
9	HADATH3	127	1.56%
10	ROUEIS3	115	1.41%

Attribution report of Andrew Donaldson regarding Mr Oneissi—exhibit P1949, para. 36

3773. From 1 August 2004 until the end of the attribution period, 16 February 2004, SFEIR2, SFEIR3 and BRAJNE2 were the most frequently used cells.⁷²⁸¹ Mr Donaldson concluded that including the end cell data, which is available from 1 October 2004, did not significantly change Purple 095’s geographic profile.⁷²⁸²

3774. Mr Donaldson noted that ROUEIS2 and subsequently SFEIR3 were predominantly used during the day, with the hours between 10:00 and 17:00, the ‘usual working hours’, amounting to

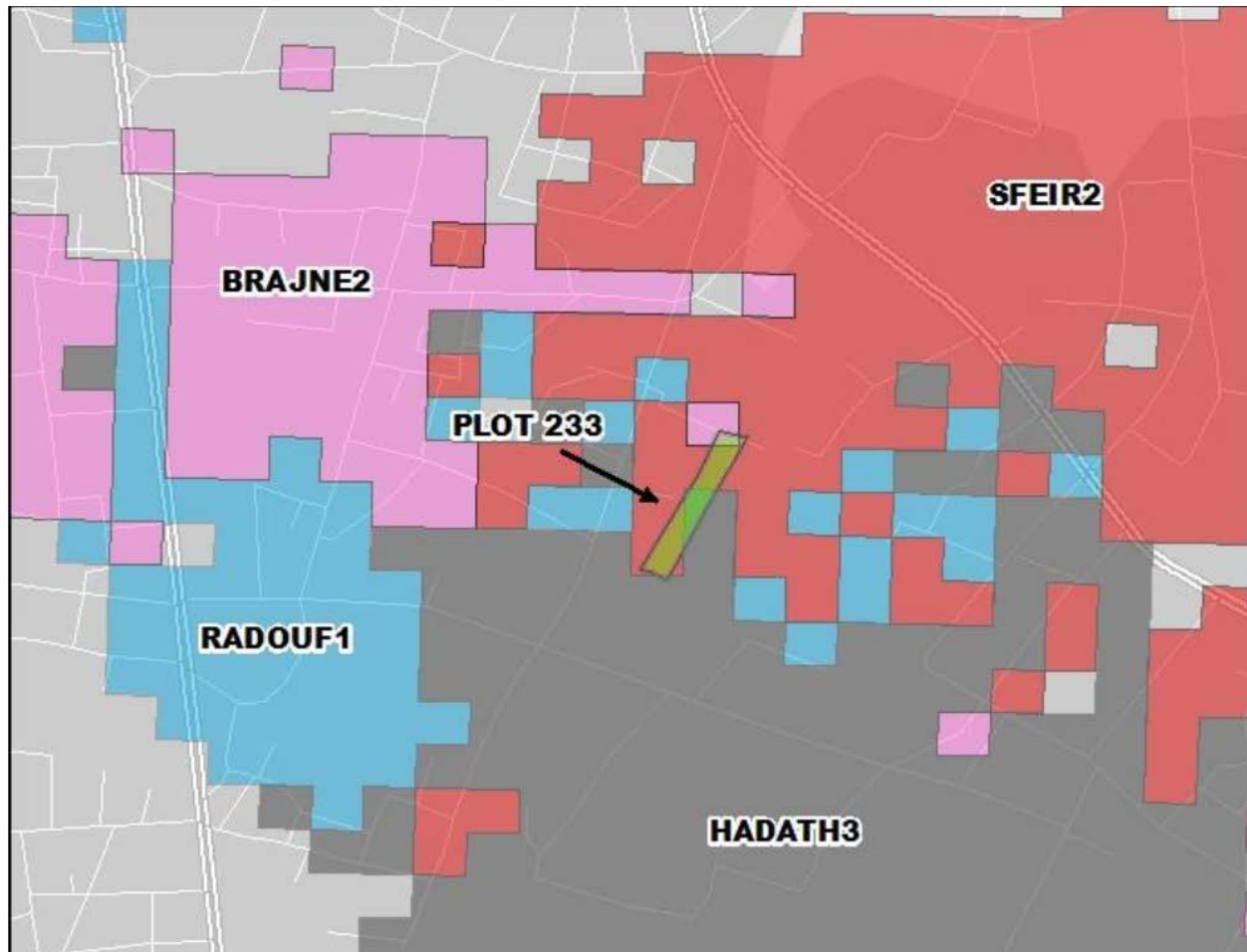
⁷²⁸⁰ Exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), paras 12, 36; Andrew Donaldson, T. 21 June 2017, pp 99-100, T. 22 June 2017, pp 10-11, T. 25 August 2017, pp 9-14. *See also* exhibit 4D324.

⁷²⁸¹ Exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), paras 36-38, 41; Andrew Donaldson, T. 25 August 2017, pp 12-13.

⁷²⁸² Andrew Donaldson, T. 25 August 2017, p. 10; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), para. 42.

three quarters of all activations. By contrast, the majority of activations for SFEIR2 and BRAJNE2 occurred outside of these hours.⁷²⁸³

3775. The map below, extracted from Mr Donaldson's report, shows the proximity of Real Estate 233, the address that Mr Issa frequently used on forms, with the predicted best server coverage areas of Alfa's SFEIR2, BRAJNE2, ROUEIS2 and HARA2:



'Map of home address with predicted best serving coverage'—Attribution report of Andrew Donaldson regarding Mr Oneissi—exhibit P1949, p. 24

⁷²⁸³ Exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), paras 39-40; Andrew Donaldson, T. 22 June 2017, pp 12-13.

iii. Cell activations during Mr Oneissi's appointments with Witness 67

3776. Throughout the attribution period, in particular between 10 January 2003 and 18 November 2004, Purple 095 activated two cells of a certain Alfa cell site 40 times. Thirty-seven of these were on 22 days on which Mr Oneissi had appointments with Witness 67.⁷²⁸⁴ Most were either around noon or in the afternoon.⁷²⁸⁵

3777. A Prosecution analyst, Ms Helena Habraken, analysed the call data records of Purple 095 and Witness 67's records of appointments with Mr Oneissi. She concluded that the location of Witness 67's office falls within the predicted best coverage of one of the Alfa cells and the other is in its vicinity.⁷²⁸⁶

3778. Mr Donaldson calculated that the 22 appointment days on which Purple 095 activated these two Alfa cells aligned with 95 per cent of its use of this cell.⁷²⁸⁷ Further, Mr Oneissi's residence is not near Witness 67's business, and the cell covering the witness's office is not within the cells most frequently used by this mobile.⁷²⁸⁸

3779. The significance of this is in showing that on a day when it is known where Mr Oneissi was, Purple 095 was also there. Mr Donaldson concluded that this corroborates other information that suggests that Mr Oneissi was in control of Purple 095 during the attribution period.⁷²⁸⁹ In his view, the distinctive cell site usage aligns with Mr Oneissi's activities.⁷²⁹⁰

2. Submissions

(a) Prosecution

3780. The Prosecution submits that there is a link between Purple 095 and Purple 231, given that the subscriber name of both mobiles is the same, despite different people using them.⁷²⁹¹ Purple

⁷²⁸⁴ Exhibit P1223, pp 1-2, 7, 46, 83-84, 86, 88, 90, 101-102, 107-108, 110-111, 165, 168-169, 182, 184-185, 195-197, 243; exhibit P602, pp 2, 8-9; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), paras 45, 47-48.

⁷²⁸⁵ Exhibit P1223, pp 1-2, 84, 86, 88, 90, 101, 107-108, 110, 168-169, 182, 184-185, 195-197.

⁷²⁸⁶ Exhibit P1154 (Witness statement of Helena Habraken), paras 12-14, pp 7, 9-11 (annexes A, C).

⁷²⁸⁷ Andrew Donaldson, T. 22 June 2017, p. 54.

⁷²⁸⁸ Andrew Donaldson, T. 22 June 2017, p. 53; exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), paras 36-41.

⁷²⁸⁹ Andrew Donaldson, T. 22 June 2017, pp 54-55.

⁷²⁹⁰ Andrew Donaldson, T. 22 June 2017, p. 55.

⁷²⁹¹ Prosecution final trial brief, para. 164.

095's use was conventional, namely to frequently call family members. It was regularly provided as a contact number for Mr Oneissi in different documents throughout the attribution period.⁷²⁹²

3781. Purple 095's contact profile demonstrates that its user was in regular and consistent contact with numbers attributed to Mr Oneissi's family members, including his mother, three brothers, two sisters, two brothers-in-law and his father-in-law. This number was also in regular and consistent contact with Mr Kheireddine, with whom Mr Oneissi held a joint bank account.⁷²⁹³

3782. Another relevant piece of evidence is an SMS to Purple 095 from 20 June 2004, addressing the recipient as 'Hussein' and mentioning Mr Oneissi's brother and mother.⁷²⁹⁴

3783. Purple 095's most frequently used cells provide coverage to 'the vicinities of Mr Oneissi's home address'.⁷²⁹⁵ These cells and the most frequent contacts remained constant throughout the attribution period, which illustrated that there was no change in the mobile's user.⁷²⁹⁶ As regards the Oneissi Defence's contention that there is no clear evidence that Mr Oneissi owned an apartment at plot 233, the Prosecution submits that his actual legal status is irrelevant. It does not matter whether he owned or rented the apartment. What matters is that throughout the attribution period Mr Oneissi regularly provided this address as his address of residence.⁷²⁹⁷

3784. A further attribution point comes from the evidence concerning Mr Oneissi's appointments with Witness 67, with whom Purple 095 had multiple communications and activated the cell providing predicted best server coverage to the witness's office's location when Mr Oneissi had scheduled appointments.⁷²⁹⁸ Witness 67 recognised Mr Oneissi as his customer, describing the recognition as obvious since he remembered him.⁷²⁹⁹

3785. According to the Prosecution, the Defence's proposition that Mr Oneissi's wife could have been Purple 095's co-user is not supported by any evidence. There is no evidence that this mobile

⁷²⁹² Prosecution final trial brief, paras 164-165.

⁷²⁹³ Prosecution final trial brief, paras 166-167; Prosecution closing submissions, T. 12 September 2018, pp 5-6.

⁷²⁹⁴ Prosecution final trial brief, para. 168; Prosecution closing submissions, T. 12 September 2018, p. 11.

⁷²⁹⁵ Prosecution final trial brief, paras 169-170; Prosecution closing submissions, T. 12 September 2018, p. 7.

⁷²⁹⁶ Prosecution closing submissions, T. 12 September 2018, pp 9-10.

⁷²⁹⁷ Prosecution closing submissions, T. 12 September 2018, p. 8.

⁷²⁹⁸ Prosecution final trial brief, paras 171-172; Prosecution closing submissions, T. 12 September 2018, pp 6, 12.

⁷²⁹⁹ Prosecution final trial brief, para. 173; Prosecution closing submissions, T. 12 September 2018, pp 11-12.

was shared with anyone, including Mr Oneissi's wife, unlike another mobile, ending in 755, subsequent to Purple 095's attribution period.⁷³⁰⁰

(b) Oneissi Defence

3786. The Oneissi Defence contends that as the telecommunications evidence is the backbone of the case against Mr Oneissi, the Prosecution must establish that Mr Oneissi was the sole user for Purple 095 for each SMS and call record relied on by the Prosecution.⁷³⁰¹

3787. The attribution of Purple 095 to Mr Oneissi must meet the standard of beyond a reasonable doubt. This is an indispensable fact for a conviction, which has not been established.⁷³⁰² The Prosecution has not proven this, nor that its cell site analysis or the Alfa telecommunications evidence can establish the physical locations of Purple 095 on the basis of its call data records.⁷³⁰³

3788. Mr Donaldson lacks expertise in cell site analysis, specifically attribution. He has no formal training in attribution techniques, he never testified on the attribution of mobiles, nor has he ever composed a written report that was used as evidence.⁷³⁰⁴

3789. In addition, the Prosecution elected not to have Mr Donaldson's attribution report peer-reviewed by the Prosecution's only expert in cell site analysis, Mr J. E. Philips. Much of Mr Donaldson's report contains opinion-based conclusions that must be disregarded in accordance with international case law. In addition, Mr Donaldson's bias is reflected in his testimony. He willfully omitted evidence or specifically selected evidence to provide to the Trial Chamber.⁷³⁰⁵

3790. For instance, Mr Donaldson unequivocally stated that Mr Oneissi purchased plot 223 while he was a renter, which was later demonstrated to be contradictory to documents provided by the

⁷³⁰⁰ Prosecution closing submissions, T. 12 September 2018, pp 13-16.

⁷³⁰¹ Oneissi Defence final trial brief, paras 11-13.

⁷³⁰² Oneissi Defence final trial brief, paras 12-13; Oneissi Defence closing submissions, T. 20 September 2018, p. 128.

⁷³⁰³ Oneissi Defence final trial brief, paras 12, 14.

⁷³⁰⁴ Oneissi Defence final trial brief, para. 15.

⁷³⁰⁵ Oneissi Defence final trial brief, paras 16-21. Mr Donaldson, in response to a question regarding the possibility that Purple 095 was shared between Mr Oneissi and his wife, stated that if that had been the case, 'her name "should be on the indictment"', which according to the Oneissi Defence is 'a clear demonstration of his prejudice against Mr Oneissi'.

Secretariat of Baabda Land Registry. Mr Donaldson actively removed this document from the final version of his attribution report.⁷³⁰⁶

3791. The documents do not link Purple 095 to Mr Oneissi beyond 20 September 2004, which is three months before the indictment period. Along similar lines, the SMS review of Purple 095 conducted by Mr Donaldson was limited to 34, roughly six per cent, of 552 non-service text messages.

3792. Of the six per cent, Mr Donaldson found only one relevant SMS. It was the only recorded contact between Purple 095 and the other number and it predated the indictment period by six months.⁷³⁰⁷

3793. Purple 095's attribution is based primarily on the location of the mobile and the cell towers it activated. The core issue, however, is that the Prosecution has not established the actual location of Mr Oneissi's residence, nor that it is in the *actual* as opposed to *theoretical* coverage area of the cells.⁷³⁰⁸ Moreover, the cell site data was missing for all incoming calls, all outgoing and incoming text messages before 1 August 2004 and all end cell data before 1 October 2004. The data set was therefore incomplete for 82 per cent of the attribution period. For 46 per cent of the calls and text messages, the cell to which Purple 095 connected remains unknown.

3794. This incomplete data set provides an incomplete geographical profile for Purple 095, creating a likelihood that those missing cell sites were not in the area alleged to be Mr Oneissi's residence.⁷³⁰⁹

3795. The Lebanese Land Registry's response to the requests for assistance confirms that Mr Oneissi never owned plot 233, which the Prosecution uses to place him in the designated coverage areas of Purple 095. The initial alleged residence of Mr Oneissi did not fall within any of the suggested most frequently used cells by Purple 095, therefore not matching its geographical profile. When questioned on this particular point, Mr Donaldson asserted that this location was

⁷³⁰⁶ Oneissi Defence final trial brief, para. 22.

⁷³⁰⁷ Oneissi Defence final trial brief, paras 23-24; Oneissi Defence closing submissions, T. 19 September 2018, pp 125-127. *See also* exhibit 4D384 (Timeline of attribution evidence regarding Mr Oneissi).

⁷³⁰⁸ Oneissi Defence final trial brief, paras 27, 29, 31-35; Oneissi Defence closing submissions, T. 19 September 2018, pp 127-128.

⁷³⁰⁹ Oneissi Defence final trial brief, para. 28; Oneissi Defence closing submissions, T. 19 September 2018, pp 42-43, 46-48.

‘established as being incorrect’ however, this is clearly wrong as no location has been established for Mr Oneissi’s residence.⁷³¹⁰

3796. Witness 67’s evidence was limited in temporal scope to 21 August 2004, the last appointment between Mr Oneissi and the witness. This occurred four months before the indictment period. Witness 67 did not see Mr Oneissi after that. All subsequent calls made to Purple 095 were through the witness’s office, not through him personally, so he could not confirm that Mr Oneissi answered the calls.⁷³¹¹

3797. Both Mr Donaldson and Mr Gary Platt observed that sharing a mobile in the family was a common practice throughout Lebanon.⁷³¹² The SMS evidence does not rule out that Purple 095 was used by more than one person. Another SMS analysed by Mr Donaldson appeared to be from a lingerie store.⁷³¹³

3798. Purple 095’s contact profile is also inconclusive. The top 30 known contacts are comprised of Oneissi and Bachir family members, but Mr Donaldson was unable to establish a relationship for 13 of the 27 non-service numbers with Mr Oneissi.⁷³¹⁴

3799. Additionally, Mr Oneissi’s wife is missing from these contacts. This is highly unusual in light of Mr Philips’s cell site analysis report suggesting that a spouse is usually listed second in a typical list of contacts.⁷³¹⁵

3800. The attribution evidence of Purple 095 supports the likelihood that it was a shared mobile. The Prosecution was only interested in finding documents listing Mr Oneissi’s name and not Purple 095. Moreover, the ‘additional attribution point’ was based on only 65 out of 8,140 calls and or texts, which in no way rules out the shared use of Purple 095.⁷³¹⁶

3801. Mr Donaldson’s evidence was also tainted by ‘confirmation bias’. He admitted that he merely sought to corroborate the information that the Lebanese ISF provided to the UNHCR,

⁷³¹⁰ Oneissi Defence final trial brief, paras 32, 35.

⁷³¹¹ Oneissi Defence final trial brief, para. 36; Oneissi Defence closing submissions, T. 19 September 2018, p. 127.

⁷³¹² Oneissi Defence final trial brief, para. 39.

⁷³¹³ Oneissi Defence final trial brief, paras 25, 42.

⁷³¹⁴ Oneissi Defence final trial brief, paras 26, 42.

⁷³¹⁵ Oneissi Defence final trial brief, para. 26.

⁷³¹⁶ Oneissi Defence final trial brief, paras 41-42; Oneissi Defence closing submissions, T. 19 September 2018, pp 128-129.

namely that Mr Oneissi was Purple 095's user. This is discernible in various requests for assistance in which the Prosecution sought information in relation to Mr Oneissi and not with regard to Purple 095.⁷³¹⁷

3. Findings

3802. As a preliminary matter, the Trial Chamber is not satisfied that the Lebanese ISF's possible identification of Purple 095 in November 2008, and of Hussein Hassan Issa as its user, and the Prosecution's requests for assistance regarding Mr Oneissi demonstrates confirmation bias in Mr Donaldson's attribution analysis.

3803. Investigations typically start with leads. They have to come from somewhere. The ISF had been investigating, since February 2005, the networks it considered were involved in the attack. On 22 November 2008, unidentified ISF officials informed the UNIIC of ISF suspicions regarding Purple 095. But this fact alone cannot demonstrate that Mr Donaldson was attempting to confirm that Mr Oneissi was using Purple 095, and was biased towards doing so merely because of the ISF's suspicions. There is no evidence of this.

3804. Moreover, the UNIIC investigator's note containing this information, exhibit 5D414, attributes Purple 018 not to Mr Sabra, but rather to Assad Salloum. On the Oneissi Defence's confirmation bias theory, Mr Donaldson and his team would not have investigated Mr Sabra's possible involvement in the crimes charged, but rather should have attempted to prove the culpability of another person.

3805. The evidence reveals that the Prosecution engaged in an enormous amount of investigation of numerous of Purple 095's (and Purple 018's) contacts in attempting to discover who was using the mobile(s). These included the standard investigatory inquiries of banks, official registries and contacts of the number. They all led in one direction, namely to Hussein Hassan Issa or Oneissi. On this point, the evidence also conclusively proves that Hussein Hassan Issa and Hussein Hassan Oneissi are the same person.

⁷³¹⁷ Oneissi Defence final trial brief, para. 38, referring to exhibit 5D414; exhibit 4D466 (Various Prosecution requests for assistance requesting records from Lebanese entities); exhibit 4D466.1 (Index of Prosecution requests for assistance and responses); Oneissi Defence closing submissions, T. 19 September 2018, pp 129-130.

3806. Throughout the attribution period, Mr Oneissi, using his former family name Issa—and even after its formal judicial correction in January 2004 to Oneissi—consistently used Purple 095 as his contact number for business and official reasons. This is demonstrated by the various documents where Mr Oneissi provided Purple 095 as his number, and often as his only number.

3807. That Purple 095 was not subscribed in Mr Issa's or Mr Oneissi's name does not affect its attribution to Mr Oneissi. The Trial Chamber, in this respect, accepts Mr Donaldson's evidence of his experience that Lebanese mobile subscriptions—at least in the attribution period—often did not provide the actual user's identity, or were not updated when the mobile was given to someone else. The Trial Chamber received an abundance of evidence to this effect, including in the form of subscriber notes. Subscriber details were not required for pre-paid SIM cards.

3808. The numerous documents, such as applications to open bank accounts and to purchase a Mitsubishi Lancer, listing Purple 095 as Mr Issa's contact, provide consistent and mutually corroborating evidence that Mr Issa/Oneissi was Purple 095's actual user.

3809. Mr Donaldson did not analyse Purple 095's call patterns to attempt to find a unique geographical signature—as identified by Mr Philips⁷³¹⁸—that would identify its user as Mr Oneissi, based upon things such as his home and work addresses and his lifestyle patterns. This is with the exception of noting in his report the timing of the majority of the activations of the cells ROUEIS2, SFEIR3, SFEIR2 and BRAJNE.⁷³¹⁹ The Prosecution made no submissions to the effect that such a profile proved that it could only have been Mr Oneissi's mobile.

3810. However, Purple 095's contact profile provides strong evidence that he was its user. The call data records demonstrate that a significant number of the top 30 contacts are with numbers attributed to Mr Oneissi's family, in-laws and acquaintances. Most notably, the highest-ranking contact is with a number attributable to his mother, Ms Fatima Darwish, with which Purple 095 had 747 contacts. The second ranking contact is with one of Mr Oneissi's brothers, Ahmad. Within the 15 top ranking contacts are also two other brothers of Mr Oneissi, one of his sisters and Mr Kheireddine, with whom Mr Oneissi had a joint bank account.

⁷³¹⁸ Exhibit P549, p. 151.

⁷³¹⁹ Exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), paras 37-40.

3811. Further, its contact profile demonstrates consistent usage throughout the attribution period. The communication with Mr Oneissi's mother shows a calling pattern between these two numbers from the first date until 15 February 2005. The same applies to the communication with Mr Oneissi's brother, Ahmad, with which Purple 095 had 695 contacts.

3812. Additional supporting evidence is in a single text message, received on 20 June 2004, sent to 'Hossin' (Hussein) and mentioning 'Abbas' and 'Ali', which are the names of two of Mr Oneissi's brothers. SMS is an informal method of communication in which names are not typically used. This mobile's text messages seem to fit that profile. On this point, and significantly, no Party directed the Trial Chamber to any other text mentioning a name pointing towards someone other than Mr Oneissi using the mobile. Thus, the only positive evidence of a recipient name in any text is that of 'Hossin', meaning 'Hussein', Mr Oneissi's given name.

3813. The consistency of Purple 095's communications throughout the attribution period also signifies that the SIM's use of four handsets was not due to a change in its user.

3814. Further evidence that Mr Oneissi was Purple 095's user throughout the entirety of the attribution period comes from Witness 67, his client records concerning Mr Issa and the call data records of Purple 095's communications with his business's two office numbers.

3815. Mr Issa's client profile, as in the other documents, lists Purple 095 as his contact number. Moreover, this is the only number that he provided. Witness 67 also recognised Mr Oneissi from a photo board and confirmed that it was of his client Mr Issa. This establishes an additional compelling link between Mr Oneissi and Purple 095. Additionally, on the 22 days when Mr Oneissi had appointments at the witness's office, Purple 095 activated cells providing predicted best server coverage to it. Many of these cell activations occurred in the afternoon, which was when Witness 67 had most appointments with Mr Issa.

3816. In addition, the two cells that Purple 095 activated almost every time Mr Issa visited Witness 67's office within the attribution period—37 out of 40 activations—do not fall within its most frequently used cell sectors. This provides further support to the conclusion that Purple 095's user had a particular reason to visit the area in the predicted best coverage of these two cells, namely of Mr Oneissi visiting Witness 67. Incontrovertibly, on this evidence, Mr Oneissi—who it is emphasised that Witness 67 recognised in a photograph—was using Purple 095.

3817. As regards Purple 095's geographic profile, the Trial Chamber has received evidence of sufficient documents to associate Mr Oneissi (as Mr Issa) with the address Al-Hadath, Al-Jamous, near *Lycée des Arts*, Ahmad Abbas Building, residence Hussein Issa. Moreover, in July 2003 Mr Oneissi, as Mr Issa, borrowed USD 24,300 from the Iran Saderat Bank to buy the property.

3818. As with Purple 095, Mr Issa consistently provided this address, with some variations, in his applications to open bank accounts, loan applications and in the records related to the purchase of the Mitsubishi Lancer. However, unlike Mr Oneissi's appointments at Witness 67's office, there is no evidence linking the activations of SFEIR2 and BRAJNE2 with his presence at this residence on particular days or times of day.

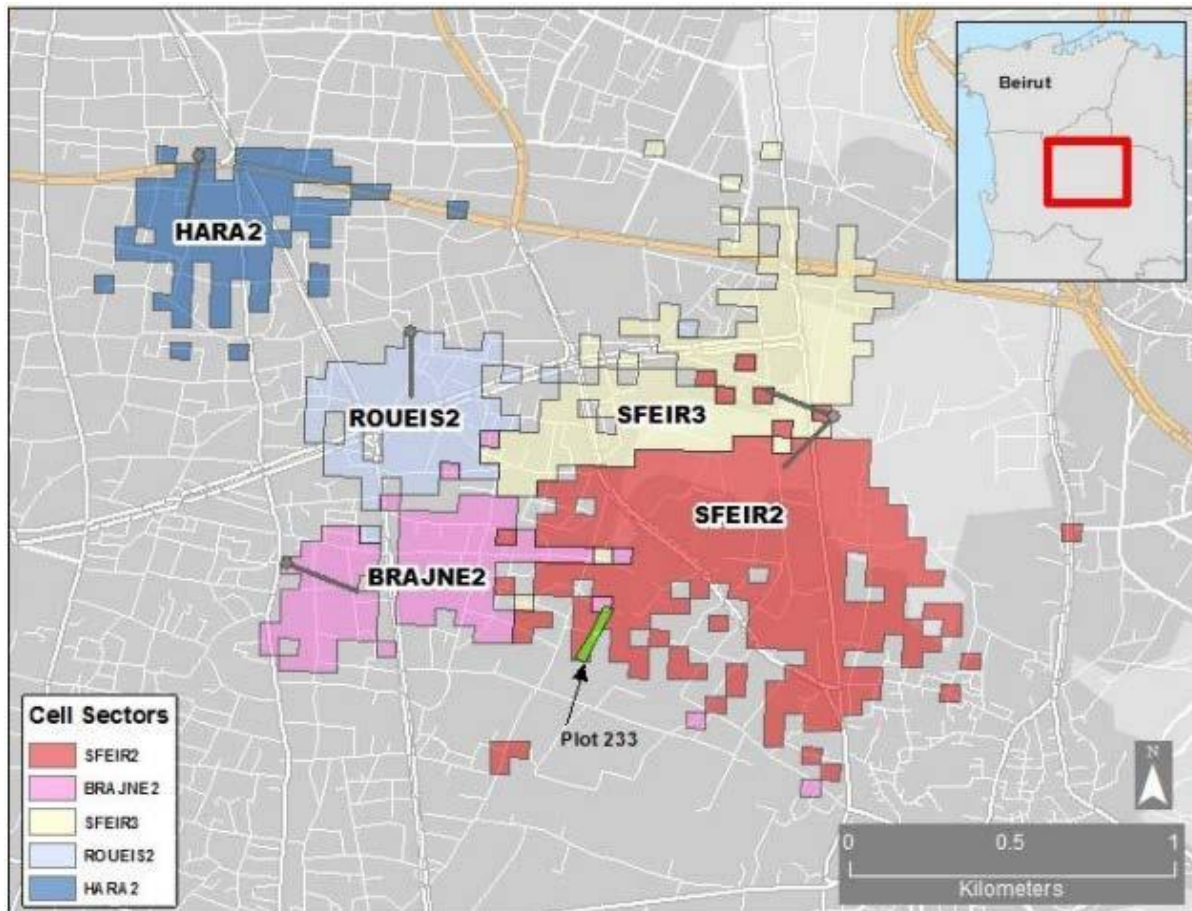
3819. Four Alfa cells provided coverage so close to Plot 233's address that—based upon the Trial Chamber's assessment of the cell site evidence, and in particular that of Mr Philips and Witness 707—a mobile in or very near the building could conceivably connect to any of them. As is shown on the diagram from the electronic presentation of evidence above, plot 233 diagonally intersects the coverage of HADATH3, SFEIR2 and BRAJNE2 and is immediately adjacent to RADOUF1. The top two cells activated for which cell site information was available, but in the overall attribution period, were SFEIR2 and BRAJNE2 (15.96 per cent) and the majority of activations occurred before 10:00 and after 17:00.⁷³²⁰ The adjacent cell SFEIR3 was third with 7.15 per cent of activations. In first place, with 3,728 activations, or 45.8 per cent, was 'N/A'.

3820. The activation of two cells providing predicted best server coverage to plot 233 therefore give some limited support to the user of Purple 095 living in an area covered by them, namely, SFEIR2 and BRAJNE2.

3821. The mobile's most frequently activated cells between 1 August 2004 and 16 February 2005—which covers the indictment period—are, first SFEIR3 (18.46 per cent), then BRAJNE2 (16.18 per cent), followed by SFEIR2 (13.86 per cent), which was formerly in first place. This is the period in which records are available of the cells activated by incoming calls, and of texts sent and received. In this period, 30 per cent of the activations were to cells with predicted best server coverage over plot 233. The diagram below from Mr Donaldson's report shows that most of

⁷³²⁰ Exhibit P1949 (Attribution report of Andrew Donaldson regarding Mr Oneissi), paras 37-40.

SFEIR3's predicted coverage is several hundred metres away from plot 233, although there is a patch of scattered coverage around 100 metres from it:



'Map of home address and most frequently used cell sectors'—Attribution report of Andrew Donaldson regarding Mr Oneissi—exhibit P1949, p. 26

3822. In the face of the consistent use of that address as a contact address, and Mr Oneissi receiving a bank loan to buy it, the fact that he is not legally identified as owning real estate as of mid-2011 is not determinative of it not being his residence. The preponderance of evidence proves his residence there from at least July 2003 onwards, when the cell activation shifted towards two of the cells covering plot 233, namely SFEIR2 and BRAJNE2. But even if this is incorrect, and he did not live there, and perhaps was either letting the property—for which he received and was repaying a bank loan—or was allowing someone else to use it, the contact profile provides sufficient evidence to connect Mr Oneissi to Purple 095.

3823. The Trial Chamber received no positive evidence of where, if anywhere, Mr Oneissi worked at the time, which could account for mobile usage during whatever his work hours may have been. The sole reference to his place of work—noted in September 2004 in a banking document, stating that he was an accountant in a carpet shop in Tyre—in the Trial Chamber’s view, is not particularly probative. It is before the indictment period, and the banking form erroneously records the city address as Tyre: ‘Street: Near *Lycée des Arts*, Region: Al-Hadath; City: Tyre’.

3824. The Trial Chamber cannot rule out that someone else at times used the mobile, and in particular, that it was Mr Oneissi’s wife, Ms Hala Bachir. She may sometimes have used her husband’s mobile, as is not unusual in relationships. There was also no evidence that she had her own mobile before 16 February 2005. Mr Donaldson, in cross-examination, agreed that husbands and wives or even a family sharing a ‘family mobile’ in Lebanon at that time was ‘certainly something we’ve observed’.⁷³²¹

3825. Apart from Mr Oneissi’s wife, the Trial Chamber has no evidence from which it could conclude that anyone else might have used Purple 095. However, Ms Bachir’s *possible* use of the mobile does not undermine the conclusion that Mr Oneissi was its consistent user.

3826. The Trial Chamber cannot of course positively find that Mr Oneissi was the only person who ever used Purple 095, but the totality of the evidence points to him as its principal user. The Trial Chamber has carefully considered the underlying evidence that Mr Donaldson relied upon. Its assessment of the evidence leads it to the only conclusion reasonably available from the totality of the evidence, namely that Mr Oneissi was the principal user of Purple 095 from at least 9 January 2003 until 16 February 2005. It is satisfied of this beyond reasonable doubt.

3827. The final issue is whether there is anything in the call data and cell site records that casts doubt on whether Mr Oneissi was the principal user on the days pleaded in the amended consolidated when he was allegedly using Purple 095 for false claim of responsibility related activities.

⁷³²¹ Andrew Donaldson, T. 25 June August 2017, p. 58.

3828. The Trial Chamber has examined the records and particularly Purple 095's call sequence table. It cannot use the evidence of the call patterns between the three Purple mobiles, 018, 095 and 231, on any of the dates pleaded to support the inference that Mr Oneissi was the user of Purple 095 at the relevant pleaded times. To do so would employ circular reasoning.

3829. However, no call pattern emerges—on any of the days when Mr Oneissi was alleged to have been near the Arab University Mosque, namely 22, 28, 29 and 31 December 2004, and 3 and 7 January 2005—suggesting that someone else was using the mobile. Similarly, on Monday 14 February 2005, Purple 095 made only four calls; three were to Purple 018, between 15:58 and 16:02, and one was to an unknown number, mobile 516, at 12:16, for 104 seconds.

3830. There were also three calls from his mother's attributed mobile to Purple 095 on Sunday 13 and Tuesday 15 February 2005 which provides further support to Mr Oneissi using the mobile at that time.

3831. The Trial Chamber is therefore satisfied that nothing points to anyone else using the mobile on those particular days.

E. Assad Hassan Sabra—Purple 018

3832. Assad Hassan Sabra was born on 15 October 1976 in Beirut. He married Hala Salloum, in Baabda, on 11 November 2000.⁷³²² They lived in Beirut. Between 22 November 2001 and 16 February 2005 a mobile, number 3419018, had numerous contacts with family members of both. That mobile is alleged to be Purple 018 that was used in the false claim of responsibility made after the attack on Mr Hariri's life on Monday 14 February 2005.

3833. The Prosecutor pleads that Mr Sabra had one of three 'Purple phones', which 'were used from at least 1 January 2003 until 16 February 2005'. The amended consolidated indictment specifies that Mr Merhi, Mr Oneissi and Mr Sabra used their personal mobiles, 'colour-coded "**Purple Phones**"', in relation to preparations for the attack. The '**Purple Phones** were used to coordinate the false claim of responsibility'. Further, there was also 'a history of contact between **ONEISSI, SABRA** and **MERHI**' between January 2003 and 16 February 2005.⁷³²³

3834. The Prosecution relies on the work of its analyst, Mr Andrew Donaldson, to prove that Mr Sabra was using Purple 018 at the time relevant to the charges against him, namely between 22 December 2004 and 14 February 2005. In his report, 'Evidence of Telephone Attribution Assad Hassan Sabra', Mr Donaldson concluded that Purple 018 was attributable to Mr Sabra from 22 November 2011 until 16 February 2005.⁷³²⁴

3835. Mr Donaldson also used two other mobiles, numbers 546 and 657 that were used from 24 February and 20 July 2005 respectively, to attribute Purple 018 to Mr Sabra.

3836. Mr Donaldson testified that he believed that the mobiles 546 and 657 had a 'common user', but Purple 018 is attributable to Mr Sabra between 22 November 2011 and 16 February 2005, and did not have multiple users.⁷³²⁵ In fact, to the contrary, there is ample evidence that if Mr Sabra was using it, so was his wife, Ms Salloum, and that it could be seen as a family mobile.

⁷³²² Exhibit P1078 (Family personal status extract), p. 2; exhibit P1080 (Marriage certificate of Assad Sabra and Hala Salloum).

⁷³²³ Amended consolidated indictment, paras 15 (e), 16-17, 19 (d); Prosecution's updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), para. 115.

⁷³²⁴ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 9.

⁷³²⁵ Andrew Donaldson, T. 22 June 2017, pp 98-99, T. 27 June 2017, pp 49, 74-75, T. 28 June 2017, pp 29-31; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), paras 17, 55, 83. *See also* exhibit P1952 (PowerPoint presentation regarding Mr Sabra, Andrew Donaldson), slides 6-7, 42, 115.

3837. In examining Mr Donaldson's methodology, at paragraphs 2623-2644 above, the Trial Chamber has explained in detail the caution it has exercised in examining Mr Donaldson's conclusions on attribution.

1. Summary of the evidence

3838. Mr Donaldson reviewed the relevant evidence and concluded that Purple 018 is attributable to Mr Sabra from 22 November 2001 to 16 February 2005, meaning that he was its user.⁷³²⁶ In his report he described what he did:

The use of 3419018 was investigated using a range of sources and techniques. These include: witness testimony, documentary evidence, text message contents, profiling of contacts, geographical footprint, IMEI crossover, potential co-location with other phones and any further events that could demonstrate attribution.⁷³²⁷

3839. Purple 018 was not used again after Wednesday 16 February 2005. To assist in attributing that mobile to Mr Sabra, Mr Donaldson also analysed the use patterns of two mobiles that the Prosecution states that Mr Sabra or his wife used after the attack, namely, mobiles 546 and 657. In relation to Purple 018 he summarised:

The following evidence provides attribution points: a) Contact profile; b) Geographic profile; c) Text message content; and d) Similar contact and geographic profiles with mobiles 546 and 657 which are in turn attributable to SABRA and his wife.⁷³²⁸

⁷³²⁶ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), paras 9, 17, 19. Records were available for Purple 018 from November 2001, while complete cell site data—including end cell data—records were available only from October 2004 until February 2005. Mr Donaldson explained that the Prosecution only had 'cell sector information for outbound voice calls prior to August 2004'. Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 21. *See also* Andrew Donaldson, T. 27 June 2017, p. 51.

⁷³²⁷ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 4.

⁷³²⁸ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 8.

3840. His conclusion on attribution covers the period from the mobile's first recorded call to its last⁷³²⁹—during which, according to Mr Donaldson, its frequent contacts were consistent.⁷³³⁰ In his testimony he concluded:

But if I could talk about the terminology I've used in the report, the indicators of Purple 018 do not bear, in my view of them, indicators of multiple users. Whereas, for example, the SMS of the two later phones do. We also have direct attribution to Mr. Sabra's wife on at least one of the later phones, as well as Mr. Sabra. The use overall appears that this is an open phone used by multiple people.⁷³³¹

3841. There is no direct evidence of who Purple 018 'belonged' to. It had no subscriber details and no evidence was presented of it being used as a contact number for anything. The Prosecution relies on its contact profile, the content of six SMS messages, the cells to which it connected and the contact and geographical similarities, including text message content, with two mobiles that were used after this one.

3842. There is no evidence associating the name 'Assad Sabra' with this mobile. Two texts sent to the mobile in 2004 refer to 'Assad' and one refers to 'Hala'. Another mentions 'Asodi'. In short, there is no evidence *directly* connecting it to Mr Sabra. The closest is an interview with Mr Sabra's maternal nephew who sent a text addressed to '*khal*', which could refer to a maternal uncle, on Eid 2005.

(a) Handset use

3843. The mobile number 'Purple 018' comes from the SIM and the number allocated by the Alfa network. It was a pre-paid 'Alfa Active' plan SIM that was activated on 8 November 2001 and deactivated by the network on 8 March 2005. Alfa had no subscriber details for its user(s).⁷³³² It was not used between 16 February 2005 and its deactivation.⁷³³³

⁷³²⁹ The number was activated on 8 November 2001 and deactivated on 8 March 2005. Exhibit P905 (Subscriber note for Purple 018). There was no call activity between 16 February 2005 and the mobile's deactivation. *See also* Andrew Donaldson, T. 27 June 2017, pp 49-50; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 24.

⁷³³⁰ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), paras 20-21, 24-25; exhibit P1221 (Call sequence table of Purple 018).

⁷³³¹ Andrew Donaldson, T. 22 June 2017, p. 98. *See also* exhibit P1952, slides 6-7.

⁷³³² Exhibit P905; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 18.

⁷³³³ Exhibit P1221; Andrew Donaldson, T. 27 June 2017, p. 50.

3844. It was used in three different handsets between 1 August 2004 and 16 February 2005,⁷³³⁴ including handset IMEI 353381001114730 from 12 August 2004 to 16 February 2005.⁷³³⁵ IMEI data before 1 August 2004 was not available⁷³³⁶ meaning that its handset use before 1 August 2004 is unknown.

(b) Contact profile

3845. To determine who was using the mobile, Mr Donaldson examined its contacts. A call sequence table of its contacts reveals 8,739 calls and SMS messages in the Prosecution's attribution period of 22 November 2001 to 16 February 2005. The most activated number was the Alfa Active Recharge line, with 592 contacts. The fifth most contacted number was Purple 231 attributed to the Accused Mr Merhi, with 214 contacts. The 25th most contacted was Purple 095, attributed to Mr Oneissi.⁷³³⁷

3846. During its attribution period, Purple 018 was in contact with 17 mobile and landline telephone numbers linked to family members of either Mr Sabra or his wife, Ms Hala Salloum.⁷³³⁸ The Prosecution tendered two family tree diagrams, one for Mr Sabra and one for Ms Salloum.⁷³³⁹

3847. The mobile contacts included:⁷³⁴⁰

- 306 contacts with a mobile number linked to Mr Sabra's father, Mr Hassan Taan Sabra.⁷³⁴¹ The number 934 was subscribed under the name 'Gaby Antonios', activated in December 1997, and recorded under the same name in a sales company's customer database.⁷³⁴² Mr

⁷³³⁴ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 27; exhibit P1221 (Call sequence table of Purple 018), pp 241 and following. It was used in handset IMEI 449309106781010 between 8 and 12 August 2004, and in handset IMEI 350861898326020 between 1 and 21 August 2004.

⁷³³⁵ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 27; exhibit P1221, pp 245 and following.

⁷³³⁶ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 27, fn. 7; exhibit P1221, pp 1-241.

⁷³³⁷ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 33; exhibit P1221.

⁷³³⁸ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 32; exhibit P1080; Andrew Donaldson, T. 28 June 2017, pp 65-66, 69-75, T. 26 September 2017, pp 44-45. *See also* exhibit P1952, slides 34-41.

⁷³³⁹ Exhibits P1959-P1960.

⁷³⁴⁰ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 29; Andrew Donaldson, T. 22 June 2017, p. 98.

⁷³⁴¹ Exhibit P1221, telephone number ending in 934; exhibit P1078; Andrew Donaldson, T. 27 June 2017, pp 65-66, T. 26 September 2017, pp 53-54; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 32 (a).

⁷³⁴² Exhibits P906, 5D397.

Hassan Taan Sabra used this number from at least 27 July 2005 to late 2010.⁷³⁴³ This number was also listed in the 2008 Hajj application for Mr Sabra's sister, Ms Fatima Hassan Sabra,⁷³⁴⁴ and a passport application for Mr Sabra's brother Mr Fahd Hassan Sabra;⁷³⁴⁵

- 267 contacts with a mobile linked to Mr Sabra's brother-in-law, Mr Hassan Haidar Makki.⁷³⁴⁶ Mr Makki activated mobile 592 on 29 November 2004 and used it until at least 2010.⁷³⁴⁷ The mobile is listed, in the name of 'Hassan Haidar Makkeh' on a vehicle bill of sale dated 3 February 2006,⁷³⁴⁸ and in the name of Hasan Makki, on an entry in a sales company's customer database.⁷³⁴⁹ Witnesses attribute this number to Mr Makki and to his auto repair shop.⁷³⁵⁰ An open source lists this number for 'Makki Auto Parts'.⁷³⁵¹ Finally, it is listed on a passport application for Mr Makki's wife;⁷³⁵²
- 212 contacts with a mobile linked to Ms Salloum's aunt, Ms Nadia Salloum,⁷³⁵³ and 72 contacts with three landlines linked to her workplace.⁷³⁵⁴ Ms Nadia Salloum provided mobile number 473 in passport applications in 1999 and 2009.⁷³⁵⁵ It is also listed as her contact number in a tow-truck company's customer database.⁷³⁵⁶ Landline numbers 431,

⁷³⁴³ Exhibit P1769 (Extract from vehicle registration database related to mobile 934), the date of acquisition was 27 July 2005; exhibit P1732 (Extract from Hajj list of applicants), for the 1429 Hajj in 2008; exhibit P1871 (Pledge for restoration of residence), dated 14 January 2008; exhibit P1149 (Statement of Witness PRH106, dated 15 October 2010), para. 32; exhibit P1155 (Statement of Witness PRH339, dated 25 October 2010 and 5 March 2015), para. 11 (p. 3).

⁷³⁴⁴ Exhibit P1730 (Extract from Hajj list of applicants).

⁷³⁴⁵ Exhibit P1596 (Mr Fahd Sabra's Lebanese passport application). *See also* exhibit P1078.

⁷³⁴⁶ Exhibit P1221, telephone number ending in 592; Andrew Donaldson, T. 27 June 2017, pp 67-68; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 32 (b). Mr Hassan Haidar Makki is the husband of Mr Sabra's sister Ms Hana Makki. Exhibit P1078; exhibit P1079 (Marriage certificate of Hassan Makkeh and Hanan Sabra).

⁷³⁴⁷ Exhibit P909 (Alfa subscriber note for mobile 592).

⁷³⁴⁸ Exhibit P1771 (Vehicle registration for Hassan Makkeh).

⁷³⁴⁹ Exhibit P2085 (Extract from customer database for mobile 592).

⁷³⁵⁰ Exhibit P1149 (Statement of Witness PRH106, dated 15 October 2010), para. 49; exhibit P2103 (Interview with Abbas Alaaeddine, 21 October 2010), pp 59-60; exhibit P1156 (Statement of Witness PRH449, dated 11 May 2015), para. 32 (ERN 60307962), p. 21 (ERN 60307971).

⁷³⁵¹ Exhibit P1875 (Screenshot of website related to number 592).

⁷³⁵² Exhibit P1586 (Ms Hanan Sabra's Lebanese passport application).

⁷³⁵³ Exhibit P1221, telephone number ending in 473; Andrew Donaldson, T. 27 June 2017, p. 69; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 32 (c); exhibit P1081 (Family personal status extract); exhibit P1082 (Family personal status extract).

⁷³⁵⁴ Exhibit P1221, telephone numbers ending in 431, 432 and 117; exhibit P1953, para. 32 (j).

⁷³⁵⁵ Exhibit P1598 (Ms Nadia Salloum's Lebanese passport application); exhibit P1587 (Ms Nadia Salloum's Lebanese passport application).

⁷³⁵⁶ Exhibit P1838 (Extract from customer database in relation to mobile 473).

432 and 117 are of a *Société Générale du Banque de Liban* branch.⁷³⁵⁷ An extract from the bank's website shows that Ms Nadia Salloum was the branch manager;⁷³⁵⁸

- 198 contacts with a landline linked to the Salloum family home.⁷³⁵⁹ Ogero records landline number 747 under the name of 'Assaad Hamid Salloum' from 1977 until 28 November 2007.⁷³⁶⁰ It is also a contact number in Ms Nadia Salloum's university student records in 2008 and 2009;⁷³⁶¹
- 162 contacts with a mobile, number 144, linked to Mr Ali Sabra, Mr Sabra's brother.⁷³⁶² Mobile 144 was subscribed to Mr Ali Sabra between 2000 and 2009.⁷³⁶³ Witness PRH106 also attributed it to him.⁷³⁶⁴ After initial calls to Alfa's service number, Purple 018's first call was to mobile 144 on 22 November 2001. The two mobiles' last contact occurred on 13 February 2005;⁷³⁶⁵
- 122 contacts with a landline linked to Mr Sabra's parents and four of their children.⁷³⁶⁶ Landline 284 is registered to Mr Sabra's father, Mr Hasan Taan Sabra,⁷³⁶⁷ and is attributed to Mr Sabra's parents by several witnesses.⁷³⁶⁸ The number was sometimes used by four

⁷³⁵⁷ Exhibit P1643 (Subscriber note for number 431); exhibit P1646 (Subscriber note for number 432); exhibit P1647 (Subscriber note for number 117).

⁷³⁵⁸ Exhibit P1873 (Screenshot of website related to number 431).

⁷³⁵⁹ Exhibit P1221, telephone number ending in 747; Andrew Donaldson, T. 27 June 2017, p. 69; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 32 (d).

⁷³⁶⁰ Exhibit P1650 (Application forms and call data records of landline 747).

⁷³⁶¹ Exhibit P1016 (Record from *Université Libanaise* related to number 747); exhibit P1017 (Record from *Université Libanaise* related to number 747).

⁷³⁶² Exhibit P1221, telephone number ending in 144. Andrew Donaldson, T. 27 June 2017, p. 70, T. 27 September 2017, p. 22; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 32 (e); exhibit P1078.

⁷³⁶³ Exhibit P902 (Alfa subscriber note for mobile 144).

⁷³⁶⁴ Exhibit P1149 (Statement of Witness PRH106, dated 15 October 2010), para. 23.

⁷³⁶⁵ Exhibit P1221, pp 1, 291.

⁷³⁶⁶ Exhibit P1221, telephone number ending in 284; Andrew Donaldson, T. 27 June 2017, pp 70-71; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 32 (f).

⁷³⁶⁷ Exhibit P1642 (Extract from Ogero list of subscribers related to number 284).

⁷³⁶⁸ Exhibit P1155 (Statement of Witness PRH339, dated 25 October 2010 and 5 March 2015), para. 11 (p. 3); exhibit P1149 (Statement of Witness PRH106, dated 15 October 2010), para. 54; exhibit P1150 (Interview of Witness PRH069, 19 October 2010), p. 16.

of their children, including Mr Assad Sabra.⁷³⁶⁹ The first and last contacts between Purple 018 and landline 284 were on 23 November 2001 and 12 February 2005;⁷³⁷⁰

- 83 contacts with a mobile linked to the brother of Mr Sabra's brother-in-law, Mr Hassan Haidar Makki, Mr Mohammed Haidar Makki.⁷³⁷¹ Mobile 716 is subscribed to 'Mohammad Haida Makke' from 8 January 2003 until at least 2010.⁷³⁷² It was provided as his contact in two Hajj applications;⁷³⁷³
- 52 contacts with a mobile linked to Mr Sabra's brother, Mr Nimr Sabra.⁷³⁷⁴ Mr Nimr Sabra provided mobile number 889 in a passport application, and witnesses stated that it was his number;⁷³⁷⁵
- 51 contacts with a mobile linked to Mr Sabra's brother-in-law, Mr Fawwaz Zahweh.⁷³⁷⁶ Mobile number 037 was subscribed in his name and listed as his contact number in a tow-truck company's customer database.⁷³⁷⁷ Two witnesses stated that it was his mobile.⁷³⁷⁸ The number is also listed in Mr Zahweh's daughter's student records in three consecutive school years from 2004 to 2007;⁷³⁷⁹

⁷³⁶⁹ Exhibit P1770 (Documents relating to vehicle registration for Mr Nemr Sabra); exhibit P1585 (Mr Moussa Sabra's Lebanese passport application); exhibit P1584 (Mr Fahd Sabra's Lebanese passport application); exhibit P2086 (Mr Assad Sabra's Lebanese passport application); exhibit P1870 (Documents relating to a *Credit Libanais* bank account).

⁷³⁷⁰ Exhibit P1221, pp 1, 291.

⁷³⁷¹ Exhibit P1221, telephone number ending in 716; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 32 (g).

⁷³⁷² Exhibit P908 (Alfa subscriber note for mobile 716).

⁷³⁷³ Exhibit P1733 (Extract from Hajj list of applicants); exhibit P1734 (Extract from Hajj list of applicants).

⁷³⁷⁴ Exhibit P1221, telephone number ending in 889; Andrew Donaldson, T. 27 June 2017, p. 71, T. 27 September 2017, pp 39-40; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 32 (h); exhibit P1078.

⁷³⁷⁵ Exhibit P1589 (Mr Nemr Sabra's Lebanese passport application); exhibit P1149 (Statement of Witness PRH106, dated 15 October 2010), para. 24; exhibit P1151 (Interview with Witness PRH051, 19 October 2010), p. 34; exhibit P1150 (Interview of Witness PRH069, 19 October 2010), pp 19-20.

⁷³⁷⁶ Exhibit P1221, telephone number ending in 037; Andrew Donaldson, T. 27 June 2017, p. 71, T. 27 September 2017, p. 40; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 32 (i); exhibit P1083 (Family personal status extract); exhibit P1084 (Marriage certificate of Fawwaz Zahweh and Fatmeh Sabra); exhibit P1078.

⁷³⁷⁷ Exhibit P903 (Alfa subscriber note for mobile 037); exhibit P1849 (Extract from customer database for mobile 037).

⁷³⁷⁸ Exhibit P1149 (Statement of Witness PRH106, dated 15 October 2010), para. 51; exhibit P1151 (Interview with Witness PRH051, 19 October 2010), pp 33-34.

⁷³⁷⁹ Exhibit P1018 (Record from *Université Libanaise* related to number 037), years 2004-2005; exhibit P1019 (Record from *Université Libanaise* related to number 037), years 2005-2006; exhibit P1020 (Record from *Université Libanaise* related to number 037), years 2006-2007.

- 37 contacts with mobile number 318 linked to Mr Sabra's cousin, Mr Haytham Kallout by two witnesses and an Alfa subscription;⁷³⁸⁰
- 12 contacts with mobile number 085 attributed to Mr Sabra's cousin, Mr Mohammed Kallout by two witnesses;⁷³⁸¹
- eight contacts with the mobile subscribed to Mr Tayssir El-Dakak, Ms Salloum's aunt's husband.⁷³⁸² Mobile 675 was subscribed under the name 'Tayssir Afifeh Dakak' and activated on 15 December 1997;⁷³⁸³
- seven contacts with Mr Sabra's maternal nephew, Mr Abbas Alaaeddine's mobile 637;⁷³⁸⁴ and
- three contacts with mobile number 878 linked to Ms Salloum's cousin, Ms Nancy El-Meqdad.⁷³⁸⁵ This is her contact number in her passport application of 4 February 2005.⁷³⁸⁶

3848. This adds up to 1,592 contacts (meaning calls or texts) out of 8,739 in the period, or around 18 per cent of the total. For direct evidence of these contacts, in October 2010, Prosecution investigators showed Mr Sabra's nephew, Mr Alaaeddine, a list of seven contacts between his own mobile and Purple 018 in January and February 2005. He could not remember the number and at

⁷³⁸⁰ Exhibit P1221, telephone number ending in 318. Andrew Donaldson, T. 27 June 2017, pp 71-72; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 32 (k); exhibit P1078; exhibit P1085 (Marriage certificate of Hasan Sabra and Leila Saleh); exhibit P1086 (Family personal status extract); exhibit P1087 (Marriage certificate of Hussein Kallout and Samira Saleh); exhibit P1088 (Family personal status extract); exhibit P910 (Alfa subscriber note for mobile 318); exhibit P1149 (Statement of Witness PRH106, dated 15 October 2010), para. 18; exhibit P1151 (Interview with Witness PRH051, 19 October 2010), p. 18.

⁷³⁸¹ Exhibit P1221, telephone number ending in 085; Andrew Donaldson, T. 27 September 2017, p. 59; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 32 (l); exhibits P1078, P1085-P1088; exhibit P1151 (Interview with Witness PRH051, 19 October 2010), p. 9; exhibit P1150 (Interview of Witness PRH069, 19 October 2010), pp 9-12.

⁷³⁸² Exhibit P1221, mobile number ending in 675; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 32 (m). Ms Salloum's aunt, Ms Afifa Salloum, married Mr Tayssir Hamadi El-Dakak. Exhibits P1073, P1080-P1083.

⁷³⁸³ Exhibit P904 (Alfa subscriber note for mobile 675).

⁷³⁸⁴ Exhibit P1221, telephone number ending in 637; exhibit P2103 (Interview with Abbas Alaaeddine, 21 October 2010), pp 20-22; Andrew Donaldson, T. 27 June 2017, p. 72, T. 27 September 2017, p. 78; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 32 (n). The Trial Chamber declined to extend provisional protective measures to this witness (Witness PRH024) in Decision on Protective Measures for Witnesses 024 and 028.

⁷³⁸⁵ Exhibit P1221, telephone number ending in 878; Andrew Donaldson, T. 27 June 2017, p. 72, T. 27 September 2017, p. 71; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 32 (o). Ms Nancy El-Meqdad is Ms Salloum's cousin, exhibit P1076 (Marriage certificate of Hasan El-Meqdad and Faiza Salloum); exhibit P1077 (Family personal status extract); exhibit P1082.

⁷³⁸⁶ Exhibit P1593 (Ms Nancy El-Meqdad's Lebanese passport application).

first thought that it could have belonged to an ex-girlfriend; and stated that it was not stored in his handset. He also identified a photograph of his uncle.⁷³⁸⁷

3849. A call sequence table shows seven contacts between his mobile and Purple 018 between 7 January 2005 and 6 February 2005—there were four voice calls from Purple 018, two to Purple 018 and there was one text on 20 January 2005 to Purple 018. All calls were short, with the longest lasting 71 seconds.⁷³⁸⁸ Mr Alaaeddine had no recollection of either the calls or the text.⁷³⁸⁹

3850. Of Mr Sabra, he said that ‘I barely know him’, but he knew that he used to drive a green BMW.⁷³⁹⁰ Usually on Eid his uncles came to visit him, but otherwise they did not contact each other.⁷³⁹¹ He had recorded mobile 657 in his handset as his uncle Assad’s number.⁷³⁹² He knew little of his uncle’s political affiliations, but knew that he ‘supports Hezbollah but I don’t know if he has any particular relation with the Party’. And ‘I know that he’s religiously committed, he does all his religious duties such as prayer, fasting, and he hangs pictures of El-Sayyed Hasan Nasrallah’.⁷³⁹³ On the same issue, in October 2010, Witness PRH069 stated that ‘When we were teenagers or younger he used to support Hezbollah but right now, I don’t know’.⁷³⁹⁴

3851. Mr Alaaeddine’s statement was received into evidence under Rule 158 over the Sabra Defence’s objections.⁷³⁹⁵ Despite Mr Alaaeddine’s protestations of barely knowing his maternal

⁷³⁸⁷ Exhibit P2103 (Interview with Abbas Alaaeddine, 21 October 2010), pp 40-41. What appeared to be a call sequence table was described as ‘Exhibit TJS/48’, at p. 42. ‘Exhibit TJS/48’ is a list of seven contacts between Purple 018 and mobile 637 on 7, 11, 20, 22, 29 January and 6 February 2005. Similarly, at pp 43-44, regarding the SMS of 20 January 2005, the investigators showed the witness something marked as ‘Exhibit JP1’. It is a text message from 637 to Purple 018 on 20 January 2005. Based on Purple 018’s call sequence table with SMS content, exhibit P523, the text message reads in English ‘Many happy returns to you uncle’. The investigators, at p. 64, showed the witness a photograph ‘marked as Exhibit EK1’ of someone he identified as his uncle ‘my mother’s brother Assad’. It is Mr Sabra’s photograph from his passport application, exhibit P2086. The documents and the copy of the passport photo are attached to an investigator’s note, dated 21 October 2010, by Mr Toby Smith, at ERNs 60185412-60185414, and received into evidence with the witness’s statement as exhibit P2103.

⁷³⁸⁸ Exhibit P523 (SMS call sequence table of Purple 018), p. 2 (SMS no. 24); exhibit P1221, pp 283-284, 286, 288-289.

⁷³⁸⁹ Exhibit P2103 (Interview with Abbas Alaaeddine, 21 October 2010), pp 43-47.

⁷³⁹⁰ Exhibit P2103 (Interview with Abbas Alaaeddine, 21 October 2010), pp 49-50.

⁷³⁹¹ Exhibit P2103 (Interview with Abbas Alaaeddine, 21 October 2010), p. 53.

⁷³⁹² Exhibit P2103 (Interview with Abbas Alaaeddine, 21 October 2010), p. 56.

⁷³⁹³ Exhibit P2103 (Interview with Abbas Alaaeddine, 21 October 2010), p. 60.

⁷³⁹⁴ Exhibit P1150 (Interview of Witness PRH069, 19 October 2010), p. 31.

⁷³⁹⁵ Corrected decision under Rule 158 (Witness PRH024).

uncle, the call sequence tables for Purple 018, mobile 657 and mobile 546 show 78 contacts with mobile 637 between 7 January 2005 and 7 October 2006.⁷³⁹⁶

(c) SMS content

3852. Evidence of the text messages sent and received by Purple 018 is very limited. The call sequence table detailing Purple 018's text messages commences on 14 February 2004, and the first SMS alleged to be relevant to attribution is from 9 May 2004.⁷³⁹⁷ The last relevant SMS text message was on 20 January 2005.⁷³⁹⁸ There is, moreover, no relevant outgoing text message content, meaning none from texts sent from Purple 018. Alfa did not store these at the time.

3853. Mr Donaldson relied on the following six text messages received by Purple 018. The first five were in the Latin script:

- A text message sent on 9 May 2004 refers to 'Assad' as the recipient, stating, '**assad** i am seating dawn alon) amargil may you came . I don't have unit to call u'.⁷³⁹⁹ It was sent from a mobile number (ending in 889) linked to Mr Sabra's brother, Mr Nimr Sabra;⁷⁴⁰⁰
- A text message on 12 August 2004 from the same number says in Arabic, '*sho wainak mish tbayin kifak wahala inshaalla malah wani mishi alhal* .good night'.⁷⁴⁰¹ This was translated into English as, 'so where have you been you haven't been seen. How are you and hala hope you are fine and I am fine .good night.'

Mr Donaldson in his report interpreted this as an inquiry about the health of the 'unidentified male recipient' and 'Hala', who he identified as Mr Sabra's wife;⁷⁴⁰²

⁷³⁹⁶ Seven with Purple 018, 31 with mobile 546 and 40 with mobile 657. Exhibit P1221, pp 283-284, 286, 288-289; exhibit P1271 (Call sequence table of mobile 546), pp 1, 3-10, 12, 14, 18-19; exhibit P1274 (Call sequence table of mobile 657), pp 15-18, 22, 29, 31-33, 36-37, 40-41, 45, 52, 54, 56, 58-59, 63, 70-71, 92, 105.

⁷³⁹⁷ Exhibit P523, p. 1 (SMS no. 3).

⁷³⁹⁸ Exhibit P523, p. 2 (SMS no. 24).

⁷³⁹⁹ Exhibit P523, p. 1 (SMS no. 3).

⁷⁴⁰⁰ Andrew Donaldson, T. 27 June 2017, pp 55, 59; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 28 (a). *See above*, at para. 3847.

⁷⁴⁰¹ Exhibit P523, p. 1 (SMS no. 4); *see also* Andrew Donaldson, T. 27 June 2017, p. 59.

⁷⁴⁰² Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 28 (b).

- A text message on 14 November 2004 in Arabic and from the same number 889, refers to ‘asodi’ as its intended recipient. Translated, it says, ‘so asodi you don't want to go to the village’;⁷⁴⁰³
- A text message from an unidentified number (ending in 941) received on 19 December 2004 refers to ‘Assad’, saying, ‘hello assad tshert footbool in the shop real madrid take care’;⁷⁴⁰⁴
- Eid Al-Adha was on Thursday 20 January in 2005. A text message from mobile 637 on 20 January 2005 refers to the recipient as ‘khal’, meaning ‘uncle’.⁷⁴⁰⁵ It says, ‘Yen3ad 3lek ya khal’, or in English, ‘Many happy returns to you uncle’. Mr Abbas Alaaeddine, Mr Sabra’s maternal nephew, used mobile 637 from ‘two months before he left the army’ in 2005.⁷⁴⁰⁶ He stated that he would usually use the word ‘*khal*’ to identify a maternal uncle, but it can also be used as a sign of respect for someone unrelated;⁷⁴⁰⁷

In October 2010, five years and nine months after the text was sent, Prosecution investigators showed it to Mr Alaaeddine, but he could not recall sending it.⁷⁴⁰⁸ His uncles would visit him on Eid or a wedding or funeral but, ‘Usually I don’t call my uncles or send them text messages on the occasion of Eid. We’re not that close to exchange messages’.⁷⁴⁰⁹ He did not have much contact with his maternal uncles;⁷⁴¹⁰ and

- Another text message also sent on Eid, on 20 January 2005 is translated as: ‘He (she) who would challenge my love to you, I accept their challenge! And he (she) who shares

⁷⁴⁰³ Exhibit P523, p. 2 (SMS no. 13); exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 28 (c); Andrew Donaldson, T. 27 June 2017, pp 59-60, T. 29 September 2017, p. 51.

⁷⁴⁰⁴ Exhibit P523, p. 2 (SMS no. 18); exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 28 (d); Andrew Donaldson, T. 27 June 2017, pp 60-61, T. 29 September 2017, p. 51.

⁷⁴⁰⁵ Exhibit P523, p. 2 (SMS no. 24); exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 28 (e); Andrew Donaldson, T. 27 June 2017, pp 61-65.

⁷⁴⁰⁶ Exhibit P2103 (Interview with Abbas Alaaeddine, 21 October 2010), pp 12, 22; exhibit P1078; exhibit P1071 (Marriage certificate of Mohammed Alaaeddine and Fatima Sabra).

⁷⁴⁰⁷ Exhibit P2103 (Interview with Abbas Alaaeddine, 21 October 2010), pp 38-39.

⁷⁴⁰⁸ Exhibit P2103 (Interview with Abbas Alaaeddine, 21 October 2010), pp 44-47.

⁷⁴⁰⁹ Exhibit P2103 (Interview with Abbas Alaaeddine, 21 October 2010), p. 46.

⁷⁴¹⁰ Exhibit P2103 (Interview with Abbas Alaaeddine, 21 October 2010), pp 26, 36-37.

my love to you, tell his mother to accept my condolences. Yeah! (May it return well on you and your family and especially Sado)’. The message was in the Arabic script but with the word ‘Sado’ in the Latin script.⁷⁴¹¹

3854. Mr Donaldson testified that ‘I believe that Sado is diminutive of Assad.’⁷⁴¹² He also testified that ‘What I have seen is that often nicknames, such as Sado, can be used in text messages.’⁷⁴¹³

(d) Geographic profile

3855. Mr Donaldson also examined the mobile’s geographical profile, meaning the cells to which it connected when receiving or making calls, texts and voice messages. This was to find patterns that could connect the user(s) with particular locations, such as home and work.

i. Mr Sabra’s residence in 2004 and 2005

3856. To prove where Mr Sabra lived during the period relevant to attribution, and hence to try to establish call usage patterns, the Prosecution led evidence from: two witnesses who knew the Sabra family, Witness 69 and Mr Alaaeddine; a service provider to the family who gave an imprecise contact address; and evidence from the electricity supplier. The only official record relating to a home address for Mr Sabra is for an electricity subscription in 2003. No land registration records recording him as owning property in Lebanon were received into evidence.

3857. Mr Donaldson stated in his report that ‘Enquiries made with the Electricité du Liban provided an address for SABRA in Hadath, “Al Hadath, rue 58, Building 28, 4th Floor, Apartment 2”’.⁷⁴¹⁴ This statement has two footnotes, one of which, footnote 159, states that it has been ‘removed’, meaning that the document referenced in an earlier version of Mr Donaldson’s report

⁷⁴¹¹ Exhibit P1965 (Decoded SMS of Purple 018), p. 1; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), paras 28 (f), 97; Andrew Donaldson, T. 27 June 2017, pp 64-65, T. 22 September 2017, pp 6-10. *See also* exhibit P1952, slides 32, 56.

⁷⁴¹² Andrew Donaldson, T. 20 September 2017, p. 9.

⁷⁴¹³ Andrew Donaldson, T. 27 June 2017, pp 64-65, 80, T. 21 September 2017, p. 32. *See also* exhibit P1952, slides 32, 56.

⁷⁴¹⁴ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 41.

is not in evidence.⁷⁴¹⁵ The other footnote refers to exhibit P656, which includes a series of documents received from the *Électricité du Liban* regarding Mr Sabra's electricity subscription.

3858. The *Électricité du Liban* recorded that Mr Sabra owned a property under the address: '23 Municipality; 03 Area; 27 Building (Tabaja); 58 Street; 04 4th floor'.⁷⁴¹⁶ The address is linked to him from 11 September 2003, the commencement date of an electricity subscription in his name; an electricity meter was installed there on 15 September 2003.⁷⁴¹⁷ A map extracted below, titled 'Municipalite Hadath (23) Numéation Des Immeubles & Rues Secteur - 3-' shows the location of numbered streets, including a street numbered 58:

⁷⁴¹⁵ Compare exhibit P1953 MFI (Attribution report of Andrew Donaldson regarding Mr Sabra, version 3), fn. 159, referring to ERN 60183339.

⁷⁴¹⁶ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 41; exhibit P656 (Information from *Électricité du Liban* on property owned by Mr Sabra), ERNs 60288929-60288930; exhibit P661 (Statement of Toby Smith), paras 10-26. See also Andrew Donaldson, T. 27 June 2017, p. 9; exhibit P2103 (Interview with Abbas Alaaeddine, 21 October 2010), pp 48-49; exhibit P1155 (Statement of Witness PRH339, dated 25 October 2010 and 5 March 2015), p. 8.

⁷⁴¹⁷ Exhibit P656, ERN 60288930.

PUBLIC

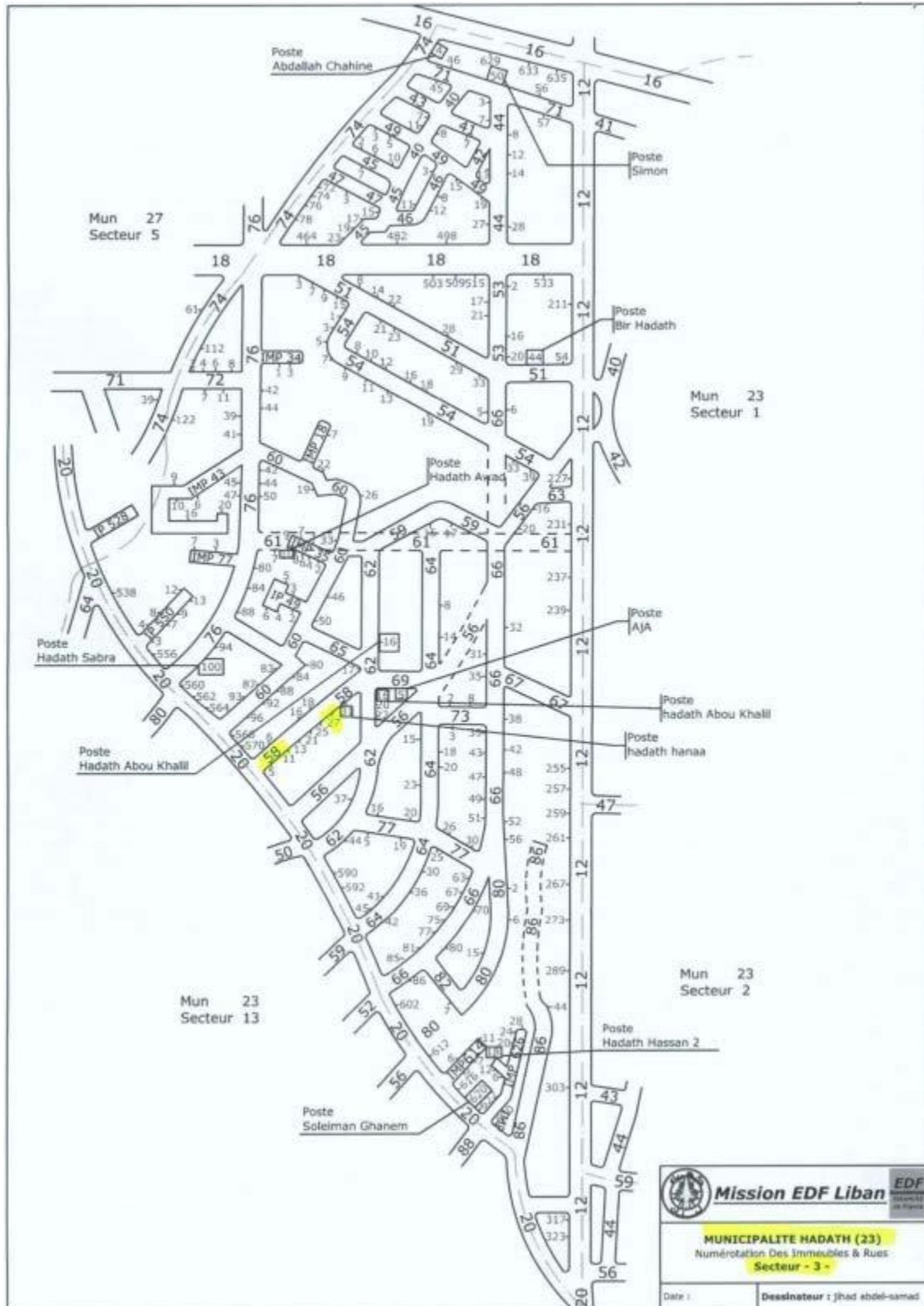


Exhibit P656, ERN 60288934

3859. A subscription receipt from the same service provider records Mr Sabra's address, 'Hadath, Hadath motorway, Sfeir, Tabaja Building', 'Real estate No. 177, Zone: Hadath' as 'his property'.⁷⁴¹⁸ *Électricité du Liban* recorded its subscriber addresses by code numbers rather than a precise street address, such as say, 58 Saint Therese Street, Hadath, Beirut, Lebanon, as is shown below. A Prosecution investigator, Mr Toby Smith, used those codes to reconstruct the property's address.⁷⁴¹⁹ The subscription is:

Accounting	Électricité Du Liban Public Establishment	Subscription date			Subscription number								Branch No. 683047	Tariff 000
		D	M	Y	CD	VIL	SECT	STR	ENT	IMP	EL	LOC		
The subscriber admits to have received a copy of the subscription policy as ratified by the Ministry of public Works as per decision No. 390 dated 05 March 1957, and to have agreed to all its conditions and regulations. Date & signature of the subscriber:		11	09	2003	230358028000402									
Record: District: Date:		Name		Mr Assad Sabra										
				Mr Sabra Assad										
Procedure fee Paid: Twenty thousand Lebanese Pounds 20000LBP		Address		Hadath, Hadath motorway, Sfeir, Tabaja Building, his property										
Power processing duties Paid: (None of the above amounts are refundable)				R. Hadath, I. Sabra										
VAT: Two thousand 2000 LBP (This amount is absolutely non-refundable)		Box or chamber: 3us3	Without junction <input type="checkbox"/>	With junction <input type="checkbox"/>	Order No. Chiyah Division – Reception					Municipality H. Hreik				
Paid in advance for power consumption: One hundred and fifty thousand 150000 LBP (This amount would be refunded upon submission of form No. 4, given to the subscriber, and after having settled all the calculated amounts until the date of termination or transfer.)		Type of procedure	Overdue invoices:	Station	Name Bloc R					No.				
		Capacity change												
		Subscription transfer			Previous subscriber: NB					Real estate No. 177 Zone: Hadath				

*Extract from exhibit P656—subscription receipt, Électricité du Liban*⁷⁴²⁰

3860. Mr Smith examined other documents from the electricity provider, which broke the address down into the following:⁷⁴²¹

- a) Municipality 23 (Hadath); Area 03; Street 58 ; Building 27 (Tabajah); 4th floor; Apartment 2
- b) El Hadath, El Hadath Highway, Sfeir, Tabajah Building, his property
- c) R. Hadath I. Sabra
- d) Real Estate: Zone: Hadath Number: 177

⁷⁴¹⁸ Exhibit P656, ERN 60288935.

⁷⁴¹⁹ Exhibit P661 (Statement of Toby Smith), para. 11, referring to ERN 60183339. Ultimately, this subscription was not tendered into evidence, but in its place, exhibit P956, which contains the same information, was tendered. Mr Donaldson's final report, exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), fn. 159, marked Mr Smith's version as 'Removed'.

⁷⁴²⁰ Exhibit P656, ERN 60288935.

⁷⁴²¹ Exhibit P661 (Statement of Toby Smith), para. 19.

3861. From this he attempted to find the address, while noting:

I am aware that outside of central Beirut there are few official street names and that it is not unusual for streets to be known by more than one name. I am also aware that buildings in Lebanon can also be known by more than one name. For example, buildings may be referred to by a name which is given to them or by the name of the person who constructs them, owns them or resides in them.⁷⁴²²

He ultimately concluded, of these records, however:

I therefore took this entry to be 'Rue Hadath, Immeuble Sabra' i.e. Hadath Street, Sabra Building. This description did not provide sufficient detail to enable me to identify the location to which electricity was supplied under the subscription.⁷⁴²³

3862. As Mr Smith could not determine a precise location for the address listed in the electricity records,⁷⁴²⁴ a Prosecution analyst, Mr Andrew Fahey, examined the Lebanese Land Registry records and located plot 177 in Hadath, marked it on a map and compared it to the location of street number coded 58 on the map received from the *Électricité du Liban*. These records show plot 177 as having eight buildings, some of which were multi-floored.⁷⁴²⁵ He concluded that the locations from the two sources corresponded,⁷⁴²⁶ as shown in his map below:

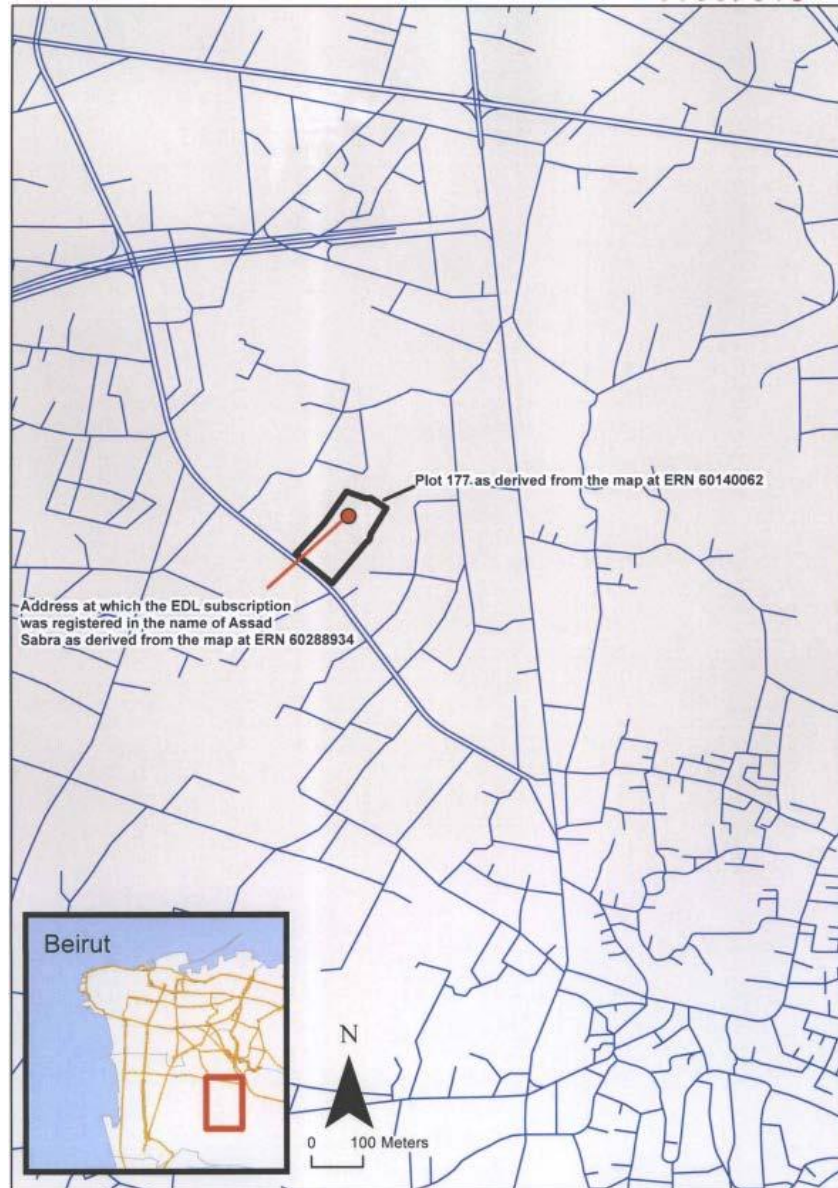
⁷⁴²² Exhibit P661 (Statement of Toby Smith), para. 22.

⁷⁴²³ Exhibit P661 (Statement of Toby Smith), para. 24, *see also* paras 20-21, 23.

⁷⁴²⁴ Exhibit P661 (Statement of Toby Smith), paras 20-23.

⁷⁴²⁵ Exhibit P662 (Statement of Andrew Fahey), paras 136-142, annex 1, p. 5 (ERN 60309444), *see also* annex 7, p. 3 (ERN 60309513). *See also* exhibit P661 (Statement of Toby Smith), paras 24-26; exhibit P1952 (PowerPoint presentation regarding Mr Sabra, Andrew Donaldson), slide 11.

⁷⁴²⁶ Exhibit P662 (Statement of Andrew Fahey), paras 141-142, annex 7, pp 2-3 (ERNs 60309512-60309513).



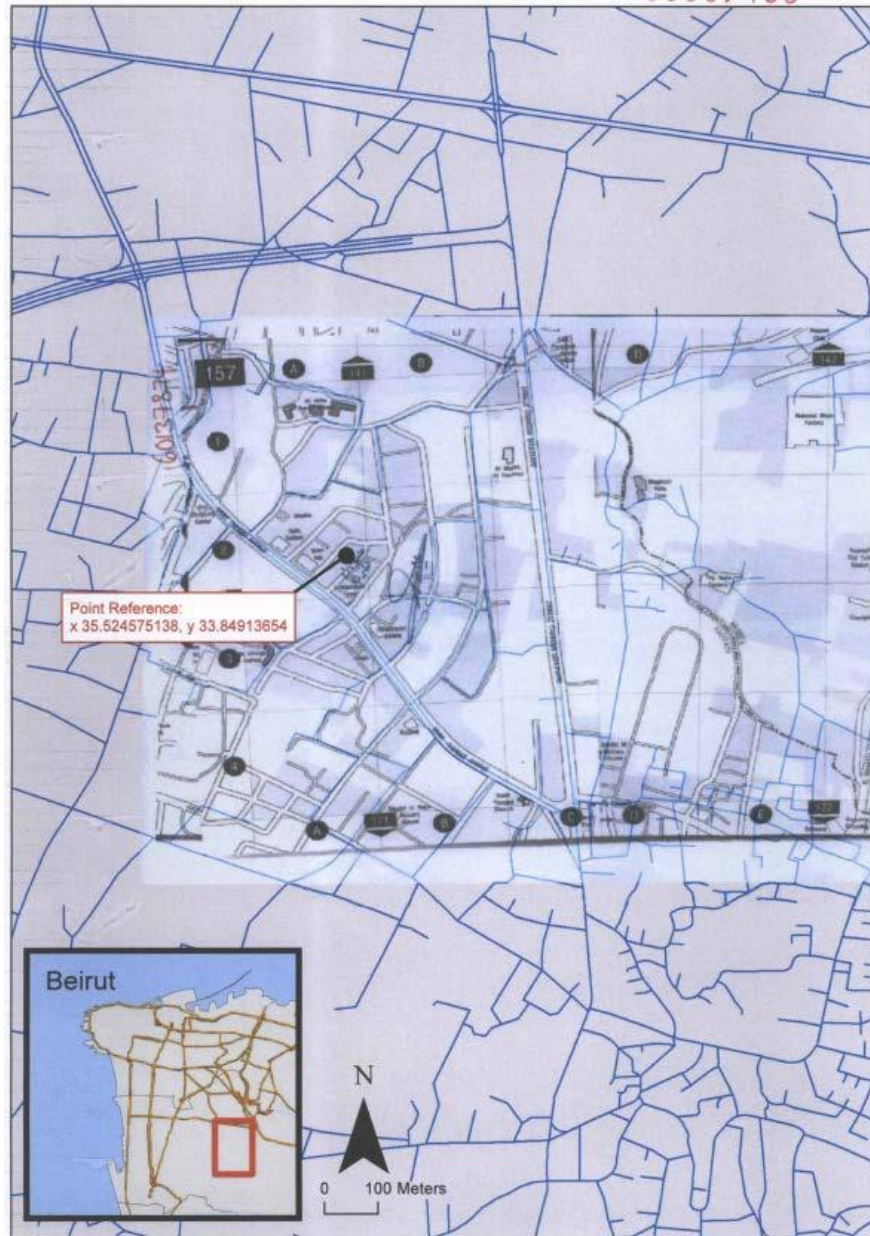
Statement of Andrew Fahey—exhibit P662, p. 102

3863. In another map,⁷⁴²⁷ Mr Fahey overlaid map 157 of the 2005 edition of the Zawarib Atlas of greater Beirut,⁷⁴²⁸ and the result shows plot 177's location *vis-à-vis* Saint Therese Avenue. Mr Fahey's map and map 157 of the Zawarib Atlas are extracted below:

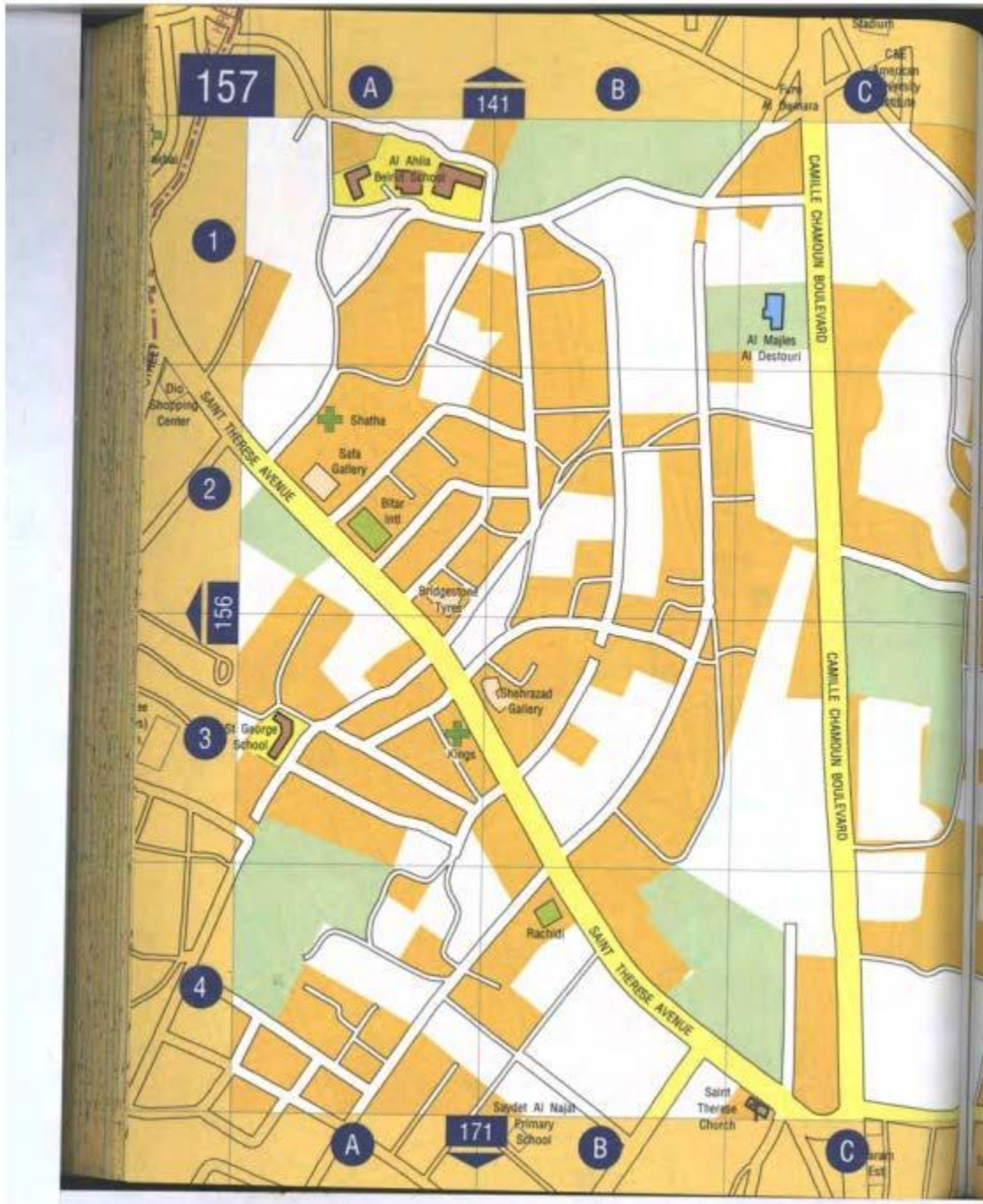
⁷⁴²⁷ Exhibit P662 (Statement of Andrew Fahey), annex 1, p. 11 (ERN 60309456).

⁷⁴²⁸ Exhibit P298, p. 83 (ERN 60298263).

PUBLIC



Statement of Andrew Fahey—exhibit P662, p. 45



Zawarib Greater Beirut Atlas, 2005 edition—exhibit P298, map 157

3864. A service provider for members of the Sabra family, including Ms Salloum, daughter Nour Sabra and Mr Sabra's father, recorded the address of Mr Sabra's wife, Ms Salloum—whose first

visit was on 28 November 2003—as ‘Haret Hreik’.⁷⁴²⁹ From her first visit on 30 June 2005, he recorded Nour Sabra’s address as ‘Haddath, St Therese’.⁷⁴³⁰ Hadath and Haret Hreik are adjoining areas in southern Beirut.

3865. In October 2010, Mr Sabra’s nephew, Mr Abbas Alaaeddine, told Prosecution investigators that before he had travelled out of Lebanon, several months earlier, Mr Sabra and his family had lived ‘at Sainte-Thérèse street’. Mr Sabra lived with his family in a ‘big compound and next to it there is a shop called Abou-Adal’, and the witness had visited there three to four times.⁷⁴³¹ The period of these visits was not specified.

3866. However, there is no *Sainte-Thérèse* street in Hadath in the Beirut street directory and the investigators did not ask him to mark this address on a map. Maps of Beirut show a Saint Therese Avenue in Hadath and a Saint Therese Street in Baabda.⁷⁴³²

3867. Further, and in a significant omission in an investigation interview designed to elicit admissible evidence about Mr Sabra, including where he lived in 2004 to 2005, the investigators failed to ask Mr Alaaeddine anything about his knowledge of the period in which Mr Sabra and his family lived at that address.

3868. An important consideration here is that the Trial Chamber, by majority, admitted Mr Alaaeddine’s interview into evidence under Rule 158 after the Prosecution provided evidence that he could not be located after the Trial Chamber had summoned him to appear in court.⁷⁴³³ The Defence opposed the admission of the interview into evidence and could not question the witness. This has diminished the weight that the Trial Chamber can give to it.

⁷⁴²⁹ Exhibit P1155 (Statement of Witness PRH339, dated 25 October 2010 and 5 March 2015), pp 11, 14; Andrew Donaldson, T. 25 September 2017, p. 42.

⁷⁴³⁰ Exhibit P1155 (Statement of Witness PRH339, dated 25 October 2010 and 5 March 2015), pp 11, 13; *see also* Andrew Donaldson, T. 28 June 2017, pp 28, 32, T. 25 September 2017, pp 38-39, 42.

⁷⁴³¹ Exhibit P2103 (Interview with Abbas Alaaeddine, 21 October 2010), pp 48-49.

⁷⁴³² Mr Donaldson said that there was a St Therese Avenue where plot 177 was, Andrew Donaldson, T. 25 September 2017, pp 44-49. *See also* exhibit P662 (Statement of Andrew Fahey), paras 136-142, annex 1, p. 5 (ERN 60309444), annex 7, p. 3 (ERN 60309513). For Saint Therese Avenue, exhibit P298 (Zawarib Greater Beirut Atlas), ERN 60298263 (map 157, grid B/3 of the atlas). A Saint Therese Street is recorded in the Zawarib Greater Beirut Atlas’s street index in Baabda, exhibit P298, ERN 60298299. The street is mapped at ERN 60298265 (map 161, grid B/4 of the atlas).

⁷⁴³³ Corrected decision under Rule 158 (Witness PRH024). The witness was not served with the summons before the scheduled date of his court appearance. Judge Re dissented on this.

3869. Another witness who knew the Sabra family, Witness PRH106, marked on the Beirut Street directory where he believed they lived.⁷⁴³⁴ That address, however, is on *Deir Al Aazareih* Street, and is about a kilometre and a half from plot 177. Witness 106 and Mr Alaaeddine plainly were referring to different addresses.

3870. In October 2010, Witness 69 stated that when Mr Sabra had his first daughter, he used to live ‘somewhere next to *Sainte-Thérèse* area. *Sainte-Thérèse* Street.’ That daughter, Nour Sabra, was born in April 2005.⁷⁴³⁵ ‘It was a kind of big compound of buildings’, but he did not know the number and stated that ‘Even if I go right now to see it I don’t remember the building’. When asked when this was, he replied, ‘No, it’s a long time’. The witness also thought that Mr Sabra had sold the place a long time ago.⁷⁴³⁶

ii. Where Mr Sabra worked

3871. The Trial Chamber received no direct evidence of where Mr Sabra (or his wife) worked during the periods relevant either to attribution or the indictment. In Prosecution interviews in October 2010, three witnesses, Mr Alaaeddine and Witnesses 106 and 69, stated that he worked in a printing business.

3872. Mr Alaaeddine said that Mr Sabra worked in a printing company, but he did not know where it was.⁷⁴³⁷ He did not say when Mr Sabra worked in printing. Witness 106 stated that Mr Sabra was working in a printing establishment, but he did not know exactly what his profession was nor where he worked, but the printing company was ‘somewhere underground where he does not have mobile phone reception’, so the witness would contact Mr Sabra through his wife.⁷⁴³⁸

3873. Witness 69, in October 2010, stated that ‘He, I think worked as a painter, paint houses and then in a printing or publishing house’, ‘the last thing I can remember is that he was working for a printing factory or house’ but he did not know which printing house.⁷⁴³⁹

⁷⁴³⁴ Exhibit P1149 (Statement of Witness PRH106, dated 15 October 2010), para. 27, marking p. 139, grid A/2, of the Zawarib Beirut Atlas, of an unknown publication date, p. 14 of the statement. The marking appears to correspond to a location in exhibit P298 (Zawarib Greater Beirut Atlas), ERN 60298254 (map 140, grid D/2).

⁷⁴³⁵ Exhibit P1074 (Family personal status extract).

⁷⁴³⁶ Exhibit P1150 (Interview of Witness PRH069, 19 October 2010), pp 28-30.

⁷⁴³⁷ Exhibit P2103 (Interview with Abbas Alaaeddine, 21 October 2010), pp 34-35.

⁷⁴³⁸ Exhibit P1149 (Statement of Witness PRH106, dated 15 October 2010), paras 20, 31, 43.

⁷⁴³⁹ Exhibit P1150 (Interview of Witness PRH069, 19 October 2010), p. 26.

iii. Mr Sabra's father's residence

3874. Mr Sabra's father, Mr Hassan Taan Sabra, according to Mr Donaldson's analysis, may have lived on the second floor of the Toufeilli building, in Hussein Mustafa Street, in Haret Hreik, Beirut. Mr Donaldson based this on analysing documents including a landline subscription for that address in his name including a lease agreement from 1997, and claims submitted for reconstruction funds for damage incurred to the property in the war with Israel in 2006.⁷⁴⁴⁰ Mr Donaldson stated that these 'elements collectively may indicate that the Hussein Mustafa Street, Toufeilli building, 2nd Floor was in fact the residence of Hassan Taan SABRA.'⁷⁴⁴¹ He put it no higher than this.

3875. The address in the reconstruction claim was for a property on Hussein Mustafa Street, real estate number 1225/3 in Haret Hreik. From Land Registry maps, Mr Fahey plotted this location on the Geovision street map of Lebanon, exhibit P548.⁷⁴⁴²

3876. Mr Sabra's father's apparent residence, according to Mr Donaldson, it appears was used at various times by his children,⁷⁴⁴³ including Mr Assad Sabra.⁷⁴⁴⁴ It was in the predicted best server coverage area of HARA2.⁷⁴⁴⁵

iv. Ms Salloum's family residence

3877. Mr Donaldson examined telephone landline subscription documents in the name of Ms Salloum's grandfather, Mr Assad Salloum, which included a lease agreement, and documents for repairs after the 2006 war with Israel. The landline address was El-Chiyah, Hussein Mustafa Street, Karim Building 4th floor, building number 1416. The reconstruction claim was for a

⁷⁴⁴⁰ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), paras 34-37; exhibit P1642; exhibit P654 ('Rebuild Lebanon' reconstruction project claim by Mr Hassan Taan Sabra).

⁷⁴⁴¹ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 37.

⁷⁴⁴² Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), paras 36, 38; exhibit P654, pp 3, 5-7, 12; exhibit P662 (Statement of Andrew Fahey), paras 122-135, annex 6, pp 1, 3, 6 (ERNs 60309505, 60309507, 60309510).

⁷⁴⁴³ Exhibits P1585, P1596, P1642, P1730, P1732, P1769-P1770; exhibit P1595 (Mr Ali Sabra's Lebanese passport application); exhibit P1590 (Mr Nemr Sabra's Lebanese passport application). *See also* Andrew Donaldson, T. 27 June 2017, pp 17-18; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), paras 35-37.

⁷⁴⁴⁴ Exhibit P1874 (Lebanese army record in relation to Mr Sabra); exhibit P1582 (Mr Sabra's Lebanese passport application); exhibit P1583 (Mr Sabra's Lebanese passport application); exhibit P1872 (*Banque du Liban* application for Mr Sabra); exhibit P1870, ERN 60171981; exhibit P2086. *See also* exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 34.

⁷⁴⁴⁵ Andrew Donaldson, T. 27 June 2017, pp 44-47; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 51 (b).

property in El-Daccache Street, Haret Hreik, with the property number 1416.⁷⁴⁴⁶ Mr Fahey mapped this property number 1416 onto a map using Lebanese Land Registry records.⁷⁴⁴⁷

3878. Using the Ogero landline subscription records, Mr Donaldson concluded that until November 2006, the Salloum family address of Mr Sabra's wife's family was at property number 1416.⁷⁴⁴⁸ This was in the predicted best server coverage area for ROUEIS3, bordering HARA2.⁷⁴⁴⁹

3879. The three addresses, namely Mr Sabra's, his father's and his wife's family's, are quite close, with the Sabra address being about two kilometres from the other two.

v. Cell activations

3880. Cell site data is available for all outgoing voice calls made by Purple 018 from 22 November 2001, the first day of the attribution period, meaning that the cell activated in making the call is recorded. However, no records are available of the cells to which Purple 018 connected when it received calls before 1 August 2004.⁷⁴⁵⁰

3881. Further, the end cell data for voice calls is available only from 1 October 2004,⁷⁴⁵¹ meaning that only the cell to which the mobile connected at the start of the call was recorded before that date. No cell site data is therefore available for 52.99 per cent of cell activations between 22 November 2001 and 16 February 2005.⁷⁴⁵² In practical terms, this means that Mr Donaldson could only analyse the cells to which Purple 018's outgoing voice calls connected until 31 July 2004.

3882. The cell towers that Purple 018 most frequently activated from 22 November 2001 to 16 February 2005 in making calls were: SFEIR2 (8.75 per cent), HARA2 (7.11 per cent),

⁷⁴⁴⁶ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), paras 45-46.

⁷⁴⁴⁷ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), paras 45-46; exhibit P662 (Statement of Andrew Fahey), paras 143-151, annex 4 (ERNs 60309481-60309490).

⁷⁴⁴⁸ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 48, exhibit P1650; Andrew Donaldson, T. 27 June 2017, p. 22.

⁷⁴⁴⁹ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 51 (c).

⁷⁴⁵⁰ Exhibit P1221; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 22; Andrew Donaldson, T. 27 June 2017, pp 49-51.

⁷⁴⁵¹ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 22.

⁷⁴⁵² Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 50.

ROUIES2 (5.80 per cent), ROUIES3 (4.46 per cent), BRAJNE3 (2.57 per cent) and SFEIR3 (1.89 per cent).⁷⁴⁵³ Each is in the neighbouring Haret Hreik and or Hadath areas of southern Beirut.⁷⁴⁵⁴

3883. Mr Donaldson also analysed the frequency in which cells were activated between 1 August 2004 and 16 February 2005—namely for the six and half months in which all cell site data was available.⁷⁴⁵⁵ SFEIR2 and HARA2 were also the top two cells activated. However, the commonly activated cells changed. The most frequently activated cells from 1 August 2004 were: SFEIR2 (19.46 per cent), HARA2 (13.46 per cent), BRAJNE3 (8.58 per cent), SFEIR3 (8.18 per cent) and ROUEIS3 (6.99 per cent).⁷⁴⁵⁶

3884. Purple 018 activated SFEIR2 the most frequently in both periods, but activated it regularly only from 6 August 2002 until 15 February 2005. Purple 018 activated it only once in May 2002, and not at all in June or July 2002.⁷⁴⁵⁷ This led Mr Donaldson to note—contrary to his conclusion that cell use was consistent for the entire attribution period—that Purple 018’s activated cells were in fact consistent only from August 2002.⁷⁴⁵⁸

3885. Mr Donaldson mapped for his court evidence the following slide showing the most used cells for Purple 018. In rank order, the most frequently activated cell is ‘N/A’, meaning not available, 53 per cent.⁷⁴⁵⁹

⁷⁴⁵³ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 50; Andrew Donaldson, T. 27 June 2017, pp 51-54, T. 25 September 2017, p. 29.

⁷⁴⁵⁴ Exhibit P1152 (Atlas of relevant cell sectors).

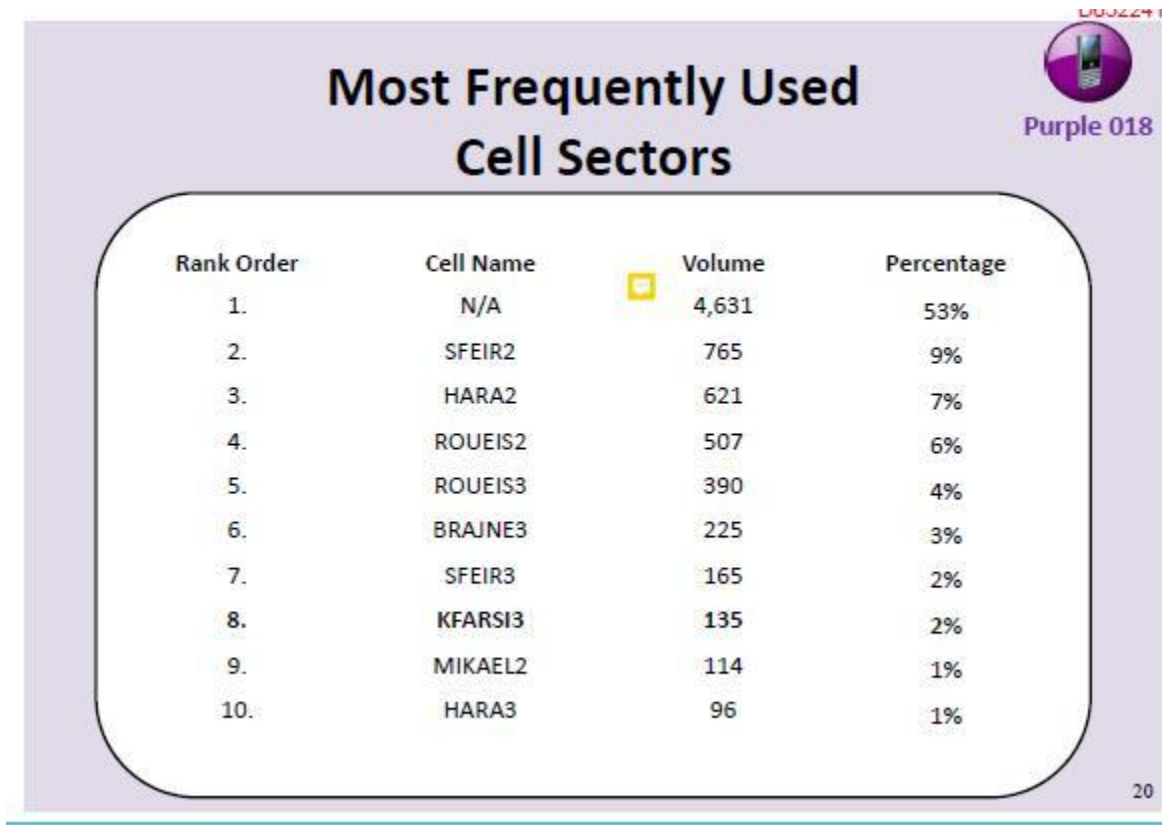
⁷⁴⁵⁵ Save for end cell data, which were available from 1 October 2004. Mr Donaldson noted, however, that the additional end cell data analysis provided ‘no substantive change to the geographic profile of **3419018**’. Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 53.

⁷⁴⁵⁶ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 52; Andrew Donaldson, T. 27 June 2017, p. 52.

⁷⁴⁵⁷ Exhibit P1221. *See also* exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 23.

⁷⁴⁵⁸ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 23.

⁷⁴⁵⁹ Exhibit P1952, slide 20.



Slide 20 of Mr Donaldson's PowerPoint presentation—exhibit P1952

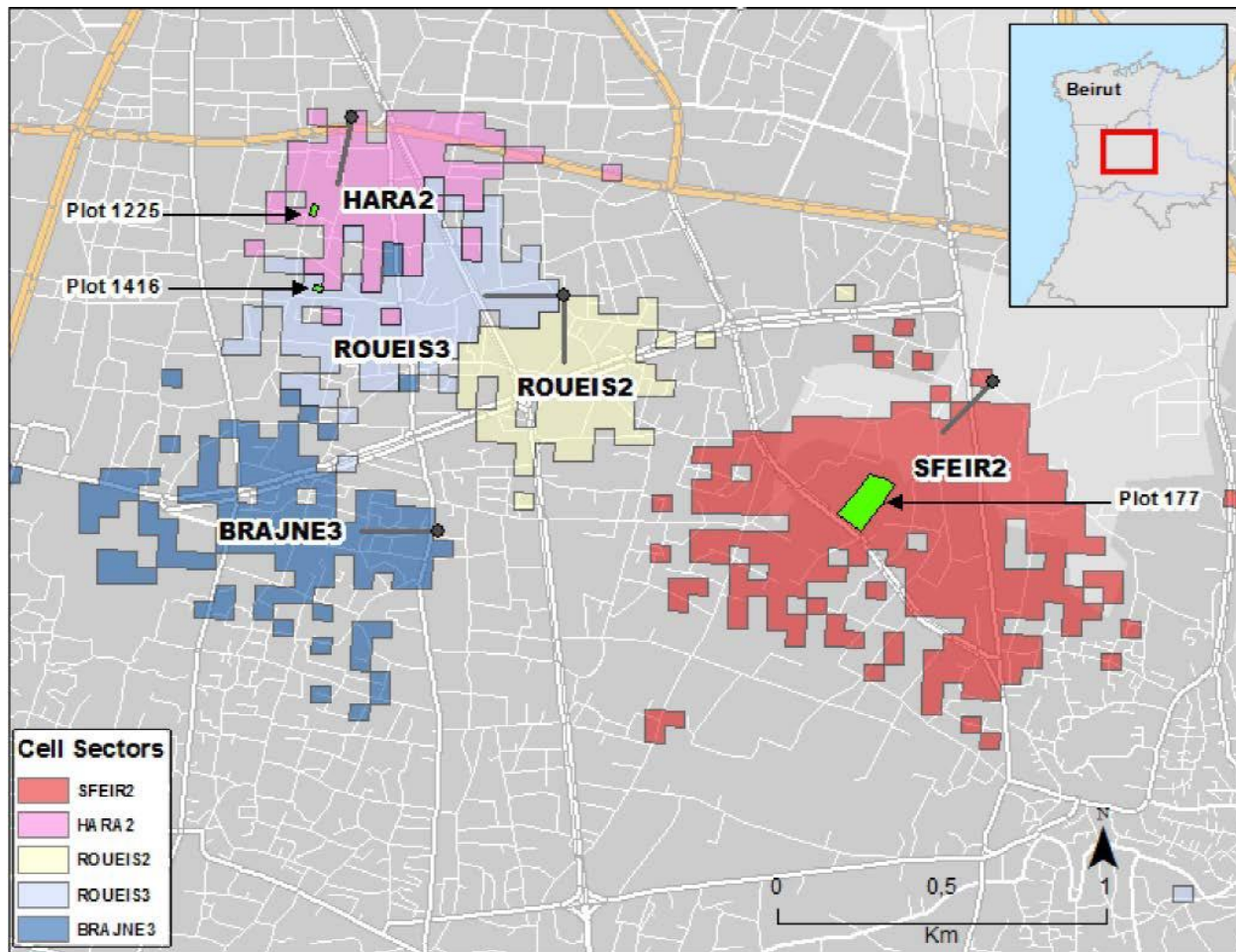
3886. Using the predicted best server coverage map for the most frequently activated cells, Mr Donaldson mapped, in the electronic presentation of evidence, the following family residences: the 'rue 58' property of Mr Sabra (marked as 'Plot 177'),⁷⁴⁶⁰ the Sabra family ('Plot 1225')⁷⁴⁶¹ and the Salloum family ('Plot 1416').⁷⁴⁶²

3887. This map clearly shows the overlapping cell coverage of HARA2, ROUEIS3 and BRANJE3. Plot 1416 is on the border of the predicted best server coverage of HARA2 and ROUEIS3 and a few hundred metres from pockets of BRANJE3's coverage. Plot 1225, while in HARA2, is likewise located several hundred metres from the possible coverage of the other two.

⁷⁴⁶⁰ Andrew Donaldson, T. 27 June 2017, pp 12-14, 17.

⁷⁴⁶¹ Andrew Donaldson, T. 27 June 2017, pp 17-18.

⁷⁴⁶² Andrew Donaldson, T. 27 June 2017, pp 19-22.



Attribution report of Andrew Donaldson regarding Mr Sabra—exhibit P1953.1, para. 51

vi. Ms Hala Salloum's visit to a service provider

3888. Ms Hala Salloum was a registered customer of the service provider Witness PRH339.⁷⁴⁶³ Purple 018 was in contact with this witness on 28 November 2003, a day when she is recorded as having had an appointment.⁷⁴⁶⁴ The service provider recorded number ending in 657 as contact number for Ms Salloum, and 'Haret Hreik' as her address.⁷⁴⁶⁵

⁷⁴⁶³ Exhibit P1155 (Statement of Witness PRH339, dated 25 October 2010 and 5 March 2015), para. 10 (p. 2), para. 6 (p. 11).

⁷⁴⁶⁴ Exhibit P1155 (Statement of Witness PRH339, dated 25 October 2010 and 5 March 2015), para. 9 (p. 11), p. 14; *see also* Andrew Donaldson, T. 28 June 2017, pp 28-29, 32.

⁷⁴⁶⁵ Exhibit P1155 (Statement of Witness PRH339, dated 25 October 2010 and 5 March 2015), para. 9 (p. 11), p. 14.

- (e) Shared contact and geographic profiles with mobiles 546 and 657, attributed to Mr Sabra and his wife

3889. Mr Donaldson analysed two mobiles used after Purple 018 and attributed them jointly to Mr Sabra and Ms Salloum, finding that their similar contact and geographic profiles supported the attribution of Purple 018.⁷⁴⁶⁶

3890. According to Mr Donaldson, mobile 546 is attributable to Mr Sabra and Ms Salloum from 24 February 2005 to 21 July 2005,⁷⁴⁶⁷ whereas mobile 657 is attributable to the two from 20 July 2005 until at least 31 December 2006.⁷⁴⁶⁸

i. Mobile 546

3891. Mobile 546 was a 'Magic' line SIM on the Touch network, which was activated on 3 February 2005, but with a sale date of 22 February 2005, and for which no subscriber details were provided.⁷⁴⁶⁹ Call activity commenced on 24 February 2005.⁷⁴⁷⁰

3892. Witness PRH590 stated that a client of her company provided mobile 546 as the contact for 'Hala Sabra', recorded as residing at the town/post code for 'Hadath', as of 28 July 2005.⁷⁴⁷¹

3893. The top 25 contacts for mobile 546 include seven numbers associated with Mr Sabra's family and four numbers linked to Ms Salloum's family.⁷⁴⁷² All were previously in contact with Purple 018.

⁷⁴⁶⁶ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 5; Andrew Donaldson, T. 27 June 2017, pp 74-75, 78, T. 28 June 2017, pp 30-32. *See also* exhibit P1952, slides 40-41, 48, 74.

⁷⁴⁶⁷ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), paras 55, 58. The subscriber period for that mobile commenced on 3 February 2005, but it was first used on 24 February 2005. A handset change on 21 July 2005 marked a change in contract and geographic profiles, suggesting a new user. Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), paras 59, 62-65; Andrew Donaldson, T. 27 June 2017, pp 77, 88.

⁷⁴⁶⁸ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 83. The end date was selected to limit the volume of data. Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 85; *see also* Andrew Donaldson, T. 27 June 2017, pp 77, 88-89, T. 28 June 2017, pp 4-5.

⁷⁴⁶⁹ Exhibit P1497 (Touch subscriber note for mobile 546); exhibit P1101 (Touch list of activation and deactivation dates); exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 56.

⁷⁴⁷⁰ Exhibit P1271 (Call sequence table of mobile 546); exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 59.

⁷⁴⁷¹ Exhibit P1157 (Statement of Witness PRH590), paras 11-20; Andrew Donaldson, T. 27 June 2017, p. 77.

⁷⁴⁷² Exhibit P1271 (Call sequence table of mobile 546); exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), paras 78-79; Andrew Donaldson, T. 27 June 2017, pp 84-87. *See also* exhibit P1952, slide 66.

3894. In addition, it had nine contacts with a Ghanaian telephone number that Mr Sabra's nephew Mr Abbas Alaaeddine stated was that of Mr Sabra's brother, Mr Fahd Sabra.⁷⁴⁷³ It also had two contacts with his brother, Mr Ali Sabra,⁷⁴⁷⁴ two contacts with his cousin, Mr Haytham Kallout,⁷⁴⁷⁵ one call to a mobile linked to Mr and Ms Fadi and Fadia Salloum, cousins of Ms Salloum;⁷⁴⁷⁶ and one call to Ms Salloum's cousin, Ms Nancy El-Meqdad.⁷⁴⁷⁷

3895. The cells most frequently activated by mobile 546 were Touch's Haret_Hreik_B (38.83 per cent) and Hazmiyeh_2_B (25 per cent).⁷⁴⁷⁸ The Sabra and Salloum family residences, 'Plot 1225' and 'Plot 1416', were within the predicted best server coverage for Touch's cell Haret_Hreik_B.⁷⁴⁷⁹ Hazmiyeh_2_B provides predicted best server coverage for Plot 177 associated with Mr Sabra.⁷⁴⁸⁰

3896. Mr Donaldson mapped these addresses on the predicted best server coverage maps for Touch cells using the electronic presentation of evidence.⁷⁴⁸¹

⁷⁴⁷³ Exhibit P1271, pp 19-21; exhibit P2103 (Interview with Abbas Alaaeddine, 21 October 2010), pp 9-10, 28-29; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 79.

⁷⁴⁷⁴ Exhibit P1271, pp 16, 18; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), p. 93 (annex C). *See above*, at para. 3847.

⁷⁴⁷⁵ Exhibit P1271, p. 18; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), p. 93 (annex C). *See above*, at para. 3847.

⁷⁴⁷⁶ Exhibit P1271, p. 13; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), p. 94 (annex C). Mr and Ms Fadi and Fadia Salloum are Ms Salloum's cousins, exhibit P1075 (Family personal status extract). This mobile is listed in a February 2004 passport application for Mr Fadi Salloum (exhibit P1594 (Mr Fadi Salloum's Lebanese passport application)) and on a June 2005 passport application for Ms Fadia Salloum (exhibit P1588 (Ms Fadia Salloum's Lebanese passport application)).

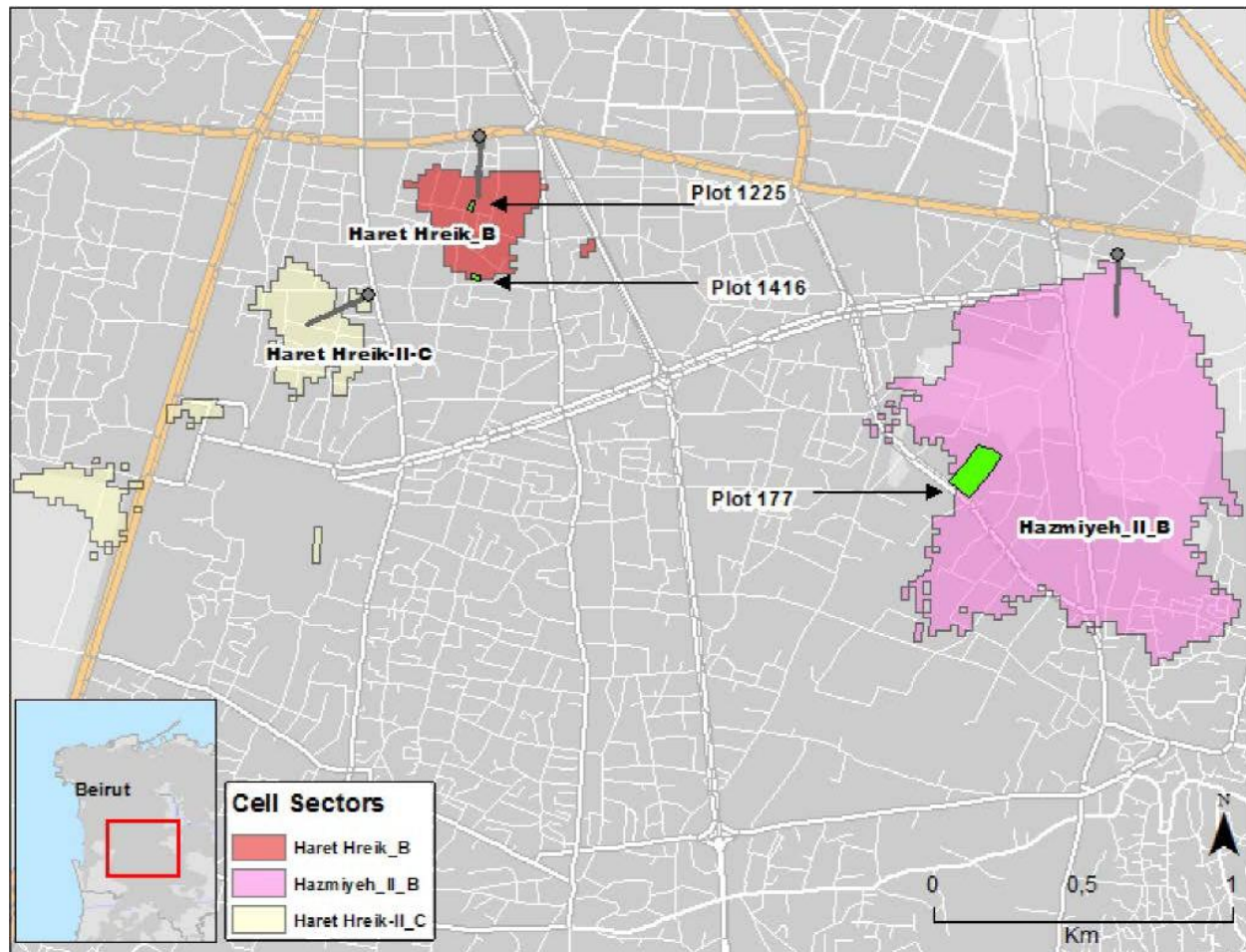
⁷⁴⁷⁷ Exhibit P1271, p. 25; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), p. 94 (annex C). *See above*, at para. 3847.

⁷⁴⁷⁸ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 80; Andrew Donaldson, T. 27 June 2017, p. 78.

⁷⁴⁷⁹ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 81 (a).

⁷⁴⁸⁰ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 81 (b).

⁷⁴⁸¹ Andrew Donaldson, T. 27 June 2017, pp 78-79.



Attribution report of Andrew Donaldson regarding Mr Sabra—exhibit P1953.1, para. 81

3897. Mr Donaldson also examined text messages sent and received by mobile 546. One SMS sent by mobile 546 is signed off ‘Hala/Nour’, the given names of Mr Sabra’s wife and daughter.⁷⁴⁸² Two text messages are addressed to ‘Lalo’, with one sending a kiss to ‘Nour’ and another regards to ‘Nana’.⁷⁴⁸³ Two outgoing text messages are signed by ‘Nadia’.⁷⁴⁸⁴ A further two outgoing

⁷⁴⁸² Exhibit P1273 (SMS call sequence table of mobile 546), p. 11; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 70; Andrew Donaldson, T. 27 June 2017, pp 80-81. Ms Salloum’s given name is Hala, and Mr Sabra and Ms Salloum’s daughter is called ‘Nour’, exhibit P1074 (Family personal status extract).

⁷⁴⁸³ Exhibit P1273, p. 5; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 71; Andrew Donaldson, T. 27 June 2017, pp 81-82.

⁷⁴⁸⁴ Exhibit P1273, p. 7; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 72; Andrew Donaldson, T. 27 June 2017, p. 83.

messages are sent by ‘Fadi’, although one instructs the recipient to call back ‘on my nb plz’.⁷⁴⁸⁵ Finally, one SMS contains the words ‘I am your boss bro Salloum.’⁷⁴⁸⁶

ii. Mobile 657

3898. Mobile 657 on the Touch network was activated on 13 May 2005 and deactivated on 31 December 2012. It was a ‘Magic’ line pre-paid number, for which there were no subscriber details.⁷⁴⁸⁷

3899. On 20 July 2005, SIM mobile number 657 changed handsets to IMEI 35162300018999.⁷⁴⁸⁸ This was the same handset used by mobile 546 throughout its attribution period, namely from 24 February 2005 until 21 July 2005.⁷⁴⁸⁹

3900. In 2008, it appears that Mr Sabra took out a bank loan. A *Société Générale du Banque de Liban* form, dated 18 June 2008 and signed in the presence of Ms Salloum’s aunt, Ms Nadia Salloum, lists mobile 657 as a contact number for its customer, Assad Hassan Sabra.⁷⁴⁹⁰

3901. Witness 106 did not have a mobile number for Mr Sabra, but stated that mobile 657 belonged to Ms Salloum.⁷⁴⁹¹ Similarly, Witness 69 stated that mobile 657 belonged to Ms Salloum and was always with her, although it was saved under ‘Assad’ in his mobile.⁷⁴⁹² Mr Sabra’s nephew, Mr Alaaeddine, stated in October 2010 that mobile 657 was Mr Sabra’s mobile.⁷⁴⁹³

3902. The two cells most frequently activated by mobile 657 are the same as those used by mobile 546, albeit with some shift in usage: Hazmiyeh_2_B accounts for 36.43 per cent and

⁷⁴⁸⁵ Exhibit P1273, p. 4; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 73.

⁷⁴⁸⁶ Exhibit P1273, p. 6; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 74; Andrew Donaldson, T. 27 June 2017, pp 83-84.

⁷⁴⁸⁷ Exhibit P1498 (Touch subscriber note for mobile 657); exhibit P1101, exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 84.

⁷⁴⁸⁸ Exhibit P1274 (Call sequence table of mobile 657), pp 12-13; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 93. *See also* exhibit P1271, pp 1-27. The next handset change occurred on 10 September 2006.

⁷⁴⁸⁹ Exhibit P1271; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 67; Andrew Donaldson, T. 27 June 2017, pp 76-77.

⁷⁴⁹⁰ Exhibit P1869 (*Banque du Liban* signature card); exhibit P1872; Andrew Donaldson, T. 27 June 2017, pp 90-91.

⁷⁴⁹¹ Exhibit P1149 (Statement of Witness PRH106, dated 15 October 2010), para. 25.

⁷⁴⁹² Exhibit P1150 (Interview of Witness PRH069, 19 October 2010), pp 21-22.

⁷⁴⁹³ Exhibit P2103 (Interview with Abbas Alaaeddine, 21 October 2010), p. 17. *See also* Andrew Donaldson, T. 28 June 2017, p. 16.

Haret_Hreik_B for 14.02 per cent.⁷⁴⁹⁴ An application form for a change of address for the Salloum family landline, to ‘El-Aarid’ street in ‘El-Chiyah’, dated 21 November 2006,⁷⁴⁹⁵ coincides with a spike of cell activity of mobile 657 in Bir_El_Abed_A and Bir-El_Abed_C—although the Salloums’ new address was not sufficiently precise to establish which cell would provide predicted best server coverage.⁷⁴⁹⁶

3903. Among the contacts of mobile 657 were 14 numbers linked to relatives of Mr Sabra and eight numbers linked to Ms Salloum’s family.⁷⁴⁹⁷ The most frequent contacts—Mr Sabra’s father; Ms Salloum’s aunt and parents; and Mr Sabra’s brother-in-law—were consistent with those seen in Purple 018 and mobile 546. On the other hand, there were significantly fewer calls to other family members, with only four direct relatives of Mr Sabra falling within the top 28 contacts.⁷⁴⁹⁸

3904. Three text messages sent by mobile 657 on 17, 19 and 27 September 2005 identify the mobile’s user as ‘Lalo’, ‘Hala’ and ‘Lalo and Sado’.⁷⁴⁹⁹ All three messages pass on regards from ‘Assad and Nour’, ‘Sado and Nana’ and ‘Nour’ and one SMS initially states ‘I’m Hala’ and signs off as ‘Lalo and Sado’.⁷⁵⁰⁰

3905. These interchangeable associations of names provided in the SMS translations, seen also in text messages of Purple 018 and mobile 546, led Mr Donaldson to posit that ‘Lalo’ may be synonymous with ‘Hala’ and ‘Sado’ with ‘Assad’.⁷⁵⁰¹ Mr Donaldson believed that ‘the term “Sado” may be used to refer to Assad Sabra’, and ‘Lalo’ ‘is an affectionate term for Hala’.⁷⁵⁰²

3906. A message received by mobile 657 on 12 January 2006 states: ‘Hi Hala, hi Asad, hi Nour’.⁷⁵⁰³ A further seven text messages do not identify the sender, but send regards from Hala,

⁷⁴⁹⁴ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), paras 80, 111; Andrew Donaldson, T. 28 June 2017, pp 6-7.

⁷⁴⁹⁵ Exhibit P1650; Andrew Donaldson, T. 27 June 2017, pp 47-48.

⁷⁴⁹⁶ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), paras 114-115; Andrew Donaldson, T. 28 June 2017, pp 10-11.

⁷⁴⁹⁷ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 109; Andrew Donaldson, T. 28 June 2017, pp 22-28. *See also* exhibit P1952, slide 112.

⁷⁴⁹⁸ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 110.

⁷⁴⁹⁹ Exhibit P1272 (SMS call sequence table of mobile 657), pp 7-8; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 97; Andrew Donaldson, T. 28 June 2017, pp 11-13.

⁷⁵⁰⁰ Exhibit P1272; Andrew Donaldson, T. 28 June 2017, pp 17-18.

⁷⁵⁰¹ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 97; Andrew Donaldson, T. 27 June 2017, p. 80, T. 20 September 2017, pp 29-30, 41-42, T. 22 September 2017, pp 29, 39-40.

⁷⁵⁰² Andrew Donaldson, T. 27 June 2017, p. 80.

⁷⁵⁰³ Exhibit P1272, p. 25.

Assad and Nour.⁷⁵⁰⁴ Two other messages that mobile 657 received between August and October 2006 are addressed to Hala, Assad and Nour, and specify ‘Nana’ and ‘Nadia’ in the third person.⁷⁵⁰⁵

3907. Finally, mobile 657 was in contact with Witness 339’s business on three dates when either Ms Salloum or her daughter are recorded as having had an appointment, 17 July 2005, 27 January 2006 and 10 May 2006.⁷⁵⁰⁶

2. How Purple 018 was discovered

3908. During the trial, the Sabra Defence put in issue how the Prosecution had connected Purple 018 with Mr Sabra.

3909. In November 2008, the UNIIIC received information from the Lebanese Internal Security Forces relating to the three Purple mobiles. This included the possible involvement of Purple 018 in the dissemination, on Monday 14 February 2005, of the videoed claim of responsibility for the attack earlier that day.⁷⁵⁰⁷ The ISF reported to the UNIIIC that Purple 018 ‘was the primary contact’ of Purple 231, which was last active on 14 February 2005 with only one incoming call the next day. Mr Donaldson set this out in a Prosecution investigator’s note on 2 November 2012, with the subject heading, ‘Finding the communications networks’, stating that the ISF had informed the UNIIIC that:

Another number was in contact with **3419018** on this day, **3598095**. This phone was located on this day in the vicinity of the tree in ESCWA square from where the video tape was collected by the AI Jazeera staff. It was also last used on 16th February 2005, hence followed a similar deactivation pattern as the other two numbers.⁷⁵⁰⁸

⁷⁵⁰⁴ Exhibit P1272, pp 19, 27, 34, 36, 39, 64, 68.

⁷⁵⁰⁵ Exhibit P1272, pp 43, 50; Andrew Donaldson, T. 28 June 2017, pp 13-23. Mr Donaldson observed that there were two Nadias in the Salloum family, one was Ms Hala Salloum’s aunt and the other Ms Salloum’s younger sister also named Nadia. Andrew Donaldson, T. 28 June 2017, pp 18-19; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 100.

⁷⁵⁰⁶ Exhibit P1155 (Statement of Witness PRH339, dated 25 October 2010 and 5 March 2015), para. 9 (p. 11), pp 13-14; exhibit P1274, pp 14, 44, 59; exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), paras 116-119; Andrew Donaldson, T. 28 June 2017, pp 8, 28-29.

⁷⁵⁰⁷ Andrew Donaldson, T. 19 September 2017, pp 19-22, T. 29 September 2017, p. 57; exhibit 5D418 (Investigator notes – Finding the Communication Networks), para. 44 (b). *See also* exhibit P2122 (Interview of Wissam Al-Hassan, 16 June 2012), pp 125-126, 146.

⁷⁵⁰⁸ Exhibit 5D418, para. 44 (c).

3910. The ISF had not at first linked Purple 018 to Mr Sabra, but rather to another person.⁷⁵⁰⁹ However, based on the content of text messages and the mobile's contact profile—meaning who the call data records showed that it was in contact with—the ISF revised its initial conclusion and suggested that Mr Sabra was its user.⁷⁵¹⁰

3911. The Sabra Defence contends that Purple 018's attribution is based on information from a compromised source, namely a senior ISF officer, Mr Wissam Al-Hassan, who in 2005 was working for Mr Hariri as the head of his personal security. In early 2006, after returning to the ISF and as the head of its Information Branch, he was assigned to lead the investigation into Mr Hariri's death.⁷⁵¹¹ According to the Sabra Defence the Prosecution failed to eliminate alternative users and to properly investigate who used this number.⁷⁵¹²

3912. The Prosecution argues that the information the UNHCR received from the ISF regarding Purple 018 was only an investigative lead. Purple 018 is attributable to Mr Sabra through evidence received by the Trial Chamber, namely the mobile's contact and geographic profile, text message content and similarity of its contact and geographic profiles with follow-on mobiles that Mr Sabra and his wife used.⁷⁵¹³

3. Submissions

(a) Prosecution

3913. The Prosecution submits that Purple 018 is attributable to Mr Sabra from 22 November 2001 to 16 February 2005, arguing that:

Purple 018 is attributed to **SABRA** from 22 November 2001 to 16 February 2005. **Mobile 546** is attributed to **SABRA** and **SALLOUM** from 24 February 2005 to 21 July 2005.

⁷⁵⁰⁹ Exhibit 5D413 (Information from ISF related to Purple 018); exhibit 5D418, para. 44 (e). *See also* Andrew Donaldson, T. 28 September 2017, pp 74-76.

⁷⁵¹⁰ Exhibit 5D417 (Response from Lebanese ISF to request for assistance in relation to Purple 018). *See also* Andrew Donaldson, T. 28 September 2017, pp 76, 94, 97.

⁷⁵¹¹ Decision on admission of Mr Al-Hassan's interview, paras 1-2.

⁷⁵¹² Sabra Defence final trial brief, paras 165, 172 and following; Sabra Defence closing submissions, T. 21 September 2018, pp 10-12.

⁷⁵¹³ Prosecution final trial brief, paras 180-182 and following; Prosecution closing submissions, T. 12 September 2018, pp 36-40. *See also* Andrew Donaldson, T. 28 September 2017, pp 97, 109.

Mobile 657 is attributed to **SABRA** and SALLOUM from 20 July 2005 to at least 31 December 2006.

And:

SABRA was the user of **Purple 018** from 22 November 2001 to 16 February 2005. A single user of the phone was assessed based upon the contact and geographic profile'.⁷⁵¹⁴

3914. Purple 018 was in contact with 17 mobile and landline numbers attributed to the families of Mr Sabra and his wife, Ms Hala Salloum.⁷⁵¹⁵ On 28 November 2003, it was also in contact with Witness 339, a service provider, whose client was Ms Salloum.⁷⁵¹⁶ Further, Purple 018 received several text messages addressed to 'Assad', 'Asodi'—which the Prosecution asserts is a diminutive name for Assad—and 'you and Hala'.⁷⁵¹⁷

3915. Furthermore, the top five most frequently used cells activated by Purple 018 were in the vicinity of Mr Sabra's residence, his parents' residence and his in-laws' residence, and the top most frequently used cell towers of Purple 018 include the cells covering the three, namely, SFEIR2, HARA2 and ROUIES2.⁷⁵¹⁸

3916. The Prosecution's final trial brief did not argue the significance of these activations, beyond stating that these cells covered the three addresses.

3917. Mr Sabra and Ms Salloum were the users of two other mobiles after Purple 018, namely, mobile 546 from 24 February 2005 to 21 July 2005, and mobile 657 from 20 July 2005 to at least 31 December 2006.⁷⁵¹⁹ Attributing these two mobiles to Mr Sabra and his wife supports Purple 018's attribution to Mr Sabra.⁷⁵²⁰

3918. All three are 'linked by their sequential use, contacts, geographic use and extracts from SMS content' and the commonalities between them demonstrate that they were used sequentially

⁷⁵¹⁴ Prosecution final trial brief, paras 181, 183; Prosecution closing submissions, T. 12 September 2018, p. 18.

⁷⁵¹⁵ Prosecution final trial brief, para. 184.

⁷⁵¹⁶ Prosecution final trial brief, para. 185.

⁷⁵¹⁷ Prosecution final trial brief, para. 186; Prosecution closing submissions, T. 12 September 2018, p. 19.

⁷⁵¹⁸ Prosecution final trial brief, paras 188-189; Prosecution closing submissions, T. 12 September 2018, p. 23.

⁷⁵¹⁹ Prosecution final trial brief, paras 181, 190-191, 197; Prosecution closing submissions, T. 12 September 2018, p. 18.

⁷⁵²⁰ Prosecution final trial brief, para. 182.

by a common user.⁷⁵²¹ Conversely, because documents and witness statements demonstrate the attribution of mobile 546 and mobile 657 to both Mr Sabra and his wife, only these mobiles displayed signs of multiple users.⁷⁵²²

(b) Sabra Defence

3919. The Sabra Defence submits that the Prosecution failed to attribute Purple 018 to Mr Sabra beyond a reasonable doubt. As its case is solely predicated on this attribution, this is fatal to the Prosecution's case against him.⁷⁵²³

3920. According to the Sabra Defence, the Prosecution's case on the attribution of Purple 018 to Mr Sabra was built on evidence tainted by the credibility and reliability of its source. It came from Mr Wissam Al-Hassan who was Mr Hariri's chief of security in 2005. However, there were challenges to his reliability and credibility, including allegations that he was in a position to influence the UNIIIC investigation. These were raised throughout trial. It was Mr Al-Hassan who provided UNIIIC with the information on Purple 018.⁷⁵²⁴

3921. The Sabra Defence argued that:

Throughout trial, challenges to the reliability and credibility of AL-HASSAN were raised by the Defence, based on: (i) his conspicuous absence from HARIRI's convoy on the day of the attack, (ii) flaws and inconsistencies in his alibi for that day, (iii) his foundational role in the investigation, and (iii) as a witness of fact.⁷⁵²⁵

3922. The attribution of Purple 018 to Mr Sabra is based on Mr Al-Hassan's evidence. Initially, in November 2008, he gave the UNIIIC the information on the Purple mobiles.⁷⁵²⁶ The Prosecution, however, did not investigate the allegations regarding his reliability and credibility

⁷⁵²¹ Prosecution final trial brief, paras 205, 209; Prosecution closing submissions, T. 12 September 2018, p. 18.

⁷⁵²² Prosecution final trial brief, paras 190, 209; Prosecution closing submissions, T. 12 September 2018, pp 20, 35-36.

⁷⁵²³ Sabra Defence final trial brief, paras 164, 166-167; Sabra Defence closing submissions, T. 21 September 2018, pp 37-38.

⁷⁵²⁴ Sabra Defence final trial brief, paras 171, 175.

⁷⁵²⁵ Sabra Defence final trial brief, para. 172.

⁷⁵²⁶ Sabra Defence final trial brief, paras 168-185.

despite the Defence challenges in this regard and did not disclose in an unredacted form the documents related to his reliability, including a UNHCR memorandum regarding Mr Al-Hassan.⁷⁵²⁷

3923. The Sabra Defence final trial brief, at paragraph 104—which was the subject of a Trial Chamber question in the closing submissions, see below—states that:

The Prosecution’s telecommunications-based case relies heavily on hearsay. First, in relation to the “discovery” of the networks and **Purple-Phones**, the Prosecution relies entirely on the anonymous second-hand information provided in the untested statement of AL-HASSAN. AL-HASSAN did not personally work on the “discovery” of the networks or **Purple-Group** and provides no elucidation or accurate methodology to how these telephone numbers, and subsequent attribution, were located. Despite this, the Prosecution founded their case on the hearsay he provided, without investigating other possible lines of investigation. The fact that AL-HASSAN is deceased does not increase the reliability of his testimony.

3924. The Prosecution’s interview with Mr Al-Hassan of 16 June 2012 was admitted into evidence under Rule 158, as he was deceased.⁷⁵²⁸ The Defence therefore could not cross-examine him on his role on providing telecommunications evidence to the Prosecution.⁷⁵²⁹ Due to the Prosecution’s failures in relation to Purple 018’s attribution, the Trial Chamber should give negligible weight to Mr Donaldson’s conclusions.⁷⁵³⁰

3925. Substantively, the Sabra Defence attacks the quality of the evidence the Prosecution used to attribute Purple 018 to Mr Sabra. Mr Donaldson, it is argued, ‘displays neither the independence nor the competence to assume’ the responsibility of attributing the mobile.⁷⁵³¹

⁷⁵²⁷ Exhibit 5D426. Sabra Defence final trial brief, paras 177-185, referring to Decision denying Sabra Defence application for disclosure, paras 40-41.

⁷⁵²⁸ Exhibit P2121 (Interview of Wissam Al-Hassan, 17 June 2012); exhibit P2122 (Interview of Wissam Al-Hassan, 16 June 2012). The Trial Chamber held that Mr Al-Hassan’s interview may corroborate evidence connected to paragraph 49 of the amended consolidated indictment, namely that the four Accused and Mr Badreddine were supporters of Hezbollah, and the alleged provenance of the network of Green mobiles as a Hezbollah network. Decision on admission of Mr Al-Hassan’s interview, para. 87.

⁷⁵²⁹ Sabra Defence final trial brief, paras 186-187.

⁷⁵³⁰ Sabra Defence final trial brief, paras 188-191.

⁷⁵³¹ Sabra Defence final trial brief, para. 192.

3926. Mr Donaldson failed to describe his methodology, including the term ‘attribution’ and employed ‘shifting terminology’ that was designed to fill gaps in the Prosecution’s case.⁷⁵³² He failed to ‘differentiate and explain the concepts of single-user, control and attribution’ and his reports contained no explanation that Mr Sabra was the mobile’s single user.⁷⁵³³ He failed to explain many of the underlying elements thus undermining the Prosecution’s attribution of Purple 018 to Mr Sabra.⁷⁵³⁴

3927. Mr Donaldson’s attribution of third party contacts was lax and susceptible to errors, ‘significantly undermining the relevance and probative value of this evidence’.⁷⁵³⁵

3928. As an example of the limitation of the SMS content and flaws in Mr Donaldson’s report, the Sabra Defence referred to Mr Alaaeddine’s evidence relating to the text of 20 January 2005.⁷⁵³⁶ Mr Donaldson omitted to mention in his report that Mr Alaaeddine did not recognise Purple 018 and it was not saved to his mobile, and that the text was probably sent to a friend because of its informality. The Sabra Defence was critical of this omission, submitting that:

The need for diligent review of sources cited in any report is not a disputed matter. It is DONALDSON’s representation of this underlying evidence in a manner more favourable to the Prosecution’s case, by omitting the full extent of the witness’ misgivings, which casts doubt on his impartiality as a witness. Given the opportunity to explain whether a duty to bring such evidence to the attention of the Chamber rested on him, DONALDSON obfuscated.⁷⁵³⁷

3929. Mr Donaldson’s evidence was also based on the assumption that all mobiles have a single user and he would only amend this if he identified evidence inconsistent with this hypothesis. His description of a single-user mobile as ‘not multi-user’ was ‘fatuous’, and he could not distinguish between evidence ‘providing’ or ‘supporting’ attribution of a mobile to someone.⁷⁵³⁸

⁷⁵³² Sabra Defence final trial brief, para. 195.

⁷⁵³³ Sabra Defence final trial brief, para. 196.

⁷⁵³⁴ Sabra Defence final trial brief, paras 195-201.

⁷⁵³⁵ Sabra Defence final trial brief, para. 312.

⁷⁵³⁶ Sabra Defence final trial brief, para. 250.

⁷⁵³⁷ Sabra Defence final trial brief, para. 252.

⁷⁵³⁸ Sabra Defence final trial brief, paras 197-199.

3930. Purple 018's contacts actually pointed away from the mobile having a single user for the following five reasons. First, its contacts are not exclusive to a single user. Second, the limited decoded and translated SMS content does not point to a single user. Third, the geo-profile evidence is consistent with any number of individuals within the area using it, in light of the number of people living and working in the areas of cells most activated. Fourth, no witness evidence attributed it to a single user, and fifth, there was a marked absence of documentation attributing it to a single user.⁷⁵³⁹

3931. Further, there was no self-attribution by Mr Sabra, nor are there intercepts or co-location evidence.⁷⁵⁴⁰ There was no documentary evidence supporting attribution such as insurance records, passport applications, utility bills, house ownership, etc.⁷⁵⁴¹ No witness attributed the mobile to Mr Sabra.⁷⁵⁴² Witness 69 had only contacted Mr Sabra through his wife on mobile 657, and a 'reasonable inference from this evidence is that SABRA did not possess a phone in 2005'.⁷⁵⁴³

3932. The Prosecution did not lead any evidence of Mr Sabra saying that Purple 018 was his number. In fact, 'Two further witnesses specifically deny that Purple-018 was used by SABRA at the relevant time', namely, Witnesses 106 and 69.⁷⁵⁴⁴

3933. The SMS evidence 'is replete with inconsistencies, limitations and gaps' rendering it unsuitable as the principal basis of attribution.⁷⁵⁴⁵ The Prosecution relies only on six incoming text messages, amounting to three per cent of the total SMS content for that mobile.⁷⁵⁴⁶ As all six were incoming, this merely permits the assumption that the sender believed the intended recipient had the receiving mobile.⁷⁵⁴⁷ Minimal weight should be given to it.⁷⁵⁴⁸ The Defence also highlighted evidentiary weaknesses in the SMS content including spelling.⁷⁵⁴⁹

⁷⁵³⁹ Sabra Defence final trial brief, paras 202-207.

⁷⁵⁴⁰ Sabra Defence final trial brief, paras 208-209.

⁷⁵⁴¹ Sabra Defence final trial brief, paras 210-212.

⁷⁵⁴² Sabra Defence final trial brief, paras 213-220; Sabra Defence closing submissions, T. 21 September 2018, p. 47.

⁷⁵⁴³ Sabra Defence final trial brief, paras 218-219.

⁷⁵⁴⁴ Sabra Defence final trial brief, paras 216-220. This is actually factually incorrect as is noted in the findings below.

⁷⁵⁴⁵ Sabra Defence final trial brief, para. 221.

⁷⁵⁴⁶ Sabra Defence final trial brief, para. 229.

⁷⁵⁴⁷ Sabra Defence final trial brief, para. 227.

⁷⁵⁴⁸ Sabra Defence final trial brief, para. 231.

⁷⁵⁴⁹ Sabra Defence final trial brief, paras 232-257.

3934. Regarding the mobile's 'geo-profile', it only identifies a general area rather than specific locations.⁷⁵⁵⁰ The cell site data was incomplete.⁷⁵⁵¹ Mr Donaldson also failed to account for the unreliability inherent in the Prosecution's predicted coverage maps, nor the reliability of the maps, thus undermining his conclusions that residences linked to Mr Sabra were within the predicted coverage of certain cells.⁷⁵⁵² There is no unique geographical signature for Mr Sabra, such as his work or social activities.⁷⁵⁵³ Mr Donaldson failed to thoroughly analyse the underlying data.⁷⁵⁵⁴ For example, there was no clear and contemporaneous evidence of residence,⁷⁵⁵⁵ and evidence of the three family addresses is inconclusive.⁷⁵⁵⁶

3935. The reliance on third-party contacts for attribution, 'while superficially attractive, is deeply flawed',⁷⁵⁵⁷ for example, 'various phones could have a similar contact pattern towards family members or a group of contacts without any possibility of distinguishing between them'.⁷⁵⁵⁸ Further, only a limited number of close family contacts was analysed, namely 17 mobile and landline numbers out of a total of 962 contacts.⁷⁵⁵⁹ There is also a lack of independent evidence demonstrating the relationship with these contacts,⁷⁵⁶⁰ and there were errors in attributions.⁷⁵⁶¹

3936. Regarding the 'follow-on phones', namely mobiles 546 and 657, the attribution of them to Mr Sabra 'by itself proves nothing'.⁷⁵⁶² In this respect, the Sabra Defence made detailed criticisms of Mr Donaldson's attribution of these two mobiles, similar to those in respect of Purple 018.⁷⁵⁶³

3937. Moreover, there was a clear alternative user, namely Mr Assad Salloum, who the Lebanese ISF had initially suspected of being the user of Purple 018.⁷⁵⁶⁴ The UNIIC and Prosecution had

⁷⁵⁵⁰ Sabra Defence final trial brief, para. 258.

⁷⁵⁵¹ Sabra Defence final trial brief, paras 263-265.

⁷⁵⁵² Sabra Defence final trial brief, paras 266-268.

⁷⁵⁵³ Sabra Defence final trial brief, para. 269.

⁷⁵⁵⁴ Sabra Defence final trial brief, paras 271-293.

⁷⁵⁵⁵ Sabra Defence final trial brief, para. 273.

⁷⁵⁵⁶ Sabra Defence final trial brief, paras 278-293.

⁷⁵⁵⁷ Sabra Defence final trial brief, para. 294.

⁷⁵⁵⁸ Sabra Defence final trial brief, para. 296.

⁷⁵⁵⁹ Sabra Defence final trial brief, paras 302-305.

⁷⁵⁶⁰ Sabra Defence final trial brief, paras 306-311.

⁷⁵⁶¹ Sabra Defence final trial brief, paras 312-364.

⁷⁵⁶² Sabra Defence final trial brief, para. 366.

⁷⁵⁶³ Sabra Defence final trial brief, paras 365-397.

⁷⁵⁶⁴ Sabra Defence final trial brief, paras 398-404.

known of this information. The Prosecution thus failed to exclude a viable alternative user.⁷⁵⁶⁵ Mr Donaldson himself had conceded that ‘if there is more than one viable candidate for attribution of a particular phone then “you don’t have an attribution”’.⁷⁵⁶⁶

3938. The Sabra Defence argues that the evidence points away from Purple 018 having a single user.⁷⁵⁶⁷ The ISF’s decision to revise Purple 018’s initial attribution and to attribute it to Mr Sabra was poor and ‘does not withstand any modest degree of scrutiny’.⁷⁵⁶⁸ The Prosecution could not rule out the possibility that the user of Purple 018 was someone other than Mr Sabra.⁷⁵⁶⁹

4. Findings

3939. The Prosecution evidence seeking to attribute Purple 018 to Mr Sabra is the weakest of any of the attribution evidence led against the four Accused and Mr Badreddine. No conclusive evidence was presented about exactly where Mr Sabra lived during the indictment period, namely from late 2004 to early 2005, nor with whom, nor where he worked, nor what he did. Mr Sabra, on the Prosecution’s case, was using Purple 018 until Wednesday 16 February 2005, when it was discarded.

3940. The Prosecution, furthermore, presented no evidence of a geographical footprint that could be traced to Mr Sabra by virtue of his home address, place of work and his leisure and social activities including those with his family. Nor was one presented for his wife, who was another potential user of Purple 018. Over the attribution period there were 8,739 contacts, as in calls made and received and texts, for which there are records, over 1,183 days. This is an average of just under 7.4 per day.

3941. The Prosecution’s pre-trial brief stated that:

SABRA is the user of Purple 018. This is attributed to **SABRA** through SMS content, the contacts profile (multiple family members as well as the two other purple phone users) and cell utilisation analysis (compared with his home address). In addition, the contacts and

⁷⁵⁶⁵ Sabra Defence final trial brief, paras 405-419, referring for example to exhibits 5D414, 5D415 and 5D416, UNIIIC memoranda stating that the ISF had informed it on 22 November, 23 December 2008 and 8 January 2009 of its belief of the alternative user of Purple 018.

⁷⁵⁶⁶ Sabra Defence final trial brief, para. 398, referring to Andrew Donaldson, T. 19 September 2017, p. 29.

⁷⁵⁶⁷ Sabra Defence final trial brief, paras 202-207.

⁷⁵⁶⁸ Andrew Donaldson, T. 29 September 2017, pp 47-53

⁷⁵⁶⁹ Sabra Defence final trial brief, paras 405-411.

cell utilisation profile of two subsequent phones, both of which are directly attributed to **SABRA** or his family, were compared with the profile of Purple 018 and provide support for the attribution of this telephone to **SABRA**.⁷⁵⁷⁰

3942. The Prosecution's final trial brief argues in a roundabout fashion that, 'A single user of the phone was assessed based upon the contact and geographic profile'.⁷⁵⁷¹ It argues that Mr Sabra was the user of Purple 018.

3943. To attribute the mobile to Mr Sabra during the pleaded indictment period, the Prosecution must prove that he was using it at all relevant times. A family or a group could of course share a mobile, but to establish criminal liability based on use of the mobile, the Prosecution must prove who was using it in making specified calls.

3944. The Prosecution case attributing single use of Purple 018 to Mr Sabra is based upon its contact and geographical profile, and the content of four text messages to that mobile—combined with similar evidence for mobiles 546 and 657.

3945. It is not a strong case. The evidence comes from an electricity subscriber record, a service provider's records, two imprecise witness statements from witnesses who were not cross-examined by the Defence, cell site evidence of the Purple mobile's activations and its contacts. There is no direct evidence of a precise address that the Prosecution could locate within plot 177, where the Prosecution submits that Mr Sabra lived. A precise address, however, is less important than a general location falling within a specified cell coverage area, here SFEIR2.

3946. Hence to determine whether Mr Sabra was using Purple 018, it is also necessary to examine who could have been using mobiles 546 and 657, that were used only after Wednesday 16 February 2005. On the Prosecution's case these were successor mobiles used by Mr Sabra after he discarded Purple 018 on Wednesday 16 February 2005, two days after completing his role in disseminating the false claim of responsibility. The case that mobiles 546 and 657 had the same users is strong; the SIMs were used in the same handset and had similar geographic and contact profiles.

⁷⁵⁷⁰ Prosecution's updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), para. 55.

⁷⁵⁷¹ Prosecution final trial brief, para. 183.

3947. But this only takes the case so far. Even if it is established that Mr Sabra was using the mobile, the evidence must also establish as the only reasonable inference available that he was using it in the calls specified in the amended consolidated indictment. In other words, that he was using Purple 018 on the specific days pleaded in December 2004 and January and February 2005.

3948. Moreover, the cell site records are incomplete for almost 53 per cent of Purple 018's calls, as the cell activated for incoming calls, incoming and outgoing text messages was not recorded until 1 August 2004. End cell data for voice calls was available only from 1 October 2004.

(a) The discovery of the Purple mobiles and Mr Wissam Al-Hassan's role

3949. The Sabra Defence, in arguing that the Prosecution had not proved this attribution, challenged Mr Al-Hassan's credibility, and the reliability of Mr Donaldson's analysis, on which the Prosecution case relies.

3950. First, Mr Al-Hassan. In its decision denying the Sabra Defence's application for the disclosure of a UNIHC memorandum, which made critical observations about Mr Al-Hassan, the Trial Chamber expressed its surprise about Mr Al-Hassan's obvious conflict of roles in moving from his position as Mr Hariri's chief of security—he was absent from work on the day of the explosion—to leading the investigation into his death.⁷⁵⁷² On any objective test, Mr Al-Hassan could not have been seen to have been a neutral investigator or source of information. Despite this evident conflict, the UNIHC was relying upon him for material including investigatory leads.

3951. In Mr Al-Hassan's interview with Prosecution officials in June 2012, he stated of the Purple mobiles that:

We were able to reach a *network*, a small network of three numbers. We identified two. And the owners and identities of two of them. Namely, Assad Sabra and Hasan Issa or Oneissi. And the third we couldn't identify it but with the cooperation with the STL we knew that they identified the third one as Merhi. Merhi.

Q. And how were you able to identify Issa and Sabra? Oneissi and Sabra?

⁷⁵⁷² Decision denying the Sabra Defence application for disclosure of a UNIHC Internal Memorandum on Mr Wissam Al-Hassan, paras 41, 45.

Actually through the geographical co-location of calls and communications that were made from the public phones to Al-Jazeera and Reuters. So out of those, among those three numbers it was easy for us to identify two of them because they were using their phones to contact their parents, to contact their houses, to make their personal phone calls.⁷⁵⁷³

3952. The Trial Chamber admitted Mr Al-Hassan's evidence under Rule 158. As a deceased and therefore unavailable witness, he obviously could not be questioned in court.⁷⁵⁷⁴ The Trial Chamber held that the lack of cross-examination and the hearsay nature of Mr Al-Hassan's evidence would decrease its weight when it was assessed.⁷⁵⁷⁵

3953. This particular passage from the interview, however, appears to be relevant only to the Sabra Defence, which relies on it to discredit the investigatory source of the information provided. It is also a little unclear why the Prosecution had three senior staff⁷⁵⁷⁶ interview Mr Al-Hassan on these types of issues in 2012 a year after the confirmation of the indictment.

3954. In this sense, the Trial Chamber does not believe that the information about the discovery of the Purple mobiles is relevant to the Prosecution's case against any of the Accused, including of course Mr Sabra. The Trial Chamber does not consider the fact that Mr Al-Hassan—whatever issues may arise with his credibility or motives—or any other ISF official, may have provided investigatory leads to the UNIIC or the Prosecution, has any real effect on the case.

3955. In this respect and before hearing the final trial submissions, the Trial Chamber posed the following question to the Sabra Defence, based on the arguments in paragraph 104 of the Sabra Defence final trial brief on Mr Al-Hassan providing the information to the UNIIC:

Paragraph 104 refers to the 'discovery' of the purple mobiles, only in 2008. How does it matter, either legally or evidentially, when the existence of the calls between the three purple mobiles was discovered?⁷⁵⁷⁷

⁷⁵⁷³ Exhibit P2122 (Interview of Wissam Al-Hassan, 16 June 2012), pp 125-126, with the question posed by Mr Alasdair Macleod.

⁷⁵⁷⁴ Exhibit P2121 (Interview of Wissam Al-Hassan, 17 June 2012); exhibit P2122 (Interview of Wissam Al-Hassan, 16 June 2012); Decision on admission of Mr Al-Hassan's interview.

⁷⁵⁷⁵ Decision on admission of Mr Al-Hassan's interview, para. 86.

⁷⁵⁷⁶ Mr Macleod, Mr Michael Taylor and Mr Ekkehard Withopf.

⁷⁵⁷⁷ Questions for closing submissions, para. 45. At para. 25, the Trial Chamber asked the Prosecution, 'Is there any legal significance about when the purple mobiles were 'discovered', referred to in paragraph 104 of the Sabra brief?'

Lead counsel for Mr Sabra responded that:

the manner in which the Purples were discovered is relevant, we say, because it's related, we submit, to the inadequate investigation conducted by the Prosecution and, in turn, the inferences it can ask you to draw relating to the behaviour of the Purple Phones.⁷⁵⁷⁸

3956. Prosecution counsel responded that the ISF merely provided 'lead information from which the investigation re-engineered'. Mr Donaldson did not rely on this information but 'on evidence gathered first by the UNIIIC and then the Office of the Prosecutor', and it points to one user, Mr Sabra.⁷⁵⁷⁹

3957. The Sabra Defence also raised a complaint that the Prosecution disclosed only a redacted version of the Al-Hassan interview to the Defence. Protracted litigation on this issue occurred during the trial, and before the Prosecution's disclosure of the final redacted version, the Trial Chamber scrutinised the Prosecution's proposed redactions and determined that they would cause no prejudice to the Defence.⁷⁵⁸⁰ The same applies to the redactions of names from the UNIIIC memorandum regarding Mr Al-Hassan.⁷⁵⁸¹ Nothing of substance, however, changed after that decision: the Defence had all the information necessary to challenge the reliability of the information and Mr Al-Hassan's credibility, and used this at trial and in final submissions.

3958. The Trial Chamber understands that Defence counsel had some discomfort as to how the UNIIIC apparently received the information concerning the three Purple mobiles, namely, from someone about whom they had suspicions. However, against this is that the Prosecution investigated who was using Purple 018 by painstakingly contacting numerous potential witnesses—including contacts of the mobiles 546 and 657—and researching Mr Sabra's and these contacts' residences. It then used cell site evidence to compile a geographic profile of the users.

3959. This entailed a monumental amount of investigatory work. The UNIIIC and the Prosecution, not the ISF, did most of this. For these reasons, the Trial Chamber does not see it as

⁷⁵⁷⁸ Sabra Defence closing submissions, T. 21 September 2018, pp 10-12.

⁷⁵⁷⁹ Sabra Defence final trial brief, paras 188-191. *See also* Sabra Defence closing submissions, T. 21 September 2018, pp 10-12; Prosecution closing submissions, T. 12 September 2018, pp 37-39.

⁷⁵⁸⁰ Decision on admission of Mr Al-Hassan's interview, paras 93-94; Decision on redactions to Mr Al-Hassan's interview, para. 27.

⁷⁵⁸¹ Decision denying Sabra Defence application for disclosure of a UNIIIC Internal Memorandum on Mr Wissam Al-Hassan, paras 7-8, 44-45, 55-58, 60; exhibit 5D426.

a relevant issue in the case. The ISF's original attribution of Purple 018 to Mr Sabra in the context of the case is thus irrelevant. The information provided was for lead investigation purposes. Moreover, other internal UNIIIC documents suggest a second line of communication with the ISF with other officials suggesting that the user was not Mr Sabra—see directly below.

3960. The Trial Chamber is accordingly satisfied that Mr Donaldson, independently of any ISF influence, assessed the witness statements, documents, text messages, contact and geographic profiles and IMEI use by Purple 018 and mobiles 546 and 657, in a manner that allows the Trial Chamber to consider his conclusions. Moreover, the Trial Chamber has also considered Mr Donaldson's evidence on the discovery of Purple mobiles in 2008, which is addressed in more detail below.⁷⁵⁸²

(b) Mr Assad Salloum as a possible alternate user of Purple 018

3961. On a related point, the Sabra Defence posited, based upon internal UNIIIC file notes referring to ISF suspicions of who was using Purple 018 that Mr Assad Salloum may have been its user. This appears to contradict the information that Mr Al-Hassan was giving the UNIIIC. The Prosecution, the Sabra Defence argues, failed to negative the possibility that Mr Salloum was the user, by not investigating it. Mr Donaldson had not seen any internal Prosecution document eliminating him as a suspect.⁷⁵⁸³

3962. The Trial Chamber can only consider the possibility of a named alternate user if it has received evidence capable of establishing the fact, or the inference sought to be drawn. The evidence for this it appears comes from internal UNIIIC file notes. From this, the implication seems to be that the Trial Chamber should conclude that the Prosecution's apparent failure to investigate this alternative theory allows it to infer that Mr Salloum may have been the user.

3963. The Sabra Defence submissions are based on the supposition that the Prosecution's apparent failure to investigate Mr Salloum's possible use of Purple 018, hence meaning it was not Mr Sabra's mobile, has raised as a reasonable inference that Mr Salloum was the alternative user.

⁷⁵⁸² See chapter XII 'Claim of responsibility for the attack on Rafik Hariri', (H) 'The non-covert nature of the use of Purple mobiles'.

⁷⁵⁸³ Sabra final trial brief, para. 414, referring to Andrew Donaldson, T. 28 September 2017, p. 96.

This would raise a reasonable doubt as to whether Mr Sabra (and or his wife) were using Purple 018.

3964. The evidence supporting this theory is in undated and un-authored internal UNIIIC file notes referring to information received from the ISF in November and December 2008 and January 2009. This was before the Special Tribunal and its Office of the Prosecutor existed. Additionally, an undated ISF document was attached to a letter from the ISF's Director General, dated 22 July 2014, in response to a Trial Chamber's order to the Government of the Lebanese Republic to cooperate with the Special Tribunal by providing information that the Sabra Defence had sought. According to the letter, the ISF had provided a copy of the document to the UNIIIC for its investigation.⁷⁵⁸⁴

3965. The Prosecution took over the investigation from the UNIIIC from 1 March 2009 and as is evident from the evidence put before the Trial Chamber, obtained most of it after that. The Prosecution, it is clear from the dates of interviews and witness statements, was undertaking much investigative work in late 2010 in respect of Mr Sabra's possible involvement in the attack on Mr Hariri.

3966. That the investigative work in respect of Mr Sabra was incomplete several months later in January 2011 is obvious from the fact that when the Prosecutor submitted his initial indictment to the Pre-Trial Judge for confirmation on 17 January 2011, it was only against Mr Ayyash. Nearly another two months passed before the Prosecutor filed an indictment against Mr Sabra and Mr Oneissi, on 11 March 2011.

3967. The first undated UNIIIC document notes that in a meeting on 12 November 2008:

Assad Ahmed SALOUM ... has been identified as the apparent user of 3419018 through SMS and the contacts with landline ... 747 subscribed to Assad Hamid SALOUM (his grand-father).⁷⁵⁸⁵

3968. Another UNIIIC document refers to information received from the ISF on 22 November 2008. It states of Purple 018 that it was:

⁷⁵⁸⁴ Reasons for admission of 22 Sabra Defence documents, para. 75.

⁷⁵⁸⁵ Exhibit 5D413.

suspicious, used by Assad SALLOUM suspicious for contacting AI Jazeera Office and reading a statement claiming responsibility for the assassination of Rafik HARIRI (55 calls) during the period from 14.10.2004 until 14.02.2005.⁷⁵⁸⁶

3969. The undated file note referring to information received on 23 December 2008 states that the ISF believed that Mr Salloum was using Purple 018, but why is not stated. It goes on to say that the ISF:

cannot totally exclude the possibility that for a certain time period the user of 3419018 (the previous Assad SALLOUM number) could have been Assad's brother Fadi SALLOUM. This needs to be clarified.⁷⁵⁸⁷

3970. The undated file note regarding the information received on 8 January 2009 provides no further information on why the ISF believed that Mr Salloum was using Purple 018. The salient extracts from this document state:

The ISF advised that the user of **3419018** seems to be Assad SALLOUM. There are still certain points not clear, so the attribution is still vague. The ISF needs to get the MTC SMS data for this specific number and they are sure that with this SMS data they will have a clear picture as to be certain if Assad SALLOUM was using this phone.

The ISF believes that SALLOUM was the user of **3419018** in 2005 but is still not 100% convinced. The ISF said that they first want to see the result of reviewing the MTC SMS to be sure with their assessment.⁷⁵⁸⁸

3971. In his investigator's note of 2 November 2012, Mr Donaldson summarised the information received from ISF in November 2008 as follows:

Assad SALLOUM was initially named by the ISF as the suspected user of **3419018**. As a result of their continued investigation this attribution was subsequently revised to Assad Hassan SABRA.

⁷⁵⁸⁶ Exhibit 5D414.

⁷⁵⁸⁷ Exhibit 5D415.

⁷⁵⁸⁸ Exhibit 5D416.

He concluded that:

UNIIC analysts were subsequently able to confirm the communications based findings of the ISF report as accurate.⁷⁵⁸⁹

3972. Finally, the undated ISF document provided to the Sabra Defence in 2014 noted mobile 018's frequent contact with landline 747 registered in the name of 'Asaad Haidar Salloum', and two incoming text messages to mobile 018, addressed to 'Asodi' and 'Assad'.⁷⁵⁹⁰ It stated that two persons with the name of 'Asaad' were registered under the same register number in 'Zqaq El-Blat', namely 'Asaad Hamid Salloum' and 'Asaad Ahmad Salloum'. However, after further analysing the mobile's contact profile, the ISF 'deduced' that:

Number 03419018 belongs to Assad Hasan Sabra and not to Asaad Ahmad Salloum.

The two names "Asaad" and "Asodi" mentioned in the incoming SMS to the above-mentioned number, refer to Assad and not Asaad.

Frequent contact between number 03419018 and the landline number 01554747 registered in the name of Asaad Haidar Salloum, since Assad Sabra is married to Hala Hasan Salloum who is the cousin (paternal uncle's daughter) of Asaad Ahmad Salloum.⁷⁵⁹¹

3973. Neither the undated internal UNIIC file notes, nor the ISF document provides positive evidence that Mr Assad Salloum was using Purple 018. They are no more than ISF communications to the UNIIC of mostly unexplained suspicions by unidentified ISF officials concerning Mr Salloum.

3974. Collectively, these documents cannot raise an inference that he was a possible (alternate) user. The main Defence argument appears to be that the Prosecution failed to properly investigate this possibility. But the apparent absence of an investigation provides no evidence that Mr Salloum was actually using Purple 018. It is evidence only of the fact that unknown ISF officials had communicated some suspicions to the UNIIC. There is no evidence before the Trial Chamber capable of supporting the inference sought. The arguments are accordingly dismissed.

⁷⁵⁸⁹ Exhibit 5D418, paras 44 (e), 45.

⁷⁵⁹⁰ The texts, sent on 14 November and 19 December 2004, respectively, stated in English: 'Hey Asodi you don't want to come to the village' and 'Hi Assad football t-shirt at the store real madrid bye'.

⁷⁵⁹¹ Exhibit 5D417.

(c) Defence attacks on Mr Donaldson's methodology and reliability

3975. The Defence of all four Accused strongly attacked Mr Donaldson's qualifications, methodology, conclusions and alleged pro-Prosecution bias. These submissions are detailed in analysing the respective methodologies of Mr Philips and Mr Donaldson.⁷⁵⁹²

3976. The Trial Chamber is of the view that the Prosecution's presentation of Mr Donaldson's evidence was in some respects unsatisfactory. When Mr Donaldson appeared to testify in June 2017, his report was still not in a final form. This resulted in a Defence application to adjourn the proceedings pending the completion of a final report. The Trial Chamber in allowing the evidence to proceed as far as it could, noted that:

The report contains statements or conclusions relating to Prosecution evidence which is either not in evidence or the Prosecution has decided or elected not to tender the documents or the witness statements or to call the witness to provide evidence. So in that respect, Mr. Donaldson's conclusions, in some respects, which have not been clearly identified, rely upon matters which are not in evidence.

The Chamber has brought this to the Prosecution's attention and has indicated its dissatisfaction with the fact that Mr. Donaldson is testifying about reports that are not in a final form.

...

Defence counsel have made legitimate complaints that the reports are not finalized and have addressed the Chamber on the fact that this is an unsatisfactory situation and is causing some prejudice and lack of fairness to the Defence in the manner in which the evidence is being presented.⁷⁵⁹³

(d) Attribution of Purple 018 without mobiles 546 and 657

3977. The evidence attributing Purple 018 to Mr Sabra is weak; without examining mobiles 546 and 657 the Trial Chamber does not believe that it can be attributed to him. Nor that it could conclude that he was its user during the relevant period. Thus, in the Trial Chamber's view, the

⁷⁵⁹² In sub-section (A) 'Single user analysis', above.

⁷⁵⁹³ Decision denying adjournment of hearing Mr Donaldson's evidence, pp 38-39.

most logical way of analysing the evidence is to start with mobile 657 and work backwards. This is done below at paragraphs 3990-4009.

3978. The evidence relating to Purple 018—without mobiles 546 and 657—is divided into two segments, described as a contact profile and geographic profile.

3979. Starting with the geographic profile, Mr Donaldson concluded that Mr Sabra, his father and his wife's family lived in three locations in Hadath and Haret Hreik in southern Beirut. The evidence points to Mr Sabra living at an address somewhere near *Sainte-Thérèse* in Hadath—meaning somewhere in plot 177, which is ascertainable, but where precisely is difficult to locate.

3980. Mr Donaldson's report is vague on the location of Mr Sabra's address in 2004 to 2005 and does not specify precisely where he concluded that Mr Sabra was living, apart from narrowing it to 'rue 58' and plot 177, and plotting this group of eight buildings on a map. The Trial Chamber, however, in examining the relevant Beirut street directory, was unable to find a 'rue 58'.⁷⁵⁹⁴ Based on Mr Fahey's evidence, the street that the *Électricité du Liban* numbered as 58 seems to open perpendicularly from the Saint Therese Avenue in Hadath, where Mr Fahey placed plot 177.⁷⁵⁹⁵

3981. *Électricité du Liban's* connection record from 2003 is strong evidence of Mr Sabra's residence there at some point. Its records indicated that Mr Sabra was still paying the electricity bills in 2010, although decreased usage in 2009 suggested that the property was empty for a period. In normal circumstances, electricity subscriptions are in the name of the person using the service, that is, the residential owner or leaseholder, although of course a landlord could pay the electricity as part of a lease agreement. This points towards his residence there in 2004 and 2005.

3982. In October 2010, Mr Sabra's nephew, Mr Alaaeddine, stated that Mr Sabra and his family lived at '*Sainte-Thérèse*', but he was apparently only referring to mid that year. He was not asked about the period relevant to the case. Mr Alaaeddine, whose evidence was contested, did not appear in court and was not cross-examined. This has substantially diminished the weight that can be given to his evidence, although in the circumstances not much turns on it. His evidence on his

⁷⁵⁹⁴ 'Rue 58' or '58 Street', appears to be merely a number code given by the *Électricité du Liban* to a street in Hadath.

⁷⁵⁹⁵ Exhibit P298 (Zawarib Greater Beirut Atlas), p. 83 (ERN 60298263) (map 157, grid B/3); exhibit P547 (Zawarib Greater Beirut Atlas), p. 66 (ERN 60221032) (map 120, grid D/4).

uncle's apparent address in 2010 is vague and carries no weight as to where Mr Sabra lived during the indictment period.

3983. The cell site evidence of frequent activations of SFEIR2, which provided predicted best server coverage to plot 177 provides very little support to Mr Sabra living there, given that only nine per cent of the activations were to that cell (19.46 per cent from 1 August 2004), meaning that 91 per cent (80.54 per cent from 1 August 2004) were not. Without knowing more (or in reality, anything) about the life or lives of its user(s) it is difficult to draw any conclusions from this.

3984. However, in the circumstances here, namely that SFEIR2 provided coverage to plot 177, and cell site evidence cannot of itself precisely locate someone somewhere, the precise address is less important than its general location in particular cell coverage area. Further, the service provider's records from 2003 give Ms Salloum's address as *Sainte-Thérèse*, Hadath.

3985. Based on Mr Fahey's evidence, plot 177 is a few hundred metres from *Sainte-Thérèse* Avenue. Combining these pieces of evidence, the Trial Chamber is thus satisfied that Mr Sabra lived somewhere on plot 177, which is very close to *Sainte-Thérèse* Avenue, in Hadath, Beirut, in 2004 to 2005, and for some years afterwards.

3986. Concerning Mr Sabra's father's address, the combination of records in evidence convinces the Trial Chamber that it was his address during the attribution period. This address is within the predicted best server coverage area of HARA2, Purple 018's second most frequently activated cell. The significance of this, however, was never explained to the Trial Chamber. Presumably, it means implicitly that Mr Sabra or his wife used their mobiles when visiting their parents and in-laws, and that they must have done this frequently. However, without any evidence of their familial relations, such as whether they were a close family with frequent visits, the Trial Chamber cannot make any finding in this respect.

3987. The Trial Chamber is also satisfied that Mr Sabra's in-laws, the Salloum family, lived at times relevant to the attribution of Purple 018 in the area of ROUIES3, adjacent to HARA2. Depending on the calculation used, ROUIES3 was either the fourth or sixth most commonly activated cell.

3988. There is no evidence, however, linking any cell activations with Mr Sabra's presence at these places on particular days or times of day.

3989. The Trial Chamber considers that Purple 018's contact profile provides some support to attributing that mobile to Mr Sabra and Ms Salloum. Notwithstanding that a number of the most frequent contacts are neither attributed nor factually linked to Mr Sabra or his wife, seven contacts identified as related to Mr Sabra or Ms Salloum fall within the top 26 most frequent contacts, and these represent an appreciable proportion of Purple 018's call volume of 1,340 calls or text messages.

(e) Attribution of mobiles 546 and 657 and effect on attribution of Purple 018

3990. There is clear evidence that mobiles 546 and 657 had the same users. The two SIMs sequentially used the same handset. The SIM for mobile 657 was used in the handset used by mobile SIM 546 until 21 July 2005.

3991. With regard to the names of the users, Witness 590 stated that a client of her company provided mobile 546 as the contact for 'Hala Sabra', recorded as residing at the town/post code for 'Hadath', as of 28 July 2005. This was a week after the SIMs had swapped between the two handsets.

3992. Regarding mobile 657, an 'SGBL' bank form from June 2008 in Mr Sabra's name gives mobile 657 for his contact. No address is provided and no other personal documents are attached to the form, despite the form requiring these. Witnesses 106 and 69 stated that it was Ms Salloum's number, although Witness 69 had it saved under 'Assad'. Mr Sabra's nephew, Mr Alaaeddine, stated in October 2010 that mobile 657 was Mr Sabra's mobile.

3993. Text messages from mobile 657 on 17, 19 and 27 September 2005 identify the mobile's user as 'Lalo', 'Hala' and 'Lalo and Sado', and pass on regards from 'Assad and Nour', 'Sado and Nana' and 'Nour'. One states 'I'm Hala' and signs off as 'Lalo and Sado'. Text messages to and from mobile 546 use similar names, 'Hala/Nour', 'Lalo', one sends a kiss to 'Nour' and another sends regards to 'Nana'. Two are signed 'Nadia'. Two are from 'Fadi' and one says 'I am your boss bro Salloum.'

3994. Apart from the use of the two SIMs in the same handset, and the mobiles being used as business contact numbers for Mr Sabra and Ms Salloum, the geographic and contact profiles of the two mobiles are so similar as to eliminate the possibility of coincidence. Likewise, the text context conclusively points to the mobiles having the same users.

3995. This is notwithstanding the paucity of text content specifically addressed by name to either Mr Sabra or Ms Salloum. But texts are generally an informal mode of communication. They require neither the formality of addressing the recipient by name, nor the sender signing their name when the two are known to each other. Obviously, there are exceptions to this, but for quick informal communications between known communicators, the use of names tends to be the exception rather than the rule. Grammar, punctuation and spelling may vary. The Trial Chamber makes this observation from its own general experience, and notes that the SMS content in evidence generally backs this up: the messages are for the most part short, informal and lacking in names. Symbols and abbreviations are frequently used. The Trial Chamber also observed from the texts in evidence that many contained mixed, and often abbreviated, Arabic and English.

3996. The Trial Chamber thus has no doubt that Mr Sabra and his wife, Ms Salloum, were sequentially using these two mobiles from 24 February 2005, first mobile 546, and then mobile 657 from 20 July 2005.

3997. Purple 018 was not used as a business contact for Mr Sabra or Ms Salloum. There is nothing in evidence attaching a name to the mobile, except for two texts referring to ‘Assad’, one referring to ‘hala’, another to ‘Asodi’ and, less strongly, ‘Sado’. The closest ‘match’, albeit indirect, is in Mr Alaaeddine’s Rule 158 interview relating to his sending a text to his uncle on Eid in January 2005.

3998. It went to Purple 018 but he could not remember, almost six years later, having sent it. But the Trial Chamber received no evidence of any reason why he would remember sending this single SMS when he was asked about it so long afterwards.

3999. The call data records for Purple 018 record the text. Objectively, on 20 January 2005, Eid, his mobile sent a text addressed to his maternal uncle, ‘*khal*’, to a mobile used by Mr Sabra and his wife. This fact can be established by official family records, independently of Mr Alaaeddine’s Rule 158 evidence. Further, the 78 contacts between Mr Alaaeddine’s mobile and Purple 018, 546

and 657 provide strong evidence of regular communication between nephew and maternal uncle (or aunt by marriage) between January 2005 and October 2006, a period of 21 months. The Trial Chamber in the circumstances is accordingly satisfied that he sent the message to his uncle, Assad Sabra, on Eid in 2005. This provides support to Mr Sabra using Purple 018 at the time.

4000. The Trial Chamber thus has to compare the geographic and contact profiles and the SMS content of Purple 018 with mobiles 546 and 657.

4001. There is some geographic consistency between the usages of the three mobiles. The cells providing the predicted best server coverage to the Sabra family home, namely, Alfa's HARA2 and Touch's Haret_Hreik_B, and to plot 177, being Alfa's SFEIR2 and Touch's Hazmiyeh_B, are the two most frequently activated cells on all three mobiles. Alfa's ROUIES3, providing predicted best coverage for the Salloum family home, is in the top five most frequently activated cells of Purple 018 between 1 August 2004 and 16 February 2005, and it also falls within the predicted best coverage of Haret_Hreik_B in the Touch network. While not inconsistent with attribution, all three cells are in southern Beirut, and therefore do not provide geographically distinctive footprints for the mobiles.

4002. Regarding their contact profiles, all three mobiles had among their most frequent contacts Mr Sabra's father, his brother-in-law Mr Hassan Makki, Ms Salloum's aunt Ms Nadia Salloum and the Salloum family home. The text content—at least in the six relevant texts in evidence—shows the same similarities. The names 'Assad' and 'Hala' are used. The name 'Asodi' is also used once. It may be a diminutive of Assad but there is no positive evidence of this. The same applies to 'Sado'.

4003. In its final trial brief, the Prosecution positively asserts that 'Asodi' is a diminutive of Assad, stating that on 'three occasions, Nimr SABRA, SABRA's brother, sent messages to Purple 018 where he addressed the user as "Assad", "Asodi" (a diminutive name for Assad)'. This is footnoted to Mr Donaldson's evidence.⁷⁵⁹⁶ But that is not what Mr Donaldson said. His testimony on point is:

Q. Mr. Donaldson, can you explain to us why you considered "Asodi" as relevant?

⁷⁵⁹⁶ Prosecution final trial brief, para. 186, fn. 322, referring to Andrew Donaldson, T. 27 June 2017, pp 59-60.

A. My understanding from discussions which I had with Lebanese colleagues is that Asodi may be diminutive of Assad, but that is not something which I can speak to personally.

4004. The Prosecution, in referring to the messages to and from ‘Sado’, wrote that ‘Sado is possibly a nickname for Assad, again footnoting this to Mr Donaldson’s testimony, report and slides.’⁷⁵⁹⁷ However, this is what Mr Donaldson actually said in court:

Again this was received by Purple 018 on the 20th of January, 2005, so within the relevant period. And I believe it is addressed to a person who is associated with Sado. What I have seen is that often nicknames, such as Sado, can be used in text messages.⁷⁵⁹⁸

4005. Mr Donaldson’s ultimate conclusions in relation to the references in the text messages to Sado, Lalo and Nana were:

My findings were that I believe the term “Sado” may be used to refer to Assad Sabra. When we see “Lalo”, it is an affectionate term for Hala. I believe “Nana” is a term used to describe Nadia Salloum. I believe that we will see the name Ali pertaining to Ali Salloum and Nour for the daughter.⁷⁵⁹⁹

4006. However, the evidence goes no further than Mr Donaldson’s belief. Mr Donaldson does not speak Arabic and had no knowledge of Lebanese diminutives or nicknames. To conclude that a nickname is used in a text and it belongs to a person with a particular name normally requires some cultural and linguistic experience. Here, there was none. The Trial Chamber thus received no positive evidence that Sado or Asodi were diminutives of Assad, that Lalo is one for Hala nor that Nana relates to Nadia, although this may well be the case.⁷⁶⁰⁰

4007. At its highest, if accepted, it shows that both Mr Sabra and Ms Salloum were using Purple 018. This is also supported by the relevant six text messages received by Purple 018. The first five

⁷⁵⁹⁷ Prosecution final trial brief, para. 186, fn. 326, referring to Mr Donaldson’s report, exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 28 (f), his slides, exhibit P1952, slide 32 and his testimony, Andrew Donaldson, T. 27 June 2017, pp 64-65.

⁷⁵⁹⁸ Andrew Donaldson, T. 27 June 2017, p. 65.

⁷⁵⁹⁹ Andrew Donaldson, T. 27 June 2017, p. 80.

⁷⁶⁰⁰ Nicknames and diminutives may also be different but related concepts. In English for example William has the diminutives ‘Will’, ‘Bill’, ‘Billy/Billie’ and ‘Willy/Willie’, while Elizabeth can be contracted to ‘Liz’, ‘Lizzy/Lizzie’, ‘Bet’, ‘Beth’ and ‘Betty’. By contrast, a true nickname is a humorous or familiar name which is not necessarily connected to the person’s real name. For example, in Australian English, for cultural reasons that need not be explored here, a person with red hair may be nicknamed ‘Bluey’. Thus a ginger-haired William could be called both Bill and Bluey, or even ‘Billy Blue’.

suggest a person named ‘Assad’, spouse of ‘Hala’, ‘Asodi’ or ‘uncle’ (coming from Mr Sabra’s nephew) as the recipient. In contrast, the sixth SMS suggests that ‘Sado’ was not the direct recipient as the text reads, ‘May it return well on you and your family and especially “Sado”’. Even allowing for the informality of texting, a sender probably would not refer to ‘Sado’ both in the second and third person in the same sentence. However, it may have been directed at Sado’s spouse—if Sado was Assad—thus showing common use.

4008. The Trial Chamber therefore has to assess the probabilities of different users of two sets of mobiles using three different consecutive mobiles—namely Purple 018, and mobiles 546/657 which had the same user—sharing a very similar geographic and contact profile and the names ‘Assad’ and ‘Hala’ in text messages. In the Trial Chamber’s view the similarities between the usage of mobiles 546/657 and Purple 018 are so close that they are beyond coincidence. The chances of this occurring by coincidence are so small as to be eliminated as a reasonable conclusion. The Trial Chamber is of this view notwithstanding the lack of evidence of how many possible combinations there may have been of people named Assad and Hala regularly making and receiving calls and texts to more or less the same people in a specified area in Beirut between late 2001 and late 2006.

4009. The Trial Chamber is therefore satisfied beyond reasonable doubt that Mr Sabra and Ms Salloum were using Purple 018 from 22 November 2001 until 16 February 2005, and then used mobile 546 from 24 February 2005 until 21 July 2005 and mobile 657 from 20 July 2005 until at least 31 December 2006.

(f) Single use attribution to Mr Sabra at relevant times in the indictment period

4010. This leads to the main issue, namely, whether the Prosecution has established beyond reasonable doubt that Mr Sabra was the user of Purple 018 in the period pleaded in the amended consolidated indictment on the relevant dates, and for the pleaded calls and incidents.

4011. To determine whether Mr Sabra was the mobile’s user during the relevant period pleaded, the Trial Chamber must examine the mobile’s call patterns and usage. Neither Mr Donaldson nor Prosecution counsel did this. In other words, they did not analyse any outgoing calls close in time

to the pleaded use of Purple 018 in the conspiracy and other crimes charged, to examine whether Mr Sabra was the more likely caller.

4012. The Trial Chamber observes here that the Prosecution did not attempt to explain the significance of the three addresses that the Prosecution put into evidence, namely, the possible addresses of Mr Sabra, his father and his in-laws. The first is implicit and obvious, namely, that Mr Sabra—and his wife in relation to mobiles 546 and 657 on the Prosecution’s case—would have been making calls from his residence or its vicinity, as this accords with the normal experience of personal mobile user behaviour. But without any evidence of the frequency of possible visits to the other two addresses and whether the mobile was used at either, the two addresses have little forensic value. There is simply no evidence of whether Mr Sabra and or his wife visited their parents or in-laws or when. And there is no evidence that when they did that they made or received calls on their mobile.

4013. Further, the five cells relevant to the activations near the three addresses, SFEIR2, HARA2, ROUEIS2, ROUEIS3 and BRAJNE3—set out in a map in Mr Donaldson’s report labelled ‘Map of home address and most frequently used cell sectors’⁷⁶⁰¹—cover an extended surface area of around six square kilometres, based on the predicted best server coverage maps. This is in a built up area of southern Beirut with many apartment blocks and businesses and other multi-use buildings.

4014. Without any evidence of the habits of the user(s) of Purple 018, such as their daily routines, where they went, shopped, worked, any cafes or restaurants frequented, the residences of friends and family who may have been visited, businesses they used, the Trial Chamber cannot draw any conclusions about why these cells were the most frequently activated. That is with the exception of SFEIR2 which covered Mr Sabra’s residence in late 2004 and early 2005.

4015. The Sabra Defence’s argument that ‘two further witnesses specifically deny that Purple-018 was used by SABRA at the relevant time’, namely Witnesses 106 and 69⁷⁶⁰², is unsupported by the evidence. Neither witness categorically stated this. Witness 106 stated that he could not remember if Purple 018 was Mr Sabra’s old number and that number did not sound familiar,⁷⁶⁰³

⁷⁶⁰¹ Exhibit P1953.1 (Attribution report of Andrew Donaldson regarding Mr Sabra), para. 51 (p. 29).

⁷⁶⁰² Sabra Defence final trial brief, para. 216.

⁷⁶⁰³ Exhibit P1149 (Statement of Witness PRH106, dated 15 October 2010), para. 42.

while Witness 69 said that he had Mr Sabra's wife's number, 657, under Assad's name but the witness used it to contact Mr Assad because 'it's all the times with his wife'.⁷⁶⁰⁴

i. Calls to and from Purple 018 between 22 December 2004 and 14 February 2005

4016. The Trial Chamber has examined calls to and from Purple 018 in the pleaded period of 22 December 2004 to 14 February 2005 in an attempt to discern whether there are any patterns pointing to who specifically was using the mobile at these relevant times. As it is evident that both Mr Sabra and Ms Salloum were using the mobile in the entire attribution period spanning 2001 to 2005, it is important to ascertain whether the evidence can establish that Mr Sabra was its user at least during these pleaded times.

4017. The Trial Chamber's review of the call sequence table for Purple 018 during the relevant period has revealed the following:

- Thirty-four calls between landline 747, subscribed to Mr Assad Haidar Salloum, Ms Salloum's grandfather. The last two calls were on 4 February 2005. It was Purple 018's seventh highest contact with 198 contacts;
- Twenty-one contacts with mobile 998, belonging to an unknown user, between 21 December 2004 and 7 February 2004;
- Twenty-one contacts with mobile 934, attributed to Mr Sabra's father, with the last call at 14:01 on Monday 14 February 2005, from Purple 018, then activating SABRA3. There were 306 calls overall and it is the third highest contact in Mr Donaldson's table;
- Nineteen contacts with mobile 375 (Associate Purple 375). No evidence was led as to its user;

⁷⁶⁰⁴ Exhibit P1150 (Interview of Witness PRH069, 19 October 2010), pp 21-22. This is a direct quote: in the interview the interpreter seemed to switch between repeating (i.e. directly interpreting) what the witness had said, and stating in the third person that the witness had said something, for example, when referring to how the witness stored the number in his mobile, 'Because he writes it under the name of the husband', and '*So he wrote it down in his mobile under the name of Assad*'. And, 'I have it in my mobile under the name of Assad because it's his mobile phone, but it's all the times with his wife, *that's why he kept it under Assad's name.*' Another example is on p. 7 where the interpreter, referring to what the witness had said, stated, '*He doesn't know the name of the street or the building, he knows, it's in the seventh floor*'. This deviates from international interpretation standards.

- Seventeen calls with a mobile attributed to Mr Hassan Haidar Makki, Mr Sabra's brother-in-law (his sister's husband) on number mobile 592. This was the fourth highest contact with 267 calls;
- Sixteen text messages were exchanged with mobile 885, including an incoming text at 16:55 on Monday 14 February 2005. Who was using it is not in evidence. However, one message was a general family message, and two sent to mobile 657 in May 2005 appeared not to be directed to Mr Sabra;

On Eid, 20 January 2005, the message written in the Arabic script, stated at the end, 'Yeah! (May it return well on you and your family and especially Sado)', with Sado in the Latin script;

On 4 May 2005, a message was directed to Ms Salloum (on mobile 657) saying, 'Good evening Lalo, how are you? Biggest kiss to the most beautiful "nour"'. On 10 May 2005, a text to 'Lalo', presumably Ms Salloum, identified the sender as 'Dado', saying, 'Hi Lalo I am Dado. You start with the decoration tomorrow because we are coming to you. My regards to little Nana. Bye bye';

- Sixteen contacts with mobile 176, attributed to Mr Bilal Kheireddine, who had a joint bank account with Mr Oneissi. There is otherwise no evidence of who he is. Overall, that number was ranked fourteenth, with 164 contacts;
- Fifteen texts and voice calls with a number attributed to Ms Salloum's aunt, Ms Nadia Assad Salloum, on mobile 473. Purple 018 made the last two voice calls to this number on Thursday 10 February 2005. This was the sixth most regular contact with 212 contacts;
- Eleven contacts with landline 852, the fifteenth highest contact (162 overall);
- Seven calls from landline 377, a number subscribed in Mr Maarouf Rammal's name that was used by customers in his supermarket. In the entire period there were 171 calls from this number, making it the tenth highest contact;
- Seven calls with mobile 869, out of 116 in total;

- Seven contacts with Mr Sabra's maternal nephew, Mr Alaaeddine, on mobile 637, including the text message on Eid, described above. The last contact was a voice call from mobile 637 on Sunday 6 February 2005;
- Three contacts occurred with an unknown mobile 371, the ninth highest with 175 contacts;
- Three contacts with a number attributed to Mr Sabra's brother, Ali Sabra, on mobile 144, out of a total of 162 contacts; and
- Three calls and two SMS from mobile 941.

4018. Normal life experience is that someone in a couple will more likely frequently contact their own relatives than their partner's. This is not of course a hard and fast rule and its general application will depend upon a multitude of factors specific to any relationship, and often unknown outside of it. The Trial Chamber, however, has no information about anything related to Mr Sabra's and Ms Salloum's familial relationships. There is no evidence about the nature or closeness of the familial relationships identified with various contacts suggesting either that *only* Mr Sabra would contact members of his family or *only* Ms Salloum would contact her family on the mobile. Even if a son or daughter more likely regularly contacts their own parents than their in-laws, this obviously does not hold for every situation and the Trial Chamber emphasises that it knows nothing about the Sabra family's.

4019. The Trial Chamber can only postulate that, generally, it would presume that Ms Salloum would be more likely to contact her own relatives, such as an aunt and her parents than Mr Sabra would be *likely* to contact them. And conversely with Mr Sabra; it is more likely that he would regularly call his own father and relatives than Ms Salloum would call them. But this can be put no higher than a general possibility.

4020. The calling patterns in the pleaded indictment period—and putting to one side the calls between the three Purple mobiles—reveal contacts with relatives on both sides of the relationship. There were 48 identified contacts with Mr Sabra's relatives and 49 with Ms Salloum's. An additional 16 were from mobile number 885 which appeared from text message content to be communicating with Ms Salloum. If this theory is correct, namely that members of a couple are

more likely to call their own relatives, the contact with identified relatives on both sides of this relationship is fairly evenly matched. This would strongly suggest that the mobile was used by both Mr Sabra and Ms Salloum in the relevant indictment period of 22 December 2004 to 14 February 2005.

4021. It is stressed, however, that this is no more than a mere possible hypothesis.

- ii. Calls to and from Purple 018 between Wednesday 22 December 2004 and Monday 14 February 2005 when Mr Sabra is alleged to have been involved in the false claim of responsibility

4022. The Prosecution's case is that Mr Sabra was present near the Arab University Mosque on dates in late December 2004 and early January 2005 for the purposes of arranging the false claim of responsibility, and, on Monday 14 February 2005 he participated in making the false claim of responsibility. The Trial Chamber has examined the call sequence table of calls from Purple 018—as it is the Prosecution's case that Mr Sabra was using the mobile at those times—to discern whether patterns emerge that could point to him as the mobile's sole user.

4023. Outgoing calls in this respect are more relevant than incoming calls. This is because if Mr Sabra was using it, logically he would be making calls to people he wished to contact himself, rather than those his wife wished to contact. If the mobile, however, has more than one user, typically callers wishing to speak to someone other than Mr Sabra, might call it. Here, of course there is no direct evidence of who was making or receiving the calls and texts.

4024. In respect of the activities alleged around the Arab University Mosque are the following call patterns:

- On Thursday 30 December 2004, at 18:11, Purple 018 connected to COLA3, providing coverage near the Arab University Mosque. A little over an hour and a half later, at 19:49, Purple 018 called Mr Bilal Kheireddine's mobile 176. At 20:25, Purple 018 called the Salloum family landline on number 747. Both calls activated SFEIR3;
- On Friday 31 December 2004, Purple 018 connected to cells near the Arab University Mosque between 12:39 and 16:34. During this period, Purple 018—apart from the calls to Mr Oneissi's Purple 095—called unknown mobile 998 at 16:05. It also took four

voice calls from the Salloum family landline 747, between 16:35 and 17:58, and then made a call to that number of 82 seconds at 18:31.

Two minutes later, at 18:33, Mr Oneissi's Purple 095 called Purple 018. For these latter two calls, Purple 018 activated CBOURJ3, a cell in southern Beirut;

- On New Year's Day, Saturday 1 January 2005, Purple 018 connected to cells near the mosque between 11:12 and 15:52. It made a call to unknown mobile 869 at 11:12, and then at 12:38 to Mr Bilal Kheireddine's attributed mobile 176;
- On Monday 3 January 2005, Purple 018 connected to cells near the mosque between 11:16 and 12:23. The only outgoing calls were to Mr Oneissi's Purple 095;
- On Tuesday 4 January 2005, Purple 018 activated cells near the mosque between 15:08 and 18:50. The only two outgoing calls were to Mr Merhi's Purple 231;
- On Wednesday 5 January 2005, between 14:34 and 14:44, Purple 018 connected to cells near the mosque. There was a call from an unknown mobile, 803. At 16:35, Purple 018 called the Salloum family landline 747, and again at 18:38, connecting to ROUEIS3 and ROUEIS2;
- On Thursday 6 January 2005, Purple 018 activated cells near the mosque between 11:41 and 18:48. It called Mr Bilal Kheireddine's mobile 176 at 11:41; and
- On Friday 7 January 2005, between 12:54 and 16:47, Purple 018 connected to cells near the mosque. In that period it made four calls to Purple 095.

4025. At 14:11 on Monday 14 February 2005, the first call in the false claim of responsibility was made to Reuters. Three calls were made to Al-Jazeera, the last at 17:04.

4026. Apart from four calls to Mr Merhi's Purple 231 and Mr Oneissi's Purple 095, Purple 018 made two other calls that afternoon. The first was to Mr Bilal Kheireddine's number 176 at 13:33 and the second was to Mr Sabra's father's mobile, number 934, at 14:01.

4027. The calls on Monday 14 February are slightly more supportive of Mr Sabra using the mobile at those particular times, based on the call to his father.

4028. The call pattern on Friday 31 December 2004, however, is of four calls from the Salloum family landline 747 to Purple 018 while it was connecting to cells near the Arab University Mosque. But what is the explanation for this? Could it have been Ms Salloum, at her parents' home, calling Mr Sabra, who had the mobile? Or was it Ms Salloum's parents calling her, or Mr Sabra on Purple 018? Or was it someone else? Another family member? At 18:31, Purple 018 called that number for 81 seconds. But there is no direct evidence of who made that call nor any of the other calls.

4029. On Wednesday 5 January 2005, after Purple 018 had connected to cells near the mosque at 14:44, it twice called the Salloum's family landline 747, at 16:35 and again at 18:38. This suggests that Ms Salloum may have been using the mobile that afternoon. It may also suggest that Mr Sabra was looking for his wife at her parents' home. But these are only possibilities. By contrast, at 14:01 on Monday 14 February 2005, Purple 018 called Mr Sabra's father's number, suggesting that he more likely had the mobile at that point. But this is no more than a possibility.

4030. The Trial Chamber cannot use the evidence of the call patterns between the three Purple mobiles, 018, 095 and 231—at any time—to support the inference that Mr Sabra was the user of Purple 018 at the relevant times. To do so would employ circular reasoning and logic. This is because the attribution to Mr Sabra as the sole user on 14 February depends upon the mobile being attributed to him by other evidence. The Prosecution has to independently prove that he was using the mobile; this cannot be proved by the fact that calls were made between the three mobiles, or from an implicit suggestion that he may be the more likely candidate in his marriage to be the user of the mobile on 14 February.

4031. The Trial Chamber has to be satisfied beyond reasonable doubt that Mr Sabra was using Purple 018 for all relevant pleaded activities. The evidence establishes that both he and his wife were using the mobile during both the attribution and indictment period. The Trial Chamber must exercise caution and evidential doubt in favour of an accused person.

(g) Conclusion

4032. Attributing mobiles 546 and 657 to Ms Salloum and Mr Sabra assists in attributing Purple 018 to both. All three mobiles had among their most frequent contacts Mr Sabra's father, Mr Hassan Sabra; Mr Sabra's brother-in-law, Mr Hassan Makki; Ms Salloum's aunt, Ms Nadia

Salloum; and the Salloum family home. There is also consistency among the use of given names and diminutives in text messages across the three mobiles, supporting the notion that all three had the same users at some times.

4033. The Trial Chamber is satisfied that Mr Sabra and Ms Salloum used both mobiles 546 and 657 although it appears that they were more often used by Ms Salloum. There is clear evidence from the use of this mobile as a business contact number that both members of this couple were using mobile 657. And texts contain their and their daughter's names.

4034. Based on the striking similarity between the contact and geographic profiles and the content of the several text messages mentioning 'Hala' and 'Assad' by name, the Trial Chamber is also satisfied that Purple 018 was also used by both Mr Sabra and Ms Salloum during the extended attribution period.

4035. The Trial Chamber, however, has been unable to find calling patterns for the user(s) of Purple 018 from which it could discern that it had a single user either in the attribution period or the relevant indictment period. On some days, assuming that Mr Sabra was more likely to contact his relatives than his wife's, and vice versa, either could have been using the mobile and at different times. Further, Witness 69 stated that he contacted Mr Sabra on mobile 657, but through Ms Salloum who had the mobile. While this was outside of the indictment period, it supports the notion, based on the call patterns of all three mobiles, that both were using the three mobiles.

4036. Most crucially, during the pleaded indictment period of 22 December 2004 to 14 February 2005, the Trial Chamber cannot conclude that Mr Sabra was the sole, main or principal user of Purple 018. The evidence points to shared usership in that period. But even more critically, the Trial Chamber cannot positively conclude from the only evidence it has—namely, that of the mobile's geographic and contact profiles, for there is no relevant text message content—that Mr Sabra was the sole user of the mobile on the days on which it is pleaded that he was using the mobile for false claim of responsibility related activities.

4037. It cannot agree with Mr Donaldson's assertion that Mr Sabra was the single user of Purple 018. The evidence actually points towards its shared use. The strongest evidence that Mr Sabra was using the mobile is based upon two texts in 2004 that use the name 'Assad' and one in 2005 referring to '*khal*' (maternal uncle) from his maternal nephew. Those three texts out of 8,739

contacts cannot provide sufficient proof beyond reasonable doubt that Mr Sabra was the mobile's *single or principal* user.

4038. The Trial Chamber is therefore unable to conclude beyond reasonable doubt that the only inference reasonably available from the evidence is that Mr Sabra was the single user of the mobile between 22 December 2004 and 14 February 2005. The evidence establishes that while he was most probably using the mobile during the period, his wife was also probably using it. Although the call to his father's attributed mobile at 14:01 on the afternoon of Monday 14 February 2005 points to him as the more likely user of Purple 018—at least between Mr Sabra and his wife as the two candidates *on that day*—this cannot of itself or in combination with any other evidence establish beyond reasonable doubt that Mr Sabra was its single user that afternoon at the relevant times.

4039. In making this finding, the Trial Chamber emphasises that it has examined the evidence in its totality while scrutinising the individual pieces of proof. None, collectively or individually, can establish single use attribution of Purple 018 for Mr Sabra at the relevant times.

F. Mustafa Amine Badreddine

4040. Mustafa Amine Badreddine was born on 6 April 1961 in El-Ghobeiri in Beirut. He was twice married, with six children. His late brother in law was Imad Mughniyeh, who was married to Mr Badreddine's sister, Saada.⁷⁶⁰⁵ Mr Badreddine was one of the four original accused in this case.

4041. In May 2016, Hezbollah announced Mr Badreddine's death in Syria. On 11 July 2016, the Trial Chamber, acting according to a three to two majority Appeals Chamber decision, terminated the case against him.⁷⁶⁰⁶ His name, however, remained in the amended consolidated indictment that the Prosecutor filed following this order.

4042. The Prosecutor, in the amended consolidated indictment, pleads that Mr Badreddine, who was allegedly also known under the alias 'Sami Issa', participated in a conspiracy with the four Accused aimed at committing a terrorist act to assassinate Mr Hariri. Specifically, Mr Badreddine is alleged to have monitored, and, with Mr Ayyash, coordinated the surveillance of Mr Hariri in preparation for the attack and the purchase of the Canter used in the attack. Additionally, he monitored the physical perpetration of the attack. Further, he monitored, and, with Mr Merhi, coordinated the preparation of the false claim of responsibility for the attack.⁷⁶⁰⁷

4043. His involvement in the attack, according to the Prosecutor, is shown by his use of a mobile in the Green network of three mobiles that were used for this purpose. Mr Badreddine is alleged to have used his Green network mobile 023 to communicate with Mr Ayyash, who was using his Green mobile 300, and with Mr Merhi who was using Green mobile 071, 'to exchange information regarding all aspects of the conspiracy and coordinate the acts done in furtherance of the conspiracy'. It was a coordination network used exclusively by these three co-conspirators.⁷⁶⁰⁸ Mr Badreddine is also alleged to have been a supporter of Hezbollah, as are the four Accused.⁷⁶⁰⁹

⁷⁶⁰⁵ Exhibit P1042 (Certified copy of family status extract and certified copy of marriage certificate), p. 13; exhibit P1040 (Birth certificate of Mustafa Badreddine) ERNs 60242738-60242741; exhibit P2023.3, para. 15.

⁷⁶⁰⁶ Interlocutory appeal decision on the death of Mr Badreddine and termination of proceedings; Order terminating proceedings against Mr Badreddine without prejudice and ordering the filing of an amended consolidated indictment.

⁷⁶⁰⁷ Amended consolidated indictment, paras 3 (a), (d)-(e), 48.

⁷⁶⁰⁸ Amended consolidated indictment, paras 15 (b), (18), 19 (a).

⁷⁶⁰⁹ Amended consolidated indictment, para. 49.

1. The cell site evidence

4044. The evidence connecting Mr Badreddine with the Green network mobile 023 comes from the Prosecution's cell site evidence. To prove that he was using Green 023, the Prosecution led evidence that Mr Badreddine was also using two personal mobiles, numbers 663 and 354, that co-located with Green 023. It led extensive evidence of the use of these two mobiles. Mr Badreddine was alleged to have used mobile 354 from 1 September 1997 to 31 December 2005, and mobile 663 from 26 February 2001 to 31 December 2005.

4045. The Prosecutor also pleaded that Mr Badreddine was using five 'sequential mobile phones', with numbers ending in 683, 944, 195, 486 and 593. These were 'used in sequential order, meaning that each phone was used for a period of weeks or months and then replaced by another'.⁷⁶¹⁰ The Prosecution led evidence only of the use of sequential mobile 944, which in reality was another personal mobile, and of its potential co-location with Green 023. The Prosecution alleged that Mr Badreddine used sequential mobile 944 from 9 March 2004 to 9 March 2005.

4046. To prove co-location of the personal mobiles and with Green 023, the Prosecution relied on the analytical evidence of its analyst, Mr Andrew Donaldson, and its cell site expert, Mr J. E. Philips.

4047. Mr Donaldson, the non-expert in-house Prosecution analyst, prepared a lengthy report, 'Evidence of telephone attribution Mustafa Amine Badreddine' a version of which the Prosecutor submitted to the Pre-Trial Judge as part of the confirmation materials used to indict Mr Badreddine.⁷⁶¹¹ Mr Donaldson positively concluded that personal mobiles 354, 663, a series of sequential mobiles, including mobile 944, and Green 023 were all attributed to Mr Badreddine,⁷⁶¹² meaning that he was the single user of all four.

4048. Mr Philips produced a detailed post-indictment report, in November 2012, entitled 'Demonstration of single person use of multiple mobile phones using Cell Site Analysis Suspect 2', in which he analysed the possible co-location of personal mobiles 944, 354, 663 and network Green mobile 023, over 15 days of interest. He concluded that, 'Over the entire period under

⁷⁶¹⁰ Amended consolidated indictment, paras 16, 18.

⁷⁶¹¹ Exhibit P2023.3 (Attribution report of Andrew Donaldson regarding Mr Badreddine), version 6, 13 December 2017.

⁷⁶¹² Exhibit P2023.3, paras 3-4.

review, all mobile phones are consistent with being used *by a single person* with no exceptions'.⁷⁶¹³ He did not positively state that the four mobiles had a single user.

4049. For this report, Mr Philips explained that he was using the three terms 'could be co-located', 'may preclude' and 'would preclude'.⁷⁶¹⁴ In the body of the report, however, he interchangeably used the other terms 'may be co-located' and 'may not be co-located'.

2. Summary of evidence and findings

4050. A number of witnesses knew Mr Badreddine under his alias of Sami Issa. Mr Badreddine had attended the Lebanese American University (LAU) as a student between 1997 and 2004. He graduated in 2005 with a Bachelor of Arts in Political Science. Mobile 354 was Mr Badreddine's contact number at the university. From about 2002 to 2005, calling himself Sami Issa, he befriended students at the university and socialised with them. Sami Issa had bodyguards, one or more apartments in Jounieh, which is about 20 or so kilometres north of Beirut, and or Sahel Alma, a boat 'Samino' that he moored north of Beirut and owned a jewellery business, Samino Jewellery, that had three branches in Beirut.

4051. Three witnesses identified mobile 354, and seven identified mobile 663, as Sami Issa's. Text messages from mobile 663 used the names 'Sami' and 'Samino'. Sami Issa, like Mustafa Badreddine, had a leg injury and walked with a limp. Text messages to both personal mobiles refer to his leg and foot injuries. The two also shared the same birthday, 6 April.

4052. Sami Issa travelled with armed bodyguards, used multiple mobiles and took precautionary measures to avoid being photographed, or leaving his fingerprints on objects.

4053. Mobile 354 had 855 contacts with one of Mr Badreddine's girlfriends and 128 with another. It also had 2,056 contacts with his sister's mobile and hundreds of contacts with the Samino outlets. Mobile 663 had 21,372 contacts with one girlfriend and 3,151 with another. It had thousands of contacts with the Samino stores and its associates, as well as 1,895 with an employee.

⁷⁶¹³ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), 6 November 2012, p. 3.

⁷⁶¹⁴ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), 6 November 2012, p. 30.

4054. The two mobiles had an overlapping geographical profile and use pattern and numerous common contacts.

4055. The third mobile, number 944, had hundreds of contacts with the mobiles of Sami Issa's business partner at Samino and its registered owner. It had a smaller circle of contacts—including what were described as Samino 'insiders',⁷⁶¹⁵ Hezbollah officials and several Badreddine family members—and a lower volume of traffic.

4056. In May 2016, Hezbollah announced Mr Badreddine's death in combat in Syria and released biographical details including photographs and video footage, and stated that he was a senior Hezbollah military commander. Eight witnesses recognised Mr Badreddine as the person they knew as Sami Issa. The evidence that Mr Badreddine was Sami Issa, and was using the three personal mobiles, is overwhelming.

4057. The cell site evidence establishes that mobiles 354 and 944 co-located, and that mobiles 944 and 663 co-located. Both had a single user. Green 023 was used on 57 days between 28 September 2004 and 12 February 2005. It moved consistently with the other three mobiles.

4058. The evidence establishes that that Mr Badreddine was using personal mobiles 354, 663 and sequential mobile 944 in the periods alleged, either under his own name or his alias Sami Issa. These mobiles co-located with Green 023 in such a manner that the only reasonable conclusion from the evidence is that Mr Badreddine was also using that mobile, as its single user.

3. Mr Badreddine's identity and his alias 'Sami Issa'

4059. Mr Badreddine used more than one name. One was 'Sami Issa'. The Prosecution initially used Mr Donaldson's analytical overview evidence—combined with witness testimony—to show that Mustafa Badreddine and Sami Issa were the same person. Mr Donaldson had relied on witness testimony, documents and text message content to conclude that Sami Issa was an alias for Mr Badreddine.⁷⁶¹⁶

⁷⁶¹⁵ Mr Donaldson used the term Samino 'insiders' to distinguish them from Samino employees in terms of their proximity to Mr Badreddine or Sami Issa. Samino 'insiders' could have been in a position to know his identity. For example, one Samino 'insider' is married into Mr Badreddine's family, while a second had their number provided as a contact for Mr Badreddine's daughter at her school. In contrast, Samino employees did not know the identity of Sami Issa. This is summarised in Mr Donaldson's report, exhibit P2023.3, paras 7-14.

⁷⁶¹⁶ Exhibit P2023.3, paras 6-39.

4060. Mustafa Amine Badreddine did not have a Lebanese passport nor any registered real estate in Lebanon. The Lebanese authorities have no record of a Sami Issa, who was born on 6 April. He too did not have a Lebanese passport. There were no tax records in Sami Issa's name, nor any official records connecting this person with Samino Jewellery, which was a registered company.⁷⁶¹⁷

4061. After Mr Badreddine's presumed death in May 2016, however, eight witnesses who knew Sami Issa recognised Mustafa Badreddine from Hezbollah publicity material, as Sami Issa.

4062. Witnesses who knew Sami Issa stated that he went by many different names. Witness PRH338 took a course with Sami Issa at the LAU and stated that the professor did not call him 'Sami Issa' when taking the class attendance. When the witness asked him about this he said he was taking a course 'instead of his friend'.⁷⁶¹⁸ Others explained that Sami Issa also went by Safi, Sam and Samino.⁷⁶¹⁹

4063. Before attributing any mobiles to Mr Badreddine, Mr Donaldson had to determine whether Mr Badreddine and Sami Issa were the same person.⁷⁶²⁰ The exact date that the alias Sami Issa was adopted is not known, but according to Mr Donaldson, 'evidence suggests that it was commonly used in certain spheres from 2002 onwards'.⁷⁶²¹

4064. The significance of the Sami Issa alias is that it ties or links Mr Badreddine to mobiles that people were contacting thinking that they were communicating with someone they knew as Sami Issa. It also links Mr Badreddine to the Sami Issa who owned three jewellery stores in Beirut. Those contacting the mobile numbers used by Sami Issa included his friends and his employees. The importance of this to the case is to link the mobiles used by Sami Issa/Mustafa Badreddine to the user of the pleaded Green network mobile 023 that was allegedly used to coordinate and monitor Mr Hariri's assassination and the false claim of responsibility.

⁷⁶¹⁷ Exhibit P2065 (Response to request for assistance concerning passports for Mr Badreddine or Mr Issa), p. 2; exhibit P2076 (Ministry of Trade documents in regards to Samino), p. 1; exhibit P2075 (Response to request for assistance concerning tax records), ERNs 60243961-60243962, 60243965-60243969, 60243973-60243976.

⁷⁶¹⁸ Exhibit P1663 (Statement of Witness PRH338), ERNs 60306057, 60306086.

⁷⁶¹⁹ Exhibit P2081 (Statement of Witness PRH273), pp 13-14; Witness PRH264, T. 10 December 2015, pp 24-26, 28-29; Witness PRH089, T. 15 December 2015, pp 14-15; exhibit P1661 (Statement of Witness PRH423), ERNs 60318047, 60305157, 60305173, 60305176, 60305184.

⁷⁶²⁰ Exhibit P2023.3, para. 1.

⁷⁶²¹ Exhibit P2023.3, para. 41.

(a) The Lebanese American University

4065. Mr Badreddine applied for admission to the LAU and was assigned a student number.⁷⁶²² LAU documents show that he used multiple different spellings of his name, including ‘Mustafa Amin Badruddin’, ‘Safi Badr’, ‘Safi Badruddin’ and ‘Mustapha’.⁷⁶²³ An email sent from ‘Safi Badr’ under Mr Badreddine’s name to the LAU on 22 November 2003, reads ‘My name is Mustaf Badruddine (Safi Badr). My ID # is 199734980’.⁷⁶²⁴

4066. Witnesses PRH605 and PRH338 attended the LAU and came to know Sami Issa.⁷⁶²⁵ Witness 605 was there from 2003, while Witness 338 attended from 1999 until 2009.⁷⁶²⁶ Witness PRH264 was Sami Issa’s university friend and knew him socially, and met him and a group of friends in 2004 and 2005.⁷⁶²⁷

4067. Sami Issa was enrolled in basic health and ancient Arabic literature at the LAU. In 2000 and 2003, Witness 338 and Sami Issa took courses together.⁷⁶²⁸ In class attendance, Sami Issa was called by a different name that the witness could no longer remember.⁷⁶²⁹ Witness 338 identified photographs and a video of Mr Badreddine as Sami Issa.⁷⁶³⁰

4068. On 28 February 2005—two weeks to the day after the attack on Mr Hariri’s life—and after attending the university for various semesters between 1997 and 2004, ‘Mustafa Amin Badruddin’ was awarded a Bachelor of Arts in Political Science.⁷⁶³¹ Witness testimony suggests that Sami Issa also studied Political Science at LAU.⁷⁶³² Mobile 663’s user also sent and received text messages

⁷⁶²² Exhibit P1139 (Information from LAU regarding Mustafa Badreddine). Following the introduction of a new computer system at the university, the number ‘19’ was added in front and a zero at the end of the student number, changing the original assigned number 973498 to 199734980, meaning that the university had two numbers associated with Mustafa Badreddine. Exhibit P1141 (Response to request for assistance for LAU documents). *See also* exhibit P2023.3, para. 34, where Mr Donaldson summarises the sources concerning the name ‘Safi Badr’.

⁷⁶²³ Exhibit P1139; exhibit P2023.3, para. 34.

⁷⁶²⁴ Exhibit P1139, ERN 60230576; exhibit P2023.3, para. 34.

⁷⁶²⁵ Exhibit P1664 (Statement of Witness PRH605), ERNs 60314174-60314177; exhibit P1663 (Statement of Witness PRH338), ERNs 60306055-60306057, 60306084-60306086; exhibit P2023.3, paras 10-11.

⁷⁶²⁶ Exhibit P1664 (Statement of Witness PRH605), ERNs 60314174; exhibit P1663 (Rule 155 statement of Witness PRH338), ERNs 60306055; exhibit P2023.3, pp 4-5.

⁷⁶²⁷ Witness PRH264, T. 10 December 2015, pp 19-21; exhibit P2023.3, paras 9, 81, 156 (d), 182.

⁷⁶²⁸ Exhibit P1146 (LAU Documents), ERNs 60285709-60285710; exhibit P1139, ERNs 60230587-60230588.

⁷⁶²⁹ Exhibit P1663 (Statement of Witness PRH338), ERNs 60306056-60306057.

⁷⁶³⁰ Exhibit P1415 (*Alahed* news video of Mustafa Badreddine dated 13 May 2016); exhibit P1663 (Rule 155 statement of Witness PRH338), ERNs 60318999, 60319002-60319007.

⁷⁶³¹ Exhibit P1139, ERNs 60230586-60230588; exhibit P2023.3, para. 21.

⁷⁶³² Exhibit P2081 (Statement of Witness PRH273) pp 25, 30; exhibit P2023.3, para. 22.

relating to the user's attendance at university in October and December 2004, as is shown in the two texts extracted below:⁷⁶³³

04-10-2004	17:48:22	3966663	241	hi albi i woke up late&went 2 univrsty.now i am out.i call u	Hi my heart, I woke up late and went to university . Now I am out.i call u
06-12-2004	16:36:10	3966663	789	ana ba3Dni bil jam3ah ana bottosil fiki	I'm still at the university . I call you.

4069. In 2005, Witness 273 collected a degree certificate on Sami Issa's behalf. Sami Issa had asked him to collect the degree as a favour, saying that the degree—a Bachelor of Arts in Political Science—was for a close friend of Sami Issa's by the name of Mustafa Badreddine, who had graduated from the LAU and was 'living outside'. Sami Issa asked the witness to send a fax from an international number, as required by university policy, to request a proxy by the person who was 'living outside'.⁷⁶³⁴ However the LAU did not have any records relating to Sami Issa.⁷⁶³⁵

(b) Mustafa Badreddine and Sami Issa's common birthday

4070. Mustafa Badreddine was born on 6 April 1961,⁷⁶³⁶ and shared a common birthday with 'Sami' Issa, who received birthday messages on 6 April. The texts below show the greetings:⁷⁶³⁷

06-04-04	03:32:45	527	3966663	Hallo SAMI , HAPPY BIRTHDAY w enchalah hal s'n! betkoun senet kh!r w yekhalealak ahlak w kel 2ely bet7!bon 7adak w ye3aydo ma3ak 3alatoul .Best wishes 4 u .Emwa!	Hallo Sami, Happy Birthday and I wish you many happy returns and God bless your parents and all your beloved ones. Best wishes for you. Emwa!
06-04-05	10:11:55	725	3966663	Hi...how r u? Happy birthday and 3a2bél el miyé.Take care...	Hi... how are you? Happy birthday and many happy returns. Take care...

(c) Leg injury

4071. Both Mustafa Badreddine and Sami Issa walked with a limp. After Mr Badreddine's presumed death in May 2016, *Alahed* news agency published a video showing Mr Badreddine

⁷⁶³³ Exhibit P2023.3, para. 169; exhibit P1294 (SMS content for mobile 663), pp 676, 829.

⁷⁶³⁴ Exhibit P2081 (Statement of Witness PRH273), p. 25.

⁷⁶³⁵ Exhibit P1140 (Letter from LAU regarding Sami Issa and Safi Badr); exhibit P2023.3, para. 22.

⁷⁶³⁶ Exhibit P1042, p. 13; exhibit P1040, ERNs 60242738-60242739, 60242741; exhibit P2023.3, para. 15.

⁷⁶³⁷ Exhibit P1294, pp 140, 160.

walking with a limp.⁷⁶³⁸ Witnesses PRH416, PRH264, PRH306, PRH470 and PRH089 all stated that Sami Issa walked with a limp or had issues with his leg.⁷⁶³⁹ Witness 416 believed that the issue was with Sami Issa's right knee, while Witness 306 thought it was his left leg.⁷⁶⁴⁰

4072. Witness 89 did not specify which leg, but stated that Sami Issa wore a support on his leg below the knee.⁷⁶⁴¹ Witness 264 stated that Sami Issa did not have a regular limp, but had difficulty walking and that his injured leg was noticeably thinner below the knee.⁷⁶⁴² Further, the user of mobiles 354 and 663 sent and received in 2004 and 2005 text messages relating to his foot surgery. The texts below show this:⁷⁶⁴³

Date (dd/mm/yy)	Time (hh:mm:ss)	Outgoing	Incoming	SMS Content	Translation
20-12-2004	16:08:07	3833354	528	Mrahib.Kifak?Ana mish nasi bes 3milt 3amaliyyi bi ijri w ana 3al 3ikkaizat .C u soon.	Hellos. How are you? I didn't forget but i had surgery to my foot and I am on crutches. See you soon
15-12-2004	23:11:18	3966663	088	Kint 3am sawwi operation la ijri	I was undergoing an operation for my leg.
31-07-2005	23:32:20	3966663	637	Albi i i i.electric in my leg.coz of operations.sooo painful.	My heart, electric in my leg, because of operations. Sooo painful.

(d) Precautions

4073. Sami Issa took numerous precautions to physically protect himself, and to avoid leaving traces of his presence anywhere.

⁷⁶³⁸ Exhibit P1415, at timestamps 15 and 24 seconds; Andrew Donaldson, T. 5 July 2017, pp 26-28; exhibit P2023.3, para. 24.

⁷⁶³⁹ Witness PRH416, T. 2 December 2015, pp 84-85; Witness PRH306, T. 8 December 2015, pp 61-64; Witness PRH470, T. 6 December 2016, p. 14; Witness PRH089, 15 December 2015, pp 78-80; exhibit P2023.3, paras 25-29.

⁷⁶⁴⁰ Witness PRH416, T. 2 December 2015, pp 84-85; Witness PRH306, T. 8 December 2015, pp 61-64; exhibit P2023.3, paras 26-27.

⁷⁶⁴¹ Witness PRH089, T. 15 December 2015, pp 78-80; exhibit P2023.3, para. 29.

⁷⁶⁴² Witness PRH264, T. 10 December 2015, p. 83, T. 14 December 2015, pp 35-39; exhibit P2023.3, para. 28.

⁷⁶⁴³ Exhibit P2023.3, paras 30, 65, 173; exhibit P1286 (SMS content for mobile 354), p. 17; exhibit P1294, pp 866, 1385.

4074. Between approximately 2002 and 2005, he had at least three armed bodyguards.⁷⁶⁴⁴ Witness 416, who was employed at a Samino jewellery store, described Sami Issa as someone who was concerned about being identified. As an example, he described one occasion when Sami Issa was in a shop examining a new mobile, using a cloth to wipe his fingerprints off after handling it.⁷⁶⁴⁵ He also described Sami Issa dipping his silverware into his glass after finishing his meal, as a way to remove his prints.⁷⁶⁴⁶

4075. In the evenings, when Sami Issa went out to smoke *hookah*, he always brought his own tobacco and his own *hookah* device.⁷⁶⁴⁷ According to the witness, Sami Issa was a cautious man and even took precautions when in public, such as disguising himself—altering his facial appearance with a moustache, goatee or wearing sunglasses and hats—and keeping his head down when getting out of his car to avoid being captured on the street video cameras.⁷⁶⁴⁸

4076. Witnesses 89, 338 and 416 said that Sami Issa owned multiple cars. He switched cars throughout the week and sometimes within the same day.⁷⁶⁴⁹

4077. Sami Issa had one or more bodyguards who sometimes also drove for him.⁷⁶⁵⁰ Sami Issa instructed Witness 416 to drive in a circuit before and after the working hours to make sure he was not being followed.⁷⁶⁵¹ Sami Issa also instructed the witness to regularly to switch the cars' number plates, including a military number plate.⁷⁶⁵² A copy of the car registration documents associated with the particular number plate was attached to a car seat pocket, and when the witness received calls from Sami Issa, no number would usually appear on the screen.⁷⁶⁵³

⁷⁶⁴⁴ Exhibit P2081 (Statement of Witness PRH273), pp 10-11, 25, 27-29, 31; Witness PRH089, 15 December 2015, pp 38-39.

⁷⁶⁴⁵ Witness PRH416, T. 2 December 2015, pp 82-83.

⁷⁶⁴⁶ Witness PRH416, T. 2 December 2015, p. 83.

⁷⁶⁴⁷ Witness PRH416, T. 2 December 2015, pp 72-73.

⁷⁶⁴⁸ Witness PRH416, T. 2 December 2015, p. 84.

⁷⁶⁴⁹ Witness PRH089, T. 15 December 2015, pp 40-41, 44-45; exhibit P1663 (Statement of Witness PRH338), ERNs 60306063, 60306082; Witness PRH416, T. 3 December 2015, pp 21-22, 53-54.

⁷⁶⁵⁰ Witness PRH264, T. 10 December 2015, pp 84, 93-95; exhibit P1658 (Statement of Witness PRH470), ERNs 60310126-60310127, 60310156-60310159; Witness PRH416, T. 3 December 2015, p. 93

⁷⁶⁵¹ Witness PRH416, T. 3 December 2015, pp 29-30.

⁷⁶⁵² Witness PRH416, T. 2 December 2015, pp 90-97, T. 3 December 2015, pp 30-31.

⁷⁶⁵³ Witness PRH416, T. 2 December 2015, p 77.

4078. Sami Issa sometimes carried a locked Samsonite briefcase.⁷⁶⁵⁴ Witness 416 once saw pockets inside the briefcase with a mobile in each of them, up to four or five mobiles. Sami Issa established a protocol for others to flip the mobile upside down so that they could not see who was calling and then hand the mobile to him.⁷⁶⁵⁵

(e) Samino jewellery

4079. Sami Issa owned a jewellery store, Samino Jewellery. It had three branches in Beirut. A Lebanese company dealing with precious metals and money changing recorded him as the owner of the Samino jewellery company. The company described him as ‘AMINO Jewelry owner Sami Issa, responsible who writes checks Shaker Nayef “SAMINO”’. This ‘Shaker’ had come in February 2001 ‘and bought 10 kg’.⁷⁶⁵⁶ As the company traded in precious metals, it is presumably referring to such a purchase. Samino Jewellery was officially registered in the name of Ali Fayeze Harb, with no mention of Sami Issa.⁷⁶⁵⁷

4080. Witnesses, however, stated otherwise. Witness 416 stated that Sami Issa owned the three Samino jewellery stores in Bourj Hammoud, Mar Elias and Furn El-Chebbak.⁷⁶⁵⁸ Mr Mohammed Nayef Shukr, who was also known as ‘Estez’, was Sami Issa’s business partner and was responsible for the financial and accounting aspects of all the branches of Samino Jewellery.⁷⁶⁵⁹ He was married to Mr Badreddine’s niece, Ms Thuraya Nazem Haidar.⁷⁶⁶⁰

4081. Witness 338, who knew Sami Issa from the university, used to buy jewellery from the Samino stores in Furn El-Chebbak and Mar Elias, which according to the witness were Sami Issa’s.⁷⁶⁶¹ The witness would see Sami Issa in the Mar Elias store and knew three employees from

⁷⁶⁵⁴ Witness PRH416, T. 2 December 2015, pp 75-76.

⁷⁶⁵⁵ Witness PRH416, T. 2 December 2015, pp 75-78.

⁷⁶⁵⁶ Exhibit P2079 (Letter from BOGHOS Company regarding Samino), pp 1-2.

⁷⁶⁵⁷ Exhibit P2076, p. 1.

⁷⁶⁵⁸ Witness PRH416, T. 1 December 2015, pp 7-8, 16-18, 35-36. *See also* Witness PRH306, T. 7 December 2015, pp 92-93, T. 8 December 2015, p. 5-7; exhibit P1658 (Statement of Witness PRH470), ERNs 60310015, 60310042-60310046, 60310053-60310055.

⁷⁶⁵⁹ Witness PRH416, T. 3 December 2015, pp 72-73; Witness PRH306, T. 8 December 2015, pp 13, 35; exhibit P1658 (Statement of Witness PRH470), ERNs 60310045-60310046, 60310056, 60310185-60310186.

⁷⁶⁶⁰ Exhibit P1038 (Family personal status extract for Mohammed Shoker), pp 8-10, 14.

⁷⁶⁶¹ Exhibit P1663 (Statement of Witness PRH338), ERNs 60306059-60306060, 60306068-60306069.

the two stores.⁷⁶⁶² She did not know whether Sami Issa was the sole owner of the stores, but Samino employees used to call him ‘the boss’.⁷⁶⁶³

4082. Sami Issa told Witness 605 that he had a jewellery store on Mar Elias street in Beirut.⁷⁶⁶⁴ Witness 89 understood that Sami Issa owned three jewellery stores, including those in Furn El-Chebbak and Mar Elias, but the witness visited only the Mar Elias store.⁷⁶⁶⁵ The witness did not purchase any jewellery from the Mar Elias store, but Sami Issa gave the witness a gift of worry beads sold in the store.⁷⁶⁶⁶

4083. Witness 264, who knew Sami Issa socially in 2004 and 2005 and who was involved in promotional activities sponsored by Samino, said that Sami Issa owned multiple jewellery stores, including that in Furn El-Chebbak.⁷⁶⁶⁷ Sami Issa occasionally gave this witness discounts on jewellery items from his stores.⁷⁶⁶⁸

(f) Identification of Mustafa Badreddine as Sami Issa

4084. On 13 May 2016, Hezbollah announced Mr Badreddine’s death in fighting in Syria.⁷⁶⁶⁹ The Trial Chamber received into evidence ten documents, under three categories, regarding Mr Badreddine’s presumed death:

i. Witness identification of Mr Badreddine as Sami Issa

4085. The first is witnesses identifying Mr Badreddine as Sami Issa. Three statements released by Hezbollah on 13 May 2016 and published on the website of the Lebanese *Al-Manar* TV channel, which reported on Mr Badreddine’s death and the related condolence and commemoration ceremonies, are relevant to the identification of Mr Badreddine as Sami Issa.⁷⁶⁷⁰

⁷⁶⁶² Exhibit P1663 (Statement of Witness PRH338), ERNs 60306060, 60306068, 60306077, 60306089-60306090, 60306110.

⁷⁶⁶³ Exhibit P1663 (Statement of Witness PRH338), ERNs 60306072-60306073, 60306110.

⁷⁶⁶⁴ Exhibit P1664 (Statement of Witness PRH605), ERNs 60314193-60314194.

⁷⁶⁶⁵ Witness PRH089, T. 15 December 2015, pp 49, 51, 58, 66-67, 85.

⁷⁶⁶⁶ Witness PRH089, T. 15 December 2015, pp 66-67.

⁷⁶⁶⁷ Witness PRH264, T. 10 December 2015, pp 19-22, 29-31, 57.

⁷⁶⁶⁸ Witness PRH264, T. 10 December 2015, pp 38-39.

⁷⁶⁶⁹ Exhibit P1982 (*Al-Manar* TV news article, 13 May 2016).

⁷⁶⁷⁰ Exhibit P1982; exhibit P1983 (*Alahed* news article, 13 May 2016); exhibit P1984 (photographs of Mustafa Badreddine from *Alahed* news article, 13 May 2016); exhibit P1415.

4086. The statements also contain a photograph of Mr Badreddine in military fatigues. Eight witnesses identified Mr Badreddine from this photograph as the man they knew as Sami Issa. Witnesses 416, 306, 264, 605, 338, 470, 423 and 369, who were interviewed after the announcement of Mr Badreddine's death, identified him either in images or in a video as the man they knew as Sami Issa, including Mr Badreddine in military camouflage.⁷⁶⁷¹

4087. An article, dated 18 May 2016, from the Iranian *Tasnim* News website records a commemoration ceremony in Damascus from that same date, with photographs of the ceremony.⁷⁶⁷²

4088. Another *Tasnim* News article recorded a meeting on 25 May 2016, where the Iranian Supreme Leader, Ayatollah Ali Khamenei, met Mr Badreddine's family in Tehran and gave his ring to Mr Badreddine's son Ali.⁷⁶⁷³ Photographs of Mr Khamenei with the family, presenting the ring to Mr Ali Badreddine, accompanied the report.⁷⁶⁷⁴

4089. Below are examples of photographs and still image from a video on which the witnesses recognised Mr Badreddine as Sami Issa:

⁷⁶⁷¹ Exhibit P1414 (Statement of Witness PRH416), p. 2; Witness PRH416, T. 3 December 2015, pp 41-45; exhibit P1660 (Statement of Witness PRH306), p. 2; Witness PRH306, T. 7 December 2015, pp 92-94, T. 8 December 2015, p. 7; exhibit P1659 (Statement of Witness PRH264), p. 2; Witness PRH264, T. 10 December 2015, pp 19-21; exhibit P1664 (Statement of Witness PRH605), ERN 60319312, 60319316-60319321; exhibit P1663 (Statement of Witness PRH338), ERN 60318999, 60319002-60319007; exhibit P1658 (Statement of Witness PRH470), ERN 60319010, 60319014-60319019; exhibit P1661 (Statement of Witness PRH423), ERN 60319190, 60319194-60319199; exhibit P1662 (Statement of Witness PRH369), ERNs 60319070, 60319074-60319079. *See also* exhibit P1415; exhibit P2023.3, paras 7-14.

⁷⁶⁷² Exhibit P1990 (*Tasnim* news article on memorial ceremony in Syria, 18 May 2016).

⁷⁶⁷³ Exhibit P1991 (*Tasnim* Iranian news article, 26 May 2016).

⁷⁶⁷⁴ Exhibit P1991, p. 2.

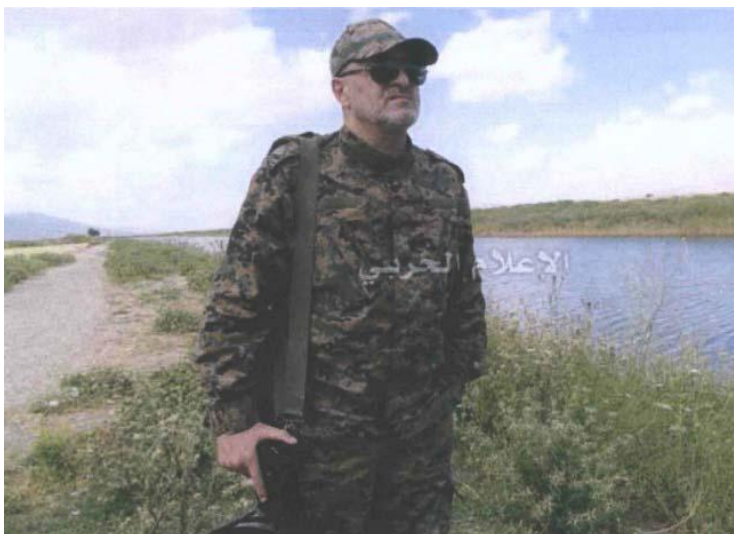


Exhibit P1983 – a photograph of Mr Badreddine in military uniform published in May 2016 in Alahed

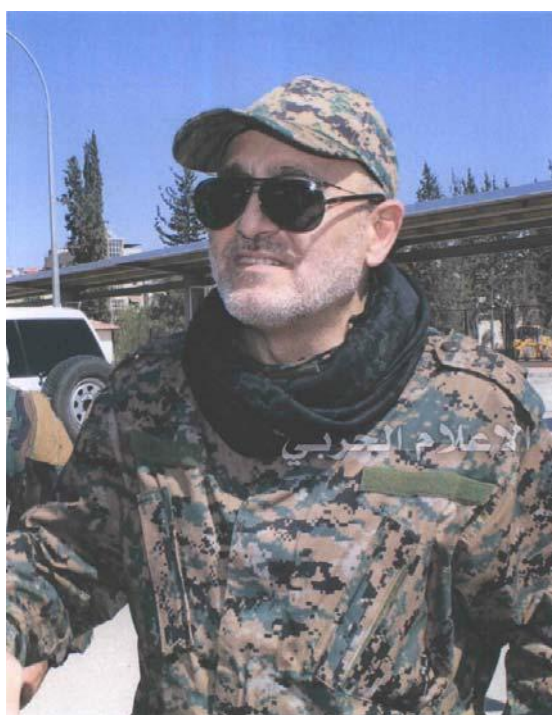


Exhibit P1983 – a photograph of Mr Badreddine in military uniform published in May 2016 in Alahed



Exhibit P1415 – a still image of Mr Badreddine in military uniform from a video published in May 2016 in Alahed

4090. Witness 338 also identified Sami Issa from the photograph below which the Prosecution downloaded from a public source website.⁷⁶⁷⁵

⁷⁶⁷⁵ Exhibit P1663 (Statement of Witness PRH338), ERNs 60318074, 60318078.



*Exhibit P724 – a photograph the Prosecution
downloaded from an open source website purporting to be of Mr Badreddine*

ii. Condolence ceremonies for Mr Badreddine in Beirut, Damascus and Tehran

4091. Several condolence ceremonies were held for Mr Badreddine in May 2016 after Hezbollah announced, through *Al-Manar* TV's website, that he had died in Syria. These were held in Beirut, Damascus and Tehran.

4092. Mr Badreddine's funeral procession took place in Beirut on 13 May 2016, and *Al-Manar* broadcast the procession and condolence ceremony.⁷⁶⁷⁶ *Al-Manar* also broadcast a two-hour tribute to Mr Badreddine held a week later, on 20 May 2016, which included a lengthy speech by Hezbollah's Secretary General, Mr Hassan Nasrallah.⁷⁶⁷⁷ Videos of the condolence ceremony on 13 May 2016 show several Hezbollah officials—Mr Ali Ammar, Mr Amine Sherri and Mr Wafik Safa—and Mr Badreddine's brothers, Adnan, Hassan and Mohammed, in attendance.⁷⁶⁷⁸ Hezbollah flags were draped over the coffin.⁷⁶⁷⁹

⁷⁶⁷⁶ Exhibit P1982; exhibits P1986 and P1987 (Video extracts of *Al-Manar* TV broadcast of Mustafa Badreddine's condolence ceremony, 13 May 2016); exhibit P1988 (Video extract of *Al-Manar* TV broadcast of Mustafa Badreddine's funeral procession, 13 May 2016).

⁷⁶⁷⁷ Exhibit P1989 (Transcript of video recording for *Al-Manar* TV regarding Mustafa Badreddine's memorial ceremony).

⁷⁶⁷⁸ Exhibit P1986.

⁷⁶⁷⁹ Exhibit P1988; exhibit P1989.

4093. Footage of the ceremonies was relevant to identifying Mr Badreddine's family and Hezbollah contacts and for the attribution of personal mobiles 354 and 663 and sequential mobile 944.⁷⁶⁸⁰

iii. Mr Badreddine was a Hezbollah supporter

4094. The Prosecutor, in paragraph 49 of the amended consolidated indictment, pleaded that Mr Badreddine, like the four Accused, was a supporter of Hezbollah.⁷⁶⁸¹ The evidence incontrovertibly establishes this in Mr Badreddine's case. At the time of his death, he was both a Hezbollah supporter and a senior Hezbollah military commander.⁷⁶⁸² This fact was not in dispute in the proceedings.

4095. The two documents and one video from *Al-Manar* and *Alahed* support the conclusion that Mr Badreddine was a prominent Hezbollah military commander and refer to his military operational activities on its behalf.⁷⁶⁸³

4096. The *Al-Manar* videos show several Hezbollah officials attending the condolence ceremonies for Mr Badreddine and show Mr Badreddine's coffin draped with a Hezbollah flag for the funeral procession.⁷⁶⁸⁴ The articles from the *Tasnim* News website describe the ceremonies held in Syria and Iran in relation to Mr Badreddine's death.⁷⁶⁸⁵

(g) Findings

4097. The evidence that Mustafa Badreddine and Sami Issa are the same person is overwhelming. The Trial Chamber therefore finds that the Prosecution has proved that Mr Badreddine used the alias Sami Issa from at least 2001 onwards.

⁷⁶⁸⁰ Decision admitting documents on the death of Mr Badreddine, paras 8, 36, disposition; T. 29 June 2017, p. 14. The Trial Chamber also admitted an interview with the late Mr Wissam Al-Hassan, who was Mr Hariri's chief of security at the time of the attack. Decision on admission of Mr Al-Hassan's interview, paras 65, 69-71, disposition; T. 13 December 2017, pp 4-5; exhibit P2121 (Interview of Wissam Al-Hassan, 17 June 2012); exhibit P2122 (Interview of Wissam Al-Hassan, 16 June 2012).

⁷⁶⁸¹ Amended consolidated indictment, para. 49.

⁷⁶⁸² See chapter IV 'Historical and political background to the attack', (S) (1) (b) 'Mustafa Amine Badreddine'.

⁷⁶⁸³ Exhibits P1982, P1983, P1989.

⁷⁶⁸⁴ Exhibits P1986, P1987, P1988, P1989.

⁷⁶⁸⁵ Exhibits P1990, P1991.

4098. The evidence that Mr Badreddine was the proprietor of Samino Jewellery and its three stores in Beirut is likewise unassailable. This leads to the question of whether Mr Badreddine, under any name, was using mobile 354.

4. Personal mobile telephone number 354

(a) Summary of evidence

4099. Mobile 354 was activated on the Touch network on 20 November 1997 and was deactivated on 22 June 2010.⁷⁶⁸⁶ The number was initially subscribed to Khodr Shehadeh Ibrahim Hodroj, with an undated transfer to Samir Ali Hodroj.⁷⁶⁸⁷ There was no break in activity related to this re-subscription.⁷⁶⁸⁸ Mr Hodroj was also the subscriber of mobile 663,⁷⁶⁸⁹ while the same bank account was linked to both mobiles 354 and 663.⁷⁶⁹⁰

4100. The amended consolidated indictment pleads that Mr Badreddine used mobile 354.⁷⁶⁹¹ To prove that it was his and or Sami Issa's from 1 September 1997 to 31 December 2005 the Prosecution relied on documents, contact and geographic profiles, witness testimony and text message content.

4101. Mr Donaldson's analysis of mobile 354 begins on 1 January 1997 and was based on the contacts and absence of any breaks in use.⁷⁶⁹²

4102. From 1998 to July 2001, mobile 704, which was also subscribed in Mr Hodroj's name,⁷⁶⁹³ contacted mobile 354 1,582 times.⁷⁶⁹⁴ Further, mobile 354 had 358 contacts with a mobile ending in 777, which was subscribed in the name of Mr Hodroj's wife, Ms Amal Kamal Haider.⁷⁶⁹⁵ The mobile subscribed to Mr Hodroj's wife was found among mobile 354's more frequent contacts. In

⁷⁶⁸⁶ Exhibit P1101 (Touch list of activation and deactivation dates), p. 1.

⁷⁶⁸⁷ Exhibit P1100 (transfer of ownership of mobile 354), pp 1, 5.

⁷⁶⁸⁸ Exhibit P2023.3, para. 48.

⁷⁶⁸⁹ Exhibit P1105 (Liban Cell GSM service contract for mobile 663), p. 1.

⁷⁶⁹⁰ Exhibit P1103 (Touch invoice for mobile 663); exhibit P1104 (Touch monthly invoice for mobile 354).

⁷⁶⁹¹ Amended consolidated indictment, para. 18.

⁷⁶⁹² Exhibit P2023.3, para. 50.

⁷⁶⁹³ Exhibit P943 (Subscriber note for mobile 704).

⁷⁶⁹⁴ Exhibit P2023.3, para. 108.

⁷⁶⁹⁵ Exhibit P466 (Personal civil status extract of Amal Kamal Haider); ERN SI-0001706; exhibit P1043 (Family civil status register extract for Samir Ali Hodroj), pp 4, 19-20; exhibit P2048 (Rainbow System client database extract); exhibit P2036 (New Trend Media subscriber database extract); exhibit P2023.3, para. 109.

isolation, this could suggest that Mr Hodroj and his wife could have been the actual users, with Mr Samir Hodroj posing as Sami Issa.

4103. However, eight witnesses identified Mr Badreddine as Sami Issa,⁷⁶⁹⁶ while one, Witness 338, did not recognise Mr Hodroj in a photograph.⁷⁶⁹⁷ Mr Donaldson concluded that it was unclear who was using mobiles 704 and 777.⁷⁶⁹⁸

4104. Lebanese American University documents from 2001 also listed mobile 354 as the contact number for ‘Mustafa Amin Badruddin’, who was a student between 1997 and 2004.⁷⁶⁹⁹ It also had over 2,000 contacts with the landline number ending in 354, possibly subscribed to Mr Badreddine’s sister, Saada.

i. Documents

4105. A LAU ‘returnees application form’ dated 27 November 2001 lists mobile 354 as the contact number for ‘Mustafa Amin Badruddin’.⁷⁷⁰⁰ A search on 3 February 2011 in the customer database of a shoe and clothing store showed Sami Issa listed as a customer with mobile 354 as contact number.⁷⁷⁰¹

ii. Witness evidence

4106. Witness 306, who worked for the Samino Jewellery company, identified mobile 354 as Sami Issa’s number.⁷⁷⁰² The witness identified photographs and the *Alahed* video of Mr Badreddine as Sami Issa.⁷⁷⁰³ Witness 89 met Sami Issa at the LAU sometime in 2004 and socialised with him outside the university. Between mid-2004 and into 2005, the witness met Sami Issa three to four times a week.⁷⁷⁰⁴ The witness identified mobile 354 as Sami Issa’s number.⁷⁷⁰⁵

⁷⁶⁹⁶ See para. 4086.

⁷⁶⁹⁷ Exhibit P1663 (Statement of Witness PRH338), ERNs 60298655, 60298665-60298666.

⁷⁶⁹⁸ Exhibit P2023.3, para. 110.

⁷⁶⁹⁹ Exhibit P1139, ERNs 60230564, 60230569, 600230574, 600230577-600230578, 60230586.

⁷⁷⁰⁰ Exhibit P1139, p. 11.

⁷⁷⁰¹ Exhibit P2068, p. 1.

⁷⁷⁰² Witness PRH306, T. 8 December 2015, pp 31-32.

⁷⁷⁰³ Exhibit P1415; exhibit P1660, p. 2.

⁷⁷⁰⁴ Witness PRH089, T. 15 December 2015, pp 13-16.

⁷⁷⁰⁵ Witness PRH089, T. 15 December 2015, pp 7-9.

Witness 423 explained that a text message he sent to mobile 354 in 2005 was to ‘maybe Safi maybe Sami’.⁷⁷⁰⁶

iii. Text messages

4107. Mobile 354’s text messages show a common user throughout the period for which content was reviewed, namely from February 2004 to 31 December 2015,⁷⁷⁰⁷ when its user identified himself and was addressed as ‘Sami’, ‘Sam’ or ‘Safi’.⁷⁷⁰⁸ Between 2004 and at least September 2005, the user of mobiles 354 and 663 received nearly identical messages from a mobile ending in 088,⁷⁷⁰⁹ which was attributed to Sami Issa’s girlfriend.⁷⁷¹⁰ Mr Donaldson assessed the short time lapse between the text messages sent to both mobiles, and the user was twice addressed as ‘Safi’, and concluded that these text messages were intended for the same recipient.⁷⁷¹¹

4108. As noted above, Mr Badreddine appeared in a video walking with a limp and three witnesses said that Sami Issa either walked with a limp or had a problem with his leg.⁷⁷¹² The user of mobiles 354 and 663⁷⁷¹³ sent text messages relating to a foot or leg injury, as is shown immediately below.⁷⁷¹⁴

Date (dd/mm/yy)	Time (hh:mm:ss)	Outgoing	Incoming	SMS Content	Translation
20-12-2004	16:08:07	3833354	528	Mrahīb.Kifak?Ana mish nasi bes 3milt 3amaliyyi bi ijri w ana 3al 3ikkaizat .C u soon.	Hellos. How are you? I didn't forget but i had surgery to my foot and I am on crutches. See you soon
24-12-2004	17:36:27	3966663	524	Merry xmas Dani &Miss indepent.wish u the best wishes.kint habib shoofkon but i did an operation in my leg &walking with cratches nowadays.c u soon.	Merry Christmas and Miss Indepent. Wish you the best wishes. I wanted to see you but I did an operation in my leg and walking with crutches nowadays. See you soon.

⁷⁷⁰⁶ Exhibit P1661, p. 52.

⁷⁷⁰⁷ Exhibit P2023.3, paras 58-59.

⁷⁷⁰⁸ For example, exhibit P1286, pp 6-9, 50-51, 53, 55, 57-59, 61, 100, 146-147, 149, 151; exhibit P2023.3, pp 20-21.

⁷⁷⁰⁹ Exhibit P1294, pp 161-203; exhibit P2023.3, p. 19.

⁷⁷¹⁰ See para. 4135.

⁷⁷¹¹ Exhibit P2023.3, para. 63.

⁷⁷¹² Witness PRH416, T. 2 December 2015, pp 84-85; Witness PRH306, T. 8 December 2015, pp 61-64; Witness PRH089, T. 15 December 2015, pp 78-80; exhibit P1415, 00:15.

⁷⁷¹³ See para. 4132.

⁷⁷¹⁴ For example, exhibit P1286, p. 17.

4109. Mr Donaldson explained that mobile 354's user identified himself as 'Sami' or 'Sam' and responded to text messages when addressed as 'Safi'. The texts show that the user of mobiles 354 and 663 received near identical text messages. Mr Donaldson concluded that these text messages were intended for the same recipient.⁷⁷¹⁵

iv. Contact profile

4110. Mr Donaldson identified a number of regular contacts with mobile 354 as including Mr Badreddine's family members, friends, university acquaintances, Samino employees and 'insiders', Hezbollah officials, and other associates.

4111. The mobiles and landlines attributable or subscribed to six out of eight of Mr Badreddine's siblings and one sister-in-law and her son, were in contact with mobile 354. The majority of these contacts occurred before 2002. According to Mr Donaldson, the low frequency of contact with other mobiles attributable to Mr Badreddine with family members, may coincide with the fact that they were acquired in 2001 or later, and a change in Mr Badreddine's use of mobiles.⁷⁷¹⁶ The Prosecution tendered a Badreddine family tree into evidence.⁷⁷¹⁷

4112. During the attribution period, number 354 had:

- 2,056 contacts, ranked fourth, with the landline number ending in 354, which was possibly subscribed in the name of Mr Badreddine's sister, Saada.⁷⁷¹⁸ This number was activated on 24 June 1986 and cancelled on 31 March 2000;⁷⁷¹⁹
- 155 contacts with the mobile ending in 989, which was subscribed in the name of Mr Badreddine's brother, Mohammed⁷⁷²⁰ or variations of this name, and was listed as the home number for Mohammed's son.⁷⁷²¹ This number was also provided for

⁷⁷¹⁵ Exhibit P2023.3, para. 66.

⁷⁷¹⁶ Exhibit P2023.3, para. 68.

⁷⁷¹⁷ Exhibit P1956 (Badreddine family tree).

⁷⁷¹⁸ Exhibit P1042, pp 4, 6-7; exhibit P1604 (Subscription record for landline 354), p. 11; exhibit P2059 (Subscriber note for landline 354), p. 1.

⁷⁷¹⁹ Exhibit P1604, p. 1; exhibit P1610 (Billing record for landline 354), pp 1-3.

⁷⁷²⁰ Exhibit P1421 (Subscriber note for mobile 989).

⁷⁷²¹ Exhibit P1423 (Subscriber note for mobile 946), p. 1; exhibit P1540 (Mr Mehdi Badreddine's passport application), pp 1-3.

Mr Badreddine's brother when registering a vehicle⁷⁷²² and was associated with an email account used by Mr Badreddine's brother and a company;⁷⁷²³

- 50 contacts with the mobile ending in 909, which was also possibly subscribed in the name of Mr Badreddine's brother, Mohammed, and for which the landline number ending in 084 was provided as an alternative contact number. The landline 084 was also provided as an alternative number for the mobile 989, mentioned above;⁷⁷²⁴
- 39 contacts with the mobile ending in 777, which was also possibly subscribed in the name of Mr Badreddine's brother, Mohammed.⁷⁷²⁵ This number was associated with an email account of Mr Badreddine's brother and a company⁷⁷²⁶ and was also used in two business customer databases as his contact number;⁷⁷²⁷
- Nine contacts with the mobile ending in 854, which was associated with Ms Bassima Al-Hajj, who was the sister of Mr Ayyash's wife, Ms Fatima Al-Hajj. Ms Bassima Al-Hajj was married to Mr Badreddine's brother, Mohammed.⁷⁷²⁸ This number was used for passport applications for Ms Al-Hajj⁷⁷²⁹ and her son, Mehdi.⁷⁷³⁰ Moreover, mobile 854 was recorded as an alternative number in the subscription form for the mobile ending in 040, which was possibly subscribed in the name of Mr Badreddine's brother, Mohammed;⁷⁷³¹
- Nine contacts with the landline number ending in 147, which was possibly subscribed in the name of another brother of Mr Badreddine, Adnan.⁷⁷³² This landline number was provided for Mr Badreddine's sister, Khadija, when registering a vehicle,⁷⁷³³ and for

⁷⁷²² Exhibit P1742 (Extract from vehicle registration database related to phone 989).

⁷⁷²³ Exhibit P2074 (Record of an email account related to mobile 777), pp 12-13, 16-20, 22-37, 39-46.

⁷⁷²⁴ Exhibit P1421.

⁷⁷²⁵ Exhibit P921 (Subscriber note for mobile 777).

⁷⁷²⁶ Exhibit P2074, pp 2, 4, 6-7, 9, 12-13, 16, 37, 43.

⁷⁷²⁷ Exhibit P1858 (Rainbow Systems clients database extract for phone 777); exhibit P2046 (Extract of Rainbow Systems customer database, phone 777).

⁷⁷²⁸ Exhibit P1034 (Family personal status extract), pp 3, 5-6; exhibit P1036 (Personal status extracts and certificates), pp 4-5.

⁷⁷²⁹ Exhibit P1537 (Ms Bassima Hajj's Lebanese passport application), p. 2.

⁷⁷³⁰ Exhibit P1036, p. 8; exhibit P1538 (Mr Mehdi Badreddine's Lebanese passport application), p. 2.

⁷⁷³¹ Exhibit P951 (Alfa subscription agreement extract for phone 854).

⁷⁷³² Exhibit P1035 (Badreddine family personal extracts and certificates), pp 6-7; exhibit P1599 (Ogero subscriber note for landline 147).

⁷⁷³³ Exhibit P2060 (Vehicle registration extract for Khadija Badreddine in relation to landline 147), p. 3.

Mr Badreddine's late brother, Bassam, in a Hajj application.⁷⁷³⁴ Landline 147 was also provided in the passport applications for Mr Badreddine's wife and two of their daughters, his niece, Mariam, and his sister, Saada;⁷⁷³⁵

- Eight contacts with the mobile ending in 614, which was possibly attributable to Mr Badreddine's brother, Hassan.⁷⁷³⁶ This number was subscribed in Mr Hassan Badreddine's name⁷⁷³⁷ and was provided as the contact number in his passport application.⁷⁷³⁸
- A subscription form dated 11 June 1998 for this number registered Hassan as the subscriber⁷⁷³⁹ and was accompanied by a copy of Mr Hassan Badreddine's passport;⁷⁷⁴⁰
- Two contacts, on 12 November 2002 and 26 July 2003, with the mobile ending in 099, which was associated with Mr Badreddine's sister, Khadija.⁷⁷⁴¹ The mobile ending in 099 was provided for Khadija when registering a vehicle,⁷⁷⁴² as well as her contact number in a business customer database;⁷⁷⁴³
- Two contacts, on 3 October 2004, with the mobile ending in 946, which was possibly attributable to Mr Badreddine's nephew, Mehdi.⁷⁷⁴⁴ This number was subscribed in Mehdi's name from 8 July 2005 onwards.⁷⁷⁴⁵ The number was also provided as a contact number for the American University of Science and Technology for an extended family member;⁷⁷⁴⁶

⁷⁷³⁴ Exhibit P1692 (Extract from the 1428 Hajj related to landline 147).

⁷⁷³⁵ Exhibit P1553 (Ms Fatima Harb's passport application) p. 2; exhibit P1554 (Ms Zahraa Badreddine's passport application), p. 2; exhibit P1555 (Passport application of Zahraa Badreddine), p. 2; exhibit P1543 (Ms Mariam Badreddine's passport application), p. 2; exhibit P1546 (Ms Saada Badreddine's passport application), p. 2.

⁷⁷³⁶ Exhibit P1042, pp 9-10.

⁷⁷³⁷ Exhibit P920.

⁷⁷³⁸ Exhibit P1545 (Mr Hassan Badreddine's passport application), p. 2.

⁷⁷³⁹ Exhibit P927 (Subscription contract for mobile 614), ERN 60279661.

⁷⁷⁴⁰ Exhibit P927, ERN 60279668.

⁷⁷⁴¹ Exhibit P1042, pp 9-10.

⁷⁷⁴² Exhibit P2031 (Vehicle registration extract for Khadija Badreddine in relation to mobile 099), p. 3.

⁷⁷⁴³ Exhibit P2033 (New Trend Media subscriber database extract in relation to mobile 099).

⁷⁷⁴⁴ Exhibit P1540, p. 1; exhibit P1042, pp 9-10; exhibit P1036, ERN 60252257.

⁷⁷⁴⁵ Exhibit P1423.

⁷⁷⁴⁶ Exhibit P980 (List of students from American University of Science and Technology).

- One contact with the mobile ending in 980. The number was attributable to Mr Badreddine's late brother, Bassam.⁷⁷⁴⁷ Mobile 980 was provided for Mr Bassam Badreddine on a Hajj application,⁷⁷⁴⁸ together with his personal details.⁷⁷⁴⁹ It was also registered as Bassam's contact number in two business customer databases⁷⁷⁵⁰ and was provided as a contact number on the passport application of Mr Badreddine's brother, Mohammed;⁷⁷⁵¹
- 855 contacts, ranked 15th, with the mobile ending in 088, which was attributable to Sami Issa's girlfriend and was provided as her contact number in the customer database of a shoe and clothing store.⁷⁷⁵² In the text messages from mobile 663 to mobile 088, from 2004 to at least 2005, he addressed her by her given name and variations of this name.⁷⁷⁵³

Text messages show that mobile 088's user had a close personal relationship with 663's user, whom she referred to as Safi, Safsoofy and on one occasion, Sami. Before the July 2006 war in Lebanon, one witness remembers having met Sami Issa three or four times in his workshop in Beirut to have dresses made. Sami Issa was accompanied by his girlfriend.⁷⁷⁵⁴ In 2009, she ordered a wedding dress from this workshop, but later cancelled the order and Sami Issa contacted the designer to discuss the refund of its deposit;⁷⁷⁵⁵

- 128 contacts with the mobile ending in 637, which was attributable to another of Sami Issa's girlfriends who was employed at the Samino Jewellery, and was provided to a towing company.⁷⁷⁵⁶ Mr Donaldson concluded that the text messages also corroborate this attribution;⁷⁷⁵⁷

⁷⁷⁴⁷ Exhibit P1042, pp 9-10.

⁷⁷⁴⁸ Exhibit P1693 (Extract from list of applicants for 1425 Hajj related to mobile 980). Mr Donaldson explained that the year 1425 on the Hajj application corresponds to the Hajj beginning in 2005, exhibit P2023.3, fn. 146.

⁷⁷⁴⁹ Exhibit P1691 (January 2005 Hajj application documents), p. 11.

⁷⁷⁵⁰ Exhibit P2054 (New Trend Media subscriber database extract in relation to mobile 980); exhibit P2047 (Rainbow System clients database extract in relation to mobile 980).

⁷⁷⁵¹ Exhibit P1042, pp 9-10; exhibit P1539, p. 1.

⁷⁷⁵² Exhibit P2062 (Mia and Straight Boutiques clients database extract for mobile 088).

⁷⁷⁵³ Exhibit P1294, pp 151, 656, 658, 845, 928, 974, 1047, 1220, 1447, 1926.

⁷⁷⁵⁴ Exhibit P1661 (Statement of Witness PRH423), ERN 60305156.

⁷⁷⁵⁵ Exhibit P1661 (Statement of Witness PRH423), ERNs 60305157-60305158.

⁷⁷⁵⁶ Exhibit P1663 (Statement of Witness PRH338), ERNs 60306056, 60306068, 60306078; exhibit P2051 (Tow-truck company customer database extract in relation to mobile 637).

⁷⁷⁵⁷ Exhibit P2023.3, para. 78; exhibit P1320 (Witness Statement of Adrian Kirwan regarding SMS review of mobile 637), pp 4-7.

- 144 contacts with the mobile ending in 434, which was possibly subscribed in Witness PRH244's name and variations of this name.⁷⁷⁵⁸ From 1999 to 2004, Witness 244 studied at the LAU and from 2000 to 2004 was part of a small group of friends who socialised with Sami Issa in 2004 and 2005;⁷⁷⁵⁹
- Nine contacts with the mobile ending in 764. Witness 89 was this mobile's user and the user of the mobile ending in 008.⁷⁷⁶⁰ Witness 89 became a friend of Sami Issa at the LAU in 2004; the witness knew him as Sam and they regularly socialised.⁷⁷⁶¹ Sami Issa and Witness 89 used to meet on Sami Issa's 'Samino' boat, which he kept at Holiday Beach Marina north of Beirut and in Sami Issa's apartment in Jounieh.⁷⁷⁶² Witness 369 interacted with Sami Issa for the two seasons in which Sami Issa used the marina for his boat.⁷⁷⁶³ He identified Sami Issa from the photographs of Mr Badreddine published by *Alahed* in May 2016;⁷⁷⁶⁴
- 14 contacts with the mobile ending in 552, which was used by Witness 264 who worked for Witness 89.⁷⁷⁶⁵ Witness 264 identified Sami Issa from the photographs, contained in the Hezbollah statements, and a video;⁷⁷⁶⁶
- Five contacts with the mobile ending in 747, which was used by Witness 338,⁷⁷⁶⁷ who met Sami Issa when they both studied at the LAU;⁷⁷⁶⁸
- 449 contacts, ranked 23rd, with landline 864, which was the number for the Samino Jewellery branch in Mar Elias;⁷⁷⁶⁹

⁷⁷⁵⁸ Exhibit P926 (Subscriber note for mobile 777).

⁷⁷⁵⁹ Witness PRH089, T. 15 December 2015, pp 15-17; exhibit P1144 (Records from LAU), ERNs 60285655-60285657; exhibit P1139, ERNs 60230587-60230588.

⁷⁷⁶⁰ Witness PRH089, T. 15 December 2015, pp 25-26; exhibit P751 (Mobile numbers used by witness PRH089).

⁷⁷⁶¹ Witness PRH089, T. 15 December 2015, pp 12-16.

⁷⁷⁶² Witness PRH089, T. 15 December 2015, pp 37, 51-53.

⁷⁷⁶³ Exhibit P1662 (Statement of Witness PRH369), ERNs 60305202-60305204. *See also* exhibit P2023.3, para. 14.

⁷⁷⁶⁴ *See* para. 4086.

⁷⁷⁶⁵ Witness PRH264, 10 December 2015, pp 16-18; exhibit P741 (Mobile phone number used by PRH264).

⁷⁷⁶⁶ Exhibit P1415; exhibit P1659 (Statement of Witness PRH264), p. 2.

⁷⁷⁶⁷ Exhibit P1663 (Statement of Witness PRH338), ERNs 60306053-60306054; exhibit P1441 (Subscriber note for mobile 747).

⁷⁷⁶⁸ Exhibit P1663 (Statement of Witness PRH338), ERNs 60306053, 60306055; exhibit P1146, ERN 60285708.

⁷⁷⁶⁹ Exhibit P1605 (Ogero subscriber note for landline 864); exhibit P2079, p. 2; exhibit P728 (Samino Jewellery business card); Witness PRH306, T. 8 December 2015, pp 39-41; Witness PRH416, T. 1 December 2015, pp 16-17; Witness PRH264, T. 10 December 2015, p. 30.

- 327 contacts with the mobile ending in 666, which was the number for the Samino Jewellery branch in Bourj Hammoud.⁷⁷⁷⁰ Mobile 666 was possibly subscribed to Mr Shukr and variations of this name, who was Sami Issa's business partner and the husband of Mr Badreddine's niece;⁷⁷⁷¹
- Ten contacts with landline 506, the number of the Samino Jewellery branch in Furn El-Chebbak, Beirut.⁷⁷⁷² This landline number was also provided as the contact number on documentation relating to Sami Issa's 'Samino' boat;⁷⁷⁷³
- Seven contacts with the mobile ending in 299, which was used by Sami Issa's bodyguard, Witness 416.⁷⁷⁷⁴ On the photographs, including that contained in the Hezbollah statements published on the *Al-Manar* website, and the video of Mr Badreddine from the *Alahed* news, the witness identified the man he knew as Sami Issa;⁷⁷⁷⁵
- 11 contacts with the mobile ending in 487, which was used by Witness 306.⁷⁷⁷⁶ Witness 306 worked in one of the Samino jewellery stores owned by Sami Issa from 2002 or 2003 to 2005.⁷⁷⁷⁷ He identified Sami Issa from the photographs and a video published by *Alahed* in May 2016;⁷⁷⁷⁸
- 16 contacts with the mobile ending in 190, which was subscribed in the name of and used by the manager of the Furn El-Chebbak branch of the Samino Jewellery.⁷⁷⁷⁹ One witness

⁷⁷⁷⁰ Exhibit P728.

⁷⁷⁷¹ Exhibit P2053 (Alfa subscriber note for mobile 666).

⁷⁷⁷² Exhibit P2079, p. 2; Witness PRH416, T. 1 December 2015, pp 16-17; exhibit P728; Witness PRH306, T. 8 December 2015, pp 39-41; exhibit P1663 (Statement of Witness PRH338), ERNs 60306059-60306060; Witness PRH264, T. 10 December 2015, p. 30.

⁷⁷⁷³ Exhibit P2072 (Boat invoices and expenses), ERN 60219616.

⁷⁷⁷⁴ Exhibit P712 (Mobile numbers used by witness PRH416).

⁷⁷⁷⁵ Exhibit P1415; exhibit P1414 (Statement of Witness PRH416), p. 2.

⁷⁷⁷⁶ Witness PRH306, T. 8 December 2015, p. 81; exhibit P737 (Mobile numbers used by witness PRH306).

⁷⁷⁷⁷ Witness PRH306, T. 7 December 2015, pp 92-93, T. 8 December 2015, pp 6-7, 85.

⁷⁷⁷⁸ Exhibit P1415; exhibit P1660 (Statement of Witness PRH306), p. 2.

⁷⁷⁷⁹ Witness PRH416, T. 1 December 2015, pp 18-19; exhibit P710 (Phone numbers identified by PRH416); exhibit P2040 (Extract of vehicle registration database in relation to mobile 190); exhibit P2030 (Vehicle Registration in relation to mobile 190), ERN 60297365; exhibit P2044 (Touch subscriber note for mobile 190); exhibit P1442 (Subscriber note for mobile 190).

similarly attributed this number to an employee of Samino Jewellery,⁷⁷⁸⁰ while another attributed it to one of Sami Issa's bodyguards;⁷⁷⁸¹

- 22 contacts with the mobile ending in 133, which was used by Witness 470.⁷⁷⁸² The witness was linked to one of Sami Issa's Samino jewellery stores;⁷⁷⁸³
- 987 contacts, ranked 12th, with the mobile ending in 880, which was attributable to Mr Ali Fayeze Harb and was possibly subscribed in his name.⁷⁷⁸⁴ Mr Harb was the registered 'business owner' of Samino Jewellery.⁷⁷⁸⁵ Documents, including a passport application, two Hajj applications and extracts from business customer databases corroborate this.⁷⁷⁸⁶ Mobile 880 was one of two numbers for Mr Badreddine's daughter, Soumaya, born in 1994, and recorded in the 2005-2006 records of the school she attended;⁷⁷⁸⁷
- 479 contacts, ranked 21st, with the mobile ending in 421, which was used by Mr Mohammed Ammar,⁷⁷⁸⁸ who was involved in the Samino Jewellery's operations.⁷⁷⁸⁹ Mr Mohammed Ammar was also associated with the mobile ending in 350⁷⁷⁹⁰ and there were seven contacts between this number and mobile 354. Mr Donaldson observed that 97 per cent of these calls occurred before 2002. During the attribution period of mobile 944 (from 9 March 2004 to 9 March 2005), there were only three calls between the mobile 421 and mobile 354, and none between the mobile 421 and mobile 663. There were, however, 119 contacts between the mobile 421 and mobile 944;⁷⁷⁹¹

⁷⁷⁸⁰ Witness PRH416, T. 1 December 2015, p. 17; exhibit P727, p. 1.

⁷⁷⁸¹ Exhibit P706 (Statement of Witness PRH065), ERN 60302925.

⁷⁷⁸² Exhibit P1658 (Statement of Witness PRH470), ERN 60310036.

⁷⁷⁸³ Exhibit P1658 (Statement of Witness PRH470), ERNs 60310042-60310043.

⁷⁷⁸⁴ Exhibit P1420 (Subscriber note for mobile 880).

⁷⁷⁸⁵ Exhibit P2076, pp 1, 5, 9-12.

⁷⁷⁸⁶ Exhibit P1548 (Mr Ali Fayeze Harb's passport application), p. 2; exhibit P1695 (Extract from list of applicants for 1423 Hajj related to mobile 880). The year 1423 equates to the Hajj beginning in 2003, exhibit P1696 (Extract from the 1428 Hajj related to mobile 880). The year 1428 equates to the Hajj beginning in 2007, exhibit P2052 (New Trend Media subscriber database extract in relation to mobile 880); exhibit P2042 (Customer record in relation to mobile 880), pp 1-2.

⁷⁷⁸⁷ Exhibit P2069 (School records for Soumaya Badreddine in relation to 880), p. 3; exhibit P1040, ERN 60242741.

⁷⁷⁸⁸ Exhibit P2045 (New Trend Media subscriber database extract in relation to mobile 421); exhibit P1440 (Subscriber note for mobile 421), p. 1.

⁷⁷⁸⁹ Exhibit P727 (Phone numbers identified by PRH306), p. 1; Witness PRH306, T. 9 December 2015, p. 16; exhibit P1658 (Statement of Witness PRH470), ERNs 60310058, 60310185-60310186.

⁷⁷⁹⁰ Exhibit P1435 (MTC subscriber note for mobile 350).

⁷⁷⁹¹ Exhibit P2023.3, para. 93.

- 344 contacts, ranked 34th, with the mobile ending in 555, which was used by Mr Mohammed Nayef Shukr and was subscribed in his name.⁷⁷⁹² His wife, Ms Haidar, provided mobile 555 when registering a vehicle.⁷⁷⁹³ Documents, including Mr Shukr's identity card attached to a mobile subscription application, vehicle registration records and extracts from two business customer databases, corroborate that this number was used by Mr Shukr and variations of this name.⁷⁷⁹⁴ Mr Donaldson observed that 75 per cent of these calls occurred before 2002. During the attribution period of mobile 944, there were 32 calls between mobile 555 and mobile 354, and none between mobile 555 and mobile 663. There were however 410 contacts between mobile 555 and mobile 944;⁷⁷⁹⁵
- 283 contacts with the mobile ending in 725, which was subscribed in the name of and used by Mr Ali Ammar.⁷⁷⁹⁶ Mr Ammar was an MP for 'Hezbollah/'Loyalty to the resistance Bloc'''.⁷⁷⁹⁷ A phone book extract, two Hajj applications and records from a media website corroborate this attribution.⁷⁷⁹⁸ Mr Ammar attended the condolence ceremony held on 13 May 2016 in Beirut to honour Mr Badreddine;⁷⁷⁹⁹

According to Mr Donaldson, there were 283 contacts between the mobile 725 and mobile 354, 97 per cent of which occurred before 2002. Mr Donaldson observed that throughout mobile 944's attribution period (from 9 March 2004 to 9 March 2005), there was one

⁷⁷⁹² Witness PRH306, T. 8 December 2015, p. 32; Witness PRH416, T. 1 December 2015, pp 15-16; exhibit P948 (Alfa subscriber note mobile 350); exhibit P797 (Extract from Alfa subscriber database), p. 5.

⁷⁷⁹³ Exhibit P2057 (Vehicle registration extract for Thuraya Haider in relation to mobile 555), p. 3.

⁷⁷⁹⁴ Exhibit P2043 (Vehicle registration extract for Mohammed Shukr in relation to mobile 555), p. 3; exhibit P2055 (Vehicle registration record for Mohammed Shukr in relation to mobile 555), p. 7; exhibit P2035 (New Trend Media subscriber database extract in relation to mobile 555); exhibit P2079, p. 2; exhibit P2037 (Extract of Alfa subscription agreement for phone 854), ERN 60133166.

⁷⁷⁹⁵ Exhibit P2023.3, para. 95.

⁷⁷⁹⁶ Exhibit P2099 (Appointment book of Marwan Hamade), p. 1; exhibit P2126 (Interview of Witness PRH028), ERN 60140591; exhibit P2093 (Investigator's note attaching telephone book of Nahib Sahyouni), p. 34; exhibit P1450 (Subscriber note for mobile ending in 725).

⁷⁷⁹⁷ Exhibit P2099, p. 1; exhibit P2093, p. 34; exhibit P2126, ERN 60140591; exhibit P2101 (Screenshot of Arab Decision website), p. 1; exhibit P1107 (Statement of Ahmad Nasser Al-Asaad), p. 10; Mustafa Nasser, T. 9 April 2015, p. 30.

⁷⁷⁹⁸ Exhibit P504 (Extract of phone book in relation to mobile 725), p. 4; exhibit P1703 (Extract from list of applicants for 1426 Hajj); exhibit P1704 (Extract from list of applicants for 1428 Hajj); exhibit P1705 (Extract from list of applicants for 1428 Hajj).

⁷⁷⁹⁹ Exhibit P1987.

call between mobile ending in 725 and mobile 354, and none between mobile 725 and mobile 663, but there were 46 contacts between mobile 725 and mobile 944;⁷⁸⁰⁰

- 90 contacts with the mobile ending in 000, which was possibly subscribed in the name of Mr Amine Sherri or variations of this name.⁷⁸⁰¹ Mr Sherri was a Hezbollah MP for Beirut.⁷⁸⁰² Documents, such as his and his family's Hajj applications, a vehicle registration record and a phone book extract, corroborate that Mr Sherri used this number.⁷⁸⁰³ Mr Sherri also attended the condolence ceremony for Mr Badreddine.⁷⁸⁰⁴ There were also two contacts between another number also ending in 000, subscribed in Mr Sherri's name, and mobile 354.⁷⁸⁰⁵ Mr Donaldson noted in his report that 90 per cent of these calls occurred before 2002. During the attribution period of mobile 944, there was one call between mobile 000 and mobile 354, and none between mobile 000 and mobile 663. There were 99 contacts between mobile 000 and mobile 944;⁷⁸⁰⁶
- 54 contacts with the mobile ending in 505, which witnesses attributed to Mr Wafik Safa,⁷⁸⁰⁷ who was the Head of the Hezbollah Coordination and Liaison Unit.⁷⁸⁰⁸ This number was initially subscribed to Mr Hussein Fakhri Ibrahim (with an end date of 15 October 2003) and then re-subscribed on the same day to Mr Khanafer Yasser Mohammad.⁷⁸⁰⁹ A Hajj application, an extract from a phone book and a number of text messages corroborate this.⁷⁸¹⁰ Mr Safa also attended the condolence ceremony for Mr Badreddine.⁷⁸¹¹ Mr Donaldson noted that the majority of the contacts between mobile ending in 505 and mobile

⁷⁸⁰⁰ Exhibit P2023.3, para. 97.

⁷⁸⁰¹ Exhibit P1425 (MTC subscriber note for mobile 000).

⁷⁸⁰² Witness PRH430, T. 13 July 2015, p. 36.

⁷⁸⁰³ Exhibit P1699 (Extract from the 1424 Hajj related to mobile 000); exhibits P1697; exhibit P1698 (Extract from the 1426 Hajj related to mobile 000); exhibit P1701 (Extract from the 1427 Hajj related to mobile 000); exhibit P1700 (Extract from the 1429 Hajj related to mobile 000); exhibit P2039 (Vehicle registration extract for Amine Sherri in relation to mobile 000), p. 3; exhibit P504, p. 5; exhibit P1702 (Extract from the 1424 Hajj related to mobile 000); exhibit P1542, p. 1.

⁷⁸⁰⁴ Exhibit P1986.

⁷⁸⁰⁵ Exhibit P942 (Alfa subscriber note for phone number 000).

⁷⁸⁰⁶ Exhibit P2023.3, para. 99.

⁷⁸⁰⁷ Exhibit P2102 (Statement of Witness PRH040), pp 17-18; exhibit P2121, p. 64.

⁷⁸⁰⁸ Exhibit P2091 (Letter from Judge Said Mirza, Public Prosecutor at the Court of Cassation), p. 1.

⁷⁸⁰⁹ Exhibit P944 (Alfa subscriber note for mobile ending in 505); exhibit P934 (Alfa subscriber note for mobile 505).

⁷⁸¹⁰ Exhibit P2093, p. 26; exhibit P1329 (SMS content for mobile 505), pp 1-5.

⁷⁸¹¹ Exhibit P1986.

354 occurred in 2001 to early 2004. Mr Safa was in contact with mobile 354 or mobile 944 over an eight year period;⁷⁸¹²

- 905 contacts, ranked 14th, with the mobile ending in 204, which was subscribed in Witness PRH604's name and which appeared twice on vehicle registration papers.⁷⁸¹³ Records from the Lebanese Ministry of Interior and Municipalities show that, from 1998 to 2005, Witness 604 paid the taxes for an apartment in Sahel Alma used by Sami Issa.⁷⁸¹⁴ In 2006, this apartment was transferred to Mr Mohammed Ammar,⁷⁸¹⁵ who was involved in the Samino Jewellery's operations.⁷⁸¹⁶
- 725 contacts, ranked 17th, with the mobile ending in 763, which was used by and possibly subscribed in the name and variations of this name, of a service provider for Sami Issa in relation to the 'Samino' boat.⁷⁸¹⁷ He provided as contact details Samino Jewellery Furn El-Chebbak branch's landline 506,⁷⁸¹⁸ and
- One contact with the mobile ending in 176, which was possibly subscribed in the name of Mr Ahmad Mokh.⁷⁸¹⁹ This mobile was in contact with Green 034,⁷⁸²⁰ Green 046,⁷⁸²¹ Green 048,⁷⁸²² Green 049,⁷⁸²³ Green 050⁷⁸²⁴ and Green 260.⁷⁸²⁵

⁷⁸¹² Exhibit P2023.3, paras 101, 104.

⁷⁸¹³ Exhibit P1455 (MTC subscriber note for mobile 204); exhibit P2049 (Vehicle registration extract for Witness PRH604 in relation to mobile 204), p. 3; exhibit P2038 (Vehicle registration extract for Witness PRH604 in relation to mobile 204), p. 3.

⁷⁸¹⁴ Exhibit P2067 (Documents in relation to the ownership of Samino), pp 3-8, 14; *see* paras 4117, 4126, 4135, 4192 and 4211.

⁷⁸¹⁵ Exhibit P2067, p. 3.

⁷⁸¹⁶ Exhibit P727, p 1; Witness PRH306, T. 9 December 2015, p. 16; exhibit P1658 (Statement of Witness PRH470), ERNs 60310058, 60310185-60310186.

⁷⁸¹⁷ Exhibit P1424 (MTC subscriber note for mobile 763).

⁷⁸¹⁸ Exhibit P2072, ERN 60219616.

⁷⁸¹⁹ Exhibit P941 (Alfa subscriber note for mobile 176). Mr Mokh failed to attend an interview with the Prosecution despite its request to him in July 2010 to do so.

⁷⁸²⁰ Exhibit P1216 (Call sequence table of Green 034), p. 1.

⁷⁸²¹ Exhibit P1214 (Call sequence table of Green 046).

⁷⁸²² Exhibit P1218 (Call sequence table of Green 048).

⁷⁸²³ Exhibit P1217 (Call sequence table of Green 049), p. 1.

⁷⁸²⁴ Exhibit P1220 (Call sequence table of Green 050), pp 1-3.

⁷⁸²⁵ Exhibit P1206 (Call sequence table of Green 260).

v. Geographic profile

4113. The Lebanese land registry had no record of property registered in Mr Badreddine's name.⁷⁸²⁶ This presented the Prosecution with challenges in determining where he lived during the relevant period.

4114. Mr Donaldson analysed certain addresses based on Mr Badreddine's links to his wider family and his studies at the LAU. In passport applications, Mr Badreddine's wife, Ms Harb, and his nephew and niece provided their address as 'Al-Ghobeiry, Abdallah Al-Hajj Street, property of Khalil Al-Raii'.⁷⁸²⁷

4115. The address on Mr Badreddine's 1997 application for admission to the LAU was 'Al-Jinan Bldg, Al Odaimi Street, with a variant spelling of Al Oudaimi Street, Haret Hreik, Beirut'. His LAU student file recorded another address, namely 'Beirut – Mariot area, Adnan Al Hakim Street'.⁷⁸²⁸

4116. Mr Donaldson highlighted that mobiles 354 and 663 were not used significantly in this area of Beirut. For instance, the four Touch cells (Unesco_C, Jnah El Wata_B, Bir Hassan_C and Mic_Marriot_A) that covered the approximate area corresponding to the addresses listed above contributed less than one per cent to the cell use of mobiles 354 and 663.⁷⁸²⁹

4117. Five witnesses described Sami Issa as using apartments in or close to Jounieh and or in Sahel Alma.⁷⁸³⁰ Mr Donaldson also analysed the addresses associated with the Samino Jewellery which Sami Issa owned.⁷⁸³¹ For example, Bourj Hammoud Samino Jewellery branch on Armenia Street in the Blanco Centre in Bourj Hammoud⁷⁸³² was potentially served by cell site Arax_A. Mr

⁷⁸²⁶ Exhibit P2075, p. 17.

⁷⁸²⁷ Exhibit P1541 (Passport application of Ms Fatima Harb), p. 1; exhibit P1552 (Ms Fatima Harb's passport application), p. 2; exhibit P1553, p. 2; exhibit P1554, p. 2. This exhibit refers to Haret Hreik, Abdallah Al-Hajj street—not the same municipality, but the same street, exhibit P1543, p. 2. The spelling of Arabic names when transliterated into English often varies.

⁷⁸²⁸ Exhibit P1139, ERNs 60230562, 60230569.

⁷⁸²⁹ Exhibit P2023.3, para. 123.

⁷⁸³⁰ Witness PRH089, T. 15 December 2015, pp 50-52; Witness PRH264, T. 10 December 2015, pp 77-78; Witness PRH416, T. 2 December 2015, p. 62; Witness PRH306, T. 8 December 2015, pp 76-77; Witness PRH065, T. 11 November 2015, pp 10-11, 13-17, 19-30; exhibit P735 (Photograph of building in Sahel Alma); exhibit P664 (Statement of Timothy Holford of 23 October 2015), ERNs 60314453-60314454; exhibit P706 (Statement of Witness PRH065), ERN 60302926; exhibit P2082 (Witness Statement of PRH447), ERNs 60307201, 60307203.

⁷⁸³¹ Exhibit P2023.2 (Additional detail for Badreddine Report - paragraph 217), paras 128-129; exhibit P2079, p. 2.

⁷⁸³² Exhibit P732 (Zawarib Greater Beirut Atlas location of Samino Bourj-Hammoud branch); exhibit P298 (Zawarib Greater Beirut Atlas), p. 35; Witness PRH306, T. 8 December 2015, pp 49-50; exhibit P728.

Donaldson noted that mobile 354 registered insignificant use of this cell sector (ten uses), while mobile 663 activated it more frequently (434 uses).⁷⁸³³

4118. Mobile 345 most frequently activated the following cell towers from 16 October 2001 to 16 February 2004. These were: Mar Mikhael_C (1,368 times), Green Tower_B (188 times) and Mar Mikhael_B (183 times). Between 23 February 2004 and 31 December 2005, they were: Bir Abed_A (226 times), Hai Kneisse_C (170 times) and Hai Kneisse_B (111 times).⁷⁸³⁴

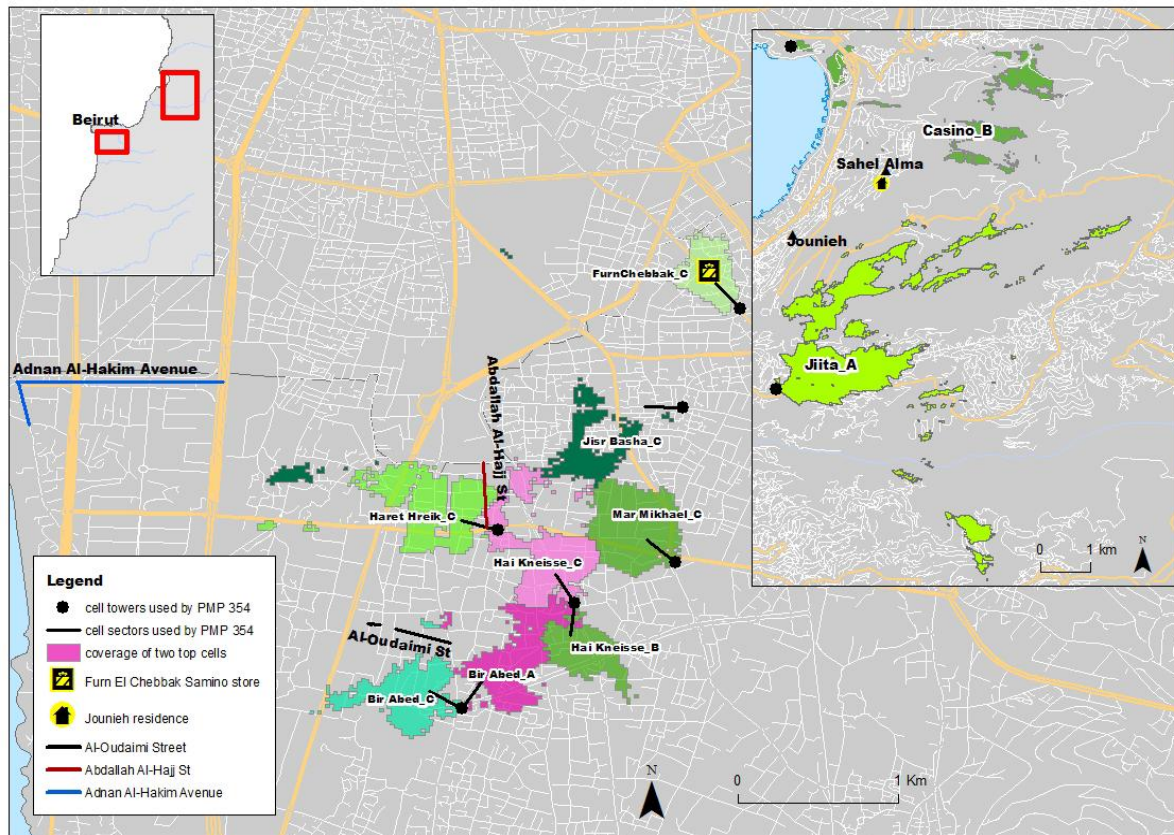
4119. Mr Donaldson explained that the shift in the most frequently activated cells towers by mobile 354 and mobile 663 could suggest that the user moved houses or changed jobs.⁷⁸³⁵ He mapped the most frequently used cell sectors from 23 February 2004 to 31 December 2004 alongside the addresses mentioned above, namely the Samino Jewellery Furn El-Chebbak store, Sami Issa's alleged residence in Jounieh and or Sahel Alma, Al-Oudaimi Street in Beirut, Abdallah Al-Hajj Street in Beirut and Adnan Al Hakim Avenue (or street) in Beirut.⁷⁸³⁶

⁷⁸³³ Exhibit P2023.3, para. 129 (c).

⁷⁸³⁴ Exhibit P2023.3, para. 136.

⁷⁸³⁵ Exhibit P2023.3, paras 136-137, 203-206.

⁷⁸³⁶ Exhibit P2023.3, para. 137. As explained in the map's legend, the black dots and lines show cell towers used, during the attribution period, by mobile 354. The corresponding coverage of the top cells was in different colours. The map also shows the addresses that Mr Donaldson considered relevant in his analysis of mobile 354's geographic profile. These were the addresses for the Furn El-Chebbak store of the Samino Jewellery in Beirut, Sami Issa's alleged residence in Jounieh and Sahel Alma, Al-Oudaimi Street in Beirut (recorded in Mr Badreddine's LAU admission application), Abdallah Al-Hajj Street in Beirut (recorded on the passport applications of Mr Badreddine's wife, nephew and niece) and Adnan Al Hakim Avenue (or street) in Beirut (recorded in Mr Badreddine's LAU student file).



Map of addresses and most frequently used cell sectors for mobile 354 from 23 February 2004 to 31 December 2004 extracted from Mr Donaldson's attribution report related to Mr Badreddine – exhibit P2023.3, para. 137

(b) Findings

4120. Eight witnesses—including Sami Issa's friends from the LAU and Samino employees—were shown either photographs, a video or both of Mr Badreddine and recognised him as Sami Issa. The evidence that Sami Issa was an alias of Mustafa Badreddine is direct and overwhelming.

4121. The outgoing and incoming content of text messages of the mobiles analysed below—including the texts related to his birthday and a leg or foot injury—show that, during the relevant period, their user was addressed and or identified himself as Sami Issa, Sami, Sami Samino, Safi or Badr.

4122. The frequency with which the Badreddine family called the personal mobile analysed below and records from the LAU further support that Mr Badreddine used these mobiles under his

Sami Issa alias. The Trial Chamber as found above is satisfied that Mr Badreddine used various false names and aliases and that throughout the periods relevant to the mobile analysed below, Mr Badreddine frequently used Sami Issa as an alias.

4123. The Trial Chamber had no evidence from which it could determine when Mr Badreddine adopted his ‘Sami Issa’ alias, or why, but three witnesses gave the mobile number 354 as Sami Issa’s. The documents reviewed incontrovertibly associate this mobile with Mr Badreddine and or his Sami Issa alias.

4124. Within the attribution period, the early use of mobile 354 demonstrates direct links to Mr Badreddine as its user, as opposed to his Sami Issa alias. For instance, records from the LAU in 2001 list mobile 354 as the contact number for ‘Mustafa Amin Badruddin’. Further, until 1999 it had over 2,000 contacts with the landline 354, subscribed to Mr Badreddine’s sister, Saada.

4125. After Mr Badreddine’s reported death in May 2016, the witnesses identified him as ‘Sami Issa’. Text message content of mobile 354, which was only available from 2004 onwards, demonstrates a common user throughout the attribution period. Mobile 354’s user consistently identified himself as ‘Sami’ or ‘Sam’ and he was also addressed as ‘Safi’.

4126. Regarding mobile 354’s geographic profile, Mr Donaldson connected its most frequently activated cells to certain addresses. This was based on Mr Badreddine’s family ties, his potential places of residence in Beirut, Jounieh and or Sahel Alma and the location of Samino Jewellery’s branches. There is, however, no direct evidence of Mr Badreddine’s presence at these places on any particular days or times of day. But when the evidence is considered in its totality this does not undermine in any significant manner that Mr Badreddine was using this mobile.

4127. The Trial Chamber therefore finds that Mr Badreddine used number 354 during the attribution period from 1 September 1997 to 31 December 2005, using different names.

5. Personal mobile number 663

(a) Summary of the evidence

4128. Mobile 663 was activated on the Touch network on 21 July 1999, subscribed in the name of ‘Samir Ali Hodroj’ and deactivated on 22 June 2010.⁷⁸³⁷ Mobile 663 was deactivated on the same day as mobile 354.⁷⁸³⁸

4129. In the amended consolidated indictment, the Prosecutor pleaded that Mr Badreddine used mobile 663.⁷⁸³⁹ It is attributed to Mr Badreddine from 26 February 2001 until 31 December 2005. The Prosecution relied on witness testimony, text message content, contacts and geographic profile to prove this.

i. Witness evidence

4130. Seven witnesses, namely Witnesses 306, 89, 416, 264, 605, 338 and 470, identified Mr Badreddine as Sami Issa from the photographs and the video from *Alahed*, and identified mobile 663 as Sami Issa’s.⁷⁸⁴⁰

4131. Mr Donaldson reviewed the content of mobile 663’s outgoing and incoming text messages,⁷⁸⁴¹ within the attribution period, in which its user identified himself as Sami Issa, Sam, Sami, Sami Samino, Safi or Badr, in his report he highlighted:

- nine examples of text messages content in which the user of mobile 663 identified himself as Sami Issa, Sam or Sami in 2004 and 2005;⁷⁸⁴²
- ten examples addressing mobile 663’s user as Safi in 2004 and 2005;⁷⁸⁴³

⁷⁸³⁷ Exhibit P1101, p. 1. Mr Donaldson observed in his report that, while mobile 663 was activated on 21 July 1999, the subscription contract in relation to this number was signed in 2001, exhibit P2023.3 fn. 454; exhibit P1105, p. 2.

⁷⁸³⁸ Exhibit P1101, p. 1.

⁷⁸³⁹ Amended consolidated indictment, para. 18.

⁷⁸⁴⁰ Exhibit P1415; exhibit P1660 (Statement of Witness PRH306), p. 2; Witness PRH089, T. 15 December 2015, pp 7-8; Witness PRH416, T. 1 December 2015, pp 12-13; exhibit P1414, p. 2; Witness PRH264, T. 10 December 2015, pp 23-24; exhibit P1659 (Statement of Witness PRH264), p. 2; exhibit P1664 (Statement of Witness PRH605), ERN 60314205; exhibit P1663 (Statement of Witness PRH338), ERN60306070; exhibit P1658 (Statement of Witness PRH470), ERNs 60310167-60310168.

⁷⁸⁴¹ Exhibit P2023.3, paras 157-162.

⁷⁸⁴² Exhibit P2023.3, para. 159; exhibit P1294, pp 23, 48, 361, 766, 778, 1166, 1285, 1354, 1822. Further examples are found in exhibit P1294, pp 90, 482, 493, 551, 554, 582, 642, 697-698, 748, 766, 793, 1285, 1354.

⁷⁸⁴³ Exhibit P2023.3, para. 160; exhibit P1294, pp 4, 6, 55, 658, 911, 1048, 1053, 1097, 1929.

- one example from 2004 addressing mobile 663's user as Issa and Badr;⁷⁸⁴⁴
- nine text examples in 2004 and 2005 from mobile 663 identifying himself as Sami Samino or Samino;⁷⁸⁴⁵
- three texts from mobile 663 providing the landline for the Mar Elias branch of the Samino jewellery store;⁷⁸⁴⁶
- ten examples of text extracts from mobile 663 referring to the Samino jewellery store branches;⁷⁸⁴⁷
- two examples in 2004 and 2005 sent to mobile 663 with birthday wishes; in a subsequent text, mobile 663's user clarified that his birthday was on 6 April;⁷⁸⁴⁸
- one text message mobile 663 sent on 5 November 2006, which is outside the attribution period, to a Saudi Arabian mobile specifying 1976 as his year of birth;⁷⁸⁴⁹ and
- 14 texts in 2004 and 2005 from mobile 663 stating that he was attending university.⁷⁸⁵⁰

4132. Mr Donaldson also identified excerpts of texts to and from mobiles 663 and 354 referring to a foot or leg injury,⁷⁸⁵¹ consistent with the evidence from Witnesses 416, 306, 264 and 89 in relation to Mr Badreddine's leg or foot injury.

4133. He further noted that mobiles 663 and 354 received nearly identical texts from the same number and concluded that based on their content the inference could be drawn that these were intended for the same recipient.⁷⁸⁵²

⁷⁸⁴⁴ Exhibit P2023.3, para. 161; exhibit P1294, p. 891.

⁷⁸⁴⁵ Exhibit P2023.3, para. 162; exhibit P1294, pp 58, 265, 795, 1103, 1144, 1270, 1319, 1345, 1631.

⁷⁸⁴⁶ Exhibit P2023.3, para. 163; exhibit P1294, pp 757, 1625.

⁷⁸⁴⁷ Exhibit P2023.3, para. 164; exhibit P1294, pp 610, 760, 790, 933, 1086, 1274, 1310, 1344, 1377, 1401.

⁷⁸⁴⁸ Exhibit P1294, pp 141, 1082; exhibit P2023.3, 165. *See also* above, at para. 4070.

⁷⁸⁴⁹ Exhibit P1294, p. 2865; exhibit P2023.3, para. 166.

⁷⁸⁵⁰ Exhibit P2023.3, para. 169; exhibit P1294, pp 60, 102, 381, 676-677, 798, 810, 829, 1261, 1335.

⁷⁸⁵¹ Exhibit P1294, pp 638, 1251, 1498; exhibit P1286, pp 10, 18, 31; exhibit P2023.3, para. 173.

⁷⁸⁵² Exhibit P2023.3, paras 171, 174; exhibit P1294, pp 235, 864, 866-867, 898, 914, 930-931, 974, 982, 991, 1004, 1385-1386, 1389, 1394.

ii. Contact profile

4134. Mr Donaldson reviewed the contacts for mobile 663, within the attribution period, to find common contacts with mobiles 354 and 944. He determined, for instance, that the Samino ‘insiders’ and Hezbollah figures, listed below, were initially mobile 354’s contacts but the volume of contacts with those numbers decreased from 2001 onwards.

4135. Mobile 663’s use began in 2001 and these mobile numbers were at first among its infrequent contacts. By 2004, they are among mobile 944’s frequent contacts.⁷⁸⁵³ According to Mr Donaldson’s analysis, number 663 was in contact with other 4,208 mobile numbers, activating on average over 57 times a day. The contacts for mobile 663 included:⁷⁸⁵⁴

- eight contacts with the landline ending in 147 subscribed in the name of Mr Badreddine’s brother, Adnan;⁷⁸⁵⁵
- 21,372 contacts, ranked first, with the mobile ending in 088 attributable to Sami Issa’s girlfriend;⁷⁸⁵⁶
- 3,151 contacts, ranked 7th, with the mobile ending in 637 attributable to the Samino Jewellery’s employee and another of Sami Issa’s girlfriends.⁷⁸⁵⁷ There were also ten contacts with landline 954, which was listed by Sami Issa’s girlfriend on a passport application and possibly subscribed in her father’s name;⁷⁸⁵⁸
- 2,588 contacts, ranked 8th, with the mobile ending in 434 subscribed in the name of Sami Issa’s acquaintance from the LAU, Witness 244;⁷⁸⁵⁹
- 2,387 contacts, ranked 9th, with mobile 764 subscribed in Witness 89’s name and 215 contacts with mobile 008, which was also subscribed in the name of the same witness;⁷⁸⁶⁰

⁷⁸⁵³ Exhibit P2023.3, para. 194.

⁷⁸⁵⁴ Exhibit P2023.3, paras 196-202.

⁷⁸⁵⁵ Exhibit P2023.3, para. 176; exhibit P1035, pp 6-7; exhibit P1599.

⁷⁸⁵⁶ Exhibit P2023.3, para. 177; exhibit P2062.

⁷⁸⁵⁷ Exhibit P2023.3, para. 178.

⁷⁸⁵⁸ Exhibit P1550 (Passport application in relation to landline 954), p. 2; exhibit P1614 (Subscriber note for landline 954); exhibit P1453 (Subscriber listing landline 954 as the home phone number); exhibit P1045 (Family status extract), pp 3-4.

⁷⁸⁵⁹ Exhibit P2023.3, para. 180; exhibit P926.

⁷⁸⁶⁰ Witness PRH089, T. 15 December 2015, p. 25; exhibit P751; exhibit P2023.3, para. 181.

- 861 contacts, ranked 21st, with the mobile ending in 552 subscribed in the name of Witness 264 who knew Sami Issa socially in 2004 and 2005;⁷⁸⁶¹
- 796 contacts, ranked 23rd, with the mobile ending in 747 used by Witness PRH338 who met Sami Issa when they studied together at the LAU;⁷⁸⁶²
- 105 contacts with the mobile ending in 763 used by Witness 605;⁷⁸⁶³ Witness 605 socialised with a group of friends from the LAU, including Sami Issa, Witness 244, Witness PRH273 and his brother;⁷⁸⁶⁴
- 1,895 contacts, ranked 11th, with the mobile ending in 299 used by Witness 416,⁷⁸⁶⁵ who was employed by Samino jewellery store;
- 1,816 contacts, ranked 12th, with the mobile ending in 487 used by Witness 306 who worked for Sami Issa;⁷⁸⁶⁶
- 1,075 contacts, ranked 16th, with landline 864 of the Mar Elias Samino Jewellery branch;⁷⁸⁶⁷
- 732 contacts, ranked 24th, with landline 506 of the Furn El-Chebbak Samino Jewellery branch;⁷⁸⁶⁸
- 302 contacts with the mobile ending in 666 for the Samino Jewellery branch in Bourj Hammoud;⁷⁸⁶⁹
- 62 contacts with the mobile ending in 133 used by Witness 470 who knew Sami Issa from when he worked at the Samino Jewellery store from 1999 to 2005;⁷⁸⁷⁰

⁷⁸⁶¹ Witness PRH264, T. 10 December 2015, pp 18-21; exhibit P741; exhibit P2023.3, para. 182.

⁷⁸⁶² Exhibit P1663 (Statement of Witness PRH338), ERNs 60306053-60306056; exhibit P2023.3, para. 183.

⁷⁸⁶³ Exhibit P1664 (Statement of Witness PRH605), ERN 60314170; exhibit P2023.3, para. 185.

⁷⁸⁶⁴ Exhibit P1664 (Statement of Witness PRH605), ERNs 60314175-60314176, 60314200-60314201.

⁷⁸⁶⁵ Exhibit P712; exhibit P2023.3, para. 186.

⁷⁸⁶⁶ Witness PRH306, T. 7 December 2015, pp 92-93, T. 8 December 2015, p. 85; exhibit P2023.3, para. 187; exhibit P737.

⁷⁸⁶⁷ Exhibit P728.

⁷⁸⁶⁸ Exhibit P728.

⁷⁸⁶⁹ Exhibit P728.

⁷⁸⁷⁰ Exhibit P1658 (Statement of Witness PRH470), ERN 60310042; exhibit P2023.3, para. 191.

- 224 contacts with the mobile ending in 190 used by the manager of the Furn El-Chebbak Samino Jewellery branch;⁷⁸⁷¹
- eight contacts with the mobile ending in 536 provided for Witness PRH691 when registering a vehicle;⁷⁸⁷²
- 69 contacts with the mobile ending in 555 attributable to Mr Shukr who was Sami Issa's business partner and who was responsible for the financial and accounting aspects of the branches of Samino Jewellery;⁷⁸⁷³
- 58 contacts with the mobile ending in 421 attributable to Mr Mohammed Ammar, who was involved in the Samino Jewellery's operations;⁷⁸⁷⁴
- nine contacts with the mobile ending in 880 attributable to Mr Ali Fayez Harb who was Samino Jewellery's 'businessowner';⁷⁸⁷⁵
- one contact with the mobile ending in 000 attributable to Mr Amine Sherri, an MP for the 'Hezbollah/'Loyalty to the resistance Bloc'';⁷⁸⁷⁶
- 1,016 contacts with the mobile ending in 763 attributable to a service provider for Sami Issa in relation to the 'Samino' boat;⁷⁸⁷⁷
- 132 contacts with the mobile ending in 204 attributable to Witness 604, who was associated with the apartment that Sami Issa used in Sahel Alma;⁷⁸⁷⁸ and

⁷⁸⁷¹ Witness PRH416, T. 1 December 2015, pp 18-19; exhibit P710; exhibit P2023.3, para. 192.

⁷⁸⁷² Exhibit P2061 (Vehicle registration extract in relation to mobile 536), p. 3; Witness PRH416, T. 1 December 2015, pp 18-19; exhibit P710; exhibit P2023.3, para. 193.

⁷⁸⁷³ Exhibit P2023.3, para. 196.

⁷⁸⁷⁴ Exhibit P2023.3, para. 197; exhibit P727.

⁷⁸⁷⁵ Exhibit P2023.3, para. 198.

⁷⁸⁷⁶ Exhibit P2023.3, para. 199.

⁷⁸⁷⁷ Exhibit P2023.3, para. 200.

⁷⁸⁷⁸ Exhibit P2023.3, para. 201.

- the mobile ending in 214, subscribed in the name of and used by Witness 273,⁷⁸⁷⁹ which contacted mobile 663, 669 times, ranked 26th. Witness 273 became a close friend of Sami Issa, whom he also knew as Safi, when they were studying at the LAU in 2002.⁷⁸⁸⁰

iii. Geographic profile

4136. Mr Donaldson observed that for mobile 663 the top most frequently used cell towers before 21 February 2004 were: Mar Mikhael_C (13,762 times), Haret Hreik_C (3,205 times) and FurnChebbak_C (2,526 times), while after this date, they were: Bir Abed_A (8,570 times), Hai Kneisse_C (6,012 times) and Hai Kneisse_B (4,276 times).⁷⁸⁸¹

4137. In the table below, Mr Donaldson compared the most frequently used cell sectors by mobiles 354 and 663 during the attribution period.⁷⁸⁸²

PMP 3833354				PMP 3966663			
Period One		Period Two		Period One		Period Two	
Mar Mikhael_C	1368	Bir Abed_A	226	Mar Mikhael_C	1376 2	Bir Abed_A	8570
Green Tower_B	188	Hai Kneisse_C	170	Haret Hreik_C	3205	Hai Kneisse_C	6012
Mar Mikhael_B	183	Hai Kneisse_B	111	FurnChebbak_C	2526	Hai Kneisse_B	4276

4138. Mr Donaldson reiterated that the change in the activated cells by mobile 663 before and after 21 February 2004 could suggest that the user moved houses or changed jobs.⁷⁸⁸³

⁷⁸⁷⁹ Exhibit P2081 (Statement of Witness PRH273), ERNs 60228549, 60228566, 60228571; exhibit P1449 (Touch subscriber note for mobile 214), p. 1; exhibit P2034 (Vehicle Registration related to mobile 214), p.3; exhibit P2056, p. 1; exhibit P2077 (Record of an email account related to mobile 241), pp 1-12; exhibit P2023.3, para. 184.

⁷⁸⁸⁰ Exhibit P2081 (Statement of Witness PRH273), pp 4-5; Witness PRH089, T. 15 December 2015, p. 17; exhibit P750 (Phone numbers identified by PRH089); exhibit P1145 (LAU documents related to mobile 241), pp 7-9, 18-19.

⁷⁸⁸¹ Exhibit P2023.3, para. 203.

⁷⁸⁸² Exhibit P2023.3, para. 205. 'Period one' and 'period two' headings correspond to the use of the cell sectors by mobiles 354 and 663 before and after 21 February 2004. The cell sectors in bold text appeared in the corresponding period of the other mobile and those with additional grey shading appeared in the same ranked position of the other mobile.

⁷⁸⁸³ Exhibit P2023.3, para. 136.

iv. Further basis for attribution of mobile 663

4139. Mr Badreddine's wife, Ms Fatima Harb, and her son, Mohammed, travelled to Saudi Arabia, from 30 May to 3 June 2005.⁷⁸⁸⁴

4140. Mr Donaldson observed that an unattributed mobile ending in 330—a top contact of mobile 944—activated on the departure day cell towers in the vicinity of the Beirut International Airport and cell towers in the airport area, cell towers Airport_B, Hai_Soullom_2_A, Mreijeh_B and Mreijeh_A, on their arrival day.⁷⁸⁸⁵ A Saudi mobile number ending in 487 was in contact with mobile 663's user and unattributed mobile ending in 330, on the dates Ms Harb and her son were there.⁷⁸⁸⁶

4141. Mr Badreddine's sister-in-law, Ms Muna Harb, died on 23 November 2005⁷⁸⁸⁷ and her death coincided with a death of a member of Sami Issa's family.⁷⁸⁸⁸ On 23 November 2005, the user of mobile 663 sent two text messages stating that a close relative of his died. At 13:23, the user of mobile 663 sent a text message stating 'I'm so busy a relative of mine died' to a mobile ending in 117.

4142. At 13:24, mobile 663 sent a text message stating 'I'm so busy a closed relative died' to mobile 637,⁷⁸⁸⁹ a number used by one of Sami Issa's girlfriends who was a Samino Jewellery employee.

v. Possible co-location of mobile 663 and mobile 354

4143. Mr Philips, as the cell site expert, analysed 23 pairs of calls in relation to mobile 663 and mobile 354 on nine days. These were 28 and 29 September 2004, 20 October 2004, 11, 12, 15, 18

⁷⁸⁸⁴ Exhibit P1040, ERNs 60242739, 60242741; exhibit P2064 (Travel movements of Fatima Harb); exhibit P2070 (Travel movements of Mohammed Badreddine); exhibit P2023.3, paras 218-223.

⁷⁸⁸⁵ Exhibit P1309 (Call sequence table for mobile ending in 330), pp 88, 90; exhibit P2023.3, paras 224-226.

⁷⁸⁸⁶ Exhibit P1296 (Call sequence table for mobile ending in 487), p. 14; exhibit P1309, p. 90; exhibit P2023.3, paras 228-231.

⁷⁸⁸⁷ Exhibit P1037 (Death certificate Ms Muna Harb), ERN 60175046.

⁷⁸⁸⁸ P2023.3, para. 232.

⁷⁸⁸⁹ Exhibit P1294, p. 1856. Mr Donaldson noted in his report that the text was quoted verbatim from the source text and marked the word 'closed' as an error, exhibit P2023.3, para. 235.

and 28 January 2005, and 11 February 2005.⁷⁸⁹⁰ Mr Donaldson provided him with the details of the mobiles and the days of interest.⁷⁸⁹¹

4144. Mr Philips noted that mobile 663 was never in contact with mobile 354.⁷⁸⁹² He found that there were no overlapping calls between mobiles 354 and 663 within the analysed pairs of calls. He concluded that seven pairs of calls fell in the category of ‘may be co-located’⁷⁸⁹³ and 16 pairs of calls were in the ‘would not preclude co-location’ category.⁷⁸⁹⁴ None of the analysed pairs of calls precluded co-location.⁷⁸⁹⁵ Mr Philips concluded that mobile 663 possibly co-located with mobile 354.⁷⁸⁹⁶

4145. Mr Donaldson, unlike Mr Philips, positively determined that the mobiles co-located, for example stating in his report, under heading ‘CO-LOCATION BETWEEN PMP 663 AND 354’ that the ‘co-location was constant’.⁷⁸⁹⁷

4146. According to Mr Donaldson, mobile 663 and mobile 354, within their attribution periods—26 February 2001 to 31 December 2005 for mobile 663 and 1 September 1997 to 31 December 2005 for mobile 354—were both active on 1,034 days and used 4,003 times within ten minutes of each other.⁷⁸⁹⁸

4147. Mr Donaldson analysed the call patterns in the use of mobiles 663 and 354 on 4 November 2001, 24 and 29 April and 8 May 2002, 9 April, 25 May, 16 June 2003, 9, 16 and 29 May, 31 July and 13 November 2004.⁷⁸⁹⁹ Mr Philips was not asked to analyse calls on any of these days.

⁷⁸⁹⁰ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 36-37, 50, 80, 82, 118, 127, 142-144, 150, 154-155, 157-158, 189, 223, 225.

⁷⁸⁹¹ Mr Donaldson provided the days of interest on 24 July 2012, exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 12-13. There were fifteen in total.

⁷⁸⁹² Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), p. 3.

⁷⁸⁹³ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 50, 80, 118, 127, 142, 144, 189.

⁷⁸⁹⁴ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 36-37, 82, 118, 127, 142-143, 150, 154-155, 157-158, 223, 225.

⁷⁸⁹⁵ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 36-37, 50, 80, 82, 118, 127, 142-144, 150, 154-155, 157-158, 189, 223, 225.

⁷⁸⁹⁶ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 3, 66, 91, 216.

⁷⁸⁹⁷ Exhibit P2023.3, para. 214.

⁷⁸⁹⁸ Exhibit P2023.3, para. 213.

⁷⁸⁹⁹ Exhibit P2023.3, para. 217; exhibit P2023.2.

4148. Mr Donaldson noted that, on 4 November 2001, mobile 663 was involved in 15 calls or text messages, while mobile 354 received five text messages and made three calls, which were forwarded to voicemail. However, a common user was precluded by ‘the swap in use’ between mobile 663 and mobile 354 at 14:15 and 14:26,⁷⁹⁰⁰ when mobile 663 was in the area of Aley, near Beirut, while mobile 354 was in the area of Sidon, south of Beirut along the coast; the two cell towers involved in these calls were over 37 kilometres apart.⁷⁹⁰¹ However, at 15:06, mobile 663 activated a cell sector further south still of Sidon.⁷⁹⁰² Mr Donaldson noted that, earlier in the day, both mobiles used cell towers in Beirut, and in the evening they used the same cell sector in Beirut at 20:05 and 20:10.⁷⁹⁰³

4149. The call sequence table for mobile 354 shows that, on 4 November 2001, it made two calls at 13:02 and 13:23, both forwarded to voicemail. Afterwards, at 14:26, it received two text messages. Mobile 354 was then inactive until 19:47, when it made a call, connecting to BorjBrajneh-II_C, which was also forwarded to voicemail.⁷⁹⁰⁴ On the same day, around the same time when mobile 354 received two text messages at 14:26, mobile 663 made a call at 14:15, connecting to Aaley El Zouhour C cell. Subsequently, it made two calls at 15:06 and 16:13, connecting to Merwanieh_A cell.⁷⁹⁰⁵

4150. Mr Donaldson observed that mobile 354’s behaviour on the evenings of 24 and 29 April, and 8 May 2002, was consistent with the mobile having been given to another person who travelled to the Keserwan district each time while mobile 663 activated cells in Beirut.⁷⁹⁰⁶

4151. In particular, on 24 April 2002, while mobile 354 made four calls between 21:50 and 22:00, using cell sectors Qornet El Hamra_A and Harissa_B in the Keserwan district, north of Beirut and south of Jounieh, mobile 663 made a call at 21:34 using Ain Tineh_A and received a text at 22:11 using Ouzai_C in west Beirut.⁷⁹⁰⁷

⁷⁹⁰⁰ Exhibit P2023.2, para. 4.

⁷⁹⁰¹ Exhibit P2023.2, para. 5.

⁷⁹⁰² Exhibit P2023.2, para. 5.

⁷⁹⁰³ Exhibit P2023.2, paras 4, 6.

⁷⁹⁰⁴ Exhibit P1311 (Call sequence table for mobile ending in 354), p. 2189.

⁷⁹⁰⁵ Exhibit P1310 (Call sequence table of mobile ending 663), p. 232.

⁷⁹⁰⁶ Exhibit P2023.2, paras 8, 11, 13.

⁷⁹⁰⁷ Exhibit P2023.2, para. 7; exhibit P1311, p. 2296; exhibit P1310, p. 523.

4152. Similarly, on the evening of 29 April 2002, both mobiles were active between 22:12 and 00:37 in disparate locations, similar to those observed on 24 April 2002.⁷⁹⁰⁸ During this period, mobile 663 made two calls, sent one text and received two texts between 22:00 and 22:28 connecting to Ouzai_A and Tabet El Dahra_B in west Beirut.⁷⁹⁰⁹ Meanwhile, mobile 354 made 17 calls between 21:57 and 00:25, connecting to Mazraa MPT_C, CHB_A, Dbaiyeh_A, Zouq Tunel_B, Adonis_C, Jiita_A, Qornet El Hamra_A, Harissa_B and Dora-II_A, whose sequential activation shows the mobile's movement from Beirut along the route to the Keserwan district and then back again.⁷⁹¹⁰ Finally, at 00:37, mobile 354 called mobile 663, both activating cells in west Beirut, Tehwita_B and Ouzai_A, respectively.⁷⁹¹¹

4153. Call sequence tables show that the two mobiles again behaved similarly on the evening of 8 May 2002. Specifically, between 22:35 and 23:06, mobile 663 sent and received text messages and made one call, activating cells Ouzai_C and Tabet El Dahra_B in west Beirut. Meanwhile, between 22:31 and 23:38, mobile 354 made six calls activating Zalka Coast_B, Dbaiyeh_A, Harissa_B, Zouq MPT_A and Jal Dib_A, along the route from Beirut to the Kersewan district and back again. At 00:56 and 00:59, the two mobiles activated cell sectors Tabet El Dahra_B and Tehwita_B, both located in Beirut.⁷⁹¹²

4154. Further, Mr Donaldson noted that, on 9 April 2003, mobile 354 was left in Beirut and only received texts, while mobile 663 was used elsewhere. He concluded that mobile 354 was left at home for a period in the afternoon.⁷⁹¹³ The call sequence table for mobile 354 shows that on this

⁷⁹⁰⁸ Exhibit P2023.2, para. 10.

⁷⁹⁰⁹ Exhibit P1310, pp 537.

⁷⁹¹⁰ Exhibit P1311, pp 2296-2297; exhibit P2323.2, para. 31 (a).

⁷⁹¹¹ Exhibit P1311, p. 2297; exhibit P1310, p. 537; exhibit P2023.2, para. 10. Mr Donaldson incorrectly stated in this paragraph of his report that there were two consecutive calls between the two mobiles at that time. The combined call sequence table—exhibit P1305 (Call sequence table of 13 numbers—Mr Badreddine), p. 2740—contains two entries for this call. However, it is evident from looking at the individual mobile call sequence tables that the two entries concern a single call, with each entry in the combined call sequence table originating from each mobiles' individual call sequence table. Similarly, in a footnote to this paragraph of his report, Mr Donaldson incorrectly stated that mobile 663 called mobile 354 six times between 2001 and 2005, when in fact there were only three contacts (two calls and one SMS), again represented by six entries in the combined call sequence table. Exhibit P1305, pp 3221, 3370; exhibit P1310, pp 1013, 1149; exhibit P1311, pp 2319, 2330.

⁷⁹¹² Exhibit P1310, p. 558; exhibit P1311, p. 2298; exhibit P2023.2, para. 12.

⁷⁹¹³ Exhibit P2023.2, paras 14-15.

day, besides four text messages which it received between 16:01 and 22:45, it had no other call activity.⁷⁹¹⁴

4155. On 25 May 2003, mobile 354 received a text at 15:35, while connecting to the Mic_Naher_Kaled cell. Mobile 663 made two calls between 15:28 and 15:58, activating Batrakieh_C and BayView_C cells.⁷⁹¹⁵ They are both coastal cells and Mr Donaldson noted that 'a body of water exists between the Mic_Naher_Kaled' tower, that activated by mobile 354 and the two cells, activated by mobile 663.⁷⁹¹⁶ This is an understatement; Mic_Naher_Kaled is near Jounieh, while the other two cells are in western Beirut. The approximate distance between the two, measured in a straight line in Google Earth across the water, is at least 15 kilometres.

4156. Mr Donaldson also identified one instance on 16 June 2003 when, as mobile 354 made a call at 19:49 connecting to Mar Mikhael_C in south Beirut, mobile 663 received a text, connecting to Maameltein_B in Jounieh. He concluded that this circumstance would be consistent with mobile 354 being left at home and used by a third person.⁷⁹¹⁷ The call sequence table for mobile 354 shows that the call at 19:49 was the only call it made in the evening. It was preceded by a number of calls between the early morning hours and before noon on the same day, all connecting to Mar Mikhael_C, the last of which was at 11:37.⁷⁹¹⁸

4157. According to Mr Donaldson, on 9, 16 and 29 May 2004, mobile 663 was left in Beirut, while mobile 354 travelled to the Ansar area in southern Lebanon. He added that, on these days, mobile 663 only used the Haret Hreik_C cell sector for inbound texts, while no texts were sent from mobile 663 and no calls were made.⁷⁹¹⁹ He concluded that, in these three instances, the circumstances would be consistent with mobile 663 having been left in Beirut, while mobile 354 was used elsewhere.⁷⁹²⁰

4158. The call sequence table for mobile 663 demonstrates that, on 9 May 2004, it received a number of texts between 00:04 and 02:17, while connecting to Haret Hreik_C in the southern

⁷⁹¹⁴ Exhibit P1311, p. 2342; exhibit P2023.2, para. 31 (b).

⁷⁹¹⁵ Exhibit P1310, p. 1421; exhibit P1311, p. 2349.

⁷⁹¹⁶ Exhibit P2023.2, para. 16.

⁷⁹¹⁷ Exhibit P2023.2, paras 17-18, 31 (c); exhibit P1310, p. 1480; exhibit P1311, p. 2358.

⁷⁹¹⁸ Exhibit P1311, p. 2358.

⁷⁹¹⁹ Exhibit P2023.2, paras 20-24, 31 (d).

⁷⁹²⁰ Exhibit P2023.2, paras 20, 22, 24.

suburbs of Beirut. A few hours later, at 06:21, mobile 663 made a call of 42 seconds, connecting to the Jisr Basha_C cell, which is approximately in the same area. Three hours later, mobile 663 again received numerous texts and made numerous calls until 23:17, connecting to different cells, including Haret Hreik_C, Chatila_B, Chatila_C, Saki Hadath A, Hai Kneissi_C, Mar Mikhael_C, Ghazal_A, Mic_Khabbaz and Casino_B.⁷⁹²¹

4159. The only call activity of mobile 354 on 9 May 2004 was at 00:43 and 00:44, when it made two calls, connecting to Nabatieh_C in the Nabatiyeh district.⁷⁹²² At that time, as noted above, mobile 663 received a text in Haret Hreik.

4160. Similarly, the call sequence table for mobile 354 shows that its only call activity on 16 May 2004 was between 00:08 and 03:43, when it made three calls, connecting to Ansar_A.⁷⁹²³ Around the same time, between 00:09 and 01:50, mobile 663 received three texts, connecting to Haret Hreik_C. It did not make or receive any calls or send or receive texts in this time span. The first call activity of mobile 663 on that day was a few hours later, at 05:37, when it made a call, connecting to Jisr Basha_C, which is in the same area as Haret Hreik_C.⁷⁹²⁴

4161. The call sequence table for mobile 354 also demonstrates that during the night of 29-30 May 2004, it made four calls between 23:37 and 01:40, connecting to the Ansar_A cell.⁷⁹²⁵ Meanwhile, between 23:19 and 01:54, mobile 663 received eight texts, connecting to Haret Hreik_C. It neither sent texts, nor was involved in any calls until 05:55 on 30 May 2004, when it made a call, connecting to Jisr Basha_C.⁷⁹²⁶

4162. Mr Donaldson observed that, on 31 July 2004, while mobile 663 connected to Kaslik_A cell at 22:43 to receive a text, mobile 354 made a call at 22:49, connecting to Hai Kneisse_C cell.⁷⁹²⁷

⁷⁹²¹ Exhibit P1310, pp 2459-2461.

⁷⁹²² Exhibit P1311, p. 2395.

⁷⁹²³ Exhibit P1311, p. 2396.

⁷⁹²⁴ Exhibit P1310, p. 2479.

⁷⁹²⁵ Exhibit P1311, p. 2396.

⁷⁹²⁶ Exhibit P1310, p. 2520.

⁷⁹²⁷ Exhibit P1311, p. 2398; exhibit P1310, p. 2715.

4163. He noted that, on 13 November 2004, mobile 354 was left in Beirut and only received texts, while mobile 663 was used elsewhere.⁷⁹²⁸ The call sequence table for mobile 354 shows that, on 13 November 2004, at 17:55, it received a text and that between 21:24 and 21:30 it made three calls, two connecting to Haret Hreik_C and one connecting to Chiyah_B.⁷⁹²⁹

4164. The call sequence table for mobile 663 shows that 40 minutes before mobile 354 received the text, mobile 663 made a call at 17:15, connecting to Chtoura_C.⁷⁹³⁰ Around the time, when mobile 354 made the three calls, mobile 663 received a text and a call, and was making a call, connecting to Jisr Basha_B.⁷⁹³¹ The Trial Chamber measured these cells, using the electronic presentation of evidence software, as being approximately 200 metres apart. Jisr Basha_C cell is 223 metres away from the Haret Hreik and Chiyah_B cells.⁷⁹³²

4165. Mr Donaldson also noted that mobiles 354 and 663 were in contact with each other on 30 April 2002, 4 December 2002 and 9 February 2003.⁷⁹³³ The first such instance, shortly after midnight on 30 April 2002, involved mobile 354 calling mobile 663 at the end of a period in which mobile 354 dislocated from the other by travelling north of Beirut, before returning to Beirut and calling mobile 663.⁷⁹³⁴ Mr Donaldson explained that this was consistent with one of the mobiles being in someone else's hands during this time.⁷⁹³⁵

4166. The next two calls between the mobiles occurred on 4 December 2002, when mobile 663 called mobile 354 at 23:10—for a two minute 51 second call—and then again at 23:24—for a six second call.⁷⁹³⁶ During these calls, mobile 663 activated cell sectors in central Beirut, while mobile 354 activated cell sectors in south Beirut.⁷⁹³⁷ The final contact between the mobiles occurred at

⁷⁹²⁸ Exhibit P2023.2, paras 28-29.

⁷⁹²⁹ Exhibit P1311, p. 2405.

⁷⁹³⁰ Exhibit P1310, p. 2995.

⁷⁹³¹ Exhibit P1310, p. 2996.

⁷⁹³² Exhibit P592.1 (Electronic Presentation of Evidence Software).

⁷⁹³³ Exhibit P2023.3, para. 210; exhibit P1311, pp 2297, 2319, 2330; exhibit P1310, pp 537, 1013, 1149. Mr Donaldson incorrectly stated that mobile 354 called mobile 663 twice and that mobile 663 called mobile 354 six times, exhibit P2023.2, para. 10, fn. 1. As explained above there were just four contacts between the two mobiles, consisting of mobile 354 calling mobile 663 once, mobile 663 calling mobile 354 twice and sending it an SMS once.

⁷⁹³⁴ Exhibit P1305, p. 2740; exhibit P1310, p. 537; exhibit P1311, p. 2297.

⁷⁹³⁵ Exhibit P2023.2, para. 11.

⁷⁹³⁶ Exhibit P1305, p. 3221; exhibit P1310, p. 1013; exhibit P1311, p. 2319.

⁷⁹³⁷ Mobile 663 activated Mar Elias-II_C and Green Tower_B, while mobile 354 activated Sabra_C and Sinjab_C, exhibit P1305, p. 3221; exhibit P1310, p. 1013; exhibit P1311, p. 2319.

12:58 on 9 February 2003, when mobile 663 sent a text to mobile 354. The mobiles both activated Haret Hreik_C during this exchange.⁷⁹³⁸

(b) Findings

4167. Seven witnesses attributed mobile 663 to Sami Issa and identified Sami Issa from photographs of Mr Badreddine. Mobile 663's text messages consistently demonstrate a common user throughout the attribution period who identified himself as 'Sami Issa', 'Sami Samino' or 'Samino'.

4168. The contact profile of mobile 663, which consisted of girlfriends, university acquaintances and Samino employees, essentially corresponded to the profile of mobile 354. This evidence weighs heavily towards Mr Badreddine having used mobile 663 under his alias of Sami Issa.

4169. The Trial Chamber also carefully considered Mr Donaldson's analysis of the cell site use for mobile 663 from October 2001 to December 2005, and his conclusion that, during this period and specifically around 21 February 2004, there was a shift in the most frequently activated cells which mirrored the use of cells by mobile 354. Mr Donaldson pointed out that the difference in the most frequently used cell sector before and after 21 February 2004 was particularly clear for mobile 663, due to its extensive use. Moreover, Mr Donaldson noted that mobile 663 shared the same top three cell sectors as mobile 354 after 21 February 2004.

4170. The Trial Chamber also carefully reviewed Mr Philips's conclusion that for every pair of calls that he analysed, mobile 663 may have co-located with mobile 354, or the calls would not preclude co-location.

4171. The Trial Chamber has examined the call patterns of mobiles 663 and 354 on the dates where Mr Donaldson identified 'inconsistencies. These are 4 November 2001, 24 and 29 April, and 8 May 2002, 9 April, 25 May, and 16 June 2003, 9, 16 and 29 May, 31 July and 13 November 2004.

4172. While the call patterns on these days would appear to preclude co-location of the two mobiles, they are not necessarily inconsistent with the two mobiles having a single user. More

⁷⁹³⁸ Exhibit P1305, p. 3370; exhibit P1310, p. 1149; exhibit P1311, p. 2330.

specifically, on all these days while one of the dislocated mobiles was making calls, the other analysed mobile only received text messages and was not being actively used. This supports the conclusion that the unused mobile was left home or nearby.

4173. The two mobiles were in contact with each other on 30 April 2002, 4 December 2002 and 9 February 2003. This however, is explicable and not inconsistent with attribution of mobiles 354 and 663 to Sami Issa / Mr Badreddine.

4174. More specifically, the calls on 30 April 2002 and 4 December 2002 were consistent with one of the mobiles being in someone else's hands temporarily during the time of the calls, while on 9 February 2003 mobile 663 only sent a text to mobile 354. The call patterns in the use of the two mobiles on 9 April, 25 May, 16 June 2003, 9, 16 and 29 May, 31 July and 13 November 2004 also support the finding that the two mobiles had a single user.

4175. In the context of the sheer number of calls over the period, these possible inconsistencies do not negate the inference that the mobiles had a single user at almost all times. The Trial Chamber therefore finds that the attribution period for mobile 663 spans from 26 February 2001 to 31 December 2005. Mr Badreddine was the principal user of mobile 663 during this time.

6. Sequential personal mobile telephone number 944

(a) Summary of the evidence

4176. Mobile 944 was activated on the Alfa network on 2 March 2004 and was subscribed in the name of 'Yazbeck Maya Ibrahim'.⁷⁹³⁹

4177. In the amended consolidated indictment, the Prosecutor pleads that Mr Badreddine used personal mobile 944.⁷⁹⁴⁰ To attribute 'sequential personal mobile' 944 to Mr Badreddine from 9 March 2004 to 9 March 2005, the Prosecution relied on its contact and geographic profile and co-location between mobiles 944, 663 and 354.⁷⁹⁴¹

⁷⁹³⁹ Exhibit P925 (Subscriber note for mobile 944).

⁷⁹⁴⁰ Amended consolidated indictment, para. 18.

⁷⁹⁴¹ Prosecution final trial brief, paras 102-103. The final trial brief did not analyse the geographical profile, exhibit P2023.3, para. 254.

4178. Mr Donaldson did not specify any deactivation date for this number.⁷⁹⁴² He reviewed the text messages but they provided no details relevant to the attribution of mobile 944's user during this period.⁷⁹⁴³

i. Contact profile

4179. The more frequent contacts of mobile 944 consisted of Samino 'insiders', Hezbollah figures and Mr Badreddine's family members.⁷⁹⁴⁴ Mr Donaldson determined that the Samino 'insiders', Hezbollah figures and family members were initially mobile 354's contacts, but the volume of contacts with those numbers decreased from 2001 onwards.

4180. After 2001, they were only infrequent contacts of mobile 663, but by 2004 they were among mobile 944's frequent contacts.⁷⁹⁴⁵ Mr Donaldson relied on this pattern to illustrate the distribution of people between the two groups of mobiles—private mobiles 354 and 663 as opposed to sequential mobile 944—and that this distribution of contacts changed between 2001 and 2004. No sequential mobile was identified for 2001, which would have established if this was concurrent.⁷⁹⁴⁶

4181. Mr Donaldson generally noted that mobile 944 differed from the profiles of mobiles 354 and 663 after 2001, but was similar to the use of mobile 354 before 2001.⁷⁹⁴⁷ Mr Donaldson identified the following contacts of this mobile number:⁷⁹⁴⁸

- 410 contacts, ranked fourth, with the mobile ending in 555 attributed to Mr Shukr. This mobile was a frequent contact of mobile 354 before 2001 and was in contact with mobile 663, while after 2001 there was little contact with either mobile;⁷⁹⁴⁹
- 219 contacts, ranked 5th, with the mobile ending in 880 attributable to Mr Harb. This number was mobile 354's frequent contact before 2001 and was in contact with mobile

⁷⁹⁴² Exhibit P925; exhibit P2023.3, p. 105.

⁷⁹⁴³ Exhibit P2023.3, paras 255, 265.

⁷⁹⁴⁴ Exhibit P2023.3, para. 253.

⁷⁹⁴⁵ Exhibit P2023.3, paras 194, 253.

⁷⁹⁴⁶ Exhibit P2023.3, para. 195.

⁷⁹⁴⁷ Exhibit P2023.3, para. 253.

⁷⁹⁴⁸ Exhibit P2023.3, paras 266-280.

⁷⁹⁴⁹ Exhibit P2023.3, para. 267.

663, while after 2001 there was little contact with either of them.⁷⁹⁵⁰ There were also two contacts with the landline ending in 256 subscribed in Mr Harb's name;⁷⁹⁵¹

- 119 contacts, ranked 8th, with the mobile ending in 421 attributable to Mr Mohammed Ammar. Similarly, this number was a frequent contact of mobile 354 before 2001 and was in contact with mobile 663. However, after 2001 there was little contact with either mobile;⁷⁹⁵²
- 138 contacts, ranked 6th, with the mobile ending in 505 attributable to Mr Safa;⁷⁹⁵³
- 99 contacts, ranked 10th, with the mobile ending in 000 attributable to Mr Sherri and which was also in contact with mobiles 354 and 663;⁷⁹⁵⁴
- 46 contacts, ranked 16th, with the mobile ending in 725 attributable to Mr Ali Ammar and which was also in contact with mobile 354;⁷⁹⁵⁵
- 132 contacts, ranked 7th, with the mobile ending in 231 and 19 contacts, ranked 21st, with the mobile ending in 254, which were both subscribed to the Ministry of Telecommunications.⁷⁹⁵⁶ Mr Donaldson explained that although these contacts were not considered to add any value, in isolation, to the attribution of mobile 944 to Mr Badreddine, he included them in his report to demonstrate that the user was in regular contact with post-paid mobiles registered to a government ministry;⁷⁹⁵⁷
- ten contacts with the mobile ending in 777 attributable to Mr Badreddine's brother, Mohammed;⁷⁹⁵⁸

⁷⁹⁵⁰ Exhibit P2023.3, para. 268.

⁷⁹⁵¹ Exhibit P1612 (Subscriber note for landline 256).

⁷⁹⁵² Exhibit P2023.3, para. 269.

⁷⁹⁵³ Exhibit P2023.3, para. 270.

⁷⁹⁵⁴ Exhibit P2023.3, para. 271.

⁷⁹⁵⁵ Exhibit P2023.3, para. 272.

⁷⁹⁵⁶ Exhibit P1443 (Touch list of persons and organisations who used mobile 254); exhibit P2023.3, paras 273-274.

⁷⁹⁵⁷ Exhibit P2023.3, para. 275.

⁷⁹⁵⁸ Exhibit P2023.3, para. 276.

- five contacts with the mobile ending in 099 associated with Mr Badreddine's sister, Khadija;⁷⁹⁵⁹
- a single contact with the mobile ending in 944 and mobile 614 attributable to Mr Badreddine's brother, Hassan;⁷⁹⁶⁰ and
- a single contact with landline 864 for the Samino Jewellery's Mar Elias branch which also contacted mobiles 354 and 663.⁷⁹⁶¹

ii. Geographic profile

4182. The top most frequently used cell sectors of mobile 944 were: ROUIES3 (963 activations corresponding to 24.39 per cent), which is in Haret Hreik, south Beirut, GHAZIR2 (209 activations corresponding to 5.29 per cent), in Jounieh, north of Beirut and BRAJNE3 (148 activations corresponding to 3.75 per cent), also in south Beirut.⁷⁹⁶² Mr Donaldson mapped mobile 944's most frequently used cell sectors during the attribution period along with addresses associated with Sami Issa.⁷⁹⁶³

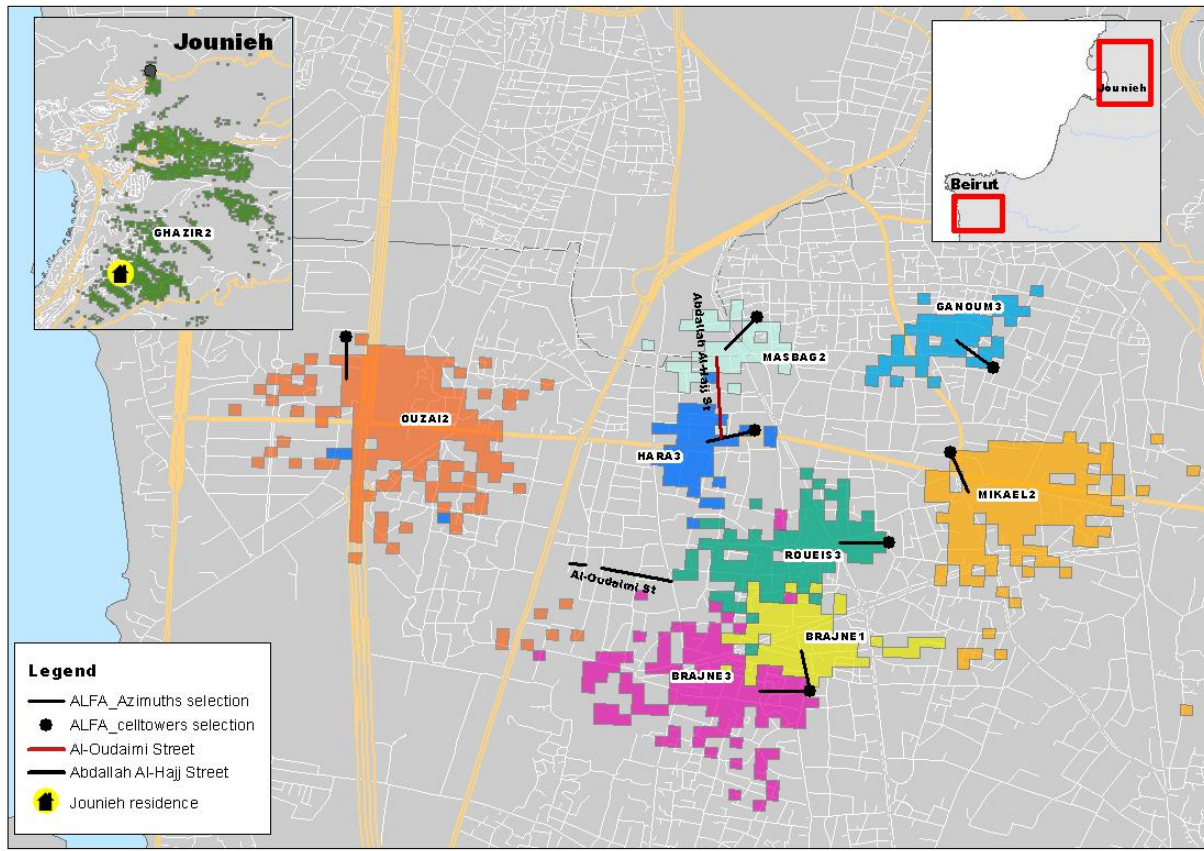
⁷⁹⁵⁹ Exhibit P2023.3, para. 277.

⁷⁹⁶⁰ Exhibit P2023.3, para. 278.

⁷⁹⁶¹ Exhibit P2023.3, para. 279.

⁷⁹⁶² Exhibit P2023.3, para. 281.

⁷⁹⁶³ Exhibit P2023.3, p. 113.



Map with top ten most frequently used cell sectors for sequential mobile from Mr Donaldson's attribution report related to Mr Badreddine – exhibit P2023.3, p. 110

- iii. Overall call patterns of mobiles 944, 663 and 354 and possible co-location

Mobiles 354 and 944

4183. Mr Philips analysed 14 pairs of calls in relation to mobile 354 and mobile 944 on seven days, namely 20 October 2004, 21 December 2004, 12, 15, 18, and 28 January 2005, and 11 February 2005. He determined that nine of the analysed calls fell in the 'may be co-located' category, and five calls fell in the 'would not preclude co-location' category. None of the analysed pairs of calls precluded co-location.⁷⁹⁶⁴ There were five instances when co-location may have been

⁷⁹⁶⁴ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp, 50, 80-82, 105, 127, 143-144, 154-156, 188, 223, 225; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 88.

precluded due to a call pair's time between calls, location of calls and call overlap. Mr Philips concluded that mobile 354 possibly co-located with mobile 944.⁷⁹⁶⁵

4184. Mobile 354 was never in contact with mobile 944.⁷⁹⁶⁶ There was one overlapping call on 12 January 2005: mobile 944 had an incoming call at 15:21:52 which ended at 15:26:27 and mobile 354 had an incoming call at 15:26:19 which ended at 15:27:22.⁷⁹⁶⁷ The overlap was minimal and the two mobiles were on different networks.⁷⁹⁶⁸ The overlap, he concluded, would not preclude co-location.⁷⁹⁶⁹

Mobile 944 and mobile 663

4185. Mr Philips analysed 260 pairs of calls in relation to mobile 944 and mobile 663 on 15 days, namely 28, 29, and 30 September 2004, 1 and 20 October 2004, 21 December 2004, 11, 12, 15, 18, 19, 28, and 31 January 2005, and 11 and 12 February 2005. Mr Philips determined that 203 of the analysed pairs fell in the category of 'may be co-located', 54 fell in the category of 'would not preclude co-location', and three fell in the category of 'may preclude co-location'. None of the analysed calls fell in the category of 'would preclude co-location'.⁷⁹⁷⁰ Mr Philips concluded that mobile 944 possibly co-located with mobile 663.⁷⁹⁷¹

4186. Mobile 663 was never in contact with mobile 944.⁷⁹⁷² There were three overlapping outgoing calls⁷⁹⁷³ and 20 other overlapping calls between mobile 663 and 944. Of the total number of overlapping calls, 21 of them had minimal overlaps.⁷⁹⁷⁴ The two mobiles used were on different

⁷⁹⁶⁵ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), p. 3.

⁷⁹⁶⁶ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), p. 2.

⁷⁹⁶⁷ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 126, 217-218.

⁷⁹⁶⁸ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), p. 218.

⁷⁹⁶⁹ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 127, 217-218.

⁷⁹⁷⁰ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 33-34, 38, 42, 45-47, 51-52, 54-55, 57, 59, 61-64, 69-70, 72, 77-78, 80-81, 84, 86, 89-90, 93-99, 101-105, 107, 111, 115, 117, 119-129, 131, 133-138, 141, 144-145, 147, 151, 153-154, 160-164, 166, 168-172, 174, 176-180, 182-186, 189, 191, 193, 196, 199- 204-205, 207-212, 214-215, 220-221, 223-226, 229-230; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 78-79, 83, 85, 88-91, 94-95, 98, 101.

⁷⁹⁷¹ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), p. 3.

⁷⁹⁷² Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), p. 3.

⁷⁹⁷³ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 67, 92, 217.

⁷⁹⁷⁴ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 2, 67, 92, 109, 217-219, 239-240.

networks. Allowing a time adjustment to accommodate potential time differences between the two cell networks used, Mr Philips determined those 21 analysed pairs fell into the category of ‘would not preclude co-location’.⁷⁹⁷⁵ There were two instances when co-location may have been precluded due to call overlap.⁷⁹⁷⁶ There were three other instances where call pairs may have precluded co-location due to a call pair’s time between calls and location of calls.⁷⁹⁷⁷ In total, there were three instances where call pairs may have precluded co-location of mobiles 663 and 944.⁷⁹⁷⁸

4187. Mobiles 663 and 944 may not have been co-located for calls at 20:40:59, 20:41:10 and 20:41:27 on 28 September 2004.⁷⁹⁷⁹ In this instance, there were three overlapping calls: mobile 663 had an outgoing call at 20:40:59, which finished at 20:51:31 (call 1) and mobile 944 had an incoming call at 20:41:10, which finished at 20:41:36 (call 2).⁷⁹⁸⁰ These calls were on different networks and the second call started and finished before the first call finished.⁷⁹⁸¹ Mobile 663 also received an SMS at 20:41:27 (call 3). The activations were of cells Bir Abed_A and HADATH3, of which the centres of best server coverage were approximately 1.5 kilometres apart.⁷⁹⁸² Calls 1 and 2 were separated in time by 11 seconds.⁷⁹⁸³ The call pair analysis may preclude the mobiles’ co-location, but there may have been no actual overlap between the calls resulting from the potential time differences between the two networks.⁷⁹⁸⁴

4188. Mobiles 663 and 944 may not have been co-locating during calls at 00:48:19 and 00:48:27 on 1 October 2004.⁷⁹⁸⁵ The two calls were separated in time by eight seconds and used two

⁷⁹⁷⁵ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 2, 67, 92, 109, 217-219, 239-240.

⁷⁹⁷⁶ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 66, 91, 108.

⁷⁹⁷⁷ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 45, 70, 91.

⁷⁹⁷⁸ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 45, 66, 70, 91, 99, 108; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 78.

⁷⁹⁷⁹ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 45, 66.

⁷⁹⁸⁰ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 45, 67.

⁷⁹⁸¹ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 45, 67.

⁷⁹⁸² Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), p. 45.

⁷⁹⁸³ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 45, 67.

⁷⁹⁸⁴ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 3, 67.

⁷⁹⁸⁵ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 68, 91.

different cells, which were 4.5 kilometres apart. Mr Philips concluded that the call pair analysis may preclude co-location, but believed that since the cells used have fragmented and extensive coverage areas, the distance between the calls may have been much less.⁷⁹⁸⁶

4189. According to Mr Donaldson, from 9 March 2004 to 9 March 2005, mobile 944 shared all of its 366 days of use with mobile 663, and 194 days of use with mobile 354.⁷⁹⁸⁷ He calculated that, on these days, mobile 944 was used 3,316 times within ten minutes of either mobile 663 or mobile 354. Of the 2,646 times for which ‘Start Cell ID’ was available, 63 per cent of the activated towers were less than 1,000 metres apart.⁷⁹⁸⁸

4190. Mr Donaldson further noted that the co-location between the three mobiles was constant, that the consecutive usage within ten minutes occurred throughout the day and night and that this consecutive usage occurred across a wide geographical area mainly within the Beirut and the Mount Lebanon area.⁷⁹⁸⁹ Based on the analysis of all the available data, he concluded that mobile 944 moved in concert with mobile 663 for at least 364 of the 366 days mobile 944 was used and that mobile 944 moved in concert with mobile 354 for at least 193 of the 194 shared days of usage.⁷⁹⁹⁰

(b) Findings

4191. Mobile 944’s pattern usage supports the conclusion that Mr Badreddine / Sami Issa used it. The numbers most frequently called were of Samino employees, Hezbollah figures and several of Mr Badreddine’s family members, which, as Mr Donaldson highlighted, differed from the contact profiles of mobiles 354 and 663 after 2001, but was similar to that of mobile 354 before 2001.

4192. With regard to the geographic profile of mobile 944, as with mobile 354, Mr Donaldson’s analysis of the most frequently activated cells in relation to certain addresses is based on Mr Badreddine’s family ties and potential places of residence and work in Beirut, Jounieh and Sahel Alma.

⁷⁹⁸⁶ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), p. 70.

⁷⁹⁸⁷ Exhibit P2023.3, para. 283.

⁷⁹⁸⁸ Exhibit P2023.3, para. 287.

⁷⁹⁸⁹ Exhibit P2023.3, para. 288.

⁷⁹⁹⁰ Exhibit P2023.3, para. 290.

4193. There was, however, no evidence showing that Mr Badreddine was present at these places on particular days. The insignificant geographic relevance of mobile 944's most frequently activated cells does not preclude attributing it to Mr Badreddine in light of the cumulative weight of mobile 944's consistent use and consistent contact profile.

4194. Mr Philips's overall conclusion was that mobile 944 possibly co-located with mobiles 663 and 354 from 28 September 2004 to 12 February 2005, except for three instances, namely on 28 September and 1 October 2004. He explained, however, this may have been due to the fragmented best server coverage of the cells activated. The Trial Chamber accepts his expert opinion on this matter.

4195. Furthermore, throughout the attribution period—from 9 March 2004 to 9 March 2005—mobile 944 consistently co-located with mobiles 663 and 354, attributable to Mr Badreddine and his Sami Issa alias. This strengthens the inference that Mr Badreddine was also using mobile 944.

4196. The communications with the top ranking contacts show a striking pattern of use by mobiles 354 and 663, conclusively followed by the pattern of use by sequential mobile 944. This pattern comprehensively illustrates the distribution of the distinctive group of contacts between mobiles 354 and 663 as opposed to contacts of sequential mobile 944. Further, the several minor inconsistencies identified by Mr Philips are explicable.

4197. The Trial Chamber received substantial evidence that the three mobiles had common movement. Mr Donaldson analysed the usage of the mobiles from 9 March 2004 to 9 March 2005, based on the relevant call sequence tables, and found convincing evidence of common movement between these personal mobiles attributed to Mr Badreddine. The common movement of these mobiles in this period was consistent and constant. Personal mobile 944, for example, shared its 366 days of use with mobile 663. It also shared 194 days of use with mobile 354. The common movement of these mobiles occurred in different areas in Lebanon and at different times of the day and night.

4198. Moreover, Mr Donaldson's analysis of the constant and consistent pattern of co-location of the three mobiles within this period is convincingly supported by the consecutive use of these mobiles within ten minutes, occurring throughout the day and night. Mr Donaldson highlighted

that these consecutive uses, within ten minutes, occurred across a wide geographical area, predominantly within the areas of Beirut, Jounieh to its north, and Mount Lebanon.

4199. Three examples from Mr Philips's analysis, on Tuesday 21 December 2004, Tuesday 18 January and Saturday 12 February 2005, show the common movement of mobiles 944 and 663 from the southern suburbs of Beirut towards the Jounieh area, in the afternoon/evening. Each showed movement in the same direction at around the same time by Green 023.⁷⁹⁹¹

4200. The Trial Chamber accordingly finds that Mr Badreddine was the user of mobile 944 during the attribution period from 9 March 2004 to 9 March 2005.

4201. The amended consolidated indictment references an additional four mobiles allegedly used by Mr Badreddine, namely 3476683, 3103195, 3121486 and 3442593.⁷⁹⁹² The Prosecution presented no evidence in relation to their attribution. Accordingly, the Trial Chamber will make no findings in relation to these four mobiles.

7. Green 023

(a) Summary of the evidence

i. Subscriber details and handset use

4202. The Prosecutor, in the amended consolidated indictment, pleads that Mr Badreddine used Green 023, one of the three mobiles in the Green network.⁷⁹⁹³ Green 023 was one of 18 post-paid Alfa SIM cards, purchased in southern Beirut in July and August 2004 in nine pairs, by nine subscribers. Collectively they are referred to as the 'Green mobiles'. Each subscriber's name was associated with two mobiles.⁷⁹⁹⁴

4203. Green 023 was subscribed in the name of 'Mofid Samir Haidar'. It was first used on 18 August 2004, and was deactivated on 23 August 2005.⁷⁹⁹⁵ Like the other Green mobiles, Green

⁷⁹⁹¹ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 106-107, 195-199, 235-237.

⁷⁹⁹² Amended consolidated indictment, para. 18.

⁷⁹⁹³ Amended consolidated indictment, paras 15 (b), 18, 19 (a).

⁷⁹⁹⁴ Exhibit P1116 (Expert report of John Edward Philips – Green mission phones), p. 22; Gary Platt, T. 6 April 2016, pp 57, 62-63; Andrew Donaldson, T. 6 July 2017, p. 78.

⁷⁹⁹⁵ Exhibit P405 (Alfa subscription of 18 Green mobiles), ERN 60105116; exhibit P797, p. 1; exhibit P2023.3, para. 307, p. 181; exhibit P1116 (Expert report of John Edward Philips - Mission phones green 023, 071 and 300), p. 23,

023 was a post-paid subscription, paid in cash every month.⁷⁹⁹⁶ In Mr Donaldson's view, Green 023 was subscribed under a fictitious identity⁷⁹⁹⁷ because of an intent to hide its acquisition.⁷⁹⁹⁸

4204. The Lebanese Directorate General of Civil Status had no record of the name and personal details on Green 023's subscriber records.⁷⁹⁹⁹ Similarly, the Lebanese Directorate General for Political and Refugees Affairs held no records in the name of Mofid Haidar, and no identity documents were issued in that name.⁸⁰⁰⁰

4205. Throughout the subscription period, Green 023 used only one handset. It was also the only number subscribed in Lebanon that ever used this handset.⁸⁰⁰¹

ii. Attribution period

4206. Mr Donaldson, who produced the Prosecution's first attribution report on Mr Badreddine, identified Green 023's attribution period as from Monday 6 September 2004 to the day of the attack, Monday 14 February 2005.⁸⁰⁰² The mobile, after its activation on 18 August, was not used between 20 and 24 August, 26 and 29 August and between 1 and 5 September 2004.⁸⁰⁰³

4207. Green 023, according to Mr Donaldson's testimony, was not used in the same place and time with mobiles 944, 354 and 663 before 6 September 2004,⁸⁰⁰⁴ as its calls did not correlate with these mobiles.⁸⁰⁰⁵ According to Mr Donaldson's report, instances of Green 023's cell use on 25 August 2004—namely three calls—'appear inconsistent with the cell use' of mobile 663. In his

table 2, p. 69; exhibit P1211 (call sequence table of Green 023), p. 1. According to exhibit P796.1 (Network analysis report – updated 8 February 2018), para. 721, Mofid Haidar was also listed as the subscriber of Green 026.

⁷⁹⁹⁶ Exhibit P2023.3, para. 307; exhibit P796.1 (Network analysis report – updated 8 February 2018), paras 686, 696, 717; Gary Platt, T. 6 April 2016, p. 81.

⁷⁹⁹⁷ Exhibit P2023.3, para. 306; Andrew Donaldson, T. 6 July 2017, p. 78, T. 17 July 2017, pp 17-19; *see also* chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles', (C) 'Green network', (5) 'Anonymity'.

⁷⁹⁹⁸ Andrew Donaldson, T. 17 July 2017, pp 17-19.

⁷⁹⁹⁹ In the Lebanese Ministry of Interior and Municipalities, exhibit P1964 (Records of national identity card and civil status extract), pp 5-6.

⁸⁰⁰⁰ Exhibit P397, p. 3.

⁸⁰⁰¹ Exhibit P2023.3, para. 308; Andrew Donaldson, T. 6 July 2017, pp 78-79. *See* chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles', (C) 'Green network', (2) 'Equipment'.

⁸⁰⁰² Exhibit P2023.3, para. 303.

⁸⁰⁰³ Exhibit P1211 (call sequence table of Green 023), p. 1. Without explanation, Mr Donaldson, in his report, stated that 'There is a gap in use from 30-08-04 until 06-09-04'. Exhibit P2023.3, para. 316. This is incorrect, as the call sequence table, exhibit P1211, shows its use on 30 August 2004 in receiving a call from Green 300 and receiving a service SMS.

⁸⁰⁰⁴ Andrew Donaldson, T. 6 July 2017, pp 78-79, T. 17 July 2017, pp 23-30.

⁸⁰⁰⁵ Andrew Donaldson, T. 17 July 2017, pp 23-30.

report, without further explanation, and apparently based on these three calls, Mr Donaldson concluded that this precluded mobile 663 from being Green 023's user from 18 to 30 August 2004.⁸⁰⁰⁶

iii. Contact profile

4208. During the attribution period, namely from Monday 6 September 2004 to Monday 14 February 2005, Green 023 had 145 contacts, 139 of which were with Green 300 and Green 071. As from 13 October 2004, these three mobiles formed an absolute closed user group that the Prosecution referred to as the 'Green network'.⁸⁰⁰⁷

4209. On 57 days between 6 September 2004 and 14 February 2005, Green 023 had 96 calls with Green 300, attributed to Mr Ayyash, and 43 calls with Green 071, which is attributed to Mr Merhi.⁸⁰⁰⁸ It received five service text messages from Alfa service numbers.⁸⁰⁰⁹ During the attribution period, but before the communications between Green 023, Green 300 and Green 071 became exclusive on 28 September 2004, only one other number was in contact with Green 023. This was an incoming call from mobile 047 on 27 September 2004,⁸⁰¹⁰ subscribed to *Jibayat*—a Lebanese company providing express couriers and delivery services.⁸⁰¹¹

iv. Geographic profile

4210. Mr Donaldson stated that, since Green 023 was part of a closed and covert network, the possibility of attributing it through investigative methods—such as seeking to trace the registered owner, to interview its contacts or review the text message content—was minimal.⁸⁰¹² Hence, the

⁸⁰⁰⁶ Exhibit P2023.3, paras 314-316, referring to activations at 15:30, 19:45 and 21:40; Andrew Donaldson, T. 17 July 2017, p. 27.

⁸⁰⁰⁷ Exhibit P2023.3, paras 306, 310; Andrew Donaldson, T. 4 July 2017, p. 11, T. 6 July 2017, p. 78, T. 17 July 2017, pp 17, 20-21. For a detailed analysis of the Green network, *see* chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles', (C) 'Green network'.

⁸⁰⁰⁸ Exhibit P1211 (Call sequence table of Green 023).

⁸⁰⁰⁹ Exhibit P2023.3 (Attribution report of Andrew Donaldson regarding Mr Badreddine), paras 309, 327; exhibit P1211, on 28 September (p. 2), 28 October (p. 3), 29 December 2005 (p. 3), 20 January and 28 January 2005 (p. 5).

⁸⁰¹⁰ Exhibit P1211, p. 1.

⁸⁰¹¹ Exhibit P2023.3, para. 326 (a); exhibit P949 (Alfa subscriber note mobile 047). Mr Donaldson stated that enquiries of the number did not reveal any positive leads.

⁸⁰¹² Exhibit P2023.3, para. 311; Andrew Donaldson, T. 4 July 2017, pp 11-12, T. 17 July 2017, p. 20.

main basis for attribution of Green 023 is its geographic profile and co-location with mobiles 944, 354 and 663.⁸⁰¹³

4211. Mr Donaldson observed that Green 023 shared a characteristic geographic profile with mobiles 944, 354 and 663. In particular, each of the four mobiles split its use between two areas that are relatively far apart, namely the Beirut southern suburbs, where Mr Badreddine's alleged primary residence was,⁸⁰¹⁴ and an area in Jounieh, near Sahel Alma,⁸⁰¹⁵ where Mr Badreddine used an apartment under his alias Sami Issa.⁸⁰¹⁶ Because of these two demographically different areas, in which Green 023 and the other mobiles were used, Mr Donaldson described this geographic split as 'uncommon and distinctive'.⁸⁰¹⁷

4212. This geographic split is shown in the map below, which illustrates the cells most activated in those areas.⁸⁰¹⁸

⁸⁰¹³ Exhibit P2023.3, para. 312; Andrew Donaldson, T. 17 July 2017 pp 21-22, 26-27.

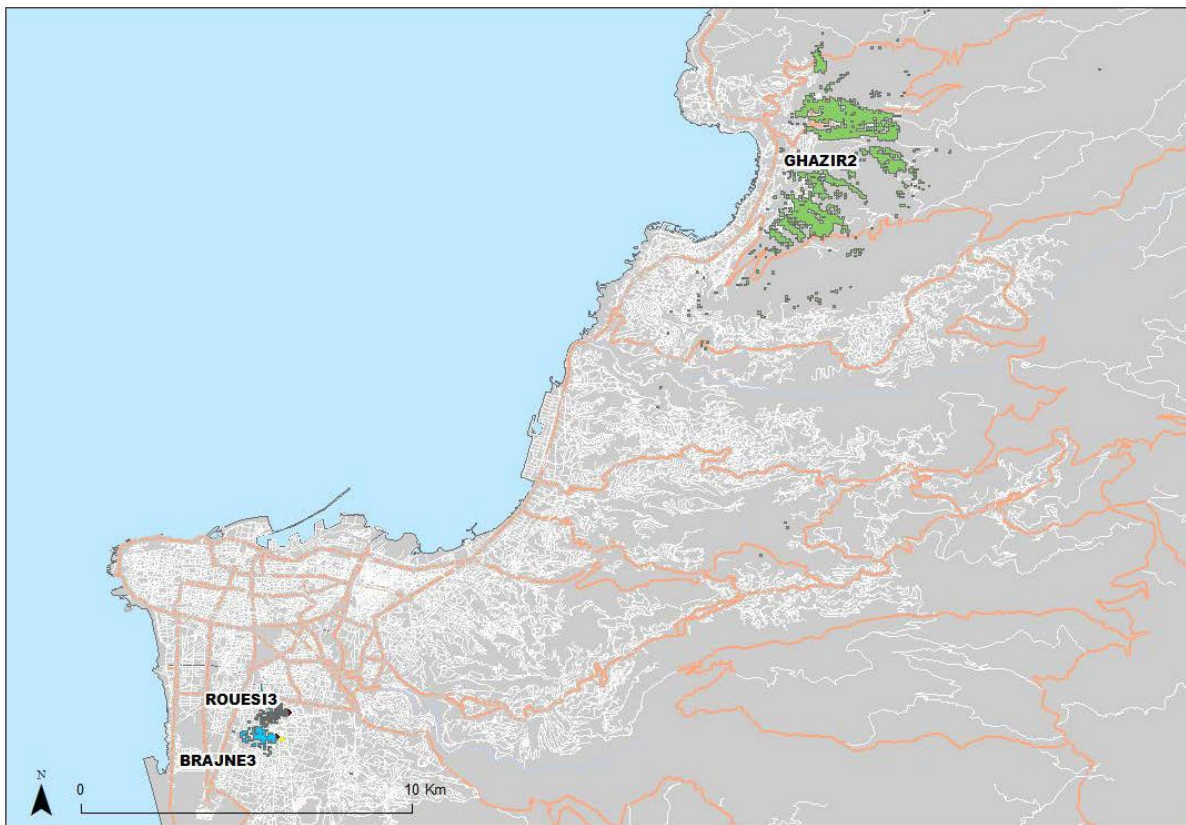
⁸⁰¹⁴ Exhibit P2023.3, paras 116-124, 204, 329-330; Andrew Donaldson, T. 17 July 2017, pp 30-31.

⁸⁰¹⁵ Exhibit P664 (Statement of Timothy Holford of 23 October 2015), ERNs 60314453-60314454.

⁸⁰¹⁶ Witness PRH089, T. 15 December 2015, pp 51-54; Witness PRH264, T. 10 December 2015, pp 77-79; Witness PRH416, T. 2 December 2015, pp 61-62; Witness PRH306, T. 8 December 2015, pp 75-77; Witness PRH065, T. 11 November 2015, pp 13-17, 19-24; exhibit P706 (Statement of Witness PRH065), ERNs 60302914-60302915; exhibit P2082 (Witness statement of PRH447), ERNs 60307233-60307234, 60307240.

⁸⁰¹⁷ Andrew Donaldson, T. 5 July 2017, p. 55, T. 6 July 2017, p. 78, T. 17 July 2017, pp 19-20, 22-23; exhibit P2023.3, paras 205, 329.

⁸⁰¹⁸ Exhibit P2023.3, p. 186.



*Top three most frequently used cells for Green 023 and sequential mobile 944 from
6 September 2004 to 14 February 2005 – exhibit P2023.3, p. 186*

4213. As the table below illustrates, Green 023's top three ranked cells were ROUEIS3, BRAJNE3—both are in south Beirut—and GHAZIR2 which provides cell coverage in the Jounieh area to the north of Beirut.⁸⁰¹⁹

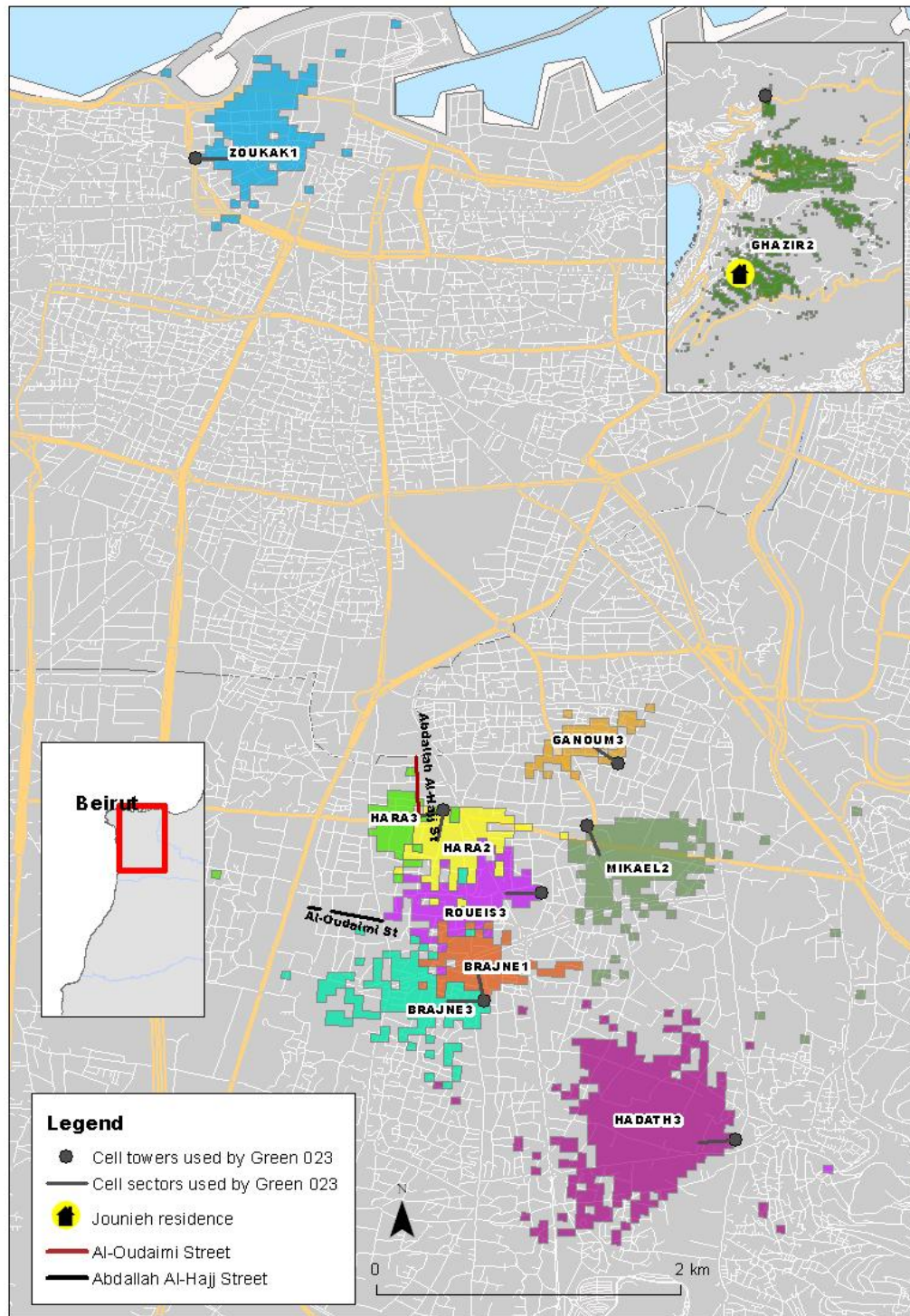
⁸⁰¹⁹ Exhibit P2023.3, para. 329; Andrew Donaldson, T. 5 July 2017, pp 49-50, T. 17 July 2017, pp 19-23.

Rank Order	Cell Name	Total	Percentage
1.	ROUEIS3	36	24.83%
2.	BRAJNE3	8	5.52%
3.	GHAZIR2	7	4.83%
4.	HADATH3	7	4.83%
5.	MIKAEL2	6	4.14%
6.	GANOUM3	4	2.76%
7.	BRAJNE1	4	2.76%
8.	ZOUKAK1	4	2.76%
9.	HARA2	4	2.76%
10.	HARA3	4	2.76%

List of most frequently used cell sectors for Green 023 from 6 September 2004 to 14 February 2005 – exhibit P2023.3, p. 184

4214. Green 023's most frequently used cells are shown in the map below from Mr Donaldson's attribution report.⁸⁰²⁰ Eight of these are more or less in a cluster in southern Beirut, while of the other two, one provides coverage to Jounieh, and the other, ZOUKAK1, is near the port.

⁸⁰²⁰ Exhibit P2023.3, p. 185.



Map of addresses and most frequently used cell sectors for Green 023 from 6 September 2004 to 14 February 2005 extracted from Mr Donaldson's attribution report related to Mr Badreddine – exhibit P2023.3, p. 185

v. Call and movement patterns

4215. Mr Philips, as the Prosecution's cell site expert, analysed approximately 1,421 calls made on 15 specific days from Tuesday 28 September 2004 to Saturday 12 February 2005 in relation to Green 023 and mobiles 354, 663 and 944.⁸⁰²¹ The Prosecution had specified the days, and in this respect, Mr Philips stated, 'Details of the mobile phones and the days of interest was received from Andrew Donaldson of STL on 24th July 2012'.⁸⁰²²

4216. These calls were on 28, 29 and 30 September, 1 and 20 October, 21 December 2004, 11, 12, 15, 18, 19, 28, and 31 January and 11 and 12 February 2005.⁸⁰²³ None of the four mobiles called each other, and Mr Philips concluded that over that period all mobiles were consistent with being used by a single person.⁸⁰²⁴

4217. Of the 1,421 calls, 65 per cent used the same cell or cells with overlapping best server coverage and 33 per cent did not preclude use of the same cell or cells with overlapping best server coverage.⁸⁰²⁵ Two per cent of the calls may have used different cells with no overlapping best server coverage due to a distance of approximately one and a half kilometre between cells the mobiles used within a short time.⁸⁰²⁶

4218. Mr Philips identified only five instances in which it was possible that two of the mobiles did not use the same cell or cells with overlapping best server coverage. However, he explained

⁸⁰²¹ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 3, 12-13, 32-240. The combined call sequence table identified on page 12 of exhibit P1937, as the source of data analysed by Mr Philips, is exhibit P1305 (Call sequence table of 13 numbers—Mr Badreddine). Mr Philips's analysis considered all calls within the combined call sequence table and extracted those within +/- 5 minutes and +/- 1 hours, and gave each extract a unique number. Mr Philips's report contains 112 extracts covering 601 calls.

⁸⁰²² Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), p. 12.

⁸⁰²³ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 12-13.

⁸⁰²⁴ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), p. 3.

⁸⁰²⁵ Exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips), slide 505; John Edward Philips, T. 24 April 2017, pp 73, 75. After receiving additional data on end cell usage, Mr Philips wrote a report on possible changes to previous findings. Despite the identity of some of the end cells differing in light of the additional data, Mr Philips identified only one instance in which a call switched from 'usage of the same cell or cells with overlapping best server coverage' to such a usage 'not being precluded'. In fact, in light of the additional data, more calls than before were identified as falling within the first category, namely 'usage of the same cell or cells with overlapping best server coverage'. Exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 76, para. 6.3.28.4, p. 102, para. 6.3.113.

⁸⁰²⁶ John Edward Philips, T. 24 April 2017, pp 73, 75; exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), p. 45, for an example of the possibility that two mobiles may not use cells in the same area at the same time.

that use of the same cell or cells with overlapping best server coverage is assessed in light of the best server coverage plots. However, best server coverage areas extend outside of the areas of the majority of these plots.⁸⁰²⁷ Therefore, assessed in light of fragmented best server coverage, it was still possible that in these five instances the mobiles used the same cell or cells with overlapping best server coverage, within a short time.⁸⁰²⁸

4219. Mr Donaldson noted that the three mobiles were never in contact with Green 023, as is evident in the call sequence tables.⁸⁰²⁹

4220. According to Mr Philips, only 29 of the calls made by the four mobiles overlapped in time.⁸⁰³⁰ This included an allowance for a time adjustment to accommodate potential time clock differences between the two networks. This meant that the number of overlapping calls was likely lower.⁸⁰³¹ Both Mr Donaldson and Mr Philips analysed the variance of timings between Alfa's and Touch's clocks in 2004 and 2005. The analysis demonstrated that between 1 September 2004 and 23 March 2005, 98.9 per cent of time variance between the two mobile network clocks was between zero and 18 seconds.⁸⁰³²

4221. Green 023's call sequence table shows that it was used on 57 days during the attribution period. Mr Donaldson observed that mobile 663 and mobile 944 shared all 57 days of use and moved together with Green 023. It shared 37 days of use with mobile 354, during which in his view, it also moved in concert with Green 023.⁸⁰³³ Consequently, Mr Donaldson concluded that the joint movement of the four mobiles was consistent and constant, meaning, it happened in all areas and at all times of day.⁸⁰³⁴

⁸⁰²⁷ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), p. 3, fn. 1; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 78.

⁸⁰²⁸ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), p. 3.

⁸⁰²⁹ Exhibit P2023.3, para. 332.

⁸⁰³⁰ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 3, 67, 92, 109, 217-219, 239-240.

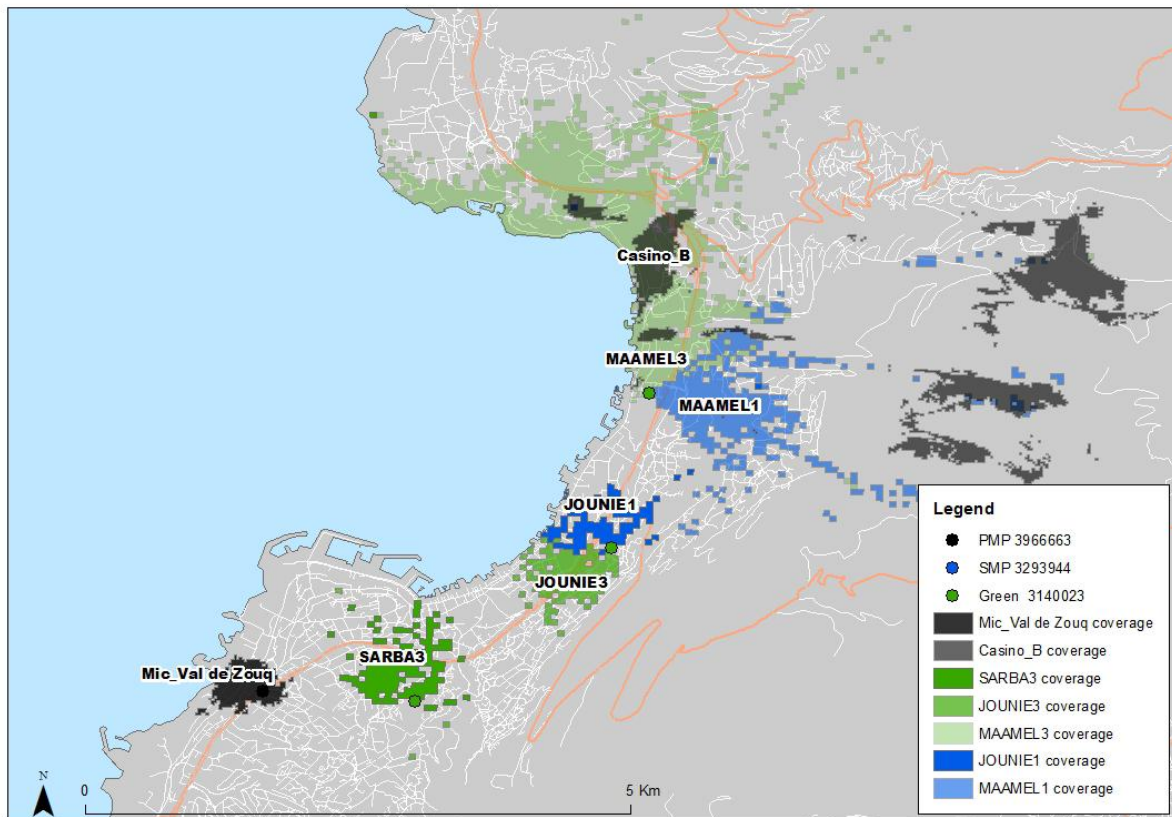
⁸⁰³¹ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 3, 67, 92, 109, 217-218, 239-240.

⁸⁰³² Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), p. 13; *for example*, exhibit P525 (Statement of Andrew Donaldson of 19 January 2015), para. 58

⁸⁰³³ Exhibit P2023.3, paras 331, 340, 348.

⁸⁰³⁴ Exhibit P2023.3, paras 338, 341, 349, *see also* paras 342-344, containing maps and tables, providing 31 examples of relevant close in time calls between the four mobiles; Andrew Donaldson, T. 17 July 2017, p. 45.

4222. The map from Mr Donaldson's attribution report below illustrates an instance, on Tuesday 21 December 2004, when Green 023, mobiles 944 and 663 were all connecting to cells in the Jounieh area on the same day and around the same time:⁸⁰³⁵



Map showing the use of Green 023, mobiles 944 and 663 on 21 December 2004 in Jounieh extracted from Mr Donaldson's attribution report related to Mr Badreddine – exhibit P2023.3, p. 198

4223. Mr Philips identified 98 call pairs with respect to Green 023 and Mr Badreddine's personal mobiles 663, 354 and sequential mobile 944 on 15 days between Monday 6 September 2004 and Monday 14 February 2005. He concluded that Green 023 possibly co-located with one of these mobiles on 55 occasions.⁸⁰³⁶

⁸⁰³⁵ Exhibit P2023.3, pp 197-198, "Example 11", depicting the use of the three mobiles on 21 December 2004 between 19:42 and 20:06.

⁸⁰³⁶ These call pairs occurred on 28, 29, 30 September; 1, 20 October; 21 December 2004; 11, 12, 15, 18, 19, 28, 31 January; and 11 and 12 February 2005. Exhibit P1937 (Expert report of John Edward Philips – Single user analysis,

4224. Most frequently, for 42 pairs of calls, Green 023 used cells with overlapping predicted coverage areas with mobile 663, meaning that the two mobiles may have co-located.⁸⁰³⁷ Of these, twenty-one pairs of calls occurred within five minutes.⁸⁰³⁸ The mobiles activated cells in the southern suburbs of Beirut,⁸⁰³⁹ near the west coast area of Beirut,⁸⁰⁴⁰ in the marina area in northern Beirut,⁸⁰⁴¹ near the north-east coast of Beirut,⁸⁰⁴² near the airport,⁸⁰⁴³ in the area of Quraitem Palace,⁸⁰⁴⁴ and in Jounieh.⁸⁰⁴⁵

4225. Six other pairs of calls occurred in under ten minutes.⁸⁰⁴⁶ The time lapse between additional four pairs of calls was not more than fifteen minutes.⁸⁰⁴⁷ The call sequence table and maps extracted from Mr Philips's report demonstrate a series of Green 023's and mobiles 663's and 944's calls and cell activations on Friday 28 January 2005. According to Mr Philips, the mobiles

Suspect 2, Mr Badreddine), pp 32, 34-37, 40-41, 43, 48-49, 54-56, 60-61, 64-65, 68, 70-71, 84-87, 106, 110, 113-116, 123, 130, 132, 145, 148-149, 156-160, 165, 172, 174, 180, 189, 195-196, 199, 205, 207, 222-223, 225, 227-228, 231-232, 236-237; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 80-81, 89, 93.

⁸⁰³⁷ These occurred on 28 September (six times), 29 September (once), 30 September (three times), 1 October (four times), 20 October (twice), 11 January (twice), 12 January (three times), 15 January (three times), 18 January (twice), 19 January (twice), 28 January (three times), 11 February (four times), 12 February (seven times). Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 32, 36-37, 41, 48, 56, 60-61, 65, 70-71, 84-85, 113, 116, 123, 130, 145, 149, 156, 160, 180 189, 199, 222, 225, 227-228, 231-232, 237; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 80-81, 93.

⁸⁰³⁸ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 32, 40-41, 65, 84-85, 113, 123, 130, 145, 148, 156, 160, 181, 199, 205, 225, 228, 231.

⁸⁰³⁹ For example Touch's Bir Abed_A and Alfa's BRAJNE1, Jisr Basha_B and GANOUM3, Hai Kneisse_C, and ROUEIS3. Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 32, 64, 112, 122, 155, 228.

⁸⁰⁴⁰ Such as Mar Elias-II_C and MSAYTB2. Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 36, 40.

⁸⁰⁴¹ Minet El-Hosn_C and ZOUKAK2, Coast Road_C and PORT2. Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 83, 159.

⁸⁰⁴² Zalka Coast_A and JALDIB_4. Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 147, 188.

⁸⁰⁴³ Furn Chebbak_C and FURN3. Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), p. 145.

⁸⁰⁴⁴ Fadlallah_A and RAOUCH1. Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), p. 180.

⁸⁰⁴⁵ Casino_B and GHAZIR2. Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 56, 68, 198.

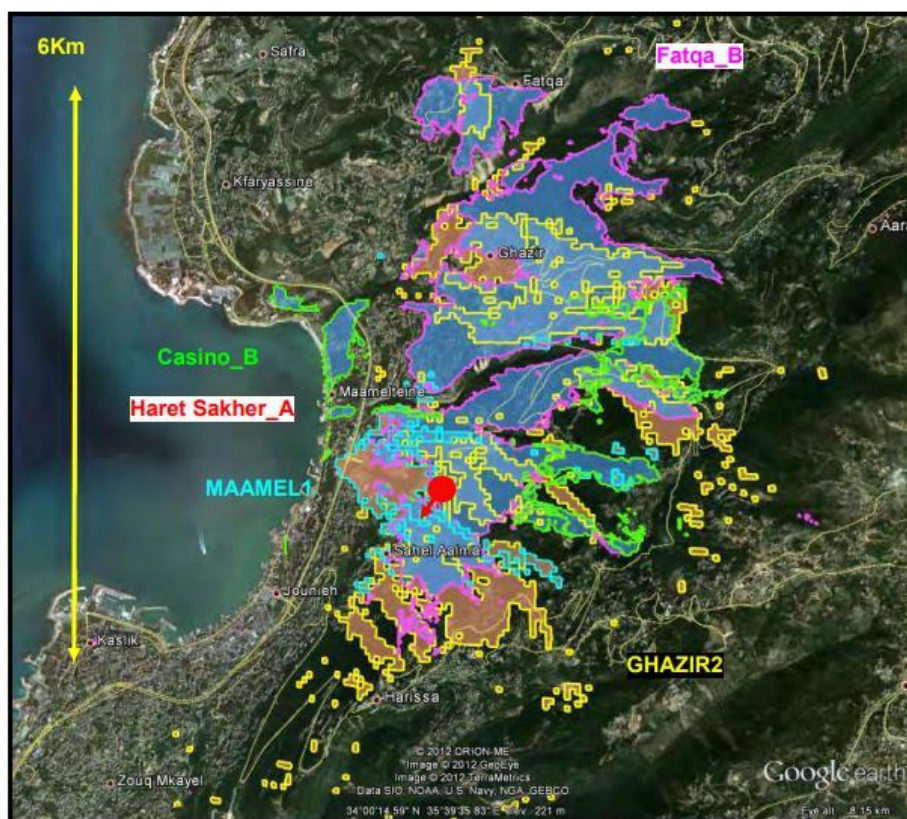
⁸⁰⁴⁶ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 37, 56, 60-61, 199, 232.

⁸⁰⁴⁷ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 36, 71, 181, 189; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 93.

possibly co-located for each call pair.⁸⁰⁴⁸ This is shown in the call sequence table extract and the map below:

28/01/2005	18:42:43	161	3966663	SMS	0	N/A	272	Fatqa_B
28/01/2005	18:52:57	1B85C0	3140023	SMS	0	352957009068690	007C	GHAZIR2
28/01/2005	18:54:50	3966663	544	Voice	54	3519650038354603	3422	Casino_B
28/01/2005	19:00:15	161	3966663	SMS	0	N/A	5041	Haret Sakher_A
28/01/2005	19:00:49	3966663	088	Voice	80	351965003835460	5041	Haret Sakher_A
28/01/2005	19:02:22	3966663	117	Voice	25	3519650038354603	5041	Haret Sakher_A
28/01/2005	19:19:10	000	3293944	SMS	0	354337000748270	0217	MAAMEL1
28/01/2005	19:19:18	000	3293944	SMS	0	354337000748270	0217	MAAMEL1
28/01/2005	19:19:21	000	3293944	SMS	0	354337000748270	0217	MAAMEL1
28/01/2005	19:25:38	161	3966663	SMS	0	3519650038354603	5041	Haret Sakher_A
28/01/2005	19:26:11	3966663	432	Voice	42	3519650038354603	5041	Haret Sakher_A
28/01/2005	19:47:35	3293944	330	Voice	24	354337000748270	007C	GHAZIR2
28/01/2005	19:48:24	281	3966663	Voice	26	3519650038354603	5041	Haret Sakher_A

Map 01



Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine—exhibit P1937, p. 198

⁸⁰⁴⁸ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), extract 91, pp 198-200. Out of the forty-two pairs of calls on 28 January 2005, Mr Philips concluded that twenty-eight pairs possibly co-located. Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 184-203.

4226. Mr Philips determined that twenty pairs of calls of Green 023 and mobile 663 fell into the category of ‘would not preclude co-location’.⁸⁰⁴⁹

4227. On Wednesday 20 October 2004, Green 023 connected to ZOUKAK2 and eight seconds later, mobile 663 used Jesuite_C. Mr Philips thought that the distance between the centres of the two cells may have precluded the mobiles from co-location, as it could not have been travelled in such short time.⁸⁰⁵⁰ However, he also noted that until that point the two mobiles were moving together in the marina area in Beirut.⁸⁰⁵¹

4228. According to Mr Philips, Green 023 had ten possible co-locations with Mr Badreddine’s sequential mobile 944.⁸⁰⁵² The two mobiles used identical Alfa cells, such as KHAYAT2, ROUEIS3, FURN3, GHAZIR2, ADMA3, MOVPIK1, OUZAI2 and MIKAEL2, for eight pairs of calls made within five minutes.⁸⁰⁵³ The ninth pair occurred within 21 minutes, activating BRANJNE3 and HADATH3, and the tenth pair within 41 minutes with both mobiles activating GANOUM3.⁸⁰⁵⁴ Mr Philips found that cell activations for a further twenty-one call pairs would not preclude the two mobiles’ co-location.⁸⁰⁵⁵

4229. On Wednesday 19 January 2005, Green 023 activated JOUNCT3, near Kaslik, north of Beirut, and mobile 944 connected to GHAZIR2, in the area of Jounieh, 22 seconds before. Mr Philips concluded that these cell activations may have precluded the mobiles’ possible co-location.

⁸⁰⁴⁹ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 35, 43, 70, 84,87, 106, 130, 132, 148, 158-159, 165, 172, 174, 189, 195, 225, 232, 236; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 89.

⁸⁰⁵⁰ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 83-85.

⁸⁰⁵¹ John Edward Philips, T. 21 April 2017, pp 21-23; exhibit P1935, slides 210-212.

⁸⁰⁵² On 28 September 2004, (once), 30 September 2004, (twice), 11 January 2005, (three times), 15, 19, January (once each day), 31 January (twice), 12 February 2005 (once). Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 60-61, 64-65, 110, 145-146, 164-165, 195-196, 204-205, 207, 228; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 80-81, 89.

⁸⁰⁵³ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 60-61, 110, 145, 164-165, 195-196, 204-205, 207, 228; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 79-80, 89.

⁸⁰⁵⁴ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 64-65, 115; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 81.

⁸⁰⁵⁵ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 34, 40-41, 43, 49, 54-55, 61, 86, 106, 110, 113-114, 165, 189, 196, 236; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 76, 80, 81, 89.

He noted, however, that the fragmented coverage areas of both cells may have not precluded the mobiles from co-locating.⁸⁰⁵⁶ Mr Philips demonstrated this on a map immediately below:

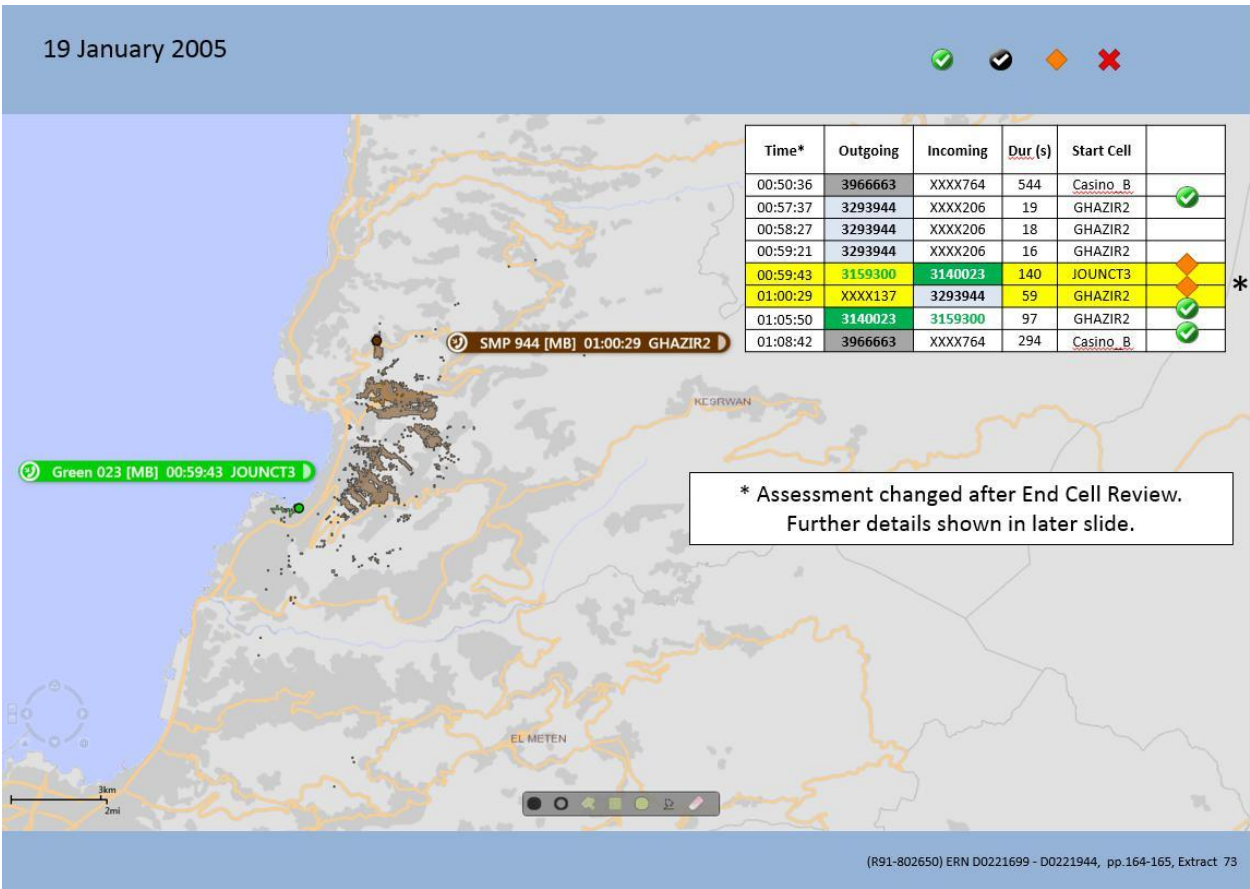


Exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips), slide 217

4230. On Tuesday 18 January and Friday 11 February 2005, Green 023 and mobile 354 connected to cells with overlapping predicted best server coverage areas in southern Beirut for four pairs of calls. Of these, three occurred within five minutes apart, and the fourth within twelve minutes.⁸⁰⁵⁷

⁸⁰⁵⁶ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 164-165; John Edward Philips, T. 21 April 2017, pp 23-24; exhibit P1935, slides 214-217; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 89.
⁸⁰⁵⁷ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 156-157, 159, 223.

The two mobiles had no call pairs, which fell into the categories of ‘would not preclude co-location’ or ‘may preclude co-location’.⁸⁰⁵⁸

4231. Turning to Mr Donaldson’s evidence, he analysed every call made during the 57 days of Green 023’s use and concluded that this mobile was used 129 times within ten minutes of use of mobiles 663, 354 and 944.⁸⁰⁵⁹ Hence, in his view, Green 023 was used in relatively close proximity to the other mobiles each time.⁸⁰⁶⁰ The consecutive use of Green 023 with the other mobiles within ten minutes occurred throughout the day and night from 07:00 to 02:00, and also across a wide geographical area within Beirut and Jounieh.⁸⁰⁶¹

4232. Of the 129 times that Green 023 was used within ten minutes of the other mobiles, in nine per cent of cases it shared the same cell as mobile 944. Fifty-three per cent of these activations were of cell towers less than one kilometre apart. In 18 per cent of the consecutive use within a ten-minute span, Green 023 activated a cell tower between one and two kilometres from the cell tower activated by mobiles 354, 663 or 944. Nineteen per cent of the activations were of cell towers over two kilometres apart.⁸⁰⁶²

4233. Mr Philips and Mr Donaldson analysed examples of the common movement of Green 023 with mobiles 354, 663 and 944 inside and outside of Beirut over the 15 days of interest.⁸⁰⁶³ Green 023 moved significantly over these 15 days outside of its most activated cells, namely, the adjoining ROUEIS3 and BRANJE3 cells in south Beirut. These two cells accounted for 30 per cent of its activations.

⁸⁰⁵⁸ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 216, 239.

⁸⁰⁵⁹ Exhibit P2023.3, para. 337.

⁸⁰⁶⁰ Andrew Donaldson, T. 17 July 2017, pp 38-39.

⁸⁰⁶¹ Exhibit P2023.3, para. 338.

⁸⁰⁶² Exhibit P2023.3, para. 337; Andrew Donaldson, T. 17 July 2017, pp 38-45, 93-94.

⁸⁰⁶³ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 32, 36-37, 4148, 56, 60-61, 64-65, 70-71, 84-85, 110, 113-116, 123, 130, 145-149, 156-157, 159-160, 165, 180, 189, 199, 205, 207, 223, 225, 228, 231-232, 237; exhibit P2023.3, paras 331-349; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), pp 80-81, 89, 93.

4234. Illustrating common movement of the personal and network mobiles, Mr Philips concluded that based on the cell activations by Green 023, it ‘may be co-located’ with either mobile 663 or 994, over the following days:⁸⁰⁶⁴

In September 2004, on:

- Tuesday 28 September, in the afternoon, in activating cells near in eastern Beirut between 15:59 and 16:07. And in the evening in activating cells in Al-Khayat, to the north of the cells in Hadath;⁸⁰⁶⁵
- Wednesday 29 September, in the late evening, in activating cells providing coverage to Jounieh, which is around 20 kilometres north of Beirut;⁸⁰⁶⁶ and
- Thursday 30 September, in the afternoon in activating cells in Al-Khayat; and in the late evening in activating cells in Ganoum in Beirut.⁸⁰⁶⁷

In October 2004, on:

- Friday 1 October in the early hours in activating cells providing coverage to Jounieh;⁸⁰⁶⁸ and
- Wednesday 20 October, in the evening, in activating cells near the port in Beirut.⁸⁰⁶⁹

In December 2004 on:

- Tuesday 21 December, while activating cells in Jounieh, in the evening, (assessed as ‘may not preclude co-location’).⁸⁰⁷⁰

⁸⁰⁶⁴ Mr Donaldson, by contrast, simply asserted co-location. Exhibit P2303.3, para. 338, stating that ‘The co-location was constant’.

⁸⁰⁶⁵ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 36-37, 40-41; exhibit P1935, slide 85.

⁸⁰⁶⁶ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), p. 56.

⁸⁰⁶⁷ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 60-61, 64-65.

⁸⁰⁶⁸ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 68-70.

⁸⁰⁶⁹ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 83-85.

⁸⁰⁷⁰ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), p. 106; exhibit P1935, slides 125, 127.

In January 2005, on:

- Wednesday 12 January, in the evening, activating cells near the Lebanese Arab University in Beirut; and later in Beirut;⁸⁰⁷¹
- Saturday 15 January, in the evening, activating cells in eastern Beirut; and then later in the evening, to the north of Beirut; and much later in the evening in activating cells near Faraya, 50 plus kilometres north-west of Beirut;⁸⁰⁷²
- Tuesday 18 January, activating cells near the port in Beirut in the afternoon;⁸⁰⁷³
- Wednesday 19 January, in the early hours of the morning, activating cells near Jounieh; and in the evening in eastern Beirut;⁸⁰⁷⁴
- Friday 28 January, in the afternoon, activating cells on the road north of Beirut and calls that would not preclude co-location; and in Jounieh in the evening;⁸⁰⁷⁵ and
- Monday 31 January, in the morning in eastern Beirut near the coast.⁸⁰⁷⁶

4235. In his court presentation slides, Mr Philips demonstrated the common movements of Green 023, mobiles 663 and 354 and sequential mobile 944 on seven days: 28, 29 September, 21 December 2005, 15, 18, 28 January and 12 February 2005.⁸⁰⁷⁷

4236. As examples of the details of three of the days referred to in the bullet points immediately above, namely on Tuesday 28 September 2004, Tuesday 21 December 2004 and Saturday 15 January 2005, Mr Philips made the following analyses.

⁸⁰⁷¹ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 129-130.

⁸⁰⁷² Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 147-149; exhibit P1935, slides 148-149, 155, 158.

⁸⁰⁷³ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), p. 159; exhibit P1935, slide 172.

⁸⁰⁷⁴ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 164-165, 180-181; exhibit P1113 (Expert report of John Edward Philips – Revised single user analysis, with end cell review), p. 89.

⁸⁰⁷⁵ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 188-189; exhibit P1935, slides 18-186.

⁸⁰⁷⁶ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), pp 204-205.

⁸⁰⁷⁷ John Edward Philips, T. 20 April 2017, pp 71-104; exhibit P1935, slides 78-198.

4237. On Tuesday 28 September 2004, Green 023 and mobile 663 had calls at 15:29 and 15:40. In his view, they possibly co-located as they activated Alfa's OGER3 and Touch's Ain Tineh_C overlapping cells, in south-west Beirut. At 15:51, mobile 354 connected to the same Touch cell. At 15:59, mobile 663 moved in easterly direction to the Green Tower_B cell, and eight minutes later Green 023 used a cell that had overlapping predicted best server coverage, MSAYBT2. At 16:26, mobile 944 activated KHAYAT2.⁸⁰⁷⁸ The map immediately below shows the coverage areas of the cell activated by the four mobiles in the afternoon on 28 September 2004:

⁸⁰⁷⁸ John Edward Philips, T. 20 April 2017, pp 71-81; exhibit P1935, slides 80-86.

28/09/2004	15:29:57	3140023	3150071	Voice	72	352957009068690	0436	OGER3
28/09/2004	15:40:17	3966663	088	Voice	36	3519650038354603	3633	Ain Tineh_C
28/09/2004	15:43:11	213	3966663	Voice	31	3519650038354603	72	Raouche_B
28/09/2004	15:51:17	3833354	002	Voice	19	3509991069061541	3633	Ain Tineh_C
28/09/2004	15:59:28	3966663	299	Voice	20	3519650038354603	42	Green Tower_B
28/09/2004	16:07:37	3150071	3140023	Voice	12	352957009068690	0299	MSAYTB2
28/09/2004	16:26:22	3293944	330	Voice	40	352504007296820	0425	KHAYAT2



Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine—exhibit P1937, p. 36

4238. Mr Philips testified that from 19:20, Green 023, mobile 663 and 944 moved in concert to southern Beirut, where the three possibly co-located for seven pairs of calls from 20:52 to 23:32.⁸⁰⁷⁹

4239. The second example is in the evening on Tuesday 21 December 2004 when mobiles 663 and 944 moved from central Beirut to the Junieh area. At 19:45 and 19:46, Green 023 and

⁸⁰⁷⁹ John Edward Philips, T. 20 April 2017, pp 77-81; exhibit P1935, slides 87-105.

mobile 944 connected to two cells on Alfa’s JOUNIE tower, cells 1 and 3.⁸⁰⁸⁰ By 20:36, mobiles 663 and 944 moved further north and, in Mr Philips’s view, possibly co-located for three pairs of calls connecting to Casino_B, Kfar Hbab_A and MAAMEL1.⁸⁰⁸¹ Green 023’s and sequential mobile 944’s activation of the JOUNIE tower’s cells is depicted below:

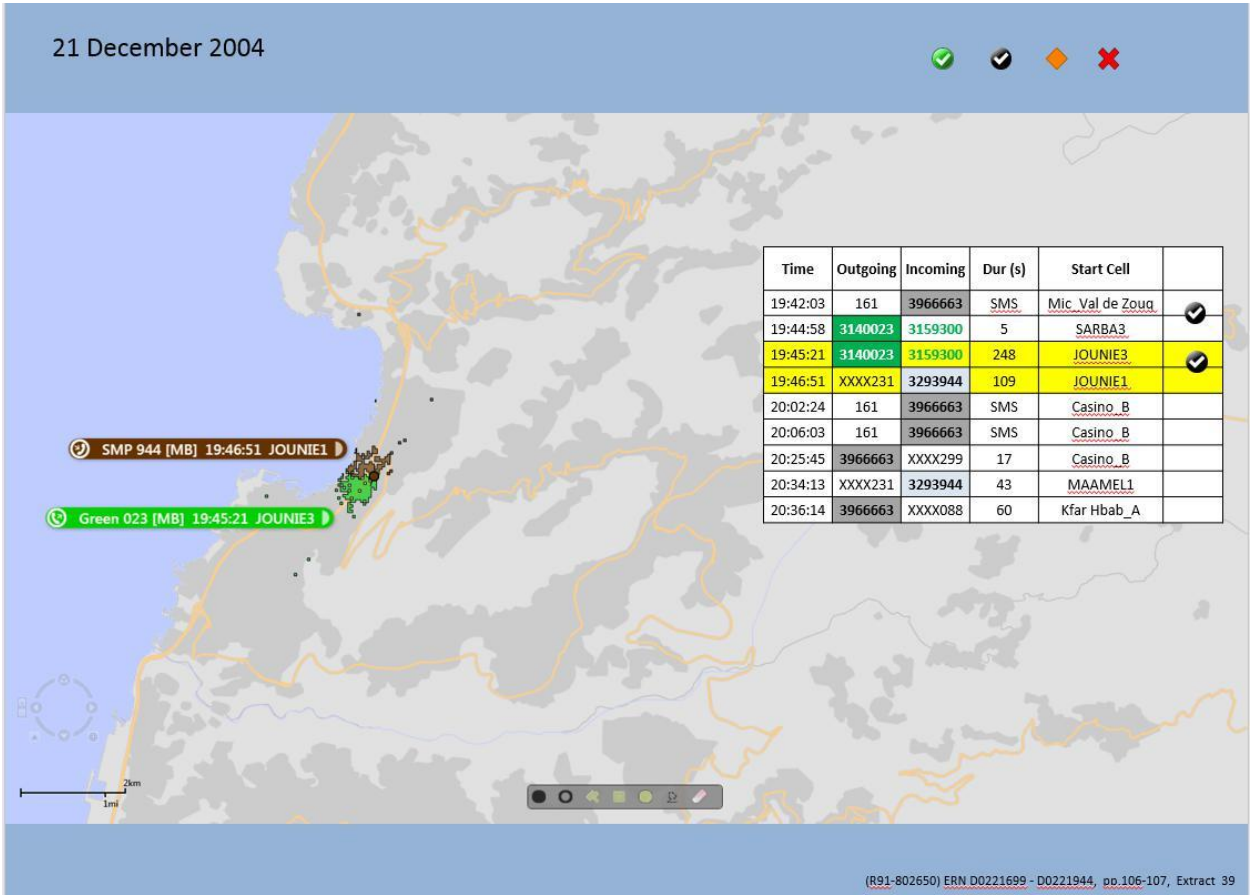


Exhibit P1935 (PowerPoint presentation on single user analysis, John Edward Philips), slide 217

4240. The third example is of Saturday 15 January 2005, when Green 023 and mobiles 663 and 944 possibly co-located while connecting to Alfa’s FURN3 and Touch’s Furn Chebbak_C for calls at 18:42, 18:49, 18:51 and 18:55. Approximately an hour later, mobiles 663 and 944 moved north-east of Beirut along the coastal road, where Green 023 and mobile 663, in Mr Philips’s view, possibly co-located connecting to JALDIB4 and Zalka Coast_A, respectively. Later, the two

⁸⁰⁸⁰ John Edward Philips, T. 20 April 2017, pp 84-88; exhibit P1935, slides 119-127.
⁸⁰⁸¹ John Edward Philips, T. 20 April 2017, pp 87-88; exhibit P1935, slides 128-132.

mobiles moved to the Faqra area and activated cells with overlapping predicted coverage areas, OUYOUN3 and Faraya_A, meaning that they may have co-located.⁸⁰⁸² Mr Philips demonstrated these possible co-locations on the maps extracted from his report:

15/01/2005	18:42:27	3966663	457	Voice	312	3519650038354603	3083	FurnChebbak_C
15/01/2005	18:49:41	3293944	206	Voice	15	354337000748270	011A	FURN3
15/01/2005	18:51:06	3150071	3140023	Voice	31	352957009068690	011A	FURN3
15/01/2005	18:55:39	605	3966663	Voice	12	3519650038354603	3083	FurnChebbak_C



Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine—exhibit P1937, p. 145

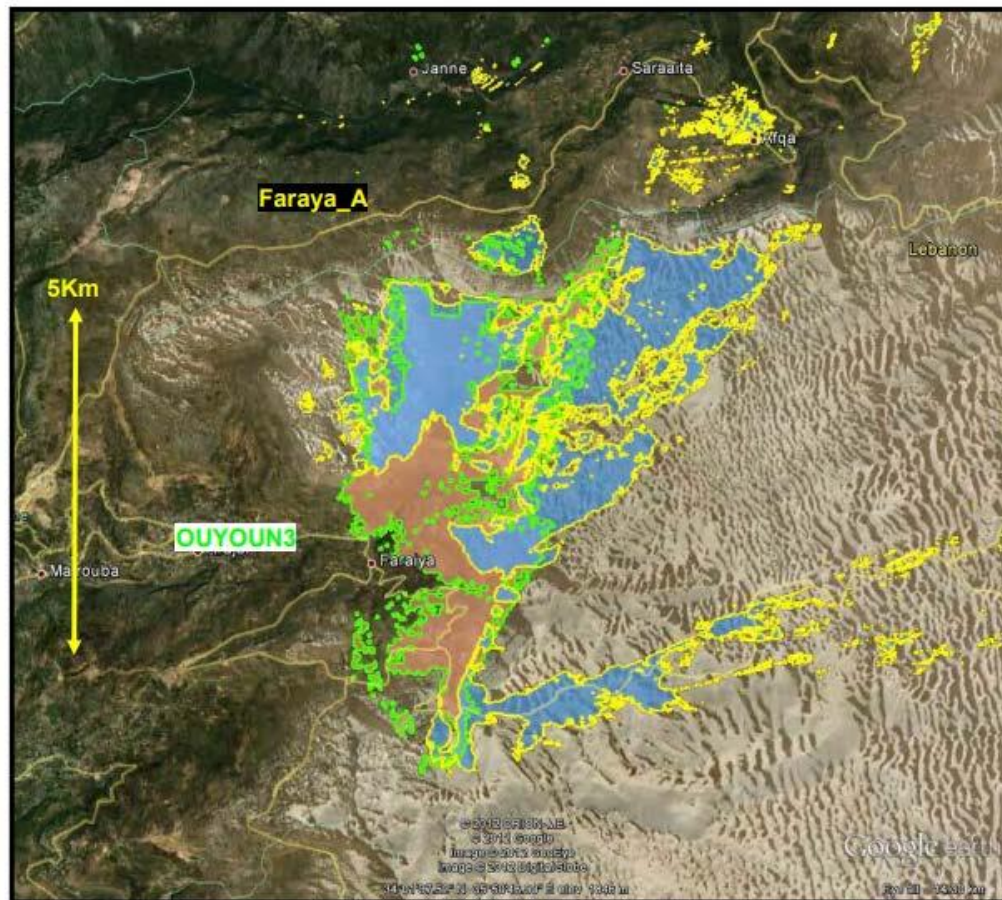
⁸⁰⁸² John Edward Philips, T. 20 April 2017, pp 88-95; exhibit P1935, slides 146-158.

15/01/2005	19:51:11	764	3966663	Voice	115	3519650038354603	4023	Mar Takla-II_C
15/01/2005	20:01:20	3293944	206	Voice	15	354337000748270	02FC	ITIHAD1
15/01/2005	20:04:31	3966663	829	Voice	148	3519650038354603	1221	Amaret Chalhoub_A
15/01/2005	20:10:26	3966663	552	Voice	275	3519650038354603	3291	Zalka Coast_A
15/01/2005	20:17:58	3966663	829	Voice	246	3519650038354603	3291	Zalka Coast_A
15/01/2005	20:22:01	3159300	3140023	Voice	45	352957009068690	00DE	JALDIB4
15/01/2005	20:29:33	3966663	117	Voice	159	3519650038354603	1101	Dbaiyeh_A



Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine—exhibit P1937, p. 147

15/01/2005	22:50:00	117	3966663	SMS	0	N/A	3551	Faraya_A
15/01/2005	23:40:53	3150071	3140023	Voice	172	352957009068690	006F	OUYOUN3



Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine—exhibit P1937, p. 149

4241. Mr Philips testified that Green 023 had no cell activations that would have precluded its possible co-location with the other three mobiles.⁸⁰⁸³

(b) Findings

4242. Mr Donaldson, unlike the Prosecution's cell site expert, Mr Philips, positively concluded that Green 023 was attributable to the user of mobiles 663, 354 and 944, which in turn were

⁸⁰⁸³ John Edward Philips, T. 20 April 2017, pp 104-105, T. 24 April 2017, p. 74; exhibit P1935, slide 505.

attributable to Mr Badreddine. Through its co-location with these three mobiles, Mr Donaldson concluded that Green 023 was attributable to Mr Badreddine.⁸⁰⁸⁴

4243. He determined that, given that Green 023 formed part of a closed network of three mobiles—without any identifying details—his main basis for attributing it to Mr Badreddine was its geographic profile and co-location with mobiles 944, 354 and 663, which he attributed to Mr Badreddine.

4244. Mr Donaldson observed a pattern that in his view was beyond coincidence. For its 57 days of use in the attribution period, Green 023 jointly and consistently moved with the other three mobiles in all areas and at all times of day, and was used in close proximity with them.

4245. Mr Philips, by contrast, concluded that, ‘Over the entire period under review, all mobile phones are consistent with being used *by a single person* with no exceptions’.⁸⁰⁸⁵ The Trial Chamber, for the reasons explained in assessing single user attribution, has preferred the evidence of Mr Philips over that of Mr Donaldson on any technical cell site matters, including possible dislocations, which he was able to explain technically.

4246. To find that Mr Badreddine was using Green 023 at all relevant times pleaded in the amended consolidated indictment, the Trial Chamber has to be satisfied that Mr Badreddine was using the personal mobiles attributed to him, and that they were co-locating with Green 023. It then has to find that the co-location was such that these mobiles, including Green 023, had a single user, namely Mr Badreddine, and that this is the only conclusion reasonably available from the evidence.

4247. Green 023’s contact profile is limited to contacting Green 071 and Green 300. This does not assist with attribution. As both Mr Philips and Mr Donaldson observed, and as is evident in the call sequence tables, Green 023 was never in contact with the other personal mobiles.

4248. Mr Philips found that only 29 of the 1,421 calls overlapped in time. This is explicable by two things. First, if someone is carrying four mobiles around and making and receiving as many calls as is the case here, overlapping calls must be inevitable. Second, the network clocks are not

⁸⁰⁸⁴ Exhibit P2023.3, paras 304, 317.

⁸⁰⁸⁵ Exhibit P1937 (Expert report of John Edward Philips – Single user analysis, Suspect 2, Mr Badreddine), p. 3.

synchronised and potential time differences between the two networks make it likely that some of the calls may not have overlapped at all.

4249. The call sequence tables show some limited yet explicable instances where some of the four mobiles may not have used the same cell or cells with overlapping best server coverage. Of the 1,421 calls Mr Philips reviewed, however, he identified only five instances in which it was possible that two of the mobiles did not use the same cell or cells with overlapping best server coverage. However, he explained each instance to the Trial Chamber's satisfaction, clarifying that fragmented best server coverage extends beyond the areas of the best server coverage plots, thus making these 'anomalies' possible.

4250. Mr Philips, in all of his cell site attribution work, emphasised that it is the combination of the period and frequency of calls and the movement of the mobiles that permits a conclusion, based on co-location, that the mobiles had a single user.

4251. Regarding the number of calls here, the figure is significant, namely 1,421 calls of four mobiles occurring on 15 days when the Green mobile was in use. Regarding the period, fifteen days is not particularly long, but its length is sufficient for clear patterns to emerge.

4252. More significantly, Mr Philips concluded that Green 023 had 55 possible co-locations with one of Mr Badreddine's other mobiles, 42 with personal mobile 663, nine with sequential mobile 944 and four with personal mobile 354.

4253. Green 023 may have co-located with the other mobiles on fourteen days, on 28, 29, and 30 September, 1 and 20 October 2004, 11, 12, 15, 18, 19, 28 and 31 January, 11 and 12 February 2005. Thirty-one of the possibly co-locating call pairs occurred within five minutes. Cell activations of further 41 pairs of calls with mobiles 663 and 944, Mr Philips concluded, would not preclude the mobiles' co-location with Green 023. Mr Philips also testified and explained in detail that the cell data of the four mobiles did not demonstrate dislocation of the mobiles.

4254. On the third element, that of movement, Green 023, as illustrated above, moved well outside of its most used cells in southern Beirut, and far, and often, over the 15 days analysed. This provides some convincing evidence of common movement between the personal mobiles attributed to Mr Badreddine and the Green network mobile 023.

4255. The evidence is that Mr Badreddine had a primary residence somewhere in the suburbs of south Beirut, but exactly where is difficult to ascertain. There is also evidence—but stronger as it was witness testimony that could be challenged in court—that he used an apartment in coastal Jounieh, 20 or so kilometres to the north of Beirut. The cell site evidence shows the fairly frequent movements of his three personal mobiles between these two locations. It also shows that Green 023 activated cells covering Jounieh on five of the 15 days analysed, and in a manner that shows co-location with his personal mobiles.

4256. This leads to the issue of whether the pattern of co-location is such that is beyond coincidence and the only reasonable conclusion available from the totality of evidence is that the four mobiles had a single user who was Mr Badreddine.

4257. The Trial Chamber has carefully assessed the evidence in its totality and, in light of its findings above, finds that Mr Badreddine was the user of mobiles 354, 663 and 944. The co-location of Green 023 with other personal mobiles, in the Trial Chamber's view, cannot be explained by mere coincidence. Green 023's and the personal mobiles' common activations of its most used cells in southern Beirut, combined with activations in the same cells or cells with overlapping best server coverage areas often within minutes of calls in areas outside of these cells, provides convincing evidence that the four mobiles had a single user. In this regard, the common movement of the mobiles outside of southern Beirut is particularly convincing.

4258. A strong basis for finding that Mr Badreddine was using all four mobiles comes from the geographic profile, in particular, the distinctive split between southern Beirut and the Jounieh area, which Green 023 shared with the other three mobiles. The consistent evidence shows that all four mobiles jointly split their use between these two geographically different and relatively distant locations, in both of which Mr Badreddine used apartments.

4259. Mr Donaldson first identified a pattern of mobiles 663 and 944 consistently sharing all 57 days of use and moving together with Green 023. Mobile 354 shared 37 days of use during which it also moved with Green 023. The co-location in his view was constant and the consecutive uses within ten minutes occurred throughout the day and night across a wide geographical area in Beirut and Jounieh. For Green 023, the best server coverage of its top two cells used was in the southern

suburbs of Beirut and the best server coverage of the third top ranked cell was in Jounieh. Notably, mobile 944 used as its top cell the same as Green 023.

4260. Further, in the Trial Chamber's view, it is significant that Green 023 used only one handset throughout the attribution period, and that it was the only mobile that ever used this handset in Lebanon.

4261. Combined, these facts strongly support the conclusion that Green 023's user remained the same throughout the specified attribution period. The movement between southern Beirut and the cells covering Jounieh is, in this respect, particularly convincing.

4262. The Trial Chamber is therefore satisfied beyond reasonable doubt that Mr Badreddine used Green 023, from at least Monday 6 September 2004 until Monday 14 February 2005. There is no evidence suggesting that anyone else was using the mobile in that period. It is therefore satisfied beyond reasonable doubt that he was the single user of the mobile in this period and was using it in all calls pleaded in and relevant to the amended consolidated indictment. This is the only conclusion reasonably available from the totality of the evidence.

X. CHRONOLOGY OF NETWORK MOBILE ACTIVITY BEFORE MR HARIRI'S ASSASSINATION ON MONDAY 14 FEBRUARY 2005

A. Summary of findings

4263. In the months before Mr Hariri's assassination, the Blue, Red and Yellow networks—and specifically the six core Red mobiles, the six core Blue mobiles and the four core Yellow mobiles—conducted observations and surveillance of Mr Hariri and his movements. On 39 days between Wednesday 20 October 2004 and Monday 14 February 2005, there was significant network activity in the area of his home, Quraitem Palace.

4264. On fourteen days between Thursday 11 November 2004 and Monday 14 February 2005, network mobiles 'followed' Mr Hariri's security detail. This showed an unequivocal pattern of the network mobiles shadowing Mr Hariri. On some of these days, and on others in the same period, network mobiles connected to cells providing coverage to locations relevant to Mr Hariri, such as Quraitem Palace. Some of the surveillance, especially in the weeks before Mr Hariri's death, was clearly connected with the assassination. These network mobiles generally activated cells near Quraitem Palace when Mr Hariri was present there.

4265. The Red network, apart from its surveillance activities, also had a crucial role in executing the attack on 14 February 2005. It was, as the Prosecution alleged, the assassination team or network.

4266. The Red mobiles were active in the area of Quraitem Palace in the morning and then in the Parliament and crime scene area. In the last two hours before the attack, 33 calls were made between the six Red mobiles. Significantly, between 12:49 and 12:53:42, Mr Ayyash's Red 741, Subject 5's Red 636, Subject 6's Red 678, Subject 7's Red 946, Subject 8's Red 893 and Subject 9's Red 652 were involved in the final seven calls of this network. The explosion that killed Mr Hariri and others occurred at 12:55:05. After the explosion, none of the mobiles in the Red network were ever used again.

4267. Some calls between the mobiles in the different networks were 'sequential' in the sense that they appeared to follow each other, but whether they can be deemed hierarchical—and if so

in which direction—was not established. In addition, there were insufficient Green network calls to allow the Trial Chamber to link them to pleaded events, which would have provided the necessary factual context. The Green network had the appearance of a triangular framework with Mr Merhi's attributed Green 071 and Mr Ayyash's Green 300 never calling each other but only communicating with Green 023, which the Prosecution attributes to Mr Badreddine.

4268. Some of the core users of the Red, Yellow, Green and Blue networks had a common mission, namely the assassination of Mr Hariri. The evidence is insufficient to establish that all surveillance by network mobile users in the months preceding Mr Hariri's death was a preparatory act for the assassination and hence connected with it. However, the only conclusion available from the totality of the evidence is that the network mobiles were engaged in surveillance of Mr Hariri in the months prior to the attack, and that a portion of it was preparatory work for his assassination.

B. The Prosecution's allegations of preparatory network surveillance between 11 November 2004 and 14 February 2005

4269. The Prosecutor pleads in the amended consolidated indictment that five interconnected mobile phone groups, four of which operated as networks, were involved in Mr Hariri's assassination.⁸⁰⁸⁶ The amended consolidated indictment specifies of the users of these network mobiles, that:

- 'Mr Ayyash and 'S5, S6, S7, S8, S9, S10, S11, S12, S14 and S23 observed HARIRI on a number of days prior to the attack. These observations were preparatory steps for the assassination;⁸⁰⁸⁷
- 'Observations of HARIRI occurred on 10 days between 20 October and 10 November 2004;⁸⁰⁸⁸ and
- 'On at least 20 days between 11 November 2004 and 14 February 2005, **AYYASH, S5, S6, S7, S8, S9, S10, S11, S12, S14 and S23**, communicating on their **Blue Network** phones and/or **Yellow Network** phones, and/or as of 14 January 2005, their respective **Red Network** phones, carried out acts in preparation for the attack including observation and

⁸⁰⁸⁶ Amended consolidated indictment, para. 14.

⁸⁰⁸⁷ Amended consolidated indictment, para. 20.

⁸⁰⁸⁸ Amended consolidated indictment, para. 21.

surveillance, in order to learn the routes and movements of his convoy and the position of HARIRI's vehicle within it. Surveillance occurred on at least 15 days and in particular on 11 November 2004, 1, 7, 14, 20, 28 and 31 January 2005, and 3, 4, 7, 8, 9, 10, 11 and 12 February 2005. By doing so, **AYYASH** and the assassination team determined the most suitable day, location and method for the attack, which they then executed on 14 February 2005.⁸⁰⁸⁹

4270. The Green network, it is alleged, was a coordination network used exclusively by Mr Badreddine, Mr Ayyash and Mr Merhi. The Yellow, Blue and Red networks were used for various preparatory tasks, including surveillance.⁸⁰⁹⁰ The three Purple mobiles, alleged to have been used by Mr Merhi, Mr Oneissi and Mr Sabra, were used to coordinate the false claim of responsibility.⁸⁰⁹¹

4271. Mr Ayyash, Mr Merhi and Mr Badreddine are pleaded to have agreed to commit a terrorist act by means of an explosive device in order to assassinate Mr Hariri between 11 November 2004 and the morning of 14 February 2005 before the explosion. The date of Mr Oneissi's and Mr Sabra's entry into the same conspiracy is pleaded as 22 December 2004.⁸⁰⁹²

4272. The attribution of various mobiles to each Accused and Mr Badreddine is separately addressed in respect of each person.⁸⁰⁹³ The Prosecution's case relies on the following attributions, namely, that:

- The user of Yellow 294, Red 741, Blue 233, Blue 322⁸⁰⁹⁴ and Green 300 was Mr Ayyash;
- The user of Green 023 was Mr Badreddine; and
- The user of Green 071 was Mr Merhi.

⁸⁰⁸⁹ Amended consolidated indictment, para. 22.

⁸⁰⁹⁰ Amended consolidated indictment, para. 19 (a) and (b).

⁸⁰⁹¹ Amended consolidated indictment, para. 15 (e).

⁸⁰⁹² Amended consolidated indictment, para. 48 (a), (c).

⁸⁰⁹³ See chapter IX 'Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine'.

⁸⁰⁹⁴ The amended consolidated indictment alleges that Subject 14 (S14) was the user of Blue 322 (amended consolidated indictment, p. 11). The Prosecution final trial brief clarifies that while S14 was its user as of 6 January 2005, Mr Ayyash was its user between 18 October 2004 and 27 December 2004. Prosecution final trial brief, Annex E, p. 2; Prosecution closing submissions, T. 11 September 2018, p. 31.

4273. The Prosecution also alleges that the unidentified Subjects 5, 6, 7, 8 and 9 were the single users of the following multiple network mobiles:

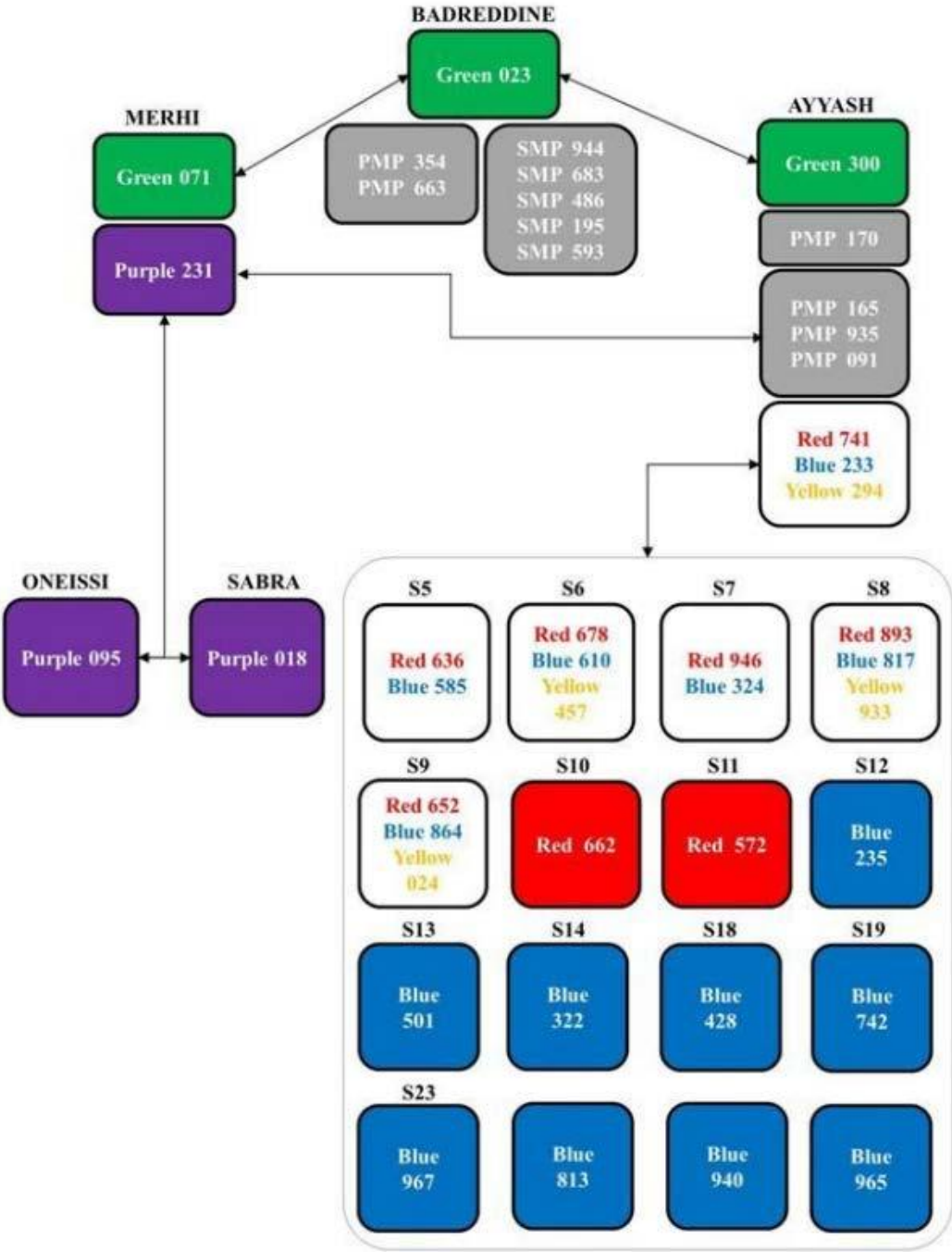
- Subject 5: Red 636 and Blue 585;
- Subject 6: Red 678, Blue 610 and Yellow 457;
- Subject 7: Red 946, Blue 324;
- Subject 8: Red 893, Blue 817 and Yellow 933; and
- Subject 9: Red 652, Blue 864 and Yellow 024.

4274. The Trial Chamber has positively found that the evidence establishes that Subject 6 was the single user of Red 678 and Blue 610.⁸⁰⁹⁵

4275. The amended consolidated indictment contains the graphic below setting out who was allegedly using each of the network mobiles and the three Purple mobiles. A cursory glance at it shows just how difficult it is to unravel who was using the mobiles on each of the days pleaded on which surveillance connected with the assassination occurred:⁸⁰⁹⁶

⁸⁰⁹⁵ See chapter VIII ‘Nature and purpose of colour-coded mobile networks and purple group of mobiles’, (G) ‘The networks’ common mission’, paras 2396, 2424, fn. 5048.

⁸⁰⁹⁶ Amended consolidated indictment, para. 19.



C. Summary of the evidence

4276. Most of the evidence relates to the activity of a large number of network mobiles (27) in the months before Monday 14 February 2005. The evidence of this activity and the locations of those mobiles is juxtaposed against Mr Hariri’s movements and other events relevant to the attack.

As is noted above in analysing the political background, the attack did not occur in a political or historical vacuum. The Prosecution relied on its investigator, Mr Gary Platt, for his expert opinion as to the significance of many of the network activities. It relied on its cell site expert, Mr J. E. Philips, for analysis of the cell site evidence and explanations as to what he thought was occurring, and particularly in relation to what he described as ‘mission phones’ that were engaged in criminal activities.

1. Some networks commence activity—Friday 24 September 2004 to Saturday 9 October 2004

4277. On the Prosecution’s pleaded case the three-mobile Green network, comprising Mr Badreddine’s Green 023, Mr Ayyash’s Green 300 and Mr Merhi’s Green 971, operated from at least Thursday 30 September 2004 until Monday 14 February 2005.

4278. On Friday 24 September 2004, Mr Merhi’s attributed Green 071 called Mr Badreddine’s Green 023.⁸⁰⁹⁷ Until Tuesday 12 October 2004, these two mobiles were in contact 23 times on ten days.⁸⁰⁹⁸ Six days later, on 30 September 2004, Mr Ayyash’s Green 300 called Mr Badreddine’s Green 023.⁸⁰⁹⁹ Until 12 October 2004, these two mobiles were in contact 13 times on six days.⁸¹⁰⁰

4279. The mobiles had been in contact with Green 023 before,⁸¹⁰¹ but the Prosecution attributes Green 300 to Mr Ayyash and Green 071 to Mr Merhi only as of the above dates, namely 30 and 24 September 2004 respectively.⁸¹⁰² On Wednesday 13 and Tuesday 19 October 2004, Mr Ayyash’s Green 300 called Mr Badreddine’s Green 023.⁸¹⁰³

4280. Shortly after one of the contacts between Mr Ayyash’s Green 300 and Mr Badreddine’s Green 023 on Thursday 30 September 2004, Mr Ayyash’s Yellow 294 called Yellow 024.⁸¹⁰⁴ From

⁸⁰⁹⁷ Exhibit P1205 (Call sequence table of Green 071), p. 7; exhibit P1211 (Call sequence table of Green 023), p. 1.

⁸⁰⁹⁸ Exhibit P1783 (Expert report of Gary Platt - Chronology), para. 69. *See also* exhibit P1205, pp 7-8; exhibit P1211, pp 1-2.

⁸⁰⁹⁹ Exhibit P1207 (Call sequence table of Green 300), p. 2; exhibit P1211, p. 2.

⁸¹⁰⁰ Exhibit P1783, para. 70. *See also* exhibit P1207, p. 2; exhibit P1211, p. 2.

⁸¹⁰¹ Exhibit P1211, p. 1.

⁸¹⁰² Prosecution final trial brief, paras 140, 260.

⁸¹⁰³ Exhibit P1207, p. 2; exhibit P1783, paras 74, 81.

⁸¹⁰⁴ Exhibit P1211, p. 2; exhibit P1240 (Call sequence table of Yellow 294), p. 44.

Wednesday 1 September until Tuesday 12 October 2004, on the Prosecution's pleaded case, the 13 yellow mobiles were active.⁸¹⁰⁵

4281. According to the Prosecution, Subject 7 was the single user of Blue 324 and Red 946, and Subject 5 used both Blue 585 and Red 636. Both were also members of the Red network assassination team. On Monday 18 October 2004, Blue 324 and Blue 322 were in contact with each other for the first time.⁸¹⁰⁶ Blue 324 called Blue 585 and Blue 585 called Blue 322.⁸¹⁰⁷

2. Surveillance of Mr Hariri and preparations for the attack—Wednesday 20 October 2004 to Sunday 13 February 2005

4282. The Prosecution's evidence of the Blue network mobile activity, and specifically that of Mr Ayyash's Blue 322, Blue 324 and Blue 585, is intended to establish the conspirators' preparatory actions for the attack. The evidence suggests a frequent presence of Blue 324 and Blue 585 in the area around Mr Hariri's residence at Quraitem Palace and at other locations where Mr Hariri was present.

4283. Conversely, when Mr Hariri was out of Lebanon, the Blue mobiles did not frequent the Quraitem Palace area. On the Prosecution's case, this pattern demonstrates surveillance of Mr Hariri in preparation for his assassination.

(a) Evidence of surveillance generally

4284. The Trial Chamber received evidence that Mr Hariri and his convoy were under surveillance in the period immediately before his assassination.⁸¹⁰⁸ Several members of Mr Hariri's security detail, and his employee Witness PRH277, stated that the Lebanese security services

⁸¹⁰⁵ Exhibit P1783 (Expert report of Gary Platt - Chronology), para. 72; exhibit P517 (Call sequence table of Yellow 120), pp 27-28; exhibit P1240, pp 40-45; exhibit P1241 (Call sequence table of Yellow 618), pp 12-15; exhibit P1242 (Call sequence table of Yellow 425), pp 19-21; exhibit P1243 (Call sequence table of Yellow 932), pp 32-39; exhibit P1244 (Call sequence table of Yellow 024), pp 23-28; exhibit P1245 (Call sequence table of Yellow 078), pp 17-21; exhibit P1246 (Call sequence table of Yellow 170), pp 20-21; exhibit P1247 (Call sequence table of Yellow 933), pp 46-49; exhibit P1248 (Call sequence table of Yellow 669), pp 72-75; exhibit P1249 (Call sequence table of Yellow 513), pp 53-59; exhibit P1250 (Call sequence table of Yellow 763), pp 23-25; exhibit P1252 (Call sequence table of Yellow 457), pp 45-52.

⁸¹⁰⁶ Exhibit P1225 (Call sequence table of Blue 324), p. 1; exhibit P1229 (Call sequence table of Blue 585), p. 1; exhibit P1236 (Call sequence table of Blue 322), p. 1; exhibit P1783 (Expert report of Gary Platt - Chronology), paras 78-79.

⁸¹⁰⁷ Exhibit P1225, p. 1; exhibit P1229, p. 1; exhibit P1236, p. 1.

⁸¹⁰⁸ This is detailed in analysing the political background to the events in chapter IV 'Historical and political background to the attack'.

including the ISF were conducting surveillance of him.⁸¹⁰⁹ Three witnesses, Mr Tarek Soubra, Witness PRH009 and Witness 277, provided evidence that Mr Hariri was also under surveillance by others, or by people they could not identify.⁸¹¹⁰

4285. Witness 277 stated that ‘many groups were trying to monitor’ Mr Hariri’s movements. He described ‘blatant incidents’ when they received word that the ‘ISF and other individuals’ were ‘watching the palace in an overt manner’. In 2005, ‘this occurred at least two or three times outfront of Quraitem Palace. There would be a group of four or five ISF officers in plainclothes’, who would tell them when asked, that ‘they were on an official mission’. They would not tell them who the target of their surveillance was but the security detail knew that it was Mr Hariri, and ‘we assumed that they were sent by ISF General Ali AL-HAJJ’.⁸¹¹¹

4286. Mr Soubra, a bodyguard in Mr Hariri’s convoy, stated that in the week before the attack — during a tour of several churches—he saw people on the roofs with binoculars watching the convoy, while others were following them on motorcycles. He described noticing ‘several informants around the palace, and they would pretend to be reading papers or doing anything’. And when Mr Hariri visited the distribution centre in Verdun on Saturday 14 February 2005, during the so-called olive oil crisis, he saw that some ‘persons were on the roof a building in front of it’.⁸¹¹²

4287. Witness 009, another member of Mr Hariri’s security detail,⁸¹¹³ described the same incident and said the security detail had been unable to identify who they were.⁸¹¹⁴ Others recognised some of them as ISF personnel.⁸¹¹⁵ Mr Hariri’s advisor, Mr Ghazi El-Youssef, testified that Mr Hariri knew that his landlines were tapped and monitored, while Witness 277 stated that

⁸¹⁰⁹ Witness PRH357, T. 3 June 2015, pp 43-45, 47-49; Witness PRH009, T. 12 October 2016, pp 30-35, 42-51, 54-59, 63 (partly private session), T. 13 October 2016, p. 38 (private session); exhibit P1185 (Statement of Witness PRH009), p. 6; exhibit P1195 (Witness PRH277’s statements), ERNs 60300182, 60300219; exhibit P336 (Statement of Tarek Soubra), para. 42; Witness PRH101, T. 7 October 2016, pp 17-21, 70-72.

⁸¹¹⁰ Exhibit P336 (Statement of Tarek Soubra), para. 42; Witness PRH009, T. 12 October 2016, pp 64-65; exhibit P1185 (Statement of Witness PRH009), p. 10; exhibit P1195 (Witness PRH277’s statements), ERN 60300219.

⁸¹¹¹ Exhibit P1195 (Witness PRH277’s statements), statement of 2 June 2010, para. 21.

⁸¹¹² Exhibit P336 (Statement of Tarek Soubra), paras 42, 46.

⁸¹¹³ Witness PRH009, T. 11 October 2016, pp 16-17; exhibit P1185 (Statement of Witness PRH009), pp 2-3.

⁸¹¹⁴ Witness PRH009, T. 12 October 2016, pp 64-65.

⁸¹¹⁵ Witness PRH009, T. 11 October 2016, pp 63-64. The ISF people working with Mr Soubra said that ‘that they recognised some of these people from training and that they were ISF personnel’; exhibit P336 (Statement of Tarek Soubra), para. 42.

Mr Hariri sometimes used a satellite line ‘with the assumption that it would be harder to monitor’.⁸¹¹⁶

4288. The surveillance immediately referred to above is of an obvious kind. It appears designed to either harass or let the target know that they are under watch. It is not professional covert surveillance. In some instances, the ISF officials engaged in it even admitted to it when challenged. The surveillance the Prosecution alleges occurred was covert, as is shown by the use of anonymous mobiles in networks in which the members only communicated with each other.

(b) Wednesday 20 October 2004

4289. On Wednesday 20 October 2004, between 10:30 and 14:45, Mr Hariri had appointments outside Quraitem Palace, including at the Grand Serail (the Lebanese prime minister’s office), with the speaker of the Lebanese Parliament, Mr Nabih Berri, in Nejme Square, from 11:40 to 11:55, and at 14:40 with President Emile Lahoud, at his official residence, Baabda Palace.⁸¹¹⁷ At this meeting, he submitted his resignation as prime minister. During the day a number of visitors, including the US and French ambassadors, met Mr Hariri at Quraitem Palace.⁸¹¹⁸ Its visitor logbook recorded visitors and their entry and exit times.⁸¹¹⁹

4290. Blue network mobiles were near Quraitem Palace that day. The Touch cell providing the predicted best server coverage to Quraitem Palace was LAU_Beirut_A.⁸¹²⁰ At 10:32 and 16:32, Blue 585 called Blue 324 with each connecting to Tallet_Druz_A.⁸¹²¹ At 15:10, Blue 322 called Blue 585, which connected to Concorde_B.⁸¹²²

⁸¹¹⁶ Ghazi El-Youssef, T. 20 March 2015, p. 16, referring to arrests during the ‘olive oil crisis’ on Thursday 10 February 2005; exhibit P1195 (Witness PRH277’s statements), statement of 2 June 2010, para. 13.

⁸¹¹⁷ Exhibit P303 (Press releases), ERN D0004755; exhibit P452 (Press release, 20 October 2004), p. 2; exhibit P532 (UNIC press review, 21 October 2004), ERN D0411974; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 83, 89.

⁸¹¹⁸ Exhibit P301 (Visitor logbook for Quraitem Palace), pp 250-252; exhibit P303, ERNs D0004739-D0004740; exhibit P452, p. 2; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 89. *See also* Mohammed Mneimneh, T. 11 November 2014, pp 51, 59-60.

⁸¹¹⁹ Mohammed Mneimneh, T. 11 November 2014, pp 43-44.

⁸¹²⁰ Exhibit P663 (Statement of Andrew Fahey), annex 1, no. 116; exhibit P1122 (ArcView shape files Touch).

⁸¹²¹ Exhibit P1225, p. 1; exhibit P1229, p. 1; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 85, 88, 91. Tallet_Druz_A is adjacent to Fadlallah_A, which is adjacent to LAU_Beirut_A; exhibit P1122.

⁸¹²² Exhibit P1236, p. 1; exhibit P1229, p. 1; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 90. Concorde_B borders Tallet_Druz_A. Exhibit P1122.

4291. Mr Platt commented that this first activity there does not necessarily mean that they were conducting ‘direct surveillance’.⁸¹²³ In his view, the relevant subjects were involved in ‘preparing surveillance’, in a scoping or intelligence gathering phase.⁸¹²⁴

4292. In the evening, Mr Badreddine’s Green 023 and Mr Ayyash’s Green 300 were in contact, with Green 023 calling three times and Green 300 calling once.⁸¹²⁵ In Mr Platt’s opinion, since the final two Green calls—at 21:10 and 21:19—connected first to adjoining and then to the same cells, this pattern is consistent with the users of these two mobiles having met.⁸¹²⁶

4293. For illustration purposes, below is a map created by Mr Platt plotting some of the relevant cell coverage areas. Quraitem Palace is marked as ‘QP’:

⁸¹²³ Gary Platt, T. 19 January 2017, p. 9.

⁸¹²⁴ Gary Platt, T. 19 January 2017, p. 10.

⁸¹²⁵ Exhibit P1207, pp 2-3.

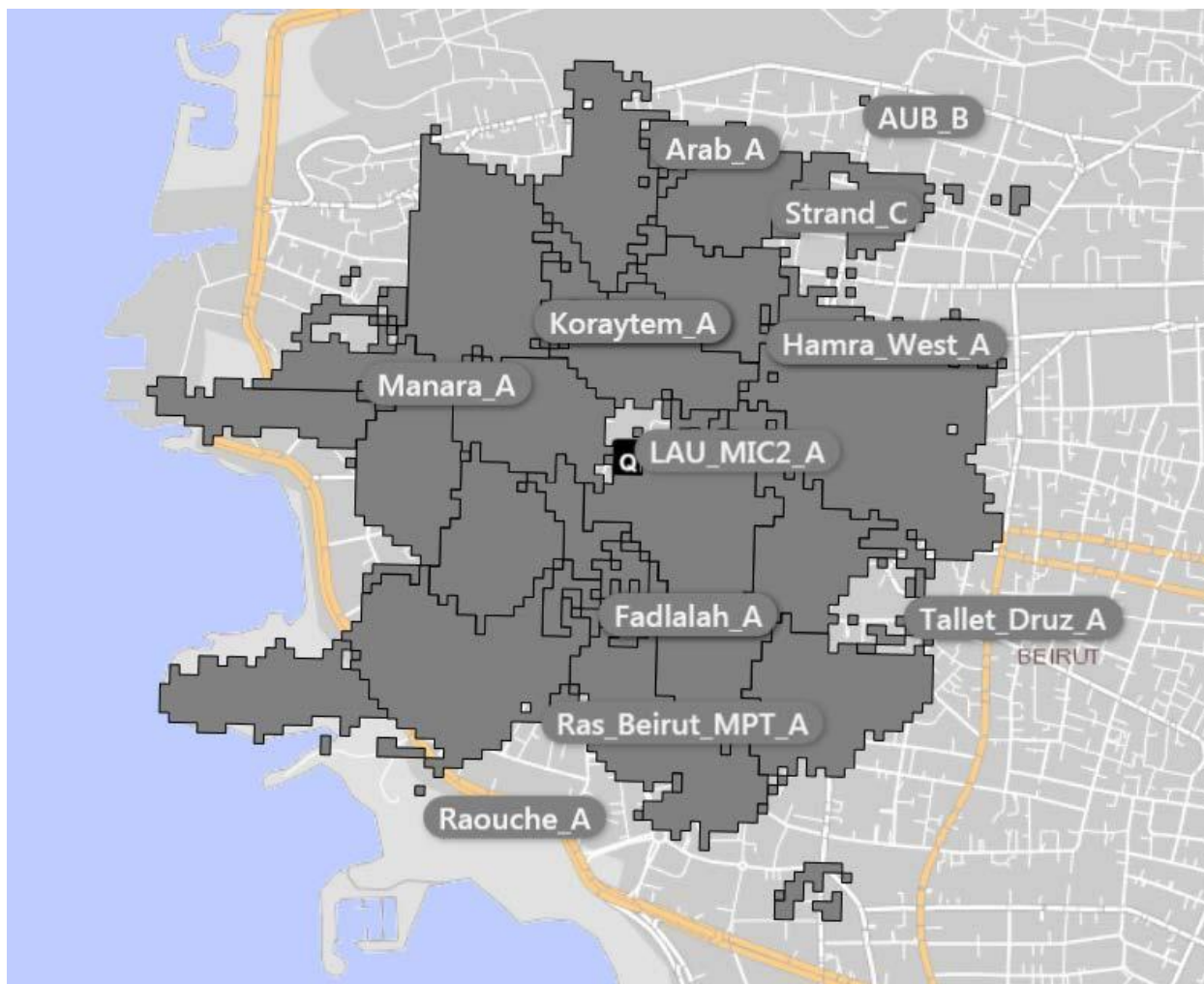
⁸¹²⁶ Gary Platt, T. 19 January 2017, pp 19-20. *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), para. 119.



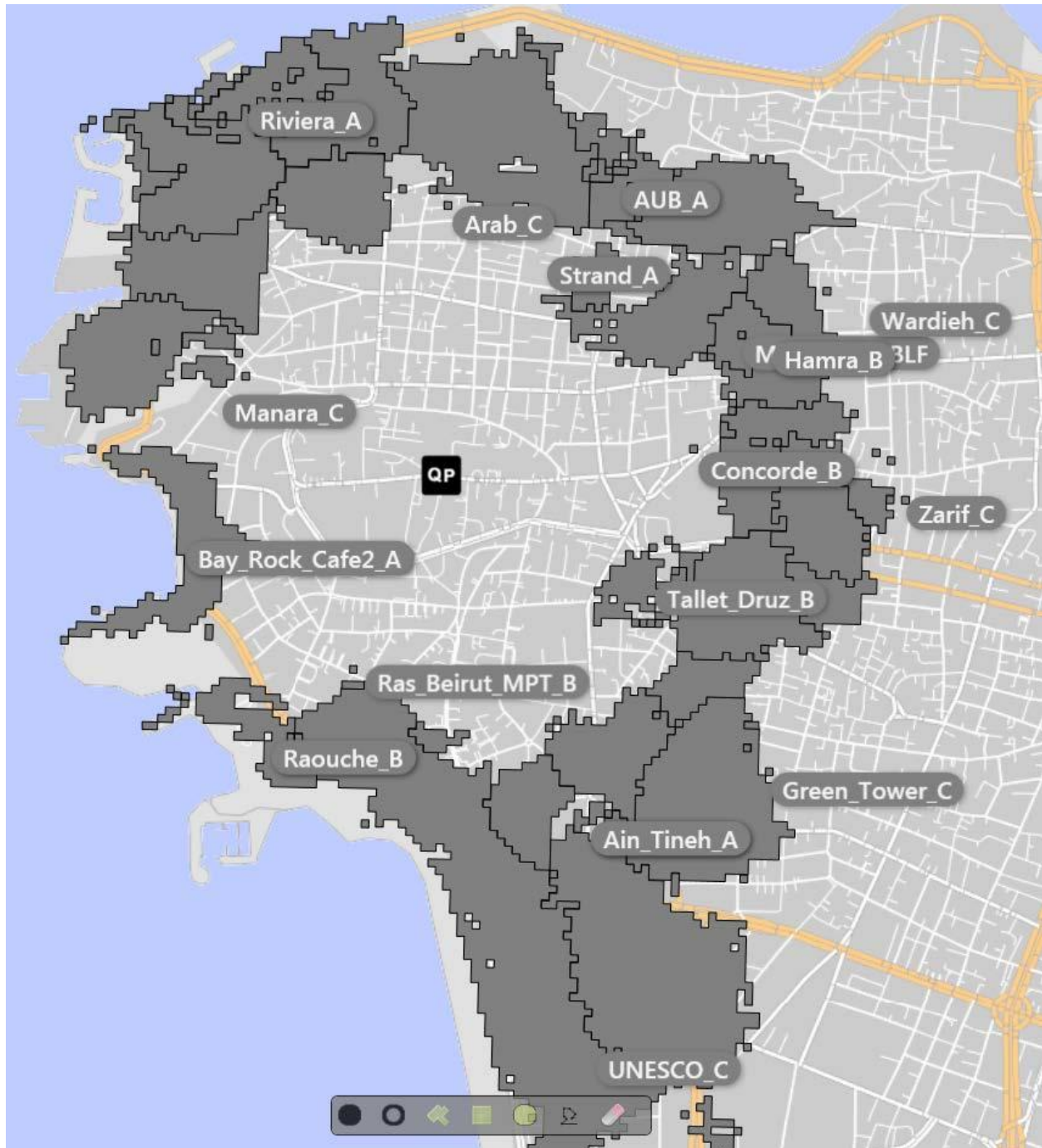
Map 8: Blue Network (S5 and S7), HARIRI Crime Scene, coastal road and Quraitem Palace, 8 November 2004 (13:22 to 16:46)

Exhibit P1783 (Expert Report of Gary Platt - Chronology), p. 53

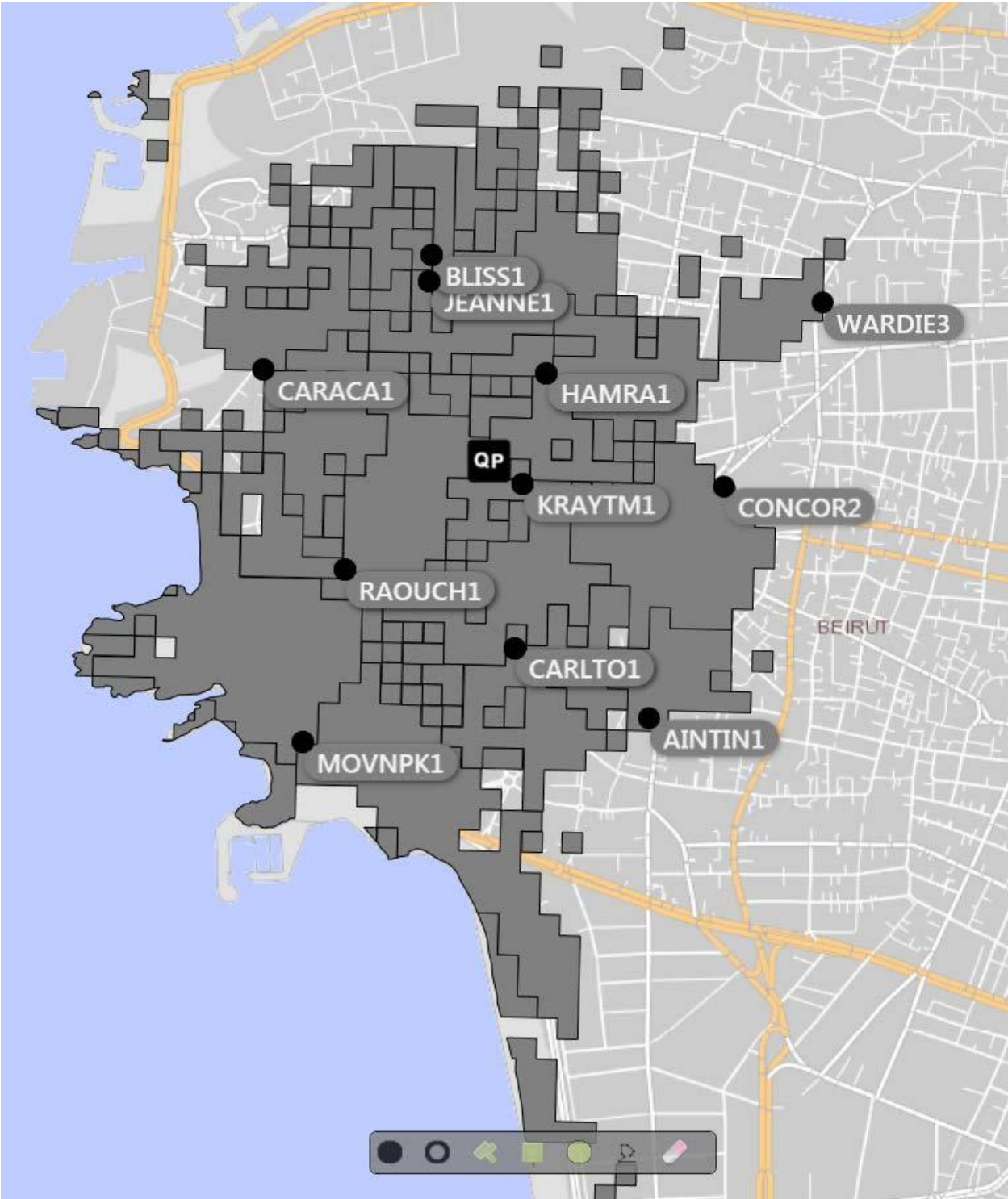
4294. Using the Prosecution's electronic presentation of evidence software, exhibit P592.1, the Trial Chamber, to aid readability of this section, created the maps below. These show the Touch and Alfa cells providing predicted best server coverage within 500 metres, and between 500 and 1,000 metres, of Quraitem Palace:



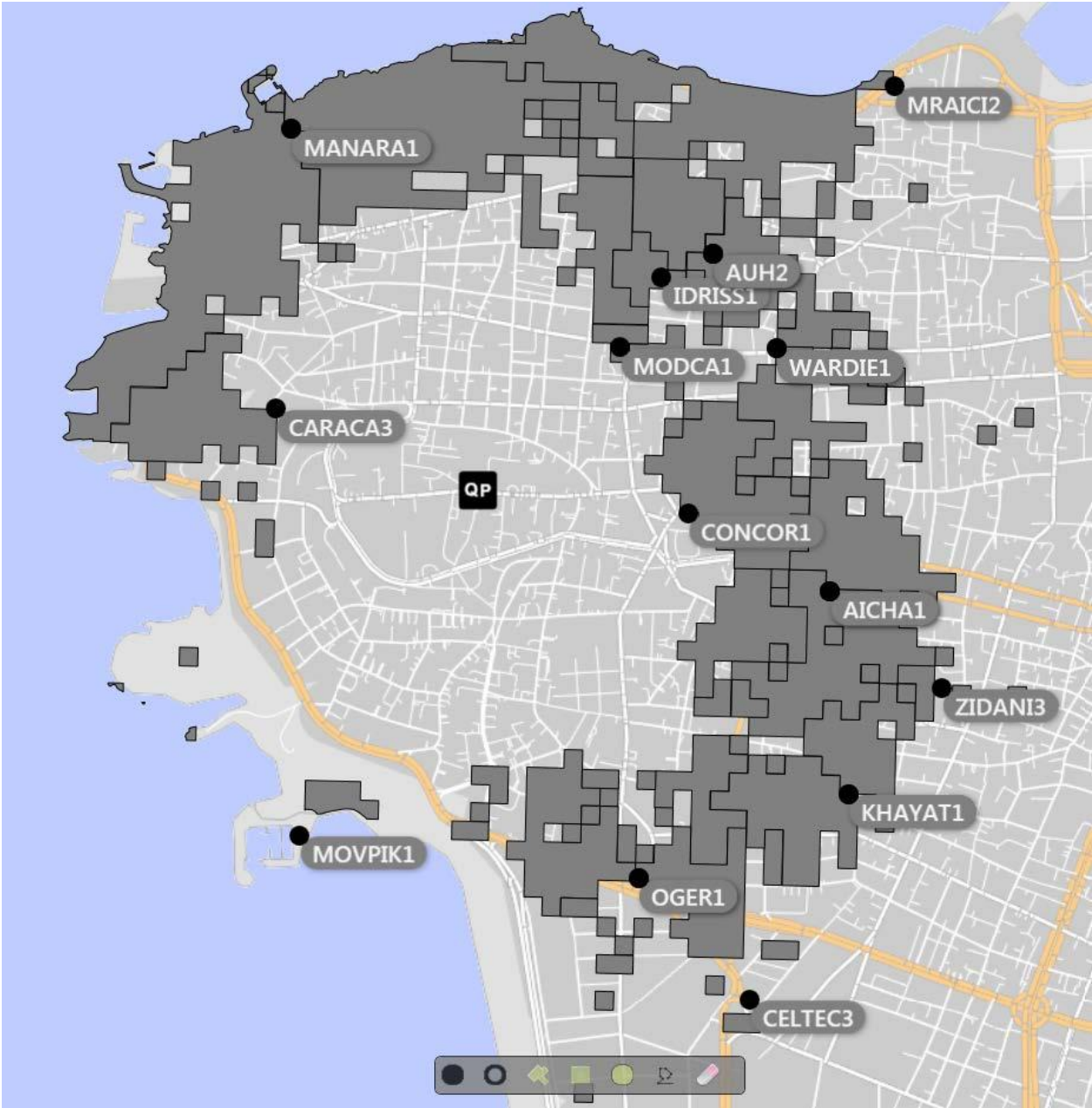
Touch cells providing best server coverage to and within 500 metres of Quraitem Palace



Touch cells providing best server coverage between 500 and 1,000 metres of Quraitem Palace



Alfa cells providing best server coverage to and within 500 metres of Quraitem Palace



Alfa cells providing best server coverage between 500 and 1,000 metres of Quraitem Palace

4295. Mr Platt also listed Alfa and Touch cells providing coverage within a 500-metre and a 1,000-metre radius of Quraitem Palace.⁸¹²⁷ Those within a 500-metre radius were:

Quraitem Palace Vicinity - MTC	Quraitem Palace Vicinity - Alfa
Arab_Bldg_A	AIN TIN1
Arab_Bldg_B	BLISS1
AUB_B	BLISS2
Fadlallah_A	BLISS3
Fadlallah_B	CARACA1
Fadlallah_C	CARACA2
Hamra_West_A	CARLTO1
Hamra_West_B	CARLTO2
Hamra_West_C	CARLTO3
Kraitem_A	CONCOR2
Kraitem_B	HAMRA1
Kraitem_C	HAMRA2
Kraitem_D	HAMRA3
El_Manara_A	JEANNE1
El_Manara_B	JEANNE2
LAU_Beirut_A	JEANNE3
Sumerland_A	KRAYTM1
Raoucheh_A	KRAYTM2
Ras_Beirut_A	MOVNPK1
Strand_C	MOVNPK2
Tallet_Druz_A	RAOUCH1
Tallet_Druz_C	RAOUCH2
	RAOUCH3
	WARDIE3

⁸¹²⁷ Exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1264-1265. While Blue mobiles may have activated more cells in the two tables than set out by the Trial Chamber below, the Trial Chamber focused on those activations that Mr Platt specifically relied upon in his report in relation to the alleged surveillance of Mr Hariri. Mr Platt also lists all cells ‘that are known to have alternate spellings’. Exhibit P1783 (Expert report of Gary Platt – Chronology), pp 446-456.

4296. Those within a 500-1,000-metre radius were:

Quraitem Palace Area – MTC	Quraitem Palace Area – Alfa
Ain_El_Tineh_A	AICHA1
Ain_El_Tineh_B	AICHA2
Ain_El_Tineh_C	AICHA3
Arab_Bldg_C	AUH2
AUB_A	AUH3
AUB_C	AUH4
Concorde_B	CARACA3
Concorde_C	CELTEC3
Green_Tower_C	CONCOR1
Hamra_B	IDRISS1
Hamra_C	KHAYAT1
El_Manara_C	KHAYAT2
Bliss_A	MANARA1
Bay_Rock_Cafe1_A	MANARA2
Bay_Rock_Cafe2_A	MODCA1
Hamra_BLF_A	MOVPIK1
Raoucheh_B	MRAICI2
Raouche_C	OGER1
Ras_Beirut_B	OGER3
Riviera_A	SIMON3
Riviera_B	WARDIE1
Strand_A	WARDIE2
Strand_B	ZIDANI3
Tallet_Druz_B	
UNESCO_C	
Wardieh_C	
Zarif_C	

4297. According to Mr Platt, an activation of cells providing coverage within a 500 metre of Quraitem Palace was consistent with the relevant mobile being in its ‘vicinity’. He defined the

activation of cells providing coverage within a 500 to 1000 metre radius of Quraitem Palace as consistent with the mobile being in the ‘area’ of that location.⁸¹²⁸

(c) Thursday 21 October 2004

4298. In the afternoon of Thursday 21 October 2004, Blue 324 and Blue 585 were in contact while in the area of Quraitem Palace.⁸¹²⁹ Later that evening, Blue 585 called Blue 322 and Blue 324, each twice.⁸¹³⁰ Blue 322 called Blue 585 once.⁸¹³¹ On that day, Mr Hariri received several visitors at Quraitem Palace.⁸¹³²

(d) Friday 22 October 2004

4299. On Friday 22 October 2004, Mr Hariri received visitors at Quraitem Palace, including the ambassadors of Germany and Saudi Arabia and Mr Karami.⁸¹³³ He also visited Mr Marwan Hamade at his home.⁸¹³⁴

4300. On that day, Blue 324 called Blue 585 in the afternoon in the area of Quraitem Palace.⁸¹³⁵ Mr Platt testified that the calls of the security detail showed Mr Hariri’s movement from Quraitem Palace to Mr Hamade’s residence and back to Quraitem Palace.⁸¹³⁶ According to Mr Platt, that Subject 7’s Blue 324 activated the cell Riviera_B at approximately the same time a member of the

⁸¹²⁸ Exhibit P1783 (Expert report of Gary Platt – Chronology), paras 22-23, 1264-1265.

⁸¹²⁹ At 15:09, Blue 324 and Blue 585 connected to Tallet_Druz_A. At 17:58, Blue 585 connected to Tallet_Druz_A and Blue 324 connected to Zarif_C, which is adjacent to Tallet_Druz_A. Exhibit P1225, p. 1; exhibit P1229, p. 1; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 97, 100-101; exhibit P112.

⁸¹³⁰ Exhibit P1229, p. 1; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 98, 102.

⁸¹³¹ Exhibit P1229, p. 1; exhibit P1236, p. 1.

⁸¹³² Exhibit P301, pp 252-255; exhibit P303, ERN D0004736; exhibit P434 (Press release, 21 October 2004), which describes a meeting between Mr Hariri and Mr Jumblatt.

⁸¹³³ Exhibit P301, pp 255-258; exhibit P303, ERNs D0004743-D0004744, D0004782.

⁸¹³⁴ Gary Platt, T. 19 January 2017, p. 42. *See also* Marwan Hamade, T. 8 December 2014, pp 41-42; exhibit P1185 (Statement of Witness PRH009), para. 16; Witness PRH009, T. 12 October 2016, p. 58; Witness PRH101, T. 5 October 2016, p. 52-53, 57, 60, 63, 69-70; Gary Platt, T. 7 February 2017, pp 83-84.

⁸¹³⁵ At 16:22, Blue 324 connected to Riviera_B, which is at the coast and compared to LAU_Beirut_A has at least two other cells in-between. Blue 585 connected to Concorde_B. Exhibit P1225, p. 1; exhibit P1229, p. 1; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 106, 109; exhibit P1122 At 16:06, 16:09, 16:25, 16.26 and 16:31, the mobiles of some of Mr Hariri’s bodyguards connected to Riviera_B and Riviera_A, which was adjacent to Riviera_B. At 16.05, the mobile of a member of Mr Hariri’s security detail had activated cell Concorde_B; at 17:13 the same mobile activated cell LAU_MIC2_A. Exhibit P1334 (Call sequence table for mobile ending in 052), p. 21; exhibit P1354 (Call sequence table for mobile ending in 520), pp 131-132; exhibit P1332 (Call sequence table for mobile ending in 973), p. 21; exhibit P1386 (Subscriber note for mobile ending in 520); exhibit P1168 (Statement of Witness PRH101), p. 1, para. 6; exhibit P1122.

⁸¹³⁶ Gary Platt, T. 19 January 2017, p. 42.

security detail activated Riviera_A was ‘consistent with someone conducting active surveillance on Mr. Hariri at this time’.⁸¹³⁷ Later that evening Blue 585 called Blue 322 and Blue 324.⁸¹³⁸

(e) Saturday 23 to Sunday 31 October 2004

4301. According to a logbook of Mr Hariri’s overseas trips, he was in Paris and Riyadh between the morning of Sunday 24 and the early evening of Wednesday 27 October 2004.⁸¹³⁹ Apart from one activation on Tuesday 26 October 2004, at 08:59 by Blue 585 (Concorde_B) when it received a call from Blue 324, there was no Blue mobile activity around Quraitem Palace between 23 and 31 October 2004.⁸¹⁴⁰ On 28 October in the evening, Mr Ayyash’s Green 300 called Mr Badreddine’s Green 023.⁸¹⁴¹

(f) Monday 1 November 2004

4302. On Monday 1 November 2004, at 10:00 and 16:40, Blue 585 called Blue 324 in the area of Quraitem Palace.⁸¹⁴² Later that evening, Blue 322 called Blue 585.⁸¹⁴³ During the day, Mr Hariri had several meetings at Quraitem Palace, including with the Tunisian and Czech ambassadors.⁸¹⁴⁴ Mr Ayyash’s Green 300 called Mr Badreddine’s Green 023 on that day.⁸¹⁴⁵

⁸¹³⁷ Gary Platt, T. 19 January 2017, p. 43.

⁸¹³⁸ Exhibit P1229, p. 1; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 107, 110.

⁸¹³⁹ Exhibit P346 (Logbook of Mr Hariri’s trips abroad), p. 5 (ERN 60004133); exhibit P348 (Travel records of Mr Hariri), ERNs 60141003, 60141005; exhibit P536 (Mr Hariri’s passport), p. 16. *See also* exhibit P301, p. 259; exhibit P303, ERNs D0004753, D0004791.

⁸¹⁴⁰ Exhibit P1225, p. 1; exhibit P1229, pp 1-2; exhibit P1236, p. 1. Mr Platt placed Unesco_C within a radius of 500-1,000 metres of Quraitem Palace. Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1265. Blue 585 activated Unesco_C on 29 October 2004 at 09:53 when it was called by Blue 324. Exhibit P1229, p. 2. However, Mr Platt does not appear to rely on this activation to support the theory that there was surveillance of Mr Hariri.

⁸¹⁴¹ Exhibit P1207, p. 3.

⁸¹⁴² Blue 585 connected to Bay_Rock_Cafe2_A at 10:00 and El_Manara_B at 16:40. Blue 324 connected to Raoucheh_A at 10:00 and Bay_Rock_Cafe2_A at 16:40. Raoucheh_A and El_Manara_B are adjacent to Fadlallah_C, which is adjacent to Hamra_West_B, which in turn borders Fadlallah_A. Exhibit P1225, p. 2; exhibit P1229, p. 2; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 115, 119, 121; exhibit P1122. Exhibits P1122 and P1152 (Atlas of relevant cell sectors), p.148. Regarding Bay_Rock_Cafe2_A, given its name and cell mast location, the Trial Chamber is satisfied that its predicted coverage area is adjacent to Bay_Rock_Cafe1_A. Bay_Rock_Cafe1_A is at the coast and compared to LAU_Beirut_A has at least two other cells in-between.

⁸¹⁴³ Exhibit P1229, p. 2; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 116, 122.

⁸¹⁴⁴ Exhibit P301 (Visitor logbook for Quraitem Palace), pp 264-266; exhibit P303, ERNs D0004836-D0004837.

⁸¹⁴⁵ Exhibit P1207, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 117, 120.

(g) Tuesday 2 November 2004

4303. On Tuesday 2 November 2004, Blue 324 and Blue 585 were in contact in the area of Quraitem Palace.⁸¹⁴⁶ That day, Mr Hariri had several visitors at Quraitem Palace, including the Egyptian ambassador.⁸¹⁴⁷

(h) Wednesday 3 to Thursday 4 November 2004

4304. On 3 Wednesday November 2004, Blue 585 and Blue 324 were in the area of Quraitem Palace.⁸¹⁴⁸

4305. Blue 322 called Blue 585 when Blue 585 was in the area of Quraitem Palace.⁸¹⁴⁹ On Thursday 4 November 2004, there was significant contact—nine times—between Blue 585 and Blue 324 in the area of Quraitem Palace.⁸¹⁵⁰ From midday on Wednesday 3 November, until midday on Thursday 4 November 2004, Mr Hariri travelled to Italy, for a private trip.⁸¹⁵¹ After his return, Mr Hariri's visitors at Quraitem Palace included his adviser, Mr Mustafa Nasser, Mr Bassem El-Sabeh MP and his former finance minister, Mr Fouad Siniora.⁸¹⁵² Later that day Mr Hariri also travelled to Abu Dhabi, which he left at night to return to Beirut.⁸¹⁵³

⁸¹⁴⁶ Blue 324 called Blue 585 at 16:11 with both connecting to Fadlallah_C. At 16:47, Blue 585—at Fadlallah_C—called Blue 324 at Tallet_Druz_A. Exhibit P1225, p. 2; exhibit P1229, p. 2; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 125.

⁸¹⁴⁷ Exhibit P301, pp 266-267.

⁸¹⁴⁸ Blue 585—at Tallet_Druz_A—called Blue 324—El_Manara_B—at 10:57. At 16:49, it called again connecting to Fadlallah_C, with Blue 324 connecting to Bay_Rock_Cafe2_A. Exhibit P1225, p. 2; exhibit P1229, p. 2; Gary Platt, T. 19 January 2017, pp 82-83.

⁸¹⁴⁹ At 15:31 and 15:58. Blue 585 connected to El_Manara_B. Exhibit P1229, p. 2; exhibit P1236, p. 1.

⁸¹⁵⁰ Blue 324 activated the following cells during these calls: Bay_Rock_Cafe2_A (10:16), Fadlallah_C (11:04), Concorde_B (11:07), Riad_El_Soloh_B (11:48), El_Manara_B (13:58 and 14:20), Bay_Rock_Cafe2_A (14:30), Tallet_Druz_C (14:46) and Raoucheh_B (14:55). Blue 585 activated the following cells during these calls: Concorde_B (10:16), Bay_Rock_Cafe2_A (11:04), El_Manara_B (11:07 and 11:48), Fadlallah_C (13:58), Fadlallah_A (14:20), Bay_Rock_Cafe2_A (14:30), Fadlallah_C (14:46) and Raoucheh_B (14:55). Tallet_Druz_C is adjacent to Fadlallah_B. It borders Fadlallah_A. Raoucheh_B is adjacent to Raoucheh_A. Riad_El_Soloh_B is adjacent to Jesuites_C which provided predicted best server coverage for the Parliament. Exhibit P1122; exhibit P1225, p. 2; exhibit P1229, pp 2-3; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 130-132.

⁸¹⁵¹ Gary Platt, T. 19 January 2017, pp 80, 87-88, 108; exhibit P346, ERN 60004133; exhibit P348, ERN 60141006; exhibit P536, p. 23. *See also* exhibit P301, p. 267.

⁸¹⁵² Exhibit P301, pp 267-268.

⁸¹⁵³ Exhibit P303, ERN D0004863; exhibit P346, ERN 60004133; exhibit P348, ERN 60141007; exhibit P536, p. 23; Gary Platt, T. 19 January 2017, pp 87-88, 100-104; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 129. *See also* exhibit P301, p. 268.

(i) Friday 5 November 2004

4306. On Friday 5 November 2004, Blue 324, from the Parliament area, contacted Blue 585 in the area of Quraitem Palace.⁸¹⁵⁴ At 12:46, Blue 322 called Blue 585 and a few minutes later Blue 324 called Blue 585.⁸¹⁵⁵ On that day, Mr Hariri received several visitors at Quraitem Palace, including Mr Michel El-Murr, Mr Hani Hammoud and Mr Hasan Mneimneh.⁸¹⁵⁶ Mr Hariri was also in the area of Dar El-Fatwa, in south Beirut, during the day.⁸¹⁵⁷

(j) Saturday 6 November 2004

4307. On Saturday 6 November 2004, Mr Badreddine's Green 023 received one call from Mr Ayyash's Green 300 and one from Mr Merhi's attributed Green 071.⁸¹⁵⁸

(k) Monday 8 November 2004

4308. On Monday 8 November 2004, Mr Hariri was at Quraitem Palace during the day receiving visitors, including his advisers Mr Ghazi El-Youssef and Mr Bassem El-Sabeh, Mr Bassel Fuleihan MP, who died in the explosion on 14 February 2005, and Mr Ahmad Fatfat MP.⁸¹⁵⁹

4309. Blue 585 and Blue 324 were in contact five times in the area of Quraitem Palace, of the crimes scene and 'in the area between'.⁸¹⁶⁰

⁸¹⁵⁴ At 10:15, Blue 324 activated Jesuites_C and Blue 585 activated El_Manara_B. Exhibit P663 (Statement of Andrew Fahey), annex 1, no. 107; exhibit P1122; exhibit P1225, p. 2; exhibit P1229, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 135, 137, 139.

⁸¹⁵⁵ Blue 585 connected to Bay_Rock_Cafe2_A and Raoucheh_B for these calls. Exhibit P1225, p. 2; exhibit P1229, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 136, 138-139.

⁸¹⁵⁶ Exhibit P301, pp 268-269; exhibit P303, ERN D0004852.

⁸¹⁵⁷ Exhibit P303, ERNs D0004861-D0004862; exhibit P663 (Statement of Andrew Fahey), annex 1, no. 50; exhibit P1122.

⁸¹⁵⁸ Exhibit P1211, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 141, 143-144.

⁸¹⁵⁹ Exhibit P301, pp 271-272; exhibit P303, ERNs D0004838-D0004839.

⁸¹⁶⁰ Blue 324 activated the following cells during these calls: Riviera_A (13:22), El_Manara_C (13:50), El_Manara_B (14:18), Bay_Rock_Cafe2_A (16:44) and Bay_Rock_Cafe1_A (16:46). Blue 585 activated the following cells during these calls: Fadlallah_B (13:22), BayView_A (13:50), Tallet_Druz_A (14:18), Fadlallah_B (16:44) and Raoucheh_B (16:46). Exhibit P1225, p. 2; exhibit P1229, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 151, 153-155, 1265-1266, 1268. Mr Platt placed cells Riviera_A and El_Manara_C within a radius of 500-1,000 metres of Quraitem Palace BayView_A was at the coast adjacent to Riad_El_Soloh_C which provided predicted best server coverage to the crime scene location. Mr Platt described Riad_El_Soloh_C as also providing coverage within a 500 metre radius of Parliament. Exhibit P663 (Statement of Andrew Fahey), annex 1, no. 69; exhibit P1122.

4310. Based on the calls of the security detail, Mr Platt concluded that, between 13.09 and 13.27, Mr Hariri travelled from Quraitem Palace to Mr Hamade's residence, that he left it sometimes after 14.07 and at 14.27 was 'probably en route back to Quraitem Palace'.⁸¹⁶¹

4311. Mr Platt commented that Subject 7's Blue 324 activated cell Riviera_A at 13:22—at around the approximate time Mr Hariri arrived at Mr Hamade's residence—and that Subject 5's Blue 585 had moved from 'the vicinity of Quraitem Palace...to the area of the St. Georges Hotel and St. Georges Marina' for the next Blue call, at 13:50.⁸¹⁶² Mr Platt underlined that, during the time the security detail travelled back to Quraitem Palace, both Blue 324 and Blue 585 connected to cells in its 'vicinity'.⁸¹⁶³

(l) Tuesday 9 November 2004

4312. On Tuesday 9 November 2004, at 15:32, Blue 324 called Blue 585, both activating Fadlallah_B.⁸¹⁶⁴ Mr Hariri was at Quraitem Palace during the day receiving visitors, including the Australian ambassador.⁸¹⁶⁵

(m) Wednesday 10 November 2004

4313. On Wednesday 10 November 2004, Blue 585 and Blue 324 were in contact four times in the area of Quraitem Palace.⁸¹⁶⁶ In the evening, Blue 322 called Blue 585 twice, then Blue 324 called Blue 585 once.⁸¹⁶⁷ Mr Hariri received visitors at Quraitem Palace, including the ambassadors of Gabon and Jordan.⁸¹⁶⁸ Mr Ayyash's Green 300 twice called Mr Badreddine's

⁸¹⁶¹ Gary Platt, T. 24 January 2017, pp 18-19, 23.

⁸¹⁶² Gary Platt, T. 24 January 2017, p 22-23.

⁸¹⁶³ Gary Platt, T. 24 January 2017, pp 23-24.

⁸¹⁶⁴ Exhibit P1225, p. 2; exhibit P1229, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 159, 162.

⁸¹⁶⁵ Exhibit P301, pp 272-274; exhibit P303, ERNs D0004840-D0004841.

⁸¹⁶⁶ Blue 324 activated the following cells during these calls: Concorde_B (10:58), Hamra_West_A (15:30), Raoucheh_A (15:37) and Bay_Rock_Cafe2_A (16:31). Blue 585 activated the following cells during these calls: Tallet_Druz_A (10:58), Concorde_B (15:30 and 15:37) and Fadlallah_A (16:31). Exhibit P1225, p. 3; exhibit P1229, pp 3-4; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 168, 172, 174, 176, p. 447. Hamra_West_A is adjacent to Fadlallah_A, *see* exhibit P1122.

⁸¹⁶⁷ Exhibit P1229, p. 4; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 177.

⁸¹⁶⁸ Exhibit P301, pp 274-276; exhibit P303, ERN D0004851.

Green 023, at 12:02 and 15:45.⁸¹⁶⁹ According to Mr Platt, since the Green mobiles connected to the same cell for the second call, this is consistent with their users meeting.⁸¹⁷⁰

(n) Thursday 11 to Wednesday 24 November 2004

4314. 11 November 2004 is the commencement date of the pleaded conspiracy. The Prosecutor alleges in the amended consolidated indictment that, between Thursday 11 November 2004 and Monday 14 February 2005, Mr Ayyash, Mr Merhi, Mr Badreddine and unidentified others, including the assassination team, agreed to commit the charged terrorist act.

4315. On Thursday 11 November, Mr Hariri met visitors at Quraitem Palace between 08:00 and 12:00 before travelling to Saudi Arabia in the afternoon. In a media release, he conveyed his condolences to the Palestinian people following the death of President Yasser Arafat.⁸¹⁷¹

4316. Before noon on that day, Blue 585 and Blue 324 were in contact nine times.⁸¹⁷² Then, they were in contact at 12:19, when Blue 324 was in the area of the airport, connecting to Airport_A – a cell adjacent to the one providing best server coverage to the airport), with Blue 585 being north of it (Ouzai_A – three cells in-between).⁸¹⁷³

4317. Witness PRH009, Witness PRH101, Mr Yahya Al-Arab, Mr Wissam Al-Hassan and Mr Talal Nasser were members of Mr Hariri's security detail, who generally accompanied him.⁸¹⁷⁴ Mr Al-Arab was one of his security chiefs, as the supervisor of Mr Hariri's close protection team. Due

⁸¹⁶⁹ Exhibit P1207, p. 3; exhibit P1211, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 169, 173, 175.

⁸¹⁷⁰ Gary Platt, T. 24 January 2017, pp 30-32, 45-46. *See also* exhibit P1782, para. 184.

⁸¹⁷¹ Exhibit P301, exhibit P303, exhibit P1782 (Narrative overview of telephone activity and relevant events), paras 189-190.

⁸¹⁷² Blue 324 activated the following cells during these calls: Hadath_C (9:28), Bay_Rock_Cafe2_A (09:58 and 10:04) and Fadlallah_A (10:56, 10:57, 11:41, 11:45, 12:00 and 12:02). Blue 585 activated the following cells during these calls: Concorde_B (09:28 and 09:58), Fadlallah_C (10:04), Fadlallah_A (10:56), Tallet_Druz_C (10:57), Bay_Rock_Cafe2_A (11:41), Raoucheh_B (11:45) and Fadlallah_B (12:00 and 12:02). Exhibit P1225, p. 3; exhibit P1229, p. 4; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 182, 184-185. Hadath_C was in south Beirut, east of the airport. Exhibit P1122.

⁸¹⁷³ Exhibit P663 (Statement of Andrew Fahey), annex 1, no. 35; exhibit P1122; exhibit P1225, p. 3; exhibit P1229, p. 4; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 186.

⁸¹⁷⁴ Exhibit P726 (Statement of Alia Al-Arab), paras 9; exhibit P1168 (Statement of Witness PRH101), p. 1, 15, paras 6-7, 89, 96; exhibit P1185 (Statement of Witness PRH009), p. 1, paras 5, 10-12; exhibit P1386. *See also* exhibit P1783 (Expert report of Gary Platt – Chronology), paras 65-66; Gary Platt, T. 7 March 2017, p. 56.

to the convoy's jammers blocking the signal, mobiles could not be used in the convoy when it was moving.⁸¹⁷⁵

4318. In the morning of Thursday 11 November 2004, two of these mobiles activated cells in the area of Quraitem Palace.⁸¹⁷⁶ At 12:20 and 12:22, mobile 052 activated the Airport_B cell.⁸¹⁷⁷ At 12:25, mobile 506 activated the same cell.⁸¹⁷⁸ Airport_B is adjacent to the cell providing best server coverage to the airport.⁸¹⁷⁹

4319. Mr Platt plotted some of this information on a map:

⁸¹⁷⁵ Regarding the jamming devices installed in the convoy vehicles, *see* chapter VI 'Explosion on 14 February 2005', (F) (2) (e) (ii) 'Jamming devices'.

⁸¹⁷⁶ Namely, Concorde_B, LAU_MIC2_A, LAU_Beirut_A and Kraittem_B. Kraittem_B was adjacent to LAU_Beirut_A. Exhibit P1334, p. 28; exhibit P1359 (call sequence table for mobile 771), pp 129-130; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 187; exhibit P1122; exhibit P1152, p. 588. No shape file was available for LAU_MIC2_A. However, given its title (*see also* exhibit P1783, p. 452 in this regard) and cell mast location, the Trial Chamber is satisfied that its coverage area was close to LAU_Beirut_A.

⁸¹⁷⁷ Exhibit P1334, p. 28; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 188.

⁸¹⁷⁸ Exhibit P1322 (Call sequence table for mobile ending in 506), p. 31; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 188.

⁸¹⁷⁹ Exhibit P663 (Statement of Andrew Fahey), annex 1, no. 35; exhibit P1122.



Map 12: Blue Network (S5 and S7) at 12:19, HARIRI's Security Detail from 12:20 to 12:25, Beirut Airport, 11 November 2004

Exhibit P1783 (Expert Report of Gary Platt - Chronology), p. 63

4320. From Thursday 11 November until the evening of Saturday 13 November, Mr Hariri was in Saudi Arabia and Egypt.⁸¹⁸⁰ He left Beirut for Saudi Arabia in the afternoon of 11 November 2004.⁸¹⁸¹ In the morning until midday, he received visitors at Quraitem Palace, including the French ambassador.⁸¹⁸²

4321. On Thursday 18 November 2004, Mr Hariri travelled to Paris, and then on Sunday 21 November, to Geneva.⁸¹⁸³ He returned to Beirut on Wednesday 24 November 2004 at 16:30.⁸¹⁸⁴

4322. There were no Blue mobile activations around Quraitem Palace between 12 and 22 November 2004.⁸¹⁸⁵ On Tuesday 23 and Wednesday 24 November 2004, by contrast, Blue 585 and Blue 324 were in the area of Quraitem Palace before his return from Switzerland.⁸¹⁸⁶

(o) Thursday 25 November 2004

4323. On Thursday 25 November 2004, Blue 585 and Blue 324 were in contact in the area of Quraitem Palace.⁸¹⁸⁷ During the day, Mr Hariri received visitors at Quraitem Palace, including the French ambassador again.⁸¹⁸⁸

⁸¹⁸⁰ Exhibit P303, ERN D0004823; exhibit P346, ERN 60004134; exhibit P536, pp 16, 22. *See also* exhibit P301, p. 276.

⁸¹⁸¹ Exhibit P303, ERNs D0004822, D0004835. *See also* exhibit P301, p. 276.

⁸¹⁸² Exhibit P301, p. 276; exhibit P303, ERN D0004835.

⁸¹⁸³ Exhibit P303, ERNs D0004854, D0004856; exhibit P346, ERN 60004134; exhibit P348, ERNs 60141009-60141010; exhibit P536, pp 9, 22. *See also* exhibit P301, p. 286.

⁸¹⁸⁴ Exhibit P303, ERN D0004855; exhibit P346, ERN 60004134; exhibit P348, ERN 60141010; exhibit P536, p. 22. *See also* exhibit P301, p. 287.

⁸¹⁸⁵ Gary Platt, T. 24 January 2017, pp 60, 102; exhibit P1783 (Expert report of Gary Platt – Chronology), pp 65, 199.

⁸¹⁸⁶ **23 November:** Blue 324 activated Concorde_B (13:29), El_Manara_B (15:00) and Fadlallah_C (16:30). Blue 585 activated Hai Kneisse_B (13:29) and Fadlallah_A (15:00 and 16:30). Exhibit P1225, p. 3; exhibit P1229, p. 4; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 198, 201-203. Hai Kneisse_B was in south Beirut, just north of Hadath_C. Exhibit P1122. **24 November:** at 12:27, Blue 585 called Blue 324, with the mobiles connecting to Fadlallah_C (Blue 324) and Concorde_B (Blue 585). Exhibit P1225, p. 3; exhibit P1229, p. 4; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 208, 212.

⁸¹⁸⁷ Blue 324 connected to BorjBrajneh-II_B (10:15), Raoucheh_A (10:50) and Tallet_Druz_C (16:45). Blue 585 connected to Raoucheh_B (10:15) and Fadlallah_B (10:50 and 16:45). Exhibit P1225, pp 3-4; exhibit P1229, pp 4-5; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 218-221. BorjBrajneh-II_B was in south Beirut, just north of the airport. Exhibit P1122.

⁸¹⁸⁸ Exhibit P301, pp 288-289; exhibit P303, ERN D0004847.

(p) Friday 26 November 2004

4324. On Friday 26 November 2004, Blue 585 and Blue 324 were in contact on three occasions in the Quraitem Palace area.⁸¹⁸⁹ In the evening, Mr Hariri received Mr Walid Jumblatt MP, the leader of the Progressive Socialist Party, at Quraitem Palace.⁸¹⁹⁰ He had received other visitors during the day, including the UN Secretary General's Special Envoy Mr Rød-Larsen, Mr Marwan Hamade and some MPs.⁸¹⁹¹

(q) Saturday 27 November to Thursday 16 December 2004

4325. On Sunday 28 November 2004, between 13:00 and 17:00, Mr Hariri travelled to Cairo for a meeting.⁸¹⁹² He returned to Beirut the same day, and in the evening, left for a private trip to Europe to Monte Carlo, returning late on Thursday 9 December 2004.⁸¹⁹³ There was no Blue or Green network activity on Saturday 27 or Sunday 28 November.⁸¹⁹⁴

4326. Between Sunday 12 and Thursday 16 December 2004, Mr Hariri was in Dubai and Manama, Bahrain.⁸¹⁹⁵ There were no Blue mobile activations around Quraitem Palace between 27 November and 16 December 2004, except for Blue 585 calling Blue 324 from El_Manara_B on 29 November 2004.⁸¹⁹⁶

(r) Friday 17 to Monday 20 December 2004

4327. Before noon on Friday 17 December 2004, Mr Hariri attended a meeting at the offices of the Mufti of the Republic, Mr Qabbani at Dar El-Fatwa,⁸¹⁹⁷ in Aicha-Bakkar, about a five-minute

⁸¹⁸⁹ Blue 585 connected to El_Manara_B (10:01), Concorde_B (10:17) and Fadlallah_C (17:02). Blue 324 connected to Jnah El Wata_B (10:01), El_Manara_B (10:17) and Bay_Rock_Cafe2_A (17:02). Exhibit P1225, p. 4; exhibit P1229, p. 5; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 224, 226-228. Jnah El Wata_B was north of El_Manara_B, with Unesco_B in between these two predicted best server coverage areas. Exhibit P1122.

⁸¹⁹⁰ Exhibit P301, p. 291; exhibit P303, ERN D0004843.

⁸¹⁹¹ Exhibit P301, pp 289-291; exhibit P303, ERNs D0004834, D0004842.

⁸¹⁹² Exhibit P346, ERN 60004134; exhibit P348, ERN 60141012; exhibit P536, p. 22. *See also* exhibit P301, p. 293.

⁸¹⁹³ Exhibit P303, ERN D0004845; exhibit P346, ERN 60004134; exhibit P348, ERN 60141013; exhibit P536, p. 22. *See also* exhibit P301, pp 293-296. Exhibit P301, the visitor logbook of Quraitem Palace, suggests that visitors for Mr Hariri entered the palace on 30 November and 1-2, 4 and 6 December 2004.

⁸¹⁹⁴ Exhibit P1782 (Narrative overview of telephone activity and relevant events), paras 221-226.

⁸¹⁹⁵ Exhibit P303, ERNs D0004879-D0004881, D0004892-D0004893, D0004895-D0004896, D0004899; exhibit P346, ERN 60004135; exhibit P348, ERNs 60141014-60141016; exhibit P536, pp 11, 17, 22. *See also* exhibit P301, pp 301-302; Ghaleb El-Chammaa, T. 10 February 2015, pp 64-66; Fouad Siniora, T. 24 March 2015, p. 3.

⁸¹⁹⁶ Exhibit P1229, p. 5; Gary Platt, T. 25 January 2017, pp 15-18.

⁸¹⁹⁷ Exhibit P303, ERNs D0004866-D0004867; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 232.

drive from the palace.⁸¹⁹⁸ He then went to the Al-Omari Mosque in downtown Beirut and the Mohammed El-Amine Mosque, south-east of Parliament.⁸¹⁹⁹

4328. During the day, Mr Hariri received visitors at Quraitem Palace, including the ambassadors of Romania and Saudi Arabia.⁸²⁰⁰ At 17:00, he visited Sidon, in South Lebanon.⁸²⁰¹ At 19:00, he departed from Beirut airport to Paris, for a private visit, returning on 20 December 2004 at 17:00.⁸²⁰²

4329. On 17 December 2004, at 13:52, Blue 585 called Blue 324 connecting to El_Manara_B and Tallet_Druz_A, respectively.⁸²⁰³ Earlier that day, at 12:13, Blue 322 had contacted Blue 585.⁸²⁰⁴

(s) Tuesday 21 December 2004

4330. On Tuesday 21 December 2004 between 07:45 and 22:25, Mr Hariri received visitors at Quraitem Palace.⁸²⁰⁵

4331. In the evening, he met Hezbollah's Secretary-General, Mr Hassan Nasrallah, at his headquarters in Haret Hreik, Dahyieh.⁸²⁰⁶ Mr Hariri's convoy left Quraitem Palace and was present in the area around Hezbollah's General Secretariat in Haret Hreik from around 21:40 until after midnight, returning to Quraitem Palace by 00:25.⁸²⁰⁷

⁸¹⁹⁸ Mohammed Mneimneh, T. 11 November 2014, p. 28.

⁸¹⁹⁹ Exhibit P303, ERN D0004866; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 232; exhibit P663 (Statement of Andrew Fahey), annex 1, no. 93.

⁸²⁰⁰ Exhibit P301, pp 303-304; exhibit P303, ERNs D0004866-D0004867.

⁸²⁰¹ Exhibit P303, ERNs D0004883, D0004887, D0004899.

⁸²⁰² Exhibit P303, ERNs D0004902-D0004903; exhibit P346, ERN 60004135; exhibit P348, ERN 60141020; exhibit P536, p. 22; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 232. *See also* exhibit P301, pp 304-305. Exhibit P301, the visitor logbook of Quraitem Palace, suggests that a few visitors for Mr Hariri entered the palace on 18 December 2004 and before 17:00 on 20 December 2004.

⁸²⁰³ Exhibit P1225, p. 4; exhibit P1229, p. 5; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 233, 236.

⁸²⁰⁴ Exhibit P1236, p. 1; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 235.

⁸²⁰⁵ Exhibit P301, pp 305-307; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 239. Visitors included Mr Ghattas El-Khoury, Mr Bassel Fuleihan and Mr Ghazi El-Youssef.

⁸²⁰⁶ Witness PRH101, T. 6 October 2016, pp 28-29, 36-37; Mustafa Nasser, T. 9 April 2015, pp 7-9, 12, 32-37, 47-55. With regard to locating the Haret Hreik district in the Dahyieh area, *see* exhibit P1131 (Statement of Andrew Fahey related to Dahyieh), paras 28-30. The significance of this meeting is discussed in chapter IV 'Historical and political background to the attack', (M) 'Political events between the second Bristol Group meeting and the third Bristol Group meeting'.

⁸²⁰⁷ Exhibit P1793 (Chronology PowerPoint presentation – 20 December 2004 to 31 December 2004), slides 38-46; Witness PRH101, T. 6 October 2016, pp 36-38; exhibit P1175 (PowerPoint presentation on meeting with

4332. In the afternoon, at 13:16 and 15:21, Blue 585 called Blue 324.⁸²⁰⁸ At 15:14, Blue 322 called Blue 585 and at 15:20, Blue 585 called Blue 322 back.⁸²⁰⁹ Blue 585 activated the following cells during these calls: Concorde_B, El_Manara_B, Bay_Rock_Cafe2_A and Fadlallah_A; Blue 324 activated Fadlallah_B and Bay_Rock_Cafe2_A; and Blue 322 activated Sfeir_B.⁸²¹⁰

4333. For illustration purposes is a map created by Mr Platt plotting some of the relevant cell coverage areas:



Map 18: Blue Network (S5 and S7), Quraitem Palace, 21 December 2004 (13:16 to 15:21), exhibit P1783 (Expert Report of Gary Platt - Chronology), p. 80

Mr Nasrallah); Gary Platt, T. 25 January 2017, pp 81-87. At 21:18, Mr Al-Arab's and Witness 101's mobiles activated cells in the area of Quraitem Palace (LAU_MIC2_A and El_Manara_B, respectively) and between 21:40 and 00:08, they activated cells in the area of Haret Hreik (Haret_Hreik_2_A, Haret_Hreik_2_B, Haret_Hreik_2_C, Bir_El_Abed_C). Exhibit P1334, pp 39-40; exhibit P1359, p. 212.

⁸²⁰⁸ Exhibit P1225, p. 4; exhibit P1229, pp 5-6; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 245, 247. At 13:16, Blue 585 connected to Concorde_B and Blue 324 connected to Fadlallah_B and at 15:21, both Blue 585 and Blue 324 connected to Bay_Rock_Cafe2_A.

⁸²⁰⁹ Exhibit P1236, p. 2; exhibit P1229, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 246. For the 15:14 call, Blue 322 connected to Sfeir_B and Blue 585 to Fadlallah_A; at 15:20, Blue 585 connected to El_Manara_B and Blue 322 to Sfeir_B.

⁸²¹⁰ P1225, p. 4; exhibit P1229, pp 5-6; exhibit P1236, p. 2. See also Gary Platt, T. 25 January 2017, pp 57-59.

4334. Blue 585, Blue 324 and Blue 322 exchanged a number of calls between 20:30 and 21:00 on the evening of 21 December 2004 and again in the early morning hours on 22 December 2004. At 20:31, 20:39 and 20:51 on 21 December 2004, Blue 585 made three calls to Blue 324, first activating cells in the area of Quraitem Palace and then moving south towards south Beirut.⁸²¹¹

4335. More than three hours later, Blue 585 called Blue 324 at 00:18 and 00:25, and then at 00:31, Blue 324 called Blue 322, activating cells in the area of Quraitem Palace, central Beirut and on the north-west coast of Beirut.⁸²¹² Finally, at 00:37, Blue 322 called Blue 585, both activating cells in south Beirut.⁸²¹³

4336. Activity on the Yellow network also increased. Mr Ayyash's Yellow 294, and Yellow 457, Yellow 933, Yellow 024, Yellow 120 and Yellow 170 exchanged calls between the evening of 21 December 2004 and the early morning hours on 22 December 2004. They activated cells in the area of Quraitem Palace, then in south Beirut in the area of Hezbollah's General Secretariat in Haret Hreik and later again in the area of Quraitem Palace.⁸²¹⁴

4337. Between 19:38 and 20:29, the same six Yellow mobile users were involved in seven calls, activating cells in the area of Quraitem Palace, except for Mr Ayyash's Yellow 294 which activated a cell in southern Beirut.⁸²¹⁵ In Mr Platt's view, given that Yellow 457 was involved in six of the

⁸²¹¹ Blue 585 connected to Raouche_A (20:31), BorjBrajneh-II_B (20:39) and Haret Hreik-II_C (20:51). Blue 324 connected to Jnah El Wata_B (20:31) and to Haret Hreik-II_A (20:39 and 20:51). Exhibit P1225, pp 4-5; exhibit P1229, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 254, 257. BorjBrajneh-II_B was in south Beirut, just north of the airport. Jnah El Wata_B was north of El_Manara_B, with Unesco_B in between these two predicted best server coverage areas, exhibit P1122.

⁸²¹² Blue 585 connected to Haret Hreik_C (00:18) and Riviera_B (00:25). Blue 324 connected to Chatila_C (00:18), Concorde_B (00:25) and Tallet Druz_C (00:31). Blue 322 connected to El-Mazraa_A (00:31). Exhibit P1225, p. 5; exhibit P1229, p. 6; exhibit P1236, p. 2; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 259-260. Riviera_B is at the coast and compared to LAU_Beirut_A has at least two other cells in-between. Exhibit P1122.

⁸²¹³ Blue 322 connected to Sfeir_B (00:37); Blue 585 connected to Ouzai_A (00:37). Exhibit P1229, p. 6; exhibit P1236, p. 2; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 263. Ouzai_A was a cell three cells north of Airport_A – a cell adjacent to the one providing best server coverage to the airport. Exhibit P663 (Statement of Andrew Fahey), annex 1, no. 35; exhibit P1122. *See also* Gary Platt, T. 25 January 2017, pp 73-75.

⁸²¹⁴ Exhibit P1783 (Expert report of Gary Platt – Chronology), paras 248, 250-253, 255-256, 258, 260-262. *See also* exhibit P1782, paras 324-328, 331.

⁸²¹⁵ At 19:38, Yellow 294 (BIRABD2) called Yellow 457 (KRAYTM2); at 20:13, Yellow 457 (KRAYTM1) called Yellow 294 (BIRABD1); at 20:26, Yellow 120 (CARLTO1) called Yellow 457 (CARLTO3); at 20:27, Yellow 120 (AINTIN2) called Yellow 933 (Tallet_Druz_A); at 20:28, Yellow 457 (CARLTO2) called Yellow 024 (Hamra_West_A); at 20:29, Yellow 457 (MOVPIK1) called Yellow 170 (El_Manara_B); 32 seconds later also at 20:29, Yellow 457 (MOVPIK1) called Yellow 933 (Ain_El_Tineh_A). Exhibit P517, p. 37; exhibit P1240, p. 50; exhibit P1244, p. 35; exhibit P1246, p. 24; exhibit P1247, p. 56; exhibit P1252, p. 64; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 248, 250-253, 255.

seven calls on the Yellow network in this short period its user—Subject 6 according to the Prosecution case—was coordinating the activities of the other users.⁸²¹⁶ This is shown on the map below from Mr Platt's chronology report:



Map 19: Yellow and Blue Network, Quraitem Palace, 21 December 2004 (19:38 to 20:31)

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 82

4338. Between 20:39 on the evening of Tuesday 21 December and 01:39 in the morning of Wednesday 22 December 2004, the same Yellow users exchanged over 30 calls, first activating cells in south Beirut in the area of Haret Hreik,⁸²¹⁷ and later, after 00:22, activating cells in the

⁸²¹⁶ Gary Platt, T. 25 January 2017, pp 72-73.

⁸²¹⁷ At 20:39, Yellow 457 (CBJOUR3) called Yellow 120 (BIRABD1); at 20:41, Yellow 933 (Haret_Hreik_B) called Yellow 457 (SABRA2); at 20:48, Yellow 457 (BIRABD1) called Yellow 120 (SABRA1); at 21:05, Yellow 457 (SABRA2) called Yellow 170 (Haret_Hreik_2_C); at 21:08, Yellow 457 (BIRABD1) called Yellow 933 (Haret_Hreik_2_B); at 21:10, Yellow 457 (HARA3) called Yellow 120 (BIRABD2); at 22:02, Yellow 294 (BIRABD1) called Yellow 457 (ROUEIS3); at 22:14, Yellow 457 (BRAJNE3) called Yellow 933 (Haret_Hreik_2_B); at 22:16, Yellow 933 (Haret_Hreik_2_B) called Yellow 457 (HARA2); at 22:17, Yellow 933 (Haret_Hreik_2_B) called Yellow 457 (HARA2) again; at 23:39, Yellow 294 (BIRABD1) called Yellow 457 (HARA2); at 00:00, Yellow 457 (BIRABD1) called Yellow 933 (Haret_Hreik_B); at 00:10, Yellow 294 (BIRABD1) called Yellow 457 (HARA3); at 00:11, Yellow 457 (HARA2) called Yellow 933 (Haret_Hreik_B); at 00:13, Yellow 294 called Yellow 457 (HARA2); at 00:14, Yellow 457 (HARA2) called Yellow 170 (Haret_Hreik_2_C); at 00:15, Yellow 457 (HARA2) called Yellow 024 (Haret_Hreik_2_A); at 00:15, Yellow 457 (HARA2) called Yellow 933

areas of Quraitem Palace, Parliament, and other locations in Beirut. Mr Ayyash's Green 300 and Yellow 294 activated BIRABD2, which provided coverage to the Hezbollah building, and BIRABD1. These two cells provide overlapping coverage to the cells that Mr Hariri's security detail connected to during the meeting.⁸²¹⁸

4339. Finally, between 00:33 and 01:39, the mobiles activated cells in south Beirut.⁸²¹⁹ According to Mr Platt, this activity on the Yellow and Blue networks shows that the relevant Yellow and Blue users were in the immediate area of Haret Hreik before Mr Hariri arrived for the meeting with Mr Nasrallah. They then stayed in the area until the meeting ended, when they returned to the area of Quraitem Palace and eventually back to south Beirut when the surveillance was complete.⁸²²⁰

(t) Wednesday 22 to Thursday 23 December 2004

4340. The amended consolidated indictment pleads that Mr Oneissi and Mr Sabra joined the conspiracy between Wednesday 22 December 2004 and the morning of Monday 14 February 2005, before the attack.

4341. On 22 December 2004, between 07:50 and 20:50, Mr Hariri received a number of visitors at Quraitem Palace.⁸²²¹ Around mid-day, Mr Hariri, Mr Bassel Fuleihan, Mr Ghattas El-Khoury

(Haret_Hreik_B); at 00:16, Yellow 024 (Haret_Hreik_2_A) called Yellow 120 (HARA3); at 00:16, Yellow 457 (BIRABD1) called Yellow 170 (Borj_Brajneh_2_A); at 00:19, Yellow 933 (Bir_hassan_B) called Yellow 024 (Ras_Nabeh_C). Exhibit P517, p. 37; exhibit P1240, pp 50-51; exhibit P1244, p. 35; exhibit P1246, pp 24-25; exhibit P1247, p. 56; exhibit P1252, pp 64-65; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 256, 258. *See also* Gary Platt, T. 25 January 2017, pp 86-88, 91-100.

⁸²¹⁸ At 00:22, Yellow 933 (Unesco_B) called Yellow 457 (RAOUCH2); at 00:24, Yellow 120 (CONCOR2) called Yellow 024 (Fadlallah_A); at 00:28, Yellow 024 (Raoucheh_A) called Yellow 457 (PHENMB1); at 00:30, Yellow 457 (ZOUKAK2) called Yellow 933 (Minaa_El_hosson_B); at 00:31, Yellow 024 (Sumerland_A) called Yellow 170 (Raoucheh_A); at 00:32, Yellow 933 (Riad_El_Soloh_B) called Yellow 120 (CARLTO3); at 00:32, Yellow 170 (Raoucheh_A) called Yellow 457 (COLA3); at 00:33, Yellow 457 (OUZAI1) called Yellow 120 (OGER3). Exhibit P517, p. 37; exhibit P1244, p. 35; exhibit P1246, p. 25; exhibit P1247, p. 56; exhibit P1252, p. 65; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 260-261; Gary Platt, T. 25 January 2017, pp 98-100; exhibit P1782 (Narrative overview of telephone activity and relevant events), paras 322-324.

⁸²¹⁹ At 00:33, Yellow 457 (OUZAI1) called Yellow 120 (OGER3); at 00:34, Yellow 457 (OUZAI2) called Yellow 024 (Tabbet_el_Dahra_A); at 00:36, Yellow 457 (HARA3) called Yellow 294 (ROUEIS2); at 01:39, Yellow 457 (BRAJNE2) called Yellow 170 (Sfeir_A). Exhibit P517, p. 37; exhibit P1240, p. 51; exhibit P1244, p. 35; exhibit P1246, p. 25; exhibit P1252, p. 65; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 262. *See also* Gary Platt, T. 25 January 2017, pp 100-101.

⁸²²⁰ Gary Platt, T. 25 January 2017, pp 88, 90-95, 100-101. *See also* exhibit P1793, slides 49-66.

⁸²²¹ Exhibit P301, pp 307-309.

and Mr Hariri's advisor, Mr Daoud El Sayegh, visited the Maronite Patriarch Nasrallah Boutros Sfeir in Bkirki, returning to Quraitem Palace by 15:00.⁸²²²

4342. That day, between 10:21 and 16:43, Blue 585 and Blue 324 were in contact four times, activating cells in the area of Quraitem Palace.⁸²²³

4343. At 17:17, Blue 322 contacted Blue 585, both activating cells in south Beirut.⁸²²⁴ Mr Platt testified that this series of calls followed a similar pattern of activity as that between October and mid-December where Blue 324 and Blue 585 connected to cells in the same area of Quraitem Palace, seemingly conducting surveillance of Mr Hariri, and then returning to south Beirut in the evening when contact was made with Blue 322.⁸²²⁵ At 13:35 and 15:17, Mr Ayyash's Yellow 294 received two calls from Yellow 425 and Yellow 669, activating cells in south Beirut.⁸²²⁶

4344. On Thursday 23 December 2004, Mr Hariri received visitors at Quraitem Palace between 07:45 and 23:15.⁸²²⁷ He also attended a meeting at the Constitutional Council at 13:00.⁸²²⁸

4345. From 09:30 to 12:55 on 23 December 2004, there were eight calls between users on the Blue network. Between 09:30 and 09:32, Blue 585, Blue 324 and Blue 864 were in contact three times, activating cells in western Beirut.⁸²²⁹ At 10:25, Blue 864 called Blue 324 and both activated

⁸²²² Ghattas El-Khoury, T. 16 January 2015, pp 52-54, 57, 62, 65; exhibit P303 ERNs D0004907, D0004910; exhibit P366 (*Al-Mustaqbal* article, 23 December 2004). See also exhibit P1782, para. 335; exhibit P1793, slides 78-83.

⁸²²³ At 10:21, Blue 585 (Saki Hadath_A) called Blue 324 (Mic_Bay Rock2); at 10:55, Blue 585 (Mic_Bay Rock2) called Blue 324 (Mic_Bay Rock2); at 13:12, Blue 585 (Fadlallah_A) called Blue 324 (Manara_B); at 16:43, Blue 585 (Fadlallah_B) called Blue 324 (Manara_B). Exhibit P1225, p. 5; exhibit P1229, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 268-269, 273.

⁸²²⁴ Blue 322 activated the Borj_Brajneh_2_C cell; Blue 585 activated the Hai_Kneisse_B cell. Exhibit P1229, p. 6; exhibit P1236, p. 2; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 276.

⁸²²⁵ Gary Platt, T. 25 January 2017, pp 104-106.

⁸²²⁶ At 13:35, Yellow 425 (Sfeir_B) called Yellow 294 (GHOBAl1); at 15:17, Yellow 669 (ROUEIS3) called Yellow 294 (OUZAI2). Exhibit P1240, p. 51; P1242, p. 28; P1248, p. 90; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 274.

⁸²²⁷ Exhibit P301, pp 309-311.

⁸²²⁸ Exhibit P303, ERN D0004911; Gary Platt, T. 26 January 2017, p. 18; exhibit P1352 (Call sequence table for mobile ending in 1506, p. 235. See also exhibit P1793, slides 117-120

⁸²²⁹ At 09:30, Blue 324 (Hazmiyeh-II_B) called Blue 585 (Unesco_B); at 09:31, Blue 585 (Raoucheh_B) called Blue 864 (OGER2); at 09:32, Blue 585 (Raoucheh_B) called Blue 864 (CELTEC3) again. Exhibit P1225, p. 5; exhibit P1229, p. 6; exhibit P1228 (Call sequence table of Blue 864), pp 2-3; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 286. As noted above, in paragraph 1632, there can be time differences between the start time of calls on the same network and between calls on different networks. This applies to the call described above as starting at 09:31 (exhibit P1228, p. 2). According to exhibit P1229 (p. 6), the start time of that call was actually 09:32:01.

cells in the area of Quraitem Palace.⁸²³⁰ Between 12:35 and 12:55, Blue 585, Blue 324, Blue 817 and Blue 864 made contact four times, activating cells in the area of Quraitem Palace.⁸²³¹

4346. At 15:22, Subject 6's Blue 610, activating a cell in south Beirut, made two calls to Blue 817, still activating a cell in the area of Quraitem Palace.⁸²³² Finally, after 15:31, there were two more calls between Blue 585, Blue 324 and Blue 322, activating cells in south Beirut.⁸²³³ At 14:23, Yellow 669 called Yellow 457; Yellow 457 activated a cell in the area of Quraitem Palace, and Yellow 669 activated a cell in south Beirut.⁸²³⁴

4347. Between 20 and 23 December 2004, Mr Badreddine's Green 023 and Mr Ayyash's Green 300 were in contact for four days in a row.⁸²³⁵ This was after a period of no contact for 40 days.⁸²³⁶

(u) Friday 24 to Sunday 26 December 2004

4348. On Friday 24 December 2004, Mr Hariri received visitors at Quraitem Palace during the day.⁸²³⁷ Later in the afternoon after 15:30, he left Quraitem Palace and travelled to Faqra Villa, about 50 kilometres north-west of Beirut, arriving there by 17:00.⁸²³⁸ Mr Al-Arab's and Witness

⁸²³⁰ Blue 864 activated CONCOR2 and Blue 324 activated Fadlallah_B. Exhibit P1225, p. 5; exhibit P1228, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 286.

⁸²³¹ At 12:35, Blue 585 (Raouche_B) called Blue 324 (Concorde_B); at 12:46, Blue 324 (Mic_Marriot) called Blue 864 (RAOUCH3); at 12:53, Blue 864 (MOVPIK1) called Blue 817 (CARACA2); at 12:55, Blue 817 (RAOUCH3) called Blue 864 (RAOUCH3). Exhibit P1225, p. 5; exhibit P1228, p. 3; exhibit P1229, p. 6; exhibit P1239 (Call sequence table of Blue 817), p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 286. *See also* Gary Platt, T. 26 January 2017, pp 18-21.

⁸²³² On both calls, Blue 610 activated ROUEIS3 and Blue 817 activated MOVPIK1. Exhibit P1227 (call sequence table of Blue 610), p. 2; exhibit P1239, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 293. *See also* Gary Platt, T. 26 January 2017, pp 45-48. As noted above, there can be time differences between the start time of calls on the same network and between calls on different networks. This applies to one of the two calls described above as occurring at 15:22 (exhibit P1227, p. 2). According to exhibit P1239 (p. 3), the start time of that call was, instead, 15:21:58.

⁸²³³ At 15:31, Blue 585 (Bir Abed_A) called Blue 322 (Hai Kneisse_C); at 17:17, Blue 324 (Sfeir_A) called Blue 585 (Bir Abed_A). Exhibit P1225, p. 5; exhibit P1229, p. 6; exhibit P1236, p. 2; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 294.

⁸²³⁴ Yellow 457 activated RAOUCH3 and Yellow 669 activated ROUEIS3. Exhibit P1252, p. 66; exhibit P1248, p. 91; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 292.

⁸²³⁵ Exhibit P1207, p. 3; exhibit P1211, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 237, 243, 275, 284, 289.

⁸²³⁶ Exhibit P1207, p. 3; exhibit P1211, p. 3. *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), paras 300-301.

⁸²³⁷ Exhibit P301, pp 312-313; Walid Jumblatt, T. 6 May 2015, pp 3-4.

⁸²³⁸ Exhibit P1783 (Expert report of Gary Platt – Chronology), paras 303-307. *See also* exhibit P336 (Statement of Tarek Soubra), para. 130; exhibit P1186 (Statement of Witness PRH009), para. 17.

9's mobiles activated cells in the area of Quraitem Palace at 15:06 and 15:34.⁸²³⁹ At 16:40, Witness 9's mobile activated Faqra_C, and at 17:09, Mr Al-Arab's mobile activated Achqut_A.⁸²⁴⁰ These are in the area of Faqra Villa.

4349. That day, between 10:14 and 13:15, Blue 585, Blue 324, Blue 817, Subject 6's Blue 610, Blue 864, Yellow 457 and Yellow 669 were involved in four calls, during which six of the mobiles activated cells in the area of Quraitem Palace.⁸²⁴¹ At 13:47, Blue 322 also received an SMS, connecting to the Sarba_C cell, in south Lebanon.⁸²⁴² At 16:40, Blue 324 called Blue 585.⁸²⁴³ According to Mr Platt, this shows that the network activity around Quraitem Palace ceased after Mr Hariri left the palace for Faqra, as 'this activity is located in South Beirut or away from Quraitem Palace'.⁸²⁴⁴

4350. On Saturday 25 December 2004, Mr Hariri was at his Faqra residence.⁸²⁴⁵ He stayed there for the Christmas holiday until the morning of Monday 27 December 2004.⁸²⁴⁶

4351. That day, between 11:09 and 17:02, Blue 585, Blue 610, Blue 324, Mr Ayyash's Yellow 294 and Yellow 457 activated cells in the area of Faqra Villa, in the Faraya area.⁸²⁴⁷ According to

⁸²³⁹ Witness 009's mobile received a call at 15:06 and activated the Fadlallah_A cell; Mr Al-Arab's mobile received a call at 15:33, and made an outgoing call at 15:34, both times activating the Mic_LAU Beirut-2 cell. Exhibit P1322, p. 42; exhibit P1359, p. 219; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 304.

⁸²⁴⁰ Exhibit P1322, p. 42; exhibit P1359, p. 219; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 305-306.

⁸²⁴¹ At 10:14, Blue 585 (Hai_El Soullum_C) called Blue 324 (Mic_Bay Rock2); at 10:20, Yellow 457 (CONCOR2) called Yellow 669 (ROUEIS3); at 12:20, Blue 817 (CBOURJ1) called Blue 610 (MOVPIK1); at 13:15, Blue 585 (Tallet_Druz_A) called Blue 864 (CONCOR2). Exhibit P1225, p. 5; exhibit P1229, p. 6; exhibit P1227, p. 2; exhibit P1239, p. 3; exhibit P1228, p. 3; exhibit P1252, p. 66; exhibit P1248, p. 91; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 298-301. *See also* Gary Platt, T. 26 January 2017, pp 49-51; exhibit 1793, slides 141-144.

⁸²⁴² Exhibit P1236, p. 2. *See also* Gary Platt, T. 26 January 2017, pp 51-52; exhibit P1793, slides 145, 147.

⁸²⁴³ Blue 324 activated Hazmiyeh-II_B and Blue 585 activated Sodico_A. Exhibit P1225, p. 5; exhibit P1229, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 302.

⁸²⁴⁴ Gary Platt, T. 26 January 2017, p.67. *See also* exhibit 1793, slides 154-155.

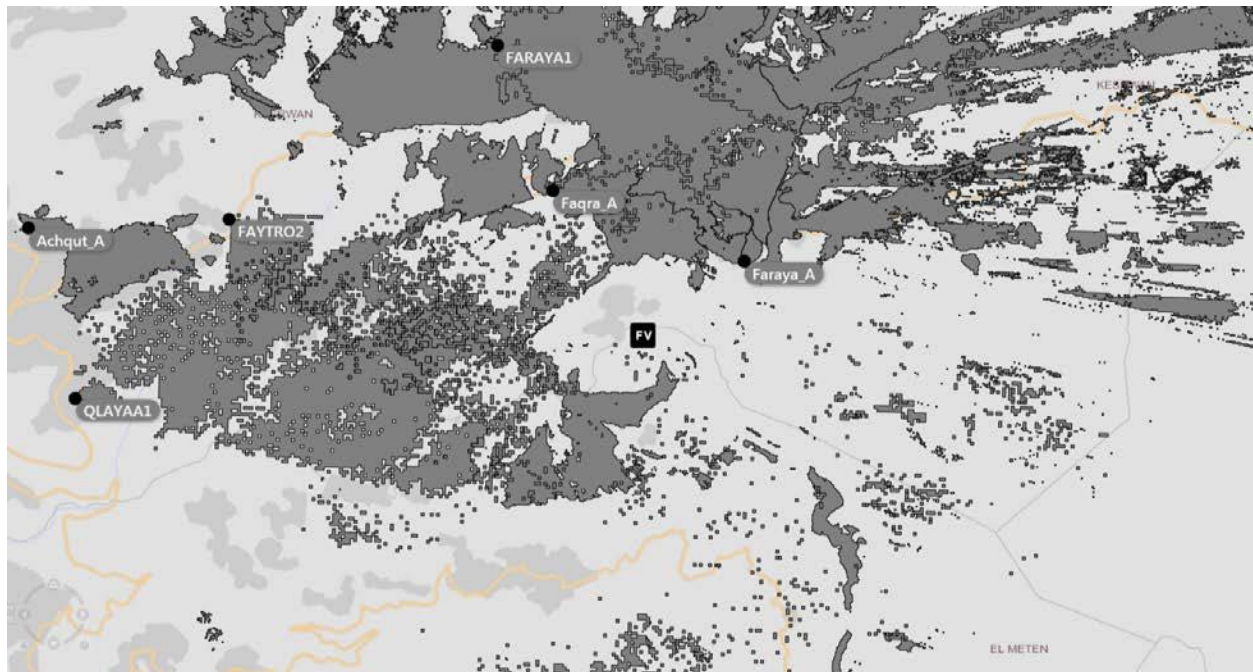
⁸²⁴⁵ Exhibit P1107 (Statement of Witness PRH045, 12 August 2010), para. 48; exhibit P1360 (Call sequence table for Mr Mustafa Nasser's mobile), pp 119-120 *See also* exhibit P1793, slides 161-168.

⁸²⁴⁶ Exhibit P301, p. 313. *See also* Witness PRH101, T. 6 October 2016, p. 51; exhibit P1168 (Statement of Witness PRH101), para. 21.

⁸²⁴⁷ At 10:11, Blue 610 (SFEIR2) called Blue 585 (Haret Hreik-II_B) (activating cells in south Beirut). Between 11:09 and 11:27, Blue 610 and Blue 585 were in contact three times, activating cells in the area of the Faqra residence (at 11:09, Blue 610 (QLAYAA1) called Blue 585 (Faqra_C); at 11:22, Blue 585 (Faraya_A) called Blue 610 (QLAYAA1); at 11:27, Blue 610 (FAYTRO2) called Blue 585 (Faraya_A)). At 11:06, Yellow 294 (TRIANO3) called Yellow 933 (Sfeir_A). At 11:32, Yellow 294 (FARAYA3) called Yellow 457 (FAYTRO1) and at 12:32, Yellow 294 (FARAYA1) called Yellow 933 (Sfeir_A). At 12:29, Blue 610 (FARAYA1) called Blue 324 (Bir_El_Abed_A); at 13:06, Blue 324 (CHB_A) called Blue 585 (Faqra_A); at 13:44, Blue 322 (Fadlallah_A) called Blue 585 (Faqra_A); at 14:01, Blue 324 (Faqra_A) called Blue 585 (White_House_A). Blue 324 was active in the Faraya area by 14:01. At 14:17, Blue 610 activating a cell in south Beirut (BRAJNE3), called Blue 324 (White_House_A). Between 16:16 and

Mr Platt this is consistent with these users having travelled to the Faraya area to conduct surveillance of Mr Hariri.⁸²⁴⁸ By the afternoon, the mobile activity showed that some of the users—Blue 610, Blue 585 and Mr Ayyash’s Yellow 294—had returned to south Beirut.⁸²⁴⁹

4352. Using the electronic presentation of evidence software, and to assist understanding of the evidence, the Trial Chamber created the map below showing the cells providing predicted best server coverage around Faqra Villa. ‘FV’ denotes its location:

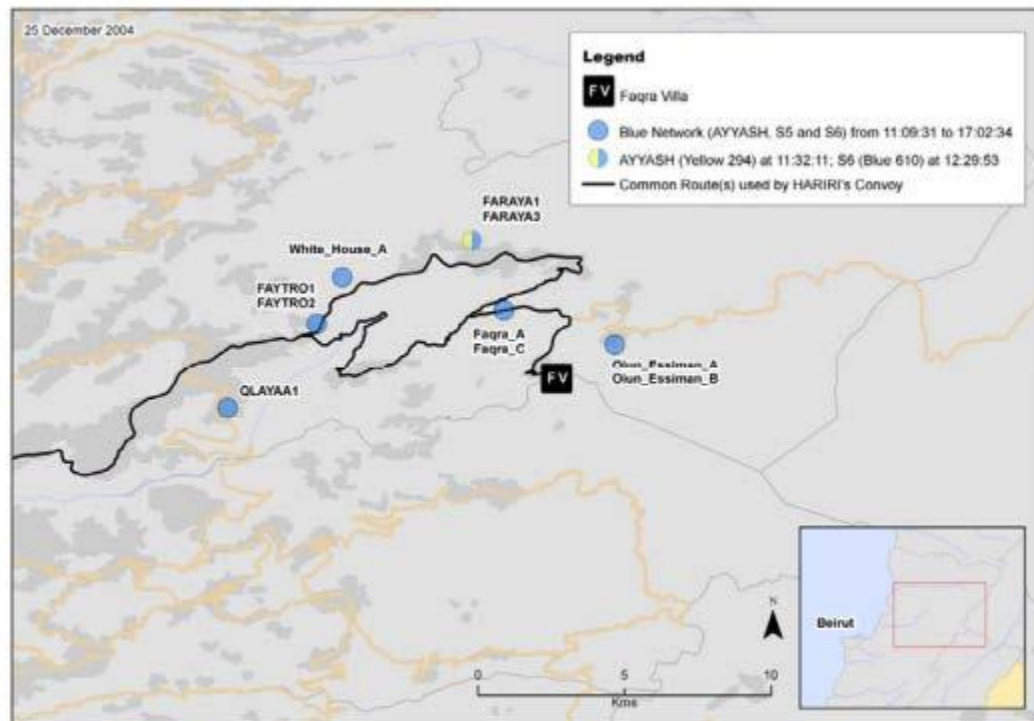


17:02, Blue 585 and Blue 324 were in contact seven times—during all seven calls, Blue 324 activated cells in the Faraya area (Faraya_B, Faraya_A, Faqra_A), while Blue 585 activated cells in south Beirut (Sfeir_A and Sfeir_B). At 16:58, Blue 324 (Faraya_A) also called Blue 610 (SFEIR2). Exhibit P1225, pp 5-6; exhibit P1227, pp 2-3; exhibit P1229, pp 6-7; exhibit P1236, p. 2; exhibit P1247, p. 56; exhibit P1252, p. 66; exhibit P1240, p. 51.

⁸²⁴⁸ Exhibit P1783 (Expert report of Gary Platt – Chronology), paras 311, 313-321; Gary Platt, T. 26 January 2017, pp 86-89, 91-98. *See also* exhibit P1793, slides 173-190.

⁸²⁴⁹ Exhibit P1783 (Expert report of Gary Platt – Chronology), paras 320-321; Gary Platt, T. 26 January 2017, pp 95-97. *See also* exhibit P1793, slides 189-190.

4353. The map below, from Mr Platt's report, depicts the Blue and Yellow network connections to cell towers located near Faqra Villa on 25 December:



Map 25: Blue and Yellow Network, Faraya, 25 December 2004 (11:09 to 17:02)

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 101

4354. On Sunday 26 December 2004, Mr Hariri remained at Faqra Villa. That day, between 09:58 and 19:48, Blue 585, Blue 610, Blue 324, Blue 817, Blue 864, Blue 322, Yellow 457, Yellow 933 and Yellow 170 made over 30 calls activating cells in the Faraya area.⁸²⁵⁰ Yellow 294, Yellow 513

⁸²⁵⁰ At 09:58, Blue 610, activating a cell in south Beirut (MIKAEL2), called Blue 864 (FARAYA1). At 11:07, Blue 322, activating a cell in south Beirut (Hadath_C), called Blue 585 (Faqr_A). Between 11:10 and 13:17, there were nine calls between Blue 585, Blue 610, Blue 324, Blue 864 and Blue 322, all activating cells in the Faraya area (at 11:10, Blue 324 (Faraya_B) called Blue 610 (FARAYA1); at 11:17 and 11:21, Blue 610 (FARAYA1 both times) called Blue 324 (Faqr_A both times); at 11:22, Blue 610 called Blue 864 (both activating FARAYA1); at 11:37, Blue 585 called Blue 324 (both activating Faqr_A); at 12:41, Blue 610 (FARAYA1) called Blue 324 (Faraya_A); at 13:08, Blue 322 (Faqr_C) called Blue 585 (Faraya_B); at 13:10, Blue 324 (Faqr_A) called Blue 610 (OUYOUN3); at 13:17, Blue 324 (Faqr_A) called Blue 610 (FARAYA1). At 13:58, Yellow 457 (FARAYA1) called Yellow 933 (Mar_Michael_C) twice; at 14:33, Yellow 669 (LAYLAK3) called Yellow 457 (FARAYA1); at 14:37, Blue 610 (FARAYA1) called Blue 585 (Amarat_Chalhoub_A); at 14:39, Yellow 457 (FARAYA1) called Yellow 669 (LAYLAK1); at 14:42, Blue 610 (FARAYA1) called Blue 585 (Borj_Hammoud_B); at 14:44, Yellow 457 (FARAYA1) called Yellow 932 (Borj_Rahhal_B); at 14:46, Yellow 457 (FARAYA1) called Yellow 669 (BRAJNE1); at 14:51, Yellow 457 (FARAYA1) called Yellow 513 (SFEIR2); at 14:57, Yellow 294 (KHALDE1) called Yellow 457 (FARAYA1); at 15:04, Yellow 457 (FARAYA1) called Yellow 933 (Justice_A); at 15:17, Yellow 513

and Yellow 669 were involved in calls with the above users on 26 December 2004, but activated cells in south Beirut during the calls.⁸²⁵¹ Blue 610 and Yellow 457 were involved in a majority of calls on this day, activating cells in the area of Faqra Villa, including on seven of the nine calls made between 09:58 and 13:17, and on 22 calls between 13:58 and 19:48.⁸²⁵²

4355. By the end of the evening, the mobiles which made these calls activated cells in southern Beirut.⁸²⁵³ According to Mr Platt, this activity is consistent with the users of the relevant mobiles returning to Beirut or home after completing their surveillance of Mr Hariri for the day.⁸²⁵⁴

(v) Monday 27 December 2004

4356. On the morning of Monday 27 December 2004, Mr Hariri returned to Quraitem Palace from Faqra Villa by 10:12. He received visitors at the palace between 10:35 and 13:55 and later between 17:30 and 21:40.⁸²⁵⁵

4357. The call activity of members of his security detail—Mr Al-Arab (mobile 771), Witness 009 (mobile 506) and Witness 101 (mobile 052)—is consistent with Mr Hariri returning to Quraitem Palace by 10:12.⁸²⁵⁶ Witness 009's mobile activated a cell in the area of Faqra Villa (Faqra_B) at 07:51 and then, at 10:12, the same mobile activated a cell in the area of Quraitem Palace

(HADATH3) called Yellow 457 (FARAYA1). At 15:18, 15:20, 15:21, 15:31, 16:45 and 19:48, Yellow 457 (activating FARAYA1 each time) called Yellow 170 (Bir_El_Abed_A), Yellow 513 (LAYLAK2), Yellow 170 (Bir_El_Abed_A) again, Yellow 933 (Raifoun_C), Yellow 170 (Sfeir_B) and Yellow 170 (Faqra_C). At 15:41, Blue 817 (FARAYA2) called Blue 610 (FARAYA1) and at 15:48, Blue 610 called Blue 817 (both activating FARAYA1) back. At 15:50, Yellow 669 (BRAJNE1) called Yellow 457 (FARAYA1) and at 19:19, Yellow 024 (Saquiet_Hadath_2_C) called Yellow 457 (FARAYA1). Exhibit P1225, p. 6; exhibit P1227, p. 3; exhibit P1228, p. 3; exhibit P1229, p. 7; exhibit P1236, p. 2; exhibit P1239, p. 3; exhibit P1240, p. 51; exhibit P1243, p. 51; exhibit P1246, p. 25; exhibit P1247, p. 57; exhibit P1248, p. 91; exhibit P1249, p. 70; exhibit P1252, p. 67; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 325,327-332; Gary Platt, T. 27 January 2017, pp 8-11, 15-17, 19-27. *See also* P1793, slides 200-207, 209-214.

⁸²⁵¹ Exhibit P1240, p. 51; exhibit P1248, p. 91; exhibit P1249, p. 70; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 327-328, 330.

⁸²⁵² Exhibit P1783 (Expert report of Gary Platt – Chronology), paras 329-330; Gary Platt, T. 27 January 2017, pp 10, 21-22.

⁸²⁵³ At 21:48, 22:15 and 23:31, Yellow 457 made or received calls activating cells in south Beirut (SFEIR3, BRAJNE3). At 22:15, Yellow 933 received a call from Yellow 457, activating the cell Mar_Michael_C. At 17:45, Blue 324 (BorjBrajneh-II_B) called Blue 585 (Haret Hreik-II_C). Exhibit P1240, p. 51; exhibit P1247, p. 57; exhibit 1252, p. 67; Gary Platt, T. 27 January 2017, pp 29-30.

⁸²⁵⁴ Gary Platt, T. 27 January 2017, pp 24-25, 27-34.

⁸²⁵⁵ Exhibit P301, pp 313-314.

⁸²⁵⁶ Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 341. *See also* exhibit P520 (Call sequence table for number 777), p. 106; exhibit P1413 (Witness PRH017's statement), para. 11; exhibit P1352, p. 242; exhibit P1322, p. 44; exhibit P1359, p. 223; exhibit P1334, 41; exhibit P1793, slides 221-223.

(Concorde_B).⁸²⁵⁷ At 10:14, 10:16 and 10:18, Mr Al-Arab's mobile activated a cell in the area of Quraitem Palace (Mic_LAU Beirut-2).⁸²⁵⁸ Finally at 10:20, Witness 101's mobile activated the same cell (Mic_LAU Beirut-2).⁸²⁵⁹

4358. Between 07:57 and 09:54, multiple calls were made on the Blue and Yellow networks, activating cells both in south Beirut and in the area of Faqra Villa.⁸²⁶⁰

4359. During this period, Blue 585 and Yellow 170 activated cells in the area of Faqra, while Subject 6's Blue 610, Blue 817 and Yellow 457 activated cells in south Beirut. At 09:29, 09:31 and 09:54, Blue 817 activated cells on the route between Faqra and Quraitem Palace.⁸²⁶¹

4360. According to Mr Platt, this activity is consistent with the users of these mobiles continuing their surveillance of Mr Hariri, both at Faqra Villa and along the route back to Quraitem Palace.⁸²⁶² Mr Platt's map from his report shows the common route Mr Hariri's convoy took back to Beirut and the location of the Blue and Yellow network mobiles:

⁸²⁵⁷ The mobile ending in 506 activated other cells en route from Faqra to Quraitem Palace between 07:51 and 10:12 (at 08:16, it activated Douwar_B; at 09:57, it activated Dora_Twin_Tower_A; and at 10:08, it activated Riviera_B). Exhibit P1322, p. 44; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 340.

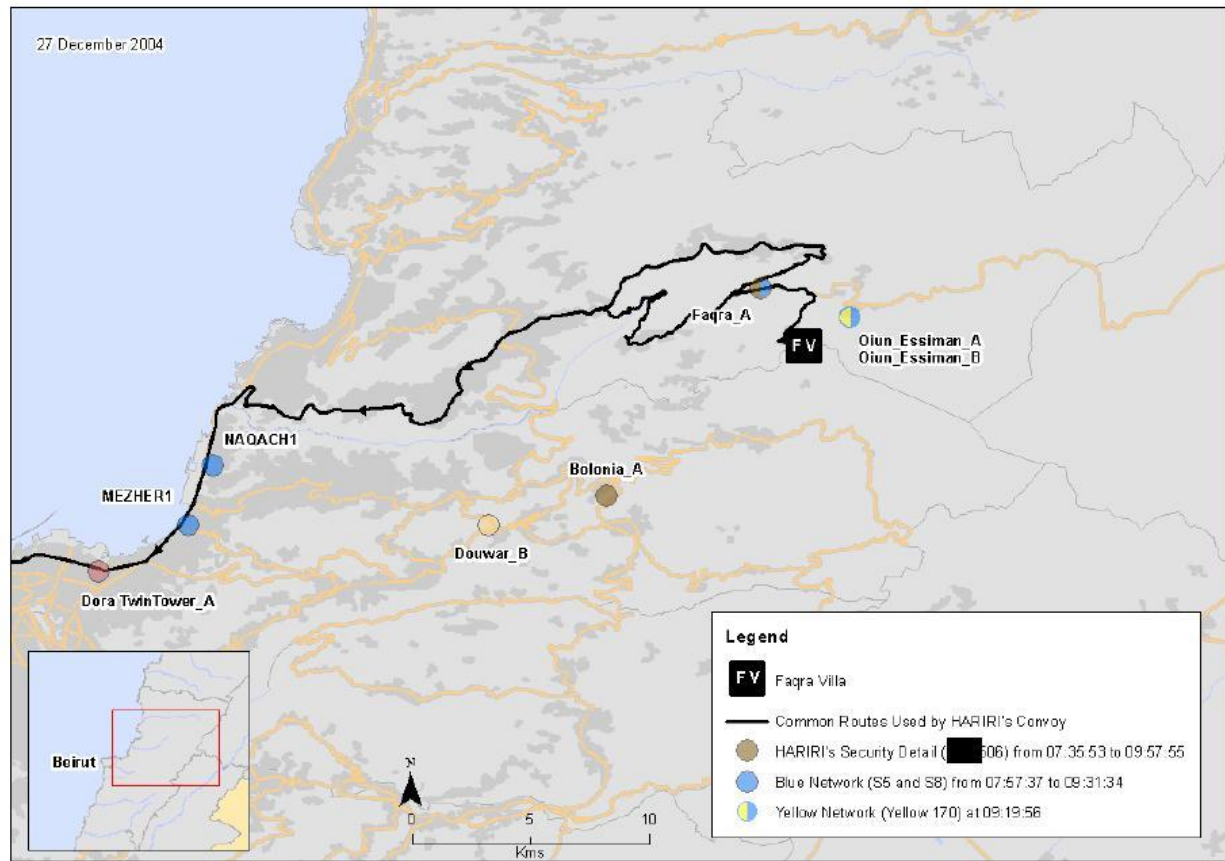
⁸²⁵⁸ Exhibit P1359, p. 223; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 340.

⁸²⁵⁹ Exhibit P1334, p. 41; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 340.

⁸²⁶⁰ At 07:57 and 07:59, Blue 817 (activating MIKAEL1 both times) called Blue 585 (activating Faraya_A and Faraya_B); at 09:19, Yellow 170 (Oiun_Essiman_A) called Yellow 457 (BRAJNE2); at 09:20 and 09:21, Blue 610 (SFEIR2 both times) called Blue 585 (Faqra_A both times); at 09:22 and 09:23, Blue 585 (Faqra_A both times) called Blue 610 (SFEIR2 both times); at 09:24, Blue 610 (SFEIR2) called Blue 585 (Faqra_A); at 09:29, Blue 610 (SFEIR2) called Blue 817 (MEZHER1); at 09:31, Blue 817 (NAQACH1) called Blue 585 (Faqra_A); and at 09:54, Blue 610 (MRAICI2) called Blue 817 (JALDIB4). Exhibit P1227, p. 3; exhibit P1229, p. 7; exhibit P1239, p. 3; exhibit P1246, p. 25; exhibit P1252, p. 67. *See also* exhibit P1783 (Expert report of Gary Platt – Chronology), paras 342-346.

⁸²⁶¹ Exhibit P1239, p. 3; Gary Platt, T. 27 January 2017, pp 47-51.

⁸²⁶² Gary Platt, T. 27 January 2017, pp 38-51. *See also* exhibit P1973, slides 224-234.



Map 28: Blue and Yellow Network, HARIRI's Security Detail, Route to Faraya, 27 December 2004 (07:35 to 09:57)

Exhibit P1783 (expert report of Gary Platt – Chronology), p. 109⁸²⁶³

4361. Between 10:03 and 10:22, close to the time Mr Hariri returned to Quraitem Palace, Subject 6's Blue 610, Blue 324 and Blue 817 activated cells along the coastal route to Quraitem Palace.⁸²⁶⁴ Blue 585 continued to activate cells in the Faraya area.⁸²⁶⁵

⁸²⁶³ While Mr Platt captions the EPE snapshot in map 28 as 'Route to Faraya', the Trial Chamber understands this map to depict the travel *from* Faraya to Quraitem Palace.

⁸²⁶⁴ At 10:03, Blue 324 (CoastRoad_B) called Blue 610 (MRAICI2); at 10:06, Blue 324 (Bay_View_C) called Blue 610 (MRAICI2); at 10:08, Blue 324 (Bay_View_C) called Blue 585 (Fagra_A); at 10:10, Blue 817 (MRAICI2) called Blue 324 (Minet El Hosn_A); at 10:19, Blue 610 (MRAICI2) called Blue 585 (Fagra_A); at 10:21, Blue 324 (Bay_View_A) called Blue 585 (Fagra_A); at 10:22, Blue 610 (MANARA2) called Blue 324 (CoastRoad_C). Exhibit P1225, p. 6; exhibit P1227, p. 3; exhibit P1229, p. 7; exhibit P1239, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 349; Gary Platt, T. 27 January 2017, pp 58-67.

⁸²⁶⁵ Exhibit P1229, p. 7; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 349; Gary Platt, T. 27 January 2017, pp 50-51, 63-64.

4362. Between 10:52 and 11:04, Mr Ayyash's Yellow 294 and Yellow 457 were in contact three times, activating cells in the area of Quraitem Palace.⁸²⁶⁶ At 11:15, Yellow 457—still in the palace area—called Yellow 933, which activated a cell in south Beirut.⁸²⁶⁷ Mr Platt testified that this gap between the Blue network activity, ending at 10:22, and that on the Yellow network, beginning at 10:51, was because Mr Hariri was then settled at Quraitem Palace, and there was no further activity.⁸²⁶⁸

4363. That day, Mr Merhi's attributed Green 071 called Mr Badreddine's Green 023 at 09:56.⁸²⁶⁹ Three minutes later, at 09:59, Mr Ayyash's Green 300 also called Green 023.⁸²⁷⁰ Green 300 and Green 023 then exchanged two more calls at 13:26 and 13:40, both activating cells in south Beirut.⁸²⁷¹ At 14:02, Mr Ayyash's Yellow 294 called Yellow 457, whose user according to the Prosecution is Subject 6.⁸²⁷² This call at 14:02 occurred 20 minutes after the last call between Green 300 and Green 023, which according to Mr Platt demonstrates further the 'command-control relationship' and coordination between Mr Ayyash and Mr Badreddine.⁸²⁷³

(w) Tuesday 28 to Wednesday 29 December 2004

4364. On 28 Tuesday December 2004, Mr Hariri received visitors at Quraitem Palace between 07:50 and 19:00.⁸²⁷⁴

⁸²⁶⁶ At 10:52, Yellow 457 (HAMRA3) called Yellow 294 (CARACA2); at 11:00, Yellow 294 (SPEARS3) called Yellow 457 (SPEARS3); at 11:04, Yellow 294 (SPEARS2) called Yellow 457 (CONCOR1). Exhibit P1240, p. 51; exhibit P1252, pp 67-68; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 350-352.

⁸²⁶⁷ Yellow 457 activated the cell SPEARS3 and Yellow 933 activated Haret_Hreik_2_C. Exhibit P1247, p. 57; exhibit P1252, pp 67-68; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 355.

⁸²⁶⁸ Gary Platt, T. 27 January 2017, pp 69-71.

⁸²⁶⁹ Green 071 activated the cell BRAJNE2 and Green 023 activated the cell HADATH3. Exhibit P1211, p. 3; exhibit P1205, p. 8; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 347.

⁸²⁷⁰ At 09:59, Green 300 (CBJOUR2) called Green 023 (ROUEIS3). Exhibit P1207, p. 3; exhibit P1211, p. 3.

⁸²⁷¹ At 13:26, Green 023 (SFEIR3) called Green 300 (MIKAEL3); at 13:40, Green 300 (SFEIR3) called Green 023 (SFEIR3). Exhibit P1207, p. 3; exhibit P1211, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 357-358. *See also* Gary Platt, T. 27 January 2017, pp 53-58.

⁸²⁷² Yellow 294 activated the cell MIKAEL2 and Yellow 457 the cell RIMAL2. Exhibit P1252, p. 68; exhibit P1240, p. 51.

⁸²⁷³ Gary Platt, T. 27 January 2017, pp 79-80. *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), para. 383.

⁸²⁷⁴ Exhibit P301, pp 314-316.

4365. Between 12:54 and 15:15, Blue 585, Blue 324 and Blue 817 were involved in calls that activated cells in the area of Quraitem Palace, the crime scene or in areas between these locations.⁸²⁷⁵

4366. The Red network SIM cards were purchased at the Nejmech cell shop in Tripoli between Friday 24 December 2004 and Tuesday 4 January 2005.⁸²⁷⁶ On 28 December, between 11:12 and 14:17, Subject 6's Blue 610, Yellow 457—whose user according to the Prosecution is also Subject 6—and Yellow 024 activated cells in the Tripoli area, in the area of the cell shop.⁸²⁷⁷ In particular, Yellow 457 called Mr Ayyash's Yellow 294 twice, at 12:49 and 13:11. Yellow 457 activated cells in the Tripoli area and Yellow 294 activated cells in the area of the Port of Beirut during these calls.⁸²⁷⁸

4367. For the 13:11 call, Yellow 457 activated a cell in the area of the Nejmech cell shop (TRIPOL2),⁸²⁷⁹ where the Red network SIM cards were purchased. The Trial Chamber used the electronic presentation of evidence software to create the map below, in which 'NC' denotes the shop:

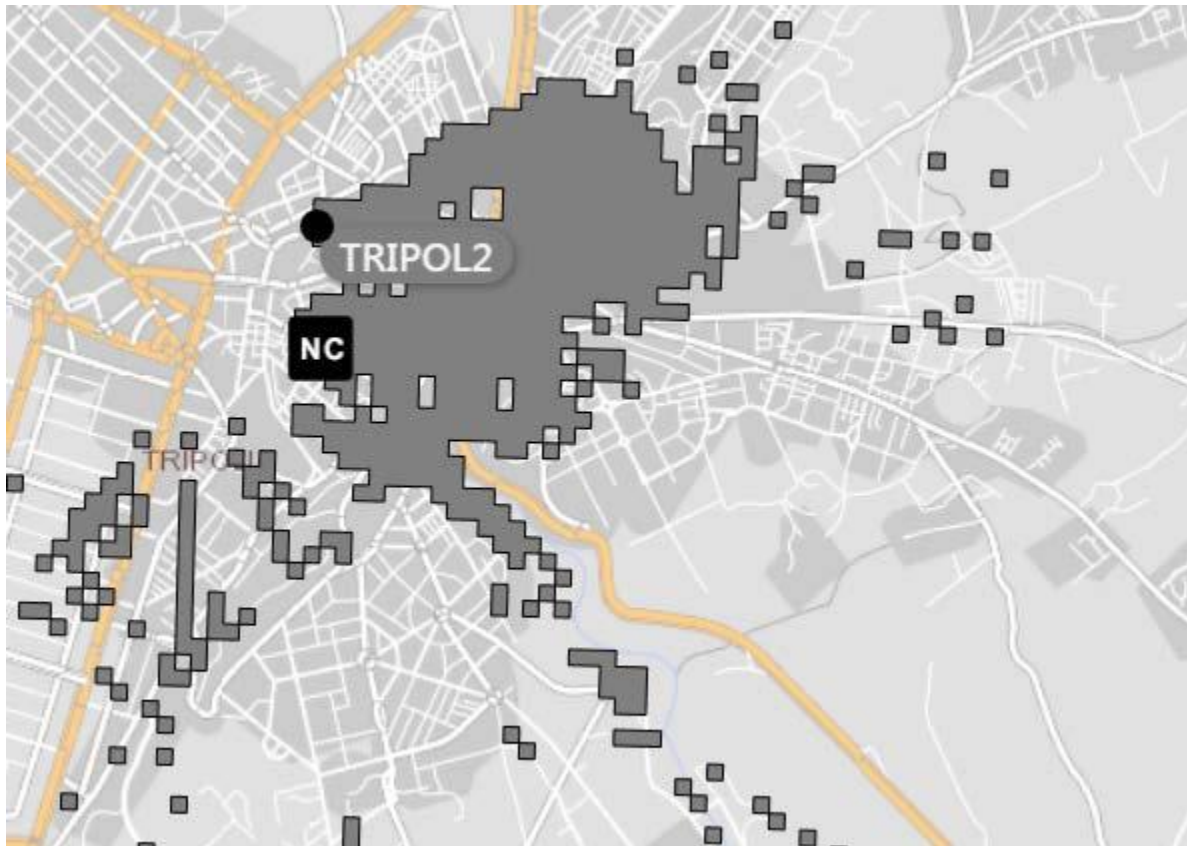
⁸²⁷⁵ At 12:54, Blue 817 (MRAICI2) called Blue 324 (Manara_B); at 13:59, Blue 817 (CONCOR2) called Blue 324 (Manara_B); at 14:05, Blue 817 (MANARA2) called Blue 324 (Raouche_B); at 14:25, Blue 585 (Bay_Rock_Cafe2_A) called Blue 817 (RAOUCH1); and at 15:14 and 15:15, Blue 324 (Fadlallah_B, both times) called Blue 585 (Tallet_Druz_A, both times). Exhibit P1225, p. 6; exhibit P1229, p. 8; exhibit P1239, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 370, 372. *See also* Gary Platt, T. 27 January 2017, pp 93-95.

⁸²⁷⁶ *See* chapter VIII 'Nature and purpose of colour-coded mobile networks and purple group of mobiles', (D) (1) 'Setting up the network', para. 2252.

⁸²⁷⁷ At 11:12, Yellow 425 (Sfeir_A) called Yellow 457 (MINIEH3); and at 12:49 and 13:11, Yellow 457 (BEDAOU2, TRIPOL2) called Yellow 294 (GHOBAl, PORT1); at 13:34, 13:53 and 14:04, Yellow 024 (activating Tripoli_5_B, all three times) called Yellow 457 (activating TRIPOL2 all three times); at 14:15, Blue 610 (TRIPOL3) called Blue 585 (Bay_Rock_Cafe1_A) and at 14:17, Blue 817 (MANARA2) called Blue 610 (TRIPOL3). Exhibit P1227, p. 4; exhibit P1239, p. 3; exhibit P1240, p. 51; exhibit P1242, p. 28; exhibit P1244, p. 36; exhibit P1252, p. 68; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 369, 371-372; Gary Platt, T. 27 January 2017, pp 81-84, 87-89. As noted above, there can be time differences between the start time of calls on the same network and between calls on different networks. This applies to the call described above as starting at 11:12 (exhibit P1242). According to exhibit P1252, the start time of that call was instead 11:11:56.

⁸²⁷⁸ Gary Platt, T. 27 January 2017, pp 82-84.

⁸²⁷⁹ Gary Platt, T. 27 January 2017, pp 83-84.



Map created by the Trial Chamber from electronic presentation of evidence (exhibit P592.1)

4368. At 13:14, Mr Ayyash's Green 300, in the Beirut port area, activating PORT1, called Mr Badreddine's Green 023, which activated ROUEIS3 in southern Beirut.⁸²⁸⁰ This call occurred three minutes after Mr Ayyash's Yellow 294 received the call from Yellow 457, when the latter activated a cell in the area of the Nejme cell shop in Tripoli. Mr Platt testified that this activity is consistent with Yellow 457 informing Yellow 294 that they had purchased the Red SIM cards.⁸²⁸¹

4369. After 16:30, Blue 585, Blue 610, Blue 324 and Blue 817 were involved in four more calls, all activating cells in south Beirut.⁸²⁸² Mr Platt testified that this call activity shows that Blue 610 had returned to Beirut from Tripoli by the end of the day and that all of the users engaged in activity

⁸²⁸⁰ Exhibit P1207, p. 3; exhibit P1211, p. 3.

⁸²⁸¹ Gary Platt, T. 27 January 2017, pp 84, 86-87.

⁸²⁸² At 16:30, Blue 610 (MIKAEL2) called Blue 324 (BorjBrajneh-II_C); at 16:37, Blue 610 (SFEIR2) called Blue 324 (Bir Abed_C); at 16:46, Blue 610 (SFEIR2) called Blue 817 (BIRABD3); at 19:07, Blue 324 (Chiyah_C) called Blue 585 (Hai El Soullum_C). Exhibit P1225, p. 6; exhibit P1227, p. 4; exhibit P1229, p.8; exhibit P1239, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 373.

either in Tripoli or around Quraitem Palace returned to southern Beirut—the area they normally frequented.⁸²⁸³ This is shown on the map from Mr Platt’s chronology report below:



Map 33: Blue and Green Network, Quraitem Palace and Beirut Port, 28 December 2004 (12:54 to 15:15)

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 118

4370. On Wednesday 29 December 2004, Mr Hariri returned to his Faqra residence and during the day, received the US ambassador, Mr Jeffrey Feltman. The media release of the meeting stated that the ambassador had inquired about the new attitude on electoral administrative divisions which Mr Hariri had announced after meeting the Maronite Patriarch, Cardinal Nasrallah Boutros Sfeir. Mr Hariri reasserted this new ‘attitude’.⁸²⁸⁴

⁸²⁸³ Gary Platt, T. 27 January 2017, pp 88-89, 96-97.

⁸²⁸⁴ Exhibit P303 (Press releases), ERN D0004894. The discussion also included Lebanese issues, the electoral law and the latest developments in the region, particularly the situation in Iraq and Palestine.

4371. At 10:36, Mr Ayyash's Yellow 294 called Subject 6's Yellow 457. Both activated cells in south Beirut.⁸²⁸⁵ Two hours later, at 12:38, Blue 864, activating a cell in south Beirut, called Blue 610—Subject 6 on the Prosecution's case—activating a cell along the route to Faraya.⁸²⁸⁶ At 15:47, Blue 610 called Blue 864, activating cells in the crime scene area and the area of Quraitem Palace.⁸²⁸⁷ Finally, after 16:13, users on the Blue and Yellow networks activated cells in the Dahyieh area.⁸²⁸⁸ Yellow 294 was involved in two calls between 19:01 and 20:08, activating cells in South Lebanon.⁸²⁸⁹ At 19:52, Mr Ayyash's Green 300 received an SMS, during which the mobile activated a cell in South Lebanon.⁸²⁹⁰

(x) Thursday 30 December 2004

4372. Mr Hariri travelled from his Faqra residence back to Quraitem Palace on Thursday 30 December 2004. He received visitors at the palace between 15:00 and 23:13.⁸²⁹¹

4373. The call activity of his security detail is consistent with Mr Hariri returning to Quraitem Palace in the afternoon—leaving the Faraya area sometime after 14:13 and arriving at the palace before 15:20.⁸²⁹²

⁸²⁸⁵ Yellow 294 activated the cell ROUEIS2 and Yellow 457 activated the cell SFEIR2. Exhibit P1240, p. 51; exhibit P1252, p. 68. *See also* exhibit P1793, slides 288-289.

⁸²⁸⁶ Blue 864 activated SFEIR2 and Blue 610 activated ACHQOU1. Exhibit P1227, p. 4; exhibit P1228, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 379; Gary Platt, T. 27 January 2017, pp 100-101.

⁸²⁸⁷ Blue 610 activated MRAICI2 and Blue 864 activated RAOUCH3. Exhibit P1227, p. 4; exhibit P1228, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 380.

⁸²⁸⁸ At 16:13, Blue 817 (BRAJNE2) called Blue 610 (BRAJNE3); at 16:49, Blue 324 (Haret Hreik-II_C) called Blue 585 (Hai El Soullum_C); at 19:11, Blue 324 (Chiyah_C) called Blue 585 (Hai El Soullum_C); at 19:56, Blue 585 (Hai El Soullum_C) called Blue 324 (Borj Brajneh_C); at 20:08, Yellow 457 (BRAJNE3) called Yellow 294 (MAAROB1); at 20:12, Blue 585 (Hai El Soullum_C) called Blue 324 (Ain Sikkeh_C); at 20:39, Blue 610 (BRAJNE3) called Blue 324 (Ain Sikkeh_B). Exhibit P1225, p. 7; exhibit P1227, p. 4; exhibit P1229, p. 8; exhibit P1239, p. 3; exhibit P1240, p. 52; exhibit P1252, p. 68; Gary Platt, T. 27 January 2017, pp 101-102. As noted above, there can be time differences between the start time of calls on the same network and between calls on different networks. This applies to the call described above as starting at 20:08 (exhibit P1252). According to exhibit P1240, the start time of that call was instead 20:07:57.

⁸²⁸⁹ At 19:01, Yellow 294 (RAHHAL1) called Yellow 425 (Sfeir_A); at 20:08, as noted in the above footnote, when receiving a call from Yellow 457, Yellow 294 activated the cell MAAROB1. Exhibit P1240, p. 52; exhibit P1242, p. 28; exhibit P1252, p. 68; Gary Platt, T. 27 January 2017, p. 102.

⁸²⁹⁰ It activated the cell RAHHAL1. Exhibit P1207, p. 3; Gary Platt, T. 27 January 2017, p. 102.

⁸²⁹¹ Exhibit P301, p. 316.

⁸²⁹² Exhibit P1783 (Expert report of Gary Platt – Chronology), paras 394-395.

4374. Between 10:25 and 13:50, Mr Al-Arab's mobile activated cells in the Faraya area,⁸²⁹³ and from 16:47, he made calls activating cells near Quraitem Palace.⁸²⁹⁴ Another security member's mobile activated cells in the Faraya area between 11:29 and 14:13;⁸²⁹⁵ and from 15:20, cells near Quraitem Palace.⁸²⁹⁶

4375. At 12:19, Blue 324, activating a cell in the Faraya area, called Blue 817, which activated a cell south of Tripoli.⁸²⁹⁷ Blue 324 was active in that area between 12:19 and 16:16, and Blue 585 activated cells in the same area between 15:44 and 19:08.⁸²⁹⁸ Before 15:44, Blue 585 was involved in calls during which it activated cells along the route between Faqra and Quraitem Palace.

4376. Mr Platt testified that by comparing the call activity and activation of cells of Blue 585 with those of Mr Hariri's security detail between 14:36 and 14:59, they were activating the same or close cells. This was consistent with Blue 585 following the convoy.⁸²⁹⁹

4377. Subject 6's Blue 610 and Blue 817 activated cells on the coastal route in western Beirut between 14:47 and 15:20 and later, from 15:35 to 16:16, in the area of Quraitem Palace.

4378. According to Mr Platt, for the calls between 14:47 and 15:20, this activity and activation of cells is consistent with the users conducting surveillance of the convoy on the route it would take between Faqra Villa and Quraitem Palace.⁸³⁰⁰ By 15:35, both Blue 610 and Blue 817 began

⁸²⁹³ For example, at 10:25, it activated Faqra_A, at 10:30, 11:48 and 12:05, it activated White_House_A; at 12:09, 12:52, 13:29 and 13:50, it activated White_House_B. Exhibit P1359, pp 231-232.

⁸²⁹⁴ At 16:47, the mobile activated Fadlallah_B; at 16:50, Fadlallah_A; between 16:56 and 17:14, it activated LAU_MIC2_A. Exhibit P1359, p. 233.

⁸²⁹⁵ For example, at 11:29, 11:30, 14:12 and 14:13, it activated Faqra_C. Exhibit P1322, p. 46.

⁸²⁹⁶ At 15:20, it activated Concorde_B; at 17:47, it activated Fadlallah_A. Exhibit P1322, p. 47.

⁸²⁹⁷ Blue 324 activated Faqra_A and Blue 817 activated KIFRAY1. Exhibit P1225, p. 7; exhibit P1239, p. 3; Gary Platt, T. 6 February 2017, pp 60-61. *See also* exhibit P1793, slides 318-319.

⁸²⁹⁸ At 12:36, Blue 610 (SFEIR2) called Blue 324 (Faqra_A); at 14:19, Blue 324 (Faraya_B) called Blue 610 (SFEIR2); at 14:34, Blue 585 (Balounah_C) called Blue 324 (Faqra_A); at 14:36, Blue 585 (Quornet_El_Hamra_A) called Blue 324 (Faqra_A); at 14:47, Blue 817 (PORT1) called Blue 585 (Dbaiyeh_A); at 14:52, Blue 585 (Dbaiyeh_A) called Blue 817 (PORT1); at 14:53, Blue 817 (PORT1) called Blue 585 (Dbaiyeh_A); at 14:56, Blue 610 (MRAICI2) called Blue 585 (Dbaiyeh_D); at 15:07, Blue 585 (Zalka Coast_A) called Blue 610 (MRAICI2); at 15:10, Blue 817 (PORT1) called Blue 610 (MRAICI1); at 15:15, Blue 585 (Dora_Twin_Tower_A) called Blue 817 (ZOUKAK3); at 15:15, Blue 585 (Dora_Twin_Tower_C) also called Blue 610 (MRAICI2); at 15:20, Blue 610 (MRAICI2) called Blue 817 (BLISS1); at 15:35, Blue 610 (RAOUCH3) called Blue 817 (JEANNE2); at 15:44, Blue 610 (CARACA3) called Blue 585 (Dbaiyeh_C); at 15:45, Blue 610 (CARACA3) called Blue 324 (Faraya_B); at 16:15, Blue 324 (Faraya_B) called Blue 585 (Faqra_A); and at 16:16, Blue 324 (Faraya_B) called Blue 585 (Faraya_B). Exhibit P1225, p. 7; exhibit P1227, p. 4; exhibit P1229, p. 8; exhibit P1239, pp 3-4.

⁸²⁹⁹ Gary Platt, T. 6 February 2017, pp 63-66. *See also* exhibit P1793, slides 332-342.

⁸³⁰⁰ Gary Platt, T. 6 February 2017, pp 66-68, 71-73. *See also* exhibit P1793, slides 343-356.

activating cells in the area of Quraitem Palace.⁸³⁰¹ Four minutes later, Subject 6's Yellow 457 called Mr Ayyash's Yellow 294, which according to Mr Platt, demonstrated a chain of command and reporting process from the subjects to Mr Ayyash about the surveillance that had occurred during the day on the way to and at Quraitem Palace.⁸³⁰²

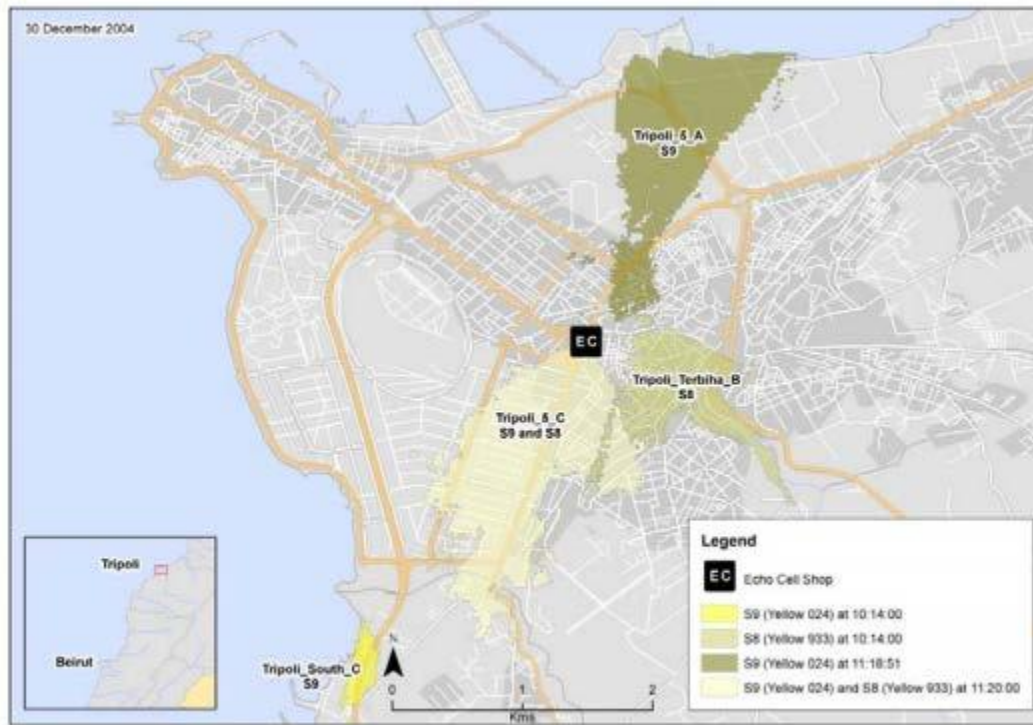
4379. On 30 December, five of the Red mobiles' handsets were bought at the Echo Cell shop in Tripoli.⁸³⁰³ In the morning, between 10:14 and 11:20, Yellow 933 and Yellow 024 activated cells in the Tripoli area.⁸³⁰⁴ At 11:20, both activated a Touch cell, Tripoli_5_C, which provided coverage to the area of the shop. This is shown in the map below from Mr Platt's report in which the shop is marked 'EC':

⁸³⁰¹ Gary Platt, T. 6 February 2017, pp 73-74.

⁸³⁰² Gary Platt, T. 6 February 2017, pp 74, 77, 85-86.

⁸³⁰³ See chapter VIII 'Nature and purpose of colour-coded mobile networks and purple group of mobiles', (D) (1) 'Setting up the network', para. 2251.

⁸³⁰⁴ At 10:14, Yellow 024 (Tripoli_South_C) called Yellow 933 (Tripoli_Terbiha_B); at 11:18, Yellow 457 (SFEIR2) called Yellow 024 (Tripoli_5_A); at 11:20, Yellow 024 (Tripoli_5_C) called Yellow 933 (Tripoli_5_C). Exhibit P1244, p. 36; exhibit P1247, p. 57; exhibit P1252, p. 68; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 393.



Map 36: Yellow Network (S8 and S9), Echo Cell Shop, Tripoli, 30 December 2004 (10:14 to 11:20)

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 123

4380. According to Mr Platt, this call activity is consistent with Yellow 933 and Yellow 024 being in the Tripoli area when the five Red network handsets were purchased from the Echo Cell shop.⁸³⁰⁵ It shows coordination between them. Also of relevance is that, on Wednesday 5 January 2005, Yellow 933 was again in the area of the same shop when one of the handsets was returned to the shop.⁸³⁰⁶

4381. At 15:39, Subject 6's Yellow 457, activating a cell in the area of Quraitem Palace, called Mr Ayyash's Yellow 294, activating a cell in south Beirut.⁸³⁰⁷

4382. The last mobile activity on the Blue network on Wednesday 30 December was at 20:56 when Blue 324, located in south Beirut, called Subject 6's Blue 610.⁸³⁰⁸ Blue 324 had previously

⁸³⁰⁵ See chapter VIII 'Nature and purpose of colour-coded mobile networks and purple group of mobiles', (D) (1) 'Setting up the network', para. 2251.

⁸³⁰⁶ Gary Platt, T. 6 February 2017, pp 56-59.

⁸³⁰⁷ Yellow 457 activated MOVPIK1. Yellow 294 activated HADATH3. Exhibit P1252, p. 68; exhibit P1240, p. 52.

⁸³⁰⁸ Blue 324 activated Hai Kneisseh_B and Blue 610 activated PHENMB1. Exhibit P1225, p. 7; exhibit P1227, p. 4.

been active in the area of Faqra all afternoon, while at 19:08, Blue 585 received a call, activating a cell in Faqra.⁸³⁰⁹ According to Mr Platt, this activity is consistent with Blue 324 and Blue 585 switching places and Blue 585 taking over surveillance at Faqra in case Mr Hariri returned there.⁸³¹⁰

(y) Friday 31 December 2004

4383. On Friday 31 December 2004, Mr Hariri received visitors at Quraitem Palace between 08:00 and 14:10, including the interior minister, Mr Elias El-Murr, the journalist Mr Ali Hamade and the newspaper proprietor, Mr Charles Ayyoub.⁸³¹¹ Later, he went to Faqra Villa to spend New Year's Eve.⁸³¹² He stayed overnight and returned to Quraitem Palace on the morning of Saturday 1 January 2005. His security detail's call activity is consistent with Mr Hariri leaving Quraitem Palace on New Year's Eve sometime after 14:11 and arriving at his Faqra residence before 15:30.⁸³¹³

4384. The last security detail call activating a cell in the Quraitem Palace area was at 14:11.⁸³¹⁴ Mr Al-Arab's mobile activated cells in the area of Quraitem Palace until at least 13:53, and then activated cells along the route between the palace and the Faraya area and ultimately activated a cell in the Faraya area at 15:32.⁸³¹⁵ Witness 9's mobile activated cells near the palace until at least 13:42, and travelled to the Faraya area and activated cells there from 15:30.⁸³¹⁶ Witness 101's mobile was in the palace area until at least 11:11, and then activated a cell in the Faraya area by 15:49.⁸³¹⁷

⁸³⁰⁹ At 19:08, Blue 610 (BRAJNE3) called Blue 585 (Faqra_A). Exhibit P1227, p. 4; exhibit P1229, p. 8.

⁸³¹⁰ Gary Platt, T. 6 February 2017, pp 86-89.

⁸³¹¹ Exhibit P301, pp 316-317.

⁸³¹² Witness PRH009, T. 11 October 2016, pp 16-17; exhibit P1186 (Statement of Witness PRH009), paras 22-23; Witness PRH101, T. 6 October 2016, pp 51-53; exhibit P1168 (Statement of Witness PRH101), paras 27-29; exhibit P1177 (PowerPoint presentation on 31 December 2004 travel to Faqra Villa).

⁸³¹³ Gary Platt, 7 February 2017, pp 20-21, 32-33; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 420-421. *See also* exhibit P1793, slides 397-398.

⁸³¹⁴ This mobile activated the Concorde_B cell. Exhibit P1332, p. 46.

⁸³¹⁵ At 13:53, Mr Al-Arab's mobile activated LAU_MIC2_A; at 14:32, it activated Dora-II_C; at 14:39 and 14:40, it activated Zalka_2_A and at 14:52, Aintoura_B. At 15:32, 15:35 and 15:47, it activated White House_B, Faqra_A and White House_A, respectively. Exhibit P1359, p. 235.

⁸³¹⁶ At 13:40 and 13:42, it activated Concorde_B; at 14:33, it activated Dora-II_A. At 15:30, it activated White House_A. Exhibit P1322, p. 47.

⁸³¹⁷ At 10:29, it activated Concorde_B; at 11:00 and 11:11, it activated Fadlallah_A. At 15:49, it activated White House_B. Exhibit P1334, p. 43.

4385. Between 09:49 and 14:19, Blue and Yellow network users were in contact with each other, activating cells in the area of Quraitem Palace and Parliament.⁸³¹⁸ For example, at 09:49, Mr Ayyash's Yellow 294, active in south Beirut, called Subject 6's Yellow 457, activating a cell in the area of Quraitem Palace and two hours later, by 12:16, Yellow 457 called Yellow 294 back, both activating the same cell in the area of Quraitem Palace.

4386. Between 12:09 and 12:53, Blue 585, Subject 6's Blue 610, Blue 324, Blue 817 and Blue 864 contacted each other eight times, activating cells in the area of Quraitem Palace or the Parliament. Blue 610 was involved in seven of the eight calls. At 14:22, Yellow 457 called Yellow 294, both activating cells in south Beirut.⁸³¹⁹

4387. At 13:13, Mr Ayyash's Green 300 called Mr Badreddine's Green 023, both activating cells in south Beirut.⁸³²⁰ Between 14:21 and 15:42, Blue 324, Blue 585, Blue 864, Blue 610 and Yellow 457 were involved in calls activating cells on the route between Beirut and the Faraya area.⁸³²¹ At 15:05 and 15:15, Blue 817 and Blue 864 activated cells in the Faraya area, and between 15:21 and 15:41, Yellow 457 was in contact with Mr Ayyash's Yellow 294 three times—Yellow 457

⁸³¹⁸ At 09:49, Yellow 294 (SFEIR2) called Yellow 457 (CONCOR2); at 11:42, Yellow 294 (SPEARS3) called Yellow 425 (Sfeir_A); at 11:58, Yellow 294 (BNPI1) called Yellow 457 (MOVPIK1); at 12:09, Blue 610 (NAAMEH1) called Blue 817 (ETOILE1); at 12:16, Yellow 457 (CARACA3) called Yellow 294 (CARACA3); at 12:21, Blue 864 (ETOILE3) called Blue 817 (SOLIDR1); at 12:22, Blue 610 (CARACA3) called Blue 864 (ETOILE3); at 12:32, Blue 610 (CARACA3) called Blue 864 (ZOUKAK2); at 12:32, Blue 610 (CARACA3) called Blue 817 (CARACA3); at 12:47, Blue 610 (CARACA3) called Blue 324 (Fadlallah_B); at 12:48, Blue 610 (CARACA3) called Blue 585 (Tallet_Druz_A); at 12:53, Blue 324 (Mic_BayRock2) called Blue 610 (RAOUCH3); at 13:05, Yellow 457 (MANARA1) called Yellow 669 (BRAJNE1); at 13:21, Blue 585 (Borj_Brajneh_2_B) called Blue 864 (BACHOU1); at 14:18, Blue 817 (CARACA3) called Blue 864 (JITAWI2); at 14:19, Blue 817 (MANARA2) called Blue 610 (BIRABD3). Exhibit P1225, p. 7; exhibit P1227, pp 4-5; exhibit P1228, p. 3; exhibit P1229, pp 8-9; exhibit P1239, p. 4; exhibit P1240, p. 52; exhibit P1242, p. 28; exhibit P1248, p. 92; exhibit P1252, pp 68-69; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 410-415, 417-418. *See also* Gary Platt, 6 February 2017, pp 99-110.

⁸³¹⁹ Yellow 457 activated the cell BRAJNE1 and Yellow 294 activated the cell MIKAEL2. Exhibit P1240, p. 52; exhibit P1252, p. 69; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 419.

⁸³²⁰ Green 300 activated ROUEIS2; Green 023 activated BRAJNE3. Exhibit P1207, p. 3; exhibit P1211, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 416.

⁸³²¹ At 14:21, Blue 610 (BIRABD3) called Blue 324 (Aintoura_B); at 14:25, Blue 324 (Zouq_Tunel_B) called Blue 585 (Transorient_A); at 14:26, Blue 864 (SAGESS1) called Blue 585 (Mic_HII_Medco-Dora); at 14:27, Blue 864 (SUKLIN1) called Blue 324 (Adonis_C); at 14:28, Blue 864 (QARANT1) called Blue 324 (Adonis_C); at 14:36, Blue 610 (JDAIDE3) called Blue 324 (Zouq_Tunel_B); at 14:43, Blue 585 (Zouq_Tunel_B) called Blue 324 (Adonis_C); at 14:46, Blue 610 (BIRKEH3) called Blue 864 (DBAYEH1); at 14:48, Blue 324 (Adonis_C) called Blue 585 (Jiita_C); at 15:42, Blue 610 (ACHQOU2) called Blue 585 (Bzoumar_B); at 15:42, Yellow 669 (BRAJNE1) called Yellow 457 (ACHQOU2). Exhibit P1225, p. 7; exhibit P1227, p. 5; exhibit P1228, p. 3; exhibit P1229, p. 9; exhibit P1248, p. 92; exhibit P1252, p. 69; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 422-423, 425-426. As noted above, there can be time differences between the start time of calls on the same network and between calls on different networks. This applies to the call described above as starting at 15:42 (exhibit P1248). According to exhibit P1252, the start time of that call was instead 15:43:03.

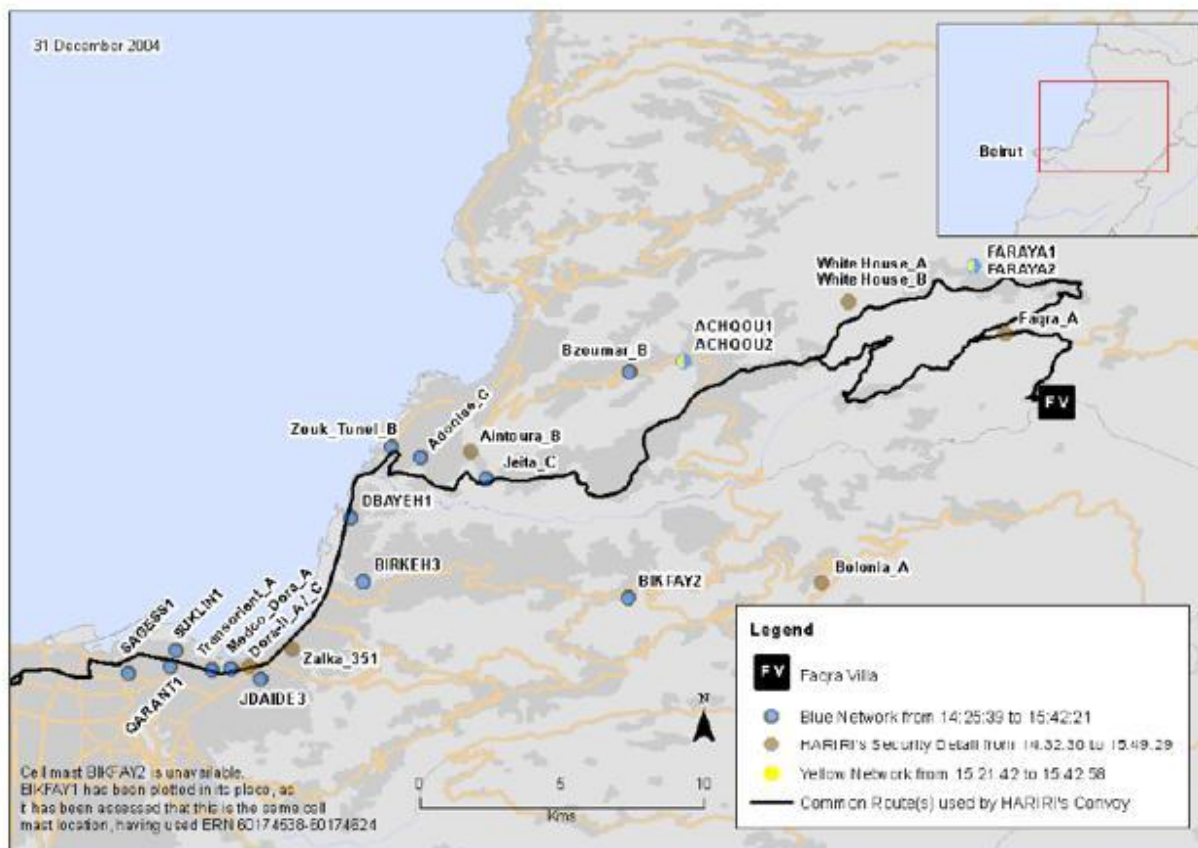
activated cells in the Faraya area while Yellow 294 was in south Beirut.⁸³²² This was the last call between the two users on 31 December 2004.⁸³²³

4388. According to Mr Platt, this call activity on the Blue and Yellow networks is consistent with the users following the route of Mr Hariri's security detail between Quraitem Palace and Faqra Villa as standard surveillance procedure.⁸³²⁴ The map below shows the road between the two locations, with cell towers marked:

⁸³²² At 15:05, Blue 817 (ACHQOU1) called Blue 864 (BIKFAY2); at 15:15, Blue 864 (FARAYA2) called Blue 817 (FARAYA1); at 15:21, Yellow 457 (FARAYA1) called Yellow 294 (MIKAEL2); at 15:26, Yellow 294 (SFEIR2) called Yellow 457 (FARAYA1); at 15:41, Yellow 294 (SFEIR2) called Yellow 457 (ACHQOU1). Exhibit P1228, p. 3; exhibit P1239, p. 4; exhibit P1240, p. 52; exhibit P1252, p. 69; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 424-426.

⁸³²³ Exhibit P1240, p. 52; exhibit P1252, p. 69.

⁸³²⁴ Gary Platt, 7 February 2017, pp 10-11, 20-24, 27-28, 32-49. *See also* exhibit P1793, slides 397, 401-429; exhibit P1782 (Narrative overview of telephone activity and relevant events), paras 430-433.



Map 40: Blue and Yellow Network (14:25 to 15:42), HARIRI's Security Detail (14:32 to 15:49), East Beirut to Faraya, 31 December 2004

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 134

(z) Saturday 1 January 2005

4389. On New Year's Day, Saturday 1 January 2005, between 10:45 and 16:00, Mr Hariri received visitors at Quraitem Palace.⁸³²⁵ His security detail's calls are consistent with Mr Hariri departing his Fagra residence on 1 January 2005 at around 09:53 and arriving at Quraitem Palace by 10:43.⁸³²⁶

4390. Mr Talal Nasser's mobile activated a cell in the Faraya area at 09:53.⁸³²⁷ Mr Al-Arab's mobile activated cells in the Faraya area at 09:26 and the mobile's next activity at 11:23 activated

⁸³²⁵ Exhibit P301, p. 317.

⁸³²⁶ Gary Platt, T. 7 February 2017, p. 72; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 441-442. See also P1807 (Chronology PowerPoint presentation – 1 January 2005 to 17 January 2005), slides 4-7.

⁸³²⁷ At 09:53, it activated White House_C. Exhibit P1354, p. 274.

a cell near Quraitem Palace.⁸³²⁸ Witness 009's's mobile activated cells in the Faraya area at 09:34, then along the route between Faraya and Beirut at 10:06 and finally at 12:39 in the area of Quraitem Palace.⁸³²⁹ Witness 101's mobile activated a cell in the Faraya area at 08:20, and at 10:43, his mobile was active in central Beirut.⁸³³⁰

4391. The Blue and Yellow networks users were primarily active in the morning in the Faraya area, and then moved to the Quraitem Palace area. For example, between 09:46 and 11:47, Blue 585, Blue 324 and Blue 817 were involved in calls activating cells in the Faraya area and on the coastal area north of Beirut, while Subject 6's Blue 610 and Blue 864 activated cells primarily in the area of Quraitem Palace.⁸³³¹

4392. Mr Platt testified that the call activity demonstrates that there were Blue network users located along the route between the two locations in anticipation of Mr Hariri's journey back to the palace. The users' activity followed the same route as Mr Hariri's convoy, activating similar cells as his security detail, which is consistent with surveillance.⁸³³² The map below from Mr Platt's chronology report, with the road and cell activations marked, illustrates this:

⁸³²⁸ At 09:26, it activated White House_B; at 11:23, it activated Fadlallah_A. Exhibit P1359, pp 236-237.

⁸³²⁹ At 09:34, it activated White House_A; at 10:06, it activated Jeita_B; and at 12:39, it activated Riviera_A. Exhibit P1322, pp 47-48.

⁸³³⁰ At 08:20, it activated Faqra_A; at 10:43, it activated Makassed_B. Exhibit P1334, p. 43.

⁸³³¹ At 09:46, Blue 324 ((Faqra_A) called Blue 610 (SFEIR2); at 10:04, Blue 864 (MOVPIK1) called Blue 324 (Faqra_A); at 10:05, Blue 864 (CARACA3) called Blue 585 (Qornet_El_Hamra_A); at 10:06, Blue 864 (MANARA2) called Blue 817 (SUKLIN1); at 10:16, Blue 817 (JALDIBI1) called Blue 864 (MRAICI2); at 10:17, Blue 610 (CARACA3) called Blue 817 (ZALKA4); at 10:19, Blue 610 (CARACA3) called Blue 324 (Faraya_A); at 10:20, Blue 610 (CARACA3) called Blue 585 (CHB_C); at 10:24, Blue 817 (ZOUKAK4) called Blue 864 (MRAICI2); at 10:28, Blue 817 (RAOUCH3) called Blue 610 (CARACA3); at 10:57, Blue 610 (SFEIR2) called Blue 864 (CARACA3); at 10:59, Blue 610 (HADATH3) called Blue 324 (Faqra_A); at 11:14, Blue 585 (Faraya_B) received a call from an unknown number ending in 852; and at 11:37, Blue 610 (SFEIR2) called Blue 324 (Faqra_C). Exhibit P1225, pp 7-8; exhibit P1227, p. 5; exhibit P1228, p. 3; exhibit P1229, p. 9; exhibit P1239, p. 4; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 445-446.

⁸³³² Gary Platt, 7 February 2017, pp 72-77, 86-91.



Map 42: Blue Network, Faraya, Quraitem Palace, HARIRI Crime Scene, 1 January 2005 (09:46 to 11:37)

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 141

4393. At 10:55, Subject 6's Yellow 457 called Mr Ayyash's Yellow 294, both activating cells in south Beirut, which according to Mr Platt further demonstrates Yellow 457's coordination role passing on information to Yellow 294.⁸³³³

4394. At around 12:20, Mr Hariri travelled to Mr Hamade's residence in Beirut and stayed approximately 40 minutes there, returning to Quraitem Palace around 13:30. The call activity of Mr Hariri's security detail is consistent with this timing. The security detail's last call near Quraitem Palace was at 12:20, and Witness 9's and Mr Al-Arab's mobiles activated cells in the area of Mr Hamade's residence at 12:39 and 13:19. And, at 13:27, Mr Al-Arab's mobile activated a cell in the area of Quraitem Palace.⁸³³⁴

⁸³³³ Yellow 457 activated the cell SFEIR2, and Yellow 294 activated the cell HAROUF3. Exhibit P1240, p. 52; exhibit P1252, p. 69; Gary Platt, T. 7 February 2017, pp 89-90.

⁸³³⁴ Mr Al-Hassan's mobile 1506 received an SMS at 12:20 activating LAU_MIC2_A. Witness 9's mobile received a call at 12:39 activating Riviera_A. Mr Al-Arab's mobile received a call at 13:19 activating Riviera_A; at 13:27, Mr

4395. Between 12:27 and 13:29, Blue 610, Blue 817 and Blue 864 were in contact with each other, repeatedly activating cells in the area of Quraitem Palace, along the coastal road of Beirut towards the St Georges Marina, in the area of Mr Hamade's residence and back in the area of Quraitem Palace.⁸³³⁵

4396. According to Mr Platt, the network activity is consistent with conducting surveillance of Mr Hariri at the palace, at Mr Hamade's residence during their meeting and on the route in between the two locations.⁸³³⁶ Between 13:37 and 16:47, Blue 610 and Blue 817 activated cells in south Beirut, while Blue 324 and Blue 585 remained in the area of Quraitem Palace and along the coastal road.⁸³³⁷

4397. Later in the afternoon on 1 January 2005, Mr Hariri travelled to Paris from Beirut airport.⁸³³⁸ He remained abroad until 7 January 2005.⁸³³⁹

4398. Between 17:04 and 22:29, Yellow 024, Yellow 457, Yellow 933 and Mr Ayyash's Yellow 294 were in contact four times, activating cells in south Beirut.⁸³⁴⁰ Yellow 024 and Yellow 933 contacted Yellow 457. According to Mr Platt, its user, Subject 6, was involved in surveillance of Mr Hariri earlier in the day. Yellow 457 then called Mr Ayyash's Yellow 294 at the end of the

Al-Arab's mobile made a call activating LAU_MIC2_A. Exhibit P1322, p. 48; exhibit 1352, p. 256; exhibit P1359, p. 237; Gary Platt, 7 February 2017, pp 91-92.

⁸³³⁵ At 12:27, Blue 864 (MOVPIK1) called Blue 817 (CARACA3); at 12:36, Blue 864 (CARACA3) called Blue 610 (HADATH3); at 12:37, Blue 610 (SFEIR2) called Blue 864 (MANARA2); at 12:38, Blue 610 (SFEIR2) called Blue 817 (CHIAH3); at 12:38, Blue 817 (CHIAH3) called Blue 864 (MRAICI2); at 12:40, Blue 864 (MRAICI2) called Blue 610 (SFEIR2); at 12:44, Blue 610 (SFEIR2) called Blue 817 (CHIAH2); at 12:45, Blue 864 (MRAICI2) called Blue 817 (CHIAH2); at 12:54, Blue 817 (MANARA1) called Blue 864 (MANARA1); at 13:17, Blue 610 (MRAICI2) called Blue 864 (MANARA1); at 13:20, Blue 610 (MANARA1) called Blue 817 (MRAICI2); at 13:21, Blue 817 (MRAICI2) called Blue 610 (MRAICI2); at 13:28, Blue 864 (JEANNE2) called Blue 817 (RACHOU1); and at 13:29, Blue 864 (RAOUCH3) called Blue 610 (MANARA2). Exhibit P1227, pp 5-6; exhibit P1228, p. 4; exhibit P1239, p. 4.

⁸³³⁶ Gary Platt, T. 7 February 2017, pp 83-84, 91-100, 112-113.

⁸³³⁷ At 13:37, Blue 610 (SIMON3) called Blue 585 (Bir Abed_A); at 13:41, Blue 817 (BACHOU1) called Blue 610 (SIMON3); at 14:16, Blue 324 (Saki Hadath_C) called Blue 610 (SFEIR2); at 15:33, Blue 585 (Ras Beirut MPT_B) called Blue 610 (SFEIR2); at 15:34, Blue 585 (Fadlallah_B) called Blue 324 (Riviera_B); and at 16:47, Blue 610 (BIRABD2) called Blue 324 (Riviera_B). Exhibit P1225, p. 8; exhibit P1227, pp 5-6; exhibit P1229, p. 9; exhibit P1239, p. 4; Gary Platt, T. 7 February 2017, pp 112-113, T. 8 February 2017, pp 3-5; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 447, 450-452.

⁸³³⁸ Exhibit P346, ERN 600004136; exhibit P536, p. 21. *See also* exhibit P347 (Witness statement of Dorian Al-Zaatari), ERN 60299345, para. 19.

⁸³³⁹ Exhibit P346, ERN 600004136; exhibit P536, p. 21.

⁸³⁴⁰ At 17:04, Yellow 024 (Hai Kneisse_B) called Yellow 457 (HARA2); at 17:24, Yellow 933 (Mar_Michael_C) called Yellow 457 (BRAJNE1); at 20:16, Yellow 933 (Mar_Michael_C) called Yellow 457 (BRAJNE1); at 22:29, Yellow 294 (SFEIR2) called Yellow 457 (BIRABD3). Exhibit P1240, p. 52; exhibit P1244, p. 36; exhibit P1247, p. 57; exhibit P1252, p. 69.

day. Mr Platt testified that this activity is consistent with a report from the day or preparation for the next day's activities.⁸³⁴¹

(aa) Sunday 2 and Monday 3 January 2005

4399. On Sunday 2 January 2005, during Mr Hariri's absence from Lebanon, at first in Paris, there was no activity on the Blue network.

4400. On Monday 3 January 2005, three calls were made on the Blue network. These were between Blue 585, Blue 324 and Blue 610.⁸³⁴²

(bb) Tuesday 4 to Thursday 6 January 2005

4401. On Tuesday 4 January 2005, the Red mobiles were used for the first time since the purchase of the Red SIMs in Tripoli, which had occurred sometime between 24 December and 4 January.⁸³⁴³ On 4 January, two calls were made on the Blue network, between Blue 585 and Blue 324, with the latter activating a cell in the Quraitem Palace area. These calls occurred at 13:41 and 14:00.⁸³⁴⁴

4402. Between 14:15 and 14:45 that day the Red mobiles made 13 successive calls, activating one of two neighbouring cells to the north of Tripoli, not by contacting each other, but instead by

⁸³⁴¹ Gary Platt, T. 8 February 2017, pp 10-11.

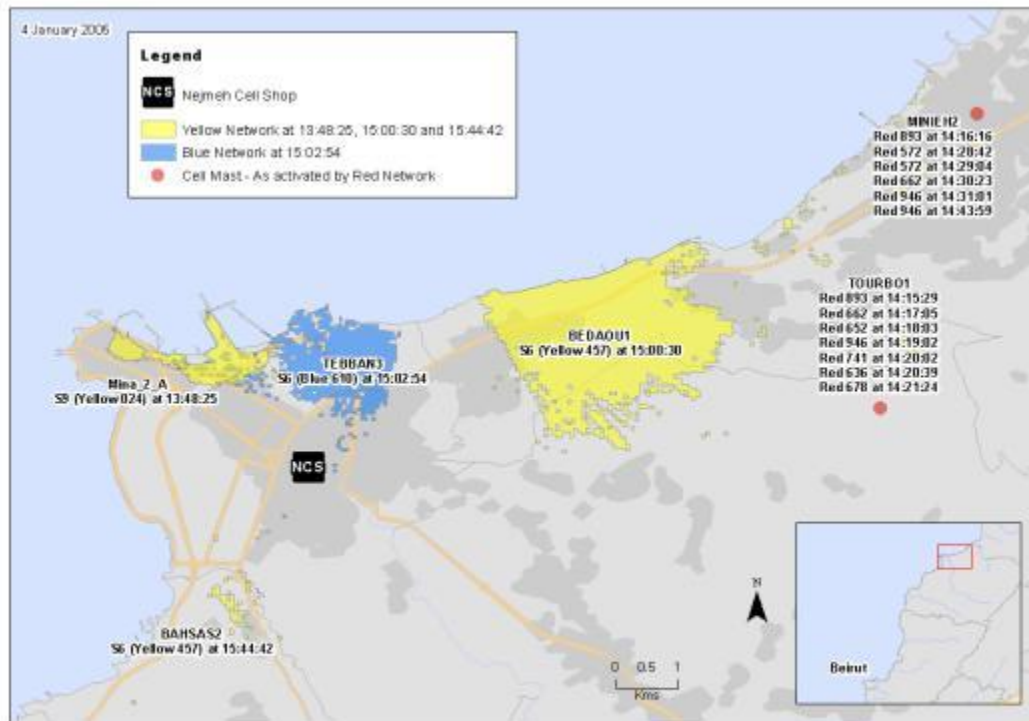
⁸³⁴² At 12:17, Blue 585 (Hai Kneisse_B) called Blue 324 (Saki Hadath_C); at 13:13, Blue 610 (BRAJNE3) called Blue 324 (Mic_Bay Rock); at 14:33, Blue 324 (Unesco_C) called Blue 585 (Saki Hadath-II_A). Exhibit P1225, p. 8; exhibit P1227, p. 6; exhibit P1229, p. 9; Gary Platt, T. 8 February 2017, pp 18-19, 26-29; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 466. While Mr Platt, in the report, states that on 2 January 2005 'Blue Network phones were not active *in the vicinity of Quraitem Palace*' (emphasis added), the call sequence tables of the Blue mobiles reveal no calls that day. The only two mobiles active—Blue 742 and Blue 940—were only involved in service calls, namely calls or text messages to or from number 1456, which is an Alfa customer number to activate mobile credit. Exhibit P1230, p. 2; exhibit P1234 (Call sequence table of Blue 940), p. 2.

⁸³⁴³ Exhibit P1197 (Call sequence table for Red 741), p. 1; exhibit P1198 (Call sequence table of Red 893), p. 1; exhibit P1199 (Call sequence table of Red 652), p. 1; exhibit P1200 (Call sequence table of Red 572); exhibit P1201 (Call sequence table of Red 662); exhibit P1202 (Call sequence table of Red 946), p. 1; exhibit P1203 (Call sequence table of Red 636), p. 1; exhibit P1204 (Call sequence table of Red 678), p. 1; Gary Platt, T. 8 February 2017, pp 39-41, T. 9 February 2017, p. 81; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 498-499; exhibit P796.1 (Network analysis report), paras 484-485. *See also* exhibit P1782, para. 468.

⁸³⁴⁴ Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 493, table 61 (p. 152).

contacting the Alfa network.⁸³⁴⁵ Mr Platt testified that this pattern is consistent with one user initiating the calls on each of the Red mobiles.⁸³⁴⁶

4403. Closely before and after the Red network calls on Tuesday 4 January, Yellow 024, Subject 6's Yellow 457 and Subject 6's Blue 610 made calls activating cells in the Tripoli area.⁸³⁴⁷ This is shown on the map below from Mr Platt's chronology report:



Map 47: S6 [Yellow 457 and Blue 610] and Yellow 024 [S9], Red Network Activation, Nejme Cell Shop, Tripoli, 4 January 2005 (13:48 to 15:44)

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 156

⁸³⁴⁵ The cells activated by the Red mobiles were TOURBO1 and MINIEH2. Exhibit P1197, p.1; exhibit P1198, p. 1; exhibit P1199, p. 1; exhibit P1200; exhibit P1201; exhibit P1202, p. 1; exhibit P1203, p. 1; exhibit P1204, p. 1; exhibit P1123 (ArcView shape files Alfa); exhibit P1783 (Expert report of Gary Platt – Chronology), para. 498, table 62 on p. 155; exhibit P796.1, para. 485. *See also* Gary Platt, T. 8 February 2017, pp 39-41, 43, 45-46, 50-51, 59.

⁸³⁴⁶ Gary Platt, T. 8 February 2017, pp 37, 49.

⁸³⁴⁷ This was approximately 27 minutes before and 17 minutes after the Red networks calls. Yellow 024 activated cell Tripoli Mina_II_A at 13:48. Yellow 457 activated BEDAOUI at 15:00 and BAHSAS2 at 15:44. Blue 610 activated TEBBAN3 at 15:02. Both Yellow 024 and Yellow 457 were in contact with Yellow 669 on 4 January 2005 (Yellow 669 activated SFEIR2 at 13:48, and HADATH3 at 15:00 and 15:44). Exhibit P1227, p. 6; exhibit P1244, p. 36; exhibit P1248, p. 92; exhibit P1252, p. 69; Gary Platt, T. 8 February 2017, pp 35-39, 51-52, 59-60, 72-73; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 489, 497, 500-501.

4404. Yellow 024 and Yellow 457 returned to Beirut in the early evening. At 16:52 and 17:58, Yellow 024 and Yellow 457 were involved in calls with Yellow 933, both activating cells in Beirut.⁸³⁴⁸

4405. On 5 January, Yellow 933 activated a cell in the Tripoli area at 12:05, to contact Yellow 457. On Thursday 6 January 2005, Yellow 425 called Mr Ayyash's Yellow 294 twice within 30 minutes around 12:00, and again at 16:42.⁸³⁴⁹ Yellow 294 was also in contact with Yellow 457 five times between 15:39 and 23:16.⁸³⁵⁰

(cc) Friday 7 January 2005

4406. According to a logbook of Mr Hariri's travels, he returned to Beirut from Switzerland on Friday 7 January 2005 at 18:00.⁸³⁵¹ However, the call activity of Mr Hariri's security team suggests that he more likely arrived at Beirut Airport between 15:42 and 16:22, and was back at Quraitem Palace by 16:54.⁸³⁵²

4407. Mr Al-Arab was in the area of Quraitem Palace until at least 15:18 on 7 January 2005.⁸³⁵³ Cell activations suggest that he and Witness 009 were travelling south from the palace at 15:31 and 15:32, respectively.⁸³⁵⁴

⁸³⁴⁸ At 16:52, Yellow 933 (Haret_Hreik_2_C) called Yellow 024 (Bashoura_A); at 17:58, Yellow 457 (SFEIR2) called Yellow 933 (Mar_Michael_B). Exhibit P1244, p. 36; exhibit P1247, pp 57-58; exhibit P1252, p. 69; Gary Platt, T. 8 February 2017, pp 52, 59-61; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 506.

⁸³⁴⁹ On 6 January 2005, Yellow 425 (Sfeir_B) called Yellow 294 (HAROUF3) at 12:22 and 12:48. At 16:42, Yellow 425 (Sfeir_B) called Yellow 294 (HAROUF3). Exhibit P1240, p. 53; exhibit P1242, p. 29; exhibit P1252, p. 69; exhibit P1247, p. 58; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 521-524.

⁸³⁵⁰ At 15:39, Yellow 294 (HAROUF3) called Yellow 457 (SFEIR2). At 15:41, Yellow 294 (HAROUF3) then again called Yellow 457 (SFEIR2). At 21:12, Yellow 294 (HAROUF3) called Yellow 457 (BRAJNE3). Yellow 457 (BRAJNE1) called Yellow 294 (HAROUF3) back at 21:19. Finally, Yellow 294 (SFEIR2) called Yellow 457 (SFEIR2) at 23:16. Exhibit P1240, p. 53; exhibit P1252, p. 70. As noted above, there can be time differences between the start time of calls on the same network and between calls on different networks. This applies to the call described above as starting at 15:41 (exhibit P1240). According to exhibit P1252, the start time of that call was instead 15:41:04.

⁸³⁵¹ Exhibit P346, ERN 600004136; exhibit P303, ERN D0004960; exhibit P536, p. 21; exhibit P347 (Witness statement of Dorian Al-Zaatari), ERN 60299345, para. 19; exhibit P347 (Supplemental material for witness statement of Dorian Al-Zaatari), ERN 60299483. *See also* Gary Platt, T. 8 February 2017, p. 97; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 539.

⁸³⁵² Exhibit P1359, pp 250-251; exhibit P1322, p. 55; exhibit P301, p. 370; Gary Platt, T. 9 February 2017, pp 2-3; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 552, 555-556.

⁸³⁵³ Mr Al-Arab activated the LAU_MIC2_A cell at 15:18. Exhibit P1359, p. 250.

⁸³⁵⁴ Both Mr Al-Arab and Witness 9 activated cell Raoucheh_B. Exhibit P1359, p. 251; exhibit P1322, p. 55; exhibit P1122; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 553, 558.

4408. Witness 009 activated cell Ouzaii-II_A at 15:42, showing that he was still travelling south.⁸³⁵⁵ By then, Mr Al-Arab had already arrived in the area of the Beirut Airport.⁸³⁵⁶ Witness 009 arrived at the airport by 16:02, activating cell Airport_A, the same cell as Mr Al-Arab.⁸³⁵⁷ Mr Al-Arab remained in that area until 16:21 and Witness 009 until 16:22.⁸³⁵⁸ Witness 009 began travelling north by 16:45.⁸³⁵⁹ At 16:54 and 17:19, Mr Al-Arab and Witness 009, respectively, again activated cells in the area of Quraitem Palace.⁸³⁶⁰

4409. There were 27 calls made on the Blue network on this day. Only 12 calls had occurred in the previous five days. Mr Platt stated ‘the Blue Network becomes very active again after being dormant for a number of days’, explaining that this increase in Blue activity coincided with Mr Hariri’s return from abroad.⁸³⁶¹ For a graphic overview of these calls, the Trial Chamber has created the table below, based on the call sequence table data:

⁸³⁵⁵ Exhibit P1322, p. 55; exhibit P1122; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 553, table 70 (p. 171).

⁸³⁵⁶ At 15:42, Mr Al-Arab activated the Airport_A cell. Exhibit P1359, p. 251; exhibit P1122; Gary Platt, T. 9 February 2017, pp 2, 5; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 553, 559.

⁸³⁵⁷ Exhibit P1322, p. 55; exhibit P1122; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 553, 559, table 70 (p. 171).

⁸³⁵⁸ Exhibit P1322, p. 55; exhibit P1359, p. 251; Gary Platt, T. 9 February 2017, p. 2; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 553, table 70 (p. 171).

⁸³⁵⁹ At 16:45, Witness 009 activated cell Unesco_B. Exhibit P1322, p. 55; Gary Platt, T. 9 February 2017, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 553, 561.

⁸³⁶⁰ Mr Al-Arab again activated cell LAU_MIC2_A, while Witness 009 activated Concorde_B. Exhibit P1322, p. 55; exhibit P1359, p. 251; exhibit P1122.

⁸³⁶¹ Gary Platt, T. 8 February 2017, pp 97-98.

Time	Outgoing	Cell	Incoming	Cell
10:50	Blue 610	CBOURJ3	Blue 585	<u>Hai El Soullum C</u>
10:53	Blue 864	MAZRAA2	Blue 817	CARACA3
11:03	Blue 864	MOVPIK1	Blue 817	MATAR6
11:11	Blue 864	CARLTO3	Blue 610	SFEIR2
11:13	Blue 864	CARLTO3	Blue 817	MEA2
11:14	Blue 610	SFEIR2	Blue 864	CARLTO3
11:37	Blue 585	<u>Bir Abed B</u>	Blue 324	<u>Concorde B</u>
12:32	Blue 585	<u>Minet El Hosn A</u>	Blue 610	SFEIR2
13:03	Blue 610	SIMON1	Blue 585	<u>Bir Abed A</u>
13:08	Blue 864	CONCOR2	Blue 610	RAMLET3
13:15	Blue 610	CARACA3	Blue 864	CONCOR2
13:24	Blue 610	CARACA3	Blue 324	<u>BorjBrakneh-II B</u>
13:25	Blue 610	CARACA3	Blue 817	CBOURJ3
14:39	Blue 610	CARACA3	Blue 324	<u>Adonis C</u>
14:40	Blue 610	CARACA3	Blue 817	RASNAB1
14:45	Blue 610	CARACA3	Blue 864	SFEIR2
14:46	Blue 610	CARACA3	Blue 585	<u>Faraya A</u>
15:21	Blue 585	<u>Faqra A</u>	Blue 610	CARACA3
15:27	Blue 864	CARACA3	Blue 610	CARACA3
15:29	Blue 610	CARACA3	Blue 864	CARACA3
15:30	Blue 864	CARACA3	Blue 817	PORT1
16:55	Blue 864	CARACA3	Blue 324	<u>Aintoura B</u>
17:04	Blue 610	BIRABD3	Blue 817	MPT1
17:05	Blue 610	BIRABD3	Blue 324	<u>Dbaiyeh A</u>
18:13	Blue 585	<u>Hai El Soullum C</u>	Blue 610	BIRABD3
21:26	Blue 322	<u>Chatila A</u>	Blue 813	SFEIR2
21:32	Blue 813	SFEIR2	Blue 322	<u>Minet el Hosn C</u>

4410. Blue 324 moved from the area of Quraitem Palace to south Beirut at 13:24 before travelling in the direction of Faraya by 14:39.⁸³⁶² Blue 585 also activated cells in the Faraya area, when it was in contact with Blue Subject 6's 610 at 14:46 and 15:21.⁸³⁶³ Because 7 January 2005 was a Friday, Mr Platt explained that the placement of the Blue mobiles was consistent with the possibility that Mr Hariri might go directly from Beirut Airport to Faqra Villa, or stop at Quraitem Palace on the way.⁸³⁶⁴

⁸³⁶² At 13:24, Blue 324 activated cell BorjBrakneh-II_B. At 14:39, it activated cell Adonis_C, located close to the Zouk Mosbeh junction turnoff. Exhibit P1225, p. 8; Gary Platt, T. 8 February 2017, p. 103; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 548.

⁸³⁶³ At 14:46, Blue 585 activated the cell Faraya_A. At 15:21, it activated the cell Faqra_A. Exhibit P1229 (call sequence table of Blue 585), p. 9; exhibit P1122; Gary Platt, T. 8 February 2017, p. 103; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 547.

⁸³⁶⁴ Gary Platt, T. 8 February 2017, p. 103.

(dd) Saturday 8 to Monday 10 January 2005

4411. Mr Hariri was at Quraitem Palace and received visitors on Saturday 8, Sunday 9 and Monday 10 January 2005, including Mr Bassel Fuleihan MP, Mr Mustafa Nasser, the journalist Mr Faisal Selman, the Syrian chief of military intelligence in Lebanon, Mr Rustom Ghazaleh and Mr Hani Hammoud, who was a media advisor to Mr Hariri and editor of the newspaper, *Al-Mustaqbal*.⁸³⁶⁵

4412. On Saturday 8 January 2005, three Blue mobiles (Blue 324, Blue 817 and Blue 864) activated cells in the area of Quraitem Palace around midday.⁸³⁶⁶ In the late afternoon, Blue 585 was located in the Faqra area and Blue 324 was in the area of Parliament.⁸³⁶⁷ This was also the first time Blue 940 was active after being dormant for five months.⁸³⁶⁸

4413. On Sunday 9 January 2005, Blue 235 was active for the first time.⁸³⁶⁹ Blue 585 and Blue 610 were also active, exchanging four calls between 15:34 and 17:43.⁸³⁷⁰

4414. On Monday 10 January, the Blue network continued to expand as Blue 233—attributed to Mr Ayyash—was used for the first time.⁸³⁷¹ There was, however, no Blue network activity around Quraitem Palace or any location related to Mr Hariri.⁸³⁷²

⁸³⁶⁵ Exhibit P301, pp 320-325; exhibit P303, ERN D0004946; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 573. *See also* exhibit P1782, paras 501, 505, 519.

⁸³⁶⁶ Blue 324 activated cell Mic_Bay Rock 2 at 12:09, 12:11 and 12:12; Blue 817 activated CARLTO3 at 12:12 and Blue 864 activated cell CONCOR2 at 12:11. Exhibit P1225, p. 8; exhibit P1228, p. 4; exhibit P1239, p. 5; exhibit P1123; exhibit P1122; Gary Platt, T. 9 February 2017, pp 33-35; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 574, 578-579.

⁸³⁶⁷ Blue 585 activated cell Faqra_A at 17:17 by receiving a call from Blue 324. Blue 324 activated cell HQ_B at 17:11, 17:15, twice at 17:16 and 17:17. Exhibit P1229, p. 9; exhibit P1225, p. 8; exhibit P1122; Gary Platt, T. 9 February 2017, pp 34, 36; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 575-576, 580-582.

⁸³⁶⁸ This was the first inter-Blue activity since 9 August 2004 for Blue 940. Exhibit P1234, p. 2; Gary Platt, T. 9 February 2017, p. 34. *See also* exhibit P1782, para. 502.

⁸³⁶⁹ Blue 235 activated Sfeir_A at 00:32. Exhibit P1226 (Call sequence table of Blue 235), p. 1. *See also* exhibit P1782, para. 516.

⁸³⁷⁰ At 15:34, Blue 610 (BIRABD_2) called Blue 585 (Hai El Soullum_C). At 16:34, Blue 585 (Hai El Soullum_C) called Blue 610 (BRAJNE1). Blue 585 (Raouche_B) again called Blue 610 (BRAJNE1) at 17:40. Finally, Blue 610 (BRAJNE1) called Blue 585 (Raouche_B) at 17:43. Exhibit P1229, p. 10; exhibit P1227, p. 7; exhibit P1123.

⁸³⁷¹ At 14:00, Blue 233 (Borj_El-Barajneh_C) called Blue 235 (Sfeir_B), at 14:01:07 according to exhibit P1226 for Blue 235 and at 14:00:15 according to exhibit P1238 for Blue 233. Exhibit P1226, p. 1; exhibit P1238 (Call sequence table of Blue 233), p. 1; Gary Platt, T. 9 February 2017, p. 51.

⁸³⁷² Gary Platt, T. 9 February 2017, p. 50.

(ee) Tuesday 11 January 2005

4415. Mr Hariri received visitors at Quraitem Palace throughout the day on Tuesday 11 January 2005.⁸³⁷³

4416. There was limited Blue network activity that day, during which all calls activated cells in south Beirut.⁸³⁷⁴ Mr Ayyash's Blue 233 participated in three of the seven calls on the Blue network.⁸³⁷⁵

4417. There were four calls on the Green network that day between Mr Ayyash's Green 300 and Mr Badreddine's Green 023.⁸³⁷⁶ At 11:22, Green 300 activated a cell in south Lebanon, on the costal road between Saida and Beirut, calling Green 023.⁸³⁷⁷ At 14:30 and 14:55, Green 300 connected to cells adjacent to the cell providing predicted best server coverage to the vehicle yard in Tripoli where the Mitsubishi Canter was sold.⁸³⁷⁸ This was the only day between 1 August 2004 and 28 December 2005, in which the Green network, or any mobile the Prosecution seeks to attribute to Mr Ayyash, used cells in Tripoli.⁸³⁷⁹

⁸³⁷³ Exhibit P301, pp 325-327. *See also* exhibit P1782, para. 526.

⁸³⁷⁴ At 12:15, Blue 817 (ROUEIS2) called Blue 610 (HADATH3). At 12:17, Blue 610 (SFEIR2) called Blue 817 (ROUEIS2). At 12:41, Blue 235 (Sfeir_B) called Blue 322 (Coast Road_A). Blue 235 (Sfeir_B) called Blue 233 (Mic_Mcharrafieh_A) at 19:47. At 19:59, Blue 235 (Sfeir_B) called Blue 322 (Hazmiyeh-II_B). Blue 235 (Sfeir_B) called Blue 233 (Haret_Hreik_2_A) at 21:09. Finally, Blue 322 (Hazmiyeh-II_B) called Blue 233 (Mar_Michael_C) at 22:40. Exhibit P1226, p. 1; exhibit P1227, p. 7; exhibit P1236, p. 2; exhibit P1238, p. 1; exhibit P1239, p. 5; Gary Platt, T. 9 February 2017, p. 85.

⁸³⁷⁵ Gary Platt, T. 9 February 2017, p. 85; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 590-591.

⁸³⁷⁶ Exhibit P1305 (Call sequence table of 13 numbers—Mr Badreddine), pp 5655-5656; exhibit P1259 (Call sequence table of ten numbers—Mr Ayyash), p. 333; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 589.

⁸³⁷⁷ Green 300 activated KHALDE3. Green 023 activated cell ROUEIS3. Exhibit P1305, p. 5655; exhibit P1259, p. 333; exhibit P1123; Gary Platt, T. 9 February 2017, pp 74-75; *see also* exhibit P1807, slides 253-254.

⁸³⁷⁸ Green 300 activated cells BEDAOU2 at 14:30 and TEBBAN1 at 14:55. Exhibit P1259, p. 333; exhibit P1123; exhibit P1783 (Expert report of Gary Platt—Chronology), paras 589, 595-596, table 74 (p. 183); Gary Platt, T. 9 February 2017, pp 77, 84-85, T. 5 April 2017, pp 31-32. *See also* exhibit P1807, slides 261-264; exhibit P1116 (Expert report of John Edward Philips – Green mission phones), para. 7.5.5.36.

⁸³⁷⁹ Exhibit P1205; exhibit P1211; exhibit P1259, pp 239-432; exhibit P1123; Gary Platt, T. 9 February 2017, pp 76-77; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 598; John Edward Philips, T. 5 September 2016, pp 71-72, T. 6 September 2016, pp 66-67; exhibit P1116 (Expert report of John Edward Philips – Green mission phones), paras 7.5.5.34-7.5.5.35. *See also* exhibit P1118 (PowerPoint presentation on common mission phones, John Edward Philips), slides 122, 153. Before the Green 300 calls activating Tripoli cells, Mr Ayyash's personal mobile 935 activated a cell that Mr Philips and Mr Platt described as being potentially en route to Tripoli. John Edward Philips, T. 6 September 2016, pp 66-67; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 594, table 74 (p. 183).

(ff) Friday 14 January 2005

4418. On Friday 14 January 2005, Mr Hariri received visitors at Quraitem Palace between 07:50 and 20:30.⁸³⁸⁰

4419. The amended consolidated indictment pleads that ‘All eight Red Network phones were used to observe HARIRI or locations connected with him between 14 January 2005 and 12 February 2005’.⁸³⁸¹ According to the Prosecution’s Pre-trial brief:

On 14 January 2005, Subjects began using Red Network phones while conducting observations. On this day, while HARIRI had appointments at Quraitem Palace, users of Red Network phones were in contact with each other on at least 32 occasions around Quraitem Palace, Parliament and Faqra.⁸³⁸²

4420. Mr Platt commented that this day was ‘the first use of the Red Network phones’. They were involved in ‘activity around Quraitem Palace, the Parliament area, the route between Quraitem Palace-Faqra villa-Zouk-Mosbeh, and also Faraya, and also in Tripoli’.⁸³⁸³ The activity took place throughout the course of the day and involved all the Red mobiles.

4421. According to Mr Platt, there was no ‘attempt to follow any of the movements of Mr. Hariri’, and there was no direct surveillance, but rather, ‘preparation for further surveillance’.⁸³⁸⁴ He described it as ‘almost a scouting day, a scouting process...consistent with doing some sort of preparatory work for surveillance’.⁸³⁸⁵

⁸³⁸⁰ Exhibit P301; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 616.

⁸³⁸¹ Amended consolidated indictment, para. 15 (a).

⁸³⁸² Prosecution’s updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), para. 72.

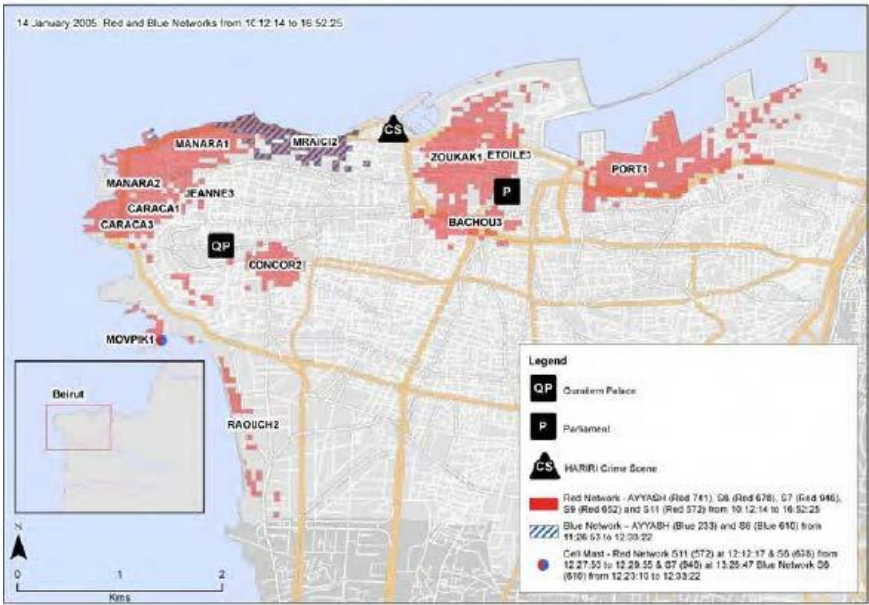
⁸³⁸³ Gary Platt, T. 13 February 2017, p. 48.

⁸³⁸⁴ Gary Platt, T. 13 February 2017, pp 49, 62. This was in response to a judicial question (from Judge Braidy), ‘Mr. Platt, I’m sorry. It isn’t clear for me. You said that they were not conducting surveillance, the Red Network now in this day. But you said that they are on the same -- in the same location that usually we have seen the Blue. What is the difference? When you said for the Blue -- the Blue they are conducting in this location, not in the immediate vicinity of Quraitem Palace but in the area, what do you call it, area, it’s more -- for example, for -- I don’t know, CARACA, Bashoura_ -- or not Bashoura_, CARACA and maybe MANARA1, maybe, so why you arrive to this conclusion that they are not conducting surveillance. They are only exploring the location, you mean?’.

Mr Platt, in answering, also stated that Mr Hariri was at Quraitem Palace and had not travelled from there, ‘it’s a Wednesday, and we know that usually it’s during the holiday period or the weekends that he travelled’. However, the Trial Chamber notes that 14 January was a Friday, so Mr Platt was inadvertently in error.

⁸³⁸⁵ Gary Platt, T. 13 February 2017, p. 49.

4422. Mr Platt plotted part of the network mobile activity on this day in the map below:



Map 62: Red and Blue Network (Ayyash, S6, S7, S9 and S11), Quraitem Palace, HARIRI Crime Scene and Parliament, 14 January 2005 (10:12 to 16:52)

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 194

4423. The table below shows most of the Red network calls that Mr Platt highlighted for this day:

Time (hh:mm:ss)	Outgoing	Cell name	Duration (secs)	Incoming	Cell name
11:43:35	146B93C0	n/a	0 (SMS)	Red 652 [S9]	MRAICI2
11:49:03	Red 652 [S9]	MRAICI2	1	Red 678 [S6]	MRAICI2
11:53:38	Red 678 [S6]	MRAICI2	74	Red 572 [S11]	RAOUC2
12:01:13	Red 572 [S11]	CARACA3	44	Red 678 [S6]	MRAICI2
12:12:17	Red 678 [S6]	MRAICI2	46	Red 572 [S11]	MOVPIK1
12:23:10	Blue 233 [AYYASH]	Saquiet_AL_Hadat_C	82	Blue 610 [S6]	MOVPIK1
12:25:18	Blue 610 [S6]	MOVPIK1	61	Blue 324 [S7]	Sfeir_B
12:27:53	Red 678 [S6]	MOVPIK1	61	Red 946 [S7]	ETOILE3
12:29:55	Red 678 [S6]	MOVPIK1	11	742	n/a
12:33:22	Blue 610 [S6]	MOVPIK1	53	Blue 324 [S7]	Sfeir_B
12:44:38	Red 678 [S6]	CARACA3	31	Red 652 [S9]	MANARA1
12:46:00	Red 678 [S6]	CARACA3	6	Red 652 [S9]	MRAICI2
12:51:40	Blue 324 [S7]	Sfeir_B	7	Blue 585 [S5]	Saquiet_AL_Hadat_C
12:52:10	Red 741 [AYYASH]	BACHOU3	39	Red 678 [S6]	CARACA3
12:53:15	Red 678 [S6]	CARACA3	39	Red 652 [S9]	MRAICI2
13:04:26	Red 652 [S9]	MRAICI2	50	Red 678 [S6]	CARACA3
13:26:47	Red 946 [S7]	MOVPIK1	97	Red 678 [S6]	CARACA3
13:36:45	Red 678 [S6]	JEANNE3	108	Red 652 [S9]	MRAICI2
13:42:04	146B93C0	n/a	0 (SMS)	Red 636 [S5]	ALMAZA1
13:46:35	Blue 233 [AYYASH]	Mar_Michael_C	61	Blue 610 [S6]	AUH3
13:55:01	Red 652 [S9]	MRAICI2	69	Red 946 [S7]	CARACA3
13:59:42	146B93C0	n/a	0 (SMS)	Red 893 [S8]	MPT3
14:03:34	Red 946 [S7]	CARACA1	31	Red 893 [S8]	SUKLIN1
14:39:41	Red 678 [S6]	MRAICI2	19	Red 652 [S9]	MANARA2
14:40:21	Red 893 [S8]	MOSBEH2	34	Red 946 [S7]	MRAICI2
14:46:21	Red 652 [S9]	CARACA1	102	Red 741 [AYYASH]	PORT1
15:05:09	Red 893 [S8]	RIMAL1	58	Red 652 [S9]	ZOUKAK1
15:16:19	Red 741 [AYYASH]	AMANOS3	34	Red 652 [S9]	DORA1
16:21:22	Red 893 [S8]	RIMAL1	45	Red 678 [S6]	MRAICI2
16:22:36	Red 893 [S8]	RIMAL1	18	Red 652 [S9]	TEBBAN3
16:29:38	Blue 233 [AYYASH]	Dbayeh_C	24	Blue 235 [S12]	Sfeir_B
16:31:26	Red 678 [S6]	CARACA3	34	Red 652 [S9]	TEBBAN3
16:43:01	Red 893 [S8]	SUKLIN2	44	Red 652 [S9]	TEBBAN1
16:46:21	Red 893 [S8]	MPT1	20	Red 946 [S7]	MOSBEH1

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 193

(gg) Monday 17 January 2005

4424. Between Monday 17 and Thursday 27 January 2005, the nine Blue mobiles which were activated between Friday 7 and Wednesday 12 January 2005 became active.⁸³⁸⁶ Blue 864 was unusually active in a cell coverage area immediately to the east of Beirut airport, particularly on 19, 24 and 26 January 2005. There were frequent calls between Mr Ayyash's Green 300 and Mr Badreddine's Green 023.

4425. On Monday 17 January, Mr Hariri remained at home all day.⁸³⁸⁷ At 22:08, on Monday 17 January 2005, Mr Ayyash's Green 300 made a 16-second call to Green 023.⁸³⁸⁸ This was the first call between the two numbers since Saturday 15 January.⁸³⁸⁹ Both activated BRAJNE3 at the start of the call; the respective end cells were MRAIJE1 (Green 300) and ROUEIS3 (Green 023).⁸³⁹⁰ The Prosecution submits that this call triggered subsequent Blue network activity.⁸³⁹¹

4426. At 22:39, Mr Ayyash's Blue 233 called Blue 322 connecting to Saquiet_Hadath_2_C, adjacent to BRANJE3.⁸³⁹² This was the fourth of six calls between Blue 233 and Blue 322 that day. Blue 233 activated Saquiet_Hadath_2_C also on the two later calls, at 23:05 and 23:31.⁸³⁹³

4427. According to Mr Platt, the sequence of calls at 22:08 and 22:39 is 'consistent with' the users of Green 300 and Green 023 meeting.⁸³⁹⁴ He pointed to the short duration of the call, the proximity of the mobiles and the half hour of inactivity of all mobiles after the 22:08 call.⁸³⁹⁵

(hh) Tuesday 18 January 2005

4428. Mr Hariri spent Tuesday 18 January 2005 receiving visitors at Quraitem Palace.⁸³⁹⁶ That day there were 54 calls between 13 of the Blue mobiles, namely Blue 610, Blue 817, Blue 864,

⁸³⁸⁶ See chapter VIII 'Nature and purpose of colour-coded mobile networks and purple group of mobiles', (E) (1) 'Setting up the network'.

⁸³⁸⁷ Exhibit P301; exhibit P303 (Press release, 17 January 2005); exhibit P1782, para. 630.

⁸³⁸⁸ Exhibit P1211, p. 4; exhibit P1207, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 673, 687, table 85 (p. 205).

⁸³⁸⁹ Gary Platt, T. 15 February 2017, p. 30.

⁸³⁹⁰ Exhibit P1211, p. 4; Exhibit P1207, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 673, 687, table 85 (p. 205).

⁸³⁹¹ Prosecution final trial brief, paras 783-784.

⁸³⁹² Exhibit P1238, p. 2; exhibit P1236, p. 4. Exhibit P1807, slide 430.

⁸³⁹³ Exhibit P1238, p. 2.

⁸³⁹⁴ Gary Platt, T. 15 February 2017, pp 31, 34, 37.

⁸³⁹⁵ Gary Platt, T. 15 February 2017, pp 30-31, 38.

⁸³⁹⁶ Exhibit P301; exhibit P1782, para. 641.

Blue 428, Blue 742, Blue 940, Blue 585, Blue 324, Blue 322, Mr Ayyash's Blue 233, Blue 235, Blue 501 and Blue 967.⁸³⁹⁷ Of these, Blue 233 was 'most dominant', being part of 25 calls.⁸³⁹⁸

4429. Cells in south Beirut were activated the most often,⁸³⁹⁹ with the exception of Blue 610, Blue 864 and Blue 233.⁸⁴⁰⁰ The Prosecution's cell site expert, Mr Philips produced the following table illustrating the top five cells used by Blue network mobiles on 18 January 2005:

Cell name	Times used	% util
Sfeir_B	17	15.60%
SFEIR2	14	12.84%
Sfeir_A	10	9.17%
Hadath_C	6	5.50%
Hai El Soullum_C	5	4.59%

Exhibit P1115 (Expert report of John Edward Philips—15 Blue mission phones), table 97 (p. 175)

4430. Call data records show that Blue 864 travelled to the Baalbek area on the morning of 18 January 2005 and spent several hours there before returning to Dahyieh. In this time, Blue 864 had contact with Subject 6's Blue 610 and Blue 501.⁸⁴⁰¹

4431. At 14:57, Mr Ayyash's Green 300 called Mr Badreddine's Green 023 for 57 seconds.⁸⁴⁰² The users were in separate locations in south Beirut.⁸⁴⁰³ Mr Platt accorded significance to the

⁸³⁹⁷ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), paras 6.9.31.3-6.9.31.6. *See also* exhibit P1782, para. 5 (pp 198-199).

⁸³⁹⁸ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), para. 6.9.31.6.

⁸³⁹⁹ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), paras 6.9.31.14-6.9.31.15, table 97 (p. 175).

⁸⁴⁰⁰ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), paras 6.9.31.8-6.9.31.9.

⁸⁴⁰¹ Exhibit P1228, p. 5; exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), para. 6.9.31.10; Gary Platt, T. 16 February 2017, pp 12-14, 20; exhibit P1227, p. 9; exhibit P1237 (Call sequence table of Blue 501), p. 1. *See also* exhibit P1782, paras 12-13 (p. 200).

⁸⁴⁰² Exhibit P1207, p. 3; exhibit P1211, p. 4; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 691.

⁸⁴⁰³ The mobiles activated OZAIMB2/AIB3 (Green 300) and ROUEIS3 (Green 023). Exhibit P1207, p. 3; exhibit P1211, p. 4; Gary Platt, T. 16 February 2017, p. 29; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 691.

relatively long duration of this call compared to other Green network calls.⁸⁴⁰⁴ Green 300 again called Green 023 at 16:07.⁸⁴⁰⁵ By the time of this 25-second call, Mr Ayyash's Green 300 had moved to the port area, whereas Mr Badreddine's Green 023 connected to the same cell.⁸⁴⁰⁶ Forty minutes later, at 16:49, Green 023 called Green 300.⁸⁴⁰⁷ For this third call, lasting 22 seconds, Green 023 activated start and end cells indicating movement north from the user's earlier location.⁸⁴⁰⁸

4432. Mr Badreddine's Green 023 arrived in the same area as Mr Ayyash's Green 300 shortly after 17:00. At 17:07, Green 023 called Green 300 for their fourth and final 68-second call, and the two activated the same cell, PORT2.⁸⁴⁰⁹ This is one of their longest calls and to Mr Platt shows that there was 'something of significance to discuss'.⁸⁴¹⁰

4433. Mr Platt took the view that the users of Green 023 and Green 300 met in the port area.⁸⁴¹¹ He concluded this based on the following factors: the preceding sequence of calls showed one user travelling to the area, followed by the other; the subsequent inactivity on all mobiles attributed to each. Mr Badreddine's personal mobile 633, was turned off over the period; there were no further calls between Green 023 and Green 300 on 18 January 2005; and finally, the location was significant.⁸⁴¹²

4434. From 18:18 on Tuesday 18 January until 00:26 the next morning Wednesday 19 January, Mr Ayyash's Blue 233 was involved in 19 calls with other Blue mobiles, including Blue 585 (four calls), Blue 864 (four), Blue 322 (three), Blue 742 (three), Blue 501 (two), Blue 817 (one), Blue 428 (one) and Blue 610 (one).⁸⁴¹³

⁸⁴⁰⁴ Gary Platt, T. 16 February 2017, pp 29-31.

⁸⁴⁰⁵ Exhibit P1207, p. 3; exhibit P1211, p. 4; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 692.

⁸⁴⁰⁶ Green 300 activated PORT2, and Green 023 activated ROUEIS3. Exhibit P1207, p. 3; exhibit P1211, p. 4; Gary Platt, T. 16 February 2017, pp 34-35; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 692.

⁸⁴⁰⁷ Exhibit P1211, p. 4; exhibit P1207, p. 4.

⁸⁴⁰⁸ Green 023 activated MIKAEL3 (start cell) and MIKAEL2 (end cell). Exhibit P1211, p. 4. *See also* exhibit P1783 (Expert report of Gary Platt – Chronology), para. 694.

⁸⁴⁰⁹ Exhibit P1211, p. 4; exhibit P1207, p. 4; Gary Platt, T. 16 February 2017, pp 29, 31, 34; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 695. *See also* exhibit P1782, para. 10 (pp 199-200).

⁸⁴¹⁰ Gary Platt, T. 16 February 2017, pp 36-37.

⁸⁴¹¹ Gary Platt, T. 15 February 2017, p. 33, T. 16 February 2017, pp 29-31, 34, 37.

⁸⁴¹² Gary Platt, T. 16 February 2017, pp 30-33, 37, 50-51, 54-57.

⁸⁴¹³ Exhibit P1238, pp 2-3.

4435. Just before midnight on 18 January 2005, Blue 742 travelled from south Beirut to the area of Anjar, near the Syrian border. The journey was a short one, with Blue 742 returning to Dahyieh shortly after 01:00 on Wednesday 19 January.⁸⁴¹⁴

4436. Mr Platt stated that the last call before Blue 742's departure was at 23:18, the user had reached the area of Anjar by 00:04 and returned to south Beirut by 01:12 and that a journey to Anjar would take between 45 minutes and one hour. On this basis, if Blue 742 went to Anjar, the trip would have been 'quite quick' or 'almost there and back'.⁸⁴¹⁵ Noting the 'extensive' coverage area of cells in the area, Mr Platt thought that 'theoretically he could have gone to Anjar but equally he could have gone elsewhere in this area'.⁸⁴¹⁶ Mr Platt did not venture an opinion on the purpose of the trip. Prosecution counsel associated the area with the location of the Syrian Military Intelligence headquarters.⁸⁴¹⁷ Mr Rustom Ghazaleh, the head of Syrian military intelligence in Lebanon had his main headquarters in Anjar.⁸⁴¹⁸

4437. Twelve minutes before Blue 742 activated a cell in Dahyieh, at 00:59 on Wednesday 19 January 2005, Mr Ayyash's Green 300 called Mr Badreddine's Green 023, for two minutes and 20 seconds.⁸⁴¹⁹ Green 023 returned the call at 01:05 for about a minute and a half.⁸⁴²⁰ These were, respectively, the second and fourth longest calls between them.⁸⁴²¹

4438. That the Green network calls occurred about half an hour after Blue 742 was in contact with Mr Ayyash's Blue 233 on the user's return from Anjar, in Mr Platt's view, suggested that the two could be connected.⁸⁴²² Mr Platt added, however, that 'there was a number of significant events

⁸⁴¹⁴ Exhibit P1230, p. 3. *See also* exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), paras 6.9.62.230-6.9.62.231, map 30; Gary Platt, T. 16 February 2017, pp 90-92.

⁸⁴¹⁵ Gary Platt, T. 16 February 2017, p. 85.

⁸⁴¹⁶ Gary Platt, T. 16 February 2016, p. 90.

⁸⁴¹⁷ Gary Platt, T. 16 February 2016, pp 76-77, 86, 91-92. *See also* exhibit P1889 (Chronology PowerPoint presentation – 18 January 2005 to 27 January 2005), slide 43; exhibit P1895 (EPE snapshots related to exhibit P1889, slide 43).

⁸⁴¹⁸ Ghattas El-Khoury, T. 15 January 2015, p. 66; Ghazi El-Youssef, T. 11 March 2015, p. 62; Walid Jumblatt, T. 4 May 2015, p. 23.

⁸⁴¹⁹ Exhibit P1207, p. 4; exhibit P1211, p. 4.

⁸⁴²⁰ Exhibit P1211, p. 4; exhibit P1207, p. 4.

⁸⁴²¹ Gary Platt, T. 16 February 2017, p. 95.

⁸⁴²² During its trip to Anjar, Blue 742 was in contact with Mr Ayyash's Blue 233 two other times. Gary Platt, T. 16 February 2017, pp 78, 93; exhibit 1230, p. 3; exhibit P1238, p. 3.

taking place during this phase’ that may have required discussion between Green 300 and Green 023.⁸⁴²³

(ii) Wednesday 19 January 2005

4439. Between Wednesday 19 and Friday 28 January 2005, there were 39 calls between Blue 864 and other Blue network mobiles for which Blue 864 used only three adjoining cells that together provide predicted best server coverage to an area next to the airport, to its east.⁸⁴²⁴

4440. Mr Philips testified that there were a lot of commercial buildings, rather than domestic dwellings, in that area.⁸⁴²⁵ With each call, Blue 864 activated either one or a combination of two of Alfa’s cells, KARAME3, AIB2 and AIB3.⁸⁴²⁶

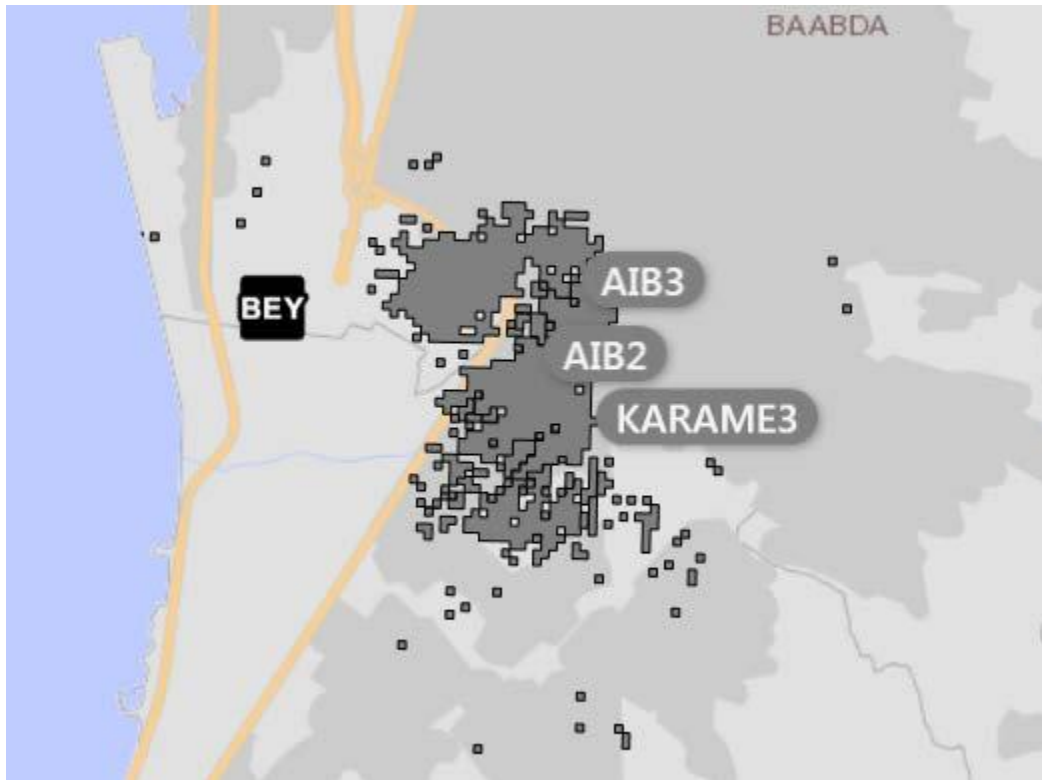
4441. For convenience, the Trial Chamber here adopts the Prosecution’s terminology and refers to those three cells collectively as the ‘east-of-airport cells’—but noting that other cells also provide coverage to areas further east of the airport. It has created a map from the electronic presentation of evidence, in which the three Alfa cells are marked and the airport is marked by its IATA code of ‘BEY’:

⁸⁴²³ Gary Platt, T. 16 February 2017, pp 93-94.

⁸⁴²⁴ Exhibit P1228, pp 5-9; exhibit P1259, pp 339-340, 342, 344-349; exhibit P1227, pp 9-10; exhibit P1226, p. 3; exhibit P1237, pp 2-3; exhibit P1225, pp 9-10; exhibit P663 (Statement of Andrew Fahey), annex 1, no. 35; exhibit P1123. *See also* exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), paras 6.9.32.10, 6.9.33.11, 6.9.37.9, 6.9.37.11, 6.9.39.11, 6.9.39.14-6.9.39.15, 6.9.40.12, 6.9.45.95, 6.9.64.6-6.9.64.9, map 39 (p. 332); John Edward Philips, T. 31 August 2016, pp 104-105, referring to exhibit P1118, slide 37, T. 5 September 2016, pp 33-35, 69, 75; exhibit P1782, paras 647, 656; exhibit P1780 (Chronology of relevant events), pp 19, 22.

⁸⁴²⁵ John Edward Philips, T. 5 September 2016, p. 51; *see also* exhibit P1118, slides 117-118.

⁸⁴²⁶ Exhibit P1228, pp 5-9.



*'East-of-airport' cells created by the Trial Chamber from electronic presentation of evidence,
exhibit P592.1*

4442. Most of the 39 calls using the east-of-airport cells were on Wednesday 19, Monday 24 and Wednesday 26 January 2005. Thirteen were on 19 January,⁸⁴²⁷ nine on 24 January⁸⁴²⁸ and ten on 26 January.⁸⁴²⁹ Two-thirds of the calls—26 out of 39—were with Mr Ayyash's Blue 233.⁸⁴³⁰ According to Mr Platt and Mr Philips, other than this period of activity, it was uncommon for Blue 864 or any other mobile in the covert networks to use the east-of-airport cells.⁸⁴³¹

⁸⁴²⁷ Exhibit P1227, p. 9; exhibit P1228, pp 5-6; exhibit P1259, pp 339-340.

⁸⁴²⁸ Exhibit P1226, pp 2-3; exhibit P1228, p. 7; exhibit P1237, p. 2; exhibit P1259, pp 345-346.

⁸⁴²⁹ Exhibit P1228, p. 8; exhibit P1259, pp 347-348; exhibit P1237, p. 3; exhibit P1225, pp 9-10.

⁸⁴³⁰ Exhibit P1228, pp 5-9; exhibit P1259, pp 339-340, 342, 344-349.

⁸⁴³¹ Gary Platt, T. 16 February 2017, pp 106, 113-115, T. 21 February 2017, p. 61; exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), paras 6.9.63.32, 6.9.64.2-6.9.64.4; John Edward Philips, T. 31 August 2016, pp 105-106, T. 2 September 2016, pp 89-91, T. 5 September 2016, pp 30-31; *see also* exhibit P1118, slides 37-38, 111-112, 117-118.

4443. Another feature of Blue 864's calls using the east-of-airport cells in this period was that about 30 per cent of those with Mr Ayyash's Blue 233 were in the early hours of the morning⁸⁴³²—also highly unusual for these mobiles.⁸⁴³³ Further, Mr Philips underlined that one of these Blue 864's calls with Mr Ayyash was close in time to a previous call between Mr Ayyash's and Mr Badreddine's Green mobiles. He termed this a hierarchical call flow.⁸⁴³⁴

4444. In the summary below, the Trial Chamber has specifically described the predicted best server coverage area of cells that calls activated only if the location was unusual given the mobiles' usual use patterns, or otherwise appears to be particularly significant.

4445. The Green mobiles' activity on Wednesday 19 January 2005 included five calls between Mr Badreddine's Green 023 and Mr Ayyash's Green 300.⁸⁴³⁵ In addition, there were 44 Blue mobile calls, using 12 different Blue mobiles.⁸⁴³⁶ Blue 864 made or received over 30 per cent of them, 14 calls.⁸⁴³⁷

4446. Thirteen of the 14 calls on 19 January 2005—all of those after the call at 00:06 to Blue 813⁸⁴³⁸—activated only the east-of-airport cells.⁸⁴³⁹ The first of these was at 05:22 to Mr Ayyash's Blue 233.⁸⁴⁴⁰ The last was at 22:01.⁸⁴⁴¹ Mr Philips concluded that Blue 864 was at, or in the area of, the airport over a significant period on 19 January 2005, 'with apparent limited movement'.⁸⁴⁴²

⁸⁴³² Eight of the 26 calls were with Blue 233—approximately 20 per cent of Blue 864's 39 calls using these cells. Exhibit P1228, pp 5-9; John Edward Philips, T. 5 September 2016, p. 40; Gary Platt, T. 16 February 2017, p. 107, T. 21 February 2017, p. 61, T. 22 February 2017, p. 16; exhibit P1118, slide. 117.

⁸⁴³³ John Edward Philips, T. 5 September 2016 pp 31, 43, 46; Gary Platt, T. 21 February 2017, p. 61, T. 22 February 2017, p. 16, T. 9 March 2017, p. 99.

⁸⁴³⁴ Mr Philips described this call flow as including a third call—in between—from Mr Ayyash's Blue 233 to Blue 501. John Edward Philips, T. 5 September 2016, pp 68-69, 74. *See also* exhibit P1118, slide 121.

⁸⁴³⁵ At 00:59, 01:05, 15:25 (two calls) and 21:02. Exhibit 1207, p. 4; exhibit P1211.

⁸⁴³⁶ Exhibit P1224 (call sequence table of Blue 967), p. 1; exhibit P1226, p. 2; exhibit P1227, pp 9-10; exhibit P1228, pp 5-6; exhibit P1229, p. 11; exhibit P1230, p. 3; exhibit P1231 (call sequence table of Blue 428), p. 3; exhibit P1232 (call sequence table of Blue 813), p. 3; exhibit P1234, p. 4; exhibit P1236, p. 4; exhibit P1237, p. 1; exhibit P1259, pp 339-340; exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), paras 6.9.32.4-6.9.32.5; *See also*, regarding Blue mobile activity generally on 19 January 2005, exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), para. 6.9.32.

⁸⁴³⁷ Exhibit P1228, pp 5-6.

⁸⁴³⁸ Which activated BRAJNE1, a cell in south Beirut. Exhibit P1228, p. 5; exhibit P1232, p. 3; exhibit P1123.

⁸⁴³⁹ Exhibit P1228, pp 5-6.

⁸⁴⁴⁰ Exhibit P1228, p. 5.

⁸⁴⁴¹ Exhibit P1228, p. 6; exhibit P1227, p. 9.

⁸⁴⁴² Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), para. 6.9.63.8; John Edward Philips, T. 5 September 2016, p. 45.

4447. All 13 calls on 19 January 2005 using the east-of-airport cells were with either Mr Ayyash's Blue 233 or Subject 6's Blue 610.⁸⁴⁴³ Blue 233 was especially active on 19 January 2005 too, making or receiving about 61 per cent of the 44 Blue mobile calls that day⁸⁴⁴⁴ and connecting with seven Blue mobiles. Mr Badreddine's Green 023 called Mr Ayyash's Green 300 at 21:02.⁸⁴⁴⁵

(jj) Thursday 20 January 2005

4448. The Prosecutor pleads in the amended consolidated indictment that on Thursday 20 January 2005:

HARIRI was scheduled to attend the Grand Mosque of Beirut in the morning but instead attended the Imam Ali Mosque for Eid prayers. All active **Red Network** phones operated for less than one hour in the vicinity of Quraitem Palace and the Grand Mosque. **AYYASH**, on **Red 741**, participated in the observations on that day. In the hours before the **Red Network** observations, Mustafa BADREDDINE on **Green 023** was in contact with **AYYASH** on **Green 300** and, subsequently, **MERHI** on **Green 071**.⁸⁴⁴⁶

4449. That day, Mr Hariri attended the *Al Imam Ali bin Abi Taleb* Mosque for *Eid Al-Adha* for early morning prayers between 06:55 and 08:00. Afterwards, he opened the doors to Quraitem Palace to members of the public who came to greet him for the occasion. Red network mobile activity that morning was concentrated around a different mosque, namely the *Al-Omari* Mosque.

4450. In the early hours, Mr Ayyash's Blue 233 received a call from Blue 864.⁸⁴⁴⁷ Immediately after, Mr Badreddine's Green 023 called Mr Ayyash's Green 300 three times in quick succession at 00:39, 00:40 and 00:41, with the calls lasting eight, 24 and 21 seconds.⁸⁴⁴⁸

4451. Mr Hariri usually attended the *Al-Omari* Mosque—which is in central Beirut and close to Parliament—for *Eid* morning prayers.⁸⁴⁴⁹ After his resignation in October 2004, and to show his presence elsewhere, Mr Hariri went more often to a mosque in a less commercial and more residential area full of his supporters, namely the *Al Imam Ali bin Abi Taleb* Mosque in Tareek El-

⁸⁴⁴³ Exhibit P1228, pp 5-6.

⁸⁴⁴⁴ Twenty-seven calls in total. Exhibit P1259, pp 339-340.

⁸⁴⁴⁵ Exhibit P1259, p. 340; exhibit P1305, p. 5684.

⁸⁴⁴⁶ Amended consolidated indictment, para. 30.

⁸⁴⁴⁷ Exhibit P1228, p. 6. Blue 233 connected to Sfeir_B; exhibit P1238, p. 3.

⁸⁴⁴⁸ Exhibit P1211, p. 4; exhibit P1207, p. 4.

⁸⁴⁴⁹ Exhibit P1186 (Statement of Witness PRH009), para. 28.

Jdeedeh.⁸⁴⁵⁰ Mr Hariri went there on 20 January 2005.⁸⁴⁵¹ Mobiles used by Mr Hariri's security detail activated cells Sabra_C (07:05), Sabra_A (08:02) and Sinjab_A (09:20), in the mosque area.⁸⁴⁵² Below is a photograph of Mr Hariri at the *Al Imam Ali bin Abi Taleb* Mosque that day.



Exhibit P91 (Photographs taken on 20 January 2005), ERN D0003920

4452. Mr Platt thought that these calls suggested that Mr Hariri was at the mosque between approximately 07:00 and 09:00 and, by 09:20, was moving away from it.⁸⁴⁵³ One of Mr Hariri's bodyguards activated cells Concorde_B at 09:46 and Fadlallah_C at 09:48, showing that Mr Hariri had at that time returned to Quraitem Palace.⁸⁴⁵⁴

⁸⁴⁵⁰ Exhibit P1168 (Statement of Witness PRH101), para. 35.

⁸⁴⁵¹ Ghaleb Ahmad El-Chammaa, T. 11 February 2015, pp 10-13; exhibit P91, ERNs D0003927, D0003923, D0003920; exhibit P111 (Witness statement of Helena Habraken regarding timing of photographs taken on 20 January 2005), pp 3-6; Gary Platt, T. 21 February 2017, p. 8; exhibit P303, ERN D0004934.

⁸⁴⁵² Exhibit P1322, p. 63; exhibit P1334, p. 49; exhibit P1171 (*Aide mémoire*—mobiles of Mr Hariri's security personnel).

⁸⁴⁵³ Gary Platt, T. 21 February 2017, p. 8. *See also* exhibit P111 (Witness statement of Helena Habraken regarding timing of photographs taken on 20 January 2005).

⁸⁴⁵⁴ Exhibit P1322, p. 63; Gary Platt, T. 21 February 2017, pp 11-12.

4453. Between 07:21 and 08:05, there was a burst of activity on the Red network. Mr Ayyash's Red 741 and six others—Red 893, Red 652, Red 678, Red 662, Red 636 and Red 946—activated cells in the area of the *Al-Omari* Mosque and Parliament.⁸⁴⁵⁵ By 08:03, Subject 8's Red 893 had moved to the area of Quraitem Palace, activating CONCOR2.⁸⁴⁵⁶ The final red call was at 08:05, when Red 741 (PORT2) called Red 893, which was still located in the area of Quraitem Palace (RAOUCH1).⁸⁴⁵⁷

4454. The map below in Mr Platt's chronology report, depicts the predicted best server coverage of the cells activated by the Red network mobiles at this time:

⁸⁴⁵⁵ Exhibit P1197, p. 1, calls nos 7-15; exhibit P1198, p. 1, calls nos 11-16; exhibit P1199, p. 1, calls nos 18-20; exhibit P1201, p. 1, calls nos 3-6; exhibit P1202, p. 1, calls nos 12-13; exhibit P1203, p. 1, calls nos 4-5; exhibit P1204, p. 1, calls nos 22-27; Gary Platt, T. 21 February 2017, pp 8-9, 13-14; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 717.

⁸⁴⁵⁶ Exhibit P1198, p. 1; Gary Platt, T. 21 February 2017, pp 14-16; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 719, 1264.

⁸⁴⁵⁷ Exhibit P1197, p. 1; exhibit P1198, p. 1; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 720.

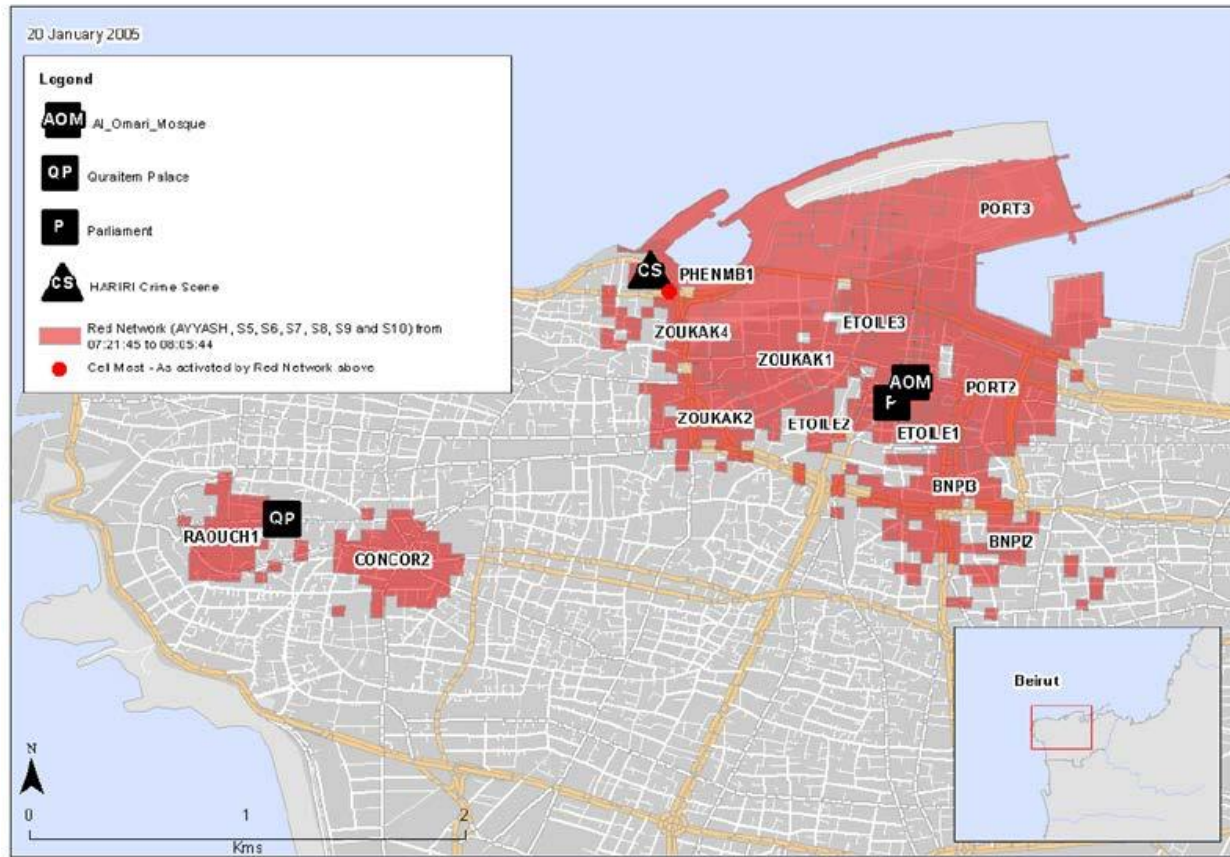


Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 215

4455. Mr Platt was of the view that on 18 January 2005, Mr Badreddine's and Mr Ayyash's Green mobiles had engaged in a 'scoping operation'.

4456. He thought that they were preparing to move surveillance efforts from the road between Quraitem Palace and Faqra Villa—the focus of previous surveillance—to the area of Parliament and the route between Parliament and Quraitem Palace, a 'slightly different route' from that—frequently travelled by Mr Hariri—from Faqra villa to Quraitem Palace.⁸⁴⁵⁸ Red network mobile users attempted, albeit unsuccessfully, to start this surveillance on Thursday 20 January 2005, based on erroneous information or an estimation that Mr Hariri would attend the *Al-Omari*

⁸⁴⁵⁸ Gary Platt, T. 21 February 2017, pp 16-23.

⁸⁴⁵⁸ Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 215; Gary Platt, T. 21 February 2017, pp 16-23.

Mosque.⁸⁴⁵⁹ Realising that Mr Hariri would not be there, in the next 45 minutes users of the Red mobiles debated their course of action before ending the operation.⁸⁴⁶⁰

4457. Finally, at 10:31 Mr Ayyash's Green 300 called Mr Badreddine's Green 023—the fourth Green call of 20 January 2005.⁸⁴⁶¹ In Mr Platt's view, the purpose of this call was likely for Green 300 to update Green 023 about the events of the morning.⁸⁴⁶²

4458. According to Mr Philips, there was comparatively little Blue network mobile activity on 20 January 2005.⁸⁴⁶³ There were 14 calls between Blue mobiles in total.⁸⁴⁶⁴ Blue 864 used one of the east-of-airport cells to make one of its four calls that day.⁸⁴⁶⁵ That call was at 17:41 to Blue 610.⁸⁴⁶⁶ Blue 864 then made two calls to Blue 501 late that night,⁸⁴⁶⁷ but activating cells outside Beirut, in southern Lebanon.⁸⁴⁶⁸

(kk) Friday 21 to Sunday 23 January 2005

4459. Blue 864's only call on Friday 21 January 2005 activated one of the east-of-airport cells, AIB3.⁸⁴⁶⁹ That call was to Mr Ayyash's Blue 233 at 15:13.⁸⁴⁷⁰ Blue 864 did not make or receive any calls using any of the east-of-airport cells on 22 January 2005.⁸⁴⁷¹ On that day, between 12:44 and 16:17, Blue 864 or Subject 5's Blue 585 activated cells in the Quraitem Palace area.⁸⁴⁷²

⁸⁴⁵⁹ Gary Platt, T. 21 February 2017, pp 14, 19-20.

⁸⁴⁶⁰ Gary Platt, T. 21 February 2017, pp 14-15, 20; exhibit P1782, para. 674.

⁸⁴⁶¹ Exhibit P1207, p. 4; exhibit P1211, p. 5; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 723.

⁸⁴⁶² Gary Platt, T. 21 February 2017, pp 5, 26.

⁸⁴⁶³ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission mobiles), paras 6.9.33.4-6.9.33.5, 6.9.45.14, graph 4 (p. 214).

⁸⁴⁶⁴ Exhibit P1224, pp 1-2; exhibit P1226, p. 2; exhibit P1227, p. 10; exhibit P1228, p. 6; exhibit P1229, p. 11; exhibit P1232, p. 3; exhibit P1234, p. 4; exhibit P1235, p. 1; exhibit P1236, p. 4; exhibit P1237, p. 1; exhibit P1259, pp 340-341; exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), paras 6.9.33.4-6.9.33.5.

⁸⁴⁶⁵ Exhibit P1228, p. 6.

⁸⁴⁶⁶ For 66 seconds, Blue 864 activated AIB3, Blue 601 activated BRAJNE1/BIRABD2; exhibit P1228, p. 6; exhibit P1227, p. 10.

⁸⁴⁶⁷ At 22:35 and 23:19, Blue 501 activated Sfeir_B in Beirut. Exhibit P1228, p. 6; exhibit P1237, p. 1.

⁸⁴⁶⁸ ZRARIE2, SULTAN3 and JOUAYA1. Exhibit P1228, p. 6; exhibit P1123. *See also* exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), paras 6.9.62.253-6.9.62.256; exhibit P1782 (Narrative overview of telephone activity and relevant events), para. 677.

⁸⁴⁶⁹ Exhibit P1228, p. 6.

⁸⁴⁷⁰ For 73 or 74 seconds, Blue 233 activated Nabatiyeh_C which is south of Beirut. Exhibit P1228, p. 6; exhibit P1259, p. 342; exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), paras 6.9.34.10-6.9.34.12; Gary Platt, T. 21 February 2017, pp 44-45.

⁸⁴⁷¹ Exhibit P1228, pp 6-7.

⁸⁴⁷² Exhibit P1783 (Expert report of Gary Platt – Chronology), paras 731-736, table 93 (p. 218).

4460. Of the nine calls Blue 864 made or received on 23 January 2005, only one activated the east-of-airport cells.⁸⁴⁷³ Specifically, Blue 864 called Blue 233 at 01:38 that day.⁸⁴⁷⁴

(II) Monday 24 January 2005

4461. Monday 24 January 2005 was another day of comparatively high levels of both Blue mobile calls generally, with 39 in total using ten different Blue numbers,⁸⁴⁷⁵ and Blue 864's calls using the east-of-airport cells.

4462. That morning, Blue 233 called Blue 864.⁸⁴⁷⁶ Blue 864 used cells in Beirut, but not the east-of-airport cells, when it received that call.⁸⁴⁷⁷ Mr Platt thought that because that call immediately followed a call from Mr Ayyash's personal mobile 170 to a mobile allegedly attributed to Subject 816, the two calls were related.⁸⁴⁷⁸

4463. Eight of Blue 864's 12 calls on 24 January 2005, and all of those after midday until 20:45 that night, activated the east-of-airport cells.⁸⁴⁷⁹ A ninth call from Blue 864, at 11:55 to Blue 235,⁸⁴⁸⁰ activated a fourth cell that provided coverage to scattered areas both to and east of the airport, but mainly south-east of the area covered by the three east-of-airport cells together, at its start. That call then activated one of the east-of-airport cells at its end.⁸⁴⁸¹ Mr Philips concluded regarding Blue 864's calls that day that that mobile appeared to spend much of that day, from late morning to approaching 21:00, in an area around the airport.⁸⁴⁸²

⁸⁴⁷³ Exhibit P1228, p. 7.

⁸⁴⁷⁴ For 146 or 147 seconds, Blue 864 activated AIB2/KARAME3, Blue 233 activated Sfeir_A. Exhibit P1228, p. 7; exhibit P1259, p. 344.

⁸⁴⁷⁵ Exhibit P1224, pp 2-3; exhibit P1225, p. 9; exhibit P1226, pp 2-3; exhibit P1228, pp 7-8; exhibit P1230, p. 3; exhibit P1231, pp 3-4; exhibit P1234, pp 4-5; exhibit P1236, p. 5; exhibit P1237, p. 2; exhibit P1259, pp 344-346; exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), paras 6.9.37.2-6.9.37.4, 6.9.37.13, 6.9.45.14, graph 4 (p. 214; Gary Platt, T. 21 February 2017, pp 80-81, 85, referring to exhibit P1889, slides 146, 152.

⁸⁴⁷⁶ At 08:57, Blue 233 activated Sfeir_A. Exhibit P1259, p. 344; exhibit P1228, p. 7.

⁸⁴⁷⁷ SFEIR2/MIKAEL2. Exhibit P1228, p. 7; exhibit P1123.

⁸⁴⁷⁸ Gary Platt, T. 21 February 2017, pp 62, 67-68, 77.

⁸⁴⁷⁹ Exhibit P1228, p. 7.

⁸⁴⁸⁰ Blue 235 activated Sfeir_B in south Beirut. Exhibit P1228, p. 7; exhibit P1226, p. 2; exhibit P1122.

⁸⁴⁸¹ MATAR6/KARAME3. Exhibit P1228, p. 7; exhibit P1123; exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), para. 6.9.63.13. Blue 864's remaining three calls on 24 January 2005 were the call at 08:57 from Blue 233, an earlier call at 08:37 to Blue 324 (Blue 864 activated RADOUF3 and Blue 324 activated Haret Hreik-II_C) and a final call from Blue 233 at 21:57 (Blue 233 activated Sfeir_A and Blue 864 activated HADATH3 and BRAJNE1). Exhibit P1228, pp 7-8; exhibit P1225, p. 9; exhibit P1259, p. 346; exhibit P1122; exhibit P1123.

⁸⁴⁸² Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), para. 6.9.37.9.

4464. There was also one call between Green mobiles on Tuesday 24 January 2005. At 17:45 that day, Mr Ayyash's Green 300 called Mr Badreddine's Green 023.⁸⁴⁸³ Mr Platt testified that this call was 'a possible link to the activities that occur the next day involving the purchase of the Mitsubishi Canter in Tripoli'.⁸⁴⁸⁴ The Trial Chamber has found that the Canter was purchased either on Monday 17 or Tuesday 25 January, with 25 January being the more likely date.⁸⁴⁸⁵

(mm) Wednesday 26 January 2005

4465. On Wednesday 26 January 2005, most Blue mobiles were used, and Blue 864 resumed its use of the east-of-airport cells. It then continued to use them on both Thursday 27 and Friday 28 January 2005. However, none of the Green network mobiles was used on that day.⁸⁴⁸⁶

4466. Blue 864's calls on 26 January 2005 activated the east-of-airport cells only.⁸⁴⁸⁷ There were ten calls involving Blue 864, with three other Blue mobiles, namely Mr Ayyash's Blue 233 (four calls), Blue 501 (two calls) and Blue 324 (four calls).⁸⁴⁸⁸ One of Blue 864's two calls to Blue 501 on 26 January 2005 was unusually long compared to other network mobile calls. At approximately six and a half minutes' duration, it was—according to Mr Philips—the second-longest call any network mobile made.⁸⁴⁸⁹

4467. Apart from the first call—a 54 or 55-second call from Blue 233 at 12:33⁸⁴⁹⁰—Blue 864's calls on 26 January 2005 using the east-of-airport cells occurred after 17:00. They continued until late that night, and overnight. After Blue 864's last call of 26 January 2005, one from Blue 233 at 23:04 that night,⁸⁴⁹¹ the same two mobiles exchanged three more calls in the early hours of the next day, 27 January 2005—at 01:10, 05:44 and 06:07.⁸⁴⁹² Mr Philips suggested that on

⁸⁴⁸³ Exhibit P1259, p. 345; exhibit P1305, p. 5698.

⁸⁴⁸⁴ Gary Platt, T. 21 February 2017, p. 86.

⁸⁴⁸⁵ See chapter XI 'Importation and sale of Mitsubishi canter', (C) 'Findings', para. 4792.

⁸⁴⁸⁶ Exhibit P1259, pp 347-348; exhibit P1305, pp 5704-5707; exhibit P1205, p. 9.

⁸⁴⁸⁷ Exhibit P1228, p. 8.

⁸⁴⁸⁸ Those mobiles activated (Blue 233) Sfeir_A, Hai_El_kneisseh_B, (Blue 501) Sfeir_B and (Blue 324) Mraijeh_C, Bir Abed_C and Haret Hreik-II_B. Exhibit P1228, p. 8; exhibit P1259, pp 347-348; exhibit P1237, p. 3; exhibit P1225, pp 9-10.

⁸⁴⁸⁹ Starting at 17:02. Exhibit P1228, p. 8; exhibit P1237, p. 3; John Edward Philips, T. 5 September 2016, p.47.

⁸⁴⁹⁰ Exhibit P1228, p. 8; exhibit P1259, p. 347.

⁸⁴⁹¹ Exhibit P1228, p. 8; exhibit P1259, p. 348.

⁸⁴⁹² Blue 233 activating Sfeir_B, Sfeir_A and Hadath_C. Exhibit P1228, p. 8; exhibit P1259, p. 348.

26 January 2005, Blue 864 was in the area covered by the east-of-airport cells ‘seemingly over an extended period from around midday to after 23:00’.⁸⁴⁹³

4468. Blue 864 also made two calls to Blue 233, using the east-of-airport cells, at 00:16 and 00:43 or 00:44 on Friday 28 January 2005.⁸⁴⁹⁴

4469. In addition, on 26 January 2005, contact between Blue network mobiles was generally extensive. Every Blue mobile, except Blue 817, Blue 585, Blue 965⁸⁴⁹⁵ and Blue 813,⁸⁴⁹⁶ was in contact with another Blue mobile on 26 January 2005.⁸⁴⁹⁷ Moreover, each of those four mobiles was in contact with at least one other Blue network mobile on at least one other day in the period from Wednesday 19 to Thursday 27 January 2005.

4470. Mr Philips described the Blue mobile activity from Tuesday 18 to around Wednesday 26 January 2005, as ‘strikingly exceptional’.⁸⁴⁹⁸ In his view, whereas it may not be conclusive for one or two Blue mobile calls to have activated cells in the area of the airport at other times,⁸⁴⁹⁹ the volume and timing of the calls activating such cells in this period made them significant.⁸⁵⁰⁰ Regarding the Blue 864 to Blue 233 calls in the early morning, particularly, he concluded that ‘there was something about that ... location which warranted not only the contact but the contact at this time.’⁸⁵⁰¹

4471. Mr Philips likewise opined that the apparent movements of mobiles to Baalbek, Anjar and Tripoli in this period were significant,⁸⁵⁰² showing—along with mobiles’ apparent presence in the

⁸⁴⁹³ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), para. 6.9.63.16.

⁸⁴⁹⁴ Blue 233 activating south Beirut cells Hazmiyeh_2_B and Hadath_C, respectively. Exhibit P1228, p. 9; exhibit P1259, p. 349; exhibit P1122.

⁸⁴⁹⁵ None of Blue 817, Blue 585 and Blue 965 made or received any calls, or sent any text messages, on 26 January 2005. Exhibit P1239, p. 6; exhibit P1229, p. 12; exhibit P1235, p. 1.

⁸⁴⁹⁶ Blue 813’s sole recorded activity on 26 January 2005 was an SMS, from a number not alleged to form part of one of the networks. Exhibit P1232, p. 3; exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), para. 6.9.39.7.

⁸⁴⁹⁷ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), paras 6.9.39.4-6.9.39.6.

⁸⁴⁹⁸ John Edward Philips, T. 6 September 2016, p. 58. *See also* T. 2 September 2016, pp 89-90, T. 5 September 2016, p. 31, T. 6 September 2016, pp 24, 65-66, 68; exhibit P1118, slides 112, 117-118, 123.

⁸⁴⁹⁹ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), paras 6.9.63.2-6.9.63.4.

⁸⁵⁰⁰ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), paras 6.9.63.13, 6.9.63.16, 6.9.65.3; John Edward Philips, T. 5 September 2016, pp 46, 73, T. 6 September 2016, p. 68; exhibit P1118, slides 117, 122.

⁸⁵⁰¹ John Edward Philips, T. 5 September 2016, p. 43.

⁸⁵⁰² John Edward Philips, T. 6 September 2016, pp 57, 65-66; T. 2 September 2016, pp 89-90.

area immediately east of the airport—that a set-up phase was occurring.⁸⁵⁰³ He also concluded that Blue 233's involvement was central to all four of these movement patterns.⁸⁵⁰⁴ In cross-examination, Mr Platt said that he had distanced himself from the issue of the mobile activity using the three east-of-airport cells—by which he appeared to mean that he considered the evidence too limited to be able to deduce much from it. Mr Platt stated, referring to the slides he had prepared with Prosecution counsel and commented on when testifying:

There was a number of slides that went in and I said, well, I can only say this or that. I mean. And I must say that the east of airport cells was one of those where I distanced myself from, so to speak. So that was another example of saying, okay, you can leave it in. You can say the phones were active there, but ... there's not an event or a location there to connect their activity there.⁸⁵⁰⁵

4472. In Mr Philips's opinion, there was a relationship between Blue and Green mobile activity in this period⁸⁵⁰⁶ and the sequence, or flow, of the relevant Blue and Green calls was 'hierarchical',⁸⁵⁰⁷ demonstrating 'the command structure'.⁸⁵⁰⁸ Mr Platt also testified that Blue and Green mobile calls in this period were connected.⁸⁵⁰⁹

(nn) Thursday 27 January 2005

4473. On Thursday 27 January 2005, Mr Hariri received visitors at Quraitem Palace and, around noon, attended the Parliament. Visitors, including Chaldean Bishop Michel Qassarji, were registered at Quraitem Palace as seeing Mr Hariri between 08:00 and 20:30.⁸⁵¹⁰

4474. Mr Platt highlighted how the call activity of members of Mr Hariri's security detail was consistent with him travelling via the coastal route from Quraitem Palace to Parliament and back

⁸⁵⁰³ John Edward Philips, T. 6 September 2016, p. 24.

⁸⁵⁰⁴ John Edward Philips, T. 6 September 2016, pp 57-58.

⁸⁵⁰⁵ Gary Platt, T. 5 April 2017, p. 69.

⁸⁵⁰⁶ John Edward Philips, T. 5 September 2016, pp 55, 69-71, 74-75; *see also* exhibit P1118, slides 103, 123.

⁸⁵⁰⁷ John Edward Philips, T. 5 September 2016, pp 13-14, 55; *see also* exhibit P1118, slide 121.

⁸⁵⁰⁸ John Edward Philips, T. 5 September 2016, p. 3; *see also* exhibit P1118, slide 123.

⁸⁵⁰⁹ Gary Platt, T. 21 February 2017, p. 5-6, 88-89; *See also* exhibit P1889, slides 6,162; exhibit P1902 (Chronology PowerPoint presentation – 20 January 2005 to 2 February 2005) slide 5.

⁸⁵¹⁰ Exhibit P301, pp 354-356; exhibit P303, ERN D0004936; exhibit P408 (Future TV footage of Mr Hariri); *see also* exhibit P1783 (Expert report of Gary Platt – Chronology), para. 767, which incorrectly states that visitors were registered between 8:00 and 21:00 for Mr Hariri; exhibit P1889, slide 216.

to Quraitem Palace again, sometime between 11:28 and 12:53.⁸⁵¹¹ Specifically, the security detail left the palace sometime after 11:28,⁸⁵¹² travelled via the coastal route⁸⁵¹³ and was present in the Parliament area between 11:56 and 12:41,⁸⁵¹⁴ arriving back by 12:53.⁸⁵¹⁵

4475. Mr Platt believed that there was surveillance of Mr Hariri at Parliament given that Subject 5's Blue 585 was active in the Parliament area well in advance of Mr Hariri's arrival. It then went on to use the same cell mast as the security detail around the time of Mr Hariri's arrival to call Mr Ayyash's Blue 233, consistent with informing the latter, who was located in Dahyieh, about Mr Hariri's arrival.⁸⁵¹⁶

4476. Mr Platt noted that the continued activity of Blue 585, Subject 7's Blue 324 and Subject 9's Blue 864 in central and west Beirut between 13:57 and 15:41 was consistent with a surveillance operation but not of the mobile type. Rather, it was consistent with presence in locations relevant to Mr Hariri, such as the areas of Quraitem Palace and the coastal road—which Mr Hariri frequently used to travel to Faqra Villa or Parliament—in case Mr Hariri would move there.⁸⁵¹⁷

⁸⁵¹¹ Exhibit P1783 (Expert report of Gary Platt – Chronology), paras 767, 773; Gary Platt, T. 22 February 2017, pp 18-19, 27, 29; *see also* exhibit P299 (Mr Hariri's 2005 Agenda Book), ERNs 60142157, 60037022. In his report, which preceded his testimony and does not include calls from mobile ending in 1506, Mr Platt's statements regarding when Mr Hariri was at the various points of this journey vary from those he made during his in-court testimony, detailed below.

⁸⁵¹² Mobile 506 activated cell Hamra_A at 11:14 and mobile 1506 activated cell LAU_MIC2_A at 11:28. Exhibit P1322, p. 68; exhibit P1352, p. 314; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 772; Gary Platt, T. 22 February 2017, p. 18. *See also* exhibit P1889, slides 205-206.

⁸⁵¹³ Mobile 771 then activated cells AUB_Sea_Gate_A (11:47) and Bay_View_A (11:49) and mobile 1506 activated cells Bay_View_C (11:48) and CoastRoad_C (11:53). Exhibit P1359, p. 293; exhibit P1352, p. 314; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 772; Gary Platt, T. 22 February 2017, p. 18. *See also* exhibit P1889, slides 205-206.

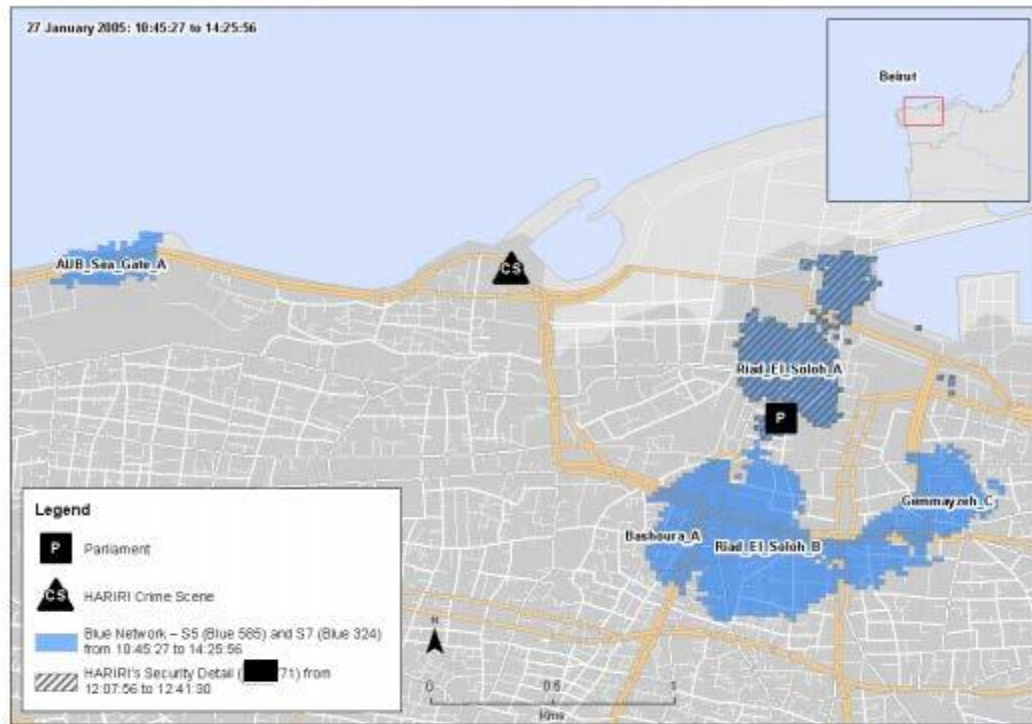
⁸⁵¹⁴ Mobile 771 activated cell Riad_El_Soloh_A (12:07, 12:19 and 12:41), which was also activated by mobile 1506 (12:09, 12:10, 12:11, 12:19, 12:24, 12:33, 12:35, 12:37 (twice), 12:38) alongside cell Riad_El_Soloh_C (11:56 and 12:41). Exhibit P1359, p. 293; exhibit P1352, p. 314; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 772; Gary Platt, T. 22 February 2017, pp 18-19, 27, 29. *See also* exhibit P1889, slides 205-214; exhibit P408; exhibit P357 (Photographs of Mr Hariri at Parliament on 27 January 2005), photographs 32, 34-35.

⁸⁵¹⁵ At 12:53, mobile 506 activated cell Fadlallah_C, mobile 771 activated cell LAU_MIC2_A and mobile 1506 activated cell Hamra_West_B. Exhibit P1322, p. 68; exhibit P1359, p. 293; exhibit P1352, p. 314; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 772; Gary Platt, T. 22 February 2017, p. 29. *See also* exhibit P1889, slides 209, 215-216.

⁸⁵¹⁶ Gary Platt, T. 22 February 2017, pp 20, 26-27. At 10:12, Blue 585 (Riad_El_Soloh_B) called service number 1343. At 10:45, Blue 233 called Blue 585 (Riad_El_Soloh_A); at 11:45, Blue 585 (Bashoura_A) called Blue 233, and at 11:56, Blue 585 (Riad_El_Soloh_A) again called Blue 233 (Mar Mikhael_C). In his report, Mr Platt also highlighted the 10:56 call between Blue 233 and Blue 864. Exhibit P1228, p. 8; exhibit P1229, p. 12; exhibit P1238, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 771. *See also* exhibit P1889, slides 218-222.

⁸⁵¹⁷ Gary Platt, T. 22 February 2017, p. 30. At 13:57, Blue 324 (Riad_El_Soloh_B) called Blue 585 (Manara_B); at 14:24, Blue 585 (Mic_AUB-Sea_Gate) called Blue 233 (Hadath_C); at 14:25, Blue 233 (Hadath_C) called Blue 585 (call not recorded in call sequence table for this mobile number, so no cell information available); at 14:25, Blue 233 (Hnein_C) called Blue 324 (call not recorded in call sequence table for this mobile number, so no cell information available).

Mr Platt also pointed out that Mr Ayyash's Blue 233 was, during this time, in contact with subjects both in Beirut (Blue 585, Blue 324 and Blue 864) and in Tripoli (Subject 8's Blue 817), evidencing its coordinating role.⁸⁵¹⁸ Mr Platt mapped what he described as the Blue network surveillance in his chronology report on the following map:



Map 71: HARIRI's Security Detail (12:07 to 12:41) and Blue Network - S5 (10:45 to 14:25), Parliament, 27 January 2005

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 230

available) (this call was not included in the slide used in court with Mr Platt; *see* exhibit P1889, slide 225); at 14:25, Blue 233 (Hnein_C) called Blue 324 (Mic_AUB-Sea_Gate); at 14:37, Blue 864 (GHOBAl1) called Blue 322 (Sfeir_A); at 14:37, Blue 864 (GHOBAl3) called Blue 585 (Mic_Summerland); at 14:39, Blue 864 (PINS1) called Blue 324 (Riviera_B); at 14:53, Blue 864 (SAGESS1) called Blue 233 (Sfeir_B); at 15:22, Blue 817 (BAHSAS1) called Blue 233 (Sfeir_B); at 15:31, Blue 864 (SAGESS1) called Blue 817 (ENFE1); at 15:33, Blue 501 (Sfeir_B) called Blue 864 (SAGESS1); at 15:35, Blue 864 (JMAYZE1) called Blue 817 (BALAMA3); at 15:38, Blue 864 (SAGESS1) called Blue 501 (Sfeir_B); and at 15:41, Blue 864 (JMAYZE1) called Blue 324 (Riviera_B). Exhibit P1229, p. 12; exhibit P1225, p. 10; exhibit P1239, p. 7; exhibit P1228, p. 9; exhibit P1238, p. 6; exhibit P1236, p. 6; exhibit P1237, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 774-777. *See also* exhibit P1889, slides 225-226.

⁸⁵¹⁸ Gary Platt, T. 22 February 2017, pp 31-32.

(oo) Friday 28 January 2005

4477. On Friday 28 January 2005, Mr Hariri received visitors at Quraitem Palace between 08:00 and 21:30. The visitors included a delegation of staff from the Hariri Foundation.⁸⁵¹⁹ The amended consolidated indictment pleads that:

On 28 January 2005, HARIRI stayed at Quraitem Palace throughout the day. The assassination team, using the Red Network phones, including AYYASH on Red 741, operated for more than six hours around Quraitem Palace and HARIRI's residence in Faqra.⁸⁵²⁰

4478. Red network activity on this day commenced at 11:36 and ended at 17:54, during which time the principal six Red network mobiles activated cells, according to Mr Platt, 'in locations or routes connected with Mr Hariri'.⁸⁵²¹ Between 11:36 and 12:44, Subject 6's Red 678 and Subject 8's Red 893 activated cells in the area of Quraitem Palace.⁸⁵²² At 13:25, Red 678 again called Red 893, which was still in the area of Quraitem Palace.⁸⁵²³

4479. At 14:14, Mr Ayyash's Green 300, which was in the Mosbeh area, called Mr Badreddine's Green 023, located south of it.⁸⁵²⁴ This call was followed at 14:17 by a call from Mr Ayyash's Red 741 to Subject 9's Red 652, and to Mr Platt, this was an example of a sequential call flow between the two networks.⁸⁵²⁵

4480. At 14:27, Green 023 called Green 300, using adjacent cells in the Zouk-Mosbeh area.⁸⁵²⁶ Mr Platt concluded that this was consistent with Green 023 travelling to meet Green 300 at an

⁸⁵¹⁹ Exhibit P301, pp 356-358; exhibit P303, ERN D0004937; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 778. *See also* Gary Platt, T. 22 February 2017, p. 52.

⁸⁵²⁰ Amended consolidated indictment, para. 33.

⁸⁵²¹ Gary Platt, T. 22 February 2017, p. 53.

⁸⁵²² At 11:36, Red 678 and Red 893 were in contact, both activating cell CARACA3. They were then in contact again at 11:48 and 12:44, with Red 678 activating MOVPIK1 both times and Red 893 activating cells CARLTO3 and CARACA1, respectively. Exhibit P1204, p. 1; exhibit P1198, p. 1; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 784; Gary Platt, T. 22 February 2017, p. 53. *See also* exhibit P1902, slides 29-30.

⁸⁵²³ Red 893 activated cell CARACA2. Exhibit P1198, p. 1; exhibit P1902, slides 32-33.

⁸⁵²⁴ At 14:14, Green 300 (MOSBEH2) called Green 023 (TRIANO1). Exhibit P1207, p. 4; exhibit P1211, p. 5; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 788, where Mr Platt stated that Green 023 was travelling toward the Zouk-Mosbeh area. *See also* exhibit P1902, slides 43-44.

⁸⁵²⁵ Gary Platt, T. 22 February 2017, p. 64. At 14:17, Red 741 (MOSBEH2) called Red 652 (FARAYA2). Exhibit P1197, p. 1; exhibit P1199, p. 1. *See also* exhibit P1902, slides 43-45.

⁸⁵²⁶ Green 023 activated cell MOSBEH2 and Green 300 activated cell RIMAL1. Exhibit P1211, p. 5; exhibit P1207, p. 4; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 788; exhibit P1902, slides 48, 50.

important location—both in terms of travel from Quraitem Palace to Faqra Villa and as a potential location for the attack—unlike at other times when the mobiles would converge in Dahyieh.⁸⁵²⁷ He also highlighted that the Green mobiles were now more directly involved with the surveillance operation, rather than being distant. This was to make more detailed observations about the suitability of the location for the eventual attack.⁸⁵²⁸

4481. According to Mr Platt, calls among Red network mobiles between 14:28 and 16:28 were consistent with a continuing surveillance operation where Subject 8's Red 893 and Red 678 were in the area of Quraitem Palace. The other subjects were covering the coastal road, Zouk-Mosbeh, and the area around Faqra Villa.⁸⁵²⁹

4482. At 16:25, Mr Badreddine's Green 023, which was further north along the coast in the direction of Jounieh, called Mr Ayyash's Green 300 who was still located in the Zouk-Mosbeh area.⁸⁵³⁰ Mr Platt commented that this call was preceded by a call from Red 652 from the Faraya area to Mr Ayyash's Red 741 in the Zouk-Mosbeh area, and was then followed by a call from Red 741 to Red 678 in the Quraitem Palace area. This sequence of calls was therefore consistent with Mr Ayyash coordinating the surveillance operation.⁸⁵³¹

4483. At 16:32, Subject 6's Blue 610 was active in the area of Quraitem Palace, followed by Subject 6's Red 678 activating the same cell again between 16:39 and 16:46, while Subject 8's Red 893 did the same at 16:39.⁸⁵³² Subject 5's Red 636 was located in the Faraya area between

⁸⁵²⁷ Gary Platt, T. 22 February 2017, pp 66-68.

⁸⁵²⁸ Gary Platt, T. 22 February 2017, p. 68.

⁸⁵²⁹ At 14:28, Red 652 (FARAYA1) called Red 946 (FARAYA1); at 14:29, Red 652 (FARAYA1) called Red 636 (FARAYA1); at 14:55, Red 678 (MRAIC12) called Red 893 (CARACA3); at 14:56, Red 741 (MOSBEH2) called Red 946 (MOSBEH2); at 14:58, Red 652 (FARAYA1) called Red 636 (FARAYA3); at 15:34, Red 652 (FARAYA1) called Red 636 (FARAYA1); at 16:18, Red 652 (OUYOUN3) called Red 741 (NDU2); at 16:27, Red 741 (NDU2) called Red 678 (RAOUCH3); and at 16:28, Red 678 (CARACA3) called Red 893 (CARLTO3). Exhibit P1204, p. 2; exhibit P1198, p. 1; exhibit P1199, pp 1-2; exhibit P1203, p. 1; exhibit P1202, p. 1; exhibit P1197, p. 1; Gary Platt, T. 22 February 2017, pp 69-71; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 785-789. *See also* exhibit P1902, slides 52-57. As noted above, there can be time differences between the start time of calls on the same network and between calls on different networks. This applies to the call described above as starting at 16:27 (exhibit P1197, p. 1). According to exhibit P1204 (p. 2), the start time of that call was 16:26:55.

⁸⁵³⁰ Green 023 activated cell ADMA3 and Green 300 activated cell NDU2. Exhibit P1211, p. 5; exhibit P1207, p. 4; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 788. *See also* exhibit P1902, slides 58-59.

⁸⁵³¹ Gary Platt, T. 22 February 2017, pp 72-74.

⁸⁵³² At 16:32, Blue 610 activated cell CARACA3 to receive a call from Blue 235; at 16:39, Red 893 (CARACA3) called Red 678 (CARACA3); at 16:40, Red 678 (CARACA3) called Red 741; and at 16:46, Red 678 (CARACA3) received a call from Red 741. Red 678 (CARACA3) and Red 893 (MANARA1) also exchanged a call in the Quraitem Palace area at 16:57. Exhibit P1227, p. 12; exhibit P1204, p. 2; exhibit P1198, p. 1; Gary Platt, T. 22 February 2017,

16:41 and 16:44, as was Subject 9's Red 652 between 16:43 and 16:44.⁸⁵³³ Mr Ayyash's Red 741 activated a cell in the Zouk-Mosbeh area between 16:40 and 16:46, as did Subject 7's Red 946 at 16:42.⁸⁵³⁴

4484. At 16:48, Mr Ayyash's Green 300, located in the Zouk-Mosbeh area, called Mr Badreddine's Green 023.⁸⁵³⁵ For Mr Platt, this network activity was consistent with the continuing surveillance operation and, due to the sequences of calls exchanged between the subjects at the various locations during this time, he opined that it was an example of highly coordinated network activity.⁸⁵³⁶

4485. Mr Platt described the Red network activity as follows:

From this day up to the day of the attack, the Red call activity was increasingly regular, sustained and frequent. This was the beginning of the Red primary phase.

The direct association, often involving closely sequential calls, between Red and Green activity began on this day and repeatedly recurred until both networks ceased shortly before the explosion.⁸⁵³⁷

4486. He mapped the Red and Green network activity on the following two maps in his chronology report:

p. 75; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 785-786. *See also* exhibit P1902, slides 63-64, 73-74.

⁸⁵³³ At 16:41, Red 636 activated cell FARAYA1 to receive a call from Red 741; at 16:43, Red 652 activated cell FARAYA2 to receive a call from Red 741; and at 16:44, Red 652 (FARAYA2) called Red 636 (FARAYA1). Exhibit P1203, p. 1; exhibit P1199, p. 2; Gary Platt, T. 22 February 2017, p. 75; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 787; exhibit P1902, slides 65-66.

⁸⁵³⁴ At 16:40, Red 741 activated cell RIMAL1 to receive a call from Red 678; at 16:41, 16:42 and 16:43, Red 741 activated cell RIMAL1 three times to call Red 636, Red 946 (MOSBEH2) and Red 652, respectively. Exhibit P1197, p. 1; exhibit P1202, p. 1; Gary Platt, T. 22 February 2017, p. 75; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 788-789; exhibit P1902, slides 67-68.

⁸⁵³⁵ Green 300 activated cell MOSBEH2 and Green 023 activated cell LAMEDI1. Exhibit P1207, p. 4; exhibit P1211, p. 5; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 788; exhibit P1902, slides 69-70.

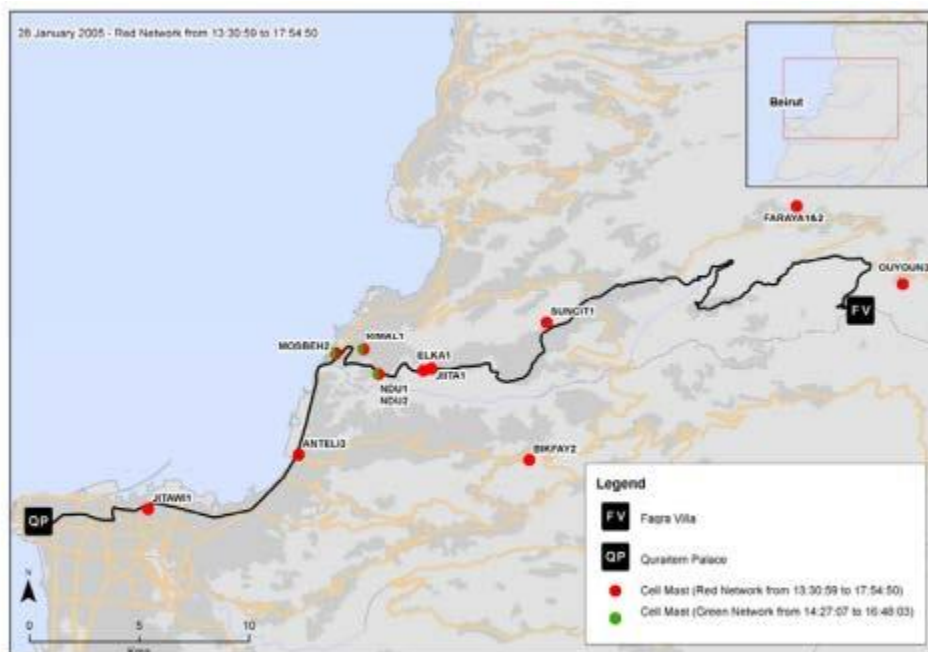
⁸⁵³⁶ Gary Platt, T. 22 February 2017, pp 75-77.

⁸⁵³⁷ Exhibit P1782 (Narrative overview of telephone activity and relevant events), paras 766-767.



Map 72: Red Network (S6 and S8), Quraitem Palace and Parliament, 28 January 2005 (11:36 to 16:57)

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 232



Map 73: Red Network, Zouk-Mosbeh and Faraya, 28 January 2005 (13:30 to 17:54)

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 235

(pp) Saturday 29 January 2005

4487. On Saturday 29 January 2005, a number of people visited Mr Hariri at Quraitem Palace between 07:55 and 21:50.⁸⁵³⁸ Mr Platt testified that the call activity of members of Mr Hariri's security detail showed that Mr Hariri travelled to Mr Hamade's residence in Beirut for a short visit sometime between 13:14 and 13:26 and returned to Quraitem Palace sometime between 13:50 and 14:03.⁸⁵³⁹

4488. In addition, Mr Hariri travelled from Quraitem Palace with his security detail to his villa in Al-Naameh—a coastal village south of Beirut, in the direction of Saida—and they returned to Beirut later that day.⁸⁵⁴⁰ According to Mr Platt,⁸⁵⁴¹ the security detail's calls are consistent with Mr Hariri travelling from Quraitem Palace to Al-Naameh sometime between 14:41 and 15:06, and returning to Quraitem Palace between 16:40 and 17:01.⁸⁵⁴²

4489. Mr Ayyash's Blue 233 was in contact with other Blue network mobiles 13 times on this day, between 12:20 and 23:56.⁸⁵⁴³ Between 12:38 and 23:27, Subject 5's Blue 585, Subject 6's Blue 610, Subject 7's Blue 324, Subject 8's Blue 817 and Subject 9's Blue 864 were 'active in the

⁸⁵³⁸ Exhibit P301, pp 358-359; *see also* exhibit P1783 (Expert report of Gary Platt – Chronology), para. 792, which incorrectly states that visitors were registered between 07:55 and 21:10 for Mr Hariri.

⁸⁵³⁹ At 13:14, mobile 771 activated cell LAU_MIC2_A, and between 13:26 and 13:32, it activated cell Riviera_A. Exhibit P1359, p. 297. Mobiles 506 (13:27) and 777 (between 13:28 and 13:50) also activated this cell. Exhibit P1322, p. 70; exhibit P520, p. 163. Finally, Mobile 777 activated cell Kraitem_C at 14:03. Exhibit P520, p. 163; Gary Platt, T. 22 February 2017, pp 83-84; exhibit P1902, slides 88-93.

⁸⁵⁴⁰ Ghattas El-Khoury, T. 16 January 2015, pp 77-80; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 792.

⁸⁵⁴¹ Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 801; Gary Platt, T. 22 February 2017, p. 91; exhibit P1902, slides 113-118. In his report, which does not include the telephone activity of mobile 777, Mr Platt stated that the security detail returned to Quraitem Palace by 17:40 (exhibit P1783 (Expert report of Gary Platt – Chronology), paras 800-801). In court, it was suggested to Mr Platt that the security detail had returned to Quraitem Palace by 17:01, based on a call made at that time by mobile 777. Gary Platt, T. 22 February 2017, p. 91; exhibit P1902, slides 116, 118.

⁸⁵⁴² First, mobile 506 activated cell Hamra_West_B (14:28) and mobiles 771 and 052 activated cell LAU_MIC2_A (14:39 and 14:41, respectively). Next, cell Naameh_B was activated by mobile 052 (15:06, 16:30 and 16:40), mobile 771 (16:08, 16:09 and 16:11), mobile 506 (16:15) and mobile 777 (15:27, 16:16, 16:17, 16:20, 16:31 and 16:34), while mobile 973 activated cell Naameh_A (15:13), mobile 771 activated cell Douhit_El_Hoss_A (15:31) and mobile 777 also activated cells Douhit_El_Hoss_A (16:33), Khaldeh2_B (16:38) and Mazraa_MPT_C (16:52) during this time. Finally, mobile 777 activated cell Fadolallah_B (17:01), mobiles 052 and 771 activated cell Concorde_B (17:40 and 17:46, respectively) and mobile 506 activated cell Fadolallah_A (18:34). Exhibit P1322, p. 70; exhibit P1332, p. 56; exhibit P1359, p. 297; exhibit P1334, p. 53; exhibit P520, p. 164; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 800.

⁸⁵⁴³ Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 794; exhibit P1238, p. 7. In addition to the pertinent calls detailed below, Mr Platt highlighted Blue 864 activating cell ZAYNEH1 at 12:20 to call Blue 233, which activated cell Haret_Hreik_2_A. Exhibit P1228, p. 10; exhibit P1238, p. 7; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 795.

area of Quraitem Palace and the ... crime scene'.⁸⁵⁴⁴ From 12:38, Blue 585—which was active in the area until 14:54⁸⁵⁴⁵— Blue 324⁸⁵⁴⁶ and Blue 817,⁸⁵⁴⁷ which were both active in west Beirut all day until 21:32, activated cells in the areas of Quraitem Palace and the crime scene, when they were in contact with Mr Ayyash's Blue 233 and Subject 6's Blue 610.⁸⁵⁴⁸ Blue 585, Blue 324 and Blue 817 were also, during this time, in contact with each other and with Blue 864.⁸⁵⁴⁹

4490. At 14:00, 14:02 and 14:04, Blue 864 activated cells in south Beirut, when in contact with Blue 817 and Blue 585, which both activated cells in the Quraitem Palace area.⁸⁵⁵⁰ At 14:09, Blue 864 activated a cell in south Beirut to call Blue 610, which activated a cell in the Quraitem Palace area.⁸⁵⁵¹ Then, during calls at 14:11, 14:13, 14:21 and 14:30, Blue 585, Blue 610 and Blue 864 all activated cells in the area of Quraitem Palace.⁸⁵⁵² The Trial Chamber created the following map, from the electronic presentation of evidence, of cells in the vicinity of Quraitem Palace and Mr Hamade's residence, which is marked as 'HR':

⁸⁵⁴⁴ Mr Platt's report did not deal with the visit to Mr Hamade's residence; the areas where these mobiles were active was characterized like this. Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 793.

⁸⁵⁴⁵ Blue 585 activated cells Raouche_B (12:38), Mic_Bay Rock (12:39), Unesco_C (13:23), Raouche_A (13:25, 14:04 and 14:11), Mic_Bay Rock2 (13:26), Manara_B (14:01, 14:02, 14:13 and 14:21), Concorde_B (14:47) and Unesco_B (14:54). Exhibit P1229, pp 12-13.

⁸⁵⁴⁶ Blue 324 activated cells Tallet Druz_A (12:38), Manara_B (13:22, 14:01), Riviera_B (13:24), Mic_AUB-Sea Gate (13:24, 13:25), Riviera_A (13:34, 13:49), Riad_El_Soloh_B (14:58), BayView_C (15:06, 15:16), Bir Hassan_A (17:17), Bir Hassan_C (17:22), Unesco_C (18:03, 18:05, 18:06, 18:14), Raouche_B (18:12) and Mic_Bay Rock2 (21:02, 21:30, 21:32). Exhibit P1225, pp 10-11.

⁸⁵⁴⁷ Blue 817 activated cells CARACA3 (12:39, 13:28, 13:59 (twice), 14:00 (twice), 14:01, 18:01, 18:02, 18:03, 18:06, 18:10, 18:12), CONCOR2 (13:22, 13:23, 13:24 (twice)), RAOUCH1 (13:26), RAOUCH3 (13:27), MRAICI2 (13:34, 13:47, 13:49), BACHOU1 (14:58), BACHOU2 (15:06), MOVPIK1 (15:15, 18:14, 20:45, 21:02, 21:22), OGER3 (15:16), RAOUCH2 (15:17, 21:29), BHVOUT1 (17:17, 17:20, 17:22), RAMLET3 (21:30), SIMON3 (21:30) and BHVOUT2 (21:32). Exhibit P1239, pp 7-8.

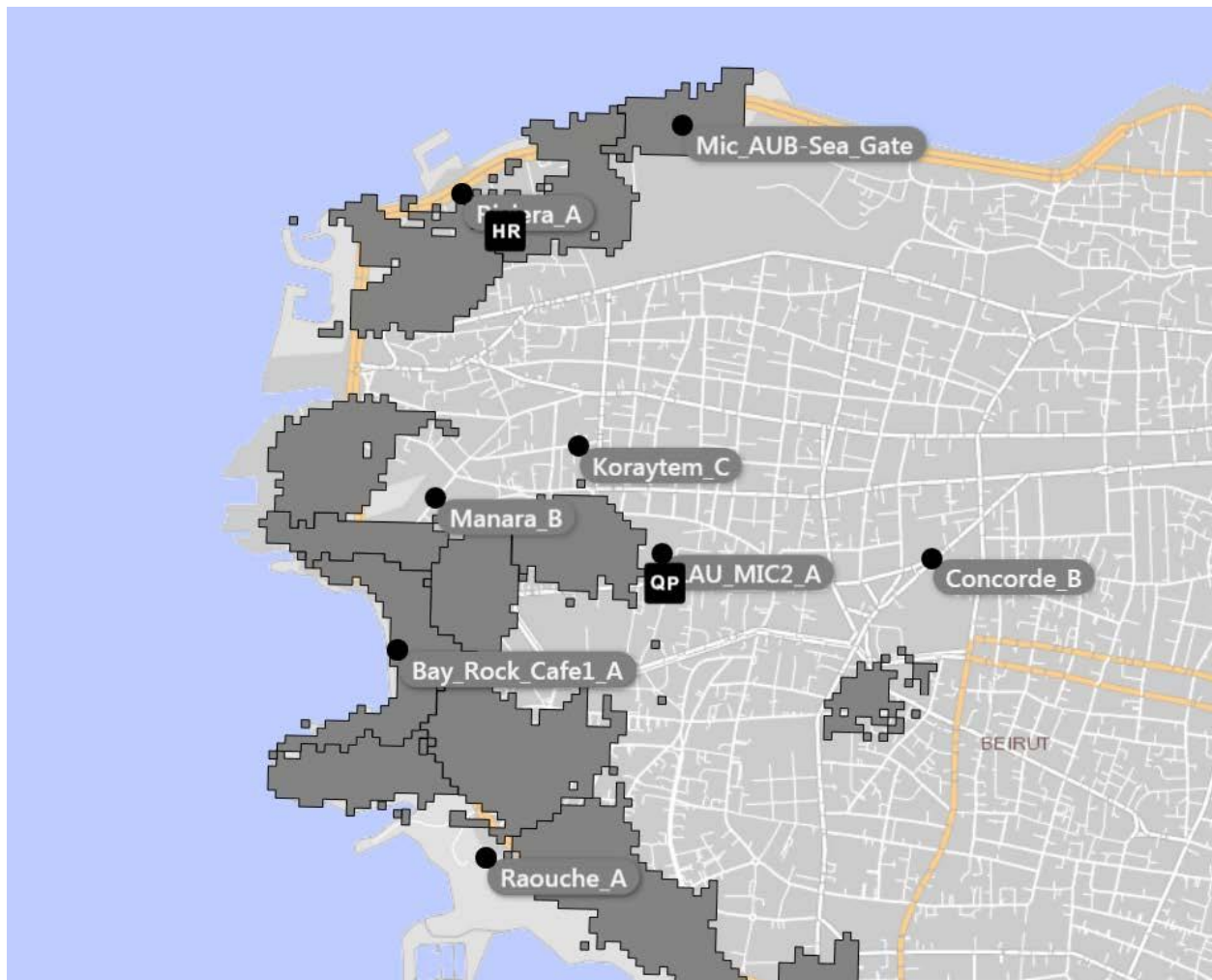
⁸⁵⁴⁸ Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 796; exhibit P1229, pp 12-13; exhibit P1225, pp 10-11; exhibit P1239, pp 7-8.

⁸⁵⁴⁹ Exhibit P1229, pp 12-13; exhibit P1225, pp 10-11; exhibit P1239, pp 7-8.

⁸⁵⁵⁰ Blue 864 activated cells SFEIR2, ROUEIS2 and BRAJNE1, respectively, when in contact with Blue 817 (which activated cell MANARA2) and Blue 585 (which activated cells Manara_B and Raouche_A). Exhibit P1228, p. 10; exhibit P1239, p. 8; exhibit P1229, p. 12; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 797.

⁸⁵⁵¹ Blue 864 activated cell CBOURJ3, and Blue 610 activated cell CARACA3. Exhibit P1228, p. 10; exhibit P1227, p. 12; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 798.

⁸⁵⁵² Blue 585 activated cells Raouche_A and Manara_B; Blue 610 activated cells CARACA3 and CARLTO2; and Blue 864 activated cell MOVPIK1. Exhibit P1229, p. 13; exhibit P1227, p. 13; exhibit P1228, p. 10; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 799.



Map created by the Trial Chamber from electronic presentation of evidence, exhibit P592.1, showing Touch's cells in the areas of Quraitem Palace and Mr Marwan Hamade's residence

4491. Mr Platt testified that Blue network activity between 12:38 and 14:21 is consistent with Subject 5's Blue 585, Subject 7's Blue 324 and Subject 8's Blue 817 conducting surveillance relating to Mr Hariri's visit to Mr Hamade's residence. They then reported information to the other three principal members of the network, two of whom—Subject 6's Blue 610 and Subject 9's Blue 864—then converged on Quraitem Palace from elsewhere upon Mr Hariri's return.⁸⁵⁵³

4492. Blue 324 and Blue 817 were 'doing the mobile surveillance aspect of the operation', while Blue 585 'remained static ... to monitor the movement and possible return back to Quraitem

⁸⁵⁵³ Gary Platt, T. 22 February 2017, pp 84-90. See also exhibit P1902, slides 88-110.

Palace’.⁸⁵⁵⁴ In a ‘reporting process’, Mr Platt underlined that the first call was to Mr Ayyash (on Blue 233), who was ‘some distance away and not involved directly with the surveillance, but clearly updating him on ... a key event’.⁸⁵⁵⁵

4493. Mr Platt concluded, of the surveillance activities he detected around Mr Hamade’s residence, that Subject 7 on Blue 324 initially followed the security detail and then called Subject 8’s Blue 817 ‘for reinforcement’.⁸⁵⁵⁶

4494. In the afternoon, Mr Hariri travelled to his villa in Naameh. According to Mr Platt, the activity of Subject 5’s Blue 585, Subject 6’s Blue 610 and Subject 9’s Blue 864 from 14:47—while Mr Hariri’s security detail was travelling from Quraitem Palace to Al-Naameh—is consistent with mobile surveillance of Mr Hariri between these two locations.⁸⁵⁵⁷

4495. Mr Platt stated that, at 14:47, the three subjects exchanged two calls, activating cells in the Quraitem Palace area,⁸⁵⁵⁸ while between 14:58 and 15:04 all three had moved south to the airport area,⁸⁵⁵⁹ consistent with the route to Naameh Villa and coinciding with the movement of Mr Hariri’s security detail.⁸⁵⁶⁰ He commented that, given Mr Ayyash’s Blue 233’s location and its contact with Subject 6’s Blue 610 while the latter was involved in mobile surveillance, the contact is consistent with reporting on the surveillance to someone who is making decisions and

⁸⁵⁵⁴ Gary Platt, T. 22 February 2017, pp 89-90.

⁸⁵⁵⁵ Gary Platt, T. 22 February 2017, p. 89. At 13:59, when receiving a call from Blue 817, Blue 233 activated the cell Sfeir_B. Exhibit P1238, p. 7.

⁸⁵⁵⁶ Gary Platt, T. 22 February 2017, pp 85-86. This was in response to a question from the Presiding Judge, ‘Now, is that consistent with Mr. Hariri being followed there or Mr. Hariri being followed by some and then others are called and asked to join, or what?’.

⁸⁵⁵⁷ Gary Platt, T. 22 February 2017, pp 91-104; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 802-821-825. *See also* exhibit P1902, slides 119-140.

⁸⁵⁵⁸ At 14:47, Blue 610 activated cell OGER3 to call Blue 864, which activated cell CARACA3 for this call and then went on to activate the same cell within the same minute to call Blue 585, which in turn activated cell Concorde_B; Exhibit P1227, p. 13; exhibit P1228, p. 10; exhibit P1229, p. 13; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 803.

⁸⁵⁵⁹ At 14:58, Blue 233 activated cell Borj_Brajneh_2_B to call Blue 610, which activated cell AIB3. At 15:00 and 15:04, Blue 864 and Blue 585 were in contact, the former activating cell MEA2 twice, and the latter activating cells Airport_B and Airport_A, respectively. In his report, Mr Platt also highlighted calls between 14:50 and 14:56, which he stated were consistent with the three subjects travelling towards Beirut Airport. Specifically, at 14:50, Blue 864 activated cell RAMLET3 to call Blue 610, which activated cell BHVOUT1. At 14:51, Blue 610, activating again cell BHVOUT1, called Blue 233, which activated cell Sfeir_A. At 14:54, Blue 585 activated cell Unesco_B to call Blue 864, which activated cell OUZAI2. At 14:56, Blue 864 activated cell MEA1 to call Blue 610, which activated cell MEA2. Exhibit P1227, p. 13; exhibit P1228, p. 10; exhibit P1229, p. 13; exhibit P1238, p. 7; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 804-809.

⁸⁵⁶⁰ Gary Platt, T. 22 February 2017, pp 91-92; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 821-822. *See also* exhibit P1902, slides 120-123.

coordinating the operation.⁸⁵⁶¹ Mr Platt also noted that within minutes of the security detail's first activity in Naameh Villa, and therefore their potential or approximate arrival there, Subject 6's Blue 610 activated 'a cell which offers coverage close to the vicinity of Naameh Villa.'⁸⁵⁶²

4496. At 15:10, Mr Ayyash's Blue 233, in the area of the airport, called Blue 610, which was located south of the airport, mid-way between Beirut and Saida.⁸⁵⁶³ By 15:15, Blue 610 had moved further south past Naameh Villa, and then went on to activate cells further south still at 15:18 and 15:36.⁸⁵⁶⁴ Mr Platt thought that this may be because the gate to Naameh Villa was directly on the main road, meaning that Blue 610 would have been unable to stop there and would have had to have travelled further south; alternatively, Blue 610 may have missed Mr Hariri's convoy turning to enter the villa, continuing its travel south.⁸⁵⁶⁵

4497. Below are photographs of Mr Hariri's Naameh Villa:



⁸⁵⁶¹ Gary Platt, T. 22 February 2017, p. 96.

⁸⁵⁶² Gary Platt, T. 22 February 2017, p. 97.

⁸⁵⁶³ At 15:10, Blue 233 activated cell Ouzaii_2_A to call Blue 610, which activated cell SAADIY1. Exhibit P1227, p. 13; exhibit P1238, p. 7; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 810.

⁸⁵⁶⁴ At 15:15, Blue 610 activated cell ZAYNEH1 to call Blue 817, which activated cell RAOUCH3. At 15:18, Blue 864, activating cell MEA1, called Blue 610, which activated cell SIBLIN3, and which in turn, at 15:36, activated cell BRAMIE3 to call Blue 864, which activated cell AIB3. Exhibit P1227, p. 13; exhibit P1228, p. 10; exhibit P1239, p. 8; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 812, 814, 823-824.

⁸⁵⁶⁵ Gary Platt, T. 22 February 2017, pp 95, 98, 100-101.



Exhibit P665 (Statement of Timothy Holford), pp 7-9

4498. After the 15:36 call, there was no other telephone activity between the principal six Blue network subjects until 16:44, around when Mr Hariri's security detail would have started travelling back to Quraitem Palace, having made the last call from Naameh Villa area at 16:40 and arriving back at Quraitem Palace by 17:01.⁸⁵⁶⁶ At 16:44, Blue 585 and Blue 864 were on the road between Naameh Villa and Quraitem Palace.⁸⁵⁶⁷ Then, between 17:07 and 17:18, Blue 610 moved from activating a cell on the road from Naameh Villa to Quraitem Palace, to activating a cell in the Quraitem Palace area.⁸⁵⁶⁸ Mr Platt testified that this would be inconsistent with Blue 610 following Mr Hariri back to Quraitem Palace, given that his security detail had already arrived there by 17:01.⁸⁵⁶⁹

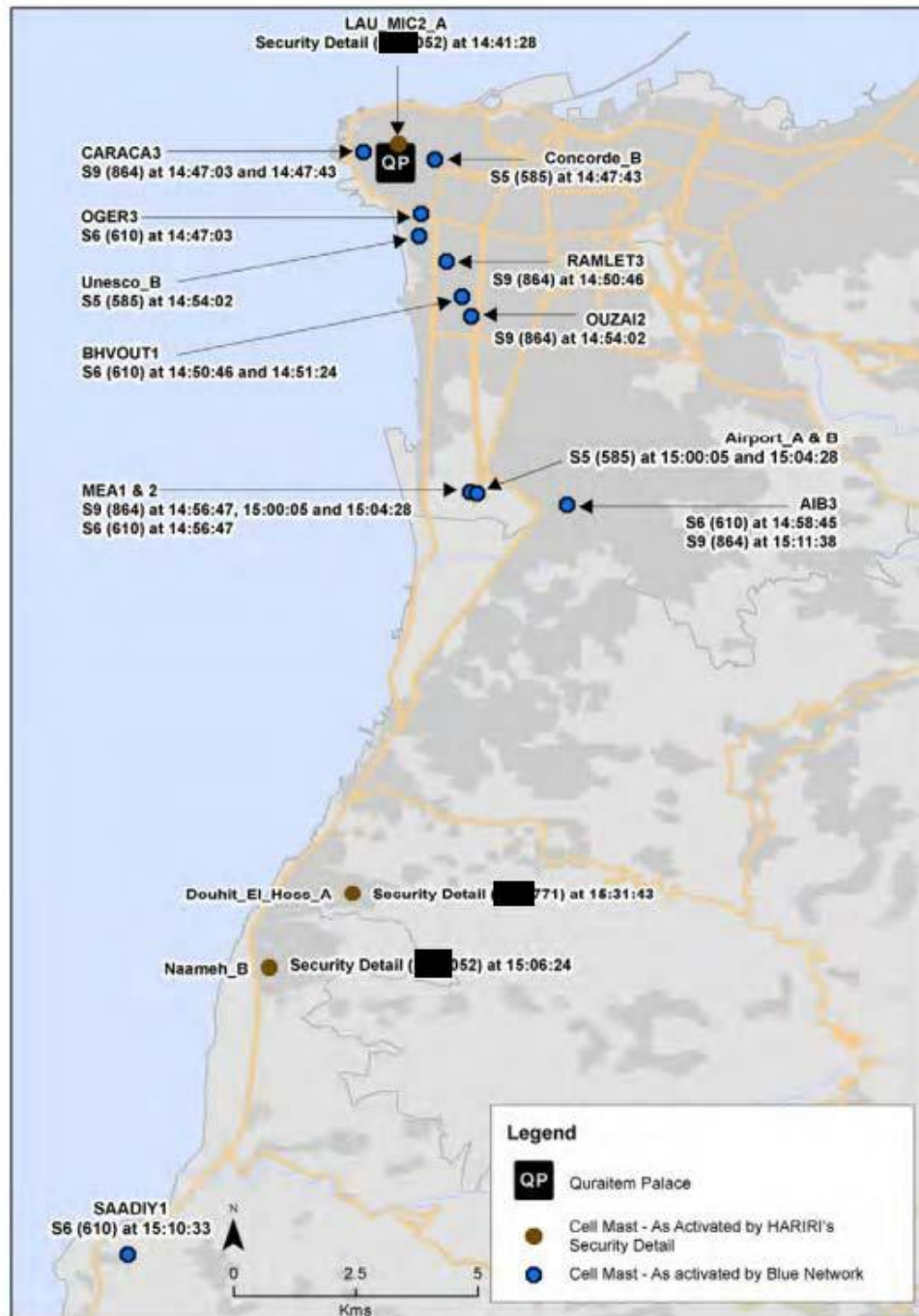
⁸⁵⁶⁶ Gary Platt, T. 22 February 2017, pp 101-102; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 815.

⁸⁵⁶⁷ At 16:44, when Blue 585 activated cell Tabet El Dahra_A to call Blue 864, which activated cell AIB3. Exhibit P1228, p. 10; exhibit P1229, p. 13; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 815. As noted above, there can be time differences between the start time of calls on the same network and between calls on different networks. The call described above as starting at 16:44 (according to exhibit P1229, the call sequence table for Blue 585), started at 16:43:59 according to exhibit P1228, the call sequence table for Blue 864.

⁸⁵⁶⁸ Blue 233, activating the cell Sfeir_A, called Blue 610 at 17:07, the latter activating cell BHVOUT1. At 17:18, Blue 610 activated cell RAOUCH1 to call Blue 233, which activated cell Hadath_C. Exhibit P1227, p. 13; exhibit P1238, p. 7; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 817-818.

⁸⁵⁶⁹ Gary Platt, T. 22 February 2017, p. 102.

4499. Mr Platt prepared a map of the Blue mobile activations between Quraitem Palace and the Naameh Villa in his chronology report:



Map 74: HARIRI's Security Detail and Blue Network (S5, S6 and S9), Beirut and south Lebanon, 29 January 2005 (14:41 to 15:31)

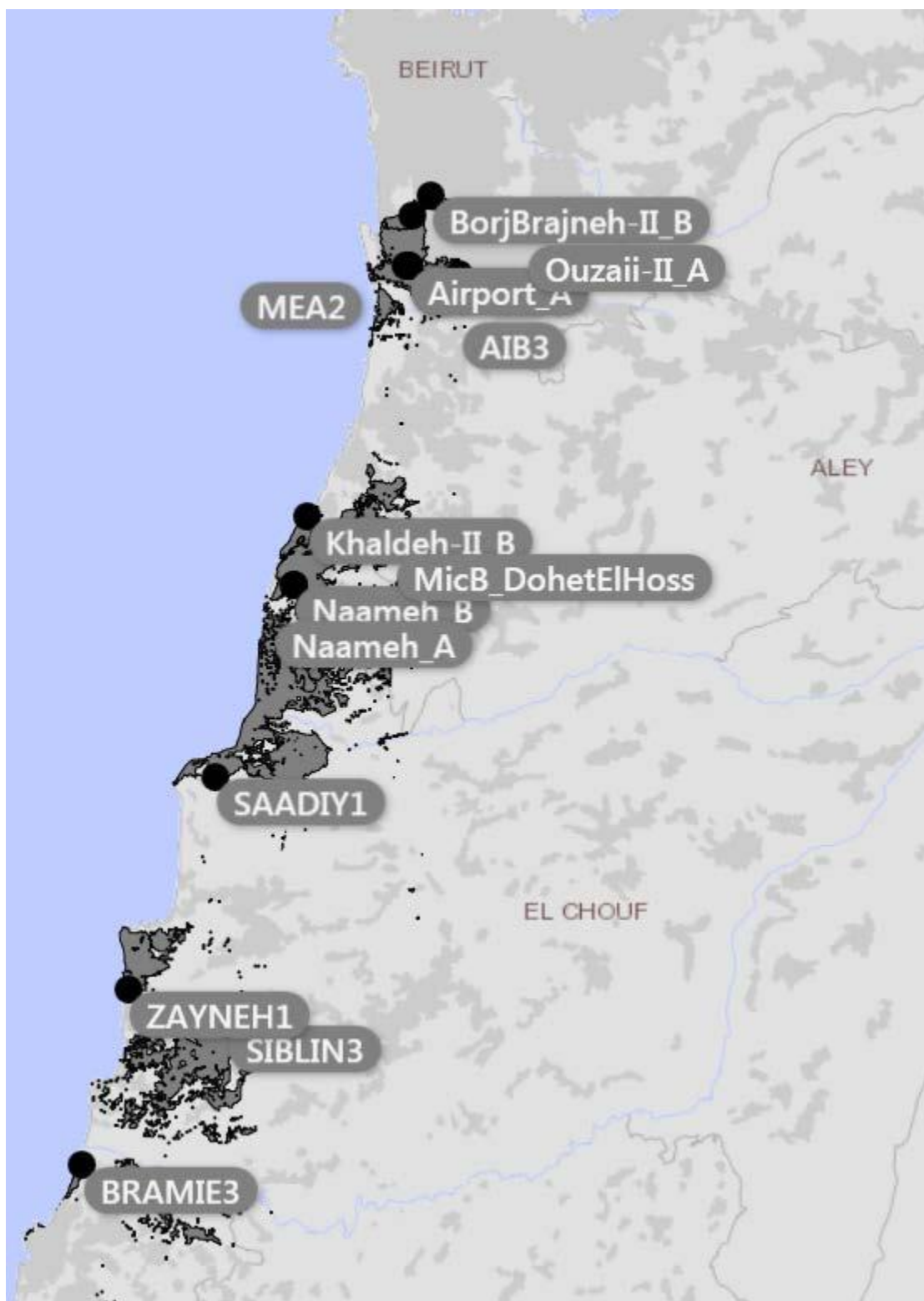
Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 242

4500. Mr Platt highlighted the activity of Blue 817 (20:45 to 21:30), Blue 324 (21:02 to 21:32) and Blue 864 (21:22 to 23:27) in the Quraitem Palace⁸⁵⁷⁰ area as being consistent with these subjects conducting surveillance of Mr Hariri, who was at Quraitem Palace.⁸⁵⁷¹

4501. The Trial Chamber, using the electronic presentation of evidence, prepared a map of the cell coverage of the cells activated by the Blue network mobiles:

⁸⁵⁷⁰ Blue 817 activated cells MOVPIK1 (20:45, 21:02, 21:22, 21:29), RAOUCH2 (21:30), RAMLET3 (21:30) and SIMON3 (21:32). Blue 324 activated cell Mic_Bay Rock2 (21:02, 21:30, 21:32); Blue 864 activated cells MOVPIK1 (21:22, 23:27) and RAOUCH3 (21:30). In his report, Mr Platt also noted Blue 864's preceding activation of cells SFEIR2 (19:19) and HADATH3 (20:30), in south Beirut. Exhibit P1239, p. 8; exhibit P1225, p. 11; exhibit P1228, p. 11; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 826, table 101 (p. 244). *See also* exhibit P1902, slides 149-155.

⁸⁵⁷¹ Gary Platt, T. 22 February 2017, pp 104-108.



Map created by the Trial Chamber from the electronic presentation of evidence, exhibit P592.1, showing cells activated by mobiles en route to and at Naameh Villa

(qq) Sunday 30 January 2005

4502. On this day, Sunday 30 January 2005, visitors, including the Druze leader Mr Walid Jumblatt, met Mr Hariri at Quraitem Palace between 08:20 and 21:40.⁸⁵⁷² In addition, according to Mr Platt,⁸⁵⁷³ the activity of Mr Hariri's security detail showed that he travelled to visit Mr Marwan Hamade at his residence sometime between 18:02 and 18:32,⁸⁵⁷⁴ was stationary in that area⁸⁵⁷⁵ and then returned to Quraitem Palace, sometime between 18:58 and 19:09.⁸⁵⁷⁶ Mr Platt's report does not refer to Mr Hariri's visit to Mr Hamade's residence. In the report, he described the activity of Subject 6's Blue 610, Subject 7's Blue 324, Subject 8's Blue 817 and Subject 9's Blue 864, between 10:28 and 19:08, as being in the area of Quraitem Palace, while noting that Subject 6's Blue 610, between 18:24 and 19:07, was also in the area of the crime scene.⁸⁵⁷⁷

4503. According to Mr Platt, the call activity between Blue 324, Blue 817, Blue 864 and Blue 610 between 10:28 and 13:04 may suggest continuing surveillance of Mr Hariri around Quraitem Palace, with the first three Subjects being active around Quraitem Palace.⁸⁵⁷⁸ The activity of the principal six Blue network mobiles between 15:05 and 17:59, with a number of them activating cells in the area of Quraitem Palace,⁸⁵⁷⁹ is consistent with static surveillance of Mr Hariri.⁸⁵⁸⁰

4504. Subject 9's Blue 864 and Subject 6's Blue 610 were in contact at 18:24 and 18:32—the time during which Mr Hariri's security detail travelled to Mr Hamade's residence—moving from the Quraitem Palace area to the area of Mr Hamade's residence (Blue 864 activating cells

⁸⁵⁷² Exhibit P301, pp 359-360; exhibit P303, ERN D0004950; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 828.

⁸⁵⁷³ Gary Platt, T. 23 February 2017, p. 7; exhibit P1902, slides 170-175.

⁸⁵⁷⁴ At 18:02, mobile 771 activated cell LAU_MIC2_A, and then, at 18:32, activated cell Riviera_A. Exhibit P1359, p. 299.

⁸⁵⁷⁵ Mobile 506 activated cell Riviera_A (18:39), mobile 973 activated cell Riviera_A (18:42, 18:51) and mobile 1506 activated cell Riviera_B (18:47). Exhibit P1322, p. 70; exhibit P1332, p. 56; exhibit P1352, p. 322.

⁸⁵⁷⁶ Mobile 1506 activated cell Riviera_B in this area for a final time at 18:58, and then went on to activate cell LAU_MIC2_A at 19:09. Exhibit P1352, p. 322.

⁸⁵⁷⁷ Exhibit P1783 (Expert report of Gary Platt – Chronology), paras 829, 833-834, 837-840, table 104 (p. 248).

⁸⁵⁷⁸ Gary Platt, T. 23 February 2017, pp 3-5. Blue 324 activated cells Raouche_C (10:30) and Manara_C (11:33, 11:55, 13:04). Blue 817 activated cells CARACA1 (10:28), CARACA3 (10:30, 10:31) and MOVPIK1 (11:32, 11:55, 13:01, 13:03, 13:04); Blue 864 activated cell CARACA3 (13:03). Exhibit P1225, p. 11; exhibit P1239, p. 9; exhibit P1228, p. 11.

⁸⁵⁷⁹ Blue 610 activated cells OGER2 (15:05), MOVPIK1 (15:06, 15:23 (twice)), CBOURJ3 (17:52) and SIMON3 (17:56); Blue 864 activated cells CARLTO2 (15:23 (twice)) and MOVPIK1 (16:10); Blue 817 activated cell MOVPIK1 (17:56, 17:59); Blue 324 activated cell Manara_C (18:00); Blue 233 activated cells Nabatieh_C (15:06 (twice)) and Ansar_A (17:52); Blue 585 activated cell Jnah El Wata_B (16:10), Exhibit P1227, p. 14; exhibit P1228, p. 11; exhibit P1239, p. 9; exhibit P1225, p. 11; exhibit P1238, pp 7-8; exhibit P1229, p. 13.

⁸⁵⁸⁰ Gary Platt, T. 23 February 2017, pp 6-7. *See also* exhibit P1902, slides 163-168.

MANARA1 both times while Blue 610 activated cell MOVPIK1 for the first call and MRAICI2 for the second call).⁸⁵⁸¹ An 18:38 call between Blue 610 (activating cell MANARA1) and Mr Ayyash's Blue 233 (activating cell Ansar_A) was consistent, according to Mr Platt, with reporting on the surveillance activity within a command structure.⁸⁵⁸²

(rr) Monday 31 January 2005

4505. On Monday 31 January 2005, Mr Hariri received visitors at the palace between 07:45 and 21:00.⁸⁵⁸³ He was also scheduled to visit the Higher Shiite Council at 11:00.⁸⁵⁸⁴ The Prosecutor, in the amended consolidated indictment, pleads that:

On 31 January 2005, HARIRI was at Quraitem Palace before going to the Higher Shiite Council, later returning to the Palace. The assassination team, using the **Red Network** phones, were active for less than three hours covering the period before, during and after HARIRI's movements. They were located around Quraitem Palace and the Higher Shiite Council when HARIRI was present. In both areas and in the same time-frame, **AYYASH** used **Red 741**, **Blue 233** and **Green 300**. In particular, on **Green 300**, he was in communication 11 times between 10:49 and 12:07 with Mustafa BADREDDINE on **Green 023**.⁸⁵⁸⁵

4506. His security detail's calls are consistent with the following.⁸⁵⁸⁶ First, he was in the area of Quraitem Palace until at least 10:09.⁸⁵⁸⁷ Second, he travelled to the Wardieh area—which Mr Platt characterised as being west of Parliament—by 10:19 and remained there until 10:40.⁸⁵⁸⁸ Third, he

⁸⁵⁸¹ Gary Platt, T. 23 February 2017, p. 8; exhibit P1227, p. 14; exhibit P1228, p. 11; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 837. *See also* exhibit P1902, slides 177-178.

⁸⁵⁸² Gary Platt, T. 23 February 2017, p. 9; exhibit P1227, p. 14; exhibit P1238, p. 8; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 830, 837-838. *See also* exhibit P1902, slides 179-180;

⁸⁵⁸³ Exhibit P301, pp 360-362; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 841.

⁸⁵⁸⁴ Exhibit P299, ERN 60142161; exhibit P303, ERNs D0004951-D0004957; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 841, 849.

⁸⁵⁸⁵ Amended consolidated indictment, para. 34.

⁸⁵⁸⁶ Gary Platt, T. 23 February 2017, pp 17-18; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 850-851, 859-860; exhibit P1902, slides 186-195. The call sequence table for mobile 1506 was not included in Mr Platt's report, such that his assessments of the times at which the security detail arrived and/or departed from the different locations varied by one to four minutes at certain junctures from the timings set out above (which are based on Mr Platt's in court testimony).

⁸⁵⁸⁷ Mobile 052 activated cell Fadlallah_A (09:12) and mobile 771 activated cell LAU_MIC2_A (10:09). Exhibit P1359, p. 300; exhibit P1334, p. 53; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 850.

⁸⁵⁸⁸ Gary Platt, T. 23 February 2017, p. 17. Mobile 771 activated cells Wardieh_B (10:22, 10:24, 10:33, 10:39) and Wardieh_A (10:36, 10:38). Exhibit P1359, p. 300. Mobile 1506 activated cells Wardieh_A (10:19, 10:24, 10:28, 10:35, 10:36, 10:40) and Wardieh_B (10:21). Exhibit P1352, p. 323. In his report, Mr Platt did not specifically

was at the Higher Shiite Council by 10:54 and remained there until 11:44.⁸⁵⁸⁹ And, fourth, he returned to the Quraitem Palace area by 12:04.⁸⁵⁹⁰ Mr Platt could not explain the security detail's activity in Wardieh.⁸⁵⁹¹

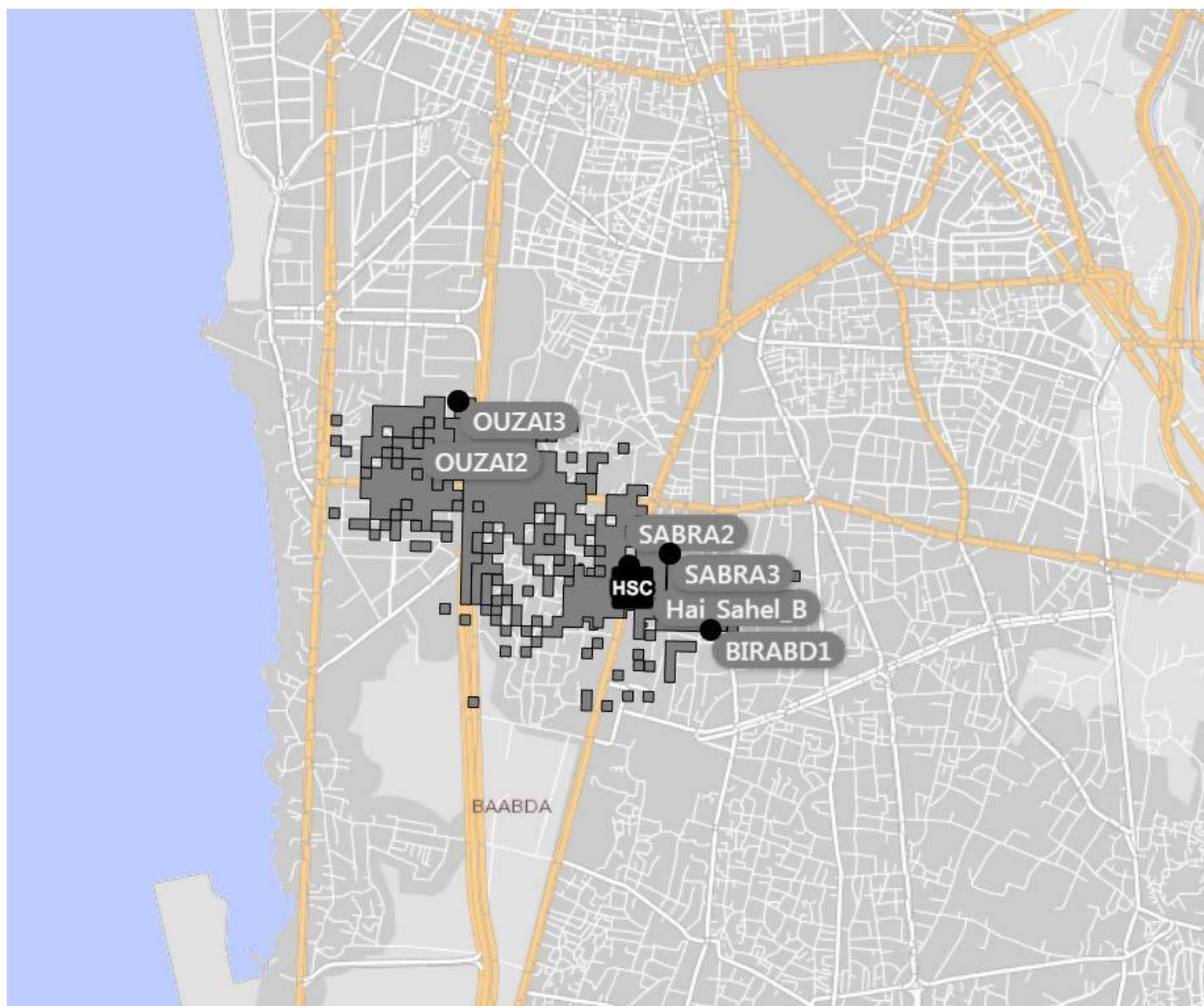
4507. The Trial Chamber prepared the following diagram using the electronic presentation of evidence software of cells around the council, which is marked as 'HSC':

characterize this activity as the security detail travelling to and being static in the Wardieh area, instead characterizing it as being 'consistent with the route of travel taken by the convoy to the to the Higher Shiite Council'. Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 850.

⁸⁵⁸⁹ Cell Hai_El_Sahel_B was activated by mobiles 1506 (10:54, 10:57, 10:59, 11:02, 11:04, 11:06, 11:10 (twice), 11:13, 11:28, 11:33, 11:39, 11:43), 052 (11:06) and 771 (10:55, 10:56 (twice), 11:00, 11:11, 11:34, 11:35, 11:44). Exhibit P1359, p. 300; exhibit 1334, p. 53; exhibit P1352, p. 323; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 851, 859.

⁸⁵⁹⁰ Mobile 1506 activated cell Kraitem_A at 12:04 and mobile 771 activated cell LAU_MIC2_A at 12:08. Exhibit P1352, p. 323; exhibit P1359, p. 300; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 859.

⁸⁵⁹¹ Gary Platt, T. 23 February 2017, p. 17.



Map created by the Trial Chamber from electronic presentation of evidence, exhibit P592.1, of cells around the Higher Shiite Council

4508. Before Mr Hariri's departure, at 09:54, Subject 6's Red 678 and Subject 8's Red 893 were in contact activating the same cell in the Quraitem Palace area.⁸⁵⁹² At 10:10, around the time of Mr Hariri's departure from Quraitem Palace, Subject 6's Blue 610, located in its area, called Blue 817 which was near the Higher Shiite Council.⁸⁵⁹³

⁸⁵⁹² Both mobiles activated cell RAOUCH1. In his report, Mr Platt also noted that, at 09:56, Blue 233 activated cell Mar_Michael_C to receive a call from Blue 817. Exhibit P1204, p. 2; exhibit P1198, p. 1; exhibit P1238, p. 8; exhibit P1239, p. 9; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 846-847. *See also* exhibit P1902, slides 196-197.

⁸⁵⁹³ Blue 610 activated cell MOVPIK1 and Blue 817 activated cell SABRA2. Exhibit P1227, p. 14; exhibit P1239, p. 9; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 852. *See also* exhibit P1902, slides 199-200; exhibit P1903 (EPE snapshots related to exhibit P1902, slide 199).

4509. Mr Platt commented that Subject 8's activity was 'not consistent with following' Mr Hariri, but rather with that subject being present at that location before Mr Hariri's arrival, due to an 'expectation' he would go there.⁸⁵⁹⁴ His visit, Mr Platt noted, was in the public domain.⁸⁵⁹⁵

4510. Around the time that the security detail arrived at the Higher Shiite Council, Blue 817 called Mr Ayyash's Blue 233 from that area; Blue 233 was connecting to a cell in the Parliament/coastal road area.⁸⁵⁹⁶

4511. In Mr Platt's view, Subject 8, on Blue 817, was a 'spotter' and informed Mr Ayyash of Mr Hariri's arrival—which caused 'a number of the Subjects to relocate from their locations either at Quraitem Palace or Parliament and come down to the Higher Shiite Council because now the manpower is needed down there'.⁸⁵⁹⁷

4512. Immediately after this Blue network call, Mr Ayyash's Green 300 called Mr Badreddine's Green 023, which was in the area of Quraitem Palace.⁸⁵⁹⁸ Mr Platt noted that, whereas previously calls between these mobiles occurred after a surveillance operation had concluded, this time it was during one because Green 023 was involved in the operation. The sequence of calls shows the passing of information from Blue 817 to Blue 233 and then from Green 300 to Green 023 about Mr Hariri's arrival at the Higher Shiite Council—showing a command structure—so that Green 300 and Green 023 could decide where to move next.⁸⁵⁹⁹

4513. Between 10:54 and 10:56, there was a burst of Red network calls correlating with Mr Hariri's arrival at the Higher Shiite Council, following a period of inactivity, consistent, in Mr Platt's opinion, with a surveillance operation.⁸⁶⁰⁰ Subject 6's Red 678 was in contact with Subject

⁸⁵⁹⁴ Gary Platt, T. 23 February 2017, pp 57-59. This was in response to a question from the Presiding Judge on Subject 8's activity, 'Is that consistent with Blue 817, that's Subject 8, following the convoy? Or is it consistent with something else? Can you explain that?'.

⁸⁵⁹⁵ Gary Platt, T. 23 February 2017, pp 60, 62.

⁸⁵⁹⁶ At 10:53, Blue 817 activated cell OUZA13 to call Blue 233, which activated cell CoastRoad_C. Exhibit P1239, p. 9; exhibit P1238, p. 8; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 853; Gary Platt, T. 23 February 2017, pp 49-50. *See also* exhibit P1902, slides 206, 208.

⁸⁵⁹⁷ Gary Platt, T. 23 February 2017, pp 58-59. This was also in response to a question from the Presiding Judge, 'Are you suggesting that Subject 8 was, in effect, a spotter waiting on one of the roads to see if Mr. Hariri's convoy went past, or are you suggesting something else?'.

⁸⁵⁹⁸ At 10:54, Green 300 activated cell PORT2 and Green 023 activated cell RAOUCH2. Exhibit P1207, p. 4; exhibit P1211, p. 5; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 853; exhibit P1902, slides 214-215.

⁸⁵⁹⁹ Gary Platt, T. 23 February 2017, pp 51-53.

⁸⁶⁰⁰ Gary Platt, T. 23 February 2017, pp 53-55.

9's Red 652, Subject 5's Red 636 and Mr Ayyash's Red 741—the latter three all were in the Parliament area—and Subject 7's Red 946, which was in the Higher Shiite Council area.⁸⁶⁰¹ Between 11:07 and 11:17, there was Red and Blue network activity in the Higher Shiite Council area.⁸⁶⁰² Mr Platt noted that Mr Ayyash's Red 741 travelled from the Parliament area to the Higher Shiite Council area between 10:56 and 11:07.

4514. According to Mr Platt, 'most of the manpower was previously concentrated at the Parliament area because there was an expectation' that Mr Hariri would have travelled there.⁸⁶⁰³ In Mr Platt's view, 'they covered all the bases', namely Quraitem Palace, the Parliament area and the Higher Shiite Council.⁸⁶⁰⁴ Further, to an extent, also the crime scene area, at a certain point, was covered.⁸⁶⁰⁵

⁸⁶⁰¹ At 10:54, Red 652 (ETOILE1) called Red 678 (OGER3); at 10:55, Red 678 (MOVPIK1) called Red 636 (PORT2); at 10:56, Red 678 (RAOUCH2) called Red 946 (GHOBAL2); and at 10:56, Red 678 (OGER2) called Red 741 (PORT2). Exhibit P1204, p. 2; exhibit P1199, p. 2; exhibit P1203, p. 1; exhibit P1202, p. 1; exhibit P1197, p. 2; exhibit P1902, slides 216-217; Gary Platt, T. 23 February 2017, pp 59-60, 63.

⁸⁶⁰² At 11:07, Red 741 activated cell SABRA3 and was in contact with Red 678, who activated cell BIRABD1; then, Blue 610 also activated cell SABRA3 to contact Blue 817 at 11:08 and 11:10, while the latter activated cells OUZAI2 and BIRABD1; at 11:16 and 11:17, Red 741 activated cell SABRA3 to call—and then to receive a call from—Red 893, which activated cell BIRABD1. Exhibit P1197, p. 2; exhibit P1204, p. 2; exhibit P1227, p. 14; exhibit P1239, p. 9; exhibit P1198, p. 1; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 854-855, 857; exhibit P1902, slides 218-224.

⁸⁶⁰³ Gary Platt, T. 23 February 2017, p. 59.

⁸⁶⁰⁴ Gary Platt, T. 23 February 2017, p. 60.

⁸⁶⁰⁵ Gary Platt, T. 23 February 2017, p. 60. This was in response to questions from the Presiding Judge, 'Well, how does that fit in with using that same term, other spotters being at the Parliament area at the same time?'...Was any other part of Beirut covered based upon your analysis of the call data records of that day?'



Photograph of Mufti Abdul Amir Qabalan and Mr Rafik Hariri on his visit at the Higher Shiite Council on 31 January 2005—Exhibit P359 (Photographs) p. 4

4515. At 11:44, around the time the security detail departed from the Higher Shiite Council, Mr Badreddine's Green 023 again called Mr Ayyash's Green 300.⁸⁶⁰⁶ Mr Platt commented that, consistent with surveillance, this was the beginning of another burst of network mobile activity correlating with Mr Hariri's movement.⁸⁶⁰⁷ Namely, at 11:46 and 11:47, there was Red network activity, with Subject 8's Red 893, Subject 6's Red 678 and Mr Ayyash's Red 741 located in the area of the Higher Shiite Council, and Subject 9's Red 652 located in the Parliament area.⁸⁶⁰⁸

⁸⁶⁰⁶ Green 023 activated cell ZOUKAK1 and Green 300 activated cell SABRA3. Exhibit P1211, p. 5; exhibit P1207, p. 4; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 861; Gary Platt, T. 23 February 2017, p. 68. *See also* exhibit P1902, slides 228, 230. As noted above, there can be time differences between the start time of calls on the same network and between calls on different networks. The call described above as starting at 11:44 (according to exhibit P1211—the call sequence table for Green 023—this call started at 11:44:58), started at 11:45:00 according to exhibit P1207, which is the call sequence table for Green 300.

⁸⁶⁰⁷ Gary Platt, T. 23 February 2017, pp 68-69; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 858, 861.

⁸⁶⁰⁸ At 11:46, Red 678 (SABRA3) called Red 652 (BNPI2); and at 11:47, Red 893 activated cell OUZAI2 to call Red 741, which activated cell SABRA3. Exhibit P1204, p. 2; exhibit P1199, p. 2; exhibit P1198, p. 1; exhibit P1197, p. 2; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 861; Gary Platt, T. 23 February 2017, pp 70-71; exhibit P1902, slides 228, 231.

4516. Between 11:48 and 11:54 there was a burst of 11 calls, all involving mobiles activating cells in locations relevant to Mr Hariri's movements, namely the Higher Shiite Council, Parliament and the route between them, prompted by Mr Hariri's departure from the Higher Shiite Council.⁸⁶⁰⁹ At 11:48, Mr Ayyash's Red 741 in the Higher Shiite Council area called Subject 5's Red 636, which was in the area of Parliament,⁸⁶¹⁰ and at 11:48, Mr Ayyash's Green 300 activated the same cell as Red 741 to call Mr Badreddine's Green 023, which was then connecting to a cell in the area of Parliament and the crime scene.⁸⁶¹¹

4517. Between 11:48 and 11:49, Subject 6's Red 678 and Mr Ayyash's Green 300 activated cells which Mr Platt characterised as consistent with the northward route taken by the security detail.⁸⁶¹² According to Mr Platt, Green 300's activity at 11:50 was 'again consistent with travelling northwards along the route towards Quraitem Palace'.⁸⁶¹³

4518. There was a high frequency of Green network calls during this period and an unusually high number of Green network calls on this day as a whole, namely 11.⁸⁶¹⁴ Immediately before the security detail's first call in the Quraitem Palace area, Red 652, Red 678 and Red 741 were in contact—at 12:02 and 12:03—all in the Quraitem Palace area.⁸⁶¹⁵ At 12:04, Green 300 called Green 023 from the Quraitem Palace area.⁸⁶¹⁶

4519. Overall, Mr Platt commented that while the security detail travelled from the Higher Shiite Council to Quraitem Palace between 11:44 and 12:08, Red 741's, Green 300's and Red 678's activity almost mirrored the security detail's journey 'and within the same time frame as the

⁸⁶⁰⁹ Gary Platt, T. 23 February 2017, pp 73-74; exhibit P1902, slides 232-243.

⁸⁶¹⁰ At 11:48, Red 741 activated cell SABRA3 to call Red 636, which activated cell ETOILE1. Exhibit P1197, p. 2; exhibit P1203, p. 1; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 861.

⁸⁶¹¹ At 11:48, Green 300 activated cell SABRA3 to call Green 023, which activated cell ZOUKAK1. Exhibit P1207, p. 4; exhibit P1211, p. 5; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 861; Gary Platt, T. 23 February 2017, pp 60, 70-71.

⁸⁶¹² At 11:48, Red 678 activated cell GHOBAl2, and Red 636 activated cell ETOILE1. At 11:49, Green 023 activated cell ZOUKAK1 and Green 300 activated cell GHOBAl2. Exhibit P1204, p. 2; exhibit P1203, p. 1; exhibit P1207, p. 4; exhibit P1211, p. 5; exhibit P1783, para. 861. Gary Platt, T. 23 February 2017, p. 74. *See also* exhibit P1902, slides 235-237.

⁸⁶¹³ At 11:50, Green 023 (PHENMB1) again called Green 300 (GHOBAl3). Exhibit P1211, p. 5; exhibit P1207, p. 4; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 861. Gary Platt, T. 23 February 2017, pp 74-75.

⁸⁶¹⁴ Gary Platt, T. 23 February 2017, p. 75; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 845.

⁸⁶¹⁵ Gary Platt, T. 23 February 2017, p. 79.

⁸⁶¹⁶ At 12:04, Green 300 activated cell RAOUCH1 to call Green 023, which activated cell OUZA11. Exhibit P1207, p. 5; exhibit P1211, p. 5; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 867. Gary Platt, T. 23 February 2017, p. 80.

security detail', consistent with mobile surveillance by these mobiles.⁸⁶¹⁷ He concluded that the seven calls between Mr Ayyash's Green 300 and Mr Badreddine's Green 023 during this short period were consistent with Green 023 getting information from Green 300 regarding the security detail's movements, and whether it was heading toward where Green 023 was.

4520. After the 11:54 call, when it had become clear that the convoy would not travel to Parliament or towards the coastal road area, Green 023 started moving toward south Beirut.⁸⁶¹⁸ Mr Platt said that, on this day, Mr Ayyash and Mr Badreddine wanted to gather first-hand detailed observations of the security detail's behaviour, in order to make decisions about the eventual attack.⁸⁶¹⁹ Mr Platt mapped the calls on the following map in his chronology report:

⁸⁶¹⁷ Gary Platt, T. 23 February 2017, pp 81-82, 89-90; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 866. *See also* exhibit P1902, slides 253-255.

⁸⁶¹⁸ Gary Platt, T. 23 February 2017, pp 90-91.

⁸⁶¹⁹ Gary Platt, T. 23 February 2017, pp 83-84.



Map 78: HARIRI's Security Detail (09:12 to 11:44), Red, Blue and Green Network (09:54 to 11:17), Quraitem Palace and Higher Shiite Council, 31 January 2005

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 254

4521. At 12:05, Subject 7's Red 946 and Subject 9's Red 652 were in contact in the area of Quraitem Palace.⁸⁶²⁰ This was followed by a 12:07 call from Mr Badreddine's Green 023 to Mr Ayyash's Green 300, which lasted for 11 seconds and during which Green 300 was south of Quraitem Palace, and Green 023 was in the area of the Higher Shiite Council.⁸⁶²¹

4522. At 12:23, Mr Ayyash's Blue 233 activated a cell in the Higher Shiite Council area, whose coverage overlaps with that of the cell used by Green 023 at 12:07.⁸⁶²² Given the short duration of the Green network call and the fact that it was the final Green network call of the day, coupled with Blue 233's location at 12:23, Mr Platt concluded that this activity was consistent with a meeting between Mr Ayyash and Mr Badreddine after the operation had concluded.⁸⁶²³

4523. There was continued Red network activity in the Quraitem Palace area following the final Green network call, from 12:18 to 12:22, as well as Red and Blue network activity in the Quraitem Palace and crime scene areas between 12:23 and 12:27.⁸⁶²⁴ Mr Platt commented that this was consistent with continuing the surveillance operation, even after Mr Hariri had returned to Quraitem Palace.⁸⁶²⁵ Mr Platt mapped the calls on the following map in his chronology report:

⁸⁶²⁰ Red 946 activated cell CARACA2 and Red 652 activated cell RAOUCH3. Exhibit P1202, p. 1; exhibit P1199, p. 2; exhibit P1902, slides 257-258.

⁸⁶²¹ Green 023 activated cell OUZAI2 and Green 300 activated cell OGER3. Exhibit P1207, p. 5; exhibit P1211, p. 5; *see also* exhibit P1783 (Expert report of Gary Platt – Chronology), para. 867; exhibit P1902, slides 257, 259.

⁸⁶²² Blue 233 activated cell BorjBrajneh-II_C to call Blue 610, which activated cell MOVPIK1. Exhibit P1238, p. 8; exhibit P1227, p. 14; Gary Platt, T. 23 February 2017, pp 92-93. Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 868; exhibit P1902, slide 260.

⁸⁶²³ Gary Platt, T. 23 February 2017, pp 92-93.

⁸⁶²⁴ At 12:18, Red 893 (RAOUCH2) called Red 678 (MOVPIK1); at 12:22, Red 652 (CARACA3) called Red 946 (MOVPIK1); at 12:23 and 12:25, Blue 610 activated cell MOVPIK1 twice to receive calls from Blue 233; at 12:25, Red 678 (MOVPIK1) called Red 652 (CARACA1); at 12:27, Red 678 (MOVPIK1) called Red 893 (MOVPIK1); and at 12:27, Red 652 (MANARA2) called Red 636 (PHENMB1). Exhibit P1198, p. 2; exhibit P1204, p. 2; exhibit P1199, p. 2; exhibit P1202, p. 1; exhibit P1227, p. 14; exhibit P1203, p. 1; exhibit P1902, slides 257, 261-263.

⁸⁶²⁵ Gary Platt, T. 23 February 2017, p. 93.



Map 79: Red, Green and Blue Network, Higher Shiite Council and Quraitem Palace, 31 January 2005 (11:44 to 12:31)

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 258

4524. Between 12:28 and 12:42, there was Red network activity in the Quraitem Palace area, as well as in the crime scene / Parliament area.⁸⁶²⁶ Mr Platt noted that the activity was consistent with continued reconnaissance of locations and routes relevant to Mr Hariri, and noted that this was the last Red network activity of the day, meaning that the network ceased operating within 34 minutes of Mr Hariri having returned to Quraitem Palace.⁸⁶²⁷ Increased Blue network activity resumed in the Quraitem Palace area between 17:51 and 19:53.⁸⁶²⁸ According to Mr Platt, this was consistent with a regrouping phase following the cessation of the Red network, to decide on the next actions, and with surveillance around Quraitem Palace.⁸⁶²⁹

4525. Mr Hariri was also scheduled to dine at 20:30 at Mr Mahmoud Mamish's residence, in the Ain El-Teeneh area.⁸⁶³⁰ Mr Hariri's security detail left Quraitem Palace sometime after 20:35, arrived at Mr Mamish's at 20:50, remained until 22:53 and was on the route back to Quraitem Palace at 23:05.⁸⁶³¹

⁸⁶²⁶ At 12:28, Red 652 (CARACA3) called Red 946 (MOVPIK1); at 12:31, Red 652 (MRAICI2) called Red 678 (RAOUCH2); and at 12:42, Red 652 (PHENMB1) called Red 946 (ZOUKAK1). Exhibit P1199, p. 3; exhibit P1202, p. 2; exhibit P1204, p. 2; exhibit P1902, slides 272-274.

⁸⁶²⁷ Gary Platt, T. 23 February 2017, pp 97-98; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 869.

⁸⁶²⁸ At 17:51, Blue 817 activated cell CONCOR2 to receive a call from Blue 610; at 17:53 and 17:55, Blue 817 activated cell CONCOR2 again to call Blue 324 (Mic_Bay Rock2) and Blue 585 (Raouche_B), respectively; at 17:56, Blue 817 activated cell RAOUCH2 to receive a call from Blue 610; at 17:58 and 17:59, Blue 817 activated cell RAOUCH3 to call Blue 585 both times; at 18:02, Blue 817 activated cell MOVPIK1 to call Blue 864; at 18:05, Blue 817 (MOVPIK1) called Blue 324 (Manara_C); at 18:26, Blue 324 (Raouche_B) called Blue 817 (MOVPIK1); at 18:39, Blue 610 activated cell CARLTO2 to call Blue 817; at 19:00, Blue 610 activated cell MOVPIK1 to receive a call from Blue 817; at 19:17, Blue 610 activated cell CARLTO2 to receive a call from Blue 235; at 19:27, Blue 610 (CARLTO2) called Blue 864 (MANARA2); at 19:42, Blue 610 activated cell CARACA1 to receive a call from Blue 817; and at 19:53, Blue 864 activated cell OGER3 to receive a call from Blue 817. Exhibit P1239, pp 9-10; exhibit P1225, p. 11; exhibit P1229, p. 13; exhibit P1227, p. 15; exhibit P1228, p. 12; Gary Platt, T. 23 February 2017, p. 99; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 843, 871; exhibit P1902, slides 276-279.

⁸⁶²⁹ Gary Platt, T. 23 February 2017, pp 99-100.

⁸⁶³⁰ Exhibit P299, ERN 60142161; exhibit 2D00081 (Statement of Mohammed Mneimneh), para. 34; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 841.

⁸⁶³¹ The following mobile activity is included in exhibit P1902, slide 281, used in court with Mr Platt. At 20:35, mobile 1506 activated cell LAU_MIC2_A; between 20:50 and 22:53, cell Ain_El_Tineh_C was activated by mobile 1506 (20:50, 21:39), mobile 052 (21:01) and mobile 771 (22:08, 22:10, 22:38, 22:53) and cell Ain_El_Tineh_B was activated by mobile 771 (20:58) and mobile 052 (21:35, 22:11); finally, at 23:05, mobile 1506 activated cell Concorde_A; however, the slide does not contain the call information showing that mobile 1506 activated cells Hamra_B (21:50, 22:00) and Concorde_A (21:55, 22:05) and that mobile 771 activated cell Concorde_B (23:06). Exhibit P1352, p. 325; exhibit P1359, p. 302; exhibit P1334, p. 54; exhibit P1902, slides 281-285; Gary Platt, T. 23 February 2017, p. 101. Mr Platt explained that there were no further calls involving members of the security detail after 23:05, and therefore that call was 'the closest we get to any activity by the security detail to Quraitem Palace'. Gary Platt, T. 23 February 2017, pp 101-102.

4526. Between 20:59 and 21:02, while Mr Hariri was attending dinner at Mr Mamish's residence, there was Blue network activity in the area of this residence and of Quraitem Palace.⁸⁶³² Mr Platt thought that this activity was consistent with surveillance of Mr Hariri at this dinner engagement, noting that those conducting the operation may not have known that he would only be travelling a short distance from Quraitem Palace to this engagement, and may have been following him to wherever he was going.⁸⁶³³ Mr Platt prepared the following diagram of the Blue network cell activations in the evening that day:



Map 80: Blue Network (S5, S6, S7 and S8), Quraitem Palace, 31 January 2005 (17:51 to 23:25)

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 260

⁸⁶³² At 20:59, Blue 324 (Unesco_C) called Blue 864 (MOVPIK1); at 21:00, Blue 610 (MOVPIK1) called Blue 585 (Manara_C); at 21:01, Blue 585 (Manara_C) called Blue 324 (Unesco_C); and at 21:02, Blue 864 (RAMLET3) called Blue 610 (CARLTO2). Exhibit P1225, p. 11; exhibit P1228, p. 12; exhibit P1227, p. 15; exhibit P1229, p. 13; exhibit P1902, slides 286-290. Mr Platt's report did not deal with the movements of Mr Hariri in connection with this visit. The network activity of Blue 585, Blue 610, Blue 324 and Blue 817 between 17:51 and 23:25 was characterised as being 'around Quraitem Palace and in the area between Quraitem Palace and south Beirut', rather than being consistent with surveillance of Mr Hariri at this dinner engagement. Exhibit P1783 (Expert report of Gary Platt – Chronology), paras 843, 871.

⁸⁶³³ Gary Platt, T. 23 February 2017, pp 103-104.

(ss) Tuesday 1 February 2005

4527. On Tuesday 1 February 2005, Mr Hariri received visitors at Quraitem Palace between 07:45 and 22:02. One of the visitors was the Deputy Syrian Minister of Foreign Affairs, Mr Walid El-Moallem.⁸⁶³⁴

4528. Blue 585 and Blue 324 activated cells in the area of Quraitem Palace between 13:02 and 13:04.⁸⁶³⁵ Subject 6's Blue 610 was in the Quraitem Palace area from 14:15 until 15:32.⁸⁶³⁶

4529. The activity of Blue 585, Blue 324, Blue 817 and Blue 864 in the area of Quraitem Palace between 18:05 and 18:15,⁸⁶³⁷ following around one hour of inactivity, was according to Mr Platt consistent with continued surveillance of Mr Hariri at Quraitem Palace.⁸⁶³⁸ Although afterwards Blue 610, Blue 585 and Blue 324 all activated cells in the Dahyieh area, Blue 817 and Blue 864 continued to be active in the Quraitem Palace area until 21:05.⁸⁶³⁹

(tt) Wednesday 2 February 2005

4530. On Wednesday 2 February 2005, Mr Hariri received visitors at Quraitem Palace between 07:40 and 21:10, including Mr Mustafa Nasser and Mr Walid Jumblatt.⁸⁶⁴⁰

4531. Blue network mobiles were active in the area near Quraitem Palace that day. Mr Platt highlighted the activity of Subject 5's Blue 585, Subject 7's Blue 324, Subject 8's Blue 817 and

⁸⁶³⁴ Exhibit P301, pp 362-365; exhibit P303, ERNs D0004972-D0004973; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 872.

⁸⁶³⁵ Blue 585 activated cells Unesco_C and Raouche_B (twice) to contact Blue 610 (13:02), Blue 864 (13:04) and Blue 324 (13:03), the latter activating cell Manara_C during this call, and again at 13:04 when calling Blue 817. Exhibit P1229, p. 13; exhibit P1225, p. 11; exhibit P1227, p. 15; exhibit P1228, p. 12; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 875.

⁸⁶³⁶ Blue 610 activated cells MOVPIK1 (14:15, 14:23, 15:03) and RAOUCH3 (15:32). Exhibit P1227, p. 15; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 876-877.

⁸⁶³⁷ Blue 585 activated cells Fadlallah_B (18:05, 18:08) and Raouche_B (18:11). Blue 324 activated cells Manara_C (18:06, 18:08) and Unesco_C (18:11). Blue 817 activated cells CARACA3 (18:05, 18:06). Blue 864 activated cell MOVPIK1 (18:15). Exhibit P1229, p. 14; exhibit P1225, p. 11; exhibit P1239, p. 10; exhibit P1228, p. 12; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 878, 880.

⁸⁶³⁸ Gary Platt, T. 24 February 2017, pp 16-17. *See also* exhibit P1902, slides 305-306; exhibit P1782, para. 824.

⁸⁶³⁹ At 18:25, Blue 585 activated cell Haret Hreik-II_C and Blue 324 activated cell BorjBrajneh-II_B. At 19:00, Blue 610 activated cell SFEIR2, while Blue 585 activated cell Mraiجه_A. At 19:03, Blue 585 activated cell Mraiجه_A to call Blue 324, which activated cell BorjBrajneh-II_B. Blue 864 activated cells CARACA3 (19:37), MOVPIK1 (21:02) and RAOUCH2 (21:04, 21:05). Blue 817 activated cells MOVPIK1 (19:40, 21:02) and OGER2 (21:05). Exhibit P1229, p. 14; exhibit P1225, p. 12; exhibit P1227, p. 15; exhibit P1228, p. 12; exhibit P1239, p. 10; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 878, 881-883.

⁸⁶⁴⁰ Exhibit P301, pp 365-366; exhibit P303, ERN D0004981; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 884.

Subject 9's Blue 864, around Quraitem Palace, at various times between 11:28 and 16:07, during which they were in contact with each other or with Subject 6's Blue 610.⁸⁶⁴¹ Specifically, Blue 585, Blue 817 and Blue 864 were active in that area between 11:28 and 13:11.⁸⁶⁴² Blue 585, Blue 324, Blue 817 were active there between 13:33 and 13:34;⁸⁶⁴³ and Blue 585 and Blue 324 were there between 16:04 and 16:07.⁸⁶⁴⁴ He mapped it in his chronology report as shown in the map below:

⁸⁶⁴¹ Gary Platt, T. 24 February 2017, pp 30-33; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 885. *See also* exhibit P1902, slides 318-323.

⁸⁶⁴² At 11:28, Blue 610 activated cell SIMON3 when in contact with Blue 817, which activated cell CARACA3. At 11:30, Blue 864 and Blue 817 both activated cell CARACA3. At 12:51, Blue 585 activated cell Raouche_B to call Blue 324, and at 13:00 Blue 864 activated cell CARACA3 to call Blue 585, which activated cell Manara_C. At 13:02 and 13:11, Blue 817 activated cell CARLTO3 when in contact with Blue 864 (which activated cell MANARA2) and Blue 324 (which activated cell Bir Abed_A). Exhibit P1227, p. 15; exhibit P1239, p. 11; exhibit P1228, p. 12; exhibit P1229, p. 14; exhibit P1225, p. 12; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 890-892.

⁸⁶⁴³ At 13:33, Blue 324 activated cell Raouche_B to call Blue 817, which activated cell CARLTO3; at 13:34, Blue 324 activated cell Unesco_C to call Blue 585, which activated cell Manara_C; and also at 13:34, Blue 817 activated cell CARLTO3 to call Blue 324, which activated cell Unesco_C. Exhibit P1239, p. 11; exhibit P1225, p. 12; exhibit P1229, p. 14; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 893. In his report, Mr Platt did not mention Blue 585's activity at this time.

⁸⁶⁴⁴ From 16:04 to 16:07, Blue 585 and Blue 324 activated cells Raouche_B (16:04), Fadlallah_B (16:05, 16:07) and Manara_C (16:04, 16:06), respectively, Blue 585's 16:05 call being with Blue 610, which activated cell SFEIR2. Exhibit P1229, p. 14; exhibit P1225, p. 12; exhibit P1227, p. 16. Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 895.



Map 82: Blue Network (S5, S7, S8 and S9), Quraitem Palace, 2 February 2005 (11:28 to 16:07)

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 267

4532. The sole Red network activity on this day was between 18:41 and 19:25, when credit was added to the eight Red network mobiles in the Tripoli area and north of Tripoli, the final call being that of Red 662 activating cell TURBO3.⁸⁶⁴⁵

4533. The topping-up process was followed ten minutes later by a call between Blue 817 and Blue 610, during which Blue 817 activated cell TRIPOL4 in the Tripoli area.⁸⁶⁴⁶ Mr Platt commented that the Blue network call shows the coordinating role of Subject 6's Blue 610 in this logistical process, as well as the position of Subject 8's Blue 817 within 'this tight-knit network' as one of three subjects 'on a frequent basis going to Tripoli'.⁸⁶⁴⁷

(uu) Thursday 3 February 2005

4534. On Thursday 3 February 2005, Mr Hariri received visitors at the palace between 07:35 and 21:45. They included the US ambassador, Mr Feltman, and the President of the Order of Physicians in Lebanon, Mr Mario Aoun.⁸⁶⁴⁸ The amended consolidated indictment pleads that:

On 3 February 2005, HARIRI had a meeting close to his residence before going to the St. Georges Yacht Club for lunch and later returning to Quraitem Palace. **AYYASH, S5, S6, S7, S8, S9, and S10** were all active on their **Red Network** and/or **Blue Network** phones around Quraitem Palace and/or the St. Georges Yacht Club at the same time that HARIRI was having lunch there.⁸⁶⁴⁹

4535. Mr Hariri also lunched with Lebanese Deputy Prime Minister Issam Fares on his yacht in Ain El-Mreish, at St Georges Marina.⁸⁶⁵⁰ His security detail departed Quraitem Palace sometime

⁸⁶⁴⁵ These Red network mobiles were solely in contact with service number 1456 and activated cells MINIEH3 (Red 741, Red 636 and Red 572), TOURBO1 (Red 636), TOURBO3 (Red 678, Red 652 and Red 662), TRIPOL4 (Red 946 and Red 893), TRIPOL3 (Red 893), TRIPOL2 (Red 893), ASAMRA1 (Red 893) and BALADI1 (Red 893). Exhibit P1197, p. 2; exhibit P1203, p. 1; exhibit P1204, p. 2; exhibit P1202, p. 2; exhibit P1198, p. 2; exhibit P1199, p. 3; exhibit P1201, p. 1; exhibit P1200, p. 1; Gary Platt, T. 24 February 2017, pp 34-36, 40; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 886, 896-897; exhibit P1902, slides 327-332; exhibit P1906 (EPE snapshot related to exhibit P1902, slides 330 and 331).

⁸⁶⁴⁶ Blue 817 activated cell TRIPOL4 to call Blue 610, which activated cell BRAJNE1. Exhibit P1239, p. 11; exhibit P1227, p. 16; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 887, 898; exhibit P1902, slides 332-334.

⁸⁶⁴⁷ Gary Platt, T. 24 February 2017, p. 36.

⁸⁶⁴⁸ Exhibit P301, pp 366-368; exhibit P303, ERNs D0004989-D0004990; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 900.

⁸⁶⁴⁹ Amended consolidated indictment, para. 36.

⁸⁶⁵⁰ Exhibit P299, ERN 60142164; exhibit P471 (Press release); exhibit P1783 (Expert report of Gary Platt – Chronology), para. 900.

after 13:01.⁸⁶⁵¹ It travelled to the St Georges Marina area—after a stop—by 14:09, and remained stationary until 15:32.⁸⁶⁵² It returned to Quraitem Palace by 16:18.⁸⁶⁵³

4536. At 11:41, Blue 324 and Blue 817 were in contact, activating cells in the area of the St Georges Marina.⁸⁶⁵⁴ Mr Platt characterised this as consistent with preparation for surveillance activity in this area.⁸⁶⁵⁵ He commented, however, that ‘there was no surveillance prior to the St Georges Marina’⁸⁶⁵⁶ and that ‘For some reasons on this day ... they decided to commence the surveillance there’.⁸⁶⁵⁷

4537. Between 11:43 and 13:00, Blue 817 and Blue 324 activated cells in St Georges Marina area, and then the coastal road. They were in contact with each other and made calls to Subject 6’s Blue 610, which activated a cell in Dahyieh; at 12:58. Subject 7’s Red 946 and Subject 8’s Red 893 made contact and also activated cells in the St Georges Marina area.⁸⁶⁵⁸ Between 13:04 and 13:33, Red 893 and Red 946 activated cells in the St Georges Marina area.⁸⁶⁵⁹ At 13:56,

⁸⁶⁵¹ At 13:00, mobile 506 activated cell Fadlallah_A; at 13:01, mobile 1506 activated cell LAU_Beirut_A. Exhibit P1322, p. 74; exhibit P1352, p. 333. *See also* exhibit P1907 (Chronology PowerPoint presentation – 3 February 2005 to 7 February 2005), slides 9-10.

⁸⁶⁵² Mobile 771 activated cells Bay_View_A (14:09, 14:31), Zouk_MPT_C (14:53) and Minaa_el_hosson_C (14:18, 14:30, 14:39, 15:07); mobile 1506 activated cells BayView_A (14:28, 14:31, 14:35, 14:36, 14:38, 14:52, 15:01, 15:15, 15:32) and Minaa_el_hosson_C (15:00, 15:03, 15:09, 15:26); mobile 506 activated cells Riad_El_Soloh_C (14:17, 14:52, 15:01), Minaa_el_hosson_C (14:20, 14:36, 14:55) and Minaa_el_hosson_A (14:38); and mobile 052 activated cells Minaa_el_hosson_A (14:48) and Minaa_el_hosson_C (14:50, 15:13, 15:17, 15:19). Exhibit P1334, p. 55; exhibit P1359, pp 308-309; exhibit P1322, p. 74; exhibit P1352, pp 333-334; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 909, 915; *see also* exhibit P1907, slides 13-16.

⁸⁶⁵³ Mobile 506 activated cells Zarif_C (15:49) and Mar_Elias2_B (16:03); mobile 771 activated cell Mar_Elias2_B (15:58, 16:00, 16:02); mobile 1506 activated cell Mar_Elias2_B (15:58 (twice), 15:59). Then, at 16:18, mobile 1506 activated cell Kraitem_B and mobile 771 activated cell LAU_MIC2_A; mobile 052 activated cell Concorde_B (16:20). Exhibit P1322, p. 74; exhibit P1359, p. 309; exhibit P1352, p. 334; exhibit P1334, p. 55. Gary Platt, T. 24 February 2017, pp 70-71. *See also* exhibit P1907, slides 17-18.

⁸⁶⁵⁴ Blue 324 activated cell BayView_A when in contact with Blue 817, which in turn activated cell PHENMB1. Exhibit P1225, p. 12; exhibit P1239, p. 11; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 904.

⁸⁶⁵⁵ Gary Platt, T. 24 February 2017, p. 57.

⁸⁶⁵⁶ Gary Platt, T. 24 February 2017, p. 69.

⁸⁶⁵⁷ Gary Platt, T. 24 February 2017, p. 66.

⁸⁶⁵⁸ At 11:43, Blue 817 (PHENMB1) called Blue 324 (BayView_A); at 11:55, Blue 817 (MANARA2) called Blue 610 (SFEIR2); at 12:55, Blue 817 (AUH1) called Blue 610 (SFEIR2); at 12:58, Red 946 (BEACH1) called Red 893 (AUH1); and at 13:00, Blue 817 (AUH1) called Blue 610 (SFEIR2). Exhibit P1239, p. 11; exhibit P1225, p. 12; exhibit P1227, p. 16; exhibit P1202, p. 2; exhibit P1198, p. 2; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 904.

⁸⁶⁵⁹ Red 893 activated cells AUH1 (12:58), MRAICI1 (13:04, 13:15), PHENMB1 (13:28) and MRAICI2 (13:33); Red 946 activated cells BEACH1 (13:04, 13:15) and MRAICI2 (13:28). Exhibit P1198, p. 2; exhibit P1202, p. 2; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 905-906. In his report, Mr Platt characterized Red 893’s location at 13:33 as being in the area of Quraitem Palace. Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 906.

Mr Badreddine's Green 023, in Dahyieh, called Mr Ayyash's Green 300, which activated a cell in the St Georges Marina area.⁸⁶⁶⁰

4538. Between 14:02 and 14:05, Subject 8's Red 893, Subject 7's Red 946 and Mr Ayyash's Red 741 were in contact while in the St Georges Marina area.⁸⁶⁶¹ Mr Platt noted that this was a burst of calls just before the security detail's first call in the St Georges Marina area, consistent, and as seen on other occasions, with the mobiles being in contact as Mr Hariri arrived.⁸⁶⁶² Between 14:18 and 14:28, Mr Ayyash's Red 741, Subject 8's Red 893, Subject 5's Red 636, Subject 9's Red 652 and Subject 6's Red 678 were all in contact, with Red 741 and Red 893 activating cells in the area of the St Georges Marina, while others were in the Quraitem Palace area.⁸⁶⁶³

4539. Mr Platt commented that this activity was consistent with surveillance, specifically having observed that the meeting was taking place at the St Georges Marina and deciding to 'move ... part of the operation team back to the vicinity of Quraitem Palace' to 'potentially view the movements, then, between St. Georges Marina back to Quraitem Palace'.⁸⁶⁶⁴

4540. At 14:42, Mr Badreddine's Green 023, located in Dahyieh, again called Mr Ayyash's Green 300, which was in the St Georges Marina area, and later that same minute, Mr Ayyash's Red 741 activated the same cell to receive a call from Red 636.⁸⁶⁶⁵ Mr Platt commented that the

⁸⁶⁶⁰ At 13:56, Green 300 activated cell MRAICI2 to receive a call from Green 023, which in turn activated cell ROUEIS3. Exhibit P1207, p. 5; exhibit P1211, p. 5; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 906. *See also* exhibit P1907, slides 21-22.

⁸⁶⁶¹ At 14:02 and 14:04, Red 893 and Red 946 were in contact, activating cells MRAICI1 and MRAICI2, and BEACH1 (both times), respectively. In his report, Mr Platt incorrectly stated that these two contacts both took place at 14:02. At 14:05, Red 893 activated cell AUH1 to contact Red 741, which activated cell MRAICI1. Exhibit P1198, p. 2; exhibit P1197, p. 2; exhibit P1202, p. 2; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 910. *See also* exhibit P1907, slides 23-24.

⁸⁶⁶² Gary Platt, T. 24 February 2017, pp 76-77.

⁸⁶⁶³ At 14:18, Red 741 (MRAICI2) called Red 636 (OGER2); at 14:21, Red 636 (MOVPIK1) called Red 652 (OGER2); at 14:22, Red 678 (MOVPIK1) called Red 636 (OGER3); at 14:24, Red 636 (RAOUCH3) called Red 652 (RAOUCH3); and at 14:28, Red 741 (MRAICI2) called Red 893 (PHENMB1). At 14:15, Red 946 had activated cell MRAICI2. Exhibit P1197, p. 2; exhibit P1198, p. 2; exhibit P1203, pp 1-2; exhibit P1199, p. 3; exhibit P1204, p. 2; exhibit P1202, p. 2; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 911. *See also* exhibit P1907, slides 27-28.

⁸⁶⁶⁴ Gary Platt, T. 24 February 2017, pp 82-83. The Trial Chamber appreciates that, even if Mr Platt refers to *moving* 'part of the operation team', the Red mobiles which started activating cells in the Quraitem Palace area were different from those who were active in the St Georges Marina area, and who continued to be active there. Therefore, the Red mobiles' activity does not reflect any *movement* of their users from an area to another.

⁸⁶⁶⁵ At 14:42, Green 023 activated cell BRAJNE3 to call Green 300, with the latter activating cell MRAICI2. Exhibit P1211, p. 5; exhibit P1207, p. 5; exhibit P1197, p. 2; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 911-912; exhibit P1907, slides 31-32; Gary Platt, T. 24 February 2017, p. 85. As noted above, in paragraph 1632, there can be time differences between the start time of calls on the same network and between calls on different

Green network call related to the ongoing surveillance operation, since Green 023 was in Dahyieh during this call but after he moved to the St Georges Marina area.⁸⁶⁶⁶

4541. Between 14:50 and 15:04, there was Red network activity between the principal six Red mobiles, five of which were calls from Mr Ayyash's Red 741 activating the same cell in the area of the St Georges Marina to call Red 893, Red 636 and Red 946.⁸⁶⁶⁷ At 15:27, Mr Badreddine's Green 023, now in the port/marina area, called Mr Ayyash's Green 300, for the third time that day.⁸⁶⁶⁸

4542. Between 15:36 and 15:43, around the time of the security detail's departure from the St Georges Marina, the principal six Red mobiles were in contact. Red 946, Red 893 and Red 741 activated cells in the St Georges Marina area, while Red 636, Red 678 and Red 652 activated cells in the Quraitem Palace area and along the coastal road towards the Palace.⁸⁶⁶⁹ Mr Platt, in his chronology report mapped the cells activated as follows:

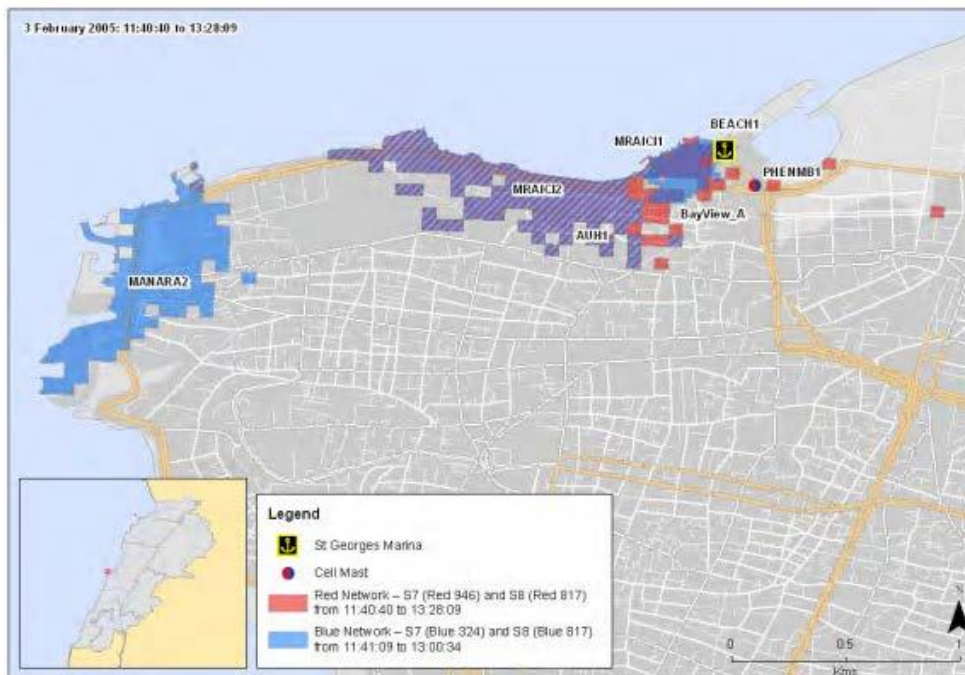
networks. The call described above as starting at 14:42 (according to exhibit P1211, the call sequence table for Green 023, it started at 14:42:00), according to exhibit P1207, which is the call sequence table for Green 300, started instead at 14:41:59.

⁸⁶⁶⁶ Gary Platt, T. 24 February 2017, p. 83.

⁸⁶⁶⁷ At 14:50, Red 652 (CARACA3) called Red 678 (BLISS3); between 14:50 and 15:04, Red 741 activated cell MRAICI2 to call the following mobiles: Red 893 (14:50, 15:02, 15:04), which activated cells ETOILE2 and PHENMB1 (twice); Red 636 (15:01), which activated cell CARACA3; and Red 946 (15:03), which activated cell MACHNA3. Exhibit P1197, p. 2; exhibit P1198, p. 2; exhibit P1199, p. 3; exhibit P1203, p. 2; exhibit P1202, p. 2; exhibit P1204, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 911, 913; exhibit P1907, slides 33-34.

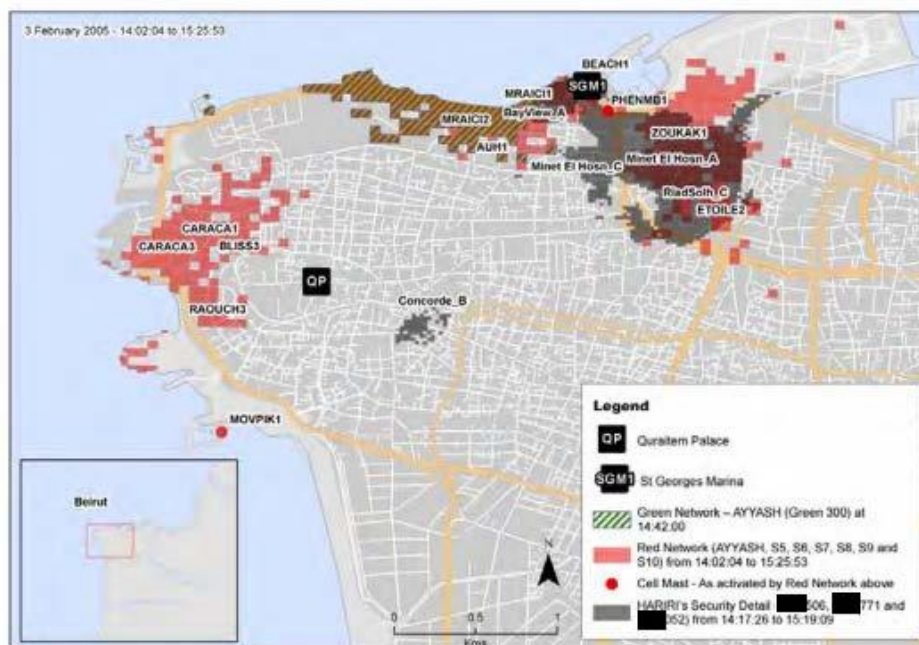
⁸⁶⁶⁸ At 15:27, Green 023 (PORT2) called Green 300 (MRAICI2). Exhibit P1211, p. 5; exhibit P1207, p. 5; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 918; Gary Platt, T. 24 February 2017, p. 87; exhibit P1907, slides 37-38.

⁸⁶⁶⁹ Between 15:36 and 15:43, Red 741 activated MRAICI2 (four times), Red 946 activated cells PHENMB1 (twice) and MRAICI2, Red 893 activated cells PHENMB1, BEACH1 and MRAICI1, Red 636 activated cells SIMON3 (twice) and CARACA3 (twice), Red 678 activated cell SIMON3, and Red 652 activated cell CARACA1. Exhibit P1197, p. 2; exhibit P1202, p. 2; exhibit P1198, p. 2; exhibit P1203, p. 2; exhibit P1204, p. 3; exhibit P1199, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 919; Gary Platt, T. 24 February 2017, pp 89-91; exhibit P1907, slides 39-46.



Map 84: Blue and Red Network (S7 and S8), St. Georges Marina, 3 February 2005 (11:40 to 13:28)

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 273



Map 85: Red Network, Quraitem Palace and St. Georges Marina, 3 February 2005 (14:02 to 15:25)

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 277

4543. As to the call between Red 946 and Red 893, both connecting to cells in the St Georges Marina area, at 15:43, Mr Platt commented that it is not possible to ‘draw any inference that ... Subject 8 or Subject 7 is attempting to follow Mr Hariri’.⁸⁶⁷⁰

4544. At 15:44, Mr Ayyash’s Green 300 called Mr Badreddine Green 023; both mobiles used the same cell in the St Georges Marina area, namely MRAICI2.⁸⁶⁷¹ Given their close proximity, the short length of the call (23 seconds) and that they exchanged no further calls until Monday 7 February 2005, Mr Platt thought that this was consistent with Mr Ayyash and Mr Badreddine possibly meeting at the site of the eventual attack to discuss its suitability.⁸⁶⁷²

4545. Mr Platt commented that there was significant overlap between the cell coverage footprints of the security detail (14:09 to 15:32) and the network mobiles (11:40 to 15:58) in the St Georges Marina area, which was consistent with surveillance of Mr Hariri.⁸⁶⁷³

4546. Further, according to Mr Platt, ‘if at this time -- stage of the process they’ve identified this as a potential scene for the attack, then it gives them ... the ability to look at the lifestyle of that area’ and to consider its suitability, given also that ‘this is a similar time of day that the actual attack’.⁸⁶⁷⁴

(vv) Friday 4 February 2005

4547. On Friday 4 February 2005, Mr Hariri had visitors at the palace between 07:35 and 17:00.⁸⁶⁷⁵ His security detail left Quraitem Palace sometime after 11:57 to travel to Mr Marwan Hamade’s residence, arriving there by 12:16, staying until 12:49, and arriving back at Quraitem

⁸⁶⁷⁰ Gary Platt, T. 24 February 2017, p. 95.

⁸⁶⁷¹ At 15:44, Green 300 and Green 023 were in contact using the same cell, MRAICI2, which had been used consistently by Red 741 (14:05, 14:18, 14:28, 14:42, 14:50, 15:01, 15:02, 15:03, 15:04, 15:37 (twice), 15:41, 15:43) and Green 300 (13:56, 14:41, 15:27) since 13:56. Exhibit P1207, p. 5; exhibit P1211, p. 5; exhibit P1197, p. 2; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 920; exhibit P1907, slides 45, 47.

⁸⁶⁷² Gary Platt, T. 24 February 2017, pp 92-93, 104.

⁸⁶⁷³ Gary Platt, T. 24 February 2017, pp 98-99, 101-102; exhibit P1907, slides 55-57; exhibit P1908 (EPE snapshot related to exhibit P1907, slide 56).

⁸⁶⁷⁴ Gary Platt, T. 24 February 2017, p. 79.

⁸⁶⁷⁵ Exhibit P301, pp 368-369; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 924.

Palace by 13:03.⁸⁶⁷⁶ Mr Hariri departed the airport at 17:00 on a trip to Bahrain.⁸⁶⁷⁷ His security detail left the Quraitem Palace area sometime after 16:47, was in the airport area from 17:05 until 17:26 and arrived back at Quraitem Palace by 17:45.⁸⁶⁷⁸

4548. Blue 324 activated a cell (Raouche_B) in the Quraitem Palace area at 10.03.⁸⁶⁷⁹ It then activated cells near Mr Hamade's residence immediately before the first security detail call from that area. In Mr Platt's view, this was another example of Mr Hariri's movements triggering network activity for those involved in surveillance.⁸⁶⁸⁰ He considered that this was consistent with surveillance. He pointed to Blue 324 calling Subject 5 on Blue 585, who was just south of Quraitem Palace and also involved in surveillance. Blue 324 then called Subject 6's Blue 610, who was in Dahyieh. This showed Blue 324 updating Blue 610 who had a coordinating role.⁸⁶⁸¹

4549. Then, following the security detail's last call from the area of Mr Hamade's residence, Blue 585 made three calls between 12:55 and 12:57, to Blue 324, Blue 610 and Blue 864, respectively.⁸⁶⁸² Mr Platt commented that, during these calls, Blue 324 was just south of Mr

⁸⁶⁷⁶ At 11:57, mobile 771 activated cell Kraitem_B; then, between 12:16 and 12:49, cell Riviera_A was activated by mobile 506 (12:16, 12:31, 12:32), mobile 052 (12:23), mobile 1506 (12:28, 12:31, 12:49) and mobile 771 (12:46, 12:47), and cell Riviera_B was activated by mobile 1506 (12:25, 12:30, 12:37, 12:47) and mobile 771 (12:33); finally, at 13:03, mobile 1506 activated cell LAU_MIC2_A. Exhibit P1359, p. 310; exhibit P1322, p. 75; exhibit P1352, p. 336; exhibit P1334, p. 55; Gary Platt, T. 6 March 2017, p. 7; *see also* exhibit P1907, slides 68-71. The visit to Mr Hamade's residence was not dealt with in Mr Platt's report and the location of Blue 585 and Blue 324 around this time was characterized as being in the area of Quraitem Palace. Exhibit P1783 (Expert report of Gary Platt – Chronology), paras 929-930, table 120 (p. 282), map 87 (p. 283).

⁸⁶⁷⁷ Exhibit P346, ERN 600004136; exhibit P348, ERNs 60141023-60141024; exhibit P303, ERN D0004970; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 924, 932.

⁸⁶⁷⁸ Gary Platt, T. 6 March 2017, p. 18. First, mobile 771 activated cell Kraitem_B (16:37), mobile 506 activated cell Concorde_B (16:43) and mobile 1506 activated cell Kraitem_C (16:47). Mr Platt's report did not include call data records for mobile 1506, meaning that his initial assessment of the last call from the Quraitem Palace area was a few minutes earlier, at 16:43. However, this discrepancy does not affect Mr Platt's assessment of the Blue network's activity around this time. Between 17:05 and 17:26, cell Airport_B was activated by mobile 771 (17:05 (twice), 17:09, 17:11, 17:13, 17:15, 17:16, 17:19, 17:23, 17:25, 17:26), mobile 1506 (17:06, 17:18), mobile 506 (17:13). Mobile 520 activated cell Airport_A (17:09, 17:15) and Airport_M2 (17:19). Mr Platt's report incorrectly stated that the last call made by a member of Mr Hariri's security detail from the area of the Beirut Airport was at 17:23, whereas the call sequence tables show an additional two calls (as summarised above) activating the same cell. Finally, at 17:45, mobile 771 activated cell Concorde_B. Mr Platt's report did not deal with the security detail's arrival back at Quraitem Palace. Exhibit P1359, p. 311; exhibit P1322, p. 75; exhibit P1334, p. 55; exhibit P1352, p. 337; exhibit P1354, p. 375; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 932-934, table 22 (p. 286); exhibit P1907, slides 83-86.

⁸⁶⁷⁹ Exhibit P1225, p. 12; Gary Platt, T. 6 March 2017, pp 6-7, 10.

⁸⁶⁸⁰ At 12:12 and 12:14, Blue 324 activated Riviera_A (twice) to call Blue 585 (Unesco_C) and Blue 610 (SFEIR2), respectively. Exhibit P1225, p. 12; exhibit P1229, p. 15; exhibit P1227, p. 16; Gary Platt, T. 6 March 2017, pp 7-8; *see also* exhibit P1907, slides 72-73.

⁸⁶⁸¹ Gary Platt, T. 6 March 2017, p. 8; *see also* exhibit P1907, slides 72-73.

⁸⁶⁸² At 12:55, Blue 585 (Raouche_A) called Blue 324 (Manara_C); at 12:56, Blue 585 (Raouche_B) called Blue 610 (SFEIR2); and at 12:57, Blue 585 (Unesco_C) called Blue 864 (MIKAEL2). Exhibit P1229, p. 15; exhibit P1225, p. 12; exhibit P1227, p. 16; exhibit P1228, p. 12; *see also* exhibit P1907, slides 74-75.

Hamade's residence, consistent with following the security detail as they departed. Blue 585 was in the Quraitem Palace area during the calls, and in a position to witness the security detail's arrival. Subject 6's Blue 610, which had a coordination role, was located in Dahyieh when receiving the call.⁸⁶⁸³ According to Mr Platt:

Subject 7 was the one who followed Mr. Hariri from Quraitem Palace to Mr. Hamade's residence originally when Mr. Hariri travelled there. Subject 7 appears to have stayed there. And around the time that Mr. Hariri returned to Quraitem Palace, it was Subject 7 who was travelling back from the vicinity of Mr Hamade's residence back to the area of Quraitem Palace.⁸⁶⁸⁴

4550. Mr Platt's view was that, following around one hour of silence, the next calls from the Quraitem Palace area and the coastal road to Faqra Villa were three calls exchanged by Blue 585 and Blue 610 between 14:21 and 14:59.⁸⁶⁸⁵ To him, this showed continued surveillance of Mr Hariri, adding that, as this day was a Friday, there may have been an assumption that Mr Hariri would travel to Faqra Villa.⁸⁶⁸⁶

4551. A burst of calls occurred between 16:47 and 17:09 coinciding with the security detail's movement from Quraitem Palace to the airport, which is consistent with surveillance and specifically with the Subjects, who could view Mr Hariri's movements, updating those who were elsewhere.⁸⁶⁸⁷ At 16:54 and 16:55, Subject 5's Blue 585 and Subject 7's Blue 324 activated cells

⁸⁶⁸³ Gary Platt, T. 6 March 2017, p. 9; *see also* exhibit P1910 (EPE snapshot related to exhibit P1907, slide 75).

⁸⁶⁸⁴ Gary Platt, T. 6 March 2017, p. 10.

⁸⁶⁸⁵ At 14:21, Blue 585 (Raouche_B) called Blue 610 (PHENMB1); at 14:32, Blue 610 (PHENMB1) called Blue 585 (BayView_A); and at 14:59, Blue 585 (BayView_C) called Blue 610 (MOVPIK1). Exhibit P1229, p. 15; exhibit P1227, p. 16; Gary Platt, T. 6 March 2017, p. 14; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 931. *See also* exhibit P1907, slides 78-79. As noted above, there can be time differences between the start time of calls in call data records. The call described above as starting at 14:21 (according to call sequence table for Blue 585—exhibit P1229—the call started at 14:21:01), based on the call sequence table for Blue 610—exhibit P1227—started instead at 14:20:58.

⁸⁶⁸⁶ Gary Platt, T. 6 March 2017, p. 14.

⁸⁶⁸⁷ Gary Platt, T. 6 March 2017, pp 18-19; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 935, 941. At 16:47, Blue 610 (MRAICI1) called Blue 817 (MOVPIK1); at 16:47, Blue 817 (MOVPIK1) called Blue 864 (MRAICI2); at 16:54, Blue 324 (Raouche_B) called Blue 585 (Manara_B); at 16:55, Blue 585 (Manara_B) called Blue 324 (Raouche_B); at 16:59, Blue 585 (Unesco_B) called Blue 864 (CHIAH2); at 17:00, Blue 585 (Mic_Marriot) called Blue 324 (Bir_hassan_A); at 17:01, Blue 585 (Bir_hassan_C) called Blue 610 (BRAJNE3); at 17:02, Blue 610 (BRAJNE1) called Blue 864 (MIKAEL2); at 17:05, Blue 324 (Airport_B) called Blue 610 (BRAJNE3); and at 17:09, Blue 610 (MEA1) called Blue 864 (CBOURJ3). Exhibit P1229, p. 15; exhibit P1227, pp 16-17; exhibit P1225, p. 12; exhibit P1239, p. 11; exhibit P1228, p. 12; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 936-939; exhibit P1907, slides 87-93. Mr Platt commented that, between 16:47 and 16:55, Blue 585, Blue 324 and Blue 817

in the Quraitem Palace area.⁸⁶⁸⁸ At 16:59, Blue 585 had moved southward from Quraitem Palace in the direction of the airport around the same time as the security detail, consistent with surveillance of this journey.

4552. Between 17:00 and 17:01, both Blue 585 and Subject 7's Blue 324 were moving southward from the Quraitem Palace area, consistent with the security detail's travel.⁸⁶⁸⁹ At 17:05, Blue 324 was in the airport area and calling Subject 6's Blue 610—which was located elsewhere—around the time of Mr Hariri's arrival at the airport. Mr Platt concluded that this was consistent with Blue 324 following the convoy from Quraitem Palace and updating Blue 610 on Mr Hariri's arrival at the airport.⁸⁶⁹⁰ By 17:09, Blue 610 had moved to the airport area.⁸⁶⁹¹ Mr Platt prepared the map below to show the cell activations of the Blue network mobiles:

activated cells in the area of Quraitem Palace, while Blue 610 and Blue 864 activated cells in the area of the crime scene.

⁸⁶⁸⁸ Gary Platt, T. 6 March 2017, p. 22.

⁸⁶⁸⁹ Gary Platt, T. 6 March 2017, p. 22, exhibit P1783 (Expert report of Gary Platt – Chronology), para. 937, table 123 (p. 288). In his report, Mr Platt commented that, at 16:59, also Blue 864 'moved away from Quraitem Palace' and travelled in the direction of the airport. However, he testified that Blue 864, after being located, at 16:47, in the coastal road area near the crime scene—had moved to Dahyieh by 17:02—and therefore in his opinion it was not involved in the surveillance from Quraitem Palace to the airport (Gary Platt, T. 6 March 2017, pp 19-20).

⁸⁶⁹⁰ Gary Platt, T. 6 March 2017, pp 22-23.

⁸⁶⁹¹ Gary Platt, T. 6 March 2017, p. 23.



Map 88: Blue Network (S5, S6, S8 and S9), Quraitem Palace and HARIRI Crime Scene, 4 February 2005 (14:21 to 16:03)

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 285

(ww) Monday 7 February 2005

4553. At 17:30 on Monday 7 February 2005, Mr Hariri was recorded as having arrived back in Lebanon from his trips to Bahrain and Paris.⁸⁶⁹² He received visitors between 17:00 and 21:55 at the palace.⁸⁶⁹³ His security detail's calls are consistent with departing from Quraitem Palace after 16:24,⁸⁶⁹⁴ Mr Hariri's arrival at Beirut Airport between 16:39 and 17:26—when his detail activated cells in the airport area⁸⁶⁹⁵—and returning to Quraitem Palace by 17:39.⁸⁶⁹⁶

4554. At 00:34 that morning Mr Ayyash's Green 300 called Mr Badreddine's Green 023 for a 23-second call. Both were in Dahyieh.⁸⁶⁹⁷ Mr Platt commented that this showed the contact between two key operatives following a few days of inactivity during Mr Hariri's absence from Lebanon, and preceding surveillance operations later that day and on the following day.⁸⁶⁹⁸ Mr Platt believed that their proximity and the brevity of the call showed that they may have arranged a meeting.⁸⁶⁹⁹

4555. Between 12:53 and 13:06, there was Blue network activity south of Quraitem Palace and north of Beirut Airport.⁸⁷⁰⁰ Mr Platt thought that this was consistent with surveillance of Mr Hariri which was to start at the airport. That the activity around the airport started around four hours

⁸⁶⁹² Exhibit P346, ERN 600004136); exhibit P348, ERNs 60141023-60141025; exhibit P303, ERN D0004965.

⁸⁶⁹³ Exhibit P301, p. 370; exhibit P303, ERN D0004965; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 952, which incorrectly states that visitors were registered between 17:00 and 21:50 for Mr Hariri.

⁸⁶⁹⁴ Mobile 771 activated cell Fadlallah_A (16:24) and mobile 506 activated cells Zarif_B (16:26) and Sinjab_C (16:37). Exhibit P1359, p. 315; exhibit P1322, p. 77; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 964.

⁸⁶⁹⁵ Mobile 506 activated cells Airport_A (16:40, 16:47, 17:24) and Airport_B (16:55, 17:04, 17:06, 17:16, 17:23), mobile 771 activated cells Airport_A (16:42) and Airport_B (16:47, 17:05, 17:13, 17:21), mobile 052 activated cell Airport_A (16:51, 16:56), mobile 520 activated cell Airport_A (16:39, 16:42, 17:06, 17:07, 17:09, 17:10), and mobile 777 activated cell Airport_B (17:26). Exhibit P1359, pp 315-316; exhibit P1322, p. 77; exhibit P1334, p. 56; exhibit P1354, pp 381-382; exhibit P520, p. 170; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 964-965.

⁸⁶⁹⁶ Mobile 506 activated cells Concorde_B (17:52), Fadlallah_A (17:55) and Kraitem_B (18:39), mobile 520 activated cell LAU_Beirut_A (17:39), mobile 777 activated cells Sinjab_C (17:33) and Fadlallah_B (17:49) and mobile 771 activated cell LAU_MIC2_A (19:11). Exhibit P1359, p. 316; exhibit P1322, pp 77-78; exhibit P1354, p. 382; exhibit P520, p. 170; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 966.

⁸⁶⁹⁷ At 00:34, Green 300 activated cells MIKAEL2 and SFEIR2 to call Green 023, which activated cell BRAJNE1. Exhibit P1211, p. 5; exhibit P1207, p. 5; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 954, 955; *see also* exhibit P1907, slides 128-129.

⁸⁶⁹⁸ Gary Platt, T. 6 March 2017, pp 102-103.

⁸⁶⁹⁹ Gary Platt, T. 6 March 2017, p. 103.

⁸⁷⁰⁰ Between 12:53 and 13:06, Blue 817 activated cell MEA1 three times and Blue 324 activated cell Airport_A; Blue 585 activated cells Raouche_B (twice) and Jnah El Wata_C; and Blue 864 activated cell MOVPIK1. Exhibit P1239, p. 12; exhibit P1225, p. 13; exhibit P1229, pp 15-16; exhibit P1228, p. 13; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 953, 959; *see also* exhibit P1907, slides 135-136.

before his arrival suggested that his actual arrival time was not known by the Subjects.⁸⁷⁰¹ Between 14:35 and 14:50, there was further Blue network activity in the airport area and the road from west Beirut to the airport.⁸⁷⁰² Then, from 16:01 to 16:36, there was further activity by three of the principal six Blue network mobiles around the airport, Quraitem Palace and the airport road.⁸⁷⁰³

4556. At 16:39, Mr Ayyash's Blue 233, then in Dahyieh, called Blue 585, which was in the airport area, followed by further Blue network activity in the airport area and airport road area until 17:00.⁸⁷⁰⁴ This series of calls was concluded with three calls made by Blue 585 in quick succession between 16:59 and 17:00, to Subject 9's Blue 864, Subject 8's Blue 817 and Mr Ayyash's Blue 233, which Mr Platt stated was consistent with Blue 585, located in the area of the airport, informing the others about the arrival of Mr Hariri's flight.⁸⁷⁰⁵ By then, Mr Ayyash's Blue 233 activated a cell providing coverage to the airport area and joined, according to Mr Platt, the three others who had been conducting the surveillance until then.⁸⁷⁰⁶

4557. Between 17:27 and 17:38, as the security detail travelled back to Quraitem Palace, Blue network activity corresponded with the security detail's journey—specifically the movement of Blue 817 and Blue 864 to the Quraitem Palace area.⁸⁷⁰⁷ By 17:39 and 17:43 respectively, Blue 585

⁸⁷⁰¹ Gary Platt, T. 6 March 2017, p. 109.

⁸⁷⁰² At 14:35, Blue 864 (OUZAI2) called Blue 817 (MEA1); at 14:46, Blue 817 (MEA1) called Blue 610; at 14:48, Blue 817 (OUZAI2) called Blue 864 (MEA1); at 14:50, Blue 817 (OUZAI1) called Blue 585 (Mraijeh_A). Exhibit P1229, p. 16; exhibit P1239, p. 12; exhibit P1228, p. 13; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 953, 961; Gary Platt, T. 7 March 2017, p. 7. *See also* exhibit P1907, slides 139-140.

⁸⁷⁰³ At 16:01, Blue 585 (Ouzaii-II_A) called Blue 864 (MEA1); at 16:18, Blue 501 called Blue 817 (RAOUCH2); at 16:27, Blue 817 (RAOUCH2) called Blue 585 (Ouzaii-II_A); at 16:29, Blue 610 called Blue 817 (CORAL1); at 16:30, Blue 817 (BHROUT1) called Blue 233; at 16:31, Blue 864 (OUZAI1) called Blue 817 (BHROUT2); and at 16:36, Blue 817 (AIB3) called Blue 585 (Airport_A); *see* exhibit P1229, p. 16; exhibit P1239, p. 12; exhibit P1228, p. 13; exhibit P1907, slides 142-143; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 961, 967-968. In his report, Mr Platt also noted that, between 13:03 and 15:15, most of the subjects involved in the operation, with the exception of Blue 864, were in contact with Blue 610, which activated cell SAKSAK1 (13:03, 13:06, 14:30, 14:46, 15:15) in the Saida area. Exhibit P1227, p. 18; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 962.

⁸⁷⁰⁴ Between 16:39 and 16:59, Blue 817 (AIB3 (16:51), MEA1 (16:59)), Blue 864 (OUZAI1 (16:59)) and Blue 585 (Airport_A (16:39, 16:51), Ouzaii-II_A (16:59)) were in contact with one another and Blue 233; at 16:39, Blue 233 activated cell Bir_El_Abed_A to contact Blue 585, and at 17:00, Blue 585 activated cell Airport_A to contact Blue 233, which activated cell Airport_B. Exhibit P1239, p. 12; exhibit P1228, p. 13; exhibit P1229, p. 16; exhibit P1238, p. 8; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 953, 969-970; exhibit P1907, slides 144-147.

⁸⁷⁰⁵ Gary Platt, T. 7 March 2017, pp 9, 11-12.

⁸⁷⁰⁶ Gary Platt, T. 7 March 2017, pp 9-10.

⁸⁷⁰⁷ At 17:27, Blue 233 (Airport_B) called Blue 585 (Hai_Sollom-II_C); at 17:28, Blue 817 (OUZAI2) called Blue 585 (Airport_B); at 17:29, Blue 817 (OUZAI3) called Blue 864 (COLA3); and at 17:38, Blue 864 (RAOUCH3) called Blue 817 (RAOUCH2). Exhibit P1238, p. 9; exhibit P1229, p. 16; exhibit P1239, p. 13; exhibit P1228, p. 13; Gary Platt, T. 7 March 2017, pp 14-15; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 971-972; *see also* exhibit P1907, slides 156-157.

and Mr Ayyash's Blue 233 had also moved to the Quraitem Palace area, with no Subjects remaining in the airport area.⁸⁷⁰⁸ Mr Platt commented: 'within a space of 15 minutes this group of four phones have moved from ... the airport or the route between the airport and Quraitem Palace to actually around Quraitem Palace. It almost speaks for itself'.⁸⁷⁰⁹

4558. Between 17:44 and 18:43, there was further Blue network activity around Quraitem Palace involving the same three subjects—Blue 585, Blue 817 and Blue 864—but not Blue 233 which had been involved in the mobile surveillance from the airport.⁸⁷¹⁰ Between 19:50 and 19:59, Blue 610 was activating cells in the St Georges tunnel and Quraitem Palace areas, and Blue 324 and Blue 817 were activating cells in the Quraitem Palace area.⁸⁷¹¹

4559. The relevant Blue network activity is displayed in the map below from Mr Platt's report:

⁸⁷⁰⁸ At 17:39, Blue 585 activated cell Mic_Bay Rock; at 17:43, Blue 233 activated Fadlallah_B. Exhibit P1229, p. 16; exhibit P1238, p. 9; Gary Platt, T. 7 March 2017, pp 15-16.

⁸⁷⁰⁹ Gary Platt, T. 7 March 2017, p. 16.

⁸⁷¹⁰ Blue 817 activated cells MOVPIK1 (four times), RAOUCH3 and SIMON3 (twice); Blue 864 activated cells CARACA3 (five times) and SFEIR2; and Blue 585 activated cells Raouche_B, Ouzai_A and Mic_Bay Rock2. Exhibit P1239, p. 13; exhibit P1228, p. 13; exhibit P1229, p. 16; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 974; Gary Platt, T. 7 March 2017, pp 18-19; exhibit P1907, slides 160-161. In his report, Mr Platt also noted that, between 18:43 and 19:39, Blue network activity was confined to south Beirut. Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 977.

⁸⁷¹¹ At 19:50 and 19:51 (activating cell ZOUKAK2) and at 19:52 (activating cell ZOUKAK3), Blue 610 contacted, respectively, Blue 817, which activated cell MOVPIK1, Blue 324, which activated cell Raouche_B, and again Blue 817, which again activated cell MOVPIK1; at 19:58 and 19:59, Blue 610 (MOVPIK1), Blue 324 (Raouche_B) and Blue 817 (MOVPIK1, OGER3) were in contact with each other. Exhibit P1227, p. 18; exhibit P1239, p. 13; exhibit P1225, p. 13; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 953, 978-979; Gary Platt, T. 7 March 2017, pp 19-20; *see also* exhibit P1907, slides 162-163.

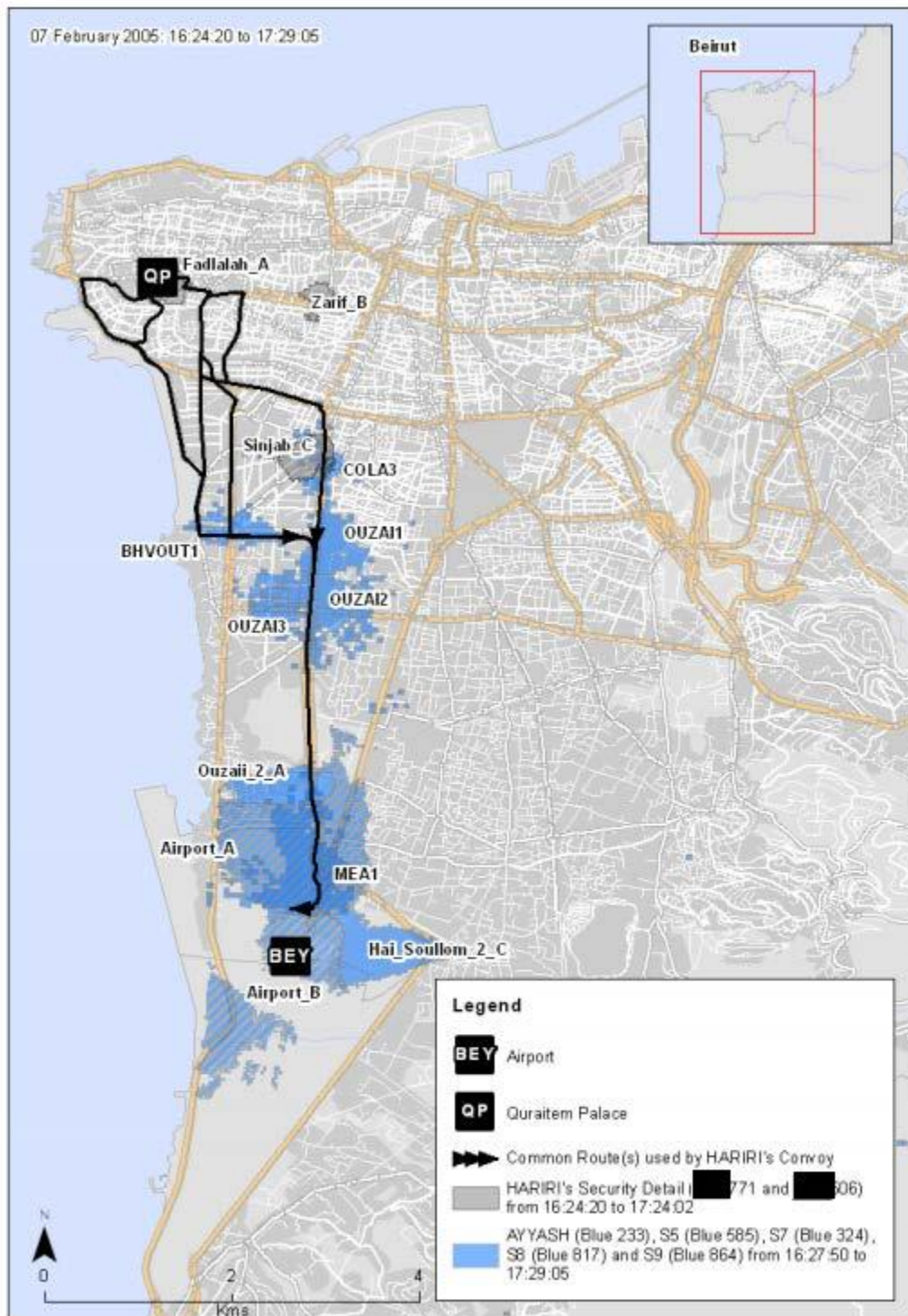


Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 300



Map 92: Blue Network – AYYASH, S5, S8 and S9 (17:38 to 18:43), HARIRI's Security Detail (17:52 to 19:11), Quraitem Palace, 7 February 2005

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 302

(xx) Tuesday 8 February 2005

4560. On Tuesday 8 February 2005, Mr Ayyash's Blue 233, Blue 585, Blue 817, Blue 864, Blue 324 and Subject 6's Blue 610 contacted each other 55 times.⁸⁷¹² Red 636, Red 652, Subject 6's Red 678, Mr Ayyash's Red 741, Red 893 and Red 946 called each other 64 times.⁸⁷¹³ This is pleaded in the amended consolidated indictment as follows:

On 8 February 2005, HARIRI's movements and those of the assassination team are similar to their respective movements on 14 February 2005, being the day of the attack. HARIRI was at Quraitem Palace in the morning before attending Parliament and afterwards

⁸⁷¹² Exhibit P1238, p. 9; exhibit P1229, pp 16-17; exhibit P1239, pp 13-14; exhibit P1228, pp 13-14; exhibit P1225, pp 13-14; exhibit P1227, pp 18-20; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 985; exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), table 145 (p. 242).

⁸⁷¹³ Exhibit P1203, pp 2-3; exhibit P1199, pp 3-4; exhibit P1204, pp 3-4; exhibit P1197, p. 3; exhibit P1198, pp 3-4; exhibit P1202, p. 2; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 985; exhibit P1114 (Expert report of John Edward Philips – Red mission phones), para. 6.3.9.7.

returning to the Palace at around 13:45. **AYYASH** and the other members of the assassination team were active on their **Red Network** and/or **Blue Network** phones around Quraitem Palace, Parliament and the routes normally used by HARIRI to travel between both locations. In particular:

- a. **AYYASH** was active on **Red 741**, **Blue 233**, **Green 300**, and on his PMP 170 and PMP 091, at relevant locations, in particular around Parliament and where the attack would take place on 14 February 2005.
- b. At 13:40 and 15:05, **AYYASH** on **Green 300** was twice in communication with Mustafa BADREDDINE on **Green 023**.⁸⁷¹⁴

4561. During the morning, Mr Hariri was at Quraitem Palace where he received visitors, including the Chairman of the Chamber of Commerce and Industry of the Russian Federation Mr Yevgeny Primakov.⁸⁷¹⁵ Mr Hariri's security convoy left Quraitem Palace for Parliament between 11:45 and 12:05.⁸⁷¹⁶ From around midday, Mr Hariri attended a parliamentary session.⁸⁷¹⁷ Between 12:05 and 13:25, members of his security detail activated cells in the Parliament area.⁸⁷¹⁸

⁸⁷¹⁴ Amended consolidated indictment, para. 38.

⁸⁷¹⁵ Exhibit P301, pp 370-371; exhibit P299, ERN 6014216; exhibit P303, ERNs D0004982-D0004983; exhibit P408; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 984; Gary Platt, T. 7 March 2017, p. 48. *See also* exhibit P1916 (Chronology PowerPoint presentation – 8 February 2005 to 12 February 2005), slide 4.

⁸⁷¹⁶ At 11:45, the mobile of one of Mr Hariri's security guards activated Kraitem_B, which was adjacent to LAU_Beirut_A, which provided predicted best server coverage to Quraitem Palace. At 12:05, it activated Riad_El_Soloh_C, which was adjacent to Jesuites_C, which provided predicted best server coverage to Parliament. Mr Platt's report did not include call data records for mobile 1506, meaning that his initial assessment of the last call of the security detail from Quraitem Palace area and the first call from the Parliament area was one minute earlier and one later, respectively, at 11:44 and 12:06, exhibit P1122; exhibit P1352, p. 340; exhibit P1359, p. 316; exhibit P1354, pp 382-383; Gary Platt, T. 7 March 2017, p. 65; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 995.

⁸⁷¹⁷ Exhibit P540 (Minutes of Parliamentary Committee Session); exhibit P92 (Photographs from Parliament), pp 41-43; exhibit P88 (Statement of Ahmad Nabil Ismail), ERNs 60289437-60289439, 60289492; exhibit P1190 (Screenshot of Video from exhibit P408); exhibit P408; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 994-995; Gary Platt, T. 7 March 2017, pp 56-57, 61; exhibit P1916, slides 13-14.

⁸⁷¹⁸ Mobiles ending in 771, 1506 and 052 activated: Riad_El_Soloh_A (12:06, 12:38, 12:49, 12:50, 12:54, 13:02, 13:05, 13:10, 13:25), Riad_El_Soloh_B (12:08, 12:15, 12:18), Riad_El_Soloh_C (12:05, 12:09; 12:40, 12:42, 12:43, 12:44, 12:45, 12:46, 12:47, 12:49, 13:23) and Jesuites_C (12:09, 12:32, 13:02); Riad_El_Soloh_A, Riad_El_Soloh_B and Riad_El_Soloh_C are adjacent to Jesuites_C, which provided predicted best server coverage for Parliament on the Touch network. Mr Platt's report did not include call data records for mobile 1506, meaning that his initial assessment there of the last call in the Parliament area was 15 minutes earlier, at 13:10; exhibit P1122; exhibit P1359, p. 316; exhibit P1352, pp 340-341; exhibit P1354, p. 383; exhibit P663 (Statement of Andrew Fahey), annex 1, no. 107; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1002; Gary Platt, T. 7 March 2017, p. 58.

4562. Between 09:25 and 11:59, Blue 864, Blue 817 and Blue 585 connected to cells that were within 500 or within 1,000 metres of Quraitem Palace.⁸⁷¹⁹ During this time, Subject 6's Blue 610 activated cells in south Lebanon but was in contact with Blue 864 (09:25) and Blue 817 (11:09).⁸⁷²⁰ The map below from Mr Platt's chronology report illustrates this:



Map 94: Blue Network (S5, S8 and S9), Quraitem Palace, 8 February 2005 (09:25 to 11:57)

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 307

4563. Between 11:54 and 11:57, Subject 5's Blue 585, Subject 8's Blue 817 and Subject 9's Blue 864 were in contact with each other, activating cells around Quraitem Palace.⁸⁷²¹ At 11:58 and 11:59, Mr Ayyash's Blue 233 activated Riad_El_Soloh_A next to Parliament, receiving calls from

⁸⁷¹⁹ Blue 864 activated MOVPIK1 (09:25) and CONCOR2 (11:56, 11:57, 11:59); Blue 817 activated CONCOR2 (10:05, 10:11), CARLTO3 (11:09, 11:54, 11:56), RAOUCH2 (11:56, 11:57) and RAOUCH3 (11:58); Blue 585 activated Mic_Bay_Rock2 (11:54) and Riviera_A (11:57). Exhibit P1228, p. 13; exhibit P1239, pp 13-14; exhibit P1229, p. 16; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 988-993; Gary Platt, T. 7 March 2017, p. 51. *See also* above, at para. 4294, the maps the Trial Chamber created, using the EPE software—exhibit P592.1—displaying the cells providing predicted best coverage to and around Quraitem Palace.

⁸⁷²⁰ Blue 610 activated cells SAKSAK1 and NABATI1, respectively. Gary Platt, T. 7 March 2017, pp 52, 86-87; exhibit P1227, p. 19.

⁸⁷²¹ Exhibit P1783 (Expert report of Gary Platt – Chronology), paras 990-991.

Blue 817 and Blue 864, which activated cells around Quraitem Palace.⁸⁷²² Mr Ayyash's Blue 233 continued to activate cells around Parliament until 12:26.⁸⁷²³ At 12:43, Blue 233 activated Naher_MPT_C, located east of Parliament.⁸⁷²⁴ At 12:56, it again activated a cell near Parliament.⁸⁷²⁵

4564. Shortly after midday, Subject 5's Blue 585, Subject 8's Blue 817 and Subject 9's Blue 864, which had activated cells around Quraitem Palace in the morning, began activating cells around Parliament.⁸⁷²⁶ Mr Platt testified that the three users who were located around Quraitem Palace moved towards Parliament at the same time as Mr Hariri, consistent with the focus of the surveillance operation moving to the Parliament area.⁸⁷²⁷ Blue 585 arrived in the Parliament area by 12:03, activating Jesuites_C, followed by Riad_El_Soloh_B at 12:06 and 12:11.⁸⁷²⁸

4565. At 12:03 and 12:05, Blue 817 activated cells along the coastal route from Quraitem Palace to Parliament,⁸⁷²⁹ followed by activations of cells in the Parliament area.⁸⁷³⁰ At 12:05, Blue 864 activated SPEARS3, between Parliament and Quraitem Palace on the 'internal route' that Mr Hariri's convoy used.⁸⁷³¹ At 12:07 and 12:09, Blue 864 activated cells in the Parliament area.⁸⁷³²

⁸⁷²² Exhibit P1238, p. 9; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 992-993; Gary Platt, T. 7 March 2017, p. 51.

⁸⁷²³ Blue 233 activated Riad_El_Soloh_A (11:58, 11:59, 12:04, 12:05, 12:07, 12:09, 12:10, 12:11), Coast_Road_C (12:25) and Minaa_El_Hosson_A (12:26). Coast_Road_C was next to Jesuites_C. Minaa_el_hosson_A was next to Riad_El_Soloh_C. Exhibit P1122; exhibit P1238, p. 9; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 997.

⁸⁷²⁴ There were at least three cells in-between this cell and Jesuites_C. Exhibit P1122; exhibit P1238, p. 9; Gary Platt, T. 7 March 2017, pp 95-96.

⁸⁷²⁵ Blue 233 activated Coast_Road_C. Exhibit P1122; exhibit P1238, p. 9.

⁸⁷²⁶ Exhibit P1783 (Expert report of Gary Platt – Chronology), paras 996-997.

⁸⁷²⁷ Gary Platt, T. 7 March 2017, pp 65-66.

⁸⁷²⁸ Exhibit P1229, p. 16; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 996-997; Gary Platt, T. 7 March 2017, pp 66-68.

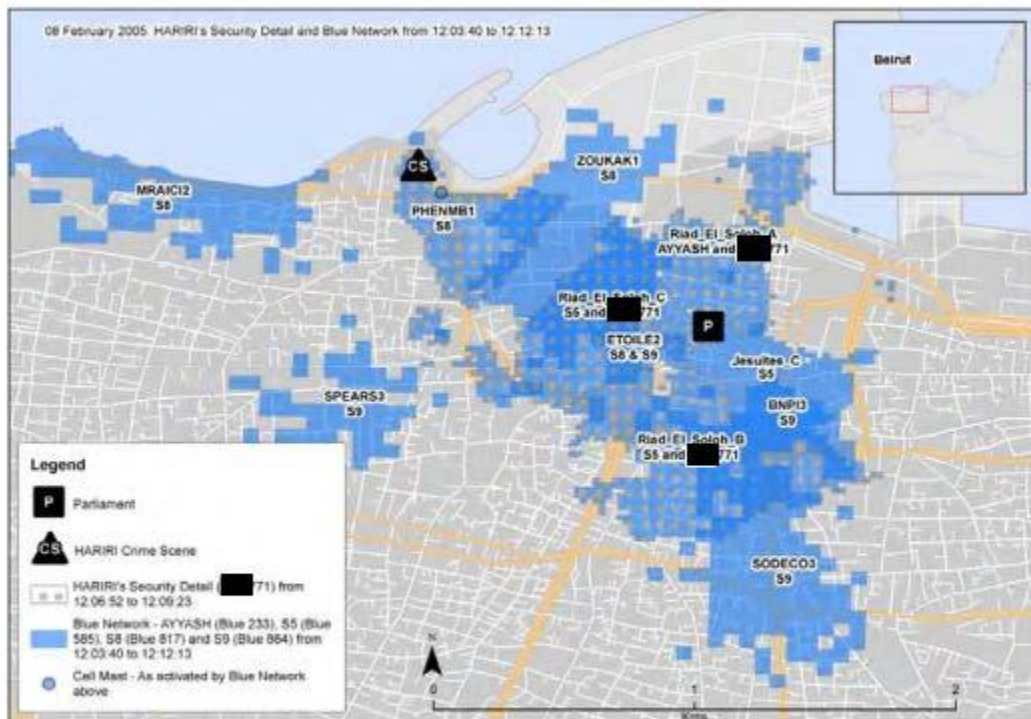
⁸⁷²⁹ Blue 817 activated MRAICI2 (12:03) and PHENMB1 (12:05). Exhibit P1123; exhibit P1239, p. 14; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 996.

⁸⁷³⁰ Blue 817 activated ETOILE2 (12:05, 12:08, 12:10, 12:25) and ZOUKAK1 (12:06); ZOUKAK1 was next to ETOILE3 which was next to ETOILE1 (which provided the predicted best server coverage to Parliament on the Alfa network). Exhibit P1123; exhibit P1239, p. 14; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 996-997.

⁸⁷³¹ Exhibit P1228, p. 13; exhibit P1123; Gary Platt, T. 7 March 2017, pp 57, 66. *See also* exhibit P1916, slides 13-14, 31-32.

⁸⁷³² Blue 864 activated ETOILE2 (12:07) and BNPI3 (12:09). ETOILE2 and BNPI3 were next to ETOILE1. Exhibit P1123; exhibit P1228, p. 13.

4566. From 12:12, Blue 864 activated cells consistent with movement to south Beirut.⁸⁷³³ At 13:03, Subject 6's Blue 610, which had activated cells in south Lebanon during the morning, activated cell SABRA2, in Beirut, and then, at 13:15, cell RASNAB1.⁸⁷³⁴ Following this call, Blue network activity ceased until 15:17 when Blue 610 began connecting to cells around Quraitem Palace.⁸⁷³⁵ These movements and cell activations are shown on the map extracted from Mr Platt's chronology report, where the crime scene is marked at 'CS', and Parliament as 'P':



Map 96: HARIRI's Security Detail, Blue Network (AYYASH, S5, S8 and S9), Parliament, 8 February 2005 (12:03 to 12:12)

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 310

⁸⁷³³ Blue 864 activated SODECO3 south of BNPI3 (12:12), then the following cells in south Beirut: MIKAEL2 (12:26), ROUEIS3 (12:43) and CHIAH1 (12:54, 12:56). Exhibit P1228, pp 13-14; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 997-998, 1000; Gary Platt, T. 7 March 2017, p. 79. *See also* exhibit P1916, slides 43-44.

⁸⁷³⁴ Exhibit P1227, p. 19; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 988; Gary Platt, T. 7 March 2017, pp 86-87. *See also* exhibit P1916, slides 50, 52.

⁸⁷³⁵ Blue 610 activated CARLTO3 (15:17, 15:49), CARACA3 (16:02, 16:32) and MOVPIK1 (17:09, 17:25, 17:38, 17:41, 17:58). Exhibit P1227, p. 19; Gary Platt, T. 7 March 2017, p. 105.

4567. Between 13:03 and 13:04, Subject 9's Red 652, Mr Ayyash's Red 741 and Subject 7's Red 946 activated cells south of Parliament.⁸⁷³⁶ Mr Platt testified that this was consistent with Red 741 meeting Red 652's Subject 9 and Red 946's Subject 7, in performance of its coordinating role.⁸⁷³⁷

4568. Around the time that Mr Hariri was at Parliament, all six Red mobiles activated cells in the area of the Parliament.⁸⁷³⁸ According to Mr Platt, the Red network activity around this time was 'very similar to what occurred just under an hour before the attack' on 14 February.⁸⁷³⁹ Mr Platt also testified that Subject 5's Red 636 and Subject 8's Red 893 could view the movements at Parliament and convey them to the other subjects who covered the route between Parliament and the crime scene.⁸⁷⁴⁰

4569. Mr Platt's map of Red and Blue network cell connections is below:

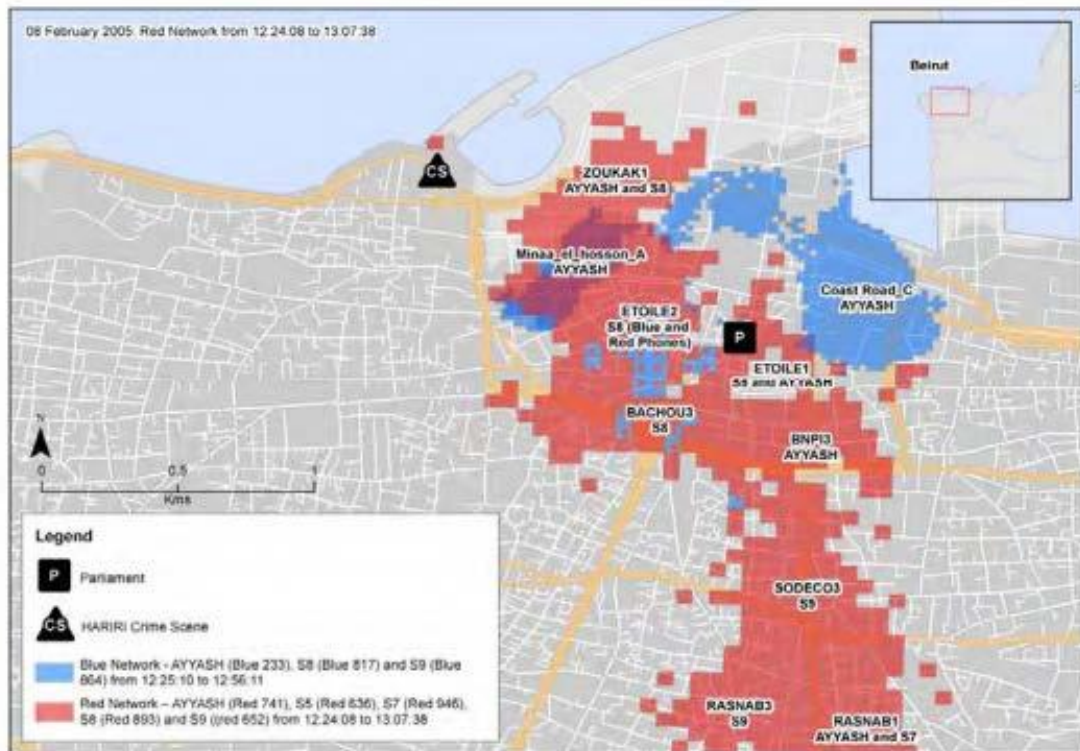
⁸⁷³⁶ Red 652 activated SODECO3 (end cell RASNAB1) (13:03) and RASNAB3 (13:04); Red 741 activated RASNAB1 (13:04); Red 946 activated RASNAB1 (13:03). Exhibit P1199, p. 3; exhibit P1197, p. 3; exhibit P1202, p. 2.

⁸⁷³⁷ Gary Platt, T. 7 March 2017, pp 92-95.

⁸⁷³⁸ Red 636 activated ETOILE1 (12:24, 12:29, 12:31, 12:50, 13:07, 13:13, 13:22, 13:24), BACHOU3 (13:16) and ETOILE2 (13:30, 13:31); Red 652 activated ZOUKAK1 (13:17), PORT2 (13:22) and BNPI3 (13:24, 13:27, 13:28, 13:29); Red 741 activated ETOILE1 (12:24), ZOUKAK1 (12:33, 13:16, 13:22, 13:24, 13:27), BNPI3 (13:07) and PORT2 (13:28, 13:29); Red 946 activated ZOUKAK1 (13:17, 13:40) and PORT2 (13:38); Red 893 activated ETOILE2 (12:29), BACHOU3 (12:33), ZOUKAK1 (12:50, 13:25), ETOILE3 (13:17, 13:24, 13:28), ZOUKAK2 (13:22) and ETOILE1 (13:31); Red 678 activated BACHOU1 at 13:25. Exhibit P1123; exhibit P1203, p. 2; exhibit P1199, p. 3; exhibit P1197, p. 3; exhibit P1202, p. 2; exhibit P1198, p. 3; exhibit P1204, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 999-1000, 1003-1004; Gary Platt, T. 7 March 2017, pp 100, 103-104.

⁸⁷³⁹ Gary Platt, T. 7 March 2017, p. 100.

⁸⁷⁴⁰ Gary Platt, T. 7 March 2017, p. 103.



Map 97: Red and Blue Network (AYYASH, S5, S8 and S9), Parliament and HARIRI Crime Scene, 8 February 2005 (12:24 to 13:07)

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 311

4570. Mr Hariri had a lunch appointment at Quraitem Palace at 13:30 with the businessman and MP Mr Salim Diab;⁸⁷⁴¹ the visitor logbook recorded that his guest arrived at 13:40.⁸⁷⁴² Mr Hariri's security detail activated cells near Quraitem Palace from 13:39.⁸⁷⁴³ Mr Hariri received guests at Quraitem Palace until the evening, including UN Special Envoy Mr Rød-Larsen, who departed at

⁸⁷⁴¹ Exhibit P299, ERN 60142169; Salim Diab, T. 22 January 2015, pp 59-60; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1001.

⁸⁷⁴² Exhibit P301, p. 371.

⁸⁷⁴³ Mobile ending in 1506 activated LAU_MIC2_A at 13:39; mobile ending in 771 activated Kraitem_B at 13:45; mobile ending in 520 activated LAU_Beirut_A at 13:47. Kraitem_B was adjacent to LAU_Beirut_A, which provided predicted best server coverage to Quraitem Palace. Mr Platt's report did not include call data records for mobile 1506, meaning that his initial assessment of the first call back from the Quraitem Palace area was 6 minutes later, at 13:45. Exhibit P1122; exhibit P1352, p. 341; exhibit P1354, p. 383; exhibit P1359, p. 316; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1002.

21:25.⁸⁷⁴⁴ Mr Platt testified that the surveillance operation's focus shifted to Quraitem Palace until the evening.⁸⁷⁴⁵

4571. At 13:24, Red 636 called Mr Ayyash's Red 741. Red 636 activated ETOILE1, which provided the predicted best server coverage for Parliament on the Alfa network. Red 741 activated ZOUKAK1, which covered an area between Parliament and the crime scene location, for a call of one minute and 29 seconds.⁸⁷⁴⁶ Mr Platt testified that this call was consistent with Red 636 reporting to Mr Ayyash's Red 741 on Mr Hariri's departure from Parliament. Mr Platt highlighted that on 14 February 2005, around the time of Mr Hariri's departure from Parliament, the Red mobile 'in the immediate vicinity of Parliament' also called Red 741, which activated the same cell—ZOUKAK1.⁸⁷⁴⁷

4572. Between 13:25 and 13:31, Red 636, Red 652, Red 741, Red 893 and Red 678 called each other seven times.⁸⁷⁴⁸

4573. At 13:30, Mr Ayyash's Red 741 connected to BEACH1, next to the crime scene location.⁸⁷⁴⁹ By 13:36, Red 741 activated cells in the area of Quraitem Palace.⁸⁷⁵⁰ At 13:39, Subject 5's Red 636 called Red 741.⁸⁷⁵¹ At 13:40, Mr Ayyash's Green 300 called Mr Badreddine's Green 023.⁸⁷⁵² Mr Platt testified that this call coincided with Mr Hariri's return to Quraitem Palace and is consistent with a reporting back process.⁸⁷⁵³ Mr Philips testified that this is an example of a hierarchical call flow.⁸⁷⁵⁴

⁸⁷⁴⁴ Exhibit P299, ERN 60142169; exhibit P301, p. 372; exhibit P303, ERNs D0004985-D0004986; Ghattas El-Khoury, T. 20 January 2015, p. 61; exhibit P92, pp 11-12; exhibit P88 (Statement of Ahmad Nabil Ismail), ERNs 60289437-60289439, 60289492; exhibit P360 (Photographs); exhibit P408.

⁸⁷⁴⁵ Gary Platt, T. 8 March 2017, pp 6-9.

⁸⁷⁴⁶ Exhibit P1203, p. 2; exhibit P1197, p. 3; exhibit P1123; exhibit P1930 (Snapshot 108 to Chronology PowerPoint).

⁸⁷⁴⁷ Gary Platt, T. 7 March 2017, pp 103-104. On 14 February 2005, Red 893—activating ETOILE1—called Mr Ayyash's Red 741 at 12:50. Gary Platt, T. 14 March 2017, pp 48-49; exhibit P1197, p. 5; exhibit P1198, p. 6.

⁸⁷⁴⁸ Exhibit P1203, p. 2; exhibit P1199, p. 3; exhibit P1197, p. 3; exhibit P1198, p. 3; exhibit P1204, p. 3. *See also* exhibit P1916, slide 64.

⁸⁷⁴⁹ Exhibit P1197, p. 3.

⁸⁷⁵⁰ Red 741 activated RAOUCH1 (13:36) and CARACA1 (13:39); exhibit P1197, p. 3.

⁸⁷⁵¹ Red 636 activated MRAICI2; Red 741 activated MANARA2 at the end of the call. Exhibit P1197, p. 3; exhibit P1203, p. 2.

⁸⁷⁵² Green 300 activated cell MANARA2; Green 023 activated cell ROUEIS3. Exhibit P1207, p. 5; exhibit P1211, p. 5.

⁸⁷⁵³ Gary Platt, T. 7 March 2017, pp 109-110.

⁸⁷⁵⁴ John Edward Philips, T. 6 September 2016, pp 40-41; exhibit P1118, slide 141.

4574. Mr Ayyash's Red 741 then activated cells along the coastal road in north-west Beirut,⁸⁷⁵⁵ before again activating ZOUKAK1 between Parliament and the crime scene location at 13:52.⁸⁷⁵⁶ At 15:05, Mr Badreddine's Green 023 called Mr Ayyash's Green 300. Both mobiles were in South Beirut.⁸⁷⁵⁷ Mr Platt testified that this call is consistent with Green 023 and Green 300 arranging a debriefing meeting.⁸⁷⁵⁸

4575. Around the time of Mr Hariri's return to Quraitem Palace, Subject 5's Red 636 and Subject 8's Red 893 activated cells consistent with movement from the Parliament area along the coastal route to the Quraitem Palace area.⁸⁷⁵⁹

4576. Mr Platt noted the evidence from the security detail that Mr Hariri's convoy used the internal route also for the return journey—namely through the city rather along the coast.⁸⁷⁶⁰ According to Mr Platt, the fact that Mr Hariri's convoy decided to use that route 'negated some of their ability to do a rehearsal but certainly gave 'em a good idea of the movements of Mr Hariri around the Parliament area and the conduct of his convoy' and therefore 'a good source of intelligence,' because 'it was around the same time the attack was conducted on the 14th'.⁸⁷⁶¹

4577. Mr Platt observed it was better to call this a 'preparation day' rather than a 'rehearsal'.⁸⁷⁶² In his view, the operation on 8 February 2005 was a 'scouting exercise' and was not an unsuccessful attempt to conduct the attack.⁸⁷⁶³ Subject 6 was not there 'for the Parliament-Quraitem Palace side of the movement'. Part of the movement, especially by Mr Ayyash's

⁸⁷⁵⁵ Red 741 activated MANARA2 (13:43) and MANARA1 (13:44, 13:48). Exhibit P1197, p. 3. *See also* P1916, slides 77-80, 83-84.

⁸⁷⁵⁶ Exhibit P1197, p. 3; Gary Platt, T. 7 March 2017, pp 108-109, T. 8 March 2017, pp 12-13. *See also* P1916, slides 83-84.

⁸⁷⁵⁷ Green 300 activated cell BRAJNE3; Green 023 activated cell ROUEIS3. Exhibit P1207, p. 5; exhibit P1211, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1008.

⁸⁷⁵⁸ Gary Platt, T. 8 March 2017, pp 14-16.

⁸⁷⁵⁹ Red 636 activated MRAICI2 (13:38, 13:39, 13:43), MANARA2 (13:42, 14:44) and CARACA3 (14:46, 14:48); Red 893 activated MTV3 (13:36), PORT1 (13:38), PHENMB1 (13:40), BEACH1 (13:41), MRAICI2 (13:43), MANARA1 (13:46), CARACA3 (13:48, 13:52, 14:36, 14:44, 14:46) and CARACA1 (14:34). Exhibit P1123; exhibit P1203, pp 2-3; exhibit P1198, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1004, 1006, 1007-1008.

⁸⁷⁶⁰ Gary Platt, T. 7 March 2017, p. 57. Mr Platt clarified this in response to a judicial question, 'The same route was used to and from the Parliament, or they changed the route when they came back from the Parliament?'

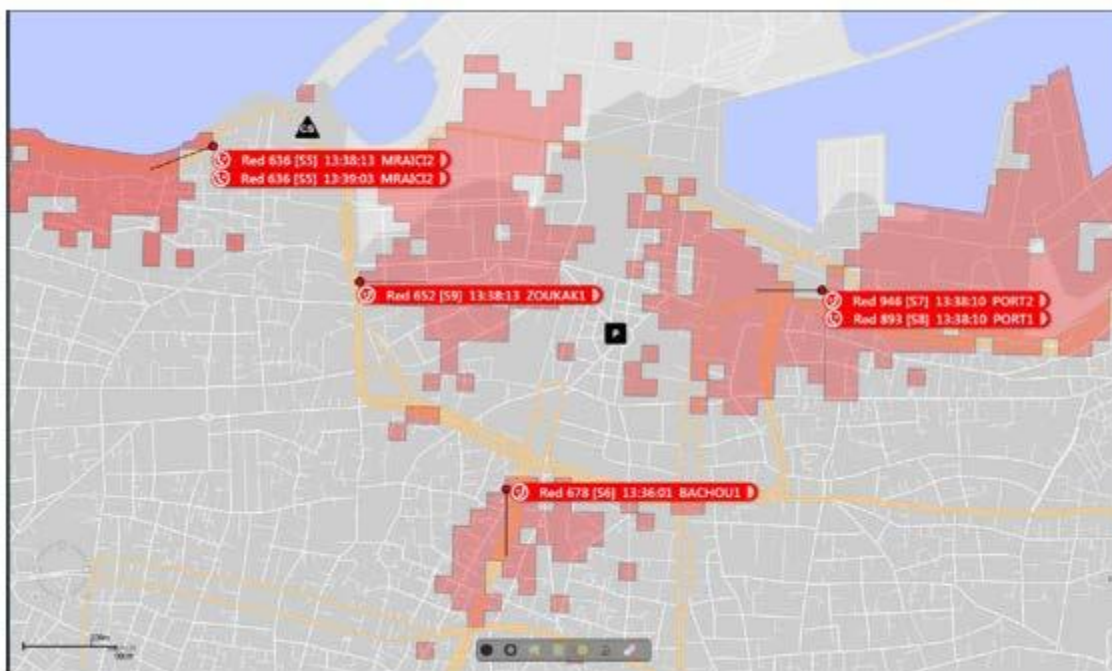
⁸⁷⁶¹ Gary Platt, T. 7 March 2017, pp 59-60. This was in response to a judicial question, 'To what extent you can describe what happened on the 8th of February as a rehearsal as long as the route that was used by the convoy on this day to and from the Parliament is different from that that was used on the day of the assassination?'

⁸⁷⁶² Gary Platt, T. 7 March 2017, p. 60. This was in response to a judicial question, 'it's better to name it a preparation day or maybe an unsuccessful attempt to make the attack on that day rather than a rehearsal?'

⁸⁷⁶³ Gary Platt, T. 7 March 2017, pp 53-54, 60.

mobiles, was not consistent with what occurred on 14 February. Further, ‘some of the Blue phones venture northwards towards the crime scene and Quraitem Palace’ while on the day of the attack the activity around those locations was ‘Red Network activity’ only.⁸⁷⁶⁴

4578. In Mr Platt’s view the period between 13:36 and 13:39 signified the beginning of a shift in focus from Parliament to Quraitem Palace.⁸⁷⁶⁵ Mr Platt represented this in his in-court slide presentation, below:



S5, S6, S7, S8 & S9 in Parliament/Coast Road area as Security Detail returns to QP: 13:36 – 13:39, exhibit P1916 (Gary Platt – PowerPoint presentation 8 – 12 February 2005), slide 69

4579. Mr Ayyash’s Red 741 connected to a cell in the Quraitem Palace area three minutes before the first call back there by the security detail.⁸⁷⁶⁶ Mr Platt commented that from the end of January onwards—in particular from Monday 31 January, with the surveillance between the Higher Shiite Council and Quraitem Palace, and on Thursday 3 February, with the surveillance at St Georges Marina—Mr Ayyash’s mobiles had ‘taken a more active role in the actual surveillance operation’.

⁸⁷⁶⁴ Gary Platt, T. 7 March 2017, pp 53-54, 60.

⁸⁷⁶⁵ Gary Platt, T. 7 March 2017, p. 108.

⁸⁷⁶⁶ Gary Platt, T. 7 March 2017, p. 109.

Namely, ‘being on the ground in the locations rather than remote from the locations coordinating the operation remotely’.⁸⁷⁶⁷

4580. For the remainder of the afternoon—from 14:44 until 18:17—Subject 5’s Red 636 activated cells in the area of Quraitem Palace.⁸⁷⁶⁸ From 15:17 until 15:24, Subject 8’s Red 893 connected to cells in the area of Quraitem Palace.⁸⁷⁶⁹ Between 13:52 and 14:54, Subject 7’s Red 946 activated cells in the area of Quraitem Palace.⁸⁷⁷⁰ From 14:34 until 18:01, Subject 6’s Red 678 activated cells in the area of Quraitem Palace.⁸⁷⁷¹ Subject 9’s Red 652 activated cells around Quraitem Palace from 14:55 until 18:36.⁸⁷⁷² Blue 817 and Blue 585 connected to cells around Quraitem Palace in the evening.⁸⁷⁷³ By 21:01, Subject 6’s Blue 610 activated cells in the Quraitem Palace area.⁸⁷⁷⁴

4581. Between 21:23 and 21:31, Mr Hariri travelled from Quraitem Palace to the Hamade residence. He returned to Quraitem Palace between 22:39 and 22:55.⁸⁷⁷⁵

4582. At 21:33, Blue 610 called Mr Ayyash’s Blue 233.⁸⁷⁷⁶ Blue 610 connected to MRAICI2, east of the Hamade residence; Blue 233 activated a cell in Dahyieh.⁸⁷⁷⁷ At 21:34, Blue 610 called

⁸⁷⁶⁷ Gary Platt, T. 7 March 2017, p. 22.

⁸⁷⁶⁸ Red 636 activated MANARA2 (14:44, 18:10, 18:17), CARACA3 (14:46, 14:48, 18:01), CONCOR2 (16:00) and CARLTO3 (16:55); exhibit P1203, pp 2-3; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1007, 1009.

⁸⁷⁶⁹ Red 893 activated MOVPIK1 (15:17), CARACA3 (15:19) and MANARA2 (15:21, 15:24). Exhibit P1198, p. 4; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1009.

⁸⁷⁷⁰ Red 946 activated CARLTO1 (13:52) and CARLTO3 (14:36, 14:54). Exhibit P1202, p. 2; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1007.

⁸⁷⁷¹ Red 678 activated CONCOR2 (14:34, 14:46, 14:48, 14:49, 14:54, 14:55), CARLTO3 (15:06, 15:08, 15:11, 15:12, 15:14), MANARA2 (15:59), CARACA3 (16:00), RAOUCH3 (16:55) and MOVPIK1 (17:48, 18:01); exhibit P1204, pp 3-4; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1007.

⁸⁷⁷² Red 652 activated CARACA3 (14:55, 15:17, 15:21, 15:23), RAOUCH3 (15:14), CONCOR2 (15:59), CONCOR1 (17:48) and RAOUCH2 (18:36); exhibit P1199, p. 4; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1007, 1009, 1012.

⁸⁷⁷³ Blue 817 activated CARACA3 (18:21), MANARA2 (20:54, 21:01) and RAOUCH2 (21:05); Blue 585 activated Unesco_C at 21:06; exhibit P1239, p. 14; exhibit P1229, p. 17; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1009, 1013, 1016.

⁸⁷⁷⁴ Blue 610 activated OGER3 (21:01) and CARACA3 (21:06); exhibit P1227, pp 19-20; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1013-1015, 1018-1020.

⁸⁷⁷⁵ At 21:23, mobile number ending in 973, which belonged to Mr Hariri’s security detail, activated LAU_Beirut_A. At 21:31, mobile ending in 520, which also belonged to Mr Hariri’s security detail, activated Riviera_A, which was in the area of the Hamade residence. Both mobiles continued to activate Riviera_A until 22:39. At 22:55, mobile ending in 520 activated Fadlallah_A, which was next to the cell providing predicted best server coverage area for Quraitem Palace, namely LAU_Beirut_A. Exhibit P1332, p. 59; exhibit P1354, pp 384-385; Gary Platt, T. 8 March 2017, pp 20-23.

⁸⁷⁷⁶ Exhibit P1227, p. 20; exhibit P1238, p. 9; Gary Platt, T. 8 March 2017, p. 21.

⁸⁷⁷⁷ Blue 233 activated Hazmiyeh-II_B. Exhibit P1238, p. 9; exhibit P1227, p. 20.

Blue 585. Blue 610 activated MANARA1, which provided predicted best server coverage to the Hamade residence on the Alfa network; Blue 585 activated a cell in west Beirut, south of Quraitem Palace.⁸⁷⁷⁸

4583. Mr Platt testified that these calls are consistent with Blue 610 following Mr Hariri to the Hamade residence. Mr Platt noted that the first of these calls was to Mr Ayyash's Blue 233, who was in Dahyieh, followed by a call to Blue 585. According to Mr Platt, this is consistent with coordination of the surveillance and updating of Blue 233.⁸⁷⁷⁹

4584. At 22:29 and 22:53, Mr Ayyash's Blue 233 called Subject 6's Blue 610 from Dahyieh.⁸⁷⁸⁰ Blue 610 continued to activate MANARA1 in the area of the Hamade residence.⁸⁷⁸¹ At 23:05, Blue 610 called Blue 585. Blue 610 activated a cell within 500 metres of Quraitem Palace; Blue 585 activated a cell east of the Hamade residence along the coastal road.⁸⁷⁸²

4585. The tables in Mr Platt's report, which highlight the relevant call activity for 8 February, show that 69 Blue and Red network calls activated cells providing coverage within a 500-metre or a 1,000-metre radius of Quraitem Palace. Thirty-eight of these activated cells providing coverage within a 500-metre radius of it.⁸⁷⁸³

(yy) Wednesday 9 February 2005

4586. On Wednesday 9 February 2005, Mr Hariri received visitors at Quraitem Palace throughout the day.⁸⁷⁸⁴ Mr Jumblatt testified that Mr Hariri met Mr Hassan Nasrallah that evening.⁸⁷⁸⁵

⁸⁷⁷⁸ Blue 585 activated Raouche_B. Exhibit P1229, p. 17; exhibit P1227, p. 20; Gary Platt, T. 8 March 2017, pp 21-23; exhibits P1122, P1123. *See also* exhibit P1916, slides 120-121.

⁸⁷⁷⁹ Gary Platt, T. 8 March 2017, pp 21-22.

⁸⁷⁸⁰ Blue 233 activated Hadath_C (22:29, 22:53). Exhibit P1227, p. 20; exhibit P1238, p. 9; Gary Platt, T. 8 March 2017, pp 22-23.

⁸⁷⁸¹ Exhibit P1227, p. 20; exhibit P1123.

⁸⁷⁸² Blue 610 activated CARLTO3; Blue 585 activated Mic_AUB-Sea Gate. Exhibit P1229, p. 17; exhibit P1227, p. 20; Gary Platt, T. 8 March 2017, p.23; exhibit P1122.

⁸⁷⁸³ Exhibit P1783 (Expert report of Gary Platt – Chronology), tables 130, 132, 136-139 (pp 306, 309, 315, 317-321).

⁸⁷⁸⁴ Exhibit P301, pp 372-373; exhibit P299, ERN 60142170; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1021.

⁸⁷⁸⁵ Walid Jumblatt, T. 6 May 2015, pp 51, 111. For details on this meeting, *see* chapter IV 'Historical and political background to the attack', (O) 'Political events between the third Bristol Group meeting and the attack', para. 687.

4587. Mr Platt testified that Blue and Red network mobile users continued the coordinated surveillance around Quraitem Palace as Mr Hariri was located there. He said that there was a lack of movement of mobiles around Quraitem Palace because Mr Hariri remained there.⁸⁷⁸⁶

4588. During the morning, Blue 864 and Blue 817 activated cells in the Quraitem Palace area. Blue mobile activity around Quraitem Palace commenced at 09:28.⁸⁷⁸⁷ Blue 864 again activated a cell in the Quraitem Palace area at 11:38.⁸⁷⁸⁸ Blue 817 activated cells in the Quraitem Palace area until 17:23.⁸⁷⁸⁹

4589. Blue 585 and Red 636 used cells in the area of Quraitem Palace. The last activation of a cell in the area of Quraitem Palace was MOVPIK1 at 18:13.⁸⁷⁹⁰ At 21:04, Blue 585, activating a cell between Quraitem Palace and the airport, called Mr Ayyash's Blue 233, which activated a cell in south Beirut.⁸⁷⁹¹ This call followed calls between Subject 6's Red 678, Subject 7's Red 946 and Subject 5's Red 636 at 21:01 and 21:03. Mr Platt testified that in his view these calls were part of a reporting process regarding the surveillance operation that ended in Subject 5's Blue 585 reporting back to Mr Ayyash's Blue 233.⁸⁷⁹²

4590. The Red mobiles called each other 26 times on this day.⁸⁷⁹³ The first Red mobile activity of the day occurred at 09:50 when Red 946 called Red 893, both activating cells in the Quraitem Palace area.⁸⁷⁹⁴ With the exception of Red 636 activating BHVOUT1 at 21:03, all of the cells

⁸⁷⁸⁶ Gary Platt, T. 8 March 2017, pp 30-31, 35, 39.

⁸⁷⁸⁷ Blue 864 activated RAOUCH2; Blue 817 activated PINS1. Exhibit P1228, p. 14; exhibit P1239, p. 15; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1026.

⁸⁷⁸⁸ Blue 864 activated CARACA1. Exhibit P1228, p. 14.

⁸⁷⁸⁹ Blue 817 activated CARLTO3 (13:03, 13:14, 13:17, 13:20), CONCOR2 (13:38), CONCOR1 (14:30), BACHOU1 (15:00) and CARLTO3 (17:20, 17:23); exhibit P1239, p. 15.

⁸⁷⁹⁰ Exhibit P1203, p. 3.

⁸⁷⁹¹ Blue 585 activated Jnah_El_Wata_B; Blue 233 activated Hazmiyeh-II_B; exhibit P1229, p. 17; exhibit P1238, p. 9.

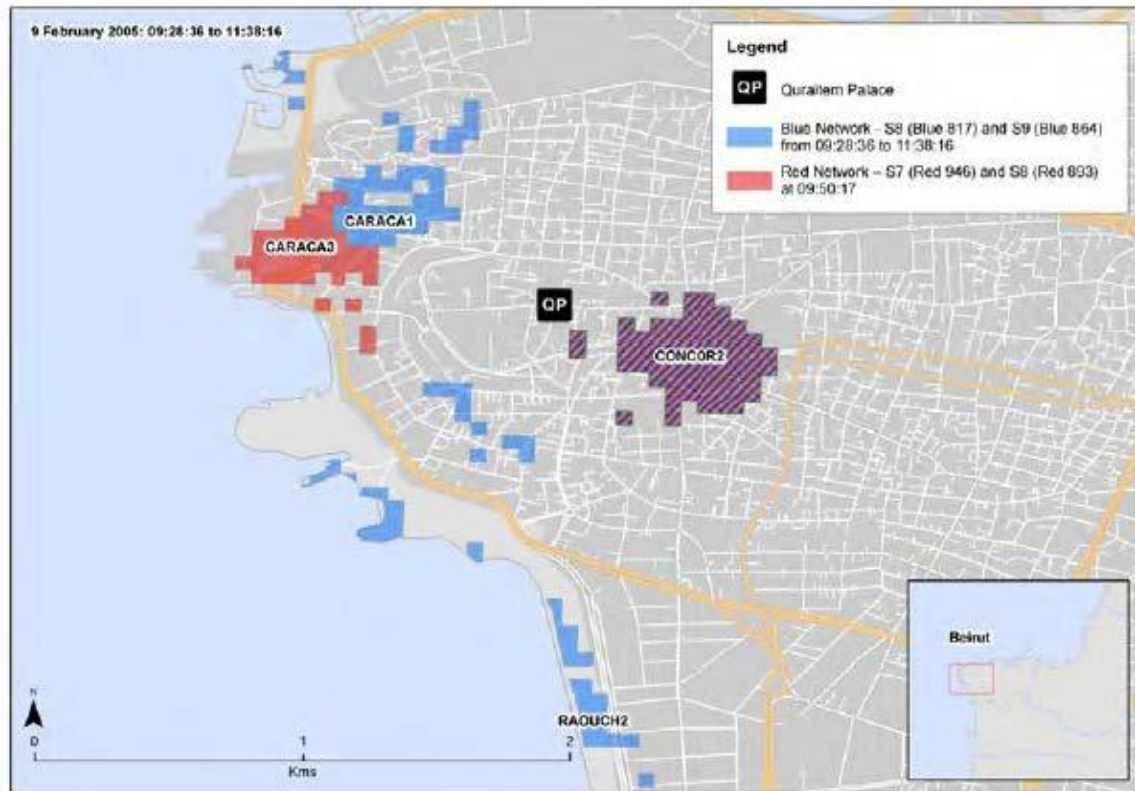
⁸⁷⁹² Gary Platt, T. 8 March 2017, p. 51.

⁸⁷⁹³ Exhibit P1203, p. 3; exhibit P1199, p. 4; exhibit P1204, p. 4; exhibit P1197, p. 3; exhibit P1198, p. 4; exhibit P1202, pp 2-3; exhibit P1114 (Expert report of John Edward Philips – Red mission phones), para. 6.3.10.8; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1022.

⁸⁷⁹⁴ Red 946 activated CONCOR2; Red 893 activated CARACA3; exhibit P1202, p. 2; exhibit P1198, p. 4; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1027; Gary Platt, T. 8 March 2017, pp 28-29.

activated by Red mobiles on this day were within 1,000 metres of Quraitem Palace.⁸⁷⁹⁵ On 36 occasions, Red mobiles activated cells which were within 500 metres of Quraitem Palace.⁸⁷⁹⁶

4591. Mr Platt plotted some of this information in the map below:



Map 103: Blue and Red Network (S7, S8 and S9), Quraitem Palace, 9 February 2005 (09:28 to 11:38)

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 323

(zz) Thursday 10 February 2005

4592. On Thursday 10 February 2005, Mr Hariri visited the Maronite Archbishop of Beirut in Achrafieh; the meeting was scheduled to commence at 10:00.⁸⁷⁹⁷ Mr Hariri had appointments to

⁸⁷⁹⁵ Exhibit P1203, p. 3.

⁸⁷⁹⁶ Exhibit P1203, p. 3; exhibit P1199, p. 4; exhibit P1204, p. 4; exhibit P1197, p. 3; exhibit P1198, p. 4; exhibit P1202, pp 2-3.

⁸⁷⁹⁷ Exhibit P303, ERNs D0004977-D0004979; exhibit P408; Bassem El-Sabeh, T. 17 March 2015, pp 19-38; exhibit P1168 (Statement of Witness PRH101), pp 9, 25; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1042.

receive visitors at Quraitem Palace throughout the day.⁸⁷⁹⁸ The visitors included Mr Ali Hamade and Mr Gebran Tueini, *An-Nahar*'s editor-in-chief.⁸⁷⁹⁹

4593. Between 09:17 and 15:45, Blue 817 activated cells around Quraitem Palace.⁸⁸⁰⁰ At 12:43, Subject 6's Blue 610 (SFEIR2) called Blue 817 (CARLTO2).⁸⁸⁰¹ Between 13:34 and 15:11, Blue 610 activated cells near Quraitem Palace.⁸⁸⁰²

4594. On this day, the Red mobiles called each other 25 times.⁸⁸⁰³ Subject 8's Red 893 was involved in 22 of these calls.⁸⁸⁰⁴ The first Red network call on this day occurred at 12:09: Subject 5's Red 636 called Red 893, both activating cells within 500 metres of Quraitem Palace.⁸⁸⁰⁵ Between 12:09 and 15:46 all of the Red mobiles except Mr Ayyash's Red 741 activated cells within 500 metres of Quraitem Palace.⁸⁸⁰⁶

⁸⁷⁹⁸ Exhibit P299, ERN 60142171; exhibit P301, pp 373-375.

⁸⁷⁹⁹ Exhibit P301, p. 374.

⁸⁸⁰⁰ Blue 817 activated CARACA3 (09:17, 09:19), CARLTO2 (12:43) and RAOUCH3 (15:45); exhibit P1239, p. 15; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1048, 1051.

⁸⁸⁰¹ Exhibit P1227, p. 20; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1050.

⁸⁸⁰² Blue 610 activated CONCOR2 (13:34, 13:40) and CARLTO2 (15:11); exhibit P1227, p. 20; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1051.

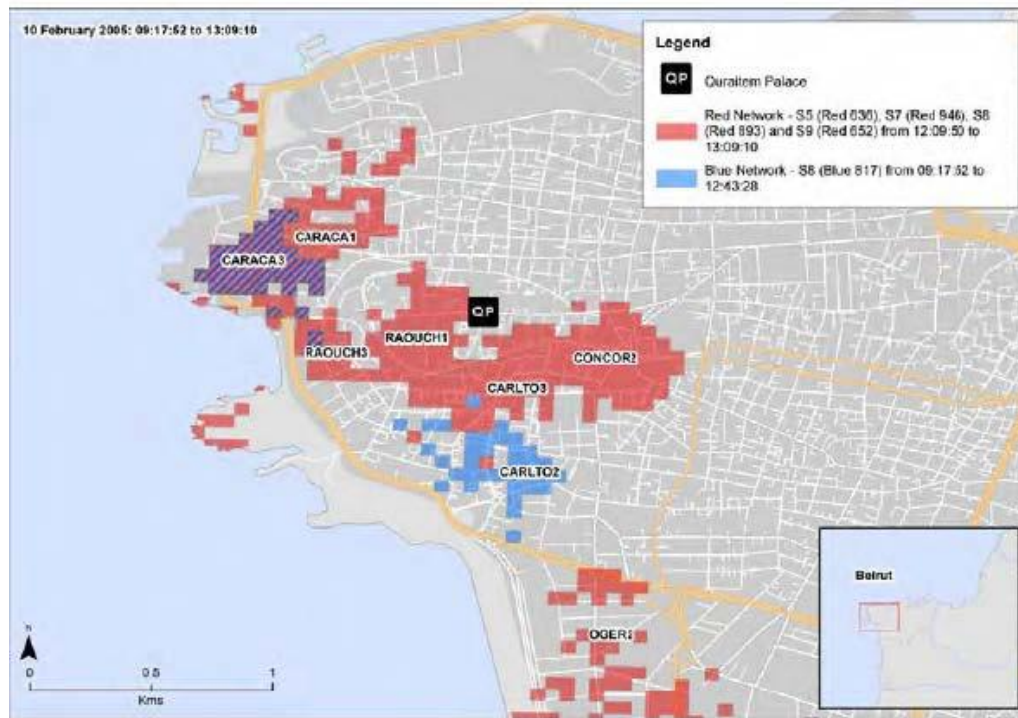
⁸⁸⁰³ Exhibit P1203, p. 3; exhibit P1199, p. 4; exhibit P1204, p. 4; exhibit P1197, p. 3; exhibit P1198, pp 4-5; exhibit P1202, p. 3; exhibit P1114 (Expert report of John Edward Philips – Red mission phones), para. 6.3.11.7.

⁸⁸⁰⁴ Exhibit P1198, pp 4-5; exhibit P1114 (Expert report of John Edward Philips – Red mission phones), para. 6.3.11.8, table 19 (p. 44).

⁸⁸⁰⁵ Exhibit P1203, p. 3; exhibit P1198, p. 5; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1049.

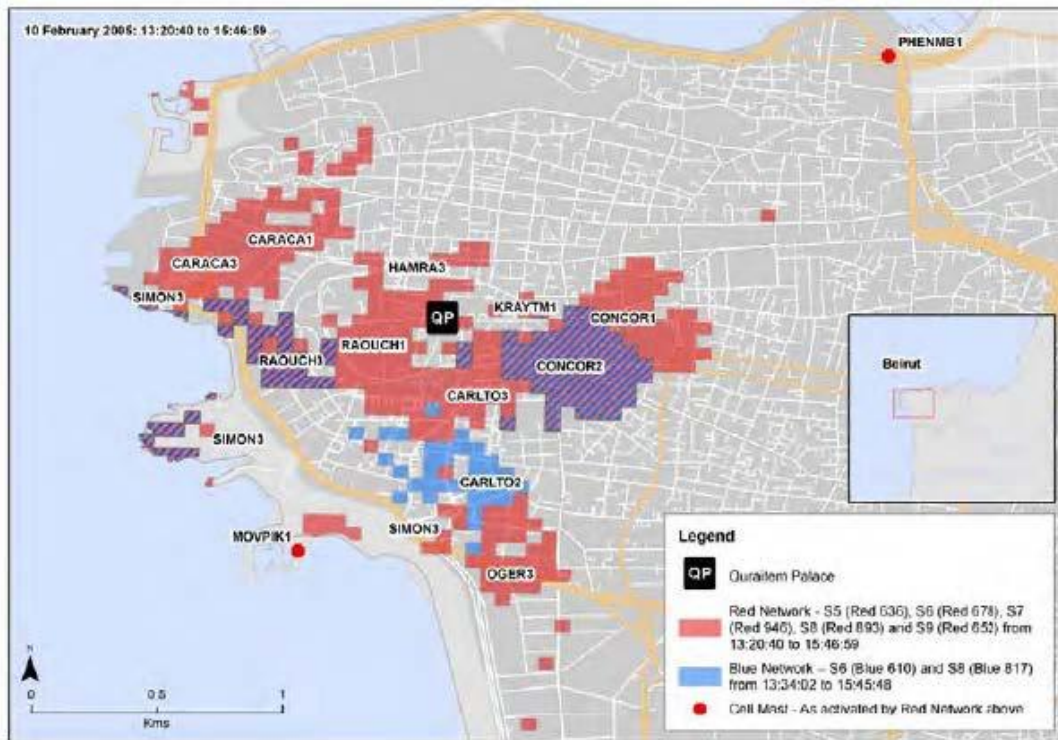
⁸⁸⁰⁶ Red 636 activated CONCOR2 (12:09, 12:11, 12:48, 13:03, 13:48); Red 652 activated CARLTO3 (13:09, 13:20), CONCOR2 (14:29), CONCOR1 (15:14) and HAMRA3 (15:46); Red 678 activated KRAYTM1 (13:46, 13:56), CONCOR2 (14:24, 14:29) and CARLTO3 (14:33, 15:13); Red 893 activated CARLTO3 (12:09, 12:15, 12:48, 12:58), RAOUCH1 (13:03), CARACA1 (13:07, 13:48), CARACA3 (13:09, 13:46, 13:55, 13:56), SIMON3 (14:24), OGER3 (14:29, 14:31), MOVPIK1 (14:33, 15:13, 15:46) and RAOUCH3 (15:08 twice, 15:14, 15:35, 15:46) and Red 946 activated CARACA3 (12:11, 13:07), RAOUCH3 (12:15, 15:08 twice) and RAOUCH1 (14:29). Exhibit P1203, p. 3; exhibit P1199, p. 4; exhibit P1204, p. 4; exhibit P1198, pp 4-5; exhibit P1202, p. 3.

4595. Mr Platt plotted some of this information in the maps below:



Map 106: Red and Blue Network (S5, S7, S8 and S9), 10 February 2005 (09:17 to 13:09)

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 332



Map 107: Red and Blue Network (S5, S6, S7, S8 and S9), 10 February 2005 (13:20 to 15:46)

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 335

(aaa) Friday 11 February 2005

4596. On Friday 11 February 2005, Mr Hariri received visitors at Quraitem Palace throughout the day, including the Australian, Turkish and Spanish ambassadors respectively at 10:45, 11:20 and 13:15.⁸⁸⁰⁷

4597. The only Blue network mobile to activate cells in the area of Quraitem Palace was Blue 864, which activated cells in the area between 13:40 and 17:44.⁸⁸⁰⁸ Between 13:40 and 15:53, Mr Ayyash's Blue 233 was in contact with Blue 864 three times; for each of these calls Blue 233

⁸⁸⁰⁷ Exhibit P299, ERN 60142172; exhibit P301, pp 375-376; Salim Diab, T. 22 January 2015, pp 59-60; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1053.

⁸⁸⁰⁸ Blue 864 connected to OGER3 (13:40), MOVPIK1 (14:21), CARACA3 (14:33), SIMON3 (15:53), CARACA1 (16:49), MANARA2 (17:24) and again MOVPIK1 (17:43, 17:44); exhibit P1228, p. 14; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1054, 1073-1074, 1076, 1078.

activated Ouzaii_2_A, in south Beirut, north of the airport. Blue 864 activated cells in the Quraitem Palace area.⁸⁸⁰⁹

4598. On this day, the Red mobiles called each other 26 times.⁸⁸¹⁰ Red 652, Red 741, Red 893 and Red 946 activated cells near Quraitem Palace.⁸⁸¹¹ The Red network activity commenced with three calls between Mr Ayyash's Red 741 and Subject 8's Red 893 at 11:46, 11:47 and 11:48. Red 741 activated cells in the Quraitem Palace area;⁸⁸¹² Red 893 activated BHVOUT2 between south Beirut and Quraitem Palace. By 11:52, Red 893 and Subject 9's Red 652 also activated cells in the Quraitem Palace area.⁸⁸¹³

4599. At 11:56, Subject 7's Red 946 activated a cell within 500 metres of Quraitem Palace.⁸⁸¹⁴ Mr Platt testified that these calls were consistent with Mr Ayyash's Red 741 coordinating the commencement of surveillance activity around Quraitem Palace.⁸⁸¹⁵

⁸⁸⁰⁹ Blue 864 activated OGER3 (13:40), CARACA3 (14:33) and SIMON3 (15:53); exhibit P1238, p. 10; exhibit P1228, p. 14; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1070, 1073-1074, 1076.

⁸⁸¹⁰ Exhibit P1203, p. 3; exhibit P1199, pp 4-5; exhibit P1204, p. 4; exhibit P1197, pp 3-4; exhibit P1198, pp 5-6; exhibit P1202, p. 3.

⁸⁸¹¹ Exhibit P1199, pp 4-5; exhibit P1197, pp 3-4; exhibit P1198, pp 5-6; exhibit P1202, p. 3; exhibit P1123.

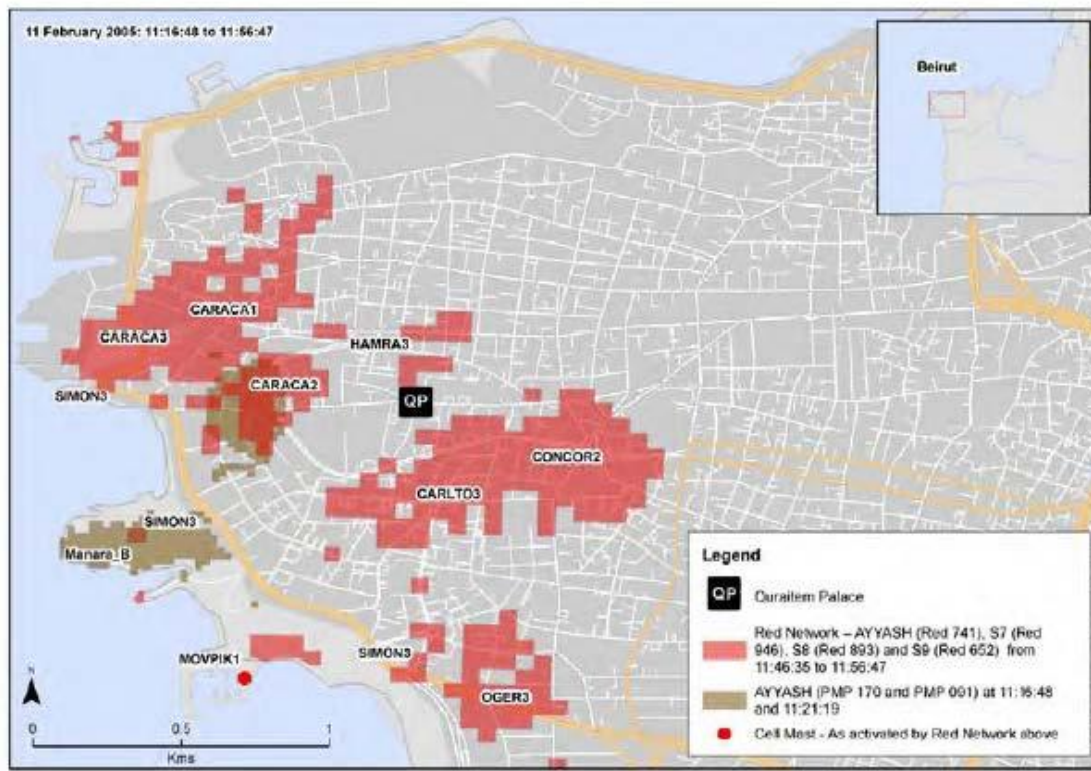
⁸⁸¹² Red 741 activated CARACA3 (11:46, 11:47) and CARACA1 (11:48). Exhibit P1197, p. 3.

⁸⁸¹³ Red 893 activated OGER3; Red 652 activated CARLTO3; exhibit P1199, pp 4-5; exhibit P1198, pp 5-6; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1062.

⁸⁸¹⁴ Red 946 activated CONCOR2; exhibit P1202, p. 3.

⁸⁸¹⁵ Gary Platt, T. 8 March 2017, p. 90.

4600. This Red network mobile activity is displayed in the graphic below:



Map 108: AYYASH [PMP 170 and PMP 091], Red Network (AYYASH, S7, S8 and S9), 11 February 2005 (11:16 to 11:56)

Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 338

4601. At 12:09, Subject 6's Red 678 called Mr Ayyash's Red 741.⁸⁸¹⁶ Red 678 activated MINIEH3, north of Tripoli, whereas Red 741 activated MRAICI2 west of the crime-scene location along the coastal road. At 12:18, Red 741 activated ETOILE3 next to Parliament, calling Subject 8's Red 893, which remained in the area of Quraitem Palace.⁸⁸¹⁷ At 12:45, Mr Ayyash's Green 300, activating PORT3 east of Parliament, called Mr Badreddine's Green 023.⁸⁸¹⁸

⁸⁸¹⁶ Exhibit P1204, p. 4; exhibit P1197, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1066.

⁸⁸¹⁷ Red 893 activated CONCOR2. Exhibit P1197, p. 3; exhibit P1198, p. 5; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1066-1067.

⁸⁸¹⁸ Exhibit P1207, p. 5; exhibit P1211, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1069. See also exhibit P1916, slides 186-188.

4602. At 12:46, Mr Ayyash's Red 741, activating PORT3, called Subject 6's Red 678.⁸⁸¹⁹ Mr Platt testified that these calls are consistent with Mr Ayyash's Red 741 coordinating the surveillance operation. Red 741 took a more active role in the surveillance around Quraitem Palace on this day. Mr Platt testified that Subject 6's Red 678, which usually took on the coordinating role, was in Tripoli. He highlighted that the 12:45 Green call, consistent with reporting, was followed by a lengthy call to Red 678.⁸⁸²⁰ To Mr Philips, this is an example of a hierarchical call flow.⁸⁸²¹ At 14:48, Mr Badreddine's Green 023 called Mr Ayyash's Green 300, which activated MEA1 north of the airport.⁸⁸²²

4603. The last activity of Subject 8's Red 893 on this day was at 16:26 when it activated CARACA1, which was within 500 metres of Quraitem Palace.⁸⁸²³ Red 652 and Red 946 continued to activate cells in the area of Quraitem Palace until 17:45.⁸⁸²⁴

(bbb) Saturday 12 February 2005

4604. Mr Hariri received visitors, including Mr Ghazi El-Youssef and MPs Mr Atef Majdalani and Mr Bassem El-Sabeh, at Quraitem Palace throughout the day on Saturday 12 February 2005.⁸⁸²⁵ In the evening, he met Mr Fouad Siniora there.⁸⁸²⁶

4605. During the morning, Mr Hariri attended two condolence services: one at the *Sacré Cœur* Church in Badaro and one at the Mar Mikhael Church in Mazraa.⁸⁸²⁷ He departed Quraitem Palace

⁸⁸¹⁹ Exhibit P1204, p. 4; exhibit P1197, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1070.

⁸⁸²⁰ Gary Platt, T. 8 March 2017, pp 91-93.

⁸⁸²¹ John Edward Philips, T. 6 September 2016, p. 41; exhibit P1118, p. 141.

⁸⁸²² Exhibit P1207, p. 5; exhibit P1211, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1075; Gary Platt, T. 9 March 2017, p. 6.

⁸⁸²³ Exhibit P1198, p. 6.

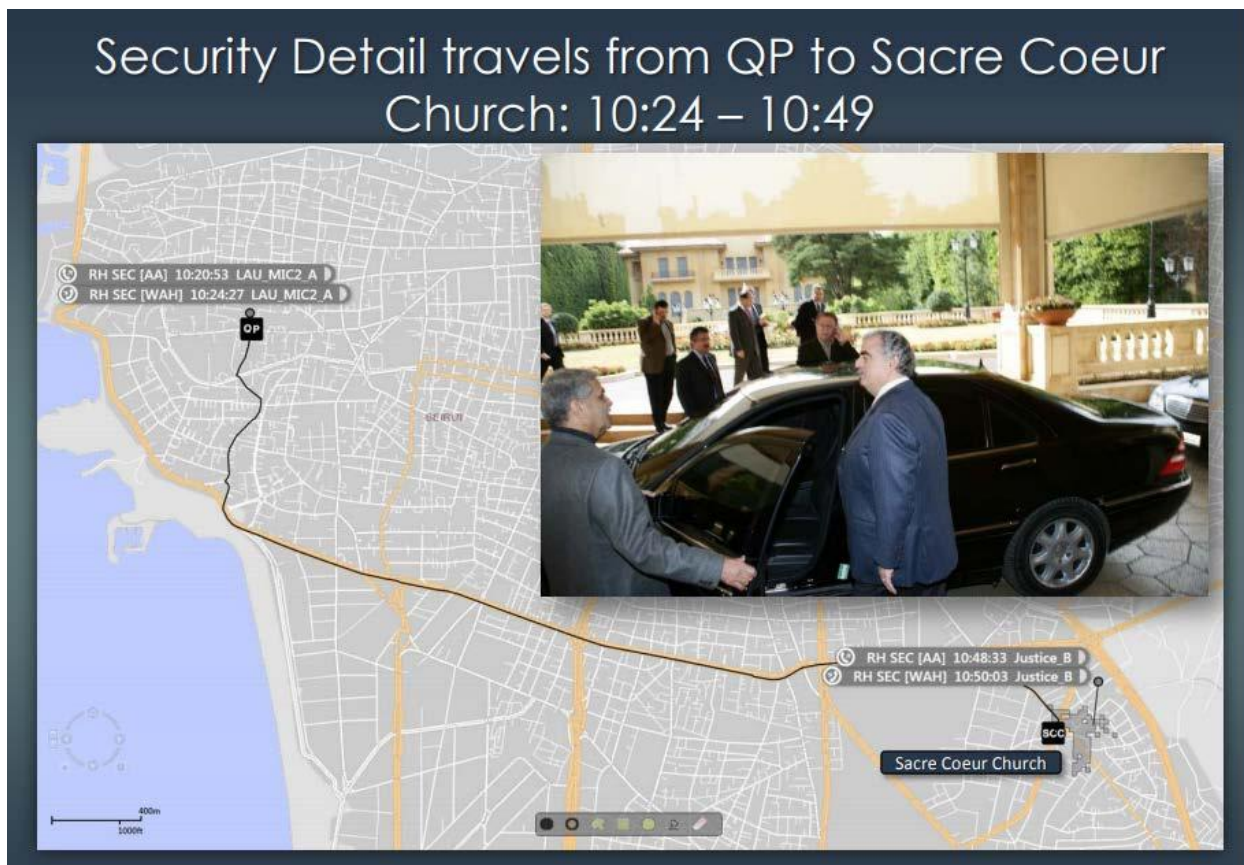
⁸⁸²⁴ Red 652 activated MANARA2 (17:16) and MOVPIK1 (17:45); Red 946 activated CARLTO2 (17:16) and MANARA2 (17:45). Exhibit P1199, pp 4-5; exhibit P1202, p. 3.

⁸⁸²⁵ Exhibit P299, ERN 60142173; exhibit P301, p. 377-381; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1080.

⁸⁸²⁶ Fouad Siniora, T. 24 March 2015, p. 26.

⁸⁸²⁷ Exhibit P299, ERN 60142173; exhibit P301, pp 377-378; exhibit P349 (Witness statement of Ayman Trawi), para. 17; Ghazi El-Youssef, T. 12 March 2015, pp 109-112; exhibit P396 (Annotated extract from exhibit P298 – Zawarib Greater Beirut Atlas); exhibit P421 (Annotated extract from exhibit P298 – Zawarib Greater Beirut Atlas); Ali Hamade, T. 13 April 2015, pp 65-67; exhibit P1185 (Statement of Witness PRH009), para. 41; exhibit P1186 (Statement of Witness PRH009), pp 8, 23; exhibit P1168 (Statement of Witness PRH101), pp 9-10, 26; exhibit P663 (Statement of Andrew Fahey), annex 1, no. 124.

with his security detail around 10:24.⁸⁸²⁸ By 10:48, Mr Hariri had arrived at the *Sacré Cœur* Church.⁸⁸²⁹ Below are images relating to the journey to the two churches from Mr Platt's in-court slides:⁸⁸³⁰

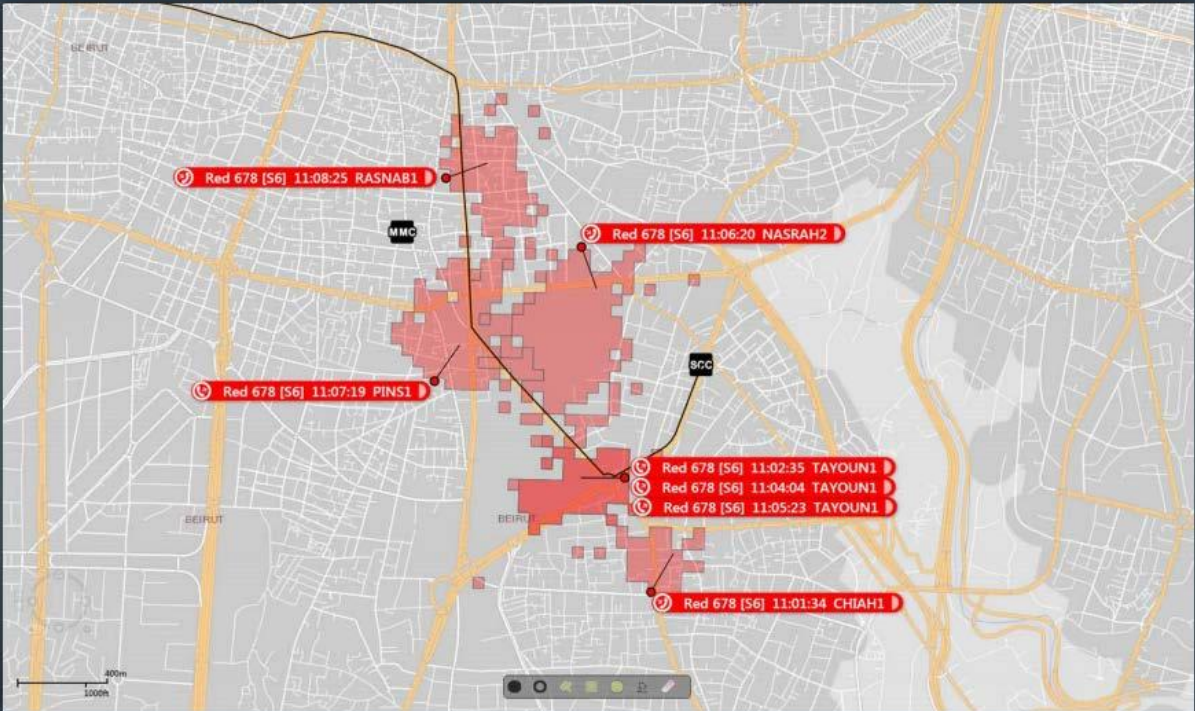


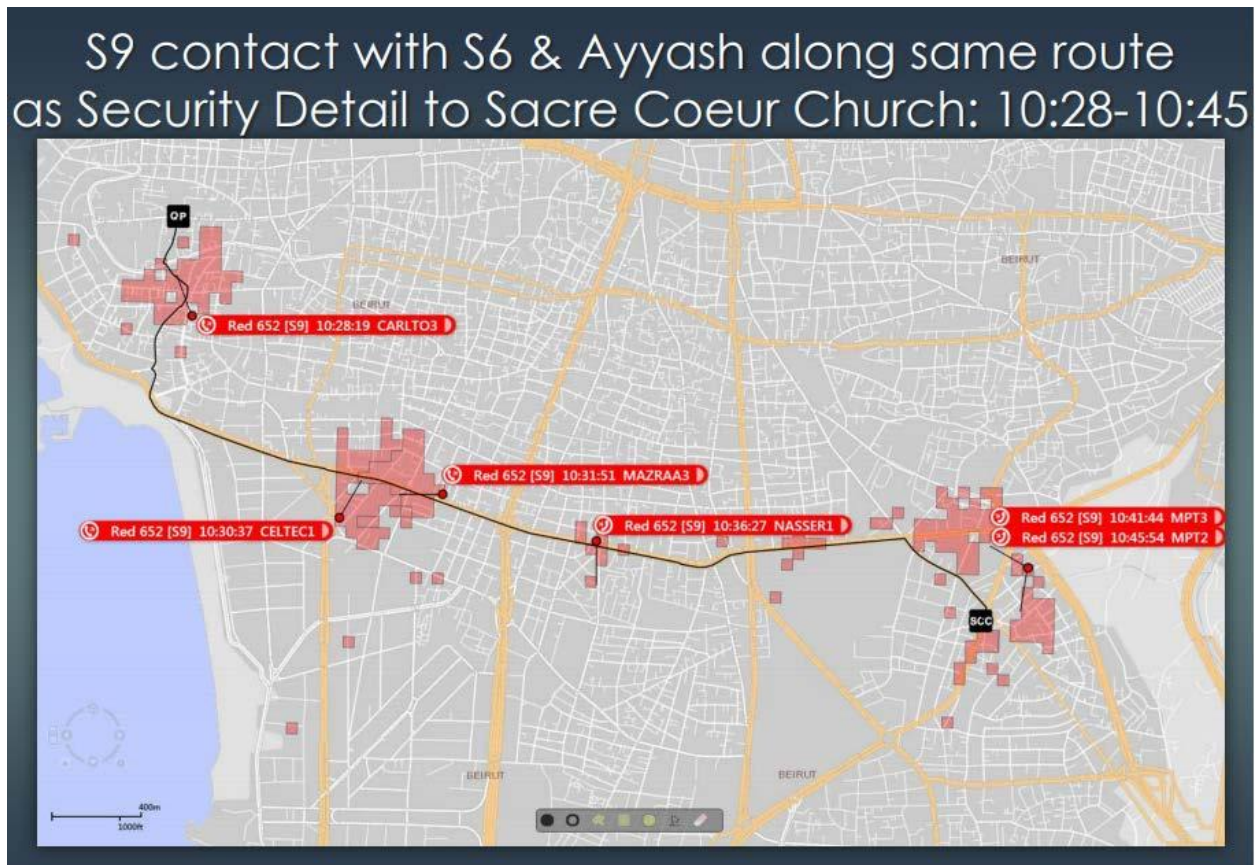
⁸⁸²⁸ Exhibit P350 (Photographs of Mr Hariri at Quraitem Palace on 12 February 2005), p. 94; exhibit P355 (Statement of Helena Habraken), pp 3-4; Gary Platt, T. 9 March 2017, p. 19. Mobiles belonging to Mr Hariri's security detail activated LAU_MIC2_A at 10:20 and 10:24; exhibit P1359, p. 326; exhibit P1352, p. 350.

⁸⁸²⁹ At 10:48, mobile 771 of Mr Hariri's security detail first activated Justice_B adjacent to *Sacré Cœur* Church, and mobile 1506 activated Justice_B at 10:50. Exhibit P1359, p. 326; exhibit P1352, p. 350.

⁸⁸³⁰ Exhibit P1916 (Chronology PowerPoint presentation – 8 February 2005 to 12 February 2005), slides 213, 228, 240. See also exhibit P593.2 (Snapshots 2nd session 16 September 2015: ID 5 to 10 – Call list for 12 February 2005: Electronic presentation of evidence Demonstration).

S6 exchanges several calls with S9 & S7 along route to vicinity of Mar Michael Church: 11:01 - 11:08





4606. Mr Ayyash's Blue 233, Blue 501, Blue 585, Blue 817, Blue 864, Blue 324 and Subject 6's Blue 610 called each other 18 times.⁸⁸³¹ The Red mobiles called each other 65 times.⁸⁸³² Mr Platt testified that the Red and Blue network activity took place in two locations: one around Quraitem Palace and the two churches attended by Mr Hariri and the other in the Zouk-Mosbeh junction area, which is the turn-off to travel to the Faraya area.⁸⁸³³

4607. According to Mr Platt, the purpose of the network activity in the Zouk-Mosbeh junction area was to cover the route to Faqra villa given that—being a Saturday—there was a possibility

⁸⁸³¹ Exhibit P1238, p. 10; exhibit P1229, p. 17; exhibit P1239, pp 15-16; exhibit P1228, p. 14; exhibit P1225, p. 14; exhibit P1227, p. 21.

⁸⁸³² Exhibit P1203, p. 3; exhibit P1199, pp 5-6; exhibit P1204, pp 4-6; exhibit P1197, p. 4; exhibit P1198, p. 6; exhibit P1202, pp 3-4.

⁸⁸³³ Gary Platt, T. 9 March 2017, pp 23-24.

that Mr Hariri could go there, and ‘the perpetrators need to know ... where Mr Hariri is going to be located’ on Monday 14 February, before attending Parliament.⁸⁸³⁴

4608. Mr Platt testified that Subject 6’s Red 678 and Subject 9’s Red 652 moved in tandem with Mr Hariri to the *Sacré Cœur* Church.⁸⁸³⁵ At 10:28, Red 652 called Red 678. During this call, Red 652 activated CARLTO3 on the south side of Quraitem Palace; Red 678 activated CARACA3 west of Quraitem Palace on the coast.⁸⁸³⁶ Between 10:28 and 10:41, Red 652 activated cells that are consistent with travel from Quraitem Palace towards the *Sacré Cœur* Church.⁸⁸³⁷ At 10:45, 10:49 and 10:50, Red 652 activated MPT2 next to the *Sacré Cœur* Church.⁸⁸³⁸ Red 678 activated MAZRAA2 between Quraitem Palace and the *Sacré Cœur* Church at 10:36. At 10:44 and 10:45, Red 678 connected to MPT3 north of the *Sacré Cœur* Church.⁸⁸³⁹

4609. At 10:32, Subject 6’s Blue 610 called Mr Ayyash’s Blue 233 from the Quraitem Palace area.⁸⁸⁴⁰ This call initiated ‘the movement by Mr Ayyash’s attributed mobiles’ from Dahyieh towards the *Sacré Cœur* Church, as well as a switch from Mr Ayyash’s Blue mobile to his Red mobile, according to Mr Platt.⁸⁸⁴¹ At 10:41, Mr Ayyash’s Red 741 activated BACHA2 in south-east Beirut, followed by ALFA2 at 10:44, south of the *Sacré Cœur* Church. At 10:49, Mr Ayyash’s Red 741 activated HOTELD2 north of the *Sacré Cœur* Church.⁸⁸⁴² This is depicted on the diagrams below.⁸⁸⁴³

⁸⁸³⁴ Gary Platt, T. 9 March 2017, pp 25, 34, 50.

⁸⁸³⁵ Gary Platt, T. 9 March 2017, p. 30.

⁸⁸³⁶ Exhibit P1204, p. 4; exhibit P1199, p. 5. *See also* exhibit P1916, slides 224, 226.

⁸⁸³⁷ Red 652 activated CARLTO3 (10:28), CELTEC1 (10:30), MAZRAA3 (10:31), NASSER1 (10:36) and MPT3 (10:41); exhibit P1199, p. 5; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1093, 1096.

⁸⁸³⁸ Exhibit P1199, p. 5; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1096.

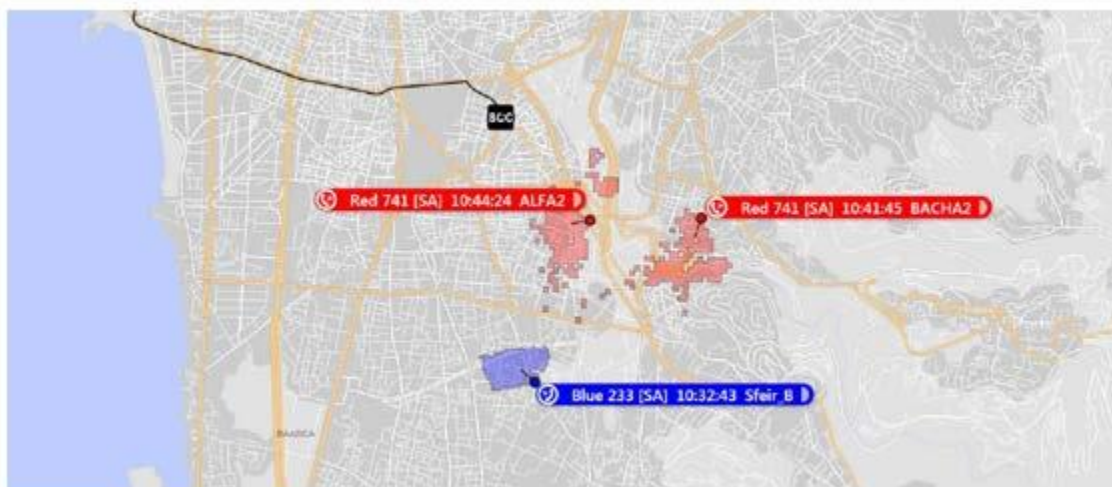
⁸⁸³⁹ Exhibit P1204, p. 4; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1096. *See also* exhibit P1916, slide 229.

⁸⁸⁴⁰ Blue 610 activated CARACA3; Blue 233 activated Sfeir_B in south Beirut; exhibit P1238, p. 10; exhibit P1227, p. 21; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1094.

⁸⁸⁴¹ Gary Platt, T. 9 March 2017, pp 30-31, 33.

⁸⁸⁴² Exhibit P1197, p. 4; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1095-1096.

⁸⁸⁴³ Taken from exhibit P1916 (Chronology PowerPoint presentation – 8 February 2005 to 12 February 2005), slides 230, 233. *See also* exhibit P593.2.



Ayyash contact with S6 & 'S9' as moves north from Dahyieh: 10:32 – 10:44



Ayyash calls 'S9' in vicinity of Sacré Cœur Church: 10:49 (prior to Security Detail departure)

4610. Mr Hariri travelled from the *Sacré Cœur* Church to Mar Mikhael Church sometime between 10:55 and 11:09.⁸⁸⁴⁴

4611. At 10:56, Subject 9's Red 652 called Subject 6's Red 678. Red 652 activated BADARO2 south-west of the *Sacré Cœur* Church; Red 678 activated MIKAEL1, which was further south

⁸⁸⁴⁴ Mobile ending in 1506 belonging to Mr Hariri's security detail last activated Justice_B at 10:55. At 11:09, mobile ending in 1506 activated Ras_Nabeh_B close to Mar Mikhael Church; exhibit P1352, p. 351; exhibit P1916, slides 215, 217.

from BADARO2.⁸⁸⁴⁵ Between 11:04 and 11:11, Red 652 was in contact with Red 678 four times; Red 652 activated cells west of Mar Mikhael Church.⁸⁸⁴⁶

4612. Around this time, Red 678 activated cells which cover the route from the *Sacré Cœur* Church to Mar Michael Church taken by Mr Hariri and his convoy: TAYOUN1 (11:02, 11:04, 11:05), NASRAH2 (11:06) and PINS1 (11:07).⁸⁸⁴⁷ At 11:08 and 11:11, Red 678 activated RASNAB1, north-east of Mar Michael Church.⁸⁸⁴⁸

4613. Around 11:12, Mr Hariri left Mar Mikhael Church and travelled back to Quraitem Palace, where he arrived around 11:24.⁸⁸⁴⁹ Around the same time that Mr Hariri's convoy travelled back to Quraitem Palace, Subject 6's Red 678 activated cells between Mar Mikhael Church and Quraitem Palace.⁸⁸⁵⁰ During this time, Mr Ayyash's Red 741 was in contact with Subject 9's Red 652 (11:14) and Subject 6's Red 678 (11:16).⁸⁸⁵¹ Mr Platt testified that these calls are consistent with Red 741's coordination role.⁸⁸⁵² The mobile activity is displayed in the graphic below from the slides used with Mr Platt in court:

⁸⁸⁴⁵ Exhibit P1199, p. 5; exhibit P1204, p. 5; exhibit P1916, slides 237, 238.

⁸⁸⁴⁶ Red 652 activated MAKASS2 (11:04) and MAKASS1 (11:06, 11:08, 11:11). Exhibit P1199, p. 5; Gary Platt, T. 9 March 2017, pp 46-47; exhibit P1916, slides 239, 241-243.

⁸⁸⁴⁷ Exhibit P1204, p. 5. Mr Platt's report did not deal with Mr Hariri's attending a second condolence service at the Mar Mikhael Church and it characterised Red 678's location around this time as being 'in the area around *Sacré Cœur* Church'. Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1096.

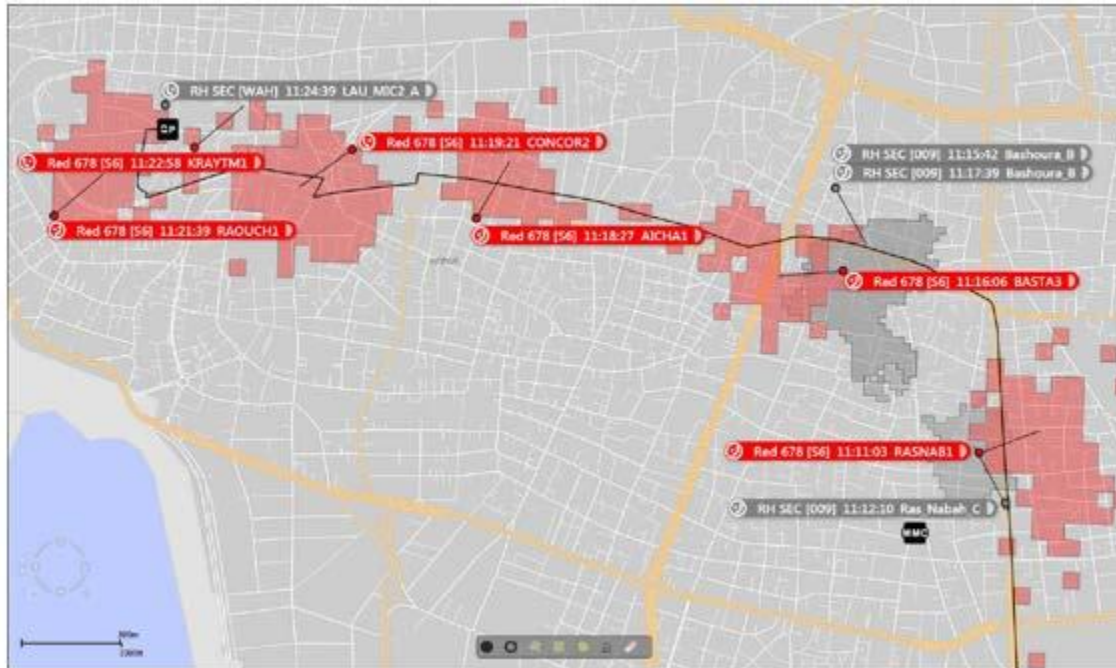
⁸⁸⁴⁸ Exhibit P1204, p. 5; exhibit P1916, slides 239-240, 242-243.

⁸⁸⁴⁹ At 11:12, mobile ending in 506 activated Ras_Nabeh_C north-east of Mar Mikhael Church, then Bashoura_B between Mar Mikhael Church and Quraitem Palace at 11:15 and 11:17. At 11:24, mobile ending in 1506 activated LAU_MIC2_A close to Quraitem Palace. Mobile ending in 1506 also activated Ras_Nabeh_B (10:20) and Sami_El_Solh_C (10:51); exhibit P1352, pp 350-351; exhibit P1322, p. 81.

⁸⁸⁵⁰ Red 678 activated BASTA3 (11:16), AICHA1 (11:18), CONCOR2 (11:19), RAOUCH1 (11:21) and KRAYTM1 (11:22); exhibit P1204, p. 5.

⁸⁸⁵¹ Exhibit P1197, p. 4.

⁸⁸⁵² Gary Platt, T. 9 March 2017, pp 47-48.



S6 contact with Ayyash & 'S9' along same route as security detail back to the palace:

11:11 – 11:22

*Exhibit P1916 (Chronology PowerPoint presentation – 8 February 2005 to 12 February 2005),
slide 246*

4614. At 11:35 and 11:40, Red 652 activated cells between Parliament and Quraitem Palace.⁸⁸⁵³ At 11:51 and 12:31, Red 652 connected to MANARA2 (within 1,000 metres of Quraitem Palace).⁸⁸⁵⁴ Between 11:35 and 11:51, Red 678 activated cells within 1,000 metres of Quraitem Palace.⁸⁸⁵⁵ By 11:41, also Mr Ayyash's Red 741 activated a cell within 1,000 metres of Quraitem Palace, RAOUCH3.⁸⁸⁵⁶

⁸⁸⁵³ Red 652 activated ZIDANI1 (11:35) and AICHA1 (11:40); exhibit P1199, pp 5-6. *See also* exhibit P1916, slides 248, 250.

⁸⁸⁵⁴ Exhibit P1199, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1103.

⁸⁸⁵⁵ Red 678 activated CARACA3 (11:35), KRAYTM1 (11:40), CONCOR2 (11:41) and MOVPIK1 (11:48, 11:50, 11:51); exhibit P1204, p. 5; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1101.

⁸⁸⁵⁶ Exhibit P1197, p. 4; Gary Platt, T. 9 March 2017, pp 50-51; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1098.

4615. Between 15:35 and 18:48, Red 678 continued activating cells within 1,000 metres of Quraitem Palace.⁸⁸⁵⁷ During this time, Subject 6's Red 678 was in contact with Mr Ayyash's Red 741 five times.⁸⁸⁵⁸

4616. At 15:47, Mr Badreddine's Green 023 called Mr Ayyash's Green 300.⁸⁸⁵⁹ At 15:48, Mr Ayyash's Red 741 called Red 678.⁸⁸⁶⁰ Mr Philips testified that this is an example of a hierarchical call flow.⁸⁸⁶¹

4617. Throughout the day, Subject 5's Red 636 and Subject 8's Red 893 activated cells providing coverage along the route between Beirut and Faqra Villa.⁸⁸⁶² Mr Ayyash's Red 741 maintained contact with Red 636 (11:18, 14:27 and 17:09) and Subject 7's Red 946 (12:54, 14:14 and 17:10) throughout the day.

4618. Mr Platt testified that Red 741's contact with Red 636 at 11:18, which was unusually long in taking a minute and 51 seconds, illustrates Mr Ayyash's Red 741 taking a prominent role in the surveillance operation, albeit from a distance.⁸⁸⁶³ At 14:28, Mr Ayyash's Green 300, activating MOSBEH2, called Mr Badreddine's Green 023.⁸⁸⁶⁴

4619. According to Mr Platt, this call is consistent with reporting about the activities or status of the operation.⁸⁸⁶⁵ For Mr Philips, this was an example of a hierarchical call flow as it followed the call of Subject 5's Red 636 to Red 741 at 14:27.⁸⁸⁶⁶ At 17:07, Mr Ayyash's Green 300 (RIMAL1) called Mr Badreddine's Green 023 (GHAZIR2) again.⁸⁸⁶⁷ Mr Platt concluded that this is consistent

⁸⁸⁵⁷ Red 678 activated CARACA3 (15:35), MANARA2 (17:07, 17:11, 17:13, 17:41) and MOVPIK1 (17:48, 18:48); exhibit P1204, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1111, 1114-1116.

⁸⁸⁵⁸ Exhibit P1204, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1111, 1114-1115, 1117; Gary Platt, T. 9 March 2017, pp 64-65.

⁸⁸⁵⁹ Green 023 activated OBEJ11; Green 300 activated RIMAL11; exhibit P1211, p. 6; exhibit P1207, p. 5; Gary Platt, T. 9 March 2017, p. 60.

⁸⁸⁶⁰ Red 741 activated MOSBEH2; Red 678 activated MANARA2; exhibit P1197, p. 4; exhibit P1204, p. 6.

⁸⁸⁶¹ John Edward Philips, T. 6 September 2016, pp 41-43; exhibit P1118, slide 142.

⁸⁸⁶² Red 636 activated RIMAL1 (10:12), FAYTRO1 (10:44, 15:09, 17:09), FARAYA2 (11:18), FARAYA1 (11:49, 14:27) and OUYOUN2 (14:43); Red 893 activated MOSBEH2 (10:08), NDU1 (10:13), ACHQOU1 (10:34), FAYTRO1 (10:44), FARAYA1 (11:26, 11:48), FARAYA3 (14:43) and CHEHWA1 (17:41). Exhibit P1203, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1082, 1088, 1105, 1111, 1116; exhibit P1198, p. 6; exhibit P1123.

⁸⁸⁶³ Gary Platt, T. 9 March 2017, p. 48.

⁸⁸⁶⁴ Exhibit P1211, p. 6; exhibit P1207, p. 5.

⁸⁸⁶⁵ Gary Platt, T. 9 March 2017, p. 59.

⁸⁸⁶⁶ John Edward Philips, T. 6 September 2016, pp 41-43; exhibit P1118, slide 142.

⁸⁸⁶⁷ Exhibit P1211, p. 6; exhibit P1207, p. 5.

with a reporting process.⁸⁸⁶⁸ Mr Philips's view was that this is an example of a hierarchical call flow as it preceded calls from Mr Ayyash's Red 741 to Red 636 (17:09) and Subject 7's Red 946 (17:10).⁸⁸⁶⁹

4620. The Quraitem Palace visitor logbook records that Mr Siniora signed in at 20:25 and out at 21:10.⁸⁸⁷⁰ According to Mr Mustafa Nasser, Mr Hariri also met Mr Hussein Khalil, Mr Nasrallah's assistant.⁸⁸⁷¹

3. The day of the attack—Monday 14 February 2005

(a) Mr Hariri's movements

4621. On the morning of 14 February 2005, at approximately 10:45,⁸⁸⁷² Mr Hariri left Quraitem Palace for Parliament⁸⁸⁷³ to attend a parliamentary session, in which the proposed electoral law was to be debated.⁸⁸⁷⁴

4622. Mr Hariri's convoy consisted of a black Toyota Land Cruiser as the first vehicle, four Mercedes vehicles—the second of which was driven by Mr Hariri—and a blue Chevrolet Suburban equipped for use as an ambulance.⁸⁸⁷⁵ Four armed ISF officers were in the Land Cruiser.⁸⁸⁷⁶ It had a wireless device to contact Quraitem Palace but did not have a jamming device.⁸⁸⁷⁷ Three Mercedes were unarmored but used jamming devices to prevent the detonation

⁸⁸⁶⁸ Gary Platt, T. 9 March 2017, pp 61-62.

⁸⁸⁶⁹ John Edward Philips, T. 6 September 2016, pp 41-43; exhibit P1118, slide 142.

⁸⁸⁷⁰ Exhibit P301, p. 380.

⁸⁸⁷¹ Exhibit 2D131 (Witness statement of Mustafa Nasser), para. 43; Mustafa Nasser, T. 9 April 2015, pp 84-85, T. 10 April 2015, p. 28.

⁸⁸⁷² Exhibit P1354, p. 398; exhibit P1359, p. 331; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1147. *See also* Amer Chehadeh, T. 16 October 2014, p. 16 (stating that he thought it was between 10:00 and 10:30 when the convoy left the palace).

⁸⁸⁷³ Witness PRH076, T. 14 October 2014, p. 29; Witness PRH009, T. 11 October 2016, pp 41-42, 75; exhibit P1186 (Statement of Witness PRH009), paras 67-68.

⁸⁸⁷⁴ Mohammed Mneimneh, T. 11 November 2014, pp 42-43, T. 12 November 2014, pp 31-33; exhibit P299, ERN 60142175; Faisal Salman, T. 8 January 2015, pp 22-23; Bassem El-Sabeh, T. 17 March 2015, pp 45-46; exhibit P90 (Photographs of Parliament provided with Ahmad Nabil Ismail's witness statement), p. 104. *See also* Ali Hamade, T. 13 April 2015, pp 68, 73.

⁸⁸⁷⁵ Exhibit P266 (Spanish forensic team expert report), ERN 60037022; Witness PRH076, T. 14 October 2014, pp 18-20; Witness PRH256, T. 22 October 2014, p. 8; Rachid Hammoud, T. 4 December 2014, pp 9, 11; Witness PRH357, T. 2 June 2015, pp 33-34; Witness PRH149, T. 3 June 2015, p. 92. *See also* Mohammed Dia, T. 16 October 2014, pp 68-70; exhibit P288 (Mohammed Dia's hand-drawn sketches of Mr Hariri's convoys); exhibit P1186 (Statement of Witness PRH009), paras 67-68.

⁸⁸⁷⁶ Witness PRH357, T. 2 June 2015, pp 35-36; Witness PRH149, T. 3 June 2015, p. 92. *See also* Witness PRH076, T. 14 October 2014, pp 17-18, 31-33, 69.

⁸⁸⁷⁷ Witness PRH357, T. 2 June 2015, pp 36-37.

of a bomb by mobile or radio signals. Mr Hariri's Mercedes, which was armoured, was not equipped with a jamming device.⁸⁸⁷⁸

4623. The convoy took the 'internal route', namely, non-coastal route,⁸⁸⁷⁹ and arrived at the Parliament building at around 10:54.⁸⁸⁸⁰ Mr Hariri posed for pictures in the parliamentary chamber with Mr El-Sabeh, Mr Hamade, his sister, Ms Bahia Hariri MP and other parliamentarians from the Beirut Decision Bloc.⁸⁸⁸¹

4624. At around 11:54,⁸⁸⁸² Mr Hariri left the Parliament building. He was due to return to Quraitem Palace to attend an electoral lunch scheduled for 13:15 with the leaders of the various electoral machines.⁸⁸⁸³ Before getting into his car, Mr Hariri crossed over Nejme Place and went

⁸⁸⁷⁸ Witness PRH076, T. 14 October 2014, pp 16, 33-35, 40, 43, 69, T. 15 October 2014, pp 37-38; exhibit P287 (Photograph of jamming device in the boot of the second convoy vehicle, annotated by Witness PRH076); Amer Chehadeh, T. 16 October 2014, pp 15, 38-41; Witness PRH357, T. 2 June 2015, p. 36; Witness PRH009, T. 11 October 2016, pp 65-66. Mr Hariri was the only one who could give a signal from his vehicle to stop the jamming device so that he could make a call. On 14 February 2005, the jamming devices were turned on and operational and there was no order from Mr Hariri to turn them off. The vehicles in the convoy would communicate through wireless devices as the mobiles did not work in the convoy. The close protection officers had Motorola walkie-talkie radios. Witness PRH076, T. 14 October 2014, pp 35-38, T. 15 October 2014, pp 46-47; Witness PRH149, T. 4 June 2015, pp 14-15; Mohammed Dia, T. 16 October 2014, pp 79-80, T. 17 October 2014, pp 6-7; Witness PRH357, T. 2 June 2015, pp 38-39; Amer Chehadeh, T. 16 October 2014, p. 15 *See also* Witness PRH256, T. 23 October 2014, p. 13. Regarding the composition of Mr Hariri's convoy, *see also* chapter VI 'Explosion on 14 February 2005', (B) 'Before the explosion on Monday 14 February 2005', paras 993-999.

⁸⁸⁷⁹ Witness PRH009, T. 13 October 2016, p. 5; Witness PRH076, T. 14 October 2014, pp 24-26; exhibit P284 (Annotated version of a map showing the route travelled by Hariri convoy on 14 February 2005 as provided in a statement of Witness PRH009); exhibit P285 (Map of the most common routes to Quraitem Palace from Parliament as provided in Witness PRH101's statement).

⁸⁸⁸⁰ Exhibit P88 (Statement of Ahmad Nabil Ismail), paras 13, 21; exhibit P110 (Witness statement of Helena Habraken; investigator's notes on timing of photographs) pp 3-5; exhibit P1322, p. 82; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1148, 1152-1153, photograph 1 (p. 363); Gary Platt, T. 13 March 2017, pp 34-35; exhibit P1923 (Chronology PowerPoint presentation –13 February 2005 to 16 February 2005), slides 54-57. *See also* Atef Majdalani, T. 29 April 2015, p. 29.

⁸⁸⁸¹ Bassem El-Sabeh, T. 17 March 2015, pp 46-47. While Mr El-Sabeh testified that Mr Hariri left before the start of the session, Mr Majdalani testified that Mr Hariri spoke during the joint parliamentary committees meeting regarding the draft electoral law (Atef Majdalani, T. 29 April 2015, pp 10, 29-30). The Trial Chamber considers that this discrepancy is not material with regard to the broader description of Mr Hariri's movements on 14 February 2005.

⁸⁸⁸² Exhibit P90, p. 162; exhibit P88 (Statement of Ahmad Nabil Ismail), paras 13, 21; exhibit P110 (Witness statement of Helena Habraken; investigator's notes on timing of photographs), pp 3-5; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1165; exhibit P1923, slide 81.

⁸⁸⁸³ Salim Diab, T. 22 January 2015, pp 59, 61; Mohammed Mneimneh, T. 11 November 2014, pp 42-43; exhibit P299, ERN 60142175; Witness PRH357, T. 3 June 2015, p. 7, T. 4 June 2015, pp 19-20; Witness PRH009, T. 11 October 2016, p. 78. It would take approximately ten to 15 minutes to go back from Parliament to Quraitem Palace. Witness PRH009, T. 11 October 2016, p. 78.

to the café *Place de l'Étoile*,⁸⁸⁸⁴ where he met journalists from news agencies, MPs and others and talked about the Taif Agreement and UN Security Council resolution 1559.⁸⁸⁸⁵

⁸⁸⁸⁴ Witness PRH076, T. 14 October 2014, p. 31; Amer Chehadeh, T. 16 October 2014, p. 19; Mohammed Dia, T. 17 October 2014, p. 4; Witness PRH256, T. 22 October 2014, p. 56; Faisal Salman, T. 8 January 2015, pp 22, 31; Witness PRH357, T. 2 June 2015, p. 40; exhibit P1185 (Statement of Witness PRH009), para. 19; Witness PRH149, T. 3 June 2015, pp 93-94. The café was 20 metres away from the Parliament building, and most MPs would go there to rest before the beginning of sessions and to exchange information and news. Faisal Salman, T. 8 January 2015, p. 31. *See also* exhibit P1923 (Gary Platt - Chronology PowerPoint), slides 68, 124; Gary Platt, T. 13 March 2017, pp 53-54.

⁸⁸⁸⁵ Faisal Salman, T. 8 January 2015, pp 22, 31-32, 36-37; Ali Hamade, T. 13 April 2015, p. 73.



*Mr Rafik Hariri outside the café Place de L'Étoile on 14 February 2005—Exhibit P90
(Photographs of Parliament provided with Ahmad Nabil Ismail's witness statement), p. 382*

4625. At 11:56:57, a white light truck was shown in CCTV camera images⁸⁸⁸⁶ from the President Suleiman Frangieh, or St Georges, tunnel.⁸⁸⁸⁷

4626. Between 12:49 and 12:50, Mr Hariri left the café and departed in his convoy, driving himself.⁸⁸⁸⁸ The convoy took the maritime route.⁸⁸⁸⁹ Mr Bassel Fuleihan was in Mr Hariri's car in the passenger seat.⁸⁸⁹⁰ The convoy took one of the most frequent exits used out of *Place de l'Étoile*, passing around the Italian embassy.⁸⁸⁹¹ Up until the convoy reached the St Georges marina, it was a 'perfectly normal trip'.⁸⁸⁹² The convoy was travelling at a speed of between 60 and 80 kilometres per hour.⁸⁸⁹³ As it approached the entrance door of the St Georges Hotel, the jamming equipment stored in the convoy vehicles set off alarms in the cars parked on the street.⁸⁸⁹⁴ The photographs below show the route travelled by the convoy:

⁸⁸⁸⁶ See chapter VI 'Explosion on 14 February 2005', (F) (2) (d) (i) (b) 'CCTV footage of a white track'.

⁸⁸⁸⁷ Gary Platt, T. 14 March 2017, pp 27-28; exhibit P1930.1 (Marked version of exhibit P1930) The President Suleiman Frangieh Tunnel is the roadway underpass between the *Fu'ad Shahab* and St Georges (Ain-El-Mreisseh) areas of Beirut. It has an entry and exit point on *Fakhr Ed Dine* Street, south of the Phoenicia and Monroe Hotels and of *Adnan El Hakim* Street, which runs east to west behind the Monroe Hotel. Exhibit P5 (Robyn Fraser report on CCTV evidence) paras 10, 115; Robyn Fraser, T. 22 January 2014, p. 41.

⁸⁸⁸⁸ Exhibit P90, pp 188, 194; exhibit P88 (Statement of Ahmad Nabil Ismail), para. 23; exhibit P110 (Witness statement of Helena Habraken; investigator's notes on timing of), pp 3-5 and in particular para. 11; Witness PRH009, T. 11 October 2016, pp 42-43, 79; exhibit P1191 (Photograph extracted from exhibit P116). See also Ali Hamade, T. 13 April 2015, p. 73; Witness PRH076, T. 14 October 2014, p. 31; Witness PRH149, T. 3 June 2015, pp 93-94; exhibit P1923, slides 120-123; Atef Majdalani, T. 29 April 2015, pp 30-31.

⁸⁸⁸⁹ Witness PRH009, T. 11 October 2016, pp 42-43, 79; exhibit P1191 (Photograph extracted from exhibit P116); Amer Chehadeh, T. 16 October 2014, pp 19-20, 39 (adding that all the jamming devices were turned on and functional); Witness PRH256, T. 22 October 2014, pp 8-12, 16, 59-62; exhibit P297 (Hand-drawn map: extracted from the annex to the Statement of Witness PRH256); exhibit 5D76 (Annotated version of Forensic Expert Summary Report, 8 March 2013); exhibit 5D77 (Annotated version of exhibit P19); exhibit 5D78 (Annotated version of exhibit P4); Gary Platt, T. 13 March 2017, pp 53-54, 58-59; exhibit P1923.2 (Annotated Slide 68 of Chronology PowerPoint).

⁸⁸⁹⁰ Second decision on agreed facts (Merhi), p. 2, disposition (ix); Witness PRH076, T. 14 October 2014, p. 21; Atef Majdalani, T. 29 April 2015, pp 30-31.

⁸⁸⁹¹ Witness PRH009, T. 11 October 2016, p. 66; Witness PRH256, T. 22 October 2014, pp 54-57; exhibit 5D75 (Annotated version of 1DT5-0001 (Map Place de l'Étoile 1)).

⁸⁸⁹² Witness PRH149, T. 3 June 2015, p. 97. See also Witness PRH076, T. 14 October 2014, p. 38; Amer Chehadeh, T. 16 October 2014, p. 20; Mohammed Dia, T. 17 October 2014, pp 8, 17.

⁸⁸⁹³ Witness PRH076, T. 14 October 2014, pp 39 (adding that they were rushing for the lunch reception at the palace), 70; Amer Chehadeh, T. 16 October 2014, p. 20; Witness PRH256, T. 22 October 2014, p. 19; Rachid Hammoud, T. 4 December 2014, pp 19-20.

⁸⁸⁹⁴ Witness PRH357, T. 2 June 2015, pp 37-39.

Convoy route to Crime Scene



14 February 2005

124

Exhibit P1923 (Gary Platt - Chronology PowerPoint presentation – 13 February 2005 to 16 February 2005), slide 124

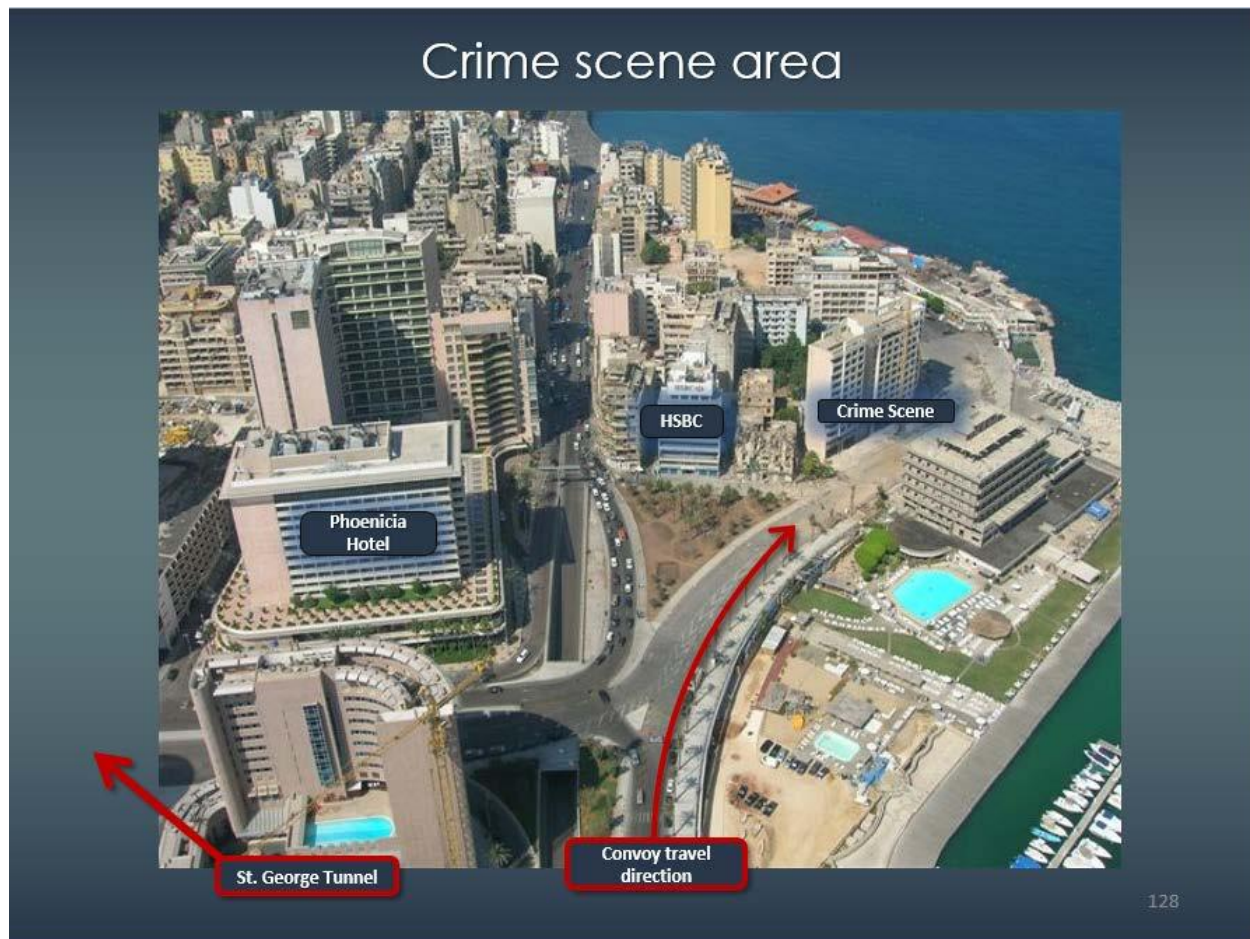


Exhibit P1923 (Gary Platt - Chronology PowerPoint presentation – 13 February 2005 to 16 February 2005), slide 128

4627. At 12:54:57, an HSBC CCTV camera captured Mr Hariri's convoy passing the HSBC bank, preceded by a white van entering the view about a minute earlier.⁸⁸⁹⁵ When the convoy approached the St Georges Hotel,⁸⁸⁹⁶ an old man was slowly driving a big yellow open-back lorry carrying a lot of metal.⁸⁸⁹⁷ The close protection officers told the man to move aside so that the

⁸⁸⁹⁵ Exhibit P5, paras 74, 76-77; Robyn Fraser, T. 23 January 2014, pp 18-20, 24-25, 50; exhibit P24 (Video excerpt from HSBC Bank CCTV footage); exhibit P26 (Still images from HSBC Bank CCTV footage); exhibit P27 (Still images from HSBC Bank CCTV footage); exhibit P28 (Still images from HSBC CCTV footage). *See also* exhibit P1923, slide 135; exhibit P20 (Still image from Phoenicia Hotel CCTV footage).

⁸⁸⁹⁶ The convoy passed in front of the St Georges Hotel at around 12:55. Exhibit P5, para. 169; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1193.

⁸⁸⁹⁷ Witness PRH357, T. 2 June 2015, pp 45-47; exhibit P116 (Photographs from annex to the UNIIC's Forensic Report Electronic data); Witness PRH149, T. 3 June 2015, pp 97-98; Witness PRH009, T. 13 October 2016, pp 17-18 (private session).

convoy could pass easily.⁸⁸⁹⁸ They concluded that the driver presented no danger to the convoy and the driver calmly drove to the right-hand side of the road and parked. Then, at approximately 12:55:05, the bomb went off.⁸⁸⁹⁹

(b) Network activity

4628. On the eve of the attack, at 19:59 on Sunday 13 February 2005, Mr Ayyash's personal mobile 170 activated a cell in the crime scene area.⁸⁹⁰⁰ According to Mr Platt, this is significant as this is the area where Mr Ayyash's attributed Red 741 and Green 300 were active the following day and where, otherwise—apart from his network activity—he was 'very rarely ... located'.⁸⁹⁰¹

4629. That same night, at 23:07, Mr Badreddine's Green 023 called Mr Ayyash's Green 300.⁸⁹⁰² Mr Platt commented that it was the penultimate Green call—the last one being shortly before the attack—and was crucial because 'the decision to ... proceed with the operation now has got to be made' and a number of Blue calls followed, in the early hours of 14 February 2005.⁸⁹⁰³

4630. Mr Platt stated that Blue call activity in the early hours of the morning occurred very rarely.⁸⁹⁰⁴ The Green call lasted only 16 seconds and, in Mr Platt's view, was either consistent with a possible decision-making process or with arranging a meeting, as there was a subsequent period of inactivity on Mr Ayyash's attributed mobiles.⁸⁹⁰⁵ The call by Green 023 occurred within three

⁸⁸⁹⁸ Witness PRH357, T. 2 June 2015, p. 45; Witness PRH009, T. 13 October 2016, pp 17-18 (private session).

⁸⁸⁹⁹ Witness PRH357, T. 2 June 2015, p. 46; Witness PRH009, T. 11 October 2016, p. 87 (private session); exhibit P317 (National Council of Scientific Geophysique report related to earthquake signals), pp 6, 16; exhibit P5, paras 78, 114, 169; exhibit P21 (Still image from ERN 10000050L (Phoenicia Hotel)); exhibit P24; exhibit P25 (Still images from HSBC CCTV footage), pp 45-47; exhibit P29 (Still image of exhibit P28); exhibit P30 (Still image of exhibit P28); exhibit P31 (Still image of exhibit P28); exhibit P32 (Still image of exhibit P28). *See also* exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1194; Faisal Salman, T. 8 January 2015, pp 56-57; Bassem El-Sabeh, T. 17 March 2015, p. 48; Gary Platt, T. 14 March 2017, p. 62; exhibit P1923, slide 137.

⁸⁹⁰⁰ At 19:59, mobile 170 activated BayView_A. This cell was adjacent to Riad_El_Soloh_C, which provided predicted best server coverage to the crime scene location. Exhibit P1259, p. 363; exhibit P663 (Statement of Andrew Fahey), annex 1, no. 69; exhibit P1122; Gary Platt, T. 9 March 2017, pp 91-92; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1125; exhibit P1923, slides 20-21.

⁸⁹⁰¹ Gary Platt, T. 9 March 2017, p. 92.

⁸⁹⁰² Exhibit P1259, p. 363; exhibit P1305, p. 5769; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1131; Gary Platt, T. 9 March 2017, p. 98. *See also* exhibit P1923, slide 28.

⁸⁹⁰³ Gary Platt, T. 9 March 2017, pp 98-100.

⁸⁹⁰⁴ Gary Platt, T. 9 March 2017, p. 99.

⁸⁹⁰⁵ Gary Platt, T. 9 March 2017, pp 98-99.

minutes of two subsequent calls from Mr Wafik Safa—the head of the central unit for liaison and coordination in Hezbollah⁸⁹⁰⁶—to Mr Badreddine’s mobile 944.⁸⁹⁰⁷

4631. There was substantial call activity in the early hours of Monday 14 February 2005. All of these calls occurred in south Beirut.⁸⁹⁰⁸ At 00:15, Blue 235 on the Sfeir_A cell⁸⁹⁰⁹ called Subject 6’s Blue 610 on the SFEIR3 cell. At 00:56, Mr Ayyash’s Blue 233 on the Hadath_C cell⁸⁹¹⁰ called Blue 610 on the MIKAEL3 cell.⁸⁹¹¹ At 01:03, Blue 610 on the SFEIR2 cell called Blue 233 on the Sfeir_A cell.⁸⁹¹² At 01:05, Blue 233 then contacted Blue 610, activating the Sfeir_A cell and the HADATH3 cell.⁸⁹¹³ Mr Platt thought that this set of calls was consistent with ‘a possible meeting being arranged and then taking place’.⁸⁹¹⁴

4632. Starting at 04:55, there were several call sequences involving Mr Ayyash’s Blue 233, Subject 6’s Blue 610, Subject 7’s Blue 324 and Subject 5’s Blue 585.⁸⁹¹⁵ All of these mobiles were in south Beirut.⁸⁹¹⁶

4633. At 10:51, Mr Ayyash’s Blue 233 contacted Blue 585 on the Mraijeh_A cell, in south Beirut.⁸⁹¹⁷

⁸⁹⁰⁶ Exhibit P2091 (Letter from Judge Said Mirza, Public Prosecutor at the Court of Cassation), p. 1.

⁸⁹⁰⁷ Exhibit P1305, p. 5769; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1130; Gary Platt, T. 9 March 2017, p. 100; *see also* exhibit P1923, slides 28-30.

⁸⁹⁰⁸ Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1141.

⁸⁹⁰⁹ Sfeir_A was north-east of the airport, exhibit P1122. An earlier call, at 23:22 on 13 February 2005, involved Blue 610 and Blue 324. Exhibit P1227, p. 21; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1132.

⁸⁹¹⁰ Hadath_C was in south Beirut, east of the airport. Exhibit P1122; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1127, 1141. *See also* exhibit P1923, slides 34-35.

⁸⁹¹¹ Exhibit P1259, p. 364; exhibit P1227, p. 22; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1141; exhibit P1923, slides 34-35. *See also* exhibit P1782, para. 1014; exhibit P1780, pp 30-31.

⁸⁹¹² Sfeir_A and SFEIR2 were north-east of the airport, *see* Exhibit P1122.

⁸⁹¹³ Exhibit P1259, p. 364; exhibit P1227, p. 22; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1141. *See also* Gary Platt, T. 13 March 2017, p. 12; exhibit P1923, slides 34-35.

⁸⁹¹⁴ Gary Platt, T. 13 March 2017, p. 13.

⁸⁹¹⁵ Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1142. *See also* exhibit P1927 (EPE snapshot related to exhibit P1923, slides 71, 77, 80); exhibit P1928 (EPE snapshot related to exhibit P1923, slides 71, 80).

⁸⁹¹⁶ Blue 610 and Blue 233 were in contact twice: at 04:55 (activating the MIKAEL2 cell and the Hazmiyeh_2_B cell) and 05:01 (activating the Sfeir_A cell and the MIKAEL2 cell). At 05:01, Blue 610 then contacted Blue 324, activating the SFEIR2 cell and the Borj_Brajneh_2_B cell. Blue 324 on the Borj_Brajneh_2_B cell then unsuccessfully tried to contact Blue 585 (cell unknown) at 05:05 and 05:07, At 05:10 and 08:34, Blue 610 on the Borj_Brajneh_2_B cell and Blue 324 were in contact twice. Exhibit P1227, p. 22; exhibit P1259, p. 364; exhibit P1225, p. 14; exhibit P1229, p. 17; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1143; Gary Platt, T. 13 March 2017, pp 13-14, 19; exhibit P1923, slides 39-42. *See also* exhibit P1782, para. 1014; exhibit P1780, p. 31.

⁸⁹¹⁷ Blue 233 activated the Tabet El Dahra_C, Exhibit P1259, p. 364; exhibit P1229, p. 17; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1151; exhibit P1923, slides 52-53; Gary Platt, T. 13 March 2017, pp 33-34. *See also* exhibit P1782, para. 1019; exhibit P1782, para. 1019.

4634. Following Mr Hariri's arrival at Parliament, at 11:00, Subject 8's Red 893 contacted Subject 6's Red 678, activating the CARACA3 cell and the CARLTO3 cell, respectively, both in the area of Quraitem Palace.⁸⁹¹⁸ At 11:01, Red 893 called Subject 9's Red 652, activating the CARACA3 cell and the MOVPIK1 cell, both in the area of Quraitem Palace.⁸⁹¹⁹ Mr Platt testified that these calls were consistent with coordination of their activities around Quraitem Palace after Mr Hariri departed and that they were located around Quraitem Palace for an operational reason.⁸⁹²⁰

4635. At 11:06 and 11:08, Blue 501 made two service provider calls from south Beirut.⁸⁹²¹ At 11:09 and 11:18, Blue 501 and Blue 585—which the Prosecution attributes to Subject 5—both in south Beirut, tried to contact Blue 324—that the Prosecution attributes to Subject 7. The calls were not connected.⁸⁹²² Mr Platt testified that the series of attempts to contact Blue 324 was 'to coordinate their movements together towards the crime scene'.⁸⁹²³

4636. Between 11:21 and 11:31, there was a series of Blue mobile calls in south Beirut. At 11:21, Blue 940 called Blue 324, activating the SFEIR2 cell and the Sfeir_A cell.⁸⁹²⁴ At 11:31, Blue 585 on the Sfeir_A cell attempted to call Blue 324, but did not connect.⁸⁹²⁵ At 11:31, Blue 585 called Blue 324 again. Both of them were using the Sfeir_A cell.⁸⁹²⁶

4637. At 11:33, Mr Ayyash's Red 741 on the ETOILE1 cell in the area of Parliament, contacted Subject 6's Red 678 on the CARLTO3 cell.⁸⁹²⁷ At 11:34 and 11:35, Red 678 in turn contacted

⁸⁹¹⁸ Exhibit P1198, p. 6; exhibit P1204, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1156. *See also* exhibit P1923, slides 58-59.

⁸⁹¹⁹ Exhibit P1198, p. 6; exhibit P1199, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1156. *See also* exhibit P1923, slides 58-59.

⁸⁹²⁰ Gary Platt, T. 13 March 2017, pp 43-44.

⁸⁹²¹ Blue 501 activated the Sfeir_B cell while making these calls. Exhibit P1237, p. 4. *See also* exhibit P1923, slide 60.

⁸⁹²² Blue 501 and Blue 585 were on the Sfeir_B and the Sfeir_A cell, respectively. Exhibit P1237, p. 4; exhibit P1229, p. 17; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1158; exhibit P1923, pp 60-61; Gary Platt, T. 13 March 2017, pp 45-46. *See also* exhibit P1782, para. 1024.

⁸⁹²³ Gary Platt, T. 13 March 2017, p. 45.

⁸⁹²⁴ Exhibit P1234, p. 6; exhibit P1225, p. 15; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1160; exhibit P1923, slide 61-62; Gary Platt, T. 13 March 2017, p. 46. Sfeir_A and SFEIR2 are north-east of the airport, in south Beirut.

⁸⁹²⁵ Exhibit P1229, p. 17; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1160; exhibit P1923, slide 65. *See also* exhibit P1782, para. 1024.

⁸⁹²⁶ Exhibit P1229, p. 17; exhibit P1225, p. 15; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1160; exhibit P1923, slides 65-66. *See also* exhibit P1782, para. 1024.

⁸⁹²⁷ Exhibit P1259, p. 364. CARLTO3 was just south of Quraitem Palace. Exhibit P1122; exhibit P1923, slide 67.

Subject 8's Red 893 and Subject 9's Red 652, activating the CONCOR2 cell⁸⁹²⁸ and the MOVPIK1 cell. Red 652, 678 and Red 893 were in the area of Quraitem Palace.⁸⁹²⁹ Mr Platt testified that, in his opinion, the call of Mr Ayyash's Red 741 to Subject 6's Red 678 was placed to coordinate the three others' move from their positions around Quraitem Palace to Parliament and the crime scene area.⁸⁹³⁰

4638. At 11:35, Mr Ayyash's Blue 233 contacted Blue 585, which was in the south Beirut area (on the Mar_Michael_C cell). Blue 233 was in the area of Parliament (on the Riad_El_Soloh_B cell).⁸⁹³¹ Immediately after this call, Blue 585—that the Prosecution attributes to Subject 5—tried to contact Blue 324—that the Prosecution attributes to Subject 7—at 11:35:43 and 11:35:51. The second call appeared to have connected. Both subjects were in the same area in south Beirut (on the Mar_Michael_C cell).⁸⁹³² Mr Platt testified that the call pattern and movement of the three users were consistent with those seen on Tuesday 8 February 2005 and that this sequence of calls was 'consistent with coordination, command and control'.⁸⁹³³

4639. At 11:47, Mr Ayyash's Blue 233 on the CoastRoad_C cell made a final call to Blue 585 on the Ras_Nabeh_A cell (central Beirut).⁸⁹³⁴ At 11:48, using the Ras_Nabeh_A cell, Blue 585 called Blue 324, but the call did not connect.⁸⁹³⁵ These were the last Blue calls until after the explosion; from this time onwards, all the principal subjects were using their Red and—in the case of Mr Ayyash—also his Green mobile, and the mobile activity was similar to that of 8 February

⁸⁹²⁸ CONCOR2 was just south-east of Quraitem Palace and adjacent to CARLTO3. Exhibit P1122; exhibit P1923, slide 69.

⁸⁹²⁹ Exhibit P1259, p. 364; exhibit P1204, p. 6; exhibit P1198, p. 6; exhibit P1199, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1161; Gary Platt, T. 13 March 2017, pp 44, 50. *See also* exhibit P1923, slides 65, 67, 69.

⁸⁹³⁰ Gary Platt, T. 13 March 2017, pp 50-51.

⁸⁹³¹ Exhibit P1229, p. 18; exhibit P1259, p. 364; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1162. *See also* exhibit P1923 (Gary Platt - Chronology PowerPoint), slides 70-71.

⁸⁹³² Exhibit P1229, p. 18; exhibit P1225, p. 15; Gary Platt, T. 13 March 2017, pp 59-60; T. 14 March 2017, p. 16; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1162. *See also* exhibit P1923, slides 70-71; exhibit P1928. According to Mr Platt's report, Blue 585 'contacted' Blue 324 at both times. However, Blue 324's call sequence table (exhibit P1225) shows that Blue 324 received a call from Blue 585 at 11:36:05 using the Mar_Michael_C cell. The Trial Chamber therefore concludes that only the second call connected to the cell.

⁸⁹³³ Gary Platt, T. 13 March 2017, pp 59-61; exhibit P1923, slides 70-71.

⁸⁹³⁴ Exhibit P1259, p. 364; exhibit P1229, p. 18; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1162; Gary Platt, T. 13 March 2017, pp 61-62, 73-74. *See also* exhibit P1923, slides 72-73, 76-77; exhibit P1926 (EPE snapshot related to exhibit P1923), slide 73.

⁸⁹³⁵ Exhibit P1229, p. 18; exhibit P1225, p. 15; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1162; Gary Platt, T. 13 March 2017, pp 74, 78. *See also* exhibit P1923, slides 76-77.

2005 and consistent with coordinating the operation.⁸⁹³⁶ After 11:47, Mr Ayyash's attributed mobiles moved immediately towards the crime scene area.⁸⁹³⁷

4640. Between 11:48 and 11:53, Mr Ayyash's Red 741 was in contact with Subject 8's Red 893, Subject 9's Red 652 and Subject 6's Red 678.⁸⁹³⁸ Subject 5's Red 636 was in contact with Subject 7's Red 946.⁸⁹³⁹ The usage of the PHENMB1 and ZOUKAK1⁸⁹⁴⁰ cells by both Mr Ayyash's Red 741 and Red 893 shows that they 'remained in the area between the crime scene and Parliament'.⁸⁹⁴¹ According to Mr Platt, the ZOUKAK1 cell was used on 8 February 2005 by those who had moved up in convoy and by Mr Ayyash's attributed mobile; there was the same pattern on 14 February 2005.⁸⁹⁴²

4641. The PHENMB1 portable relay cell mast was close to the exit road from the President Suleiman Frangieh tunnel and to the crime scene.⁸⁹⁴³ Subject 9's Red 652 and Subject 6's Red 678 were in the Parliament area, using the ETOILE3 and ETOILE2 cells.⁸⁹⁴⁴ Red 678's call to Mr Ayyash's Red 741 at 11:53 would be, in Mr Platt's opinion, consistent with Red 678 updating Red 741 'on the activities around Parliament'.⁸⁹⁴⁵ Subject 5's Red 636 and Subject 7's Red 946 were both in the Parliament area, on the SODECO3 and the RASNAB1 cells, respectively.⁸⁹⁴⁶

⁸⁹³⁶ Gary Platt, T. 13 March 2017, pp 74-76. *See also* Gary Platt, T. 14 March 2017, pp 16-17; exhibit P1923, slide 77; exhibit P1927.

⁸⁹³⁷ Gary Platt, T. 13 March 2017, p. 74.

⁸⁹³⁸ Exhibit P1259, p. 364; exhibit P1199, p. 6; exhibit P1204, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1164. *See also* exhibit P1923, slides 78-79.

⁸⁹³⁹ Exhibit P1203, p. 3; exhibit P1202, p. 4; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1164. *See also* exhibit P1923, slide 80.

⁸⁹⁴⁰ ZOUKAK1 covered the area between Parliament and the crime scene location, and was adjacent to ETOILE3. Exhibit P1123; exhibit P1930.

⁸⁹⁴¹ Exhibit P1259, p. 364; exhibit P1198, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1164. *See also* exhibit P1923, slide 78. For the 11:48 call, both Red 741—making the call—and Red 893—receiving it—activated PHENMB1 as the start cell and ZOUKAK1 as the end cell. Mr Ayyash's Red 741 activated ZOUKAK1 again at 11:49, when calling Red 652, and activated PHENMB1 again at 11:53, when in contact with Red 678. As to Subject 8's Red 893, its call at 11:48 was the only one 'away from the ETOILE cell site during the use of the Red Network over this period' (Gary Platt, T. 13 March 2017, pp 82-83).

⁸⁹⁴² Gary Platt, T. 13 March 2017, pp 83-84.

⁸⁹⁴³ Gary Platt, T. 13 March 2017, pp 63, 68, T. 14 March 2017, p. 23; exhibit P1923, slides 73, 75, 100. *See also* Gary Platt, T. 13 March 2017, pp 71-73—where Prosecution counsel responds to judicial questions as to the ZOUKAK1 and PHENMB1 cells.

⁸⁹⁴⁴ Exhibit P1199, p. 6; exhibit P1204, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1164.

⁸⁹⁴⁵ Gary Platt, T. 13 March 2017, p. 92; exhibit P1923, slide 83.

⁸⁹⁴⁶ Exhibit P1202, p. 4; exhibit P1203, p. 3; Gary Platt, T. 13 March 2017, p. 90. *See also* Gary Platt, T. 14 March 2017, p. 17; exhibit P1923, slide 80; exhibit P1927; exhibit P1928.

4642. Mr Platt testified that their movements were consistent with the movements of the Mitsubishi Canter through the tunnel to the crime scene area.⁸⁹⁴⁷ Mr Platt however conceded that the relevant call sequence tables did not show whether or not the users were ‘ahead, behind, or close to the Mitsubishi Canter’, keeping it in sight.⁸⁹⁴⁸ He also stated that, given the circumstances and the requirements of the operation, it was highly likely that those who were involved, especially the six principal subjects, would have been aware at this time that the attack was due to take place and that the Canter would be used in the attack.⁸⁹⁴⁹

4643. Mr Hariri left Parliament around 11:54. Immediately after Subject 6’s Red 678 contacted Mr Ayyash’s Red 741 at 11:53—Red 678 called Subject 9’s Red 652, at 11:54:31, both being in the Parliament area.⁸⁹⁵⁰ At 11:55, Red 652 was still in the Parliament area and called Red 893, which was in the same area.⁸⁹⁵¹ At 11:56, Red 678 called Red 652, both still in the Parliament area.⁸⁹⁵² Mr Platt concluded that the four Red mobile calls placed within a period of three minutes were possibly initiated by Mr Hariri’s movement from Parliament to the café.⁸⁹⁵³

4644. At 11:57, Subject 5’s Red 636 called Mr Ayyash’s Red 741, located in the area of the crime scene on the PHENMB1 cell. Subject 5’s Red 636 was south of the crime scene in the area of the Suleiman Frangieh tunnel, using the ZOUKAK2 cell at the start of the call and the PHENMB1 cell at the end of the call.⁸⁹⁵⁴ According to Mr Platt, based on the activated cells, Red 636’s movements would be consistent with the mobile travelling from the south northwards through the tunnel, in tandem with the Mitsubishi Canter van’s direction of travel.⁸⁹⁵⁵ Mr Platt also added that the mobile activity was again consistent with Subject 5’s Red 636 updating Mr Ayyash’s Red 741 upon his

⁸⁹⁴⁷ Gary Platt, T. 13 March 2017, pp 77-80. Mr Platt added that their movements were consistent with the users being in ‘any form of motorized transportation’. Gary Platt, T. 14 March 2017, p. 9.

⁸⁹⁴⁸ Gary Platt, T. 13 March 2017, p. 80, T. 14 March 2017, p. 9.

⁸⁹⁴⁹ Gary Platt, T. 14 March 2017, p. 10.

⁸⁹⁵⁰ Namely on the BACHOU3 and the ETOILE2 cell, respectively. Exhibit P1199, p. 6; exhibit P1204, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1166; Gary Platt, T. 13 March 2017, p. 92.

⁸⁹⁵¹ Namely on the BASTA1—with coverage south of Parliament—and the ETOILE1 cell, respectively. Exhibit P1198, p. 6; exhibit P1199, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1167; Gary Platt, T. 13 March 2017, pp 91-92.

⁸⁹⁵² The BACHOU2 cell and the ETOILE1 cell were activated. Exhibit P1199, p. 6; exhibit P1204, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1169.

⁸⁹⁵³ Gary Platt, T. 13 March 2017, p. 92. *See also* exhibit P1923, slides 82-87.

⁸⁹⁵⁴ Exhibit P1259, p. 364; exhibit P1203, p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1170; Gary Platt, T. 13 March 2017, p. 93, 14 March 2017, p. 6. *See also* exhibit P1923, slides 88, 96.

⁸⁹⁵⁵ Gary Platt, T. 13 March 2017, pp 93-94, T. 14 March 2017, pp 7, 17. *See also* exhibit P1923, slides 89-90; exhibit P1927.

arrival at the crime scene area.⁸⁹⁵⁶ Immediately after, Mr Ayyash's Green 300 and Mr Badreddine's Green 023 were used for the last time⁸⁹⁵⁷ when Green 300 called Green 023 at 11:58 for 14 seconds, connecting to the PHENMB1 and MRAICI1 cells.⁸⁹⁵⁸

4645. Although no shape file for the PHENMB1 cell was received into evidence, the electronic presentation of evidence software shows that the mast of this portable relay cell was within about 100 metres of the crime scene.⁸⁹⁵⁹ The shortest distance between the predicted best server coverage area of MRAICI1 and the crime scene was less than 30 metres. This is shown on the map below.



Map created by the Trial Chamber from electronic presentation of evidence, exhibit P592.1

⁸⁹⁵⁶ Gary Platt, T. 14 March 2017, p. 7.

⁸⁹⁵⁷ Exhibit P1259, p. 364; exhibit P1305, p. 5770; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1173; Gary Platt, T. 13 March 2017, pp 62, 93, T. 14 March 2017, p. 20. *See also* exhibit P1923, slides 72-73, 88, 97-98; exhibit P1926.

⁸⁹⁵⁸ Green 300 was on the MRAICI1 cell at the start of the call and on the PHENMB1 cell at the end of the call and Green 023 was on the ROUEIS3 cell at the start and the end of this call. Exhibit P1259, p. 364; exhibit P1305, p. 5770.

⁸⁹⁵⁹ This cell had a 150-metre radius coverage. Exhibit P777 (Annex 5 to Witness PRH707's statement), p. 5; exhibit 2D71 (Information regarding Alfa's relay station PHENMB1); exhibit P1112 (Expert report of John Edward Philips – Single user analysis, Suspects 4, 5, 6, 7, and 8), paras 4.2.5.11, 4.2.5.13.

4646. Around the time that Mr Hariri entered the Café *Place de l'Étoile*, there was a series of 11 Red network calls that lasted until 12:16. At 12:00 and 12:05, Subject 9's Red 652 called Subject 8's Red 893. Both were connecting to the ETOILE1 cell in the Parliament area.⁸⁹⁶⁰ Mr Platt stated that from this moment until Mr Hariri departed the area, Red 893 only used the ETOILE1 cell.⁸⁹⁶¹

4647. At 12:01, Subject 5's Red 636 called Subject 6's Red 678. Red 636 was on the PHENMB1 cell and Red 678 on the BACHOU2 cell.⁸⁹⁶² Red 636 then called Subject 9's Red 652 at 12:02 on the ZOUKAK4 cell, which provided predicted coverage to the crime scene and to that area.⁸⁹⁶³

4648. At 12:04 and 12:05, Mr Ayyash's Red 741 called Subject 7's Red 946. Both were on the ZOUKAK1 cell,⁸⁹⁶⁴ which offered coverage between the crime scene and Parliament.⁸⁹⁶⁵ At 12:09, Red 741, who was active on the ZOUKAK1 cell, was in contact with Subject 8's Red 893 located in the area of Parliament on the ETOILE1 cell.⁸⁹⁶⁶

4649. At 12:09, Subject 9's Red 652, also in the area of Parliament (on the ETOILE1 cell), called Mr Ayyash's Red 741. The latter was on the PHENBM1 cell at the time.⁸⁹⁶⁷ Mr Platt thought that these calls were consistent with Red 741 having a prominent role in the operation at this moment; and given the coverage offered by the cells, Red 893 and Red 652 could see Mr Hariri's movements, updating Red 741.⁸⁹⁶⁸ At 12:12, Subject 9's Red 652 on the BACHOU3 cell was in contact with Subject 5's Red 636 who was in the area of Parliament on the ETOILE2 cell.⁸⁹⁶⁹ At 12:13, Subject 8's Red 893 was contacted by Subject 6's Red 678, who was still in the area of

⁸⁹⁶⁰ Exhibit P1198, p. 6; exhibit P1199, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1175. Gary Platt, T. 14 March 2017, p. 23. *See also* exhibit P1923, slides 101, 102, 106.

⁸⁹⁶¹ Gary Platt, T. 14 March 2017, p. 25. *See also* exhibit P1923, p. 106.

⁸⁹⁶² Exhibit P1203, p. 3; exhibit P1204, p. 6; Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1175.

⁸⁹⁶³ Exhibit P1203, p. 4; exhibit P1199, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1175; Gary Platt, T. 14 March 2017, p. 40. *See also* exhibit P1930; exhibit P1930.1.

⁸⁹⁶⁴ Exhibit P1259, p. 364; exhibit P1202, p. 4; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1175; Gary Platt, T. 14 March 2017, pp 18, 25. *See also* exhibit P1928; exhibit P1923, slides 105, 107; exhibit P1930, showing the predicted server coverage of the cells ZOUKAK1 and ZOUKAK4 around the crime scene. ZOUKAK1 was adjacent to ETOILE3, *see* exhibit P1122.

⁸⁹⁶⁵ Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1175.

⁸⁹⁶⁶ Exhibit P1198, p. 6; exhibit P1259, p. 364; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1175. Gary Platt, T. 14 March 2017, pp 42-43. *See also* exhibit P1923, slides 108-109.

⁸⁹⁶⁷ Exhibit P1199, p. 6; exhibit P1259, p. 364; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1175. *See also* exhibit P1923, slide 110.

⁸⁹⁶⁸ Gary Platt, T. 14 March 2017, pp 41-42.

⁸⁹⁶⁹ Exhibit P1199, p. 6; exhibit P1203, p. 4; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1175. *See also* exhibit P1923, slide 111.

Parliament on the BACHOU1 cell.⁸⁹⁷⁰ At 12:16, Mr Ayyash's Red 741 on the ZOUKAK1 cell was in contact with Subject 8's Red 893. The latter was in the area of Parliament on the ETOILE1 cell.⁸⁹⁷¹ This was the last call Red 741 made for about 30 minutes.⁸⁹⁷²

4650. After 12:16, there was no further call activity among the subjects for nearly ten minutes.⁸⁹⁷³ In Mr Platt's opinion, there was nothing to trigger any movement or activity as Mr Hariri was still at the café.⁸⁹⁷⁴ At 12:26, Subject 9's Red 652 called Subject 6's Red 678, while both were in the Parliament area.⁸⁹⁷⁵ Communications among the Red network users then ceased for 17 minutes.⁸⁹⁷⁶

4651. At 12:43, Mr Ayyash's Red 741 was still between Parliament and the crime scene, activating the ZOUKAK1 cell. He called Subject 8's Red 893. The latter was still in the Parliament area on the ETOILE1 cell.⁸⁹⁷⁷

4652. Between 12:49:33 and 12:53:42, Red 741, Red 636, Red 678, Red 946, Red 893 and Red 652 were involved in the final seven calls of the Red network.⁸⁹⁷⁸ The two calls from Subject 8's Red 893 at 12:50:34 and 12:50:55 on the ETOILE1 cell were directed to Subject 7's Red 946 and Mr Ayyash's Red 741, respectively, both in the crime scene area.⁸⁹⁷⁹ These were Red 946's and Red 741's last calls.⁸⁹⁸⁰ Mr Platt plotted some of this information on a map.

⁸⁹⁷⁰ Exhibit P1198, p. 6; exhibit P1204, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1175.

⁸⁹⁷¹ Exhibit P1198, p. 6; exhibit P1259, p. 364; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1175; Gary Platt, T. 14 March 2017, p. 45. *See also* exhibit P1923, slides 108, 113.

⁸⁹⁷² Gary Platt, T. 14 March 2017, p. 45.

⁸⁹⁷³ Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1176.

⁸⁹⁷⁴ Gary Platt, T. 14 March 2017, p. 46. *See also* exhibit P1923, slides 115-116.

⁸⁹⁷⁵ The mobiles activated the BACHOU1 and the BNPI3 cells, respectively. Exhibit P1199, p. 6; exhibit P1204, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1178.

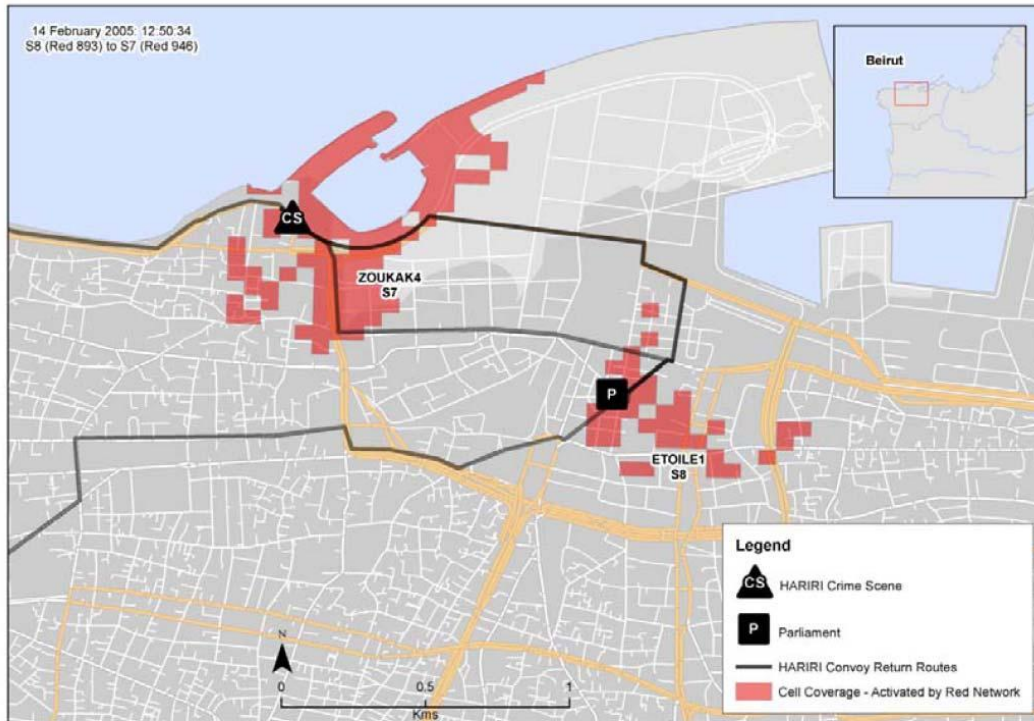
⁸⁹⁷⁶ Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1179.

⁸⁹⁷⁷ Exhibit P1259, p. 364; exhibit 1198, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1180. *See also* exhibit P1923, slides 117-118.

⁸⁹⁷⁸ Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1183; Gary Platt, T. 14 March 2017, pp 47-49. *See also* exhibit P1923, slides 117, 119, 125, 129-134.

⁸⁹⁷⁹ Red 946 and Red 741 were on the ZOUKAK4 and the ZOUKAK1 cell, respectively. Exhibit P1198, p. 6; exhibit P1202, p. 4; exhibit P1259, p. 364; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1184; Gary Platt, T. 14 March 2017, pp 12-13, 48-49, 56-59. *See also* exhibit P1928 exhibit P1923.6 (EPE snapshots related to exhibit P1923, slide 129).

⁸⁹⁸⁰ Gary Platt, T. 14 March 2017, pp 13, 40; exhibit P1197, p. 5; exhibit P1202, p. 4.



Map 151: Red 893 [S8] calls Red 946 [S7], Parliament and HARIRI Crime Scene, 14 February 2005 (12:50:34)

Exhibit P1783 (expert report of Gary Platt – Chronology), p. 397

4653. Mr Platt thought that the call at 12:50:34 was consistent with Subject 8's Red 893, who could have seen Mr Hariri departing, informing Subject 7's Red 946 of Mr Hariri's movement and alerting the latter that the Mitsubishi Canter had to move towards the crime scene.⁸⁹⁸¹

4654. At 12:51:32, Subject 8's Red 893 on the ETOILE1 cell contacted Subject 9's Red 652, which then contacted Subject 5's Red 636 at 12:52:02. Red 652 and Red 636 were both in the area of Parliament (both on the BACHOU3 cell).⁸⁹⁸² This was Red 636's last call.⁸⁹⁸³ Between 12:52:36

⁸⁹⁸¹ Gary Platt, T. 14 March 2017, pp 18, 48, 56-58, T. 5 April 2017, p. 43.

⁸⁹⁸² Exhibit P1198, p. 6; exhibit P1199, p. 6; exhibit P1203, p. 4; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1187; Gary Platt, T. 14 March 2017, pp 48-49, 58-59.

⁸⁹⁸³ Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1188.

and 12:53:17, a white van was seen passing through the CCTV footage of the HSBC bank.⁸⁹⁸⁴ It was driving at a very slow speed.⁸⁹⁸⁵

4655. At 12:52:09, Subject 8's Red 893 on the ETOILE1 cell contacted Subject 6's Red 678 who was on the BNPI3 cell.⁸⁹⁸⁶ The final Red network call occurred at 12:53:42, when Subject 9's Red 652 contacted Subject 6's Red 678. Both of these mobiles were in the area of Parliament.⁸⁹⁸⁷

D. Submissions

1. Prosecution

4656. The Prosecution submits that the networks were involved in 58 days of surveillance of Mr Hariri, including 19 days of mobile surveillance, between Wednesday 20 October 2004 and Monday 14 February 2005.⁸⁹⁸⁸ From 20 October to Sunday 19 December 2004, low-level preliminary surveillance took place.⁸⁹⁸⁹

4657. Daily, frequent surveillance began on Tuesday 21 December 2004 and lasted until Saturday 8 January 2005. It came to a halt on Saturday 1 January 2005, when Mr Hariri left Lebanon, and resumed upon his return on Friday 7 January 2005.⁸⁹⁹⁰ Surveillance during this period enabled the observation of Mr Hariri's regular routes to assess suitable locations for the assassination as well as observation of Mr Hariri's security team to learn their movements and behaviours.⁸⁹⁹¹ Surveillance was reduced to 'negligible levels' between Sunday 9 and Wednesday 26 January, but

⁸⁹⁸⁴ Exhibit P5, paras 74, 76; exhibit P22 (Still image from the video-recording); exhibit P23 (Marked image of an HSBC camera); exhibit P24; Robyn Fraser, T. 22 January 2014, pp 110-111. Ms Fraser testified that a video clip extracted from camera 15 of the HSBC bank covered a period between 12:52:36 until the time of the explosion. Robyn Fraser, T. 23 January 2014, pp 4-8.

⁸⁹⁸⁵ Exhibit P5, para. 74; Robyn Fraser, T. 23 January 2014, pp 5-7. *See also* Gary Platt, T. 14 March 2017, p. 10.

⁸⁹⁸⁶ Exhibit P1198, p. 6; exhibit P1204, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1189; Gary Platt, T. 14 March 2017, pp 58-59.

⁸⁹⁸⁷ Namely, the BACHOU3 and the BNPI3 cells, respectively. Exhibit P1199, p. 5; exhibit P1204, p. 6; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1190.

⁸⁹⁸⁸ Prosecution final trial brief, para. 958; Prosecution closing submissions, T. 11 September 2018, p. 32.

⁸⁹⁸⁹ Prosecution final trial brief, paras 668, 677-679; Prosecution closing submissions, T. 13 September 2018, p. 107.

⁸⁹⁹⁰ Prosecution final trial brief, paras 694-695, 697, 712, 715.

⁸⁹⁹¹ Prosecution final trial brief, para. 712.

became regular and frequent again from 27 January until 13 February.⁸⁹⁹² Surveillance centred on areas of interest for Mr Hariri, such as Quraitem Palace, Parliament and the airport.⁸⁹⁹³

4658. Further, relevant network activity on days when Mr Hariri was abroad was virtually non-existent.⁸⁹⁹⁴ The Prosecution submits that the regular use of Red mobiles to coordinate the suicide bomber's movements to that of Mr Hariri 'marked a decision to begin the final weeks of surveillance that would leave an obvious forensic trail to the Attack'.⁸⁹⁹⁵

4659. Beyond surveillance, the Prosecution outlines additional attack preparations by the networks. For example, the handsets and SIM cards that would later be used in Red mobiles were purchased from cell shops in Tripoli in late December/early January by a network user.⁸⁹⁹⁶ The Prosecution further submits that the attack was rehearsed on Tuesday 8 February 2005 because Mr Hariri attended a parliamentary session on that day, as on Monday 14 February 2005, and because Blue and Red mobile activity patterns on Monday 14 February replicated network activity patterns on 8 February.⁸⁹⁹⁷

4660. Red network activity began in the morning of Monday 14 February 2005 with cell activations around Quraitem Palace.⁸⁹⁹⁸ The Prosecution submits that the Red network was involved in surveillance around Parliament, when Mr Hariri was there, and café *Place de l'Étoile*, which he was expected to visit after the parliamentary session.⁸⁹⁹⁹ Approximately three minutes after he exited Parliament, the Canter was recorded on CCTV traveling through the President Suleiman Frangieh Tunnel.⁹⁰⁰⁰ The Prosecution argues that the Canter's location coincides with Red mobile activity in that area.⁹⁰⁰¹ The Prosecution further submits that calls on the Red and

⁸⁹⁹² Prosecution final trial brief, paras 715, 803, 809, 889, 891-892, 904-908.

⁸⁹⁹³ Prosecution final trial brief, paras 679, 906, 949-957; Prosecution closing submissions, T. 11 September 2018, p. 89.

⁸⁹⁹⁴ Prosecution final trial brief, paras 681, 715, 900 (b); Prosecution closing submissions, T. 13 September 2018, p. 107.

⁸⁹⁹⁵ Prosecution final trial brief, paras 889, 897.

⁸⁹⁹⁶ Prosecution final trial brief, paras 369, 371.

⁸⁹⁹⁷ Prosecution final trial brief, para. 948; Prosecution closing submissions, T. 14 September 2018, p. 29.

⁸⁹⁹⁸ Prosecution final trial brief, para. 980.

⁸⁹⁹⁹ Prosecution final trial brief, paras 981, 985-986.

⁹⁰⁰⁰ Prosecution final trial brief, para. 987; Prosecution closing submissions, T. 13 September 2018, p. 95.

⁹⁰⁰¹ Prosecution final trial brief, para. 988; Prosecution closing submissions, T. 13 September 2018, p. 96.

Green networks at that time are indicative of an update being given to Mr Badreddine of the van's arrival at the eventual crime scene.⁹⁰⁰²

4661. The Red network continued to be active around the café, near the tunnel where the Canter was waiting and in the crime scene area.⁹⁰⁰³ Once Mr Hariri and his security convoy left *Place de l'Étoile*, a call was placed between a Red mobile at *Place de l'Étoile* and a Red mobile accompanying the van, to ensure that the Canter left immediately.⁹⁰⁰⁴ A flurry of Red network calls were made, which the Prosecution submits 'telegraphed Hariri's direction of travel'.⁹⁰⁰⁵ CCTV captured the Canter moving slowly in the direction of the crime scene between 12:51 and 12:53, and Mr Hariri's convoy passing at 12:54.⁹⁰⁰⁶ The Canter exploded at 12:55, 'within three minutes from the last Red call'.⁹⁰⁰⁷

2. Defence

4662. The Ayyash Defence submits that Mr Platt's chronology report, exhibit P1783, should not be given any weight regarding the alleged surveillance of Mr Hariri by network mobiles.⁹⁰⁰⁸ The combination of call sequence tables made from unreliable data from Alfa and Touch with speculation around the purpose of content-less calls renders the report of minimal assistance.⁹⁰⁰⁹ Mr Platt looked at 'which cells may offer coverage 500 or 1,000 metres away, without explaining how surveillance can be accomplished at a distance of 1,000 metres'.⁹⁰¹⁰

4663. The Merhi Defence submits that Mr Philips was clear that the Green mobile the Prosecutor attributed to Mr Merhi was excluded and isolated from the alleged surveillance of Mr Hariri during the set-up phase—from Tuesday 18 to Wednesday 26 January 2005—and the execution phase—Thursday 27 January to Monday 14 February 2005.⁹⁰¹¹

⁹⁰⁰² Prosecution final trial brief, para. 991; Prosecution closing submissions, T. 13 September 2018, pp 96-97.

⁹⁰⁰³ Prosecution final trial brief, paras 994-996.

⁹⁰⁰⁴ Prosecution final trial brief, para. 997; Prosecution closing submissions, T. 13 September 2018, p. 101.

⁹⁰⁰⁵ Prosecution final trial brief, paras 998-1001.

⁹⁰⁰⁶ Prosecution final trial brief, paras 1002-1003; Prosecution closing submissions, T. 13 September 2018, pp 102, 105.

⁹⁰⁰⁷ Prosecution final trial brief, paras 1003-1004; Prosecution closing submissions, T. 13 September 2018, p. 106. The explosion actually occurred within one minute and 30 seconds from the beginning of the last Red network call, and within 50 seconds from the end of that call.

⁹⁰⁰⁸ Ayyash Defence final trial brief, para. 333; Ayyash Defence closing submissions, T. 17 September 2018, p. 77.

⁹⁰⁰⁹ Ayyash Defence final trial brief, para. 334.

⁹⁰¹⁰ Ayyash Defence final trial brief, paras 335-336.

⁹⁰¹¹ Merhi Defence final trial brief, para. 374; Merhi Defence closing submissions, T. 18 September 2018, p. 69.

4664. Further, the Prosecution failed to connect a mobile attributed to Mr Merhi and any locations of interest, such as those where the surveillance of Mr Hariri took place or the crime scene.⁹⁰¹²

E. Findings

4665. The Trial Chamber has carefully reviewed the vast amount of evidence it received in relation to the network activities from September 2004 through to Monday 14 February 2005. The first issue is the roles each of the networks may have had in observing Mr Hariri. The second is whether these roles formed part of a common operation. To determine these the Trial Chamber must examine in full detail the surveillance alleged.

1. The networks

4666. The Trial Chamber received extensive evidence of four colour-coded mobile networks, Red, Blue, Yellow and Green, that communicated almost exclusively in the networks.

4667. There is no direct evidence that the users of the network mobiles were engaged in surveillance of Mr Hariri. The evidence is circumstantial, consisting only of call data and cell site records showing the cell activations—that reveal the calling and cell siting patterns of the network mobiles—and matching these with Mr Hariri’s provable known movements. When the two correspond, patterns emerge from which it can be concluded the locations of network mobiles and Mr Hariri coincided in a manner meaning either that they were following or observing him or his security detail.

4668. The Red, Blue and Green networks operated completely covertly. Yellow network mobiles swapped handsets between the SIM cards, including between three Blue network mobiles and on Mr Ayyash’s personal mobiles 165 and 170. The Blue mobiles operated as a covert network and a core of six operated covertly from some time in December 2004 until Monday 14 February 2005. They communicated almost exclusively with each other.

4669. The six Red network mobiles were indisputably involved in Mr Hariri’s assassination on Monday 14 February 2005. They were present activating cells that corresponded with Mr Hariri’s movements from Quraitem Palace to the Parliament, the crime scene area and the area between it

⁹⁰¹² Merhi Defence final trial brief, para. 382; Merhi Defence closing submissions, T. 18 September 2018, pp 68-69.

and the Parliament. Significantly, between 12:50:34 and 12:53:42, Mr Ayyash's Red 741, Red 636, Red 678, Red 946, Red 893 and Red 652 were involved in the final seven calls of the Red network. The explosion that killed Mr Hariri and others occurred at 12:55:05. After the explosion, the Red network was never used again. During the last two hours before the attack, 33 calls were made between the six Red mobiles.

4670. While clear direct evidence that they were in contact with the Mitsubishi Canter or the suicide bomber is lacking, they were active in the area of Quraitem Palace in the morning and then moved to the Parliament and crime scene area. Their high forensic visibility—meaning that they were easily discoverable in an investigatory cell dump looking for mobiles near to the crime scene, Parliament and Quraitem Palace on the day of the attack—and especially with their closure just before the assassination, made their discovery inevitable. And this indeed occurred. This leaves no room for doubt that the Red mobiles had a significant role in the attack. It is the only reasonable inference available from the totality of the evidence.

4671. The days of use of the Green, Blue and Red networks largely overlapped, and between Friday 14 January and Monday 14 February 2005, the Red mobiles were active on 11 days, the Green mobiles on 21 days and the Blue mobiles on all 31 days. It is clear from the patterns of cell activations and the sequences of some calls between network users that the four networks were interconnected and coordinated with each other.

4672. The role of the Red network mobiles in the assassination is obvious. To ascertain the role of the other networks, and whether they were engaged in surveillance of Mr Hariri, the Trial Chamber has had to work backwards from Monday 14 February. To do this, it had to examine the Red network's cell activations and calls on the other days in January and February 2005 and any correlation with that of the other networks and Mr Hariri's known movements.

4673. The Prosecution alleged both static and mobile surveillance of Mr Hariri. The limitations of the Prosecution's telecommunications evidence are evident in analysing the static surveillance alleged, and specifically in matching cell activations with the other evidence of Mr Hariri's movements. For example, the presence of Blue mobiles in the general area of Quraitem Palace—even the repeated presence—may be difficult to connect to a deliberate surveillance operation, either static or mobile.

4674. The cell mast activations of the mobiles used by Mr Hariri's security detail prove his movements; his detail was always with him. Other evidence such as photographs and media reporting also corroborates Mr Hariri's visits to various locations. Additionally, the Trial Chamber received ample evidence from his staff, and palace documents such as its visitor's logbook, and of media releases, of his presence at Quraitem Palace and his absences from Beirut and Lebanon, to prove where Mr Hariri was at all relevant times. This evidence effectively proves Mr Hariri's movements between Wednesday 20 October 2004 and Monday 14 February 2005.

4675. The Trial Chamber has also found that the cell site evidence of mobiles connecting to cells is probative of the *general* area where the mobile was at the time. In this regard, the Trial Chamber emphasises that relying only on the telecommunications evidence—and without any more specific evidence about a mobile's location, such as GPS—can only lead to the conclusion that a mobile connected to a cell which places it in a predicted best server coverage area.

4676. The Trial Chamber has accordingly factored in the limitations of cell site evidence in determining where a mobile actually was when connecting to a cell. This includes that cell coverage can overlap, meaning that a mobile could be physically located in the coverage area of a cell neighbouring that to which it is connecting. As an example, and as a further complication in relation to the surveillance evidence, some relevant locations in Beirut are fairly close, such as Quraitem Palace and Mr Marwan Hamade's residence, and the crime scene and the Parliament. This means that a mobile that is ostensibly connecting to a cell providing predicted best server coverage to one of these locations, was actually in a neighbouring cell when it made the call. The networks maps show areas of scattered coverage outside the main cell coverage areas that further complicate this analysis.

4677. Generally, however, the cell site evidence is sufficiently probative for the Trial Chamber to discern patterns of cell connections from which it can conclude that surveillance was occurring. The patterns are all important here, for it is the patterns of cell activations, calls and mobile movements in combination with Mr Hariri's own movements that can determine whether these are beyond coincidence.

4678. The Trial Chamber has analysed both the static and mobile surveillance alleged. It has examined the evidence of each alleged incidence and in the light of the evidence of the networks and their connections.

2. The surveillance alleged

4679. The Prosecutor, in the amended consolidated indictment, pleaded that ‘observations’ of Mr Hariri occurred on ten days between Wednesday 20 October and Wednesday 10 November 2004.⁹⁰¹³

4680. Further, he alleged that surveillance occurred on at least 15 days between Thursday 11 November 2004 and Monday 14 February 2005—in particular on 11 November 2004, 1, 7, 14, 20, 28 and 31 January 2005, and on 3, 4, 7, 8, 9, 10, 11 and 12 February 2005.⁹⁰¹⁴

4681. According to the Prosecution’s final trial brief—which largely relies on Mr Platt’s evidence—between ‘the commencement of preliminary surveillance on 20 October 2004 and the Attack on 14 February 2005, there were a total of 58 days of surveillance, including 19 days of mobile surveillance’.⁹⁰¹⁵

4682. The limitations of the Prosecution’s telecommunications evidence, as noted above, are evident in analysing the static surveillance alleged. For example, the presence of network mobiles in the general ‘area’ or ‘vicinity’ of Quraitem Palace, in the sense of connecting to cells providing coverage up to 500 metres or a kilometre away—even their repeated presence—may be difficult to connect to *deliberate* static surveillance operations. The Trial Chamber has also factored in that a mobile that activated one of these cells providing coverage near the palace may not have been connecting to the cell providing the predicted best server coverage to where it was, but rather to a neighbouring cell that provided coverage near the palace. This would have placed it further away from the general ‘area’ or ‘vicinity’ of Quraitem Palace, or perhaps closer to it.

⁹⁰¹³ Amended consolidated indictment, para. 21.

⁹⁰¹⁴ Amended consolidated indictment, para. 22.

⁹⁰¹⁵ Prosecution final trial brief, para. 958.

3. Surveillance in general

4683. Surveillance comes in different forms. It is a much broader concept than merely keeping constant visual contact with a target. To ensure covertness, visual contact may be limited. Surveillance may be mobile, or static or electronic, or a combination.

4684. Mobile surveillance does not always require those conducting surveillance to closely follow the target. It may involve teams who switch roles. It could include different vehicles, cars, motorbikes and vans following a target, simultaneously or at different times. Static surveillance could likewise involve stationing different people in strategic positions that allow observation at different places and from different vantage points. Surveillance may also include reconnaissance of the target, their patterns of conduct and habits, including areas they frequent. It may be directed at finding out how the target's security system or detail works.

4685. Surveillance also has different objectives, depending upon who is doing it. Although the surveillance objectives of law enforcement and intelligence agencies differ from those involved in criminal enterprises, they might employ similar methodologies. Typical aims of law enforcement or intelligence surveillance are to track someone to ensure that the individual does not leave an area, such as a country; to observe (potential) criminal conduct; to determine if someone is a wanted person accused of criminality (for example, in an international context, a war crimes suspect). Law enforcement might also employ deterrent surveillance, to warn someone that they are under observation. Criminals, on the other hand, might conduct surveillance to familiarise themselves with someone's movements in order to target them for a crime, such as a robbery or a murder.

4686. The surveillance alleged here is of the latter kind and its purpose was to observe and follow the target to gather as much information as possible about his movements and behaviour, in order to commit a crime. To assassinate someone as heavily protected as Mr Hariri was, a great deal of information would have been needed about his habits and, crucially, the habits of those who protected him; his security detail and convoy included his private security team and the ISF personnel assigned to protect him as a former prime minister.

4687. Lebanon is not a large country and Mr Hariri was a very prominent public figure. It was a matter of common knowledge that he travelled around Lebanon in a convoy equipped with

jamming devices. It was also well known that he had residences in Beirut, Faqra and Al-Naameh. Many people would have seen his convoy travel at speed between these residences and other places. In this sense, he could have been seen as an easy target on which to mount surveillance. Nonetheless, to ensure the execution of a successful operation to murder him, it was necessary to obtain as much technical information as possible on his movements and habits and those of his security detail. A failed attempt could have been the last one.

4688. The Trial Chamber received cogent evidence that Lebanese state agencies including the ISF had Mr Hariri under surveillance. Why the ISF considered it necessary to keep the former prime minister under surveillance was unexplained. Members of his security detail also described motorbikes following his convoy and unknown people with binoculars on rooftops watching him. Mr Hariri also thought that his telephone lines at Quraitem Palace were monitored. He sometimes sought to convey messages to those he thought were monitoring his communications.

4. Mobile surveillance

4689. The Trial Chamber has identified the following fourteen specific instances of network activity that coincided with Mr Hariri's proven movements. These are:

- **Thursday 11 November 2004: trip to the airport from Quraitem Palace**

4690. On Thursday 11 November 2004, Mr Hariri was at Quraitem Palace before he flew to Saudi Arabia. Two Blue network mobiles—Blue 585 and Blue 324—after being in contact nine times in the area of Quraitem Palace while Mr Hariri was there—travelled to Beirut International Airport area at approximately the same time as Mr Hariri's security detail moved there.

- **Tuesday 21 December 2004: evening meeting with Mr Hassan Nasrallah, in Haret Hreik, Dahyieh**

4691. On Tuesday 21 December 2004, Mr Hariri was at Quraitem Palace receiving visitors. In the afternoon, two Blue network mobile users were in the area. In the evening while Mr Hariri was there, Blue and Yellow network mobiles connected to cells near Quraitem Palace. Mr Hariri then travelled to the area of the Hezbollah's General Secretariat, in Haret Hreik, Dahyieh, for an evening meeting with Mr Nasrallah between from 21:40, arriving back at the palace by 00:25.

4692. Blue, Yellow and Green mobiles, including Mr Ayyash's Yellow 294 and Green 300 connected to cells providing coverage to the Hezbollah headquarters. They remained in or were in the area after the meeting. Coinciding with Mr Hariri's trip home, they then activated cells in the area of Quraitem Palace, within the period of Mr Hariri's security convoy travel back.

- **Monday 27, Thursday 30, Friday 31 December 2004 and Saturday 1 January 2005: trips to or from Mr Hariri's Faqra Villa**

4693. After spending the early morning of Monday 27 December 2004 at his Faqra Villa Mr Hariri returned to Quraitem Palace. In the morning, multiple Blue and Yellow network calls connected to cells near Faqra Villa or in the Faraya area, and later to cells providing coverage along the route from Faqra Villa to Quraitem Palace, in Beirut. This coincided with the time of travel of Mr Hariri's convoy from Faqra villa to Quraitem Palace.

4694. Mr Hariri travelled to his Faqra Villa on Wednesday 29 December and returned to Quraitem Palace the following day. On Thursday 30 December 2004, in the afternoon, multiple Blue network calls connected to cells near Faqra Villa or in the Faraya area and to cells providing coverage along the route from Faqra Villa to Quraitem Palace. This was at the same time as Mr Hariri's convoy travelled between the two. In particular, at the same or the approximate same time, Blue mobiles activated the same cells or cells in the same areas activated by the security detail along that route.

4695. On Friday 31 December 2004, in the afternoon, Mr Hariri's convoy travelled from Beirut to Faqra Villa. At the same time Blue mobiles and one Yellow mobile activated cells on the route between Beirut and the Faraya area. The movement of certain Blue mobiles, initially located either in the area of Quraitem Palace, along the coastal road or at the Zouk-Mosbeh area, was consistent with that of the security detail. These mobiles reached the Faraya area—as they activated cells there—at around the same time as Mr Hariri's security detail. Mr Hariri stayed there overnight.

4696. On Saturday 1 January 2005, in the morning Mr Hariri travelled back to Beirut. While he did, Blue network calls connected to cells in the Faraya area and to cells providing coverage along the route from Faqra Villa to Quraitem Palace. This was where users of network mobiles, in Mr Platt's opinion, were located in anticipation of Mr Hariri's journey back to Beirut. Along the route between Faqra Villa and Mosbeh, one Blue mobile activated similar cells to the security detail.

- **29 January 2005: trip to Mr Marwan Hamade's residence**

4697. On Saturday 29 January 2005, three Blue network mobiles were active in the Quraitem Palace area when Mr Hariri was there, before he left to visit Mr Hamade's residence. These were Blue 585, Blue 324 and Blue 817.

4698. A few minutes before the visit—and then again after—his security detail activated cells close to Mr Hamade's residence, one of these network mobiles, Blue 324, activated cells near Mr Hamade's residence. This included the cell activated by the security detail itself, namely, Riviera_A. After a short while, during Mr Hariri's less than thirty-minute visit to Mr Hamade, Blue 817 activated MRAICI1 near Mr Hamade's residence.

4699. After Mr Hariri's return to Quraitem Palace, or around that time, there was no longer activity by the Blue mobiles around the area of Mr Hamade's address.

4700. The Trial Chamber notes that the analysis here is complicated because the cells providing coverage to Quraitem Palace and Mr Hamade's residence are in the same general area.

4701. Mr Platt's report did not address this particular instance of mobile surveillance—or any of Mr Hariri's visits to Mr Hamade—and it is not pleaded in the amended consolidated indictment. Mr Platt's report described where the three Blue mobiles were active, generally—during a large part of the day—as those of Quraitem Palace, the crime scene or west Beirut. He explained that Mr Hariri's regular visits to Mr Hamade came to light only after Mr Hamade had testified in November 2014. Therefore, the analysis of the security detail's activity to that effect—and the following analysis of whether the network mobiles was consistent with it—was done only after completing the initial report.⁹⁰¹⁶

4702. The Trial Chamber also notes that certain cells activated by the Blue mobiles involved in mobile surveillance, including the cell activated by the security detail after reaching Mr Hamade's residence, are defined, in Mr Platt's report, as in the area of Quraitem Palace. Other cells they activated were not.

⁹⁰¹⁶ Gary Platt, T. 7 February 2017, pp 83-84.

- **29 January 2005: trip to villa at Al-Naameh villa**

4703. In the afternoon of Saturday 29 January 2005, three Blue mobiles—Blue 585, Subject 6's Blue 610 and Blue 864—activated cells first in the Quraitem Palace area, and then to the south, in the area of Beirut International Airport.

4704. This coincided with the time and direction of travel of Mr Hariri's security detail from Quraitem Palace to Naameh Villa south of Beirut. Further, Blue 610 moved south of the airport, mid-way between Beirut and Saida, activating a cell providing coverage close to the villa within minutes of Mr Hariri's potential arrival there. Blue 610 continued moving further south past Naameh Villa.

- **Monday 31 January 2005: trip to the Higher Shiite Council from Quraitem Palace and back to Quraitem Palace**

4705. In the morning of 31 January 2005, multiple Blue, Green and Red network calls connected to cells in the Quraitem Palace area, the Parliament area and the area of the Higher Shiite Council. This included a burst of Red network calls at the time of Mr Hariri's arrival, and departure from the Higher Shiite Council.

4706. Blue 817 was already in the Higher Shiite Council area approximately when Mr Hariri left Quraitem Palace and—around the time of Mr Hariri's arrival there—contacted Mr Ayyash's Blue 233 from there. A short while later, other Red mobiles, including Mr Ayyash's Red 741 and Subject 6's Red 678, also moved into the Higher Shiite Council area from either the Parliament or the Quraitem Palace areas, where they had activated cells. During Mr Hariri's security detail's journey back to Quraitem Palace, Mr Ayyash's mobiles and Subject 6's Red 678 were active along the northern route taken by the convoy.

- **Saturday 3 February 2005: trip from St Georges Marina to Quraitem Palace**

4707. On Thursday 3 February 2005, multiple Blue and Red network calls activated cells in the area of St Georges Marina, starting more than an hour before Mr Hariri arrived there to have lunch with Lebanon's deputy prime minister. This continued until after Mr Hariri's departure.

4708. In particular, Mr Ayyash's Red 741, Subject 8's Red 893 and Subject 7's Red 946 were involved in a burst of calls around the approximate time of Mr Hariri's arrival. Mr Ayyash's and Mr Badreddine's Green mobiles also activated cells in the St Georges Marina area. The other three Red mobiles activated cells in the Quraitem Palace area.

- **Sunday 4 February 2005: trips to Mr Hamade's residence and to the airport**

4709. On Friday 4 February 2005, after midday, Blue 324 activated cells relatively close Mr Hamade's residence both immediately before the first security detail call from that area and then during Mr Hariri's half hour visit. Blue 585, with which Blue 324 was in contact, activated cells in the Quraitem Palace area, including around the approximate time of Mr Hariri's return.

4710. On the same day, in the afternoon, after activating cells in the area of Quraitem Palace some minutes after Mr Hariri had left it, two Blue network mobiles—Blue 324 and Blue 585—activated cells southwards in the direction of the Beirut International Airport. This was around the same time as the Mr Hariri's security detail travelled there to take Mr Hariri to the airport to travel to Bahrain. Blue 324 then activated a cell in airport area at the same time as the first call by Mr Hariri's security detail. It was to contact a third Blue network mobile—Subject 6's Blue 610—which, within four minutes also activated a cell in the airport area.

- **Monday 7 February 2005: trip from airport to Quraitem Palace**

4711. Blue network activity around the Beirut International Airport started around four hours before the arrival of Mr Hariri's flight into Beirut, returning from his trip to Bahrain and then Paris. While his security detail activated cells in the airport area awaiting Mr Hariri's arrival, a series of Blue Network calls connected to cells there.

4712. Around when the security travelled back to Quraitem Palace, all four Blue network mobiles, which until then were active in the airport area—including Mr Ayyash's Blue 233—activated cells either between the airport and the Quraitem Palace areas or in the Quraitem Palace area.

- **Tuesday 8 February 2005: trip from Quraitem Palace to Parliament**

4713. On Tuesday 8 February 2005, approximately around the time of Mr Hariri's departure from Quraitem Palace to attend a parliamentary session, three Blue network mobiles were in contact with each other, activating cells in the Quraitem Palace area. Around when his security detail first connected to a cell in the Parliament area, those three mobiles also started activating cells there.

4714. In between, one had connected to a cell along the internal route to the Parliament that the convoy used; the other two Blue mobiles connected to cells along the costal route. Mr Ayyash's Blue 233 had already activated a cell near the Parliament some minutes before the security detail's first call there.

4715. Around the time when Mr Hariri was at the Parliament, the six main Red network mobiles connected to cells in the area. And around the time he returned to Quraitem Palace, Red mobiles activated cells along the coastal road from the Parliament to Quraitem Palace. The convoy used the internal route to travel back to the palace.

- **Saturday 12 February 2005: trips to two churches in Badaro and Mazraa**

4716. On Saturday 12 February 2005, Mr Hariri visited two churches. After contacting each other in the Quraitem Palace area around the time that Mr Hariri departed there, two Red network mobiles—Subject 6's Red 678 and Subject 9's Red 652—connected to cells along the route the convoy used to reach the *Sacré Coeur* Church. This coincided with the convoy's travel there. Some minutes later, Mr Ayyash's Red 741 was also active in the *Sacré Coeur* Church area.

4717. Around the time Mr Hariri arrived at the Mar Michael Church, Red 678 and Red 652 were also relatively near that church. While Mr Hariri's convoy travelled back to Quraitem Palace, Red 678 activated cells between Mar Michael Church and Quraitem Palace along the convoy's route. Within 15 minutes or so of Mr Hariri's arrival there, Mr Ayyash's Red 741 also connected to cells in the Quraitem Palace area.

- **Monday 14 February 2005: trip from Quraitem Palace to Parliament and back**

4718. On Monday 14 February 2005, three Red network mobiles—Subject 6's Red 678, Subject 9's Red 652 and Subject 8's Red 893—connected to cells in the area of Quraitem Palace at 11:00—

fifteen minutes after Mr Hariri's departure at 10:45 to go to Parliament—and again at 11:33 and 11:34, when Mr Hariri was in the Parliament building. At that time, Red 678 was in contact with Mr Ayyash's Red 741, which already connected to a cell in the Parliament area.

4719. Before midday, the three Red mobiles that were previously active in the Quraitem Palace moved to the Parliament or the crime scene areas. After 12:00—when Mr Hariri was at the café *Place de l'Étoile* to meet journalists, MPs and others—and then until after he had departed from there with his security convoy—four Subjects—the users of Red 636, Red 678, Red 893 and Red 652—were near the Parliament or in the Parliament area.

4720. As of 11:48, Mr Ayyash's Green and Red mobiles connected to cells either in the crime scene area—at 11:48, 11:53, 11:57, 11:58 and 12:09—or to two cells of which one provided predicted best coverage between Parliament and the crime scene and the other provided predicted best coverage to the crime scene—at 11:49, 12:04, 12:05 and between 12:16 and 12:50. After midday, Subject 7's Red 946 also connected to these same two cells—that providing predicted best coverage between Parliament and the crime scene or that predicting predicted best coverage to it.

5. Static surveillance

4721. Static surveillance, when based on cell site data alone, is far more difficult to determine. Patterns of cell activations by identified network mobiles, at times relevant to the target's presence or movement, can potentially connect the mobiles with the target. The surveillance could be in the form of watchers stationed near key locations, such as along potential travel routes or 'near' the palace itself.

4722. Between Wednesday 20 October and Wednesday 10 November 2004, network mobiles connected to cells in the Quraitem Palace area on ten days. On three of them, only one network call activated cells there—including on one day when Mr Hariri was abroad.

4723. Between Thursday 11 November 2004 and Monday 14 February 2005, network mobiles connected to cells in the Quraitem Palace area on 36 days. Except on limited days when only a single call or two calls activated cells there—including on two days Mr Hariri was abroad or a day

on which he returned from an international trip—the number of calls connecting to cells in that area ranged from a low of three to 69 on one day.

4724. With limited exceptions—including a few instances when Mr Hariri was outside of Lebanon or was not yet back in Beirut—activations of cells in the Quraitem Palace area by network calls coincided with Mr Hariri's presence in the palace.

4725. From Wednesday 20 October until Friday 17 December, only two Blue network mobiles—Blue 585 and Blue 324—activated cells in the Quraitem Palace area. On Tuesday 21 and Thursday 23 December 2004, other Yellow and Blue mobiles, respectively, started connecting to cells in that area. On Friday 14 January 2005, the Red mobiles—making their first network calls since their activation—connected to cells in the Quraitem Palace in 24 calls.

4726. On a few days when Mr Hariri was in his Faqra residence in the Faraya area several Blue and Yellow network mobiles, including Mr Ayyash's Yellow 294, activated cells in the Faqra or the Faraya area, to connect to cells in to south Beirut at the end of each day. This occurred, for example, on Saturday 25 December 2004 when Mr Hariri stayed for the Christmas holiday and when he remained there the following day. Blue 322 also activated cells in those areas.

4727. On Sunday 26 December 2004, when Mr Hariri was at his Faqra residence, Yellow and Blue mobiles connected to cells in the Faqra and Faraya area for approximately 10 hours, between 9:58 in the morning and 19:48 in the evening.

4728. On three days when network calls connected to cells near Faqra Villa or in the Faraya area, namely, on 27, 31 December 2004 and Saturday 1 January 2005, the Trial Chamber, as noted above, has found that this was to conduct mobile surveillance of Mr Hariri's trips between his Faqra residence and Quraitem Palace.

6. General conclusions on network surveillance of Mr Hariri

4729. The ultimate issue is whether the various network cell activations and calls, in combination with Mr Hariri's movements, leads to only one inevitable conclusion, namely, that they were engaged in the surveillance, or 'observations' of him. The Trial Chamber's conclusion is that this is what occurred.

4730. The evidence establishes that on 39 days between Wednesday 20 October 2004 and Monday 14 February 2005 there was significant network activity in the area of Quraitem Palace. This occurred in 2004 on 20 October; 3,⁹⁰¹⁷ 4, 5, 8, 10, 11, 23,⁹⁰¹⁸ 25 and 26 November; and on 21, 22, 23, 24, 27, 28, 30 and 31 December; and, in 2005 on 1, 7,⁹⁰¹⁹ 8, 14, 22, 27, 28, 29, 30, 31 January 2005; and on 1, 2, 3, 4, 7, 8, 9, 10, 11, 12 and 14 February. But it was only at least three days when these activations occurred, namely, Wednesday 3 and Tuesday 23 November 2004 and Friday 7 January 2005, that Mr Hariri was not in Beirut.

4731. The Trial Chamber observed an unequivocal pattern of the networks shadowing Mr Hariri. On a number of occasions between Thursday 11 November 2004 and Monday 14 February 2005, it is obvious from the presence of network mobiles connecting to cells near where Mr Hariri's security detail was, that they had 'followed' him to where he was. One striking feature is that during Mr Hariri's absences from Lebanon, network activity significantly scaled down, and most ceased around Quraitem Palace. Examples of this are during Mr Hariri's trips abroad between 12 and 22 November 2004, 27 November to 16 December 2004, 17 to 20 December 2004 and 2 to 7 January 2005.⁹⁰²⁰

4732. The patterns of calls between network mobiles, their presence connecting to cells around Quraitem Palace, the airport, in the Faraya area and in other places where Mr Hariri was such as his visits to churches, his dinners and lunches, is beyond coincidence. There are too many calls and too many instances of network mobiles sharing a locality with Mr Hariri, and over an extended period, for this to be accidental. This happened too often and in too many different places to be spontaneous. The mobile users were communicating in closed networks, and on different days, their users operated in locations where Mr Hariri was.

4733. While the static surveillance alleged, based only on cell activations, is more difficult to ascertain, again, clear patterns have emerged of network presence near Quraitem Palace and along the route to Faqra Villa. Significantly, there was very little network activity around Quraitem Palace when Mr Hariri was not there. Considering the evidence of the network activity in its

⁹⁰¹⁷ During the day, Mr Hariri had left Beirut.

⁹⁰¹⁸ Mr Hariri was abroad.

⁹⁰¹⁹ Most calls occurred before Mr Hariri arrived from the airport.

⁹⁰²⁰ As set out above, when Mr Hariri was abroad, network activity around Quraitem Palace did not stop completely.

totality leads to the inevitable conclusion that much of this must have been connected with surveillance of Mr Hariri. There is no other conclusion reasonably available from the evidence.

4734. The Trial Chamber therefore finds that the users the Blue, Red and Yellow networks—and more specifically the six core Red mobiles, the six core Blue mobiles and the four core Yellow mobiles—conducted observations or surveillance of Mr Hariri and his movements on different days from Wednesday 20 October 2004 to Monday 14 February 2005.

4735. It is therefore satisfied that the only reasonable conclusion available from the evidence is that Mr Hariri was under surveillance from Wednesday 20 October 2004 to Monday 14 February 2005, with the surveillance in the latter period connected with his possible assassination. The Trial Chamber cannot find that all of it was connected with the plan to assassinate Mr Hariri. In its totality—as is set out in analysing the dates of the conspiracy—the evidence only suffices to establish that the final decision to assassinate Mr Hariri was most probably made sometime in early February 2005. The Trial Chamber, however, cannot positively conclude that the surveillance in October, November and December 2004 and in January 2005 was solely for the purpose of planning his assassination.

4736. Undoubtedly, some of it in the latter part of January 2005 was directed at obtaining information about Mr Hariri's movements and convoy if needed to continue with a plan to assassinate him, which had hatched by then. The Trial Chamber is satisfied that at least some of the users of the Red, Yellow, Green and Blue networks had a common mission, namely the assassination of Mr Hariri. However, the fact that these networks were connected and that their existence was linked to Mr Hariri's movements and eventually his assassination, does not mean that every user of every network mobile knew about the mission to assassinate him, either in detail or at all.

7. Role of the Green network

4737. In relation to the Green network, the Prosecution relies on so-called 'hierarchical call flows', namely other network activity just before or shortly after two of the mobiles in the Green network were in contact. Such call flows would be either evidence of 'reporting from the field' or the conveying of instructions downwards.

4738. According to the Prosecution, the Green network was the mission command, the apex of the operation, with Mr Badreddine at its peak as the coordinator or monitor of the preparations for the assassination and making the false claim of responsibility for the attack. These calls are listed in detail in analysing the conspiracy alleged in chapter XIV ‘Legal findings on elements of the crimes and Individual criminal responsibility’, (B) (3) (f) ‘Whether Mustafa Amine Badreddine had a role in the conspiracy’. The Trial Chamber has concluded there that insufficient evidence exists to draw this conclusion.

4739. Mr Platt concluded that telecommunications evidence allowed the conclusion that some network users had meetings. The Trial Chamber accepts that they did meet, as indeed they would have had to. The surveillance of Mr Hariri was obviously not spontaneously arranged in bursts of short mobile calls between various network users in the field. It could have occurred only as a result of planning which would naturally have involved planning meetings. But there is no evidence of when they were, or where or for how long, nor of what was said.

4740. The Trial Chamber is not satisfied that there is sufficient evidence from the telecommunications evidence alone, which consists only of metadata, to conclude from this that users of network mobiles met in person at the times and in the areas suggested by the Prosecution. It is a strong possibility, but without more evidence, the Trial Chamber is not prepared to make a positive finding that it occurred.

4741. The Trial Chamber is also not satisfied that the Green network functioned as ‘mission command’. The Trial Chamber carefully considered the so-called call flows from the Green to the Blue and Red network. It also considered its findings on the attribution of various mobiles.

4742. It is satisfied that there was a connection between these calls and that there was clear sequencing in the sense of calls following each other, even from network to network. However, without the content of any of these calls, or any other evidence, inferring a hierarchy from a few instances of sequencing is speculative. Additionally, the Trial Chamber carefully considered whether the timing of the calls could provide the relevant context, such as to suggest the call content. However, again, the evidence on the timing was inconclusive and inferring that the calls must have related to instructions or reporting goes no higher than conjecture.

4743. The Trial Chamber accordingly was of the view that it was not the only reasonable conclusion from the evidence that the Green network acted as mission command. The Trial Chamber allowed for the reasonable possibility that the Green network had another function, not necessarily at the apex of all other networks.

XI. IMPORTATION AND SALE OF MITSUBISHI CANTER

4744. In December 2004, Witness PRH075 imported into Lebanon from the United Arab Emirates the white 2002 Mitsubishi Canter right-hand-drive light truck that was used in the explosion on Monday 14 February 2005. He sometimes displayed his imported vehicles for sale at a ‘dealership’ in Tripoli that Witness PRH063 operated with a partner. Its records were inaccurate and or incomplete.

4745. The Canter was displayed at Witness 63’s ‘showroom’ for a short period before its sale in January 2005 to two men who paid in cash for it and drove it away. During their visit, Witness 63 called Witness 75, regarding price negotiations, twice within five to 15 minutes. No witness could independently recall the sale date, although Witnesses 63, 75 and an office manager, Witness PRH459, concluded that it had been Tuesday 25 January 2005. But, this was after reviewing their records and discussing the matter between themselves, when they were interviewed by Lebanese investigating officials in 2006. They thought the sale was after the *Eid Al-Adha* holiday on Thursday 20 January 2005.

4746. Neither call data records nor the dealership’s records can confirm the sale date. On two days between 1 January 2005 and 14 February 2005, namely Monday 17 and Tuesday 25 January 2005, Witness 63’s mobile called Witness 75’s mobile twice—or more—within less than an hour. Some network mobile activity in Tripoli, including calls with numbers attributed to Mr Ayyash, occurred on 25 January 2005, but not on 17 January 2005. There was also network mobile activity in Tripoli on 11, 12, 14, 15 and 22 January. The Prosecution argues that the truck was sold on 25 January 2005 and Mr Ayyash coordinated its purchase. The preponderance of witness evidence supports that date, which is confirmed by the network activity. The Ayyash Defence submits that 17 January 2005 is more likely—indeed that cell coverage records prove it could not have been 25 January 2005—and that the witnesses’ conclusion about that date was unpersuasive, given the methods by which they reached it. Furthermore, according to the Ayyash Defence, Mr Ayyash was in Saudi Arabia, not Lebanon, from 15 to 28 January 2005.

4747. The Trial Chamber has concluded that the dealership witnesses’ evidence on its own cannot establish the date of the sale, but that there is no reason to disbelieve that evidence. That evidence

in conjunction with the records of Witnesses 63's and 75's calls limits the sale date to either 17 or 25 January 2005. Based on the combination of the witnesses' evidence, the call data records for Witnesses 63's and 75's mobiles, the date of Eid and the dealership's receipt stubs, 25 January 2005 is the more likely date.

4748. Obtaining the Canter was part of the plot to commit the attack and kill Mr Hariri. It is plausible that the network mobile activity on 11, 12, 14, 15, 22 and 25 January 2005 concerned—and evidenced—this aspect of the plot. However, there is insufficient evidence to determine beyond reasonable doubt either any particular network mobile user's role in the Canter's purchase, or what any of them did afterwards to prepare it for use in the attack.

A. Summary of the evidence

1. The Tripoli truck dealership and its importation of a Mitsubishi Canter light truck

(a) The Tripoli dealership

4749. In 2004 and 2005, Witness 63 ran a van and pick-up truck dealership in Tripoli, with Witness 75's brother⁹⁰²¹ and Witness 75, who was their business associate.⁹⁰²² Witness 75 sometimes imported vehicles into Lebanon, but did not have his own sales lot.⁹⁰²³

4750. Witness 63 ran one lot, which could loosely be described as a 'showroom', for selling vehicles, while Witness 75's brother had another,⁹⁰²⁴ about 250 to 300 metres away.⁹⁰²⁵ Witness 75 had his own, separate business premises, 'a relatively short distance' away.⁹⁰²⁶ At Witness 63's

⁹⁰²¹ Witness PRH063, T. 4 June 2015, pp 68, 72; exhibit P474 (Extract from statement of Witness PRH063), ERN 60032699, para. 18; Witness PRH075, T. 16 June 2015, p. 56; exhibit P482 (Statement of Witness PRH041), p. 7, para. 7.

⁹⁰²² Witness PRH063, T. 4 June 2015, pp 73, 80; Witness PRH075, T. 15 June 2015, pp 7-8, 38.

⁹⁰²³ Witness PRH075, T. 15 June 2015, pp 6-7, 9-10, T. 16 June 2015, pp 15, 57; Witness PRH063, T. 4 June 2015, p. 80.

⁹⁰²⁴ Witness PRH075, T. 15 June 2015, pp 7-9, T. 16 June 2015, p. 56; exhibit P483 (Witness PRH459's statement of 27 April 2006), ERN 60302870; exhibit 1D159 (Witness PRH459's statement of 30 April 2006), ERNs 60014354T-60014355T; exhibit P483 (Witness PRH459's statement of 2 May 2006), ERNs 60302883, 60302885; exhibit P483 (Witness PRH459's statement of 16 December 2014), ERN 60302864, para. 1.

⁹⁰²⁵ Exhibit 1D148 (Exhibit marked by Witness 63); Witness PRH459, T. 17 June 2015, pp 58-59; Witness PRH063, T. 4 June 2015, p. 73, T. 5 June 2015, pp 52-57.

⁹⁰²⁶ Witness PRH063, T. 4 June 2015, p. 73.

showroom he sold his own vehicles⁹⁰²⁷ and those of others such as Witness 75,⁹⁰²⁸ who paid Witness 63 a commission.⁹⁰²⁹

4751. Witnesses PRH041 and 459 worked at the dealership. Witness 41 was a labourer at Witness 63's 'showroom',⁹⁰³⁰ while Witness 459 did general office management for Witness 75's brother.⁹⁰³¹ Witness 459 was responsible for only a few business transactions relating to Witness 63's 'showroom'.⁹⁰³²

4752. Vehicles were sometimes imported in a disassembled state.⁹⁰³³ It normally took between two and three weeks between a purchase in the United Arab Emirates and display in Tripoli.⁹⁰³⁴ This included around three to four days for customs clearance.⁹⁰³⁵ Witness 75 imported vehicles using different names.⁹⁰³⁶

4753. In 2004 and 2005 the dealership did not keep fully accurate or detailed records of its vehicle sales.⁹⁰³⁷ In 95 per cent of cases, customers paid in cash.⁹⁰³⁸ Once paid in full,⁹⁰³⁹ the dealership did not keep copies of the paperwork accompanying those vehicles.⁹⁰⁴⁰ Rather, it would give the

⁹⁰²⁷ Witness PRH063, T. 4 June 2015, p. 73.

⁹⁰²⁸ Witness PRH063, T. 4 June 2015, p. 73, T. 5 June 2015, pp 46-49; Witness PRH075, T. 15 June 2015, pp 7-9, T. 16 June 2015, pp 43, 56-57.

⁹⁰²⁹ Witness PRH063, T. 4 June 2015, p. 73, T. 5 June 2015, pp 46-49; Witness PRH075, T. 15 June 2015, p. 8, T. 16 June 2015, pp 43-44, 56.

⁹⁰³⁰ Exhibit P482 (Statement of Witness PRH041), p. 2, paras 5-7; Witness PRH063 T. 4 June 2015, p. 72.

⁹⁰³¹ Exhibit P483 (Witness PRH459's statement of 27 April 2006), ERNs 60302869-60302870, 60302880; exhibit 1D159 (Witness PRH459's statement of 30 April 2006), pp 2-3 (ERNs 60014354T-60014354AT); exhibit P483 (Witness PRH459's statement of 2 May 2006), ERN 60302883; Witness PRH459, T. 17 June 2015, pp 41, 58-60, 62, 65; Witness PRH063, T. 10 June 2015, pp 59-60.

⁹⁰³² Exhibit P483 (Witness PRH459's statement of 27 April 2006), ERN 60302870.

⁹⁰³³ Witness PRH075, T. 15 June 2015, pp 17-18; exhibit P483 (Witness PRH459's statement of 27 April 2006), ERNs 60302871-60302872; Witness PRH459, T. 17 June 2015, p. 63; exhibit P482 (Statement of Witness PRH041), pp 2-3, para. 10; *see also* exhibit P462 (Khodr Al-Masri's 3 February 2010 statement), pp 2-3 (ERNs 60124138-60124139), paras 10, 12-13.

⁹⁰³⁴ Witness PRH075, T. 15 June 2015, p. 52, T. 16 June 2015, pp 36-37, stating that it normally took around one or one and a half weeks on the road, then three or maybe four days at the customs office, then two or three days of preparation for display.

⁹⁰³⁵ Witness PRH075, T. 15 June 2015, p. 52.

⁹⁰³⁶ Especially in the name of one particular person, referred to in court as 'the import partner'. Witness PRH075, T. 15 June 2015, pp 14-15, T. 16 June 2015, pp 12-15, 30-36.

⁹⁰³⁷ As to the dealership's sales practices generally being disorganised, incomplete and or not compliant with Lebanese law, *see* Witness PRH063, T. 10 June 2015, p. 66; Witness PRH075, T. 16 June 2015, pp 33-34, 110.

⁹⁰³⁸ Witness PRH063, T. 4 June 2015, p. 90.

⁹⁰³⁹ Witness PRH063, T. 5 June 2015, p. 23; exhibit 1D159 (Witness PRH459's 30 April 2006 statement), p. 3 (ERN 60014354AT).

⁹⁰⁴⁰ Witness PRH459, T. 17 June 2015, p. 64; exhibit 1D159 (Witness PRH459's 30 April 2006 statement), pp 2-3 (ERNs 60014354T-60014354AT); Witness PRH063, T. 5 June 2015, p. 23. *See also* Witness PRH459, T. 17 June 2015, pp 64-65.

buyer the vehicle's registration papers⁹⁰⁴¹ and leave it to them to 'do all the administrative procedure' necessary to legally use the vehicle.⁹⁰⁴² It also gave some customs-related documents to its accountant⁹⁰⁴³ and destroyed some other records once 'done with' them.⁹⁰⁴⁴ Witness 63 kept only the stub of a receipt given to a customer, leaving 'nothing but a summary' of the transaction that was 'not important' nor 'useful in any way'.⁹⁰⁴⁵ Witness 75's brother's company had to make a revenue statement to the Lebanese Ministry of Finance every three months.⁹⁰⁴⁶ Witness 459 would copy information from a document where he had recorded a vehicle sale⁹⁰⁴⁷ into an invoice book, and give it to their accountant.⁹⁰⁴⁸ However, they very seldom knew the exact date of a sale⁹⁰⁴⁹ and would randomly select a date in that quarter for the invoice.⁹⁰⁵⁰ Moreover, if Witness 75's brother had not given Witness 459 the vehicle's buyer's name, when Witness 459 prepared the invoices he would record that vehicle's sale on the invoice of 'any other customer who had previously purchased a pick-up truck'⁹⁰⁵¹ or use a random name.⁹⁰⁵² Witness 75 only recorded his vehicles' sales from time to time and sometimes did not record 'anything at all'.⁹⁰⁵³

(b) Importation of a Mitsubishi Canter light truck

4754. In December 2004, Witness 75 imported into Lebanon, under his import partner's name,⁹⁰⁵⁴ a used white 2002 Mitsubishi Canter light commercial truck with chassis number FE52CE560619 and engine-block number 4D33J01926,⁹⁰⁵⁵ and then displayed it at Witness 63's

⁹⁰⁴¹ Witness PRH063, T. 5 June 2015, p. 23; Witness PRH459, T. 17 June 2015, p. 64.

⁹⁰⁴² Witness PRH063, T. 4 June 2015, pp 94-95.

⁹⁰⁴³ Exhibit P483 (Witness PRH459's statement of 27 April 2006), ERN 60302875.

⁹⁰⁴⁴ Witness PRH459, T. 17 June 2015, pp 64-65.

⁹⁰⁴⁵ Witness PRH063, T. 4 June 2015, pp 92-94; *see also* T. 10 June 2015, pp 22-26.

⁹⁰⁴⁶ Exhibit P483 (Witness PRH459's statement of 27 April 2006), ERN 60302874.

⁹⁰⁴⁷ Exhibit P483 (Witness PRH459's statement of 27 April 2006), ERN 60302874; exhibit 1D159 (Witness PRH459's 30 April 2006 statement), p. 2 (ERN 60014354AT); *see also* Witness PRH459, T. 17 June 2015, pp 64, 72-73.

⁹⁰⁴⁸ Exhibit P483 (Witness PRH459's statement of 27 April 2006), ERNs 60302874-60302875; Witness PRH459, T. 17 June 2015, pp 42, 64.

⁹⁰⁴⁹ Witness PRH459, T. 17 June 2015, p. 43; *see also* p. 44.

⁹⁰⁵⁰ Exhibit P483 (Witness PRH459's statement of 27 April 2006), ERNs 60302875-60302876; Witness PRH459, T. 17 June 2015, p. 43; *see also* pp 74-75 regarding exhibit 1D158 (Desk diary extract containing a list of vehicles and dates) particularly. *Compare* Witness PRH459, T. 17 June 2015, pp 42-43, 64.

⁹⁰⁵¹ Exhibit 1D159 (Witness PRH459's 30 April 2006 statement), p. 2 (ERN 60014354T).

⁹⁰⁵² Witness PRH459, T. 17 June 2015, p. 67.

⁹⁰⁵³ Witness PRH075, T. 16 June 2015, p. 110.

⁹⁰⁵⁴ Exhibit P479 (Various Canter purchase, import and sale records), pp 1-2; Witness PRH075, T. 16 June 2015, p. 44.

⁹⁰⁵⁵ Exhibit P479, pp 1 (December 2004 Canter purchase invoice), 2 (United Arab Emirates vehicle export certificate), 3-4, 6-7 (Lebanese customs documents), 8 (Customs declaration signed by Witness 75's brother); exhibit P480 (Lebanese Customs Department certificate); Witness PRH075, T. 15 June 2015, pp 11-13, 16, 19, 21-24, 34-35,

lot.⁹⁰⁵⁶ Witness 75 had bought it in person in the United Arab Emirates⁹⁰⁵⁷ and a trailer-truck driver brought it over land, partly disassembled,⁹⁰⁵⁸ through customs and to the Tripoli dealership.⁹⁰⁵⁹ The evidence on how long after its arrival in Lebanon it reached Witness 63's lot, and where and when it was reassembled, was imprecise, inconsistent and ultimately inconclusive. Consequently, the Trial Chamber will not further address that evidence. The latest date on Lebanese customs records for the vehicle's importation is 19 December 2004.⁹⁰⁶⁰

2. The sale transaction

(a) The day's events

4755. On the day Witness 63 sold the Canter, two men he had never seen before came to his lot⁹⁰⁶¹ and asked him about its price. They asked for a reduction and Witness 63 called Witness 75, who authorised a USD 250 discount.⁹⁰⁶² Witness 75 said that Witness 63 told him a customer was interested in the Canter⁹⁰⁶³ and he did not agree to the offered price.⁹⁰⁶⁴ Witness 63 then told the men about the authorised reduction,⁹⁰⁶⁵ they asked for a further reduction, Witness 63 refused, and they agreed to pay USD 11,250.⁹⁰⁶⁶ Witness 63 then called Witness 75 again. Witness 75 agreed to the price.⁹⁰⁶⁷ Witness 63 said he gave Witness 75 the truck's chassis number and told Witness 75 to bring its papers and 'cash the price of the van'⁹⁰⁶⁸—it is unclear exactly what Witness 63 meant by this.

T. 16 June 2015, pp 7, 9-12, 17-19, 25, 31-32, 58; Witness PRH063, T. 4 June 2015, pp 76-77, 80, 95, T. 5 June 2015, pp 22, 43, T. 10 June 2015, p. 68; exhibit P483 (Witness PRH459's 2 May 2006 statement), ERNs 60302883-60302884; Witness PRH459, T. 17 June 2015, pp 48, 50-51, 69-70; exhibit P482 (Statement of Witness PRH041), p. 2, para. 7, *see also* p. 3, para. 11; Witness PRH041, T. 17 June 2015, p. 23.

⁹⁰⁵⁶ Witness PRH075, T. 16 June 2015, pp 36-37; Witness PRH063, T. 4 June 2015, p. 76; exhibit P483 (Witness PRH459's statement of 27 April 2006), ERN 60302877; exhibit P483 (Witness PRH459's statement of 2 May 2006), ERN 60302884; exhibit P482 (Statement of Witness PRH041), p. 3, para. 11; Witness PRH041, T. 17 June 2015, pp 20-21.

⁹⁰⁵⁷ Witness PRH075, T. 15 June 2015, pp 11-13, 16, 19, T. 16 June 2015, p. 7.

⁹⁰⁵⁸ Witness PRH075, T. 15 June 2015, pp 17-18; exhibit P462 (Khodr Al-Masri's 3 February 2010 statement), pp 2-3 (ERNs 60124138-60124139), paras 10, 12-13.

⁹⁰⁵⁹ Witness PRH075, T. 15 June 2015, p. 19, T. 16 June 2015, pp 7, 63; exhibit P462 (Khodr Al-Masri's statements).

⁹⁰⁶⁰ Exhibit P479, p. 5 (Extract from Lebanese customs documents).

⁹⁰⁶¹ Witness PRH063, T. 4 June 2015, p. 82.

⁹⁰⁶² Witness PRH063, T. 4 June 2015, p. 83.

⁹⁰⁶³ Witness PRH075, T. 15 June 2015, pp 38-40, T. 16 June 2015, p. 38.

⁹⁰⁶⁴ Witness PRH075, T. 15 June 2015, p. 40.

⁹⁰⁶⁵ Witness PRH063, T. 4 June 2015, pp 83-84.

⁹⁰⁶⁶ Witness PRH063, T. 4 June 2015, p. 84; *see also* T. 5 June 2015, p. 63.

⁹⁰⁶⁷ Witness PRH075, T. 15 June 2015, pp 40, 66, T. 16 June 2015, pp 42-43, 72-73.

⁹⁰⁶⁸ Witness PRH063, T. 4 June 2015, pp 84-85, *see also* T. 5 June 2015, p. 63.

4756. Witness 63 called Witness 75's mobile using his own.⁹⁰⁶⁹ Witness 63 said that logically the first call was longer than the second⁹⁰⁷⁰ and the time between the two calls was a matter of minutes,⁹⁰⁷¹ maybe five or ten.⁹⁰⁷² Witness 75 estimated that it was either five to 15 minutes,⁹⁰⁷³ or five to ten minutes.⁹⁰⁷⁴ Witness 75 could not remember where he was when Witness 63 called, but he was 'in the same area'.⁹⁰⁷⁵

4757. After the second call, Witness 75 retrieved the Canter's papers from Witness 459 at his brother's lot⁹⁰⁷⁶ and brought them to Witness 63's lot.⁹⁰⁷⁷ Witness 459 stated that Witness 75 had insisted that Witness 459 hand him the papers immediately, and then Witness 75 left on foot towards Witness 63's lot.⁹⁰⁷⁸ Witness 75 was unsure whether he walked or drove there.⁹⁰⁷⁹ According to Witness 63, Witness 75 arrived approximately 15 minutes after their second call.⁹⁰⁸⁰

4758. Once the buyers had given the cash to Witness 75,⁹⁰⁸¹ Witness 63 wrote a receipt,⁹⁰⁸² gave it to them⁹⁰⁸³ and kept its stub.⁹⁰⁸⁴ They gave Witness 63 the name 'Mohammed El-Masri' and a mobile number, which he wrote on the stub.⁹⁰⁸⁵ That stub, numbered 2746, is undated.⁹⁰⁸⁶ The number written on the stub was Witness PRH661's mobile number in 2004 and 2005,⁹⁰⁸⁷ but that

⁹⁰⁶⁹ Witness PRH063, T. 4 June 2015, p. 84, T. 5 June 2015, pp 12-13; Witness PRH075, T. 15 June 2015, pp 39, 65, T. 16 June 2015, p. 38. *See also* Witness PRH063, T. 4 June 2015, p. 17, T. 10 June 2015, pp 63-64, referring to exhibit 1D150 (Annotated list of Witnesses PRH063's and PRH075's outgoing calls).

⁹⁰⁷⁰ Witness PRH063, T. 5 June 2015, p. 63.

⁹⁰⁷¹ Witness PRH063, T. 5 June 2015, p. 18.

⁹⁰⁷² Witness PRH063, T. 4 June 2015, pp 84-85, T. 5 June 2015, p. 63.

⁹⁰⁷³ Witness PRH075, T. 15 June 2015, p. 40; *see also* p. 66, stating it was 'mainly ten ... like ten or eight'.

⁹⁰⁷⁴ Witness PRH075, T. 16 June 2015, pp 42-43, 72-73.

⁹⁰⁷⁵ Witness PRH075, T. 15 June 2015, p. 41. *Compare* T. 16 June 2015, p. 38.

⁹⁰⁷⁶ Exhibit P483 (Witness PRH459's statement of 2 May 2006), ERN 60302885.

⁹⁰⁷⁷ Witness PRH063, T. 4 June 2015, p. 85, T. 5 June 2015, p. 21; Witness PRH075, T. 15 June 2015, pp 41-43, T. 16 June 2015, pp 38, 50, 54.

⁹⁰⁷⁸ Exhibit P483 (Witness PRH459's statement of 2 May 2006), ERN 60302885.

⁹⁰⁷⁹ Witness PRH075, T. 15 June 2015, p. 42.

⁹⁰⁸⁰ Witness PRH063, T. 4 June 2015, p. 85, T. 5 June 2015, p. 79.

⁹⁰⁸¹ Witness PRH063, T. 4 June 2015, pp 86, 91; Witness PRH075, T. 15 June 2015, pp 42-44.

⁹⁰⁸² Witness PRH063, T. 4 June 2015, pp 86, 92.

⁹⁰⁸³ Witness PRH063, T. 4 June 2015, p. 86.

⁹⁰⁸⁴ Witness PRH063, T. 4 June 2015, pp 92-94.

⁹⁰⁸⁵ Witness PRH063, T. 4 June 2015, pp 92, 96.

⁹⁰⁸⁶ Exhibit P475 (Receipt for Mitsubishi Canter van payment); Witness PRH063, T. 4 June 2015, p. 96. *See also* pp 91, 97-98.

⁹⁰⁸⁷ Exhibit P463 (Witness PRH661's statements of 3 May 2006 and 19 July 2007), ERNs 60294357, 60204366.

witness knew neither anyone with the name the buyers gave or similar names,⁹⁰⁸⁸ nor the dealership witnesses.⁹⁰⁸⁹

4759. After buying the Canter, the two men drove off together in it.⁹⁰⁹⁰ According to Witness 41, who was there,⁹⁰⁹¹ they drove in the direction of Beirut.⁹⁰⁹² Both Witness 63 and Witness 41 estimated that the two buyers had been there for about 30 or 45 minutes.⁹⁰⁹³ The three witnesses' evidence about the time of the sale differed. For Witness 41 it was around 12:00 or 13:00,⁹⁰⁹⁴ for Witness 63 it was around 'midday/early afternoon',⁹⁰⁹⁵ but Witness 75 testified that Witness 63 had called him at around 14:00⁹⁰⁹⁶ and that he—Witness 75—met the buyers at around 14:15 to 15:00.⁹⁰⁹⁷ No witness recalled seeing either man with a mobile.⁹⁰⁹⁸ Investigators showed Witness 41 photographs including one of Mr Ayyash but he did not recognise anyone in them.⁹⁰⁹⁹

(b) The date of the sale

4760. To establish the date of the Canter's sale, the Trial Chamber has reviewed the undated receipt stub for the sale,⁹¹⁰⁰ other dealership records, call data records including cell coverage records and call sequence tables and witness evidence. Three of the four witnesses from the dealership—Witnesses 63, 75 and 459—testified that the date was 25 January 2005,⁹¹⁰¹ though none independently recalled this when testifying in 2015.⁹¹⁰² They had determined the date together after reviewing the dealership's records, when they were interviewed by the Lebanese

⁹⁰⁸⁸ Exhibit P463 (Witness PRH661's statements of 3 May 2006 and 19 July 2007), ERNs 60294363, 60294366-60294367.

⁹⁰⁸⁹ Exhibit P463 (Witness PRH661's statement of 3 May 2006), ERN 60294363.

⁹⁰⁹⁰ Witness PRH063, T. 4 June 2015, p. 101; exhibit P482 (Statement of Witness PRH041), p. 4, para. 24.

⁹⁰⁹¹ Exhibit P482 (Statement of Witness PRH041), pp 3-4, paras 19-20, 21-24; Witness PRH041, T. 17 June 2015, p. 25; Witness PRH063, T. 4 June 2015, pp 82-83, 91, 102.

⁹⁰⁹² Exhibit P482 (Statement of Witness PRH041), p. 4, para. 24.

⁹⁰⁹³ Witness PRH063, T. 4 June 2015, p. 101, T. 5 June 2015, p. 58; Witness PRH041, T. 17 June 2015, p. 25.

⁹⁰⁹⁴ Witness PRH041, T. 17 June 2015, p. 22.

⁹⁰⁹⁵ Witness PRH063, T. 5 June 2015, pp 18-19. He also agreed he had stated in several earlier statements that it was around midday. Witness PRH063, T. 5 June 2015, pp 60-61, 71, 75-76.

⁹⁰⁹⁶ Witness PRH075, T. 16 June 2015, p. 38. *See also* p. 72.

⁹⁰⁹⁷ Witness PRH075, T. 15 June 2015, p. 74. Witness 75 also testified that he remembered stating in May 2006 that the men were at Witness 63's 'showroom' around midday and not later than 14:00, but made no other comment about that statement. Witness PRH075, T. 16 June 2015, p. 26.

⁹⁰⁹⁸ Witness PRH041, T. 17 June 2015, p. 21; Witness PRH063, T. 5 June 2015, pp 78-79; Witness PRH075, T. 16 June 2015, p. 39.

⁹⁰⁹⁹ Exhibit P482 (Statement of Witness PRH041), p. 4, paras 21, 28; Witness PRH041, T. 17 June 2015, p. 22.

⁹¹⁰⁰ Exhibit P475.

⁹¹⁰¹ Witness PRH063, T. 5 June 2015, pp 9-10; Witness PRH075, T. 15 June 2015, p. 66; Witness PRH459, T. 17 June 2015, pp 73-74, 99-100.

⁹¹⁰² *See* sub-section (iii) 'Witnesses' evidence', below.

investigating authorities in mid-2006.⁹¹⁰³ They also took into account call data records⁹¹⁰⁴ and the date of the 2005 *Eid Al-Adha* festival.⁹¹⁰⁵

i. Call data

4761. The call data records, as revealed by the call sequence tables, show there were two days between 1 January 2005 and 14 February 2005 when Witness 63's mobile called Witness 75's mobile at least twice within less than an hour, namely 17 and 25 January 2005.⁹¹⁰⁶ On 17 January 2005, Witness 63's mobile called Witness 75's mobile three times—at 12:15:55 for 80 seconds, at 13:07:55 for 77 seconds and at 13:12:26 for 15 or 16 seconds.⁹¹⁰⁷

4762. By contrast, on 25 January 2005, Witness 63's mobile called Witness 75's mobile five times. The interval between the calls was approximately:

- one hour and two minutes between the first, at 14:22:19 (67 seconds) and second, at 15:24:49 (97 seconds);
- 12 minutes between the second and the third, at 15:36:13 (33 seconds);
- 40 minutes between the third and the fourth, at 16:16:27 (55 seconds); and
- 40 minutes between the fourth and the fifth, at 16:56:58 (29 seconds).⁹¹⁰⁸

In testifying, Witness 63 at first thought that the second and third were the relevant calls, but was then unsure.⁹¹⁰⁹

⁹¹⁰³ See sub-section (iii) 'Witnesses' evidence', below.

⁹¹⁰⁴ Exhibit P477 (Call sequence table of Witnesses PRH063's and PRH075's mobiles for 17 January 2005 to 27 January 2005); exhibit P478 (Redacted call sequence table of Witnesses PRH063's and PRH075's mobiles for 17 January 2005 to 27 January 2005). Witness PRH075, T. 15 June 2015, pp 55-57, 64-69.

⁹¹⁰⁵ See paras 4773, 4775, below.

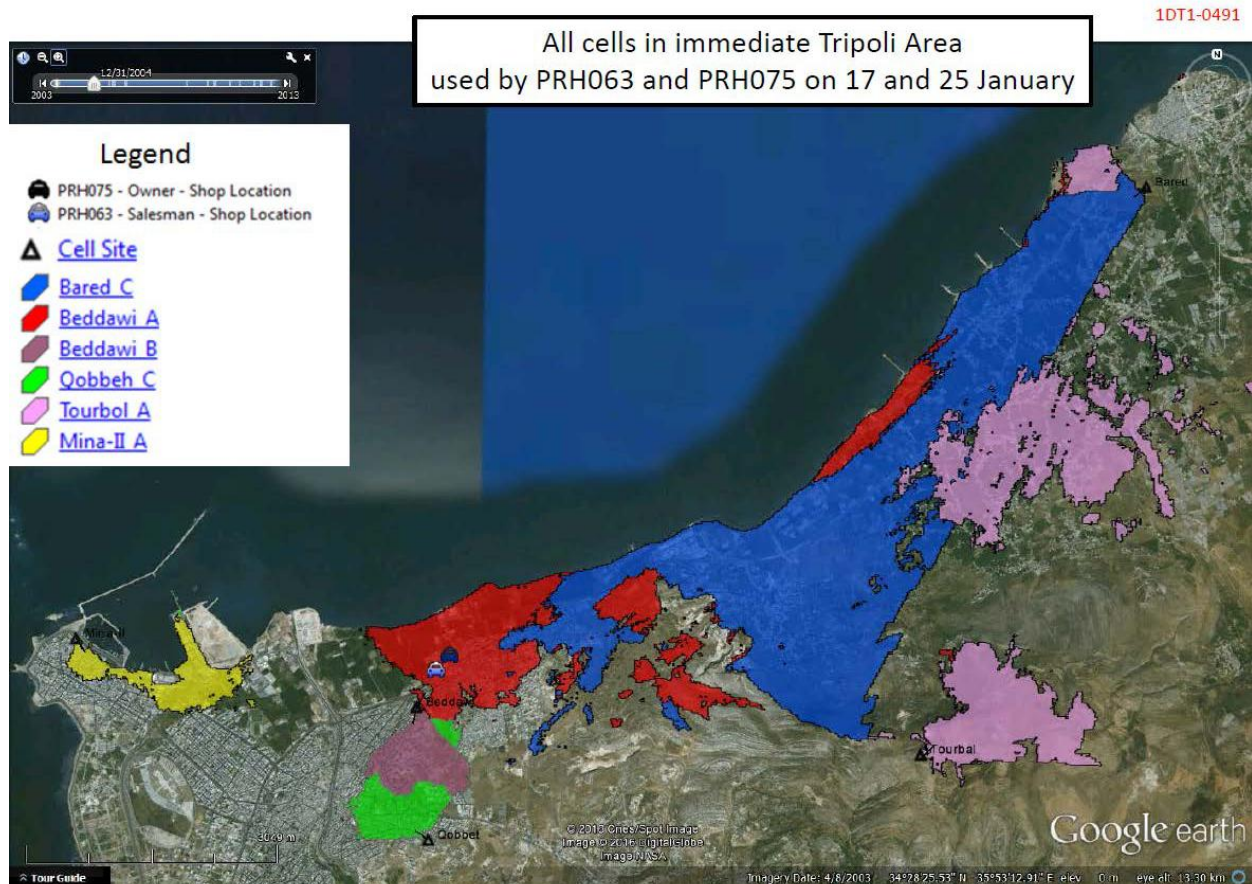
⁹¹⁰⁶ Exhibit P1283 (Call sequence table of Witness PRH063's mobile, 1 January to 14 February 2005); exhibit P1284 (Call sequence table of Witness PRH075's mobile, 1 January to 14 February 2005). See also exhibits P477-P478, 1D150.

⁹¹⁰⁷ Exhibit P1283, p. 6; exhibit P1284, p. 15. See also exhibit 1D347 (PowerPoint presentation on mobile activity of Witnesses PRH063 and PRH075), pp 6-9; exhibits P477-P478.

⁹¹⁰⁸ Exhibit P1283, pp 8-9; exhibit P1284, p. 24. See also exhibit 1D150, p. 2; exhibit 1D347, pp 2-5; exhibits P477-P478.

⁹¹⁰⁹ Witness PRH063, T. 5 June 2015, p. 18.

4763. For illustration purposes, below is a map created by the Ayyash Defence plotting some of the coverage areas referred to below.



*Exhibit 1D347 (PowerPoint presentation on mobile activity of Witnesses PRH063 and PRH075),
ERN 1DT1-0491*

4764. The predicted best server coverage for Witness 63's lot—where he was when he called Witness 75 on the day of the Canter's sale—is either Beddawi_A, for Touch network mobiles,⁹¹¹⁰ or BEDAOU2, for Alfa network mobiles.⁹¹¹¹ Based on witnesses' descriptions of the location of

⁹¹¹⁰ Exhibit P592.1 (Electronic Presentation of Evidence software). See also exhibit P1783 (Expert report of Gary Platt – Chronology), p. 223, para. 754, map 69; Gary Platt, T. 21 February 2017, pp 90, 94.

⁹¹¹¹ Exhibit P592.1. See also exhibit P1783 (Expert report of Gary Platt – Chronology), p. 198, para. 653, table 82; Gary Platt, T. 21 February 2017, pp 91, 94; exhibit P1889 (Chronology PowerPoint presentation—18 to 27 January 2005), pp 165-167.

Witness 75's brother's lot⁹¹¹²—its coordinates are not in evidence—the same cells appear to provide the predicted best server coverage for that lot, too.⁹¹¹³

4765. On Monday 17 and Tuesday 25 January 2005, each call from Witness 63's mobile to Witness 75's connected to Beddawi_A.⁹¹¹⁴ However, when it received the three calls on 17 January 2005 Witness 75's mobile activated different cells to those it activated on 25 January 2005. On 17 January 2005, it connected to Mina_2_A.⁹¹¹⁵ Mina_2_A is about two kilometres west of Witness 63's and Witness 75's brother's lots,⁹¹¹⁶ and is separated from Beddawi_A by at least two other Touch cells at any point along its boundary.⁹¹¹⁷ Using predicted server coverage data, the Trial Chamber estimates that at their closest point, Mina_2_A and Beddawi_A are between 1.3 and two kilometres apart.⁹¹¹⁸ A route by road between the two cells appears to be around three kilometres long.⁹¹¹⁹ These and the Trial Chamber's other estimates are subject to the overall caveat that predicted best cell server coverage is 60 to 70 per cent accurate.⁹¹²⁰

4766. On Tuesday 25 January 2005, Witness 75's mobile connected to Quobbet_C⁹¹²¹ for the first call from Witness 63's mobile, at 14:22:19, and Bared_C for the subsequent four calls. Witness 75's mobile connected to several different cells in the intervals between the first four calls on 25 January 2005, namely Quobbet_C, Beddawi_B and Tourbol_C between the first and second call, Tourbol_A between the second and third call and Tourbol_A and Bared_C—calling Witness 63's mobile, among other numbers—between the third and fourth calls. It connected only to Bared_C between the fourth and fifth calls—including with one call to Witness 63.⁹¹²² As set out above, the second and third calls were the closest together in time, occurring about 12 minutes apart, whereas all the other calls occurred at least 40 minutes apart.

⁹¹¹² See above, at para. 4750.

⁹¹¹³ Exhibit P592.1.

⁹¹¹⁴ Exhibit P1283, pp 6, 8-9; Gary Platt, T. 5 April 2017, pp 9, 11-12. See also exhibit 1D347, pp 2-3, 6-7; exhibits P477-P478.

⁹¹¹⁵ Referred to in the map as Mina-II_A, exhibit P1284, p. 15.

⁹¹¹⁶ This estimate refers to the distance between those lots and the eastern most boundaries of the Mina_2_A cell's predicted coverage area. Exhibit P592.1.

⁹¹¹⁷ Exhibit P1122 (ArcView shape files Touch).

⁹¹¹⁸ Exhibit P592.1. See also exhibit 1D347, p. 10.

⁹¹¹⁹ Exhibit P592.1. See also exhibit 1D347, p. 11.

⁹¹²⁰ See chapter VII 'Reliability of telecommunications evidence', (I) (6) 'Findings on cell site analysis'.

⁹¹²¹ Referred to in the map as Quobbet_C.

⁹¹²² Exhibit P1284, p. 24; Gary Platt, T. 5 April 2017, pp 9-11. See also exhibit 1D347, pp 4-5; exhibits P477-P478.

4767. As the map above shows:

- Quobbet_C is south of Witness 63's lot and partly separated from Beddawi_A by Beddawi_B. One part of Quobbet_C is also adjacent to Beddawi_A and, by the Trial Chamber's estimation, about 500 metres from Witness 63's lot.
- Beddawi_B is south and south-east of the dealership lots, and adjacent to Beddawi_A.
- Bared_C is to the north-east of and adjacent to Beddawi_A. It covers a much larger area than any of the other cells Witness 75 activated in the period of his five calls from Witness 63 on 25 January 2005.
- Tourbol_A is not adjacent to Beddawi_A. It lies to the east and north-east of Bared_C and at some points, adjacent to it. The predicted coverage for Tourbol_A is, therefore, further away from both Witness 63's and Witness 75's brother's lots than that of Bared_C. The cell consists of several disconnected coverage areas.⁹¹²³

4768. Tourbol_C (not shown on the map) is the smallest cell that Witness 75 activated and consists of two clusters of disconnected coverage areas. One of those clusters is south of Beddawi_A, and east of Beddawi_B, but not adjacent to either. The other cluster is further east—and further away from the dealership's lots—in approximately the same area where, as shown on the map, an isolated small horizontal part of Tourbol_A nearly abuts the south-eastern corner of Bared_C.⁹¹²⁴

4769. One plausible explanation for a mobile switching from Bared_C to Tourbol_A and back again within 12 minutes, as Witness 75's mobile did between the second and third call from Witness 63's mobile on 25 January 2005, is that that mobile was in an area covered by both cells, such as one of the points where Bared_C and Tourbol_A are adjacent to one another.⁹¹²⁵ The Trial Chamber estimates that the nearest such point was at least five kilometres away from Witness 63's lot.⁹¹²⁶ Given the 60 to 70 per cent overall accuracy of coverage data, however, the distance may

⁹¹²³ Exhibit P592.1.

⁹¹²⁴ Exhibit P592.1.

⁹¹²⁵ See chapter VII 'Reliability of telecommunications evidence', (B) (2) 'Cell allocation'.

⁹¹²⁶ Exhibit P592.1.

have been as much as seven kilometres—that is, another 40 per cent further away than five kilometres—or as little as three kilometres—40 per cent closer.

ii. The dealership's records

4770. The receipts containing the stub recording the Canter's sale (stub 2746)⁹¹²⁷ were consecutively numbered.⁹¹²⁸ The stub immediately preceding the Canter's, numbered 2745, is blank.⁹¹²⁹ The stub before, numbered 2744, has the handwritten date 17 January 2005,⁹¹³⁰ with a price of 11,000 USD, and that 1,000 was received, leaving 10,000 remaining. It also includes a seven-digit number and, after the word 'from', something illegible followed by Witness 75's name.⁹¹³¹ Immediately after the Canter stub is an undated receipt stub (stub 2747),⁹¹³² then another with the handwritten date 26 January 2005 (stub 2748).⁹¹³³ Stub 2747 states that 10,000 USD was received from a 'Jihad Chahine' for settlement of balance, with Witness 75's name.⁹¹³⁴ Stub 2748 states that 500 USD were received from Jihad Chahine for 'LT pickup truck' on 26 January 2005.

4771. A handwritten document extract from papers on Witness 459's desk at the dealership,⁹¹³⁵ a form of desk diary extract, contains a list of vehicles and dates.⁹¹³⁶ Next to 8 March 2005 is written 'narrow white Mitsubishi Canter for' Witness 75,⁹¹³⁷ and '10,500'.⁹¹³⁸ 'Mitsubishi Canter' next appears on 31 March 2005, after four other items, one dated 9 March 2005 and the others 30 March 2005.⁹¹³⁹ The description and amount next to 9 March 2005 are 'white Isuzu for' Witness 75⁹¹⁴⁰ and '12,500'.⁹¹⁴¹

⁹¹²⁷ Exhibit P475.

⁹¹²⁸ Exhibit 1D149 (Receipt Book); Witness PRH063, T. 4 June 2015, p. 97.

⁹¹²⁹ Exhibit 1D149, p. 43 (ERN L0012488).

⁹¹³⁰ Exhibit 1D149, p. 42 (ERN L0012487).

⁹¹³¹ Witness PRH063, T. 4 June 2015, p. 97; Witness PRH075, T. 15 June 2015, pp 44-45.

⁹¹³² Exhibit 1D149, p. 45 (ERN L0012490).

⁹¹³³ Exhibit 1D149, p. 46 (ERN L0012491).

⁹¹³⁴ Witness PRH063, T. 4 June 2015, p. 97; Witness PRH075, T. 15 June 2015, pp 44-45.

⁹¹³⁵ Witness PRH459, T. 17 June 2015, p. 72.

⁹¹³⁶ Exhibit 1D158.

⁹¹³⁷ Witness PRH063, T. 4 June 2015, p. 97; Witness PRH075, T. 15 June 2015, pp 44-45.

⁹¹³⁸ Exhibit 1D158.

⁹¹³⁹ Exhibit 1D158.

⁹¹⁴⁰ Witness PRH063, T. 4 June 2015, p. 97; Witness PRH075, T. 15 June 2015, pp 44-45.

⁹¹⁴¹ Exhibit 1D158.

iii. Witnesses' evidence

4772. When they were interviewed by the Lebanese authorities in April and May 2006, Witnesses 41, 63, 75, 459 and others such as Witness 75's brother went through the dealership's records to try to remember what occurred. At times, the investigating officials had put the four dealership witnesses, and others, together for this purpose.⁹¹⁴² This was after they had already detained and interviewed Witness 63 for several days.⁹¹⁴³ The authorities also initially detained Witness 75's brother.⁹¹⁴⁴

4773. According to Witness 63, Witnesses 41, 63, 75 and 459 remembered together that the sale had occurred after 'the holidays' that year,⁹¹⁴⁵ which he thought meant *Eid Al-Adha*.⁹¹⁴⁶ *Eid Al-Adha* began on 20 January 2005.⁹¹⁴⁷ After reviewing his previous statements, Witness 75 recalled that the sale was probably after or 'around' *Eid Al-Adha*.⁹¹⁴⁸ Witness 459 testified that he determined 25 January 2005 as the sale date partly because it was after *Eid Al-Adha*.⁹¹⁴⁹ The witnesses gave different estimates of how long the Canter was at the 'showroom',⁹¹⁵⁰ and how long this was after Witness 75's return from the United Arab Emirates.⁹¹⁵¹ This evidence was inconclusive as to whether 17 or 25 January 2005 was the sale date.

⁹¹⁴² Witness PRH063, T. 5 June 2015, pp 33, 64, 75-76, 86-88; Witness PRH075, T. 16 June 2015, pp 4-6, 12, 16, 21-23, 25, 106-107; Witness PRH459, T. 17 June 2015, p. 100; Witness PRH041, T. 17 June 2015, pp 20, 24. *See also* Witness PRH063, T. 10 June 2015, pp 13-14, 32-33, 52, 60, 63-64, 68, 71-72; Witness PRH459, T. 17 June 2015, pp 68-71; exhibit P483 (Witness PRH459's statement of 2 May 2006), ERN 60302885.

⁹¹⁴³ Witness PRH063, T. 10 June 2015, pp 35-62, 67, 73, T. 5 June 2015, pp 41-42; Witness PRH075, T. 15 June 2015, p. 84, T. 16 June 2015, p. 20; Witness PRH459, T. 17 June 2015, p. 62. *See also* exhibit 1D159 (Witness PRH459's 30 April 2006 statement), p. 1 (ERN 60014353T).

⁹¹⁴⁴ Witness PRH063, T. 10 June 2015, p. 60; Witness PRH075, T. 15 June 2015, p. 84, T. 16 June 2015, pp 4, 6; Witness PRH459, T. 17 June 2015, pp 62-63. *See also* exhibit 1D159 (Witness PRH459's 30 April 2006 statement), p. 1 (ERN 60014353T).

⁹¹⁴⁵ Witness PRH063, T. 5 June 2015, pp 10, 63-64, 69-70, 86-88.

⁹¹⁴⁶ Witness PRH063, T. 5 June 2015, p. 10.

⁹¹⁴⁷ Exhibit P476 (16 January 2005 press release on the celebration of *Eid Al-Adha*).

⁹¹⁴⁸ Witness PRH075, T. 15 June 2015, pp 53-55, *see also* p. 75, T. 16 June 2015, p. 103.

⁹¹⁴⁹ Witness PRH459, T. 17 June 2015, p. 100, *see also* pp 68-71.

⁹¹⁵⁰ Witness PRH063, T. 4 June 2015, p. 78; Witness PRH075, T. 15 June 2015, pp 51-53, T. 16 June 2015, pp 37-38, 102-103.

⁹¹⁵¹ Exhibit P483 (Witness PRH459's statement of 2 May 2006), ERN 60302884; *see also* Witness PRH075, T. 15 June 2015, p. 39, T. 16 June 2015, p. 63.

4774. Witness 459 acknowledged that the specific dates in his desk diary extract are unreliable.⁹¹⁵² He wrote ‘8 March 2005’ on the document when invoicing the Canter truck, but not when it was sold.⁹¹⁵³ As for the ‘white Isuzu’ listed in the desk diary extract:

- the Isuzu was sold in January 2005⁹¹⁵⁴ and its buyer paid by instalments;⁹¹⁵⁵
- Witnesses 63 and 75 testified that the dealership had sold the Isuzu and the Canter on different days.⁹¹⁵⁶ The Isuzu’s buyer told Witness 63 that he remembered seeing the Canter when he had come to make the down payment;⁹¹⁵⁷
- Witness 459 found out from reviewing the receipt book that the Isuzu buyer had paid the last instalment on 26 January 2005,⁹¹⁵⁸ but did not know its actual sale date;⁹¹⁵⁹ and
- stub 2744, dated 17 January 2005, concerned a down payment from the Isuzu buyer, while the 26 January 2005 stub, 2748, recorded that Witness 63 had delivered that vehicle to its buyer and the buyer had paid in full.⁹¹⁶⁰

4775. These witnesses were uncertain about the date of the Canter’s sale.⁹¹⁶¹ Witness 75 described 25 January 2005 as the ‘most probable’ sale date only⁹¹⁶² after he was shown call sequence tables for 17 to 25 January 2005⁹¹⁶³ and was informed that there was evidence that *Eid*

⁹¹⁵² Witness PRH459, T. 17 June 2015, p. 74.

⁹¹⁵³ Witness PRH459, T. 17 June 2015, pp 73-75; *see also* exhibit P483 (Witness PRH459’s statement of 2 May 2006), ERN 60302886. Witness 459 testified that the sale date was 25 January 2005.

⁹¹⁵⁴ Witness PRH041, T. 17 June 2015, p. 23.

⁹¹⁵⁵ Witness PRH041, T. 17 June 2015, p. 23; Witness PRH063, T. 5 June 2015, pp 65-66; Exhibit P483 (Witness PRH459’s statement of 2 May 2006), ERN 60302886.

⁹¹⁵⁶ Witness PRH063, T. 10 June 2015, p. 73; Witness PRH075, T. 15 June 2015, pp 75-76.

⁹¹⁵⁷ Witness PRH063, T. 5 June 2015, p. 67, T. 10 June 2015, pp 71-72.

⁹¹⁵⁸ Exhibit P483 (Witness PRH459’s statement of 2 May 2006), ERN 60302886.

⁹¹⁵⁹ Witness PRH459, T. 17 June 2015, p. 74.

⁹¹⁶⁰ Witness PRH063, T. 5 June 2015, pp 19, 66.

⁹¹⁶¹ By contrast, Gary Platt assumed a sale date range of 17 to 26 January 2005 for the purposes of his ‘Chronology Report’, but in parts of that report, also expressed the opinion that the date was 25 January 2005. Exhibit P1783 (Expert report of Gary Platt—Chronology), paras 27, 595, 744, 750-753 and summary chart in para. 1262, 11 January 2005, 15 January 2005 and 25 January 2005 items. In cross-examination, Mr Platt said 25 January 2005 ‘was chosen’ because Witness 75 said the sale occurred after *Eid Al-Adha*, but conceded that 17 January 2005 was possible too. Gary Platt, T. 5 April 2017, pp 22-23. *Compare* Gary Platt, T. 13 February 2017, pp 13-14, claiming, in effect, that his ‘Chronology Report’ stated only the range 17-25 January 2005, not the specific date of 25 January 2005.

⁹¹⁶² Witness PRH075, T. 15 June 2015, p. 66. *See also* T. 16 June 2015, pp 108-109, confirming that their previous, unadmitted statement that the date was ‘probably’ 19 or 25 January 2005 was correct.

⁹¹⁶³ Exhibits P477-P478; Witness PRH075, T. 15 June 2015, pp 55-57, 64-69.

Al-Adha was on 20 January 2005.⁹¹⁶⁴ Witness 63 said that he was less than 80 per cent sure the sale was after *Eid Al-Adha*⁹¹⁶⁵—it was Witness 75 who had been ‘more sure’ of that⁹¹⁶⁶—although Witness 63 had been 80 to 90 per cent sure that the sale date was 25 January 2005.⁹¹⁶⁷ For both, nothing about the sale was especially memorable.⁹¹⁶⁸

3. Network mobile activity in Tripoli, Tuesday 11 to Tuesday 25 January 2005

4776. In addition to the network activity in Tripoli on and around the days when mobile handsets were bought from or returned to shops in that town,⁹¹⁶⁹ there were Green and or Blue network calls using cells that provide predicted coverage in Tripoli, on six days between December 2004 and 25 January 2005: 11, 12, 14, 15, 22 and 25 January. No network mobiles used cells in Tripoli on Monday 17 January 2005.⁹¹⁷⁰

4777. On Tuesday 11 January 2005, Mr Ayyash’s Green 300 made calls at 14:30 and 14:55 to Mr Badreddine’s Green 023,⁹¹⁷¹ which was using cells in the south Beirut area at the time.⁹¹⁷² With the first call, Green 300 connected to the cell in Tripoli that provided predicted best coverage to Witness 63’s lot for Alfa network mobiles—BEDAOU2—and with the second, to TEBBAN1,

⁹¹⁶⁴ Prosecution submissions, T. 15 June 2015, p. 65.

⁹¹⁶⁵ Witness PRH063, T. 5 June 2015, p. 67.

⁹¹⁶⁶ Witness PRH063, T. 5 June 2015, pp 63, 66-67.

⁹¹⁶⁷ Witness PRH063, T. 10 June 2015, pp 70-72.

⁹¹⁶⁸ Witness PRH063, T. 5 June 2015, pp 65-66, 68; Witness PRH075, T. 16 June 2015, pp 40-41.

⁹¹⁶⁹ Namely, 28 December 2004, 30 December 2004, 4 January 2005 and 5 January 2005, as summarised in chapter X ‘Chronology of network mobile activity before Mr Hariri’s assassination on Monday 14 February 2005’, (C) (2) ‘Surveillance of Mr Hariri and preparations for the attack—Wednesday 20 October 2004 to Sunday 13 February 2005’, and chapter VIII ‘Nature and purpose of colour-coded mobile networks and purple group of mobiles’, (D) (1) ‘Setting up the network’. The Prosecution alleges that such activity formed part of preparations for the attack.

⁹¹⁷⁰ Details of the Blue and Green network calls that day are at exhibit P1224 (Call sequence table of Blue 967), p. 1; exhibit P1227 (Call sequence table of Blue 610), p. 9; exhibit P1228 (Call sequence table of Blue 864), p. 5; exhibit P1229 (Call sequence table of Blue 585), p. 11; exhibit P1231 (Call sequence table of Blue 428), p. 3; exhibit P1234 (Call sequence table of Blue 940), p. 3; exhibit P1236 (Call sequence table of Blue 322), p. 3; exhibit P1259 (Call sequence table of ten numbers—Mr Ayyash), p. 337; exhibit P1305 (Call sequence table of 13 numbers—Mr Badreddine), p. 5677. *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), paras 499, 619-629, 635-640; exhibit P1780 (Chronology of relevant events), p. 19; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 572, 671-673, 674-681, 683-687, table 85; exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), sub-section 6.9.30.

⁹¹⁷¹ Exhibit P1259, p. 333; exhibit P1305, p. 5656; exhibit P1123 (ArcView shape files Alfa). *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), paras 533-534; exhibit P1116 (Expert report of John Edward Philips – Green mission phones), paras 7.5.2.10, 7.5.5.36; exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), para. 6.9.25.15; exhibit P1783 (Expert report of Gary Platt—Chronology), paras 589, 595-596, table 74; Gary Platt, T. 9 February 2017, pp 77, 84-85, T. 5 April 2017, pp 31-32.

⁹¹⁷² HADATH3/ROUEIS3, then ROUEIS3/BRAJNE1.

which provided predicted best coverage to an area that begins less than 100 metres from that lot.⁹¹⁷³ This was the only day in the amended consolidated indictment period on which the Green network, or any mobile the Prosecution seeks to attribute to Mr Ayyash, used cells in Tripoli.⁹¹⁷⁴

4778. On 12, 14, 15 and 22 January 2005, Blue 817 used cells in Tripoli, including one of those that provided predicted best coverage to Witness 63's lot.⁹¹⁷⁵ The calls on 12, 14 and 15 January 2005 using Tripoli cells were with Blue 610.⁹¹⁷⁶ The sole call on Saturday 22 January 2005 from Tripoli was to Blue 501.⁹¹⁷⁷

4779. On 15 January 2005, immediately after one of its calls with Blue 817, Blue 610 called Mr Ayyash's Blue 233.⁹¹⁷⁸ Green 300 also contacted Green 023 20 minutes after a call with Blue 610.⁹¹⁷⁹ These calls activated various cells in Beirut, not Tripoli.⁹¹⁸⁰

⁹¹⁷³ At the start of the call in each case. At the end of the calls, Green 300 connected to BEDAOU1 and TEBBAN3, respectively, both of which also provide coverage in Tripoli. TEBBAN1 is adjacent to and west and south-west of BEDAOU2, BEDAOU1 is west of BEDAOU2 and TEBBAN3 is east of BEDAOU2. Exhibit P1259, p. 333; exhibit P592.1.

⁹¹⁷⁴ Exhibit P1205 (Call sequence table of Green 071); exhibit P1259; exhibit P1305; exhibit P1123; Gary Platt, T. 9 February 2017, pp 76-77; exhibit P1782 (Narrative overview of telephone activity and relevant events), para. 534; exhibit P1783 (Expert report of Gary Platt—Chronology), para. 598; John Edward Philips, T. 5 September 2016, pp 71-72, T. 6 September 2016, pp 66-67; exhibit P1116 (Expert report of John Edward Philips – Green mission phones), paras 7.5.5.34-7.5.5.35. *See also* exhibit P1118 (PowerPoint presentation on common mission phones, John Edward Philips), pp 122, 153.

⁹¹⁷⁵ BEDAOU2. Three calls on 12 January 2005 between 08:41 and 09:14, activating TEBBAN1, TEBBAN3, BALADI1 and BALADI2; four calls on 14 January 2005 between 17:39 and 18:08, activating BAHSAS1, MASQA2, TOURBO3, BAHSAS2 and KALAMO1; four calls on 15 January 2005 between 11:41 and 22:13, activating BEDAOU2, BAHSAS3, BAHSAS1, BAHSAS2 and KALAMO1; one call on 22 January 2005 at 11:02, activating MINA2. Exhibit P1227, pp 7-8; exhibit P1237 (Call sequence table of Blue 501), p. 2; exhibit P1239 (Call sequence table of Blue 817), pp 5-6; exhibit P592.1. *See also* exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), paras 6.9.25.12-6.9.25.13, 6.9.25.15, 6.9.27, 6.9.28, 6.9.35; exhibit P1782 (Narrative overview of telephone activity and relevant events), paras 549, 570, 591-592, 695-697; exhibit P1780 (Chronology of relevant events), pp 16-18, 21.

⁹¹⁷⁶ Blue 610 activating cells in Beirut each time (SFEIR2, SFEIR3, ROUEIS2, HADATH3 and BRAJNE1). Exhibit P1227 (Call sequence table of Blue 610), pp 7-8; exhibit P1239, p. 5; exhibit P1123. *See also* exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), paras 6.9.25.12-6.9.25.13, 6.9.25.15, 6.9.27, 6.9.28; exhibit P1782 (Narrative overview of telephone activity and relevant events), paras 549, 570, 591-592.

⁹¹⁷⁷ Blue 501 activating Sfeir_B in Beirut. Exhibit P1237, p. 2; exhibit P1239, p. 6; exhibit P1122. *See also* exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), para. 6.9.35; exhibit P1782 (Narrative overview of telephone activity and relevant events), paras 695-697; exhibit P1780 (Chronology of relevant events), p. 21.

⁹¹⁷⁸ At 21:34, Blue 610 activating BRAJNE3/BRAJNE1, Blue 233 activating Sfeir_A. Exhibit P1227 (Call sequence table of Blue 610), p. 8; exhibits P1122-P1123. *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), paras 591, 594.

⁹¹⁷⁹ At 20:22, Green 300 activating BRASIL2/HADATH1, Green 023 activating JALDIB4. Exhibit P1259, p. 336; exhibit P1305, p. 5672. *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), para. 593.

⁹¹⁸⁰ *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), paras 591, 594.

4780. On 25 January 2005, there were seven network mobile calls using Tripoli cells, all made to or from Blue 610 in the afternoon. Two were with Blue 864, one was with Blue 967 and the other four were with Blue 233, which activated cells in Beirut on each occasion.⁹¹⁸¹ More specifically:

- Three of Blue 610's four calls with Blue 233 on 25 January 2005 occurred shortly before 15:00, with Blue 610 activating cells in central Tripoli.⁹¹⁸² The first was at 14:40 or 14:41 from Blue 610 to Blue 233⁹¹⁸³ and the other two were from Blue 233 to Blue 610, at 14:54⁹¹⁸⁴ and 14:59:42 or 14:59:58.⁹¹⁸⁵
- Less than a minute before the third call, at 14:59:03 or 14:59:18, Blue 610 had called Blue 967, again activating a cell in central Tripoli.⁹¹⁸⁶
- At 15:10, Green 300 called Green 023 which, like Green 300, activated a cell in Beirut.⁹¹⁸⁷
- Then, at 15:37, Blue 610 made its final call to Blue 233.⁹¹⁸⁸ With that call, Blue 610 activated BEDAOU2 which provided predicted best coverage for Witness 63's lot.⁹¹⁸⁹

⁹¹⁸¹ Exhibit P1224, p. 3; exhibit P1227, p. 11; exhibit P1228, p. 8; exhibit P1259, p. 346; exhibit P592.1; exhibit P1122; exhibit P1123. *See also* exhibit P1783 (Expert report of Gary Platt—Chronology), para. 745; exhibit P1782 (Narrative overview of telephone activity and relevant events), para. 727.

⁹¹⁸² Exhibit P1227, p. 11; exhibit P1259, p. 346; exhibit P592.1; exhibits P1122-P1123. *See also* exhibit P1783 (Expert report of Gary Platt—Chronology), paras 755-757; exhibit P1782 (Narrative overview of telephone activity and relevant events), para. 728; exhibit P1780 (Chronology of relevant events), p. 22; Gary Platt, T. 21 February 2017, pp 88-89; exhibit P1889, pp 162-163.

⁹¹⁸³ Blue 610 activating TRIPOL4, Blue 233 activating Sfeir_A, exhibit P1227, p. 11; exhibit P1259, p. 346.

⁹¹⁸⁴ Blue 610 activating ASAMRA2/ASAMRA1, Blue 233 activating Sfeir_A, exhibit P1227, p. 11; exhibit P1259, p. 346.

⁹¹⁸⁵ Blue 610 activating MAARAD2/MINA2, Blue 233 activating Sfeir_A, exhibit P1227, p. 11; exhibit P1259, p. 346.

⁹¹⁸⁶ MAARAD2. Blue 967 activated a cell in Beirut, Sfeir_B, for this call. Exhibit P1224, p. 3; exhibit P592.1; exhibit P1122; exhibit P1123. *See also* exhibit P1783 (Expert report of Gary Platt—Chronology), para. 756; exhibit P1889, p. 162.

⁹¹⁸⁷ Green 300 activating BRAJNE1, Green 023 activating ROUEIS3. Exhibit P1259, p. 346; exhibit P1305, p. 5700; exhibit P1123. *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), para. 728; exhibit P1780 (Chronology of relevant events), p. 22; exhibit P1783 (Expert report of Gary Platt—Chronology), paras 746, 758; Gary Platt, T. 21 February 2017, p. 90; exhibit P1889, pp 162, 164.

⁹¹⁸⁸ Blue 233 activating Bir_El_Abed C. Exhibit P1227, p. 11; exhibit P1259, p. 346.

⁹¹⁸⁹ Exhibit P1227, p. 11; exhibit P592.1. *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), para. 728; exhibit P1780 (Chronology of relevant events), p. 22; exhibit P1783 (Expert report of Gary Platt—Chronology), p. 198, para. 653, table 82, para. 759; Gary Platt, T. 21 February 2017, pp 91, 93-94, 96; exhibit P1889, pp 165-167.

- After that, still activating cells in Tripoli, Blue 610 exchanged calls with Blue 864 at 16:43⁹¹⁹⁰ and 16:49.⁹¹⁹¹

4781. Blue 610 then activated cells between Tripoli and Beirut when Blue 233 called it at 17:26 or 17:27 on 25 January 2005⁹¹⁹² and a cell in Beirut at 18:20.⁹¹⁹³ By the end of that day, either using Tripoli cells, cells in Beirut or ones in between, Blue 610 had been in contact with every one of the alleged ‘principal six’ in the assassination team except S7,⁹¹⁹⁴ to whom the Prosecution attributes Blue 324.

4782. The following map, prepared by telecommunications and cell site analysis expert Mr John Edward Philips, depicts seven of the eight cells providing coverage in Tripoli that Blue 610 used on 25 January 2005, namely ASAMRA2, BEDAOU2, MAARAD2, MINA2, MINA3, TEBBAN3 and TRIPOL4.⁹¹⁹⁵ The eighth cell, ASAMRA1, is not pictured but provided fragmented predicted best coverage to a small area in central Tripoli that is visible on the map. The main area of this cell’s predicted coverage, which is less than 500 metres across, is adjacent to those of TRIPOL4 and ASAMRA2.⁹¹⁹⁶

⁹¹⁹⁰ Blue 610 activating TEBBAN3, Blue 864 activating OUZAI2/CBOURJ3. Exhibit P1227, p. 11; exhibit P1228, p. 8; exhibit P592.1; exhibit P1123. *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), para. 729; exhibit P1780 (Chronology of relevant events), p. 22; exhibit P1783 (Expert report of Gary Platt—Chronology), para. 760; Gary Platt, T. 21 February 2017, p. 97; exhibit P1889, pp 171-172.

⁹¹⁹¹ Blue 610 activating MINA3, Blue 864 activating OUZAI2/ BRAJNE3. Exhibit P1227, p. 11; exhibit P1228, p. 8; exhibit P592.1; exhibit P1123. *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), para. 729; exhibit P1780 (Chronology of relevant events), p. 22; exhibit P1783 (Expert report of Gary Platt—Chronology), para. 760; Gary Platt, T. 21 February 2017, p. 97; exhibit P1889, pp 171-172.

⁹¹⁹² Blue 233 activating Borj_Brajneh_2_C, Blue 610 activating AMCHIT1/JBLVIL1. Exhibit P1227, p. 11; exhibit P1259, p. 346; exhibits P1122-P1123. *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), para. 729; exhibit P1783 (Expert report of Gary Platt—Chronology), para. 761; Gary Platt, T. 21 February 2017, p. 97; exhibit P1889, pp 173-174.

⁹¹⁹³ SALOUM2, calling Blue 585 (Sfeir_B). Exhibit P1227, p. 11; exhibit P1229, p. 12; exhibits P1122-P1123. *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), para. 729; exhibit P1783 (Expert report of Gary Platt—Chronology), para. 761; Gary Platt, T. 21 February 2017, p. 97; exhibit P1889, pp 173-174.

⁹¹⁹⁴ Exhibit P1224, p. 3; exhibit P1227, p. 11; exhibit P1228, p. 8; exhibit P1229, p. 12; exhibit P1239, p. 6; exhibit P1259, p. 346. *See also* Gary Platt, T. 21 February 2017, p. 98.

⁹¹⁹⁵ Exhibit P1115 (Expert report of John Edward Philips – 15 Blue mission phones), para. 6.9.62.208, map 26, which Mr Philips described as providing ‘Detail of the best server coverage of the cells in the immediate vicinity of Tripoli’. This map also shows some cells that Blue 610 did not activate, namely BAHSAS1, BAHSAS2, BAHSAS3, BALADI1 and TEBBAN1.

⁹¹⁹⁶ Exhibit P592.1.

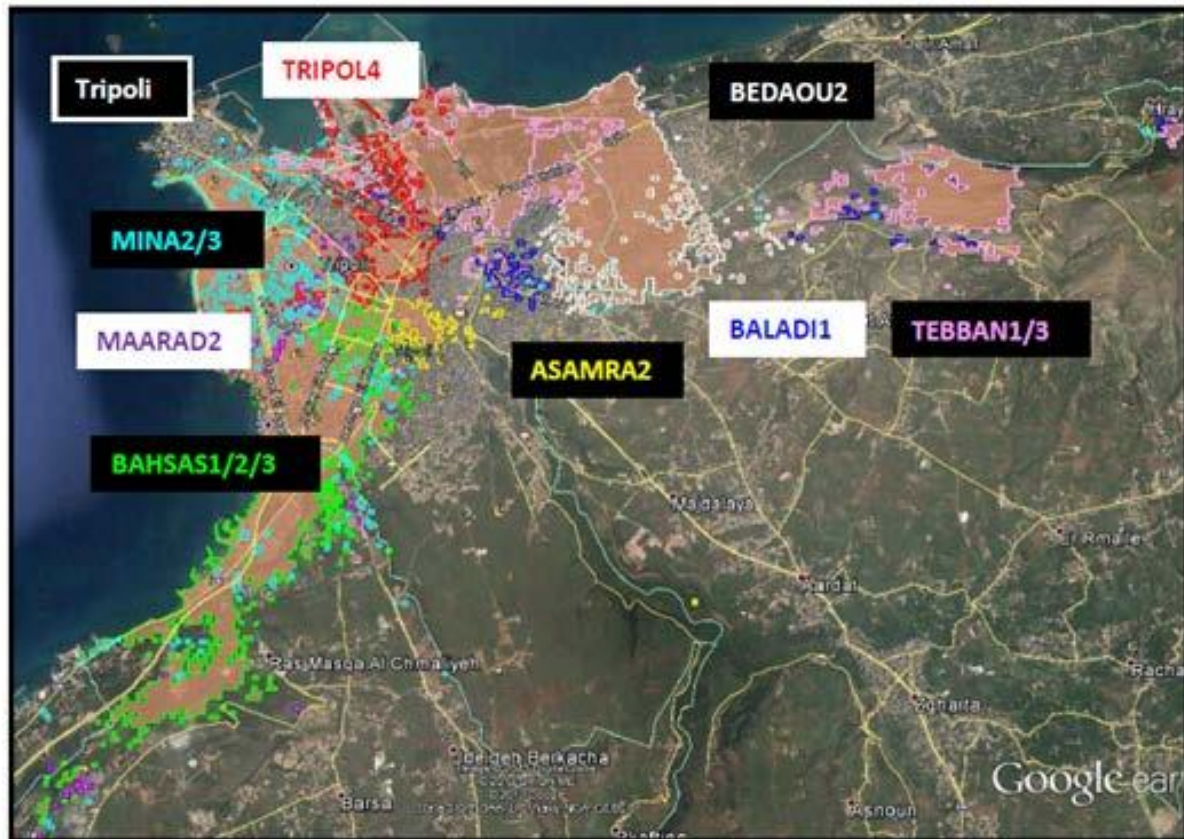


Exhibit P1115 (Expert report of John Edward Philips—15 Blue mission phones), p. 310 (map 26)

4783. Mr Platt considered that the sequence of Blue 610's calls and the call between Green mobiles in the afternoon of 25 January 2005 was significant because it was consistent with Blue 610 updating Green 300's user via that user's Blue mobile.⁹¹⁹⁷ It also meant that Green 300 was providing an update to Green 023.⁹¹⁹⁸

B. Submissions

4784. The Prosecution alleges that two men using false names⁹¹⁹⁹ bought the Canter from the Tripoli dealership on 25 January 2005⁹²⁰⁰ between 15:30 and 16:00.⁹²⁰¹ After importing that

⁹¹⁹⁷ Gary Platt, T. 21 February 2017, p. 88.

⁹¹⁹⁸ Gary Platt, T. 21 February 2017, pp 88-89.

⁹¹⁹⁹ Amended consolidated indictment, para. 32 (c).

⁹²⁰⁰ Amended consolidated indictment, para. 32; Prosecution final trial brief, paras 423, 755 (9), 787, 840, 881; Prosecution closing submissions, T. 13 September 2018, p. 92, T. 14 September 2018, p. 31.

⁹²⁰¹ Amended consolidated indictment, para. 32 (c).

vehicle to Lebanon, Witness 75 had displayed it for sale at Witness 63's lot within a few days of 17 December 2004.⁹²⁰² As Witness 63's calls to Witness 75 on the sale day were five to ten minutes apart, call data records prove that only 17 or 25 January 2005 could be the sale date.⁹²⁰³ Predicted cell coverage data of the relevant cell sites near the lot do not eliminate either date.⁹²⁰⁴ But the preponderance of witness testimony—including about the Canter sale's timing relative to *Eid Al-Adha* and the Isuzu's sale—points to 25 January 2005 as the date.⁹²⁰⁵

4785. Further, Mr Ayyash coordinated the purchase of the Canter, using the Blue and Green networks as overseen by Mr Badreddine.⁹²⁰⁶ Blue and Green network activity in this period confirms 25 January 2005 was the sale date.⁹²⁰⁷ Around the time of the sale that day, Blue 610 (S6) called Blue 233—attributed to Mr Ayyash—using cells in Tripoli including near the dealership.⁹²⁰⁸ One such call occurred one minute after Witness 63's second call to Witness 75.⁹²⁰⁹ S6 was Mr Ayyash's deputy.⁹²¹⁰ In the amended consolidated indictment, the Prosecutor alleges that S6 was one of the Canter's buyers, with another unidentified person.⁹²¹¹ In its final trial brief, the Prosecution submits that S6 'supervised' the Canter's purchase.⁹²¹² Around the sale time Mr Ayyash also used Green 300 to call Green 023, attributed to Mr Badreddine.⁹²¹³ Later in the afternoon, just before leaving Tripoli, Blue 610 also called Blue 864 (S9).⁹²¹⁴ Calls by Blue and

⁹²⁰² Prosecution final trial brief, para. 864.

⁹²⁰³ Prosecution final trial brief, para. 866.

⁹²⁰⁴ Prosecution final trial brief, para. 867.

⁹²⁰⁵ Prosecution final trial brief, sub-heading VII.I.7 (a), para. 868.

⁹²⁰⁶ Amended consolidated indictment, paras 3 (a), 3 (e), 19 (a); Prosecution final trial brief, paras 7, 787; Prosecution closing submissions, T. 11 September 2018, pp 21, 31-32, T. 13 September 2018, p. 92, T. 14 September 2018, p. 41. *See also* Prosecution final trial brief, paras 967-969, 971.

⁹²⁰⁷ Prosecution final trial brief, paras 869 and following; amended consolidated indictment, para. 32.

⁹²⁰⁸ Amended consolidated indictment, para. 32 (a); Prosecution final trial brief, paras 423, 806, 841, 872-873; Prosecution closing submissions, T. 13 September 2018, p. 92, T. 14 September 2018, pp 39, 41. *See also* Prosecution final trial brief, para. 15.

⁹²⁰⁹ Amended consolidated indictment, para. 32 (d); Prosecution final trial brief, para. 872.

⁹²¹⁰ Prosecution final trial brief, paras 722, 846, 966, 975; Prosecution closing submissions, T. 11 September 2018, p. 40, T. 14 September 2018, p. 41.

⁹²¹¹ Amended consolidated indictment, para. 32 (c).

⁹²¹² Prosecution final trial brief, para. 854 (iii). *See also* Prosecution closing submissions, T. 11 September 2018, p. 40, T. 14 September 2018, p. 39. During Mr Platt's testimony, Prosecution counsel stated that the evidence 'does not identify whether Subject 6 was actually in the showroom or not. It could be consistent either with him being there or actually being nearby and supervising men who were purchasing the vehicle'. T. 21 February 2017, p. 92.

⁹²¹³ Amended consolidated indictment, para. 32 (b); Prosecution final trial brief, para. 423; Prosecution closing submissions, T. 13 September 2018, p. 92, T. 14 September 2018, p. 41; *see also* Prosecution closing submissions, T. 11 September 2018, pp 31-32.

⁹²¹⁴ Prosecution final trial brief, paras 841, 881, *see also* para. 976.

Green network users in Tripoli on several days earlier in January suggest they were scouting for a suitable vehicle.⁹²¹⁵ But there were no such calls on 17 January 2005.⁹²¹⁶

4786. On 14 February 2005, the Prosecution submits, the Canter was used in the explosion. Parts of it, including its engine block, were later found at the crime scene.⁹²¹⁷ The Prosecution also submitted in its final trial brief that all of the circumstances, including the association between the Canter's purchase and unusual network activity in an area east of Beirut airport in January 2005,⁹²¹⁸ suggest that that area was used for preparations for the attack, such as preparing a vehicle-borne improvised explosive device using the Canter.⁹²¹⁹

4787. The Ayyash Defence accepts that Witness 75 imported a Canter to Lebanon in December 2004⁹²²⁰ and that a finding can be made that its engine block was retrieved from the crime scene crater.⁹²²¹ It was in Witness 63's lot by either late December 2004 or early January⁹²²² and there is consistent evidence that Witness 63 called Witness 75 twice in a short space of time during negotiations with its buyers.⁹²²³ Further, the sale occurred on either 17 or 25 January 2005.⁹²²⁴

4788. However, the Ayyash Defence argues that no evidence conclusively establishes the sale date⁹²²⁵ and that it was more likely 17 January 2005 than 25 January 2005.⁹²²⁶ Witnesses testified that the buyers had stayed less than an hour,⁹²²⁷ and their evidence shows the sale happened

⁹²¹⁵ Prosecution final trial brief, paras 15, 420-422, 477 (ii), 875-880. *See also* Prosecution final trial brief, paras 755, 816; amended consolidated indictment, para. 26; Prosecution closing submissions, T. 14 September 2018, pp 40-41.

⁹²¹⁶ The Prosecution also specifically submitted that there was no Blue network activity in the Tripoli area on 17 January 2005. Prosecution final trial brief, para. 870.

⁹²¹⁷ Prosecution final trial brief, paras 1063-1064, fn. 2200.

⁹²¹⁸ The evidence on this issue is summarised in chapter X 'Chronology of network mobile activity before Mr Hariri's assassination on Monday 14 February 2005', (C) (2) (gg) 'Monday 17 January 2005', (ii) 'Wednesday 19 January 2005', (kk) 'Friday 21 to Sunday 23 January 2005', (ll) 'Monday 24 January 2005' and (mm) 'Wednesday 26 January 2005'.

⁹²¹⁹ Prosecution final trial brief, paras 816, 859. *See also* Prosecution final trial brief, para. 837; Prosecution closing submissions, T. 14 September 2018, pp 12-13.

⁹²²⁰ Ayyash Defence final trial brief, para. 96.

⁹²²¹ Ayyash Defence final trial brief, para. 94.

⁹²²² Ayyash Defence final trial brief, para. 96.

⁹²²³ Ayyash Defence final trial brief, paras 102-103; Ayyash Defence closing submissions, T. 17 September 2018, p. 82.

⁹²²⁴ Ayyash Defence closing submissions, T. 17 September 2018, p. 82.

⁹²²⁵ Ayyash Defence final trial brief, paras 38, 99-100.

⁹²²⁶ Ayyash Defence final trial brief, paras 149-157; Ayyash Defence closing submissions, T. 17 September 2018, pp 82, 84. *See also* Ayyash Defence final trial brief, para. 126.

⁹²²⁷ Ayyash Defence final trial brief, para. 106; Ayyash Defence closing submissions, T. 17 September 2018, pp 83-84.

between around midday⁹²²⁸ and 14:30⁹²²⁹—thus finishing nearly an hour before the relevant pair of calls on 25 January 2005, at 15:24:49 and 15:36:13.⁹²³⁰ Their evidence about the date was uncertain, ambiguous and contradictory.⁹²³¹ The Lebanese investigating officials' interviewing techniques undermined the autonomy of their memories⁹²³² and their evidence that the sale was after *Eid Al-Adha* is unreliable.⁹²³³ Additionally, the dealership's lack of any systematic record-keeping practice, and its general attitude toward documentation, make the documents used to determine that date unreliable.⁹²³⁴ If the dealership received the Isuzu down payment on 17 January 2005, this would not preclude it having sold the Canter that day.⁹²³⁵ Moreover, the locations of Witness 75's mobile on 25 January 2005 exclude it as the sale date.⁹²³⁶

4789. The Prosecution's allegations about network mobile activity linked to the sale, on both 25 January 2005 and various days before that, are speculative and not proven beyond reasonable doubt.⁹²³⁷ Furthermore, Mr Ayyash was in Saudi Arabia, not Lebanon, from 15 to 28 January 2005.⁹²³⁸ Yet during that period, on 15 and 25 January, Blue 233's and Green 300's calls allegedly linked to the Canter activated cells in Lebanon. Therefore, Mr Ayyash cannot be those mobiles' only user⁹²³⁹ and the Prosecution cannot prove that he was involved in procuring the Canter.⁹²⁴⁰ Lastly, there is no evidence on the Canter's whereabouts between its sale and 14 February 2005.⁹²⁴¹

⁹²²⁸ Ayyash Defence final trial brief, para. 101; Ayyash Defence closing submissions, T. 17 September 2018, p. 83.

⁹²²⁹ Ayyash Defence final trial brief, para. 107; Ayyash Defence closing submissions, T. 17 September 2018, p. 83.

⁹²³⁰ Ayyash Defence closing submissions, T. 17 September 2018, p. 84.

⁹²³¹ Ayyash Defence final trial brief, paras 109-114.

⁹²³² Ayyash Defence final trial brief, para. 144.

⁹²³³ Ayyash Defence final trial brief, paras 141-147.

⁹²³⁴ Ayyash Defence final trial brief, paras 126-131.

⁹²³⁵ Ayyash Defence final trial brief, paras 132-140.

⁹²³⁶ Ayyash Defence final trial brief, sub-heading IV.A.3.iii, paras 115-122; Ayyash Defence closing submissions, T. 17 September 2018, pp 84-88.

⁹²³⁷ Ayyash Defence final trial brief, paras 94-95, 97, 148; Ayyash Defence closing submissions, T. 17 September 2018, pp 7, 81-82. *See also*, regarding the limitations of the telecommunications evidence generally, Ayyash Defence closing submissions, T. 17 September 2018, pp 47 and following.

⁹²³⁸ Ayyash Defence final trial brief, paras 95, 97, 373. *See also* Ayyash Defence closing submissions, T. 17 September 2018, pp 7, 27, 79-82, 89-121. *See* chapter IX 'Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine', (B) (2) (g) 'The 2005 Hajj'.

⁹²³⁹ Ayyash Defence final trial brief, para. 373.

⁹²⁴⁰ Ayyash Defence final trial brief, paras 95, 97.

⁹²⁴¹ Ayyash Defence final trial brief, paras 158, 160-161; *see also* paras 162-167.

C. Findings

4790. The Trial Chamber finds that in December 2004, Witness 75 imported a white 2002 Mitsubishi Canter right-hand-drive light commercial truck, with chassis number FE52CE560619 and engine-block number 4D33J01926, to Lebanon from the United Arab Emirates. The Canter was displayed at Witness 63's lot, then sold to two men who paid in cash for it and drove it away. While those men were at the lot on the day of the sale, Witness 63 called Witness 75, regarding price negotiations, twice within five to 15 minutes.

4791. The dealership's records generally were inaccurate and or incomplete. The Canter sale date stated on the desk diary extract, 8 March 2005, is incorrect. The records of the Isuzu's sale and witnesses' testimony, together, suggest the Canter left the dealership before the Isuzu, on a different day. However, given the general unreliability of the records, this does not establish the date of the Canter's sale. Moreover, the dealership witnesses' memories of the time and date of the sale in court, ten years after these events, were uncertain. Even when first interviewed, in mid-2006, they had no reason to remember that sale specifically and, as all acknowledged, were influenced by one another's recollections. Consequently, the witnesses' evidence on its own cannot establish the date of the sale either.

4792. There is, however, no reason to disbelieve the witnesses' evidence. In conjunction with the records of Witnesses 63's and 75's calls, it limits the sale date to either 17 or 25 January 2005. The locations of the predicted coverage areas of the cells Witness 75's mobile activated on those days do not exclude either day, given that coverage data is approximate only and that it is unclear whether Witness 75 was travelling on foot at all relevant times. The Trial Chamber finds that 25 January 2005 is the more likely date of the Canter's sale, based on the combination of the call data records for Witnesses 63's and 75's mobiles, the date of *Eid*, the receipt stubs and the witnesses' evidence.

4793. Regarding the Blue and Green network activity in Tripoli on 11, 12, 14, 15, 22 and 25 January 2005, the Trial Chamber has found beyond reasonable doubt that the Canter was used in the explosion on 14 February 2005.⁹²⁴² The explosives were in the Canter's rear when they were

⁹²⁴² See chapter VI 'Explosion on 14 February 2005', (F) (2) (d) (ii) 'Recovery of Mitsubishi canter parts at the crime scene after the attack', for the Trial Chamber's findings see paras 1308-1316.

triggered.⁹²⁴³ There can also be no reasonable doubt that this was a deliberate act.⁹²⁴⁴ On this basis, the Trial Chamber is satisfied beyond reasonable doubt that obtaining the Canter was part of the plot to commit the attack and kill Mr Hariri.

4794. Based on the call data in evidence, the Trial Chamber is also satisfied that the network calls on 11, 12, 14, 15, 22 and 25 January 2005 occurred and that the users of some Green and Blue mobiles were in Tripoli and likely near the dealership on those days. Specifically, Green 300 was there on 11 January, Blue 817 on 12, 14, 15 and 22 January and Blue 610 on 25 January. Further, as the Trial Chamber has found for reasons set out above that Mr Ayyash remained in Lebanon from 15 to 28 January 2005⁹²⁴⁵ and was Green 300's and Blue 233's sole user, the Trial Chamber accepts that he made and received the relevant calls on both mobiles during that period.

4795. Due to the times and dates of the network activity in Tripoli and the particular cells used, it is plausible that that activity concerned—and evidenced—obtaining the Canter in order to use it in the attack. Although the Trial Chamber does not consider that Mr Ayyash's calls with Green 023 on 15 and 25 January were part of hierarchical call flows as the Trial Chamber has defined that term,⁹²⁴⁶ those calls could still have been relaying information or instructions about this issue, given their coincidence in time with Blue 817's and 610's calls activating Tripoli cells on those days. However, there is insufficient evidence for the Trial Chamber to determine beyond reasonable doubt either any particular network mobile user's role in the Canter's purchase, or what any of them did afterwards to prepare it for use in the explosion on Monday 14 February 2005.

⁹²⁴³ See chapter VI 'Explosion on 14 February 2005', (F) (2) (d) (ii) d. 'Findings'.

⁹²⁴⁴ The Trial Chamber's specific findings on the intention required to prove each of the crimes charged are in chapter XIV 'Legal findings on elements of the crimes and Individual criminal responsibility'.

⁹²⁴⁵ See chapter IX 'Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine', (B) (2) (g) 'The 2005 Hajj', for the Trial Chamber's findings *see* paras 3356-3410.

⁹²⁴⁶ See chapter XIV 'Legal findings on elements of the crimes and Individual criminal responsibility', (B) (3) 'Whether Mustafa Amine Badreddine had a role in the conspiracy'.

XII. CLAIM OF RESPONSIBILITY FOR THE ATTACK ON RAFIK HARIRI

A. Introduction and preliminary issues

4796. On the afternoon of Monday 14 February 2005, some hours after the successful attack on Mr Hariri's life, international media outlets broadcast a claim of responsibility for the attack in which a twenty-two year old Palestinian, Mr Ahmad Abu Adass, claimed responsibility for the attack on behalf of an unknown fundamentalist group called *El-Nusra-wal-Jihad-fi-Bilad-El-Sham* 'Victory and Jihad in Greater Syria'. His family had reported him missing a month earlier.

4797. The Prosecutor's case is that the claim of responsibility was false and that the fundamentalist group is fictional. Rather, Mr Badreddine, Mr Merhi, Mr Oneissi and Mr Sabra were responsible for manufacturing a false claim of responsibility to deflect attention away from the true perpetrators of the attack.

4798. Mr Badreddine is alleged to have monitored, and together with Mr Merhi, coordinated the preparation of the false claim of responsibility.⁹²⁴⁷ Mr Oneissi and Mr Sabra, under Mr Merhi's coordination, are alleged to have participated in Mr Abu Adass's disappearance for the purpose of creating a false claim of responsibility. Before the attack, Mr Merhi is alleged to have coordinated their activities 'in order to identify and effect the disappearance of a suitable individual', Mr Abu Adass, 'who would be used to make the video-taped false claim of responsibility'.⁹²⁴⁸

4799. Immediately after the attack, and under Mr Merhi's coordination, Mr Oneissi and Mr Sabra are alleged to have participated in disseminating statements falsely attributing responsibility for the attack, ensuring the delivery of the video and a letter to Al-Jazeera, and that the video would be broadcast.⁹²⁴⁹

4800. Their role in the claim of responsibility is the sole basis for Mr Merhi's, Mr Oneissi's and Mr Sabra's alleged criminal responsibility. The core events of the false claim plot were:

⁹²⁴⁷ Amended consolidated indictment, para. 3 (e).

⁹²⁴⁸ Amended consolidated indictment, para. 3 (d).

⁹²⁴⁹ Amended consolidated indictment, para. 3 (b)-(c).

- the conspirators identifying a suitable person to make the false claim—namely Mr Abu Adass, who was a young introverted person with strong religious leanings—in the Arab University Mosque in Beirut. Mr Oneissi befriended Mr Abu Adass by pretending to be ‘Mohammed’, who needed assistance in learning how to pray;⁹²⁵⁰
- effecting the disappearance of Mr Abu Adass from his home on Sunday 16 January 2005: ‘Mohammed’ also participated in this;
- creating a video in which Mr Abu Adass falsely claimed responsibility for the attack on Mr Hariri; and
- disseminating and publishing the false claim via media outlets immediately after the assassination on Monday 14 February 2005.⁹²⁵¹

4801. The Prosecutor alleges that Mr Merhi and Mr Badreddine used their Green network mobiles, respectively Green 071 and Green 023, exclusively to ‘exchange information’ and ‘to coordinate the acts done in furtherance of the conspiracy’.⁹²⁵² Mr Merhi coordinated the false claim, and he, Mr Oneissi and Mr Sabra communicated for this purpose on their three personal mobiles. The Prosecution termed these the ‘Purple phones’. These, according to the amended consolidated indictment, were ‘a group of three phones, which were used from at least 1 January 2003 until 16 February 2005’ and ‘were used to communicate amongst each other and to communicate with others outside the group’. Further, they ‘were used to coordinate the false claim of responsibility’.⁹²⁵³

4802. To prove this aspect of its case, the Prosecution led telecommunications and cell site evidence of the movements of the Purple mobiles, namely Mr Merhi’s Purple 231, Mr Oneissi’s Purple 095 and Mr Sabra’s attributed Purple 018;⁹²⁵⁴ and of communications between Mr Badreddine’s Green 023 and Mr Merhi’s attributed Green 071. The Prosecution alleges that

⁹²⁵⁰ In the amended consolidated indictment, the Prosecutor alleges that Mr Oneissi was ‘Mohammed’.

⁹²⁵¹ Amended consolidated indictment, paras 23, 23 (d), 27-29, 44.

⁹²⁵² Amended consolidated indictment, para. 19 (a).

⁹²⁵³ Amended consolidated indictment, paras 15 (e), 16, 19 (d).

⁹²⁵⁴ These are pleaded to be the personal mobiles of Mr Merhi, Mr Sabra and Mr Oneissi between 2003 and 2005. Amended consolidated indictment, para. 16.

behavioural patterns of their mobiles show that Mr Oneissi and Mr Sabra coordinated the false claim, and that Mr Merhi coordinated it.

4803. It also called evidence of what occurred in the mosque in January 2005, and from Mr Abu Adass's family, friends and associates. Finally, it presented evidence from those who received and broadcast the video on the afternoon of Monday 14 February 2005.

4804. The Trial Chamber has found that Mr Merhi was the sole user of his personal mobile Purple 231 from 19 December 2002 to 15 February 2005, and that another colour-coded mobile, the Grey mobile, was unequivocally his from 21 February 2004 to 16 April 2005.⁹²⁵⁵ It has also found that Mr Oneissi was the principal user of his personal mobile Purple 095 from at least 9 January 2003 until 16 February 2005,⁹²⁵⁶ and that Mr Badreddine used Green 023 from at least Monday 6 September 2004 until Monday 14 February 2005.⁹²⁵⁷

4805. The evidence, however, was insufficient to establish that Mr Merhi was using Green 071.⁹²⁵⁸ Similarly, the Trial Chamber could not conclude that Mr Sabra was the sole, main or principal user of Purple 018 in the period pleaded, from 22 December 2004 to 14 February 2005.⁹²⁵⁹ Notwithstanding this, the Trial Chamber has carefully reviewed the evidence on the mobiles' activity, call patterns and cell activations, including that of Green 071 and Purple 018, in the preparation and delivery of the claim of responsibility for the attack on Mr Hariri's life. This is consistent with considering the totality of the evidence led against the Accused. For the purposes of analysis here, and to do justice to the Prosecution's case—and even though the Trial Chamber cannot positively find that Mr Sabra was the user of Purple 018—the analysis below proceeds on the assumption that Mr Sabra *was* Purple 018's single user.

⁹²⁵⁵ See chapter IX 'Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine', (C) (9) (c) 'The Grey mobile' and (d) 'Purple 231'.

⁹²⁵⁶ See chapter IX 'Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine', (D) 'Hussein Hassan Oneissi—Purple 095'.

⁹²⁵⁷ See chapter IX 'Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine', (F) (7) 'Green 023'.

⁹²⁵⁸ See chapter IX 'Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine', (C) (9) (e) 'Green 071'.

⁹²⁵⁹ See chapter IX 'Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine', (E) 'Assad Hassan Sabra—Purple 018'.

1. 'Associate Purple' mobiles

4806. Another aspect of the case was the role of what the Prosecution termed 'Associate Purple' mobiles or 'Purple associates'. They were neither pleaded in the amended consolidated indictment nor in the Prosecution's pre-trial briefs. The three Purple mobiles were all in contact with Purple associate 744, attributed to Mr Merhi's brother, and Purple associate 375.⁹²⁶⁰ The Purple mobiles were also in contact with the other three Purple associates, numbers 415, 251 and 472, although number 472 had only two calls with Mr Oneissi's Purple 095, in November 2004.⁹²⁶¹

4807. In opening the case, Prosecution counsel submitted, regarding Mr Merhi, that seven pre-paid mobile telephones were mutual contacts of the three 'principal' Purple mobiles and of each other. This was particularly during the time of the luring and abduction of Mr Abu Adass in late December 2004 and mid-January 2005, and the delivery of the false claim of responsibility in the afternoon of 14 February 2005.⁹²⁶²

4808. The Trial Chamber received into evidence the call sequence tables of five Associate Purple mobiles,⁹²⁶³ and heard evidence from the Prosecution's criminal network expert, Mr Gary Platt, of the call activities of Purple associate 744 and Purple associate 375. The Prosecution did not bring any evidence as to who used Purple associate 375.⁹²⁶⁴

4809. In its final trial brief, the Prosecution referred a number of times to these two mobiles, in one place arguing that 'Two additional phones are associated with the group through their contact and call patterns, particularly during the period of ABU ADASS' abduction (Purple Associate 744 [Abbas Habib MERHI] and Purple Associate 375)'.⁹²⁶⁵ The brief, however, contains no explanation as to their role in anything pleaded in the amended consolidated indictment.

⁹²⁶⁰ See chapter IX 'Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine', (C) (2) (d) 'Contact profile'; exhibit P1342 (Call sequence table of Associate Purple 744); exhibit P1339 (Call sequence table of Associate Purple 375); exhibit P527 (Call sequence table of Purple 231); exhibit P1221 (Call sequence table of Purple 018); exhibit P1223 (Call sequence table of Purple 095).

⁹²⁶¹ Exhibit P527; exhibit P1221, exhibit P1223; exhibit P1327 (Call sequence table of Associate Purple 472); exhibit P1350 (Call sequence table of Associate Purple 251); exhibit P1361 (Call sequence table of Associate Purple 415).

⁹²⁶² Prosecutor's opening statement regarding Hassan Habib Merhi, T. 18 June 2014, p. 39; Decision on joinder; Trial management decision.

⁹²⁶³ Exhibits P1327, P1339, P1342, P1350 and P1361.

⁹²⁶⁴ Exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 44 (p. 21).

⁹²⁶⁵ Prosecution final trial brief, para. 504. At para. 776, it states that on Sunday 16 January 2005 'all three Purple and the two Purple Associate phones (744 & 375) became inactive in a synchronised manner', but without explaining its significance.

4810. At the end of the case, the alleged role of these additional Associate Purple mobiles was not clear; hence no findings are made on this.

2. Rule 158 witnesses

4811. As a preliminary yet essential matter, the Trial Chamber notes that much of the evidence as to Mr Abu Adass's background and the 'Mohammed' story comes from witnesses who did not testify in court.

4812. They were his father, Mr Taysir Abu Adass, who died in March 2005, Witness PRH056 and Mr Ziad Ramadan, who was a friend and former workmate. Mr Taysir Abu Adass was deceased, and neither Witness 56 nor Mr Ramadan appeared in court. The Trial Chamber determined, on the Prosecution's application, and over the objections of Defence counsel, that the latter two were 'unavailable' to appear in court and testify, and thus admitted their evidence in statement form under Rule 158.⁹²⁶⁶

4813. The Trial Chamber received into evidence: eleven statements from Witness 56, five on the Prosecution's application, and six on the Sabra Defence's application;⁹²⁶⁷ eight from Mr Ramadan, being three on the Prosecution's and five on the Sabra Defence's applications;⁹²⁶⁸ and nine from Mr Taysir Abu Adass, namely two tendered by the Prosecution and seven by the Sabra Defence.⁹²⁶⁹

4814. The Rule 158 evidence of these witnesses, on many points, is hearsay. Their statements, which are themselves a form of hearsay as out of court statements, contained other hearsay evidence—primarily as to what Mr Abu Adass had said or done—resulting in several levels of hearsay. In some instances, the source of the information in the statements is unclear. This

⁹²⁶⁶ Rule 158 provides for the admission of the evidence of unavailable persons, that is, persons who have died, who can no longer with reasonable diligence be traced or who are for good reason otherwise unavailable to testify orally. Evidence under Rule 158 could be in the form of a written statement, any other reliable record of what the person has said, written or otherwise expressed or a transcript of a statement, whether or not it is in the form prescribed by the Rules. Witness 56 was to testify before the Tribunal, but ultimately did not. Decision admitting evidence under Rule 158 (Witness PRH056); Decision admitting statements of Witness PRH056 under Rule 158. Mr Taysir Abu Adass died shortly after the assassination. Decision on admission of statements of Witness PRH402 and Witness PRH636. Mr Ramadan was unwilling to testify due to his seven-year detention without charge, in a Syrian prison. Rule 158 decision Witness PRH103, paras 7, 35-38.

⁹²⁶⁷ These are exhibits P2128, P2129, P2130, P2131, P2132, 5D474, 5D475, 5D476, 5D477, 5D510 and 5D511.

⁹²⁶⁸ Exhibits P1774, P1775, P1776, 5D469, 5D470, 5D471, 5D472 and 5D473.

⁹²⁶⁹ Exhibit P461, which contains two statements, and exhibits 5D512, 5D513, 5D514, 5D515, 5D516, 5D517 and 5D518, which contain records of and reports on interviews with the witness. *See* Decision on admission of statements of Witness PRH402 and Witness PRH636, para. 24.

inevitably affects its reliability and how the Trial Chamber can use the evidence. Hence, and in accordance with the relevant international legal standards on assessing evidence,⁹²⁷⁰ the Trial Chamber has taken a cautious approach in considering this evidence.

4815. The Merhi Defence submits that the Trial Chamber must examine their statements with caution because of the witnesses' links with Mr Abu Adass.⁹²⁷¹ The Oneissi and Sabra Defence argue that this hearsay evidence, untested by the Defence, is fundamentally unreliable.⁹²⁷² The Oneissi Defence also argues that because the Prosecution alleges that Mr Oneissi was 'Mohammed', meaning that the evidence goes to his acts and conduct, findings on this should not be based on hearsay evidence.⁹²⁷³

4816. The Trial Chamber notes, however, that both the Prosecution and Defence selectively relied upon parts of the Rule 158 statements in support of their own cases, notwithstanding their opposition at the time of proposed admission to Rule 158 statements tendered by the opposing Party. This is of course permissible, as evidence may be used selectively. A witness may be truthful, or reliable, on one point but not on another, and the truthful or reliable evidence, for example, could be corroborated.⁹²⁷⁴

4817. The Prosecution, while relying in general on the Rule 158 witnesses in making its case about the 'Mohammed' story, considers Witness 56's evidence unreliable as to the date(s) on which Mr Abu Adass met 'Mohammed'.⁹²⁷⁵ The Oneissi Defence, however, relies on these witnesses to show that Mr Abu Adass had become more religious and had religious materials on his computer,⁹²⁷⁶ spent long hours at his computer,⁹²⁷⁷ and was sometimes approached by young people looking for religious guidance in the mosque.⁹²⁷⁸

4818. The Sabra and Merhi Defence rely on the witnesses to support their case that a friend of Mr Abu Adass with alleged links to jihad and in particular al-Qaeda, Mr Khaled Taha, telephoned

⁹²⁷⁰ See chapter III 'Assessment of evidence', (C) (6) 'Hearsay evidence'.

⁹²⁷¹ Merhi Defence final trial brief, para. 477.

⁹²⁷² Oneissi Defence final trial brief, paras 246-254, 308-312; Sabra Defence final trial brief, para. 623.

⁹²⁷³ Oneissi Defence final trial brief, paras 240-245.

⁹²⁷⁴ For example, *Kupreškić and others* Appeal Judgment, paras 332-333, and other legal authorities cited at para. 300, in chapter III 'Assessment of evidence', (D) (1) 'Witness testimony'.

⁹²⁷⁵ Prosecution final trial brief, paras 519, 522-525.

⁹²⁷⁶ Oneissi Defence final trial brief, paras 265-266.

⁹²⁷⁷ Oneissi Defence closing submissions, T. 20 September 2018, pp 23-25.

⁹²⁷⁸ Oneissi Defence final trial brief, paras 323-324.

the Abu Adass landline on the night before the disappearance.⁹²⁷⁹ The Merhi Defence also relies on the Rule 158 witnesses to support the argument that, in the video claiming responsibility, Mr Abu Adass's appearance had changed.⁹²⁸⁰

4819. Where the out-of-court statements of these witnesses, which were not subject to cross-examination, deal with contested issues, the Trial Chamber has examined whether any other evidence that Defence counsel could challenge in court could corroborate the hearsay evidence. This is consistent with the Trial Chamber's decisions on how to treat this evidence, namely that the Defence's inability to cross-examine these witnesses requires a careful examination of the weight that can be given to their evidence.⁹²⁸¹ Accordingly, the Trial Chamber has only relied upon the evidence in the Rule 158 statements on matters that are either uncontroversial or uncontested.⁹²⁸²

4820. The Trial Chamber has carefully examined the Prosecution's final trial brief on this issue. The Prosecution there appears not to have distinguished between the statements received into evidence under Rule 158 and testimony from witnesses who appeared in court, meaning that their evidence could be challenged in questioning. The Prosecution has consistently used the Rule 158 evidence, and footnoted it, but without noting that the evidence was untested in court. It has done this without differentiating the different types of testimony. No submissions were made about this in the lengthy 'Evaluation of evidence' section of its final trial brief.⁹²⁸³

4821. Further, the Prosecution made no submissions as to why the Trial Chamber should treat the Rule 158 testimony in the manner it apparently suggests, namely, by simply referring to it without distinction as if the evidence were as reliable as the testimony of witnesses who were, or could have been, questioned by the Parties and Judges in court.

⁹²⁷⁹ Merhi Defence final trial brief, paras 514, 517; Sabra Defence final trial brief, paras 21, 24, 36, 636.

⁹²⁸⁰ Merhi Defence final trial brief, para. 518. Unlike the Sabra and Oneissi Defence, the Merhi Defence does not argue that the Trial Chamber should not rely on the Rule 158 witnesses in general.

⁹²⁸¹ Rule 158 decision Witness PRH103, para. 48; Decision denying Merhi Defence certification to appeal Rule 158 decision (Witness PRH103), para. 7; Decision denying Sabra Defence certification to appeal Rule 158 decision (Witness PRH103), para. 6; Decision denying Oneissi Defence certification to appeal Rule 158 decision (Witness PRH103), paras 9-10; Decision admitting evidence under Rule 158 (Witness PRH056), para. 51; Decision denying certification to appeal of 1 February 2018, paras 20, 25; Decision denying certification to appeal (Rule 158 admission), paras 21, 23.

⁹²⁸² See chapter III 'Assessment of evidence', (C) (6) 'Hearsay evidence'.

⁹²⁸³ Prosecution final trial brief, paras 28-79.

4822. The closest the final trial brief comes to distinguishing between the two types of evidence appears to be at paragraphs 512 to 513. There, the Prosecution submits that the evidence of one witness (Mr Ramadan) is corroborated by ‘the independent evidence of’ another (Witness 87) who did testify. And further, that the ‘Mohammed’ story is corroborated by a witness who encountered a ‘Mohammed’ in the mosque.⁹²⁸⁴ In that section of the brief, the Prosecution relies heavily on Witness 56’s and Mr Ramadan’s statements.⁹²⁸⁵ However, it does this without explaining either how the live testimony corroborates the hearsay Rule 158 evidence, or why the Trial Chamber should find the Rule 158 evidence reliable or credible. In oral closing submissions, Prosecution counsel submitted that the Prosecution ‘relies upon the admitted statements and testimony of four witnesses’, two of whose testimony was admitted under Rule 158.⁹²⁸⁶

4823. Finally, the Oneissi Defence, in its final trial brief submitted that the Trial Chamber, pursuant to Rule 140 and to avoid an injustice, ‘should reconsider its erroneous decision to admit’ the evidence of Witness 56, Mr Taysir Abu Adass and Mr Ramadan.⁹²⁸⁷ The Trial Chamber has decided, generally, to give Witness 56’s and Mr Ramadan’s Rule 158 statements little weight, and to give some contested portions no weight. It has given some limited weight to Mr Taysir Abu Adass’s evidence. In these circumstances, reconsideration is unnecessary.

3. Mr Ziad Ramadan (Witness PRH103)

4824. Another preliminary point is of Mr Ramadan’s background; the information below comes from his witness statements that were received into evidence, international reports relating to his detention in Syria and a Prosecution investigatory statement.

4825. Mr Ramadan is a Syrian national, who worked with Mr Abu Adass. The two sometimes spoke by telephone and Mr Ramadan visited Mr Abu Adass at his home. The Lebanese investigating authorities arrested Mr Ramadan in Beirut on the evening of Wednesday 16 February

⁹²⁸⁴ In oral closing arguments, Prosecution counsel said, ‘For the evidence regarding Mohammed, the Prosecution relies upon the admitted statements and testimony of four witnesses: Two protected witnesses who testified in court, including PRH087; and two other witnesses who the Chamber determined were unavailable, PRH056 and PRH103, that being Mr. Ziad Ramadan.’, T. 13 September 2018, p. 35.

⁹²⁸⁵ And also in analysing Mr Abu Adass’s character, for example, at para. 530 in footnoting to the Rule 158 statements of Mr Taysir Abu Adass, Mr Ramadan and Witness 56.

⁹²⁸⁶ Namely, Witness 56 and Mr Ziad Ramadan—and two witnesses who testified in court; Prosecution closing submissions, T. 13 September 2018, p. 35 (Mr T. Adhihetty).

⁹²⁸⁷ Oneissi Defence final trial brief, paras 206-262.

2005 because of his contacts with Mr Abu Adass. He provided a statement, but was not charged, and was released the next day, on Thursday 17 February 2005.⁹²⁸⁸

4826. In the first week of March 2005, Mr Ramadan left for Syria because the Lebanese authorities had discovered on 16 February 2005 that his residence permit had expired. He fled out of fear of rearrest. On 21 July 2005, he voluntarily surrendered to the Syrian intelligence services, who were looking for him. The Syrian authorities detained and interrogated him and asked several times why he had escaped from Lebanon.⁹²⁸⁹

4827. Mr Ramadan was detained, it appears without charge or trial, for the next seven years in the Syrian prison system. During his detention, according to international reports, he was severely mistreated. After his release in 2012, he fled Syria.⁹²⁹⁰

4828. Mr Ramadan's detention in Syria was the subject of international reports, including by the UN Human Rights Council's Working Group on Arbitrary Detention in 2009. It reported that his deprivation of liberty was 'arbitrary, being in contravention of Articles 9 and 19 of the International Covenant on Civil and Political Rights' and requested the Syrian government to 'take the necessary steps to remedy the situation', which in its opinion would amount to immediately releasing Mr Ramadan and to accord him appropriate reparation.⁹²⁹¹ The Trial Chamber did not receive evidence on the exact date of Mr Ramadan's release from Syrian custody.⁹²⁹²

4829. Mr Ramadan was on the Prosecution's witness list with the pseudonym Witness PRH103, but, during the trial, he informed Prosecution officials that he did not wish to testify. The Special

⁹²⁸⁸ Exhibit P1775 (Witness statement of Ziad Ramadan, UNIIC, 1 December 2005), p. 1, paras 7, 10-11, 36-37, 63, 68-69 (ERNs 205565-205566, 205569, 205571-205572).

⁹²⁸⁹ Exhibit P1775 (Witness statement of Ziad Ramadan, UNIIC, 1 December 2005), paras 7, 13, 19 (ERNs 205565-205567).

⁹²⁹⁰ Rule 158 decision Witness PRH103, paras 6-7, 12, 14.

⁹²⁹¹ UN Human Rights Council, Working Group on Arbitrary Detention, Opinion No. 24/2010 (Syrian Arab Republic), UN Doc. A/HRC/WGAD/2010/24, 24 February 2012, ERNs D0487247-D0487250; UN Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, Addendum – Situation in Specific Countries Territories, UN Doc. A/HRC/11/41/Add.1, 19 May 2009, ERNs D0487452, D0487454-D0487455, paras 301, 305; Human Rights Watch, 'Syria: Free Man Falsely Held as Witness', 23 July 2010, ERNs D0487279-D0487281.

⁹²⁹² An NGO, the Damascus Center for Human Rights Studies, referred to in the Prosecution motion tendering Mr Ramadan's statements, (F2601, Prosecution Motion to Admit Two Statements and an Interview Transcript of PRH103, 23 May 2016, at para. 17 (ix)) reported on 22 August 2011 that Mr Ramadan had been sentenced to six years imprisonment, that he should accordingly have been released in July 2011, but that Syria refused to do so, *see* <https://www.alkarama.org/en/articles/syria-ziad-ramadan-remains-detained-despite-end-sentence-and-wgad-opinion-calling-his>.

Tribunal has no agreement with his country of residence with regard to compelling his testimony;⁹²⁹³ the result was that he did not testify in court.

4830. Accordingly, and on the Prosecution's application, the Trial Chamber admitted three statements—that Mr Ramadan provided between 16 February 2005 and 22 May 2006 to the Lebanese investigating authorities and the UNIIC⁹²⁹⁴—into evidence under Rule 158.⁹²⁹⁵ In deciding on the statements' *prima facie* reliability—there being no issue as to their relevance to the proceedings—and hence admissibility, the Trial Chamber examined the circumstances of the taking of the statements, their internal consistency and corroboration by any evidence already heard by the Trial Chamber.⁹²⁹⁶ In support of its application, the Prosecution submitted a statement from an investigator⁹²⁹⁷ concerning the circumstances of Mr Ramadan's interview by the UNIIC in May 2006, during his detention in Syria. The investigator did not notice any signs then that Mr Ramadan had been physically abused.⁹²⁹⁸

4831. During his detention in Syria, Mr Ramadan was interrogated by the Syrian authorities, and he provided statements relating to Mr Abu Adass. The Sabra Defence sought the admission into evidence of these statements.⁹²⁹⁹ The Trial Chamber held that although they were made when Mr Ramadan was in custody, none of the Parties had sought to cast doubt on their accuracy, reliability or voluntariness. The Trial Chamber closely examined them and decided that they had sufficient probative value for admission into evidence in the interests of fairness and for a complete picture of what had occurred.⁹³⁰⁰ That decision, however, was for the purpose of deciding their

⁹²⁹³ Rule 158 decision Witness PRH103, paras 14-16.

⁹²⁹⁴ On 1 December 2005, investigators from the UNIIC interviewed the witness at a hotel in Damascus. The Syrian authorities took him from custody to the hotel for the interview. He provided the investigators with a written statement. Exhibit P1775 (Witness statement of Ziad Ramadan, UNIIC, 1 December 2005).

⁹²⁹⁵ The statements received exhibit numbers P1774 to P1776. The Trial Chamber thereafter denied applications by the Merhi Defence, Sabra Defence and Oneissi Defence to certify for interlocutory appeal the admission of the statements. Decision denying Merhi Defence certification to appeal Rule 158 decision (Witness PRH103); Decision denying Sabra Defence certification to appeal Rule 158 decision (Witness PRH103); Decision denying Oneissi Defence certification to appeal Rule 158 decision (Witness PRH103).

⁹²⁹⁶ Rule 158 decision Witness PRH103, paras 39, 42, 44, 47.

⁹²⁹⁷ Statement of Mr Alasdair Macleod, dated 5 December 2016, which is not in evidence.

⁹²⁹⁸ Mr Macleod's statement was provided to the Trial Chamber, the Parties and participants via the Special Tribunal's Legal Workflow system, following a request by the Trial Chamber for further information. F2870, Prosecution Second Further Submissions pursuant to the Trial Chamber Request regarding PRH103, 5 December 2016, para. 1.

⁹²⁹⁹ Exhibits 5D469 to 5D473. The Trial Chamber thereafter denied an application by the Prosecution to certify for interlocutory appeal the admission of the statements. Decision denying Prosecution certification to appeal Rule 158 decision (Witness PRH103).

⁹³⁰⁰ Rule 158 decision Witness PRH103, paras 49-52.

admissibility, as opposed to how much weight the Trial Chamber could give to them in evaluating the evidence in its deliberations.

B. Making the claim of responsibility for the attack

4832. In the immediate aftermath of the explosion on 14 February 2005, Beirut was in a state of chaos and crisis. The Trial Chamber received evidence of an atmosphere of turmoil that included the overloading of the mobile networks and a breakdown in communications.

4833. People were desperately trying to obtain information about family and friends. The crime scene, as is detailed above,⁹³⁰¹ was swamped with emergency and security personnel, journalists and many others who should not have been there, including people looking for their loved ones. It was at first unclear whether Mr Hariri had survived the attack. When his death was announced, the obvious question was of ‘who was responsible’. It was in this setting, but before Mr Hariri was officially confirmed dead, that the Beirut offices of Reuters and Al-Jazeera received calls claiming responsibility for the attack.

4834. The Prosecution case is that the claim of responsibility was made by four telephone calls—one to Reuters and three to Al-Jazeera—and a video and accompanying letter, which were put in a cardboard box in a tree near the Al-Jazeera office.⁹³⁰²

4835. It relies on the Purple mobiles’ call data records and cell site evidence to show that Mr Oneissi and Mr Sabra, coordinated by Mr Merhi, participated in the delivery and dissemination of the false claim.⁹³⁰³ The amended consolidated indictment explicitly pleads that either Mr Oneissi *or* Mr Sabra made the call to Reuters, the first and third calls to Al-Jazeera, and that Mr Sabra made the second call to Al-Jazeera.⁹³⁰⁴ For the third call to Al-Jazeera—the fourth in time that afternoon—the pleading is that Mr Oneissi *or* Mr Sabra ‘demanded with menace that Al-Jazeera broadcast the video, which was done shortly after’.⁹³⁰⁵

⁹³⁰¹ See chapter VI ‘Explosion on 14 February 2005’, (C) ‘The explosion and immediate aftermath’.

⁹³⁰² Amended consolidated indictment, para. 44 (a)-(b), (d)-(e).

⁹³⁰³ Amended consolidated indictment, para. 44.

⁹³⁰⁴ Amended consolidated indictment, paras 3 (b)-(d), 48 (c) (ii), 64 (f) (ii), 66 (f) (ii), 68 (h) (ii), 70 (h) (ii).

⁹³⁰⁵ Amended consolidated indictment, para. 44 (g).

1. Evidence

4836. Those involved in making the claim of responsibility called Reuters and Al-Jazeera from four different payphones in Beirut on Monday 14 February 2005. On the Prosecution case, the calls were made at 14:11, 14:19, 15:27 and 17:04.⁹³⁰⁶ The map below shows where these payphones were; they are labelled one to four, and the offices of Al-Jazeera and Reuters and the tree are also marked.



Exhibit P1923 (Chronology PowerPoint presentation – 13 February 2005 to 16 February 2005), slide 146

(a) Call to Reuters at 14:11

4837. Witness PRH012—who worked for the Reuters news agency in Beirut—was working at the office on 14 February 2005 when she heard the explosion. She left and went to the blast scene,

⁹³⁰⁶ Amended consolidated indictment, para. 44 (a)-(b), (d), (g).

taking about seven to eight minutes to get there by taxi and on foot, where she saw that cars were still exploding. She stayed for about half an hour and returned to the office.⁹³⁰⁷

4838. Less than half an hour later, while watching news coverage about the explosion, the telephone rang. The witness answered and heard a male voice saying: ‘Write, write down’. She asked, ‘Who’s speaking?’ to which the caller replied, ‘Keep quiet and write’.⁹³⁰⁸ He then read a statement, which she recalled as follows:

We, the Nusra and Jihad group in the Greater Syria, on this day have given due punishment to the infidel Rafik Hariri, so that he may be an example to others of his sort. God is our witness, God is a witness to what we’re saying.⁹³⁰⁹

4839. The caller, according to the witness, spoke classical Arabic with an accent that sounded unnatural and unusual.⁹³¹⁰ She felt that the caller was over-pronouncing certain letters and used a dialect close to a Palestinian one.⁹³¹¹ She did not hear any background noise on the other end of the line.⁹³¹²

4840. According to call data records, at 14:11, the Reuters news agency received a 41-second call using telecard 6162569.⁹³¹³ It was made from a public payphone⁹³¹⁴ near Abou Shaker Square—El-Mazraa, Abou Shaker Street next to Mufti Hasan Khaled Organization for Education—set on a triangle shaped concrete island in a busy square.⁹³¹⁵

⁹³⁰⁷ Witness PRH012, T. 14 July 2015, pp 11-15.

⁹³⁰⁸ Witness PRH012, T. 14 July 2015, pp 17, 58; exhibit P509 (Report of interview with Witness PRH012), p. 1.

⁹³⁰⁹ Witness PRH012, T. 14 July 2015, pp 17-18, 60; exhibit P509 (Report of interview with Witness PRH012), p. 1.

⁹³¹⁰ Witness PRH012, T. 14 July 2015, pp 18-19, 21, 23.

⁹³¹¹ Witness PRH012, T. 14 July 2015, pp 18, 22-23, 28-29, 31.

⁹³¹² Witness PRH012, T. 14 July 2015, pp 73-74; exhibit P509, p. 1.

⁹³¹³ Exhibit P506 (Call sequence table of the Reuters landline, 14 February 2005), p. 3; exhibit P546 (Call history of telecard with serial number 6162569 on 14 February 2005); exhibit P1970 (Slimmed down call sequence table of the Reuters landline showing a telecard call on 14 February 2005), p. 3; Witness PRH012, T. 14 July 2015, pp 9-10. *See also* exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1222; exhibit P1780 (Chronology of relevant events), p. 32; exhibit P1782 (Narrative overview of telephone activity and relevant events), para. 1061; exhibit P1923 (Chronology PowerPoint presentation – 13 February 2005 to 16 February 2005), slide 151.

⁹³¹⁴ The payphone number was 1819312. Exhibit P506, p. 3; exhibit P546; exhibit P1970, p. 3. *See also* exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1222; exhibit P1780, p. 32; exhibit P1923, slide 151; exhibit P1782, para. 1084.

⁹³¹⁵ Exhibit P1412 (Statement of Glenn Williams), pp 3, 9-12, 34; exhibit P546. *See also* exhibit P1923.8 (Snapshots 112, 113 and 114 to Chronology PowerPoint), p. 5 (snapshot 114); Gary Platt, T. 15 March 2017, pp 35-36.

4841. The amended consolidated indictment pleads that either Mr Oneissi or Mr Sabra made this call.

(b) First call to Al-Jazeera at 14:19

4842. On 14 February 2005, at the time of the explosion, Mr Ghassan Ben-Jeddo, Al-Jazeera's Beirut bureau chief,⁹³¹⁶ and Witness PRH007, a film director working there, were in Al-Jazeera's then new Beirut office.⁹³¹⁷

4843. They went outside and then headed towards the main Al-Jazeera office in the centre of Beirut, near a government building.⁹³¹⁸ About thirty minutes after the explosion, Mr Ben-Jeddo reached the main office.⁹³¹⁹

4844. Mr Ben-Jeddo watched Mr Hariri's *Al-Mustaqbal* TV announce his death. Shortly afterwards Al-Jazeera's landline received a call.⁹³²⁰ While Mr Ben-Jeddo was uncertain as to the exact timing of the call, he was confident that this call followed the announcement of Mr Hariri's death on *Al-Mustaqbal* TV.⁹³²¹ Witness PRH006, an editor at Al-Jazeera, answered the call.⁹³²²

4845. The witness heard a male voice telling her to take a paper and a pen because he had a statement to make. The caller then started dictating quickly.⁹³²³ When the witness could not follow

⁹³¹⁶ Ghassan Ben-Jeddo, T. 8 July 2015, pp 57, 69; Witness PRH006, T. 23 June 2015, p. 24.

⁹³¹⁷ Ghassan Ben-Jeddo, T. 8 July 2015, pp 60, 63, 65, 75; Witness PRH007, T. 24 June 2015, pp 61-62; exhibit P491 (Statements of Witness PRH007), p. 11.

⁹³¹⁸ Ghassan Ben-Jeddo, T. 8 July 2015, pp 61, 65-66; Witness PRH007, T. 24 June 2015, pp 60, 62; exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), paras 41-42; exhibit P491 (Statements of Witness PRH007), p. 11. *See also* exhibit P496 (Extract from Zawarib Greater Beirut Atlas, exhibit P298, annotated by Ghassan Ben-Jeddo).

⁹³¹⁹ Ghassan Ben-Jeddo, T. 9 July 2015, p. 81; Witness PRH006, T. 23 June 2015, pp 25, 36, T. 24 June 2015, pp 23-25; exhibit 5D163 (Statement of Witness PRH006), pp 1-2.

⁹³²⁰ The number was 1999449. Ghassan Ben-Jeddo, T. 8 July 2015, pp 76-78, 80-81, T. 10 July 2015, pp 96-97; exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), para. 42; exhibit 3D305 (Call sequence table of the Al-Jazeera landline, 14 February 2005); exhibit P1971 (Slimmed down call sequence table of the Al-Jazeera landline showing telecard calls on 14 February 2005).

⁹³²¹ Ghassan Ben-Jeddo, T. 8 July 2015, pp 81-82, T. 10 July 2015, p. 97.

⁹³²² Witness PRH006, T. 23 June 2015, pp 23, 40; Ghassan Ben-Jeddo, T. 8 July 2015, pp 76-77, 82; exhibit 5D163 (Statement of Witness PRH006), p. 2; exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), para. 42.

⁹³²³ Witness PRH006, T. 23 June 2015, pp 41, 52; exhibit 5D163 (Statement of Witness PRH006), p. 2.

what the caller was saying, he became angry and threatened to hang up;⁹³²⁴ the witness then gave the telephone to Mr Ben-Jeddo.⁹³²⁵

4846. Mr Ben-Jeddo listened and took notes.⁹³²⁶ The caller said something very similar to the written text, containing the claim of responsibility for the assassination, that the Al-Jazeera employees found in the tree later that afternoon.⁹³²⁷ Initially, Mr Ben-Jeddo did not take this information seriously because he had never heard about the organisation before and in his experience sometimes more than one organisation claimed responsibility for such attacks.⁹³²⁸ He made notes during the call but did not keep them.⁹³²⁹ The call lasted a minute or a minute and a half.⁹³³⁰

4847. Both Witness 6 and Mr Ben-Jeddo said that the caller spoke classical Arabic.⁹³³¹ Witness 6 found the caller's voice high-pitched and tense.⁹³³² To her it seemed as if he had put on a Lebanese accent.⁹³³³ She could hear background noises, such as cars passing by.⁹³³⁴

4848. Mr Ben-Jeddo testified that the caller was neither screaming nor shouting, and it sounded like he was reading from a script. He was speaking fast, using classical Arabic, but his Arabic was very poor.⁹³³⁵ His pronunciation was broken and weak, and it was unclear if the caller was even a native Arabic speaker.⁹³³⁶ Mr Ben-Jeddo thought that the caller may have been from Afghanistan

⁹³²⁴ Witness PRH006, T. 23 June 2015, pp 41-42, 48, 52.

⁹³²⁵ Ghassan Ben-Jeddo, T. 8 July 2015, p. 77, T. 9 July 2015, p. 61; Witness PRH006, T. 23 June 2015, pp 41-42, 48, 76.

⁹³²⁶ Ghassan Ben-Jeddo, T. 8 July 2015, pp 82, 85; Witness PRH006, T. 23 June 2015, p. 51.

⁹³²⁷ Ghassan Ben-Jeddo, T. 8 July 2015, p. 83; Witness PRH006, T. 23 June 2015, pp 42-43.

⁹³²⁸ Ghassan Ben-Jeddo, T. 8 July 2015, p. 84, T. 9 July 2015, pp 17-18, 20-21.

⁹³²⁹ Ghassan Ben-Jeddo, T. 8 July 2015, p. 83.

⁹³³⁰ Ghassan Ben-Jeddo, T. 8 July 2015, p. 85, T. 9 July 2015, pp 89-90; Witness PRH006, T. 23 June 2015, pp 42, 51.

⁹³³¹ Witness PRH006, T. 23 June 2015, p. 42; Ghassan Ben-Jeddo, T. 8 July 2015, p. 94.

⁹³³² Witness PRH006, T. 23 June 2015, pp 41, 76.

⁹³³³ Witness PRH006, T. 23 June 2015, pp 42, 53-54, 76.

⁹³³⁴ Witness PRH006, T. 23 June 2015, p. 93.

⁹³³⁵ Ghassan Ben-Jeddo, T. 8 July 2015, pp 85-86, 89, 91-95, T. 9 July 2015, pp 95, 97-98; exhibit 5D166 (Statement of Ghassan Ben-Jeddo, dated 15 July 2005), paras 10-11; exhibit 5D169 (Statements of Ghassan Ben-Jeddo, dated 9 March 2005 and 9 April 2005), p. 1; exhibit 5D170 (Record of Ghassan Ben-Jeddo's interview with UN Fact-Finding Mission), p. 1. *See also* exhibit P497 (Al-Jazeera live broadcast of the attack on 14 February 2005), timestamps 00:22:29-00:23:37; exhibit 5D179 (Transcript of Al-Jazeera broadcast of 14 February 2005), pp 9-10; exhibit 5D182 (Joseph Jhugroo's investigator's note), p. 2.

⁹³³⁶ Ghassan Ben-Jeddo, T. 8 July 2015, pp 85-86.

or Pakistan,⁹³³⁷ a native English speaker who also spoke Arabic,⁹³³⁸ a Lebanese person with a poor command of the language⁹³³⁹ or someone pretending to have poor Arabic.⁹³⁴⁰ His perception of the caller's poor command of Arabic, however, could also have been due to the poor quality of the landline, and the background noise.⁹³⁴¹

4849. As to the timing of the call, the call data records show that Al-Jazeera's Beirut office received a 61-second call on 14 February 2005, at 14:19, from a public payphone on the Saeb Salam Boulevard, facing the Arab Bank, also using telecard 6162569.⁹³⁴² Mr Ben-Jeddo appeared live for the first time after the explosion during a news bulletin on the 'top of the hour', which would have been either at 14:00 or 15:00.⁹³⁴³

4850. In this broadcast, he only hesitantly mentioned the call claiming responsibility for the assassination, as he was sceptical about its veracity.⁹³⁴⁴

4851. In the amended consolidated indictment, the Prosecutor pleads that either Mr Oneissi or Mr Sabra made this call.

⁹³³⁷ Ghassan Ben-Jeddo, T. 8 July 2015, pp 85, 89-93; exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), para. 52; exhibit 5D170 (Record of Ghassan Ben-Jeddo's interview with UN Fact-Finding Mission), p. 1.

⁹³³⁸ Ghassan Ben-Jeddo, T. 8 July 2015, pp 89-90, 92-94; exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), para. 52.

⁹³³⁹ Ghassan Ben-Jeddo, T. 8 July 2015, pp 93-94.

⁹³⁴⁰ Ghassan Ben-Jeddo, T. 8 July 2015, pp 89-90, 94-96; exhibit 5D170 (Record of Ghassan Ben-Jeddo's interview with UN Fact-Finding Mission), p. 1.

⁹³⁴¹ Ghassan Ben-Jeddo, T. 8 July 2015, p. 97; exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), para. 52.

⁹³⁴² The payphone's number was 1649957. Exhibit 3D305 (Call sequence table of the Al-Jazeera landline, 14 February 2005); exhibit P1971 (Slimmed down call sequence table of the Al-Jazeera landline showing telecard calls on 14 February 2005); exhibit P546 (Call history of telecard with serial number 6162569 on 14 February 2005); exhibit P1412 (Statement of Glenn Williams), pp 6-9, 35. *See also* exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1223; exhibit P1780 (Chronology of relevant events), p. 32; exhibit P1782 (Narrative overview of telephone activity and relevant events), para. 1061; exhibit P1923 (Chronology PowerPoint presentation – 13 February 2005 to 16 February 2005), slide 157.

⁹³⁴³ Ghassan Ben-Jeddo, T. 9 July 2015, pp 54-55, 86, T. 10 July 2015, pp 100-101 (Mr Ben-Jeddo explains that 'on the top of the hour' means within two or three minutes of the stroke of the hour).

⁹³⁴⁴ Ghassan Ben-Jeddo, T. 9 July 2015, pp 17-21. *See also* exhibit P497, timestamps 00:22:29-00:23:37; exhibit 5D179, pp 9-10.

(c) Second call to Al-Jazeera at 15:27

4852. After Mr Ben-Jeddo's live appearance during a news bulletin, Witness 6 received a second call on the Al-Jazeera landline.⁹³⁴⁵ When the caller heard Witness 6's voice, he refused to talk to her and asked to speak to someone who would understand what he was saying.⁹³⁴⁶ The witness could not recognise if it was the same caller, but was under the impression that he recognised her. The caller was speaking Arabic in a high-pitched, nervous and tense voice. Witness 6 passed the telephone to Mr Ben-Jeddo.⁹³⁴⁷

4853. Mr Ben-Jeddo noticed a difference between the two callers.⁹³⁴⁸ This time the caller was speaking 'proper Arabic' without any accent, with a sharp and pleasant voice. Mr Ben-Jeddo perceived him as an Arab from the Levant region with an accent similar to Lebanese. Unlike the first call, the line was clear. The noise in the background made the witness believe that the speaker was in a public area.⁹³⁴⁹ The second caller's voice was different to the first caller's.⁹³⁵⁰

4854. The caller told Mr Ben-Jeddo that there was a video tape on a tree near the Al-Jazeera building, next to a pink building. He said that it must be retrieved within fifteen minutes or it would not be found.⁹³⁵¹

4855. The call data records reveal that the Al-Jazeera's landline office received a 54-second call at 15:27 from a public payphone⁹³⁵² in *Rue Banque du Liban* facing the Abou Bakr El Saddik mosque in Hamra, using the same telecard, number 6162569.⁹³⁵³

⁹³⁴⁵ Exhibit 3D305; exhibit P1971; Witness PRH006, T. 23 June 2015, p. 55; exhibit 5D163 (Statement of Witness PRH006), p. 3; Ghassan Ben-Jeddo, T. 9 July 2015, pp 27, 31-32, 55; exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), para. 58; exhibit 5D170 (Record of Ghassan Ben-Jeddo's interview with UN Fact-Finding Mission), p. 1.

⁹³⁴⁶ Witness PRH006, T. 23 June 2015, pp 56-57; exhibit 5D163 (Statement of Witness PRH006), p. 3.

⁹³⁴⁷ Witness PRH006, T. 23 June 2015, pp 56-57.

⁹³⁴⁸ Ghassan Ben-Jeddo, T. 8 July 2015, pp 86, 96-97.

⁹³⁴⁹ Ghassan Ben-Jeddo, T. 9 July 2015, pp 33-34; exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), paras 58, 60.

⁹³⁵⁰ Ghassan Ben-Jeddo, T. 8 July 2015, p. 97.

⁹³⁵¹ The tree was close to the UN ESCWA. Ghassan Ben-Jeddo, T. 9 July 2015, pp 27, 34; exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), para. 58; exhibit P498 (Satellite photograph annotated during Ghassan Ben-Jeddo's testimony on 9 July 2015 with an arrow locating the tree). *See also* Witness PRH006, T. 23 June 2015, p. 60.

⁹³⁵² The payphone number was 1741432.

⁹³⁵³ Exhibits 3D305 (Call sequence table of the Al-Jazeera landline, 14 February 2005); exhibit P1971 (Slimmed down call sequence table of the Al-Jazeera landline showing telecard calls on 14 February 2005); exhibit P546 (Call history of telecard with serial number 6162569 on 14 February 2005); exhibit P1412 (Statement of Glenn Williams), pp 15-

4856. In the amended consolidated indictment, the Prosecutor pleads that Mr Sabra made this call.

(d) Collection of the videoed claim of responsibility and the letter at 15:53

4857. After the second call to Al-Jazeera, Mr Ben-Jeddo asked Witness 7 to go and get the tape.⁹³⁵⁴ Witness 7 agreed and went to the tree.⁹³⁵⁵

4858. This particular tree was unique and is well-known,⁹³⁵⁶ as it was high and stood out from the other trees in the area.⁹³⁵⁷ Normally a private security officer was next to the tree, but a building next to it blocked a closed circuit TV view of the tree.⁹³⁵⁸ For illustration purposes, exhibit P498 below is a satellite photograph, annotated by Mr Ben-Jeddo, with an arrow showing the tree, which is marked as 'TREE'; it also shows the Al-Jazeera office.

18, 33. *See also* Gary Platt, T. 15 March 2017, p. 43; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1231; exhibit P1780, p. 32; exhibit P1782, paras 1065, 1087.

⁹³⁵⁴ Ghassan Ben-Jeddo, T. 9 July 2015, pp 34-35, 55; exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), para. 58; exhibit 5D169 (Statements of Ghassan Ben-Jeddo, dated 9 March 2005 and 9 April 2005), p. 5; Witness PRH007, T. 24 June 2015, p. 62; exhibit P491 (Statements of Witness PRH007), p. 11; Witness PRH006, T. 23 June 2015, p. 60, T. 24 June 2015, p. 9.

⁹³⁵⁵ Ghassan Ben-Jeddo, T. 9 July 2015, p. 35; exhibit 5D166 (Statement of Ghassan Ben-Jeddo, dated 15 July 2005), para. 17; exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), para. 58; Witness PRH007, T. 24 June 2015, p. 62; exhibit P491 (Statements of Witness PRH007), p. 11; exhibit 4D161 (Photograph marked by Witness PRH007 showing where on the tree he saw the white box).

⁹³⁵⁶ Witness PRH006, T. 23 June 2015, p. 60.

⁹³⁵⁷ Exhibit P492 (Statements of Witness PRH115, dated 8 February 2007, 3 October 2008 and 13 March 2015), p. 16 (ERN 60305521).

⁹³⁵⁸ Exhibit P492 (Statements of Witness PRH115, dated 8 February 2007, 3 October 2008 and 13 March 2015), p. 15 (ERN 60305520).



Exhibit P498 (Satellite photograph annotated by Ghassan Ben-Jeddo)

4859. Witness 7 looked up discreetly and noticed a white box in the tree with three to five small holes.⁹³⁵⁹ He thought it was a birdcage and it was empty.⁹³⁶⁰ Being afraid that someone might shoot him, he dared not take it. He went back to the office empty-handed saying that he could not find anything.⁹³⁶¹

⁹³⁵⁹ Witness PRH007, T. 24 June 2015, pp 63-64; exhibit P491 (Statements of Witness PRH007), pp 11-12; exhibit 4D161.

⁹³⁶⁰ Exhibit P491 (Statements of Witness PRH007), p. 12.

⁹³⁶¹ Witness PRH007, T. 24 June 2015, pp 62, 65; exhibit P491 (Statements of Witness PRH007), pp 11-12; exhibit 4D161; Ghassan Ben-Jeddo, T. 9 July 2015, pp 35-36; Witness PRH006, T. 23 June 2015, pp 60-61, T. 24 June 2015, p. 9; exhibit 5D166 (Statement of Ghassan Ben-Jeddo, dated 15 July 2005), para. 17; exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), para. 58.

4860. Mr Ben-Jeddo said that if Al-Jazeera did not get the tape it would be given to another station.⁹³⁶² Witness PRH115, a technician working at Al-Jazeera,⁹³⁶³ then volunteered to go and get the tape.⁹³⁶⁴

4861. Witness 115 said that the Lebanese Security Forces and army personnel frequently patrolled the area, which made him afraid when he approached the tree.⁹³⁶⁵ He walked around the tree two or three times before he noticed a white box on one of the branches. It was not easy to see from the ground.⁹³⁶⁶ At 15:52, he sent an SMS to Witness 6 saying ‘there is a white box on it, I daren’t go and get it.’⁹³⁶⁷

4862. The photograph below circled by Witness 115, exhibit 4D161, shows where he saw the white box with the tape.

⁹³⁶² Exhibit P491 (Statements of Witness PRH007), pp 11-12. *See also* Ghassan Ben-Jeddo, T. 9 July 2015, pp 27, 31, 34.

⁹³⁶³ Exhibit P492 (Statements of Witness PRH115, dated 8 February 2007, 3 October 2008 and 13 March 2015), pp 1-2, 12 (ERNs 60305506-60305507, 60305517).

⁹³⁶⁴ Ghassan Ben-Jeddo, T. 9 July 2015, p. 36; Witness PRH115, T. 7 July 2015, p. 74; Witness PRH006, T. 23 June 2015, pp 64-65; exhibit 5D166 (Statement of Ghassan Ben-Jeddo, dated 15 July 2005), para. 17; exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), para. 58; exhibit 5D169 (Statements of Ghassan Ben-Jeddo, dated 9 March 2005 and 9 April 2005), p. 5; exhibit 5D164 (Statement of Witness PRH115, dated 16 April 2005), p. 3; exhibit P492 (Statements of Witness PRH115, dated 8 February 2007, 3 October 2008 and 13 March 2015), pp 15, 25 (ERNs 60305520, 60305530). *See also* exhibit P491 (Statements of Witness PRH007), p. 12; exhibit 5D165 (Record of Witness PRH115’s interview with UN Fact-Finding Mission), p. 1.

⁹³⁶⁵ Witness PRH115, T. 7 July 2015, p. 68, T. 8 July 2015, p. 20; exhibit P492 (Statements of Witness PRH115, dated 8 February 2007, 3 October 2008 and 13 March 2015), pp 16, 25 (ERNs 60305521, 60305530).

⁹³⁶⁶ Witness PRH115, T. 7 July 2015, p. 69; exhibit P492 (Statements of Witness PRH115, dated 8 February 2007, 3 October 2008 and 13 March 2015), pp 16, 25 (ERNs 60305521, 60305530); exhibit P495 (Photographs of the tree marked by Witness PRH115 showing where he found and then left the white box). *See also* exhibit 5D164 (Statement of Witness PRH115, dated 16 April 2005), p. 3; exhibit 5D165 (Record of Witness PRH115’s interview with UN Fact-Finding Mission), p. 1.

⁹³⁶⁷ Witness PRH115, T. 7 July 2015, pp 62-63, T. 8 July 2015, pp 45-46; Witness PRH006, T. 23 June 2015, p. 65, T. 24 June 2015, pp 8-9, 42; exhibit P492 (Statements of Witness PRH115, dated 8 February 2007, 3 October 2008 and 13 March 2015), pp 15-16, 25 (ERNs 60305520-60305521, 60305530); exhibit 5D164 (Statement of Witness PRH115, dated 16 April 2005), p. 3; exhibit 5D165 (Record of Witness PRH115’s interview with UN Fact-Finding Mission), p. 1; exhibit 5D163 (Statement of Witness PRH006), p. 3; exhibit P494.1 (Redacted call sequence table with SMS content of Witness PRH115’s mobile, 14 February 2005); exhibit P494 (Call sequence table with SMS content of Witness PRH115’s mobile, 14 February 2005), p. 1; exhibit P1276 (Call sequence table with SMS content of Witness PRH115’s mobile, 14 February 2005), p. 2; exhibit P493 (Call sequence table of Witness PRH115’s mobile, 14 February 2005), row 15; exhibit P493.1 (Redacted call sequence table of Witness PRH115’s mobile, 14 February 2005), row 15; exhibit P1278 (Call sequence table of Witness PRH115’s mobile, 14 February 2005), row 15. *See also* exhibit P488 (Call sequence table of Witness PRH006’s mobile, 14 February 2005), row 57; exhibit P488.1 (Redacted extract of call sequence table of Witness PRH006’s mobile, 14 February 2005), row 57; exhibit P489 (Call sequence table with SMS content of Witness PRH006’s mobile, 14 February 2005), p. 2; exhibit P489.1 (Redacted extract of call sequence table with SMS content of Witness PRH006’s mobile, 14 February 2005).

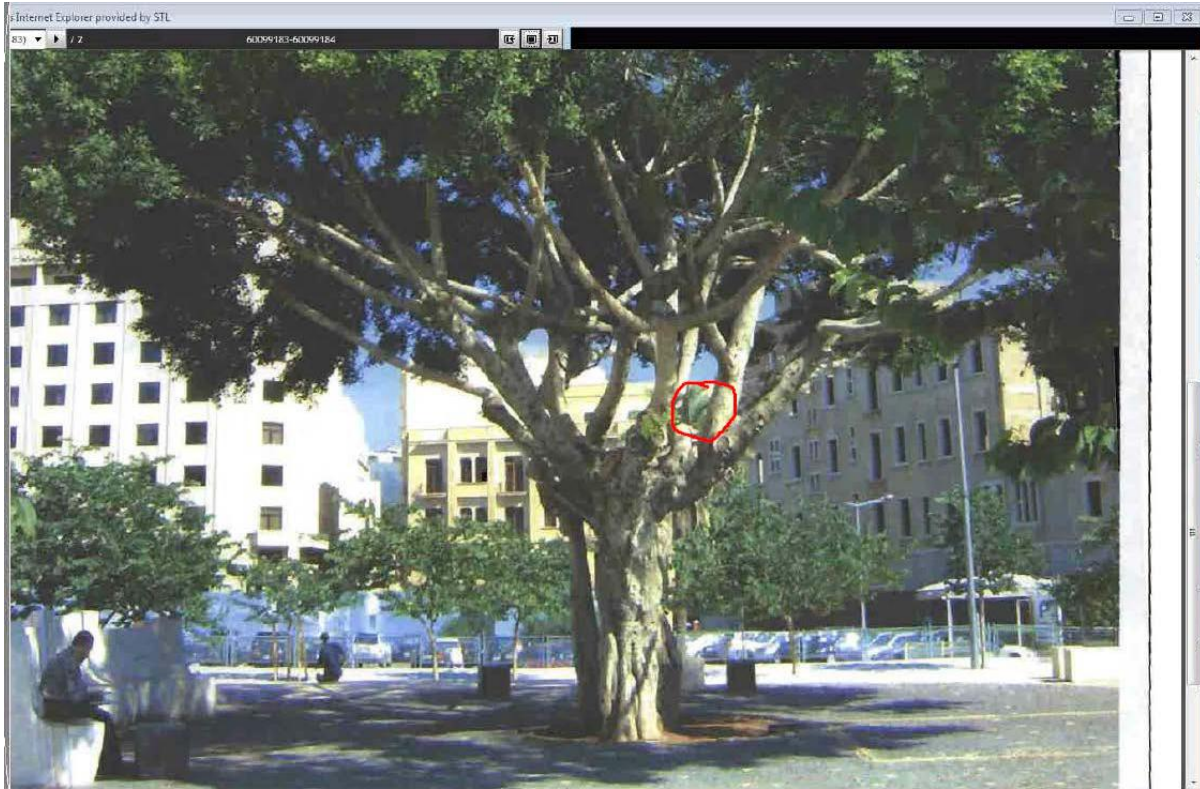


Exhibit 4D161 (Photograph marked by Witness PRH115 showing where on the tree he saw the white box)

4863. Witness 6 told Mr Ben-Jeddo about Witness 115's message, and Mr Ben-Jeddo then went to get the tape.⁹³⁶⁸ Witness 6 sent an SMS message to Witness 115 saying that Mr Ben-Jeddo was coming.⁹³⁶⁹ After Witness 115 saw this message, he climbed about a metre or a metre and a half up the tree and collected the box.⁹³⁷⁰ He sent an SMS at 15:53 to Witness 6 saying 'I got it, a VHS

⁹³⁶⁸ Ghassan Ben-Jeddo, T. 9 July 2015, p. 37.

⁹³⁶⁹ Witness PRH006, T. 23 June 2015, p. 67, T. 24 June 2015, pp 8-9; Witness PRH115, T. 8 July 2015, p. 45; exhibit P492 (Statements of Witness PRH115, dated 8 February 2007, 3 October 2008 and 13 March 2015), pp 16, 25 (ERNs 60305521, 60305530); exhibit 5D164 (Statement of Witness PRH115, dated 16 April 2005), p. 3; exhibit 5D165 (Record of Witness PRH115's interview with UN Fact-Finding Mission), p. 1; exhibit P489, p. 2; exhibit P489.1; exhibit P488, rows 58-59; exhibit P488.1, rows 58-59. *See also* exhibit P494.1; exhibit P1276, p. 2; exhibit P493; exhibit P493.1, rows 17-18; exhibit P1278, rows 17-18.

⁹³⁷⁰ Witness PRH115, T. 7 July 2015, pp 65-66; exhibit P492 (Statements of Witness PRH115, dated 8 February 2007, 3 October 2008 and 13 March 2015), pp 16, 25 (ERNs 60305521, 60305530); exhibit 5D164 (Statement of Witness PRH115, dated 16 April 2005), pp 3-4; exhibit 5D165 (Record of Witness PRH115's interview with UN Fact-Finding Mission), p. 1; exhibit P495; Ghassan Ben-Jeddo, T. 9 July 2015, p. 37.

tape. Ai.⁹³⁷¹ Witness 115 did not dare bring the box with him, so he left it at the bottom of the tree and took only a white sealed envelope.⁹³⁷²

4864. Mr Ben-Jeddo met Witness 115 outside the building, coming back with the envelope. They both returned to the office.⁹³⁷³ Witness 115 said that he went to collect the tape and returned to the office between 14:00 and 15:00.⁹³⁷⁴

4865. Witness 115 then gave the envelope to Mr Ben-Jeddo who opened it and found a VHS tape inside and a written statement claiming responsibility.⁹³⁷⁵ Mr Ben-Jeddo held the tape with a tissue, as he did not want to touch it and contaminate it with his fingerprints.⁹³⁷⁶

4866. After watching the tape, Witness 6 converted it from VHS to digital format to send to Al-Jazeera's headquarters in Doha, Qatar.⁹³⁷⁷ The formatting took about ten to twenty minutes.⁹³⁷⁸

⁹³⁷¹ Witness PRH115, T. 7 July 2015, pp 62-63, T. 8 July 2015, pp 45-46; Witness PRH006, T. 24 June 2015, pp 8-9; exhibit P492 (Statements of Witness PRH115, dated 8 February 2007, 3 October 2008 and 13 March 2015), pp 16, 25 (ERNs 60305521, 60305531); exhibit 5D164 (Statement of Witness PRH115, dated 16 April 2005), p. 5; exhibit P488, p. 2; exhibit P488.1; exhibit P489, p. 2; exhibit P489.1; exhibit P494.1; exhibit P494, p. 2; exhibit P1276, p. 2; exhibit P493, row 16; exhibit P493.1, row 16; exhibit P1278, row 16.

⁹³⁷² Witness PRH115, T. 8 July 2015, p. 21; exhibit P492 (Statements of Witness PRH115, dated 8 February 2007, 3 October 2008 and 13 March 2015), pp 16, 25-26 (ERNs 60305521, 60305530-60305531); exhibit 5D164 (Statement of Witness PRH115, dated 16 April 2005), p. 5; exhibit 5D165 (Record of Witness PRH115's interview with UN Fact-Finding Mission), p. 2; Ghassan Ben-Jeddo, T. 9 July 2015, pp 37-38; Witness PRH006, 23 June 2015, p. 67. *See also* exhibit P495.

⁹³⁷³ Ghassan Ben-Jeddo, T. 9 July 2015, pp 37-38; Witness PRH115, T. 7 July 2015, pp 53, 75, 84; exhibit P492 (Statements of Witness PRH115, dated 8 February 2007, 3 October 2008 and 13 March 2015), pp 17, 26 (ERNs 60305522, 60305531); exhibit 5D164 (Statement of Witness PRH115, dated 16 April 2005), p. 5.

⁹³⁷⁴ Witness PRH115, T. 7 July 2015, pp 90-93; exhibit 5D165 (Record of Witness PRH115's interview with UN Fact-Finding Mission), p. 2.

⁹³⁷⁵ Ghassan Ben-Jeddo, T. 9 July 2015, pp 37-38; Witness PRH006, T. 23 June 2015, p. 67; Witness PRH115, T. 7 July 2015, p. 75; exhibit 5D166 (Statement of Ghassan Ben-Jeddo, dated 15 July 2005), para. 17; exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), para. 66; exhibit 5D169 (Statements of Ghassan Ben-Jeddo, dated 9 March 2005 and 9 April 2005), p. 7; exhibit P492 (Statements of Witness PRH115, dated 8 February 2007, 3 October 2008 and 13 March 2015), pp 17, 26 (ERNs 60305522, 60305531); exhibit 5D164 (Statement of Witness PRH115, dated 16 April 2005), p. 5; exhibit 5D165 (Record of Witness PRH115's interview with UN Fact-Finding Mission), p. 2.

⁹³⁷⁶ Ghassan Ben-Jeddo, T. 9 July 2015, pp 39, 73; exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), para. 66; exhibit 5D169 (Statements of Ghassan Ben-Jeddo, dated 9 March 2005 and 9 April 2005), p. 3; exhibit 5D170 (Record of Ghassan Ben-Jeddo's interview with UN Fact-Finding Mission), p. 1. *See also* exhibit 5D168 (Information report regarding the video tape of the claim of responsibility), ERN 60031459T.

⁹³⁷⁷ Witness PRH006, T. 23 June 2015, p. 69, T. 24 June 2015, p. 42; exhibit 5D163 (Statement of Witness PRH006), p. 3; Ghassan Ben-Jeddo, T. 9 July 2015, pp 50-51; exhibit 5D166 (Statement of Ghassan Ben-Jeddo, dated 15 July 2005), para. 19; exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), para. 66.

⁹³⁷⁸ Witness PRH006, T. 23 June 2015, p. 69; Ghassan Ben-Jeddo, T. 9 July 2015, p. 51.

Witness PRH430, also an Al-Jazeera producer, transmitted the footage to Doha,⁹³⁷⁹ while Mr Ben-Jeddo faxed the letter accompanying the tape to the headquarters.⁹³⁸⁰

4867. Witness 115 testified that he was ‘under the tree’ when he sent first text message at 15:52, saying ‘I remember that because some things one cannot forget’; he also said that he was ‘by the tree’ when he sent the messages to Witness 6.⁹³⁸¹

4868. In the amended consolidated indictment, the Prosecutor pleads that Mr Oneissi was watching the location to confirm receipt of the video by Al-Jazeera.⁹³⁸²

(e) Third call to Al-Jazeera at 17:04

4869. After Witness 430 transmitted footage from the scene of the explosion to Al-Jazeera’s Doha headquarters, he went to the Al-Jazeera offices on the fourth floor, where he found Mr Ben-Jeddo and Witness 6.⁹³⁸³ Shortly afterwards, the witness answered a call on the office landline.⁹³⁸⁴

4870. The line was clear, without any background noise. Witness 430 heard a man in a clear and high voice say in classic Arabic, without a Lebanese colloquial dialect, ‘I want to talk to Ghassan Ben-Jeddo’.⁹³⁸⁵ When the witness asked who was calling, the caller raised his voice and started to speak loudly, saying, ‘Give me Ghassan Ben-Jeddo.’⁹³⁸⁶ The witness immediately handed the telephone to Mr Ben-Jeddo and stayed with him until the end of the call.⁹³⁸⁷

4871. Mr Ben-Jeddo could not remember whether the call occurred shortly after 15:00 or shortly after 16:00, but was certain that the caller asked him why the video had not yet been broadcast.⁹³⁸⁸ Mr Ben-Jeddo explained that they had sent the tape to Doha and the decision to air the video would

⁹³⁷⁹ Witness PRH430, T. 13 July 2015, pp 6, 16-18.

⁹³⁸⁰ Ghassan Ben-Jeddo, T. 9 July 2015, p. 50.

⁹³⁸¹ Witness PRH115, T. 7 July 2015, pp 62-63.

⁹³⁸² Amended consolidated indictment, para. 44 (d).

⁹³⁸³ Witness PRH430, T. 13 July 2015, pp 16-20, 23.

⁹³⁸⁴ Witness PRH430, T. 13 July 2015, pp 23, 49, 67.

⁹³⁸⁵ Witness PRH430, T. 13 July 2015, pp 24-25, 58, 71-72.

⁹³⁸⁶ Witness PRH430, T. 13 July 2015, pp 24, 52, 71.

⁹³⁸⁷ Witness PRH430, T. 13 July 2015, pp 24-25, 49.

⁹³⁸⁸ Ghassan Ben-Jeddo, T. 9 July 2015, pp 52-53, 107; exhibit 5D166 (Statement of Ghassan Ben-Jeddo, dated 15 July 2005), para. 21 (‘The third call came approximately at 1515 hrs.’); exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), para. 72 (‘Approximately 60 minutes after we collected the video I received the third call’); exhibit 5D169 (Statements of Ghassan Ben-Jeddo, dated 9 March 2005 and 9 April 2005), p. 2 (stating that the third call occurred between 15:00 and 15:30); exhibit 5D170 (Record of Ghassan Ben-Jeddo’s interview with UN Fact-Finding Mission), p. 1 (‘At about 3:30 p.m., I received a third phone call from another man and asked me why I did not broadcast the tape’).

be taken by Al-Jazeera's headquarters.⁹³⁸⁹ The caller became threatening, and in a sharp voice said that Al-Jazeera would hear a lot in the future about the group claiming responsibility for the attack, and that it was in the company's interest to cooperate.⁹³⁹⁰

4872. Mr Ben-Jeddo's impression was that the caller had a similar accent to that of the second caller, namely a Lebanese accent or from the Levant region speaking both classical and colloquial Arabic.⁹³⁹¹ He heard very little to no background noise during the third call.⁹³⁹²

4873. Mr Ben-Jeddo said that *three* different people called him about the attack.⁹³⁹³

4874. According to call data records, Al-Jazeera's Beirut office received a two-minute call at 17:04 using telecard 6162569 from a public payphone⁹³⁹⁴ on Habib-Abou-Chahla Street, next to the *Saint Elie Battina* College in the Mazraa area.⁹³⁹⁵

4875. In the amended consolidated indictment, the Prosecutor pleads that either Mr Oneissi or Mr Sabra made this call.

(f) Possible fourth call to Al-Jazeera

4876. Call data records reveal only three payphone calls to Al-Jazeera using telecard 6162569 on 14 February 2005.⁹³⁹⁶ Mr Ben-Jeddo, however, testified that the Al-Jazeera office received four calls regarding the claim of responsibility.

⁹³⁸⁹ Ghassan Ben-Jeddo, T. 9 July 2015, pp 51-53, 107-108; exhibit 5D166 (Statement of Ghassan Ben-Jeddo, dated 15 July 2005), para. 21; exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), para. 72; exhibit 5D169 (Statements of Ghassan Ben-Jeddo, dated 9 March 2005 and 9 April 2005), p. 2. *See also* Witness PRH430, T. 13 July 2015, pp 49-50; exhibit 5D170 (Record of Ghassan Ben-Jeddo's interview with UN Fact-Finding Mission), p. 1.

⁹³⁹⁰ Ghassan Ben-Jeddo, T. 9 July 2015, pp 51-52, 107-108.

⁹³⁹¹ Ghassan Ben-Jeddo, T. 9 July 2015, p. 52; exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), para. 72.

⁹³⁹² Ghassan Ben-Jeddo, T. 9 July 2015, pp 52, 109; exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), paras 75-76.

⁹³⁹³ Ghassan Ben-Jeddo, T. 8 July 2015, pp 96-97.

⁹³⁹⁴ The number was 1819727.

⁹³⁹⁵ Exhibit 3D305; exhibit P1971; exhibit P546; exhibit P1412 (Statement of Glenn Williams), pp 4, 12-15, 36. *See also* exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1245; exhibit P1780, p. 33; exhibit P1782, para. 1071.

⁹³⁹⁶ Exhibit P546; exhibit 3D305; exhibit P1971.

4877. In two statements, dated 17 February and 9 March 2005, and tendered into evidence by the Sabra Defence, he noted that these calls took place around 13:30, 14:15, 15:30 and 16:00.⁹³⁹⁷ Witness 6 also testified that there were four calls to Al-Jazeera regarding the videotape.⁹³⁹⁸ Witness 430, testifying ten years and five months after the event, could not remember whether there were three or four calls regarding the claim of responsibility.⁹³⁹⁹

(g) Broadcast of the claim video at 17:30

4878. Al-Jazeera's Doha headquarters was initially reluctant to broadcast the video footage of the claim of responsibility. Mr Ben-Jeddo said that it took between one and a half and two hours to decide to air the tape, and the video was eventually broadcast at 17:30.⁹⁴⁰⁰

4879. The video tape contained a footage of Mr Abu Adass, who was seated under a banner purportedly to be that of the group *El-Nusra-wal-Jihad-fi-Bilad-El-Sham* (Society for Support and Jihad in Greater Syria), reading out the following claim of responsibility:

In the name of Allah, Lord of the Worlds, Blessings and Peace be upon his Beloved Prophet and his family and all his companions.

In support of our brothers, the Mujahedeen in the Land of the Two Holy Mosques, and to avenge their innocent martyrs, who were killed by the security forces of the infidel Saudi regime in the Land of the Two Holy Mosques, we have resolved, having placed our trust in God Almighty, to inflict just punishment upon the agent of that regime and its cheap tool in Greater Syria, the sinner and holder of ill-gotten gains Rafiq Hariri, through the execution of a resounding martyrdom operation; such as to confirm our promise of Victory and 'jihad' and to herald numerous martyrdom operations against the infidels, apostates and tyrants in the Greater Syria.

⁹³⁹⁷ Exhibit 5D168 (Information report regarding the video tape of the claim of responsibility), ERNs 60031459T-60031460T; exhibit 5D169 (Statements of Ghassan Ben-Jeddo, dated 9 March 2005 and 9 April 2005), pp 1-6. *See also* Ghassan Ben-Jeddo, T. 10 July 2015, pp 3-13.

⁹³⁹⁸ Witness PRH006, T. 23 June 2015, p. 79.

⁹³⁹⁹ Witness PRH430, T. 13 July 2015, p. 68.

⁹⁴⁰⁰ Ghassan Ben-Jeddo, T. 9 July 2015, pp 53-54, T. 10 July 2015, pp 10-12, 15; exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), para. 82; exhibit 5D169 (Statements of Ghassan Ben-Jeddo, dated 9 March 2005 and 9 April 2005), pp 3, 6.

“Praise be to Allah, Lord of the Worlds.”⁹⁴⁰¹



Exhibit P766 (Still image from video-recorded claim of responsibility featuring Mr Abu Adass aired on Al-Jazeera)

4880. The letter accompanying the video tape stated:

Praise be to God Lord of the Worlds, Most Gracious, Most Merciful, Master of the Day of Judgment, and Blessings and Peace be upon his Servant and Prophet and his family and all his companions.

Here is good news for all Muslims and especially the Holy Land of Palestine, Mesopotamia, the Sanctuary of the Two Holy Places, our brothers in Afghanistan, our people in Chechnya and the Blessed Land of Greater Syria; good news raising the banner of oppressed believers and supporting their struggle against arrogant despots.

⁹⁴⁰¹ Exhibit P499 (The digital format of the video tape containing the claim of responsibility); exhibit P499.1 (Transcript of text read by Ahmad Abu Adass on the tape).

Praise be to God, the banner of support and jihad was held aloft in Greater Syria and, praise be to God, due punishment was meted out to the agent of infidelity in the Land of the Two Holy Places, Rafic Hariri, through a suicide operation carried out by the Mujahid, Ahmad Abou-Adass, who raised the banner of support and jihad in Greater Syria on Monday 14 February 2005 AD, 5 Muharram 1426 AH, in Beirut.

God is Great, Praise be to God Lord of the Worlds.

Attached is a film of the martyr Ahmad Abou Adass, who carried out the operation.

4881. The letter was signed *El-Nusra-wal-Jihad-fi-Bilad-El-Sham*, Abou Hafass El-Chami.⁹⁴⁰²

4882. On the night of 14 February 2005, Mr Ben-Jeddo received a call from Mr Jamil El-Sayyed, the Director-General of the Lebanese General Directorate of General Security, asking for the video tape that had been collected from the tree.⁹⁴⁰³ The following morning Mr Ben-Jeddo met Mr El-Sayyed and his assistant, at Mr El-Sayyed's office, and handed over the tape in the white envelope.⁹⁴⁰⁴

4883. Mr Ben-Jeddo did not remember whether he also gave Mr El-Sayyed the original letter or just a copy.⁹⁴⁰⁵ General Elias Farhat of the Lebanese army also contacted him, on 15 February 2005, requesting the video tape, but by then he had already handed it to Mr El-Sayyed.⁹⁴⁰⁶ Mr Ben-Jeddo also testified that he may have given the letter to the UN fact-finding mission,⁹⁴⁰⁷ but could

⁹⁴⁰² Exhibit P500 (Letter accompanying video tape) (emphasis omitted).

⁹⁴⁰³ Jamil El-Sayyed, T. 7 June 2018, p. 14; Ghassan Ben-Jeddo, T. 9 July 2015, pp 43, 64; exhibit 5D166 (Statement of Ghassan Ben-Jeddo, dated 15 July 2005), para. 23; exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), paras 82, 113-114; exhibit 5D169 (Statements of Ghassan Ben-Jeddo, dated 9 March 2005 and 9 April 2005), p. 8.

⁹⁴⁰⁴ Jamil El-Sayyed, T. 7 June 2018, p. 15; Ghassan Ben-Jeddo, T. 9 July 2015, pp 43, 64-65; exhibit 5D166 (Statement of Ghassan Ben-Jeddo, dated 15 July 2005), para. 23; exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), paras 105-106, 118, 123-124, 126.

⁹⁴⁰⁵ Ghassan Ben-Jeddo, T. 9 July 2015, pp 50, 65; exhibit 5D169 (Statements of Ghassan Ben-Jeddo, dated 9 March 2005 and 9 April 2005), p. 8. See chapter VI 'Explosion on 14 February 2005', (F) (1) (b) (ii) 'Collection of videotaped claim of responsibility by Lebanese authorities'.

⁹⁴⁰⁶ Ghassan Ben-Jeddo, T. 9 July 2015, pp 43-44, 65; exhibit 5D166 (Statement of Ghassan Ben-Jeddo, dated 15 July 2005), para. 23; exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), para. 82; exhibit 5D169 (Statements of Ghassan Ben-Jeddo, dated 9 March 2005 and 9 April 2005), p. 8.

⁹⁴⁰⁷ On 18 February 2005, the UN Secretary-General sent a fact-finding mission to Beirut, headed by Mr Peter FitzGerald, to inquire into the causes, circumstances and consequences of the attack against Mr Hariri on Monday 14 February 2005.

not remember whether he had given the original or a copy of the letter with the tape to the Lebanese or international authorities, or *vice versa*.⁹⁴⁰⁸

4884. After receiving the video tape, Mr El-Sayyed questioned Mr Ben-Jeddo about the telephone calls to Al-Jazeera.⁹⁴⁰⁹ Mr El-Sayyed testified that he sent it to the judicial investigative officer, Judge Abou Arraj.⁹⁴¹⁰ Officials of the Lebanese General Directorate of General Security took the video to the investigating judge with instructions to avoid touching it to preserve potential fingerprints.⁹⁴¹¹

4885. It appears that some limited forensic investigation occurred. The only evidence about this, however, is that of Mr Michael Taylor, the Prosecution's former Chief of Investigations, who said that the Prosecution requested four sets of fingerprints from the Lebanese Ministry of Interior to compare them against unidentified fingerprints on the tape's packaging. He also stated that he was 'pretty confident' that the Prosecution had requested and obtained the fingerprints of Mr Khaled Taha,⁹⁴¹² who the Sabra Defence had argued was an associate of Mr Abu Adass and implicated in Mr Hariri's assassination. A Lebanese judicial commission document dated Thursday 17 February 2005, which refers to Mr Ben-Jeddo's first statement, also refers to a 'Sealed video tape' being attached to the report.⁹⁴¹³ No other evidence was led about what happened to the tape after it was placed in the Lebanese investigating judge's case file.⁹⁴¹⁴

⁹⁴⁰⁸ Ghassan Ben-Jeddo, T. 9 July 2015, p. 50. Exhibit P500 was a copy with the words 'received on 10/03/05 from Ghassan Benjeddou' in English with his signature in Arabic. The Arabic writing, but not the English, was his. See chapter VI 'Explosion on 14 February 2005', (F) (1) (b) (ii) 'Collection of videotaped claim of responsibility by Lebanese authorities'.

⁹⁴⁰⁹ Jamil El-Sayyed, T. 7 June 2018, p. 15; exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), para. 126.

⁹⁴¹⁰ Jamil El-Sayyed, T. 7 June 2018, p. 15.

⁹⁴¹¹ Jamil El-Sayyed, T. 7 June 2018, pp 15-16.

⁹⁴¹² Michael Taylor, T. 25 June 2018, p. 21. See also Witness PRH006, T. 23 June 2015, p. 93. The Sabra Defence alleged that Mr Taha had a role in the conspiracy to murder Mr Hariri; and the Sabra and the Oneissi Defence submit that Mr Abu Adass left his home for the last time with Mr Taha; these submissions are dealt with in detail below.

⁹⁴¹³ Exhibit 5D168 (Information report regarding the video tape of the claim of responsibility), ERNs 60031459T-60031461T.

⁹⁴¹⁴ During Mr Ben-Jeddo's evidence, the Prosecution's trial counsel, Mr A. Milne, informed the Trial Chamber that the Prosecution had no record of any fingerprint examination by the Lebanese investigating authorities. However, he said that there is 'a report from 2013, though, that under the aegis of the Special Tribunal the -- what we believe to be this letter that we're talking about, together with some associated envelopes, I must presume that includes the envelope that went with it when it was handed to General El-Sayyed, but it's not entirely clear which that is, they were submitted for finger-print analysis to a national crime agency'. Mr Milne stated that four latent fingerprint marks were found on the letter and 'some associated envelopes'. A comparison of these prints with the thumb prints on passport applications of Mr Oneissi, Mr Sabra and Mr Ayyash found no matches. Prosecution submissions, T. 9 July 2015, pp 68-70.

2. Submissions

4886. The Prosecution argues that four calls—one to Reuters and three to Al-Jazeera—were made between 14:03 and 17:24 on Monday 14 February 2005, from four different payphones in Beirut, using the same telecard.⁹⁴¹⁵

4887. The first three calls made the false claim. The fourth ensured its dissemination, a key part of the false claim plot, designed to deflect the focus from those the wider community could blame for the attack.⁹⁴¹⁶ Al-Jazeera then aired the claim of responsibility shortly after the call made from the fourth payphone.⁹⁴¹⁷

4888. The Merhi Defence disputes the Prosecution's claims about the timing and method of the call to Reuters, and the first, second and third calls to Al-Jazeera.⁹⁴¹⁸ It also submits that the Prosecution disregarded Mr Ben-Jeddo's evidence about Al-Jazeera receiving a fourth call.⁹⁴¹⁹

4889. More specifically, it argues that serious doubts exist that the call to Reuters was made as the Prosecution claimed.⁹⁴²⁰ Witness 12 testified that the caller may have been transferred to the editorial desk after first calling a management telephone.⁹⁴²¹ Further, the Prosecution's theory that the Reuters call was made from a payphone is contradicted by Witness 12's evidence that no background noise was heard, and the witness's conclusion that the call was made from an enclosed location, not a public payphone. The lack of background noise stands in stark contrast to the evidence of a Prosecution investigator, Mr Glenn Williams, that the telephone box was 'located on a triangle shape concrete island in a busy square where streets meet'.⁹⁴²² It is therefore equally possible that the call to Reuters was made from a landline.⁹⁴²³

4890. The Merhi Defence also challenges the Prosecution's submission that the first call to Al-Jazeera, as described by Witness 6 and Mr Ben-Jeddo, was the 14:19 call identified by the

⁹⁴¹⁵ Prosecution final trial brief, paras 562-565, 567-568, 572-575.

⁹⁴¹⁶ Prosecution final trial brief, para. 1120.

⁹⁴¹⁷ Prosecution final trial brief, para. 576; Prosecution closing submissions, T. 14 September 2018, pp 57-60.

⁹⁴¹⁸ Merhi Defence final trial brief, paras 545-553, 559-561, 567.

⁹⁴¹⁹ Merhi Defence final trial brief, paras 554-558.

⁹⁴²⁰ Merhi Defence final trial brief, paras 545-546.

⁹⁴²¹ Merhi Defence final trial brief, para. 546.

⁹⁴²² Merhi Defence final trial brief, para. 547.

⁹⁴²³ Merhi Defence final trial brief, paras 548-549.

Prosecution.⁹⁴²⁴ Both witnesses provided statements shortly after the events that the call occurred at 13:30. Taken together with the incomplete call data records, it is thus ‘highly likely that those calls took place at 13:30, i.e. well before the first call from Purple 231 on the day of 14 February 2005’. As such, it would be unreasonable to conclude that Mr Merhi was coordinating the claim of responsibility.⁹⁴²⁵

4891. In relation to the second call to Al-Jazeera, allegedly made at 15:27, the Merhi Defence submits that Witness 6 placed the second call after 14:00, around thirty minutes after the first call. Mr Ben-Jeddo testified that the second call was at 14:15.⁹⁴²⁶ It is possible to establish that there was another call to Al-Jazeera—in-between the ‘second’ (15:27) and ‘third’ (17:04) call—which the Prosecution disregarded without valid explanation.⁹⁴²⁷ Mr Ben-Jeddo stated that this call was at about 15:30 and the caller inquired why the tape had not yet been broadcast.⁹⁴²⁸

4892. In relation to the last call to Al-Jazeera, allegedly at 17:04, the Merhi Defence submits that Mr Ben-Jeddo’s evidence puts the timing of the call between 15:00 and 16:00, once again not fitting the Prosecution’s theory.⁹⁴²⁹

4893. Crucially, Mr Ben-Jeddo’s testimony on the point ‘cannot be disregarded simply because it does not fit in with the Prosecution’s theory regarding the activity of the Purple phones on the afternoon of 14 February’.⁹⁴³⁰ The Prosecution ‘is mistaken as to the number of calls made to the press agencies, the chronology of those calls and their provenance’; this is important because the Prosecution’s case is that Mr Sabra was updating Mr Merhi. Thus, if ‘the number of calls is imprecise and the timing of the calls incorrect, it follows that the Prosecution’s entire theory regarding Merhi’s alleged supervision is invalidated.’⁹⁴³¹

4894. The Oneissi Defence argues that the Prosecution failed to establish a link between Mr Oneissi and the telecard used to make the calls of the false claim of responsibility.⁹⁴³² The

⁹⁴²⁴ Merhi Defence final trial brief, para. 550.

⁹⁴²⁵ Merhi Defence final trial brief, para. 551.

⁹⁴²⁶ Merhi Defence final trial brief, paras 552-553.

⁹⁴²⁷ Merhi Defence final trial brief, paras 554-556.

⁹⁴²⁸ Merhi Defence final trial brief, paras 555, 557.

⁹⁴²⁹ Merhi Defence final trial brief, para. 561.

⁹⁴³⁰ Merhi Defence final trial brief, para. 558.

⁹⁴³¹ Merhi Defence final trial brief, paras 562, 564.

⁹⁴³² Oneissi Defence final trial brief, para. 565.

Prosecution does not specify who made the calls, as it merely alleges that Reuters and Al-Jazeera received calls.⁹⁴³³ Given all this, the Prosecution has failed to prove the allegations in relation to Mr Oneissi's alleged participation in the delivery of the claim of responsibility on 14 February 2005.⁹⁴³⁴

4895. The Sabra Defence submits that the Prosecution failed to prove that the calls to the news organisations were made using the telecard or that Mr Oneissi and Mr Sabra were responsible for making the calls.⁹⁴³⁵ Call data records from the telecard and the call data records of the news agencies are unreliable, because the same underlying evidence created both sets of records.⁹⁴³⁶ It is impossible to determine that only four false claim calls were made.⁹⁴³⁷

4896. Similarly, the timing of the alleged false claim calls is not supported by witness testimony or evidence.⁹⁴³⁸ Further, Mr Ben-Jeddo testified that there were four telephone calls to Al-Jazeera's landline, not three.⁹⁴³⁹

3. Findings

4897. The Trial Chamber finds that four telephone calls were made on the afternoon of 14 February 2005 regarding the claim of responsibility for the attack using telecard 6162569. The call data records for this telecard, as for the Reuters and Al-Jazeera landlines, reveal that four calls were made—one to Reuters at 14:11, and three to Al-Jazeera, at 14:19, 15:27 and 17:04.

4898. The Trial Chamber notes the potential conflict between the call data records and Mr Ben-Jeddo's and Witness 6's evidence as to the timing of the calls and whether the Al-Jazeera office received three or four calls, meaning five calls overall, regarding the false claim of responsibility. Mr Ben-Jeddo, in his second statement to the Lebanese investigating authorities, made on 9 March 2005, stated that there were four calls. Call data records of the telecard and the Reuters landline show that the agency received the call claiming responsibility for the attack at 14:11. Neither

⁹⁴³³ Oneissi Defence final trial brief, para. 606; Oneissi Defence closing submissions, T. 20 September 2018, pp 90-91.

⁹⁴³⁴ Oneissi Defence final trial brief, para. 608.

⁹⁴³⁵ Sabra Defence final trial brief, paras 667, 673; Sabra Defence closing submissions, T. 21 September 2018, p. 44.

⁹⁴³⁶ Sabra Defence final trial brief, paras 668-677.

⁹⁴³⁷ Sabra Defence final trial brief, paras 678-692.

⁹⁴³⁸ Sabra Defence final trial brief, paras 693-752.

⁹⁴³⁹ Sabra Defence final trial brief, paras 678-681, 692.

Witness 12's statement, made in March 2005, nor her testimony ten years later is consistent with these records.

4899. The Trial Chamber is more inclined to credit the call data records for telecard 6162569 and for Al-Jazeera's office, which recorded only three calls to Al-Jazeera, over the oral evidence of Mr Ben-Jeddo and Witness 6, who both remembered four calls—especially considering that the evidence was given over ten years after the events. Mr Ben-Jeddo's statements of 17 February and 9 March 2005 are obviously far more contemporaneous than his testimony in July 2015, but the first was still made three days after the dramatic events described. Moreover, Mr Ben-Jeddo did not retain the notes he made of the calls at the time, which presumably—given his training and experience as a journalist—would have noted the timing and number of calls and callers.

4900. In making this finding the Trial Chamber is conscious that it is of course possible that another call was made to Al-Jazeera, but using a landline—for which no call data records are available—in lieu of the telecard. However, this is highly unlikely. It would make little sense for the caller(s) who had been using an anonymous telecard to communicate a message connected with the assassination of the former Lebanese prime minister, to suddenly switch to a landline—which was potentially discoverable—to make another call to the same media outlet.

4901. The Trial Chamber cannot make any findings from this evidence about who made the calls, nor how many callers there were. Mr Ben-Jeddo testified that three different people called Al-Jazeera regarding the claim of responsibility. It is also possible that another, different person called Reuters. Although it is most likely that the same people made the calls, there is no way of comparing whether the same person(s) called both Reuters and Al-Jazeera. The Prosecution made no specific submissions on this point. Logically, more than one person would have been involved; the risk of being overheard in making such a call from a public payphone—especially when it may have been necessary to speak loudly and clearly—would have been too great for this task to have been entrusted to only one person. It seems to the Trial Chamber that the most logical *modus operandi* would have involved one person making the call(s) and at least one other person being close enough to ensure that no one else could hear the call, or interfere. That said, it is not the only possibility, or inference reasonably available from the evidence.

4902. The Trial Chamber also finds that members of Al-Jazeera's Beirut office obtained the false claim video and letter at 15:53 from the tree near their office. The call data records support this finding.

4903. However, it cannot determine *when* the package was placed in the tree; there is no evidence from which the Trial Chamber can make a finding as to whether it was placed there before or after the attack.

4904. This is also relevant to the *mens rea* of the three Accused. This is analysed in more detail in relation to the conspiracy charged and the individual criminal responsibility of the Accused, below. The pertinence of this is that if the Trial Chamber could conclude that Mr Oneissi or Mr Sabra themselves placed the video in the tree, the real possibility that this was not done until *after* the attack would cast serious doubt on whether they had the *mens rea* for criminal responsibility either via a conspiracy or through accomplice liability as charged.⁹⁴⁴⁰ The findings regarding whether the three Accused participated in this aspect of the claim of responsibility are set out below, at paragraphs 5643-5692.

C. Mr Ahmad Abu Adass

4905. The entire false claim plot centres on its subject, Mr Ahmad Abu Adass. The Trial Chamber received evidence about Mr Abu Adass from family and friends who knew him. The evidence goes to proving the Prosecutor's pleading that the claim of responsibility for the attack was false. The gist of the Prosecution case is that because of his personal profile he was deliberately targeted and chosen by those who were responsible for this attack.

1. Evidence

4906. Mr Abu Adass was Palestinian and born in 1982 in Saudi Arabia, and came to Lebanon when he was nine.⁹⁴⁴¹ As an adolescent, he studied at the UNRWA School in Bir Hassan in

⁹⁴⁴⁰ See chapter XIV 'Legal findings on elements of the crimes and Individual criminal responsibility', (D) (3) 'Findings on individual criminal responsibility'.

⁹⁴⁴¹ Exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 1; exhibit 5D512 (Witness statement of Taysir Abu Adass, undated), p. 1; exhibit P461 (Witness statements of Taysir Abu Adass, dated 19 January 2005 and 28 February 2005), ERNs 50008343, 50003488-50003489.

Beirut.⁹⁴⁴² He took various computer courses at the British Institute in Sin-el-Fil,⁹⁴⁴³ and at a computer centre in Dawra.⁹⁴⁴⁴ After leaving school, he had no steady job, but worked in various mainly short-term jobs from 2002 to 2004, including at a software programming company, a printing press and designing book covers from home.⁹⁴⁴⁵ He was described as ‘all the time on his computer’.⁹⁴⁴⁶

4907. The Trial Chamber received some evidence suggesting that Mr Abu Adass was an isolated person with a limited social life.⁹⁴⁴⁷ Specifically, Witness 56 stated that he had many friends before he started to become committed to Islam in 2003. After 2003, his group of friends did not change

⁹⁴⁴² Exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 3; exhibit 5D476 (Statement of Witness PRH056, dated 17 February 2005), p. 8; exhibit 5D512 (Witness statement of Taysir Abu Adass, undated), pp 1-2. Witness 56 stated that Mr Abu Adass had finished his baccalaureate, ‘he only did the first part’, and wanted to go to university, but his uncles in the United States told him to study computer design instead. In another statement Witness 56 said that Mr Abu Adass completed the baccalaureate, as did Mr Taysir Abu Adass in one statement. Exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 3; exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), paras 25-26 (p. 3); exhibit 5D512 (Witness statement of Taysir Abu Adass, undated), p. 1. Mr Ziad Ramadan said that Mr Abu Adass had not taken the baccalaureate. Exhibit 5D473 (Statement of Ziad Ramadan, Syrian authorities, undated), p. 18.

⁹⁴⁴³ Exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 1; exhibit 5D476 (Statement of Witness PRH056, dated 17 February 2005), p. 8; exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), paras 25-26 (p. 3); exhibit P461 (Witness statements of Taysir Abu Adass, dated 19 January 2005 and 28 February 2005), ERN 50003488; exhibit 5D512 (Witness statement of Taysir Abu Adass, undated), pp 1-2.

⁹⁴⁴⁴ Exhibit 4D212 (Statement of Witness PRH087, 14 February 2005), p. 3; exhibit P596 (Statements of Witness PRH087, dated 14 January 2015 and 24 November 2006), para. 42 (p. 10).

⁹⁴⁴⁵ Exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 3; exhibit 5D473 (Statement of Ziad Ramadan, Syrian authorities, undated), pp 3-4; exhibit 5D470 (Statement of Ziad Ramadan, Syrian authorities, 8 November 2005), pp 2-3; exhibit 5D475 (Statement of Witness PRH056, 15 February 2005), p. 1 (three months before Mr Abu Adass went missing, he had worked in Abed Printing press in El-Basta-El-Tahta about five months); exhibit 5D477 (Statement of Witness PRH056, 1 October 2005), p. 5 (Sheikh Ahmad El-Saneh had provided work for Mr Abu Adass around six months before his disappearance, at Saadeddine Itani Press). This company is referred to variously as Tiasonit, Metasoft and Microteam Software Company. Mr Ziad Ramadan clarified that the name was originally Microteam Software and was then changed to Metasoft. Exhibit 5D470 (Statement of Ziad Ramadan, Syrian authorities, 8 November 2005), p. 2; exhibit P1774 (Statement of Ziad Ramadan, Lebanese authorities, 16 February 2005), p. 2; exhibit 5D473 (Statement of Ziad Ramadan, Syrian authorities, undated), pp 3, 10; exhibit P1776 (Transcript of Ziad Ramadan’s interview by UNIIIC, 22 May 2006), p. 23 (ERN 60005296).

⁹⁴⁴⁶ Exhibit P2130 (Statement of Witness PRH056, dated 5 May 2006), para. 57 (p. 5).

⁹⁴⁴⁷ Exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), p. 4; exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 3; exhibit 5D476 (Statement of Witness PRH056, dated 17 February 2005), p. 6; exhibit 5D475 (Statement of Witness PRH056, 15 February 2005), p. 2; exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 2; exhibit P461 (Witness statements of Taysir Abu Adass, dated 19 January 2005 and 28 February 2005), ERN 50003488; exhibit 4D212 (Statement of Witness PRH087, 14 February 2005), p. 3. *See also* exhibit P761.1 (Transcript of television programme regarding Mr Abu Adass), p. 3.

but he did not see them so much.⁹⁴⁴⁸ Before 2003, he went to the gym, the beach and night clubs.⁹⁴⁴⁹ After 2003, he used to go swimming.⁹⁴⁵⁰

4908. Witness 87 lived near the Abu Adass family and knew Mr Ahmad Abu Adass. He described Mr Abu Adass as an introverted man who minded his own business.⁹⁴⁵¹ He saw Mr Abu Adass occasionally with friends his age, who were all religiously observant and bearded, with Palestinian accents.⁹⁴⁵² According to other evidence, however—including from the same witnesses—Mr Abu Adass had some social contacts, including some close friends and acquaintances.⁹⁴⁵³

4909. Mr Ziad Ramadan was a friend of Mr Abu Adass.⁹⁴⁵⁴ He described him as a ‘very simple’ man,⁹⁴⁵⁵ ‘even simpleminded’,⁹⁴⁵⁶ as well as ‘lazy’.⁹⁴⁵⁷ Mr Abu Adass never talked about politics, his beliefs or ideologies,⁹⁴⁵⁸ and had no political affiliation.⁹⁴⁵⁹ In particular, he never expressed a view about Mr Hariri.⁹⁴⁶⁰

⁹⁴⁴⁸ Exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), paras 39-40, 51-54; exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 3; exhibit 5D476 (Statement of Witness PRH056, dated 17 February 2005), p. 6; exhibit 5D475 (Statement of Witness PRH056, 15 February 2005), p. 2.

⁹⁴⁴⁹ Exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), paras 39-40 (p. 4).

⁹⁴⁵⁰ Exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), paras 39-40, 51-52 (p. 4).

⁹⁴⁵¹ Exhibit 4D212 (Statement of Witness PRH087, 14 February 2005), p. 3.

⁹⁴⁵² Exhibit 4D212 (Statement of Witness PRH087, 14 February 2005), p. 5; exhibit P596 (Statements of Witness PRH087, dated 14 January 2015 and 24 November 2006), paras 97-98 (p. 14).

⁹⁴⁵³ Exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), paras 71-72 (p. 5); exhibit 4D212 (Statement of Witness PRH087, 14 February 2005), p. 5 (ERN 50008262); exhibit P596 (Statements of Witness PRH087, dated 14 January 2015 and 24 November 2006), paras 97-98 (p. 14).

⁹⁴⁵⁴ Exhibit 5D470 (Statement of Ziad Ramadan, Syrian authorities, 8 November 2005), pp 5, 8-9; exhibit P1776 (Transcript of Ziad Ramadan’s interview by UNIIIC, 22 May 2006), p. 19 (ERN 60005292).

⁹⁴⁵⁵ Exhibit P1776 (Transcript of Ziad Ramadan’s interview by UNIIIC, 22 May 2006), p. 19 (ERN 60005292); exhibit 5D469 (Statement of Ziad Ramadan, Syrian authorities, 22 July 2005), p. 3; exhibit 5D470 (Statement of Ziad Ramadan, Syrian authorities, 8 November 2005), pp 5, 13.

⁹⁴⁵⁶ Exhibit 5D469 (Statement of Ziad Ramadan, Syrian authorities, 22 July 2005), p. 3.

⁹⁴⁵⁷ Exhibit 5D473 (Statement of Ziad Ramadan, Syrian authorities, undated), p. 7; exhibit P1776 (Transcript of Ziad Ramadan’s interview by UNIIIC, 22 May 2006), p. 35 (ERN 60005308).

⁹⁴⁵⁸ Exhibit 5D476 (Statement of Witness PRH056, dated 17 February 2005), p. 7; exhibit P461 (Witness statements of Taysir Abu Adass, dated 19 January 2005 and 28 February 2005), p. 3 (ERN 50003489); exhibit 5D469 (Statement of Ziad Ramadan, Syrian authorities, 22 July 2005), p. 2; exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), paras 87-90 (p. 7).

⁹⁴⁵⁹ Exhibit 5D512 (Witness statement of Taysir Abu Adass, undated), p. 2; exhibit 5D513 (Witness statement of Taysir Abu Adass, 14 February 2005); exhibit 5D515 (Witness statement of Taysir Abu Adass, dated 17 February 2005), p. 1; exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 4. In one statement, Mr Taysir Abu Adass stated that he ‘did not know that Ahmad was member of a party or biased to a specific religious ideology’. Exhibit P461 (Witness statements of Taysir Abu Adass, dated 19 January 2005 and 28 February 2005), p. 2 (ERN 50003488).

⁹⁴⁶⁰ Exhibit 5D476 (Statement of Witness PRH056, dated 17 February 2005), p. 7; exhibit P2128 (Statements of Witness PRH056, dated 13 April and 18 July 2005), pp 9-10, 14; exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), paras 87-88 (p. 7).

4910. Witness 56 stated that Mr Abu Adass was a ‘very calm and polite person’,⁹⁴⁶¹ and easily influenced because he was trusting and emotional.⁹⁴⁶² He would rarely get angry and was in general lively and easy-going.⁹⁴⁶³ Aged twenty-two, his father still gave him pocket money.⁹⁴⁶⁴

4911. Mr Abu Adass did not have a driver’s license,⁹⁴⁶⁵ and did not know how to drive.⁹⁴⁶⁶ At the time of his disappearance, he was ‘making plans for the future’.⁹⁴⁶⁷ Witness 56 stated that Mr Abu Adass was planning to get married,⁹⁴⁶⁸ and had asked his family to purchase the bride’s dress.⁹⁴⁶⁹ Mr Ramadan also stated that when he last saw Mr Abu Adass, Mr Abu Adass told him that he was planning to get married.⁹⁴⁷⁰

4912. At least a year before Mr Hariri’s assassination, Mr Abu Adass became much more religiously committed than the rest of his family.⁹⁴⁷¹ Following his increased religious

⁹⁴⁶¹ Exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 3.

⁹⁴⁶² Exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), paras 73-74 (p. 5).

⁹⁴⁶³ Exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), paras 81-82 (p. 6).

⁹⁴⁶⁴ Exhibit 5D512 (Witness statement of Taysir Abu Adass, undated), pp 2, 4.

⁹⁴⁶⁵ Exhibit 5D512 (Witness statement of Taysir Abu Adass, undated), p. 2; exhibit 5D513 (Witness statement of Taysir Abu Adass, 14 February 2005); exhibit P461 (Witness statements of Taysir Abu Adass, dated 19 January 2005 and 28 February 2005), p. 3 (ERN 50003489); exhibit P2132 (Statement of Witness PRH056, dated 1 July 2010), para. 20.

⁹⁴⁶⁶ Exhibit P461 (Witness statements of Taysir Abu Adass, dated 19 January 2005 and 28 February 2005), p. 3 (ERN 50003489); exhibit 5D513 (Witness statement of Taysir Abu Adass, 14 February 2005); exhibit P2132 (Statement of Witness PRH056, dated 1 July 2010), para. 20; exhibit 5D515 (Witness statement of Taysir Abu Adass, dated 17 February 2005), p. 2; exhibit 5D476 (Statement of Witness PRH056, dated 17 February 2005), p. 7; exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 3; exhibit 5D512 (Witness statement of Taysir Abu Adass, undated), p. 2.

⁹⁴⁶⁷ Exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), paras 83-84 (p. 6).

⁹⁴⁶⁸ Exhibit 5D476 (Statement of Witness PRH056, dated 17 February 2005), p. 2.

⁹⁴⁶⁹ Exhibit 5D476 (Statement of Witness PRH056, dated 17 February 2005), pp 2-3; exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 4.

⁹⁴⁷⁰ Exhibit 5D473 (Statement of Ziad Ramadan, Syrian authorities, undated), p. 12.

⁹⁴⁷¹ Witness 56’s accounts of this vary between two and three years. Exhibit 5D474 (Statement of Witness PRH056, 14 February 2005), p. 2 (two years); exhibit 5D476 (Statement of Witness PRH056, dated 17 February 2005), p. 8 (saying about two years); exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 1 (stating that his commitment to religion started about three years previously); exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), paras 39-40 (p. 4) (about 2003); exhibit 5D475 (Statement of Witness PRH056, 15 February 2005), p. 2 (two years previously). Witness 56 stated that Mr Abu Adass became religiously committed during his studies, which he completed aged 21 (he was 23 when he disappeared) exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 3. Mr Taysir Abu Adass said variously that it was one year only or two years before his disappearance. Exhibit 5D512 (Witness statement of Taysir Abu Adass, undated), p. 2; exhibit 5D515 (Witness statement of Taysir Abu Adass, dated 17 February 2005), p. 1; exhibit P461 (Witness statements of Taysir Abu Adass, dated 19 January 2005 and 28 February 2005), ERN 50003488.

commitment, he grew a beard,⁹⁴⁷² and generally wore Islamic clothing.⁹⁴⁷³ He attended mosque for prayer,⁹⁴⁷⁴ usually five times a day.⁹⁴⁷⁵ He usually attended the Al-Houry mosque, also known as the Arab University Mosque,⁹⁴⁷⁶ in Beirut, because it was close to his house.⁹⁴⁷⁷

4913. The Trial Chamber also heard evidence from a witness who met someone calling himself ‘Mohammed’ in the mosque in early January 2005. That witness stated that Mr Abu Adass sometimes led the prayers and deputised for the imam.⁹⁴⁷⁸ His primary religious instruction was self-study, by reading books, listening to tapes and using his computer.⁹⁴⁷⁹ Mr Ramadan stated that Mr Abu Adass ‘was very interested in preaching and inviting people to join his religion’, and used to offer religious classes to the young students at the university.⁹⁴⁸⁰ Witness 56 stated that many people used to visit Mr Abu Adass,⁹⁴⁸¹ and that people the same age as Mr Abu Adass came to the house to visit him and discuss religion.⁹⁴⁸²

4914. Mr Ben-Jeddo added that the mosque that Mr Abu Adass attended was in an area of Beirut, Tariq-El-Jdideh, that was generally considered to be ‘fertile ground for religious activism for

⁹⁴⁷² Exhibit 5D470 (Statement of Ziad Ramadan, Syrian authorities, 8 November 2005), p. 9; exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 1; exhibit 5D512 (Witness statement of Taysir Abu Adass, undated), p. 2; exhibit P461 (Witness statements of Taysir Abu Adass, dated 19 January 2005 and 28 February 2005), ERN 50003489. The evidence as to the extent of his commitment to the beard varies. Witness 56 asked Mr Abu Adass to shave his beard to help him get a job, but he said that it was part of his identity as a Muslim. Exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 4. However, Mr Taysir Abu Adass’s account suggests that Mr Abu Adass agreed that he would shave it when he got a job. Exhibit P461 (Witness statements of Taysir Abu Adass, dated 19 January 2005 and 28 February 2005), ERN 50003490; exhibit 4D584 (Photographs of Mr Ahmad Abu Adass). An identity card from 15 April 2002 shows Mr Abu Adass as bearded. Exhibit 4D561.

⁹⁴⁷³ Exhibit 5D470 (Statement of Ziad Ramadan, Syrian authorities, 8 November 2005), p. 9 (that Mr Abu Adass lately ‘used to go out in Jallabiah and have a beard’); exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 1 (‘started wearing the Abaya’); exhibit P461 (Witness statements of Taysir Abu Adass, dated 19 January 2005 and 28 February 2005), ERN 50003489. When Mr Abu Adass went to work at the programming company, he wore a shirt and trousers. Exhibit 5D473 (Statement of Ziad Ramadan, Syrian authorities, undated), p. 17.

⁹⁴⁷⁴ Exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 1; T. 20 January 2016, p. 23 (closed session); exhibit 5D515 (Witness statement of Taysir Abu Adass, dated 17 February 2005), p. 1.

⁹⁴⁷⁵ Exhibit P461 (Witness statements of Taysir Abu Adass, dated 19 January 2005 and 28 February 2005), ERN 50003488; exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), paras 47-48 (p. 4); exhibit P2132 (Statement of Witness PRH056, dated 1 July 2010), para. 14.

⁹⁴⁷⁶ *For example*, exhibit P761.1 (Transcript of television programme regarding Mr Abu Adass), p. 2.

⁹⁴⁷⁷ Exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), paras 49-50 (p. 4); exhibit P2132 (Statement of Witness PRH056, dated 1 July 2010), para. 14.

⁹⁴⁷⁸ T. 20 January 2016, p. 36.

⁹⁴⁷⁹ Exhibit 5D476 (Statement of Witness PRH056, dated 17 February 2005), p. 6; exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 1.

⁹⁴⁸⁰ Exhibit P1776 (Transcript of Ziad Ramadan’s interview by UNIIC, 22 May 2006), p. 34 (ERN 60005307).

⁹⁴⁸¹ Exhibit P2128 (Statements of Witness PRH056, dated 13 April and 18 July 2005), p. 7.

⁹⁴⁸² Exhibit 5D474 (Statement of Witness PRH056, 14 February 2005), p. 2.

Islamic groupings and others as well'.⁹⁴⁸³ He explained that its central location in Beirut, the presence of the Arab University and its vicinity to the Palestinian camps provided the opportunity for Islamic religious organisations, such as *Jamaa Islamiya* and *al-Ahbash*, and political organisations, described by Mr Ben-Jeddo as 'pro-resistance, pro-Palestinian or pro-Future Movement affiliations', to target potential activists with their programs.⁹⁴⁸⁴

4915. The Lebanese investigating authorities searched the Abu Adass family home soon after the broadcast of the video. The evidence regarding these searches and what was found on Mr Abu Adass's computer is set out below at paragraphs 5725-5729 in analysing whether the claim of responsibility was actually false.

2. Submissions

4916. The Prosecution submits that Mr Abu Adass was 'a quiet, private, trusting young man with a high degree of religious devotion and few friends.'⁹⁴⁸⁵ It further argues that Mr Abu Adass was apolitical and saving money for his wedding, and that he could not drive.⁹⁴⁸⁶

4917. The Sabra and Oneissi Defence submit that Mr Abu Adass had gone through a process of religious radicalisation before the attack.⁹⁴⁸⁷ The Merhi Defence also argues that the hearsay evidence fails to demonstrate that Mr Abu Adass was 'non-violent and apolitical', given the personal links that the witnesses had with Mr Abu Adass.⁹⁴⁸⁸

3. Findings

4918. The Trial Chamber is satisfied that the evidence establishes that Mr Abu Adass was a young man, perhaps with an introverted personality, who in the period before his disappearance was becoming increasingly religious. This included growing a beard and wearing religious clothing. His Lebanese identity card, dated 15 April 2002, shows him with a beard.⁹⁴⁸⁹ He was attending the mosque near his home daily and had developed an interest in Islamic literature. Mr Abu Adass

⁹⁴⁸³ Ghassan Ben-Jeddo, T. 10 July 2015, pp 55, 83.

⁹⁴⁸⁴ Ghassan Ben-Jeddo, T. 10 July 2015, pp 55, 81-82.

⁹⁴⁸⁵ Prosecution final trial brief, paras 530, 1108.

⁹⁴⁸⁶ Prosecution final trial brief, paras 1101, 1103-1104.

⁹⁴⁸⁷ Sabra Defence final trial brief, para. 573; Oneissi Defence final trial brief, paras 265-266, 271, 273; Oneissi Defence closing submissions, T. 20 September 2018, pp 26-32.

⁹⁴⁸⁸ Merhi Defence final trial brief, para. 477; Merhi Defence closing submissions, T. 18 September 2018, pp 56-57.

⁹⁴⁸⁹ Exhibit 4D561.

also appears to have been disinterested in politics. These factors, in the Trial Chamber's assessment, could have made him susceptible to approaches from groups wishing to recruit young vulnerable people to their religious causes.

4919. The Trial Chamber is also satisfied from the uncontested evidence that Mr Abu Adass could not drive. He was interested in computers and had briefly worked in the information technology sector. At the time of his disappearance, like many other young people, he was probably contemplating a married future.

D. Selecting Mr Abu Adass—between Friday 22 December 2004 to Friday 7 January 2005

4920. The Prosecutor, in the amended consolidated indictment, alleges that in late December 2004 to early January 2005, Mr Abu Adass was identified as a likely scapegoat for making the false claim. He alleges that Mr Oneissi, posing as 'Mohammed', approached people, including Mr Abu Adass, at the Arab University Mosque, and that telecommunications evidence placed Mr Oneissi and Mr Sabra around the Arab University Mosque in the relevant period.⁹⁴⁹⁰

4921. In opening the case against Mr Merhi, the Prosecution's lead counsel referred to Mr Sabra visiting Tripoli, in mid-December 2004. The visit was a 'distinctive thing' because his personal mobile Purple 018 had never before contacted or connected to a cell site in Tripoli. From Monday 13 December 2004, Purple 018 made or received eight calls on four days, on that day and then on Wednesday 15, Monday 20 and Friday 24 December 2004. Mr Platt testified that, between October 2002 and February 2005, Mr Sabra's Purple 018 activated cells in the Tripoli area only on those four days in December 2004,⁹⁴⁹¹ and therefore that activity was unusual.⁹⁴⁹²

4922. This, it was argued, supports the inference that Mr Sabra was there to locate a scapegoat for the false claim of responsibility; therefore his 'purpose in Tripoli becomes compelling'. The 'break in their calling protocol after adherence for five weeks must have been something of significance, i.e., for Mr Oneissi to tell Mr Sabra about Abu Adass'.⁹⁴⁹³ After Mr Oneissi's

⁹⁴⁹⁰ Amended consolidated indictment, paras 3 (b)-(c), 23.

⁹⁴⁹¹ From 13 to 24 December 2004.

⁹⁴⁹² Gary Platt, T. 25 January 2017, p. 53.

⁹⁴⁹³ Prosecutor's opening statement regarding Hassan Habib Merhi, T. 18 June 2014, pp 48-49 (Mr G. Cameron).

attendance around the Arab University Mosque, ‘a decision was made which favoured Abu Adass as the most promising candidate’.⁹⁴⁹⁴

4923. In its final trial brief, however, the Prosecution made no submissions with regard to this alleged attempt, by Mr Sabra, to locate a suitable candidate in Tripoli for making the video. This is despite the evidence that the Prosecution relied upon in the opening, namely the call data records, remaining unchanged during the trial. It is also noted that the Prosecution led no evidence in support of this allegation, such as proof of the proximity of the cells to which Mr Sabra’s mobile connected in places of potential interest for locating an alternative candidate to Mr Abu Adass—presumably such as mosques or religious schools.

4924. At the close of the trial in its final trial brief, the Prosecution submits that Mr Merhi’s, Mr Oneissi’s and Mr Sabra’s involvement in profiling, identifying and selecting Mr Abu Adass as the scapegoat for the false claim of responsibility is demonstrated by two things. These are first, the Purple mobiles’ communications during what it termed the ‘COLA phase’ when Mr Oneissi’s Purple 095 and Mr Sabra’s Purple 018 were connecting to Alfa’s COLA cells near the mosque.⁹⁴⁹⁵ Second, the evidence that the ‘COLA phase’ coincided with the period in which Mr Abu Adass met, and later left his home with, a man calling himself ‘Mohammed’.⁹⁴⁹⁶ The Prosecution relies on further ‘evidence and analysis’ to support this conclusion.⁹⁴⁹⁷

1. Meeting(s) between Mr Abu Adass and ‘Mohammed’ in the Arab University Mosque

4925. The Prosecutor alleges that Mr Abu Adass met the person identifying himself as ‘Mohammed’ at the Arab University Mosque some time in late December 2004 or early January

⁹⁴⁹⁴ Prosecutor’s opening statement regarding Hassan Habib Merhi, T. 18 June 2014, pp 47-50 (Mr G. Cameron).

⁹⁴⁹⁵ The Prosecution used this term to refer to the ten days between Wednesday 29 December 2004 and Friday 7 January 2005 when Mr Sabra’s Purple 018, as attributed, and Mr Oneissi’s Purple 095 were most active connecting to the three COLA cells and those adjacent to it near the mosque.

⁹⁴⁹⁶ Prosecution final trial brief, paras 1170, 1184, *see also for example*, paras 505, 533-548, 736.

⁹⁴⁹⁷ This includes the evidence of the pattern of the Purple mobiles’ and of Mr Merhi’s attributed Green mobile’s communications; expert evidence on the Green network mobiles; evidence of Mr Merhi’s attributed Green mobile’s communications with Mr Badreddine; evidence of the Purple mobiles’ activity during the relevant time and after the attack, on 14 February 2005; the video with the claim of responsibility; evidence that the claim was false; and evidence on the cessation of use of the Green, Red and Purple mobiles, Prosecution final trial brief, paras 1170, 1184.

2005, and last saw him in the first week of January 2005, probably at a Friday prayer on 7 January 2005. According to the amended consolidated indictment, Mr Oneissi was ‘Mohammed’.⁹⁴⁹⁸

4926. The evidence proving this comes from a combination of pieces of evidence. One category is the hearsay statements of Mr Abu Adass’s family and friends. Another is testimony from a witness who met someone calling himself ‘Mohammed’ in the mosque in January 2005. A third category is testimony from a witness, Witness 87, who saw Mr Abu Adass in the mosque teaching someone how to pray in January 2005. The fourth is cell site evidence and call data records of the movements and location of Mr Oneissi’s Purple 095 and Mr Sabra’s attributed Purple 018 in December 2004 and January 2005 when Mr Abu Adass was being targeted, approached and supposedly abducted.

(a) Evidence

- i. Witness 56’s and Mr Ziad Ramadan’s hearsay accounts of what Mr Abu Adass told them

4927. The evidence of Mr Abu Adass’s encounters with anyone in the mosque in December 2004 and January 2005 is mostly hearsay and derives from statements admitted into evidence under Rule 158. The thread running through all accounts is of Mr Abu Adass teaching someone to pray in the mosque near his home in the weeks before his disappearance. Only one witness, Witness 87, provided direct evidence of Mr Abu Adass (apparently) teaching anyone to pray in the mosque.

4928. Mr Abu Adass attended the mosque daily; the evidence on this is consistent and appears to be unchallenged. Witness 56 and Mr Ramadan stated that Mr Abu Adass had told them of his encountering a young man there calling himself ‘Mohammed’. Their evidence as to the number of meetings, and what occurred, varies. Witness 56 variously described the number of meetings as around three, two and one, while Mr Ramadan refers to their meeting just once.

⁹⁴⁹⁸ Amended consolidated indictment, para. 23 (d).

4929. According to Witness 56, in December 2004 or January 2005, Mr Abu Adass saw a young man, sitting on his own in the corner of the mosque who did not stand up to pray when the others did.⁹⁴⁹⁹

4930. Mr Abu Adass, surprised by this behaviour,⁹⁵⁰⁰ approached the young man.⁹⁵⁰¹ Mr Abu Adass told the man to stand up and participate,⁹⁵⁰² to which the young man replied that he did not know how to pray.⁹⁵⁰³ He eventually joined the prayer.⁹⁵⁰⁴ Mr Abu Adass told Witness 56 that the young man introduced himself as 'Mohammed'. This, however, 'was not his real name', but he liked to be called that way.⁹⁵⁰⁵ 'Mohammed' then asked Mr Abu Adass to teach him about Islam and how to pray, to which Mr Abu Adass agreed.⁹⁵⁰⁶

4931. Witness 56 stated that Mr Abu Adass was happy as he could now teach someone about Islam.⁹⁵⁰⁷ Mr Ramadan was not surprised that Mr Abu Adass responded to 'Mohammed's' request for help, as he was involved in the religious teaching of other young people.⁹⁵⁰⁸

⁹⁴⁹⁹ Exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 2; exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 3; exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), para. 122 (p. 9); exhibit 5D476 (Statement of Witness PRH056, 17 February 2005), p. 3.

⁹⁵⁰⁰ Exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 2.

⁹⁵⁰¹ Exhibit 5D476 (Statement of Witness PRH056, 17 February 2005), p. 3.

⁹⁵⁰² Exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 2.

⁹⁵⁰³ Exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 3; exhibit P761.1 (Transcript of television programme regarding Mr Abu Adass), p. 17; exhibit 5D476 (Statement of Witness PRH056, 17 February 2005), p. 3.

⁹⁵⁰⁴ Exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 3; exhibit 5D470 (Statement of Ziad Ramadan, Syrian authorities, 8 November 2005), p. 11.

⁹⁵⁰⁵ Exhibit P2131, (Statement of Witness PRH056, dated 7 and 8 June 2005), para. 120 (p. 9).

⁹⁵⁰⁶ Exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 3; exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), para. 122 (p. 9); exhibit 5D476 (Statement of Witness PRH056, 17 February 2005), p. 3; exhibit 5D469 (Statement of Ziad Ramadan, Syrian authorities, 22 July 2005), pp 3-4.

⁹⁵⁰⁷ Exhibit 5D476 (Statement of Witness PRH056, 17 February 2005), p. 3; exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 3.

⁹⁵⁰⁸ Exhibit P1776 (Transcript of Ziad Ramadan's interview by UNHCR, 22 May 2006), pp 34, 36 (ERNs 60005307, 60005309).

4932. Mr Abu Adass told both Witness 56 and Mr Ramadan that ‘Mohammed’ was not the young man’s real name;⁹⁵⁰⁹ he was Muslim, or his parents were Muslim, but he was raised in a Christian orphanage.⁹⁵¹⁰ Witness 56 stated that ‘Mohammed’s’ real name was either Fadi or Chadi.⁹⁵¹¹

4933. Mr Abu Adass also told Witness 56 that ‘Mohammed’ was in his mid-twenties⁹⁵¹² and had a car⁹⁵¹³ and that ‘Mohammed’ offered to buy him a car, but he refused as he did not know how to drive.⁹⁵¹⁴ ‘Mohammed’ also told Mr Abu Adass that he wanted to live in the Tariq-El-Jdideh area, and asked Mr Abu Adass to help him find an apartment in that area.⁹⁵¹⁵

4934. Mr Abu Adass told Mr Ramadan that ‘Mohammed’s’ Arabic sounded ‘a bit shaky’.⁹⁵¹⁶ Witness 56 said that Mr Abu Adass had said that ‘Mohammed’ had a Lebanese accent. The witness stated also that there was ‘nothing distinctive about his voice’.⁹⁵¹⁷

4935. Witness 56 and Mr Ramadan provided differing accounts as to when this meeting in the mosque took place. Witness 56’s statements contain several different dates: namely, at the end of December 2004 or the beginning of January 2005, during a dusk prayer;⁹⁵¹⁸ about three weeks or one month before Mr Abu Adass’s disappearance;⁹⁵¹⁹ one month or one and a half months before

⁹⁵⁰⁹ Exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), para. 120 (p. 9); exhibit 5D475 (Statement of Witness PRH056, 15 February 2005), p. 1; exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 11; exhibit 5D473 (Statement of Ziad Ramadan, Syrian authorities, undated), p. 12.

⁹⁵¹⁰ Exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 3; exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 3; exhibit 5D477 (Statement of Witness PRH056, 1 October 2005), p. 5; exhibit 5D469 (Statement of Ziad Ramadan, Syrian authorities, 22 July 2005), pp 3-4; exhibit 5D473 (Statement of Ziad Ramadan, Syrian authorities, undated), p. 13.

⁹⁵¹¹ Exhibit 5D475 (Statement of Witness PRH056, 15 February 2005), p. 1.

⁹⁵¹² Exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 4.

⁹⁵¹³ Exhibit 5D477 (Statement of Witness PRH056, 1 October 2005), p. 6; exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 14.

⁹⁵¹⁴ Exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 3; exhibit P2132 (Statement of Witness PRH056, dated 1 July 2010), para. 15.

⁹⁵¹⁵ Exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 12.

⁹⁵¹⁶ Exhibit 5D473 (Statement of Ziad Ramadan, Syrian authorities, undated), p. 13.

⁹⁵¹⁷ Exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 4; exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), para. 124 (p. 9).

⁹⁵¹⁸ Exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 2; exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 3; exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), para. 122 (p. 9).

⁹⁵¹⁹ Exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 2 (the meeting took place around December 2004); exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), para. 122 (p. 9); exhibit 5D477 (Statement of Witness PRH056, 1 October 2005), p. 5 (the meeting took place about one month before the disappearance); exhibit P2132 (Statement of Witness PRH056, dated 1 July 2010), para. 17 (one to one and a half months before Mr Abu Adass’s disappearance).

Mr Abu Adass's disappearance;⁹⁵²⁰ and around the beginning of January 2005.⁹⁵²¹ Mr Ramadan said that Mr Abu Adass told him, a few days before he disappeared,⁹⁵²² that he met 'Mohammed' around a week or ten days earlier, at a Friday prayer at the Arab University Mosque.⁹⁵²³ On Mr Ramadan's version, this would have been Friday 7 January 2005.

4936. According to Witness 56, Mr Abu Adass then saw 'Mohammed' a second time during a Friday prayer, shortly after their first meeting.⁹⁵²⁴ After this second meeting, Mr Abu Adass did not see 'Mohammed' for a week.⁹⁵²⁵ Afterwards, the two met again at the mosque.⁹⁵²⁶ 'Mohammed' then disappeared again for a week.⁹⁵²⁷

4937. Witness 56's statements are unclear as to whether Mr Abu Adass and 'Mohammed' met three or four times in the Arab University Mosque.⁹⁵²⁸

4938. Regarding their other contacts, Witness 56 stated that 'Mohammed' called Mr Abu Adass using a payphone between two and five times,⁹⁵²⁹ and 'Mohammed' did not have a mobile and had told Mr Abu Adass that he did not want to have one.⁹⁵³⁰

⁹⁵²⁰ Exhibit P2132 (Statement of Witness PRH056, dated 1 July 2010), para. 17.

⁹⁵²¹ Exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 3.

⁹⁵²² Exhibit 5D470 (Statement of Ziad Ramadan, Syrian authorities, 8 November 2005), pp 9-11; exhibit 5D473 (Statement of Ziad Ramadan, Syrian authorities, undated), pp 11-13; exhibit P1776 (Transcript of Ziad Ramadan's interview by UNIIC, 22 May 2006), p. 24 (ERN 60005297). *See also* exhibit 5D469 (Statement of Ziad Ramadan, Syrian authorities, 22 July 2005), pp 3-4; exhibit P1775 (Witness statement of Ziad Ramadan, UNIIC, 1 December 2005), para. 89 (ERN 205573).

⁹⁵²³ Mr Ramadan stated in one statement (exhibit 5D473, p. 13) that the meeting occurred during a Friday prayer, exhibit P1776 (Transcript of Ziad Ramadan's interview by UNIIC, 22 May 2006), p. 24 (ERN 60005297); exhibit 5D469 (Statement of Ziad Ramadan, Syrian authorities, 22 July 2005), pp 3-4; exhibit 5D470 (Statement of Ziad Ramadan, Syrian authorities, 8 November 2005), pp 9-11; exhibit 5D473 (Statement of Ziad Ramadan, Syrian authorities, undated), pp 11-13.

⁹⁵²⁴ Exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 2.

⁹⁵²⁵ Exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), pp 2-3; exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), para. 122 (p. 9).

⁹⁵²⁶ Exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 3.

⁹⁵²⁷ Exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 3.

⁹⁵²⁸ It is unclear from Witness 56's evidence whether the two met three times in total after they first met. Exhibit 5D477 (Statement of Witness PRH056, 1 October 2005), p. 5.

⁹⁵²⁹ Exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), para. 124 (p. 9); exhibit P2132 (Statement of Witness PRH056, dated 1 July 2010), para. 16.

⁹⁵³⁰ Exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 3; exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), para. 124 (p. 9).

4939. Mr Ramadan visited Mr Abu Adass a few days before his disappearance. Mr Abu Adass was worried and wondered why ‘Mohammed’ had not turned up or done what he had decided to do.⁹⁵³¹

4940. Neither witness provided a description of what ‘Mohammed’ looked like; neither had ever seen him.

ii. Witness 87’s account of seeing a man sitting with Mr Abu Adass in the mosque

4941. Witness 87 testified that he saw Mr Abu Adass with a young man in the mosque shortly before his disappearance.

4942. The witness was a neighbour of Mr Abu Adass.⁹⁵³² He described seeing a man sitting with Mr Abu Adass in the Arab University Mosque on either the Friday before Mr Abu Adass disappeared, or the week before.⁹⁵³³ This would make it either Friday 7 or Friday 14 January 2005.

4943. Mr Abu Adass was teaching the young man how to pray.⁹⁵³⁴ The witness noticed them, as he had never seen Mr Abu Adass talking to anyone in the mosque before.⁹⁵³⁵ The witness was four metres away from them,⁹⁵³⁶ and could not see the face of the man clearly, as they were sitting in front of the witness and to the right-hand side.⁹⁵³⁷ The person was young, approximately the same

⁹⁵³¹ Exhibit 5D473 (Statement of Ziad Ramadan, Syrian authorities, undated), p. 13.

⁹⁵³² Exhibit P597 (Statement of Witness PRH087, 23 March 2010), para. 6.

⁹⁵³³ Witness PRH087, T. 29 September 2015, p. 16; exhibit P596 (Statements of Witness PRH087, dated 14 January 2015 and 24 November 2006), paras 75-76 (p. 12). *See also* exhibit 4D213 (Statement of Witness PRH087, dated 28 April 2005), p. 2.

⁹⁵³⁴ Witness PRH087, T. 29 September 2015, pp 18, 22-23, 62-63. The Trial Chamber admitted Witness 87’s statements into evidence (exhibits P596 and P597) with the exception of portions that concerned his direct observations of the person in the mosque. The Trial Chamber also declared admissible five statements by Witness 56 and two statements by Witness 87 ‘with the exception of the parts of the statements concerning direct observations of and interactions *with the person described as Mohammed*’ (emphasis added). However, paragraph 3 of that decision, makes it clear that Witness 87, in his statements, described his observations of ‘a man’—who Mr Abu Adass was teaching how to pray at the Arab University Mosque—without knowing, and therefore mentioning, that man’s name. Witness 56, on the contrary, described telephone calls to Mr Abu Adass from a person who Witness 56 knew as ‘Mohammed’. The decision therefore incorrectly referred to both witnesses describing the observations and interactions ‘*with the person described as Mohammed*’. *See* Decision admitting witness statements by Witness PRH056 and Witness PRH087, disposition.

⁹⁵³⁵ Witness PRH087, T. 29 September 2015, p. 16; exhibit P597 (Statement of Witness PRH087, 23 March 2010), para. 8.

⁹⁵³⁶ Witness PRH087, T. 29 September 2015, p. 16.

⁹⁵³⁷ Witness PRH087, T. 29 September 2015, pp 16-17.

age as Mr Abu Adass,⁹⁵³⁸ had very short hair,⁹⁵³⁹ and dark skin, ‘a little bit darker’ than Mr Abu Adass’s.⁹⁵⁴⁰ When sitting, the two were almost of the same height.⁹⁵⁴¹

4944. In his testimony, the witness stated that he could not hear the voice of the man because they were sitting too far away.⁹⁵⁴² However, in his statements made in April 2005—much closer to the events described, but still over three months afterwards—he stated that he heard the man speak to Mr Abu Adass.⁹⁵⁴³ The man had a Palestinian accent⁹⁵⁴⁴ or one that was ‘either Palestinian or from the Gulf’.⁹⁵⁴⁵ The witness was not sure what the man was wearing, ‘Maybe a T-shirt or a shirt, and he was wearing normal trousers. Maybe jeans, but I’m not sure.’⁹⁵⁴⁶

iii. A witness who met ‘Mohammed’ in the Arab University Mosque

4945. The Trial Chamber also heard evidence from a witness who encountered a ‘Mohammed’ in the mosque.

4946. At the beginning of January 2005, on a Monday, during the noon prayer, this witness saw a young man sitting in the corner near the stairs next to the main hall of the mosque.⁹⁵⁴⁷ The witness wondered why the man was sitting rather than standing and joining the other worshippers in prayer.⁹⁵⁴⁸ After the prayer, when the witness was about to leave the mosque, the young man

⁹⁵³⁸ Witness PRH087, T. 29 September 2015, pp 16-17.

⁹⁵³⁹ Witness PRH087, T. 29 September 2015, pp 17, 25.

⁹⁵⁴⁰ Witness PRH087, T. 29 September 2015, p. 26.

⁹⁵⁴¹ Witness PRH087, T. 29 September 2015, p. 19. In a previous statement shown to him in cross-examination the witness said that the young man was a bit taller than Mr Abu Adass. Exhibit P596 (Statements of Witness PRH087, dated 14 January 2015 and 24 November 2006), para. 78 (p. 12); Witness PRH087, T. 29 September 2015, p. 66.

⁹⁵⁴² Witness PRH087, T. 29 September 2015, p. 18.

⁹⁵⁴³ Exhibit 4D213 (Statement of Witness PRH087, dated 28 April 2005), p. 2; Witness PRH087, T. 29 September 2015, pp 63-69.

⁹⁵⁴⁴ Exhibit 4D213 (Statement of Witness PRH087, dated 28 April 2005), p. 2.

⁹⁵⁴⁵ Witness PRH087, T. 29 September 2015, pp 63-69; exhibit P596 (Statements of Witness PRH087, dated 14 January 2015 and 24 November 2006), para. 78 (p. 12). Witness 87 also stated that perhaps the man had changed his accent in order to make Mr Abu Adass understand him, as Mr Abu Adass’s accent was itself a mixture of Palestinian and Gulf. Exhibit P596 (Statements of Witness PRH087, dated 14 January 2015 and 24 November 2006), para. 78 (p. 12).

⁹⁵⁴⁶ Witness PRH087, T. 29 September 2015, p. 19.

⁹⁵⁴⁷ T. 20 January 2016, pp 24-26, 30-32 (closed session).

⁹⁵⁴⁸ T. 20 January 2016, p. 33 (closed session); exhibit P760, p. 1.

approached and started talking.⁹⁵⁴⁹ The witness asked why he was sitting instead of praying.⁹⁵⁵⁰ The man said that he did not know how to pray and would like the witness to teach him how.⁹⁵⁵¹

4947. The young man said that his name was ‘Mohammed’ and that he came from a village in a remote area. He was secretive about his family name and address.⁹⁵⁵² The witness did not have enough time to teach him,⁹⁵⁵³ and suggested that someone else help ‘Mohammed’.⁹⁵⁵⁴ The witness looked around and saw Mr Abu Adass who the witness did not know but used to see frequently at the mosque.⁹⁵⁵⁵ The witness pointed at Mr Abu Adass and said that he was better suited to teach ‘Mohammed’ how to pray.⁹⁵⁵⁶

4948. ‘Mohammed’, however, then became aggressive and said that he felt comfortable only with the witness. ‘Mohammed’ asked the witness not to tell anyone else about his request.⁹⁵⁵⁷ Mr Abu Adass saw the witness pointing at him and approached them asking if something was wrong. The witness replied that nothing was wrong, and Mr Abu Adass left.⁹⁵⁵⁸

4949. ‘Mohammed’ told the witness that if the witness would not teach him, he did not want to learn and would never pray. The witness felt guilty and agreed to teach ‘Mohammed’ how to pray.⁹⁵⁵⁹ ‘Mohammed’ asked to meet when the mosque would be empty, because he would feel ashamed if someone saw the witness teaching him.⁹⁵⁶⁰ They agreed to meet an hour before or after the noon prayer on Wednesday in the same week and parted.⁹⁵⁶¹ The following Wednesday, the

⁹⁵⁴⁹ T. 20 January 2016, pp 33-34 (closed session), T. 26 January 2016, pp 74-75 (closed session); exhibit P762, p. 1.

⁹⁵⁵⁰ T. 20 January 2016, p. 34 (closed session); exhibit P762, p. 2; exhibit P760, p. 1.

⁹⁵⁵¹ T. 20 January 2016, p. 34 (closed session); exhibit P762, pp 1-2; exhibit P760, p. 1.

⁹⁵⁵² T. 20 January 2016, pp 34-35 (closed session); exhibit P762, p. 2.

⁹⁵⁵³ T. 20 January 2016, p. 35 (closed session).

⁹⁵⁵⁴ T. 20 January 2016, pp 35-36 (closed session).

⁹⁵⁵⁵ T. 20 January 2016, p. 36 (closed session), T. 25 January 2016, pp 63-64 (closed session); exhibit P762, p. 2; exhibit P760, p. 2.

⁹⁵⁵⁶ T. 20 January 2016, pp 37-38 (closed session); exhibit P760, p. 1.

⁹⁵⁵⁷ T. 20 January 2016, pp 37-38 (closed session), T. 26 January 2016, pp 73-74 (closed session); exhibit P762, pp 2-3; exhibit P760, pp 1-2.

⁹⁵⁵⁸ T. 20 January 2016, p. 37 (closed session), T. 26 January 2016, pp 74-75 (closed session); exhibit P762, pp 2-3; exhibit P760, pp 1-2; exhibit 4D241 (Diagram of meeting in the mosque).

⁹⁵⁵⁹ T. 20 January 2016, pp 38, 40-41 (closed session).

⁹⁵⁶⁰ T. 20 January 2016, pp 38-39 (closed session); exhibit P760, p. 2; exhibit P762, p. 3.

⁹⁵⁶¹ T. 20 January 2016, pp 38-39 (closed session); exhibit P762, p. 3; exhibit P760, p. 2.

witness arrived 20 minutes late for the appointment and rushed into the mosque but did not see ‘Mohammed’. The witness never saw him again.⁹⁵⁶²

4950. In April 2005, the witness saw Mr Ibrahim El-Masri, the Deputy Secretary General of *Al-Jamaa Al-Islamiya*, repeating what Mr Abu Adass’s sister⁹⁵⁶³ had said in a Future TV program describing the circumstances of her brother’s disappearance, including Mr Abu Adass meeting a ‘Mohammed’ at the mosque and this ‘Mohammed’ asking Mr Abu Adass to teach him how to pray.⁹⁵⁶⁴

4951. Exhibit P760 also provides evidence of the witness, in 2006, providing an account of what occurred⁹⁵⁶⁵ and describing how the witness discovered a ‘link’ between the witness’s story and that of Mr Abu Adass.⁹⁵⁶⁶

4952. The witness remembered having pointed at Mr Abu Adass as someone who could, and was better suited to teach ‘Mohammed’ how to pray.⁹⁵⁶⁷ ‘Mohammed’ might have preferred Mr Abu Adass ‘because of his abaya, because of his beard’. As the witness did not find ‘Mohammed’ on the date agreed for their appointment, the witness did not know whether ‘Mohammed’ had left the mosque because the witness was late, or alternatively he was ignoring the witness, and had preferred Mr Abu Adass.⁹⁵⁶⁸ The witness felt remorse for being the ‘cause’ of what happened to Mr Abu Adass.⁹⁵⁶⁹

4953. In mid-2007, the witness assisted the Lebanese investigating authorities in sketching ‘Mohammed’ and, in March 2010, pointed to Mr Oneissi’s face on photo boards shown by Prosecution investigators. Using the combination of the evidence of what occurred in the mosque, the purported photo board identification and call data records of the movements of Mr Oneissi’s personal mobile the Prosecution alleges that Mr Oneissi was ‘Mohammed’.

⁹⁵⁶² T. 20 January 2016, pp 39-40 (closed session), T. 26 January 2016, pp 78, 88 (closed session); exhibit P762, p. 3; exhibit P760, p. 2.

⁹⁵⁶³ Rania Abu Adass.

⁹⁵⁶⁴ T. 20 January 2016, pp 54-55, 60, 63-68 (closed session).

⁹⁵⁶⁵ T. 20 January 2016, pp 72, 74-76 (closed session), T. 26 January 2016, pp 39-41, 60-61 (closed session). The original version of exhibit P760 no longer exists. T. 20 January 2016, pp 72, 74-77.

⁹⁵⁶⁶ T. 20 January 2016, pp 63-64, 71-72 (closed session).

⁹⁵⁶⁷ T. 20 January 2016, pp 37, 71-72 (closed session).

⁹⁵⁶⁸ T. 26 January 2016, p. 78 (closed session).

⁹⁵⁶⁹ T. 26 January 2016, p. 77 (closed session).

4954. The evidence of the call data records and the photo board identification procedure is analysed in detail below at paragraphs 4999 to 5485.

(b) Submissions

4955. In its final trial brief, the Prosecution argues that in the weeks before his disappearance, Mr Abu Adass met a man calling himself ‘Mohammed’ at the Arab University Mosque.⁹⁵⁷⁰

4956. The evidence does not establish dates precisely, but Mr Abu Adass most likely first met ‘Mohammed’ in late December 2004 or early January 2005, and last saw him at a Friday prayer on 7 January 2005. Mr Ramadan stated that when he saw Mr Abu Adass, on 14 January 2005, Mr Abu Adass expressed concern that he had not seen ‘Mohammed’ in about ten days. Witness 87 also saw ‘Mohammed’ teaching Abu Adass on Friday 7 January 2005. Witness 56’s evidence was somewhat inconsistent as to the day when Mr Abu Adass met ‘Mohammed’, but this is unsurprising given that five years had passed between the witness’s first and last statements.⁹⁵⁷¹ The evidence of the witness who met ‘Mohammed’ in the mosque was ‘credible, reliable, and compelling’.⁹⁵⁷² Mr Abu Adass’s and this witness’s ‘closely parallel experiences demonstrate that their encounters with “Mohammed” were part of the same search for a scapegoat, over the same narrow timeframe’.⁹⁵⁷³

4957. The Merhi Defence submits that the Prosecution ‘surprisingly’ is unable to ‘determine with any precision’ two important material aspects of the alleged false claim, namely, ‘Mohammed’s’ identity and the day on which Mr Abu Adass was selected by ‘Mohammed’. And it does not allege any specific action by Mr Merhi during this period.⁹⁵⁷⁴

4958. The Oneissi Defence also argues that the ‘Mohammed’ story could have been fabricated by Mr Abu Adass, or as a cover-up by Witness 56, Mr Ramadan and Mr Taysir Abu Adass.⁹⁵⁷⁵ The Prosecution’s case—because it is not possible to establish the dates of meetings and that the last meeting took place on 7 January 2005—is vague.⁹⁵⁷⁶

⁹⁵⁷⁰ Prosecution final trial brief, para. 510.

⁹⁵⁷¹ Prosecution final trial brief, paras 519-523, 525.

⁹⁵⁷² Prosecution final trial brief, para. 516.

⁹⁵⁷³ Prosecution final trial brief, paras, 513, 524.

⁹⁵⁷⁴ Merhi Defence final trial brief, paras 491, 493.

⁹⁵⁷⁵ Oneissi Defence final trial brief, para. 263.

⁹⁵⁷⁶ Oneissi Defence final trial brief, paras 335-338.

4959. Witness 56, according to the Oneissi Defence, embellished the account over time,⁹⁵⁷⁷ and Mr Ramadan fabricated his story because of trouble with the Lebanese and Syrian authorities.⁹⁵⁷⁸ Witness 56's and Mr Ramadan's evidence is imprecise regarding the identity of 'Mohammed' or the timing of the alleged meetings and interactions between Mr Abu Adass and 'Mohammed'.⁹⁵⁷⁹

4960. Further, the date of 7 January 2005 is neither corroborated by Witness 87—who could not describe or identify the person he saw with Mr Abu Adass⁹⁵⁸⁰—nor by the other witness.⁹⁵⁸¹ Additionally, Witness 87's evidence does not support any precise finding regarding the timing of the alleged meetings other than 'during midday prayer' either the Friday before Mr Abu Adass's disappearance or the Friday before that.⁹⁵⁸² Moreover, whereas Witness 56 stated that Mr Abu Adass and 'Mohammed' met for the first time at the dusk prayer, Witness 87 said the meeting between Mr Abu Adass and the young man occurred during the midday prayer.⁹⁵⁸³

4961. The Oneissi Defence also raised a number of further challenges to the reliability of the evidence of the witness who met 'Mohammed', arguing that it is unreliable, inconsistent, that the 'Mohammed story' cannot be verified and that the witness has specified political links. The submissions conclude by arguing that the circumstances surrounding the 'Mohammed story' were 'highly suspicious' and 'cast serious doubts as to the reliability' of the witness's alleged encounter with 'Mohammed', and the witness's credibility.⁹⁵⁸⁴ Its final trial brief also noted that the Prosecution's:

representation of Abu-Adass has evolved, between the Indictment and Pre-Trial Brief to the Prosecution Brief: while Abu-Adass is initially portrayed merely as a generous but naïve man, the Prosecution now conveniently emphasises his Salafist and Wahhabi tendencies.⁹⁵⁸⁵

4962. The Sabra Defence submits that there is no evidence demonstrating beyond a reasonable doubt that the 'Mohammed' who Witness 56 and Mr Ramadan referred to is the same person

⁹⁵⁷⁷ Oneissi Defence final trial brief, paras 292-296.

⁹⁵⁷⁸ Oneissi Defence final trial brief, paras 301-307.

⁹⁵⁷⁹ Oneissi Defence final trial brief, paras 313, 335-338.

⁹⁵⁸⁰ Oneissi Defence final trial brief, paras 340-345.

⁹⁵⁸¹ Oneissi Defence final trial brief, paras 350-353, 406-409.

⁹⁵⁸² Oneissi Defence final trial brief, paras 342-343.

⁹⁵⁸³ Oneissi Defence final trial brief, paras 341-342.

⁹⁵⁸⁴ Oneissi Defence final trial brief, paras 357-404.

⁹⁵⁸⁵ Oneissi Defence final trial brief, para. 279 (footnotes omitted).

described by Witness 87 and the witness who met ‘Mohammed’ in the mosque.⁹⁵⁸⁶ Their accounts of the meeting between Mr Abu Adass and ‘Mohammed’ suffer from a number of inconsistencies, which affect their reliability.⁹⁵⁸⁷ The Prosecution’s shift from the identity of ‘Mohammed’ as Mr Oneissi and the failure to specify the date when Mr Abu Adass allegedly met ‘Mohammed’ is fatal to the Prosecution’s case.⁹⁵⁸⁸

4963. The Prosecution relies on Mr Ramadan’s evidence that on Friday 14 January 2005 Mr Abu Adass informed him that he had seen ‘Mohammed’ at least ten days before, namely, on or around Tuesday 4 January 2005, even though this does not fit into its case.⁹⁵⁸⁹ The Prosecution also selectively treats Witness 56’s various accounts of this meeting by inconsistently stating that the alleged meeting with ‘Mohammed’ occurred on Friday 7 January 2005, even though Witness 56 had not specifically stated in any accounts that this meeting took place on this date.⁹⁵⁹⁰

4964. The Prosecution uses Witness 87’s evidence that he saw Mr Abu Adass teaching someone how to pray ‘one week before he disappeared’ to argue that Mr Abu Adass met ‘Mohammed’ on Friday 7 January 2005. However, the witness also stated that he saw Mr Abu Adass meeting someone on the Friday before his disappearance, that is, on Friday 14 January 2005.⁹⁵⁹¹ Further, Witness 87 seeing Mr Abu Adass with someone does not equate to this individual being ‘Mohammed’. Also, Witness 87’s testimony that Mr Abu Adass must have been teaching someone to pray is an unfounded assumption as he could not hear what Mr Abu Adass said from his position in the mosque and took no interest at the time.⁹⁵⁹²

4965. Finally, the evidence of the witness who met ‘Mohammed’ in the mosque does not establish when Mr Abu Adass met ‘Mohammed’, or that they met the same person. The witness recollects meeting ‘Mohammed’ on a Monday in early January 2005, but this does not establish that Mr Abu Adass met the same person on Friday 7 January 2005.⁹⁵⁹³

⁹⁵⁸⁶ Sabra Defence final trial brief, paras 619-631.

⁹⁵⁸⁷ Sabra Defence final trial brief, paras 620-631.

⁹⁵⁸⁸ Sabra Defence final trial brief, para. 632.

⁹⁵⁸⁹ Sabra Defence final trial brief, para. 622.

⁹⁵⁹⁰ Sabra Defence final trial brief, paras 620-621.

⁹⁵⁹¹ Sabra Defence final trial brief, paras 624, 627.

⁹⁵⁹² Sabra Defence final trial brief, paras 625-626.

⁹⁵⁹³ Sabra Defence final trial brief, paras 628-631.

(c) Findings

4966. The Trial Chamber heard evidence that is divisible into three discrete themes. It agrees with the Prosecution's general argument that they must be viewed together.

4967. The first is of Mr Abu Adass's alleged meeting(s) with 'Mohammed' in the Arab University Mosque, as relayed by Mr Abu Adass to Witness 56 and Mr Ramadan. The second is of Witness 87's direct evidence that he saw Mr Abu Adass with someone in the Arab University Mosque in early January 2005. Thirdly, another witness testified of meeting 'Mohammed' in the mosque at around the same time. Mr Abu Adass was reported missing, as of Sunday 16 January 2005 and his family and friends never saw him again; the evidence and findings regarding his reported disappearance are set out below at sub-section (E) 'Mr Abu Adass's disappearance and surrounding events.

4968. The Trial Chamber received evidence from which it can find that at the beginning of January 2005 a witness met someone called 'Mohammed' in the mosque. Having heard the evidence, the Trial Chamber is satisfied that the witness attempted to provide credible and reliable evidence about this meeting. There is evidence of this in exhibit P760 and statements made in 2007.

4969. The Trial Chamber has carefully considered the Oneissi Defence's lengthy final trial submissions arguing that the witness was unreliable and lacked credibility, but is ultimately of the view that the evidence was reliable on all salient points. Having viewed the witness and the cross-examination, the Trial Chamber is convinced that the witness was attempting to provide the best account of a brief encounter that occurred over ten years earlier. In this respect, the witness was credible.

4970. The Trial Chamber has carefully assessed the evidence of each of the witnesses who provided evidence about what might have occurred in the mosque *vis-à-vis* Mr Abu Adass. It has examined the different witness accounts both for internal consistencies and for consistency with each other. In other words, it has considered each version individually and in combination with the others.

4971. The accounts of the four witnesses are only partially consistent. The consistencies include Witness 56 and Mr Ramadan stating that Mr Abu Adass had said that he had met someone named ‘Mohammed’ in the mosque, who had asked Mr Abu Adass to help him pray. They also consistently stated that they were told that ‘Mohammed’ was of Muslim origin but raised in a Christian orphanage and that ‘Mohammed’ was not his real name.

4972. The evidence is not, on the other hand, consistent as to the number and dates of the meetings. Witness 56’s statements say that Mr Abu Adass met ‘Mohammed’ once, twice and three times. According to Mr Ramadan, conversely, Mr Abu Adass met ‘Mohammed’ only once. This is not of course of itself necessarily inconsistent, as Mr Ramadan may have been told of only one meeting; more of which he was unaware may have occurred.

4973. Of the dates of the meeting(s), Witness 56 stated that Mr Abu Adass first met ‘Mohammed’ between a week and one and a half months before Mr Abu Adass’s disappearance; this would make it between about the beginning of December 2004 and the first week of January 2005. Mr Ramadan stated that he had heard that Mr Abu Adass met ‘Mohammed’ sometime in early January 2005. In a statement, Mr Ramadan said that this occurred during a Friday prayer. Relying on this, the meeting would have occurred on Friday 7 January 2005.⁹⁵⁹⁴

4974. While this might support a finding that Mr Abu Adass met someone called ‘Mohammed’ in the mosque at some time between these dates, the inconsistencies undermine the reliability of these accounts—taking them either individually or together. Further, and significantly, Witness 56’s and Mr Ramadan’s accounts are untested Rule 158 hearsay, and on a crucial and contested issue. As outlined above, therefore, the Trial Chamber has carefully examined whether any other evidence corroborated it.

4975. Witness 87 testified and was cross-examined by the Defence. He gave reliable and, in the Trial Chamber’s view, credible evidence that he saw Mr Abu Adass sitting with a person in the mosque either on the Friday before Mr Abu Adass disappeared, or the week before. These possible dates would therefore be either Friday 7 or 14 January 2005. He explained that he understood that Mr Abu Adass was teaching the other man how to pray because they were speaking aloud during

⁹⁵⁹⁴ As noted by the Oneissi Defence (Oneissi Defence final trial brief, paras 326, 329), in the corrected version of its final trial brief, the Prosecution removed two sentences concerning this aspect of Mr Ramadan’s evidence.

day-time prayer, which otherwise would not be allowed according to the Sunni school, and he had never seen Mr Abu Adass doing it before.⁹⁵⁹⁵ What is absent from his account, however, is any evidence about who it was. The person was unnamed. It may have been the ‘Mohammed’ in question, or someone else.

4976. Mr Ramadan also provided evidence that Mr Abu Adass regularly helped young people learn more about religion. He stated that Mr Abu Adass had relations with many students and with some young people from the mosque of the university, that he was very interested in preaching and inviting people to join his religion and that he ‘was also offering some religious classes to the young students at the university’.⁹⁵⁹⁶

4977. This evidence is before the Trial Chamber, although in untested Rule 158 form, and if accepted, provides a reasonable alternative inference that Witness 87 saw Mr Abu Adass teaching someone other than the named ‘Mohammed’ how to pray. The Trial Chamber, however, is of the view that the evidence is unreliable—being Rule 158 untested hearsay—thus logically it cannot provide a *reasonable* alternative inference.

4978. Further, Witness 87 could not specify the exact date of the incident; it could have been either Friday 7 or Friday 14 January 2005. The date is significant because it could provide context to cell activations of Mr Oneissi’s Purple 095 and Mr Sabra’s attributed Purple 018 around the Arab University Mosque. The Trial Chamber considers that these two significant omissions, namely, the lack of a precise date and the name of the person Witness 87 saw with Mr Abu Adass mean that they cannot corroborate, or strengthen, either Witness 56’s or Mr Ramadan’s account of what Mr Abu Adass is said to have told them about ‘Mohammed’.

4979. Additionally, Witness 87’s description of the person he saw with Mr Abu Adass differs in some respects from that of the witness who encountered a ‘Mohammed’ in the mosque. This is of course not unusual; witnesses frequently describe the same person differently, and will notice or record different features to memory. Numerous factors affect and determine how a witness sees

⁹⁵⁹⁵ Witness PRH087, T. 29 September 2015, pp 18-23. *See also* exhibit 4D213 (Statement of Witness PRH087, dated 28 April 2005), p. 2.

⁹⁵⁹⁶ Exhibit P1776 (Transcript of Ziad Ramadan’s interview by UNIIC, 22 May 2006), p. 34 (ERN 60005307).

and recalls an event, including describing a previously unknown but briefly encountered person. They may or may not have been describing the same person.

4980. The descriptions that Witness 87 and the witness who met a ‘Mohammed’ in the mosque gave of the person they saw in the mosque in January 2005 cannot, of themselves, corroborate Witness 56’s or Mr Ramadan’s accounts. Neither provided a description of what ‘Mohammed’ looked like. Witness 56 and Mr Ramadan—neither of whom had met ‘Mohammed’—only stated that they had heard that he was in his mid-twenties. The Trial Chamber however will also consider this, as the Prosecution alleges that the evidence of both witnesses corroborates, in different ways, that of Witness 56 and Mr Ramadan.

4981. In examining their descriptions in more detail, a comparison between the more detailed description of ‘Mohammed’ given by the witness who met him and that of Witness 87 can be based only on their common descriptions of that person, that is, of his age, hair length, complexion and accent. The witness who saw ‘Mohammed’ in the mosque said that he was 175 centimetres tall. However, Witness 87’s description of the young man as having the same height as Mr Abu Adass when sitting does not permit a comparison on this.

4982. Witness 87 was four metres away from Mr Abu Adass and the young man,⁹⁵⁹⁷ and could not see his face clearly,⁹⁵⁹⁸ so his description was limited. He described him as young—approximately the same age as Mr Abu Adass, who at the beginning of 2005 was aged 22⁹⁵⁹⁹—and having very short hair.⁹⁶⁰⁰ The additional information Witness 87 provided was mainly based on comparing him with Mr Abu Adass, namely, that the young man had dark skin that was ‘a little bit darker’ than Mr Abu Adass’s,⁹⁶⁰¹ and, when sitting, the two were almost of the same height.⁹⁶⁰²

⁹⁵⁹⁷ Witness PRH087, T. 29 September 2015, p. 16. *See also* exhibit P596 (Statements of Witness PRH087, dated 14 January 2015 and 24 November 2006), para. 76 (p. 12).

⁹⁵⁹⁸ Witness PRH087, T. 29 September 2015, pp 16-17.

⁹⁵⁹⁹ Mr Abu Adass was born in 1982. Exhibit 4D561 (Mr Ahmad Abu Adass’s Lebanese identity card), which states that he was born in Saudi Arabia in 1982.

⁹⁶⁰⁰ Witness PRH087, T. 29 September 2015, pp 16-17, 25; exhibit P596 (Statements of Witness PRH087, dated 14 January 2015 and 24 November 2006), para. 78 (p. 12).

⁹⁶⁰¹ Witness PRH087, T. 29 September 2015, p. 26. A photograph of Mr Abu Adass before he grew his beard is in exhibit 4D584.

⁹⁶⁰² Witness PRH087, T. 29 September 2015, p. 19.

He had an accent that was either Palestinian or from the Gulf,⁹⁶⁰³ but in his testimony, ten years and eight months after the event, he stated that he could not hear him.⁹⁶⁰⁴

4983. ‘Mohammed’, on the other hand according to the witness who met him, was around 25 to 30, his hair was a few centimetres long, with white or a little greyish complexion, although the witness also described him as having a bluish face or ashen skin.⁹⁶⁰⁵ ‘Mohammed’ spoke with an unfamiliar accent—it was neither from Beirut, nor from the Bekaa or from the south of Lebanon—and appeared to be trying to use an accent to make it seem that he came from a remote village.⁹⁶⁰⁶

4984. Both say the man was young, but differed as to his complexion, one describing it as dark and the other white, one says the accent was Palestinian or from the Gulf, while the other could not identify it.

4985. In these circumstances, the Trial Chamber cannot safely conclude that they were the same person. Witness 87 could not properly see him. Moreover, the encounters were brief and a lengthy period elapsed between their seeing the person and describing him to the authorities. Witness 87 saw ‘Mohammed’ in January 2005 and first described him nearly two years later in a statement made in late November 2006.⁹⁶⁰⁷ The witness who met ‘Mohammed’ in the mosque in January 2005 similarly provided an initial description at least a year later, sometime in 2006.⁹⁶⁰⁸ They also gave differing descriptions as to the person’s complexion and accent.

4986. The accounts also differ as to dates. Witness 87 thought that he had seen the young man on either Friday 7 or Friday 14 January 2005. The other witness described meeting ‘Mohammed’ in the mosque on a Monday at the beginning of January 2005, which would be either Monday 3 or 10 January. Therefore, although the descriptions about the accent and age are not necessarily inconsistent, the circumstances do not permit the Trial Chamber to positively find that the two witnesses saw the same young man in the mosque in January 2005.

⁹⁶⁰³ Exhibit P596 (Statements of Witness PRH087, dated 14 January 2015 and 24 November 2006), para. 78 (p. 12); Witness PRH087, T. 29 September 2015, pp 63-65.

⁹⁶⁰⁴ Witness PRH087, T. 29 September 2015, p. 18.

⁹⁶⁰⁵ T. 20 January 2016, pp 41, 46, 50 (closed session); exhibit P760; exhibit P762, p. 3.

⁹⁶⁰⁶ T. 20 January 2016, pp 85-86 (closed session).

⁹⁶⁰⁷ Exhibit P596 (Statements of Witness PRH087, dated 14 January 2015 and 24 November 2006).

⁹⁶⁰⁸ Exhibit P760.

4987. It is of course conceivable that the same person approached both Mr Abu Adass and the witness at this mosque within a few days of each other and asked each to teach him how to pray. However, it is also equally conceivable that it was not the same person.

4988. The witness's evidence is therefore equivocal for purposes of corroborating the Rule 158 hearsay evidence of Mr Ramadan and Witness 56 on this material fact pleaded against Mr Oneissi. The Trial Chamber, as is noted above, accepts that a witness met someone named 'Mohammed' at the mosque in early January 2005, and that this person asked the witness to teach him how to pray. The Trial Chamber is also satisfied that the witness pointed at nearby Mr Abu Adass as someone who could, or was better suited to teach 'Mohammed' how to pray. However, without more, the Trial Chamber cannot positively conclude that the witness's evidence corroborates that of the two Rule 158 witnesses, Witness 56 and Mr Ramadan, who provided hearsay evidence on these points.

4989. To recap: Witness 87's evidence does not corroborate that Mr Abu Adass met and taught '*Mohammed*' to pray. It only confirms that Mr Abu Adass *may* have taught *someone* to pray in the mosque in January 2005. Further, the other witness's evidence does not corroborate that 'Mohammed' approached *Mr Abu Adass*. It only confirms that a person named 'Mohammed' approached *that witness*. In these circumstances, it is not the only reasonable inference available to the Trial Chamber on the evidence that either Witness 87 or the other witness's evidence corroborates the two Rule 158 witnesses' already somewhat inconsistent hearsay evidence.

4990. The Trial Chamber therefore finds that the Prosecution has not established beyond a reasonable doubt that Mr Abu Adass met a person called 'Mohammed' at the mosque in late December 2004 or early January 2005 and taught him how to pray. Even if a finding is not required to the high standard of beyond reasonable doubt, the evidence the Prosecution led to establish this pleaded fact would have been insufficient to prove it on a lower evidentiary standard, such as on the balance of probabilities.

2. The 'identification' of Mr Oneissi as the 'Mohammed' who Mr Abu Adass encountered in the mosque

4991. In the amended consolidated indictment, the Prosecutor alleges that Mr Oneissi posed as 'Mohammed' to meet Mr Abu Adass and to convince him to leave his home on 16 January

2005.⁹⁶⁰⁹ This is a material fact that the Prosecution must prove beyond reasonable doubt to the extent that a conviction would rely upon it. As illustrated in more detail below,⁹⁶¹⁰ the Prosecution submitted, in its final trial brief and closing arguments, that the Trial Chamber need not establish the precise identity of the ‘Mohammed’ who lured Mr Abu Adass away from his family. However, it also insisted that there is evidence that Mr Oneissi was ‘Mohammed’.⁹⁶¹¹

4992. Regarding Mr Sabra’s alleged role, in opening the case against Mr Merhi, Prosecution counsel stated that, while Mr Oneissi’s role was to befriend and gain the initial trust of Mr Abu Adass, ‘Mr Sabra’s role was to remain in the background and to gather information about Abu Adass and the surrounding area in preparation for his abduction on the morning of the 16th of January’.⁹⁶¹²

4993. The Trial Chamber is only legally required to assess whether the Prosecution has established its pleaded case against the Accused beyond reasonable doubt. In final submissions, Prosecution’s lead counsel appeared to argue the contrary. In referring to what he described as the ‘subplot’ of the ‘Mohammed deceit’, he argued that, ‘What you need to consider is the involvement of Mr. Sabra and Mr. Oneissi in that subplot. And you don’t need to find who played which role’.⁹⁶¹³ This submission implicitly suggests that the Trial Chamber could safely switch the pleaded roles of Mr Oneissi and Mr Sabra. This means that it could find that either or neither were ‘Mohammed’, but the two nevertheless played some role in the ‘Mohammed’ story.

4994. The Trial Chamber agrees that it could legally adopt this course to the extent that the evidence supported a finding that Mr Sabra had some involvement in the ‘Mohammed’ deceit. This applies regardless of whether the evidence supported Mr Oneissi having such a role. This appears to be sufficiently pleaded in the amended consolidated indictment. However, as a matter of law, a positive finding that Mr Sabra, as opposed to Mr Oneissi, was ‘Mohammed’—which is the pleaded material fact—would require an amendment to the indictment. Mr Sabra’s defence was run on the basis that he was not alleged to be ‘Mohammed’. It was not pleaded that he was.

⁹⁶⁰⁹ Amended consolidated indictment, paras 23, 28-29.

⁹⁶¹⁰ See paras 5036-5042, below.

⁹⁶¹¹ Prosecution closing submissions, T. 14 September 2018, p. 67.

⁹⁶¹² Prosecutor’s opening statement regarding Hassan Habib Merhi, T. 18 June 2014, pp 50-52 (Mr G. Cameron).

⁹⁶¹³ Prosecution closing submissions, T. 14 September 2018, p. 69.

4995. To prove that Mr Oneissi was ‘Mohammed’, the Prosecution relies on the testimony of a witness who encountered a ‘Mohammed’ in the Arab University Mosque on a Monday in January 2005. The witness pointed to a photograph of Mr Oneissi in an interview with Prosecution investigators in March 2010, and, according to the Prosecutor’s pleading, identified him. It also relies upon cell site evidence showing Mr Oneissi’s mobile and Mr Sabra’s attributed mobile connecting to the cells near the mosque on relevant days in December 2004 and January 2005. Added to this are the hearsay Rule 158 statements of Witness 56 and Mr Ramadan about the meeting between Mr Abu Adass and ‘Mohammed’.

4996. The Trial Chamber has received insufficient probative evidence to conclude that Mr Abu Adass met someone called ‘Mohammed’ at the mosque in late December 2004 or early January 2005. However, to do justice to the Parties’ cases, the Trial Chamber has carefully examined the Prosecutor’s pleading, and supporting evidence, that Mr Oneissi was ‘Mohammed’. In so doing, it will assume for the purposes of the analysis, that it *could* be satisfied that Mr Abu Adass met a ‘Mohammed’ in the mosque. All of the evidence presented has therefore been comprehensively analysed.

4997. There are two strands to this evidence. The first is whether the identification evidence presented *could* establish that Mr Oneissi was the ‘Mohammed’ who the witness met in the mosque, or could be relied upon to prove this. The second is whether the Trial Chamber could use this evidence—or any other—to establish that Mr Oneissi was the ‘Mohammed’ who Mr Abu Adass allegedly met, and then left his home with on Sunday 16 January 2005.

4998. Whether the Purple mobiles’ activity during the so-called ‘COLA phase’ could have supported a finding that Mr Oneissi was ‘Mohammed’ is also considered. This includes examining in detail whether Mr Abu Adass met or could have met Mr Oneissi. And hence whether there is sufficient evidence to support a finding that the three were involved in profiling, identifying and selecting Mr Abu Adass as the scapegoat for the pleaded false claim of responsibility.

(a) Evidence

4999. The witness who met ‘Mohammed’ in the mosque was asked to identify ‘Mohammed’ from photo boards compiled by Prosecution investigators. In examining this purported identification, the Trial Chamber also reviewed the evidence of:

- Mr Lorenzo Lanzi, the Prosecution associate forensic expert who created the photo boards;⁹⁶¹⁴
- Mr Xavier Laroche, the Prosecutor forensic coordinator who scanned Lebanese passport applications and residence certificates to create the photo boards;⁹⁶¹⁵
- Witness PRH539,⁹⁶¹⁶ a Prosecutor investigator who assisted Mr Laroche in scanning the passport applications and residence certificates;
- Mr Glen Williams, a Prosecution investigator who showed the photo boards to witnesses;⁹⁶¹⁷
- Mr Alasdair Macleod, a UNHCR and thereafter Prosecution, investigator present when an ISF officer sketched ‘Mohammed’ in July 2007;⁹⁶¹⁸ and
- Professor Siegfried Ludwig Sporer, an expert witness in eyewitness identification called to testify by the Oneissi Defence.⁹⁶¹⁹

5000. In assessing Professor Sporer’s evidence, the Trial Chamber has also considered the evidence of four other witnesses: Witness 87, Witness DHO-003, Witness DHO-004 and Witness DHO-005,⁹⁶²⁰ each of whom stated that they saw a man with Mr Abu Adass and participated in separate identification procedures.⁹⁶²¹ Each was shown the same photo boards as the witness, yet none identified Mr Oneissi as the person they saw.⁹⁶²²

⁹⁶¹⁴ Mr Lanzi testified on 14 and 15 July 2015. The Trial Chamber also admitted into evidence, under Rule 155, two statements that Mr Lanzi made on the creation of the photo boards (exhibit P507) and, upon the Oneissi Defence’s application, a further statement (exhibit 4D178) and—to make Professor Sporer’s report understandable—the audio recording of an interview by counsel for Mr Oneissi with Mr Lanzi (exhibit 4D558).

⁹⁶¹⁵ The Trial Chamber admitted Mr Laroche’s evidence under Rule 155, without cross-examination, to make Professor Sporer’s report, which relies on it, understandable. Exhibit 4D551 (Audio interview of Xavier Laroche by counsel for Mr Oneissi); exhibit 4D552 (Witness Statement of Xavier Laroche); exhibit 4D557 (Forensic report on the preparation of the photo boards, Xavier Laroche). Decision admitting evidence in Oneissi Defence case.

⁹⁶¹⁶ He testified on 16 September 2016.

⁹⁶¹⁷ He testified on 28, 29 and 30 November 2016.

⁹⁶¹⁸ He testified on 12, 13, 14 January 2016, 13, 14, 15, 18 and 19 July 2016.

⁹⁶¹⁹ Professor Sporer testified on 14, 15 and 16 May 2018.

⁹⁶²⁰ Witnesses DHO-003, DHO-004, DHO-005; respectively, Mr Samer Al-Ajouz, Mr Yasser Al-Ali and Mr Abd al-Rahman Harb. No application was made for protective measures in respect of these Rule 155 witnesses.

⁹⁶²¹ Witness DHO-005 saw two men with Mr Abu Adass. Exhibit 4D549 (Witness Statement of Abd el-Rahman Harb, UNHCR, 16 January 2008), para. 44.

⁹⁶²² They did not identify anyone, on the photo boards as the person they had seen. Witness DHO-003 first identified one of the fillers (those who are not the suspects on a photo board), but then stated that it was not the person he saw

i. A witness's descriptions of 'Mohammed'

5001. Upon the Oneissi Defence's application, the Trial Chamber also admitted into evidence under Rule 155⁹⁶²³ statements, video recordings and transcripts of the identification procedures of these four witnesses, and related investigators notes. This was for the limited purpose of making Professor Sporer's report, which relied upon them, understandable.⁹⁶²⁴ The Trial Chamber has therefore disregarded those parts of the statements that do not relate to this.

5002. The witness described 'Mohammed' sometime in 2006,⁹⁶²⁵ January 2007⁹⁶²⁶ and March 2007.⁹⁶²⁷ On 10 July 2007, a Lebanese Judicial Police sketch artist drew a sketch of 'Mohammed' based on a description.⁹⁶²⁸



Exhibit P763 (Sketch of 'Mohammed' drawn in July 2007)

and did not identify anyone else. Exhibit 4D546.2 (Video recording of the identification interview of Mr Samer Al-Ajouz).

⁹⁶²³ Without cross-examination.

⁹⁶²⁴ Decision admitting evidence in Oneissi Defence case. Witness 87 also testified as a Prosecution witness and the Trial Chamber admitted into evidence two statements under Rule 156—one on his identification procedure (exhibits P596 and P597); Decision admitting witness statements by Witness PRH056 and Witness PRH087.

⁹⁶²⁵ Exhibit P760; T. 26 January 2016, p. 43 (closed session). *See also* T. 20 January 2016, pp 75-76 (closed session).

⁹⁶²⁶ Exhibits P762, p. 3.

⁹⁶²⁷ Exhibit P760.

⁹⁶²⁸ Exhibit P763 (Sketch of 'Mohammed' drawn in July 2017). *See also* exhibit 4D256 (UNIIC investigators' notes of 10 July 2007).

5003. The witness described ‘Mohammed’ as ‘in the end of the 20s’, 27 or 29 years old.⁹⁶²⁹ He was about 175 centimetres tall,⁹⁶³⁰ athletic and slim,⁹⁶³¹ with a very short beard,⁹⁶³² very visible eyebrows, long and thick eyelashes and blue eyes.⁹⁶³³ He also had thick, dark chestnut hair, a few centimetres. His accent was neither from Beirut, nor from the Bekaa or from the south.⁹⁶³⁴ His hair had a parting on the left side.⁹⁶³⁵ ‘Mohammed’ spoke with an unfamiliar accent. It seemed that he used an accent to make it seem that he came from a remote village.⁹⁶³⁶ He was wearing blue jeans and a thick shirt.⁹⁶³⁷ This encounter with ‘Mohammed’ lasted around ten minutes.⁹⁶³⁸

ii. The construction of the photo boards in March 2010

5004. In March 2010, Mr Williams—at that time a Prosecution investigator who had previously conducted numerous identifications on photo montage boards as a police officer in New Zealand⁹⁶³⁹—asked his colleagues, Mr Laroche and Mr Lanzi, to create two photo boards, and he explained that Mr Oneissi and Mr Sabra had to be on separate photo boards.⁹⁶⁴⁰

5005. Mr Lanzi sought to retrieve images of Mr Sabra and Mr Oneissi, and images of people having similar visual characteristics, referred to as ‘fillers’.⁹⁶⁴¹ The photographs were chosen from a set of Lebanese passport application forms and identification and residence certificates that Mr Laroche⁹⁶⁴² and Witness 539 had obtained from the relevant Lebanese authorities.⁹⁶⁴³

⁹⁶²⁹ T. 20 January 2016, p. 41 (closed session). The witness had previously described ‘Mohammed’ as ‘around 25 years of age or older’ or ‘25-27 years old’. Exhibit P762, p. 3; exhibit P760, p. 1. The Prosecution gave the witness copies of witness statements before testifying and encouraged the witness to examine them for the purposes of memory refreshment. T. 20 January 2016, pp 42-45 (closed session).

⁹⁶³⁰ T. 20 January 2016, pp 45-46 (closed session); exhibit P762, p. 3; exhibit P760, p. 1.

⁹⁶³¹ T. 20 January 2016, p. 46 (closed session); exhibit P762, p. 3; exhibit P760, p. 1.

⁹⁶³² T. 20 January 2016, pp 46, 48-49 (closed session); exhibit P762, pp 1, 3; exhibit P760, p. 1.

⁹⁶³³ T. 20 January 2016, p. 46 (closed session), T. 26 January 2016, p. 98 (closed session); exhibit P762, pp 1, 3; exhibit P760, p. 1.

⁹⁶³⁴ T. 20 January 2016, pp 85-86 (closed session); exhibit P762, pp 1, 3.

⁹⁶³⁵ T. 20 January 2016, p. 50 (closed session); exhibit P762, p. 3; exhibit P760, p. 1.

⁹⁶³⁶ T. 20 January 2016, pp 85-86 (closed session).

⁹⁶³⁷ T. 20 January 2016, p. 50 (closed session), exhibit P762, p.1.

⁹⁶³⁸ T. 20 January 2016, p. 39 (closed session).

⁹⁶³⁹ Mr Williams was a Prosecution investigator between November 2009 and January 2013. Glenn Williams, T. 28 November 2016, pp 4-5, 21, 24, 29-31.

⁹⁶⁴⁰ The creators of the photo boards were instructed that fillers should bear physical similarities. Glenn Williams, T. 28 November 2016, pp 45, 50-51; exhibit P507 (Witness statement of Lorenzo Lanzi), para. 9.

⁹⁶⁴¹ Exhibit P507 (Witness statement of Lorenzo Lanzi), para. 12. Fillers, or foil, are the members in the photo board, or line-up, who are not the suspect.

⁹⁶⁴² Mr Laroche was the Prosecution’s Forensic coordinator and previously had a similar post with the UNHCR.

⁹⁶⁴³ Lorenzo Lanzi, T. 14 July 2015, p. 47, T. 15 July 2015, pp 17-19, 41; exhibit P507 (Witness statement of Lorenzo Lanzi), para. 12; Witness PRH539, T. 16 September 2016, pp 8-22; exhibit 4D176 (Twenty-four identification

5006. Mr Lanzi, who is Swiss, chose photographs that in his view most resembled the persons of interest.⁹⁶⁴⁴ The investigators did not provide Mr Lanzi with statements containing the descriptions of those they were seeking.⁹⁶⁴⁵ Mr Laroche reviewed the photographs selected by Mr Lanzi for the photo boards.⁹⁶⁴⁶ Mr Williams and the investigators then approved the photo boards.⁹⁶⁴⁷

5007. Relatives of Mr Sabra, however, also ended up on Mr Oneissi's photo board, and relatives of Mr Oneissi were on Mr Sabra's photo board. Mr Lanzi was not aware of this when he compiled the photo boards.⁹⁶⁴⁸ Similarly, Mr Williams was not aware at that time that relatives of the suspects were included in the photo boards.⁹⁶⁴⁹

5008. Mr Lanzi acknowledged in his testimony that there was a major difference in age between two people whose images were on Mr Oneissi's photo board,⁹⁶⁵⁰ and also between one person and Mr Oneissi.⁹⁶⁵¹

iii. Witness's review of photo boards in March 2010

5009. On 22 March 2010, in an attempt to identify 'Mohammed' during a mission to Beirut, the Prosecution investigator, Mr Williams, showed a witness two photo boards,⁹⁶⁵² each of twelve photographs. One photo board included a photograph of Mr Oneissi, and the other included a photograph of Mr Sabra.⁹⁶⁵³ The photograph of Mr Oneissi is in exhibit P765 immediately below.

certificates and passport applications); exhibit 4D551 (Audio interview of Xavier Laroche by counsel for Mr Oneissi), pp 1, 10; exhibit 4D552 (Witness statement of Xavier Laroche), paras 8, 10.

⁹⁶⁴⁴ Lorenzo Lanzi, T. 14 July 2015, p. 55.

⁹⁶⁴⁵ Lorenzo Lanzi, T. 15 July 2015, p. 79.

⁹⁶⁴⁶ Exhibit 4D551 (Audio interview of Xavier Laroche by counsel for Mr Oneissi), p. 29.

⁹⁶⁴⁷ Lorenzo Lanzi, T. 14 July 2015, pp 46-49; exhibit P507 (Witness statement of Lorenzo Lanzi), paras 17-18; Glenn Williams, T. 28 November 2016, p. 52.

⁹⁶⁴⁸ Lorenzo Lanzi, T. 15 July 2015, pp 50, 97-98.

⁹⁶⁴⁹ Glenn Williams, T. 28 November 2016, pp 82-83, T. 29 November 2016, pp 19-20.

⁹⁶⁵⁰ Comparing photographs 9 and 11 from photo board A. The subjects were born in 1968 and 1982. Exhibit 4D177 (Photo board picture comparisons), p. 11; Lorenzo Lanzi, T. 15 July 2015, p. 64.

⁹⁶⁵¹ Lorenzo Lanzi was shown photographs 4 (Mr Oneissi) and 11 from photo board A. Mr Oneissi and this filler were born, respectively, in 1974 and 1982. Exhibit 4D177, p. 5; Lorenzo Lanzi, T. 15 July 2015, p. 74.

⁹⁶⁵² Exhibit P765. Copies of the two photo boards—unmarked by any witness—are also in evidence as exhibit P508; Glenn Williams, T. 28 November 2016, p. 84 (private session). Mr Sean Buckley was his mission partner and was highly involved in the planning of the process. Glenn Williams, T. 28 November 2016, pp 33, 74; *see also* exhibit 4D287 (List of pseudonyms and names used with Mr Williams).

⁹⁶⁵³ The two photo boards were placed one right next to the other.



Exhibit P765 (Mr Oneissi's photograph from the photo board selected in March 2010)

5010. Mr Williams knew who the suspects were.⁹⁶⁵⁴ He showed the two photo boards together. He explained that—since three witnesses⁹⁶⁵⁵ had seen Mr Abu Adass meeting a person at different times and ‘it was not known if that individual was either of the relevant individuals who featured in each of the photo boards ... the appropriate way was to lay both photo boards in front of the witnesses’.⁹⁶⁵⁶ He was aware that the witness had described ‘Mohammed’ as being about 25 years old, with blackish hair, blue eyes and no distinguishing features.⁹⁶⁵⁷

5011. Before showing the photo boards, Mr Williams instructed the witness that the person in question (‘Mohammed’) ‘may or may not be among the photographs’ to be shown. The witness was also instructed to take as much time as needed to make a decision about each photograph and to keep in mind that individual features such as head or facial hair and clothing are subject to change. Finally, the witness was also told not to ask Mr Williams any question when looking at the photographs, because no help or guidance could be given.⁹⁶⁵⁸

⁹⁶⁵⁴ Glenn Williams, T. 28 November 2016, pp 11, 28, T. 29 November 2016, p. 22.

⁹⁶⁵⁵ This witness, Witness 087 and Witness DHO-005.

⁹⁶⁵⁶ Glenn Williams, T. 28 November 2016, p. 84 (private session).

⁹⁶⁵⁷ Glenn Williams, T. 28 November 2016, pp 86-88 (private session).

⁹⁶⁵⁸ Exhibit P764.1 (Transcript of identification procedure), pp 1-2.

5012. Approximately six minutes after looking at the photographs,⁹⁶⁵⁹ the witness stated, ‘It’s too hard’.⁹⁶⁶⁰ Then, two minutes and ten seconds later,⁹⁶⁶¹ the witness asked, in Arabic, ‘Is it possible to have like options because it have different (...)?’⁹⁶⁶² Mr Williams said, ‘the question is whether any of the photographs is the person you saw and if the answer is not you simply tell us no’.⁹⁶⁶³ Approximately two minutes and thirty seconds later, 10 minutes and 42 seconds after he had started looking at the photo boards,⁹⁶⁶⁴ the witness tapped three times on Mr Oneissi’s photograph. Mr Williams nodded.⁹⁶⁶⁵

5013. Mr Williams asked the witness to circle the photograph and sign underneath, and to sign the other board.⁹⁶⁶⁶ Mr Williams then completed the written declaration for the witness to sign and read it aloud, ‘After viewing the photo board, I identify number 4 board A as being the person Mohammed from the Mosque’. Mr Williams asked the witness whether there were any comments. The witness stated, in English, ‘It was so hard to remember...But’,⁹⁶⁶⁷ and around 14 seconds later pointed to the selected photograph and said in Arabic, ‘There is a big resemblance’.⁹⁶⁶⁸

5014. Mr Williams wrote down these comments to complete the written declaration,⁹⁶⁶⁹ ‘After viewing the photo board, I identify photograph number *Photo number 4 Board A* as being the person Mohammed from the Mosque. It was hard to remember but there is a big resemblance’.

⁹⁶⁵⁹ Exhibit P764, at 14:10; exhibit 4D560 (Investigators notes on photo board identification), p. 5.

⁹⁶⁶⁰ T. 21 January 2016, p. 37 (closed session).

⁹⁶⁶¹ Exhibit P764, at 16:20.

⁹⁶⁶² Exhibit P764.1 (Transcript of identification procedure), p. 3. *See also* T. 21 January 2016, pp 37-38, 41-42 (closed session). According to exhibit 4D560 (Investigators notes on photo board identification)—which contains Mr Williams’s ‘detailed account compiled by watching the enhanced audio version of the video of identification’—the interpreter, in translating the witness’s question into English, stated: ‘Is it possible to have the captions because... to have different *pictures*?’ Then this comment follows in parenthesis: ‘the last word is very hard to decipher’ (*see* p. 5).

⁹⁶⁶³ Exhibit P764 (Video recording of the identification procedure), at 16:30.

⁹⁶⁶⁴ Exhibit P764 (Video recording of the identification procedure), at 18:59.

⁹⁶⁶⁵ Exhibit P764 (Video recording of the identification procedure), at 19:02.

⁹⁶⁶⁶ Exhibit P764.1 (Transcript of identification procedure), p. 3; exhibit P765 (Photo boards used in identification procedure). In photo board A, the photograph number 4—of Mr Oneissi—is circled by pen and outside the circle the witness’s signature is appended, and the signature is also appended on the side of photo board B.

⁹⁶⁶⁷ Exhibit P764 (Video recording of the identification procedure), at 21:05.

⁹⁶⁶⁸ Exhibit P764 (Video recording of the identification procedure), at 21:19; exhibit P764.1 (Transcript of identification procedure), p. 4; T. 21 January 2016, p. 43 (closed session).

⁹⁶⁶⁹ Exhibit P764 (Video recording of the identification procedure), between 19:56:20 and 19:56:56 and between 21:03 and 21:41.

The portion in *italics* is handwritten.⁹⁶⁷⁰ The Trial Chamber decided to admit the declaration into evidence as indispensable to the identification process.⁹⁶⁷¹

5015. Defence counsel did not cross-examine the witness about the identification procedures.⁹⁶⁷²

iv. Professor Sporer's evidence

5016. Professor Siegfried Ludwig Sporer testified for the Oneissi Defence as an expert witness in eye-witness identification.⁹⁶⁷³ He was a Professor of Social Psychology at the University of Giessen, Germany between 1997 and 2015.⁹⁶⁷⁴ He occasionally appeared as an expert in trials in Germany, usually as a court-appointed expert.⁹⁶⁷⁵

5017. The professor examined the Prosecution's identification procedures, including selecting the photographs for the photo boards and administering the identification procedure.⁹⁶⁷⁶ He analysed the extent to which they followed best practises and to what extent, by not following them, they may have introduced the potential for error and bias.⁹⁶⁷⁷ Professor Sporer also analysed the factors, 'assessment variables' that, according to experimental psychological studies, may affect an identification decision and its accuracy, and therefore are relevant in assessing the

⁹⁶⁷⁰ Exhibit P765.1 (Written declaration following identification procedure), p. 3. The original printed declaration contained some parts that were crossed through by pen. The printed declaration, including the stricken parts, reads: 'After viewing the photoboard, I identify photograph number [INSERT NUMBER OF PHOTOGRAPH] as being [THE PERSON I SAW AT X-Y-Z]. [Insert any additional comments].' After one line space, the declaration reads: 'I do not identify any of the individuals shown.' After another line space, it reads: 'Attached is the actual photoboards shown to me and signed by me'.

⁹⁶⁷¹ Decision admitting two photo boards into evidence, para. 42.

⁹⁶⁷² The Trial Chamber considered this in its decision admitting the two photo boards into evidence and that Rule 150 (J) requires a cross-examining party to put to a witness the nature of a Party's case that contradicts the witness's evidence. The Trial Chamber had previously drawn this rule to the attention of Defence counsel. Decision admitting two photo boards into evidence, paras 29-30.

⁹⁶⁷³ The area of the expertise is implicit in the Trial Chamber's decision, as read together with the relevant application from the Defence, and Professor Sporer's report. Professor Sporer's expertise was unopposed. Decision on Professor Sporer's evidence; F3605, Defence for Hussein Hassan Oneissi Rule 161 (A) Disclosure Notice and Request for the Admission into Evidence of Prof Sporer's Expert Report, 21 March 2018; F3621, Prosecution's Rule 161 (B) Notice in relation to Witness DHO-001 Siegfried Ludwig Sporer and Request to Strike Portions of the Report, 6 April 2018; exhibit 4D540 (Professor Sporer's expert report).

⁹⁶⁷⁴ Siegfried Sporer, T. 14 May 2018, p. 16; exhibit 4D541 (Professor Sporer's *curriculum vitae*), p. 1.

⁹⁶⁷⁵ Siegfried Sporer, T. 16 May 2018, p. 79. His second area of expertise—which Professor Sporer describes as not relevant to his expert testimony in this case—is 'deception'. Siegfried Sporer, T. 14 May 2018, p. 21.

⁹⁶⁷⁶ Exhibit 4D540 (Professor Sporer's expert report), pp 4-5.

⁹⁶⁷⁷ Exhibit 4D540 (Professor Sporer's expert report), p. 9, *see also* pp 4-5.

evidentiary value of an identification decision.⁹⁶⁷⁸ He analysed whether and how certain factors may have affected the identification attempts in this case.

a. The construction of the photo boards

5018. Professor Sporer explained that there are two approaches to selecting foil or fillers, namely non-suspects,⁹⁶⁷⁹ when constructing photo boards. One is the ‘match-to-suspect’ strategy, while the other is the ‘match-to-description’ strategy.⁹⁶⁸⁰ According to the latter approach, a line-up should not contain faces with elements that are inconsistent with the witness’s description. According to Professor Sporer, empirical evidence shows that match-to-description has better probative value.⁹⁶⁸¹ The danger of the match-to-suspect strategy is that it creates a tendency towards the suspect. Some authors recommend a combination of both approaches.⁹⁶⁸²

5019. Professor Sporer noted that the same two photo boards were shown to multiple witnesses, including the witness, even though the witnesses gave different and contradictory descriptions,⁹⁶⁸³ for example regarding eye colour and hair colour,⁹⁶⁸⁴ and may not have been referring to the same person. If this were the case, the same identification board should not have been used with the witnesses.⁹⁶⁸⁵ Also, many of the fillers did not match the description well enough to be proper fillers, thus reducing the number of reasonable fillers who could be alternatives.⁹⁶⁸⁶ Further, the age of those in the photo boards varied widely, with differences of up to 20 years.⁹⁶⁸⁷ Professor

⁹⁶⁷⁸ Exhibit 4D540 (Professor Sporer’s expert report), pp 4-5 33, 94, figure 3.01; Siegfried Sporer, T. 16 May 2018, p. 27 (private session).

⁹⁶⁷⁹ Exhibit 4D540 (Professor Sporer’s expert report), p. 14.

⁹⁶⁸⁰ Siegfried Sporer, T. 15 May 2018, pp 40, 66-67; exhibit 4D540 (Professor Sporer’s expert report), pp 63-64.

⁹⁶⁸¹ Siegfried Sporer, T. 15 May 2018, pp 40-41.

⁹⁶⁸² Siegfried Sporer, T. 15 May 2018, p. 75.

⁹⁶⁸³ Exhibit 4D540 (Professor Sporer’s expert report), pp 26-27.

⁹⁶⁸⁴ Exhibit 4D540 (Professor Sporer’s expert report), p. 27.

⁹⁶⁸⁵ Siegfried Sporer, T. 15 May 2018, p. 42-45. *See also* exhibit 4D540 (Professor Sporer’s expert report), pp 27, 44. According to Professor Sporer, ‘It is considered standard practice in today’s guidelines that different witnesses who provided different descriptions from different observations (not observing the same encounter) should not be shown the same lineup’. Professor Sporer relied on the US Department of Justice’s Technical Working Group of Eyewitness Identification Evidence’s ‘Eyewitness Evidence: A Guide for Law Enforcement’, October 1999. *See* exhibit 4D540 (Professor Sporer’s expert report), p. 63.

⁹⁶⁸⁶ Siegfried Sporer, T. 15 May 2018, p. 47.

⁹⁶⁸⁷ Exhibit 4D540 (Professor Sporer’s expert report), pp 65-68, figure 4.01; Siegfried Sporer, T. 15 May 2018, pp 58, 67-68.

Sporer found it difficult to understand why the investigators did not use the witnesses' descriptions.⁹⁶⁸⁸

5020. Professor Sporer testified that, according to international best practices, only one suspect should be on a photo board or a line-up.⁹⁶⁸⁹ Everyone else in the line-up should be innocent fillers.⁹⁶⁹⁰ However, two photo boards, one containing Mr Oneissi's photograph and one containing Mr Sabra's, were shown together to the witness, which violated the 'single-suspect' model.⁹⁶⁹¹ Further, several relatives—as potential persons-of-interest—were included in the photo boards, substantially reducing the probative value of the whole identification procedure.⁹⁶⁹²

b. The review of the photo boards

5021. Professor Sporer noted that Mr Williams, who administered the photo boards, knew who the suspect was. However, the person administering the line-up should be blind to this. Otherwise, non-verbal communication can be unconsciously transmitted.⁹⁶⁹³ Eyewitness studies have demonstrated that this reduces errors.⁹⁶⁹⁴

5022. Further, the witness, after tapping fingers on a face, was interrupted by the investigator, who said aloud the number being pointed at.⁹⁶⁹⁵ Professor Sporer testified that, from a scientific point of view, the person administering the photo board is supposed to wait and not suggest an answer to the person or give any feedback.⁹⁶⁹⁶ He described Mr Williams's nod, after the witness tapped on the photo, as a non-verbal signal and suggestive influence.⁹⁶⁹⁷ According to Professor Sporer, Mr Williams 'actually actively influenced the witness in the sense of confirming, oh, yes, you identified'. This is post-identification feedback that should not have occurred.⁹⁶⁹⁸

⁹⁶⁸⁸ Exhibit 4D540 (Professor Sporer's expert report), p. 80.

⁹⁶⁸⁹ Professor Sporer asserted that there is unanimity among researchers, in the literature published since the 1980s, that there should be a single-suspect model. Siegfried Sporer, T. 14 May 2018, pp 40, 44.

⁹⁶⁹⁰ Siegfried Sporer, T. 14 May 2018, p. 39; exhibit 4D540 (Professor Sporer's expert report), p. 14.

⁹⁶⁹¹ Siegfried Sporer, T. 15 May 2018, p. 58.

⁹⁶⁹² Exhibit 4D540 (Professor Sporer's expert report), pp 57-58, 61.

⁹⁶⁹³ Siegfried Sporer, T. 15 May 2018, pp 58-59, 88-92. This requirement applies to medical and forensic sciences, such as fingerprint analysis, and eyewitness testimony.

⁹⁶⁹⁴ Siegfried Sporer, T. 15 May 2018, p. 89.

⁹⁶⁹⁵ Siegfried Sporer, T. 16 May 2018, pp 29, 57 (private session).

⁹⁶⁹⁶ Siegfried Sporer, T. 16 May 2018, p. 30 (private session); exhibit 4D540 (Professor Sporer's expert report), p. 88.

⁹⁶⁹⁷ Exhibit P764 (Video recording of the identification procedure), at 18:53-19:05; Siegfried Sporer, T. 16 May 2018, p. 57 (private session).

⁹⁶⁹⁸ Siegfried Sporer, T. 16 May 2018, pp 58, 65 (private session).

5023. Professor Sporer stated that the identification procedures contained the ‘appearance-change instruction’, warning witnesses that individual features such as head, facial hair and clothing are subject to change.⁹⁶⁹⁹ An empirical study shows that this instruction led to an increase in false identifications.⁹⁷⁰⁰ Professor Sporer noted positively that the witnesses were warned that the person they met may not be in the line-up, which is recommended by identification guidelines.⁹⁷⁰¹

5024. Professor Sporer concluded that the outcome of any identification process with a photo board constructed and administered as in this case has no scientific value.⁹⁷⁰²

c. Factors relevant to assessing the accuracy of an identification decision

5025. Professor Sporer noted that the factors affecting an identification decision and its accuracy can be divided into variables at the encoding or perception stage, the retention interval and the retrieval stage.⁹⁷⁰³ They include confidence and response latency—namely, the time taken to arrive at a decision.⁹⁷⁰⁴

5026. To estimate the likelihood of the accuracy of a later identification, Professor Sporer was of the view that the conditions of the original encounter must be scrutinized.⁹⁷⁰⁵ Distinctive features such a scar or a large nose can help the witness encode these.⁹⁷⁰⁶ Professor Sporer read relevant portions of the transcript of proceedings and considered that the Trial Chamber focused on Mr Oneissi’s monobrow, apparently visible in his passport photograph.⁹⁷⁰⁷ For example, during the

⁹⁶⁹⁹ Exhibit 4D540 (Professor Sporer’s expert report), p. 92.

⁹⁷⁰⁰ Exhibit 4D540 (Professor Sporer’s expert report), p. 94.

⁹⁷⁰¹ Siegfried Sporer, T. 15 May 2018, pp 58, 82.

⁹⁷⁰² Siegfried Sporer, T. 16 May 2018, pp 69-70. He emphasised that none of the investigators involved in the construction and administration of the photo boards ever referred to the literature on the psychology of eyewitness testimony and did not appear to be aware of the guidelines based on that literature. Exhibit 4D540 (Professor Sporer’s expert report), pp 52-53. The Trial Chamber acknowledges the point but is not overly concerned by this as it is aware of the difference in learning of a university professor, as a specialist in this field, and investigators. It accepts that investigators should be trained to use the relevant guidelines and additionally should be aware of the principles but without requiring a detailed knowledge of the academic literature on the subject.

⁹⁷⁰³ Exhibit 4D540 (Professor Sporer’s expert report), p. 33.

⁹⁷⁰⁴ Exhibit 4D540 (Professor Sporer’s expert report), pp 33, 94, figure 3.01.

⁹⁷⁰⁵ Exhibit 4D540 (Professor Sporer’s expert report), p. 34; Siegfried Sporer, T. 15 May 2018, pp 19-21, 26-27.

⁹⁷⁰⁶ Siegfried Sporer, T. 15 May 2018, pp 33-37. Many people rely on outer features (hair, beard) when encoding a face, and consequently recognition drops when outer features are changed. Exhibit 4D540 (Professor Sporer’s expert report), pp 41-42; Siegfried Sporer, T. 15 May 2018, pp 37-38.

⁹⁷⁰⁷ Exhibit 4D540 (Professor Sporer’s expert report), p. 42.

Oneissi Defence's cross-examination of Mr Lanzi on the selection of the fillers for the photo board, the Trial Chamber noted that a distinguishing feature of Mr Oneissi's photograph was his 'monobrow'.⁹⁷⁰⁸ Mr Lanzi agreed in response to judicial questions, that that was a distinguishing feature in Mr Oneissi's photograph, but that only one filler on Mr Oneissi's photo board had such a monobrow.⁹⁷⁰⁹ According to Professor Sporer, as a striking, potentially distinctive feature, the witness should have but did not mention the monobrow.⁹⁷¹⁰

5027. The original observation by the witness of 'Mohammed' did not involve a criminal action but a single encounter with the person.⁹⁷¹¹ Professor Sporer commented that the only reason for the witness to encode 'Mohammed's' face was his inappropriate behaviour in a place of worship. However, after 'Mohammed' did not come to an appointment two days later, the witness had no reasons to rehearse the event in his memory until early 2006, when he wrote about it.⁹⁷¹² Without rehearsal of the event, information is more likely to fade from a witness's memory and therefore more likely to be forgotten.⁹⁷¹³

5028. Professor Sporer stated that creating associations between the information perceived and the witness's personal memories can improve later recall and recognition.⁹⁷¹⁴ In 2007, the witness claimed to have memorized 'Mohammed's' face because he looked like a classmate. According to Professor Sporer, it was not clear whether this association was elicited at the original encounter—and so helped to preserve the memory—or was added later to embellish the witness's memory report.⁹⁷¹⁵

⁹⁷⁰⁸ The two eyebrows have no marked division but seem to form a single eyebrow. T. 15 July 2015, p. 43.

⁹⁷⁰⁹ Lorenzo Lanzi, T. 15 July 2015, pp 43-44 (responding to Judge Nosworthy's question).

⁹⁷¹⁰ Siegfried Sporer, T. 16 May 2018, p. 43 (private session); exhibit 4D540 (Professor Sporer's expert report), p. 25. Professor Sporer underlined that 'it seems striking that none of the witnesses seem to have noticed these features [the monobrow and the rather large ears (of Mr Oneissi)] and therefore incorporated them in their descriptions'. Exhibit 4D540 (Professor Sporer's expert report), pp 42-43.

⁹⁷¹¹ According to Professor Sporer, presumably, 'if one tried to re-enact' the relevant interaction, the whole encounter was presumably shorter than the ten minutes estimate that the witness provided for the first time in court. Exhibit 4D540 (Professor Sporer's expert report), pp 35-36, referring to T. 20 January 2016, p. 39 (closed session).

⁹⁷¹² Professor Sporer considered that, even if two months after the encounter—in watching a television program about Mr Abu Adass's disappearance—it became clear that the encounter might be important. Exhibit 4D540 (Professor Sporer's expert report), p. 40.

⁹⁷¹³ Exhibit 4D540 (Professor Sporer's expert report), p. 40.

⁹⁷¹⁴ Exhibit 4D540 (Professor Sporer's expert report), p. 40.

⁹⁷¹⁵ Exhibit 4D540 (Professor Sporer's expert report), pp 39-41; Siegfried Sporer, T. 16 May 2018, pp 47-48 (private session).

5029. Professor Sporer noted that, in the witness's testimony, the descriptions got more detailed. As memory does not get better after eight or ten years, this means that the witness tried to make an impression as a credible witness.⁹⁷¹⁶ As to the description of 'Mohammed' that the witness provided in different statements, Professor Sporer pointed to 'minor discrepancies', such as describing 'Mohammed' with dark chestnut hair versus blackish hair, or hair parted versus straight and spiky hair.⁹⁷¹⁷

5030. Professor Sporer testified that accurate choices are made faster than inaccurate choices.⁹⁷¹⁸ The witness's long decision time demonstrated a lack of confidence in the decision.⁹⁷¹⁹ Even after, the witness was still looking at the other faces. Professor Sporer had never seen an identification that took as long as in this case, neither in the literature nor the case studies.⁹⁷²⁰

5031. Further, confidence can be indicative of accuracy of the identification, but only if it is assessed immediately at the time of the decision in the line-up. Researchers seem to agree that identification with high certainty is more likely to be correct than identification with medium certainty, which in turn is more likely to be correct than one with low certainty.⁹⁷²¹

5032. 'Confidence was never explicitly stated' by the witness. The witness did say 'there is a big resemblance',⁹⁷²² but in Arabic,⁹⁷²³ so it was difficult to assess what degree of familiarity was

⁹⁷¹⁶ Siegfried Sporer, T. 16 May 2018, pp 41-42, 46 (private session).

⁹⁷¹⁷ Siegfried Sporer, T. 16 May 2018, pp 39-40 (private session).

⁹⁷¹⁸ In a study that analysed wrongful convictions, some of the witnesses who misidentified somebody were originally insecure and often it took them fairly long before deciding. Siegfried Sporer, T. 15 May 2018, pp 107-109, T. 16 May 2018, pp 7, 9, 11; exhibit 4D540 (Professor Sporer's expert report), figure 6.06 (ERN 1DT4-2381(COR2)).

⁹⁷¹⁹ Siegfried Sporer, T. 16 May 2018, p. 67 (private session); exhibit 4D540 (Professor Sporer's expert report), p. 33.

⁹⁷²⁰ Siegfried Sporer, T. 16 May 2018, pp 67-68 (private session).

⁹⁷²¹ In mistaken identification cases in the US, witnesses who were initially unsure became sure several months or years later when testifying in court: it is the post-identification feedback effect, which influences confidence but not accuracy. *See* Siegfried Sporer, T. 14 May 2018, p. 54, T. 15 May 2018, pp 102-104.

⁹⁷²² Siegfried Sporer, T. 16 May 2018, p. 65 (private session).

⁹⁷²³ In his report, Professor Sporer correctly noted that the witness pronounced this sentence in Arabic. Exhibit 4D540 (Professor Sporer's expert report), p. 18. Professor Sporer, in his testimony, mistakenly stated that the witness said this sentence in English. Professor Sporer was not 'sure whether he made an internal translation before he said this'. Siegfried Sporer, T. 16 May 2018, p. 65 (private session).

meant.⁹⁷²⁴ The witness additionally stated that ‘It was very difficult’.⁹⁷²⁵ Empirical evidence shows that people who say that the task was difficult are less confident. Professor Sporer concluded that the witness’s ‘expression’ put the confidence on the lower side.⁹⁷²⁶

(b) Submissions

5033. The Prosecution’s position shifted from definitely averring—at the outset of the trial—that Mr Oneissi and ‘Mohammed’ were one and the same, to stating, by its closing submissions, that the Trial Chamber need not make any finding on the issue.

5034. The amended consolidated indictment pleads that Mr Oneissi, calling himself ‘Mohammed’, met Mr Abu Adass—the individual selected as suitable for the video-taped false claim of responsibility—at the Arab University Mosque in either December 2004 or January 2005.⁹⁷²⁷ The Prosecution reaffirmed this in its pre-trial briefs⁹⁷²⁸ and opening statements.⁹⁷²⁹

5035. However, mid-trial and without explanation, the Prosecution’s position shifted. In an email to the Oneissi Defence, it stated that it did not regard the purported photo board identification of Mr Oneissi as ‘Mohammed’ to ‘represent a conclusive identification’ of him.⁹⁷³⁰

5036. By the close of the evidence and in its final trial brief, the Prosecution’s position had moved to merely stating that a witness⁹⁷³¹ had ‘identified’ a photograph of Mr Oneissi from a photo board when asked to identify the person calling himself ‘Mohammed’ spoken to at the mosque in January 2005. The Prosecution’s position was that it did not ‘place great weight in this identification’, but

⁹⁷²⁴ Professor Sporer explained that, when a higher degree of familiarity is required by a witness to identify someone, the reliability of the evidence is stronger, whereas when a smaller degree of familiarity is considered sufficient by a witness to identify someone, this minimizes the probative value of an identification. Exhibit 4D540 (Professor Sporer’s report) pp 17-18.

⁹⁷²⁵ Siegfried Sporer, T. 16 May 2018, p. 65 (private session). As noted above—and as correctly reported in Professor Sporer’s expert report (exhibit 4D540, p. 18), the witness actually said, ‘It was so hard to remember...But’. *See* above, at para. 5013, referring to exhibit P764, at 21:05.

⁹⁷²⁶ Siegfried Sporer, T. 16 May 2018, p. 65 (private session).

⁹⁷²⁷ Amended consolidated indictment, paras 3 (b), 23.

⁹⁷²⁸ Prosecution’s updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), para. 122; Prosecution pre-trial submissions (Merhi case), annex A, para. 113.

⁹⁷²⁹ Prosecutor’s opening statement, T. 16 January 2014, pp 14 (Mr N. Farrell), 105 (Mr G. Cameron); Prosecutor’s opening statement regarding Hassan Habib Merhi, T. 18 June 2014, p. 51 (Mr G. Cameron), ‘I expect the evidence to show that the accused Oneissi was, in fact, Mohammed’.

⁹⁷³⁰ Email dated 6 February 2015 from the Prosecution Senior Trial Counsel to Counsel for Mr Oneissi, annexed to F2214, Oneissi Defence Motion Requesting Non Admission of Photo Board, 22 September 2015.

⁹⁷³¹ The witness who met a ‘Mohammed’ in the mosque.

nonetheless it remains that the witness ‘associated a person resembling’ the photograph of Mr Oneissi on the photo board with the person encountered at the mosque.⁹⁷³²

5037. Concerning ‘Mohammed’ and his association with the Accused, the Prosecution in its final trial brief stated:

In this regard, it is worth recalling that the Chamber does not need to establish the precise identity of the “Mohammed” who lured ABU ADASS away from his family. Whilst the Prosecution alleged in the Indictment that it was **ONEISSI** who acted as “Mohammed”, and has presented evidence in support of this allegation, it is unnecessary to dwell on the resolution of this issue. It is, in no way, dispositive of **ONEISSI**’s involvement in the “Mohammed” deceit, the identification of a suitable scapegoat and the preparation of the false claim plot as a whole. The evidence establishes that **ONEISSI** was intimately involved in multiple aspects of the overall plot, regardless of whether he was the person who interacted personally with ABU ADASS.⁹⁷³³

5038. The Prosecution, in its final trial arguments, neither made any submissions on the quality of the identification process nor responded to the Oneissi Defence’s arguments on this.

5039. The Trial Chamber, after examining the Parties’ and Legal Representatives of Victims’ final trial briefs, directed the Prosecution to address the following question:

The amended consolidated indictment, at paragraphs 23, 27 and 28, alleges that Mr Hussein Hassan Oneissi was ‘Mohammed’, while the Prosecution brief states, at paragraph 518, that the Trial Chamber ‘does not need to establish the precise identity’ of the ‘Mohammed’ who lured Mr Ahmed Abu Adass away from his home (see also paragraph 730 of the Prosecution brief which does not link Mr Oneissi with ‘Mohammed’).

Is the Prosecution conceding that it has not proved that Mr Oneissi was ‘Mohammed’?

And if so, what effect does this have on its case against Mr Oneissi?⁹⁷³⁴

⁹⁷³² Prosecution final trial brief, para. 517.

⁹⁷³³ Prosecution final trial brief, para. 518, with internal footnote to the amended consolidated indictment omitted.

⁹⁷³⁴ Questions for closing submissions, para. 3.

5040. In oral closing arguments, in response to the Trial Chamber's question, Prosecution counsel submitted that 'There's no concession. There is evidence that Mr Oneissi was Mohammed',⁹⁷³⁵ which has 'some evidential value' and 'there are other features that also provide some indication that Mr Oneissi was Mohammed'.⁹⁷³⁶

5041. Specifically, Witness 56's evidence reflected that 'Mohammed first appeared, new to the area, came in, and met Abu Adass, disappeared for a week, came back, disappeared for another week, and then Abu Adass went off with Mohammed'. Also, Mr Oneissi's Purple mobile usage pattern 'to a large extent, matches that'. There was 'heavy COLA cell use' on Wednesday 22 December 2004 by Mr Oneissi over a period. That occurred a week later and again on Friday 7 January 2005. Something in these patterns provides support to Mr Oneissi being 'Mohammed'.⁹⁷³⁷

5042. The Prosecution submitted that the Trial Chamber need not establish the precise identity of the 'Mohammed' who lured Mr Abu Adass away from his family. Although the amended consolidated indictment alleges that Mr Oneissi acted as 'Mohammed' and the Prosecution 'presented evidence in support of this allegation', it was unnecessary to dwell on the resolution of this issue.⁹⁷³⁸ It was a fact relating to the acts and conduct of the Accused but was not one essential to conviction. The Prosecution's oral submissions on this point are footnoted below.⁹⁷³⁹

⁹⁷³⁵ Prosecution closing submissions, T. 14 September 2018, p. 69.

⁹⁷³⁶ Prosecution closing submissions, T. 14 September 2018, p. 67.

⁹⁷³⁷ Prosecution closing submissions, T. 14 September 2018, p. 68.

⁹⁷³⁸ Prosecution closing submissions, T. 14 September 2018, p. 67; Prosecution final trial brief, para. 518. According to the Prosecution, this is not dispositive of Mr Oneissi's involvement in the 'Mohammed' deceit, the identification of a suitable scapegoat and the preparation of the false claim plot as a whole. These submissions are dealt with in this chapter, in sub-section (D) (3) 'Activity of Mr Merhi's Purple 231, Mr Oneissi's Purple 095 and Mr Sabra's attributed Purple 018, between December 2004 and Friday 7 January 2005', and (E) 'Mr Abu Adass's disappearance and surrounding events'.

⁹⁷³⁹ Prosecution closing submissions, T. 14 September 2018, pp 69-71. In response to a question as to whether the pleading that Mr Oneissi was 'Mohammed' was a material fact:

'MR. POVOAS: It's a fact relating to the acts and conduct of the accused, but it's not essential to conviction. It's not something you need to find beyond reasonable doubt. It's not even something you need to find. What you need to find is the responsibility of Mr. Oneissi and Mr. Sabra for the overall false claim plot. An important part of that is the Mohammed deceit, and by that I mean the subplot in which someone would appear, pretend to be a Muslim orphan wanting to learn how to pray, and that that would be used to lure somebody. Eventually, ultimately, it was Abu Adass. What you need to consider is the involvement of Mr. Sabra and Mr. Oneissi in that subplot. And you don't need to find who played which role.

PRESIDING JUDGE RE: Okay. So maybe I can answer it for you. You're saying the Prosecution isn't conceding that it hasn't proved the case that Mr. Oneissi was Mohammed. That's the first part. And the second one, you would be saying this doesn't affect the case against Mr. Oneissi because we could, if we wanted to, find that he was Mohammed, or he was involved in some way in the Mohammed story as opposed to him being Mohammed. We don't need to find

5043. The Merhi Defence submits that the Prosecution is unable to determine ‘Mohammed’s’ identity with any precision.⁹⁷⁴⁰ The Prosecution inaccurately asserts that it is not important for the Trial Chamber to establish that Mr Oneissi is the ‘Mohammed’ who approached Mr Abu Adass, as alleged in the amended consolidated indictment.⁹⁷⁴¹

5044. The Oneissi Defence submits that, based on Professor Sporer’s expert evidence, the photo board interview and its outcome should be given no weight, as the board was improperly constructed and incorrectly administered.⁹⁷⁴² Further, no identification occurred during the photo board interview and nothing establishes that the witness positively identified Mr Oneissi as ‘Mohammed’.⁹⁷⁴³ The Oneissi Defence referred in detail to Professor Sporer’s specific criticisms regarding the construction and administration of the photo boards.⁹⁷⁴⁴

5045. Further, the Prosecutor’s position is unclear. He cannot state that he does not accord much value to the witness’s identification, but ‘in parallel say that he is maintaining the fact that Oneissi is possibly Mohammed, or at the end of the day it doesn’t really matter’. ‘With identification processes, either there is a positive identification or there isn’t. There is no middle ground.’⁹⁷⁴⁵ It is not possible to ‘do away with the faults of the procedure using telephone evidence’.⁹⁷⁴⁶ The

that he was Mohammed, just that his actions were temporal, coincidental with the Mohammed thing, so he was inextricably involved with Mohammed even if he wasn’t Mohammed. Yes?

MR. POVOAS: That’s it. And it’s worthwhile making this submission. You’ve heard me say that when you consider these patterns against this concrete occurrence in the plot, you obviously don’t consider it in isolation. You look at it in its totality. This pattern of behaviour cannot be coincidence. And you can be satisfied, actually, so that you’re sure that this took place. But even if you’re not sure in itself of this side of the plot, and I don’t -- I say you very much can be. But even if, you are entitled to use the patterns involved in his behaviour to reinforce and corroborate all of the other patterns, particularly the delivery of the false claim on the 14th of February. So in my submission, you don’t look at this activity in isolation and say: Am I sure? You don’t have to be sure of that. You need to be sure that these two accused, Sabra and Oneissi, are involved in shielding the perpetrators from justice with the necessary mens rea, the necessary knowledge. It’s wrong to address even this part of the plot and say: Are we sure beyond reasonable doubt? It’s really important, it’s crucial that every time you are considering subissues, bigger issues, do not consider them in isolation, because the power of this case is in the big, the full picture, and the totality of the evidence. And that’s why you can be sure, in the end, because all of these patterns, spreading right through from beginning to end and the dropping of the phones, none of this can be coincidence. There is no reasonable alternative inference that it’s anything other than explaining the guilt of the accused.’

⁹⁷⁴⁰ Merhi Defence final trial brief, para. 491.

⁹⁷⁴¹ According to the Merhi Defence, Mr Merhi ‘stands accused of having coordinated the activities of Sabra and Oneissi and not these of an unidentified individual who introduced himself as Mohammed in order to profile, identify and select Abu Adass’. This also applies to the alleged abduction of Mr Abu Adass who, the Prosecution alleges, left with the same ‘Mohammed’, Merhi Defence final trial brief, para. 488 (emphasis omitted).

⁹⁷⁴² Oneissi Defence final trial brief, paras 420, 470.

⁹⁷⁴³ Oneissi Defence final trial brief, para. 420.

⁹⁷⁴⁴ Oneissi Defence final trial brief, paras 428-510.

⁹⁷⁴⁵ Oneissi Defence closing submissions, T. 19 September 2018, p. 113.

⁹⁷⁴⁶ Oneissi Defence closing submissions, T. 19 September 2018, p. 116.

Prosecution failed to establish any link between ‘Mohammed’ and Mr Oneissi,⁹⁷⁴⁷ thus implicitly admitting that it cannot establish that Mr Oneissi posed as ‘Mohammed’.⁹⁷⁴⁸

5046. In closing submissions, counsel for Mr Oneissi submitted that ‘for obvious reasons, the Mohammed-Oneissi allegation is the mainstay’ of the Prosecution case, and the ‘failure to prove that Mr. Oneissi is Mohammed, has, of course, a concrete effect’ on this.⁹⁷⁴⁹

5047. The Oneissi Defence also argues that the Prosecution’s submission that the ‘forensic visibility’ of Mr Oneissi’s mobile 095 “‘was extremely low” is a complete and utter contradiction with the alleged “intensity” of 095’s activations of the COLA cells around the mosque and the Prosecution’s exaggerated claims in relation to the activations of BNPI3’.⁹⁷⁵⁰ Additionally, this ‘submission is even more contradictory given the Prosecution allegation ... that, as “Mohammed”, Mr. Oneissi was undisguised when he approached’ both the witness who encountered ‘Mohammed’ and Mr Abu Adass.⁹⁷⁵¹

5048. According to the Sabra Defence, the Prosecution failed to investigate the inconsistencies in the witness’s account, including the description of ‘Mohammed’ and the subsequent identification of Mr Oneissi, despite the stark contrast in features.⁹⁷⁵² The Sabra Defence also submits that, contrary to the Prosecution’s submissions, the identity of ‘Mohammed’ is crucial to establishing the identity of the true perpetrators behind Mr Abu Adass’s disappearance and whether he was lured away or left voluntarily with an acquaintance.⁹⁷⁵³ Further, there is no allegation that Mr Sabra ever pretended to be ‘Mohammed’ or addressed or approached anyone in this capacity.⁹⁷⁵⁴

⁹⁷⁴⁷ Oneissi Defence final trial brief, para. 419 and following.

⁹⁷⁴⁸ Oneissi Defence final trial brief, para. 678. The Oneissi Defence argues that the Prosecution’s submission is a clear concession that it could not prove that Mr Oneissi was ‘Mohammed’. Oneissi Defence closing submissions, T. 20 September 2018, p. 133, T. 19 September 2018, p. 113.

⁹⁷⁴⁹ Oneissi Defence closing submissions, T. 20 September 2018, p. 134.

⁹⁷⁵⁰ BNPI3 was adjacent to BACHOU3, the cell that provided the predicted best coverage to the tree where the video was found on Monday 14 February 2005.

⁹⁷⁵¹ Oneissi Defence final trial brief, para. 179.

⁹⁷⁵² Sabra Defence final trial brief, paras 661-662, 664.

⁹⁷⁵³ Sabra Defence final trial brief, paras 657-658. These submissions will be addressed below.

⁹⁷⁵⁴ Sabra Defence final trial brief, para. 847.

(c) Findings

i. The shift in the Prosecution's case

5049. The Prosecution submits that the Trial Chamber does not need to find beyond reasonable doubt that Mr Oneissi was 'Mohammed', or that it is even something it needs to find at all.⁹⁷⁵⁵ The Trial Chamber notes with some unease the Prosecution's arguments on the standard of proof necessary to conclude whether Mr Oneissi was 'Mohammed'.

5050. To the contrary, the Trial Chamber is convinced that the fact of 'Mohammed' and Mr Oneissi sharing the same identity is a material fact that must be proved beyond reasonable doubt to the extent that a conviction of Mr Oneissi would rely on it. The Trial Chamber agrees, for the reasons set out above at paragraphs 208-209 that Mr Oneissi's identification as 'Mohammed' is a material fact that must be proved beyond reasonable doubt. It is a material fact which would underpin Mr Oneissi's criminal responsibility—and also Mr Sabra's and Mr Merhi's—by virtue of their pleaded involvement in making the false claim of responsibility.

5051. In some respects, it appeared to represent the essence of the case against Mr Oneissi. Contrary to the Prosecution's suggestion, a material fact cannot be converted into one that is non-material merely because it is obvious, at the close of the case, that the evidence is insufficient to prove that fact beyond reasonable doubt.

5052. Like all the elements of a crime, the Prosecution must prove the identification of an Accused beyond reasonable doubt.⁹⁷⁵⁶ If the Trial Chamber were not satisfied beyond reasonable doubt that Mr Oneissi was 'Mohammed',⁹⁷⁵⁷ it could still nonetheless convict him of the crimes charged if the Prosecution could prove beyond reasonable doubt other relevant material facts proving the elements of the crimes charged and supporting the charged modes of responsibility.

⁹⁷⁵⁵ Prosecution closing submissions, T. 14 September 2018, p. 69.

⁹⁷⁵⁶ *Popović and others* Trial Judgment, para. 54; *Popović and others* Appeal Judgment, para. 1150; *Limaj and others* Trial Judgment, para. 20.

⁹⁷⁵⁷ See chapter III 'Assessment of evidence', (C) (1) 'Presumption of innocence, standard of proof beyond reasonable doubt and the *in dubio pro reo* principle'.

ii. International case law on identification evidence

5053. The Trial Chamber has examined, and accepts, the following principles of international criminal law procedural law.

5054. According to the ICTR's and ICTY's case law, a reasonable Trial Chamber must take into account the difficulties associated with identification evidence in a given case and carefully evaluate it before accepting it as the basis for a conviction.⁹⁷⁵⁸ Further, a Trial Chamber must always, in the interests of justice, proceed with extreme caution when assessing a witness's identification of the accused made under difficult circumstances.⁹⁷⁵⁹

5055. The principles also include that 'visual identification evidence is treated with very special care' as it is particularly liable to error,⁹⁷⁶⁰ and 'involves inherent uncertainties due to the vagaries of human perception and recollection'.⁹⁷⁶¹ And, 'even where a witness appears to be honest, the Trial Chamber must be convinced that his or her evidence is objectively reliable before it will be sufficient to establish a positive identification'.⁹⁷⁶²

5056. Relevant assessment factors also include the following. First, the circumstances of observing the alleged perpetrator, such as the length of the observation, the distance between the perpetrator and the witness, any obstructions of the observation and the interactions between the witness and the perpetrator. Second, the manner in which the witness describes the perpetrators; and third, the existence of irreconcilable witness testimonies.⁹⁷⁶³

5057. A trial chamber will also assess whether identification evidence includes inconsistent or inaccurate testimony about the defendant's physical characteristics at the time.⁹⁷⁶⁴ Furthermore,

⁹⁷⁵⁸ *Rukundo* Appeal Judgment, para. 67; *Limaj and others* Appeal Judgment, para. 30; *Kupreškić and others* Appeal Judgment, para. 34.

⁹⁷⁵⁹ Such as darkness, obstructed view or traumatic events. See *Kupreškić and others* Appeal Judgment, para. 39; *Haradinaj and others* Appeal Judgment, para. 155; *Kalimanzira* Appeal Judgment, para. 96.

⁹⁷⁶⁰ *Limaj and others* Trial Judgment, para. 17.

⁹⁷⁶¹ *Vasiljević* Trial Judgment, para. 16.

⁹⁷⁶² *Popović and others* Trial Judgment, para. 55, referring to *Kunarac and others* Trial Judgment, para. 561; *Vasiljević* Trial Judgment, para. 16.

⁹⁷⁶³ *Bemba* Trial Judgment, para. 242, relying on *Haradinaj and others* Appeal Judgment, para. 156; *Limaj and others* Appeal Judgment, para. 30; *Kupreškić and others* Appeal Judgment, para. 40; *Popović and others* Trial Judgment, para. 55.

⁹⁷⁶⁴ *Haradinaj and others* Appeal Judgment, para. 156.

identification evidence may be affected by the length of time between the crime and the confrontation.⁹⁷⁶⁵

5058. On photo board identification, the ICTY Trial Chamber in *Limaj and others* considered whether:

- a. the accused's photograph was clear enough and matched his description at the time of the events;
- b. the accused blended with or stood out among the foils/fillers;
- c. a long time had elapsed between the original sighting of the accused and the photo spread identification;
- d. the identification was made immediately and with confidence;
- e. the witness had opportunities to become familiar with the accused prior to his identification, in person or through the media; and
- f. the procedure in some way encouraged the witness to make a positive identification despite some uncertainty, or encouraged the witness to identify the accused rather than someone else.⁹⁷⁶⁶

5059. The Trial Chamber finds these considerations persuasive and adopts them, while noting that several coincide with those Professor Sporer describes as relevant in determining the accuracy and evidentiary value of an identification.

iii. The purported identification of 'Mohammed'

5060. On 10 July 2007, based on the witness's description, a sketch of 'Mohammed' was made. On 22 March 2010, the witness participated in the identification procedure described above, administered by the Prosecution investigators, where the witness tapped on Mr Oneissi's photograph.

⁹⁷⁶⁵ *Haradinaj and others* Appeal Judgment, para. 156, referring to *Limaj and others* Appeal Judgment, para. 30.

⁹⁷⁶⁶ *Limaj and others* Trial Judgment, para. 19.

5061. However, having assessed the evidence regarding the purported identification of ‘Mohammed’, including that of Professor Sporer, the Trial Chamber is not satisfied that the identification is reliable and therefore probative.

5062. There are two primary reasons for this. The first is the more than five-year gap in time between when the witness saw ‘Mohammed’ in the Arab University Mosque in January 2005 and the purported identification of Mr Oneissi as this ‘Mohammed’ to Prosecution investigators in March 2010. The second is the flawed manner in which the identification was attempted and about which Professor Sporer provided extensive evidence.

5063. A major difficulty in this case is the length of time between the encounter and the identification. Specifically, the witness met the person identifying as ‘Mohammed’ for around ten minutes in a mosque in January 2005. The witness thought nothing of this event until seeing the program featuring Mr Abu Adass’s sister on television, a few months later in April 2005.

5064. The first description the witness gave of this ‘Mohammed’ was sometime in 2006. The witness gave another to Lebanese investigative authorities in January 2007, and in July 2007, a Lebanese police sketch artist drew a sketch of ‘Mohammed’. The witness described ‘Mohammed’ as in his late twenties, around 175 centimetres tall, slim and bearded, with visible eyebrows and blue eyes. He had thick dark chestnut hair and spoke with an unfamiliar accent, which the witness thought was used to make it seem like ‘Mohammed’ came from a remote village. Almost three more years passed, to March 2010—making it five years after the sole ten-minute long conversation with ‘Mohammed’—before the witness participated in a purported photo board identification procedure.

5065. Of itself and without more, this chronology would normally render any resulting identification unreliable. The period between the original sighting of the person and the photo board identification is relevant to assessing the reliability of identification evidence, under both the principles of international criminal law case law and on Professor Sporer’s evidence. In short, the science and the law, and indeed common human experience, accord in that the longer the period the less reliable the ‘identification’. Memory does not improve over time.

5066. In particular, the Trial Chamber agrees with Professor Sporer’s observations that before writing exhibit P760 in 2006, two years after the brief meeting, the witness apparently had no

reason to rehearse ‘Mohammed’s’ description to memory. Without this, information is likely to fade. It also shares his concerns that no eyewitness studies have investigated retention intervals as long as those experienced in this case, namely that the sketch was created two and a half years after the original observation, and that the identification took place in 2010, more than five years after the relevant encounter.

5067. Further, the Trial Chamber accepts Professor Sporer’s evidence that the conditions of the witness’s original encounter with ‘Mohammed’ in 2005 are relevant to the accuracy of the later identification. These points include that the witness met ‘Mohammed’ only once, the original observation did not involve a criminal act, and the whole encounter was possibly shorter than the estimated ten minutes. On the other hand, the Trial Chamber also notes that the encounter in the mosque was unusual. In normal circumstances, someone would not usually remember a routine visit to a religious institution, especially if they occurred daily. This particular encounter, however, was sufficiently out of the ordinary for someone in the witness’s position to have been expected to have remembered some significant details about it.

5068. The other major problem with the witness’s purported identification is the flawed identification procedures employed here.

5069. The Trial Chamber largely accepts Professor Sporer’s mostly unchallenged evidence critiquing the reliability of these procedures. For example, he criticised a number of features. These include the failure to consider the available descriptions of several witnesses in the selection of photographs for the photo boards, and the inclusion of relatives of Mr Oneissi and Mr Sabra who might have been persons of interest.⁹⁷⁶⁷ He also criticised the administration of the identification procedure by a ‘non-blind’ administrator, who should not have interacted with the witnesses and interpreted their responses, as the investigator did with the witness.⁹⁷⁶⁸ Another was the failure to

⁹⁷⁶⁷ The Trial Chamber, in admitting the photo boards into evidence, found that ‘including photos of relatives of suspects does not, of itself, make the process unsafe’. Decision admitting two photo boards into evidence, para. 34. However, in light of Professor Sporer’s evidence on this point, the Trial Chamber finds that it would have been desirable for the Prosecution to ensure, for such an important task, that it complied with instructions not to include certain relatives of the Accused in the photo boards.

⁹⁷⁶⁸ The Trial Chamber recognises that several guidelines, including some cited by Professor Sporer, such as the ICTY guidelines or the UK Police and Criminal Evidence Act 1984 Code of Practice for the detention, treatment and questioning of persons by Police Officers, do not require the blind administration of a photo board procedure. Nevertheless, given the need not to ‘contaminate’ any possible identification by giving clues, conscious or unconscious—it would have been desirable for the Prosecution to have either adopted a blind administration or, if impracticable, that administrators had adopted ‘blind procedures’. See 2017 U.S. Department of Justice guidelines

ask the witnesses to assess or rate their confidence on their decisions, which is potentially important to evaluate their accuracy.

5070. Further, while studies show that accurate choices are made faster than inaccurate choices, the witness took more than ten minutes to inspect the photographs and to tap on one. The comment, ‘It’s too hard’, with the request for different photographs—after spending the first six minutes inspecting them—likely attests to a loss of memory as a function of the long retention interval. It also shows the witness’s apparent unpreparedness at that moment to identify ‘Mohammed’ based on the photographs on the photo boards. However, approximately two minutes and forty seconds after, the witness tapped on Mr Oneissi’s photograph. The Trial Chamber accepts Professor Sporer’s concerns in each of these areas.

5071. What the witness said when selecting Mr Oneissi’s photograph also shows a lack of confidence in the ‘identification’. At the end of the identification procedure, the witness did not state that Mr Oneissi was ‘Mohammed’. In English, the witness stated: ‘It was so hard to remember...But’, and after 14 seconds, in Arabic: ‘There is a big resemblance’.

5072. These statements are understandable in the circumstances, namely, the brevity of the witness and ‘Mohammed’s’ sole encounter, the five and a half years that passed before viewing the photo board and the obvious concern taken in attempting to assist the investigation. Nevertheless, the Trial Chamber interprets what the witness said as not expressing confidence in the decision.

5073. The Trial Chamber also notes that Mr Oneissi’s photograph differs from the witness’s own descriptions of ‘Mohammed’. ‘Mohammed’—according to the witness’s 2006 description—had a white bluish face or ashen skin, and big or wide blue eyes.⁹⁷⁶⁹

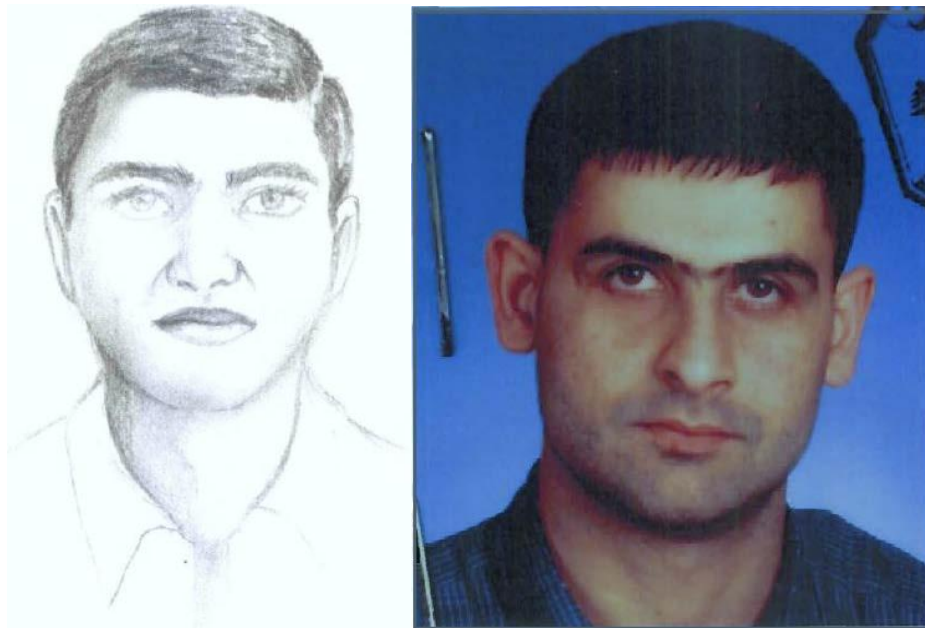
5074. While the quality and light in the photograph may not allow someone to properly appreciate Mr Oneissi’s complexion, his eyes certainly differ: they are not blue, as described, but brown. This

(US Department of Justice, Eyewitness identification procedures for conducting photo arrays, procedure 5.2) stating that, when a blind administration may be impracticable—for example if all the officers in an investigating office already know who the suspect is—‘blinded’ procedures should be adopted, where the administrator cannot see the order or arrangement of the photographs viewed by the witness or which photograph(s) the witness is viewing at any particular moment. *See also* Decision admitting two photo boards into evidence, para. 35, finding that it was ‘not ideal that Mr Williams knew Mr Sabra’s and Mr Oneissi’s identities as suspects’.

⁹⁷⁶⁹ Exhibit P760, p. 1; exhibit P762, p. 3.

lack of congruence between the photograph selected and the witness's previous description of the person is a relevant factor for assessing identification evidence, as noted both by Professor Sporer and in international criminal law case law.

5075. Further, in the Trial Chamber's subjective (internal and collective) view there is some limited resemblance between the photograph of Mr Oneissi and the sketch of 'Mohammed', drawn according to the witness's instruction. These are set side by side immediately below.



Exhibits P763 and P765 (Sketch of 'Mohammed' drawn in July 2007 and Mr Oneissi's photograph from the photo board selected in March 2010)

5076. According to Professor Sporer, a lack of resemblance between such a sketch and the person in question is 'a sign that there is something wrong in the memory'.⁹⁷⁷⁰ The Trial Chamber, as noted, can see a limited resemblance between the sketch of 'Mohammed' and Mr Oneissi's photograph. This, however, does not add to the reliability of the identification attempt.

5077. The Trial Chamber recognises that some aspects of the identification process were properly conducted. All relevant identification procedures were video recorded. This ensured a high degree

⁹⁷⁷⁰ Siegfried Sporer, T. 16 May 2018, p. 38 (private session).

of transparency and allowed the Trial Chamber to properly assess the evidence. The Trial Chamber could hear and observe the interactions between witness and investigator, including gestures.

5078. Other positive aspects of the identification procedures employed include the selection of photographs, for the photo boards, of similar size and similar background lighting or colour.⁹⁷⁷¹ Professor Sporer described, as a positive aspect, that all the witnesses were given the instruction that the person they met may not be in the line-up, which is recommended by identification guidelines. Professor Sporer also did not see anything in the video showing that Mr Williams provided any suggestion or directed the witness to any photograph.⁹⁷⁷² The Trial Chamber has carefully re-scrutinised the video and remains satisfied that there is no evidence that any external factor during the videoing influenced the selection of Mr Oneissi's photograph.

5079. Further, the Trial Chamber is of the view that the witness tried, in testifying, to remember to the witness's best ability what had occurred some eleven years earlier. In this sense, it views the testimony as credible. Witnesses typically vary their accounts with each retelling of a story; this could include describing a thing or a person. This goes to the reliability of the recollection. Here, the particular relevant issue is that the witness would have had no reason to think, in January 2005, that the event was significant enough to attempt to memorise, or, to use Professor Sporer's terminology, to 'encode'. The witness was not witnessing a crime or an event for which there may have been a contemporaneous reason to 'encode' information, such as a detailed description of someone encountered for a mere ten minutes.

5080. The Trial Chamber, however, disagreed with certain portions of Professor Sporer's evidence. In particular, it is clear that the guidelines and principles he personally favours—whether based on his own research or that of others—are not universally accepted. National and international guidelines differ, for example, about whether fillers should resemble the suspect⁹⁷⁷³

⁹⁷⁷¹ The lighting/colour of the background is substantially similar for all the photographs of each photo board.

⁹⁷⁷² Siegfried Sporer, T. 15 May 2018, pp 82-85, T. 16 May 2018, pp 83-84 (private session).

⁹⁷⁷³ The Code D - Revised Code of Practice for the identification of persons by Police Officers (PACE), used in the UK, requires that an 'identification parade' includes people who *resemble the suspect*. See Code D of the Police and Criminal Evidence Act 1984 (as revised in 2017) (PACE Code D), para. 3.7 (Professor Sporer refers to the 2011 version of Code D; but its para. 3.7 is unchanged). The ICTY guidelines on visual identification also required, for the preparation of a photo board, to 'pick photographs of people of similar appearance *to the suspect*'. See exhibit 4D289, pp 1-2 (emphasis added).

or the witness's description of the 'suspect'.⁹⁷⁷⁴ These, according to Professor Sporer, should be preferred or at least considered. National guidelines also differ as to whether more than one suspect can be included in the same photo array.⁹⁷⁷⁵ While Professor Sporer believes that using the 'appearance-change' instruction 'may not be a good idea',⁹⁷⁷⁶ the US Department of Justice guidelines on the other hand provide that such instructions should be given to the witness.⁹⁷⁷⁷ Theories, practices and ideas on this apparently diverge.

5081. Nevertheless, the Trial Chamber accepts in large part the remainder of Professor Sporer's evidence. Furthermore, the few positive aspects of the identification procedure, and the witness's earnest attempt to make an identification, are substantially outweighed by the many flaws in the identification process as noted previously, including the construction and administration of the photo board. To this must be added the significant delay between when the witness met 'Mohammed' and the selection of Mr Oneissi's photograph during the identification procedure.

5082. The Trial Chamber therefore is not convinced of the reliability of the photo board identification to establish whether Mr Oneissi was the 'Mohammed' in the mosque. Accordingly, even if the Trial Chamber had positively found that Mr Abu Adass met a 'Mohammed' in the mosque, it would have disregarded the photo board evidence in assessing whether there was any evidence capable of establishing that Mr Oneissi was that 'Mohammed'.

⁹⁷⁷⁴ According to the 'Eyewitness evidence: A guide for law enforcement', developed and approved by the Technical Working Group for Eyewitness Evidence - October 1999, section V, para. 2, the investigator should 'Select fillers who generally fit the witness's description of the perpetrator. When there is a limited/inadequate description of the perpetrator provided by the witness, or when the description of the perpetrator differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features'. The Trial Chamber notes that, on 6 January 2017, the US Department of Justice issued 'Eyewitness identification procedures for conducting photo arrays', and described the 'Eyewitness evidence: A guide for law enforcement', as its previous publication addressing procedures for photo arrays and stated that since then 'research and practice have both evolved significantly'. See Memorandum of 6 January 2017 from the Deputy Attorney General of the US Department of Justice on 'Eyewitness Identification: Procedures for Conducting Photo Arrays'. According to these more recent US Department of Justice guidelines, 'fillers should generally fit the witness's description of the perpetrator'. See US Department of Justice, Eyewitness identification procedures for conducting photo arrays, <https://www.justice.gov/file/923201/download>, procedure 3.2.

⁹⁷⁷⁵ Code D of the Police and Criminal Evidence Act 1984 (as revised in 2017), annex B, para. 9, p. 40. See Eyewitness evidence: A guide for law enforcement, developed and approved by the Technical Working Group for Eyewitness Evidence - October 1999, section V, para. 1. According to the 2017 US guidelines—as described above—only one suspect should be included in each photo array regardless of whether multiple suspects fit the same description. See US Department of Justice, Eyewitness identification procedures for conducting photo arrays, procedure 2.1.

⁹⁷⁷⁶ Exhibit 4D540 (Professor Sporer's expert report), p. 94.

⁹⁷⁷⁷ See US Department of Justice, Eyewitness identification procedures for conducting photo arrays, procedure 6.3.2.

5083. Finally, the Trial Chamber makes the following observations on the Parties' submissions regarding the identification procedures.

5084. It is not clear to the Trial Chamber whether the Prosecution, at the close of the case, was still submitting that the witness 'identified' Mr Oneissi—even if not *conclusively*⁹⁷⁷⁸—or instead acknowledges that the witness's evidence can only establish a resemblance between Mr Oneissi and the 'Mohammed' encountered at the mosque. The Trial Chamber would have appreciated greater clarity as to the Prosecution's final position on whether, and to what extent, the witness's identification evidence should be accepted. The Prosecution did not make any submissions on its reliability or how the Trial Chamber should treat the evidence.

5085. The Trial Chamber also notes the lack of submissions from the Prosecution addressing the quality of the identification process or Professor Sporer's evidence. Prosecution submissions on the methodology of the construction and administration of the photo boards would have assisted the Trial Chamber in assessing the relevant evidence. In closing arguments, the Oneissi Defence noted that the Prosecutor did not 'even mention in his closing brief or his closing arguments' Professor Sporer or his evidence. It argued that this meant that the Prosecutor agreed with, or consented, to it.⁹⁷⁷⁹ Against this, however, in oral closing arguments, Prosecution counsel explicitly submitted that 'there is some evidential value' in evidence that Mr Oneissi was 'Mohammed'.⁹⁷⁸⁰

5086. Meanwhile, the Oneissi Defence submitted in its final trial brief, relying on Professor Sporer's evidence, that Mr Williams's nod and further verbal communication affected the witness's confidence, the probability that he would sign the declaration,⁹⁷⁸¹ and could have influenced the witness's comment, 'there is a big resemblance'.⁹⁷⁸²

⁹⁷⁷⁸ According to Black's Law Dictionary, conclusive evidence means 1. Evidence so strong as to overbear any other evidence to the contrary – also termed *conclusive proof*. 2. Evidence that so preponderates as to oblige a factfinder to come to a certain conclusion.

⁹⁷⁷⁹ Oneissi Defence closing submissions, T. 19 September 2018, p. 114.

⁹⁷⁸⁰ Prosecution closing submissions, T. 14 September 2018, pp 67, 69; Prosecution final trial brief, para. 517.

⁹⁷⁸¹ Oneissi Defence final trial brief, para. 478.

⁹⁷⁸² Oneissi Defence final trial brief, para. 482.

5087. However, the Oneissi Defence elected not to pursue these issues with the only person who could testify about whether he was in fact influenced by the alleged clues—namely, the witness.⁹⁷⁸³

5088. The Trial Chamber held at the time that in these circumstances any submission by the Oneissi Defence asserting that the witness was in fact influenced by Mr Williams’s conduct in the interview would be without weight.⁹⁷⁸⁴ The Trial Chamber has therefore given no weight to the Oneissi Defence final submissions on this issue. Ultimately, however, as the Trial Chamber has decided not to credit the witness’s identification evidence, nothing now turns on the Oneissi Defence’s strategic litigation decision not to cross-examine the witness on the identification process pursuant to Rule 150 (J).⁹⁷⁸⁵

3. Activity of Mr Merhi’s Purple 231, Mr Oneissi’s Purple 095 and Mr Sabra’s attributed Purple 018, between December 2004 and Friday 7 January 2005

5089. The Prosecution’s case alleging Mr Oneissi’s and Mr Sabra’s involvement in the ‘Mohammed’ story and Mr Abu Adass’s disappearance and his subsequent appearance in the broadcast video hinges upon it proving their presence in and near the Arab University Mosque at relevant times. The allegation that Mr Oneissi befriended Mr Abu Adass, pretending to be ‘Mohammed’ and seeking assistance in learning how to pray was central to this part of the case.

5090. The evidence led to prove this is the call data records showing Mr Oneissi’s personal mobile and Mr Sabra’s shared personal mobile connecting to the Alfa network’s COLA and adjacent cells at relevant times, and Mr Oneissi’s purported identification as the ‘Mohammed’ that a witness saw in the Mosque, and therefore, as the ‘Mohammed’ that Mr Abu Adass allegedly met in the mosque. The Prosecution submitted in its final trial brief, however, that it did not place great weight on this identification but insisted that it still had some evidential value.

5091. The Trial Chamber has found above, at paragraph 4968, that a witness met someone named ‘Mohammed’ at the mosque in early January 2005. Further, that that ‘Mohammed’ asked the

⁹⁷⁸³ It did so despite the Trial Chamber previously stating that the Parties should explore the issue of Mr Williams’s allegedly ‘suggestive conduct’ in the administration of the photo boards with the witness. Decision denying Oneissi motion to exclude photo board evidence, para. 18.

⁹⁷⁸⁴ Decision admitting two photo boards into evidence, paras 29-30, 38.

⁹⁷⁸⁵ Rule 150 (J) requires a cross-examining party to put to a witness the nature of a Party’s case that contradicts that witness’s evidence.

witness to teach him how to pray, and that the witness pointed at nearby Mr Abu Adass as someone who was better suited to teach him how to pray. But this could not establish beyond reasonable doubt that Mr Abu Adass met a ‘Mohammed’ in the mosque. Nor that the ‘Mohammed’ the witness met in the mosque was the same ‘Mohammed’ who Mr Abu Adass allegedly met.

5092. Once the evidence that Mr Oneissi was positively identified as ‘Mohammed’ is excluded from consideration as lacking reliability, the call data records showing the cells to which his Purple 095 and Mr Sabra’s attributed Purple 018 connected are the only evidence of his and Mr Sabra’s pleaded presence in the relevant areas.

5093. For completeness, however, the Trial Chamber has considered and analysed the Prosecution’s pleaded case that Mr Oneissi’s Purple 095 and Mr Sabra’s pleaded Purple 018 mobile activity reflected ‘Mohammed’s’ presence at the mosque in December 2004 and January 2005. Namely, that Mr Oneissi and Mr Sabra, between **Wednesday 22 December 2004 and Monday 17 January 2005**, were ‘responsible for locating a suitable individual who would be used to make a false claim of responsibility’ for the attack.⁹⁷⁸⁶

5094. The Prosecution relied upon mobile calls on Mr Merhi’s and Mr Oneissi’s personal (Purple) mobiles, Mr Sabra’s attributed Purple mobile, and on contacts between Mr Badreddine’s Green network mobile, 023, and Mr Merhi’s attributed Green 071, and evidence from Mr Abu Adass’s family and friends.

5095. The Prosecution argues that Mr Oneissi’s and Mr Sabra’s mobile use—connecting to the COLA and adjacent cells around the mosque at that time—was unusual or exceptional, and combined with the evidence of Mr Abu Adass meeting ‘Mohammed’ in the mosque and his disappearance, proves their involvement in both, and hence making the false claim of responsibility. The Prosecution argues that the evidence of their presence around the mosque has to be taken in tandem with the evidence of their mobiles connecting to cells near the payphones used to make the calls to Reuters and Al-Jazeera and the tree, in the afternoon of Monday 14 February 2005.

⁹⁷⁸⁶ Amended consolidated indictment, para. 23.

5096. Whether it can be established that Mr Abu Adass left his home on Sunday 16 January 2005 in the company of this ‘Mohammed’—and that this ‘Mohammed’ called his family home either the day before or the day after his disappearance—is dealt with below at paragraphs 5318 to 5485. There, it is concluded that neither allegation has been proved.

(a) Evidence

5097. The Trial Chamber heard extensive evidence about the Alfa network’s COLA and adjacent cells near the mosque, and of the patterns of communication between the three Purple mobiles, 231, 095 and 018, and the two Green network mobiles, 071 and 023, during the pleaded period.

5098. The Prosecution did not ask its cell site expert Mr J. E. Philips or another cell site expert to analyse Purple 018 and Purple 095;⁹⁷⁸⁷ hence, it relied heavily upon the analysis and opinion evidence of its in-house expert witness on criminal networks, Mr Gary Platt.

i. Cells relevant to the ‘COLA phase’

5099. The Trial Chamber has carefully examined the cell site evidence to determine where Mr Oneissi and Mr Sabra—if he was using Purple 018 on the relevant days—*could have been* while making and receiving calls.⁹⁷⁸⁸ It has scrutinised whether the evidence is sufficient to prove beyond reasonable doubt their presence *at or near the mosque* at the critical moments; and further, to determine whether Mr Oneissi’s Purple 095’s and Mr Sabra’s attributed Purple 018’s connections to cells near the mosque in December 2004 and January 2005 were, as the Prosecution argues, ‘exceptional’.

5100. The Trial Chamber believes that the fairest approach to evaluating the evidence where precision is required as to where an Accused person was alleged to have been, is to examine the area of the predicted best server cell coverage, and to calculate the potential distances between this area—as activated by a mobile—and any relevant pleaded location. This is necessary to determine where an Accused could have been *vis-à-vis* the events pleaded by the Prosecutor, for example, where it is alleged that he was at the Arab University Mosque at a relevant time. Using the

⁹⁷⁸⁷ Gary Platt, T. 6 April 2017, p. 104.

⁹⁷⁸⁸ The Trial Chamber emphasises that it could not conclude beyond reasonable doubt that Mr Sabra was the single user of Purple 018. *See* chapter IX ‘Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine’, (E) (4) ‘Findings’.

electronic presentation of evidence software,⁹⁷⁸⁹ the Trial Chamber has itself calculated some distances where they were otherwise not in evidence. The Trial Chamber is satisfied that the distances are accurate enough for its purposes here.

5101. A Google Earth map reproduced immediately below, exhibit 4D325, tendered as a visual aid by the Oneissi Defence, shows the Alfa cells ‘near’ the mosque (marked as ‘AUM’ in the centre) and their coverage areas. It shows that thirty cells provide potential coverage within a kilometre of the mosque, and that there is a considerable degree of potential overlapping coverage, with pockets of coverage extending into adjacent cells:⁹⁷⁹⁰

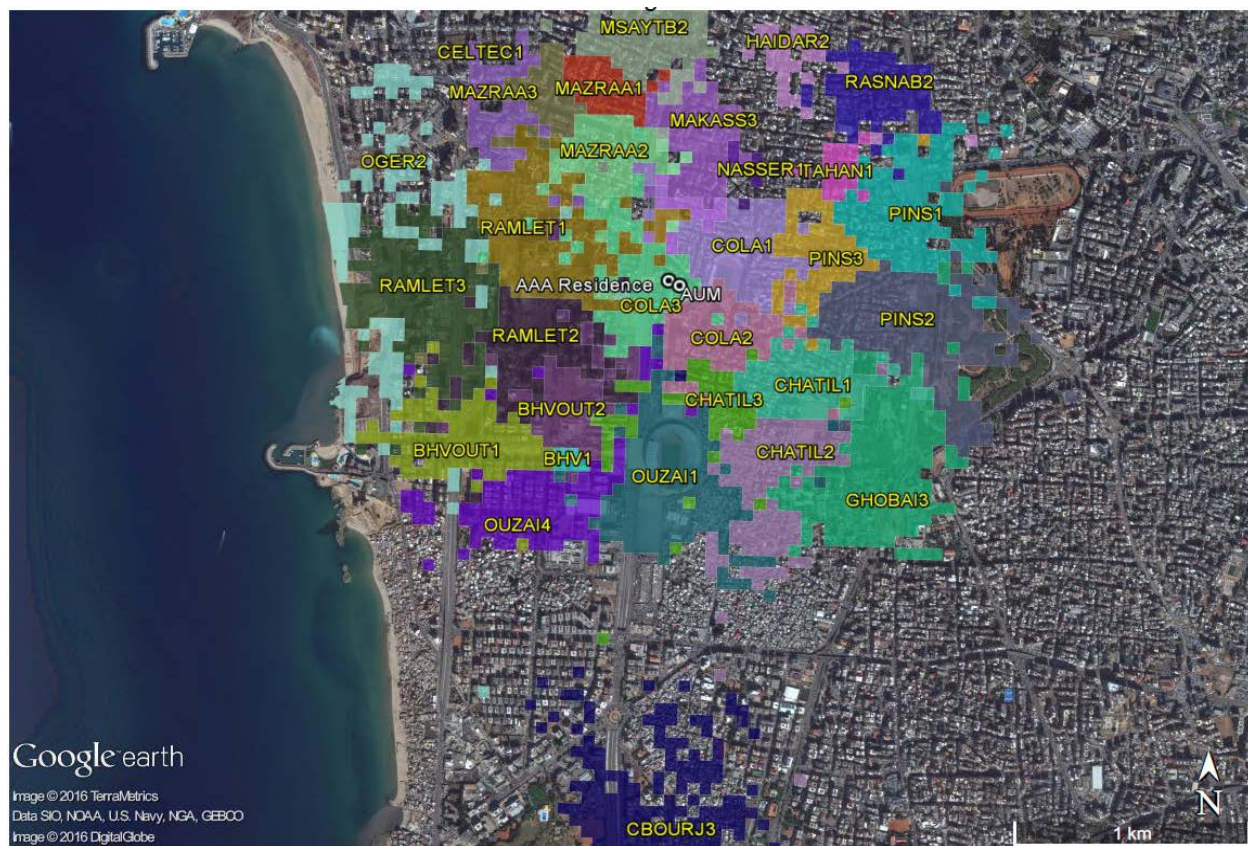


Exhibit 4D325 (Cell coverage around the Arab University Mosque), p. 2

⁹⁷⁸⁹ Exhibit P592.1.

⁹⁷⁹⁰ MAKASS1 and MAKASS2 do not appear on the diagram. No shape files for these cells were tendered into evidence, however it appears from their azimuths and the cell naming protocol that these two missing cells would cover the missing area above NASSER1 and TAHAN1. The Trial Chamber has checked this on the electronic presentation of evidence software, exhibit P592.1, and on Alfa's ArcView shape files, exhibit P1123.

5102. The Oneissi Defence also tendered the following Google Earth image of the three COLA cells showing that they had a circumference of six kilometres, a surface area of 2.88 square kilometres and a radius of 0.96 kilometres and were intersected by a busy motorway:⁹⁷⁹¹

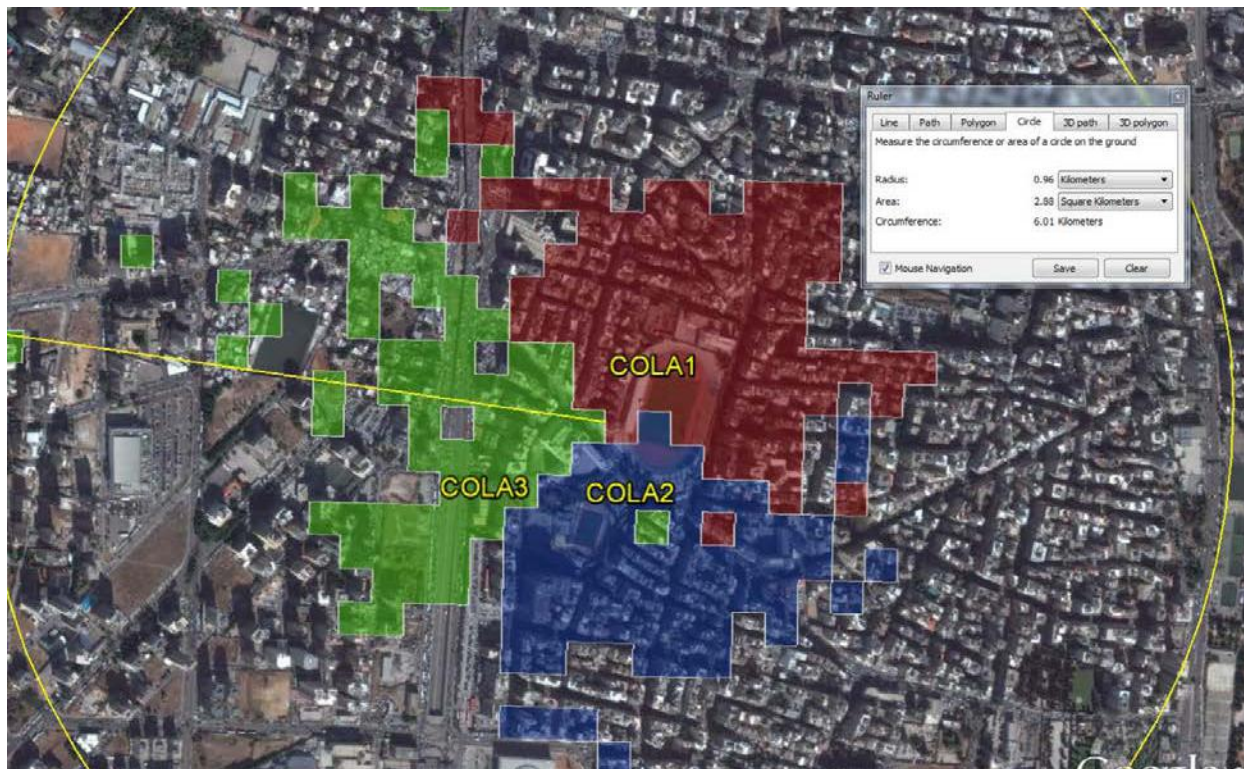


Exhibit 4D321 (COLA cells coverage and distance from COLA cell mast), p. 1

5103. Mr Platt listed the Alfa and Touch cells providing coverage to mobiles within a 500 and 1,000-metre radius of the mosque.⁹⁷⁹² A person walking at a reasonable pace could cover at least part of this distance in some minutes. Twelve Touch cells and sixteen Alfa cells were within a 500-metre radius:

⁹⁷⁹¹ Exhibit 4D321, referred to in the Oneissi Defence final trial brief at para. 187.

⁹⁷⁹² Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1273.

Arab University Mosque Vicinity – MTC	Arab University Mosque Vicinity – Alfa
El_Mazraa_B	BHVOUT2
El_Mazraa_C	CBOURJ3
Irshad_B	CHATIL1
Jnah_El_Wata_A	CHATIL3
Makassed_C	COLA1
Cola1_A	COLA2
Sabra_A	COLA3
Sabra_C	MAKASS3
Sinjab_A	MAZRAA2
Sinjab_B	NASSER1
Sinjab_C	OGER2
UNESCO_A	OUZAI1
	OUZAI4
	PINS3
	RAMLET1
	RAMLET2

Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1273

5104. Of these, the COLA cells on the Alfa network provided the predicted best server coverage to the immediate area of the mosque. COLA3 provided it to the mosque itself, while COLA1 and COLA2 provided it to areas within less than 50 metres of the mosque, respectively to the north-east and south-east.⁹⁷⁹³ Effectively, given the limitations of the accuracy of predictive cell coverage maps, this means that a mobile in the mosque could potentially connect to any of the three. This is shown on the map below, extracted from the electronic presentation of evidence, where the mosque is marked as ‘AUM’.

⁹⁷⁹³ Exhibit P592.1 (Electronic Presentation of Evidence software).

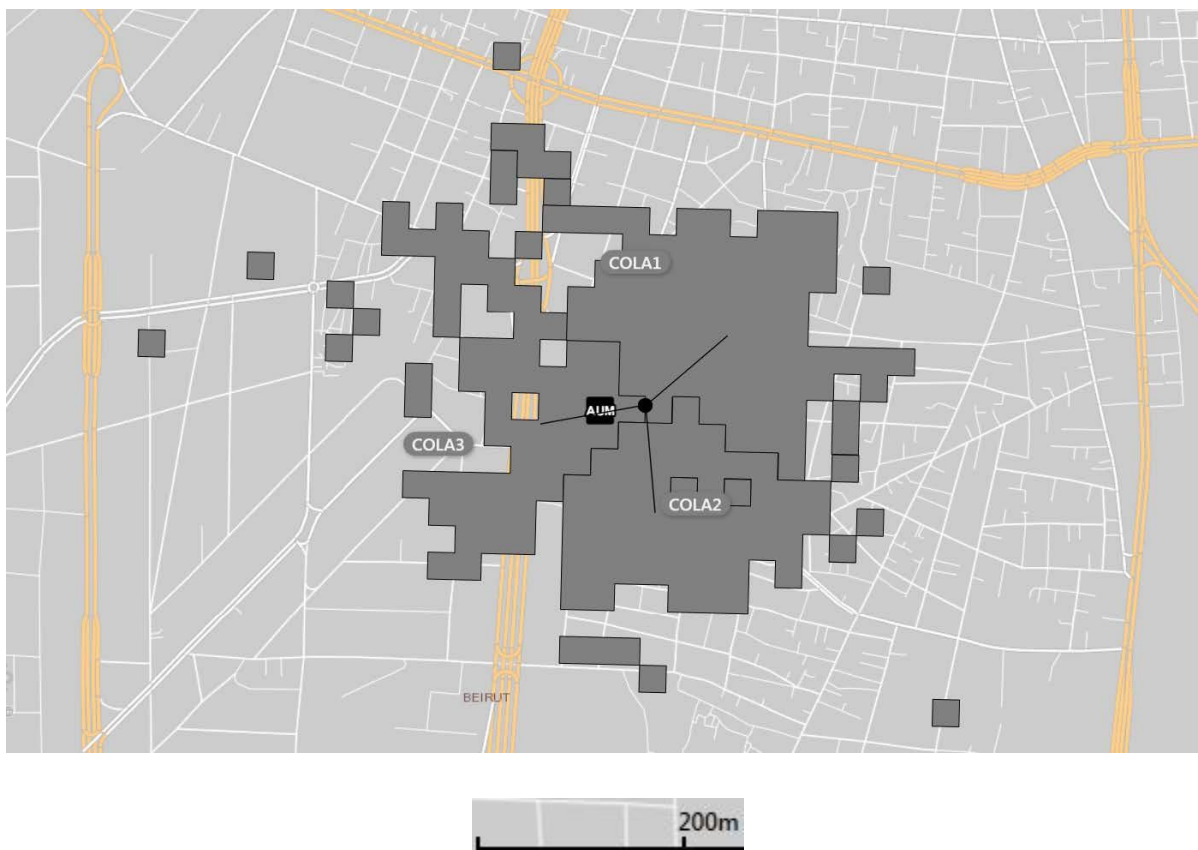


Exhibit P592.1 – the three COLA cells in the electronic presentation of evidence

5105. The Trial Chamber has prepared the three maps below—using the electronic presentation of evidence software—showing the three COLA cells separated out from each other, with the distances measured from the mosque to the outermost edges of the predicted best server coverage areas of each cell.⁹⁷⁹⁴ In doing so, it has remained cognisant of Mr Philips’s expert cell site evidence, concerning radio propagation and that these are mere approximations rather than absolutes.⁹⁷⁹⁵

⁹⁷⁹⁴ Exhibit P592.1. See also Gary Platt, T. 26 January 2017, pp 2-3; exhibit P1793 (Chronology PowerPoint presentation – 20 December 2004 to 31 December 2004), slide 101.

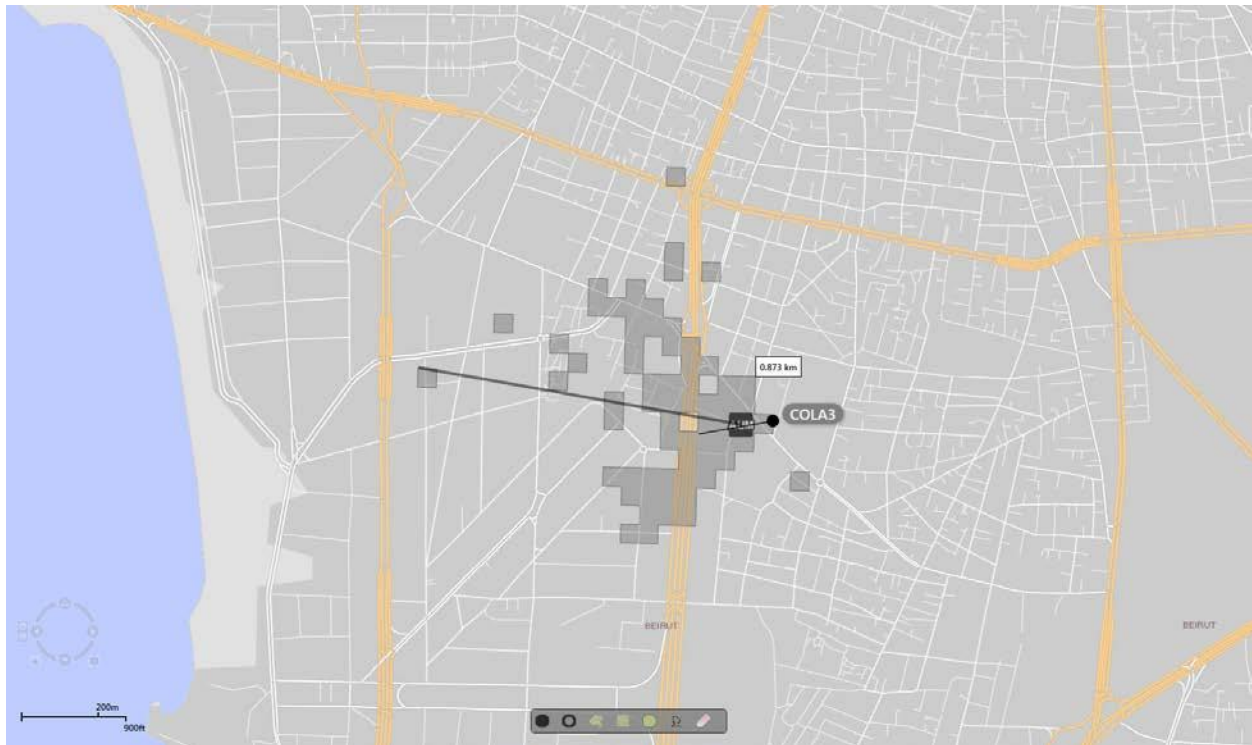
⁹⁷⁹⁵ See chapter VII ‘Reliability of telecommunications evidence’, (B) (1) (b) ‘Coverage prediction’.



Distance from the Arab University Mosque to the edges of COLA1’s predicted coverage



Distance from the Arab University Mosque to the edges of COLA2’s predicted coverage



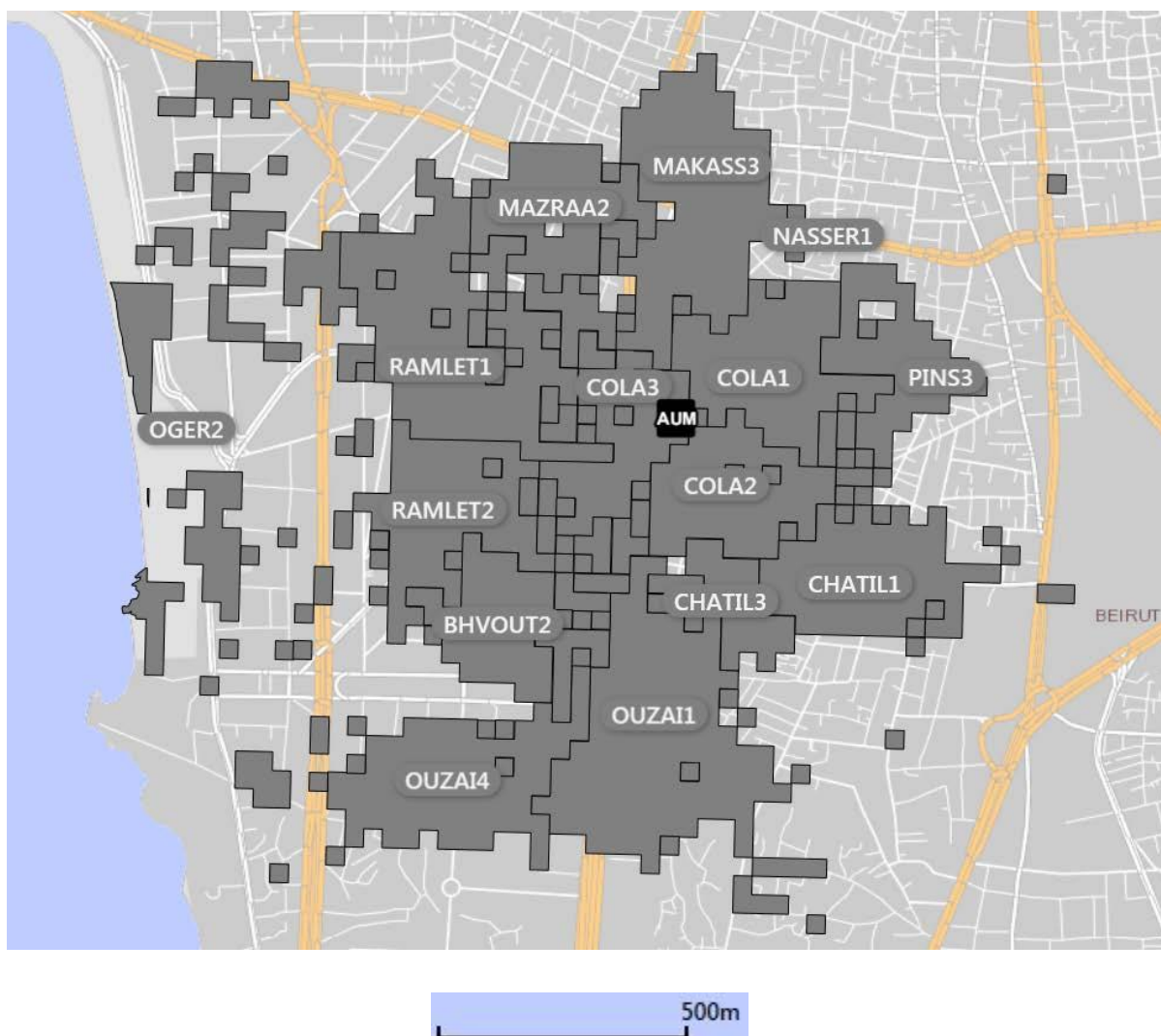
Distance from the Arab University Mosque to the edges of COLA3's predicted coverage

5106. According to Mr Platt, fourteen cells that provide coverage within a 500 to 1,000 metre radius of the mosque are on the Alfa network; and twenty-three are on Touch's. These are:

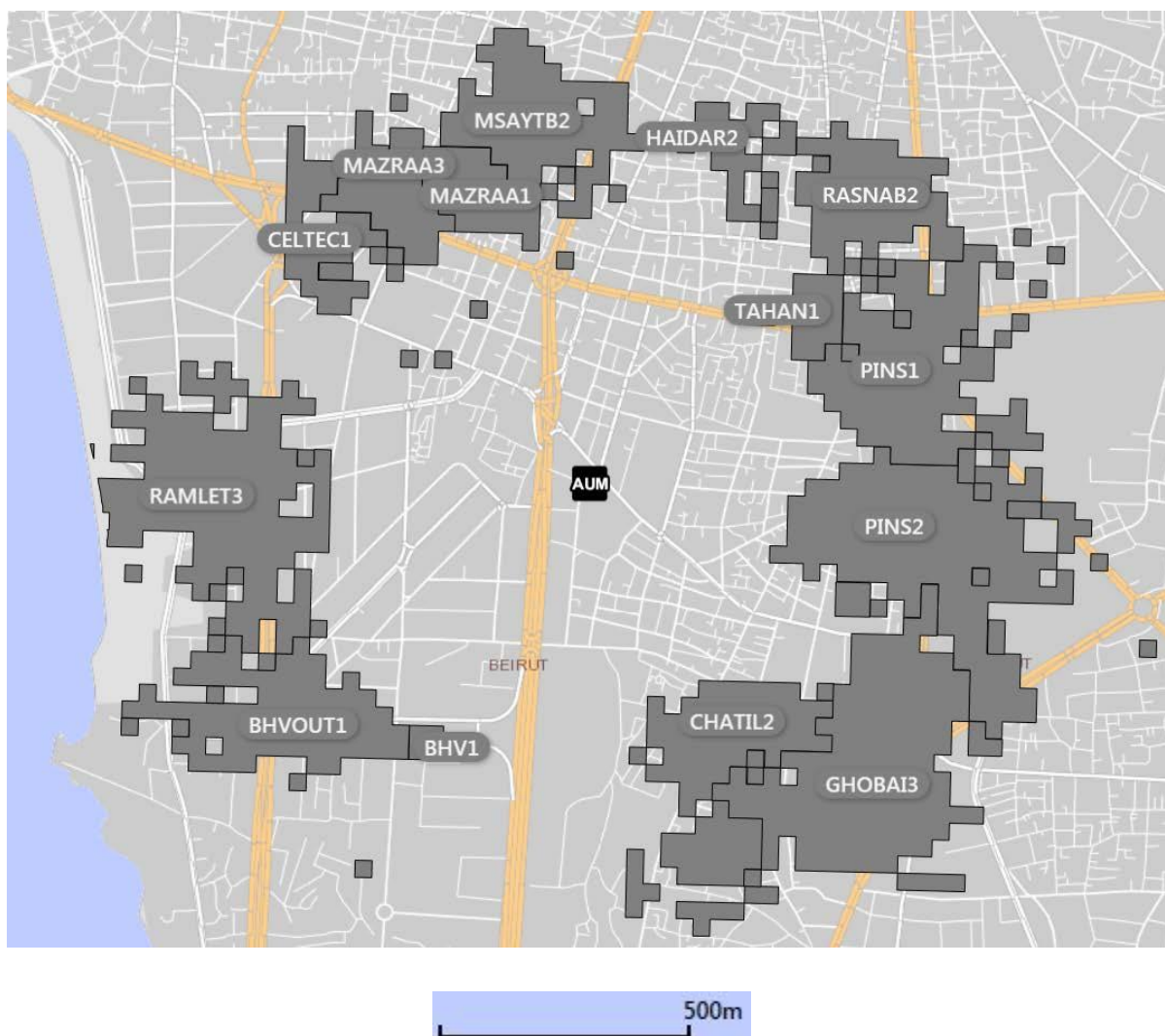
Arab University Mosque Area - MTC	Arab University Mosque Area - Alfa
Basta_C	BHV1
Beirut_Tower_B	BHVOUT1
Bir_hassan_A	CELTEC1
Bir Hassan_C	CHATIL2
Chatila_C	GHOBAI3
El_Mazraa_A	HAIDAR2
Green Tower_B	MAZRAA1
Irshad_A	MAZRAA3
Jnah_El_Wata_B	MSAYTB2
Jnah_El_Wata_C	PINS1
Makassed_A	PINS2
Makassed_B	RAMLET3
Mazraa_MPT_A	RASNAB2
Mazraa_MPT_B	TAHAN1
Mazraa_MPT_C	
Barbir_A	
Admic_BHV_A	
LibanCall_A	
Libancall2_A	
Salim_slam_A	
Ras_Nabeh_B	
Sabra_B	
UNESCO_B	

Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1274

5107. Using the electronic presentation of evidence software, the Trial Chamber prepared the two maps below showing the Alfa network's cells within a 500 metre radius of the mosque, and those within a kilometre:



Alfa cells providing coverage within a 500 metre radius of the Arab University Mosque



Alfa cells providing coverage within a one kilometre radius of the Arab University Mosque

5108. The starting point is to analyse the reliability of the Alfa network maps of the predicted best server coverage areas of cells in the so-called ‘COLA phase’ between **Wednesday 29 December 2004 and Friday 7 January 2005**.

5109. In doing so the Trial Chamber has considered the evidence of Alfa’s official representative, Witness 707, that the accuracy of the coverage maps the telecommunications providers used to configure their networks was between sixty and seventy per cent. Further, that cell site evidence on its own and without more cannot place *a person*—as opposed to a mobile—in a particular

location at a given time.⁹⁷⁹⁶ This is important in placing Mr Oneissi with his personal mobile and Mr Sabra's shared personal mobile Purple 018 *near* the mosque at a relevant time, although the Trial Chamber notes that the word 'near' is itself relative, as is the phrase 'in the vicinity of'. Mr Platt used both terms in his detailed expert report on the chronology of events, which is in evidence as exhibit P1783.

5110. The Trial Chamber has also factored in Mr Philips's expert evidence that while a mobile will normally connect to the cell providing the best coverage, namely the best serving cell, a network may allocate a call to a neighbouring cell, in what he described as 'exceptional circumstances'. Generally, in these circumstances the call is allocated into one of six neighbouring cells that normally surround the best serving cell. If this occurs, for example, as a result of a directed retry due to the overloading of the best serving cell, call data records do not record the cell from which the call was redirected.⁹⁷⁹⁷

5111. As the predicted best server coverage maps of Beirut show, with their numerous pockets of scattered coverage, a call could potentially redirect into one of more than six neighbouring cells. In reality, the coverage maps do not resemble the idealised cells depicted in Mr Philips's report, as shown below:⁹⁷⁹⁸



Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), figure 019

⁹⁷⁹⁶ See chapter VII 'Reliability of telecommunications evidence', (C) (4) 'Cell site related issues' and (G) (3) (c) 'Accuracy of maps'.

⁹⁷⁹⁷ John Edward Philips, T. 20 August 2015, pp 28, 47, 51, 53, 55-56, 58, 70, 80-82, 85-87.

⁹⁷⁹⁸ John Edward Philips, T. 20 August 2015, p. 52; exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 33.

5112. To illustrate, the Oneissi Defence exhibit 4D325 extracted above in colour at paragraph 5101 shows the extent of the pockets of scattered coverage in the predicted best server coverage maps. Pockets of coverage for COLA2 appear in the coverage maps for the adjacent CHATIL1, CHATIL3 and PINS3 cells. And pockets of coverage for COLA3, which provided the predicted best coverage for the mosque, are in the coverage maps for the adjoining RAMLET1, MAZRAA2 and COLA2 cells.

5113. Effectively, this means that a mobile situated in an adjoining cell, which could be some distance from the mosque—maybe 600 to 800 metres away—could have connected to COLA3 which covered the mosque, or COLA2 which has a predicted best server coverage area from about 40 metres from the mosque. Similarly, in a directed retry, which the call data records do not register, a call made from within a scattered pocket of these cells could have been made from any of their six (or more) neighbouring cells, which would not include those providing coverage to or very near to the mosque.

5114. A further consideration is that unlike on the afternoon of Monday 14 February 2005 after the attack on Mr Hariri, the Trial Chamber has no evidence of any specific network congestion on any of the days in the pleaded so-called ‘COLA phase’. The network congestion issue is considered in greater detail below at paragraphs 5542-5564 in relation to the afternoon after the attack.

ii. Evidence of Prosecution expert Mr Gary Platt

5115. The Prosecution relies on Mr Platt for his analytical opinion evidence in relation to the activities of the Purple mobiles. Given that he is not a cell site expert it is necessary to carefully examine his methodology.⁹⁷⁹⁹

5116. Mr Platt produced a lengthy ‘chronology’ report of events relevant to the case, listing them day by day, from Wednesday 1 September 2004 to Wednesday 16 February 2005.⁹⁸⁰⁰ Each day was structured with an overview, a description of mobile activity and the locations and routes of travel relevant to Mr Hariri, and was footnoted to witness testimony and exhibits in evidence, or

⁹⁷⁹⁹ The Trial Chamber declared Mr Gary Platt an expert in the surveillance of criminal networks and the identification and organisation of covert communication networks. His expertise extends to providing expert opinion evidence on the group of ‘purple phones’.

⁹⁸⁰⁰ Exhibit P1783 (Expert report of Gary Platt – Chronology).

documents awaiting tender or formal receipt into evidence. He also set out any assumptions for a relevant day or event.

5117. The Prosecution also tendered, as *aide-mémoires*, a chronology of relevant events and a narrative overview of the chronology.⁹⁸⁰¹ Mr Platt testified at length on these issues and the Prosecution led him through slide presentations in court.⁹⁸⁰²

5118. Mr Platt provided extensive evidence on the so-called ‘COLA phase’—namely, 29 December 2004 to 7 January 2005—and the seven preceding days. His evidence consists primarily of a detailed ‘chronology’ report of relevant events occurring between 1 September 2004 and 16 February 2005.⁹⁸⁰³

5119. His evidence was that, on each day between Wednesday 29 December 2004 and 7 January 2005—bar Sunday 2 January 2005—Mr Oneissi’s Purple 095 and or Mr Sabra’s attributed Purple 018 activated the COLA cells in the immediate vicinity of the Arab University Mosque. During this period, these two Purple mobiles were repeatedly in contact with one another and occasionally with Mr Merhi’s Purple 231.⁹⁸⁰⁴

5120. Based on the available call data records, Mr Platt concluded that Mr Oneissi’s Purple 095 and or Mr Sabra’s attributed Purple 018 were not used regularly in this area outside of the ‘COLA phase’, and that they both therefore had unique bursts of activity in this area which coincided with one another.⁹⁸⁰⁵ The exception was a further ‘burst’ of activity by Mr Oneissi’s Purple 095 in this

⁹⁸⁰¹ Exhibit P1780 (Chronology of relevant events); exhibit P1782 (Narrative overview of telephone activity and relevant events).

⁹⁸⁰² Mr Platt testified about the Purple mobiles between 25 January and 15 March 2017, and was cross-examined by counsel for Mr Merhi, Mr Sabra and Mr Oneissi between 21 March and 19 April 2017. For the PowerPoint slides regarding the Purple mobiles’ activity, *for example* exhibit P1793 (Chronology PowerPoint presentation – 20 December 2004 to 31 December 2004), slides 100-108, 156-159, 194-195, 217-218, 282-283, 302-309, 369-380, 431-448; exhibit P1807 (Chronology PowerPoint presentation – 1 January 2005 to 17 January 2005), slides 54-65, 70-73, 80-90, 110-119, 126-134, 155-160, 196-215; exhibit P1923 (Chronology PowerPoint presentation – 13 February 2005 to 16 February 2005). *See also* exhibit P1934 (Corrected chronology PowerPoint slides regarding the Purple mobiles).

⁹⁸⁰³ For the parts of Mr Platt’s report setting out Purple mobile activity between 22 December 2004 and 7 January 2005, *see* exhibit P1783 (Expert report of Gary Platt – Chronology), pp 87, 90-91, 93, 96, 98-99, 101-102, 106, 111, 115, 118-122, 127-129, 135-138, 143-152, 156-159, 161-165, 173-176.

⁹⁸⁰⁴ Gary Platt, T. 6 February 2017, p. 50; exhibit P1783 (Expert report of Gary Platt – Chronology), pp 119-122, 127-129, 135-138, 143-152, 156-159, 161-165, 173-176. *See also* exhibit P1793, slides 302-309, 369-380, 431-448; exhibit P1807, slides 54-65, 70-73, 80-90, 110-119, 126-134, 155-160, 196-215; exhibit P1780, pp 12-15; exhibit P1782, pp 146-170.

⁹⁸⁰⁵ Gary Platt, T. 6 February 2017, pp 56, 92-93, 96-97. *See also* exhibit P1793, slides 309, 378-380; exhibit P1934, slides 13-16.

area, on Monday 17 January 2005.⁹⁸⁰⁶ Moreover, the bursts of activity in this area during the ‘COLA phase’ also coincided with a peak in the frequency of contacts between these two Purple mobiles.⁹⁸⁰⁷

5121. He also stated that one week before the start of the ‘COLA phase’, on Wednesday 22 December 2004, Purple mobiles began activating the COLA cells for the first time during the indictment period.⁹⁸⁰⁸ His evidence also dealt with the calls between Mr Oneissi’s Purple 095, Mr Merhi’s Purple 231 and Mr Sabra’s shared Purple 018 during this seven-day period.⁹⁸⁰⁹

5122. Mr Platt’s chronology report, exhibit P1783, his network analysis report, exhibit P796.1, and the narrative overview of events, exhibit P1782, however, in many respects mirror the Prosecution’s pleaded case. In numerous instances, the facts relied upon for conclusions are sourced, in footnotes, to the admitted evidence contained in the statements of the three Rule 158 witnesses, Witness 56, Mr Taysir Abu Adass and Mr Ziad Ramadan, but without noting that the evidence is often hearsay. Thus, Mr Platt has relied upon facts, in the form of untested Rule 158 statements, some of which were hearsay, to reach some of his conclusions.⁹⁸¹⁰ Without these facts, his conclusions would be meaningless as they provide the necessary context for his opinions; but conversely unreliable underlying contextual facts may adversely affect the reliability of these conclusions.

5123. In the introduction to his chronology report, exhibit P1783, he set out some parameters and his methodology. These included some important qualifications, namely that:

⁹⁸⁰⁶ Gary Platt, T. 6 February 2017, pp 97-98. *See also* exhibit P1793, slide 380.

⁹⁸⁰⁷ Gary Platt, T. 7 February 2017, pp 57-59, 66-69. *See also* exhibit P1793, slides 444-448; exhibit P1934, slides 5-7, 18-19.

⁹⁸⁰⁸ Gary Platt, T. 25 January 2017, pp 101-102, T. 26 January 2017, p. 2. *See also* exhibit P1793, slides 100-108.

⁹⁸⁰⁹ Gary Platt, T. 26 January 2017, pp 3-9, 73-74, 100, 102, T. 27 January 2017, pp 35-36, 97; exhibit P1783 (Expert report of Gary Platt – Chronology), pp 87, 90-91, 96, 98-99, 101-102, 106, 115, 118. *See also* exhibit P1793, slides 102-108, 156-159, 194-195, 217-218, 282-283; exhibit P1780, pp 10-12; exhibit P1782, pp 132-146.

⁹⁸¹⁰ *For example*, exhibit P1782, para. 618 (footnotes 225-226) regarding the two pleaded calls to the Abu Adass house on Monday 17 January, ‘The first call at around 07:30 indicated that their car had broken down and that Ahmad Abu Adass was in Tripoli and would return in the afternoon. The second call, at around 21:00, stated that he was going to Iraq and would not return.’—footnoted to Mr Taysir Abu Adass’s and Mr Ramadan’s Rule 158 statements (exhibits P461 and P1775). This summary is followed by analysis, under the heading, ‘Mr. Oneissi and Mr. Sabra’s Phones Become Active Again around the Time of the First Call to Mr. Abu Adass’s Residence’, of Mr Merhi’s, Mr Oneissi’s and Mr Sabra’s mobile activity that day. *See also*, exhibit P1783 (Expert report of Gary Platt – Chronology), paras 674, 682 (fns 99-101) referring to Witness 56’s statements (exhibits P2129 and P2131).

The maps do not pinpoint the exact location of the phone user. Rather, the maps provide an indication through the predicted best server coverage provided from the CSPs [call service providers] (ALFA and MTC) the approximate area from where the call could have been made or received.

To illustrate the proximity of the relevant phones to HARIRI or places related to HARIRI, this report uses the words “area” and “vicinity”. This is only used to provide a rough location of where the phone is potentially located, for the purpose of the narrative.

When the term ‘in the vicinity of’ is used, this means that the predicted best server coverage for the cell activated offers service within 500 metres of a particular location. Therefore, any activation of these cells is consistent with being in the vicinity of that location. However, on occasions the cell may also offer coverage outside the vicinity, therefore it is viable the phone may be outside this defined vicinity range.

When the term ‘in the area of’ is used, this means that the predicted best server coverage for the cell activated offers service within 1000 metres of a particular location. Therefore, any activation of these cells is consistent with being in the area of that location. However, on occasions the cell may also offer coverage outside the area, therefore it is viable the phone may be outside this defined area range.⁹⁸¹¹

5124. Defence counsel cross-examined Mr Platt at length about his expertise, methodology and his conclusions. They also questioned the terminology used in relation to cell site matters, in particular, the terms ‘in the vicinity of’ and ‘in the area of’. He explained that, at the request of Prosecution lawyers and to aid his chronology report’s readability, he added distance ranges and these terms to enhance understanding of the relative proximity of cells to specified locations. This was to show how close a cell’s coverage was to a location, and in particular when compared to a different cell.⁹⁸¹²

5125. Mr Platt had not used these terms before, and cell site experts did not commonly use them.⁹⁸¹³ He agreed that in common English usage, ‘vicinity’ suggests something quite close.⁹⁸¹⁴ Further, while the report uses ‘vicinity’ and ‘immediate vicinity’ to mean the same thing, someone

⁹⁸¹¹ Exhibit P1783 (Expert report of Gary Platt – Chronology), paras 16, 21-23.

⁹⁸¹² Gary Platt, T. 6 April 2017, pp 19-21.

⁹⁸¹³ Gary Platt, T. 6 April 2017, p. 20.

⁹⁸¹⁴ Gary Platt, T. 6 April 2017, p. 23.

reading it would consider ‘immediate vicinity’ to suggest something much closer.⁹⁸¹⁵ Additionally, he agreed that the cells described as covering the ‘vicinity’ of the mosque, meaning within 500 metres of it, also covered areas several kilometres away.⁹⁸¹⁶ And stating that someone connecting to one of these was ‘in the vicinity’ of the mosque could be misleading because the user could have been in an area beyond the 500 metres.⁹⁸¹⁷

5126. Moreover, even when his report omitted to specify that use of these cells was *consistent with* their user being ‘in the vicinity’ of the mosque—rather than the user *being* ‘in the vicinity’ of the mosque—this caveat always applied.⁹⁸¹⁸ While using these cells was consistent with the user being ‘in the vicinity’ of the mosque, in isolation it was also ‘consistent with’ many other things.⁹⁸¹⁹

5127. In this regard, his chronology report and network analysis report, the narrative overview of events and the *aide-memoire* regarding the chronology of relevant events also use the term ‘consistent with’.⁹⁸²⁰ Mr Platt, who is British, agreed that the UK’s Forensic Science Regulator’s *Codes of Practice and Conduct* on cell site analysis is a suitable standard for assessing his work.⁹⁸²¹ According to this Code:

The word ‘consistent’ or phrase ‘consistent with’ should be avoided, and shall only be used if alternative scenarios are also considered (for example, ‘consistent with being at the scene, also consistent with being anywhere within the service area of the cell, which may mean the phone was many kilometres away’). In the appeal court in *R v. Puaca* [2005] EWCA Crim. 3001 Lord Justice Hooper commented that: “*Whereas ‘inconsistency’ is often probative, the fact of consistency is quite often of no probative value at all.*” Without clarification ‘consistent with’ can easily be misinterpreted by a lay person as meaning ‘is’, because the context or limitations of the finding are unknown. If the data would be expected in a number of considered or expected scenarios, clearly being consistent with one of them is not discriminating or useful. For example, if there is usage of a cell that serves both the

⁹⁸¹⁵ Gary Platt, T. 6 April 2017, pp 21-22.

⁹⁸¹⁶ Gary Platt, T. 6 April 2017, pp 26-27. *See also* Gary Platt, T. 23 March 2017, pp 25-26, where Mr Platt—commenting on exhibit 4D321—agrees that there is a small pocket of the predicted best coverage of COLA3 which is approximately 960 metres from the cell tower.

⁹⁸¹⁷ Gary Platt, T. 6 April 2017, p. 28.

⁹⁸¹⁸ Gary Platt, T. 6 April 2017, pp 28-39.

⁹⁸¹⁹ Gary Platt, T. 6 April 2017, p. 31.

⁹⁸²⁰ Exhibits P1783, P796.1, P1782, P1780.

⁹⁸²¹ Gary Platt, T. 6 April 2017, p. 56.

alleged and alternative locations, stating that usage is consistent with the device being at one and not mentioning the other is clearly misleading; likewise if a cell covers the alternative location, stating that this is consistent with movement toward the scene without mentioning that it is also consistent with being at the alternative location is misleading (and not impartial).⁹⁸²²

5128. Given Witness 707's evidence of the sixty to seventy per cent accuracy of the Alfa network's predicted best server coverage maps, Mr Platt agreed that the actual coverage his report refers to might differ by a hundred metres, or that pockets within that area might not be covered; meaning a potential margin of error of thirty to forty per cent. Despite this he felt that the data gave a good sense of the coverage of those cells, and placed mobile users within 'the vicinity' of certain locations.⁹⁸²³ Further, the cell activation is consistent both with the user being in the vicinity of the mosque and elsewhere within the range of those three COLA cells, parts of which would be outside the mosque's 'vicinity'.⁹⁸²⁴ He also could not be sure that the actual, as opposed to the predicted best coverage areas of the cells relevant to the 'COLA phase' did not, in 2005, extend to areas beyond those in the maps in evidence.⁹⁸²⁵

5129. Likewise, while COLA1 and COLA3 provided predicted best server coverage to parts of the nearby Salim Salam motorway into central Beirut, he could not exclude that COLA2 provided coverage to parts of it, although it was outside of the predicted best coverage area.⁹⁸²⁶ It was a busy road and, in 2005, a mobile user stuck in a traffic jam could have activated the three COLA cells.⁹⁸²⁷

5130. The Defence also questioned Mr Platt about some perceived omissions in his report. He started working as a Prosecution investigator in 2010,⁹⁸²⁸ and in 2014, had informed Prosecution lawyers that 'dozens' of calls were missing from his report. However, 'the lawyers did not want them included', instead telling him that these calls would be included in the narratives. Attempts

⁹⁸²² Exhibit 1D270, p. 24 (internal footnote omitted).

⁹⁸²³ Gary Platt, T. 22 March 2017, pp 77-81.

⁹⁸²⁴ Gary Platt, T. 23 March 2017, pp 31, 42.

⁹⁸²⁵ Gary Platt, T. 23 March 2017, pp 29-30, 39, 65-66; exhibit 4D321 (COLA cells coverage and distance from COLA cell mast); exhibit 5D244 (PowerPoint presentation regarding cell coverage distances of ETOILE2 and COLA3 cells); exhibit 4D325 (Cell coverage around the Arab University Mosque).

⁹⁸²⁶ Gary Platt, T. 23 March 2017, pp 30-31.

⁹⁸²⁷ Gary Platt, T. 23 March 2017, pp 32, 34.

⁹⁸²⁸ Exhibit P794 (Mr Platt's *curriculum vitae*), p. 1.

were then made to include these calls in the slides he used in court.⁹⁸²⁹ He had also noticed errors in his report, but Prosecution lawyers did not ask him to correct them by writing a new report.⁹⁸³⁰

5131. Some conclusions in his report, specifically that Mr Abu Adass was ‘abducted’, were based on the work of other Prosecution officials; Mr Platt had neither investigated this nor questioned any witnesses.⁹⁸³¹ In this respect, he agreed that on such occasions he could be viewed as acting as ‘a spokesman’ for the Prosecution.⁹⁸³² Because he was not asked to, he did not include in an amended report, or in his court slides, evidence that Mr Oneissi’s Purple 095 activated COLA2 only hours after the witness who encountered ‘Mohammed’ was at the mosque.⁹⁸³³

5132. The Defence also attacked perceived deficiencies in how Mr Platt viewed the cell site evidence. Mr Platt himself did not verify the reliability and authenticity of the cell coverage information in his report, but instead relied on the data given to him.⁹⁸³⁴ He did not carry out any on-site cell coverage measurements,⁹⁸³⁵ but agreed that site measurements are used to verify the accuracy of predicted coverage maps, which may not match the actual ground coverage.⁹⁸³⁶ He had made such checks himself in his past professional experience as it was the most accurate way to determine coverage as close as possible to the relevant period.⁹⁸³⁷

5133. His experience of working with the British police was that on-site cell coverage checks were routine.⁹⁸³⁸ The police rarely relied on predicted best coverage maps, but rather used on-site coverage surveys by engineers; this was the best evidence.⁹⁸³⁹ These surveys were done as soon as possible, sometimes within hours of a crime report, but also up to a few months afterwards.⁹⁸⁴⁰ The telecommunications companies’ coverage maps were primarily used for intelligence or, if as evidence, the police would also conduct a cell site survey to determine which cell provided

⁹⁸²⁹ Gary Platt, T. 7 February 2017, p. 17.

⁹⁸³⁰ Gary Platt, T. 9 February 2017, p. 6. Mr Platt said that the former Prosecution lead counsel, Mr G. Cameron would not allow him to update his report; T. 19 January 2017, p. 92, T. 22 March 2017, p. 81.

⁹⁸³¹ Gary Platt, T. 7 April 2017, pp 68-69.

⁹⁸³² Gary Platt, T. 7 April 2017, p. 69.

⁹⁸³³ Gary Platt, T. 24 March 2017, pp 2-4, exhibit 4D332 (Timeline of Purple 095’s activity on 3 January 2005).

⁹⁸³⁴ Gary Platt, T. 22 March 2017, p. 72.

⁹⁸³⁵ Gary Platt, T. 22 March 2017, pp 62-63.

⁹⁸³⁶ Gary Platt, T. 22 March 2017, pp 61, 63.

⁹⁸³⁷ Gary Platt, T. 22 March 2017, p. 61.

⁹⁸³⁸ Gary Platt, T. 22 March 2017, p. 63.

⁹⁸³⁹ Gary Platt, T. 22 March 2017, pp 64-65, 67.

⁹⁸⁴⁰ Gary Platt, T. 22 March 2017, pp 66-67.

coverage to a particular location, rather than verifying the accuracy of its entire predicted coverage.⁹⁸⁴¹ In his experience, a minimum check on the integrity of cell site analyses would be a survey of the scene as near to the time of the incident as possible, with various checks on the circumstances on that day regarding the network.⁹⁸⁴² He was aware of three surveys conducted in the case—one in 2007 by a prospective UK cell site expert, drive test surveys by Alfa and some 2010 surveys carried out by Prosecution officials—none were used in evidence by the Prosecution.⁹⁸⁴³

5134. Discrepancies between the predicted coverage maps and the on-site surveys, on occasion, were found. This investigation was the first time that Mr Platt had used best server coverage maps to this extent and this long after the relevant event; but he was aware that others had done so in the UK.⁹⁸⁴⁴

5135. The Defence also challenged Mr Platt's expertise in relation to cell site analysis. His chronology report and testimony provides extensive evidence and opinions of the location and movement of mobiles. Cell site analysis, he agreed, is of call data records relating to a mobile over a particular time, to determine its location and movement.⁹⁸⁴⁵ But Mr Platt is not a cell site expert; and no part of his chronology report was drafted or reviewed by a cell site expert.⁹⁸⁴⁶

5136. Moreover, opinions on likely cell coverage areas should be based on cell site experts' opinions; which would take into account radio propagation, the specifics of likely cell configuration, the geographic area and the clutter environment.⁹⁸⁴⁷ The accuracy of cell location, height, down tilt and orientation are critical to the accuracy of a cell site expert's opinion. Radio surveys may assist, but cannot substitute for an expert's knowledge and critical assessment.⁹⁸⁴⁸

⁹⁸⁴¹ Gary Platt, T. 22 March 2017, p. 65.

⁹⁸⁴² Gary Platt, T. 6 April 2017, p. 108.

⁹⁸⁴³ Gary Platt, T. 6 April 2017, pp 111-112.

⁹⁸⁴⁴ Gary Platt, T. 22 March 2017, pp 66-68.

⁹⁸⁴⁵ Gary Platt, T. 6 April 2017, p. 10.

⁹⁸⁴⁶ Gary Platt, T. 6 April 2017, p. 8.

⁹⁸⁴⁷ Gary Platt, T. 6 April 2017, pp 11-12. Mr Philips, for example, was able to testify about various anomalies in coverage which he had encountered in his experience; *see* John Edward Philips, T. 19 August 2015, pp 100-104.

⁹⁸⁴⁸ Gary Platt, T. 6 April 2017, pp 12-13. *See also* Mr Philips's testimony of the limited usefulness of field surveys not undertaken contemporaneously to the relevant events (or within a 'reasonable' time) or undertaken without knowing that the cell site network configuration or clutter information (existence of buildings in the area) is the same as that at the time of the relevant events. Mr Philips acknowledged that there would have been some benefit to him conducting a site visit even in 2012, to gain a feel, for example, for the topology, location of cell site buildings and

5137. Mr Platt had encountered situations where a mast's cells did not cover its foot area; but rather because of its height or high positioning, adjacent cells provided coverage.⁹⁸⁴⁹ And further, of predicted coverage plots being correct at ground level, but incorrect for upper storeys.⁹⁸⁵⁰ As Mr Philips pointed it out, a cell could provide coverage to the bottom of a building, another could give coverage to its fourth or fifth storey, while a different cell could cover the top.⁹⁸⁵¹

5138. Mr Platt was also questioned about the COLA cells and cell mast, which was in a densely populated area with high-rise buildings.⁹⁸⁵² Google Earth's elevation profile was sometimes used to assess terrain coverage, and the image below, tendered by the Sabra Defence, is an elevation profile of the COLA cells area.⁹⁸⁵³

building density, assuming that it had not changed significantly since the relevant events; John Edward Philips, T. 19 August 2015, pp 66-69, 100, 105-107. Mr Philips also summarised the four main components of a prediction package as being: the propagation model, the terrain model, the clutter model (buildings, trees, etc.) and the transmission parameters (height of the ground at the cell site, height of the building on which the cell site, type and direction of aerial, frequency, etc.); John Edward Philips, T. 19 August 2015, pp 95-97.

⁹⁸⁴⁹ Gary Platt, T. 6 April 2017, pp 116-119.

⁹⁸⁵⁰ Gary Platt, T. 6 April 2017, pp 123-124.

⁹⁸⁵¹ John Edward Philips, T. 19 August 2015, pp 100-103.

⁹⁸⁵² Gary Platt, T. 6 April 2017, p. 122.

⁹⁸⁵³ Gary Platt, T. 7 April 2017, p. 5.

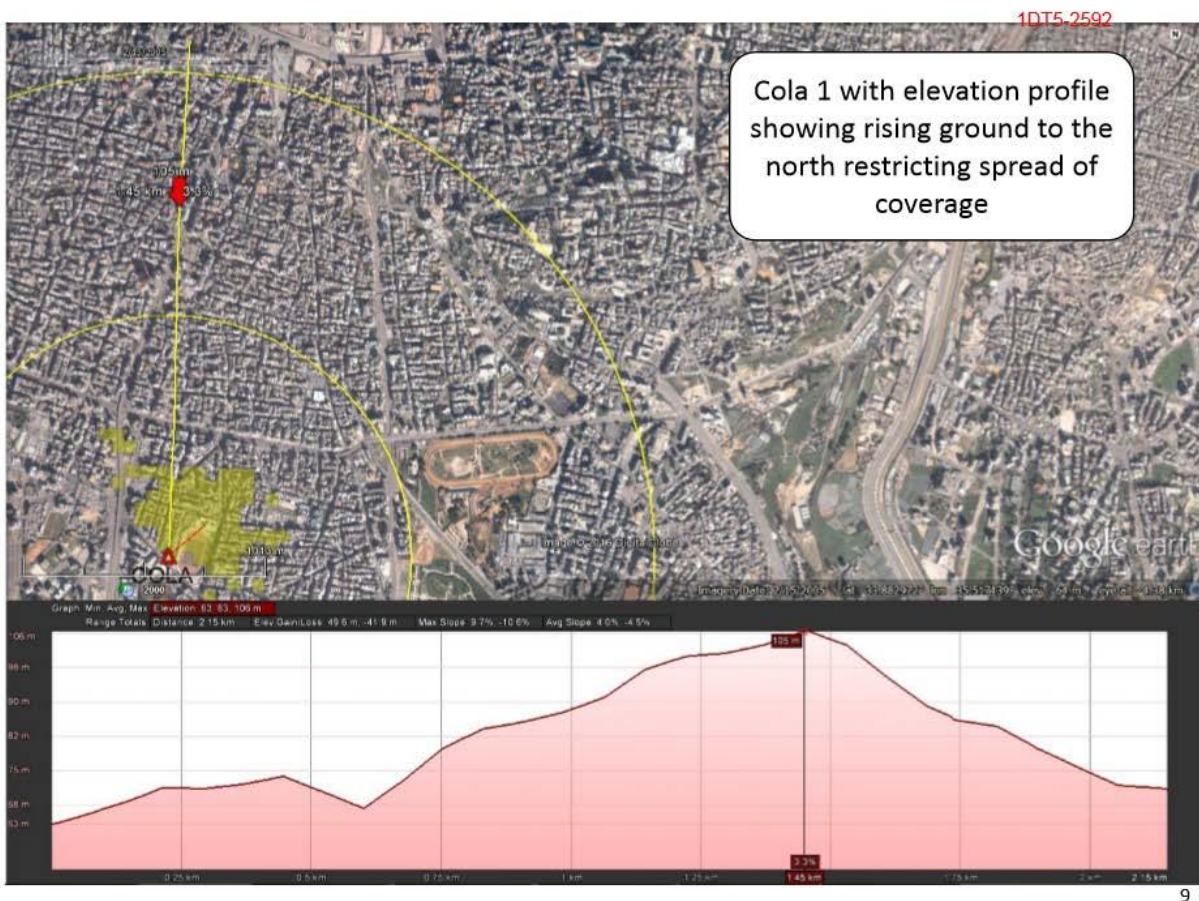


Exhibit 5D355 (PowerPoint presentation—Sabra Defence’s cell analysis of the ‘COLA-area’), slide 9

5139. Mr Platt agreed that a mobile in a tall building on the high point of the terrain—marked by the downward pointing red arrow on the upper left of the image—could connect to COLA1.⁹⁸⁵⁴ Further, COLA3’s terrain coverage falls towards the coast, to the west, as shown in Sabra Defence exhibit 5D355, slide 11.⁹⁸⁵⁵

⁹⁸⁵⁴ Gary Platt, T. 7 April 2017, p. 7.

⁹⁸⁵⁵ Gary Platt, T. 7 April 2017, p. 8.

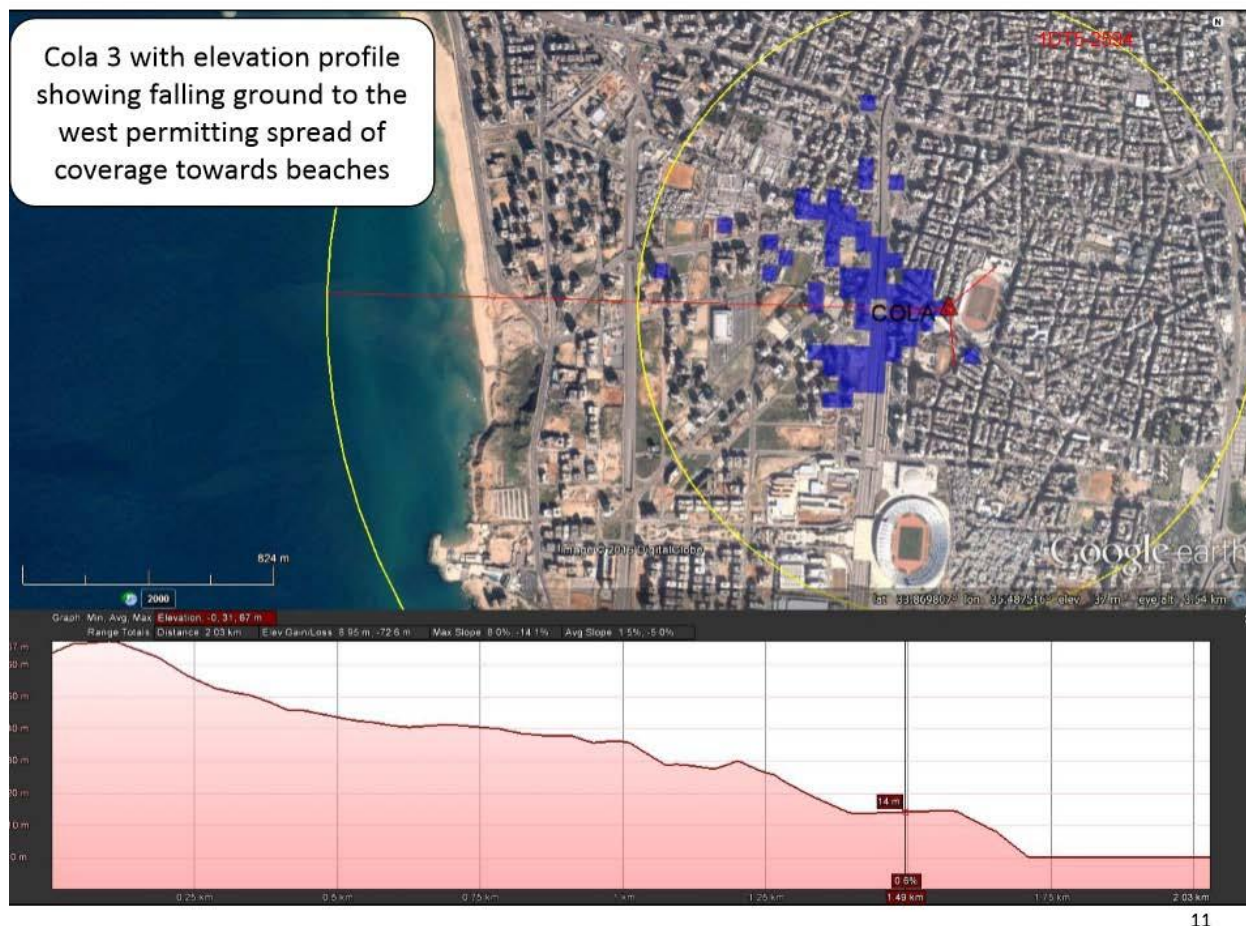


Exhibit 5D355 (PowerPoint presentation—Sabra Defence’s cell analysis of the ‘COLA-area’), slide 11

5140. Signals from a cell on a higher point could therefore propagate farther where the terrain falls away with a clear line of sight. Thus, a mobile in a high-rise building on the coast could conceivably connect to the COLA3 cell.⁹⁸⁵⁶

5141. Mr Philips’s report states that best server plots are predictions of signal level at ground level, whereas above ground level, and in buildings, there may be server coverage outside of the predicted area. The higher above ground the cell is, the more likely this is.⁹⁸⁵⁷ The accuracy of best

⁹⁸⁵⁶ Gary Platt, T. 7 April 2017, p. 9.

⁹⁸⁵⁷ Exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), 6.5.3.1.1.4, 6.5.3.8.1.7-6.5.3.8.1.8; *see also* exhibit P550 (PowerPoint presentation, John Edward Philips), slide 110.

server coverage plots is diluted in considering factors such as building materials, windows and the floor of the building.⁹⁸⁵⁸

5142. The UK Code referred to above⁹⁸⁵⁹ states that the examination methods must be fit for purpose, may include a radio propagation survey and the methods must be validated before use in evidence. Any unvalidated aspect must be explicitly highlighted as a limitation; this allows a court to consider it in relation to its admissibility.⁹⁸⁶⁰

5143. Neither Mr Philips nor another cell site expert was asked to analyse Purple 018 and Purple 095.⁹⁸⁶¹ Mr Platt decided not to read Mr Philips's reports, but conceded, in hindsight, that it might have been helpful to consider them.⁹⁸⁶²

5144. Further, he agreed that cell site analysis can only indicate that a mobile was within the likely coverage area of a particular cell, rather than in any particular location within that area.⁹⁸⁶³ These techniques do not establish the actual cell coverage when a mobile was used, as surveys are limited to ground level coverage and are almost always not contemporaneous with relevant events.⁹⁸⁶⁴

5145. With all of this in mind, the Trial Chamber has carefully analysed the cell site evidence relating to the mobile activity of the Purple mobiles.

- iii. Before Wednesday 22 December 2004—Alfa records were incomplete before 1 October 2004

5146. In examining the call data records, the Trial Chamber has carefully considered the evidence of Mr Oneissi's Purple 095 and Mr Sabra's attributed Purple 018 connecting to cells 'near' the mosque before Wednesday 22 December 2004, while also bearing in mind that Alfa's call data records before 1 October 2004 are incomplete. Before 1 August 2004, the Alfa network had cell

⁹⁸⁵⁸ John Edward Philips, T. 25 April 2017, p. 40.

⁹⁸⁵⁹ At para. 5127.

⁹⁸⁶⁰ Exhibit 1D270 (UK's Forensic Science Regulator's *Codes of Practice and Conduct* on cell site analysis), pp 14-15.

⁹⁸⁶¹ Gary Platt, T. 6 April 2017, p. 104.

⁹⁸⁶² Gary Platt, T. 6 April 2017, p. 106.

⁹⁸⁶³ Gary Platt, T. 6 April 2017, pp 11, 13.

⁹⁸⁶⁴ Gary Platt, T. 6 April 2017, p. 11. *See also* Mr Philips's general explanation of predicted cell coverage maps being computer-generated estimates of the best server coverage areas of cells, taking into account the coverage of adjacent cells; John Edward Philips, T. 19 August 2015, pp 87-89.

data records of outgoing calls, but none of incoming calls and inbound and outbound SMS messages;⁹⁸⁶⁵ and end cell data was only available from 1 October 2004.⁹⁸⁶⁶ Because he was using this incomplete data, Mr Platt was uncomfortable with saying that the two mobiles, Purple 018 and Purple 095, were not active around the COLA area from 2002 to 1 August 2004.⁹⁸⁶⁷

5147. The available call data records reveal that from 9 January 2003—the date of its attribution to Mr Oneissi as its principal user—until Wednesday 22 December 2004 his personal mobile Purple 095 activated the COLA cells only six times. These were all in 2004: on 21 January, 30 April, 29 September, 15 October and on Saturday 4 December 2004, twice.⁹⁸⁶⁸ This mobile, however, also activated other cells within a 500-metre radius of the mosque 22 times between August 2003 and 22 December 2004.⁹⁸⁶⁹

5148. Purple 018, on the other hand, connected to COLA cells for the first time in November 2004,⁹⁸⁷⁰ whereas from the day of its attribution to Mr Sabra as one of its users, 22 November 2001, it connected to other cells ‘near’ the Arab University Mosque seventeen times. This was once in 2001, three times in 2002, once in 2003 and twelve times between April and 22 December 2004.⁹⁸⁷¹

5149. From the date of its attribution to Mr Merhi as the principal user on 19 December 2002 until Wednesday 22 December 2004, his personal mobile Purple 231 activated cells within the

⁹⁸⁶⁵ Gary Platt, T. 26 January 2017, p. 80, T. 6 February 2017, pp 54-56, 94, T. 7 February 2017, pp 63-64, 68, T. 9 February 2017, pp 28-29. *See also* Prosecution final trial brief, para. 540.

⁹⁸⁶⁶ Gary Platt, T. 7 February 2017, pp 64-65. *See also* Prosecution final trial brief, para. 540.

⁹⁸⁶⁷ Gary Platt, T. 6 February 2017, p. 55, T. 7 February 2017, p. 64.

⁹⁸⁶⁸ Mr Oneissi’s Purple 095 activated COLA3 on 21 January 2004 at 14:36, 30 April 2004 at 12:28, 29 September 2004 at 10:52, 15 October 2004 at 13:02, and twice on 4 December 2004 at 12:47 and 12:48, exhibit P1223 (Call sequence table of Purple 095), pp 122, 159, 219, 227, 247-248. *See also* exhibit P1783 (Expert report of Gary Platt – Chronology), para. 71.

⁹⁸⁶⁹ Mr Oneissi’s Purple 095 activated BHVOUT2 on 20 December 2004; CBOURJ3 on 9 August, 10 October, 19 November, 30 December 2003, 15 March, 22 May, 20 August, 10 September, 11 November, 16 November, 14 December and 20 December 2004; CHATIL1 on 20 December 2004; MAKASS3 three times on 13 August and again on 15 October 2004; NASSER1 on 7 October and 13 December 2004; OGER2 on 12 October 2004; and OUZAI1 on 4 December 2004. Exhibit P1223, pp 73, 91, 103, 115, 142, 166, 198-199, 201, 208, 223, 225, 227, 239, 242, 247, 250-251, 253.

⁹⁸⁷⁰ Purple 018 activated COLA3 on 12 November 2004 at 23:49 and again on 15 November at 16:29; exhibit P1221 (Call sequence table of Purple 018), pp 269, 271.

⁹⁸⁷¹ Purple 018 activated CBOURJ3 on 13 February 2002, 11 September 2003, 4 April, twice on 16 June, 6 and 18 September, 10 October, 11 and 12 November and twice on 15 December 2004; OGER2 twice on 23 August 2004; OUZAI1 twice on 27 April 2002; and OUZAI4 on 10 December 2001. Exhibit P1221, pp 8, 27, 43, 157, 208, 227, 249, 253, 256, 262, 267-268, 276.

500-metre radius of the mosque eleven times between August and October 2004.⁹⁸⁷² It never connected to a COLA cell.⁹⁸⁷³

5150. In **2002**, Purple 018 and Mr Merhi's Purple 231 were in contact twice.⁹⁸⁷⁴ In **2003**, they were in contact 61 times over 44 days.⁹⁸⁷⁵ In **2004**, it was 62 times over 44 days.⁹⁸⁷⁶

5151. Mr Oneissi's Purple 095 and Mr Sabra's attributed Purple 018 made contact 25 times in eighteen days in **2003**,⁹⁸⁷⁷ and four times in four days in **2004**; this was on 27 January, 15 March, 23 May and 23 June.⁹⁸⁷⁸

5152. Before **September 2004**, Mr Oneissi's Purple 095 and Mr Merhi's Purple 231 were in contact 21 times over sixteen days in **2003**,⁹⁸⁷⁹ and 87 times over 46 days in **2004**. There was an increase of calls in April 2004, with 26 calls exchanged.⁹⁸⁸⁰

⁹⁸⁷² Purple 231 activated CBOURJ3 on 2 August, five times on 6 September, twice on 15 September, on 27 September, on 12 and 21 October 2004. Exhibit P527 (Call sequence table of Purple 231), pp 71, 81-82, 84, 87, 92-93.

⁹⁸⁷³ Exhibit P527.

⁹⁸⁷⁴ On 26 and 28 December 2002. Exhibit P527, p. 1.

⁹⁸⁷⁵ There were three calls in January (7, 11, 13), one call on 22 February, one on 29 April, one on 7 May, one on 6 June, six calls in July (one on 2, two on 5 and the rest on 6, 17, 23), ten in August (one on 12, two on 13, one on 14, one on 19, two on 23, one on 25, 27 and 29), twenty-two calls in September (two on 1, two on 3, two on 4, one on 8 and 20, two on 21, three on 22, six on 23, two on 24 and one on 28), four calls in October (two on 2, one on 3 and 9), four calls in November (one on 10, two on 12 and one on 15), eight calls in December (2, 4, 5, 8, 22, 23, 25, 29). Exhibit P527, pp 3-4, 7-8, 10-12, 15-19, 21-25, 28-29, 31-34.

⁹⁸⁷⁶ From January to end August 2004, there were eleven contacts in January (two on 3, one on 7, one on 9, one on 17, one on 18, three on 20, one on 26 and one on 29), four calls in February (one on 9, two on 10 and one on 11), twelve in March (four on 7, one on 10, 16, 17 and 18, two on 24 and two on 29), two calls on 9 April, four calls in May (on 8, 14, 24 and 26), twelve calls in June (one on 7, three on 12, one on 16, two on 17, one on 18, two on 22, one on 23 and 28), three calls in July (on 4, 19 and 29), fourteen in August (two on 12, four on 13, one on 14, two on 16, one on 18, 20, 23, 25 and 30). Exhibit P527, pp 34-35, 37-40, 43-48, 54-57, 59-63, 66, 69, 73-79.

⁹⁸⁷⁷ In 2003, there were two calls in January (12 and 31), 10 calls in February (five on 3, one on 4, 8, 18, 22 and 24), four in March (three on 3 and one on 21), one on 8 May, three in July (on 6, 16 and 19), one on 16 August, three in November (one on 9 and two on 10) and one on 15 December. Exhibit P1221, pp 98, 102-105, 108, 110, 113, 125, 137, 140-141, 148, 169, 180.

⁹⁸⁷⁸ Exhibit P1221, pp 190, 203, 221, 231.

⁹⁸⁷⁹ In 2003, there was one call in June (25), two calls in August (6 and 31), four calls in September (three on 8 and one on 24), two calls in October (on 8 and 9), eight calls in November (of which four on 1st, the others on 3, 4, 7 and 8), four calls in December (on 23, 25, 26, 29). Exhibit P527, pp 10, 14, 18-19, 22, 25, 27-28, 33-34.

⁹⁸⁸⁰ From January to end August 2004, there were eight calls in January (two on 6, one on 8, 14, two on 15, one on 16 and 31), nine calls in February (two on 10, two on 11, one on 12, three on 13, one on 27), seven in March (two on 12, then one on 13, 15, 16, 27 and 30), 26 calls in April (one on 3 and 13, five on 21, two on 22, four on 23, four on 24, eight on 28 and one on 30), twelve in May (one on 1, two on 5, one on 14, two on 22, one on 25, three on 28 and two on 31), ten in June (four on 4, one on 15 and 17 and four on 19), nine calls in July (16, 17, 20, 21, two on 26, two on 28 and one on 30) and six calls in August (four on 5 and one on 13 and 17). Exhibit P527, pp 34-36, 38, 40, 42, 45-47, 49-53, 56-58, 61-62, 66-69, 71, 74-75.

5153. In **September and October 2004**, when some networks allegedly involved in Mr Hariri's assassination became active,⁹⁸⁸¹ Mr Oneissi's Purple 095 was in contact with Mr Merhi's Purple 231 some 48 times over 21 days.⁹⁸⁸² Mr Sabra's attributed Purple 018 and Mr Merhi's Purple 231 were in contact 27 times in thirteen days.⁹⁸⁸³ During this period, Purple 095 and Purple 018 were in contact once, on 14 October 2004,⁹⁸⁸⁴ and Purple 018 once called a number ending in 6091, used by Mr Merhi's family.⁹⁸⁸⁵

5154. In **November 2004, and until Wednesday 22 December 2004**, Mr Oneissi's Purple 095 and Mr Merhi's Purple 231 were in contact sixteen times on thirteen days.⁹⁸⁸⁶ Purple 231 and Purple 018 were in contact 38 times in nineteen days,⁹⁸⁸⁷ and Purple 095 and 018, six times on three days.⁹⁸⁸⁸

iv. Wednesday 22 to Wednesday 29 December 2004

5155. On the evening of **Tuesday 21 December 2004**, as described above at paragraphs 648 and 4331, Mr Hariri met Hezbollah's Secretary-General, Mr Hassan Nasrallah, in Haret Hreik in Beirut. According to the Prosecution, this event marked an increase in the surveillance of Mr Hariri and in activity on the Yellow network, with several calls exchanged within that network between the evening of Tuesday 21 December and the early hours of Wednesday 22 December 2004.⁹⁸⁸⁹

⁹⁸⁸¹ From end September, some of the other networks commenced activity. *See* chapter X 'Chronology of network mobile activity before Mr Hariri's assassination on Monday 14 February 2005', (C) (1) 'Some networks commence activity—Friday 24 September 2004 to Saturday 9 October 2004'.

⁹⁸⁸² Purple 095 was in contact with Purple 231 on 4, 7, 8 (three times), 18, 20, 21, 22, 23 (twice), 24 (three times), 26, 27 (nine times), 28 (four times), 29 (eight times) and 30 September 2004 and 1, 4, 5 (twice), 6, 12 (four times), 13 and 21 October 2004. Exhibit P527, pp 80, 82, 84-93; exhibit P1223, pp 205, 207-208, 211-222, 224-225, 229.

⁹⁸⁸³ Purple 018 was in contact with Purple 231 on 3, 4, 6 (three times), 8, 18 (eight times), 19 (three times) and 20 September 2004 and 6 (three times), 7, 20 (twice), 21, 22 and 23 October 2004. Exhibit P527, pp 80-82, 84-85, 90-91, 93; exhibit P1221, pp 252-253, 256-257, 261, 264.

⁹⁸⁸⁴ On 14 October 2004, at 13:27, Purple 018 called Purple 095. Exhibit P1221, p. 262; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 77.

⁹⁸⁸⁵ Exhibit P1221, p. 264; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 113. *See* chapter IX 'Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine', (C) (2) 'Personal mobile 6091'.

⁹⁸⁸⁶ Purple 231 and Purple 095 were in contact on 9 (twice), 11, 13 (twice), 15, 17 (twice), 23 and 26 (twice) November 2004 and on 1, 3, 9, 14 and 18 December 2004. Exhibit P527, pp 96-99-103, 105.

⁹⁸⁸⁷ Purple 018 was in contact with Purple 231 on 10 (five times), 11 (five times), 12 (five times), 13 (twice), 14, 15, 16, 24 (twice), 27, 28 and 30 November 2004) and on 1, 2 (twice), 7, 12 (four times), 15 (twice), 16, 17 and 18 December 2004. Exhibit P527, pp 96-105.

⁹⁸⁸⁸ In November 2004, Purple 018 and Purple 095 were in contact on three days: three SMS on 14, two calls on 16 and one on 17 November 2004. Exhibit P1221, pp 270-271; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 195.

⁹⁸⁸⁹ *See* paras 4331, 4338-4339.

Wednesday 22 December 2004

5156. The following day, **Wednesday 22 December 2004**,⁹⁸⁹⁰ at 14:00 and 15:09, Mr Oneissi's Purple 095 activated COLA2 and COLA3 cells, which provide coverage to the mosque area.⁹⁸⁹¹

5157. On the same day, at 15:12, Mr Oneissi's Purple 095 called Mr Merhi's Purple 231, activating OUZAI1, which is adjacent to COLA2.⁹⁸⁹² There was a seven-day gap before any of the Purple mobiles activated the COLA cells again.⁹⁸⁹³ On Wednesday 22 December, Mr Oneissi's Purple 095 did not activate the COLA cells before or after the noon or dusk prayers.⁹⁸⁹⁴ The afternoon prayer times, however, were at around 14:16.

5158. Mr Platt was not asked to align the COLA cells activations with the prayer times but he conceded that, with hindsight, it would have been sensible.⁹⁸⁹⁵

5159. Meanwhile, between **Monday 20 and Thursday 23 December 2004**, Mr Badreddine's Green 023 and Mr Ayyash's Green 300 were in contact for four days in a row, after having had no contact for forty days.⁹⁸⁹⁶

5160. The Prosecution submits that the Green network was already operational then but with only limited activity. From **Wednesday 20 December 2004**, its use accelerated reflecting the evolution in the conspiracy to assassinate Mr Hariri.⁹⁸⁹⁷ Accordingly, the sudden escalation and resumption

⁹⁸⁹⁰ On this day, Purple 095 was in contact with Associate Purple 375, and Mr Merhi's Purple 231 called Associate Purple 744, attributed to Mr Merhi's brother. Exhibit P527 (Call sequence table of Purple 231), p. 106; exhibit P1223 (Call sequence table of Purple 095), p. 253; exhibit P1339 (Call sequence table of Associate Purple 375), p. 29; exhibit P1342 (Call sequence table of Associate Purple 744), p. 58.

⁹⁸⁹¹ Exhibit P1223, p. 253; Gary Platt, T. 26 January 2017, p. 5; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 267, 278; exhibit P663 (Statement of Andrew Fahey), p. 12 (ERN 60311098) (annex 1, no. 21); exhibit P1123 (ArcView shape files Alfa). *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), para. 341.

⁹⁸⁹² Exhibit P1223, p. 253; exhibit P527, p. 106; Gary Platt, T. 26 January 2017, p. 7; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 267, 279; exhibit P1123. *See also* exhibit 4D325 (Cell coverage around the Arab University Mosque); exhibit P1782, para. 342; exhibit P1793 (Chronology PowerPoint presentation – 20 December 2004 to 31 December 2004), slides 102-103, 107.

⁹⁸⁹³ Gary Platt, T. 26 January 2017, p. 9; exhibit P1221, pp 277-279; exhibit P1223, pp 253-256. *See also* exhibit P1782, para. 340.

⁹⁸⁹⁴ Exhibit 4D328 (Timeline of Purple 095's activity on 22 December 2004); Gary Platt, T. 23 March 2017, p. 81.

⁹⁸⁹⁵ Gary Platt, T. 23 March 2017, pp 74-75.

⁹⁸⁹⁶ Exhibit P1207 (Call sequence table of Green 300), p. 3; exhibit P1211 (Call sequence table of Green 023), p. 3; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 237, 243, 275, 284, 289. *See also* exhibit P1782, paras 300-301.

⁹⁸⁹⁷ The Prosecution terms the period from Monday 20 December 2004 to Sunday 2 January 2005 the 'Green initial phase' and the period from Tuesday 11 January to Monday 14 February 2005 as the 'Green primary phase'; Prosecution final trial brief, paras 700-701.

of Green network activity reflected a ‘step-change’ in both limbs of the conspiracy driven by Mr Badreddine; through Mr Ayyash by intensified surveillance and set-up of the Red network and through Mr Merhi by identifying a scapegoat for the false claim.⁹⁸⁹⁸

Thursday 23 December 2004

5161. On **Thursday 23 December 2004**, and within a short period, Mr Badreddine’s Green 023 received calls from both Mr Merhi’s attributed Green 071, which had been inactive for seven weeks, and Mr Ayyash’s Green 300.⁹⁸⁹⁹

Friday 24 December 2004

5162. On **Friday 24 December 2004**, Mr Sabra’s attributed Purple 018 received a call from Mr Oneissi’s Purple 095 at 12:52. Purple 095 connected to SFEIR3 in southern Beirut whereas Purple 018 connected to TRIPOL1 in Tripoli.⁹⁹⁰⁰

Saturday 25 December 2004

5163. The next day, **Saturday 25 December 2004**, Mr Merhi’s Purple 231 called Purple 018 twice at 18:57 and 20:46.

5164. For these calls, Mr Merhi’s Purple 231 connected to SFEIR3 and SABRA2, respectively. Mr Sabra’s attributed Purple 018 connected to KHALDE1 at the beginning of the call and CHARLI1 at the end of the call, south of the airport, and to HARA2 in southern Beirut.⁹⁹⁰¹

5165. Mr Merhi’s Purple 231, connecting to SABRA2, also called Mr Oneissi’s Purple 095 at 20:44, which connected to HAROUF2 in southern Lebanon.⁹⁹⁰²

⁹⁸⁹⁸ Prosecution final trial brief, para. 702.

⁹⁸⁹⁹ Green 071 contacted Green 023 for 36 seconds, at 14:05, followed shortly by Green 300 calling Green 023 for 21 seconds at 14:08. Exhibit P1205 (Call sequence table of Green 071), p. 8; exhibit P1207, p. 3; exhibit P1211, p. 3; Gary Platt, T. 26 January 2017, pp 26-28, T. 27 January 2017, pp 54-55; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 288-289. *See also* exhibit P1782, para. 347; exhibit P1793, slides 128-130.

⁹⁹⁰⁰ Exhibit P1221, p. 278; exhibit P1223, p. 254; exhibit P1123.

⁹⁹⁰¹ Exhibit P527, p. 106; exhibit P1221, p. 278; exhibit P1123. At 17:28, Purple 231 received a 14-second call from Associate Purple 744, attributed to Mr Merhi’s brother.

⁹⁹⁰² Exhibit P527, p. 106; exhibit P1223, p. 255.

Sunday 26 December 2004

5166. On **Sunday 26 December 2004** there were five calls involving Mr Oneissi's Purple 095, four of which were with Mr Merhi's Purple 231 and one with Mr Sabra's attributed Purple 018.

5167. None of the calls made between Friday 24 and Sunday 26 December 2004 activated COLA cells. During these calls, Purple 095 connected to cells in southern Lebanon, Purple 018 connected to SFEIR2 in southern Beirut and Purple 231 connected to SFEIR3 and GALAXY1, which is also in southern Beirut.⁹⁹⁰³

Monday 27 December 2004—Green network activity

5168. The next day, **Monday 27 December 2004**, the Purple mobiles were active but did not contact each other.⁹⁹⁰⁴ The Green mobiles exchanged calls after four days of silence,⁹⁹⁰⁵ which Mr Platt testified illustrated similar organisation and structure to the calls between the three Green mobiles on 23 December 2004.⁹⁹⁰⁶ Mr Merhi's attributed Green 071 called Mr Badreddine's Green 023 at 09:56, connecting to BRAJNE2 in southern Beirut.⁹⁹⁰⁷

Tuesday 28 December 2004

5169. On **Tuesday 28 December 2004**, Mr Merhi's Purple 231 and Mr Oneissi's Purple 095 exchanged one call in the afternoon, with Purple 095 connecting to TAHAN1.⁹⁹⁰⁸ The predicted best server coverage of this cell is 500 to 1,000 metres from the mosque.⁹⁹⁰⁹ This is shown on exhibit 4D325 in paragraph 5101 above.

⁹⁹⁰³ Purple 231 called Purple 095 at 11:10, after which Purple 095 called Purple 231 at 11:23. Purple 095 connected to KFARSI3 in South Lebanon on both occasions. At 11:34 and again at 19:08, Purple 231 called Purple 095. Purple 095 remained in South Lebanon for both calls. At 12:51, Purple 018, activating SFEIR2 in south Beirut, called Purple 095, which activated KFARSI3 in South Lebanon. Exhibit P527, p. 107; exhibit P1221, p. 278; exhibit P1223, pp 254-255; Gary Platt, T. 27 January 2017, pp 35-36. *See also* exhibit P1793, slide 218; exhibit P1123.

⁹⁹⁰⁴ Purple 231 contacted Associate Purple 375 twice, at 16:48 and at 18:05. Exhibit P527, p. 107; exhibit P1221, p. 278; exhibit P1223, pp 255-256; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 362.

⁹⁹⁰⁵ Exhibit P1205, p. 8; exhibit P1207, p. 3; exhibit P1211, p. 3.

⁹⁹⁰⁶ Gary Platt, T. 27 January 2017, pp 53-57; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 347-348. *See also* exhibit P1782, paras 379-381; exhibit P1793, slides 235-237.

⁹⁹⁰⁷ At 09:56, Green 071 contacted Green 023 for less than a minute. Three minutes later Green 300 called Green 023 for 46 seconds. Following the call to Green 023, Green 071 became inactive again until 2 January 2005. Exhibit P1205, p. 8; exhibit P1207, p. 3; exhibit P1211, p. 3.

⁹⁹⁰⁸ Purple 231 called Purple 095 at 15:53. Exhibit P527, p. 107; exhibit P1223, p. 256. Purple 231 called Associate Purple 375 at 08:45.

⁹⁹⁰⁹ Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1274.

v. The so-called ‘COLA phase’—Wednesday 29 December 2004 to Friday 7 January 2005

5170. The Prosecution used the term, ‘COLA phase’, to refer to the ten-day period between **Wednesday 29 December 2004 and Friday 7 January 2005** when Mr Sabra’s attributed Purple 018 and Mr Oneissi’s Purple 095 were most active connecting to the COLA and adjacent cells near the mosque.

5171. According to the Prosecution’s final trial brief, under the heading, ‘Extraordinary Purple Phone Activity Over the Ten Days Until 7 January 2005 (the COLA Phase)’, their mobiles had ‘exceptional activity’, which was evidence of Mr Abu Adass’s identification and selection at the end of December 2004 and early January 2005.⁹⁹¹⁰ This phase also overlaps with the closure of the Yellow network, which ceased operations between 30 December 2004 and 12 January 2005, with the last Yellow-to-Yellow call occurring on 7 January 2005.⁹⁹¹¹

5172. Mr Abu Adass regularly attended the dusk prayers at the Arab University Mosque. Witnesses 56 and 87 stated that he prayed there every Friday,⁹⁹¹² and his father stated that he prayed five times a day there, including for the evening prayer.⁹⁹¹³ The witness who met ‘Mohammed’ in the mosque said that Mr Abu Adass performed the five daily prayers and was at the mosque when ‘Mohammed’ approached the witness. This would have been on either Monday 3 or Monday 10 January 2005, as is set out above at paragraph 4986.⁹⁹¹⁴

Prayer times

5173. The Trial Chamber received some evidence of the published prayer times for Beirut in December 2004 and January 2005. The Oneissi Defence tendered charts on which it had marked

⁹⁹¹⁰ Prosecution final trial brief, paras 519-525, 532-535.

⁹⁹¹¹ See paras 2362-2363.

⁹⁹¹² Exhibit 5D474 (Statement of Witness PRH056, 14 February 2005), p. 2; exhibit P2132 (Statement of Witness PRH056, dated 1 July 2010), para. 14; exhibit 4D212 (Statement of Witness PRH087, undated), p. 3; exhibit P596 (Statements of Witness PRH087, dated 14 January 2015 and 24 November 2006), para. 56 (p. 11); Witness PRH087, T. 29 September 2015, pp 16, 52.

⁹⁹¹³ Exhibit P461 (Witness statements of Taysir Abu Adass, dated 19 January 2005 and 28 February 2005), ERN 50003488.

⁹⁹¹⁴ Exhibit P760, pp 1-2; exhibit P762, pp 2-4; T. 20 January 2016, pp 36-38 (closed session), T. 25 January 2016, pp 63-64 (closed session), T. 26 January 2016, pp 74-75 (closed session); exhibit 4D241 (Diagram of meeting in the mosque).

⁹⁹¹⁴ T. 20 January 2016, pp 38, 40-41 (closed session).

the noon and dusk prayer times in Beirut on six days, Wednesday 22, Wednesday 29, Thursday 30, and Friday 31 December 2004, and Monday 3, and Friday 7 January 2005.⁹⁹¹⁵

5174. The Prosecution invited the Trial Chamber, if it wished, to take judicial notice of the prayer times in Beirut during those months, and the Trial Chamber noted that they were available online.⁹⁹¹⁶ No Party formally tendered a list of the prayer times on the days relevant to the amended consolidated indictment, and no Party expressed any opposition to the Trial Chamber consulting open source material listing the published prayer times. The Trial Chamber, accordingly, where there was no evidence as to a particular prayer time, has consulted open source material for this information.⁹⁹¹⁷ It has no reason to doubt its reliability and the prayer times are not in issue. The times in the Oneissi Defence exhibits and in the open source material vary slightly for some prayer times by around a minute or so, but nothing turns on this.

Wednesday 29 December 2004

5175. On **Wednesday 29 December 2004**, Mr Merhi's Purple 231 received a call from Mr Sabra's attributed Purple 018, at 15:55. Purple 231 activated SFEIR3, in southern Beirut, while Purple 018 activated both SAIDA1 and QANAYE1, which are in Sidon, in southern Lebanon.⁹⁹¹⁸

5176. On that day, Mr Oneissi's Purple 095 activated the COLA2 and COLA3 cells three times within a minute when it received two service texts at 15:26 and one call at 15:27.⁹⁹¹⁹ The noon prayer was at 11:41 and the dusk prayer at 16:38.⁹⁹²⁰

⁹⁹¹⁵ Exhibits 4D328-4D329, 4D331-4D334.

⁹⁹¹⁶ T. 23 March 2017, pp 79-80.

⁹⁹¹⁷ Prayer times for December 2004 and January 2005 are listed in for example: <https://www.islamicfinder.org/world/lebanon/276781/beirut-beyrouth-lb-prayer-times/> or <https://www.islamicfinder.org/prayer-times/printmonthlyprayer/?timeInterval=month&calendarType=Gregorian&month=11&year=2004>.

⁹⁹¹⁸ Exhibit P527 (Call sequence table of Purple 231), p. 107; exhibit P1221 (Call sequence table of Purple 018), p. 279; exhibit P1123 (ArcView shape files Alfa).

⁹⁹¹⁹ The call at 15:27 to Purple 095 was from Associate Purple 375. At 15:55, Purple 018 called Purple 231. Purple 231 received a call from Associate Purple 744, attributed to Mr Merhi's brother, at 16:29. Exhibit P1223 (Call sequence table of Purple 095), p. 256; exhibit P527 (Call sequence table of Purple 231), p. 107; exhibit P1221 (Call sequence table of Purple 018), p. 279; Gary Platt, T. 6 February 2017, pp 22, 49-50, 52-54; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 378, 381, 383. *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), paras 401, 408-409; exhibit P1793 (Chronology PowerPoint presentation – 20 December 2004 to 31 December 2004), slides 304-305, 307.

⁹⁹²⁰ Exhibit 4D329 (Timeline of Purple 095's activity on 29 December 2004), p. 2.

5177. Mr Platt testified that this was the first day of the ten days of increased Purple mobile activation of the COLA cells and that Purple 095's activation of the COLA cell for such a short time, should be seen in that context. He conceded, however, that an alternative explanation was that Purple 095's user was passing by the COLA cells area on the way from north to southern Beirut.⁹⁹²¹

Thursday 30 December 2004

5178. On **Thursday 30 December 2004**, as on the previous day, Mr Oneissi's Purple 095 activated one of the COLA cells, COLA3, for a short period, at 18:05, 18:09 and 18:11.⁹⁹²² One call, namely at 18:11, came from Mr Sabra's attributed Purple 018, also connecting to COLA3.⁹⁹²³ The dusk prayer was at 16:39.⁹⁹²⁴

5179. Open source information on daily prayer times reveals that the evening prayer time was at 18:03, which places the two Purple mobiles connecting to cells 'near' the mosque when Mr Abu Adass was likely attending the evening prayer.

Friday 31 December 2004

5180. On **Friday 31 December 2004** a peak in activity between the Purple mobiles occurred. There were ten calls between Mr Oneissi's Purple 095 and Mr Sabra's attributed Purple 018, and three calls from Purple 095 to Mr Merhi's Purple 231.⁹⁹²⁵

5181. As noted earlier, the evidence is of Mr Abu Adass praying almost every Friday at that mosque. The Oneissi Defence chart showed the noon prayer at 11:42 and dusk prayer at 16:40,⁹⁹²⁶ while the open source information gave the prayers times as 05:14, 11:41, 14:21, 16:39 and 18:03.

⁹⁹²¹ Gary Platt, T. 6 February 2017, pp 51-53.

⁹⁹²² Exhibit P1223, p. 257; Gary Platt, T. 6 February 2017, pp 90-92; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 391, 404. *See also* exhibit P1782, para. 422; exhibit P1793, slides 373-375.

⁹⁹²³ This call lasted 27 seconds. Exhibit P1221, p. 279; exhibit P1223, p. 257; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 391, 403-405. *See also* exhibit P1782, para. 422.

⁹⁹²⁴ Exhibit 4D334 (Timeline of Purple 095's activity on 30 December 2004).

⁹⁹²⁵ Exhibit P527, p. 108; exhibit P1221, pp 279-280; exhibit P1223, pp 257-258.

⁹⁹²⁶ Exhibit 4D333 (Timeline of Purple 095's activity on 31 December 2004), pp 1-2.

5182. Mr Sabra's attributed Purple 018 called Mr Oneissi's Purple 095 eight times between 12:39 and 16:30, namely at 12:39, 14:41, 14:09, 15:13, 15:39, 15:47, 15:58 and 16:30.⁹⁹²⁷

5183. During the call at 15:58, Mr Sabra's attributed Purple 018 was connecting to COLA2 and Mr Oneissi's Purple 095 activated the CHATIL1 cell at the start of the call and COLA2 at the end; the two cells are adjacent.⁹⁹²⁸ At 16:30, it connected to CBOURJ3 in southern Beirut.⁹⁹²⁹

5184. Subsequently, at 16:34, Mr Oneissi's Purple 095 connecting to CBOURJ3, called Mr Sabra's attributed Purple 018, which connected to CBOURJ2.⁹⁹³⁰ Shortly thereafter, Mr Oneissi's Purple 095 called Mr Merhi's Purple 231 at 16:55 and again at 18:18. Mr Oneissi's Purple 095 activated cells south of the airport on both occasions, whereas Mr Merhi's Purple 231 activated SFEIR3 both times.⁹⁹³¹ At 18:33, Mr Oneissi's Purple 095 called Mr Sabra's attributed Purple 018, with both activating CBOURJ3.⁹⁹³² At 18:41, Mr Oneissi's Purple 095 called again Mr Merhi's Purple 231, connecting to SFEIR2 and MIKAEL2 respectively.⁹⁹³³

5185. The only time when Mr Oneissi's Purple 095 activated a COLA cell on that day was during a call with Mr Sabra's attributed Purple 018 at 15:58.⁹⁹³⁴

5186. Before and after that call, Mr Oneissi's Purple 095 activated cells in the Dahyieh area. In Mr Platt's view, a journey from the Dahyieh area to the vicinity of the mosque and then back to Dahyieh appears to have occurred during the 45 minutes of those activations.⁹⁹³⁵

⁹⁹²⁷ Purple 095 was in south Beirut during the calls of 12:39, 12:41, 14:09, 15:13, 15:39 and 15:47. Exhibit P1223, p. 257; exhibit P1221, pp 279-280.

⁹⁹²⁸ Exhibit P1221, p. 280; exhibit P1223, p. 257; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 430. *See also* exhibit 4D325 (Cell coverage around the Arab University Mosque); exhibit P1782, para. 435.

⁹⁹²⁹ Exhibit P1223, p. 257.

⁹⁹³⁰ Exhibit P1221, p. 280; exhibit P1223, p. 257.

⁹⁹³¹ Exhibit P1223, p. 257; exhibit P527, p. 108; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 434; exhibit P1123.

⁹⁹³² Exhibit P1221, p. 280; exhibit P1223, p. 257.

⁹⁹³³ Exhibit P1223, p. 258.

⁹⁹³⁴ Exhibit P1223, pp 257-258.

⁹⁹³⁵ Exhibit P1223, pp 257-258; Gary Platt, T. 7 February 2017, p. 55.

5187. Mr Sabra's attributed Purple 018 activated COLA cells nine times that day. Broken down, this was at 10:39, 11:34, twice at 12:54, at 13:29, on COLA3, at 15:13 on COLA1, and at 15:57, 15:58 and 16:05 on COLA2.⁹⁹³⁶

5188. In addition, Purple 018 connected to cells within the 500-metre radius of the mosque on another six occasions. These were at 12:39, connecting to MAKASS3, at 12:41, on OUZAI4 which was adjacent to OUZAI1, at 14:09 and 14:26 activating CHATIL1 and at 15:39 and 15:47 on NASSER1.⁹⁹³⁷

5189. Mr Sabra's attributed Purple 018 connected to COLA cells near the mosque three times between noon and the 14:21 prayers, and then again between 15:13 and 16:05. Shortly before the 16:39/16:40 prayers, it had moved south of the mosque to CBOURJ2.⁹⁹³⁸

Saturday 1 January 2005

5190. On **Saturday 1 January 2005**, Mr Oneissi's Purple 095 called Mr Sabra's attributed Purple 018 three times. These were twice in the early afternoon, at 13:24 and 14:24, and once later at 16:51.⁹⁹³⁹

5191. During these calls, only Mr Sabra's attributed Purple 018 activated COLA3, at 14:24 and at 16:51.⁹⁹⁴⁰ Mr Oneissi's Purple 095 also called Mr Merhi's Purple 231 at 14:18, a few minutes before its second call to Purple 018.⁹⁹⁴¹ In the morning the same day, Purple 018 activated the COLA3 cell at 11:12 and 12:38.⁹⁹⁴²

⁹⁹³⁶ Exhibit P1221, pp 279-280; Gary Platt, T. 7 February 2017, pp 49-51, 53, 58-59; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 429. *See also* exhibit P1793, slides 432, 434-438.

⁹⁹³⁷ Exhibit P1221, pp 279-280; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1273; exhibit 4D325.

⁹⁹³⁸ Exhibit P1221, pp 279-280.

⁹⁹³⁹ Exhibit P1223, p. 258.

⁹⁹⁴⁰ For the calls at 13:24 and 14:24, Purple 095 connected to ARAMOU2 and BCHAMO2, south of the airport. During its third call to Purple 018, at 16:51, Purple 095 activated HADATH3 in south Beirut. Between 16:05 and 16:46 both Purple 095 and Purple 018 were in contact with Associate Purple 375. Exhibit P1223, p. 258; exhibit P1221, pp 280-281; exhibit P1339 (Call sequence table of Associate Purple 375), p. 32. *See also* exhibit P1123.

⁹⁹⁴¹ Purple 095 connected to ARAMOU2, south of the airport, and Purple 231 activated SFEIR3. Exhibit P1223, p. 258; exhibit P527, p. 108.

⁹⁹⁴² Exhibit P1221, p. 280; Gary Platt, T. 8 February 2017, pp 12-13; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 453-454. *See also* exhibit P1782, para. 450; exhibit P1807 (Chronology PowerPoint presentation – 1 January 2005 to 17 January 2005), slides 56-59.

5192. At 12:44 and 13:57, Purple 018 was in the predicted best server coverage area of CBJOUR3. Later the same day, after having spent some time in southern Beirut, it again connected to the COLA3, COLA2 and COLA1 cells between 14:24 and 19:06. This was sixteen times in total.⁹⁹⁴³ The last three of these calls were with Mr Merhi's Purple 231.⁹⁹⁴⁴

5193. Mr Oneissi's Purple 095 did not activate any COLA cells nor other cells providing best server coverage within a kilometre of the mosque on this day.⁹⁹⁴⁵ The daily prayers in Beirut were at 11:42, 14:22, 16:40 and 18:04. Purple 018's COLA cell activations overlapped with the afternoon, dusk and evening prayers at the mosque.

Sunday 2 January 2005

5194. On **Sunday 2 January 2005**, no Purple mobile used cells providing coverage to the (extended) mosque area.⁹⁹⁴⁶ Mr Oneissi's Purple 095 and Mr Sabra's attributed Purple 018 were in contact twice on this day, at 12:33 and 18:10.⁹⁹⁴⁷ Mr Merhi's Purple 231 called Mr Oneissi's Purple 095 in the afternoon, at 15:01.⁹⁹⁴⁸

5195. The same day, Mr Merhi's attributed Green 071 contacted Mr Badreddine's Green 023 for a 38-second voice call in the evening, at 19:18, and Mr Ayyash's Green 300 called Green 023 at 15:13.⁹⁹⁴⁹ After the call on 2 January, Mr Merhi's attributed Green 071 was inactive for ten

⁹⁹⁴³ Purple 018 activated the COLA cells at 14:24, 15:37, 15:52, 15:55, 16:00, 16:02 (three times), 16:05, 16:11, 16:12, 16:51, 16:54, 17:53, 18:35 and 19:06. Exhibit P1221, pp 280-281; Gary Platt, T. 8 February 2017, pp 13-15; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 440, 458-460. *See also* exhibit P1782, para. 450; exhibit P1807, slides 59-63.

⁹⁹⁴⁴ Purple 231 called Purple 018 at 17:53 and 18:35, after which it received a call from Purple 018 at 19:06. Exhibit P1221, p. 281.

⁹⁹⁴⁵ Exhibit P1223, p. 258; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1273-1274.

⁹⁹⁴⁶ Gary Platt, T. 8 February 2017, pp 22-23; exhibit P1221, p. 281; exhibit P1223, pp 258-259; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 467. *See also* exhibit P1782, para. 458.

⁹⁹⁴⁷ At 12:33, Purple 095 called Purple 018, activating GREENH2, south of the airport. At 18:10, Purple 018 called Purple 095, activating SFEIR3 and HARA2 respectively. In between these calls, at 13:42, Associate Purple 375 called Purple 018. Exhibit P1223, p. 258; exhibit P1221, p. 281; exhibit P1339, p. 32.

⁹⁹⁴⁸ Purple 231 activated BRAJNE2 and Purple 095 activated MIKAEL2 and SFEIR3. Exhibit P527, p. 108; exhibit P1223, p. 258.

⁹⁹⁴⁹ Exhibit P1205 (Call sequence table of Green 071), p. 8; exhibit P1211 (Call sequence table of Green 023), p. 3; exhibit P1207 (Call sequence table of Green 300), p. 3; Gary Platt, T. 8 February 2017, pp 22-25; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 469-470, 474. *See also* exhibit P1782, para. 455; exhibit P1807, slides 71-73.

days.⁹⁹⁵⁰ In the context of the wider pleaded network activity, there was none on the Blue network that day.⁹⁹⁵¹

5196. As there was no Purple mobile activity near the area of the mosque, and Mr Merhi's attributed Green 071 had been inactive for the previous five days, Mr Platt concluded that this call on 2 January 2005 was pre-arranged and could not have been an update call. He stated that it was consistent with the users of these Green mobiles arranging a meeting.⁹⁹⁵²

5197. Mr Platt also testified that the Green mobile calls of 2 January 2005, while not having such close correlations, had a similar pattern to those calls from Mr Ayyash's Green 300 and Mr Merhi's Green 071 to Mr Badreddine's Green 023, on 23 and 27 December 2004. In his view, those December calls were pre-arranged and coordinated between their users. Their duration was often short; thus he concluded that these were arrangement or update calls, rather than conversational ones.⁹⁹⁵³

Monday 3 January 2005

5198. The witness who met 'Mohammed' in the mosque and saw Mr Abu Adass there would have done so either on **Monday 3 January**, or **Monday 10 January 2005** during the noon prayer.⁹⁹⁵⁴ On Monday 3 January, according to Mr Platt's evidence, another peak in inter-purple activity occurred. Purple 018 and Mr Oneissi's Purple 095 were in contact ten times during the two hours between 12:22 and 14:24.⁹⁹⁵⁵

5199. Mr Sabra's attributed Purple 018 called Mr Oneissi's Purple 095 six times—at 12:22, 13:51, 13:58, 14:08, 14:12 and 14:24—while Purple 095 called Purple 018 four times, at 12:23, 12:37, 12:45 and 14:16.⁹⁹⁵⁶

⁹⁹⁵⁰ Exhibit P1205, p. 108; Gary Platt, T. 27 January 2017, pp 55-57, T. 8 February 2017, p. 24.

⁹⁹⁵¹ See para. 4399.

⁹⁹⁵² Gary Platt, T. 8 February 2017, pp 22-25. See also exhibit P1807, slide 73.

⁹⁹⁵³ At 09:56 on 27 December 2004, Green 071 contacted Green 023 for less than a minute. Three minutes later Green 300 called Green 023 for 46 seconds. Following its call to Green 023, Green 071 became inactive again until 2 January 2005. Exhibit P1205, p. 8; exhibit P1207, p. 3; exhibit P1211, p. 3; Gary Platt, T. 26 January 2017, pp 27-28, T. 27 January 2017, pp 53-57; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 284, 288-289, 339, 347-348, 464, 469-470, 474. See also exhibit P1782, paras 347, 379-381, 455.

⁹⁹⁵⁴ See above, at paras 4945-4952, 4986.

⁹⁹⁵⁵ Gary Platt, T. 8 February 2017, pp 29-32; exhibit P1221, pp 281-282; exhibit P1223, p. 259; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 479. See also exhibit P1782, para. 464.

⁹⁹⁵⁶ Exhibit P1221, pp 281-282; exhibit P1223, p. 259. Purple 095 was in south Beirut for all of these calls.

5200. Before the first call to Mr Oneissi's Purple 095, Purple 018 activated COLA3 at 11:16.⁹⁹⁵⁷ During its call with Purple 095 at 12:22 and 12:23, it activated OUZAI3 and CBOURJ3.⁹⁹⁵⁸

5201. Mr Oneissi's Purple 095 activated CHATIL1 at 14:44 and at the end of this 51-second call, it activated COLA2.⁹⁹⁵⁹

5202. According to Mr Platt, this shows that Mr Oneissi's Purple 095 may have been traveling at the time of the call. Purple 095 activated cells in southern Beirut twenty minutes before and within thirty minutes of this COLA2 activation. Mr Platt conceded, however, that this pattern was similar to that of Mr Oneissi's Purple 095 on Friday 31 December 2004, suggesting a possible journey from the Dahyieh area to the 'vicinity' of the mosque and then back to Dahyieh.⁹⁹⁶⁰

5203. Neither Mr Sabra's attributed Purple 018 nor Mr Oneissi's Purple 095 was in contact with Mr Merhi's Purple 231 on Monday 3 January 2005.⁹⁹⁶¹

5204. The prayer times on this day were 05:15, 11:43, 14:23, 16:41 and 18:05.⁹⁹⁶² There was no overlap between these and the COLA cells activations. Mr Sabra's attributed Purple 018, however, activated a COLA cell before the noon prayer, while Mr Oneissi's Purple 095 activated a COLA cell after the start of the afternoon prayer.⁹⁹⁶³

Tuesday 4 January 2005

5205. The seventh day of the so-called 'COLA phase', **Tuesday 4 January 2005**, coincided with the initialisation process of the Red mobiles in Tripoli.⁹⁹⁶⁴ On this day, there was an 81-second

⁹⁹⁵⁷ Exhibit P1221, p. 281.

⁹⁹⁵⁸ For the remainder of the calls, Purple 018 connected to cells in south Beirut. Exhibit P1221, pp 281-282.

⁹⁹⁵⁹ The call came from Associate Purple 375. Exhibit P1223, p. 259.

⁹⁹⁶⁰ Gary Platt, T. 8 February 2017, pp 32-33, T. 24 March 2017, pp 21-22. *See also* exhibit P1807, slides 87-90.

⁹⁹⁶¹ Exhibit P527, p. 108; exhibit P1221, pp 281-282; exhibit P1223, p. 259; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 485.

⁹⁹⁶² According to the Oneissi Defence chart, the noon prayer was at 11:43 and the dusk prayer at 16:42. Exhibit 4D332 (Timeline of Purple 095's activity on 3 January 2005).

⁹⁹⁶³ Exhibit P1221, p. 281; exhibit P1223, p. 259.

⁹⁹⁶⁴ On this day, eight SIM cards that were used to form the Red Network were activated in the Tripoli area. *See* paras 2253, 4401.

call from Yellow 425 to Mr Sabra's attributed Purple 018 at 12:28. Two hours later, Yellow 425 called Mr Ayyash's Yellow 294 for eight seconds.⁹⁹⁶⁵

5206. In the afternoon, Mr Oneissi's Purple 095 called Mr Sabra's attributed Purple 018 once at 15:26 and Mr Merhi's Purple 231 twice, at 15:52 and 17:33.⁹⁹⁶⁶ In the late afternoon, Mr Merhi's Purple 231 called Purple 018 at 18:11 and Purple 018 call Purple 231 back twice at 18:47 and 18:50.⁹⁹⁶⁷

5207. Between 15:08 and 18:50, Purple 018 used COLA2 and COLA3 for six sequential calls, including the one with Mr Oneissi's Purple 095 and the three with Mr Merhi's Purple 231.⁹⁹⁶⁸ These COLA activations overlapped with the dusk and evening prayers at 16:42 and 18:06.

5208. Of the call between Yellow 425 and Purple 018,⁹⁹⁶⁹ this was the only time between September 2004 and February 2005 that the Yellow and Purple mobiles were in contact.⁹⁹⁷⁰ For Mr Platt this was:

obviously a crucial period in -- in the planning, the operation, the plot, whereby the Red Phones are clearly being activated. A decision has been made for that. And, of course, we're in the middle of the -- what's been termed as the COLA phase, the activity of the Purple Phones around the Arab University Mosque. So obviously it coincides with that, where both sides of the operation, the -- what has been termed the false claim and the -- and I'm using other people's terms slightly here, the mission team are in full flow, and at a pivotal point in the operation.⁹⁹⁷¹

⁹⁹⁶⁵ Exhibit P1221, p. 282; exhibit P1242 (Call sequence table of Yellow 425), p. 29; exhibit P1240 (Call sequence table of Yellow 294), p. 52; Gary Platt, T. 8 February 2017, pp 65-66; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 508-509. *See also* exhibit P1782, para. 474; exhibit P1807, slides 111-113.

⁹⁹⁶⁶ On all of these occasions, Purple 095 connected to cells south of the airport. Exhibit P1223, pp 259-260.

⁹⁹⁶⁷ Exhibit P527, p. 108; exhibit P1221, p. 282.

⁹⁹⁶⁸ These calls took place at 15:08, 15:26, 17:09, 18:11, 18:47 and 18:50. Exhibit P1221, p. 282; Gary Platt, T. 8 February 2017, pp 66-68; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 492, 510-512. *See also* exhibit P1782, para. 475; exhibit P1807, slides 114-118.

⁹⁹⁶⁹ At 12:28, Yellow 425 activated Sfeir_B and Purple 018 activated BIRABD1. Exhibit P1242, p. 29; exhibit P1221, p. 282. *See also* Gary Platt, T. 8 February 2017, p. 65; exhibit P1782, para. 474; exhibit P1783, para. 508.

⁹⁹⁷⁰ Exhibit P1782, para. 474.

⁹⁹⁷¹ Gary Platt, T. 8 February 2017, p. 66.

Wednesday 5 January 2005

5209. It was either on **Wednesday 5 January**—or alternatively **Wednesday 12 January 2005**—that the witness who had met ‘Mohammed’ in the mosque was supposed to meet ‘Mohammed’ again to teach him how to pray.⁹⁹⁷²

5210. On 5 January 2005, there was a single call from Mr Oneissi’s Purple 095 to Mr Sabra’s attributed Purple 018 at 13:28 when the mobiles were connecting to cells in south Beirut, after which Purple 018 activated COLA3 twice between 14:34 and 14:44, shortly after the start of the afternoon prayers.⁹⁹⁷³ The afternoon prayer, according to the open source information, was at 14:25.

5211. Mr Sabra’s attributed Purple 018 and Mr Oneissi’s Purple 095 were not in contact with Mr Merhi’s Purple 231 this day.⁹⁹⁷⁴

5212. Mr Platt testified that the activation of cells in Tripoli by Yellow mobile users who were not normally in Tripoli on the same days as significant Red activity, for example on 5 January 2005, ‘established clear connectivity between the Yellow and Red phones’ which can no longer be ‘mere coincidence’.⁹⁹⁷⁵

Thursday 6 January 2005

5213. On the penultimate day of the pleaded so-called ‘COLA phase’, **Thursday 6 January 2005**, Mr Sabra’s attributed Purple 018 activated COLA3 at 11:41, just before the start of the noon prayer, and CHATIL1 in the afternoon at 15:28.⁹⁹⁷⁶

⁹⁹⁷² See above, at para. 4949. The witness was meant to meet ‘Mohammed’ before or after the noon prayer, namely, either at about 11:00 or 13:00, so that there would be fewer people around. T. 20 January 2016, pp 38-39 (closed session).

⁹⁹⁷³ At 14:44, Purple 018 sent a text message to Associate Purple 375, and at 16:28 it called that number. Exhibit P1221, p. 282; exhibit P1223, p. 260; Gary Platt, T. 8 February 2017, pp 75-77; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 516, 525-528. See also exhibit P1782, para. 480; exhibit P1807, slides 128-134.

⁹⁹⁷⁴ Purple 095 called Associate Purple 744, which the Prosecution attributed to Mr Merhi’s brother, at 11:38 and at 16:35, who also received a call from Purple 231 at 15:39. Exhibit P527, pp 108-109; exhibit P1221, p. 282; exhibit P1223, p. 260; exhibit P1342 (Call sequence table of Associate Purple 744), p. 66; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 516, 530.

⁹⁹⁷⁵ Gary Platt, T. 8 February 2017, pp 70-72. See also exhibit P1807, slides 121-123.

⁹⁹⁷⁶ Exhibit P1221, p. 283. According to the open source information the noon prayer was at 11:44.

5214. It then activated the COLA3 cell five times between 16:34 and 18:48.⁹⁹⁷⁷ The last four activations overlapped with the dusk and evening prayers, at 16:44 and 18:08.

5215. The only contact for the day between the Purple mobiles was a text message from Purple 018 sent to Mr Oneissi's Purple 095 in the afternoon, at 16:34.⁹⁹⁷⁸ Mr Merhi's Purple 231 received and made no calls on this day; it was inactive from the previous evening at 20:44, until the next day when it received a call from Mr Oneissi's Purple 095 at 11:30.⁹⁹⁷⁹

Friday 7 January 2005

5216. The last day of the so-called 'COLA phase', **Friday 7 January 2005**, is the day on which the Prosecution submits that Mr Abu Adass met 'Mohammed' at the mosque during the Friday prayer, before disappearing on the morning of Sunday 16 January.⁹⁹⁸⁰ The noon prayer was at 11:45 and the dusk prayer at 16:45.⁹⁹⁸¹

5217. The first contact between the Purple mobiles was in the morning at 09:52, when Mr Oneissi's Purple 095 called Mr Sabra's attributed Purple 018 for thirty seconds using the OUZAI1 cell.⁹⁹⁸² An hour and a half later, at 11:30, it called Mr Merhi's Purple 231 using the COLA3 cell, which was Purple 231's only call on that day.⁹⁹⁸³

5218. At 11:31, Purple 095 activated for two consecutive calls the COLA3 and COLA2 cells.⁹⁹⁸⁴ The calls were to and from a number ending in 188, attributed to Mr Oneissi's mother. At the end

⁹⁹⁷⁷ These activations occurred at 16:34 (twice), 16:36, 17:14 and 18:48. Purple 018's first call of the day came from Associate Purple 375 at 10:38. It had further two contacts with Associate Purple 375 during the day, at 16:34, when it sent an SMS to this number, and at 17:14, when it received a call from this number. Exhibit P1221, pp 282-283; Gary Platt, T. 8 February 2017, pp 86-88; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 532, 535. *See also* exhibit P1782, para. 486; exhibit P1807, slides 156, 158-159.

⁹⁹⁷⁸ Purple 095 was in south Beirut (activating SFEIR3). Exhibit P1221, p. 283; exhibit P1223, p. 260; exhibit P527, p. 109; Gary Platt, T. 8 February 2017, p. 87; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 532, 535, 538. *See also* exhibit P1782, paras 486-487.

⁹⁹⁷⁹ Exhibit P527, p. 109.

⁹⁹⁸⁰ *See above*, at paras 4929-4935, 4941-4943. The Prosecution submits that the evidence points firmly to Friday 7 January 2005 as the day of the last, if not only, meeting between 'Mohammed' and Mr Abu Adass. Prosecution final trial brief, paras 519-525.

⁹⁹⁸¹ Exhibit 4D331 (Timeline of Purple 095's activity on 7 January 2005), pp 1, 3.

⁹⁹⁸² The OUZAI1 cell is within the 500-metre radius from the mosque. Purple 018 activated SFEIR2. Exhibit P1223, p. 261; exhibit P1221, p. 283; Gary Platt, T. 9 February 2017, pp 13-14; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 541, 565, 1273. *See also* exhibit P1782, para. 497; exhibit P1807, slides 197-198.

⁹⁹⁸³ Exhibit P527, p. 109; exhibit P1223, p. 261; Gary Platt, T. 9 February 2017, pp 14-15, 17; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 566. *See also* exhibit P1782, para. 498; exhibit P1807, slides 199-201.

⁹⁹⁸⁴ Exhibit P1223, p. 261; Gary Platt, T. 9 February 2017, pp 14-15, 17; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 567. *See also* exhibit P1782, para. 497; exhibit P1807, slides 199-201.

of the second call, Purple 095 switched from COLA2 to OUZAI3.⁹⁹⁸⁵ Subsequently, at 12:36, Mr Oneissi's Purple 095 received a call while it was in SFEIR3 in southern Beirut.⁹⁹⁸⁶

5219. Mr Platt testified that this pattern of cell activation is 'consistent' with Mr Oneissi having been on his way to Dahyieh when he activated the COLA cells at 11:31, meaning he would not have been at the mosque around the noon prayer time, which on that day was 11:45.⁹⁹⁸⁷

5220. Shortly thereafter, at 12:54 and 12:59, Mr Oneissi's Purple 095 exchanged two calls with Purple 018, activating MAZRAA2 at the start and COLA3 at the end of each call, while Purple 018 activated COLA1 and COLA2 at the start and at the end of the calls.⁹⁹⁸⁸

5221. In the next twenty minutes, there were three calls between Purple 095 and Purple 018, at 13:03, 13:04 and 13:19, with both mobiles using Alfa cells providing coverage near the mosque. For these calls, Mr Oneissi's Purple 095 used OUZAI1 and COLA2, while Mr Sabra's attributed Purple 018 activated COLA2 and CHATIL3.⁹⁹⁸⁹

5222. Later in the afternoon, at 14:05, Mr Oneissi's Purple 095 activated OUZAI3 and for the following four sequential calls between 15:24 and 16:38, it returned to the COLA3 cell.⁹⁹⁹⁰ For a call at 16:41, it used MSAYTB2, and for another call at 16:47, it used COLA2.⁹⁹⁹¹ Mr Sabra's attributed Purple 018 activated COLA3 at 15:44 and COLA2 for two calls with Mr Oneissi's Purple 095 later in the afternoon.⁹⁹⁹² Mr Oneissi's Purple 095 connected to COLA cells shortly before and shortly after the dusk prayer, which on that day was at 16:45.⁹⁹⁹³ The two extracts below

⁹⁹⁸⁵ Exhibit P1223, p. 261; Gary Platt, T. 9 February 2017, pp 14-15, 17; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 566-567. The mobile ending in 188 is attributed to Mr Oneissi's mother, *see* paras 3273-3274.

⁹⁹⁸⁶ Exhibit P1223, p. 261; Gary Platt, T. 9 February 2017, pp 15, 17-18; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 568. *See also* exhibit P1807, slide 201.

⁹⁹⁸⁷ Gary Platt, T. 23 March 2017, pp 86-88; exhibit 4D330 (Distance between OUZAI3 and COLA2); exhibit 4D331, p. 1.

⁹⁹⁸⁸ Exhibit P1221, p. 283; exhibit P1223, p. 261; Gary Platt, T. 9 February 2017, pp 16-18; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 569. *See also* exhibit P1807, slide 203.

⁹⁹⁸⁹ Exhibit P1221, p. 283; exhibit P1223, p. 261; Gary Platt, T. 9 February 2017, pp 21-22; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 570. *See also* exhibit P1807, slides 204-207.

⁹⁹⁹⁰ The four calls were made at 15:24, 15:31, 16:16 and 16:38. At 14:05 Purple 095 called Associate Purple 375. Exhibit P1223, p. 261; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 570.

⁹⁹⁹¹ Exhibit P1223, p. 261.

⁹⁹⁹² The two calls were at 16:38 and 16:47. Exhibit P1221, p. 283; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 570.

⁹⁹⁹³ Purple 095 activated COLA3 for a call from Purple 018 at 16:38, and COLA2 at the start of a call to Purple 018 at 16:47. Exhibit 1223, p. 261; exhibit 4D331, p. 3. Open source information gives the afternoon and evening prayers as at 14:26 and 18:08. The prayer times for Friday 7 January 2005 were: *Fajr* 05:15, *Dhuhr* 11:44, *Asr* 14:26, *Maghrib* 16:45 and *Isha* 18:08.

from Mr Platt's chronology report depict the activations of Mr Oneissi's Purple 095 and Mr Sabra's attributed mobile 018 to the COLA and adjacent cells that day:

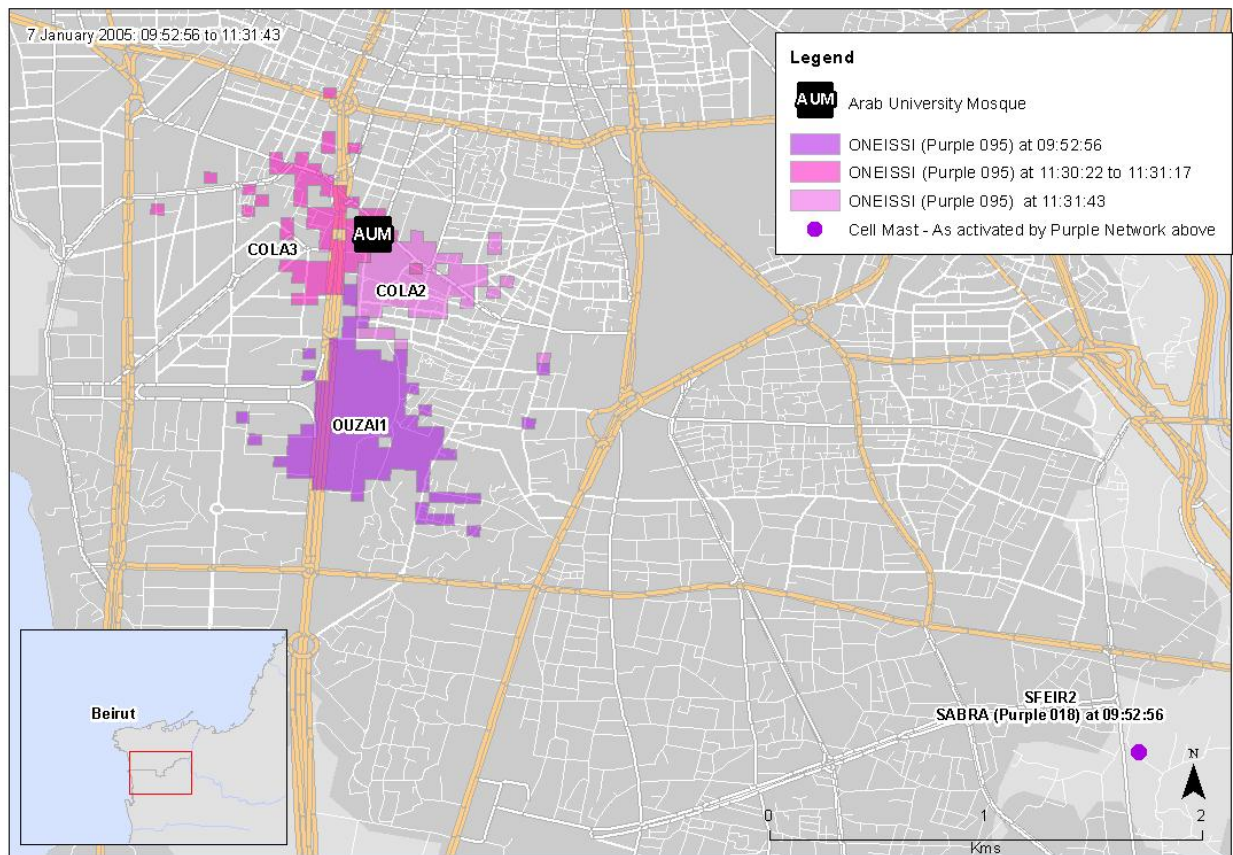


Exhibit P1783 (Expert report of Gary Platt – Chronology), Map 56

Purple 095, Mosque, 7 January 2005 (09:52 to 11:31)

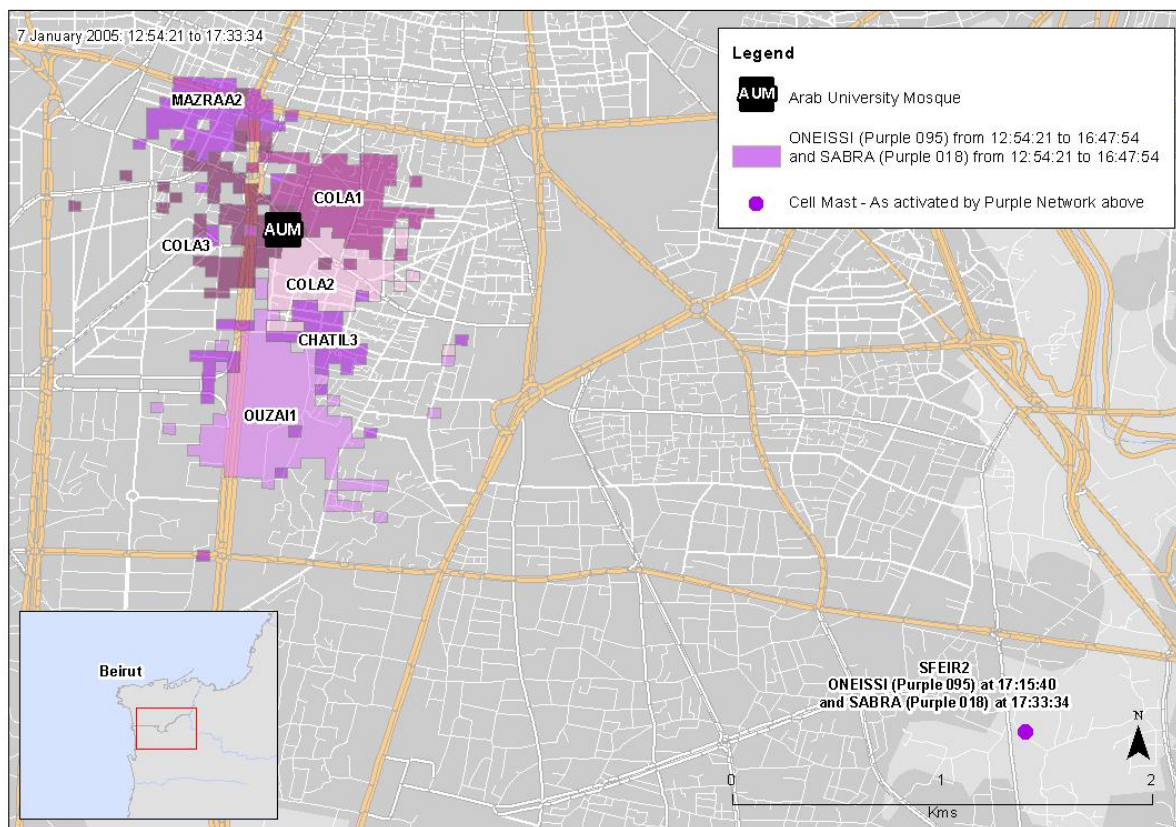


Exhibit P1783 (Expert report of Gary Platt – Chronology), Map 57

Purple 095 and Purple 018, Mosque, 7 January 2005 (12:54 to 17:33)

5223. This was the last day when Purple 018 activated any of the COLA cells.⁹⁹⁹⁴ Mr Platt concluded, as demonstrated in the graph below, that the frequency of calls between Mr Sabra's attributed Purple 018 and Mr Oneissi's Purple 095 increased during the 'COLA phase' and the sudden intensity of contacts coincided with their call activity around the mosque.⁹⁹⁹⁵

⁹⁹⁹⁴ Exhibit P1221, pp 283 and following; Gary Platt, T. 9 February 2017, pp 26, 29-30; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 572. *See also* exhibit P1782, para. 499.

⁹⁹⁹⁵ Gary Platt, T. 7 February 2017, pp 58-59, 66-68. *See also* exhibit P1793, slides 444-448, exhibit P1934 (Corrected Chronology PowerPoint slides regarding the Purple mobiles), slide 9.

Contact between Purple 018 (Sabra) and Purple 095 (Oneissi) Correlates with Purple 018 (Sabra) and Purple 095 (Oneissi) COLA Activations

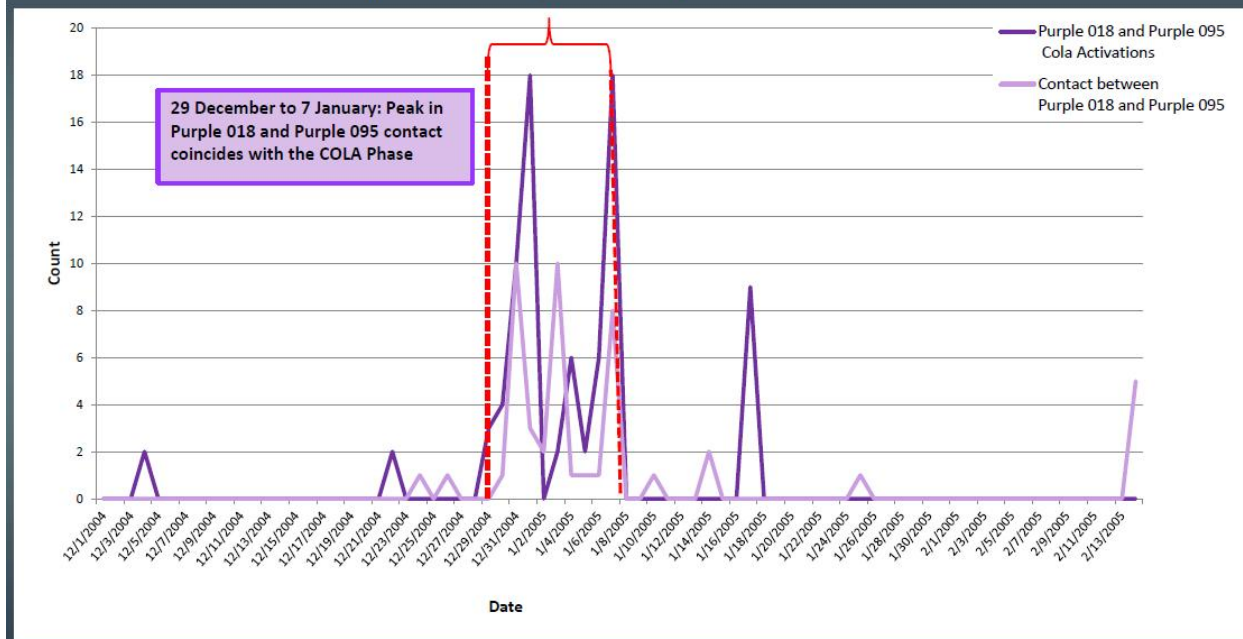


Exhibit P1793 (Chronology PowerPoint presentation – 20 December 2004 to 31 December 2004), slide 448

5224. Mr Platt accepted that during the COLA activation periods on **Wednesday 29, Thursday 30, Friday 31 December 2004 and Monday 3 January 2005**, Mr Oneissi's Purple 095 did not activate the COLA cells immediately before or after the noon or dusk prayer.⁹⁹⁹⁶

5225. Moreover, he agreed, both in his report and in his testimony, that activation of the COLA cells does not establish precisely where the person holding the mobile was; it can only show presence in the general area of activation.⁹⁹⁹⁷ He also accepted that a gap of twenty to sixty minutes

⁹⁹⁹⁶ Gary Platt, T. 23 March 2017, pp 83-85, T. 24 March 2017, pp 9-10; exhibits 4D329, 4D332-4D334. Prayer times for December 2004 and January 2005 are listed in the open source material referred to in footnote 9917, and are set out for the relevant days in the tables prepared by the Trial Chamber at paragraphs 5285, 5287, 5289-5290 below.

⁹⁹⁹⁷ Gary Platt, T. 24 March 2017, pp 11-12, 35-36; exhibit 4D321 (COLA cells coverage and distance from COLA cell mast); exhibit 4D337 (Google Earth satellite photo with coverage of MAZRAA2, COLA3, COLA2, OUZAI1).

between calls activating the same cells would provide sufficient time for a mobile to have travelled elsewhere and returned to connect to that cell.⁹⁹⁹⁸

(b) Submissions

5226. In opening the case against the initial four Accused, Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra, the Prosecution submitted that the three Purple mobiles, while not being a closed network, conformed to a calling pattern very similar to that of the Green mobiles and the three initial Blue mobiles.⁹⁹⁹⁹ It did not, however, present any evidence that the calls between the Purple mobiles followed an open triangle pattern, like that of the Green network, and did not, in its final trial brief, reiterate what was stated to this effect in opening the case.

5227. Prosecution lead counsel stated in his opening that ‘Mr Merhi would call Mr Sabra and vice versa. The same between Mr Merhi and Mr Oneissi, but virtually no calls between Mr Sabra and Mr Oneissi. Those call patterns changed significantly in late December’.¹⁰⁰⁰⁰ Later, in opening the case against Mr Merhi, he added that the call between Mr Oneissi and Mr Sabra, who was in Tripoli on 24 December 2004, represented a ‘break in their calling protocol after adherence for five weeks’, and that this ‘must have been for something of significance, i.e., for Mr. Oneissi to tell Mr. Sabra about Abu Adass’.¹⁰⁰⁰¹

5228. At the end of the case, the Prosecution submitted that the Purple mobiles used the COLA cells, which provided coverage of the Arab University Mosque area, in an extraordinary fashion over the ten-day period when ‘Mohammed’ was approaching candidates in the mosque—from Wednesday 29 December 2004 until Friday 7 January 2005.¹⁰⁰⁰² During the ten-day ‘COLA phase’ there was a ‘dramatic increase in contact’ between Purple 095 and Purple 018.¹⁰⁰⁰³ The Prosecution

⁹⁹⁹⁸ Gary Platt, T. 23 March 2017, pp 45-46.

⁹⁹⁹⁹ Prosecutor’s opening statement, T. 16 January 2014, pp 102-103 (Mr. G. Cameron). *See also* Prosecutor’s opening statement regarding Hassan Habib Merhi, T. 18 June 2014, p. 40 (Mr G. Cameron). For evidence on the open triangle pattern of the Green mobiles and the three initial Blue mobiles, *see* paras 2210-2212, 2306, 2332. For the overview of the evidence regarding the Purple mobiles, *see* chapter VIII ‘Nature and purpose of colour-coded mobile networks and Purple group of mobiles’, (H) ‘Purple group of mobiles’.

¹⁰⁰⁰⁰ Prosecutor’s opening statement, T. 16 January 2014, pp 102-103 (Mr G. Cameron); Prosecutor’s opening statement regarding Hassan Habib Merhi, T. 18 June 2014, pp 39-40, 44-47 (Mr G. Cameron).

¹⁰⁰⁰¹ Prosecutor’s opening statement regarding Hassan Habib Merhi, T. 18 June 2014, pp 47-49 (Mr G. Cameron).

¹⁰⁰⁰² Prosecution final trial brief, paras 533-543, 731.

¹⁰⁰⁰³ Prosecution final trial brief, para. 544, *see also* paras 545-548.

acknowledges, however, that some caution must be exercised in relation to the call data before 1 August 2004, because cell data from then was only available for outgoing calls.¹⁰⁰⁰⁴

5229. Mr Sabra's Purple 018 and Mr Oneissi's Purple 095 connected to Alfa's COLA cells *in the immediate vicinity* of the mosque on nine days between Wednesday 29 December 2004 and Friday 7 January 2005, concurrently with 'Mohammed's' presence in the same mosque and the selection of Mr Abu Adass.¹⁰⁰⁰⁵ On each day, the mobile using the COLA cells also had contact with Mr Merhi's Purple 231 while in the mosque area, shortly before or after.¹⁰⁰⁰⁶ The Prosecution submitted that the mobile usage in this period was exceptional. First, the Purple mobiles were not usually in the COLA area. Second, Mr Sabra's Purple 018 and Mr Oneissi's Purple 095 exchanged an unusually high number of calls.¹⁰⁰⁰⁷ And third, Mr Merhi and Mr Badreddine were in contact after a hiatus.¹⁰⁰⁰⁸

5230. Relying on Mr Platt's expert report, the Prosecution explained that sixteen Alfa cells served the area around the mosque, within a 500-metre radius of it. The COLA cell was the closest, less than a hundred metres away, and COLA3's azimuth pointed directly to, and extended over, the surrounding vicinity, including the Abu Adass family home.¹⁰⁰⁰⁹

5231. The 'COLA phase' also coincided with broader developments in the conspiracy, namely the establishment of the Red network¹⁰⁰¹⁰ and the surveillance of Mr Hariri on Tuesday 21 December 2004 when he met Mr Nasrallah.¹⁰⁰¹¹

5232. The Prosecution submits that the 'COLA phase' also coincided with the shutdown of the Yellow network between Thursday 30 December 2004 and Friday 7 January 2005, 'as operational security was tightened in anticipation of an advance in preparations for the assassination'.¹⁰⁰¹² Within this context, Yellow 425 called Mr Sabra's Purple 018 on 4 January and then Mr Ayyash's

¹⁰⁰⁰⁴ Prosecution final trial brief, para. 540.

¹⁰⁰⁰⁵ Prosecution final trial brief, paras 533-534, 543.

¹⁰⁰⁰⁶ Prosecution final trial brief, para. 534; Prosecution closing submissions, 21 September 2018, pp 82-83.

¹⁰⁰⁰⁷ Prosecution final trial brief, paras 544-548, 731-736.

¹⁰⁰⁰⁸ Prosecution final trial brief, paras 701, 733.

¹⁰⁰⁰⁹ Prosecution final trial brief, para. 533, fn. 1099.

¹⁰⁰¹⁰ Prosecution final trial brief, para. 727.

¹⁰⁰¹¹ Prosecution final trial brief, paras 697, 732.

¹⁰⁰¹² Prosecution final trial brief, para. 611.

Yellow 294 the same afternoon. In the Prosecution's view, these events confirm the connection between the Purple mobiles' false claim and the conspiracy.¹⁰⁰¹³

5233. The Merhi Defence submits that no reliable inferences can be drawn from the behaviour of the Purple mobiles during the 'COLA phase', as the cell data from before 1 October 2004 is incomplete. It argues that it is therefore impossible to establish that the activity of the Purple mobiles was exceptional during a 'COLA phase' period, when the data for the remainder of their attribution period is incomplete.¹⁰⁰¹⁴

5234. It also argues that throughout the amended consolidated indictment period, neither Purple 231 nor Green 071 activated cells near the mosque and that the activity of the other two Purple mobiles around the mosque was not exceptional.¹⁰⁰¹⁵ This was also so considering that Purple 095 had activated one of the COLA cells and neighbouring cells on a few occasions in 2004, including during a call to Purple 231, and that Purple 018 also activated cells covering this area before 2004.¹⁰⁰¹⁶

5235. The Merhi Defence points to absence of contacts between Purple 231 and the other Purple mobiles during the 'COLA phase', when on the Prosecution's case 'Mohammed' met Mr Abu Adass, for example on Wednesday 5 January 2005. Similarly, there is 'weak' call data evidence in relation to Mr Merhi's alleged activity on Friday 7 January 2005, the date that the Prosecution believed the 'Mohammed' meeting occurred.¹⁰⁰¹⁷

5236. To establish that the activity of those mobiles was unique in that ten-day period, the frequency of COLA cell activations throughout the entire period that the mobiles were used should be known. Instead, for 82 per cent of Purple 095 attribution's period the data is incomplete.¹⁰⁰¹⁸ The incompleteness of the telecommunications data also means that the Prosecution cannot draw inferences about the reasons for the calls between the Purple mobiles.¹⁰⁰¹⁹ Specifically, the Merhi Defence points out that:

¹⁰⁰¹³ Prosecution final trial brief, paras 611-612.

¹⁰⁰¹⁴ Merhi Defence final trial brief, paras 494-501.

¹⁰⁰¹⁵ Merhi Defence final trial brief, paras 492, 494-497.

¹⁰⁰¹⁶ Merhi Defence final trial brief, para. 497.

¹⁰⁰¹⁷ Merhi Defence final trial brief, paras 502-503.

¹⁰⁰¹⁸ Merhi Defence final trial brief, para. 499. The attribution period was 9 January 2003 until 16 February 2005.

¹⁰⁰¹⁹ Merhi Defence final trial brief, paras 500-502.

Between 15 June 2002 and 14 February 2005, Purple 018 and Purple 231 exchanged 209 calls and seven SMSs. For almost 50% of these calls, the cell data is not available. The same is true for Purple 095, since it had 195 phone exchanges with Purple 231, including six SMSs. For 71 of those 195 exchanges, there is no cell data. It is impossible therefore to know the number of calls, apart from the one on 30 April 2004, between Purple 231 and Purple 018 and Purple 095 when the users were situated in COLA.¹⁰⁰²⁰

5237. The Oneissi and Sabra Defence also challenge Mr Platt's methodology in respect of the Alfa cells. Mr Platt, according to the Oneissi Defence, used misleadingly expansive terminology such as 'in the vicinity of', and 'consistent with' in his cell site analysis.¹⁰⁰²¹ He also expressly acknowledged that Alfa predictions were only sixty to seventy percent accurate.¹⁰⁰²² The Sabra Defence similarly points to limitations to the best coverage prediction and argues that Mr Platt is not a cell site expert.¹⁰⁰²³ Both also point to the general limitation accuracy of sixty to seventy per cent of the predicted best server coverage area.¹⁰⁰²⁴

5238. The Oneissi Defence submits that Mr Platt did not attempt to verify the reliability and authenticity of the Alfa telecommunications evidence by conducting site visits to the cell area.¹⁰⁰²⁵ Even if Mr Oneissi had been in the mosque area, this could have been for non-criminal purposes, and the Prosecution failed to conduct adequate investigations into whether Mr Oneissi had any link to the Tariq-El-Jdideh area.¹⁰⁰²⁶ Further, the Prosecution failed to prove that the presence of Purple 095 in the area was exceptional.¹⁰⁰²⁷

5239. There was also nothing exceptional about the contacts between the Purple mobiles and the so-called Purple associates.¹⁰⁰²⁸ In fact, the personal contacts between these numbers significantly predates the period of alleged criminal activity.¹⁰⁰²⁹ Additionally, Purple 095's activations of the

¹⁰⁰²⁰ Merhi Defence final trial brief, para. 501 (footnotes omitted).

¹⁰⁰²¹ Oneissi Defence final trial brief, paras 181-182.

¹⁰⁰²² Oneissi Defence final trial brief, para. 183.

¹⁰⁰²³ Sabra Defence final trial brief, paras 588-589, 595-599.

¹⁰⁰²⁴ Oneissi Defence final trial brief, paras 183-188; Sabra Defence final trial brief, paras 588-595.

¹⁰⁰²⁵ Oneissi Defence final trial brief, paras 165-169. *See also* Sabra Defence final trial brief, para. 595.

¹⁰⁰²⁶ Oneissi Defence final trial brief, paras 207-209.

¹⁰⁰²⁷ Oneissi Defence final trial brief, paras 189-195.

¹⁰⁰²⁸ Oneissi Defence final trial brief, paras 196-198.

¹⁰⁰²⁹ Oneissi Defence final trial brief, para. 198.

COLA cells were generally infrequent and sporadic.¹⁰⁰³⁰ Purple 095's movements also do not corroborate the evidence of Witness 87,¹⁰⁰³¹ or the witness who met 'Mohammed' in the mosque, in terms of the timing of the meetings there.¹⁰⁰³²

5240. Purple 095 did not activate the COLA cells on the day that 'Mohammed' was supposed to be in the mosque.¹⁰⁰³³ This was during the noon prayer on a Monday of the first or second week of January 2005, namely on either 3 or 10 January 2005,¹⁰⁰³⁴ and either at 11:00 or at 13:00 on the following Wednesday 5 or 12 January when the witness made arrangements to meet 'Mohammed' at the mosque.¹⁰⁰³⁵

5241. In addition, the number of COLA activations that appear to involve private conversations with Mr Oneissi's family members is utterly inconsistent with the Prosecution allegation that he was in the midst of executing a crucial part in the assassination plot.¹⁰⁰³⁶

5242. Similarly, the Oneissi Defence argues that the cell site data is incomplete and that therefore the Prosecution's inferences that the Purple activity was exceptional are speculative.¹⁰⁰³⁷

5243. Furthermore, the 'fact that cell site analysis is not a sufficiently reliable way to determine the physical location of a mobile was plainly demonstrated' in relation to Witness 115's call data records.¹⁰⁰³⁸ As an example, the Oneissi Defence refers to the evidence showing that Witness 115 was under the tree on Monday 14 February 2005 while his mobile was connecting to an adjacent cell. It points out that on the basis of the call data records and the theoretical coverage alone, 'it would have been impossible to discern that on the two occasions that PRH115's mobile activated Bashoura_A, he was not physically located within the theoretical coverage of the cell, but roughly 300 metres away.' Moreover, the call data records 'seemed to indicate that he had moved from

¹⁰⁰³⁰ Oneissi Defence final trial brief, paras 210-234, 237. In this respect, the Oneissi Defence challenges the Prosecution's submissions about Purple 095's activations on 22, 29, 30 and 31 December 2004 and 3 and 7 January 2005.

¹⁰⁰³¹ Oneissi Defence final trial brief, paras 346-349.

¹⁰⁰³² Oneissi Defence final trial brief, paras 410-418.

¹⁰⁰³³ Oneissi Defence final trial brief, para. 164.

¹⁰⁰³⁴ Oneissi Defence final trial brief, paras 351, 411-412; Oneissi Defence closing submissions, T. 19 September 2018, pp 108-109.

¹⁰⁰³⁵ Oneissi Defence final trial brief, para. 414.

¹⁰⁰³⁶ Oneissi Defence final trial brief, paras 232-234.

¹⁰⁰³⁷ Oneissi Defence final trial brief, paras 191-195.

¹⁰⁰³⁸ See paras 5553-5557, 5589-5590, below.

one area to another, when in fact he was stationary'.¹⁰⁰³⁹ It also disputed the Prosecution's contention that this represented 'exceptional circumstances' pointing out that the Prosecution had provided nothing to support this.¹⁰⁰⁴⁰

5244. The Sabra Defence also argues that the COLA cells are subject to modelling issues, which were not included in the generations of the predicted coverage. These are first, that the COLA cells appear to have been situated on the top of multi-storey buildings, making it possible that someone using a mobile at the base of the COLA cell site would not activate that cell. Second, the coverage maps only reflect the ground level predictions, which may not accurately reflect usage from upper storeys. Third, due to the location of the cells, COLA1's and COLA 3's signals can propagate to locations potentially distant from the mosque.¹⁰⁰⁴¹

5245. Further, the cell site analysis underpinning the behavioural profiling of the Purple mobiles had no objective basis. The Prosecution also fails to consider reasonable alternatives for the presence of Purple mobiles in Tariq-El-Jdideh, in Beirut.¹⁰⁰⁴² For example, the Prosecution fails to take into consideration Purple 018's contacts, seven of which were unattributed, that had a history of activating COLA cells between September 2004 and March 2005, thus providing an innocent reason for Purple 018 to activate COLA cells.¹⁰⁰⁴³

5246. The Sabra Defence also presented the Trial Chamber with its analysis of the cell activation of six mobiles that in its view presented behavioural similarities with Purple 018. It argues that these, as they were termed, 'Purple-alike' mobiles' cell utilisation also 'reflects precisely the essential elements' of the identification operation,¹⁰⁰⁴⁴ which shows that the 'essential elements' identified by the Prosecution are not demonstrative of guilt.¹⁰⁰⁴⁵ Other mobiles exhibited similar behaviour to the Purple mobiles. For example, the activations of one, mobile 027, of the COLA

¹⁰⁰³⁹ Oneissi Defence final trial brief, paras 150-151, referring to exhibit 4D360 (Purple activity amongst Al Jazeera SMS exchanges re collecting the tape from the tree: 15:53-15:55).

¹⁰⁰⁴⁰ Oneissi Defence final trial brief, para. 152, referring to the Prosecution final trial brief, para. 61.

¹⁰⁰⁴¹ Sabra Defence final trial brief, paras 590-594.

¹⁰⁰⁴² Sabra Defence final trial brief, paras 595-606.

¹⁰⁰⁴³ Sabra Defence final trial brief, paras 607-610.

¹⁰⁰⁴⁴ Sabra Defence final trial brief, paras 611-615.

¹⁰⁰⁴⁵ Sabra Defence final trial brief, para. 615.

cells peaked in December 2004 and January 2005.¹⁰⁰⁴⁶ Two graphs below—prepared for court presentation by the Sabra Defence—illustrate this:

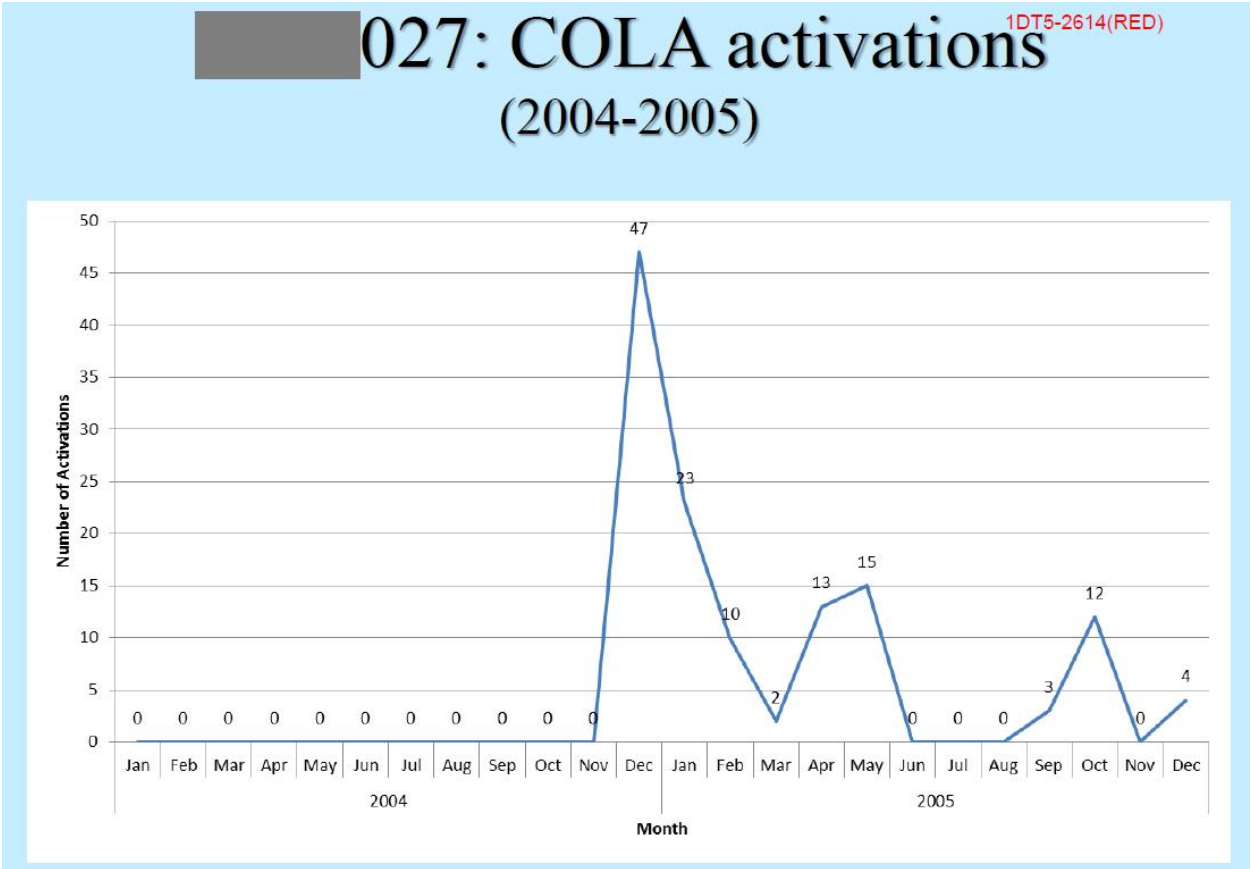


Exhibit 5D348 (PowerPoint presentation ‘Phone numbers with cell site activities similar to Purple 018’), slide 14

¹⁰⁰⁴⁶ Exhibit 5D530 (Call sequence table of mobile 027).

027: COLA activations (1 September 2004 – 16 February 2005)

1DT5-2615(RED)

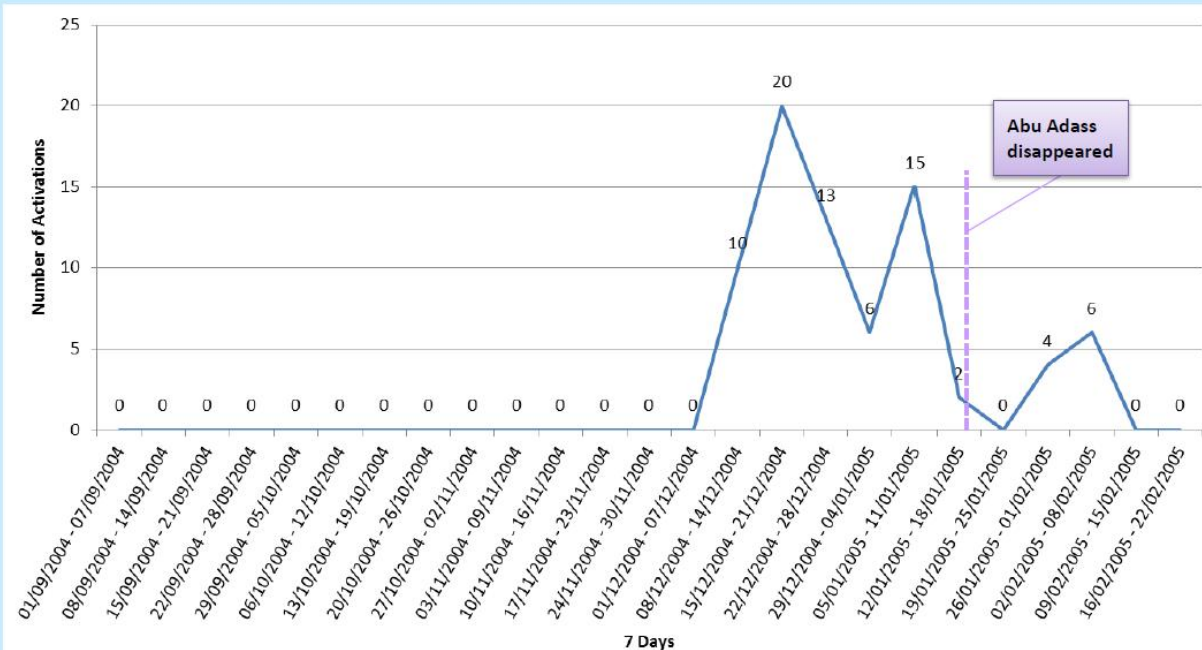


Exhibit 5D348 (PowerPoint presentation 'Phone numbers with cell site activities similar to Purple 018'), slide 15

5247. Furthermore, mobile 027 was active near a payphone on Monday 14 February 2005, connecting to TAHAN1 at 14:20, one minute after the first call to Al-Jazeera.¹⁰⁰⁴⁷ It was also inactive on Sunday 16 January 2005, just like the Purple mobiles.¹⁰⁰⁴⁸

5248. The Sabra Defence presented evidence of five other mobiles that similarly had peak COLA cell activations in December 2004 and January 2005, connected to cells near the payphones on 14 February and or were inactive on 16 January 2005.¹⁰⁰⁴⁹ The graph below provides an overview of this:

¹⁰⁰⁴⁷ Exhibit 5D530, p. 24.

¹⁰⁰⁴⁸ Exhibit 5D530, p. 20.

¹⁰⁰⁴⁹ Sabra Defence final trial brief, paras 612-614, referring to exhibits 5D349 (MFI) and 5D350 (MFI), which have been replaced with corrected versions, exhibits 5D531 and 5D530, respectively, and exhibits 5D352, 5D353 and 5D354.

	Activated COLA cells before AAA disappeared?	Activated COLA cells during “COLA Phase”?	How many Payphones the user appeared nearby on 14 Feb 2005 within 30 mins of respective Telecarte call?	Inactivity or reduced activities on 16 Jan 2005?
027	✓	✓	PB1; PB2	✓
213	✓	✓	PB1; PB2	✗
920	✓	✓	PB3	✓
792	✓	✓	PB1; PB2; PB4	✗
228	✓	✓	PB4	✓
762	✓	✓	PB4	✗

Exhibit 5D348 (PowerPoint presentation ‘Phone numbers with cell site activities similar to Purple 018’), slide 88

5249. Mr Platt testified that in his understanding the Lebanese investigating authorities may have considered these six mobiles when surveying cell activations around the tree and payphones but ultimately focused on the Purple mobiles because—in contrast to these six mobiles—the Purple mobiles were in contact with one another and ceased activity by 16 February 2005.¹⁰⁰⁵⁰

5250. According to the Sabra Defence, the sudden and unusual use of the COLA cells by the Purple mobiles during the ‘COLA phase’ cannot conclusively establish that their presence in the area was directly connected with the preparation of Mr Abu Adass’s abduction.¹⁰⁰⁵¹

5251. Similarly, the Prosecution failed to consider reasonable alternatives for the elevated contact frequency between Purple 018 and Purple 095 during the ‘COLA phase’. Furthermore, there was a history of significant contact between Purple 018 and Purple 095 predating this phase; there were 36 contacts between the two mobiles between January 2003 and November 2004, meaning that the new patterns of communication were not unusual.¹⁰⁰⁵²

¹⁰⁰⁵⁰ Gary Platt, T. 6 April 2017, pp 102-103.

¹⁰⁰⁵¹ Sabra Defence final trial brief, para. 615.

¹⁰⁰⁵² Sabra Defence final trial brief, paras 616-618.

5252. The Sabra Defence also submits that the allegation that the Yellow network shut down on the grounds of tightened operational security is inconsistent with the open usage of mobiles in the ‘COLA phase’.¹⁰⁰⁵³ Similarly, the call between Yellow 425 to Purple 018, on Tuesday 4 January 2005, is anomalous and illogical ‘in the context of the alleged tightening of operational security’ and ‘following the initial phase of the conspiracy’. It is illogical that a semi-covert network which had ‘maintained strict discipline in inter-network contact throughout the operation, yet is deemed to be a security risk, would breach discipline at this supposedly critical point to contact a **Purple-Phone**’.¹⁰⁰⁵⁴

5253. The Sabra Defence argues that the incompleteness of the cell site data before 1 August 2004, substantially limits the inferences that can be drawn. In particular, by 15 August 2004, start-cell data for 4,630 mobile activities is missing, which accounts for 63 per cent ‘of concurrent activities’ meaning that the ‘Prosecution cannot therefore exclude that **Purple-018** connected to cells in that area during one of these many calls’.¹⁰⁰⁵⁵

(c) Findings

5254. The Trial Chamber, as noted, cannot find beyond reasonable doubt either that Mr Abu Adass met a person named ‘Mohammed’ in the Arab University Mosque, nor that the person who claimed to be the ‘Mohammed’ there was Mr Oneissi. The Trial Chamber is not satisfied of the reliability of the Prosecution evidence used to establish that Mr Oneissi was the ‘Mohammed’ encountered in the mosque, and most specifically its intended and pleaded identification evidence. The Trial Chamber has disregarded this in assessing whether there is any evidence capable of proving that material fact.¹⁰⁰⁵⁶ Even if proof beyond reasonable doubt for these facts, however, is not required, the intermediate and ultimate result would remain unchanged.

i. Whether the Prosecution has proved that Mr Oneissi was ‘Mohammed’

5255. To a large extent the Prosecution case theory of Mr Merhi’s, Mr Oneissi’s and Mr Sabra’s involvement in the plot to kill Mr Hariri relied upon proof that Mr Oneissi was ‘Mohammed’ as

¹⁰⁰⁵³ Sabra Defence final trial brief, paras 534-535.

¹⁰⁰⁵⁴ Sabra Defence final trial brief, paras 540-542.

¹⁰⁰⁵⁵ Sabra Defence final trial brief, paras 600-601.

¹⁰⁰⁵⁶ See para. 5082.

the lynch pin for proving his and Mr Sabra's involvement in the telephone calls to Al-Jazeera and Reuters on Monday 14 February 2005.

5256. The evidence intended to prove this, as is detailed above, was the combination of the presence of Mr Sabra's attributed personal mobile Purple 018 and Mr Oneissi's Purple 095 near the mosque in tandem with testimony from Witness 56, Witness 87, Mr Ramadan and the witness who met a 'Mohammed' in the mosque in early January 2005. The evidence identifying Mr Oneissi as 'Mohammed' was supposed to buttress these other pieces of evidence. The Prosecution's pleadings and opening statements reiterated that Mr Oneissi acted as 'Mohammed'. The Trial Chamber—for the reasons described above at paragraphs 5060 to 5082 above—has disregarded the photo board identification as reliable evidence in assessing whether Mr Oneissi was 'Mohammed'.

5257. The combination of this evidence—together with the Purple mobiles' activations on the afternoon of Monday 14 February—*might* have allowed the Trial Chamber to draw the necessary inferences that they were responsible for making the calls to the news agencies. However, without the evidence of their pleaded participation in the 'Mohammed' story—and by extension Mr Abu Adass's disappearance—their only connection to the conspiracy was Mr Oneissi's Purple 095's and Mr Sabra's attributed Purple 018's presence, at various times, at locations 'near' the payphones, and the tree, on the afternoon of 14 February 2005. And additionally, 'near' the Arab University Mosque in December 2004 and January 2005.

5258. Once the main evidence linking Mr Oneissi with 'Mohammed' is eliminated from consideration, the Prosecution's case against the three Accused considerably weakens. The obvious question follows of how this diminished evidence could be sufficient to establish proof beyond reasonable doubt that they made the calls, were present near the tree at the relevant time and, additionally, knew that they were to participate in this *before* the explosion at around 12:55 on 14 February 2005. Their pleaded criminal responsibility requires their awareness of this.

5259. The evidence shows that Mr Oneissi's Purple 095 was, to use Mr Platt's terminology, 'in the vicinity' of the mosque on Wednesday 29, Thursday 30 and Friday 31 December 2004, and on Monday 3 and Friday 7 January 2005—in the sense of connecting to nearby cells. A witness also

described meeting a ‘Mohammed’ in the mosque, either on Monday 3 or Monday 10 January 2005, around the noon prayer time.

5260. The mobile Purple 018, used by Mr Sabra and his wife, was ‘near’ the mosque on Thursday 30 and Friday 31 December 2004, and on Saturday 1, Monday 3, Tuesday 4, Wednesday 5, Thursday 6 and Friday 7 January 2005. This mobile was activating cells in this area more often than Mr Oneissi’s Purple 095 and for longer periods.

5261. In his two opening statements, the Prosecution’s lead counsel pointed to the activations by Mr Oneissi’s Purple mobile of cells in the mosque area in December 2004 and January 2005. He stated that ‘when all the evidence is considered in its totality’, it proves that Mr Oneissi was ‘Mohammed’.¹⁰⁰⁵⁷

5262. In oral closing arguments, Prosecution counsel similarly submitted that other evidence also provides ‘some indication that Mr. Oneissi was Mohammed’.¹⁰⁰⁵⁸ Counsel argued that his Purple mobile usage patterns ‘to a large extent, match’ Witness 56’s evidence on when ‘Mohammed’ appeared in the mosque area and disappeared from it twice, each time for one week, before leaving with Mr Abu Adass. The Prosecution also pointed to Purple 095’s ‘heavy COLA cell use’ on Wednesday 22 December 2004, and then ‘again a week later and again on the 7th of January’, with only a ‘two further days’ of use in between.¹⁰⁰⁵⁹

5263. As is explained above, the Trial Chamber has been unable to find that Mr Abu Adass met a person named ‘Mohammed’ in the mosque. It has only concluded that a witness met someone named ‘Mohammed’ there in early January 2005, that this person asked the witness to teach him how to pray and the witness pointed at nearby Mr Abu Adass as someone who was better suited to teach this ‘Mohammed’ how to pray.¹⁰⁰⁶⁰ According to the witness, this occurred either on Monday 3 or 10 January 2005, during the noon prayer.

5264. The Trial Chamber finds that Mr Oneissi’s Purple 095’s presence ‘in the vicinity’ of the mosque on Monday 3 January 2005—which on the evidence is one of the two possible dates for

¹⁰⁰⁵⁷ Prosecutor’s opening statement, T. 16 January 2014, pp 104-105 (Mr G. Cameron); Prosecutor’s opening statement regarding Hassan Habib Merhi, T. 18 June 2014, pp 50-51 (Mr G. Cameron).

¹⁰⁰⁵⁸ Prosecution closing submissions, T. 14 September 2018, p. 67.

¹⁰⁰⁵⁹ Prosecution closing submissions, T. 14 September 2018, p. 68.

¹⁰⁰⁶⁰ See paras 4967-4990.

the encounter—after the start of the afternoon prayer, is insufficient, of itself, to establish beyond reasonable doubt that Mr Oneissi was ‘Mohammed’. This is so even when considering this piece of evidence together with the totality of the Purple mobiles’ activity during the so-called ‘COLA phase’, on the day of Mr Abu Adass’s disappearance, Sunday 16 January—or more precisely their inactivity then—or on Monday 14 February 2005. The evidence does not establish how long Mr Oneissi was there for, and moreover, 32 minutes after activating the CHATIL1/COLA2 cells, he was back in southern Beirut, in the area of SFEIR3.

5265. The Trial Chamber has also found Witness 56’s account on Mr Abu Adass’s meeting with a ‘Mohammed’, either on its own or when considered with other evidence, insufficiently reliable to be probative.

5266. In its final trial brief, the Prosecution acknowledges that Witness 56’s evidence is ‘somewhat inconsistent’ regarding when Mr Abu Adass met ‘Mohammed’. While outlining these inconsistencies, it describes them as ‘not surprising given the span over five years’ between the first and last statements.¹⁰⁰⁶¹ The Prosecution notes that in an early statement, Witness 56 described Mr Abu Adass meeting ‘Mohammed’ one week before his disappearance. The Prosecution is apparently relying on one version of this witness’s account that ‘Mohammed’ disappeared twice, each time for one week, before Mr Abu Adass left home on 16 January 2005.

5267. The Trial Chamber accepts that witness accounts often vary with retelling. But even if Witness 56 had given a consistent account, the Trial Chamber could not conclude—based only on: Mr Oneissi’s Purple 095 twice activating the COLA cells on Wednesday 22 December 2004, not activating them for a week, doing so again three times on Wednesday 29, three times on Thursday 30 December and once on Friday 31 December 2004, and then again once on Monday 3 and eleven times on Friday 7 January 2005—that Mr Oneissi was ‘Mohammed’.

5268. Further, as it is clear from its submissions, the Prosecution does not argue that, of itself, Mr Oneissi’s Purple mobile pattern of use could prove Mr Oneissi’s identification as ‘Mohammed’. It merely describes this as something providing support to Mr Oneissi being ‘Mohammed’.¹⁰⁰⁶² The Trial Chamber, however—for the reasons described above—has

¹⁰⁰⁶¹ Prosecution final trial brief, paras 522-523.

¹⁰⁰⁶² Prosecution closing submissions, T. 14 September 2018, p. 68.

disregarded the photo board identification as reliable evidence in assessing whether Mr Oneissi was ‘Mohammed’.

5269. Thus, the evidence of Mr Oneissi’s Purple mobile use during the ten-day ‘COLA phase’, including whether it had not previously frequented the mosque area, or whether the communications between Purple 018 and Purple 095 were exceptional, could not establish beyond reasonable doubt that Mr Oneissi was ‘Mohammed’. This is so even when taken with the evidence of the Purple mobiles’ call activity when Mr Abu Adass disappeared, and on the afternoon of Monday 14 February 2005, which is analysed in detail below at paragraphs 5566 to 5609.

5270. The Prosecution, at the end of the case, submitted that the Trial Chamber need not establish the precise identity of the ‘Mohammed’ who lured Mr Abu Adass away from his family, and that determining whether Mr Oneissi acted as ‘Mohammed’ ‘is not dispositive of ONEISSI’s involvement in the “Mohammed” deceit’. According to the Prosecution, however, ‘the evidence establishes that ONEISSI was intimately involved in multiple aspects of the overall plot, regardless of whether he was the person who interacted personally’ with Mr Abu Adass.¹⁰⁰⁶³

5271. As explained above,¹⁰⁰⁶⁴ the Trial Chamber has considered whether Mr Oneissi could still be convicted for the crimes charged, even where the Trial Chamber was not satisfied beyond reasonable doubt that he was ‘Mohammed’, if the Prosecution could establish beyond reasonable doubt other material facts supporting the relevant charges.

5272. With regard to its specific allegations on the selection and recruitment of Mr Abu Adass as a scapegoat, the Prosecutor has never pleaded that Mr Sabra, or someone else, pretended to be ‘Mohammed’ or approached someone in that capacity.¹⁰⁰⁶⁵ His pleading is that Mr Oneissi called himself ‘Mohammed’ to approach and interact with Mr Abu Adass.¹⁰⁰⁶⁶ This is distinct from the Prosecution’s case on the calls to Reuters and Al-Jazeera on Monday 14 February 2005, where it

¹⁰⁰⁶³ Prosecution final trial brief, para. 518.

¹⁰⁰⁶⁴ See chapter III ‘Assessment of evidence’, (C) (1) ‘Presumption of innocence, standard of proof beyond reasonable doubt and the *in dubio pro reo* principle’.

¹⁰⁰⁶⁵ Sabra Defence final trial brief, para. 847.

¹⁰⁰⁶⁶ Amended consolidated indictment, para. 23; Prosecution’s updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), paras 122-124; Prosecution pre-trial submissions (Merhi case), annex A, para. 113.

is alleged that three out of the four calls on that day were made either by Mr Oneissi or Mr Sabra, and the other one by Mr Sabra.

5273. What the Prosecution has described as the “‘Mohammed’ deceit” was centred on the pleaded allegation that Mr Oneissi was ‘Mohammed’. The Prosecutor did not plead in the alternative that anyone else—either Mr Sabra or a third person—acted as ‘Mohammed’ to lure Mr Abu Adass to make the video. The Prosecution included both Mr Sabra’s and Mr Oneissi’s photographs in the photo boards used in an attempt to identify the ‘Mohammed’ seen in the mosque. No witness identified Mr Sabra.

5274. In any event, the issue of whether Mr Sabra could have been ‘Mohammed’ does not arise as the evidence is incapable of proving beyond reasonable doubt that either Mr Sabra or Mr Oneissi played the role of what the Prosecution termed the ‘Mohammed deceit’ in the mosque, or even that there was reliable evidence of the ‘Mohammed deceit’. The Trial Chamber therefore concludes that the Prosecution has not proved beyond reasonable doubt its pleaded allegation on the ‘Mohammed deceit’, namely, that Mr Oneissi acted as that ‘Mohammed’.

ii. Telecommunications evidence linking the Purple mobiles to Ahmad Abu Adass

5275. The Prosecution submits, as is noted above, that the Purple mobiles’ communications during the ‘COLA phase’ establish the involvement of the three Accused in what it calls the ‘Mohammed deceit’. This is to the extent that it coincided with the period in which Mr Abu Adass met, and later left his home with, a man calling himself ‘Mohammed’. However, once the evidence of the purported identification of Mr Oneissi as ‘Mohammed’ is taken from consideration, and the remaining evidence cannot establish that Mr Oneissi was ‘Mohammed’—or that Mr Abu Adass met a ‘Mohammed’ in the mosque—all that remains is the telecommunications evidence.

5276. The Trial Chamber therefore will consider whether, in its totality, and considering the patterns and coincidences, the telecommunications evidence is sufficient to ‘link’ Mr Oneissi and Mr Sabra with Mr Abu Adass’s presence in late December 2004 and early January 2005 in the mosque. And thus, that the users of the three Purple mobiles were involved in targeting Mr Abu Adass to use him in the video.

5277. The totality of the telecommunications evidence, purporting to show their involvement, is therefore considered in more detail below.

5278. The Trial Chamber emphasises that it has been unable to conclude that Mr Sabra was the sole user of Purple 018. However, to consider the evidence in its totality, the analysis here is proceeding on the theoretical assumption that he was using it for the calls analysed below. On ten days, namely, on Wednesday 22, Wednesday 29, Thursday 30 and Friday 31 December 2004 and Saturday 1, Monday 3, Tuesday 4, Wednesday 5, Thursday 6 and Friday 7 January 2005, Mr Oneissi's Purple 095 and Mr Sabra's attributed personal mobile Purple 018 activated cells providing a predicted best server coverage within a 500-metre radius of the mosque, either overlapping or close to prayer times.¹⁰⁰⁶⁷ The significance of this to the case is that it would have coincided with when Mr Abu Adass should have been in the mosque.

5279. Mr Platt agreed in his testimony that when activating the COLA cells, a mobile could have been physically anywhere within the 2.88 square kilometres of the area covered by those three cells.¹⁰⁰⁶⁸ This is illustrated below by exhibit 4D321, tendered by the Oneissi Defence, showing the circumference and surface area of the predicted best server coverage of the three COLA cells.

¹⁰⁰⁶⁷ Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1273, lists the cells within a 500-metre radius of the mosque; the table is extracted at paragraph 5103 above.

¹⁰⁰⁶⁸ Gary Platt, T. 24 March 2017, pp 11-12; exhibit 4D321.

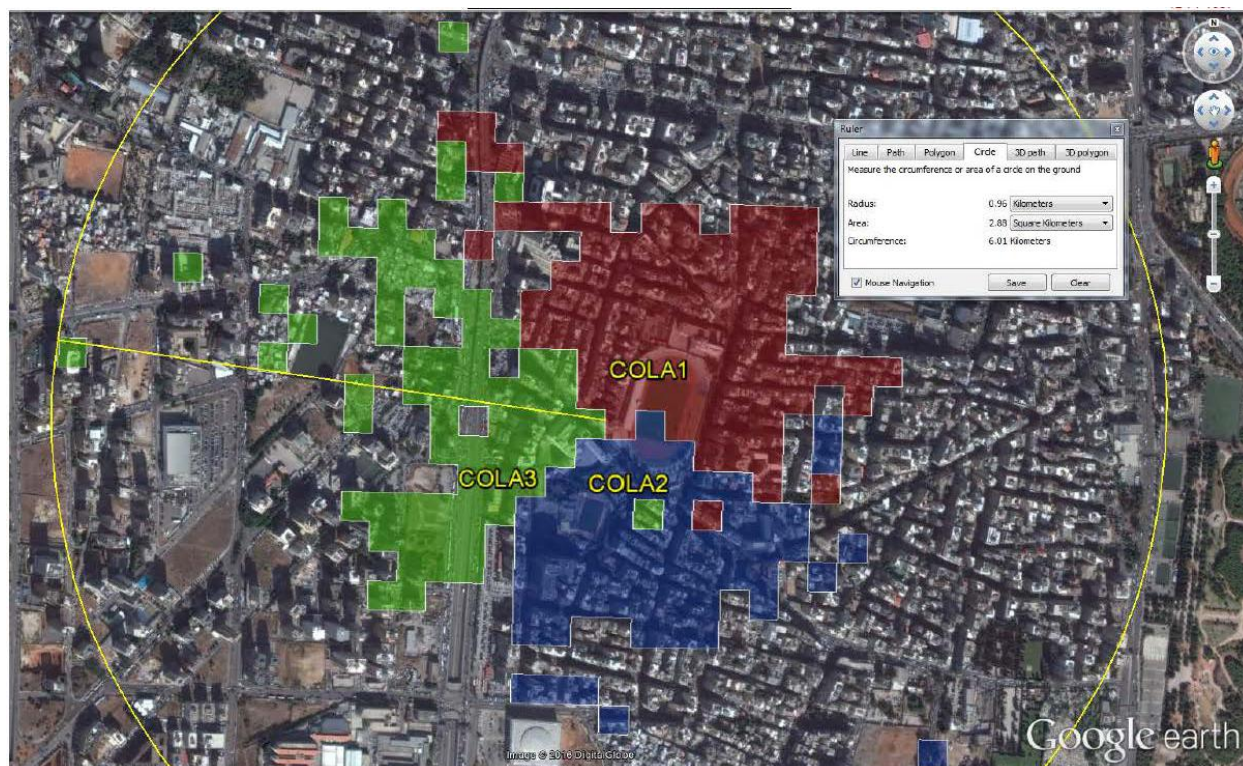


Exhibit 4D321 (COLA cells coverage and distance from COLA cell mast), p. 1

- a. Mr Oneissi's and Mr Sabra's presence 'near' the mosque around prayer times

5280. The electronic presentation of evidence software shows the approximate distances between the predicted best coverage areas of these sixteen cells and the mosque in the following table, prepared by the Trial Chamber:¹⁰⁰⁶⁹

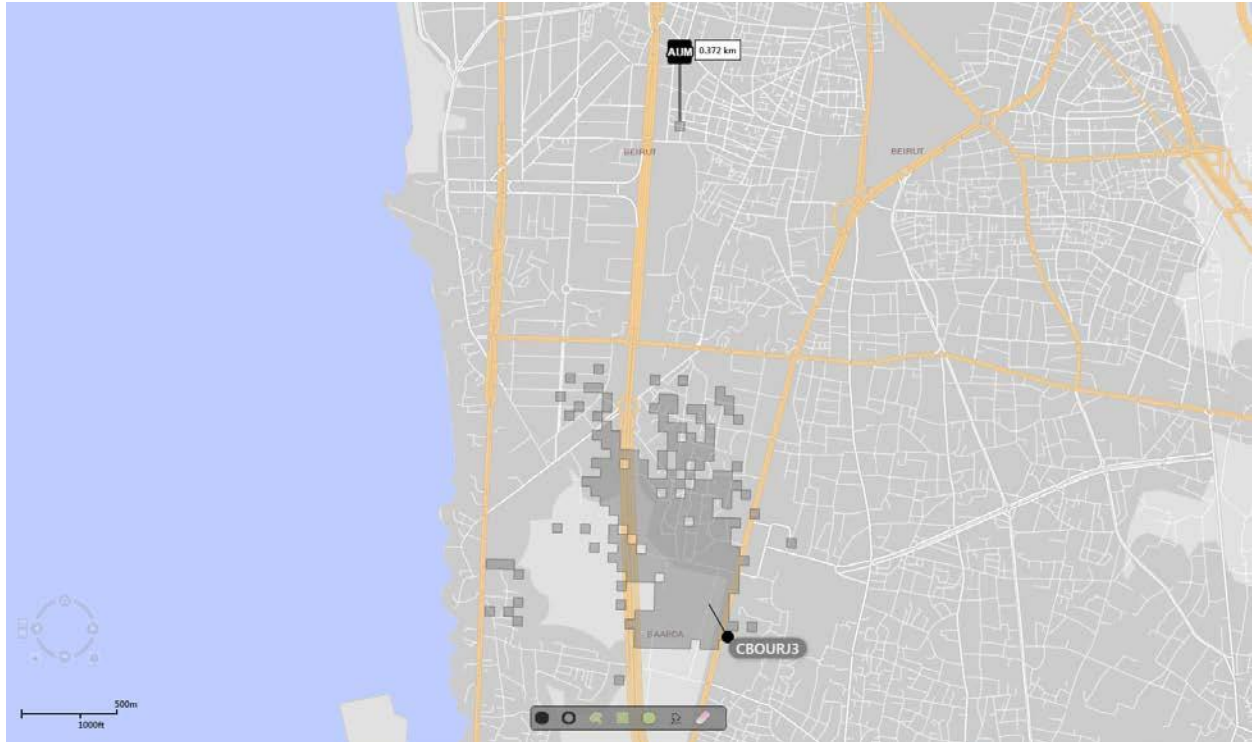
Cell	Shortest distance from Arab University Mosque (metres)	Longest distance from Arab University Mosque (metres)	Range of distances from Arab University Mosque (metres)
BHVOUT2	323	1218	895
CBOURJ3	372	3374	3002
CHATIL1	431	1183	752
CHATIL3	321	1604	1283
COLA1	45	602	557
COLA2	44	892	848
COLA3	0	873	873
MAKASS3	127	982	855

¹⁰⁰⁶⁹ Exhibit P592.1 (Electronic Presentation of Evidence software).

MAZRAA2	115	859	744
NASSER1	403	682	279
OGER2	211	1994	1783
OUZAI1	230	1442	1212
OUZAI4	185	1661	1476
PINS3	384	844	460
RAMLET1	101	1032	931
RAMLET2	214	1260	1046

5281. The predicted best server coverage area of CBOURJ3 provides the most extreme example. The extract from the electronic presentation of evidence below shows that the difference between the shortest and longest distance from the mosque varies considerably. The map shows a small pocket of predicted best server coverage around 300 metres from it. However, the cell itself is around 3.1 kilometres away and most of the predicted best coverage lies within a kilometre of the cell itself. Thus in this sense a tiny pocket of CBOURJ3's coverage is within 500 metres of the mosque, but in reality almost all of it is not. The map, created with exhibit P592.1, below, illustrates this:¹⁰⁰⁷⁰

¹⁰⁰⁷⁰ Exhibit P592.1.



Distance from the Arab University Mosque to the closest edges of CBOURJ3's predicted coverage

5282. Another extract from the electronic presentation of evidence, immediately below, shows that the distance between the mosque and the pocket of coverage the furthest away from it is 3.37 kilometres. This means that while a mobile located within around 50 metres of the mosque could theoretically connect to a pocket of CBOURJ3, so could a mobile that was around 3.3 kilometres away. Potentially this could extend further if a mobile in one of six neighbouring cells connected to CBOURJ3, rather than the best serving cell, or was redirected into one of these, or another.



Distance from the Arab University Mosque to the furthest edges of CBOURJ3’s predicted coverage

5283. The Trial Chamber notes here the issue of whether there was an overlap between the activations of the COLA cells by Mr Oneissi’s Purple 095 and Mr Sabra’s attributed Purple 018 and the prayers at the mosque. This is only to identify when the calls occurred. It does not mean that the Prosecution had to prove any such overlap to establish its case. Tables showing this are added to the text below to make it more comprehensible.

5284. On **Wednesday 22 December 2004**, Mr Oneissi’s Purple 095 was in the area of the mosque before and after the afternoon prayer at 14:16.

Prayer time	Purple 095 in area	Purple 018 in area
	14:00 COLA2	
14:16		
	15:09 COLA3	
	15:12 OUZAI1/RAMLET1	

5285. On **Wednesday 29 December 2004**, Mr Oneissi’s Purple 095 was in the area of the mosque at 15:26 and 15:27, mid-way between the afternoon and dusk prayers.

Prayer time	Purple 095 in area	Purple 018 in area
14:20		
	15:26 COLA3	
	15:27 COLA2	
16:38		

5286. On **Thursday 30 December 2004**, both Mr Oneissi's Purple 095 and Mr Sabra's attributed Purple 018 were in the mosque area shortly after the start of the evening prayer.

Prayer time	Purple 095 in area	Purple 018 in area
18:03		
	18:05 COLA3	
	18:09 COLA3	
	18:11 COLA3	18:11 COLA3

5287. On **Friday 31 December 2004**, Mr Sabra's attributed Purple 018 was in the mosque area before and after the noon prayer at 11:41, then at 14:09 and 14:26, while the afternoon prayer was at 14:21, and at 16:05, 34 minutes before the dusk prayer at 16:39.

Prayer time	Purple 095 in area	Purple 018 in area
		10:19 CBOURJ3
		10:39 COLA3
		11:34 COLA3
11:41		
		12:39 MAKASS3
		12:41 OUZAI4/MAZRAA2
		12:54 COLA3
		13:29 COLA3
		14:09 CHATIL1
14:21		
		14:26 CHATIL1
		15:13 COLA1
		15:39 NASSER1/MAKASS3
		15:47 NASSER1
		15:57 COLA2
	15:58 CHATIL1/COLA2	15:58 COLA2
	16:30 CBOURJ3	16:05 COLA2
	16:34 CBOURJ3	
16:39		

5288. On **Saturday 1 January 2005**, the first of Mr Sabra's attributed Purple 018's activations, at 11:12, was half an hour before the noon prayer, and its subsequent activations overlapped with the 14:22 afternoon, the 16:40 dusk and the 18:04 evening prayers.

Prayer time	Purple 095 in area	Purple 018 in area
		11:12 COLA3
11:42		
		12:38 COLA3
14:22		
		14:24 COLA3
		15:37 COLA3
		15:52 COLA3
		15:55 COLA3
		16:00 COLA3
		16:02 COLA3
		16:05 COLA3
		16:11 COLA3
		16:12 COLA1
16:40		
		16:51 COLA3
		16:54 COLA3
		17:53 COLA3
18:04		
		18:35 COLA3
		19:06 COLA3

5289. On **Monday 3 January 2005**, there was no overlap, but Mr Sabra's attributed Purple 018 activated a COLA cell 27 minutes before the noon prayers and Mr Oneissi's Purple 095 did so 21 minutes after the start of the afternoon prayers at 14:23. This was on one of two possible Mondays in January 2005 when a witness encountered a 'Mohammed' in the mosque.

Prayer time	Purple 095 in area	Purple 018 in area
		11:16 COLA3
11:43		
		12:22 OUZA13
		12:23 CBOURJ3
14:23		
	14:44 CHATIL1/COLA2	

5290. However, Mr Oneissi's Purple 095 activation of the COLA cells on **Monday 3 January** is also consistent with him driving through the area on the way home. Thirty-two minutes after the CHATIL1/COLA2 activation, Mr Oneissi was back in south Beirut, in the area of SFEIR3.

5291. On **4 Tuesday January 2005**, Mr Sabra's attributed Purple 018's activated the COLA cells in between the afternoon and dusk prayer, and five minutes after the evening prayer started at 18:06.

Prayer time	Purple 095 in area	Purple 018 in area
14:24		
		15:08 COLA2/COLA3
		15:26 COLA3
16:42		
		17:09 COLA3
18:06		
		18:11 COLA3
		18:47 COLA3
		18:50 COLA3

5292. On **Wednesday 5 January 2005**, it activated COLA cells nine minutes after 14:25 afternoon prayer.

Prayer time	Purple 095 in area	Purple 018 in area
14:25		
		14:34 COLA3
		14:44 COLA3

5293. On **Thursday 6 January 2005**, Purple 018 activated COLA cells three minutes before the noon prayer, eight minutes before dusk prayer, between the dusk and evening prayers, and 40 minutes after the evening prayer commenced.

Prayer time	Purple 095 in area	Purple 018 in area
		11:41 COLA3
11:44		
14:25		
		15:28 CHATIL1
		16:34 COLA3
		16:36 COLA3
16:44		
		17:14 COLA3
18:08		
		18:48 COLA3

5294. On **Friday 7 January 2005**, Mr Oneissi's Purple 095 connected to the COLA cells thirteen minutes before the noon prayer. Mr Sabra's attributed Purple 018 and Mr Oneissi's Purple 095 both connected to COLA cells seven minutes before the dusk prayer, which commenced at 16:45 and two minutes after, at 16:47. Both mobiles connected to relevant cells five times between 12:54 and 13:19. This was one of two possible Fridays when Witness 87 saw Mr Abu Adass in the mosque; the other was Friday 14 January, two days before Mr Abu Adass's disappearance.

Prayer time	Purple 095 in area	Purple 018 in area
	09:52 OUZAI1	
	11:30 COLA3	
	11:31 COLA3	
	11:31 COLA2	
11:44		
	12:45 CBOURJ3	
	12:54 MAZRAA2/COLA3	12:54 COLA1/COLA2
	12:59 MAZRAA2/COLA3	12:59 COLA1/COLA2
	13:03 OUZAI1	13:03 COLA2
	13:04 COLA2	13:04 COLA2
	13:19 OUZAI1	13:19 CHATIL3
14:26		
	15:24 COLA3	
	15:31 COLA3	
		15:44 COLA3
	16:16 COLA3	
	16:38 COLA3	16:38 COLA2
16:45		
	16:47 COLA2/OUZAI1	16:47 COLA2

5295. The call data records further show that, while these two Purple mobiles were in the vicinity of the mosque during the so-called 'COLA phase', they also were frequently in contact with each

other, as well as with Mr Merhi's Purple 231, which was always away from the area of the mosque, and was mostly in SFEIR3 in southern Beirut.

5296. This is the totality of the evidence 'linking' Mr Oneissi and Mr Sabra with Mr Abu Adass in the mosque, once the evidence of the purported identification of Mr Oneissi as 'Mohammed',¹⁰⁰⁷¹ is taken from consideration. Self-evidently, this evidence of itself is insufficient to show that the users of these three Purple mobiles *must have* been involved in targeting Mr Abu Adass for his role in the video. There is no probative evidence that either Accused person met him.

b. Whether the communications between the three Purple mobiles were 'exceptional'

5297. The Prosecution argues that Mr Oneissi's and Mr Sabra's presence near the mosque in December 2004 and January 2005 was 'exceptional'. The word 'exceptional'—used 74 times in the Prosecution's final trial brief, and fourteen times in relation to their presence near the mosque—is a relative term.¹⁰⁰⁷² To determine whether the presence of Mr Oneissi and the mobile used by Mr Sabra and his wife was 'exceptional', the frequency of their activations of the relevant cells before Wednesday 29 December 2004 must be compared with their connections between then and Friday 7 January 2005; namely, in the period the Prosecution has termed the 'COLA phase'.

5298. In addition, and contrary to the Prosecution's pleaded case, the Trial Chamber considers that the communication between the three mobiles was not 'exceptional' at least in the sense of their communicating with each other. The three men clearly knew each other and were in contact by mobile telephone over the years preceding the attack on Mr Hariri, that is, assuming that Mr Sabra was making these calls on the mobile that he and his wife were jointly using.

5299. In this respect, while communications between Mr Sabra's attributed Purple 018 and Mr Oneissi's Purple 095 had not been as frequent, the two mobiles had had contact twenty-five times over eighteen days in 2003. Their communication was certainly heightened over the period termed

¹⁰⁰⁷¹ This includes his pleaded call to Mr Abu Adass's home on Saturday 15 January 2005, which is analysed paragraphs 5359 to 5364.

¹⁰⁰⁷² Regarding their pleaded presence near the mosque, for example, *see* Prosecution final trial brief, paras 14, 76, 505-506, 535, 539-540, 543-544, 560, 731, 734, 1170, 1184.

as the ‘COLA phase’, which is indeed why the Prosecution used the terminology; and in the overall scheme of their communications, it could be viewed as ‘unusual’.

5300. The Trial Chamber has also calculated that the three mobiles had 59 connections to COLA cells and those within 500 metres of the mosque between 10 December 2001 and 22 December 2004, namely:

- **Mr Oneissi’s Purple 095**—there were 28 activations from 9 January 2003 to 22 December 2004, six times with COLA cells, and 22 times with other cells in the ‘vicinity’;
- **Mr Sabra’s attributed Purple 018**—there were 19 activations to cells in the ‘vicinity’, once in 2001, three times in 2002, once in 2003 and 12 times between April and December 2004. To COLA cells, the first time was twice in November 2004; and
- **Mr Merhi’s Purple 231**—there were eleven activations to cells in the vicinity, between August and October 2004, but never to COLA cells.

5301. The three Purple mobiles had the following 397 contacts with each other between 26 December 2002 and 22 December 2004, namely:

- 170 between **Mr Oneissi’s Purple 095 and Mr Merhi’s Purple 231**: 48 times in September and October 2004; 16 times between 1 November and 22 December 2004; 19 times in 2003 times; and 87 times in 2004 before September;
- 190 between **Mr Sabra’s attributed Purple 018 and Mr Merhi’s Purple 231**: 27 times in September and October 2004; 38 times between 1 November and 22 December 2004; twice in 2002; 61 times in 2003; and, 62 times in 2004 before September; and
- Thirty-six between **Mr Oneissi’s Purple 095 and Mr Sabra’s attributed Purple 018**: once in September and October 2004, six times between 1 November and 22 December 2004; 25 times in 2003; and, four times in 2004 before September.

5302. The Prosecution elevates the significance of the Purple mobiles’ activity in the ‘COLA phase’ by arguing that Mr Sabra using his attributed Purple 018, and Mr Oneissi using his Purple 095 were present near the mosque more frequently than usual during late December 2004 and early

January 2005. However, as the call data records are incomplete, it is difficult to ascertain how correct this is, and Mr Platt himself was cautious in this respect.

5303. Mr Platt testified that before 1 August 2004 call data records for incoming voice calls and incoming and outgoing text messages were unavailable for Alfa cells. Further, and significantly, he felt uncomfortable stating that the users were *not* near the COLA cells from 2002 until 1 August 2004. The three Purple mobiles were all on the Alfa network.¹⁰⁰⁷³ Thus, any calculation as to the frequency or infrequency of the Purple mobiles' presence *in their totality* near the mosque during the so-called 'COLA phase' is uncertain.

5304. The graph extracted from exhibit P1793, Mr Platt's chronology slides, at paragraph 5223 above, reveals a 'peak' or 'spike' in activity in contact between Mr Oneissi's Purple 095 and Mr Sabra's attributed Purple 018, that coincided with their mobiles connecting to the COLA cells.

5305. Nevertheless, even assuming that Purple 018's and Mr Oneissi's Purple 095's comparative use near the mosque peaked during late December 2004 and early January 2005, such evidence would still be equivocal at best. The most it would establish—without more—is that the users of these Purple mobiles were *in the area* of the mosque far more often than usual. The incomplete call records also show that Mr Oneissi activated cells within a 500-metre radius of the mosque, including the COLA cells, 27 times between August 2003 and 22 December 2004. This effectively refutes the Prosecution's theory that Mr Oneissi and Mr Sabra conducted their activity in an area they had not previously frequented to avoid being recognised.¹⁰⁰⁷⁴

5306. The 'more' that may have established their involvement would have been Mr Oneissi's identification as 'Mohammed' and its connection with Mr Abu Adass's disappearance on Sunday 16 January 2005. However, once this is eliminated as probative evidence that can be used against him—and Mr Sabra and Mr Merhi—combined with Witness 56's evidence being admitted under Rule 158, and thus not subject to cross-examination, the Prosecution's case on what they were doing there is irretrievably weakened. The case may have been stronger had Mr Ramadan and Witness 56 testified.

¹⁰⁰⁷³ See paras 2428, 2435, 2441, 2445, 3454, 3676, 3843.

¹⁰⁰⁷⁴ Prosecution final trial brief, para. 531.

5307. Of itself and without more, there is nothing necessarily criminal about the presence of Mr Sabra's attributed Purple 018 and Mr Oneissi's Purple 095 in the mosque's (wider) neighbourhood. Nor about the communications between these two mobiles and with Mr Merhi's Purple 231. It is not the only reasonable inference available that Mr Oneissi's and Mr Sabra's unusual presence there, if he was using mobile 018, was linked to the targeting of Mr Abu Adass and for the purposes of the false claim of responsibility. Their presence, unusual or otherwise, may have been for other reasons relating to the mosque, the Arab University or other locations in the surrounding area.

5308. The Trial Chamber stresses that the call data records before August 2004 are incomplete, meaning that it is impossible to know how many times these mobiles connected to the COLA and adjacent cells before then. The Oneissi Defence pointed out that before 1 August 2004 'it is simply unknown which cell site was activated by 095 for 3728 out of a total of 8140 calls/SMS – i.e. no less than 46% of all of 095's' call data records.¹⁰⁰⁷⁵

5309. Significantly, the mere activation of the COLA cells cannot establish precisely whether the user of the mobile was *in* or *at* or even *outside* the mosque; it can only establish their presence in the general area of cell activation. In this respect, it is highlighted that the Oneissi Defence's calculation of an area of 2.88 square kilometres surrounding the COLA mast in which the three COLA cells offered predicted best server coverage is unchallenged.¹⁰⁰⁷⁶

5310. The call data records only reveal when a mobile connected to a particular cell. They cannot establish whether someone was in the cell sector either without their mobile or without using it. The Trial Chamber has no evidence of the frequency, or otherwise, of Mr Oneissi's and Mr Sabra's presence in the areas covered by those cells when their mobiles were not connecting to the cells. When they were there, if at all—without their mobiles connecting to cells—is simply unknowable.

5311. Further, the activation of cells in southern Beirut shortly before or after the activation of the COLA cells is consistent with Mr Oneissi driving through the area on the way to or from his home in southern Beirut. Similarly, a twenty to sixty-minute gap between calls from a mobile activating the same cells provides more than ample time for a mobile user to have left and returned

¹⁰⁰⁷⁵ Oneissi Defence final trial brief, para. 193, referring to exhibits 4D323 and 4D324.

¹⁰⁰⁷⁶ Oneissi Defence final trial brief, para. 212; *see also* exhibit 4D321, illustrating this.

to reconnect to that cell. The call data records alone cannot prove that the mobile user remained near the mosque.¹⁰⁰⁷⁷

5312. The Trial Chamber acknowledges that these (incomplete) call data records show a peak in contact between the mobiles during December 2004 and January 2005. Despite this peak, it is speculative to submit, using incomplete cell data, that Mr Oneissi's and Mr Sabra's presence, if he was using Purple 018, in the areas covered by the COLA and adjacent cells in December 2004 and January 2005 was unusual enough to be used to attribute criminal responsibility to them as part of a conspiracy. The Trial Chamber here of course recognises that this is one aspect of the Prosecution's evidence, that must be considered within the totality of the evidence led against the Accused, including what occurred on the afternoon of Monday 14 February 2005.

5313. The Prosecution also points to the calls between Mr Merhi's attributed Green 071 and Mr Badreddine's Green 023 on 6 November, 23 and 27 December 2004, and on Sunday 2, Wednesday 12, Thursday 13, Friday 14, Saturday 15, Sunday 16 January and Thursday 20 January 2005. Additionally, between 9 and 13 November 2004, Mr Merhi was in contact with Mr Oneissi's Purple 095 and Mr Sabra's attributed Purple 018 a number of times. On 13 November 2004, Mr Merhi called Mr Ayyash on his personal mobile 935.¹⁰⁰⁷⁸ Mr Sabra's mobile 018 contacted Mr Oneissi's mobile 095 six times on 14, 16 and 17 November 2004.¹⁰⁰⁷⁹

5314. In opening the case against Mr Merhi, the Prosecution argued that the increase in communication between Mr Sabra and Mr Oneissi and the corresponding increase in contact between Mr Merhi and Mr Sabra and Mr Oneissi is evidence that Mr Merhi 'had taken steps to assemble his team to advance the false claim of responsibility'.¹⁰⁰⁸⁰

5315. The difficulty with this, however, is that there is no evidence connecting these calls with anything related to Mr Abu Adass, the mosque, anyone called 'Mohammed', Mr Abu Adass's disappearance, the video or its making or its broadcast. And significantly, the last call between Green 071, attributed to Mr Merhi, and Mr Badreddine on Green 023 was on Monday 7 February

¹⁰⁰⁷⁷ Gary Platt, T. 23 March 2017, pp 45-46.

¹⁰⁰⁷⁸ Exhibit P527, p. 98; exhibit P1261 (Call sequence table of mobile 935), p. 77.

¹⁰⁰⁷⁹ See para. 5301.

¹⁰⁰⁸⁰ Prosecutor's opening statement regarding Hassan Habib Merhi, T. 18 June 2014, pp 45-47.

2005, in circumstances which appear to be devoid of context. According to the Prosecution's opening against Mr Merhi, based on all of the evidence, at this point it can be inferred that:

there was no longer any further need for Mr Merhi and Badreddine to communicate, that the false claim of responsibility materials including the video involving Abu Adass had been prepared, and Mr Merhi and his team, including the accused Sabra and Oneissi, were ready and waiting for the moment following the assassination when they were to fulfil the final part of their role in the conspiracy.¹⁰⁰⁸¹

5316. The Trial Chamber acknowledges, as is set out below at paragraphs 5373 to 5377 and 5481 to 5483, that the most suspicious calls between the two Green mobiles occurred on the morning of Sunday 16 January 2005 around the time when Mr Abu Adass, on the Rule 158 evidence, left his home for the last time. However, without the evidence connecting Mr Oneissi and Mr Sabra to Mr Abu Adass, before or after that date—and most particularly that Mr Oneissi was 'Mohammed'—this series of calls rises to a level no higher than of coincidental suspicion.

5317. Accordingly, the Prosecution has not established beyond reasonable doubt that Mr Merhi, Mr Oneissi and Mr Sabra participated in selecting Mr Abu Adass for the video in the pleaded period of Wednesday 22 December 2004 to Friday 7 January 2005.

E. Mr Abu Adass's disappearance and surrounding events

1. Introduction—the Prosecutor's pleaded case against the three Accused

5318. Mr Merhi and Mr Oneissi are alleged, based upon the amended consolidated indictment, to have been involved in Mr Abu Adass's disappearance from his home on the morning of Sunday 16 January 2005.

5319. Regarding Mr Oneissi's role, the Prosecutor pleads that '**ONEISSI**, prior to the attack and under the coordination of **MERHI** participated in the disappearance of **ABU ADASS** for the purpose of creating a false claim of responsibility'.¹⁰⁰⁸²

5320. Of Mr Merhi's role, the Prosecutor pleaded that '**MERHI**, prior to the attack, coordinated the activities of **ONEISSI** and **SABRA** in order to identify and effect the disappearance of a

¹⁰⁰⁸¹ Prosecutor's opening statement regarding Hassan Habib Merhi, T. 18 June 2014, pp 57-58.

¹⁰⁰⁸² Amended consolidated indictment, para. 3 (b).

suitable individual, **ABU ADASS**, who would be used to make a video-taped false claim of responsibility for the attack’.¹⁰⁰⁸³

5321. Mr Sabra’s role is pleaded as ‘**SABRA**, prior to the attack and under the coordination of **MERHI**, participated with **ONEISSI** in identifying a suitable individual, **ABU ADASS**, who would be used to make a video-taped false claim of responsibility to the attack’.¹⁰⁰⁸⁴

5322. The Prosecutor also alleges that Mr Abu Adass left with Mr Oneissi, posing as ‘Mohammed’, on the morning of **Sunday 16 January 2005**, pleading that ‘At about 07:00, **ABU ADASS** left his home to meet with **ONEISSI** calling himself “Mohammed”’.¹⁰⁰⁸⁵ The Prosecutor does not specifically plead that Mr Sabra was involved in Mr Abu Adass’s disappearance, which the amended consolidated indictment does not describe as an ‘abduction’; it does not allege that he was abducted.

5323. The night before the disappearance, on **Saturday 15 January 2005**, the Prosecutor pleads, ‘At about 21:00, **ONEISSI** calling himself “Mohammed” called **ABU ADASS** on his family’s landline phone at home, and the two agreed to meet early the next morning’.¹⁰⁰⁸⁶ Further, Mr Merhi coordinated Mr Oneissi’s actions, as is shown by mobile activity around the time of Mr Abu Adass’s disappearance.¹⁰⁰⁸⁷

5324. The Prosecutor’s two pre-trial briefs plead that Mr Oneissi was involved in his ‘disappearance’¹⁰⁰⁸⁸ but do not allege his abduction; rather the words ‘disappearance’ and ‘disappeared’ are used.¹⁰⁰⁸⁹ Further, Prosecution counsel, in opening the case against Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra, did not allege an ‘abduction’. However, five months later in June 2014, in opening the case against Mr Merhi, whose case was joined to that of the other

¹⁰⁰⁸³ Amended consolidated indictment, para. 3 (d).

¹⁰⁰⁸⁴ Amended consolidated indictment, para. 3 (c).

¹⁰⁰⁸⁵ Amended consolidated indictment, para. 28.

¹⁰⁰⁸⁶ Amended consolidated indictment, para. 27.

¹⁰⁰⁸⁷ Amended consolidated indictment, para. 3 (d).

¹⁰⁰⁸⁸ Prosecution’s updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), paras 62, 114, 130; Prosecution pre-trial submissions (Merhi case), annex A, paras 53, 105, 121.

¹⁰⁰⁸⁹ Prosecution pre-trial submissions (Merhi case), annex A, paras 53, 105, 108, 111-112, 116, 121, 139.

four Accused in February 2014 after the trial's commencement, Prosecution lead counsel specifically and repeatedly alleged that Mr Abu Adass was 'abducted'.¹⁰⁰⁹⁰

5325. The amended consolidated indictment does not plead that Mr Sabra participated in abducting Mr Abu Adass. In relation to Mr Sabra's role, the Prosecution's lead counsel, but only in the Merhi opening statement, said 'I expect that on all the evidence it will be open to you to find that Mr. Sabra had a different role to play in arranging the abduction of Abu Adass.' Furthermore, he stated, 'I expect it will be open to you to infer on all the evidence that Mr. Oneissi and Mr. Sabra worked as a team with Mr. Merhi to arrange the abduction and later the delivery of the false claim of responsibility.'¹⁰⁰⁹¹ Some ambiguity appears to be present here as to their roles.

5326. On their respective roles, Prosecution lead counsel said that:

Mr. Oneissi's role was to befriend and gain the initial trust of Abu Adass. Mr. Sabra's role was to remain in the background and to gather information about Abu Adass and the surrounding area in preparation for his abduction on the morning of the 16th of January.¹⁰⁰⁹²

5327. The Prosecution's final trial brief, however and without the intended Prosecution evidence having changed between the opening and closing of the case,¹⁰⁰⁹³ positively asserts that Mr Abu Adass 'was abducted on 16 January 2005'.¹⁰⁰⁹⁴ In reality, though, the main difference between the opening and the final trial submissions is that the Prosecution's anticipated evidence substantially weakened at trial; Witness 56 and Mr Ramadan did not testify, and the Prosecution, at the end of the case, no longer positively asserted that a witness had identified Mr Oneissi as 'Mohammed'.

5328. Despite this, in the final trial brief, it alleges that Mr Abu Adass was abducted—using the terms 'abduction' and 'disappearance' interchangeably—but without providing facts supporting the legal elements of the crime of abduction. The words 'abducted' and 'abduction' appear over one hundred times in the brief. The final trial brief also submits that '**ONEISSI**'s use of Purple 095 and **SABRA**'s use of Purple 018 reflected their involvement in the recruitment and abduction

¹⁰⁰⁹⁰ Prosecutor's opening statement regarding Hassan Habib Merhi, T. 18 June 2014, pp 39, 43-44, 50-54. (Mr G. Cameron), for example, at p. 43 referring to 'phase four' of the conspiracy, arguing that 'In this phase, Abu Adass is abducted and the video of the false claim of responsibility on all the evidence can be inferred to have been prepared.'

¹⁰⁰⁹¹ Prosecutor's opening statement regarding Hassan Habib Merhi, T. 18 June 2014, pp 51-52 (Mr G. Cameron).

¹⁰⁰⁹² Prosecutor's opening statement regarding Hassan Habib Merhi, T. 18 June 2014, p. 52 (Mr G. Cameron).

¹⁰⁰⁹³ This is in the sense that the Trial Chamber received the statements of Witness 56 and Mr Ramadan under Rule 158, thereby accepting onto the trial record the evidence of the Prosecution's case in respect of what it alleged.

¹⁰⁰⁹⁴ Prosecution final trial brief, para. 778.

of ABU ADASS, under the coordination of **MERHI** using Purple 231.’¹⁰⁰⁹⁵ The Prosecution’s in-house expert on criminal networks, Mr Gary Platt, in exhibit P1782, entitled ‘Narrative overview of telephone activity and events relevant to the case for the Prosecution’, in positively asserting that Mr Abu Adass had been kidnapped used the word ‘abduct’ and ‘disappear’, respectively 27 and 13 times.¹⁰⁰⁹⁶

5329. The Prosecution, in its opening against Mr Merhi and in its final trial submissions, may have been using the term ‘abduction’ in a colloquial rather than a legal sense. Thus, the difference between ‘abduction’ and ‘disappearance’ in this respect could be terminological. The Trial Chamber also accepts that ‘effecting’ the disappearance of someone could include their abduction or kidnapping, namely, holding a person against their will.

5330. These arguments therefore probably do not relate to a material fact, proof of which is essential to a conviction, but rather to a fact in a chronology of events, namely that Mr Abu Adass left his home at the behest of the Accused. In this sense, the manner in which Mr Abu Adass left his home and came to be at the location of the filming of the video is not necessarily a material fact. The elements of the crimes with which the Accused are charged concern the taping of the claim of responsibility and its dissemination in four payphone calls on Monday 14 February 2005. How Mr Abu Adass came to the location of the video is evidence of the pleaded material facts, rather than a material fact. Conversely, the actual video-taping of the claim of responsibility could be a material fact against the Accused if they were involved in its production, or more to the point, if there was any evidence of this.

5331. The Prosecution’s final trial brief also attributes some roles and call activities—of Mr Merhi’s, Mr Oneissi’s and Mr Sabra’s mobiles—relating to Mr Abu Adass’s disappearance in early to mid-January 2005, similar to those pleaded in the amended consolidated indictment.¹⁰⁰⁹⁷

5332. On Mr Sabra’s role, the Prosecution urges the Trial Chamber to make findings on his involvement in Mr Abu Adass’s disappearance from the following categories of evidence. These are, first, Mr Sabra’s Purple mobile 018’s unusual use in the vicinity of the Arab University

¹⁰⁰⁹⁵ Prosecution final trial brief, para. 9. *See also* paras 1183, 1184.

¹⁰⁰⁹⁶ His *aide-memoire*, exhibit P1780 (Chronology of relevant events), used ‘abduction’ nine times.

¹⁰⁰⁹⁷ Prosecution final trial brief, paras 504-505 (iii)-(vii), 549-559, 593, 599, 759-760, 762-781, 1170-1172, 1777-1178, 1183-1185; Prosecution closing submissions, T. 14 September 2018, pp 18-19, 21, 24-25, 65-72.

Mosque in late December 2004 to early January 2005, before Mr Abu Adass's 'abduction'. Second, there are the Green and Purple hierarchical calls from Wednesday 12 January to Saturday 15 January 2005. And, third, there is the inactivity of the Purple mobiles, including Mr Sabra's Purple 018, on Sunday 16 January 2005, the day of Mr Abu Adass's 'abduction'.¹⁰⁰⁹⁸

5333. The Trial Chamber, however, is not prepared to make a finding that Mr Sabra was directly involved in some way in Mr Abu Adass's alleged 'abduction' on Sunday 16 January 2005 in the absence of a pleading to that effect providing notice to the Defence and positive evidence from which it could draw such a conclusion. The second of these is obvious.

2. Mr Abu Adass's disappearance on Sunday 16 January 2005

(a) Introduction

5334. The Prosecution argues that Mr Sabra, Mr Merhi and Mr Oneissi's involvement in Mr Abu Adass's 'abduction' on **Sunday 16 January 2005** was shown by the following. These are first, the Green and Purple 'hierarchical' call flows from **Wednesday 12 January to Saturday 15 January 2005**. The second is of telephone calls to the Abu Adass home on the evening of **Saturday 15 January 2005** from 'Mohammed'.

5335. The third is of the inactivity of the Purple mobiles on **Sunday 16 January 2005** when there were no calls between Mr Merhi's Purple 231, Mr Oneissi's Purple 095 and Mr Sabra's attributed Purple 018. The fourth is the activity of the Green mobiles that day, namely, that of Mr Abu Adass's disappearance.

5336. The fifth is of telephone calls to the Abu Adass household on **Monday 17 January 2005** by 'Mohammed'. The sixth is of Purple mobile call patterns on **Monday 17 January 2005**, around when the Abu Adass household received the calls from 'Mohammed'. The seventh is of Mr Taysir Abu Adass reporting Mr Abu Adass missing on **Wednesday 19 January 2005**.

¹⁰⁰⁹⁸ Prosecution final trial brief, paras 533-537, 539, 543-551, 554, 557, 559, 578, 593, 735, 759-760, 776-777, 1184-1186, 1191; Prosecution closing submissions, T. 14 September 2018, pp 18-19, 21, 24-25.

5337. Another consideration is of Mr Khaled Taha's travel movements on Saturday 15 and Sunday 16 January 2005. The Trial Chamber has examined the evidence concerning this because the Sabra Defence ran a positive defence that he was involved in the plot to assassinate Mr Hariri.

5338. The Trial Chamber did not receive any evidence on the creation of the video and the letter, including who made them, when they were made and where they were created. Similarly, no Party presented any positive evidence of what happened to Mr Abu Adass after his disappearance and the making of the video. The Prosecution argued in its final trial that it must be assumed that Mr Abu Adass was murdered,¹⁰⁰⁹⁹ resulting in the Trial Chamber posing the following written question to the Prosecution:

Paragraph 1047 of the Prosecution brief refers to the abduction and 'presumed murder' of Mr Ahmed Abu Adass (see also the Sabra brief at paragraph 53). Is it intended to suggest that Mr Merhi, Mr Oneissi and Mr Sabra are implicated in this? And, if so, where is the supporting evidence?¹⁰¹⁰⁰

5339. In closing oral arguments, Prosecution counsel responded that no finding on this issue was necessary.¹⁰¹⁰¹

5340. The Trial Chamber received no forensic evidence relating to the video, letter and its envelope; nor evidence of the chain of custody of these items following their provision by Mr El-Sayyed to the judicial investigating judge, Judge Abou Arraj. Mr Michael Taylor, the Prosecution's former Chief of Investigations, believed that fingerprints had been requested from the Lebanese Ministry of Interior to compare against those on the tape's packaging, but there is no evidence about the outcome of any such investigations, if indeed they took place.

(b) Evidence of mobile activity

i. Purple mobile activity on Monday 10 January 2005

5341. After a period of two days without mobile activity between the Purple mobiles, on Monday 10 January 2005 they had limited contact with each other.¹⁰¹⁰² At 10:51 that day, Mr Oneissi's

¹⁰⁰⁹⁹ Prosecution final trial brief, para. 1047.

¹⁰¹⁰⁰ Questions for closing submissions, para. 18.

¹⁰¹⁰¹ Prosecution closing submissions, T. 11 September 2018, pp 29-30.

¹⁰¹⁰² Exhibit P527 (Call sequence table of Purple 231), p. 109; exhibit P1221 (Call sequence table of Purple 018), pp 283-284; exhibit P1223 (Call sequence table of Purple 095), pp 261-262; Gary Platt, T. 9 February 2017, pp 51-

Purple 095 called Sabra's attributed Purple 018 for 16 seconds.¹⁰¹⁰³ At 11:32, Mr Merhi's Purple 231 called Mr Sabra's attributed Purple 018 for 84 seconds.¹⁰¹⁰⁴

- ii. Intensified Green mobile calls and 'hierarchical' Green-Purple call flows between Wednesday 12 January and Saturday 15 January 2005

5342. Mr Platt's evidence was that **Wednesday 12 January 2005** was the first day of a five-day period when calls between Mr Merhi's Green 071 and Mr Badreddine's Green 023 increased in number.¹⁰¹⁰⁵ Mr Platt noted that only three of the eighteen calls between Green 071 and Green 023 from 13 October 2004 onwards were initiated by Green 023, and two of these were on Wednesday 12 January 2005.¹⁰¹⁰⁶ The number of Green calls is illustrated below in a graph.

52; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 577, 584, 586-588. *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), paras 504, 517, 524-525. Associate Purple 375 called Purple 095 on 8 January 2005 and twice Purple 018 on 9 January 2005. Purple 231 called Associate Purple 744, attributed to Mr Merhi's brother on 8 January 2005. Exhibit P1339 (Call sequence table of Associate Purple 375), pp 33-34; exhibit P1342 (Call sequence table of Associate Purple 744) p. 69.

¹⁰¹⁰³ Exhibit P1221, p. 284; exhibit P1223, p. 262.

¹⁰¹⁰⁴ Exhibit P527, p. 109; exhibit P1221, p. 284.

¹⁰¹⁰⁵ Gary Platt, T. 9 February 2017, pp 85-86; exhibit P1205 (Call sequence table of Green 071), pp 8-9; exhibit P1211 (Call sequence table of Green 023), p. 4. *See also* exhibit P1782, paras 544-545.

¹⁰¹⁰⁶ Gary Platt, T. 9 February 2017, pp 87-88; exhibit P1205, pp 8-9; exhibit P1211, pp 3-5. *See also* exhibit P1782, para. 547.

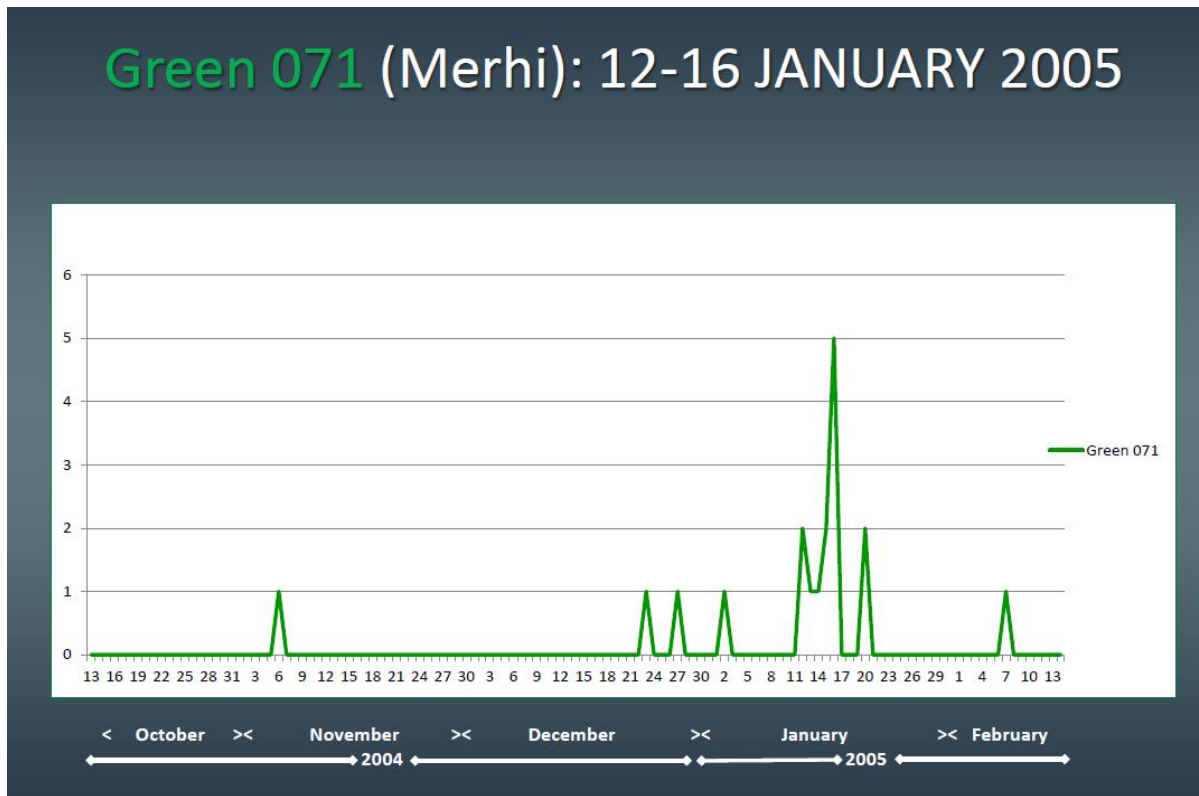


Exhibit P1807 (Chronology PowerPoint presentation – 1 January 2005 to 17 January 2005), slide 270

5343. Mr Platt added that a ‘hierarchical call flow’, meaning a tight sequence of calls, between the Green and the Purple mobiles also occurred first on 12 January 2005.¹⁰¹⁰⁷ He explained that these were Green mobile calls followed immediately by calls from Mr Merhi’s Purple 231 to other Purple mobiles.¹⁰¹⁰⁸

5344. On **Wednesday 12 January 2005**, at 20:20, Mr Badreddine’s Green 023 called Mr Merhi’s attributed Green 071. The call lasted 101 seconds. Mr Badreddine’s mobile connected to CARACA2 in north-west Beirut and Mr Merhi’s mobile connected to BRAJNE2 in southern Beirut.¹⁰¹⁰⁹ At 20:22, Mr Merhi’s Purple 231 called Associate Purple 744, which Prosecution analyst Mr Andrew Donaldson linked to Mr Merhi’s brother and which, according to Mr Platt,

¹⁰¹⁰⁷ Gary Platt, T. 9 February 2017, pp 86-87; exhibit P2133 (Combined call sequence table of Green 071, Purple 231 and Grey mobile), p. 46. *See also* exhibit P1782, para. 546.

¹⁰¹⁰⁸ Gary Platt, T. 9 February 2017, pp 86-90.

¹⁰¹⁰⁹ Exhibit P1211, p. 4; exhibit P1205, p. 8.

also had contact with other Purple mobiles.¹⁰¹¹⁰ Both mobiles activated cells in southern Beirut.¹⁰¹¹¹

5345. Mr Platt testified that in his opinion, the length of the Green mobile call and the fact that the two mobiles were far apart shows that Mr Merhi and Mr Badreddine had a conversation.¹⁰¹¹²

5346. On **Thursday 13 January 2005**, at 19:50, Mr Merhi's attributed Green 071 called Mr Badreddine's Green 023. The call lasted for almost twenty minutes.¹⁰¹¹³ In Mr Platt's view, a significant event or urgency meant that the users broke protocol and spoke at unusual length.¹⁰¹¹⁴

5347. On **Friday 14 January 2005**, at 19:55, Mr Merhi's attributed Green 071 made a three-minute call to Mr Badreddine's Green 023. Mr Merhi's mobile activated a cell in southern Beirut, while Mr Badreddine's mobile activated a cell near Jounieh.¹⁰¹¹⁵

5348. At 19:59, Mr Merhi's Purple 231 called Associate Purple 744, linked to Mr Merhi's brother. Both mobiles activated cells in southern Beirut.¹⁰¹¹⁶ At 20:00, Mr Merhi's Purple 231 called Mr Sabra's attributed Purple 018, both activating cells in southern Beirut.¹⁰¹¹⁷ At 20:01 and 20:04, Purple 018 called Mr Oneissi's Purple 095. Both mobiles connected to cells in southern Beirut.¹⁰¹¹⁸ Mr Platt testified that the Green mobile call was unusually long and concluded that it had triggered the calls on the Purple mobiles.¹⁰¹¹⁹ Around midday, Mr Merhi's Purple 231, his

¹⁰¹¹⁰ Gary Platt, T. 9 February 2017, p. 90; exhibit P2133, p. 46.

¹⁰¹¹¹ Mr Merhi's Purple 231 activated BRAJNE2, Associate Purple 744 activated HARA2. Exhibit P527, p. 110; exhibit P1342, p. 70.

¹⁰¹¹² Gary Platt, T. 9 February 2017, pp 88-90. *See also* exhibit P1807 (Chronology PowerPoint presentation – 1 January 2005 to 17 January 2005), slides 277-280.

¹⁰¹¹³ For this call Green 071 activated SFEIR3 in south Beirut, Green 023 used GHAZIR2 in Jounieh. Mr Badreddine's personal mobile 663 activated Sfeir_B in southern Beirut at 21:05. Purple 231 called Associated Purple 744, attributed to Mr Merhi's brother, at 12:35 and was inactive between a call at 14:07 and an incoming service SMS at 19:47. Exhibit P1205, p. 8; exhibit P1211, p. 4; exhibit P1310 (Call sequence table of mobile 663), p. 3163; exhibit P527, p. 110.

¹⁰¹¹⁴ Gary Platt, T. 13 February 2017, pp 28-29; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 612-614. *See also* exhibit P1782, para. 555.

¹⁰¹¹⁵ Green 071 used BRAJNE2, Green 023 activated JOUNIE3. Exhibit P1205, p. 8; exhibit P1211, p. 4.

¹⁰¹¹⁶ Mr Merhi's Purple 231 activated BRAJNE2, Associate Purple 744 activated BIRABD3. Exhibit P527, p. 110; exhibit P1342, p. 71.

¹⁰¹¹⁷ Mr Merhi's Purple 231 activated BRAJNE2, Mr Sabra's Purple 018 activated HARA2. Exhibit P527, p. 110; exhibit P1221, p. 285.

¹⁰¹¹⁸ Mr Sabra's Purple 018 connected to HARA2 for both calls; Mr Oneissi's Purple 095 used SFEIR2/BRAJNE2 (20:01) and BRAJNE2 (20:04). Exhibit P1221, p. 285; exhibit P1223, p. 264.

¹⁰¹¹⁹ Gary Platt, T. 13 February 2017, pp 90-93; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 631-633. *See also* exhibit P1782, para. 579; exhibit P1807, slides 315-321.

brother's Associate Purple 744 and the unattributed Associate Purple 375 used different cells outside Beirut along the Anjar-Beirut highway.¹⁰¹²⁰

5349. On **Saturday 15 January 2005**, Mr Sabra's attributed Purple 018 and Mr Oneissi's Purple 095 activated the BLISS1 and BLISS2 cells in western Beirut, in the afternoon.¹⁰¹²¹ Later in the afternoon, both mobiles were active in SFEIR3, in the southern suburbs of Beirut, around the same time, Purple 095 at 17:07 and Purple 018 at 17:18.¹⁰¹²² Mr Oneissi's Purple 095 was not in contact with the other Purple mobiles on this day.¹⁰¹²³ At 18:52, Mr Merhi's Purple 231, using SINFIL3, called Purple 018, which activated SFEIR3 again.¹⁰¹²⁴ Following this call, Mr Merhi's Purple 231 was inactive for over 48 hours.¹⁰¹²⁵

5350. The cell usage by Purple 018 and Mr Oneissi's Purple 095, as mapped in court in the snapshot from the electronic presentation of evidence below, was irregular in western Beirut.¹⁰¹²⁶ Mr Platt considered the mobiles' simultaneous inactivity, common cell usage and the absence of calls between the two as consistent with them being together in west and south Beirut that day.¹⁰¹²⁷

¹⁰¹²⁰ Gary Platt, T. 13 February 2017, p. 87; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 630; exhibit P527, p. 110; exhibit P1342, p. 70; exhibit P1339, p. 35. *See also* exhibit P1782, para. 575.

¹⁰¹²¹ Exhibit P1221, p. 285; exhibit P1223, p. 264; Gary Platt, T. 14 February 2017, pp 13, 19; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 643; exhibit P1814 (Electronic presentation of evidence snapshots showing coverage of BLISS1, BLISS2 and JEANNE2), pp 1, 3 (snapshots 73-74). *See also* exhibit P1782, para. 584.

¹⁰¹²² Exhibit P1221, p. 285; exhibit P1223, p. 264; Gary Platt, T. 14 February 2017, p. 21; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 644. *See also* exhibit P1807, slide 352.

¹⁰¹²³ Exhibit P1223, p. 264.

¹⁰¹²⁴ Purple 231 made its first call on 15 January 2005 at 14:30 when it contacted Associate Purple 744 for a 16-second call, two minutes later it called Purple 018. Exhibit P527, p. 110; exhibit P1221, p. 285; Gary Platt, T. 14 February 2017, p. 23; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 646-647. *See also* exhibit P1782, paras 584-585; exhibit P1807, slide 354.

¹⁰¹²⁵ Associate Purple 375 used SFEIR3 for its last three calls of the day between 18:12 and 21:17, after which it became inactive for the following three days. Associate Purple 744 activated SFEIR1 and SFEIR3 for calls between 18:54 and 20:01, when it, too, came to be unused until 18 January 2005. Exhibit P527, p. 110; exhibit P1339, p. 35; exhibit P1342, p. 71; Gary Platt, T. 14 February 2017, pp 23, 43-44, 47, 53-54; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 648. *See also* exhibit P1782, paras 589-590; exhibit P1807, slides 355-356.

¹⁰¹²⁶ Gary Platt, T. 14 February 2017, pp 14-15, 19.

¹⁰¹²⁷ Gary Platt, T. 14 February 2017, pp 19-21. The meeting in the area of the SFEIR3 cell potentially also involved Associate Purple 744 and Associate Purple 375. Gary Platt, T. 14 February 2017, pp 21, 47. *See also* exhibit P1807, slides 355-356.

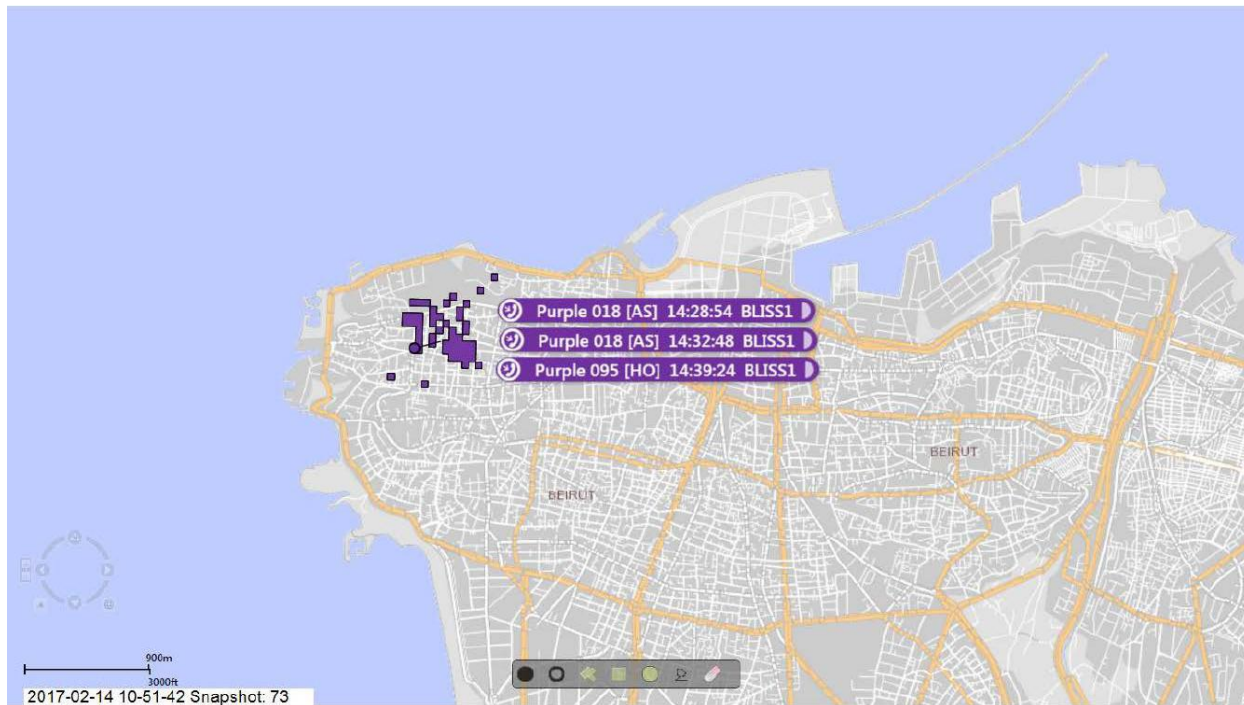


Exhibit P1814 (Electronic presentation of evidence snapshots), snapshot 73

5351. The same day, Mr Merhi's attributed Green 071 made two calls to Mr Badreddine's Green 023.¹⁰¹²⁸ One of these was a 31-second call at 18:51, when Green 071 used SIN FIL3 at the end of the call and Green 023 activated FURN3, which provided best server coverage for the Samino Jewellery store, in which Mr Badreddine had an interest under the alias of Sami Issa.¹⁰¹²⁹ The other was at 23:40 when Mr Merhi's attributed Green 071, using SFEIR3, called Mr Badreddine's Green 023, which activated OUYOUN3 in Faraya.¹⁰¹³⁰

5352. Mr Platt also noted that Mr Merhi's attributed Green 071's call to Mr Badreddine's Green 023 at 18:51 followed a short, fifteen-second call made at 18:49 from Mr Badreddine's sequential mobile 944 to the *Al-Rassoul Al-Aazam* Hospital, the 'Great Prophet Hospital'.¹⁰¹³¹ The

¹⁰¹²⁸ Exhibit P1205, p. 9; exhibit P1211, p. 4.

¹⁰¹²⁹ Gary Platt, T. 14 February 2017, pp 21-23; exhibit P1205, p. 9; exhibit P1211, p. 4; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 646. *See also* exhibit P1782, para. 586; exhibit P1807, slide 354.

¹⁰¹³⁰ Exhibit P1205, p. 9; exhibit P1211, p. 4; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 661. *See also* exhibit P1782, para. 588.

¹⁰¹³¹ Gary Platt, T. 14 February 2017, p. 22; exhibit P1287 (Call sequence table of mobile 944), p. 108; exhibit P1606 (Subscriber note for landline 206). *See also* exhibit P1807, slides 353-354.

hospital was a common contact of Mr Badreddine's sequential mobile 944, Mr Ayyash's personal mobiles 170 and 091 and Mr Merhi's Purple 231.¹⁰¹³²

5353. On certain dates, such as Saturday 15 January 2005, a pattern emerged, namely, of calls to the hospital from non-network mobiles followed shortly afterwards by calls between the Green mobiles.¹⁰¹³³ Mr Platt concluded that the calls to the hospital were to transmit messages between the users of the network mobile telephones, such as the Green mobiles, to another mobile.¹⁰¹³⁴ However, he acknowledged that—in the absence of evidence how the hospital communicated with the Accused—it was equally plausible that the mobile users called there for other reasons.¹⁰¹³⁵

5354. Mr Platt also drew attention to the close proximity of Mr Merhi's Green 071 and Purple 231 to Mr Badreddine's Green 023 during the calls at 18:51 and 18:52. In his view, this was consistent with the three mobiles being close to Mr Badreddine's (as Sami Issa) Samino Jewellery shop.¹⁰¹³⁶

5355. Mr Platt observed that the area that SINFIL3 covered—which is in central-eastern Beirut—was not frequented regularly by Green 071 and Mr Merhi's personal mobile Purple 231.¹⁰¹³⁷ He concluded that this was consistent with the users of Green 071/Purple 231, namely Mr Merhi, and Green 023, Mr Badreddine, arranging and meeting in the shop's vicinity.¹⁰¹³⁸

5356. Mr Platt highlighted what he viewed as a hierarchical call flow pattern between the call from Mr Merhi's Green 071 to Mr Badreddine's Green 023, followed within a minute by a call from Mr Merhi's Purple 231 to Purple 018.¹⁰¹³⁹ This was at 18:51, when Green 071 called Mr Badreddine's Green 023 for 31 seconds.¹⁰¹⁴⁰ At 18:52, Mr Merhi's Purple 231 called Mr Sabra's

¹⁰¹³² Gary Platt, T. 13 February 2017, pp 70-72; exhibit P2023.3 (Attribution report of Andrew Donaldson regarding Mr Badreddine); para. 280; exhibit P2026.2 (Attribution report of Andrew Donaldson regarding Mr Ayyash), paras 192, 254, annex E (ERNS D0537569, D0537573); exhibit P1962.1 (Attribution report of Andrew Donaldson regarding Mr Merhi), para. 44.

¹⁰¹³³ Gary Platt, T. 13 February 2017, pp 68, 71-73.

¹⁰¹³⁴ Gary Platt, T. 13 February 2017, pp 71-73.

¹⁰¹³⁵ Gary Platt, T. 24 February 2017, pp 13-14, T. 6 March 2017, pp 96-97.

¹⁰¹³⁶ Gary Platt, T. 14 February 2017, pp 21-23. *See also* exhibit P1807, slide 354.

¹⁰¹³⁷ Gary Platt, T. 14 February 2017, pp 24-25.

¹⁰¹³⁸ Gary Platt, T. 14 February 2017, pp 25, 32, 41-45. *See also* exhibit P1815 (Electronic presentation of evidence snapshots mapping calls using FURN3, FurnChebbak_C, Tehwita_C).

¹⁰¹³⁹ Gary Platt, T. 14 February 2017, pp 22-23; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 638-639, 646-647. *See also* exhibit P1782, para. 585.

¹⁰¹⁴⁰ Exhibit P1205, p. 9; exhibit P1211, p. 4.

attributed Purple 018.¹⁰¹⁴¹ After this call, Mr Merhi's Purple 231 was inactive for over 48 hours.¹⁰¹⁴²

5357. On Sunday 16 January 2005, the only call to or from the three Purple mobiles was a call three minutes after midnight by Mr Sabra's attributed Purple 018.¹⁰¹⁴³ Mr Platt testified that this inactivity was consistent with Mr Merhi and Mr Badreddine—during their meeting on Saturday 15 January 2005—having decided something about the abduction of Mr Abu Adass, which was to take place the following day.¹⁰¹⁴⁴

5358. In contrast to the Purple mobiles, Green 071 and Mr Merhi's Grey mobile were active on Sunday 16 January 2005. Green 071 called Mr Badreddine's Green 023 five times between 06:19 and 09:00.¹⁰¹⁴⁵ Mr Platt testified that, in his opinion, these calls related to Mr Abu Adass's abduction and some operational purpose required Mr Badreddine to return to Beirut from Faraya¹⁰¹⁴⁶ during this time, although he was not directly involved in the abduction himself.¹⁰¹⁴⁷ In the evening at 18:37, Mr Merhi's personal Grey mobile made a call after receiving two text messages, at 18:36. The mobile activated SFEIR3, in southern Beirut, near his home.¹⁰¹⁴⁸

iii. Telephone calls to the Abu Adass landline on Saturday 15 January 2005

5359. The Trial Chamber heard evidence about alleged telephone calls on **Saturday 15 January 2005**—from 'Mohammed' and Mr Khaled Taha.

5360. Witness 56 stated in five statements that Mr Abu Adass received a telephone call on the Abu Adass family landline in the evening of Saturday 15 January 2005 between 20:30 and

¹⁰¹⁴¹ Exhibit P527, p. 110.

¹⁰¹⁴² Exhibit P527, p. 110; Gary Platt, T. 14 February 2017, pp 23, 25; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 648.

¹⁰¹⁴³ Gary Platt, T. 13 February 2017, p. 92, T. 14 February 2017, pp 53-54; exhibit P527, p. 110; exhibit P1221, p. 285; exhibit P1223, p. 264. *See also* exhibit P1807, slides 375-378.

¹⁰¹⁴⁴ Gary Platt, T. 14 February 2017, pp 43-44.

¹⁰¹⁴⁵ Exhibit P1205, p. 9; exhibit P1211, p. 4; Gary Platt, T. 14 February 2017, pp 73-76; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 662, 666-667, 669. *See also* exhibit P1782, para. 604; exhibit P1807, slides 379-397.

¹⁰¹⁴⁶ Mr Badreddine frequently visited Faraya. Witness PRH416, T. 2 December 2015, pp 71, 79-80.

¹⁰¹⁴⁷ Gary Platt, T. 14 February 2017, pp 79-80.

¹⁰¹⁴⁸ Exhibit P2144 (Call sequence table of the Grey mobile), pp 55-56.

21:00.¹⁰¹⁴⁹ In two accounts the caller is described as ‘Mohammed’.¹⁰¹⁵⁰ In another two statements, Mr Abu Adass told the witness that the caller was ‘Mohammed’,¹⁰¹⁵¹ while in the fifth, Mr Abu Adass is described as having received a telephone call on 15 January 2005, but without identification.¹⁰¹⁵²

5361. The witness believed that the call was made from a public telephone, although the reasons given differed slightly.¹⁰¹⁵³ Witness 56 consistently stated that ‘Mohammed’ had told Abu Adass that he would collect him at 07:00 the following morning.¹⁰¹⁵⁴ However, the account varied of what ‘Mohammed’ had told Mr Abu Adass about the proposed trip. In three versions, he had told Mr Abu Adass that he had an unknown surprise for him,¹⁰¹⁵⁵ while in a fourth, ‘Mohammed’ had said he wanted to show Mr Abu Adass an apartment.¹⁰¹⁵⁶ In a fifth, ‘Mohammed’ had told Mr Abu Adass he would take him out.¹⁰¹⁵⁷

5362. Mr Ramadan stated that he was informed that someone had called Mr Abu Adass, telling him that he (the caller) had found a house in the Arab University area. He was going to get married there, he wanted Mr Abu Adass to see the house or the apartment and had a surprise for him.¹⁰¹⁵⁸

¹⁰¹⁴⁹ Exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 4; exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 1; exhibit P2132 (Statement of Witness PRH056, dated 1 July 2010), paras 16, 18; exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 3; exhibit 5D477 (Statement of Witness PRH056, 1 October 2005), p. 2. In another statement, Witness PRH056 stated that Mr Abu Adass told her the day before he disappeared that he would be meeting ‘Mohammed’, but did not make reference to a telephone call. Exhibit 5D475 (Statement of Witness PRH056, 15 February 2005), p. 1.

¹⁰¹⁵⁰ Exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 4; exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 1.

¹⁰¹⁵¹ Exhibit P2132 (Statement of Witness PRH056, dated 1 July 2010), paras 16, 20; exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 3.

¹⁰¹⁵² Exhibit 5D477 (Statement of Witness PRH056, 1 October 2005), p. 2.

¹⁰¹⁵³ Exhibits P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005) and 5D477 (Statement of Witness PRH056, 1 October 2005), p. 1; exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), para. 144 (p. 11); exhibit P2132 (Statement of Witness PRH056, dated 1 July 2010), para. 17.

¹⁰¹⁵⁴ Exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 3; exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 4; exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 3.

¹⁰¹⁵⁵ Exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 3; exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 4; exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), para. 124 (p. 9).

¹⁰¹⁵⁶ Exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 3.

¹⁰¹⁵⁷ Exhibit 5D475 (Statement of Witness PRH056, 15 February 2005), p. 1.

¹⁰¹⁵⁸ Exhibit 5D473 (Statement of Ziad Ramadan, Syrian authorities, undated), pp 13-14.

In a television interview, Mr Abu Adass's sister stated that 'Mohammed' called the house once on the evening before Mr Abu Adass's disappearance.¹⁰¹⁵⁹

5363. In two statements, Witness 56 stated that Mr Abu Adass received an additional call on Saturday 15 January 2005, from Mr Khaled Taha.¹⁰¹⁶⁰ In another statement, the witness said that there was no telephone call after the call from 'Mohammed'.¹⁰¹⁶¹ A call sequence table of the Abu Adass family landline shows no calls to or from it on 15 January 2005.¹⁰¹⁶²

5364. A representative from Ogero, the telecommunications company providing landline services in Lebanon, Witness PRH709, stated that landline-to-landline call data records were generated and stored only from 1 January 2006. Before then, such records were incomplete and only generated if there was a test run on a specific line.¹⁰¹⁶³

iv. Mr Abu Adass's departure on Sunday 16 January 2005

5365. In the early morning of **Sunday 16 January 2005**, Mr Abu Adass attended the dawn prayers at the nearby Arab University Mosque and returned home.¹⁰¹⁶⁴ The dawn prayers that day were at 05:15.¹⁰¹⁶⁵

5366. Witness 56 stated that Mr Abu Adass then left the house at around 07:00.¹⁰¹⁶⁶ Witness 56's account of Mr Abu Adass's departure varied in some regards. In one statement, the witness said that Mr Abu Adass left with a man called 'Mohammed'.¹⁰¹⁶⁷ However, according to another statement, the witness did not think that anyone had seen the man with whom Mr Abu Adass had left.¹⁰¹⁶⁸

¹⁰¹⁵⁹ Exhibit P761.1 (Transcript of television programme regarding Mr Abu Adass), pp 1, 17.

¹⁰¹⁶⁰ Exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), para. 227 (p. 19); exhibit P2132 (Statement of Witness PRH056, dated 1 July 2010), para. 18. In the first statement, exhibit P2131, the witness stated that this additional call was received before the call from 'Mohammed', while in the latter, exhibit P2132, the witness was unsure of the order of the calls.

¹⁰¹⁶¹ Exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 3.

¹⁰¹⁶² Exhibit 5D555 (Call sequence table of the Abu Adass family landline), p. 4.

¹⁰¹⁶³ Exhibit P1777 (Consolidated witness statement on behalf of Ogero with annexes 1-9), paras 14-16, 18, 21, 79; Witness PRH711, T. 10 January 2017, pp 49-52, 54-56; Witness PRH709, T. 11 January 2017, pp 33-36, 39-45; Toufic Chebaro, T. 12 January 2017, p. 16.

¹⁰¹⁶⁴ Exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 4.

¹⁰¹⁶⁵ According to the open source information referred to at footnote 9917.

¹⁰¹⁶⁶ Exhibit 5D474 (Statement of Witness PRH056, 14 February 2005), p. 1; exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 4.

¹⁰¹⁶⁷ Exhibit 5D475 (Statement of Witness PRH056, 15 February 2005), pp 1-2.

¹⁰¹⁶⁸ Exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), paras 117-118 (p. 9).

5367. Witness 56 also stated that Mr Abu Adass had said that ‘Mohammed’ would be picking him up in his car,¹⁰¹⁶⁹ but in another statement, was unsure whether ‘Mohammed’ used a car when he came on 16 January 2005.¹⁰¹⁷⁰ Witness 56 also stated that a car horn was heard before Mr Abu Adass left the house, but later that there had been no car horns before his departure.¹⁰¹⁷¹ Witness 56 stated variously that when he left the house, Mr Abu Adass was wearing brown clothing,¹⁰¹⁷² white robes¹⁰¹⁷³ and ‘regular’ clothes.¹⁰¹⁷⁴ The witness stated both that Mr Abu Adass bade farewell to his family,¹⁰¹⁷⁵ and that he left without saying goodbye.¹⁰¹⁷⁶ The witness also stated first that Mr Abu Adass took nothing at all with him;¹⁰¹⁷⁷ and then later, that he took his wallet and identification.¹⁰¹⁷⁸

5368. According to his father, Mr Abu Adass said that he was leaving with someone but did not give that person’s name.¹⁰¹⁷⁹

5369. Mr Ramadan stated that Mr Abu Adass’s family contacted him the same day Mr Abu Adass disappeared, at around 21:00, telling him that Mr Abu Adass had left the house around 07:30 with another person. The two had still not come back by the time the family called Mr Ramadan.¹⁰¹⁸⁰

5370. Witness 87 stated that Mr Taysir Abu Adass told him that Mr Abu Adass went with someone ‘on the pretext that Ahmad was looking for a house for him’, but without saying where they were going.¹⁰¹⁸¹

5371. The call sequence table for the Abu Adass family’s landline shows four calls from two different numbers on this day. The first and the last calls were from a mobile number that appears

¹⁰¹⁶⁹ Exhibit P2132 (Statement of Witness PRH056, dated 1 July 2010), para. 20.

¹⁰¹⁷⁰ Exhibit 5D477 (Statement of Witness PRH056, 1 October 2005), p. 6.

¹⁰¹⁷¹ Exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 3.

¹⁰¹⁷² Exhibit 5D474 (Statement of Witness PRH056, 14 February 2005), p. 1.

¹⁰¹⁷³ Exhibit P2132 (Statement of Witness PRH056, dated 1 July 2010), para. 20.

¹⁰¹⁷⁴ Exhibit 5D477 (Statement of Witness PRH056, 1 October 2005), p. 2.

¹⁰¹⁷⁵ Exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 4.

¹⁰¹⁷⁶ Exhibit 5D477 (Statement of Witness PRH056, 1 October 2005), p. 6.

¹⁰¹⁷⁷ Exhibit 5D474 (Statement of Witness PRH056, 14 February 2005), p. 3; exhibit 5D477 (Statement of Witness PRH056, 1 October 2005), p. 6.

¹⁰¹⁷⁸ Exhibit P2132 (Statement of Witness PRH056, dated 1 July 2010), para. 19.

¹⁰¹⁷⁹ Exhibit 5D512 (Witness statement of Taysir Abu Adass, undated), p. 4.

¹⁰¹⁸⁰ Exhibit 5D473 (Statement of Ziad Ramadan, Syrian authorities, undated), pp 13-14; exhibit 5D470 (Statement of Ziad Ramadan, Syrian authorities, 8 November 2005), pp 14-15.

¹⁰¹⁸¹ Exhibit 4D212 (Statement of Witness PRH087, undated), p. 3; exhibit 4D213 (Statement of Witness PRH087, dated 28 April 2005), p. 3.

to be a regular contact of the landline. Two calls from number 367 at 19:33 and 19:35 were the only calls from that number during the period of 1 December 2004 to 28 February 2005.¹⁰¹⁸²

v. Cessation of Purple mobile activity and increased Green mobile activity on Sunday 16 January 2005

5372. On **Sunday 16 January 2005**, the day that Mr Abu Adass left his home for the last time after attending the mosque for prayers, save for a call by Purple 018 three minutes after midnight, there were no calls on the three Purple and the two Associate Purple mobiles that day.¹⁰¹⁸³

5373. By contrast, Mr Merhi's attributed Green 071 was active. It called Mr Badreddine's Green 023 five times between 06:19 and 09:00.¹⁰¹⁸⁴ Green 023 used the OUYOUN3 cell in Faraya for the call at 06:19, GANOUM3 at 07:40,¹⁰¹⁸⁵ MIKAEL2 and HARA1 at 07:46 and ROUEIS3 in Haret Hreik at 08:25 and at 09:00.¹⁰¹⁸⁶

5374. The second and longest call, at 07:40, was just over one minute.¹⁰¹⁸⁷ After the fifth call, Green 023 was inactive for the remainder of the day, and Green 071 neither made nor received calls for another four days, until **Thursday 20 January 2005**.¹⁰¹⁸⁸

5375. Mr Philips and Mr Platt calculated that almost thirty per cent of the eighteen calls between Mr Badreddine's Green 023 and Mr Merhi's attributed Green 071 from 13 October 2004¹⁰¹⁸⁹ occurred in less than three hours on Sunday 16 January 2005.¹⁰¹⁹⁰

¹⁰¹⁸² Exhibit 5D555, p. 4. *See also* Gary Platt, T. 7 April 2017, pp 55-56.

¹⁰¹⁸³ Exhibit P527 (Call sequence table of Purple 231), p. 110; exhibit P1221 (Call sequence table of Purple 018), p. 285; exhibit P1223 (Call sequence table of Purple 095), p. 264; exhibit P1339 (Call sequence table of Associate Purple 375), p. 35; exhibit P1342 (Call sequence table of Associate Purple 744), p. 71.

¹⁰¹⁸⁴ Exhibit P1205 (Call sequence table of Green 071), p. 9; exhibit P1211 (Call sequence table of Green 023), p. 4; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 662, 666. *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), para. 604.

¹⁰¹⁸⁵ Mr Badreddine's personal mobile 663 activated the equivalent Touch cell at 7:42, JisrBasha_B. Exhibit P1310 (Call sequence table of mobile 663), p. 3170. *See also* exhibit P1807 (Chronology PowerPoint presentation – 1 January 2005 to 17 January 2005), slide 389.

¹⁰¹⁸⁶ Exhibit P1211, p. 4; Gary Platt, T. 14 February 2017, p. 73; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 669. *See also* exhibit P1782, para. 609.

¹⁰¹⁸⁷ Exhibit P1205, p. 9; exhibit P1211, p. 4.

¹⁰¹⁸⁸ Exhibit P1205, p. 9; exhibit P1211, p. 4.

¹⁰¹⁸⁹ *See* chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles', (C) 'Green network', (3) 'Usage'.

¹⁰¹⁹⁰ John Edward Philips, T. 6 September 2016, pp 68-71; exhibit P1116 (Expert report of J. E. Philips, 'Mission phones?' – Green mobiles, dated 3 May 2015), paras 7.5.2.5 (p. 35), 7.5.5.8 (p. 51); exhibit P1205. *See also* exhibit P1782, para. 605.

5376. For Mr Platt, the early morning calls were unusual for Green 071 and Green 023. This suggested urgency and resulted in Mr Badreddine's Green 023 travelling to Beirut that day.¹⁰¹⁹¹ He found the call pattern consistent with Mr Merhi's attributed Green 071 providing updates on the 'abduction' of Mr Abu Adass to Mr Badreddine's Green 023; it was also consistent with Mr Badreddine keeping away from this event due to his organisational position.¹⁰¹⁹² The call activity of Green 071 and Green 023 also suggested to Mr Platt that Mr Abu Adass's 'abduction' was completed by 09:00, and that the users of the two Green mobiles met at that time.¹⁰¹⁹³

5377. Mr Platt highlighted two short successive calls by Mr Badreddine on his sequential mobile 944, using the SABRA2 cell at 07:59 and 08:00, to *Al-Rasoul Al-Aazam* (Great Prophet Hospital) in between the calls from Green 071 to Green 023 at 07:46 and 08:25.¹⁰¹⁹⁴ He explained that this fitted his theory of using the hospital to leave a message to call back, which may have been necessary if Mr Merhi's Green 071 was switched off.¹⁰¹⁹⁵

5378. Mr Platt observed that this was the only day since 1 September 2004 that Mr Sabra's attributed Purple 018, Mr Oneissi's Purple 095, Mr Merhi's Purple 231, the unattributed Associate Purple 375 and Associate Purple 744—attributed to Mr Merhi's brother, Mr Abbas Habib Merhi—were simultaneously inactive for over 24 hours.¹⁰¹⁹⁶ In Mr Platt's opinion, this was consistent with an operational need for these mobiles not to be used on Sunday 16 January 2005, so that they were not traced or lost.¹⁰¹⁹⁷ Mr Merhi's Grey mobile, however, was active. Connecting to SFEIR3 in the evening, it received two text messages from a number at 18:36, after which it called the same number at 18:37.¹⁰¹⁹⁸

¹⁰¹⁹¹ Gary Platt, T. 14 February 2017, pp 77-79; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 666-669. *See also* exhibit P1782, para. 609.

¹⁰¹⁹² Gary Platt, T. 14 February 2017, pp 73, 78-81, 83, 92; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 666-669.

¹⁰¹⁹³ Gary Platt, T. 14 February 2017, pp 80-81, 83, 92-95. *See also* exhibit P1782, para. 611; exhibit P1807, slides 395-396.

¹⁰¹⁹⁴ Gary Platt, T. 14 February 2017, pp 74-76; exhibit P1287 (Call sequence table of mobile 944), p. 108; exhibit P1606 (Subscriber note for landline 206). *See also* exhibit P1807, slides 392-393.

¹⁰¹⁹⁵ Gary Platt, T. 14 February 2017, pp 74-76.

¹⁰¹⁹⁶ Gary Platt, T. 14 February 2017, pp 59-60, 64-65; exhibit P1782, para. 603. *See also* exhibit P1807, slides 375, 378.

¹⁰¹⁹⁷ Gary Platt, T. 14 February 2017, pp 64-66, 68-70.

¹⁰¹⁹⁸ Exhibit P2144 (Call sequence table of the Grey mobile), pp 55-56.

vi. Telephone calls to the Abu Adass home on Monday 17 January 2005

5379. The Prosecution, in its final trial brief, submits that the Abu Adass family ‘received two calls from his abductors’, on **Monday 17 January 2005**.¹⁰¹⁹⁹ At around 07:00 or 07:30 that day, namely the day following Mr Abu Adass’s disappearance, a man with a Lebanese accent called the Abu Adass’s family landline and said he was ‘the one who went with Ahmad’.¹⁰²⁰⁰

5380. The caller said that he was with Mr Abu Adass in Tripoli, and they had not returned the previous day because their car had broken down. They were waiting for a repair and would return to Beirut that afternoon.¹⁰²⁰¹ The caller said that Mr Abu Adass had not called because he was still in an apartment with no telephone, and the caller was at the car workshop.¹⁰²⁰² The caller refused an offer to have someone pick up Mr Abu Adass.¹⁰²⁰³ He also said that Mr Abu Adass had asked him to say that he would return home as he had promised.¹⁰²⁰⁴

5381. Witness 56 thought that the caller was the same person who called the Abu Adass’s family landline on Saturday 15 January 2005 as ‘Mohammed’, and that the call was made from a public telephone.¹⁰²⁰⁵

¹⁰¹⁹⁹ Prosecution final trial brief, para. 556.

¹⁰²⁰⁰ Exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 2; exhibit 5D477 (Statement of Witness PRH056, 1 October 2005), p. 2; exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 4; exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 5; exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), paras 141-146 (pp 10-11). *See also* exhibit P2130 (Statement of Witness PRH056, dated 5 May 2006), para. 24 (p. 3); exhibit 5D474 (Statement of Witness PRH056, 14 February 2005), p. 2 (in which Witness 56 mentioned the call made later that same day – as detailed below – but did not mention that another call had been received earlier that same day concerning Mr Abu Adass); exhibit 5D476 (Statement of Witness PRH056, 17 February 2005), p. 4; exhibit P461 (Witness statements of Taysir Abu Adass, dated 19 January 2005 and 28 February 2005), ERN 50003488.

¹⁰²⁰¹ Exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 2; exhibit 5D476 (Statement of Witness PRH056, 17 February 2005), p. 4; exhibit 5D477 (Statement of Witness PRH056, 1 October 2005), p. 2; exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), pp 4-5; exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 5; exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), para. 144 (pp 10-11); exhibit P461 (Witness statements of Taysir Abu Adass, dated 19 January 2005 and 28 February 2005), ERN 50003488.

¹⁰²⁰² Exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 2; exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 5; exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), para. 144 (pp 10-11).

¹⁰²⁰³ Exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), para. 144 (p. 11).

¹⁰²⁰⁴ Exhibit 5D476 (Statement of Witness PRH056, 17 February 2005), p. 4; exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), pp 5-6.

¹⁰²⁰⁵ Exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), para. 144 (p. 11); exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 3; exhibit 5D477 (Statement of Witness PRH056, 1 October 2005), p. 2.

5382. Later the same day, at around 21:00, there was another call from a man,¹⁰²⁰⁶ saying he was the same person who called earlier.¹⁰²⁰⁷ The caller said that the car had not broken down, but that Mr Abu Adass had gone or would be going to Iraq and would not return home.¹⁰²⁰⁸ He would try to get Mr Abu Adass's telephone number so he could be called in an attempt to change his mind.¹⁰²⁰⁹ He did not mention his location or give any telephone number.¹⁰²¹⁰ When asked for his name, he ended the call.¹⁰²¹¹

5383. Witness 56 did not know whether the second caller was the same as the first.¹⁰²¹² The second call was also made from a public telephone.¹⁰²¹³

5384. Mr Abu Adass's family contacted Mr Ramadan on Monday 17 January 2005 and told him that Mr Abu Adass had been in a car that broke down on the way to Tripoli.¹⁰²¹⁴ In another statement, he said that he went to the Abu Adass house on 17 January and the family told him they had received a telephone call from a person saying that the two were together in Tripoli, their car

¹⁰²⁰⁶ Exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 2; exhibit 5D476 (Statement of Witness PRH056, 17 February 2005), p. 4; exhibit 5D477 (Statement of Witness PRH056, 1 October 2005), p. 2; exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 6; exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 5; exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), para. 144 (p. 11); exhibit P461 (Witness statements of Taysir Abu Adass, dated 19 January 2005 and 28 February 2005), ERN 50003489.

¹⁰²⁰⁷ Exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 2; exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), pp 6, 13; exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), para. 144 (p. 11). *See also* exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 5 (in which Witness 56 gave evidence of understanding that the caller on the evening of Monday 17 January 2005 morning was the same person as the 'Mohammed' who had called on Saturday 15 January 2005).

¹⁰²⁰⁸ Exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 2; exhibit 5D474 (Statement of Witness PRH056, 14 February 2005), p. 2; exhibit 5D476 (Statement of Witness PRH056, 17 February 2005), p. 4; exhibit 5D477 (Statement of Witness PRH056, 1 October 2005), p. 2; exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), pp 6, 13; exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), para. 144 (p. 11); exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 5; exhibit P461 (Witness statements of Taysir Abu Adass, dated 19 January 2005 and 28 February 2005), ERN 50003489. *See also* exhibit 5D518 (Summary of investigation concerning Mr Abu Adass, dated 3 March 2005), p. 2.

¹⁰²⁰⁹ Exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 5.

¹⁰²¹⁰ Exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 14.

¹⁰²¹¹ Exhibit 5D474 (Statement of Witness PRH056, 14 February 2005), p. 2; exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 6.

¹⁰²¹² Exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), para. 144 (p. 11); exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 13; exhibit 5D477 (Statement of Witness PRH056, 1 October 2005), p. 2.

¹⁰²¹³ Exhibit 5D474 (Statement of Witness PRH056, 14 February 2005), p. 2; exhibit 5D477 (Statement of Witness PRH056, 1 October 2005), p. 2; exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), para. 144 (p. 11); exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 3.

¹⁰²¹⁴ Exhibit 5D473 (Statement of Ziad Ramadan, Syrian authorities, undated), p. 14.

had broken down and was being repaired in a workshop and they would return once the repair was complete. Mr Abu Adass was also tired and sleepy.¹⁰²¹⁵

5385. The Abu Adass family called Mr Ramadan, who expressed disbelief at Mr Abu Adass going to Iraq.¹⁰²¹⁶ Mr Ramadan did not mention in his statements that he knew about the second call or that he was told that Mr Abu Adass had gone to Iraq.

5386. The call sequence table of the Abu Adass family's landline for Monday 17 January 2005 also does not display any calls from an unknown number. The calls in the morning and around 21:00 on that day come from mobile numbers that appear to have communicated with the family's landline on previous occasions.¹⁰²¹⁷

vii. Purple mobile activity on Monday 17 January 2005

5387. There were no calls between Mr Merhi's attributed Green 071 and Mr Badreddine's Green 023 on **Monday 17 January 2005**.¹⁰²¹⁸ This was the day after Mr Abu Adass left his home for the last time.

5388. The amended consolidated indictment pleads that the Abu Adass family received two calls 'on around 17 January 2005'. The first was 'from the person believed to be "Mohammed" claiming that he and ABU ADASS had broken down in a vehicle in Tripoli'. In the second, the caller claimed that 'ABU ADASS had decided to go on jihad to Iraq and would not be coming home'. In relation to the Accused, it pleads that '**ONEISSI** was in the vicinity of ABU ADASS' home and used Purple 095 to contact **MERHI** on Purple 231'.¹⁰²¹⁹

5389. On that day, in the evening, Mr Oneissi's Purple 095 activated COLA2 near the Arab University Mosque.¹⁰²²⁰ His mobile, between 07:01 and 08:14 in the morning, activated SFEIR3 in south Beirut, when it received five service text messages within less than thirty seconds.¹⁰²²¹

¹⁰²¹⁵ Exhibit 5D470 (Statement of Ziad Ramadan, Syrian authorities, 8 November 2005), p. 15.

¹⁰²¹⁶ Exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), para. 144 (p. 11); exhibit P1776 (Transcript of Ziad Ramadan's interview by UNHCR, 22 May 2006), p. 24.

¹⁰²¹⁷ Exhibit 5D555 (Call sequence table of the Abu Adass family landline), pp 4-5.

¹⁰²¹⁸ Exhibit P1205 (Call sequence table of Green 071), p. 9; exhibit P1211 (Call sequence table of Green 023), p. 4.

¹⁰²¹⁹ Amended consolidated indictment, para. 29.

¹⁰²²⁰ Exhibit P1223 (Call sequence table of Purple 095), p. 265; Gary Platt, T. 9 February 2017, pp 26-27, 29-30, 53; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 672, 680. *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), paras 499, 622-625.

¹⁰²²¹ Exhibit P1223, pp 264-265.

Similarly, Mr Merhi's Purple 231 received four service messages from Alfa in a quick succession after it became active again at 20:44.¹⁰²²² Mr Sabra's attributed Purple 018 made a call at 08:18.¹⁰²²³ The three Purple mobiles activated the SFEIR3 cell.¹⁰²²⁴

5390. Purple 095 then connected to MIKAEL2, from 20:48 to 20:49, and CHIAH2 at 20:50 and 20:51. It then activated COLA2 to receive eight service messages in six minutes from 20:55, and to send one message to Mr Merhi's Purple 231 at 21:02.¹⁰²²⁵ His Purple 231 called Mr Oneissi's Purple 095 back at 21:04 and 21:05.¹⁰²²⁶

5391. Meanwhile, Mr Sabra's attributed Purple 018 received two more calls, the last was at 10:26, all activating cells in southern Beirut, namely SFEIR3 and BRAJNE1.¹⁰²²⁷ It had no contact with the other two Purple mobiles that day.¹⁰²²⁸

5392. This day, Monday 17 January 2005, was the last time any Purple mobiles connected to the COLA cells.¹⁰²²⁹ The Purple mobiles were also inactive for much of the day.¹⁰²³⁰ Mr Merhi's Purple 231 connected exclusively to SFEIR3 that day.¹⁰²³¹ The other two Purple mobiles also activated the SFEIR3 cell.¹⁰²³²

5393. Mr Platt observed that the messages that Mr Oneissi's Purple 095 received in the morning placed its user in south Beirut and coincided with the call to the Abu Adass family landline about the car breaking down in Tripoli.¹⁰²³³ The text messages received on Mr Merhi's Purple 231 and Mr Oneissi's Purple 095 in the evening, in his assessment, showed that the two Purple mobiles

¹⁰²²² Exhibit P527 (Call sequence table of Purple 231), pp 110-111.

¹⁰²²³ Exhibit P1221 (Call sequence table of Purple 018), p. 285.

¹⁰²²⁴ Exhibit P527, p. 110; exhibit P1221, p. 285; exhibit P1223, p. 264.

¹⁰²²⁵ Exhibit P1223, p. 265.

¹⁰²²⁶ Exhibit P527, p. 111.

¹⁰²²⁷ Exhibit P1221, p. 285; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 676.

¹⁰²²⁸ Exhibit P1221, p. 285.

¹⁰²²⁹ Purple 018 used COLA3 for the last time on 6 January 2005. Purple 231 did not activate any of the COLA cells. Exhibit P527; exhibit P1221, pp 283-292; exhibit P1223, pp 265-281; Gary Platt, T. 14 February 2017, pp 106-107, T. 15 February 2017, pp 7-8; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 680-681, 686. *See also* exhibit P1782, para. 627.

¹⁰²³⁰ Associate Purple 375 and 744 remained inactive throughout the day. Gary Platt, T. 14 February 2017, p. 101; exhibit P527, pp 110-111; exhibit P1221, p. 285; exhibit P1223, pp 264-265; exhibit P1339 (Call sequence table of Associate Purple 375), p. 35; exhibit P1342 (Call sequence table of Associate Purple 744), p. 71.

¹⁰²³¹ Exhibit P527, pp 110-111.

¹⁰²³² Exhibit P1221, p. 285; exhibit P1223, pp 264-265.

¹⁰²³³ Gary Platt, T. 14 February 2017, pp 100-102; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 674, referring to exhibit P2131 (Statement of Witness PRH056, dated 7-8 June 2007), paras 143-144 (pp 10-11); exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 5. *See also* exhibit P1782, para. 620.

were switched on shortly before the second call to the Abu Adass family landline at around 21:00.¹⁰²³⁴

5394. The cells activated by Mr Oneissi's Purple 095 placed it in south Beirut at 20:48 and showed its movement to the COLA2 cell in the vicinity of the Arab University Mosque, close to where Mr Abu Adass lived.¹⁰²³⁵

5395. Mr Platt testified that this was consistent with confining the mobile activity to the area of the mosque and away from the residence of Purple 095's user in south Beirut.¹⁰²³⁶ When Mr Merhi's Purple 231 and Mr Oneissi's Purple 095 contacted each other between 21:02 and 21:05, Purple 095's cell usage showed that it travelled south, away from the COLA cells area.¹⁰²³⁷ Mr Platt thought that this was consistent with reporting on what had happened in the preceding minutes in the area of the COLA2 cell.¹⁰²³⁸

5396. Associate Purple 744 and Associate Purple 375 became active only on **Tuesday 18 January 2005**. Associate Purple 744—attributed to Mr Merhi's brother, Mr Abbas Habib Merhi—received 42 text messages and used SFEIR3 for its first call after the inactive period.¹⁰²³⁹ The unattributed Associate Purple 375 activated BIRABD3.¹⁰²⁴⁰

5397. Mr Platt concluded that the series of 'pent-up' messages received by Mr Merhi's Purple 231, Mr Oneissi's Purple 095 and Mr Merhi's brother's Associate Purple 744 suggests that the users had their mobiles turned off.¹⁰²⁴¹ He did not review the Grey mobile, but it too had no calls or messages between 15:22 on Saturday 15 January and 18:36 on Sunday 16 January 2005.¹⁰²⁴² The SMS call sequence table shows that at 21:13 on 15 January and at 13:32 on 16

¹⁰²³⁴ Gary Platt, T. 14 February 2017, pp 102-103. *See also* exhibit P1782, para. 622.

¹⁰²³⁵ Gary Platt, T. 14 February 2017, pp 104-106; exhibit P1223, p. 265; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 678-679; exhibit P1412 (Statement of Glenn Williams), pp 24-28 (ERNs 60294170-60294174) (paras 56, 59-62, 65-67). *See also* exhibit P1782, para. 624; exhibit P1807, slides 412, 414.

¹⁰²³⁶ Gary Platt, T. 15 February 2017, pp 3-5.

¹⁰²³⁷ Gary Platt, T. 14 February 2017, pp 106-107; exhibit P1223, p. 265; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 683-685. *See also* exhibit P1782, paras 625-626; exhibit P1807, slides 416, 418.

¹⁰²³⁸ Gary Platt, T. 15 February 2017, p. 10.

¹⁰²³⁹ Exhibit P1342, pp 71-73.

¹⁰²⁴⁰ Exhibit P1339, p. 35.

¹⁰²⁴¹ Gary Platt, T. 14 February 2017, pp 101-103.

¹⁰²⁴² Exhibit P2144, p. 55.

January 2005 two messages were sent to Mr Merhi's Grey mobile,¹⁰²⁴³ which were received at 18:36 on Sunday 16 January.¹⁰²⁴⁴

5398. In Defence cross-examination on the general significance of a mobile receiving multiple text messages within a short time, Mr Platt agreed that mobiles may be switched off because they are not needed for a period of time.¹⁰²⁴⁵ He also agreed that some areas have no mobile coverage, and that pent-up SMS messages could be received when a mobile re-enters an area of coverage after being in a no-coverage area, rather than after being turned off and then on again.¹⁰²⁴⁶

viii. Reporting Mr Abu Adass missing, Wednesday 19 January 2005

5399. It appears that on **Wednesday 19 January 2005** Mr Taysir Abu Adass filed a complaint with the Public Prosecutor's Office at the Court of Appeal in Beirut, requesting an investigation into the disappearance of his son, Mr Ahmad Abu Adass. Later that same day he made a statement at a police station.¹⁰²⁴⁷

5400. The Public Prosecutor of Beirut issued an 'all-point bulletin' on 19 January 2005 to be distributed to all Interior Security Forces.¹⁰²⁴⁸ Mr Taysir Abu Adass initially told the Lebanese authorities that Mr Abu Adass left his home on '15/1/2005, which was last Sunday'; the date is incorrect as the previous Sunday was 16 January 2005. In two subsequent statements to the Lebanese authorities, however, he stated that his son left his home on 16 January 2005.¹⁰²⁴⁹

¹⁰²⁴³ Exhibit P2147 (SMS content for Grey mobile), p. 48 (rows 546, 548).

¹⁰²⁴⁴ Exhibit P2144, p. 55. The call sequence table with SMS content, exhibit P2147, shows that the text messages were delivered at 18:32. The Trial Chamber received evidence from the representatives of the Lebanese mobile telecommunications service providers regarding the setting of clocks at the mobiles switching centres (MSCs). *For example*, exhibit P1192.4 (Explanation on timing and clocks for call data records, Annex 9 to Witness PRH707's statement of 11 November 2015). The four-minute difference has no significance here.

¹⁰²⁴⁵ Gary Platt, T. 4 April 2017, p. 41.

¹⁰²⁴⁶ Gary Platt, T. 24 March 2017, pp 13-14, T. 4 April 2017, pp 45-46.

¹⁰²⁴⁷ Exhibit 5D587 (Complaint of Taysir Abu Adass, dated 19 January 2005), p. 1; exhibit P461 (Witness statements of Taysir Abu Adass, dated 19 January 2005 and 28 February 2005), ERNs 50003487, 50008343; exhibit 5D512 (Witness statement of Taysir Abu Adass, undated), pp 2, 4; exhibit 5D514 (Summary report of interview with Taysir Abu Adass, dated 14 February 2005), p. 3; exhibit 5D518 (Summary of investigation concerning Mr Abu Adass, dated 3 March 2005), p. 2; exhibit 5D515 (Witness statement of Taysir Abu Adass, dated 17 February 2005), p. 2. *See also* exhibit 5D474 (Statement of Witness PRH056, 14 February 2005), p. 2; exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 1; exhibit 5D476 (Statement of Witness PRH056, 17 February 2005), p. 5; exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), para. 152 (p. 12).

¹⁰²⁴⁸ Exhibit P461 (Witness statements of Taysir Abu Adass, dated 19 January 2005 and 28 February 2005), ERN 50008345.

¹⁰²⁴⁹ Exhibit 5D587 (Complaint of Taysir Abu Adass, dated 19 January 2005), p. 1; exhibit 5D512 (Witness statement of Taysir Abu Adass, undated), p. 4; exhibit P461 (Witness statements of Taysir Abu Adass, dated 19 January 2005

ix. Mr Khaled Taha's travel on Saturday 15 and Sunday 16 January 2005

5401. Lebanese and Syrian border records show that Mr Taha entered Lebanon from Syria on **Saturday 15 January 2005**, and returned there on **Sunday 16 January 2005**.¹⁰²⁵⁰ Mr Macleod, a UNIIIC and then Prosecution investigator, and Mr Taylor, the Prosecution's former Chief of Investigations, testified that Lebanese border records revealed that Mr Taha travelled between Lebanon and Syria fifteen times between 20 May 2004 and 15 January 2005.¹⁰²⁵¹ The Trial Chamber has received no direct information about Mr Taha's whereabouts after Sunday 16 January 2005.

5402. In October 2005, the Syrian Government informed the UNIIIC that its border records did not show Mr Taha leaving Syria through official channels after 16 January 2005 and stated that it was unaware of his location.¹⁰²⁵² According to Mr Macleod, when he joined the UNIIIC in February 2006, Mr Taha's location was unknown. Mr Macleod's view was that Mr Taha had gone into hiding because he was involved in illegal activities.¹⁰²⁵³ A Lebanese Military Court indictment issued in 2007 alleged that Mr Taha had fled into the Ein-El-Hilwe camp, near Saida in Lebanon, after Mr Hariri's assassination.¹⁰²⁵⁴

5403. The Trial Chamber also received evidence about subsequent investigations—by Lebanese authorities,¹⁰²⁵⁵ the UNIIIC¹⁰²⁵⁶ and the Prosecution—into Mr Taha's possible involvement in

and 28 February 2005), ERNs 50003487, 50008343. *See also* exhibit 5D514 (Summary report of interview with Taysir Abu Adass, dated 14 February 2005), p. 3.

¹⁰²⁵⁰ Exhibit 5D478 (Response of Syrian authorities to UNIIIC's request for assistance regarding Khaled Taha's entry record to Syria); exhibit 5D479 (Lebanese entry and exit records regarding Khaled Taha).

¹⁰²⁵¹ Report of Arrival and Departure of the Suspect on the Lebanese/Syrian border, ERNs 50003913-50003916. During the Prosecution's closing submissions (T. 13 September 2018, pp 40-41), the Presiding Judge asked the Prosecution to clarify whether the relevant records were in evidence. Lead counsel for Mr Sabra, Mr Young, answered that he believed the records had been admitted—however, they were not. Alasdair Macleod, T. 19 July 2016, pp 43-46; Michael Taylor, T. 25 June 2018, pp 92-96, T. 26 June 2018, p. 52.

¹⁰²⁵² Exhibit 5D478.

¹⁰²⁵³ Alasdair Macleod, T. 14 January 2016, pp 57-59.

¹⁰²⁵⁴ Exhibit 5D502 (Lebanese Military Court indictment), p. 8.

¹⁰²⁵⁵ Exhibit 5D497 (Extract from an investigation summary produced by Lebanese authorities); exhibit 5D502; exhibit 5D258 ('Sight translation' of letter from Syrian Special Judicial Commission); exhibit 5D482 (Table of 'terrorism cases' before the Lebanese Military Court in July to September 2008), p. 18.

¹⁰²⁵⁶ Exhibit 5D490 (UNIIIC report to the United Nations Security Council, 20 October 2005), paras 182, 190.

Mr Abu Adass's disappearance. According to Mr Taylor, the Prosecution 'robustly' investigated the possibility that Mr Taha left the country with Mr Abu Adass.¹⁰²⁵⁷

5404. In 2009, Mr Taylor authored an internal strategy document that named Mr Taha as a 'person of interest'.¹⁰²⁵⁸ Between 26 May and 9 July 2010, the Prosecution sent four requests for assistance to the Lebanese authorities seeking information, mainly about the Accused but also about Mr Taha.¹⁰²⁵⁹ Mr Taylor believed that the Prosecution had sought and obtained Mr Taha's fingerprints from the Lebanese Government,¹⁰²⁶⁰ and conducted door-to-door enquiries near Mr Taha's house.¹⁰²⁶¹ Mr Taha had used two mobiles and two landlines, and the Prosecution had unsuccessfully tried to find him by tracing their use.¹⁰²⁶²

5405. In 2010, the Prosecution recontacted previously interviewed witnesses so it could question them about Mr Taha, including Witness 56¹⁰²⁶³ and a relative of that witness.¹⁰²⁶⁴ The relative's witness statement was not admitted into evidence,¹⁰²⁶⁵ but its relevant portion was read onto the record during the trial.¹⁰²⁶⁶

5406. It states that she heard from Witness 56 that Mr Abu Adass first met Mr Taha in the mosque near the Arab University. On the day that Mr Abu Adass disappeared, Mr Abu Adass said that he was with Mr Taha. Later that day, Mr Taha called the family from Tripoli. He said that Ahmad would be late because their car had broken down, but that he would come back soon because he had promised to clean some carpets.¹⁰²⁶⁷

¹⁰²⁵⁷ Michael Taylor, T. 25 June 2018, p. 17.

¹⁰²⁵⁸ Michael Taylor, T. 25 June 2018, pp 103-104, 108-109.

¹⁰²⁵⁹ Michael Taylor, T. 25 June 2018, p. 110; *for example*, exhibit 4D382 (Prosecution request for financial information).

¹⁰²⁶⁰ Michael Taylor, T. 25 June 2018, pp 21, 104.

¹⁰²⁶¹ Michael Taylor, T. 25 June 2018, pp 21-22.

¹⁰²⁶² Michael Taylor, T. 25 June 2018, pp 23, 33, 92.

¹⁰²⁶³ Michael Taylor, T. 25 June 2018, pp 20-21, 104.

¹⁰²⁶⁴ Michael Taylor, T. 25 June 2018, p. 21.

¹⁰²⁶⁵ Decision on Sabra Defence reconsideration and admission of a witness statement through Quentin Mugg, paras 24, 26. In a challenge to the Trial Chamber's decision to order Mr Michael Taylor, to testify under Rule 165, the Prosecution also argued that the relative's statement lacked reliability, being incorrect about Mr Taha's nationality, background, meeting with Mr Abu Adass, and the circumstances of Mr Abu Adass's disappearance; F3674, Corrected Version of "Prosecution Motion for Partial Reconsideration of the Decision", 1 June 2018, paras 26, 30-32.

¹⁰²⁶⁶ One of the investigators who took the statement was questioned on this issue. Quentin Mugg, T. 11 January 2018, p. 42.

¹⁰²⁶⁷ Quentin Mugg, T. 11 January 2018, p. 42.

5407. There is a potential apparent inconsistency here. Mr Taylor testified that the contradictions between the relative's statement and Witness 56's statement should have been included in the 'mission report', a document produced by the investigating team upon its return to the office from its 'mission' to Lebanon, summarising the evidence received in any interviews. In his view, the relative's statement was 'poor' and 'deficient'.¹⁰²⁶⁸ No further interviews were conducted after 30 August 2010 regarding the evidence emerging from the relative's statement.¹⁰²⁶⁹ At some point in 2013, according to Mr Taylor and Mr Macleod, senior Prosecution trial counsel decided not to pursue further inquiries into Mr Taha.¹⁰²⁷⁰

(c) Submissions

5408. The Prosecutor in the amended consolidated indictment alleges that on Saturday 15 January 2005, at about 21:00, Mr Oneissi, calling himself 'Mohammed', called Mr Abu Adass and the two agreed to meet early the next day, namely on Sunday 16 January 2005.¹⁰²⁷¹ Further, on Sunday 16 January 2005, at about 07:00 Mr Abu Adass left his home to meet with Mr Oneissi alias 'Mohammed'.¹⁰²⁷² In leaving his home, Mr Abu Adass said he would be back in a couple of hours.¹⁰²⁷³ The following day, Monday 17 January 2005, the Abu Adass family received a call from 'Mohammed' claiming that Mr Abu Adass was with him in Tripoli, where their vehicle had broken down. The amended consolidated indictment alleges that the family then received a second call, informing them that Mr Abu Adass had decided to go to jihad to Iraq and would not be coming home.¹⁰²⁷⁴ The Prosecution submitted at the close of the case that the evidence had established these pleaded facts.

5409. In relation to Mr Merhi's role, the Prosecution submits that Mr Merhi 'co-ordinated' Mr Oneissi's and Mr Sabra's actions 'as they located, identified, approached, and abducted a suitable individual to make the false claim of responsibility, which in turn required sufficient knowledge of the nature of the plot, including the means of execution'.¹⁰²⁷⁵ Regarding Mr Oneissi's and Mr

¹⁰²⁶⁸ Michael Taylor, T. 26 June 2018, pp 26-27, 42-43.

¹⁰²⁶⁹ Michael Taylor, T. 26 June 2018, p. 37.

¹⁰²⁷⁰ Michael Taylor, T. 25 June 2018, p. 75.

¹⁰²⁷¹ Amended consolidated indictment, para. 27.

¹⁰²⁷² Amended consolidated indictment, paras 27-28; Prosecution final trial brief, para. 511.

¹⁰²⁷³ Prosecution final trial brief, para. 511.

¹⁰²⁷⁴ Amended consolidated indictment, para. 29. *See also* Prosecution final trial brief, para. 458.

¹⁰²⁷⁵ Prosecution final trial brief, para. 1177.

Sabra's roles, the Prosecution submits that the evidence has established that each participated in the profiling, identifying, selecting and abducting of Mr Abu Adass.¹⁰²⁷⁶

5410. The Prosecution argues that there were hierarchical call patterns between the Green and Purple mobiles on Wednesday 12, Friday 14 and Saturday 15 January 2005, showing that instructions were being passed down from Mr Badreddine to Mr Merhi, and then from Mr Merhi to Mr Oneissi and Mr Sabra.¹⁰²⁷⁷ According to its final trial brief, the 'abduction of ABU ADASS was a critical task in the preparation and delivery of the false claim, thereby necessitating the higher degree of co-ordination and supervision during this period evident from these call cascades'.¹⁰²⁷⁸

5411. On Friday 14 January 2005, two days before Mr Abu Adass's disappearance on Sunday 16 January 2005, the two Associate Purple mobiles moved to Anjar, in the Bekaa valley when Mr Merhi's Purple 231 also activated cells in the area.¹⁰²⁷⁹ The Purple mobiles, as well as Purple Associate mobiles 744 and 375, entered into an exceptional period of inactivity on Sunday 16 January 2005, the day of Mr Abu Adass's abduction—showing an awareness of the forensic visibility around the most complex aspect of the false claim plot.¹⁰²⁸⁰

5412. The Prosecution also argues that the Purple mobiles' use of the SFEIR3 cells in their last contacts on Saturday 15 January 2005, and again when they resumed activity on Monday 17 January 2005, shows a centralised coordination and perhaps the mobiles being left in a single location.¹⁰²⁸¹

5413. The Purple mobiles became active again on Monday 17 January 2005. Under the heading, in the final trial brief, 'Isolated Purple Calls on 17 January 2005 Correspond with the Post-Abduction Calls to ABU ADASS' House', the Prosecution submits that the activity of the Purple mobiles that day 'was very limited and coincided with calls made to the ABU ADASS residence

¹⁰²⁷⁶ Prosecution final trial brief, para. 1183.

¹⁰²⁷⁷ Prosecution final trial brief, paras 607-610.

¹⁰²⁷⁸ Prosecution final trial brief, para. 608.

¹⁰²⁷⁹ Prosecution final trial brief, para. 504, fns 1054, 2133.

¹⁰²⁸⁰ Prosecution final trial brief, paras 549-554, 593, 776-777.

¹⁰²⁸¹ Prosecution final trial brief, para. 553.

related to his disappearance'. These, according to the Prosecution, were 'two calls from his abductors'.¹⁰²⁸²

5414. The first call to the house was made at 07:30, and Mr Oneissi's Purple 095 became active half an hour before that, at 07:01, having been inactive the previous day. His mobile received texts, which is consistent with him turning it on after a prolonged period. His next activity was at 08:14, at almost the same time when Mr Sabra's attributed Purple 018 became active again. Mr Oneissi's Purple 095's became active again just before 21:00 when the second call was made to the Abu Adass house.¹⁰²⁸³ At 21:02, Mr Oneissi's Purple 095 texted Mr Merhi's Purple 231, and shortly afterwards the two exchanged calls as Mr Oneissi returned to south Beirut. This was 'consistent with reporting back that the call had been made'.¹⁰²⁸⁴

5415. This was the last time any Purple mobile connected to a COLA cell, which reflected, according to the Prosecution, that 'in much the same way as the man posing as "Mohammed", **ONEISSI** and **SABRA** retained no further interest or purpose in that area'.¹⁰²⁸⁵

5416. Mr Merhi's 'supervisory' role in the false claim plot is shown by the increase in Green 071's activity, with almost thirty per cent of calls between Mr Merhi's Green 071 and Mr Badreddine's Green 023 taking place in the morning of Sunday 16 January 2005. The Prosecution submits that these calls are consistent with Mr Merhi reporting back to Mr Badreddine. His very limited activity after this period on his Green network mobile 071, suggests that the principal purpose of using that mobile, his supervisory role, had been largely fulfilled.¹⁰²⁸⁶

5417. Mr Merhi's Purple 231 was directing operations, as is shown by texts between Mr Oneissi's Purple 095 and Mr Merhi's Purple 231 that day,¹⁰²⁸⁷ arguing that this 'was the last time any of the **Purple Phones** ever connected to a COLA cell reflecting that their unusual purpose in the area had now been fulfilled'.¹⁰²⁸⁸

¹⁰²⁸² Prosecution final trial brief, paras 555-556.

¹⁰²⁸³ Prosecution final trial brief, paras 557-558, 779-780.

¹⁰²⁸⁴ Prosecution final trial brief, paras 558, 780.

¹⁰²⁸⁵ Prosecution final trial brief, para. 780.

¹⁰²⁸⁶ Prosecution final trial brief, paras 602-603.

¹⁰²⁸⁷ Prosecution final trial brief, para. 605.

¹⁰²⁸⁸ Prosecution final trial brief, para. 559.

5418. Accordingly, ‘the only reasonable conclusion’ from the evidence ‘becomes that **MERHI**, **ONEISSI**, and **SABRA** were involved in the identification and abduction of ABU ADASS for the purpose of using him to make the false claim of responsibility’.¹⁰²⁸⁹

5419. Regarding the Defence arguments that Mr Abu Adass left his home with Mr Taha, the Prosecution argues that there is no admitted evidence demonstrating that Mr Abu Adass left with him on 16 January 2005.¹⁰²⁹⁰ While the Lebanese/Syrian border entry and exit records show that Mr Taha entered Lebanon on 15 January 2005 and left on 16 January 2005, they do not show what Mr Taha did in Lebanon.¹⁰²⁹¹ And it took steps to investigate Mr Taha’s possible involvement in Mr Abu Adass’s disappearance.¹⁰²⁹² In any event, and in the alternative, even if Mr Taha had left with Mr Abu Adass, it does not affect the Prosecution case against Mr Sabra, Mr Oneissi and Mr Merhi.¹⁰²⁹³

5420. As acknowledged by Mr Taylor, Witness 56’s relative’s statement was inconsistent, and was correctly deemed inadmissible hearsay by the Trial Chamber.¹⁰²⁹⁴ Further, the Prosecution did not fail to meet its investigative obligations. Neither the Statute nor the Rules oblige the Prosecution to further the truth, and the Trial Chamber has expressly rejected the assertion that the Prosecution should present both inculpatory and exculpatory material.¹⁰²⁹⁵ Further, and as outlined by Mr Taylor, the Prosecution did take a number of steps to investigate Mr Taha’s possible involvement in Mr Abu Adass’s disappearance.¹⁰²⁹⁶

5421. The Merhi Defence argues that the Prosecution ‘has not ruled out the reasonable possibility that Abu Adass left of his own accord’.¹⁰²⁹⁷ Given that there were only four calls between Purple 231 and Purple 018 between early January, when Mr Abu Adass was allegedly identified and Sunday 16 January 2005, the day of his alleged abduction—totalling less than four minutes—it is

¹⁰²⁸⁹ Prosecution final trial brief, para. 77.

¹⁰²⁹⁰ Prosecution closing submissions, T. 13 September 2013, pp 19, 36.

¹⁰²⁹¹ Prosecution closing submissions, T. 13 September 2018, p. 39.

¹⁰²⁹² Prosecution closing submissions, T. 13 September 2018, pp 45-46.

¹⁰²⁹³ Prosecution closing submissions, T. 13 September 2018, p. 52.

¹⁰²⁹⁴ Prosecution closing submissions, T. 13 September 2018, pp 45-46, 48-50.

¹⁰²⁹⁵ Prosecution closing submissions, T. 13 September 2018, pp 22, 27.

¹⁰²⁹⁶ Prosecution closing submissions, T. 13 September 2018, pp 45-46.

¹⁰²⁹⁷ Merhi Defence final trial brief, paras 507, 511-512.

impossible to infer that a complex abduction was being coordinated.¹⁰²⁹⁸ Moreover, there was no call with Purple 095, thus:

it would be unreasonable to conclude that an operation as complex as the abduction, transportation and unlawful detention of an individual and the recording of a video can be coordinated in phone conversations lasting less than four minutes.¹⁰²⁹⁹

5422. The Merhi Defence submitted in closing submissions that ‘the Prosecution builds its case on a vacuum, on the absence of calls’.¹⁰³⁰⁰ Mr Platt inappropriately also relied on the activity of the Purple Associate mobiles to create the illusion that there was a hierarchical increase in Green to Purple network call flows from Wednesday 12 to Saturday 15 January 2005.¹⁰³⁰¹

5423. The Prosecution also failed to rule out the reasonable possibility that Mr Abu Adass left Lebanon with Mr Taha.¹⁰³⁰² Mr Taha was a friend of Mr Abu Adass,¹⁰³⁰³ entered Syria from Lebanon on 16 January 2005 and did not officially leave Syria any time afterwards.¹⁰³⁰⁴ The Prosecution failed to adequately investigate Mr Taha’s possible involvement.¹⁰³⁰⁵

5424. The Oneissi Defence argues that Mr Platt’s evidence was that no inferences can be drawn about periods of inactivity;¹⁰³⁰⁶ and that ‘pent-up’ texts did not give rise to an inference of covert activity.¹⁰³⁰⁷ Contacts between Purple 095 and other Purple mobiles, including the Purple Associates, were not exceptional, as they significantly predated the indictment period.¹⁰³⁰⁸

5425. Mr Taysir Abu Adass never mentioned the alleged departure with ‘Mohammed’ or the subsequent telephone calls in the report he gave to police, because the family were trying to cover up the possible departure of their son to Iraq.¹⁰³⁰⁹ The Oneissi Defence final trial brief states, that on the ‘eve of his departure, Abu Adass would have received calls from Bilal Zaroura, a convicted

¹⁰²⁹⁸ Merhi Defence final trial brief, paras 508-509.

¹⁰²⁹⁹ Merhi Defence final trial brief, para. 509.

¹⁰³⁰⁰ Merhi Defence closing submissions, T. 18 September 2018, p. 81.

¹⁰³⁰¹ Merhi Defence final trial brief, paras 507, 510.

¹⁰³⁰² Merhi Defence final trial brief, para. 512. The Merhi Defence made no submissions about this in closing arguments.

¹⁰³⁰³ Merhi Defence final trial brief, para. 517.

¹⁰³⁰⁴ Merhi Defence final trial brief, para. 513.

¹⁰³⁰⁵ Merhi Defence final trial brief, para. 517.

¹⁰³⁰⁶ Oneissi Defence final trial brief, paras 202-203.

¹⁰³⁰⁷ Oneissi Defence final trial brief, para. 204.

¹⁰³⁰⁸ Oneissi Defence final trial brief, paras 196-198.

¹⁰³⁰⁹ Oneissi Defence final trial brief, paras 283-291.

jihadist terrorist, and Khaled Taha, who was close to the ‘AQ13’ group’, meaning al-Qaeda.¹⁰³¹⁰ It submits that the evidence does not establish who, if anyone, called the Abu Adass household on Saturday 15 and Monday 17 January 2005,¹⁰³¹¹ or collected Mr Abu Adass in the morning of Sunday 16 January 2005.¹⁰³¹²

5426. The Oneissi Defence also argues that at ‘least one other member of the Abu-Adass family’ had heard that Mr Abu Adass had left with Mr Taha. This statement directly contradicts and is inconsistent with the Prosecution’s theory, and thus was ignored.¹⁰³¹³

5427. The so-called ‘Al-Qaeda 13’ were thirteen people allegedly associated with al-Qaeda, who were charged and detained in Lebanon in early 2006.¹⁰³¹⁴ The indictment against these thirteen and others—any judgement is not in evidence—alleges that al-Qaeda had decided to target Lebanon in 2004 and organised cells to do so, and it also alleges Mr Taha’s involvement in Mr Hariri’s assassination.¹⁰³¹⁵

5428. The Sabra Defence argues that the Prosecution’s assertion that ‘Mohammed’ called Mr Abu Adass on Saturday 15 January 2005 relies solely on Witness 56’s ‘inconsistent, uncorroborated and untested’ evidence.¹⁰³¹⁶ As for Mr Abu Adass’s departure on 16 January 2005, the Prosecution’s case is again based entirely on Witness 56’s hearsay evidence.¹⁰³¹⁷ Witness 56’s evidence is undermined by Mr Ramadan’s and Mr Taysir Abu Adass’s evidence,¹⁰³¹⁸ and was inconsistent as to where Mr Abu Adass had said he was going; whether he had left with ‘Mohammed; by car; the items Mr Abu Adass had taken with him; and his plans for the remainder of the day.¹⁰³¹⁹ Witness 56’s evidence on the calls of 17 January 2005 is also unreliable,¹⁰³²⁰ and

¹⁰³¹⁰ Oneissi Defence final trial brief, para. 539. No evidence, however, was tendered supporting this assertion.

¹⁰³¹¹ Oneissi Defence final trial brief, paras 522-529.

¹⁰³¹² Oneissi Defence final trial brief, paras 530-532.

¹⁰³¹³ Oneissi Defence final trial brief, para. 295.

¹⁰³¹⁴ Exhibit 5D502 (Lebanese Military Court indictment); exhibit 5D498 (Detailed list of seized items belonging to 13 detainees affiliated with al-Qaeda, dated 18 March 2006).

¹⁰³¹⁵ Exhibit 5D502, pp 5-6.

¹⁰³¹⁶ Sabra Defence final trial brief, paras 633-636.

¹⁰³¹⁷ Sabra Defence final trial brief, paras 35, 638, 641-646.

¹⁰³¹⁸ Sabra Defence final trial brief, paras 647-650.

¹⁰³¹⁹ Sabra Defence final trial brief, paras 34, 641-646.

¹⁰³²⁰ Sabra Defence final trial brief, paras 651, 654-655.

is supported neither by telecommunications evidence—which the Prosecution failed to investigate properly—nor by the initial police complaint reporting Mr Abu Adass as missing.¹⁰³²¹

5429. The Sabra Defence also submits that:

It is absurd to suggest that the Purple-Group was not concerned with being discovered until after the completion of the FCR [false claim of responsibility], yet in the same breath extrapolate from rows of CDRs that the users in fact had a high awareness of their security, but only for the period that fits the Prosecution's case.¹⁰³²²

5430. The Sabra Defence disputes the Prosecution's interpretation of Purple mobile inactivity on Sunday 16 January 2005. This could have been coincidental,¹⁰³²³ and the Prosecution does not take account of earlier periods of inactivity.¹⁰³²⁴ The Prosecution relies on the Purple Associate mobiles to show the inactivity was unusual, without explaining their relevance.¹⁰³²⁵ Further, given the subsequent return to open-use mobiles, it is illogical to infer that the inactivity stemmed from concern about 'forensic visibility'.¹⁰³²⁶ It is also 'entirely possible that the mutual silence on 16 January was indeed coincidental' as it is not the '*only* reasonable inference' that the Purple mobiles were involved in the alleged abduction that day.¹⁰³²⁷

5431. The Sabra Defence also submits that Mr Abu Adass may have left with Mr Khaled Taha, rather than 'Mohammed'. It points to Mr Taha's border entry and exit records; his alleged call to the Abu Adass landline on 15 January 2005; the secrecy which surrounded Taha's visit to Lebanon; and his alleged links to al-Qaeda.¹⁰³²⁸

5432. It also argues that the Prosecution failed to adequately investigate Witness 56's relative's evidence that she was told that Mr Abu Adass had left with Mr Taha. The Prosecution pointed to inconsistencies in the statement, which did not form part of the Trial Chamber's decision to exclude the relative's statement, but these were insignificant.¹⁰³²⁹

¹⁰³²¹ Sabra Defence final trial brief, paras 651-653.

¹⁰³²² Sabra Defence final trial brief, para. 518.

¹⁰³²³ Sabra Defence final trial brief, para. 526.

¹⁰³²⁴ Sabra Defence final trial brief, paras 522-526.

¹⁰³²⁵ Sabra Defence final trial brief, paras 519-521.

¹⁰³²⁶ Sabra Defence final trial brief, paras 516-518.

¹⁰³²⁷ Sabra Defence final trial brief, para. 526.

¹⁰³²⁸ Sabra Defence final trial brief, para. 24.

¹⁰³²⁹ Sabra Defence final trial brief, paras 26-31.

5433. Only one of the four inaccuracies the Prosecution pointed to in the relative's statement was objectively incorrect, namely, that Mr Taha was Lebanese as opposed to Palestinian.¹⁰³³⁰ The statement is consistent on other points, regarding Mr Abu Adass's increased religious fervour; his job, friends and employment; and his promise to return and help clean carpets in the family home on 16 January 2005.¹⁰³³¹ Moreover, the relative's statement is no less reliable than other hearsay evidence relied upon by the Prosecution.¹⁰³³² Also, the Prosecution did not expend its best efforts to find Mr Taha.¹⁰³³³ The decision to discontinue the investigation did not involve Mr Taylor, despite his role as Chief of Investigations, and was not formally recorded in accordance with best practice.¹⁰³³⁴

(d) Findings

i. Ahmad Abu Adass's disappearance on Sunday 16 January 2005

5434. The fact of Mr Abu Adass's disappearance from his home on Sunday 16 January 2005 is uncontested. Rather, the issue among the Parties is with whom he left and in what circumstances. The Prosecution argues that Mr Abu Adass left with 'Mohammed', while the Merhi, Sabra and Oneissi Defence argue that he left with Mr Khaled Taha. The Prosecution's position at the close of the case was that 'Mohammed's' precise identity need not be established, despite having positively pleaded—and run its case on this basis—that Mr Oneissi was 'Mohammed'.

5435. The Trial Chamber has no reason to disbelieve the evidence of Mr Abu Adass's father, as contained in the official missing person's report, that this was the day of his disappearance. It therefore finds that that is when he left his home for the last time. Similarly, the uncontested evidence is that he was never seen again. The Trial Chamber, likewise, makes the finding that his family never saw Mr Abu Adass again after he left his home in Beirut on Sunday 16 January 2005.

5436. Most of the evidence on the 'Mohammed' story (again) derives from Witness 56, Mr Taysir Abu Adass and Mr Ramadan. Their out-of-court statements were admitted under Rule 158, thus depriving the Defence of the chance to question or challenge their accounts in cross-examination.

¹⁰³³⁰ Sabra Defence final trial brief, paras 29, 31. The Sabra Defence points to F3674, Corrected Version of "Prosecution Motion for Partial Reconsideration of the Decision", 1 June 2018, paras 31-32.

¹⁰³³¹ Sabra Defence final trial brief, para. 25.

¹⁰³³² Sabra Defence final trial brief, para. 32.

¹⁰³³³ Sabra Defence final trial brief, paras 37-39.

¹⁰³³⁴ Sabra Defence final trial brief, para. 41.

As the Trial Chamber previously noted, without corroboration, it will not give any weight to the contentious matters in their accounts.¹⁰³³⁵

5437. Witness 56 is the only witness who provided evidence that ‘Mohammed’ called on the evening of Saturday 15 January 2005, and that Mr Abu Adass agreed to meet him the next day. Although Mr Abu Adass’s sister said something similar in April 2005 in a television interview that the Trial Chamber received into evidence, it was not in the form of a statement, and the Prosecution did not call this witness, similarly depriving the Defence of the possibility to cross-examine her. The Trial Chamber has therefore not assessed the interview for the truth of what was said.

5438. The other witnesses who provided evidence on this issue—Mr Taysir Abu Adass, Mr Ramadan and Witness 87—only stated that he left with ‘someone’. They did not name Mr Abu Adass’s companion. Further, Witness 56’s account of the departure is not entirely internally consistent and varied on issues such as whether Mr Abu Adass left by car, what he wore and carried, and what he said upon his departure.

5439. No telecommunications evidence is available about landline calls, such as from a payphone, to the Abu Adass family’s landline on Saturday 15 and Monday 17 January 2005, which might corroborate Witness 56’s account. This is because call data records for landline-to-landline calls such as to the Abu Adass family’s were incomplete in January 2005. However, this does not assist in corroborating Witness 56 regarding the telephone calls on 15 and 17 January. It merely shows that the absence of such records does not conflict with the witness’s evidence.

5440. Even if the Trial Chamber could give credit to Witness 56’s statements regarding the telephone calls to the Abu Adass family landline and the name of the person with whom Mr Abu Adass departed—which it does not—none of the relevant witnesses actually *saw* Mr Abu Adass leave with anyone. The best evidence on this issue, from Witness 56, merely states that the witness *heard* that Mr Abu Adass had left with ‘Mohammed’.

5441. Given its equivocal and untested nature, the evidence that Mr Abu Adass left his home with ‘Mohammed’ is insufficiently reliable to make a finding that this occurred. The evidence is in this respect so lacking that the Trial Chamber could also reasonably consider that Mr Abu Adass

¹⁰³³⁵ See para. 287.

left with someone else, or that he had departed alone. In other words, while the evidence cannot establish beyond reasonable doubt that Mr Abu Adass left with ‘Mohammed’, there are alternative possibilities reasonably available from the evidence. The Trial Chamber consequently cannot find that the Prosecution has established beyond a reasonable doubt that Mr Abu Adass left with ‘Mohammed’ on Sunday 16 January 2005. Even if proof beyond reasonable doubt is not required of this fact, there is no probative evidence that this occurred.

ii. Alternative inferences—Khaled Taha and Bilal Zaaroura

5442. Given these findings, the Trial Chamber need not make further findings on the question of whether Mr Abu Adass left with Mr Taha. However, it will do so for completeness.

5443. The Trial Chamber cannot conclude that Mr Taha telephoned the Abu Adass family landline the night before Mr Abu Adass disappeared. Only Witness 56’s Rule 158 evidence states this, and the witness’s account regarding this was inconsistent. It was also not corroborated by any call data records linking Mr Taha to calls to their home.

5444. As for Mr Taha’s possible departure with Mr Abu Adass on Sunday 16 January 2005, the Trial Chamber has heard no evidence about Mr Taha’s movements, beyond that Lebanese/Syrian border records show that he entered Lebanon from Syria on 15 January 2005 and returned to Syria on 16 January 2005. Nor does it have any evidence of Mr Abu Adass’s location beyond 16 January 2005.

5445. The Lebanese/Syrian border records do not record Mr Abu Adass as leaving Lebanon with Mr Taha on that date or on any other.¹⁰³³⁶ The Trial Chamber therefore does not have sufficient evidence capable of supporting the inference urged on it by the Merhi, Oneissi and Sabra Defence.

5446. Finally, the Trial Chamber agrees with the Prosecution that the interview of Witness 56’s relative—who stated that Mr Abu Adass had left with Mr Taha—was deficient in a number of aspects. The pertinent information in the relative’s statement regarding Mr Taha was hearsay. A competent interviewer taking a witness statement should seek to identify clearly as far as possible—and in the statement, so that it is obvious to anyone reading it—the source of any hearsay assertions. Further, whoever reviewed the relative’s statement should have noticed the potential

¹⁰³³⁶ Exhibits 5D478 and 5D479.

inconsistencies regarding Mr Taha, and ensured that the relative and Witness 56 were both re-interviewed on those points.

5447. In refusing a Sabra Defence motion to reconsider its decision not to admit the relative's statement into evidence, the Trial Chamber noted of the statement that:

On its face, this statement appears to contradict portions of Witness 056's evidence. However, the statement does not describe how the witness became aware of this information; namely, when, how, from whom or in what circumstances they obtained this information. It is thus hearsay of unknown provenance.¹⁰³³⁷

5448. These omissions detracted from the statement's reliability to the point that its only evidentiary value was to show that the Prosecution was aware of a *potential* contradiction between accounts. The statement cannot be used to establish the truth of what was said.¹⁰³³⁸

5449. However, these minor deficiencies in this aspect of a very lengthy and complicated investigation by the Lebanese investigating authorities, the UNIIC and the Prosecution, do not mean that an alternative hypothesis regarding Mr Abu Adass's disappearance is reasonably available from this evidence. At its highest, the relative's statement suggests a possible investigative lead that the Prosecution could have explored. At any rate, Mr Taylor testified that the Prosecution did consider Mr Taha's possible involvement in Mr Abu Adass's disappearance. Moreover, the Special Tribunal's Rules oblige the Prosecution to disclose potentially exculpatory information, and the Prosecution appears to have honoured this in disclosing the information in the relative's statement. This allowed the Defence to do its own investigative work.

5450. Finally, regarding the Oneissi Defence's submission of a payphone call from Mr Bilal Zaaroura to the Abu Adass family landline on Sunday 16 January 2005, there is nothing in

¹⁰³³⁷ Decision on Sabra Defence reconsideration and admission of a witness statement through Quentin Mugg, para. 8.

¹⁰³³⁸ Of the methodology employed in taking the statement, the Trial Chamber held, 'Regretfully, this 2010 witness statement is deficient in that it does not explain the provenance of this apparently contradictory information. The interviewers, it appears, neglected to ask the witness about the circumstance of obtaining this hearsay evidence, namely when, how, from whom or in what circumstances the witness obtained this information. Remarkably, they apparently overlooked asking—or, alternatively, including in the statement—whether Witness 056's relative actually obtained this information from Witness 056. Without knowing this, the information relayed by Witness 056's relative is simply an unreliable piece of hearsay.' Decision on Sabra Defence reconsideration and admission of a witness statement through Quentin Mugg, para. 24.

evidence demonstrating that the payphone call in question could be attributed to Mr Zarooura.¹⁰³³⁹ Hence, the submission has no factual basis and is disregarded.

iii. Whether Mr Abu Adass was abducted

5451. The amended consolidated indictment, as noted above at paragraphs 5318 to 5325, does not specifically allege that Mr Abu Adass was ‘abducted’ from his home. The Prosecutor pleads that Mr Merhi coordinated Mr Oneissi who participated in Mr Abu Adass’s ‘disappearance’, and additionally, coordinated Mr Oneissi’s and Mr Sabra’s activities to identify and effect the disappearance of a suitable individual.¹⁰³⁴⁰

5452. Mr Abu Adass is alleged to have left his home to meet Mr Oneissi, calling himself ‘Mohammed’.¹⁰³⁴¹ The Prosecution’s final trial brief, however, positively submits that the evidence, when considered in its totality demonstrates that Mr Oneissi and Mr Sabra participated in the selection and abduction of Mr Abu Adass ‘as a suitable scapegoat for the false claim of responsibility’.

5453. The evidence supporting this is bullet-pointed as:¹⁰³⁴²

- their mobile communication with each other and Mr Merhi during the ‘COLA phase’, which coincides with when Mr Abu Adass ‘met and later left his home with a man calling himself ‘Mohammed’;
- the pattern of Purple mobile communications, including Mr Merhi’s attributed Green network communications;
- the expert evidence that the Green network operated as ‘mission phones’ in criminal activity;

¹⁰³³⁹ The Sabra Defence sought to attribute telephone number 367 to Mr Zaaroura and to admit call sequence tables on this basis. Decision on admission of documents (Abu Adass), paras 33, 126-127, 130-131, 135. The Trial Chamber rejected these arguments insofar as they alleged possible attribution of a public payphone, admitting—following partial reconsideration—the tables on the basis that they showed calls to the Abu Adass landline. Sabra Defence seventh bar table decision (Abu Adass and Mohammed), para. 74.

¹⁰³⁴⁰ Amended consolidated indictment, para. 3 (b), (d).

¹⁰³⁴¹ Amended consolidated indictment, para. 28.

¹⁰³⁴² Prosecution final trial brief, paras 1183-1184.

- evidence linking Mr Oneissi and Mr Sabra through Mr Merhi's alleged Green network communications with Mr Badreddine, and through this to Mr Ayyash and the users of the Yellow, Blue and Red networks;
- evidence of the increase in Purple mobile communications between Mr Merhi, Mr Oneissi and Mr Sabra;
- evidence that Mr Oneissi's and Mr Sabra's presence in the vicinity of the mosque during the 'COLA phase' was exceptional;
- evidence of the exceptional inactivity of the Purple mobiles around the time of Mr Abu Adass's disappearance;
- evidence of the correspondence of Purple mobile calls with calls to Mr Abu Adass's home after his disappearance;
- evidence of the Purple mobile activity linked to the delivery of the false claim of responsibility after the attack on 14 February 2005;
- evidence demonstrating that Mr Abu Adass was in the video, and that the claim was false; and
- evidence of the cessation of use of the Purple mobiles, the Green and Red network mobiles, co-ordinated with the timing of the attack.

5454. The Prosecution asks the Trial Chamber to infer from the combination of these bullet-pointed pieces of evidence that the only reasonable inference available is that Mr Oneissi and Mr Sabra, under Mr Merhi's coordination, 'abducted' Mr Abu Adass on Sunday 16 January 2005. However, no evidence was presented about Mr Abu Adass's alleged *physical* abduction; there is no evidence about how it occurred, nor where, or by whom.

5455. The Prosecution's final trial brief states—in submitting that a closed criminal network was not required to execute the false claim of responsibility—that indeed, 'the most complex aspect of the undertaking would have been the abduction of ABU ADASS'.¹⁰³⁴³ It also asserts of the Purple

¹⁰³⁴³ Prosecution final trial brief, para. 593.

inactivity that the ‘length of time was well beyond that required to abduct and incarcerate ABU ADASS. It is consistent with participation in the creation of the videotape of the false claim of responsibility’.¹⁰³⁴⁴

5456. Despite the assertion of the complexity of this task, and of Mr Abu Adass’s incarceration, there is no evidence on the record of how this abduction is supposed to have occurred, nor where and how he was supposed to have been held or imprisoned.

5457. In the Trial Chamber’s view, only the calls to the Abu Adass home on Saturday 15 and Monday 17 January 2005 could link any of the Accused to Mr Abu Adass leaving his home on Sunday 16 January, and then only if it could positively find that Mr Oneissi was ‘Mohammed’. But as is outlined above, the evidence on this is deficient and the Trial Chamber cannot find that Mr Oneissi was the ‘Mohammed’, who is said to have called the house, solely from Witness 56’s untested Rule 158 evidence.

5458. Regarding Mr Sabra’s role, the amended consolidated indictment as the pleading instrument does not allege him to have ‘abducted’ Mr Abu Adass. While noting the apparent shift in the Prosecution’s case from start to finish on this point, no evidence links him to Mr Abu Adass’s departure from his home.

5459. The Trial Chamber accordingly is unable to positively conclude from the evidence that Mr Abu Adass was ‘abducted’, either by Mr Oneissi, acting under Mr Merhi’s coordination (or supervision), or by Mr Oneissi and Mr Sabra acting together, or by anyone else.

iv. Cell site evidence relating to Mr Merhi’s, Mr Oneissi’s and Mr Sabra’s alleged involvement in Mr Abu Adass’s disappearance

5460. The Trial Chamber has examined in detail whether the cell site evidence can unequivocally establish that Mr Merhi, Mr Sabra and Mr Oneissi participated in Mr Abu Adass’s disappearance. It is only the patterns of their movements, based on the call data records of mobiles connecting to specific cells, and the call patterns between the three mobiles that could establish the inferences urged by the Prosecution.

¹⁰³⁴⁴ Prosecution final trial brief, para. 552.

5461. The Prosecution's case on the mobile evidence is first, that calls between the Green and Purple mobiles from Wednesday 12 to Saturday 15 January 2005 showed the alleged preparation of the abduction. Secondly, the activity of the Green mobiles, and the inactivity of the Purple mobiles, on Sunday 16 January 2005 showed the involvement in Mr Abu Adass's disappearance. The third is that the activity of the three Purple mobiles on Monday 17 January 2005 aligned with the telephone calls to the Abu Adass landline.

5462. The Purple-Green mobile activity between Wednesday 12 and Saturday 15 January 2005, according to Mr Platt, had a number of distinctive features, and there were an unusual number of calls between Mr Merhi's Green mobile 071 and Mr Badreddine's Green mobile 023.

5463. Mr Badreddine initiated two of these, on Wednesday 12 January; this was uncommon. There were eighteen calls between Green 071 and Green 023 between 13 October 2004 and 7 February 2005; the longest was on Thursday 13 January 2005 and lasted nineteen and a half minutes. Mr Platt said that showed that something unusual was occurring. Mr Platt also thought that Mr Badreddine and Mr Merhi met in this period. There is, however, no evidence of such a meeting, nor if it occurred, of what occurred; it is simply a hypothesis.

5464. The Trial Chamber accepts that the mobile activity may have well had some or all of the features that Mr Platt described. The evidence, however, neither provides any inference that could be the only one reasonably available from the evidence about what was being said in the calls, nor links the Accused to any activity preparatory to the claim of responsibility. Without the evidence of Mr Oneissi meeting Mr Abu Adass in the mosque as 'Mohammed', it is the only evidence against the three Accused, except for the location of their mobiles on Monday 14 February 2005. Similarly, although Mr Platt may have correctly surmised that callers used a hospital to pass messages to call each other, his hypothesis is no more than that, and he correctly conceded this in Defence questioning.

5465. Further, while he suggested that they could have been using this form of communication if, for example, Mr Merhi's attributed Green mobile was switched off, it is a little difficult to reconcile this with the calls to the hospital on the morning of Sunday 16 January 2005. One on hand, the Prosecution is relying upon the calls between Green 071 and Mr Badreddine's Green mobiles at a supposedly crucial point, namely, the 'abduction' of Mr Abu Adass. But on the other,

it is seeking to explain the calls to the hospital by suggesting that Mr Merhi may have switched off his attributed Green mobile at this obviously critical time, namely when he was supposed to have been monitoring the abduction. Switching off a network mobile at this critical moment is incongruous especially if Mr Merhi was, as the Prosecution argued, remaining in a static location in Dahyieh for operational reasons.

5466. The Trial Chamber similarly cannot draw a conclusion beyond reasonable doubt concerning the inactivity of the Purple mobiles on Sunday 16 January 2005, or the increased activity of the Green mobiles in the morning that day.

5467. The Trial Chamber can accept that it may make sense for a group of kidnappers to take the precaution of silencing their mobiles on the day of their victim's disappearance. However, it is also equally possible that the Purple mobile users decided not to activate their mobiles on 16 January 2005 for other reasons unrelated to Mr Abu Adass's departure. Moreover, Mr Merhi's Grey mobile *was* activated in the early evening of that day, when it received two messages that had been sent to it the previous night and on the afternoon of Sunday 16 January.

5468. The absence of mobile activity does not unequivocally establish any particular action by their users, and in particular, it does not demonstrate that the Accused must have 'lured' or kidnapped Mr Abu Adass from his home that day. Similarly, the increase in Green mobile activity that morning—although coinciding with Mr Abu Adass's departure from his home—does not of itself demonstrate Mr Merhi's supervisory, or pleaded coordinating, role. Here, it is again stressed that there is no evidence of the content of any of the calls, any text messages or any meetings between the alleged conspirators.

5469. The Prosecution also points to three supposedly 'hierarchical call flows' between the Purple and the Green mobiles that demonstrate how Mr Badreddine was directing and monitoring the operation and Mr Merhi's work. Mr Platt illustrated the calls in a slide:

HIERARCHICAL GREEN/ PURPLE CALLS						
CALLS RELATED BY PROXIMITY & CALL FLOW						
12 January 2005						
TIME	DIALING PHONE LABEL	DIALING CELL	DURATION	CALL TYPE	RECEIVING PHONE LABEL	RECEIVING CELL
20:20:07	Green 023 [MB]	CARACA2	00:01:41	VOICE	Green 071 [HM]	BRAJNE2
20:22:28	Purple 231 [HM]	BRAJNE2	00:00:31	VOICE	HM Brother	HARA2
14 January 2005						
19:55:16	Green 071 [HM]	BRAJNE2	00:03:31	VOICE	Green 023 [MB]	JOUNIE3
19:59:32	Purple 231 [HM]	BRAJNE2	00:00:19	VOICE	HM Brother	BIRABD3
20:00:16	Purple 231 [HM]	BRAJNE2	00:00:55	VOICE	Purple 018 [AS]	HARA2
20:01:59	Purple 018 [AS]	HARA2	00:00:17	VOICE	Purple 095 [HO]	SFEIR2
20:04:25	Purple 018 [AS]	HARA2	00:00:54	VOICE	Purple 095 [HO]	BRAJNE2
15 January 2005						
18:51:07	Green 071 [HM]	SALOUM2	00:00:31	VOICE	Green 023 [MB]	FURN3
18:52:38	Purple 231 [HM]	SINFIL3	00:00:33	VOICE	Purple 018 [AS]	SFEIR3

33

Exhibit P1934 (Corrected Chronology PowerPoint slides regarding the Purple mobiles), slide 33

5470. These are critical to its case, especially in relation to the conspiracy charged, and are the following:

- On **Wednesday 12 January 2005**, at 20:20, Mr Badreddine's Green 023 called Mr Merhi's attributed Green 071 for 101 seconds. Two minutes later, Mr Merhi's Purple 231 called Associate Purple 744, which is linked to Mr Merhi's brother, and Mr Platt stated that it had contact with other Purple mobiles; and
- Two days later, on **Friday 14 January 2005**, at 19:55, Mr Merhi's attributed Green 071 made a three and a half minutes call to Mr Badreddine's Green 023. Four minutes later, Mr Merhi's Purple 231 called Associate Purple 744. A minute later, at 20:00, Mr Merhi's Purple 231 called Mr Sabra's attributed Purple 018. At 20:01 and 20:04, Mr Sabra's Purple 018 called Mr Oneissi's Purple 095; and

- The following day, **Saturday 15 January 2005**, at 18:51, Mr Merhi's attributed Green 071 called Mr Badreddine's Green 023 for 31 seconds. At 18:52, Mr Merhi's Purple 231 called Mr Sabra's Purple 018.

5471. None of these calls, however, connected to cells relevant to Mr Abu Adass's address or the mosque. The first call, on **Wednesday 12 January 2005**, in the Trial Chamber's view is not an example of a 'hierarchical' call flow.

5472. A call from Mr Badreddine to Mr Merhi's attributed Green 071, followed by Mr Merhi calling a mobile associated with his own brother does not fit within the Prosecution's pleaded case theory that Mr Badreddine was coordinating Mr Merhi's activities, who in turn was coordinating those of Mr Oneissi and Mr Sabra. Mr Merhi is not accused of co-ordinating his brother in any kind of criminal activity. Further, it is not connected to any pleaded event. It is three days after the end of the 'COLA phase' and four days before Mr Abu Adass disappeared. The Trial Chamber cannot connect it to anything concrete pleaded against the Accused or referred to in the amended consolidated indictment as to Mr Badreddine's alleged role.

5473. The calls on **Friday 14 and Saturday 15 January 2005** are likewise devoid of context. To find a connection to any material facts pleaded against the three Accused persons—and hence to be satisfied that this is the only reasonable conclusion available from the evidence—the Trial Chamber would have to speculate as to their content.

5474. The only connection with the case against the Accused is that the calls were made over the two days before Mr Abu Adass left his home. The alleged call to the Abu Adass family home, on the Prosecution's pleading occurred on Saturday 15 January at 21:00, more than two hours after Mr Merhi's attributed Green network call to Mr Badreddine and his call to Mr Sabra's attributed Purple 018. The Trial Chamber thus has no *reliable* evidence connecting these calls to Mr Abu Adass. It may have been different had Witness 56 testified, and was questioned in court, but this did not occur.

5475. In relation to the calls to the Abu Adass residence on **Monday 17 January 2005**—the evidence for which also derives from untested Rule 158 statements—the Trial Chamber likewise cannot connect them to any of the three Accused.

5476. On the evening of 17 January, at 21:02, Mr Oneissi's Purple 095 activated COLA2 to text Mr Merhi's Purple 231, and it also received text messages. Purple 231 then called Purple 095 at 21:04 and, again at 21:05. By then, Mr Oneissi's Purple 095 was connecting to another cell, GHOBAl3, which adjoins CHATIL1, which in turn is adjacent to COLA2—as is shown on the map above at paragraph 5101.

5477. Using the electronic presentation of evidence, the Trial Chamber measured the distance between the GHOBAl mast and the COLA mast as about 1.3 kilometres. The distance from the GHOBAl mast and the mosque, and the Abu Adass residence, is about 1.4 kilometres. Additionally, the furthest point from the GHOBAl3 predicted best server coverage area and the mosque is 1.6 kilometres, and it is about the same distance from the residence. This demonstrates how far away Mr Oneissi *may have been* from the Abu Adass residence and the mosque in the second call at 21:05. He may have been in a vehicle or on a motorbike.

5478. The Prosecution submitted this call was 'consistent with reporting back that the call had been made'.¹⁰³⁴⁵ That may be so, but it is also 'consistent' with other things.

5479. Prosecution counsel also told the Trial Chamber, in closing arguments, that the 'conspirators' returned to the mosque area to use a payphone to call the Abu Adass family. This was because in their eyes Mr Abu Adass needed to be seen as a Sunni extremist who had been recruited and groomed in his local mosque, so it made perfect sense to go back to the area and to make a payphone call from nearby.¹⁰³⁴⁶

5480. The 'abductors' may well have returned to the area to make the call—if indeed Mr Abu Adass had been abducted—and from an unidentified payphone, but this is only speculative. It is not the only inference reasonably available from the evidence. Moreover, someone's mere brief presence in the form of a mobile call connecting to a cell covering the mosque—and other areas—cannot prove that they were there making a call from an unidentified payphone, and for the reasons the Prosecution urged, for there are no supporting call data records.

¹⁰³⁴⁵ Prosecution final trial brief para. 558.

¹⁰³⁴⁶ Prosecution closing submissions, T. 14 September 2018, pp 25-26, in response to a question from Judge Braidly as to why the alleged abductors had to return to the area of the Abu Adass home on 17 January 2005.

5481. The Trial Chamber has also examined the Green network calls between Mr Badreddine and Mr Merhi's attributed Green 071 on the morning of Sunday 16 January 2005. These indeed coincide with the date of Mr Abu Adass's officially reported disappearance. The Prosecution's final trial brief argues that Mr Merhi, using his Green 071 mobile, 'was responsible for overseeing the abduction of ABU ADASS and the delivery and publication of the false claim'.¹⁰³⁴⁷ Further, he 'played a critical, supervisory role that ensured the realisation of the false claim component to the assassination plot. He oversaw all key aspects of this component.'¹⁰³⁴⁸

5482. However, neither Mr Oneissi's mobile nor Mr Sabra's shared mobile were active that day. If they participated in Mr Abu Adass's leaving his home that day, as is alleged, the communication of this to Mr Merhi, and presumably then in turn to Mr Badreddine as the conspiracy's pleaded coordinator is left unexplained. Nothing connects the three Accused with Mr Abu Adass leaving his home for the last time.

5483. It follows that there is no reliable evidence connecting Mr Merhi's calls on his attributed Green network mobile to Mr Badreddine that morning with the disappearance, notwithstanding their temporal coincidence with his disappearance that day. Therefore, the only conclusion reasonably available from the cell site evidence of the mobile activities is that the Trial Chamber cannot positively find that any of the three Accused were involved in Mr Abu Adass's disappearance on Sunday 16 January 2005.

5484. This conclusion must be considered in tandem with the analysis of the cell site evidence relating to the dissemination of the claim of responsibility on the afternoon of Monday 14 February 2005, below at paragraphs 5539 to 5692. However, when the two are put together, for the reasons set out below, the conclusion remains the same.

5485. The Trial Chamber is also unable to make any finding about calls to the so-called 'Associate Purple' mobiles. There is nothing in the evidence from which the Trial Chamber could draw any inferences against the Accused in relation to these calls.

¹⁰³⁴⁷ Prosecution final trial brief, para. 599.

¹⁰³⁴⁸ Prosecution final trial brief, para. 1181.

F. Preparing the claim of responsibility—Tuesday 18 January 2005 to Sunday 13 February 2005

1. Introduction

5486. The Prosecution alleges that, first, immediately after his disappearance, probably on Tuesday 18 January 2005, Mr Abu Adass made the video containing the claim of responsibility. Second, on Wednesday 9 or Thursday 10 February 2005, the telecard used to make the calls claiming responsibility on Monday 14 February 2005 was purchased. Third, the mobile activity around these events showed the involvement of Mr Sabra, Mr Oneissi and Mr Merhi in these preparatory events.

2. Preparatory events

(a) Evidence

i. Making the video claiming responsibility

5487. The evidence that Mr Abu Adass's appearance had changed in the video is outlined above at paragraphs 5705 to 5706. The Trial Chamber received no evidence of when, where or how it was made nor, it stresses, of anything either directly or indirectly connected with it.

ii. Purchase of the telecard number 6162569 on Wednesday 9 or Thursday 10 February 2005

5488. The Trial Chamber received evidence from which it can find that the telecard used to call Reuters and Al-Jazeera on Monday 14 February 2005 was purchased several days earlier.

5489. In February 2005, Mr Abdo Fayyad worked as a salesperson at a sales office of the telecommunications company, Ogero, in Nahr Beirut. He identified his name and handwriting in an entry for the sale of a telecard number 6162569 on Thursday 10 February 2005.¹⁰³⁴⁹ In a statement to the Lebanese ISF, on 16 March 2005, and a Lebanese Investigating Judge, on 16

¹⁰³⁴⁹ Exhibit P563 (Statement of Abdo Fayyad, dated 24 March 2014), ERNs 60294372, 60294394.

August 2005, he said that he had sold the telecard on 10 February 2005, as noted in the sales records.¹⁰³⁵⁰

5490. However, in October 2007, he told UNHCR investigators that he had sold the telecard on 9 February 2005 and that the ‘head of the section’ had determined this date after checking the register. When asked specifically about the date, Mr Fayyad stated that the telecard was sold between two dates but there was no documentation to confirm the exact date.¹⁰³⁵¹

5491. As Mr Fayyad sold up to 600 telecards per day, he did not remember who bought the card and the company did not record the customers’ names or the time of purchase.¹⁰³⁵² There were no CCTV cameras in operation at the shop and Mr Fayyad could not recall an unusual or notable customer from the day of the sale.¹⁰³⁵³

(b) Submissions

5492. Regarding the purchase date of the telecard, the Prosecution did not make any submissions in its final trial brief. In closing submissions, it mentioned briefly that the telecard ‘was purchased on 10th February’.¹⁰³⁵⁴ The Merhi Defence argues that the evidence relating to the telecard is contradictory on the question of the date purchased.¹⁰³⁵⁵

(c) Findings

5493. The Trial Chamber finds that an unknown person purchased a telecard with the number 6162569 on Thursday 10 February 2005 at the Ogero sales office in Nahr Beirut. Ogero’s sales records state that this telecard was sold by Mr Fayyad on that date and there is no reason to doubt their accuracy. But in any event whether it was bought on 9 or 10 February 2005 is unimportant as nothing connects any of the Accused with the purchase.

¹⁰³⁵⁰ Exhibit P563 (Statement of Abdo Fayyad, dated 16 March 2005), ERN 60294381; exhibit P563 (Statement of Abdo Fayyad, dated 16 August 2005), ERN 60294385; exhibit P563 (Statement of Abdo Fayyad, dated 31 October 2007), ERNs 60289133-60289134.

¹⁰³⁵¹ Exhibit P563 (Statement of Abdo Fayyad, dated 31 October 2007), ERN 60289134.

¹⁰³⁵² Exhibit P563 (Statement of Abdo Fayyad, dated 24 March 2014), ERN 60294372; exhibit P563 (Statement of Abdo Fayyad, dated 16 March 2005), ERN 60294381; exhibit P563 (Statement of Abdo Fayyad, dated 31 October 2007), ERN 60289133-60289134.

¹⁰³⁵³ Exhibit P563 (Statement of Abdo Fayyad, dated 31 October 2007), ERN 60289134-60289135.

¹⁰³⁵⁴ Prosecution closing submissions, T. 14 September 2018, p. 57.

¹⁰³⁵⁵ Merhi Defence final trial brief, para. 522.

5494. Mr Fayyad has no recollection of the sale and relied on the sales records for the purchase date. Evidently, he was not shown the sales records during the UNIIIC interview, which explains why he may have been uncertain about the date then.

3. Mobile activity from Tuesday 18 January to Sunday 13 February 2005

5495. The Prosecutor pleads in the amended consolidated indictment that following the disappearance of Mr Abu Adass, Mr Merhi's Purple 231 and Mr Ayyash's personal mobile 091 were in contact with each other in late January and early February 2005.¹⁰³⁵⁶ The Prosecution's final trial brief points out that Purple and Green mobiles also had limited contact with each other during this period.¹⁰³⁵⁷

(a) Evidence

i. Alleged decline in Purple mobile activity

5496. On **Tuesday 18 January 2005**, two days after Mr Abu Adass's disappearance, Mr Oneissi's Purple 095 was active, making or receiving eleven calls.¹⁰³⁵⁸ Mr Merhi's Purple 231 and Mr Sabra's attributed Purple 018 each received one call.¹⁰³⁵⁹ The Purple mobiles were then not in contact with each other again until Friday 21 January 2005.¹⁰³⁶⁰

5497. On **Friday 21 January 2005**, there was only one call between the Purple mobiles. Mr Merhi's Purple 231 made a call of 43 seconds to Mr Oneissi's Purple 095 at 16:09.¹⁰³⁶¹ The next contacts between the Purple mobiles was on **Monday 24 January**.¹⁰³⁶² The only call between

¹⁰³⁵⁶ Amended consolidated indictment, paras 31, 37.

¹⁰³⁵⁷ Prosecution final trial brief, paras 560-561, 811, 931-933.

¹⁰³⁵⁸ Exhibit P1223 (Call sequence table of Purple 095), p. 266; exhibit P1339 (Call sequence table of Associate Purple 375), p. 35.

¹⁰³⁵⁹ Exhibit P527 (Call sequence table of Purple 231), p. 111; exhibit P1221 (Call sequence table of Purple 018), p. 285.

¹⁰³⁶⁰ Exhibit P527, p. 111; exhibit P1221, pp 285-287; exhibit P1223, pp 266-267; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 690. *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), paras 25 (p. 202), 665-666 (p. 206). The Trial Chamber notes an error in the paragraph numbering of exhibit P1782, on pages 198-202. It appears that 23 paragraphs were inserted between paras 644 and 645.

¹⁰³⁶¹ Exhibit P527, p. 111; exhibit P1223, p. 267.

¹⁰³⁶² Exhibit P527, pp 111-112; exhibit P1221, pp 286-287; exhibit P1223, p. 268; exhibit P1339, pp 36-37; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 725.

Purple mobiles that day was at 10:11 with a 43-second call from Mr Merhi's Purple 231 to Mr Oneissi's Purple 095.¹⁰³⁶³

5498. On **Tuesday 25 January 2005**, Mr Sabra's attributed Purple 018 and Mr Merhi's Purple 231 exchanged calls in the afternoon, at 14:39 and 14:43.¹⁰³⁶⁴ The first call lasted for almost three minutes.¹⁰³⁶⁵ These were their first contacts since **Saturday 15 January**.¹⁰³⁶⁶ For both calls, Purple 018 activated ETOILE1 near Parliament.¹⁰³⁶⁷ The last call between the Purple mobiles of the day occurred at 18:39 between Mr Sabra's attributed Purple 018 and Mr Oneissi's Purple 095.¹⁰³⁶⁸ Purple 018's next contact with another Purple mobile occurred ten days later, on Friday 4 February 2005.¹⁰³⁶⁹

5499. Mr Platt highlighted the significance of Mr Sabra's Purple 018's calls with Mr Merhi's Purple 231 when he was connecting to the ETOILE1 cell. This cell provided coverage near the tree where the video claiming responsibility for Mr Hariri's assassination would be placed, and is the vicinity of Al-Jazeera's office.¹⁰³⁷⁰ This is shown on the map directly below taken from the electronic presentation of evidence, on which Al-Jazeera is marked 'AJ', Reuters as 'Reu' and the tree as 'T':

¹⁰³⁶³ Exhibit P527, p. 112; exhibit P1223, p. 268.

¹⁰³⁶⁴ Exhibit P527, p. 112; exhibit P1221, p. 287.

¹⁰³⁶⁵ Exhibit P527, p. 112; exhibit P1221, p. 287.

¹⁰³⁶⁶ Gary Platt, T. 21 February 2017, p. 102; exhibit P527, pp 110-112; exhibit P1221, pp 285-287.

¹⁰³⁶⁷ Exhibit P1221, p. 287.

¹⁰³⁶⁸ Exhibit P1221, p. 287; exhibit P1223, p. 269.

¹⁰³⁶⁹ Exhibit P1221, pp 287-288. *See also* exhibit P1782, para. 734.

¹⁰³⁷⁰ Gary Platt, T. 21 February 2017, pp 102-103; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 763; exhibit P1900 (Electronic presentation of evidence snapshots showing coverage of ETOILE1, location of Al-Jazeera and Reuters offices, and the tree). *See also* exhibit P1782, paras 732, 734; exhibit P1889 (Chronology PowerPoint presentation – 18 January 2005 to 27 January 2005), slide 178. The Parliament and the Reuters news agency are also located in the same area.



Exhibit P1900 (Electronic presentation of evidence snapshots showing coverage of ETOILE1, location of Al-Jazeera and Reuters offices, and the tree)

5500. Mr Platt added that Purple 018 did not frequent this area of Beirut.¹⁰³⁷¹ He thought that the presence of Purple 018 in this area was consistent with the overall preparation process including the purchase of the Mitsubishi Canter on Tuesday 25 January 2005, searching for a suitable place to hide the video tape, and identifying the payphones to call the news agencies on Monday 14 February 2005.¹⁰³⁷²

5501. The last calls between Mr Merhi's Purple 231 and Mr Oneissi's Purple 095 occurred on **Wednesday 26 January 2005**.¹⁰³⁷³

5502. The Purple mobiles were active but made no contact with each other again until **Friday 4 February 2005**,¹⁰³⁷⁴ when Purple 018 contacted Mr Merhi's Purple 231.¹⁰³⁷⁵ When it called

¹⁰³⁷¹ Gary Platt, T. 21 February 2017, pp 102-103. *See also* exhibit P1782, paras 734-735.

¹⁰³⁷² Gary Platt, T. 21 February 2017, pp 103-106.

¹⁰³⁷³ Gary Platt, T. 22 February 2017, pp 9-10; exhibit P527, pp 112-117; exhibit P1223, pp 269-281; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 766.

¹⁰³⁷⁴ Exhibit P527, pp 112-114; exhibit P1221, pp 287-288; exhibit P1223, pp 270-276; exhibit P1339, pp 37-39; exhibit P1342 (Call sequence table of Associate Purple 744), pp 76-79.

¹⁰³⁷⁵ Exhibit P527, p. 114; exhibit P1221, p. 288; Gary Platt, T. 22 February 2017, pp 9-10, T. 6 March 2017, p. 29; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 946-947.

Mr Merhi's Purple 231 at 14:53, Purple 018 activated AICHA1 in west Beirut, which is adjacent to the ETOILE1 cell that it connected to on Tuesday 25 January 2005. AICHA1's predicted best server coverage area has a predicted border that is about one kilometre from the tree where the video was placed. According to Mr Platt, this was an unusual cell activation by Purple 018.¹⁰³⁷⁶ The next time it was in this area was on Monday 14 February 2005.¹⁰³⁷⁷

5503. From **Friday 4 February to Sunday 13 February 2005**, the Purple mobiles were active but had no contact with each other.¹⁰³⁷⁸

5504. Mr Platt testified that infrequent contacts between the Purple mobiles from **Monday 17 January until Monday 14 February 2005** demonstrate that the major part of the operation, namely the 'abduction' of Mr Abu Adass, was over. However, further activities were necessary for the execution of the false claim, such as the delivery of the video tape.¹⁰³⁷⁹

ii. Patterns of Green mobile activity and inactivity

5505. Mr Merhi's attributed Green 071 became active for the penultimate time on **Thursday 20 January 2005**.¹⁰³⁸⁰ Green 071 called Mr Badreddine's Green 023 that day at 06:01, and received a call from Green 023 at 06:56. Both calls were of less than thirty seconds.¹⁰³⁸¹

5506. Mr Platt observed that the only other time when Green 071 and Green 023 were in contact with each other so early in the morning was on Sunday 16 January 2005, when Mr Abu Adass disappeared.¹⁰³⁸² Because their next and last contact followed almost three weeks later, on Monday

¹⁰³⁷⁶ Gary Platt, T. 6 March 2017, pp 29-30; exhibit P1221, p. 288; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 946. *See also* exhibit P1782, paras 734, 873-874; exhibit P1907 (Chronology PowerPoint presentation – 3 February 2005 to 7 February 2005), slide 101.

¹⁰³⁷⁷ Gary Platt, T. 6 March 2017, p. 30.

¹⁰³⁷⁸ Exhibit P527, pp 114-116; exhibit P1221, pp 288-291; exhibit P1223, pp 276-280. Associate Purple 375 was in contact with Purple 018 on 6 February (twice) and 8 February 2005. Exhibit P1339, pp 40-42. Associate Purple 744 received three calls from Purple 095 on 5 and 6 February 2005. Exhibit P1342, pp 79-82.

¹⁰³⁷⁹ Gary Platt, T. 21 February 2017, p. 46.

¹⁰³⁸⁰ Gary Platt, T. 21 February 2017, p. 6; exhibit P1205 (Call sequence table of Green 071), p. 9; exhibit P1211 (Call sequence table of Green 023), p. 4; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 712, 716. *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), para. 676. On 20 January 2005, Green 023 was also in contact with Green 300 three times after midnight and once at 10:31.

¹⁰³⁸¹ Exhibit P1205, p. 9; exhibit P1211, p. 4.

¹⁰³⁸² Gary Platt, T. 21 February 2017, pp 6-7.

7 February 2005, Mr Platt's view was that the role of Mr Merhi's Green 071 was largely but not entirely completed.¹⁰³⁸³

5507. On **Monday 7 February 2005**, at 10:45, fourteen minutes after Mr Badreddine's Green 023 received a call from Mr Ayyash's Green 300, Mr Merhi's attributed Green 071 made a 65-second call to Mr Badreddine's Green 023.¹⁰³⁸⁴ This was the last call between Green 071 and Green 023.¹⁰³⁸⁵

5508. Mr Philips compared the Green mobiles calls and the different dates when they ceased all activity, namely Monday 7 February 2005 for Green 071 and Monday 14 February 2005 for Green 023 and Green 300. From this he concluded that Green 071's cessation of use seven days earlier than the other two Green mobiles 'may well imply' that the role Green 071 played in the Green mobiles' mission was completed earlier than that of Green 023 and Green 300.¹⁰³⁸⁶

iii. Contact between Mr Merhi's Purple 231 and Mr Ayyash's personal mobile 091

5509. On **Sunday 23 January 2005**, Mr Merhi's Purple 231 received two calls from Mr Ayyash's personal mobile 091.¹⁰³⁸⁷ Apart from the rarity of the contacts between the users of these mobiles, Mr Platt emphasised that these calls fitted into a series of eleven calls between the users of the Blue network mobiles, including Mr Ayyash's personal mobile 091. And further, that both mobiles used cells in Dahyieh, in southern Beirut, that provided overlapping coverage, namely on Alfa's BRAJNE2 and Touch's Sfeir_A.¹⁰³⁸⁸ The call data records reveal eight calls

¹⁰³⁸³ Gary Platt, T. 21 February 2017, pp 7-8. *See also* exhibit P1782, para. 676.

¹⁰³⁸⁴ Exhibit P1205, p. 9; exhibit P1211, p. 5; exhibit P1207 (Call sequence table of Green 300), p. 5; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 958.

¹⁰³⁸⁵ Gary Platt, T. 6 March 2017, p. 104; exhibit P1205, p. 9. *See also* exhibit P1782, paras 904-905.

¹⁰³⁸⁶ Exhibit P1116 (Expert report of J.E. Philips, 'Mission phones?' – Green mobiles, dated 3 May 2015), para.7.5.7 (p. 66), John Edward Philips, T. 31 August 2016, p. 96, T. 1 September 2016, pp 9-11, T. 6 September 2016, pp 44, 77. *See also* exhibit P1118 (PowerPoint presentation on common mission phones, John Edward Philips), slide 157.

¹⁰³⁸⁷ Gary Platt, T. 21 February 2017, pp 67-68, 71; exhibit P527 (Call sequence table of Purple 231), p. 111; exhibit P1256 (Call sequence table of mobile 091), p. 4; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 738-740. *See also* exhibit P1782 (Narrative overview of telephone activity and relevant events), paras 706, 708.

¹⁰³⁸⁸ Gary Platt, T. 21 February 2017, pp 67-68, 71. *See also* exhibit P1782, paras 706, 708-709; exhibit P1889 (Chronology PowerPoint presentation – 18 January 2005 to 27 January 2005), slide 140.

between Purple 231 and Mr Ayyash's personal mobiles 091 and 935 between 13 November 2004 and 6 February 2005.¹⁰³⁸⁹

5510. On **Saturday 5 February 2005**, at 12:17, Mr Merhi's Purple 231, in south Beirut, called Mr Ayyash's personal mobile 091, which was then in southern Lebanon, for a minute and a half.¹⁰³⁹⁰

5511. The following day, **Sunday 6 February 2005**, Mr Merhi's Purple 231 contacted Mr Ayyash's personal mobile 091 again at 16:51.¹⁰³⁹¹ This call was followed by three calls, within a minute, from Mr Merhi's Purple 231 to the Great Prophet Hospital's (*Al-Rasoul Al-Aazam*) landline.¹⁰³⁹² At 17:37, Purple 231 received a call from Mr Ayyash's personal mobile 091, and they had two more short calls, at 18:41 and 18:59.¹⁰³⁹³ The last call was of seven seconds,¹⁰³⁹⁴ and they were activating cells in south Beirut for these calls.¹⁰³⁹⁵

5512. In Mr Platt's view, these calls demonstrated contact between the two limbs of the 'plot' for which the mobile users were responsible, namely the surveillance of Mr Hariri and the preparation of the false claim of responsibility. It goes to demonstrate either that they were not aware of the other's Green mobile or that they were 'ordered not to use' those to call each other.¹⁰³⁹⁶ It also illustrated an insulation of the third Green mobile, Mr Badreddine's Green 023, from the ongoing operations.¹⁰³⁹⁷

¹⁰³⁸⁹ The first was on 13 November 2004, and there were two calls on 23 January, one on 5 February and four on 6 February. Exhibit P527, pp 98, 111, 114-115; exhibit P1256 (Call sequence table of mobile 091), pp 4, 8; exhibit P1261 (Call sequence table of mobile 935), p. 77; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 195, 738-740, 949, 951. *See also* exhibit P1782, paras 197, 706, 708, 878-879, 892-894.

¹⁰³⁹⁰ Exhibit P527, p. 114; exhibit P1256, p. 8; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 949.

¹⁰³⁹¹ Exhibit P527, p. 114; exhibit P1256, p. 8; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 951.

¹⁰³⁹² Exhibit P527, p. 114; exhibit P1606 (Subscriber note for landline 206).

¹⁰³⁹³ Exhibit P527, p. 115; exhibit P1256, p. 8; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 951.

¹⁰³⁹⁴ Exhibit P527, p. 115; exhibit P1256, p. 8.

¹⁰³⁹⁵ Exhibit P527, pp 114-115; exhibit P1256, p. 8; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 951.

¹⁰³⁹⁶ Gary Platt, T. 6 March 2017, p. 89. *See also* Gary Platt, T. 9 February 2017, p. 73.

¹⁰³⁹⁷ Gary Platt, T. 6 March 2017, pp 89-90.

(b) Submissions

5513. According to the Prosecution, the eight inter-Purple mobile calls in the month after Mr Abu Adass's abduction, from Sunday 16 January 2005—as opposed to the twelve on Monday 14 February 2005 alone—showed a 'largely but not wholly dormant period of preparation.'¹⁰³⁹⁸

5514. The calls between Mr Ayyash and Mr Merhi on Sunday 23 January 2005 also formed part of a sequence of successive Blue network calls between Mr Ayyash and Subjects 6, 7, 9 and 816.¹⁰³⁹⁹ There were, however, calls between Mr Ayyash and Mr Merhi in late January and early February 2005¹⁰⁴⁰⁰ as well as from Mr Merhi to Mr Badreddine on Monday 7 February 2005.¹⁰⁴⁰¹

5515. In relation to the making of the video, the Prosecution's final trial brief submits that:

The length of the period of Purple inactivity, save for isolated calls largely coinciding with the time of the calls to ABU ADASS' home, varied between 48 hours to 72 hours, and only ended on 18 January 2005. This length of time was well beyond that required to abduct and incarcerate ABU ADASS. It is consistent with participation in the creation of the videotape of the false claim of responsibility.¹⁰⁴⁰²

5516. In response to this submission, the Trial Chamber posed the following question to the Prosecution:

Paragraph 552 of the Prosecution brief alleges that inactivity of the purple and associated purple mobiles for a period of 48 to 72 hours before 18 January 2005 is consistent with 'participation in the creation of the videotape of the false claim of responsibility'.

Where is the evidence for this assertion? Further, it was not pleaded in the amended consolidated indictment or pre-trial brief. What legal consequences flow from this? And is this alleged to be a material fact?¹⁰⁴⁰³

¹⁰³⁹⁸ Prosecution final trial brief, para. 561.

¹⁰³⁹⁹ Prosecution final trial brief, para. 614.

¹⁰⁴⁰⁰ Amended consolidated indictment, paras 31, 37.

¹⁰⁴⁰¹ Prosecution final trial brief, para. 615.

¹⁰⁴⁰² Prosecution final trial brief, para. 552.

¹⁰⁴⁰³ Questions for closing submissions, para. 12.

5517. In answering this in oral closing arguments, Prosecution counsel said that they no longer maintained this submission.¹⁰⁴⁰⁴ The Prosecution also submitted that possible changes to Mr Abu Adass's appearance, in the video, could be explained by a styling change.¹⁰⁴⁰⁵

5518. Prosecution counsel also submitted that Mr Abu Adass's 'drawn appearance' in the video was possibly explicable because he 'had been lured and then suddenly realized that he was part of a horrible plot ... he must have been very scared'.¹⁰⁴⁰⁶ Although the Prosecution had 'no direct evidence of who created the video', it did have evidence that 'Mr. Oneissi and Mr. Sabra were involved at each step of the way through to the delivery. They were the inner core and needed to know'.¹⁰⁴⁰⁷

5519. Regarding Mr Sabra's Purple 018 connecting to ETOILE1 and calling Mr Merhi's Purple 231 on Tuesday 25 January 2005, the Prosecution's final trial brief stated that this was 'significant because this cell is directly adjacent to cells' that Mr Sabra connected to on Monday 14 February around the tree. Further, it was Mr Sabra's first contact with another Purple mobile for ten days.¹⁰⁴⁰⁸ Prosecution counsel in closing arguments described this as 'advance planning'.¹⁰⁴⁰⁹

5520. The Merhi Defence, apparently relying upon untested Rule 158 evidence, argued that the Prosecution's assertion that the video cassette was probably made on 18 January 2005¹⁰⁴¹⁰ does not tally with the testimony of Mr Abu Adass's close associates that, in the video, Mr Abu Adass had lost weight and his beard seemed thicker.¹⁰⁴¹¹

5521. It also argued that the Prosecution produced no evidence linking the activity of Purple 231 on Monday 17 and Tuesday 18 January 2005 to the recording of the video.¹⁰⁴¹² The lack of calls between Purple 231 and Purple 095 after Wednesday 26 January 2005 show that no preparation

¹⁰⁴⁰⁴ Prosecution closing submissions, T. 14 September 2018, pp 23-24.

¹⁰⁴⁰⁵ Prosecution closing submissions, T. 14 September 2018, pp 26-27.

¹⁰⁴⁰⁶ Prosecution closing submissions, T. 14 September 2018, p. 27.

¹⁰⁴⁰⁷ Prosecution closing submissions, T. 14 September 2018, p. 37.

¹⁰⁴⁰⁸ Prosecution final trial brief, para. 932. *See also* Prosecution closing submissions, T. 11 September 2018, p. 34, where it was described as 'the advanced planning for the 14th of February by the identification of the pay phones and the location to place the videotape in advance of the 14th of February'.

¹⁰⁴⁰⁹ Prosecution closing submissions, T. 11 September 2018, p. 34.

¹⁰⁴¹⁰ Merhi Defence final trial brief, para. 518.

¹⁰⁴¹¹ Merhi Defence final trial brief, para. 518, referring to the Prosecution final trial brief, para. 1106, which refers to the evidence of Mr Taysir Abu Adass, Witness 56, Witness 87, the witness who saw 'Mohammed' in the mosque and Mr Ramadan on Mr Abu Adass's appearance in the video.

¹⁰⁴¹² Merhi Defence final trial brief, para. 519.

was occurring, and Green 071 cannot have been used to coordinate the claim of responsibility, given that it was used only once on Thursday 20 January 2005, before its last use on Monday 7 February 2005.¹⁰⁴¹³ The Merhi Defence further submits that the call made on 7 February 2005 is unexplained, given the Prosecution's argument that the preparation of the false claim was completed on 27 January 2005.¹⁰⁴¹⁴

5522. The Purple mobiles did not activate cells in the area of the store that sold the telecard between Wednesday 9 and Saturday 12 February 2005, and there is no evidence that the same telecard was delivered to Mr Sabra or Mr Oneissi to make the calls claiming responsibility for the attack.¹⁰⁴¹⁵

5523. The Oneissi Defence submits that it cannot be inferred that Mr Oneissi was involved in the creation of the video merely because his mobile was inactive, regardless of how 'exceptional' the inactivity was.¹⁰⁴¹⁶

5524. The Sabra Defence argues, regarding the calls between Mr Merhi's Purple 231 and Mr Ayyash's personal mobile 091, that the Prosecution provides no plausible reason to break an established communication protocol.¹⁰⁴¹⁷ The Prosecution provided no explanation as to why the Green network did not act as the communication hub on this occasion.¹⁰⁴¹⁸

5525. The Sabra Defence also attacked paragraph 552 of the Prosecution's final trial brief, referred to above at paragraphs 5515 to 5518, stating that 'the Prosecution's improper allegation is pure supposition'. It argues that there is 'no forensic evidence from the FCR-Tape [false claim of responsibility], from the device used to record the FCR-Video or the location in which it was recorded which would establish any link to the accused'.¹⁰⁴¹⁹ The Prosecution also cannot establish when it was recorded. In arguing that it was recorded between 16 and 18 January 2005, the Prosecution 'neglects to consider its own evidence' that the video must have been recorded

¹⁰⁴¹³ Merhi Defence final trial brief, paras 530, 543-544.

¹⁰⁴¹⁴ Merhi Defence final trial brief, para. 399.

¹⁰⁴¹⁵ Merhi Defence final trial brief, para. 522.

¹⁰⁴¹⁶ Oneissi Defence final trial brief, paras 202, 546-549.

¹⁰⁴¹⁷ Sabra Defence final trial brief, paras 536-539.

¹⁰⁴¹⁸ Sabra Defence final trial brief, para. 539.

¹⁰⁴¹⁹ Sabra Defence final trial brief, para. 794.

sometime after Mr Abu Adass's 'disappearance in light of the changes in his physical appearance'.¹⁰⁴²⁰

5526. In closing submissions, counsel for Mr Sabra argued that the Prosecution's allegation in its final trial brief that the users of Purple mobiles were implicated in creating the video 'exceed the scope of the charges'. The Trial Chamber accordingly cannot make a finding on them, otherwise it 'would be a clear violation of Mr. Sabra's rights'.¹⁰⁴²¹

(c) Findings

5527. The Trial Chamber is unable to make any findings about when the video tape was made beyond the obvious that it was made after Mr Abu Adass's disappearance on Sunday 16 January, and before Mr Hariri's assassination on Monday 14 February 2005. The evidence about his beard's possible growth is unclear and the Trial Chamber can accordingly make no finding about how much it had grown between his disappearance and whenever the video was made. His Lebanese identity card, issued in April 2002, shows him with a beard, but this is inconclusive; there was no evidence about when the photograph was taken, and beard wearing can regularly change.¹⁰⁴²²

5528. The Trial Chamber received some evidence about Mr Abu Adass's allegedly changed appearance in the video tape. However, this evidence is contested and comes from witnesses whose evidence is challenged and it was admitted under Rule 158 without cross-examination, although the Merhi and Oneissi Defence and the Prosecution used it in their final trial briefs. The Trial Chamber has given this evidence no weight, but has noted that Mr Abu Adass having a possibly changed appearance may be explicable by the circumstances of what he was doing, namely, appearing in a video taking responsibility for the murder of Mr Hariri in the name of an Islamic group.

5529. The Trial Chamber also cannot accept the Prosecution's submissions that the only inference reasonably available from the evidence is that a period of 'inactivity' of contact between Mr Merhi's and Mr Oneissi's Purple mobiles and Mr Sabra's attributed Purple mobile was that they were involved in making the video.

¹⁰⁴²⁰ Sabra Defence final trial brief, para. 795.

¹⁰⁴²¹ Sabra Defence closing submissions, T. 21 September 2018, p. 10.

¹⁰⁴²² Shaving or trimming a beard, which can only take a few minutes to do, can alter a person's physical appearance.

5530. Not making calls over a short period, especially in circumstances in which they had made and not made calls to each other over the preceding three years, is probative of not very much. This is so even when the entirety of the patterns of the calls is closely analysed. The Trial Chamber cannot infer something positive, namely that they were involved in making the video, from the negative evidence, namely the lack of calls. The submission is at best speculative, and is unsupported by the evidence. The mere lack of communication is insufficient to provide evidence of positive activity on the part of the three Accused. This is even when accepting the coincidences evident here.

5531. Added to this is the lack of evidence connecting any of the Accused with the purchase of the telecard used to call Reuters and Al-Jazeera. The Trial Chamber of course accepts that it is neither alleged that they did purchase it, nor would it have been necessary for them to have done so to have participated in the conspiracy. This is something that could have been ‘outsourced’ to a trusted source.

5532. Another piece of evidence was that on Tuesday 25 January 2005, Mr Sabra’s attributed Purple 018 activated the ETOILE1 cell, in twice calling Mr Merhi’s Purple 231 in a five-minute period in the afternoon. This cell provided predicted best server coverage to the Lebanese Parliament, Al-Jazeera and Reuters, and its predicted coverage boundaries—at their closest point—are within around 70 metres of the tree where the video was placed, at some unknown date.¹⁰⁴²³ To Mr Platt this was significant. To the Prosecution in closing arguments, it represented ‘advance planning’ for the attack.

5533. However, against this is that in ETOILE1’s predicted best server coverage area, the greatest distance from the tree is significantly further away, namely around 650 metres. There are a number of scattered pockets of coverage, and the distance between the furthest coverage edge and the tree is just over 650 metres, as is shown in the diagram below prepared by the Trial Chamber, where the tree is marked as ‘T’:

¹⁰⁴²³ The Trial Chamber, using the electronic presentation of evidence software, has measured the distance between the tree and the edge of the closest pocket of ETOILE1’s predicted best server coverage as around 70 metres.



Distance from the tree to the edges of ETOILE1's predicted best coverage boundaries

5534. Mr Sabra's attributed mobile 018, it is evident from this, could have been at or 'near' the tree, and connecting to ETOILE1, or he could have been over 600 metres away from it, or possibly further away connecting to a neighbouring cell. It is impossible to know where it was, other than that it was in the 'general vicinity', in a built-up urban area, of an object that has a pleaded significance to the case. The Trial Chamber, therefore, cannot draw an inference from this cell activation alone that Mr Sabra's shared mobile was in 'the vicinity of' the tree, Al-Jazeera and Reuters for purposes connected with making the claim of responsibility for the attack that occurred almost three weeks later.

5535. In saying this, however, the Trial Chamber has also inclusively examined the entirety of the cell site evidence presented in connection with the claim of responsibility. Whichever way it is viewed, however, a connection to a cell providing predicted best server coverage 'near' the tree—but otherwise covering the Lebanese Parliament, Al-Jazeera and Reuters—on Tuesday 25 January 2005, lacks context. Further, the Trial Chamber also cannot positively find that Mr Sabra was using Purple 018 when it activated ETOILE1.

5536. Further, the Trial Chamber cannot accept that the only reasonable inference available from calls between Mr Merhi's personal mobile 231 and Mr Ayyash's personal mobile 091 on Sunday 6 February 2005 is their lack of awareness of each other's Green mobiles or that they were 'ordered not to use' them to call each other. Conceivably, both are possible inferences. Moreover, there were eight calls between their personal mobiles from 13 November 2004 to mid-February 2005.

5537. However, against this is that while their contact on their personal mobiles demonstrates that the mobile users knew each other, there is no evidence of the reason for their contact on that day on their personal mobiles. The call data records establish that they had called each other 24 times over the preceding fourteen months, from 4 December 2003.¹⁰⁴²⁴ Mr Ayyash, moreover, is not alleged to have been involved in the false claim aspect of the conspiracy. The Trial Chamber cannot find any other evidence, relating to the development of the false claim part of the conspiracy—or any other part—that it can link to these calls. They are without context.

5538. As there is no evidence about any of these matters, there is no evidence connecting any of the Accused with the making of the video nor any of the other preparatory acts to making the claim of responsibility on Monday 14 February 2005. The Trial Chamber therefore cannot conclude that the only inference reasonably available from the totality of the evidence is that any of the three Accused were involved in making the video used in the claim of responsibility for the attack.

4. Activity of Mr Merhi's Purple 231, Mr Oneissi's Purple 095 and Mr Sabra's attributed Purple 018 on the afternoon of Monday 14 February 2005

(a) Introduction

5539. The evidence implicating Mr Merhi, Mr Oneissi and Mr Sabra in participating in the activities relating to making the claim of responsibility—namely, placing the video and letter in a box in the tree, and then calling Reuters and Al-Jazeera—comes from the call data records of their personal mobiles after the attack on the afternoon of Monday 14 February 2005. On the Prosecution's case, this must be considered in combination with the evidence of their alleged

¹⁰⁴²⁴ *For example*, exhibit P1259 (Call sequence table of ten numbers—Mr Ayyash), pp 164, 174-176, 178, 187-189, 194-195, 204, 225, 243-244, 261, 268, 281.

involvement in Mr Abu Adass's disappearance in January 2005, including that of his alleged 'abduction'. The evidence in this respect is completely circumstantial.

5540. Mr Platt—the Prosecution's expert on the surveillance of criminal networks and the identification and organisation of covert communication networks—provided his opinion evidence on the movements of the three mobiles *vis-à-vis* the calls to Reuters and Al-Jazeera. He concluded that Mr Oneissi and Mr Sabra were involved in making or monitoring the calls and watching the tree to ensure that the video was collected for immediate broadcast.

5541. He analysed the call data records between 14:03 and 17:24 on Monday 14 February 2005 and noted that the Purple mobiles of Mr Merhi, Mr Oneissi and Mr Sabra called each other twelve times. This, he concluded, represented a peak in Purple mobile activity similar to that during the so-called 'COLA phase' between Wednesday 29 December 2004 and Friday 7 January 2005.¹⁰⁴²⁵

(b) Stability of the networks on Monday 14 February 2005 after the explosion

5542. Another important feature of the case is the stability of the two mobile telecommunications networks on the afternoon of Monday 14 February 2005 in Beirut after the attack on Mr Hariri, from 12:55 onwards, and especially in the area relatively near the crime scene. The Trial Chamber has carefully considered the evidence of network congestion in assessing the reliability of the cell site evidence for that afternoon.

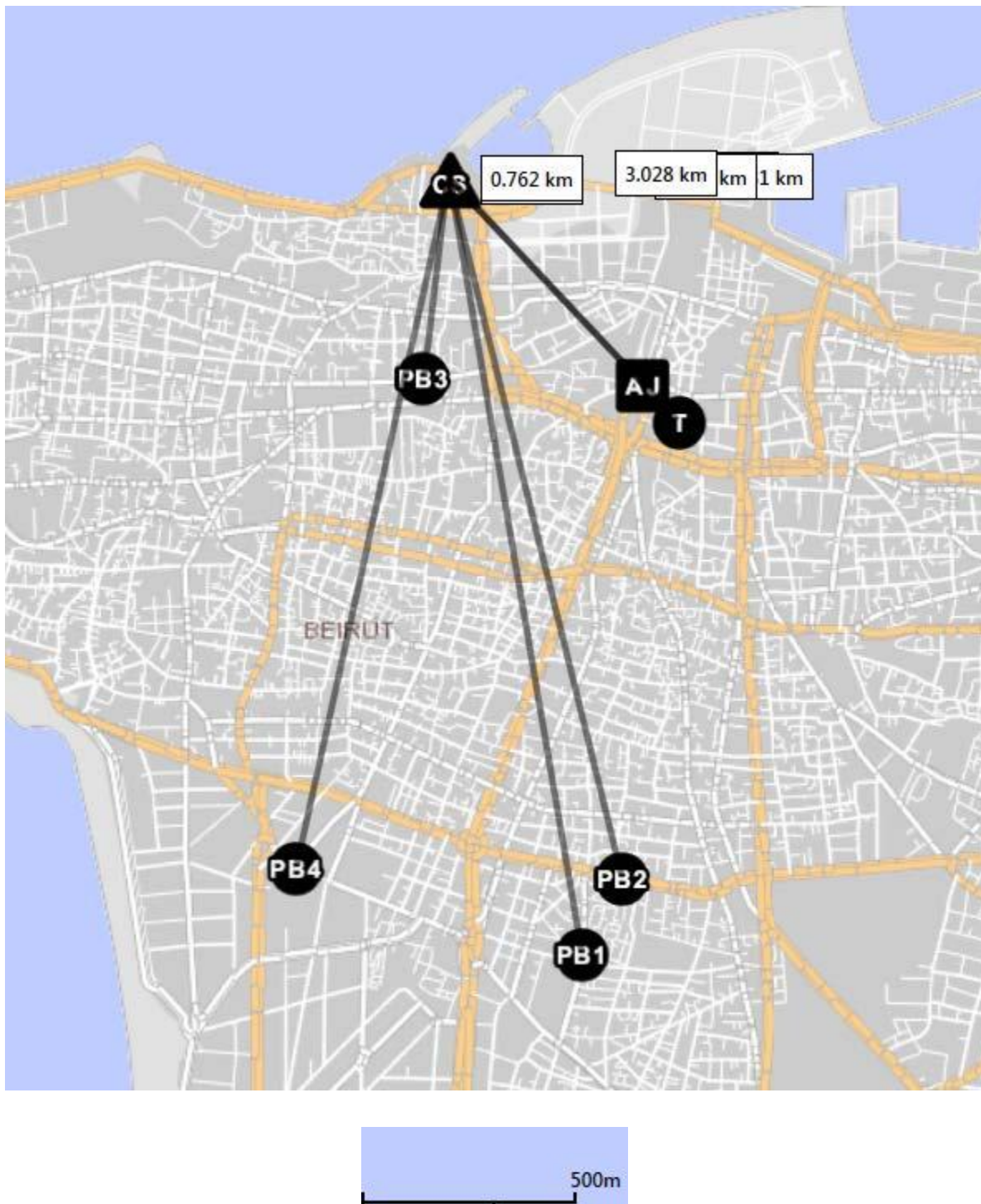
5543. The four payphones from which the calls to Reuters and Al-Jazeera were made, and the tree and the Al-Jazeera offices are all within three kilometres of the crime scene. Payphone three is only around 750 or so metres away, while the Al-Jazeera office is about one kilometre and the tree around 1,200 metres from it.¹⁰⁴²⁶

5544. The Trial Chamber has used the electronic presentation of evidence to mark the distances on a diagram, below, where the tree is marked as 'T', the Al-Jazeera office as 'AJ', the payphones as 'PB' and the crime scene as 'CS':¹⁰⁴²⁷

¹⁰⁴²⁵ Gary Platt, T. 14 March 2017, pp 73-75. *See also* exhibit P1780 (Chronology of relevant events), pp 32-33; exhibit P1782 (Narrative overview of telephone activity and relevant events), paras 1057-1074; exhibit P1934 (Corrected Chronology PowerPoint slides regarding the Purple mobiles), slide 7.

¹⁰⁴²⁶ Payphone two is about 2.75 kilometres, payphone four about 2.7 kilometres and payphone one about three kilometres distant.

¹⁰⁴²⁷ The overlap of the distance text boxes on the map is due to an unresolvable technical issue.



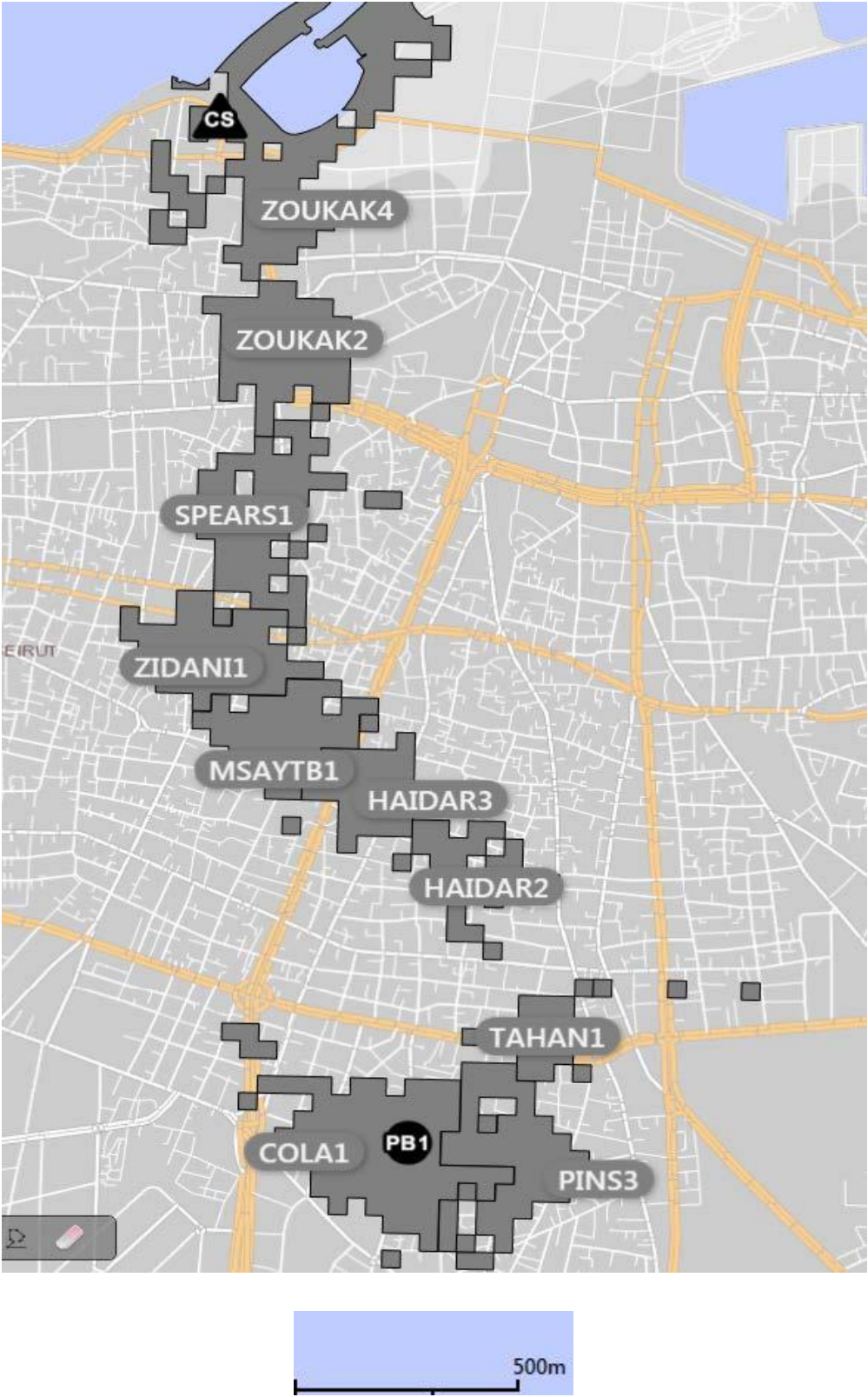
Distances from the crime scene to the four payphones, the tree and the Al-Jazeera office

5545. From payphone one, the furthest payphone from the crime scene, there were eight contiguous cells between that covering the payphone, TAHAN1, and that covering the scene of

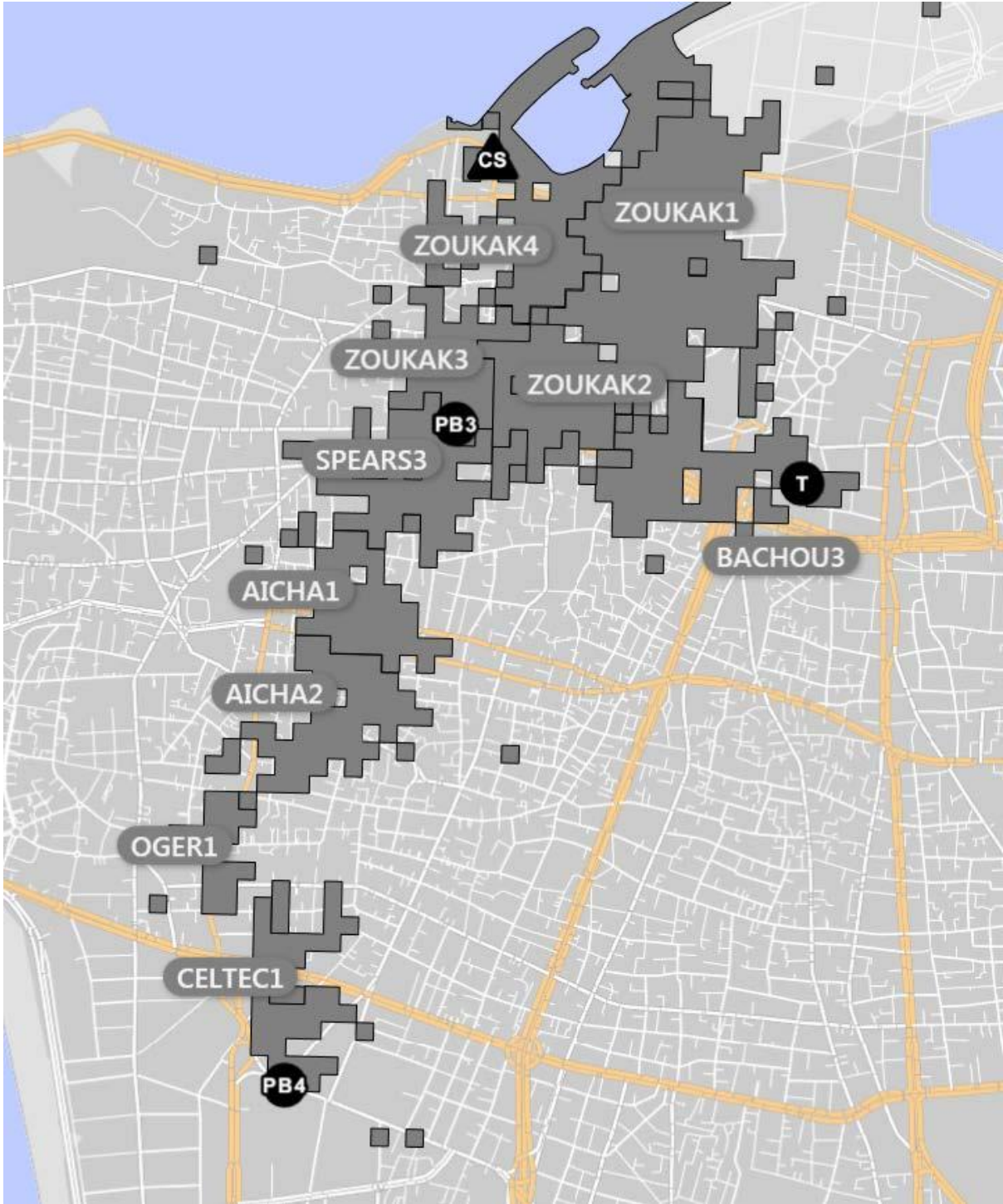
the explosion, ZOUKAK4.¹⁰⁴²⁸ By contrast, there was only one cell between payphone three and the crime scene, and one between the tree and the crime scene.¹⁰⁴²⁹ The Trial Chamber has used the electronic presentation of evidence in the map below to show the number of cells between the crime scene and the payphones and tree. This is to show their relative proximity to the crime scene, and hence, areas of network congestion after the attack.

¹⁰⁴²⁸ ZOUKAK2, SPEARS1, ZIDANI1, MSAYTB1, HAIDAR3, HAIDAR2, PINS3 and COLA1.

¹⁰⁴²⁹ Either ZOUKAK1, ZOUKAK2 or ZOUKAK3.



Cells between the crime scene and payphone one



Cells between the crime scene and payphones three, four and the tree

5546. The Trial Chamber received evidence that the networks experienced severe congestion in the aftermath of the attack.

5547. Mr Philips and Witnesses 705 and 707 gave general and specific testimony on network congestion. Witness 705, as the Touch representative, described what Touch referred to as the ‘handover’ of a call from a cell that had reached a predetermined capacity, to another.¹⁰⁴³⁰ He described this occurring during periods of congestion triggered during peak hours of cell traffic, or by particular events.¹⁰⁴³¹ The call data records do not register handovers;¹⁰⁴³² the start cell is registered and the end cell may also appear.¹⁰⁴³³

5548. Alfa used the expression ‘directed retry’ to explain the same technical procedure, which is common to telecommunication networks. Witness 707, the Alfa representative, and Mr Philips agreed that an event of this proportion—which would include people constantly trying to call their relatives in the hours after the attack and considerable media interest—would result in a high density of calls, thus causing significant network congestion.¹⁰⁴³⁴

5549. Witness 707 examined an extract from an Alfa log of incidents from across the network on the afternoon of the attack, and explained that such an explosion would cause considerable congestion on the network mobile switching centres (MSCs), which would have reached their maximum capacity to handle calls.¹⁰⁴³⁵ Alfa had six MSCs in 2004 to 2005.¹⁰⁴³⁶ The incidents in the log, exhibit 4D263, include a power failure in the COLA cell and abnormalities in the MSCs from over-congestion after the explosion. MSCs 1 to 6 all record that they experienced congestion due to the explosion.

¹⁰⁴³⁰ Witness PRH705, T. 6 May 2016, p. 10; exhibit P826 (Witness PRH705’s statement of 16 November 2015), paras 55, 57.

¹⁰⁴³¹ Witness PRH705, T. 6 May 2016, p. 10; exhibit P826 (Witness PRH705’s statement of 16 November 2015), para. 59.

¹⁰⁴³² Witness PRH705, T. 6 May 2016, pp 13-14, T. 21 July 2016, pp 6-8; exhibit P826 (Witness PRH705’s statement of 16 November 2015), para. 59.

¹⁰⁴³³ Witness PRH705, T. 6 May 2016, pp 13-14, T. 21 July 2016, p. 8.

¹⁰⁴³⁴ John Edward Philips, T. 26 August 2015, pp 50-52; Witness PRH707, T. 22 April 2016, pp 56-57. *See also* Gary Platt, T. 6 April 2017, pp 107-108.

¹⁰⁴³⁵ Exhibit 4D263 (Extract from an Alfa business record which is a log of incidents that occurred across the Alfa network on 14 February 2005); Witness PRH707, T. 25 July 2016, pp 46-53, 55-57, 60-61, 92-93.

¹⁰⁴³⁶ Witness PRH707, T. 10 February 2016, p. 64. There is no evidence on the record about which covered the cells relevant to the case.

5550. It also shows the cells directly affected by the explosion and the effect of these on neighbouring cells and the overall coverage of the Alfa network.

5551. The expert and technical evidence was that in congestion or overloading of the best serving cell, the network allocates the call either through a directed retry into the six neighbouring cells, or sends a busy response to the caller and does not allocate the call until the best serving cell is available again.¹⁰⁴³⁷ Under normal circumstances in a directed retry, the call data records register not the best serving cell, but rather the cell to which the call is transferred. The call data records do not show if a directed retry occurred. Similarly, the handover from the best serving cell to another does not appear in the call data records; only the cell used at the beginning of the call is normally recorded.¹⁰⁴³⁸

5552. Concerning the experiences of those attempting to make calls after the explosion, the Trial Chamber received evidence from a number of victims participating in the proceedings that their calls to relatives did not go through because the mobile networks were down on the afternoon of the attack.¹⁰⁴³⁹ Mr Ben-Jeddo also testified that in the hours after the explosion, he tried to call a colleague from Al-Jazeera several times before his call went through, but then disconnected. He also saw many people who could not make calls because the networks were congested.¹⁰⁴⁴⁰

5553. Witness 256, who was in Mr Hariri's convoy on the day of the attack, in the minutes after the attack tried to call the Quraitem Palace, but there was no network coverage at the explosion site.¹⁰⁴⁴¹ Witness 115, the Al-Jazeera technician who went to collect the false claim video and the letter, observed that the mobile networks were very busy after the explosion and that the closer one was to the explosion site the more difficult it was to make calls. On the afternoon of the attack,

¹⁰⁴³⁷ John Edward Philips, T. 20 August 2015, pp 47-49, 51-53, 55, 85-87; Witness PRH707, T. 12 February 2016, pp 59, 62, 64; Witness 705, T. 6 May 2016, pp 10, 15; exhibit P826 (Witness PRH705's statement of 16 November 2015), paras 55, 57, 59; exhibit P549, pp 35, 167. Touch, unlike Alfa, did not activate directed retry in its network, Witness PRH705, T. 6 May 2016, pp 8-9, 13; Witness PRH707, T. 12 February 2016, p. 60.

¹⁰⁴³⁸ John Edward Philips, T. 20 August 2015, pp 53-54; Witness PRH705, T. 6 May 2016, pp 13-14, T. 21 July 2016, pp 6-8; exhibit P826 (Witness PRH705's statement of 16 November 2015), para. 59.

¹⁰⁴³⁹ Exhibit P181 (Bilal Yamout's witness statement), para. 16; Victim V016, T. 30 August 2017, p. 48; exhibit P82 (Omar Fayoumi's statement), p. 13 (paras 103-108); exhibit 1V35 (Bazika Nasser's statement), para. 11; exhibit 1V38 (Dina Ghalayini's statement), para. 7; exhibit 1V34 (Roula Nasser's witness statement), para. 11; exhibit 1V36 (Clemence Tarraf's witness statement), para. 10; Liliane Khallouf, T. 29 August 2017, p. 24; Lama Ghalayini, T. 28 August 2017, p. 17; Robert Aoun, T. 30 August 2017, pp 6-7; Ihsan Fayed, T. 7 September 2017, pp 19-20; Witness PRH256, T. 22 October 2014, p. 19. Landlines were not affected, Robert Aoun, T. 30 August 2017, p. 6.

¹⁰⁴⁴⁰ Ghassan Ben-Jeddo, T. 7 July 2015, pp 77-78.

¹⁰⁴⁴¹ Witness PRH256, T. 22 October 2014, p. 19.

his Al-Jazeera colleagues experienced similar difficulties calling the channel headquarters in Doha, Qatar.¹⁰⁴⁴²

5554. The Parties made submissions on the congestion, and it is appropriate to deal with them here. The Prosecution's final trial brief made no specific submissions on network congestion on the afternoon of 14 February 2005. In general terms, and relying on Mr Philips's evidence, it submitted that:

even in exceptional circumstances where a mobile phone user is not within the best server coverage area of the connecting cell sector, this means the user is in a somewhat enlarged area—the best server coverage area plus—and not a completely different area.¹⁰⁴⁴³

5555. The Merhi Defence argued that because of the lack of information about the frequency of congestion in the mobile networks in Lebanon in 2005, it was impossible to determine how often a mobile activated neighbouring cells due to congestion, including by analysing the call data records, which did not register the cases of directed retry. Further, according to Mr Philips, the directed retry function can consider up to twenty usable cells before selecting the six whose signal is the strongest at the exact time of the call. Those six cells are not necessarily the closest to the 'best serving cell'.¹⁰⁴⁴⁴

5556. This is contrary to the Prosecution submission that because the best server coverage extends over smaller areas in urban environments, a mobile which connected to neighbouring cells was likely to be closer to the congested best serving cell.¹⁰⁴⁴⁵

5557. The Oneissi Defence submitted that the following three things are sufficient to infer inconsistencies in the cell site analysis relating to the afternoon of the attack.¹⁰⁴⁴⁶ These are first, Witness 707's account on the network congestion resulted from the explosion on 14 February

¹⁰⁴⁴² Witness PRH115, T. 8 July 2015, p. 67.

¹⁰⁴⁴³ Prosecution final trial brief, para. 61.

¹⁰⁴⁴⁴ Merhi Defence final trial brief, paras 127-128. The Ayyash, Oneissi and Sabra Defence similarly submitted that network congestion and directed retries at the material time negatively affect the accuracy of the cell site analysis. Ayyash Defence final trial brief, para. 199; Sabra Defence final trial brief, paras 133, 783; Oneissi Defence final trial brief, paras 143-147, 188, 568.

¹⁰⁴⁴⁵ Merhi Defence final trial brief, paras 127-128.

¹⁰⁴⁴⁶ Oneissi Defence final trial brief, paras 592-593.

2005; second, Alfa's incidents log from the same day;¹⁰⁴⁴⁷ and third, Witness 115's account of activating a cell 300 metres away from where he used his mobile.

5558. In response, in oral closing arguments, the Prosecution rejected that, in case of congestion, in an urban area where a mobile cannot connect to the best serving cell, that the mobile must be in a potentially larger area because of the number of surrounding cells.¹⁰⁴⁴⁸ This contradicts Witness 705's and Mr Philips's evidence¹⁰⁴⁴⁹ that, where the cells are next to each other, they provide coverage for smaller geographic areas.¹⁰⁴⁵⁰ The Prosecution submitted that, based on Mr Philips's evidence, this occurrence would be highly exceptional and that there is no evidence that this had occurred in any calls.¹⁰⁴⁵¹

5559. The evidence of Witnesses 705, 707¹⁰⁴⁵² and Mr Philips is uncontested that in network congestion, and regardless of whether it is an urban or a rural location, the call from the congested cell normally will be redirected, or 'handed over' into one of six, usually neighbouring, cells.

5560. From the combination of the expert and technical evidence and that from witnesses who were trying to use the networks after the attack, the Trial Chamber can safely conclude that the two networks were experiencing substantial congestion on the afternoon of Monday 14 February 2005.

5561. The Alfa records show that the mobile switching centres were experiencing congestion and overloading. The result would have been the networks attempting to route calls from the best serving cell to a neighbouring one. Irrespective of the congestion that afternoon, it is in any event impossible to determine the extent of directed retries from call data records alone. The Prosecution did not provide any relevant statistics on congestion frequency relating to Alfa or Touch.

¹⁰⁴⁴⁷ Exhibit 4D263.

¹⁰⁴⁴⁸ Prosecution closing submissions, T. 11 September 2018, pp 56-59.

¹⁰⁴⁴⁹ Witness PRH705, T. 6 May 2016, pp 6, 10; John Edward Philips, T. 20 August 2015, p. 6.

¹⁰⁴⁵⁰ Prosecution final trial brief, paras 58-59; Prosecution closing submissions, T. 11 September 2018, p. 58.

¹⁰⁴⁵¹ Prosecution closing submissions, T. 11 September 2018, pp 58-59.

¹⁰⁴⁵² Witness PRH707, T. 12 February 2016, pp 59, 62, 64; exhibit P549, p. 35.

5562. A careful review of the evidence leads to the conclusion that in congestion such as that experienced after the explosion, numerous calls would have been redirected around the network cells.¹⁰⁴⁵³

5563. This must affect the reliability of the cell site evidence for the afternoon of Monday 14 February, and specifically whether the mobiles used by Mr Oneissi and Mr Sabra were connecting to the best serving cell or to one of six neighbouring cells, or—with the scattered pockets of possible coverage—to other cells. This inevitably effects the strength of the Prosecution’s case as to where the two Accused were when their mobiles made the calls registered in the call data records. This is important because the Prosecutor has pleaded their activities that afternoon with precision. The network congestion and inevitable directed retries must therefore diminish the reliability of the cell site evidence after 12:55 on Monday 14 February 2005.

5564. With this in mind, the Trial Chamber has carefully scrutinised each call attributed to Mr Oneissi on Purple 095 and Mr Sabra on his shared Purple 018 that afternoon.

(c) Evidence

i. The morning of Monday 14 February 2005

5565. In the morning of **Monday 14 February 2005**, Mr Sabra’s attributed Purple 018 and Mr Oneissi’s Purple 095 activated cells in southern Beirut. Mr Sabra’s attributed Purple 018 received calls at 10:39, connecting to SFEIR3/MIKAEL2, and at 10:40, connecting to BACHA2/SFEIR3. Mr Oneissi’s Purple 095 made its first call of the day at 12:16 from SFEIR3. Mr Merhi’s Purple 231 did not make or receive any calls in the morning.¹⁰⁴⁵⁴

ii. Call to Reuters at 14:11—payphone 1, COLA1 cell

5566. The attack occurred at 12:55. Less than an hour and a half after the attack, at 14:11, in a call lasting 41 seconds, Reuters was contacted by someone speaking in classical Arabic, with an

¹⁰⁴⁵³ See sub-section (F) (4) (b) ‘Stability of the networks on Monday 14 February 2005 after the explosion’, above.

¹⁰⁴⁵⁴ Exhibit P527 (Call sequence table of Purple 231), p. 116; exhibit P1221 (Call sequence table of Purple 018), p. 291; exhibit P1223 (Call sequence table of Purple 095), p. 280; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1204. See also exhibit P1782 (Narrative overview of telephone activity and relevant events), paras 1053-1055; exhibit P1923 (Chronology PowerPoint presentation – 13 February 2005 to 16 February 2005), slides 149-151.

accent that sounded unnatural and unusual. Witness 12, who took the call, did not hear any background noise on the other end of the line.¹⁰⁴⁵⁵

5567. The evidence of the movements of Mr Oneissi's and Mr Sabra's mobiles in the preceding forty-five minutes is the following: forty minutes before the call to Reuters, at 13:33, Mr Sabra's attributed Purple 018 activated SFEIR3 in southern Beirut;¹⁰⁴⁵⁶ thirteen minutes later, at 13:46, Mr Oneissi's Purple 095 also activated SFEIR3.¹⁰⁴⁵⁷

5568. Thirteen minutes later, at 13:59, Mr Oneissi's Purple 095 activated CBOURJ3, which was west of SFEIR3; it ended the call on SABRA3, which bordered CBOURJ3 to the north.¹⁰⁴⁵⁸ At 14:01, Mr Sabra's attributed Purple 018 also activated SABRA3.¹⁰⁴⁵⁹ Mr Platt concluded that Mr Sabra's Purple 018 and Mr Oneissi's Purple 095 were 'travelling together in the same direction'.¹⁰⁴⁶⁰

5569. At 14:03, Mr Merhi's Purple 231, which activated SFEIR3 in southern Beirut,¹⁰⁴⁶¹ called Mr Sabra's attributed Purple 018 for 26 seconds.¹⁰⁴⁶² Purple 018 activated first GHOBAl3, north of its previous location, and then CHATIL1, which was still further north in the direction of the payphone from which the call to Reuters was made less than eight minutes later, at 14:11.¹⁰⁴⁶³

5570. No call data records evidence places either Mr Oneissi's Purple 095 or Purple 018 in the immediate vicinity of the payphone from which the call to Reuters was made at 14:11, when it was made.¹⁰⁴⁶⁴ While COLA1 provided predicted best server coverage to the payphone, its furthest

¹⁰⁴⁵⁵ See sub-section (B) (1) (a) 'Call to Reuters at 14:11', above.

¹⁰⁴⁵⁶ Exhibit P1221, p. 291; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1218. See also exhibit P1923, slide 152.

¹⁰⁴⁵⁷ Exhibit P1223, p. 280; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1219. See also exhibit P1923, slide 153.

¹⁰⁴⁵⁸ Exhibit P1223, p. 280; Gary Platt, T. 14 March 2017, p. 77, T. 15 March 2017, pp 29-30; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1220, 1227. See also exhibit P1780 (Chronology of relevant events), p. 32; exhibit P1923, slide 154; exhibit P1923.7 (Snapshot 111 to Chronology PowerPoint).

¹⁰⁴⁵⁹ Exhibit P1221, p. 291; Gary Platt, T. 15 March 2017, pp 29-30; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1220, 1228. See also exhibit P1923, slide 155.

¹⁰⁴⁶⁰ Gary Platt, T. 14 March 2017, pp 77-78.

¹⁰⁴⁶¹ Exhibit P527, p. 116; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1221. See also exhibit P1923, slide 156.

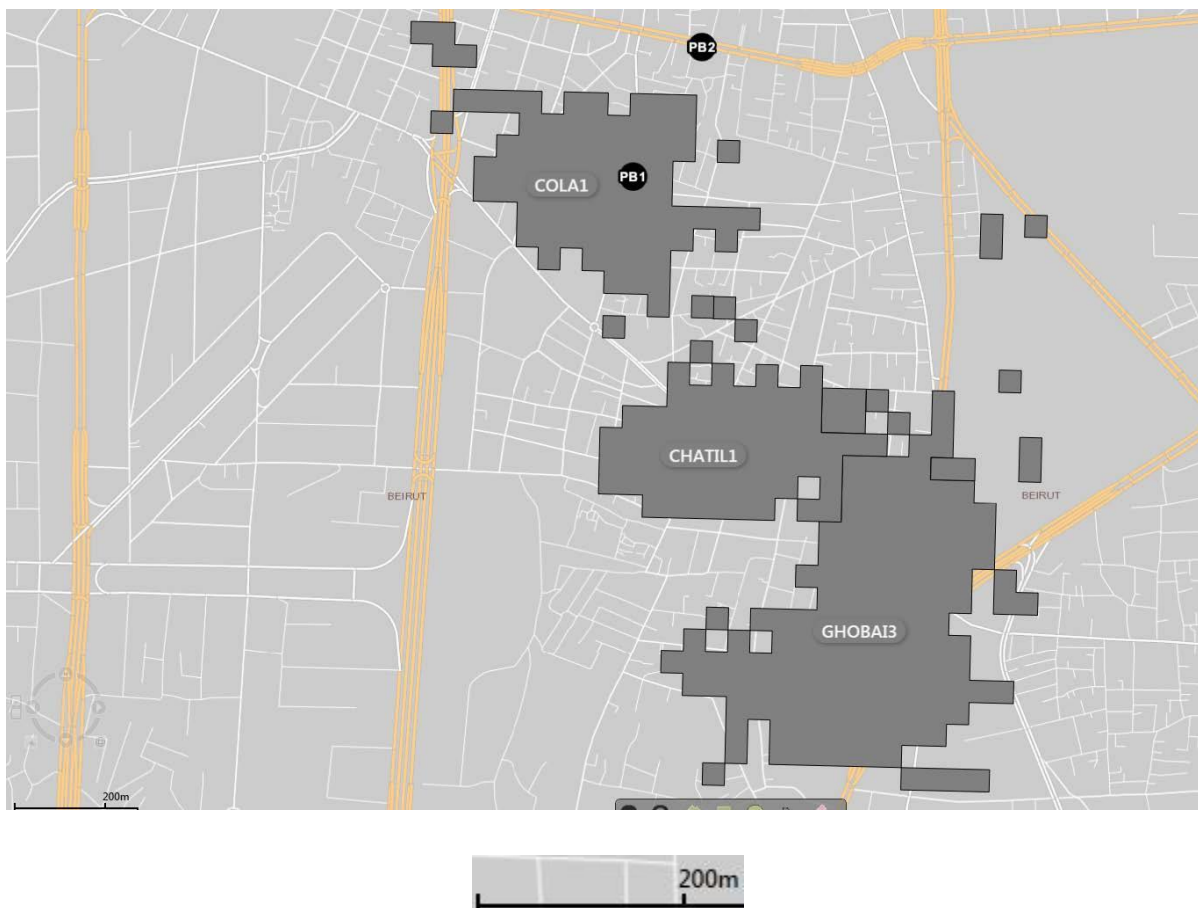
¹⁰⁴⁶² Exhibit P527, p. 116; exhibit P1221, p. 291; Gary Platt, T. 14 March 2017, pp 75-76; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1221, 1226 (table 174). See also P1780, p. 32; exhibit P1782, para. 1057.

¹⁰⁴⁶³ Exhibit P1221, p. 291; Gary Platt, T. 15 March 2017, pp 30, 36-37; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1221. See also exhibit P1923, slide 156; exhibit P1780, p. 32.

¹⁰⁴⁶⁴ The public payphone was near Abou Shaker Square—El-Mazraa, Abou Shaker Street next to Mufti Hasan Khaled Organization for Education—set on a triangle shaped concrete island in a busy square. See above, at para. 4840.

predicted boundary point from the payphone is 610 metres away, and in a heavily built-up area. GHBOBAI3's closest predicted boundary to the first payphone box is 635 metres away, while its furthest is around 1.6 kilometres distant. With CHATIL1 the figures are 329 metres at its closest and about one kilometre at its furthest.

5571. The Trial Chamber, using the electronic presentation of evidence, has prepared the following map showing the three cells, with the first and second payphones marked as 'PB1' and 'PB2':



Map of COLA 1, CHATIL1 and GHOBAl3 and first and second payphones

iii. First call to Al-Jazeera, at 14:19—payphone 2, TAHAN1 cell

5572. The first call to Al-Jazeera occurred at 14:19. This was the call that Witness 6 first took and then handed to Mr Ben-Jeddo. Both witnesses stated that the caller spoke in classical Arabic,

although Witness 6 had the impression that the caller was putting on a Lebanese accent. The call lasted 61 seconds and Witness 6 could hear background noise, such as cars passing by.¹⁰⁴⁶⁵

5573. Payphone two is within TAHAN1's predicted best server coverage area. There is no evidence putting either Mr Oneissi's or Mr Sabra's mobiles in that cell. However, seventeen minutes after this call, at 14:36, Mr Merhi's Purple 231 made a call to Mr Sabra's attributed Purple 018, which activated GHOBAl3.¹⁰⁴⁶⁶

5574. Two minutes after this call, at 14:38, Mr Oneissi's Purple 095 activated GHOBAl3 and at 14:41, GHOBAl2/CBOURJ3.¹⁰⁴⁶⁷ This covers an area approximately one to one and a half kilometres south of the two payphones used to call Reuters at 14:11 and Al-Jazeera at 14:19.¹⁰⁴⁶⁸

5575. Mr Platt was of the view that Purple 018 and Purple 095 activating the same cell, GHOBAl3, within a minute of each other is consistent with Mr Oneissi and Mr Sabra travelling together.¹⁰⁴⁶⁹ Shortly afterwards, at 14:49, Mr Oneissi's Purple 095 activated SIMON1, which is north of the airport.¹⁰⁴⁷⁰

5576. The map below illustrates the Purple mobile activity before and after the call to Reuters and the first call to Al-Jazeera.¹⁰⁴⁷¹ The payphones from which these two telephone calls were made were—in a straight line—339 metres apart, on Saeb Salam Boulevard facing the Arab bank and Mazraa Corniche.¹⁰⁴⁷² The map shows the movements of Mr Oneissi's Purple 095 and Mr Sabra's attributed Purple 018 in respect of payphones one and two between 13:33 and 14:49:

¹⁰⁴⁶⁵ See sub-section (B) (1) (b) 'First call to Al-Jazeera at 14:19'.

¹⁰⁴⁶⁶ Exhibit P1221, p. 291; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1225. See also exhibit P1780, p. 32; exhibit P1782, para. 1063; exhibit P1923, slides 157-158. According to the evidence, at 14:26, Purple 231 made a call to an unattributed number, ending in 885, the only other call that it made all day. Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1224; exhibit P527, p. 116.

¹⁰⁴⁶⁷ Exhibit P1223, p. 280; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1226. See also exhibit P1923, slides 159-160; exhibit P1780, p. 32.

¹⁰⁴⁶⁸ Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1229.

¹⁰⁴⁶⁹ Gary Platt, T. 15 March 2017, p. 40.

¹⁰⁴⁷⁰ Exhibit P1223, p. 280; Gary Platt, T. 15 March 2017, p. 40; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1226. See also exhibit P1782, para. 1063; exhibit P1923, slide 161.

¹⁰⁴⁷¹ Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1227.

¹⁰⁴⁷² Gary Platt, T. 15 March 2017, p. 41; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1229; exhibit P1923.9 (Snapshot 115 to Chronology PowerPoint), p. 1. See above, at para. 4849.

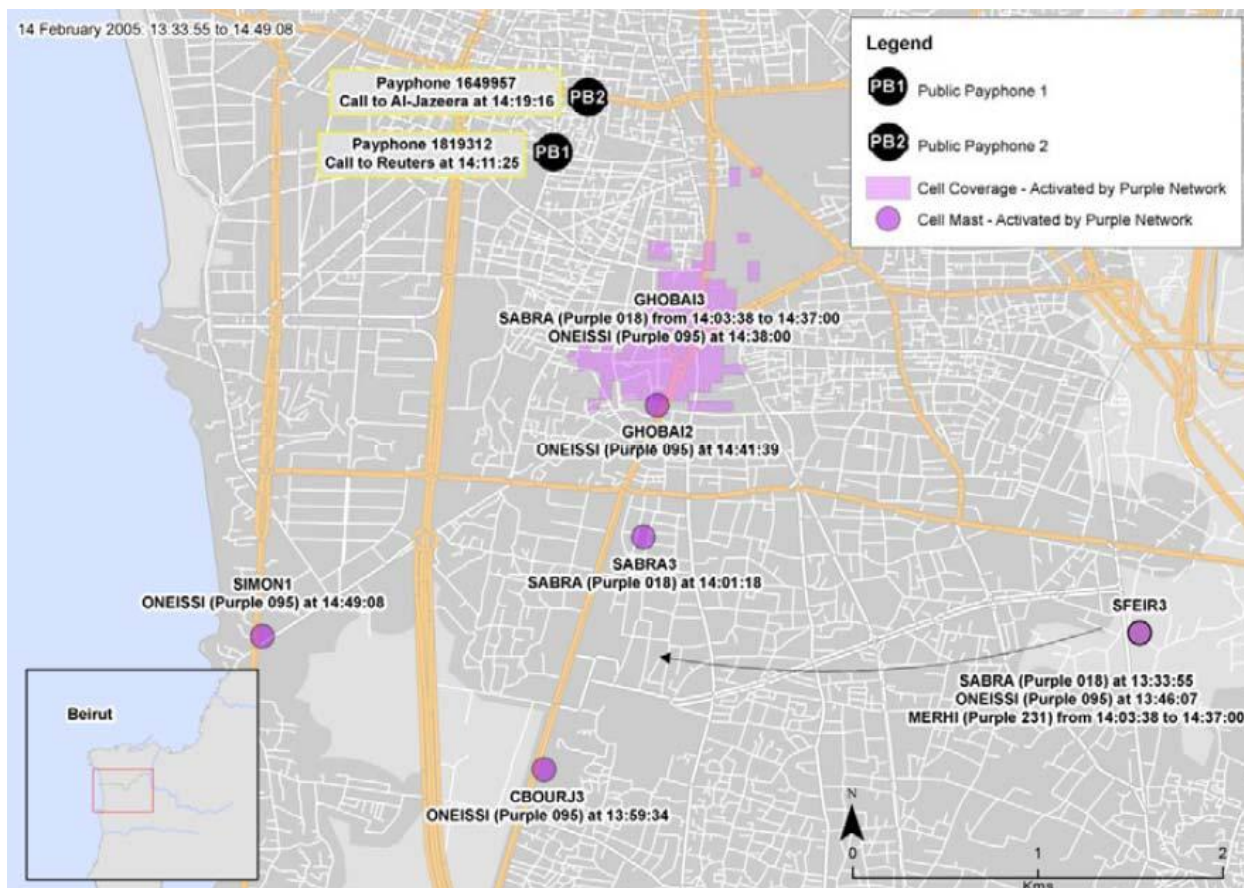
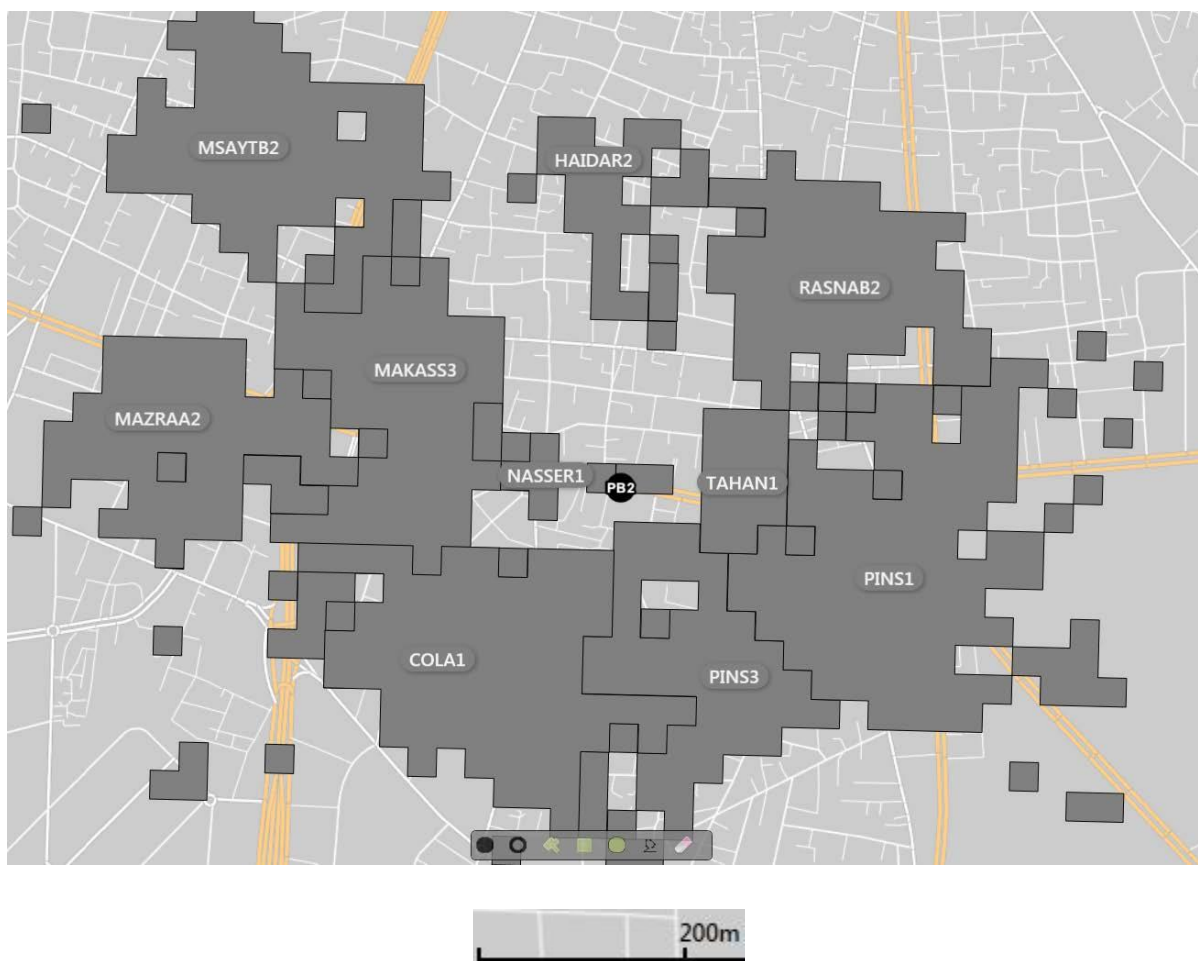


Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1227

5577. TAHAN1 provided predicted best server coverage to the second payphone. NASSER1 was adjacent and very close to the payphone. PINS3 was adjacent to TAHAN1.¹⁰⁴⁷³ The Trial Chamber's calculations, using the electronic presentation of evidence software, show that TAHAN1's furthest outer 'border' of its predicted best server coverage is around 390 metres from the payphone, while NASSER1's is around 295 metres away from it.

5578. A diagram, prepared with that software, showing the cells around the second payphone is below; it does not depict the coverage area of the MAKASS1 and 2 cells, immediately to the payphone's north, for which the Trial Chamber received no shapefiles. The second payphone is marked as 'PB2':

¹⁰⁴⁷³ Exhibit P592.1 (Electronic Presentation of Evidence software).



Cells around the second payphone

iv. Second call to Al-Jazeera at 15:27—payphone 3, BACHOU2

5579. The three Purples mobiles were then inactive for over an hour, between 14:49 and 15:53.¹⁰⁴⁷⁴

5580. The second call to Al-Jazeera occurred at 15:27, when Witness 6 received the call and passed it on to Mr Ben-Jeddo. The caller, according to Mr Ben-Jeddo, was a different person to the first caller, and this time was speaking in ‘proper Arabic’, with an accent similar to Lebanese. The line was clear, unlike in the first call, but some background noise suggested that the speaker

¹⁰⁴⁷⁴ Exhibit P527, p. 116; exhibit P1221, p. 291; exhibit P1223, pp 280-281.

was in a public area. The caller told Mr Ben-Jeddo that there was a video tape on a tree near the Al-Jazeera building that must be retrieved within fifteen minutes or it would not be found.¹⁰⁴⁷⁵

5581. The call data records reveal that the Al-Jazeera's landline office received a 54-second call at 15:27 from a public payphone in Rue Banque du Liban facing the Abou Bakr El Saddik mosque in Hamra, using the same telecard, 6162569.¹⁰⁴⁷⁶ There was no call data records evidence placing either Mr Oneissi or Mr Sabra near the payphone from which the call was made, at the time it was made.

5582. At 15:53, almost half an hour after the second call to Al-Jazeera, and after over an hour of inactivity by the Purple mobiles, Mr Merhi's Purple 231, Mr Sabra's attributed Purple 018 and Mr Oneissi's Purple 095 became active again.¹⁰⁴⁷⁷

5583. Between 15:53 and 16:02, the three Purple mobiles exchanged nine calls.¹⁰⁴⁷⁸ At 15:53:47, Purple 018 connected to cell SPEARS3, when it received a six-second call from Mr Merhi's Purple 231, which was still in south Beirut. SPEARS3 provided predicted best server coverage to an area very close to the payphone from which the second call to Al-Jazeera was made, at 15:27.¹⁰⁴⁷⁹

5584. Mr Platt testified that in his opinion the six-second call was consistent with the user of Mr Merhi's Purple 231 asking the user of Mr Sabra's Purple 018 for a status update.¹⁰⁴⁸⁰

5585. BACHOU2 provided the predicted best server coverage to this payphone, while SPEARS3 and ZOUKAK3 were adjacent and very close to it. BACHOU3 provided the predicted best server coverage to the tree. BNPI3 was adjacent and very close to the tree. ETOILE2 and MARTYR1 were also adjacent to BACHOU3.¹⁰⁴⁸¹

5586. The Trial Chamber has calculated that the outer 'edge' of the predicted best server coverage of BACHOU2 is approximately one kilometre away from the payphone, noting that the pocket providing predicted coverage to the payphone is scattered and well away from the main shapefile

¹⁰⁴⁷⁵ See sub-section (B) (1) (c) 'Second call to Al-Jazeera at 15:27'.

¹⁰⁴⁷⁶ See above, at para. 4855.

¹⁰⁴⁷⁷ Gary Platt, T. 15 March 2017, pp 46-47, 49-50, 52.

¹⁰⁴⁷⁸ Gary Platt, T. 15 March 2017, pp 50, 55.

¹⁰⁴⁷⁹ Exhibit P1221, p. 291; exhibit P527, p. 116; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1235. See also exhibit P1780, p. 32; exhibit P1782, para. 1066; exhibit P1923, slides 165, 167.

¹⁰⁴⁸⁰ Gary Platt, T. 15 March 2017, pp 51-52.

¹⁰⁴⁸¹ Exhibit P592.1.

of the coverage map. SPEARS3's outer 'edge' is around 570 metres from the payphone, while ZOUKAK3's is about 890 metres distant, although the map shows a single patched area far from the main shapefile.

5587. The map below, prepared by Mr Platt, illustrates the movements of Mr Sabra's attributed Purple 018 and Mr Oneissi's Purple 095 in relation to the Al-Jazeera office, the tree where the false claim tape was left, and the payphone from which the second call to Al-Jazeera was made:

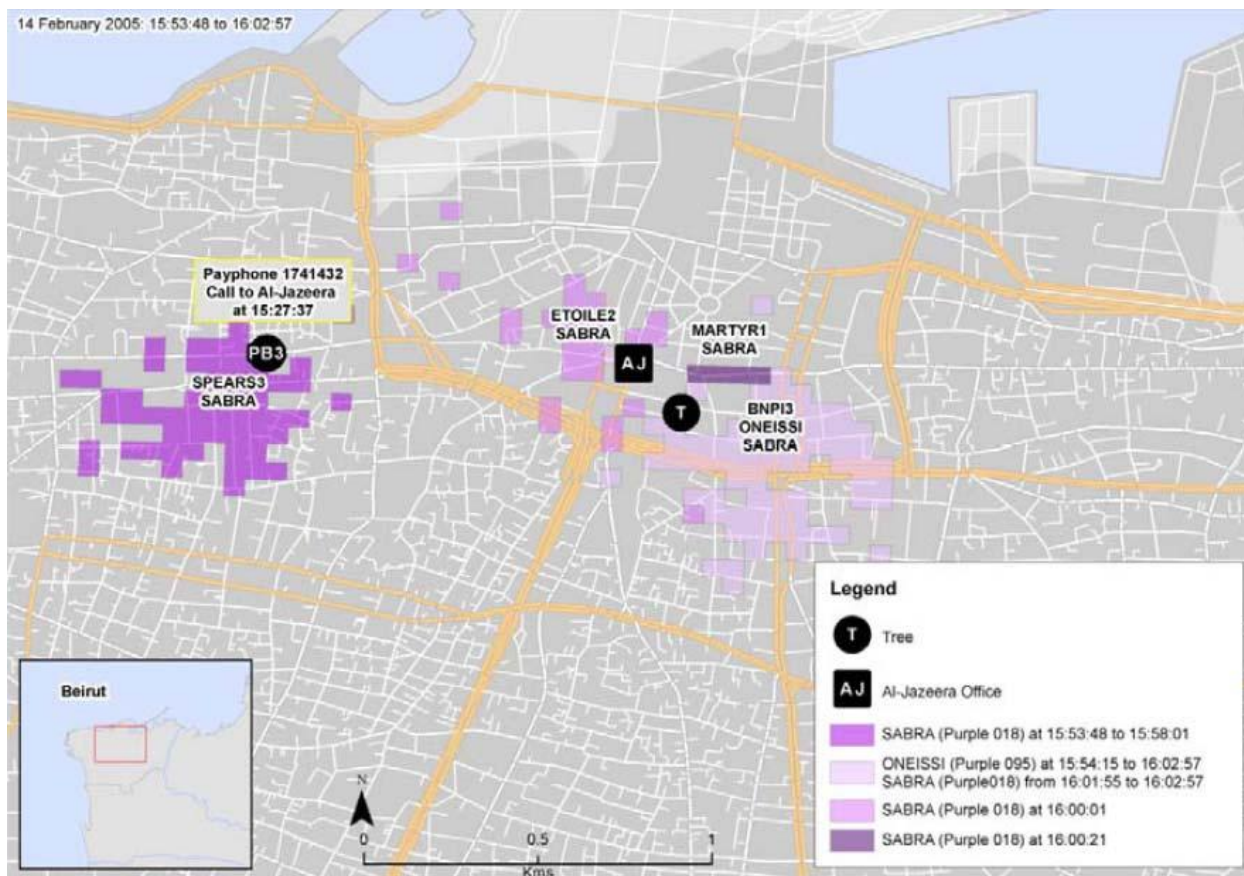


Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 414

5588. The tree is within BACHOU3's predicted best server coverage area; BNPI3 is very close to it. The Trial Chamber has calculated that BACHOU3's outer edge is around 715 metres from the tree, although in a scattered patch, while BNPI3's most distant 'border' is around 655 metres away. The maps below show the predicted best server coverage of the tree and the third payphone. The tree is marked as 'T' and the payphone as 'PB3':



Exhibit P592.1 (Electronic Presentation of Evidence software)

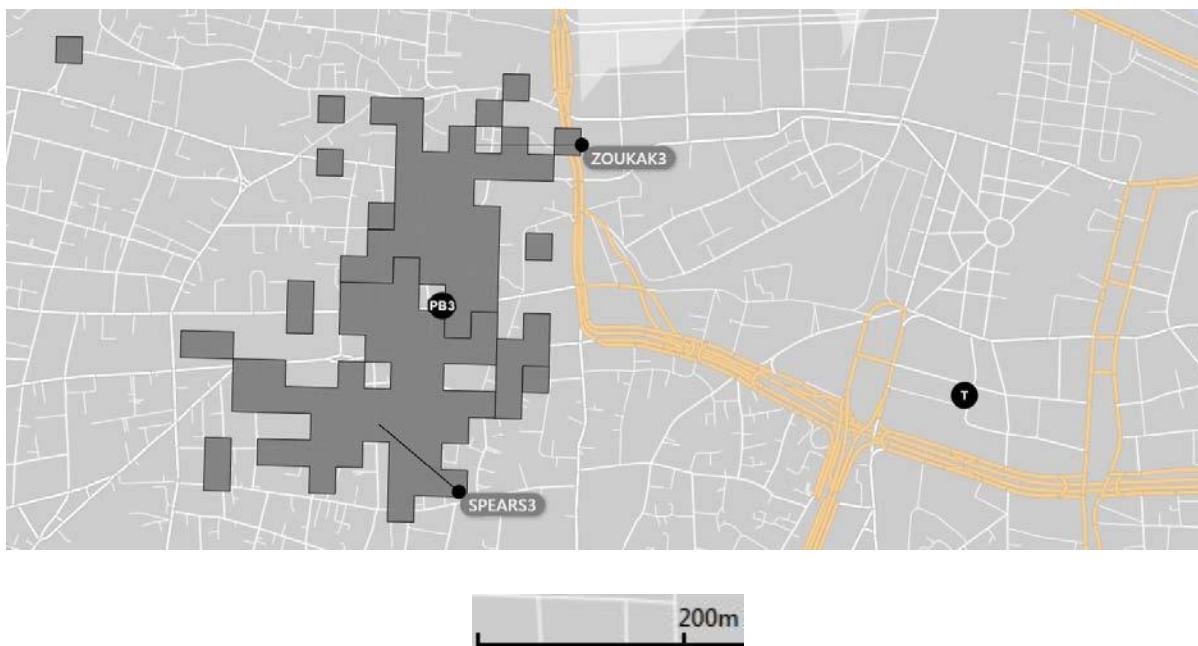


Exhibit P592.1 (Electronic Presentation of Evidence software)

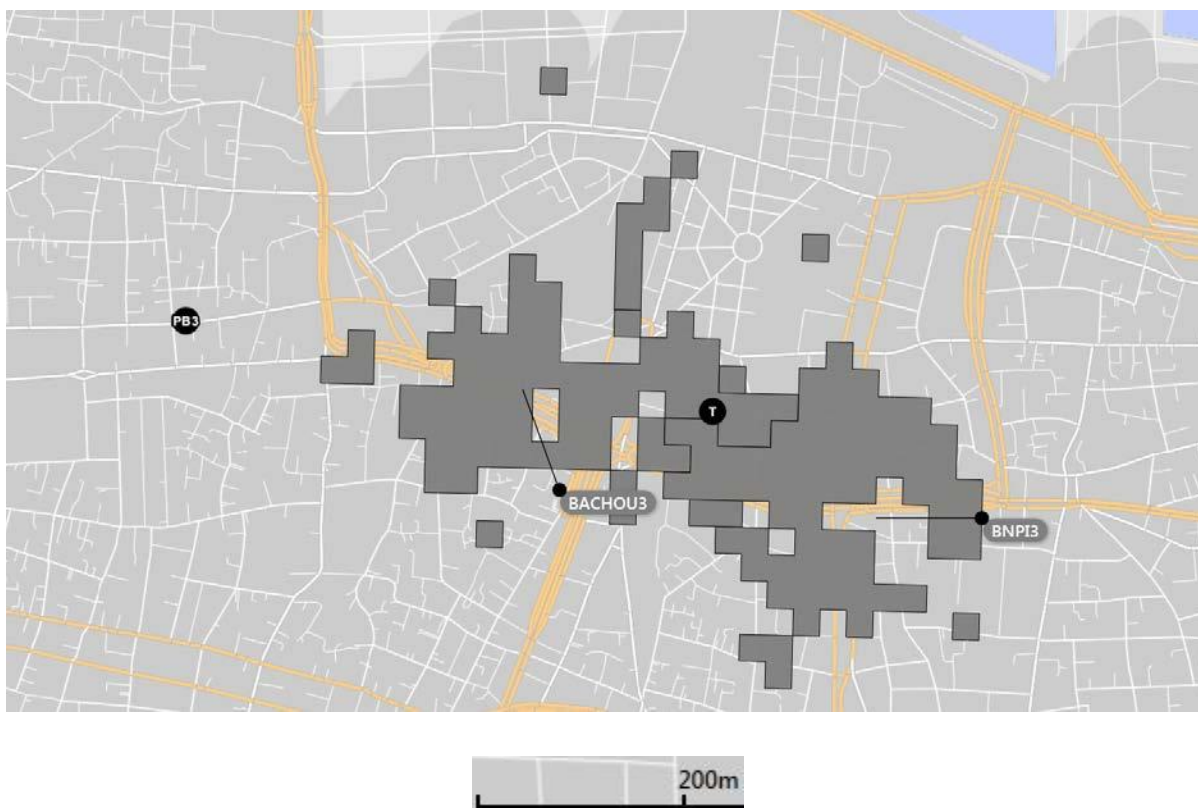


Exhibit P592.1 (Electronic Presentation of Evidence software)

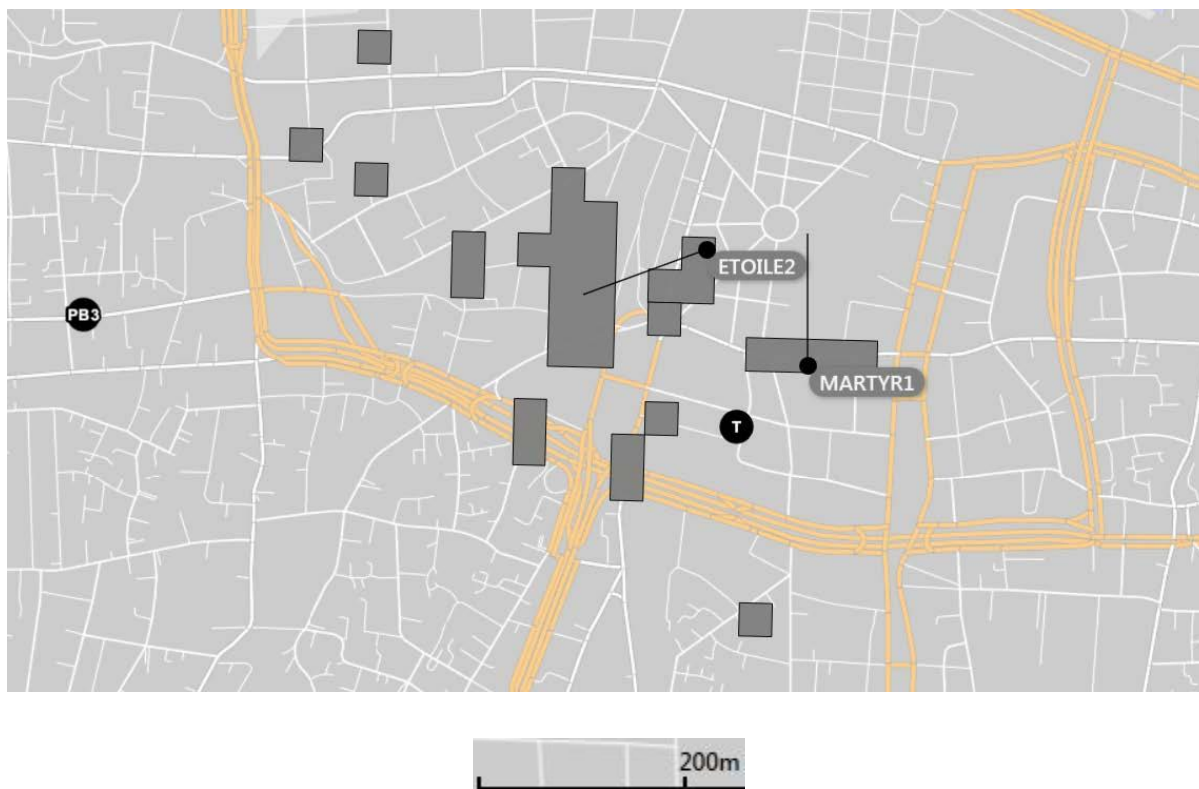


Exhibit P592.1 (Electronic Presentation of Evidence software)

v. Collection of the video and letter

5589. At 15:53, according to a text message that he sent to Witness 6, Witness 115 collected the video from the tree. The second call had been made to Al-Jazeera at 15:27 from the third payphone.¹⁰⁴⁸²

5590. Witness 115 was at the tree when he sent two texts. When he sent his first message at 15:52, his mobile activated Bashoura_A on the Touch network. This cell, according to Touch's coverage maps, did not provide the predicted best server coverage to the tree, but rather to an area around 300 metres south-west away. A minute later, at 15:53, he sent his second text message and his mobile activated Riad_El_Soloh_B, which provided the predicted best server coverage to the

¹⁰⁴⁸² See sub-section (B) (1) (d) 'Collection of the videoed claim of responsibility and the letter at 15:53'.

tree.¹⁰⁴⁸³ The witness received two text messages, at 15:54 and 15:55, again activating Riad_El_Soloh_B and then Bashoura_A.¹⁰⁴⁸⁴

5591. At 15:54, Mr Sabra's attributed Purple 018, connecting to SPEARS3, which provided coverage to the third payphone area, called Mr Oneissi's Purple 095. Purple 095 was activating BNPI3, the cell adjacent to that providing coverage to the tree, namely, BACHOU3.¹⁰⁴⁸⁵

5592. A minute later, at 15:55, Purple 018 was still near the third payphone when he called Mr Merhi's Purple 231, which remained in southern Beirut.¹⁰⁴⁸⁶

5593. According to Mr Platt, the 15:54 call was consistent both with conducting surveillance on the tree to ensure that A-Jazeera collected the video tape,¹⁰⁴⁸⁷ and with Mr Sabra on Purple 018 asking Mr Oneissi on Purple 095 for a requested status update on this.¹⁰⁴⁸⁸ The 15:55 call the following minute was consistent with Mr Sabra on Purple 018 informing Mr Merhi on Purple 231, as Mr Sabra's supervisor, of the status of the operation, namely of the collection of the video tape.¹⁰⁴⁸⁹

5594. At 15:56, Mr Oneissi's Purple 095, connecting to the cell providing coverage to the tree, received five SMS messages.¹⁰⁴⁹⁰ According to Mr Platt, receiving messages in quick succession was consistent with a mobile turning on after being switched off for a period,¹⁰⁴⁹¹ although here it would have been only for one minute and one second.¹⁰⁴⁹²

¹⁰⁴⁸³ Witness PRH115, T. 7 July 2015, pp 62-63, T. 8 July 2015, pp 45-46; exhibit P492 (Statements of Witness PRH115, dated 8 February 2007, 3 October 2008 and 13 March 2015), pp 15-16, 25 (ERNs 60305520-60305521, 60305531); exhibit 5D164 (Statement of Witness PRH115, dated 16 April 2005), pp 3, 5; exhibit 5D165 (Record of Witness PRH115's interview with UN Fact-Finding Mission), p. 1; exhibit P494.1 (Redacted call sequence table with SMS content of Witness PRH115's mobile, 14 February 2005); exhibit P494 (Call sequence table with SMS content of Witness PRH115's mobile, 14 February 2005), p. 1; exhibit P1276 (Call sequence table with SMS content of Witness PRH115's mobile, 14 February 2005) p. 2; exhibit P493 (Call sequence table of Witness PRH115's mobile, 14 February 2005); exhibit P493.1 (Redacted call sequence table of Witness PRH115's mobile, 14 February 2005); exhibit P1278 (Call sequence table of Witness PRH115's mobile, 14 February 2005).

¹⁰⁴⁸⁴ Exhibit P494.1; exhibit P493; exhibit P493.1; exhibit P1278.

¹⁰⁴⁸⁵ Exhibit P1221, p. 291; exhibit P1223, p. 281; Gary Platt, T. 15 March 2017, pp 47, 50-52; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1236. *See also* exhibit P1780, p. 32; exhibit P1923, slides 165, 170.

¹⁰⁴⁸⁶ Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1237; exhibit P1221, p. 291; exhibit P527, p. 116. *See also* exhibit P1780, p. 33; exhibit P1782, para. 1068; exhibit P1923, slides 165, 171.

¹⁰⁴⁸⁷ Gary Platt, T. 15 March 2017, p. 47.

¹⁰⁴⁸⁸ Gary Platt, T. 15 March 2017, pp 51-52.

¹⁰⁴⁸⁹ Gary Platt, T. 15 March 2017, p. 52. *See also*, exhibit P1782, para. 1068.

¹⁰⁴⁹⁰ Exhibit P1223, p. 281. *See also* exhibit P1923, slides 173-174.

¹⁰⁴⁹¹ Gary Platt, T. 15 March 2017, pp 52-53.

¹⁰⁴⁹² Exhibit P1223, p. 281.

5595. Two minutes later, at 15:58, Mr Oneissi's Purple 095, which was near the tree, called Mr Sabra's attributed Purple 018, whose mobile was connecting to a cell near the third payphone.¹⁰⁴⁹³

5596. Another two minutes later, at 16:00:01, Purple 018 contacted Mr Oneissi's Purple 095.¹⁰⁴⁹⁴ Mr Oneissi's Purple 095 was still connecting to the BNPI3 cell, while Mr Sabra's attributed Purple 018 had moved from SPEARS3 to ETOILE2, in the direction of Mr Oneissi's Purple 095, and the tree.¹⁰⁴⁹⁵

5597. At 16:00:20, only 19 seconds after Mr Sabra's attributed Purple 018 called Mr Oneissi's Purple 095, Mr Merhi's Purple 231 called Purple 018.¹⁰⁴⁹⁶ By then, Purple 018 had moved even closer to the tree, connecting to the MARTYR1 cell, which also partly covered the Al-Jazeera office.¹⁰⁴⁹⁷ At the end of the 34-second call, Purple 018 activated BNPI3.¹⁰⁴⁹⁸

5598. Shortly afterwards, at 16:01 and 16:02, Mr Oneissi's Purple 095 called Mr Sabra's attributed Purple 018. Both mobiles activated BNPI3.¹⁰⁴⁹⁹ Following these calls, Mr Oneissi's Purple 095 and Purple 018 were not in contact with each other again on 14 February 2005.¹⁰⁵⁰⁰ However, they both received calls as they travelled towards southern Beirut.¹⁰⁵⁰¹

5599. Mr Platt considered that the call activity between 16:00 and 16:02 was consistent with the users of Purple 095 and Purple 018 completing their work, namely ensuring that the tape had been collected, and then leaving.¹⁰⁵⁰²

¹⁰⁴⁹³ Exhibit P1221, p. 291; exhibit P1223, p. 281; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1238. *See also* exhibit P1923, slides 176-177.

¹⁰⁴⁹⁴ Exhibit P1221, p. 291; exhibit P1223, p. 281; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1239. *See also* exhibit P1923, slides 176, 178.

¹⁰⁴⁹⁵ Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1239; exhibit P1221, p. 291; exhibit P1223, p. 281. *See also* exhibit P1780, p. 33; exhibit P1782, para. 1069; exhibit P1923, slides 176, 178.

¹⁰⁴⁹⁶ Exhibit P527, p. 116; exhibit P1221, p. 291; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1240.

¹⁰⁴⁹⁷ Exhibit P1221, p. 291; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1240. *See also* exhibit P1780, p. 33; exhibit P1782, para. 1069; exhibit P1923, slides 176, 179.

¹⁰⁴⁹⁸ Exhibit P1221, p. 291.

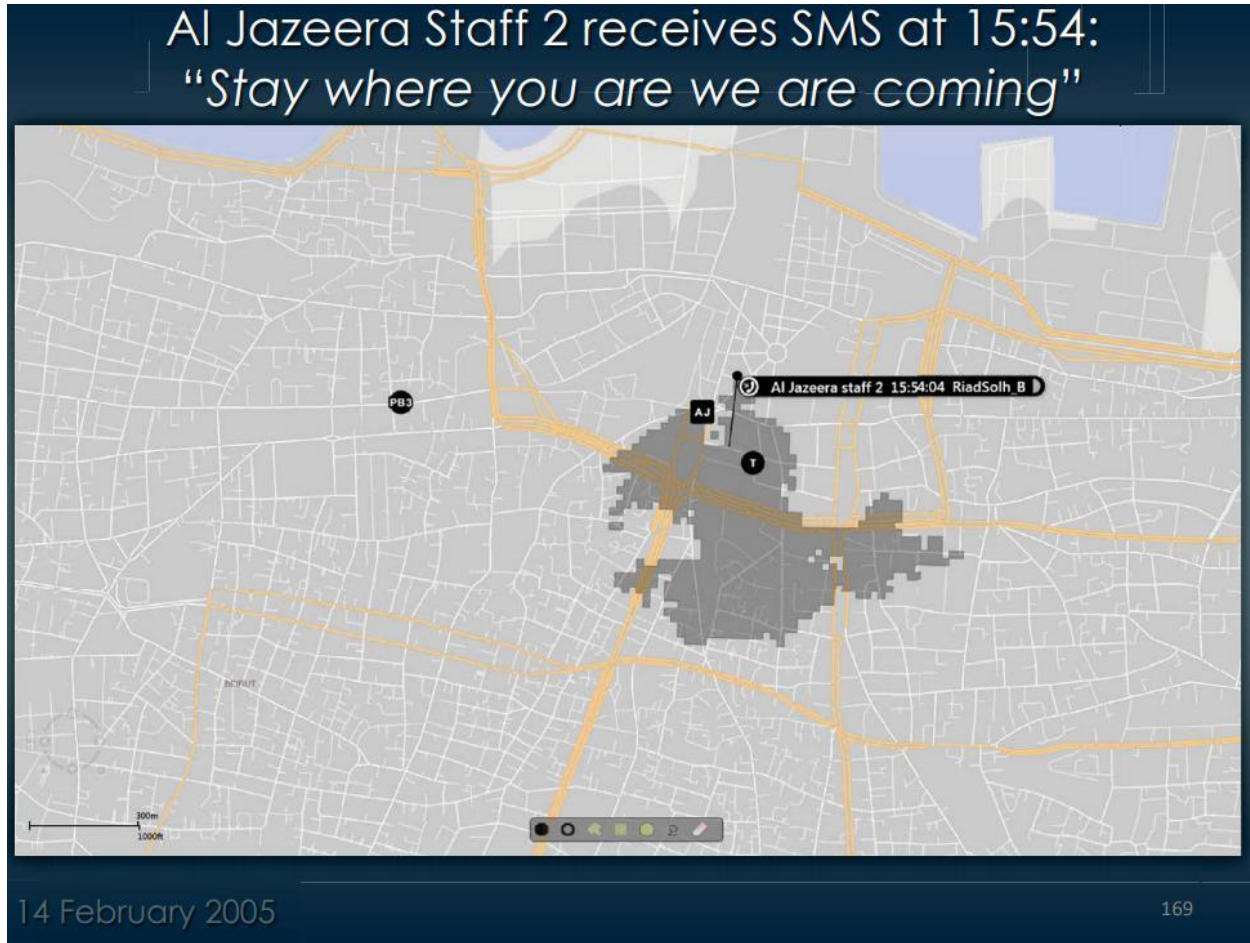
¹⁰⁴⁹⁹ Exhibit P1221, pp 291-292; exhibit P1223, p. 281; Gary Platt, T. 15 March 2017, p. 56; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1241. *See also* exhibit P1923, slides 176, 180-181.

¹⁰⁵⁰⁰ Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1242; exhibit P1221, p. 292; exhibit P1223, p. 281.

¹⁰⁵⁰¹ Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1242; exhibit P1221, p. 292; exhibit P1223, p. 281.

¹⁰⁵⁰² Gary Platt, T. 15 March 2017, pp 57-58.

5600. The two images below from Mr Platt's chronology presentation covering Sunday 13 to Wednesday 16 February 2005 show the predicted coverage of Riad_El_Soloh_B and Bashoura_A, and illustrate how Witness 115's mobile connected to different cells while he was at the tree.¹⁰⁵⁰³



¹⁰⁵⁰³ Exhibit P1923, slides 169, 172.

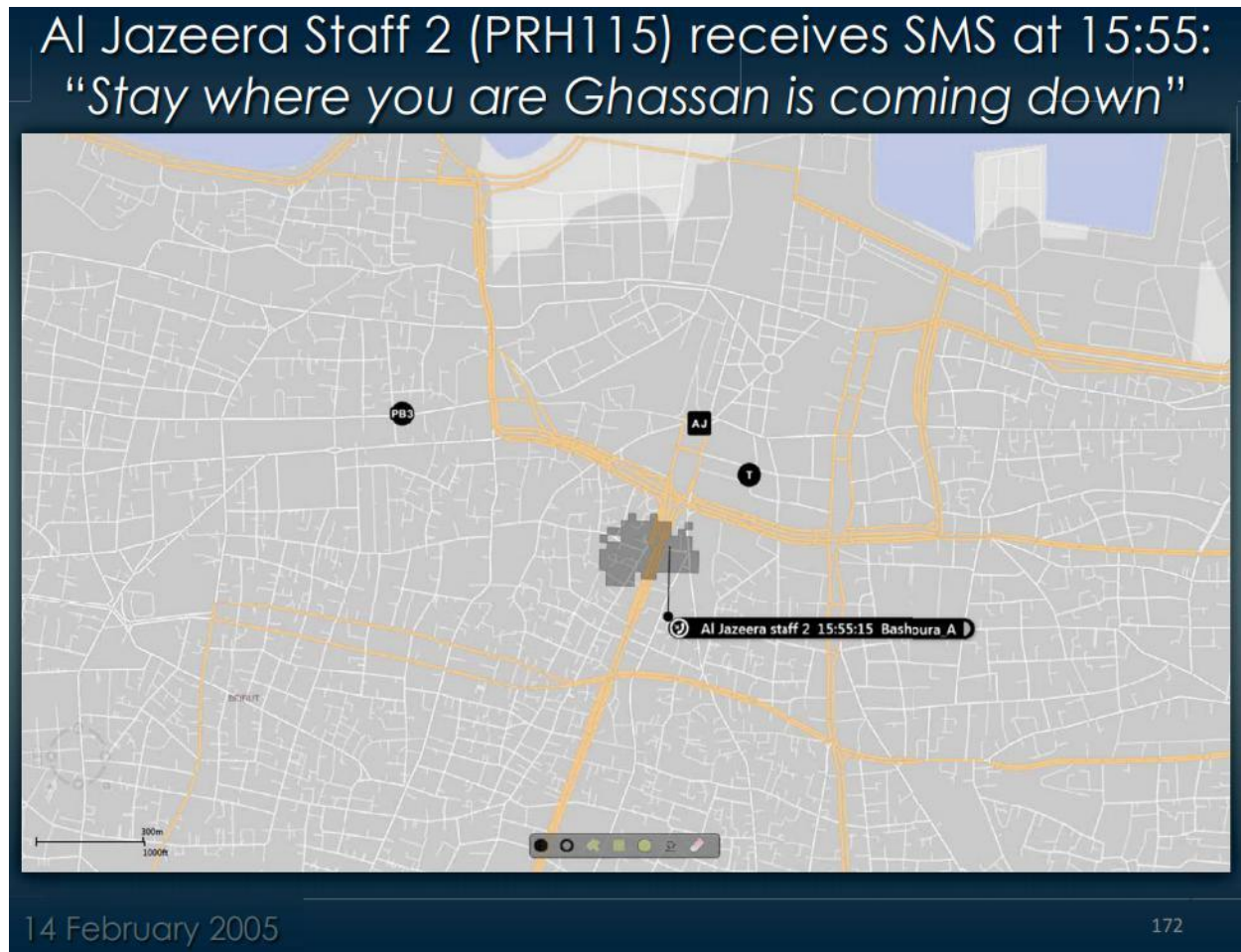


Exhibit P1923, slides 169, 172—Two electronic presentation of evidence images from Mr Platt's Chronology PowerPoint presentation (13-16 February 2005) showing the cells Witness 115's mobile activated when sending text messages at 15:52 and 15:53

vi. Third call to Al-Jazeera at 17:04—payphone 4, CELTEC1 cell

5601. The third call to Al-Jazeera occurred at 17:04 from the fourth payphone. This was the call in which Mr Ben-Jeddo's impression was of a caller having a similar accent to that of the second caller, namely a Lebanese accent or from the Levant region speaking both classical and colloquial Arabic. Mr Ben-Jeddo said of this call that there was very little to no background noise.¹⁰⁵⁰⁴

5602. In the half-hour before this third call, Mr Oneissi's Purple 095 and Mr Sabra's attributed Purple 018 were in south-western Beirut.

¹⁰⁵⁰⁴ See sub-section (B) (1) (e) 'Third call to Al-Jazeera at 17:04'.

5603. At 16:32, Mr Oneissi's Purple 095 activated SFEIR3, and at 16:53, BRAJNE3, both of which are in south Beirut.¹⁰⁵⁰⁵ At 16:55, Mr Sabra's attributed Purple 018 activated cell CBOURJ3, north of the Beirut airport in south-west Beirut.¹⁰⁵⁰⁶

5604. At 17:15, eleven minutes after the third call to Al-Jazeera, Mr Sabra's attributed Purple 018 contacted Mr Merhi's Purple 231 from the western coastal area of Beirut, activating OGER3/CELTEC2.¹⁰⁵⁰⁷ OGER3 and CELTEC2 were adjacent to OGER2, a part of which provided predicted best server coverage to a location very close to the payphone.¹⁰⁵⁰⁸ Mr Platt's opinion was that the call at 17:15 was consistent with Mr Sabra on Purple 018 updating Mr Merhi on Purple 231 that the call to Al-Jazeera had been placed.¹⁰⁵⁰⁹

5605. At 17:24—nine minutes after Mr Sabra's attributed Purple 018 contacted Mr Merhi's Purple 231—Purple 231 made a nine-second call to Purple 018 while both users were in southern Beirut.¹⁰⁵¹⁰ Mr Platt stated that the 17:24 call was the last contact between all three Purple mobiles.¹⁰⁵¹¹ In his view, this was because the operation had concluded.¹⁰⁵¹²

5606. The extracts from exhibit P592.1, below, show that while CELTEC1 provided the predicted best server coverage from the Alfa network map, both OGER2 and RAMLET1 could also cover it; the fourth payphone is marked as 'PB4'.¹⁰⁵¹³ The Trial Chamber has calculated that the outer 'edge' of CELTEC1's predicted best server coverage is around 600 metres away. The similar furthest outer 'edge' of OGER2, which has a scattered coverage map is around 2.7 kilometres from the payphone, while the same measurement on RAMLET1's map shows a distance of around 890 metres.

¹⁰⁵⁰⁵ Exhibit P1223, p. 281; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1243. *See also* exhibit P1923, slides 184, 186.

¹⁰⁵⁰⁶ Exhibit P1221, p. 292; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1244. *See also* exhibit P1923, slide 187.

¹⁰⁵⁰⁷ Exhibit P1221, p. 292; exhibit P527, p. 116; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1246. *See also* exhibit P1780, p. 33; exhibit P1782, para. 1072; exhibit P1923, slide 188.

¹⁰⁵⁰⁸ Exhibit P592.1.

¹⁰⁵⁰⁹ Gary Platt, T. 15 March 2017, p. 59.

¹⁰⁵¹⁰ Exhibit P527, p. 117; exhibit P1221, p. 292; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1248. *See also* exhibit P1923, slide 189; exhibit P1782, para. 1072.

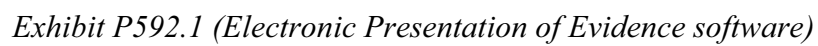
¹⁰⁵¹¹ Gary Platt, T. 15 March 2017, pp 59-60; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1248; exhibit P527, p. 117; exhibit P1221, p. 292; exhibit P1223, p. 281.

¹⁰⁵¹² Gary Platt, T. 15 March 2017, pp 59-60, 62, 64.

¹⁰⁵¹³ The public payphone was on Habib-Abou-Chahla Street, next to the *Saint Elie Battina* College in the Mazraa area. *See above*, at para. 4874.







18 August 2020

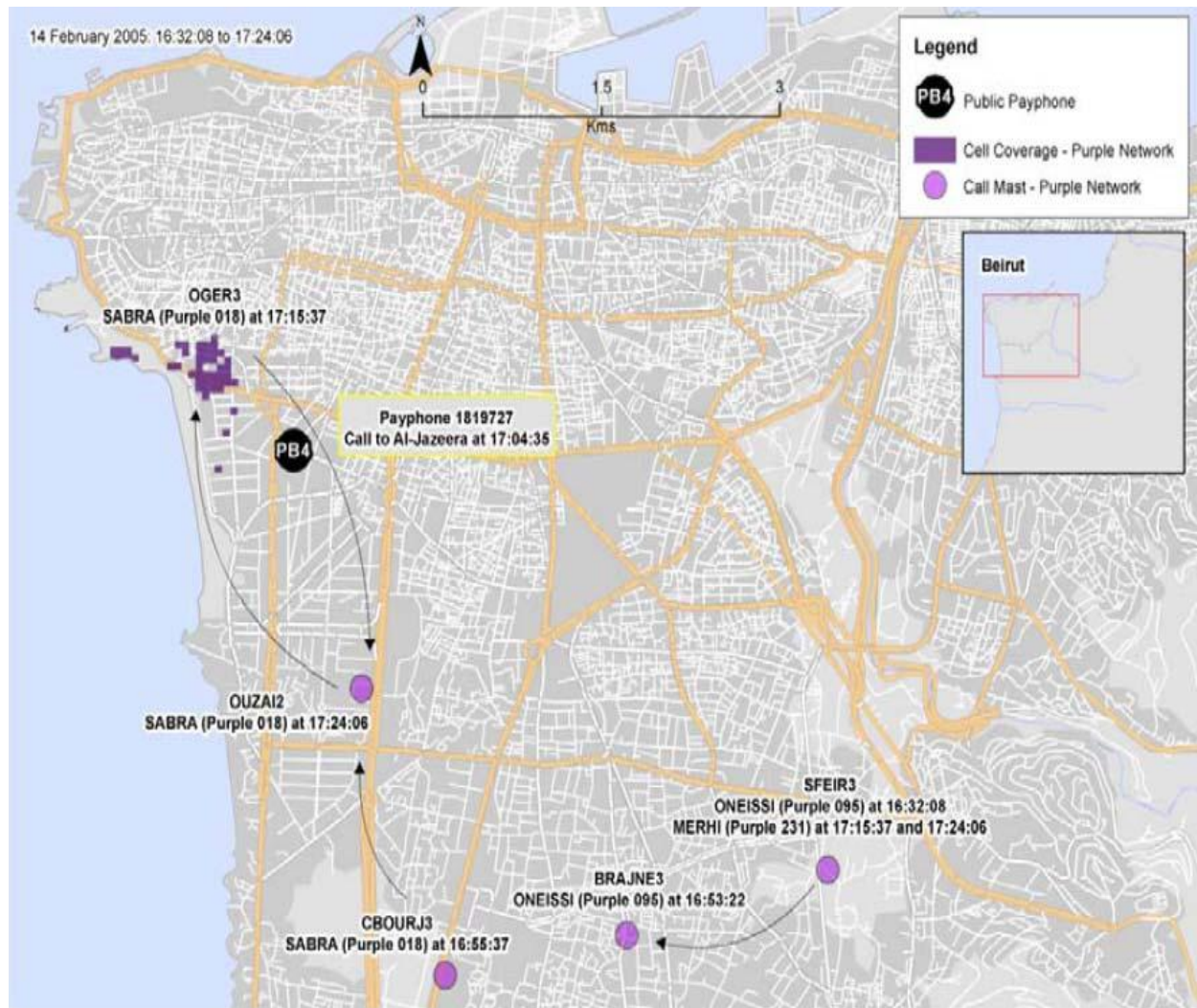


Exhibit P1783 (Expert report of Gary Platt – Chronology), p. 416

5608. Between 14:03 and 17:24, Mr Merhi's Purple 231, connecting to SFEIR3, had seven calls with Mr Sabra's attributed Purple 018.¹⁰⁵¹⁴ According to Mr Platt, the calls from Mr Merhi's Purple 231 to Mr Sabra's Purple 018 at 14:36, 15:53 and 17:24 were consistent with Mr Merhi coordinating the false claim by contacting the person responsible for making the first two false claim calls, namely Mr Sabra on Purple 018.¹⁰⁵¹⁵

¹⁰⁵¹⁴ Exhibit P527, pp 116-117.

¹⁰⁵¹⁵ Gary Platt, T. 15 March 2017, pp 42, 45-46, 59-60.

5609. Mr Platt considered that the fact that Purple 231 was static within the coverage of SFEIR3 all day was consistent with its user coordinating the false claim of responsibility.¹⁰⁵¹⁶ Mr Platt did not explain why it was necessary for a mobile user in this situation to remain ‘static’.

vii. Final Purple mobile activity

5610. On the evening of **Monday 14 February 2005**, at 19:48, Mr Merhi’s Purple 231 activated cell SFEIR3 in south Beirut when it received an incoming call from an unattributed number. This was its last call activity that day.¹⁰⁵¹⁷

5611. The final calls of Mr Sabra’s attributed Purple 018 that evening occurred at 21:01 and 21:44, when it connected to SFEIR3 and SFEIR2 in south Beirut.¹⁰⁵¹⁸ As for Mr Oneissi’s Purple 095, after activating SFEIR3 at 16:32 and BRAJNE3 at 16:53 in south Beirut, it remained inactive.¹⁰⁵¹⁹

5612. The following day, **Tuesday 15 February 2005**, Mr Oneissi’s Purple 095 activated cells in south Beirut with thirteen voice calls and three Alfa SMS service messages.¹⁰⁵²⁰ Mr Sabra’s attributed Purple 018 made one call on 15 February 2005, activating a cell in south Beirut.¹⁰⁵²¹

5613. After consistent usage since 2001 and 2002, the three Purple mobiles ceased use between 15 and 16 February 2005. Mr Platt describes them as having been ‘discarded’.¹⁰⁵²² The last activity of Mr Merhi’s Purple 231 occurred at 11:12 on Tuesday 15 February 2005, when it connected to SFEIR3 in south Beirut.¹⁰⁵²³

¹⁰⁵¹⁶ Gary Platt, T. 15 March 2017, p. 61. *See also* exhibit P1782, para. 1074.

¹⁰⁵¹⁷ Exhibit P527, p. 117; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1249.

¹⁰⁵¹⁸ Exhibit P1221, p. 292; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1250.

¹⁰⁵¹⁹ Exhibit P1223, p. 281; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1243.

¹⁰⁵²⁰ Exhibit P1223, p. 281; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1256. *See also* exhibit P1782, para. 1076.

¹⁰⁵²¹ Exhibit P1221, p. 292; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1257. *See also* exhibit P1923, slides 202, 204.

¹⁰⁵²² Gary Platt, T. 15 March 2017, pp 64, 79-80, 86. *See also* exhibit P1780, p. 33.

¹⁰⁵²³ Exhibit P527, p. 117; Gary Platt, T. 15 March 2017, pp 79-80; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1254-1255. *See also* exhibit P1782, para. 1075; exhibit P1923, slides 202, 204.

5614. The final activity of Purple 018 was a call to an Alfa service number on **Wednesday 16 February 2005** and a call to Associate Purple 375. In both instances, it connected to HARA2 in south Beirut.¹⁰⁵²⁴

5615. The final call of Mr Oneissi's Purple 095 was in receiving a call from an unknown number on 16 February 2005 at 10:46, activating BRAJNE2.¹⁰⁵²⁵

5616. Mr Platt testified that it was common for criminals to review the crime they have committed for any errors or clues that could lead to their capture. Further, the cessation of use of the Purple mobiles one to two days after the dissemination of the false claim, and after years of use, was consistent with the users' involvement in the crime.¹⁰⁵²⁶

(d) Submissions

5617. The Prosecution submits that the totality of the Purple mobile activity shows that Mr Oneissi and Mr Sabra participated in the delivery and dissemination of the false claim of responsibility, while Mr Merhi supervised it.¹⁰⁵²⁷

5618. In the amended consolidated indictment, the Prosecutor pleads that '**ONEISSI or SABRA** made a total of four calls to the offices of the Reuters and Al-Jazeera news networks', using the same prepaid telecard, 6162569.¹⁰⁵²⁸

5619. The Prosecutor initially and unambiguously pleaded that Mr Oneissi or Mr Sabra made all of the four telephone calls to Reuters and Al-Jazeera; this was broken down into Mr Oneissi *or* Mr Sabra making the call to Reuters, and the first and third calls to Al-Jazeera, and Mr Sabra making the second call.¹⁰⁵²⁹ In relation to the fourth call, either Mr Oneissi or Mr Sabra is pleaded to have 'demanded with menace that Al-Jazeera broadcast the video'.¹⁰⁵³⁰

¹⁰⁵²⁴ Exhibit P1221, p. 292; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1260. *See also* exhibit P1782, para. 1077; exhibit P1923, slides 211-212.

¹⁰⁵²⁵ Exhibit P1223, p. 281; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1258. *See also* exhibit P1782, para. 1076; exhibit P1923, slides 211-212.

¹⁰⁵²⁶ Gary Platt, T. 15 March 2017, pp 80-81.

¹⁰⁵²⁷ Prosecution final trial brief, para. 606.

¹⁰⁵²⁸ Amended consolidated indictment, para. 44.

¹⁰⁵²⁹ Amended consolidated indictment, para. 44 (a)-(b), (d), (g); Prosecution's updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra), paras 152-154, 158.

¹⁰⁵³⁰ Amended consolidated indictment, para. 44 (g).

5620. The Prosecution's final trial brief, however, is silent as to who is supposed to have made the four calls and argues its case in general terms, stating that:

the person making the call would have to be a trusted person with a clear understanding of the plot in order to be prepared to adapt as necessary in making the false claim calls such, as for example, how to respond or not to reactions or questions from the media companies as they made the false claim. This would not have been merely delegated to someone outside of the inner circles of the conspiracy given that this was the public face of the conspiracy and that its credibility was integral to the plot.¹⁰⁵³¹

5621. The Prosecution argues Mr Oneissi's and Mr Sabra's proximity to the payphones. However, the closest it comes to suggesting that either of them made the calls is in stating, of the third call to Al-Jazeera, that (*italics added*):

By 17:04, over an hour after the collection of the tape from the tree, *the conspirators* made their fourth and final call from a fourth payphone. Their impatience to await its broadcast, perhaps reflecting the same anxiety reflected by their frenzied calls after collection of the tape,

...

One of them called Al-Jazeera again, using the same telecarte as before, this time to issue threats designed to secure broadcast of the tape.¹⁰⁵³²

5622. The reference to a series of 'frenzied calls' appears to relate back to a submission that the three users of the Purple mobiles made eight calls over nine minutes from 15:53, when they 'engaged in a frenzied series of calls among themselves'.¹⁰⁵³³ Taking the two paragraphs together, the final trial brief may be suggesting that either Mr Oneissi or Mr Sabra made the final call but it does not directly do so. In oral closing submissions, however, the Prosecution submitted that Mr Sabra made the third telephone call, with lead Prosecution counsel saying:

¹⁰⁵³¹ Prosecution final trial brief, para. 1019, *see also* paras 1020-1025, 1031-1037; Prosecution closing submissions, T. 14 September 2018, pp 48-56.

¹⁰⁵³² Prosecution final trial brief, paras 573-574 (footnotes omitted).

¹⁰⁵³³ Prosecution final trial brief, para. 569.

The Prosecution case is that Mr. Sabra had made that call at sometime before to go and collect the tape from the tree, and had remained in the area in case the tape wasn't picked up and he'd have to make another call.¹⁰⁵³⁴

5623. The Trial Chamber will therefore treat the Prosecution's final trial brief, as arguing, but only when read in its totality, that Mr Sabra made the call to Al-Jazeera from the third payphone.

5624. The Prosecution submits that the evidence establishes that:

- Mr Sabra was in the vicinity of the payphone used to call Reuters, eight minutes prior to that call;¹⁰⁵³⁵
- Mr Sabra's and Mr Oneissi's mobiles co-located in a predicted coverage area of one to one-and-a-half kilometres south from the second payphone, twenty minutes after the first call to Al-Jazeera;¹⁰⁵³⁶
- Mr Sabra's mobile used a cell providing predicted best server coverage to the third payphone while Mr Oneissi's mobile was using a cell in the vicinity of the tree, at the time of the second call to Al-Jazeera;¹⁰⁵³⁷ and
- Mr Oneissi and Mr Sabra exchanged a 'flurry' of calls between themselves and Mr Merhi when the video-tape was being collected, during which Mr Sabra moved from the third payphone towards the tree.¹⁰⁵³⁸

5625. The Prosecution points out that eight of Mr Merhi's nine calls on 14 February 2005 were made between 14:03 and 17:24. Seven were with Mr Sabra, and three of these were in the minutes immediately following the collection of the video-tape from the tree.¹⁰⁵³⁹

¹⁰⁵³⁴ Prosecution closing submissions, T. 14 September 2018, p. 52.

¹⁰⁵³⁵ Prosecution final trial brief, para. 1020.

¹⁰⁵³⁶ Prosecution final trial brief, paras 1022-1023.

¹⁰⁵³⁷ Prosecution final trial brief, para. 1025.

¹⁰⁵³⁸ Prosecution final trial brief, paras 1027-1028.

¹⁰⁵³⁹ Prosecution final trial brief, para. 1014.

5626. Further, all of his calls connected to SFEIR3, which is consistent with Mr Merhi's 'direct supervision of the delivery of the false claim from his base area.'¹⁰⁵⁴⁰ Mr Sabra's mobile was also connected to a cell near the payphone from which the third call to Al-Jazeera was made.¹⁰⁵⁴¹

5627. In relation to the tree, Prosecution counsel in closing submissions stated that Mr Oneissi need not have been in the immediate vicinity of the tree to watch it, given the number of surrounding vantage points 'from which he could observe the video being collected'. Because the video was in white box it would have been visible from a further distance away.¹⁰⁵⁴²

5628. The simultaneous disposal of the three personal Purple mobiles over a period of 36 hours between Tuesday 15 and Wednesday 16 February 2005—after years of continuous use—also serves to reinforce the involvement of their users.¹⁰⁵⁴³ The Prosecution also argues that the disposal reflects the users' realisation that unanticipated and unintended forensic traces may have been left around the payphones.¹⁰⁵⁴⁴ This was also similar to the synchronised shut down of the Red and Green networks.¹⁰⁵⁴⁵

5629. In view of the circumstantial nature of the evidence and the possible flaws in the purported identification of Mr Oneissi as 'Mohammed', the Trial Chamber posed the following question to the Prosecution:

If the Trial Chamber were not satisfied beyond reasonable doubt of the guilt of Mr Oneissi and Mr Assad Hassan Sabra, what flow-on effect, if any, would there be in relation to Mr Hassan Habib Merhi's pleaded role, given that he is alleged to have coordinated their activities?¹⁰⁵⁴⁶

5630. The Prosecution responded that if reasonable doubt persists as to the *mens rea* of Mr Oneissi and Mr Sabra, or the attribution of the Purple mobiles, the Trial Chamber could still convict Mr Merhi.¹⁰⁵⁴⁷

¹⁰⁵⁴⁰ Prosecution final trial brief, para. 1015.

¹⁰⁵⁴¹ Prosecution final trial brief, para. 1037.

¹⁰⁵⁴² Prosecution closing submissions, T. 14 September 2018, p. 48.

¹⁰⁵⁴³ Prosecution final trial brief, paras 579-588, 1012, 1040-1047.

¹⁰⁵⁴⁴ Prosecution final trial brief, para. 597.

¹⁰⁵⁴⁵ Prosecution final trial brief, paras 583, 1040.

¹⁰⁵⁴⁶ Questions for closing submissions, para. 5.

¹⁰⁵⁴⁷ Prosecution closing submissions, T. 14 September 2018, pp 72-73.

5631. The Trial Chamber also posed a question to the Prosecution in the following terms, namely:

The amended consolidated indictment (paragraph 23) pleads that Mr Oneissi and Mr Sabra were responsible for locating an individual suitable for making the false claim of responsibility for the attack. If the Trial Chamber cannot be satisfied beyond reasonable doubt of their involvement in this, what effect would this have on their pleaded involvement (paragraphs 44, 64, 66, 68 and 70) on 14 February 2005 in relation to delivering the video and making calls to Reuters and Al-Jazeera?¹⁰⁵⁴⁸

5632. In response, Prosecution counsel contended that Mr Oneissi and Mr Sabra may still be convicted if the Trial Chamber is satisfied that they delivered the false claim, even if the allegations of selecting and kidnapping Mr Abu Adass are not proven.¹⁰⁵⁴⁹ However, Prosecution lead counsel conceded that if the Trial Chamber did not find that Mr Oneissi and Mr Sabra performed the preparatory and shielding acts alleged, this may affect any findings against Mr Merhi, stating:

The only way in which it would have an impact is if you found that all of the allegations made against Mr. Sabra and Mr. Oneissi and their *actus reus*, their acts and conduct, if you didn't find any of that took place and that the Purple Phone patterns just didn't portray the pattern we say, then obviously that's problematic. But otherwise, it has absolutely no effect.¹⁰⁵⁵⁰

5633. The Merhi Defence argues that the Prosecution produced no evidence to support the claim that Mr Merhi coordinated the activities on Monday 14 February 2005, and does not accuse him of 'any specific act' beyond relying on the resumption of the mobile activities. It submits that the calls between Purple 231 and Purple 018 that day could be explained as their users becoming anxious about one another following the explosion.¹⁰⁵⁵¹ If, as the Prosecution implies, the Purple mobiles were together in SFEIR3 before the first calls, there was no need for Purple 231 to coordinate by a call to Purple 018 thirty minutes later.¹⁰⁵⁵²

¹⁰⁵⁴⁸ Questions for closing submissions, para. 6.

¹⁰⁵⁴⁹ Prosecution closing submissions, T. 14 September 2018, p. 73.

¹⁰⁵⁵⁰ Prosecution closing submissions, T. 14 September 2018, pp 72-73 (Mr Povoas).

¹⁰⁵⁵¹ Merhi Defence final trial brief, paras 523, 540.

¹⁰⁵⁵² Merhi Defence final trial brief, para. 525.

5634. The Merhi Defence also argues that—given that the calls to Reuters and Al-Jazeera did not take place at the time alleged by the Prosecution—they could not be placed with any reliability in the timeframe of the first call from Purple 231 to Purple 018 on 14 February 2005.¹⁰⁵⁵³

5635. Further, the Prosecution's submissions about calls from Mr Merhi to Mr Sabra are illogical, given that they did not follow the alleged hierarchical lines.¹⁰⁵⁵⁴ Call records of the eight calls after the collection of the video tape are not reliable in terms of time-stamping and difficulties with the cellular network.¹⁰⁵⁵⁵ The Prosecution disregarded evidence of the fourth call to Al-Jazeera because it did not fit with the Prosecution's theory of what the Purple mobiles were doing on 14 February 2005.¹⁰⁵⁵⁶

5636. The cessation of Purple mobiles' activity after the attack did not show that the users were involved, given that publicity about the attack came later, and there was a belief that there was no need to use a covert network. The extent of the investigation became public only afterwards, contrary to Mr Platt's theory of why the mobiles were disposed.¹⁰⁵⁵⁷

5637. Further, the 'illogicality becomes even more apparent' when the two mobiles attributed to Mr Merhi are compared, arguing, 'If the user of Green 071 knows and agrees to the details of the alleged conspiracy, and is therefore aware of its scope, the naivety and mistakes made by the user of Purple 231 are inexplicable'.¹⁰⁵⁵⁸

5638. The Oneissi Defence argues that the schematic mappings used by Mr Platt meant that he was unable to take into account factors important for cell site analysis around the area of the tree.¹⁰⁵⁵⁹ Contrary to the Prosecution's submission, the discarding of Purple 095 is further evidence that Mr Oneissi was unaware of the false claim operation before it happened.¹⁰⁵⁶⁰ To the extent that the Prosecution's argument that the 'forensic visibility' of the Purple mobiles is low rests upon

¹⁰⁵⁵³ Merhi Defence final trial brief, para. 551.

¹⁰⁵⁵⁴ Merhi Defence final trial brief, paras 526, 528.

¹⁰⁵⁵⁵ Merhi Defence final trial brief, para. 565.

¹⁰⁵⁵⁶ Merhi Defence final trial brief, para. 558.

¹⁰⁵⁵⁷ Merhi Defence final trial brief, paras 532-533.

¹⁰⁵⁵⁸ Merhi Defence final trial brief, para. 534.

¹⁰⁵⁵⁹ Oneissi Defence final trial brief, para. 169.

¹⁰⁵⁶⁰ Oneissi Defence final trial brief, para. 175.

a belated discovery of the mobiles, Purple 095 did not activate cells providing coverage for any of the payphones at the time the false claim calls were purported to be made.¹⁰⁵⁶¹

5639. The Prosecution failed to establish that Mr Oneissi and Mr Sabra were actually travelling together simply because the two mobiles attributed to them co-located at times.¹⁰⁵⁶² The Prosecution erroneously conflates activation of the cell covering the tree, BNPI3, with surveillance of the tree despite failing to establish the coverage of that cell and without any evidence beyond call data records, which cannot establish precise locations.¹⁰⁵⁶³

5640. The Sabra Defence submits that there were reasonable alternatives for the Purple mobiles' behaviour on 14 February 2005.¹⁰⁵⁶⁴ According to the Sabra Defence, the Prosecution did not discover or consider the 'Purple-alike' mobiles, namely six mobiles that presented behavioural similarities with Purple 018. Their cell use places each of them near at least one payphone on 14 February 2005 shortly before or after the respective calls to Reuters and Al-Jazeera.¹⁰⁵⁶⁵ This shows that 'the activities portrayed by the Prosecution as "inextricably linked to the Payphones calls" are not statistical outliers' and that the involvement in the conspiracy of the Purple mobiles' users is not the only reasonable inference available on the evidence.¹⁰⁵⁶⁶ Further, the Purple mobiles were not suddenly discarded, but rather gradually ceased use over two days.¹⁰⁵⁶⁷

5641. This was particularly notable given that the Red network did cease activity immediately after the assassination, and the Green network before it.¹⁰⁵⁶⁸ The Prosecution also failed to consider the activity of the Purple associate mobiles, which continued to be used openly for approximately two months after the attack.¹⁰⁵⁶⁹

5642. In closing submissions, the Sabra Defence argued that the Trial Chamber was:

¹⁰⁵⁶¹ Oneissi Defence final trial brief, paras 178-179, 569, 572, 609.

¹⁰⁵⁶² Oneissi Defence final trial brief, para. 568; Oneissi Defence closing submissions, T. 20 September 2018, p. 90.

¹⁰⁵⁶³ Oneissi Defence final trial brief, paras 583, 585, 589-591, 595-597, 612-613; Oneissi Defence closing submissions, T. 19 September 2018, pp 89-92; 97-98, T. 20 September 2018, pp 86-87.

¹⁰⁵⁶⁴ Sabra Defence final trial brief, paras 782-786.

¹⁰⁵⁶⁵ Sabra Defence final trial brief, paras 784-786.

¹⁰⁵⁶⁶ Sabra Defence final trial brief, para. 786 (footnote omitted).

¹⁰⁵⁶⁷ Sabra Defence final trial brief, para. 528.

¹⁰⁵⁶⁸ Sabra Defence final trial brief, para. 530.

¹⁰⁵⁶⁹ Sabra Defence final trial brief, para. 531.

completely in the dark as to how and when this tape ever got to be in a tree located in a square in Beirut and, crucially, whether Mr. Sabra was involved, and in which case, how so. Nor are you told who drafted the accompanying letter to the video, when it was drafted, and again whether it ever came to be in the possession of Mr. Sabra.¹⁰⁵⁷⁰

(e) Findings

5643. The Trial Chamber has found that four telephone calls took place on Monday 14 February 2005.¹⁰⁵⁷¹ The first was at 14:11 to Reuters, and the remaining three were at 14:19, 15:27 and 17:04 to Al-Jazeera. Further, it is satisfied that the Al-Jazeera staff collected the video and letter from a tree near Al-Jazeera's office at around 15:53. The Trial Chamber has received no evidence about when the video and letter were placed in the tree and thus can make no findings on this. It has also been unable to make any positive findings about who made the calls; it cannot find beyond reasonable doubt, as it must as these are material facts underlying the elements of the charges, that either of Mr Oneissi or Mr Sabra made the calls.

5644. The Prosecution argues that the pattern of Purple mobile activity around these events shows that Mr Oneissi and Mr Sabra participated in the delivery and dissemination of the false claim, while Mr Merhi supervised it. The Prosecution positively submitted in its oral final trial submissions, as is alleged in the amended consolidated indictment, that Mr Sabra made the second call (from the third payphone) to Al-Jazeera at 15:27.

5645. The Trial Chamber has examined each individual piece of evidence and has carefully scrutinised it for the patterns from which the Prosecution argues it can find that the three Accused were implicated in the conspiracy as alleged. However, the Trial Chamber cannot be satisfied beyond reasonable doubt based on the location or other activity of the Purple mobiles, when taken in their overall context, that the only reasonable conclusion available from the evidence is that Mr Sabra or Mr Oneissi were involved in making the telephone calls in the manner alleged. Nor that Mr Merhi coordinated this—as is pleaded in the amended consolidated indictment—or, as is argued in the final trial brief, that he ‘supervised this integral contribution to the conspiracy’.¹⁰⁵⁷²

¹⁰⁵⁷⁰ Sabra Defence closing submissions, T. 21 September 2018, p. 42.

¹⁰⁵⁷¹ See above, at para. 4897.

¹⁰⁵⁷² Prosecution final trial brief, paras 618, 1177.

5646. Each of the four calls constitutes a material fact pleaded against the three Accused. The calls and the collection of the video from the tree for its broadcast by Al-Jazeera are the facts underlying the elements of the crimes charged, namely, making a false claim of responsibility for the attack. The Prosecutor must therefore prove beyond reasonable doubt that the Accused were responsible for the four calls and ensuring that the video was collected from the tree for broadcast. Without proving these facts, there is no case against any of the three Accused.

5647. The evidence of the call data records, combined with that of the content of the calls from the payphones, cannot of itself establish that either Mr Oneissi or Mr Sabra were present at the payphones when the calls were made. It is only the patterns of their mobile movements, when analysed in their entirety by contrasting them with calls from the payphones and the collection of the video, that could provide the necessary inferences of their involvement, assuming that Mr Sabra was using Purple 018.

5648. The Trial Chamber again stresses that it has no evidence of the content of the calls made or text messages sent nor of Mr Oneissi's and Mr Sabra's precise locations—the sole evidence against them is the pattern of the movements of Mr Oneissi's Purple 095 and Mr Sabra's shared personal Purple mobile 018 and calls made—in tandem with the payphone calls and the video collection and broadcast.

5649. Crucially, the Trial Chamber has examined in careful detail the predicted best server coverage map for the cells covering the four payphones and the tree. Given the imprecision of cell site evidence and that it cannot, of itself, place a mobile at a precise location, it is essential to examine where Mr Oneissi's Purple 095 and Mr Sabra's attributed Purple 018 *could have been* while connecting to the cells providing predicted coverage to the payphones and the tree.

5650. In this respect, the Trial Chamber is conscious of the agreed technical standard of the sixty to seventy percent accuracy of these maps. It is also acutely mindful of the technical and eyewitness testimony of network congestion experienced after 12:55 on the afternoon of Monday 14 February.

5651. The Alfa 'trouble data' extract in exhibit 4D263 reveals that its mobile switching centres, or MSCs, were experiencing congestion caused by the explosion, the result of which would have been numerous directed retries or alternatively a failure to connect. In practical terms, this casts

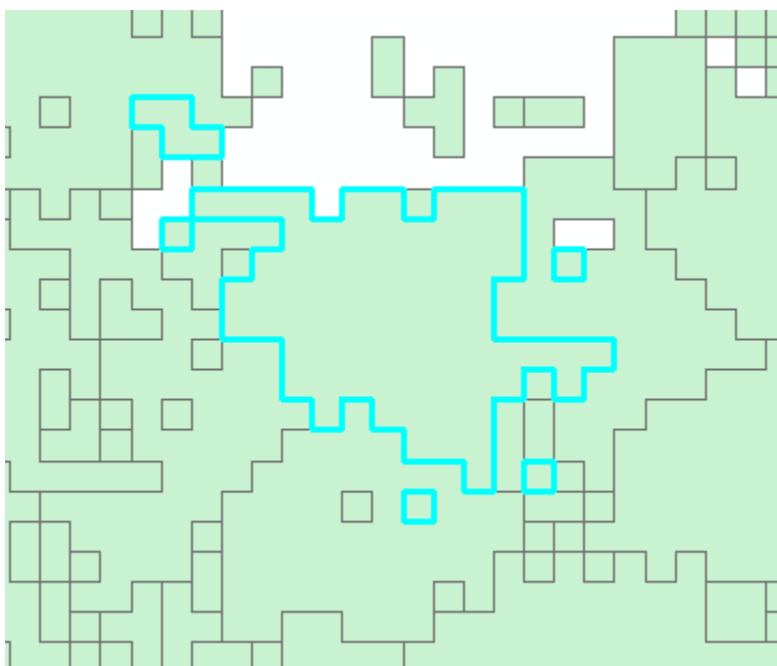
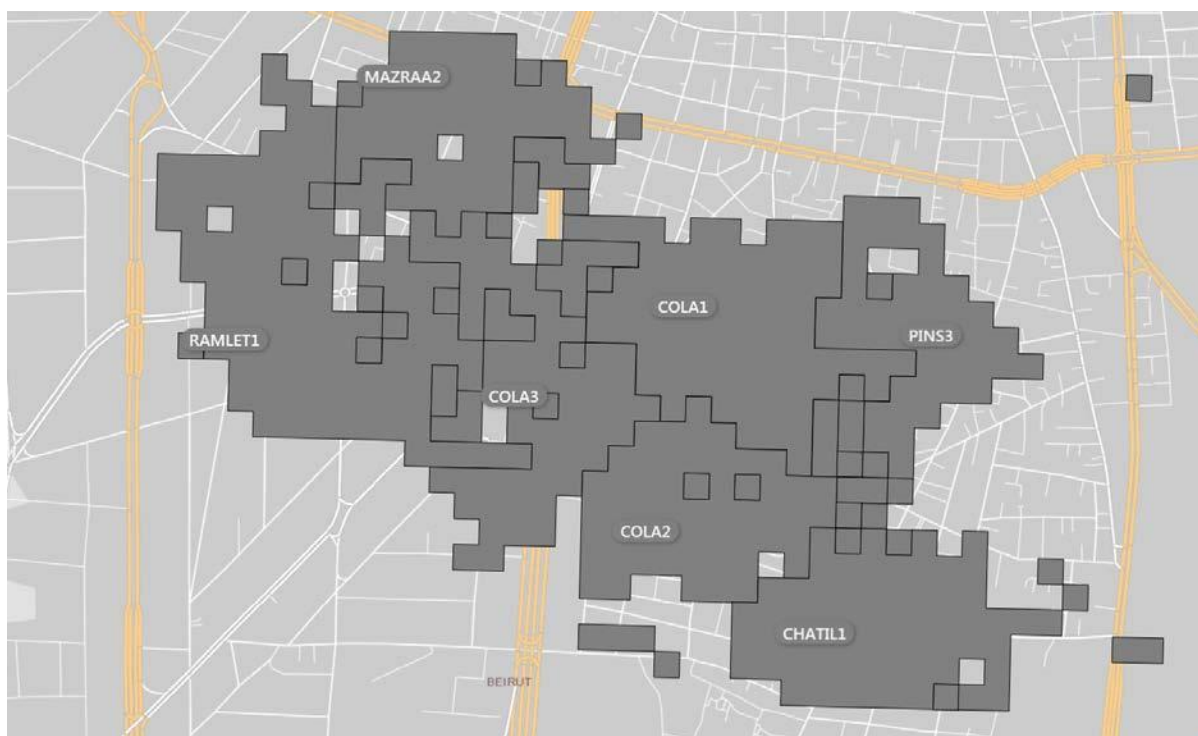
real doubt on the reliability of the cell site evidence for that afternoon. Added to this is the eyewitness testimony of network congestion at the time. Callers across the network in Beirut would have been redirected from the best serving cell to one of its six neighbours—or others—but without Alfa or Touch being able to say which.

5652. This means that Purple 018 and Mr Oneissi's Purple 095 may not have been connecting to the best serving cell for *any* of the calls they made that afternoon; theoretically they could have been in any of the six neighbouring cells—or cells adjacent to these—when they made the calls. Of course, this works both ways as it could also place them exactly where the Prosecution's case wanted them to be, namely, at the payphones or at the tree. That, however, illustrates the problem; the congestion must further detract from the existing sixty to seventy percent accuracy of the coverage maps.

5653. For example, a directed retry from a mobile having COLA1 as its best serving cell could theoretically result in it connecting to the following six cells, for which the Trial Chamber has shapefiles, namely, MAZRAA2, RAMLET1, COLA3, COLA2, CHATIL1 and PINS3. However, as the network determines the directed retry on the basis of the actual signal strengths,¹⁰⁵⁷³ and from drive tests rather than the coverage maps, in reality a mobile that did not connect to COLA1 could have been redirected to another neighbouring cell.

5654. The extracts below from exhibits P592.1 and P1123 show the neighbouring cells of the COLA1 cell:

¹⁰⁵⁷³ See for further details chapter VII 'Reliability of telecommunications evidence', (B) (2) 'Cell allocation', and (C) (4) 'Cell Site related issues', at paras 1749-1750.



5655. It is also emphasised that the Prosecutor's allegations are *precisely* pleaded, namely, that either Mr Oneissi or Mr Sabra made the first, second and fourth calls, that Mr Sabra made the third

call and that Mr Oneissi was present watching the tree. The measurements below, however, illustrate the difficulties inherent in relying solely upon cell site evidence to prove someone's location at a *precise* place. To which, it is emphasised, is added the network congestion issue.

5656. Regarding the first payphone call to Reuters: it was made at 14:11 from a payphone near Abou Shaker Square. While the first payphone is within COLA1, that cell's predicted boundaries extend for around another 610 metres in other directions. The user of mobile 018, had been 'nearby', eight minutes earlier, at 14:03. Then, Purple 018 had activated a cell with a predicted coverage several hundred metres south, when it had connected to GHOBAl3 as the start cell and CHATIL1 as the end cell. GHOBAl3's predicted best server coverage *vis-à-vis* the first payphone box is around 630 metres from it at its closest point and around 1.6 kilometres at its furthest. The corresponding figures for CHATIL1 are around 330 metres at its closest and just over one kilometre at its furthest.

5657. This illustrates graphically the difficulties in attempting to position a person solely by cell site evidence. At 14:03, Mr Sabra's attributed Purple 018 may have been 1.6 kilometres away, or even further, from the first payphone. The movement from GHOBAl3 to CHATIL1 could suggest a movement in the direction of the payphone, however, it is equally possible that the mobile was stationary and connected to these adjacent cells. Moreover, without more, where it actually was when the calls were made is unknowable.

5658. The mere near contemporaneous presence in a predicted cell coverage area, of itself, cannot establish beyond reasonable doubt that the user of Purple 018 was ever at the payphone, let alone making the call at 14:11 or even observing someone else who was doing so. The evidence of Purple 018's presence, potentially to within a few hundred metres of the payphone eight minutes earlier—or 1.6 kilometres away from it—must accordingly be placed in the context of the totality of the other calls that day.

5659. The first call to Al-Jazeera was at 14:19 from a payphone on the Saeb Salam Boulevard. Mr Sabra's attributed Purple 018 and Mr Oneissi's Purple 095 both activated cells in an area at least one kilometre from this payphone within twenty minutes of the call—at 14:36 and 14:38 respectively—seventeen and nineteen minutes after the call. In this sense their mobiles could be considered to have been 'near' or 'in the vicinity' of the payphone. But the timing and distance are

greater than for the Reuters call. Taken in isolation they cannot show that the only reasonable inference is that either Accused was involved in the first call to Al-Jazeera. But again, these pieces of evidence have to be placed within the context of the patterns of the totality of the calls on the day.

5660. Similarly to the cell coverage for the first payphone, the coverage of payphone two by TAHAN1 extends around 390 metres away from it. The neighbouring NASSER cells—to which a mobile at the payphone may have connected—extend for almost another 300 metres.

5661. The second call to Al-Jazeera occurred at 15:27 from the third payphone, on Rue Banque du Liban. Unlike with the other payphone calls, Mr Sabra's attributed Purple 018 activated a cell providing predicted coverage to it, SPEARS3. However, this activation occurred at 15:53, 26 minutes after the call. Once again, this piece of evidence on its own could merely prove Mr Sabra's presence, if he was using the Purple mobile, 'near' the payphone some time, namely 26 minutes, after the call. Further, the outer boundary of the coverage map of BACHOU2, which provided predicted coverage to this payphone, is a full kilometre from it.

5662. The payphone was also very close to SPEARS3 and ZOUKAK3, to which a mobile next to the payphone could also have conceivably connected, but which extended respectively for approximately another 570 and 890 metres on the predicted best server coverage maps. Into this must be factored, it is again emphasised, the network congestion that was then occurring.

5663. This too must be viewed in the totality of the calls made that day. On one hand, it is certainly consistent with Mr Sabra, if he was using Purple 018, being in a position to make the call, or to observe someone else making it, but on the other, it is equally consistent with him doing something else. The Trial Chamber must be convinced beyond reasonable doubt that the Prosecutor's pleading is the only inference reasonably available on the evidence.

5664. Finally, the third call to Al-Jazeera was made at 17:04 from the fourth payphone, on Rue Habib-Abou-Chahla. Eleven minutes later, at 17:15, Mr Sabra's attributed Purple 018 activated a cell at the start of the call, OGER3, which was approximately 750 metres from the payphone.¹⁰⁵⁷⁴ This too, on its own, could not prove that the user of Purple 018 placed the call. As with the second

¹⁰⁵⁷⁴ OGER3 had scattered predicted best server coverage: the closest point to the payphone was around 460 metres, and the furthest point 2,050 metres away.

call to Al-Jazeera, it is indeed consistent with Purple 018's user being able to make the call or to watch someone doing it, but is also consistent with their not doing it. It is equally consistent with the user being at least a kilometre away. It provides no direct evidence of where the user actually was at 17:04.

5665. The fourth payphone, within CELTEC1's predicted coverage, is very close to OGER2 and RAMLET1 coverage areas. Again, a mobile at the payphone could also have conceivably connected to either of these two cells, the predicted coverage maps of which extend respectively, around 2.7 kilometres and 890 metres from the payphone. CELTEC1's furthest outer edge is about 600 metres away. OGER2 has a very scattered predicted best server coverage area, divided into at least eighteen separate pockets of predicted coverage; the fourth payphone is in one of these small pockets. The Trial Chamber has also factored in Mr Philips's evidence that cells frequently have scattered or fragmented areas of coverage.

5666. Another relevant point here is that the last call to Al-Jazeera was made at 17:04 and the video was not broadcast until 17:30. Yet, at 17:24, which was nine minutes after Mr Sabra's attributed Purple 018 had contacted Mr Merhi's Purple 231, Mr Merhi's Purple 231 made a nine-second call to Purple 018. Mr Sabra's attributed mobile had then moved away from the area of the payphones, before the video's broadcast—which on the Prosecution's case marked the mission's completion—and both were in southern Beirut. This could be considered equally consistent with the Prosecution's case theory or with something else.

5667. The Trial Chamber has also carefully considered the Purple mobile activity near the tree by Al-Jazeera's office from which the video and letter were collected, at approximately 15:53.

5668. The tree, covered on predicted maps by BACHOU3 is adjacent to BNPI3; their furthest distances, of predicted best server coverage, from the tree are respectively around 715 and 655 metres away. Concerning the tree, it is evident that Mr Oneissi, while connecting to BNPI3, could have been within eyesight of the tree, or equally that he could have been 715 metres away from it, well out of view.

5669. Or he could have been even further distant, if his mobile was in a cell bordering BACHOU3 and it was redirected to one of the six adjacent cells to which a call may be redirected—or perhaps more—especially on the afternoon of the attack when the network was congested. The same

reasoning applies to the mobiles connecting to cells providing predicted best server coverage to the payphones, and the neighbouring cells of each. In short, those using the mobiles connecting to these cells may have been nowhere near either the payphones or the tree at the relevant times.

5670. The evidence of Witness 115 is crucial here. He sent a text message at 15:53 stating that he had the video tape. Mr Oneissi's Purple 095 was simultaneously connecting to a cell near the tree from at least 15:54 through 16:02, while Mr Sabra's attributed Purple 018 connected to a cell near the tree from 16:00 to 16:02.

5671. This witness collected the video from the tree. While he was at the tree he sent and received four text messages. In the first, at 15:52, his mobile activated Bashoura_A on the Touch network, but this cell according to Touch's coverage maps, did not provide the predicted best server coverage to the tree, but rather to an area about 300 metres south-west of it. His second text was at 15:53, but his mobile activated Riad_El_Soloh_B, which provided the predicted best server coverage to the tree, on Touch's network maps.

5672. The witness then received two messages, at 15:54 and 15:55, but again activating first Riad_El_Soloh_B and then Bashoura_A. Within a period of three minutes, while the witness was physically next to the tree,¹⁰⁵⁷⁵ his mobile twice activated a cell providing theoretical coverage to the tree, and one that was at least 200 metres away.

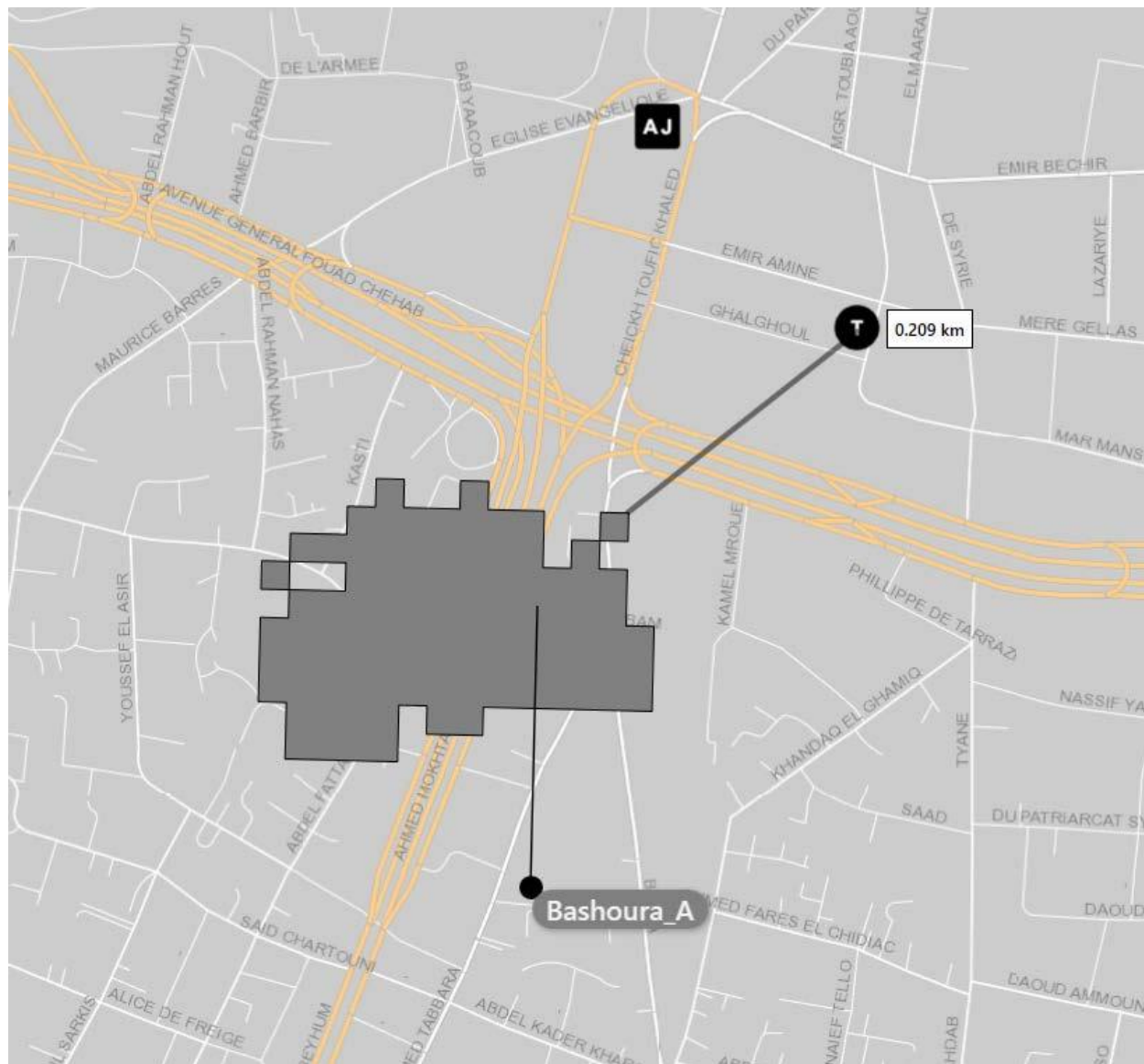
5673. This example is very important because Witness 115 provided evidence of precisely where he was when he sent and received the SMS messages; it is thus possible to compare his actual location against the accuracy of Touch's predicted best cell coverage maps on the afternoon of Monday 14 February 2005. Here, the evidence supports both the Prosecution and Defence contentions.

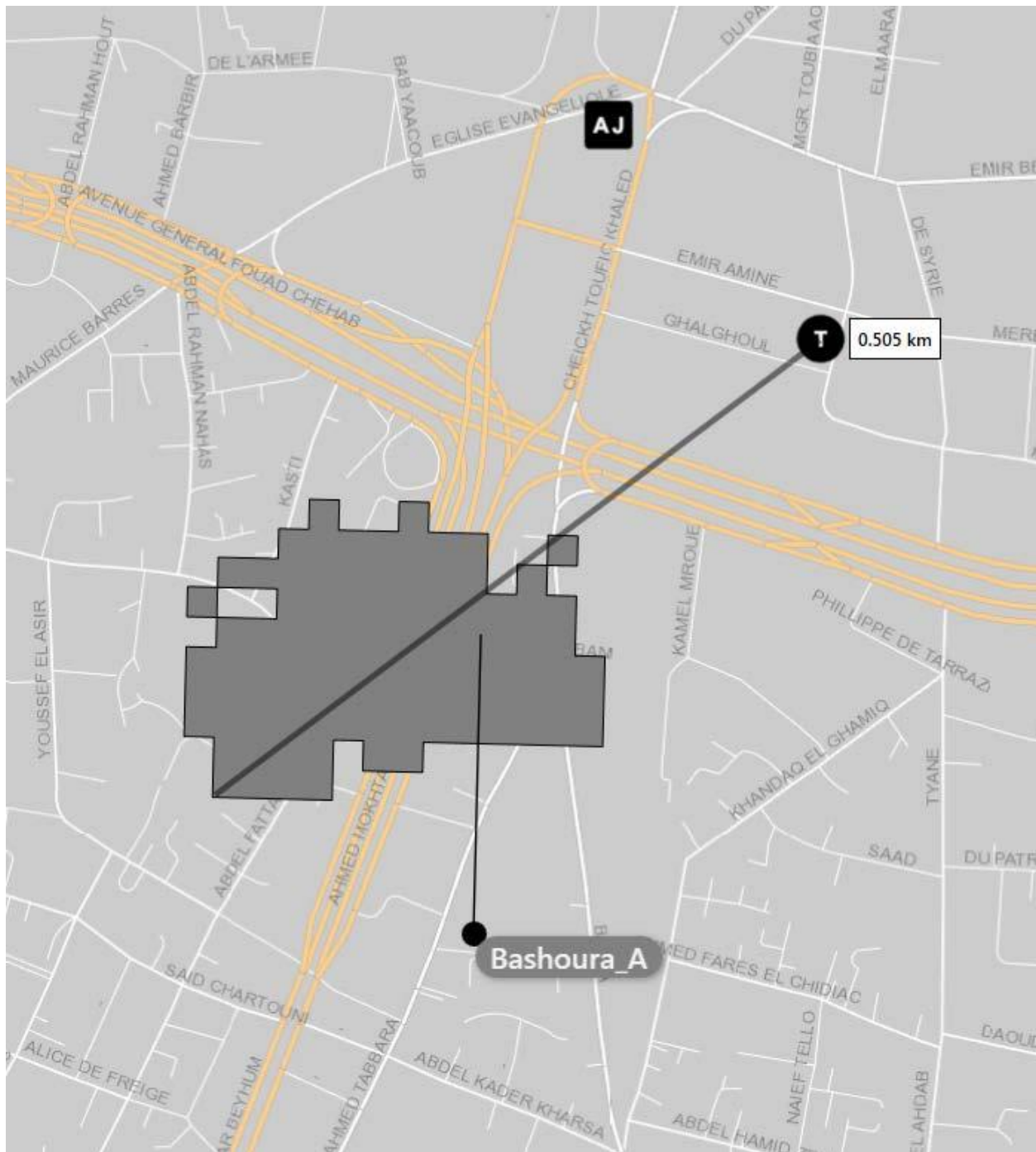
5674. It supports the Prosecution's in showing that mobiles connect either to the cell providing the theoretical best coverage, or a neighbouring cell, and that the Accused may still have been within sight of the tree, while connecting to a neighbouring cell. On the other hand, it also supports

¹⁰⁵⁷⁵ See sub-section (B) (1) (d) 'Collection of the videoed claim of responsibility and the letter at 15:53', at para. 4867.

the Defence's in casting doubt on whether the cell site evidence is sufficiently reliable to place Mr Oneissi within sight of the tree when he was allegedly watching it.

5675. The Trial Chamber, using the electronic presentation of evidence, has calculated from the two maps below that Bashoura_A's closest predicted best server coverage edge to the tree, 'T', is just over 200 metres, while its furthest is around 500 metres away. Al-Jazeera is marked as 'AJ'.





5676. The maps illustrate that while the witness was actually under the tree, the call data records show that he was connecting to a cell and, on its theoretical coverage maps, could potentially have been half a kilometre from it. This demonstrates the danger of relying only on cell site evidence to place a person at a precisely pleaded location. And despite the Prosecution's final trial submissions

that Mr Oneissi could have been watching the tree from a nearby vantage point, the Trial Chamber received no evidence of where this could have been.

5677. The overlap in time and location when Witness 115 was collecting the video, especially for Mr Oneissi's Purple 095, provides stronger evidence of Mr Oneissi's and Mr Sabra's *potential* involvement in the claim of responsibility than the telephone calls to Reuters and Al-Jazeera. This is assuming that Mr Sabra was using Purple 018. The Prosecution correctly argues that the three distinct but connected events—the call to Reuters, the calls to Al-Jazeera and the collection of the video—must be viewed together to make sense of them. Taken in isolation their mere presence—proved by the connection of their mobiles to a cell providing coverage to the tree at the relevant time—could not prove their involvement in the plot. The Trial Chamber is also conscious that it must exercise an evidentiary doubt in favour of an Accused person.

5678. The evidence shows conclusively that the users of Purple 018 and Purple 095 were somewhere 'near' the tree when Witness 115 collected the false claim video and letter, connecting to BNPI3. This is 'near' in the relative sense of connecting to a cell that could have placed them at least 700 metres away, or even in a neighbouring cell, and thus further away.

5679. It cannot, however, concretely show where in relation to the tree they were, nor whether they were actually together, nor that it was within their sight. Nor can it say anything about when the objects were placed in the tree or by whom. But it definitively proves that Witness 115 was at the tree while his mobile was connecting to a cell providing coverage to a plot at least several hundred metres away. This was on the Touch network, but the principles apply equally to Alfa cells. This evidence showing that a mobile connected, twice within three minutes, to a cell several hundred metres away, while the witness was at the tree, illustrates the inherent difficulties in relying solely on cell site evidence to situate someone at a precise location.

5680. How, when faced with this positive contemporaneous evidence that a mobile at the tree could connect to a cell at least 200 to 500 metres away, could the Trial Chamber positively find beyond reasonable doubt that Mr Oneissi was simultaneously there at the same tree, watching it? The answer is that there has to be a reasonable doubt. This is even when this specific piece of evidence is viewed within the totality of all the Purple mobile calls that afternoon.

5681. The Trial Chamber also cannot be certain from this evidence that the Purple mobile users were present ‘near’ the tree and payphones because they were active participants in the false claim plot.

5682. The Trial Chamber recognises that it is of course suspicious that the user of Purple 018, and Mr Oneissi as the user of Purple 095 or both were *relatively near* the four payphones, or the tree containing the video on Monday 14 February 2005. This is in the qualified sense of their being at least within a few kilometres of them at relative times, while recognising the possible patterns that emerge. And that this occurred within a comparatively short period around when the calls to Reuters and Al-Jazeera were made, and the video was collected. As noted above, the strongest evidence is that the users of the two Purple mobiles were connecting to a cell providing coverage to the tree when the Al-Jazeera employee collected that package, thus *potentially* allowing them to observe what was happening.

5683. The patterns of contacts between Purple 018 and Purple 095, and Purple 018 and Purple 231 also clearly attract suspicion. These mobiles were in contact with each other on Monday 14 February 2005 at times relatively close to the times of the telephone calls and the video collection. It is indeed, as Mr Platt testified, ‘consistent with’ Mr Sabra, if he used Purple 018, providing update reports to Mr Merhi about the calls and the video collection. Purple 095 and Purple 231 were not in contact that day; their last contact occurred on 26 January 2005. Mr Sabra’s shared Purple 018’s and Mr Oneissi’s Purple 095’s voyage away from the area to near their homes afterwards is likewise consistent with the completion of a mission, as Mr Platt concluded.

5684. Another important factor, however, is that Mr Ben-Jeddo stated that there were three distinct callers. He may well have been mistaken; it is of course possible that one person disguising their voice made all three calls. The caller(s) may not even have been male. And, further, he was testifying many years after the event about receiving calls from unknown callers in what would have been a fairly tense, evolving and uncertain situation. But this is the evidence on the record, and it militates against a finding that either Mr Sabra or Mr Oneissi, or both, made the calls. On Mr Ben-Jeddo’s evidence someone is missing, namely that there was a potential third caller, and the Prosecution cannot provide any explanation for this. Additionally, there is no way of determining whether the same person(s) made the initial call to Reuters.

5685. But to conclude this, the Trial Chamber has to be satisfied beyond reasonable doubt that Mr Merhi was coordinating what they were doing—or, as is submitted in the Prosecution’s final trial brief, ‘supervising’ their activities. The only evidence of this, it is emphasised, comes from analysing the call patterns between Mr Merhi’s personal mobile Purple 231 and the contacts on the Green network mobile 071, which the Prosecution attributed to him, with Mr Badreddine’s Green 023. More specifically:

- Mr Merhi’s Purple 231 called Mr Sabra’s attributed Purple 018 at 14:03, eight minutes before the call to Reuters;
- Mr Merhi’s Purple 231 called Mr Sabra’s attributed Purple 018 at 14:36, seventeen minutes after the first call to Al-Jazeera at 14:19; and
- Mr Sabra’s attributed Purple 018, Mr Oneissi’s Purple 095 and Mr Merhi’s Purple 231 exchanged nine calls from 15:53 to 16:02, some 26 minutes after the second call to Al-Jazeera at 15:27.

5686. There were also calls contemporaneous with the collection of the video from the tree. And Purple 018 called Mr Merhi’s Purple 231 at 17:15, eleven minutes after the final call to Al-Jazeera. The Trial Chamber agrees that these calls could indeed be considered, in Mr Platt’s words, as ‘consistent’ with their participation in the calls and the collection of the video from the tree. It also notes, in this regard, the caution that should be exercised in using this term in a scientific sense to draw conclusions, without also stating what else it could have been consistent with.¹⁰⁵⁷⁶

5687. The Trial Chamber further notes in this regard that Mr Sabra’s attributed Purple 018 called Mr Merhi’s Purple 231 on Tuesday 25 January and Friday 4 February 2005. On 25 January, Purple 018 activated ETOILE1, which provided coverage to the Parliament and is adjacent to BNPI3, which is very close to the tree where the video and letter were to be placed, meaning that potentially it could have connected to BNPI3.

5688. On Friday 4 February, Mr Sabra’s attributed Purple 018 connected to AICHA1, but the edge of its predicted coverage the closest to the tree is a kilometre from it. Very little therefore could be drawn from this, although, on one view, it could be construed as a preparatory act in the

¹⁰⁵⁷⁶ In this respect *see* exhibit 1D270, the UK’s Forensic Science Regulator’s *Codes of Practice and Conduct*, referred to above at paragraphs 5127, 5142.

sense of ‘scoping’ the vicinity. Yet it is equally plausible that Mr Sabra, if he was indeed using Purple 018, was nowhere near the tree on the day. Thus his possible visit to the vicinity of the tree is obviously not the only inference reasonably available from the evidence whether viewed individually or holistically; and ‘consistency’ does not equate to proof beyond reasonable doubt as it must not only be ‘consistent’ but also the only inference reasonably available on the evidence. Here, it is not, even though it is not a fact requiring proof beyond reasonable doubt.

5689. However suspicious the Purple mobiles’ movements and communications with each other on Monday 14 February 2005 and in the preceding weeks are, they are insufficient to establish the Accused’s involvement in the claim of responsibility. These suspicions do not rise to the exacting level of proof beyond a reasonable doubt that Mr Merhi, Mr Oneissi and Mr Sabra must have participated in the dissemination of a false claim of responsibility. There is too much uncertainty surrounding what they were doing. There is no evidence of the content of their calls, their texts and whether they met, or where and when and what was discussed. Nor does the evidence establish that Mr Sabra was using Purple 018 that afternoon.

5690. It must be emphasised again that once the evidence identifying Mr Oneissi as ‘Mohammed’ is eliminated from consideration, the strength of the Prosecution case significantly diminishes.

5691. The Trial Chamber therefore finds that the Purple mobile activity highlighted by the Prosecution is too remote in time and distance to demonstrate that the Accused were present at the payphones when the calls were made, were otherwise involved in the calls, or were located at the site of the video collection.

5692. The Trial Chamber, it is also stressed here, has factored in its specific concerns about the reliability of the cell site evidence on the afternoon of Monday 14 February 2005, and most particularly because of the network congestion that would have resulted in mobiles connecting to neighbouring cells as a result of directed retries.

G. Whether the claim of responsibility was false

5693. The Trial Chamber, as is detailed above, heard uncontested evidence that after the explosion, on Monday 14 February 2005, the Reuters and Al-Jazeera media outlets in Lebanon, were informed of a claim of responsibility for the assassination. The claim was made in several

telephone calls to the two broadcasters; in a video-tape featuring Mr Abu Adass reading a statement; and in a letter accompanying the video-tape that Al-Jazeera employees retrieved from a tree.

5694. The heart of the Prosecution's case against Mr Merhi, Mr Oneissi and Mr Sabra is that the claim of responsibility was false. The amended consolidated indictment avers that they participated in making a knowingly false claim of responsibility and the Prosecution's case proceeded on that basis. They are charged in count six under Article 219 (4) and (5) of the Lebanese Criminal Code as accomplices to committing a terrorist act by participating in making a false claim of responsibility. Counts six through eight also charge the three under the same Article.

5695. However, no *direct* evidence that it was a *false* claim of responsibility was produced at trial. The evidence from which the Prosecution urges the Trial Chamber to find that the claim was false falls into several distinct categories. The first is the lack of forensic evidence at the crime scene connecting Mr Abu Adass with it; in this respect the Trial Chamber has found that Mr Abu Adass's DNA was not detected there, thus eliminating him as the suicide bomber.¹⁰⁵⁷⁷ And, further, that he could not drive.

5696. The second relates to Mr Abu Adass's character and background. This evidence comes from his friends and relatives and is generally to the effect that he was a quiet and unassuming young man who was becoming more religious. On the Prosecution's case, he was more likely to have been selected as the scapegoat for the false claim; on the Sabra Defence's, as a scapegoat targeted by *al-Ahbash*.

5697. The third concerns the content of the video and accompanying letter outlining the claim of responsibility and whether it appears to have been a genuine jihadi claim of responsibility. Connected with this is general and vague evidence that the group in whose name Mr Abu Adass claimed responsibility for the attack was unknown on 14 February 2005, and was never seen again.

5698. Another consideration is whether only part of the claim of responsibility was false. In other words, whether Mr Abu Adass was the real suicide bomber yet the group *El-Nusra-wal-Jihad-fi-Bilad-El-Sham* was fictitious. Or alternatively, that the group was real and was responsible for the

¹⁰⁵⁷⁷ See chapter VI 'Explosion on 14 February 2005', (F) (3) (c) (iv) 'Findings'.

attack, but Mr Abu Adass was not the suicide bomber. The third is that pleaded by the Prosecutor, namely, that both parts of the claim were false.

5699. Finally, and most crucially, are Mr Merhi's, Mr Oneissi's and Mr Sabra's actions, including the allegation that Mr Oneissi acted as 'Mohammed' to befriend Mr Abu Adass, and their using him to create the video of the false claim. The purported identification of Mr Oneissi as 'Mohammed' aside, added to this is the telecommunications evidence concerning calls between Mr Merhi's and Mr Oneissi's mobiles and Mr Sabra's attributed mobile between Wednesday 29 December 2004 and Monday 14 February 2005. It is from the combination of this evidence that the Prosecution submits that the Trial Chamber should convict the three Accused.

1. Evidence

(a) The claim of responsibility

5700. On Monday 14 February 2005, at 14:11, as is explained above, the Beirut office of Reuters received a call and Witness 12 answered the call from someone, who read her a statement to the following effect:

We, the Nusra and Jihad group in the Greater Syria, on this day have given due punishment to the infidel Rafik Hariri, so that he may be an example to others of his sort. God is our witness, God is a witness to what we're saying.¹⁰⁵⁷⁸

5701. At around 14:19 someone then called Al-Jazeera's Beirut office. Mr Ben-Jeddo testified that the caller said something very similar to the written text containing the claim of responsibility for the assassination, which the Al-Jazeera office received later.¹⁰⁵⁷⁹

5702. The video tape contained a footage of Mr Abu Adass under a banner of *El-Nusra-wal-Jihad-fi-Bilad-El-Sham* reading out the following claim of responsibility:

In the name of Allah, Lord of the Worlds, Blessings and Peace be upon his Beloved Prophet and his family and all his companions.

¹⁰⁵⁷⁸ Witness PRH012, T. 14 July 2015, pp 17-18, 60; exhibit P509 (Report of interview with Witness PRH012), p. 1.

¹⁰⁵⁷⁹ Ghassan Ben-Jeddo, T. 8 July 2015, p. 83; Witness PRH006, T. 23 June 2015, pp 42-43.

In support of our brothers, the Mujahedeen in the Land of the Two Holy Mosques, and to avenge their innocent martyrs, who were killed by the security forces of the infidel Saudi regime in the Land of the Two Holy Mosques, we have resolved, having placed our trust in God Almighty, to inflict just punishment upon the agent of that regime and its cheap tool in Greater Syria, the sinner and holder of ill-gotten gains Rafiq Hariri, through the execution of a resounding martyrdom operation; such as to confirm our promise of Victory and 'jihad' and to herald numerous martyrdom operations against the infidels, apostates and tyrants in the Greater Syria.

"Praise be to Allah, Lord of the Worlds."¹⁰⁵⁸⁰

5703. The letter accompanying the video tape stated:

Praise be to God Lord of the Worlds, Most Gracious, Most Merciful, Master of the Day of Judgment, and Blessings and Peace be upon his Servant and Prophet and his family and all his companions.

Here is good news for all Muslims and especially the Holy Land of Palestine, Mesopotamia, the Sanctuary of the Two Holy Places, our brothers in Afghanistan, our people in Chechnya and the Blessed Land of Greater Syria; good news raising the banner of oppressed believers and supporting their struggle against arrogant despots.

Praise be to God, the banner of support and jihad was held aloft in Greater Syria and, praise be to God, due punishment was meted out to the agent of infidelity in the Land of the Two Holy Places, Rafic Hariri, through a suicide operation carried out by the Mujahid, Ahmad Abou-Adass, who raised the banner of support and jihad in Greater Syria on Monday 14 February 2005 AD, 5 Muharram 1426 AH, in Beirut.

God is Great, Praise be to God Lord of the Worlds.

Attached is a film of the martyr Ahmad Abou-Adass, who carried out the operation.

5704. The letter was signed *El-Nusra-wal-Jihad-fi-Bilad-El-Sham*, Abou Hafass El-Chami.¹⁰⁵⁸¹

¹⁰⁵⁸⁰ Exhibit P499 (The digital format of the video tape containing the claim of responsibility); exhibit P499.1 (Transcript of text read by Ahmad Abu Adass on the tape).

¹⁰⁵⁸¹ Exhibit P500 (Letter accompanying video tape) (emphasis omitted).

(b) Evidence about the contents of the claim of responsibility

5705. The Trial Chamber heard evidence about Mr Abu Adass's appearance in the video claiming responsibility, and the group in whose name responsibility was made.

5706. Five witnesses noted that Mr Abu Adass looked different from usual in the video tape.¹⁰⁵⁸² His face was pale and tired. He was dressed in an *amamah* (a turban) and dark clothing, which was different to the white or grey clothes he usually wore.¹⁰⁵⁸³ Mr Abu Adass wore a turban for the first time.¹⁰⁵⁸⁴ His expression also seemed unusual.¹⁰⁵⁸⁵ Witness 56 and Mr Taysir Abu Adass noted that his voice was low and not normal.¹⁰⁵⁸⁶

5707. Mr Ben-Jeddo appeared live for the first time after the explosion during a news bulletin on the 'top of the hour'. He hesitantly mentioned the call claiming responsibility for the assassination as he was sceptical about the veracity of the claim.¹⁰⁵⁸⁷ He announced the following:

I just want to point out that we have received a phone call here in our office in Beirut that we report to the viewers as is, but with reservation. Someone called and claimed to be talking in the name of a group called the *El-Nusra-wal-Jihad-fi-Bilad-El-Sham*. It is the first time we hear of this group. He said, "the group announces the execution... (direct quotation) the execution of the comeuppance" of whom he described as the infiltrator and infidel Rafic Hariri. The caller also described the operation as a suicide attack and the details will be revealed soon. We have never heard of this group. We think that the real perpetrators of the assassination of late Prime Minister Rafic Hariri... This was just a voice

¹⁰⁵⁸² Exhibit P461 (Witness statements of Taysir Abu Adass, dated 19 January 2005 and 28 February 2005), ERN 50003490; exhibit 5D513 (Witness statement of Taysir Abu Adass, 14 February 2005); exhibit 5D514 (Summary report of interview with Taysir Abu Adass, dated 14 February 2005), p. 4; 5D515 (Witness statement of Taysir Abu Adass, dated 17 February 2005), p. 2; 5D518 (Summary of investigation concerning Mr Abu Adass, dated 3 March 2005), p. 3; Exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 10; exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), paras 169-172 (pp 13-14); exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 5; Witness PRH087, T. 29 September 2015, pp 24-25; exhibit P596 (Statements of Witness PRH087, dated 14 January 2015 and 24 November 2006), paras 111-114 (p. 14); exhibit P1775 (Witness statement of Ziad Ramadan, UNHCR, 1 December 2005), para. 99; T. 20 January 2016, pp 53-54 (closed session), T. 29 January 2016, pp 37-38, 43 (closed session).

¹⁰⁵⁸³ T. 20 January 2016, pp 53-54 (closed session), T. 29 January 2016, p. 37 (closed session); exhibit P766 (Still image from video-recorded claim of responsibility featuring Mr Abu Adass aired on Al-Jazeera); exhibit P767 (Copy of Mr Abu Adass's identity card and a photograph of Mr Abu Adass attached thereto) ERNs D0014247, D0114250.

¹⁰⁵⁸⁴ Exhibit P762, p. 4; 20 January 2016, pp 53-54 (closed session), T. 29 January 2016, p. 37 (closed session).

¹⁰⁵⁸⁵ Exhibit P596 (Statements of Witness PRH087, dated 14 January 2015 and 24 November 2006), para. 114.

¹⁰⁵⁸⁶ Exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 10; exhibit P461 (Witness statements of Taysir Abu Adass, dated 19 January 2005 and 28 February 2005), ERN 50003490.

¹⁰⁵⁸⁷ See sub-section (B) (1) (b) 'First call to Al-Jazeera at 14:19'.

speaking about this issue... But I can confirm that the man was not speaking good Arabic.¹⁰⁵⁸⁸

5708. He then continued to analyse the possible impacts of Mr Hariri's assassination on the Lebanese political scene and economy.¹⁰⁵⁸⁹ He was of the view that considering the security measures in place to protect the former prime minister, 'those who managed to hit Hariri today knew exactly what they were doing and it was definitely a very high-rank intelligence security operation', and that the group which claimed responsibility for the attack was 'just a cover'.¹⁰⁵⁹⁰ That the caller did not speak good Arabic was one reason he handled this group's claim with reservations.¹⁰⁵⁹¹

5709. Mr Ben-Jeddo had not heard of the '*El-Nusra-wal-Jihad* in Greater Syria' group before he received the call, or ever again.¹⁰⁵⁹² As a seasoned journalist relying on his experience with claims of responsibility for assassinations, including 'on the Palestinian scene', he expected more than one organisation claiming responsibility for operations with the magnitude of the attack on Mr Hariri.¹⁰⁵⁹³ The caller's poor Arabic,¹⁰⁵⁹⁴ and that the claim came from a fundamentalist religious group surprised him and made him sceptical about the veracity of the claim.¹⁰⁵⁹⁵ Only when Al-Jazeera received the video record of the claim did he take it seriously.¹⁰⁵⁹⁶

5710. He also found it unusual that a 'radical religious group' claimed responsibility for Mr Hariri's assassination, as—in his view—it would have affected the Muslim, more specifically the Sunni public opinion on Islamist movements.¹⁰⁵⁹⁷ His opinion was that it would have been 'very embarrassing' to Islamist groups had Mr Hariri been killed by members of his own religious sect, Sunni Muslims, under the banner of Islam.¹⁰⁵⁹⁸

¹⁰⁵⁸⁸ Exhibit P497 (Al-Jazeera live broadcast of the attack on 14 February 2005), timestamps 00:22:29-00:23:37; exhibit 5D179 (Transcript of Al-Jazeera broadcast of 14 February 2005), pp 9-10; Ghassan Ben-Jeddo, T. 8 July 2015, p. 87.

¹⁰⁵⁸⁹ Exhibit P497, timestamps 00:31:47-00:36:01; exhibit 5D179, p. 15.

¹⁰⁵⁹⁰ Exhibit P497, timestamps 00:33:50-00:36:01; exhibit 5D179, p. 15.

¹⁰⁵⁹¹ Exhibit P497, timestamps 00:33:50-00:36:01; exhibit 5D179, p. 16.

¹⁰⁵⁹² Ghassan Ben-Jeddo, T. 8 July 2015, pp 83-84, 10 July 2015, pp 31-32, 86, 93.

¹⁰⁵⁹³ Ghassan Ben-Jeddo, T. 8 July 2015, pp 55-58, 84, T. 9 July 2015, pp 17-18, 21.

¹⁰⁵⁹⁴ See sub-section (B) (1) (b) 'First call to Al-Jazeera at 14:19', above.

¹⁰⁵⁹⁵ Ghassan Ben-Jeddo, T. 9 July 2015, pp 18-19, 21; exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), para. 56; exhibit P497, timestamps 00:33:50-00:36:01; exhibit 5D179, p. 16.

¹⁰⁵⁹⁶ Ghassan Ben-Jeddo, T. 9 July 2015, p. 19.

¹⁰⁵⁹⁷ Ghassan Ben-Jeddo, T. 10 July 2015, p. 29.

¹⁰⁵⁹⁸ Ghassan Ben-Jeddo, T. 10 July 2015, pp 34-35.

5711. The same night, Mr Ben-Jeddo hosted talk shows with guests including Mr Assaad Harmouche, a member of *Jamaa Islamiya*'s political bureau and a Lebanese MP.¹⁰⁵⁹⁹ The witness remembered that Mr Harmouche had doubted any religious group's responsibility for the attack.¹⁰⁶⁰⁰

5712. A few weeks later, Mr Ibrahim El-Masri, then the Deputy Secretary-General of the *Jamaa Islamiya*, expressed his doubts to Mr Ben-Jeddo that Mr Abu Adass had executed the attack on Mr Hariri, and excluded the involvement of any Islamic group, including al-Qaeda.¹⁰⁶⁰¹ According to Mr Ben-Jeddo, Mr El-Masri had a distinguished status in the *Jamaa Islamiya* and 'knew a lot of things about a lot of people', including Mr Abu Adass, who attended the mosque in the centre of Tariq-El-Jdideh—a locality in southern Beirut—where the *Jamaa Islamiya* was also present.¹⁰⁶⁰² Mr El-Masri described Mr Abu Adass to Mr Ben-Jeddo as a very modest and 'somehow naive' person, and therefore considered that he may have only been a 'scapegoat'.¹⁰⁶⁰³

5713. Witness 6, Al-Jazeera's editor who answered the first call to Al-Jazeera, before giving the receiver to Mr Ben-Jeddo, testified that she had not heard of the *El-Nusra-wal-Jihad-fi-Bilad-El-Sham* group before.¹⁰⁶⁰⁴ Witness 12 testified that after the call to Reuters she had informed her supervisor that 'an unknown person' had called to claim responsibility for the explosion.¹⁰⁶⁰⁵

5714. On the Prosecution's application—opposed by the Ayyash, Badreddine, Merhi and Oneissi Defence—the Trial Chamber declared Witness PRH620,¹⁰⁶⁰⁶ who works in counter-terrorism, as an expert under Rule 161, holding that she could provide some limited expert opinion evidence. The witness had prepared a lengthy report comparing the video with that of claims of responsibility for other attacks in Iraq, Saudi Arabia, Pakistan, Jordan, the UK, Tunisia, Russia, Kenya, Turkey, Indonesia, Qatar and Morocco. She had concluded that the attack was not carried out by jihadi

¹⁰⁵⁹⁹ Ghassan Ben-Jeddo, T. 10 July 2015, pp 27-29; exhibit 5D167 (Statement of Ghassan Ben-Jeddo, dated 5 and 12 September 2007), para. 82.

¹⁰⁶⁰⁰ Ghassan Ben-Jeddo, T. 10 July 2015, pp 31-32.

¹⁰⁶⁰¹ Ghassan Ben-Jeddo, T. 10 July 2015, pp 28, 53, 55-56, 58-59.

¹⁰⁶⁰² Ghassan Ben-Jeddo, T. 10 July 2015, pp 53, 55-56, 58, 81.

¹⁰⁶⁰³ Ghassan Ben-Jeddo, T. 10 July 2015, pp 55-56, 58.

¹⁰⁶⁰⁴ Witness PRH006, T. 23 June 2015, p. 47.

¹⁰⁶⁰⁵ Witness PRH012, T. 14 July 2015, p. 58.

¹⁰⁶⁰⁶ Ms Rita Katz.

groups and that Mr Hariri was not a target of such groups at the time of his death.¹⁰⁶⁰⁷ The Trial Chamber held that:

Although it is not the report of an academic, its author evidently has some considerable “specialized knowledge” in the area of analysing videoed jihadist claims of responsibility for attacks. The witness has carefully compared and contrasted various “genuine” jihadist video claims of responsibility with that aired on Al-Jazeera on 14 February 2005, concluding that the latter was not genuine.¹⁰⁶⁰⁸

5715. The Prosecution had intended that this witness would provide the necessary analytical opinion evidence from which the Trial Chamber could determine that the claim of responsibility was false. The witness had been listed to testify by video-conference link on a specified date.

5716. However, the witness did not testify in the case. Hence, the Prosecution did not lead its main evidence, albeit expert opinion evidence, that the claim of responsibility was false. As a consequence, and at the end of the trial, the Prosecution could only rely upon Mr Ben-Jeddo’s assertion that the group was fictitious—in combination with other circumstantial pieces of evidence—to establish that the videoed claim of responsibility was false.

(c) Mr Abu Adass’s background and associates

5717. The Trial Chamber heard evidence about Mr Abu Adass’s background, character and associates. The Prosecution and Sabra Defence argue that this shows he was a likely scapegoat, while the Oneissi and Merhi Defence submit that this made him the probable suicide bomber. Most of the evidence about Mr Abu Adass, notwithstanding that in large part it was admitted under Rule 158, appeared to be uncontested.

5718. The evidence, to recap, is that he was a Palestinian who had been born in Saudi Arabia and arrived in Lebanon, aged nine. He had no full-time job, but rather had worked in part-time positions after leaving school, in printing and in computing. The descriptions of his personality, from those

¹⁰⁶⁰⁷ Decision on expertise (Witness PRH620), para. 4.

¹⁰⁶⁰⁸ Decision on expertise (Witness PRH620), para. 13. It then authorised her to testify via video-conference link. Decision authorising video-link testimony (Witness PRH620).

who knew him, were of an isolated person with limited social contacts, introverted who could not drive and who had become increasingly religious in the period before his disappearance.¹⁰⁶⁰⁹

5719. In addition to the evidence detailed above describing who he was, the Trial Chamber received the following evidence relevant to whether he could have either been the suicide bomber or connected with the plot to kill Mr Hariri; it included some limited information about Mr Abu Adass's associates who allegedly had extremist connections.

5720. Witness 56 said that Mr Abu Adass had a friend with the given name of 'Khaled'.¹⁰⁶¹⁰ Mr Ramadan, however, never heard Mr Abu Adass talk about Mr Taha,¹⁰⁶¹¹ and did not himself know him.¹⁰⁶¹² According to an indictment issued by a Lebanese Military Court investigating judge in April 2007, Mr Taha had been allegedly involved in activities connected with al-Qaeda.¹⁰⁶¹³ The Trial Chamber notes here that it was an indictment, meaning an allegation of criminality, as opposed to a court judgement.

5721. In this respect, the Sabra Defence tendered an ISF summary report provided to the UNIIIC investigation, dated 24 September 2005 and headed 'Information about a suspect who was acquainted with Ahmad Abu Adass'. This investigatory report referred to connections between Mr Abu Adass and Mr Khaled Taha who had alleged al-Qaeda connections; the report stated that it 'is probable that the religious commitment of Abu Adas and Taha was very similar because they used to pray together which means that they both adopted the same ideology and doctrine'.¹⁰⁶¹⁴ The information, however, is in a summary report and the Trial Chamber received no evidence concerning the reliability or credibility of the information from which the summary was drawn.

¹⁰⁶⁰⁹ See sub-section (C) 'Mr Ahmad Abu Adass', above.

¹⁰⁶¹⁰ Exhibit 5D477 (Statement of Witness PRH056, 1 October 2005), pp 3-4, 6.

¹⁰⁶¹¹ Exhibit P1776 (Transcript of Ziad Ramadan's interview by UNIIIC, 22 May 2006), p. 48 (ERN 60005321).

¹⁰⁶¹² Exhibit 5D470 (Statement of Ziad Ramadan, 8 November 2005), p. 16; exhibit P1776 (Transcript of Ziad Ramadan's interview by UNIIIC, 22 May 2006), pp 20, 48 (ERNs 60005293, 60005321).

¹⁰⁶¹³ Exhibit 5D502 (Lebanese Military Court indictment), pp 4, 8. The indictment alleges that in 2004 Mr Taha was recruited to work for al-Qaeda to establish cells in Lebanon, and was involved in preparatory acts in carrying out terrorist attacks there.

¹⁰⁶¹⁴ Exhibit 5D251 (Investigative summary report about Khaled Taha), p. 5 (ERN 308323). The Trial Chamber admitted a portion of this document, namely two paragraphs from which the above evidence is drawn. The remainder of the document was received into evidence only to provide context for the admitted portion. Decision clarifying decision on admission of documents (Abu Adass), paras 9-12.

5722. According to Mr Ramadan, Mr Abu Adass had contact with Mr Husam Mohsen, also known as ‘Sheikh Husam’.¹⁰⁶¹⁵ Mr Ramadan thought that Mr Abu Adass knew Mr Mohsen as he had applied for a job at a print shop where Mr Mohsen was working.¹⁰⁶¹⁶ Witness 56 stated that ‘Sheikh Husam’ had worked at the Abded Printing press, where Mr Abu Adass had been employed a few months before his disappearance.¹⁰⁶¹⁷ The Trial Chamber received very limited evidence as to who Mr Mohsen was; in response to a suggestion by Sabra Defence counsel, Prosecution analyst Ms Kei Kamei agreed that Mr Mohsen was Mr Abu Adass’s religious mentor who guided him through ‘the process of religious transformation’.¹⁰⁶¹⁸ This was obviously something that was not within her personal knowledge and thus can only be given very limited weight.

5723. Mr Abu Adass also apparently had connections with Sheikh Ahmad El-Saneh, who was arrested in Lebanon in September 2004, in connection with an alleged plot to bomb the Italian embassy in Beirut in 2004.¹⁰⁶¹⁹ Witness 56 stated that Mr El-Saneh had employed Mr Adass at Saadeddine Itani printing press about six months before his disappearance.¹⁰⁶²⁰

5724. Ms Kamei believed that Mr Abu Adass had been hired by Mr El-Saneh at Al-Risala, a publishing house, and that Mr El-Saneh had been arrested shortly thereafter. Mr Macleod thought that Mr El-Saneh was a ‘religious scholar who was acquainted with Ahmad Abu Adass’ and that Mr Abu Adass did not work directly with Al-Risala but for another company that was part owned by it. The evidence of both comes from their interviews with witnesses and is not direct evidence of these facts.¹⁰⁶²¹

¹⁰⁶¹⁵ Exhibit P1776 (Transcript of Ziad Ramadan’s interview by UNIIC, 22 May 2006), pp 19-21 (ERN 60005292-ERN 60005294).

¹⁰⁶¹⁶ Exhibit P1776 (Transcript of Ziad Ramadan’s interview by UNIIC, 22 May 2006), p. 21 (ERN 60005294).

¹⁰⁶¹⁷ Exhibit 5D475 (Statement of Witness PRH056, 15 February 2005), pp 1-2.

¹⁰⁶¹⁸ Kei Kamei, T. 16 November 2015, p. 49.

¹⁰⁶¹⁹ Exhibit 5D491 (Response from Lebanese ISF to a UNIIC regarding the arrest of people linked to al-Qaeda in September 2004), pp 1-2. In the response, signed by Lieutenant Wissam Al-Hassan, dated 6/3/2006, Mr El-Saneh is identified as Ahmed Issam El-Saheh. In its overview, the report states that on ‘17/9/2004, and according to information made available to the Directorate General of the Internal Security Forces – Information Division, elements of a terrorist network were arrested, who were planning to bomb certain embassies and foreign interests in Lebanon by means of booby-trapped cars and planting explosives in some judicial and security centres. Investigations have been carried out with the detainees by the Information Division of the Directorate General of the Internal Security Forces.’

¹⁰⁶²⁰ Exhibit 5D477 (Statement of Witness PRH056, 1 October 2005), p. 5.

¹⁰⁶²¹ Kei Kamei, T. 16 November 2015, pp 105-106, 110; Alasdair Macleod, T. 13 July 2016, pp 48, 50.

5725. Following Mr Hariri's assassination, the Lebanese investigating authorities searched the Abu Adass family home and seized documents from the hard drive of a computer, including extracts from religious books, transcripts of religious sermons or lectures and audio files.

5726. The Trial Chamber received evidence that this was Mr Abu Adass's personal computer, although there is some inconsistency as to its provenance,¹⁰⁶²² shared only with Mr Abu Adass's younger sister who played games on it.¹⁰⁶²³ The evidence as to whether Mr Abu Adass or his family had an internet subscription—which was received under Rule 158—was conflicting, although receipts for an internet subscription in Mr Taysir Abu Adass's name were found in the family home.¹⁰⁶²⁴

5727. Some of the material from the computer contained passages referring to jihad,¹⁰⁶²⁵ while others included statements recommending practices associated with Sharia rule, such as blood money;¹⁰⁶²⁶ killing prisoners of war;¹⁰⁶²⁷ the necessity of only one true religion;¹⁰⁶²⁸ and marital violence described as 'wife-beating'.¹⁰⁶²⁹ It also included a text entitled 'Jihad: the neglected duty',

¹⁰⁶²² Mr Taysir Abu Adass stated that he had bought it for Mr Abu Adass. Exhibit 5D512 (Witness statement of Taysir Abu Adass, undated), pp 3, 5; exhibit P461 (Witness statements of Taysir Abu Adass, dated 19 January 2005 and 28 February 2005), ERN 50003488. Witness 56 said that Mr Abu Adass's paternal uncle had bought it for him. Exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), paras 31-32 (p. 3). That witness also said that Mr Abu Adass bought it himself. Exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 8. In another statement, Witness 56 was referred to a receipt for the purchase of a computer in the name of Mr Abu Adass. Exhibit P2132 (Statement of Witness PRH056, dated 1 July 2010), para. 123.

¹⁰⁶²³ Exhibit 5D510 (Statement of Witness PRH056, 15 February 2005), p. 1.

¹⁰⁶²⁴ Four receipts for payment for internet subscriptions dated between 1 January 2001 and 1 January 2005 were recovered from Mr Abu Adass's house after his disappearance, in the name of Mr Taysir Abu Adass. Exhibit P805 (List of items seized from the Abu Adass family home), p. 20; exhibit 4D563 (Internet subscription, Taysir Abu Adass, dated 1 January 2005), p. 1; exhibit 4D564 (Internet subscription, Taysir Abu Adass, dated 1 January 2001); exhibit 4D565 (Internet subscription, Taysir Abu Adass, dated 1 October 2004); exhibit 4D569 (Internet subscription, Taysir Abu Adass, dated 1 December 2004), p. 1. *But see*, exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 3; exhibit P761.1 (Transcript of television programme regarding Mr Abu Adass), p. 16; exhibit 5D512 (Witness statement of Taysir Abu Adass, undated), p. 3; exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 8; exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), paras 37-38. Mr Ziad Ramadan stated that Mr Abu Adass 'had no idea about Internet; he never told me he had access to Internet'. Exhibit P1776 (Transcript of Ziad Ramadan's interview by UNIIIC, 22 May 2006), p. 18 (ERN 60005291).

¹⁰⁶²⁵ Exhibits 5D485.24, 5D485.25, 5D485.26, 5D485.28, 5D485.29 (Extracts of books); exhibits 5D486.1, 5D486.2, 5D486.3, 5D487.3 (Transcripts of CD); exhibit 5D488 (Transcript of audio cassette). *See also* exhibit 5D485.4 (Extracts of book—'Jurisprudence of Sunnah', by Sayyid Saabiq).

¹⁰⁶²⁶ Exhibit 5D485.20 (Extracts of book—'Jurisprudence of Sunnah', by Sayyid Saabiq).

¹⁰⁶²⁷ Exhibits 5D485.3, 5D485.8 (Extracts of book—'Jurisprudence of Sunnah', by Sayyid Saabiq). One extract, exhibit 5D485.31 (Al Qassam leaflet), takes a more moderate position and sets out 'human rights' in Islamic Sharia, including certain rights attributable to non-Muslims.

¹⁰⁶²⁸ Exhibits 5D485.3, 5D485.5, 5D485.7 (Extracts of book—'Jurisprudence of Sunnah', by Sayyid Saabiq); exhibits 5D486.1, 5D486.3 (Transcripts of CD).

¹⁰⁶²⁹ Exhibit 5D485.21 (Extracts of book—'Jurisprudence of Sunnah', by Sayyid Saabiq).

by Muhammed Abdulsalaam Faraj. In a filing, the Oneissi Defence described him as an ‘Egyptian radical Islamist and theorist’.¹⁰⁶³⁰ The book’s cover describes him as having had a ‘prominent role’ in the preparations for killing the Egyptian President Anwar Sadat, and for which he was executed.¹⁰⁶³¹

5728. Additionally, the Lebanese investigating authorities retrieved various issues of a publication, *Al Battar Camp*, a periodical issued by the military committee of the Mujahidin in the Arabian Peninsula,¹⁰⁶³² and a document entitled ‘The Unequivocal Evidence on the Apostasy of the Saudi State’.¹⁰⁶³³ Two exhibits referred to by the Sabra Defence, exhibits 5D483 and 5D484, are photographs of book covers; in the absence of specific submission as to the nature of these exhibits, the Trial Chamber will not consider them any further.

5729. The Trial Chamber also received a document stating that the computer contained six photographs that ‘show some buildings similar to the buildings at the site of the explosion.’¹⁰⁶³⁴ Neither the Prosecution nor the Defence, however, tendered the photographs into evidence, meaning that the Trial Chamber cannot assess the veracity of this claim.

5730. Mr Taysir Abu Adass and Witness 56 both stated that Mr Abu Adass owned the items on the computer,¹⁰⁶³⁵ although Witness 56 stated that there had been no ‘sketch of the crime scene’ on his computer.¹⁰⁶³⁶ How the witness knew this was unexplained, but in any event the evidence is contained in a Rule 158 statement and the witness was not questioned about it. The Trial Chamber, accordingly, has given it no weight.

¹⁰⁶³⁰ Exhibit 4D572; F3659, Corrected Version of the Rule 154 Motion for the Amendment of the Rule 128 Exhibit List and for the Admission of Documents related to Mr Ahmed Abu Adass filed on 11 May 2018, 29 June 2018.

¹⁰⁶³¹ Exhibit 4D572; (‘Engineer Muhammad Abdulsalaam Faraj – may God have mercy on him – had a prominent role in the preparations for the killing of the damned agent of the Zionists – Anwar “the Jew” – and God generously granted him his wish for martyrdom in His cause. He was executed for his role in the assassination of the damned Sadat, along with Khalid al-Islambouli and his noble brethren – may God have mercy upon them. We consider them to be martyrs and we bear witness to none but God’).

¹⁰⁶³² Exhibit P810 (Documents related to list of items seized from the Abu Adass family home), pp 56, 71; exhibit 4D577 (Copy of *Al-Battar* military periodical); exhibit 4D578 (Communications Security), exhibit 4D579 (Military Studies—Covert Work Group).

¹⁰⁶³³ Exhibit 4D574.

¹⁰⁶³⁴ Exhibit 5D481 (Information summary, dated 3 March 2005).

¹⁰⁶³⁵ Exhibit 5D512 (Witness statement of Taysir Abu Adass, undated), p. 3 (questioned as to the ownership of ‘the computer, the CDs and the religious books most of which are related to Salafi doctrines’); exhibit 5D474 (Statement of Witness PRH056, 14 February 2005), p. 4.

¹⁰⁶³⁶ Exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 6.

5731. According to Witness 56, Mr Abu Adass thought that ‘whoever was involved in suicide missions was insane’,¹⁰⁶³⁷ but additionally that he had never talked about suicide bombers.¹⁰⁶³⁸ This witness also stated that Mr Abu Adass never spoke of his friends leaving the country for jihad,¹⁰⁶³⁹ and had never thought of going to Iraq.¹⁰⁶⁴⁰ However, the witness also stated that Mr Abu Adass spoke about jihad for Palestine.¹⁰⁶⁴¹

5732. His father, Mr Taysir Abu Adass, described him as ‘a person who never believed in violence.’¹⁰⁶⁴² Mr Ben-Jeddo testified that Mr El-Sayyed told him that Mr Abu Adass was generally known to have become a fundamentalist.¹⁰⁶⁴³ Later the information became publicly available in the media.¹⁰⁶⁴⁴

2. Submissions

5733. The Prosecution alleges that the claim of responsibility was false, while the Merhi and Oneissi Defence claim that it was genuine. The Sabra Defence agrees that the claim was false, but argues that another group, *al-Ahbash*, was responsible. It agrees that Mr Abu Adass was selected as a scapegoat because of his background and character, but argues that *al-Ahbash* was responsible. These submissions, and the Sabra Defence’s other arguments about *al-Ahbash*’s alleged involvement in Mr Abu Adass’s disappearance, are considered below at paragraphs 5837-5842.

5734. The Prosecution, relying on Mr Ben-Jeddo’s testimony alleges that Mr Abu Adass falsely claimed responsibility on behalf of a fictional fundamentalist group, *El-Nusra-wal-Jihad-fi-Bilad-El-Sham*, the ‘Society for Support and Jihad in Greater Syria’.¹⁰⁶⁴⁵ It further submits, referring to the evidence of Witness 6 and Witness 12, that ‘Unsurprisingly, the invisibility of this group was

¹⁰⁶³⁷ Exhibit 5D476 (Statement of Witness PRH056, 17 February 2005), pp 7-8.

¹⁰⁶³⁸ Exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), paras 89-90 (p. 7); exhibit 5D474 (Statement of Witness PRH056, 14 February 2005), p. 4.

¹⁰⁶³⁹ Exhibit 5D477 (Statement of Witness PRH056, 1 October 2005), p. 6.

¹⁰⁶⁴⁰ Exhibit P2132 (Statement of Witness PRH056, dated 1 July 2010), para. 19.

¹⁰⁶⁴¹ Exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), paras 91-92 (pp 7-8).

¹⁰⁶⁴² Exhibit 5D515 (Statement of Taysir Abu Adass, dated 17 February 2005), p. 1.

¹⁰⁶⁴³ Ghassan Ben-Jeddo, T. 10 July 2015, pp 26-27, 55. Mr El-Sayyed did not testify about as to whether he had discussed this with Mr Ben-Jeddo.

¹⁰⁶⁴⁴ Ghassan Ben-Jeddo, T. 10 July 2015, pp 26-27.

¹⁰⁶⁴⁵ Prosecution final trial brief, paras 1109-1113.

confirmed by other witnesses’.¹⁰⁶⁴⁶ Witnesses who knew Mr Abu Adass provided evidence that his appearance in the video was unusual, showing signs of significant stress and coercion.¹⁰⁶⁴⁷

5735. The Prosecution also argues that Mr Abu Adass was selected as a scapegoat because his religious approach and appearance fitted the stereotype of a person who would believably harbour the motives expressed in the video. The language used in the false claim made explicit reference to Mr Hariri’s connection to the Saudi regime, meaning that a scapegoat with apparent ties to Saudi Arabia was desirable.¹⁰⁶⁴⁸ As for the items seized at the Abu Adass house—argued by the Defence to show signs of radicalism—the Defence cannot show that Mr Abu Adass accessed them, or ‘who in that household accessed these materials’, and even if Mr Abu Adass did so, what impact it had upon him.¹⁰⁶⁴⁹

5736. The success of the plot depended on the driving skill of the suicide bomber, whereas Mr Abu Adass could not drive.¹⁰⁶⁵⁰ Mr Abu Adass was making plans for his future life, which included marriage, and was introverted, apolitical and non-violent.¹⁰⁶⁵¹

5737. The Ayyash Defence observes that while the amended consolidated indictment alleges that Mr Ayyash’s culpable acts include communication with Mr Merhi in relation to the false claim of responsibility, the Prosecution’s final trial brief does not do so, and the Prosecution led no evidence upon this issue.¹⁰⁶⁵²

5738. The Merhi Defence argues that the claim was not false.¹⁰⁶⁵³ It points out that the Prosecution presented no evidence to support its theory that the video and letter ‘constituted a *false* claim of responsibility’.¹⁰⁶⁵⁴ It notes that the Prosecution failed to call an expert witness, Ms Katz (Witness PRH620) to verify the statements made in the video tape, relying instead on Mr Ben Jeddo’s ‘factual and non-expert’ evidence. His evidence has no probative value, as the Prosecution had implicitly acknowledged that Ms Katz’s ‘expertise was required so as to enable the Chamber

¹⁰⁶⁴⁶ Prosecution final trial brief, para. 1112.

¹⁰⁶⁴⁷ Prosecution final trial brief, paras 1105-1106.

¹⁰⁶⁴⁸ Prosecution final trial brief, para. 529.

¹⁰⁶⁴⁹ Prosecution closing submissions, T. 13 September 2018, p. 51.

¹⁰⁶⁵⁰ Prosecution final trial brief, paras 1100-1101.

¹⁰⁶⁵¹ Prosecution final trial brief, paras 1102-1104.

¹⁰⁶⁵² Ayyash Defence final trial brief, para. 714.

¹⁰⁶⁵³ Merhi Defence final trial brief, para. 15.

¹⁰⁶⁵⁴ Merhi Defence final trial brief, para. 535.

to arrive at its legal and factual findings on the false nature of the claim, which is an essential element of the crimes of which Merhi stands accused'.¹⁰⁶⁵⁵

5739. Further, evidence of Mr Abu Adass's background shows that the claim was not false. It was 'unusual' for a religious person to have the materials found on Mr Abu Adass's computer.¹⁰⁶⁵⁶ The statements of Abu Adass's family members and friends that he was non-violent and apolitical lack probative value in light of their interest in seeing Mr Abu Adass exonerated,¹⁰⁶⁵⁷ and the fact they were not cross-examined by the Defence.¹⁰⁶⁵⁸

5740. The Oneissi Defence submits that Mr Abu Adass's face was 'much thinner' than the last time the witness saw him, that his skin colour was 'unusual', and that his beard was visibly thicker and in a 'different style'—which shows that the videotape was filmed after 17 January 2005.¹⁰⁶⁵⁹ It also submits that Mr Abu Adass's increased religious commitment is consistent with the claim of responsibility being genuine.¹⁰⁶⁶⁰ The documents found on his computer show that he belonged to the 'extremist Wahhabi Salafi school of thought', and was interested in al-Qaeda.¹⁰⁶⁶¹ Witness 56 tried to hide Mr Abu Adass's interest in jihad and extreme religious ideology from the Lebanese investigation.¹⁰⁶⁶²

5741. The Oneissi Defence also argues that 'a number of elements support that RAMADAN was experimenting with explosives with Abu-Adass' assistance' including that Mr Abu Adass 'had been collecting information about bombs and explosives for RAMADAN'.¹⁰⁶⁶³ This submission, however, relies on documents that are not in evidence. Further, associates of Mr Abu Adass, such

¹⁰⁶⁵⁵ Merhi Defence final trial brief, para. 537.

¹⁰⁶⁵⁶ Merhi Defence closing submissions, T. 18 September 2018, p. 56.

¹⁰⁶⁵⁷ Merhi Defence final trial brief, para. 477.

¹⁰⁶⁵⁸ Merhi Defence closing submissions, T. 18 September 2018, pp 50-51.

¹⁰⁶⁵⁹ Oneissi Defence final trial brief, para. 550, relying upon Witness 56's statements.

¹⁰⁶⁶⁰ Oneissi Defence closing submissions, T. 20 September 2018, pp 32, 46.

¹⁰⁶⁶¹ Oneissi Defence final trial brief, paras 268-271.

¹⁰⁶⁶² Oneissi Defence final trial brief, heading ii., p. 96, paras 272-277.

¹⁰⁶⁶³ Oneissi Defence final trial brief, para. 299 (footnotes omitted). ('A number of elements support that RAMADAN was experimenting with explosives with Abu-Adass' assistance. A UNIIC witness stated that during his last visit to Abu-Adass' house, Abu-Adass had told him that RAMADAN had studied chemistry and that could make C4 explosives. It seems that Abu-Adass had been collecting information about bombs and explosives for RAMADAN and apparently intended to approach wealthy acquaintances for fund-raising to help RAMADAN's project. This same witness even affirmed that Abu-Adass was performing tests on explosives with RAMADAN. RAMADAN's knowledge about explosives is also confirmed by the "AQ13" group member Hani Al-Shanti.')

as his former employer, Sheikh Ahmad El-Saneh, one of his cousins,¹⁰⁶⁶⁴ Mr Ramadan,¹⁰⁶⁶⁵ Mr Zaaroura¹⁰⁶⁶⁶ and Mr Taha,¹⁰⁶⁶⁷ were connected to ‘violent ideologies’.¹⁰⁶⁶⁸

5742. The Sabra Defence submits that the fact that Mr Abu Adass did not personally claim responsibility in the video, but only in the accompanying letter, shows that he was tricked into making the confession.¹⁰⁶⁶⁹

3. Findings

5743. The Trial Chamber has found that there is no forensic evidence linking Mr Abu Adass to the scene of Mr Hariri’s assassination.¹⁰⁶⁷⁰ Neither his remains nor traces of his DNA were recovered from the crime scene. This means that there is no *direct* evidence linking him with the crime scene. The only evidence is his appearance on the video, which it is noted, provides no details of the nature of the attack. The Trial Chamber has also found that the explosives were detonated by an unidentified suicide bomber, driving the Canter.¹⁰⁶⁷¹

5744. The issue therefore is whether the contents of the claim of responsibility—in the letter and video—in combination with the evidence of Mr Abu Adass’s background and character, support a finding that the claim of responsibility was false. It is a material fact that must be proved beyond reasonable doubt.

5745. Mr Taysir Abu Adass, Witness 56 and Mr Ziad Ramadan each stated that in the video Mr Abu Adass had a changed appearance and a nervous demeanour.

5746. Their evidence is internally consistent on knowing Mr Abu Adass well and being aware of his appearance shortly before his disappearance. They were undoubtedly horrified when they viewed the video and, as a normal reaction to viewing it, they would have been expected to have scrutinised his comportment, including his clothing. In noting this, though, the Trial Chamber is

¹⁰⁶⁶⁴ Oneissi Defence final trial brief, para. 289.

¹⁰⁶⁶⁵ Oneissi Defence final trial brief, para. 298; Oneissi Defence closing submissions, T. 20 September 2018, p. 40.

¹⁰⁶⁶⁶ Oneissi Defence final trial brief, para. 539, *see also* para. 531.

¹⁰⁶⁶⁷ Oneissi Defence final trial brief, para. 252; Oneissi Defence closing submissions, T. 20 September 2019, pp 34, 40.

¹⁰⁶⁶⁸ Oneissi Defence final trial brief, para. 289.

¹⁰⁶⁶⁹ Sabra Defence final trial brief, paras 549-550.

¹⁰⁶⁷⁰ *See* chapter VI ‘Explosion on 14 February 2005’, (F) (3) (c) (iv) ‘Findings’.

¹⁰⁶⁷¹ *See* chapter VI ‘Explosion on 14 February 2005’, (F) (2) (f) (iii) ‘Findings’.

also cognisant that they may have been downplaying his potential involvement in the attack. And, as the evidence was admitted under Rule 158, is not corroborated by any witness who testified, and their evidence is generally contested, the Trial Chamber has given it very limited weight on this point.

5747. However, given the nature of what Mr Abu Adass was saying, namely that he was informing the world that a jihadist group had killed Mr Hariri, someone in those novel circumstances might have appeared nervous, and not just to those who knew him. The Trial Chamber is prepared to accept that his physical appearance between his disappearance and his appearance in the video might have changed. The Trial Chamber emphasises, however, that it has no expertise in assessing the demeanour of video-taped would-be suicide bombers, or those involved in making claims—false or otherwise—of Mr Hariri’s, or anyone else’s, assassination.

5748. Significantly, in the video Mr Abu Adass does not assert responsibility for having killed Mr Hariri himself. He does not claim to be a suicide bomber, but rather said, as if operating as a spokesperson for the group:

we have resolved, having placed our trust in God Almighty, to inflict just punishment upon the agent of that regime and its cheap tool in Greater Syria, the sinner and holder of ill-gotten gains Rafiq Hariri, through the execution of a resounding martyrdom operation.

5749. The Trial Chamber notes from its own experience that the video appears staged to appear as if Mr Abu Adass were responsible, in the manner of similar videos that have been broadcast after suicide bombing attacks. In this respect it could be viewed as ambiguous; he is not claiming to be responsible but is speaking on behalf of the group that is claiming responsibility.

5750. Mr Abu Adass, in the video, provided neither a date nor location for the attack. Nor did he describe the attack itself. He does not claim to be the suicide bomber. The accompanying letter, however, precisely referred to ‘a suicide operation carried out by the Mujahid, Ahmad Abou-Adass, who raised the banner of support and jihad in Greater Syria on Monday 14 February 2005 AD, 5 Muharram 1426 AH, in Beirut’.

5751. The only conclusion available from the combination of these two pieces of evidence, in tandem with the evidence of the date of Mr Abu Adass’s reported disappearance, is that the video

was made some time in advance of the attack. The letter, however, was prepared—on an unknown date—in anticipation of its dissemination on an identified date after the attack. The video of itself does not provide proof that, when it was made, those in the conspiracy to kill Mr Hariri had decided to kill him with suicide bomber detonating explosives concealed on a light truck.

5752. In the video, Mr Abu Adass is sitting in front of a banner displaying the name of the group, *El-Nusra-wal-Jihad-fi-Bilad-El-Sham*. Consistent with this, in both the letter accompanying the video tape and the statements read to the media outlets in the telephone calls, the group claimed responsibility for the attack.

5753. The only evidence about the existence or otherwise of this group, as noted, comes from Mr Ben-Jeddo, who testified that it had not been heard of before, or after, the claim of responsibility.¹⁰⁶⁷² Witness 6, the Al-Jazeera editor, had also never heard of it, but this was not explored with her, and her few words on this topic can thus be given very limited weight. Witness 12, who took the call at Reuters described the group as ‘unknown’. The Prosecution’s submission that ‘unsurprisingly’ these witnesses confirmed the group’s invisibility is stretching the evidence.

5754. Mr Ben-Jeddo’s evidence, therefore, it is stressed, is the only ‘direct’ proof that the group is fictitious. The Trial Chamber did not hear any evidence of Mr Ben-Jeddo’s specific expertise on this point, but is prepared to accept, based upon his lengthy experience as a journalist in the region at the time, that the group was generally unknown. It also accepts his evidence that the group was never heard of again, at least by those who were likely to have known about it if it indeed existed, such as Al-Jazeera journalists working in the region.

5755. Additionally, and the Trial Chamber notes that this is a matter of common knowledge, Mr Ben-Jeddo noted that often more than one organisation claims responsibility for the same attack. He also provided cogent reasons why in his view the group was fictional. In this respect, his evidence can be viewed as reliable.

5756. This leans towards a finding that the group was fictional. Further, the evidence of Mr Abu Adass’s character and background does not detract from this potential conclusion. It is uncontested

¹⁰⁶⁷² Ghassan Ben-Jeddo, T. 8 July 2015, pp 83-84, T. 10 July 2015, p. 93.

that Mr Abu Adass became increasingly religiously committed at least a year—although the evidence is also of the ‘years’—before the assassination, including growing a beard, wearing Islamic clothing and attending the mosque five times a day. He was also described as being ‘introverted’; however, in the Trial Chamber’s view, nothing particular turns on this. In the absence of any expert evidence on this point—such as on the psychological profiling of those claiming responsibility for similar attacks, whether by a suicide bomber or someone else—no inference can be drawn one way or another connecting someone having an introverted personality with potential jihadi or suicide bombing tendencies.

5757. Several possibilities arise. They include that Mr Abu Adass voluntarily joined a fictitious jihadi group—or perhaps thought that he had joined a real one—and freely participated in a video claiming responsibility for an attack before it had occurred. Another is that he was lured into making the video, for unknown reasons. Alternatively, he was forced to do so. The evidence is insufficient to allow the Trial Chamber to draw any positive conclusions either way.

5758. There is no evidence that he had any animosity towards Mr Hariri or Sunni Muslims or any sub-branch of this branch of Islam or any intention of committing crimes against either. But there is some evidence that he had had an interest at least in fundamentalist Islamic teachings and perhaps jihadi activities.

5759. In February 2005, the Lebanese investigating authorities seized documents and a computer from the Abu Adass household. The preponderance of evidence allows the Trial Chamber to find that the computer was used, almost exclusively, by Mr Abu Adass. Among the documents seized were materials that referred to jihad, and to more extremist ideas. As this part of the witnesses’ evidence is uncontroversial,¹⁰⁶⁷³ the Trial Chamber finds no reason to discount Mr Abu Adass’s father’s statement that Mr Ahmad Abu Adass owned the computer and Witness 56’s statement that he used it and only shared it with his younger sister, Rania, who played games on it.

5760. Witness 56 denied that Mr Abu Adass had any jihadi intentions, but also provided evidence that suggested that Mr Abu Adass was sympathetic to jihad in Palestine. The witness’s statement in this respect, however, could be viewed as self-serving and as it was untested the Trial Chamber can give it little weight. Mr Ben-Jeddo testified that Mr Abu Adass was known to have become a

¹⁰⁶⁷³ See para. 287.

fundamentalist. However, he had heard this from Mr El-Sayyed and its provenance and reliability is uncertain. And there is a difference between someone holding fundamentalist views and deciding to end their own life and that of many others in an explosion.

5761. The Trial Chamber believes, both from the evidence of what was found in the Abu Adass house and from common experience, that it is certainly possible that Mr Abu Adass—as a young Palestinian with a relatively newfound strong religious commitment—had some interest in what could be described as ‘extremist’ ideas. At least in the sense that the views were non-mainstream. However, this does not of itself support the inference that he personally wanted to commit jihad, and in particular by murdering Mr Hariri and many others.

5762. The Trial Chamber here also disregards the Oneissi Defence’s assertion at paragraph 299 of its final trial brief connecting Mr Abu-Adass and Mr Ramadan with explosives. The information supporting this submission is contained in annexes to an Oneissi Defence response to the Prosecution’s motion to admit Mr Ramadan’s statements into evidence.¹⁰⁶⁷⁴ These annexes include statements that the Trial Chamber declined to receive into evidence; these were the subject of motions by the Sabra Defence to have them admitted.¹⁰⁶⁷⁵ The submission is therefore based entirely on material not in the trial record and should not have been made.¹⁰⁶⁷⁶

¹⁰⁶⁷⁴ F2622, Defence for Hussein Hassan Oneissi Response to the “Prosecution Motion to Admit Two Statements and an Interview Transcript of PRH103”, Dated 25 May 2016, 9 June 2016, Annexes F-H.

¹⁰⁶⁷⁵ The Sabra Defence made several unsuccessful attempts to tender the statements into evidence, in filings: F3024, Motion for the Admission of Documents Relating to the Claim of Responsibility – Character, religious beliefs and associates of Ahmed Abu Adass with updated annexes, 7 March 2007, para. 2, Annex A, items 7, 64; F3057, Motion for the Admission of Documents Relating to the Claim of Responsibility – The Selection of Ahmed Abu Adass, 29 March 2017, para. 2, Annex A, items 12, 58; F3165, Motion for the Admission of Documents and Statements Relating to Ahmed Abu Adass – The Successful Recruitment of Ahmed Abu Adass, 31 May 2017, para. 2, Annex A, item 18; F3205, Motion for the Admission of Documents and Statements Relating to Ahmed Abu Adass – The Video and the Letter: The False Claim of Responsibility, 30 June 2017, para. 2, Annex A, items 1, 31; F3251, Motion for the Admission of Documents Relating to the Claim of Responsibility – The Fax, 26 July 2017, para. 2, Annex A, item 2; F3411, Sabra Defence Response to “Prosecution Renewal of Application under Rule 158 in respect of Witness PRH056”, 13 November 2017, paras 42-43; F3413, Notice of Amendment of Annex B of Defence Filing of 13 November 2017 (F3411), 16 November 2017, Annex, items 11, 81, 164. The Trial Chamber denied the admission into evidence of these statements in its decisions: Decision on admission of documents (Abu Adass), paras 83-106, disposition; Sabra Defence second bar table decision (Abu Adass selection), paras 2, 8, 17-18, 24-30, disposition; Sabra Defence fourth bar table decision (Abu Adass recruitment), paras 10, 15, disposition; Sabra Defence fourth bar table decision (The false claim of responsibility), paras 4, 15; Sabra Defence sixth bar table decision (Abu Adass fax), paras 12, 14; Summary dismissal of Sabra Defence application to admit 224 documents.

¹⁰⁶⁷⁶ Oneissi Defence final trial brief, para. 299, referring to F2622, Defence for Hussein Hassan Oneissi Response to the “Prosecution Motion to Admit Two Statements and an Interview Transcript of PRH103”, Dated 25 May 2016, 9 June 2016, para. 11, Annexes F-H.

5763. Nor does pointing to friends or acquaintances of Mr Abu Adass with allegedly radical inclinations show that Mr Abu Adass was a likely suicide-bomber. A Lebanese Military Court indictment dating from April 2007—not a judgment, it is stressed—alleges that Mr Khaled Taha was involved in activities associated with al-Qaeda.¹⁰⁶⁷⁷

5764. But, even if the allegations are correct, it does not show anything about Mr Abu Adass. Further, the Trial Chamber did not receive any reliable evidence that Mr Ahmad El-Saneh, Mr Abu Adass's apparent former employer, was involved in an alleged plot in 2004 to attack the Italian embassy in Beirut. The sole basis for this assertion by the Oneissi Defence was Witness 56's statement, which is not a reliable source for this type of information.¹⁰⁶⁷⁸

5765. The remainder of the evidence that the Oneissi Defence pointed to as supporting the alleged radical tendencies of Mr Abu Adass's associates was either not admitted into evidence¹⁰⁶⁷⁹—and thus should not have been referred to in closing submissions—or was not admitted for the truth of its contents.¹⁰⁶⁸⁰ There is thus insufficient evidence on the record from which the Trial Chamber could make these particular findings, as urged upon it by the Defence.

5766. Furthermore, other evidence about Mr Abu Adass's background supports the conclusion that he was not the suicide bomber. The evidence that Mr Abu Adass had never learned how to drive and did not have a car is consistent and not challenged.

5767. The Trial Chamber has found that the suicide bomber transported the explosives to the crime scene in a Mitsubishi Canter.¹⁰⁶⁸¹ Mr Abu Adass thus could not perform one of the key functions of the suicide bomber, namely driving a light truck, and careering it into the path of a convoy as it slowed to pass the St Georges Hotel. It is highly unlikely that he would have been entrusted with this critical task if he were a novice driver who had learnt to drive a light truck only

¹⁰⁶⁷⁷ The judgment was not tendered into evidence. Counsel wished to rely upon its content in the same manner as the judgments of international courts and tribunals would be used. Oneissi Defence closing submissions, T. 20 September 2018, pp 34-39. The Presiding Judge stated that the Trial Chamber could take judicial notice of the contents of a judgment. However, the Trial Chamber was not provided with any judgment from which such judicial notice could be taken.

¹⁰⁶⁷⁸ Oneissi Defence final trial brief, para. 289.

¹⁰⁶⁷⁹ Oneissi Defence final trial brief, para. 299.

¹⁰⁶⁸⁰ Oneissi Defence final trial brief, para. 290, referring to exhibit 5D254 (UNIIC internal memorandum on *al-Ahbash*). See also Sabra Defence second bar table decision (Abu Adass selection), para. 40 (holding that exhibit 5D254 was admitted for the limited purpose of assessing the quality of the UNIIC investigation).

¹⁰⁶⁸¹ See para. 1448.

between his disappearance on Sunday 16 January 2005 and the attack on Monday 14 February 2005.

5768. Mr Abu Adass's lifestyle at the time was also not necessarily consistent with someone planning to carry out a suicide mission soon after his departure from his home on Sunday 16 January 2005. Witness 56 and Mr Ramadan both stated that at the time he disappeared, he was considering marriage. Mr Abu Adass had also recently begun a new and well-paid work project, and seemed happy with that development. These portions of the witnesses' evidence are unchallenged. Therefore, the Trial Chamber has no reasons to discount these statements by people who knew him well, although untested in cross-examination,¹⁰⁶⁸² and considers that such planning for his future is a further but limited factor weighing against him being a suicide bomber.

5769. Finally, the Trial Chamber agrees with the Prosecution and the Sabra Defence that Mr Abu Adass was an ideal scapegoat. As well as his religious background, he was, it appears, probably an introverted young man, aged only twenty-two at the time of the assassination, who still received pocket money from his father. On this limited uncontroversial point,¹⁰⁶⁸³ the Trial Chamber sees no reason to disregard his father's statement. It would appear that he could have been susceptible to influence from strong religious outsiders.

5770. After carefully considering all the circumstances outlined above, the Trial Chamber is of the view that it can be satisfied beyond reasonable doubt that the claim of responsibility for the attack as shown in the video, letter and telephone calls to Reuters and Al-Jazeera, was a false claim. The most likely explanation is that those responsible for Mr Hariri's assassination attempted to turn attention away from themselves by diverting it to someone claiming a hatred of Mr Hariri based upon his connections with Saudi Arabia, ostensibly to avenge the deaths of those who Saudi security forces had killed.

5771. The Trial Chamber, however, cannot positively determine from the totality of the evidence whether Mr Abu Adass was forced to participate in making the video, or alternatively, whether he did so voluntarily. Either is possible. Given that Mr Abu Adass does not claim to be the suicide bomber, he could have been tricked into making the video. On the other hand, he could have agreed

¹⁰⁶⁸² See para. 287.

¹⁰⁶⁸³ See para. 287.

to do it without needing to have been duped. The content of the video does not permit the Trial Chamber to draw an inference one way or the other.

5772. The Trial Chamber also cannot make any explicit finding about Mr Abu Adass's fate; he is most likely deceased, and most probably, it would appear, from soon after his disappearance. There is no evidence on the record from which the Trial Chamber can make a definite finding about what happened to him, or when.

5773. The Trial Chamber finds that Mr Abu Adass was not the suicide bomber and his disappearance is consistent with him being used to set up a false claim of responsibility for the attack by those who perpetrated it. The evidence also suggests that the group *El-Nusra-wal-Jihad-fi-Bilad-El-Sham* was fictitious, meaning that both aspects of the false claim were indeed false.

5774. Even if the conclusion that Mr Abu Adass was not the suicide bomber is incorrect, the findings of criminal responsibility against Mr Merhi, Mr Oneissi and Mr Sabra would not change. Whether or not Mr Abu Adass was the suicide bomber, there is still insufficient evidence to prove beyond reasonable doubt their participation in the counts charged in the amended consolidated indictment.

H. The non-covert nature of the use of the Purple mobiles

5775. Another strand in the Prosecution's case is of Mr Merhi, Mr Oneissi and Mr Sabra using their personal mobiles to communicate—at least by mobile telephone—in executing the false claim of responsibility. The Purple mobiles are thus alleged neither to be 'network' mobiles nor covert in nature. This is in contrast to the closed Red, Blue and Green networks, and the 'semi-covert' Yellow network.¹⁰⁶⁸⁴

¹⁰⁶⁸⁴ Mr Platt, the Prosecution expert in the identification and organisation of covert communication network, classified the Yellow network as 'semi covert', because it was 'on the lower end of the scale' of covertness. The Trial Chamber, however, has considered that a network is or is not covert—based on Mr Philips's and Mr Platt's evidence as to the general characteristics of a mobile network—and that a label of 'semi-covert' did 'not assist the Trial Chamber in its analysis of the Yellow mobiles'. The Trial Chamber has found that, at least the four 'core' Yellow mobiles operated as a type of covert network. See the analysis in chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles'.

1. Evidence

5776. A starting point here is how the investigation came to uncover the potential role of the Purple mobile users in the conspiracy to murder Mr Hariri. The investigations commenced on the afternoon of the attack, yet the UNIIIC did not discover the potential involvement of the Purple mobiles in the attack until November 2008.

5777. The history of the discovery of the colour-coded networks is set out in an investigators' note prepared by Mr Donaldson in 2012, and tendered into evidence by the Oneissi Defence.¹⁰⁶⁸⁵ In relation to the Purple mobiles, the note explains that when investigating mobile activities that could have been linked to the attack, the Lebanese ISF discovered that Purple 231 was last active on 14 February 2005 with only one incoming call the following day.¹⁰⁶⁸⁶

5778. The ISF discovered that its primary contact on 14 February 2005 was with Purple 018, which was 'located in the vicinity of the different phone booths' from where the calls to Reuters and Al-Jazeera were made. Purple 018 was also in contact with another mobile, Purple 095, which was 'in the vicinity of the tree in ESCWA square' from where the Al-Jazeera's staff collected the video tape. Both Purple 018 and Purple 095 were last used on 16 February 2005.¹⁰⁶⁸⁷

5779. Mr Donaldson testified that UNIIIC did not discover the Purple mobiles until it received this information from the ISF in November 2008, long after receiving the information on the network mobiles. From information obtained in June 2008 in relation to Mr Ayyash's personal mobiles, which had been in contact with Purple 231, the mobiles that were later called the Purple phones could have become possible numbers of interest to the investigation.¹⁰⁶⁸⁸ The Purple mobiles were not discovered until long after the other networks, when the UNIIIC received information from its unspecified 'partner agencies' involved in the telecommunications analysis.¹⁰⁶⁸⁹

¹⁰⁶⁸⁵ Exhibit 5D418 (Investigator notes – Finding the Communication Networks).

¹⁰⁶⁸⁶ Exhibit 5D418, para. 44 (a).

¹⁰⁶⁸⁷ Exhibit 5D418, para. 44 (b)-(c).

¹⁰⁶⁸⁸ Andrew Donaldson, T. 19 September 2017, pp 17-22; exhibit 5D418, paras 4, 44-45. Here Mr Donaldson referred to Mr Ayyash's personal mobile 170, however it was mobile 091 and mobile 935 which had contacts with Purple 231. Exhibit P1262 (Call sequence table of mobile 170); exhibit P1256 (Call sequence table of mobile 091); exhibit P1261 (Call sequence table of mobile 935).

¹⁰⁶⁸⁹ Andrew Donaldson, T. 19 September 2017, pp 17-22.

5780. Mr Donaldson was confident that the UNIIIC did not do any analysis on, for instance, Purple 095 or Purple 018, before November 2008. He did not rule out the possibility that, based on other information that the UNIIIC received in June 2008 in relation to specific private mobiles linked to Purple 231, mobiles that were later termed Purple mobiles could have become possible numbers of interest.¹⁰⁶⁹⁰

5781. The Prosecution's cell site expert, Mr Philips, argued that not all mobiles in a network are necessarily discarded upon a mission's completion. The closer a mobile is to the crime, the higher its 'forensic visibility', in other words, the risk that its call activity will be associated with the crime,¹⁰⁶⁹¹ and thus the greater the need to discard it.¹⁰⁶⁹² Conversely, in his view, a mobile with low forensic visibility might not be discarded,¹⁰⁶⁹³ for example, a mobile with a high volume of calls that was active near the crime scene would be highly visible.¹⁰⁶⁹⁴

5782. Mr Platt also provided some expert opinion evidence on this. The Trial Chamber declared him qualified to provide expert opinion on matters connected with the surveillance of criminal networks, and the identification and organisation of covert communication networks.¹⁰⁶⁹⁵ This included evidence on the group of Purple mobiles.¹⁰⁶⁹⁶

5783. In Mr Platt's opinion, at the time of their activity around the mosque—in searching for a candidate to make the false claim—no consideration was given to covertness or to the possibility of being detected by merely going there. At that time, they may have thought they could not find a suitable subject and needed to go elsewhere. Further, they did not think that the investigation would have found 'all these phone calls and put this together'.¹⁰⁶⁹⁷ It was 'a mistake by them'. 'Criminals ... don't always think of everything'.¹⁰⁶⁹⁸

5784. However, according to Mr Platt, after Monday 14 February 2005—when the mobiles attributed to Mr Sabra and Mr Oneissi were in close proximity of the tree and of payphones used

¹⁰⁶⁹⁰ Andrew Donaldson, T. 19 September 2017, pp 21-22.

¹⁰⁶⁹¹ John Edward Philips, T. 31 August 2016, pp 16-17. *See also* chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles', (B) (2) (d) 'Closure of the network'.

¹⁰⁶⁹² John Edward Philips, T. 31 August 2016, p. 42.

¹⁰⁶⁹³ John Edward Philips, T. 31 August 2016, pp 40-42, T. 6 September 2016, pp 13-14.

¹⁰⁶⁹⁴ John Edward Philips, T. 6 September 2016, pp 13-14.

¹⁰⁶⁹⁵ Decision on expertise (Mr Platt).

¹⁰⁶⁹⁶ Decision clarifying Mr Platt's area of expertise.

¹⁰⁶⁹⁷ Gary Platt, T. 7 February 2017, pp 61-62.

¹⁰⁶⁹⁸ Gary Platt, T. 14 February 2017, p. 90.

to make the calls for the claim of responsibility—there must have been a decision-making process to get rid of those mobiles that had been used for years.¹⁰⁶⁹⁹ That could not be coincidence.¹⁰⁷⁰⁰

5785. Mr Platt stated that it is common for criminals to debrief with a risk assessment after the commission of a crime.¹⁰⁷⁰¹ It is called ‘clearing your tracks ... seeing what tracks you left and eradicating them as best as possible’.¹⁰⁷⁰² The cessation of use of the Purple mobiles on the two days immediately following the crime, and after years of use, was consistent with the users’ involvement in the crime.¹⁰⁷⁰³

5786. As to the Purple mobiles’ inactivity on Sunday 16 January 2005—the day of Mr Abu Adass’s disappearance—as noted above Mr Platt believed that it was consistent with an operational need for the mobiles not to be used that day.¹⁰⁷⁰⁴ As part of the discipline, the Purple mobiles could have been stored or located at a particular location until their users were ready to continue using them following the inactivity. Mr Platt considered that this resulted from ‘operational security’ considerations.¹⁰⁷⁰⁵

5787. In cross-examination, he accepted that the claim of responsibility for the assassination of a politician was a ‘risky phase where people taking part in it could be arrested’, that ‘the organization’ knew at the time that it was possible to retrace calls and mobiles, and that it apparently neglected to make people work with covert mobiles for that phase.¹⁰⁷⁰⁶ In his view, even considering that Mr Oneissi was originally ‘part of the conspiracy’, it was either an oversight or Mr Oneissi thought there was no risk given the level of activity to be undertaken—as compared to the network mobiles engaged in the direct surveillance of Mr Hariri—or he was not aware of the risk.¹⁰⁷⁰⁷

¹⁰⁶⁹⁹ Gary Platt, T. 7 February 2017, pp 61-62.

¹⁰⁷⁰⁰ Gary Platt, T. 9 February 2017, p. 66.

¹⁰⁷⁰¹ Gary Platt, T. 7 February 2017, pp 61-62, T. 9 February 2017, p. 66, T. 15 March 2017, pp 80-81.

¹⁰⁷⁰² Gary Platt, T. 7 February 2017, p. 62.

¹⁰⁷⁰³ Gary Platt, T. 15 March 2017, pp 80-81. *See also* above, at paras 5610-5116.

¹⁰⁷⁰⁴ Gary Platt, T. 14 February 2017, pp 65-66.

¹⁰⁷⁰⁵ Gary Platt, T. 14 February 2017, p. 71.

¹⁰⁷⁰⁶ Gary Platt, T. 24 March 2017, pp 73-75.

¹⁰⁷⁰⁷ Gary Platt, T. 24 March 2017, pp 76-77.

5788. That Mr Oneissi did not have a covert mobile did not necessarily show that he was not part of ‘the organization’ although Mr Platt accepted that this was ‘also a possible explanation’.¹⁰⁷⁰⁸

5789. In response to a judicial question,¹⁰⁷⁰⁹ Mr Platt explained that the Purple mobiles were largely used for personal purposes and were not mission mobiles nor were they used in a covert fashion.¹⁰⁷¹⁰ They were not ‘really used for any covert work like surveillance’.¹⁰⁷¹¹ His assessment was that their activity around the Arab University Mosque was quite limited and static, coinciding with the ‘cultivation of the Subjects at the mosque’.¹⁰⁷¹² They were used there on an ‘irregular basis’.¹⁰⁷¹³ Therefore, it differed from the surveillance of Mr Hariri, which occurred in ‘unique locations, operating in close proximity ... of him and following him’.¹⁰⁷¹⁴

2. Submissions

5790. According to the Prosecution, it was not necessary nor surprising that a mobile network was not established for this part of the plot. The most complex aspect, namely, Mr Abu Adass’s abduction, revealed awareness of covertness and forensic visibility by the Purple mobiles being switched off at the time.¹⁰⁷¹⁵ This and the discarding of the Purple mobiles after the attack demonstrated an advanced level of awareness of covert practices.¹⁰⁷¹⁶ The Prosecution submitted that:

This insight was evident from the outset when, in light of the particular demands of preparing the false claim and the associated low forensic profile of the remote communication required, it was deemed unnecessary to adopt a covert mobile phone network.¹⁰⁷¹⁷

¹⁰⁷⁰⁸ Gary Platt, T. 24 March 2017, p. 77.

¹⁰⁷⁰⁹ Gary Platt, T. 7 February 2017, pp 59-60. Judge Braidy asked the witness whether he could explain why the Purple mobiles lacked the strict discipline and covertness of the network mobiles.

¹⁰⁷¹⁰ Gary Platt, T. 7 February 2017, pp 60-62.

¹⁰⁷¹¹ Gary Platt, T. 14 February 2017, pp 89-90.

¹⁰⁷¹² Gary Platt, T. 7 February 2017, p. 60.

¹⁰⁷¹³ Gary Platt, T. 14 February 2017, pp 89-90.

¹⁰⁷¹⁴ Gary Platt, T. 7 February 2017, p. 60.

¹⁰⁷¹⁵ Prosecution final trial brief, para. 593.

¹⁰⁷¹⁶ Prosecution final trial brief, para. 584.

¹⁰⁷¹⁷ Prosecution final trial brief, para. 584.

5791. According to the Prosecution, none of the steps in the false claim plot ‘inherently required the use of a mobile’.¹⁰⁷¹⁸ Were it not for ‘the frenzied nature of the Purple calls’ at the moment the tape was collected, the disposal of the Purple mobiles would have been unnecessary.¹⁰⁷¹⁹

5792. The Prosecution also relies on Mr Philips’s evidence that covertness in the use of a mobile will be proportionate to the seriousness and complexity of the crime and to the anticipated degree of risk that the mobile will be discovered, dictated by the mobile’s proximity to the crime scene.¹⁰⁷²⁰

5793. The Purple mobiles, however, were neither intended for use, nor used, in the vicinity of the crime scene.¹⁰⁷²¹ While the preparation of the false claim involved ‘no little risk’, it did not require a high degree of remote coordination or mobile activity bearing a forensic association with the criminal activity itself.¹⁰⁷²² On the day of Mr Abu Adass’s disappearance, the Purple mobiles were inactive.¹⁰⁷²³ Their use around the payphones and the tree on Monday 14 February 2005 ‘was not an inherently necessary part of the plan, and therefore, this task could not sensibly have been pre-assessed as necessitating a covert network’.¹⁰⁷²⁴

5794. Additionally, according to the Prosecution, referring to Mr Donaldson’s evidence, that the Purple mobiles were discovered only in 2008, long after the other networks, shows ‘the extremely low forensic visibility’ of their use.¹⁰⁷²⁵

5795. The Merhi Defence asks the Trial Chamber to ‘reverse’ its decision clarifying that Mr Platt’s area of expertise extends to providing expert opinion evidence on the Purple mobiles’ activities.¹⁰⁷²⁶ The Defence had lacked notice as to the Prosecution’s case regarding the Purple mobiles and the Purple associates; nevertheless, the Trial Chamber permitted Mr Platt to present ‘numerous theories, inferences and opinions’ about these mobiles.¹⁰⁷²⁷ To reinstate the fairness of

¹⁰⁷¹⁸ Prosecution final trial brief, para. 592.

¹⁰⁷¹⁹ Prosecution final trial brief, para. 588.

¹⁰⁷²⁰ Prosecution final trial brief, para. 585.

¹⁰⁷²¹ Prosecution final trial brief, para. 596.

¹⁰⁷²² Prosecution final trial brief, para. 586.

¹⁰⁷²³ Prosecution final trial brief, para. 596.

¹⁰⁷²⁴ Prosecution final trial brief, para. 597.

¹⁰⁷²⁵ Prosecution final trial brief, para. 598.

¹⁰⁷²⁶ Merhi Defence final trial brief, para. 35.

¹⁰⁷²⁷ Merhi Defence final trial brief, paras 29-34.

the proceedings, the Trial Chamber should disregard the Prosecution's allegations on the Purple and Associate Purple mobiles whenever those were based on Mr Platt's evidence.¹⁰⁷²⁸

5796. The Oneissi Defence argues that given that the Purple mobiles were not part of a covert network, Mr Oneissi's Purple 095 could not have been used for criminal activity. It is a contradiction to allege that Mr Oneissi had an advanced level of awareness of covert practices, yet chose to use his personal mobile.¹⁰⁷²⁹ The Prosecution's suggestion that the false claim did not require the use of a covert network is 'unreferenced'; as not even Mr Platt provided evidence to this effect.¹⁰⁷³⁰ Further, the Prosecution improperly attempts to link Purple 095 with the covert networks, despite the lack of any coordination or cooperation.¹⁰⁷³¹ The intensity of the alleged activations made by Purple 095 also undermines the Prosecution's assertion that the mobile had 'low forensic visibility'.¹⁰⁷³²

5797. Further, the Prosecution's suggestion that the Purple mobiles were discovered a long time after the network mobiles is misleading, as the Prosecution led no evidence on this. In 2008, the UNIIC received evidence on the Purple mobiles' attribution and, therefore, their discovery must have occurred earlier. The Trial Chamber should reject 'the Prosecution's attempt to spin the tardiness of the UNIIC investigation to its own advantage'.¹⁰⁷³³

5798. The Sabra Defence argues that given the complexity of the false claim operation, a covert network should have been required. The Prosecution has ignored certain factors in its assessment of complexity. These include: the surveillance of the Arab University Mosque area before Mr Abu Adass's selection; the intelligence-gathering in the team; visits to Tripoli to lead another false trail, or to select a different individual; the calls from the mosque area to Mr Abu Adass's landline; the scoping mission to identify appropriate payphones and hiding place for the tape; and the strict control over the operation by a supervisor in a certain location.¹⁰⁷³⁴

¹⁰⁷²⁸ Merhi Defence final trial brief, para. 35.

¹⁰⁷²⁹ Oneissi Defence final trial brief, paras 171-172.

¹⁰⁷³⁰ Oneissi Defence final trial brief, para. 177.

¹⁰⁷³¹ Oneissi Defence final trial brief, paras 199-201.

¹⁰⁷³² Oneissi Defence final trial brief, para. 179.

¹⁰⁷³³ Oneissi Defence final trial brief, para. 178.

¹⁰⁷³⁴ Sabra Defence final trial brief, paras 479, 483-493.

5799. The Prosecution also erroneously claims that the false claim plot had low forensic visibility. The area from which Mr Abu Adass disappeared, and the area in which the false claim was delivered, are also crime scenes. Mr Abu Adass himself, and the circumstances around the false claim, would have been a primary focus for investigators, especially as Mr Ben-Jeddo immediately told Al-Jazeera viewers that the false claim was unlikely to have been genuine.¹⁰⁷³⁵

5800. The Prosecution also submits, contradictorily, that the users of the Purple mobiles made a miscalculated decision not to use covert mobiles, but also displayed advanced awareness of covert practices, relying on the inactivity on the day of Mr Abu Adass's disappearance, and the discarding of the Purple mobiles between 15 and 16 February 2005.¹⁰⁷³⁶ The Sabra Defence argues that the Prosecution failed to adequately investigate the discovery of the Purple mobiles.¹⁰⁷³⁷

5801. The Sabra Defence also points to the differences in the cessation of activity of the Red and Green networks, namely immediately before the attack and an hour after the attack, respectively, and that of the Purple mobiles. The shutdown of the Green network was 'synchronised' while the Purple mobiles featured a 'gradual discontinuing', thus drawing a parallel between the two is 'wholly illusory and lacks any credibility'.¹⁰⁷³⁸

3. Findings

5802. Why alleged conspirators would chose to use their personal mobiles to communicate with each other on a necessary part of a plan to assassinate a well-guarded former prime minister, while exercising strict discipline in all other aspects of the plot, is largely unexplained. As accepted by Mr Platt, the claim of responsibility for the assassination of a politician was a risky phase where the people involved could be arrested.

5803. Mr Merhi is alleged not to be someone who is being manipulated or used by those higher up in the conspiracy, but rather as a core conspirator who was exercising strict network discipline by contacting Mr Badreddine only on their Green network mobiles. But, on the other hand, he is

¹⁰⁷³⁵ Sabra Defence final trial brief, paras 495-513.

¹⁰⁷³⁶ Sabra Defence final trial brief, para. 514.

¹⁰⁷³⁷ Sabra Defence closing submissions, T. 21 September 2018, pp 11-12.

¹⁰⁷³⁸ Sabra Defence final trial brief, para. 530.

also alleged to have been using his own personal mobile to communicate with two co-conspirators to coordinate all aspects of the false claim of responsibility.

5804. The folly of this would be illustrated by the need to discard the mobiles within two days of the attack on 14 February 2005. But why, given that Mr Abu Adass identified himself in the video, and a normal criminal investigation would therefore have led straight back to the mosque, his home, his family, friends, associates and contacts, they would have chosen to use their personal mobiles is inexplicable. In the same way that a ‘cell-dump’ would have identified the Red network as a closed user group, operating near Mr Hariri, that ceased all activity just before the attack, it could have found those who were using the Purple mobiles near the mosque and thus linked their users to Mr Abu Adass.

5805. The Prosecution explained that the Purple mobiles were discovered only in 2008 because of ‘the extremely low forensic visibility’ of their use. Mr Donaldson clarified that the UNIIC did not discover the Purple mobiles until it obtained new relevant information in November 2008, long after the networks. He added that, based on information that the UNIIC obtained in June 2008 in relation to specific private mobiles linked to Purple 231, the mobiles that later became the Purple mobiles could have become possible numbers of interest.

5806. The Trial Chamber has accepted that a mobile ‘network’ is a group of mobiles that form a communication network.¹⁰⁷³⁹ And, that a ‘mission phone’ is a special type of mobile network, that Mr Philips defined as a mobile obtained and dedicated to a specific objective or mission, which is covert and almost always ‘nefarious’. Those involved in the mission do not want to be associated with it, so anonymity in all areas is key and an essential characteristic.

5807. These mobiles differ from personal mobiles, which are non-covert mobiles used to call family and friends and are for everyday usage. The Purple mobiles were used for personal purposes such as to call family and friends and for ‘normal’ non-covert communications. They did not present the characteristics described as pertaining to mission mobiles and were not used in a covert fashion.

¹⁰⁷³⁹ See chapter VIII ‘Nature and purpose of colour-coded mobile networks and Purple group of mobiles’, (B) ‘Mobile networks in general’.

5808. However, one or two days after Mr Hariri's assassination they were all discarded. The last activity for Mr Merhi's Purple 231 occurred at 11:12 on Tuesday 15 February 2005. Mr Oneissi last used his personal mobile Purple 095 on Wednesday 16 February 2005, after having used it since January 2003. Mr Sabra gave up his shared personal mobile Purple 018 on 16 February 2005 as well, after using it since November 2001.

5809. One of the features of network mobiles is that they may cease operation at the same time after the commission of the crimes, as this lowers the likelihood that an investigation team can identify the mobile users. The simultaneous discarding of the Purple mobiles over two days after the attack presents some similarity with how expert evidence described 'the closure of a network', as connected to reasons of covertness.

5810. However, while a simultaneous cessation of activity is an organisational factor of a covert network, these personal mobiles were not otherwise used in a covert fashion. Normally, covert users do this to distance themselves from their mobiles and to prevent their identification. Mr Platt explained the discarding of the three mobiles as the result of a risk assessment after the commission of a crime.

5811. The Trial Chamber accepts that the coincidental cessation in the use of the Purple mobiles over two days, after several years of active use, may indeed suggest that a decision to this effect intervened after a certain event, due to some fear. However, such a decision, when occurring in the context of an alleged conspiracy whose participants otherwise used a covert network for its other operations, seems to be contradictory and difficult to explain.

5812. The Prosecution argues that while it was reasonable for the Accused not to use network mobiles in the false claim preparation, the traces left around the payphones and, in particular the tree, were 'unanticipated and unintended'. It argues that the 'ultimate intensity of use' in those areas 'was not an inherently necessary part of the plan'.¹⁰⁷⁴⁰ However, why this was the case is unexplained. Mr Platt provided no opinion on this.

5813. The Prosecution's argument that the 'frenzied nature' of the Purple calls at that time betrayed their 'over-anxiety' to ensure that responsibility for the attack 'was publically assigned

¹⁰⁷⁴⁰ Prosecution final trial brief, para. 597.

away from their sponsors’¹⁰⁷⁴¹ is not entirely convincing. Does this mean that more coordination was needed than expected? Or, alternatively, that of all the steps in the false claim plot, the last one was not given sufficient consideration? This is difficult to believe when the Prosecution, at the same time, describes the false claim of responsibility as ‘a sophisticated and essential component to the assassination plot’,¹⁰⁷⁴² and its last phase as one of its key components.¹⁰⁷⁴³ The use of personal mobiles to execute it is far from ‘sophisticated’.

5814. According to Mr Platt, the choice not to use network mobiles for the false claim aspect of the plot—as opposed to the others—was based on the difference between the static and irregular nature of the activity around the Arab University Mosque and the mobile nature of the surveillance of Mr Hariri. These were in unique locations and in close proximity of him, and therefore there was a difference in the related risk of detection. However, Mr Platt also acknowledged that this was an oversight, or a mistake, or that those involved were not aware of the risks. Mr Platt accepted that their non-involvement was also a possible explanation.

5815. The Trial Chamber accepts that Mr Platt’s opinion explaining why the conspirators may have used network mobiles for tracking Mr Hariri and carrying out the assassination but not for identifying and abducting Mr Abu Adass may be correct. It is, however, harder to accept his explanation for the use of non-network mobiles with regard to the activities on the afternoon of 14 February 2005, although his reasoning could be seen as valid. Namely, that network mobiles were not necessary to make the calls from public payphones, especially if the two people involved in this were together. Against this, of course, the Trial Chamber accepts that criminals make mistakes, which may lead to their apprehension, and that this could have been a mistake that was only realised after the calls on Monday 14 February 2005.

5816. However, ultimately it is not the only reasonable inference available from the evidence. Another is that they were not involved in the alleged criminal activity or that they were not previously aware of the scope and significance of their call activity. Otherwise, they would not have used their personal mobiles to carry it out.

¹⁰⁷⁴¹ Prosecution final trial brief, para. 588.

¹⁰⁷⁴² Prosecution final trial brief, para. 1194, *see also* paras 1168, 1182, 1188.

¹⁰⁷⁴³ Prosecution final trial brief, paras 604-606.

5817. This strand of evidence is being used to buttress a circumstantial case regarding mobile usage. The discarding of the mobiles is being used to help prove that the three Accused were involved in making the false claim of responsibility. Conversely, the mobile activities on Monday 14 February are being used to prove that something occurred that required the three to discard their mobiles over the next few days, namely, that they had a criminal reason to do so. In other words, the two strands of evidence can only be considered together.

5818. Hence, even if the Trial Chamber is wrong in not finding that the only inference reasonably available from the evidence is that the discarding of the mobiles soon after the attack means involvement in the attack, such a finding only has context when considered with all the other cell site evidence. But if the Trial Chamber cannot be convinced beyond reasonable doubt that the mobiles' activities on the afternoon of 14 February can only equate to participation in the false claim of responsibility, the discarding of the mobiles cannot persuade the Trial Chamber that the opposite has been proved.

5819. Finally, regarding the Merhi Defence submission asking the Trial Chamber to 'reverse' its decision clarifying Mr Platt's area of expertise, the Trial Chamber—in three interlocutory decisions—dismissed similar Defence challenges with respect to Mr Platt's evidence.¹⁰⁷⁴⁴ The last application, placed in the middle of a final trial brief, falls short of advancing specific arguments to reconsider these decisions, and the Trial Chamber did not find any apparent reasons to do so. In any event, in light of the Trial Chamber's findings regarding the role and nature of the Purple mobiles and the Purple associates, reconsideration is also unnecessary.

I. Possible involvement of *al-Ahbash* in Mr Hariri's assassination

5820. In light of these conclusions, the Trial Chamber need not necessarily address the alternative theory advanced by the Sabra Defence that Mr Abu Adass was selected to carry out a false claim

¹⁰⁷⁴⁴ Decision denying certification to appeal decision on Powerpoints (the Trial Chamber—refusing a Merhi Defence certification application—held that Prosecution allegations regarding the Purple mobiles and Purple associates were not new to the Defence); Decision denying the exclusion of Mr Platt's evidence (the Trial Chamber found that the Prosecution had provided late but adequate notice to the Defence regarding the Associate Purple mobiles, and held that any prejudice to the Defence would be cured by sufficient time to prepare for Mr Platt's cross-examination); Decision denying reconsideration of decision on Mr Platt's area of expertise (the Trial Chamber held that the Merhi Defence had not demonstrated any actual injustice that involved prejudice, nor had it cited any legal authority for the exclusion of Mr Platt's opinion evidence on the Purple mobiles' role). *See also* Clarification decision on exclusion of Mr Platt's evidence.

of responsibility not by the three Accused, but rather by the *al-Ahbash* group. However, to deliver a fully reasoned judgment, this evidence and the submissions are briefly examined.

1. Evidence

5821. The evidence on *al-Ahbash* came from material obtained from the Lebanese investigating authorities, a statement of Witness 56 and the testimony of Mr Saadeddine El-Ajouz.

5822. According to reports by the Lebanese Army Directorate of Intelligence, *al-Ahbash* is an abbreviation for the Association of Islamic Philanthropic Projects. It was an Ashari, Shafii and Sufi Sunni Muslim group, whose members were students of Sheikh Abdullah Mohammed El-Harari. He was known as *El-Habshi* (the Abyssinian), and the group was known after him as *El-Habshi yah* or *al-Ahbash*.¹⁰⁷⁴⁵

5823. The group had been reported to have had relations with the Lebanese and Syrian security institutions.¹⁰⁷⁴⁶ Beginning in the 1990s, it ‘was able to penetrate all State agencies.’¹⁰⁷⁴⁷ In one report, Lebanese authorities described how it adopted ‘an extremist religious approach’ and that it was ‘in constant dispute with other religious parties, including Wahhabis and Salafis, over doctrinal orientation and interpretation.’¹⁰⁷⁴⁸

5824. Another report described how it ‘acted as informants for the Syrian security apparatus openly, which helped them to marginalise and fight anyone who differed with them in creed or opinion by fabricating accusations against them and having them arrested.’¹⁰⁷⁴⁹ Mr Ahmed Abdel Aal was a ‘top security official’ in *al-Ahbash*.¹⁰⁷⁵⁰ The report, however, was anonymously sourced and therefore can be given very limited weight.¹⁰⁷⁵¹

¹⁰⁷⁴⁵ Exhibit 5D505 (Lebanese Army Directorate of Intelligence reports on the *al-Ahbash* group). The Sabra Defence sought admission of some documents on *al-Ahbash*. The Trial Chamber admitted most of them. It admitted exhibits 5D505 and 5D506 only insofar as they provide contextual information regarding the UNIIIC investigation and to establish the Lebanese Government’s assessment of *al-Ahbash*, and not for the truth of their contents. Sabra Defence sixth bar table decision (Abu Adass fax), paras 29, 31.

¹⁰⁷⁴⁶ Exhibit 5D505, pp 7-8; exhibit 5D506 (ISF General Directorate’s report on the *al-Ahbash* group), p. 13.

¹⁰⁷⁴⁷ Exhibit 5D505, p. 8.

¹⁰⁷⁴⁸ Exhibit 5D505, p. 38.

¹⁰⁷⁴⁹ Exhibit 5D506, p. 13.

¹⁰⁷⁵⁰ Exhibit 5D506, p. 17.

¹⁰⁷⁵¹ Sabra Defence sixth bar table decision (Abu Adass fax), para. 31.

5825. Witness 56 stated that *al-Ahbash* called Mr Abu Adass's family 'Al Wahhabi' because they came from Saudi Arabia.¹⁰⁷⁵² The witness explained that *al-Ahbash* members 'tried to antagonise Ahmad whenever he walked past them by calling him an infidel and a Wahhabi.' On one occasion, Mr Abu Adass resisted going to a shop to collect some textiles because its members worked next door.¹⁰⁷⁵³ According to Mr Samer Al-Ajouz, Mr Abu Adass and the group 'had completely opposite views', and 'people from Abu Adass' circle often spoke against *al-Ahbash* and vice-versa.'¹⁰⁷⁵⁴ He was unable to recall any specific incidents between *al-Ahbash* and Mr Abu Adass.¹⁰⁷⁵⁵

5826. About four to five months before he disappeared, Mr Abu Adass told Witness 56 that he believed he was under surveillance.¹⁰⁷⁵⁶ Witness 56 had heard from a relative that Mr Abu Adass had been 'watched by the police for several months'.¹⁰⁷⁵⁷

5827. Mr Saadeddine El-Ajouz, the owner and manager of the Power Group, testified that, in 2004 and 2005, he was a member of *al-Ahbash*.¹⁰⁷⁵⁸ The Power Group sold twenty SIM cards to Witness 553, the owner of a mobile shop in Tripoli, on 24 December 2004, including the SIM cards used in the eight Red mobiles.¹⁰⁷⁵⁹ Mr El-Ajouz gave evidence regarding a number of individuals allegedly implicated in Mr Hariri's assassination according to the UNIIIC investigation, such as Mr Abdel Aal¹⁰⁷⁶⁰ and Mr Fouad El-Masri, who was part of an alleged al-Qaeda cell and bought hundreds of mobile devices from Power Group.¹⁰⁷⁶¹ Mr El-Ajouz testified that he and others—including Mr Abdel Aal—did not orchestrate the delivery and the sale of the

¹⁰⁷⁵² Exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), paras 79-80 (p. 5).

¹⁰⁷⁵³ Exhibit P2131 (Statement of Witness PRH056, dated 7 and 8 June 2007), paras 79-80 (pp 5-6).

¹⁰⁷⁵⁴ Exhibit 4D545 (Statement of Samer Al-Ajouz, dated 19 January 2007), paras 174-177 (p. 9).

¹⁰⁷⁵⁵ Exhibit 4D545 (Statement of Samer Al-Ajouz, dated 19 January 2007), para. 175 (p. 9).

¹⁰⁷⁵⁶ Exhibit P2130 (Statement of Witness PRH056, dated 5 May 2006), para. 53 (p. 4). ('Because Ahmad had a beard he assumed he was being surveyed. All the extremists with beards were under surveillance.')

¹⁰⁷⁵⁷ Exhibit P2128 (Statements of Witness PRH056, dated 13 April 2005 and 18 July 2005), p. 15; exhibit P2129 (Statement of Witness PRH056, dated 7 July 2005), p. 4.

¹⁰⁷⁵⁸ Saadeddine El-Ajouz, T. 31 August 2015, pp 78-79.

¹⁰⁷⁵⁹ See chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles', (D) (1) 'Setting up the network'.

¹⁰⁷⁶⁰ Saadeddine El-Ajouz, T. 1 September 2015, pp 19-25, 27-28, 74-75. See also exhibit 5D507 (ISF report regarding Ahmad Abu Adass), pp 1-2. The Trial Chamber admitted the report into evidence for the limited purpose of providing contextual information of the ISF's investigation concerning Mr Abu Adass. Sabra Defence sixth bar table decision (Abu Adass fax), paras 32-35.

¹⁰⁷⁶¹ Saadeddine El-Ajouz, T. 1 September 2015, pp 76-87; exhibit 5D502 (Lebanese Military Court indictment), p. 7.

Red mobiles.¹⁰⁷⁶² His manager and other employees were subject to investigations and the Power Group was shut down for four months as a result of this.¹⁰⁷⁶³

5828. After the trial, *al-Ahbash*'s leader, Mr Abdel Aal, sent a fax sent to Lebanese officials providing information on Mr Abu Adass and his alleged associates. The Trial Chamber admitted the fax into evidence not for the truth of its contents, but to demonstrate that it had been sent.¹⁰⁷⁶⁴ It contained information about Mr Abu Adass's background, including asserting that he was 'a Devil worshiper', and about his associates, including Mr Abu Adass's cousin, Mr Bassam Ismail, who had been imprisoned for assassinating a previous *al-Ahbash* leader.¹⁰⁷⁶⁵

2. Submissions

5829. The Sabra Defence argues that *al-Ahbash* deliberately selected Mr Abu Adass for the false claim because of a history of antagonism between the group and Mr Abu Adass. *Al-Ahbash* had clashed with Mr Abu Adass due to their vehement opposition to Wahabi and Salafi ideologies.¹⁰⁷⁶⁶

5830. It points to UNHCR internal memoranda, arguing that Mr Abu Adass and *al-Ahbash* had a history of antagonism,¹⁰⁷⁶⁷ and submits that *al-Ahbash* could keep Mr Abu Adass under close surveillance, having had a 'clear and influential' presence in his neighbourhood.¹⁰⁷⁶⁸ It submits that Mr El-Ajouz, who was linked to the sale of the Red mobile SIM cards and was a member of *al-Ahbash*, was associated with another member of it, Mr El-Masri, who may have been involved in creating the video of the false claim of responsibility.¹⁰⁷⁶⁹

5831. The Sabra Defence argues that the Prosecution failed to investigate the inference that *al-Ahbash* was responsible for the production of the false claim of responsibility; previous attacks of

¹⁰⁷⁶² Saadeddine El-Ajouz, T. 3 September 2015, pp 7, 19-20, 41, 55-57, 71, 73, 77-78. See exhibit 5D203 ('Alfa Active' identification statement). The same document—without the highlights—was admitted under exhibit P484 (ERNs 60138425-60138426).

¹⁰⁷⁶³ Saadeddine El-Ajouz, T. 1 September 2015, p. 113.

¹⁰⁷⁶⁴ T. 19 July 2016, pp 68-70. See also Sabra Defence sixth bar table decision (Abu Adass fax), paras 32-35, admitting the Arabic version of this exhibit into evidence.

¹⁰⁷⁶⁵ Exhibit 5D259 (Fax sent by Mr Abdel Aal to the Lebanese authorities on 14 February 2005), p. 1.

¹⁰⁷⁶⁶ Sabra Defence final trial brief, para. 574.

¹⁰⁷⁶⁷ Sabra Defence final trial brief, para. 576, referring to exhibit 5D254 (UNHCR internal memorandum on *al-Ahbash*). The Sabra Defence points specifically to evidence that two of Mr Abu Adass's cousins, Mr Bassam Ismail and Mr Tarek Ismail, were involved in the assassination of a previous president of *al-Ahbash*, Sheikh Nizar al-Halabi, on 31 August 1995.

¹⁰⁷⁶⁸ Sabra Defence final trial brief, para. 579.

¹⁰⁷⁶⁹ Sabra Defence final trial brief, paras 555-556.

a similar nature to the attack on Mr Hariri; Mr Abu Adass's close associates who had been omitted from the fax sent to the Lebanese authorities after the assassination; its targeting of the Abu Adass family; and the links to Syrian Military Intelligence within Tariq-El-Jdideh.¹⁰⁷⁷⁰

5832. The fax—which was sent by Mr Ahmed Abdel Aal, *al-Ahbash*'s head of security—showed that *al-Ahbash* sought to steer investigations after the claim of responsibility.¹⁰⁷⁷¹ The speed with which the information in the fax was disseminated after the video shows prior preparation, and was designed to point responsibility away from *al-Ahbash* toward their enemies.¹⁰⁷⁷² It asserted that Mr Abu Adass had been seen with the deputy leader of *Asbat al Ansar*, a group with an extremist ideology and a history of antagonism with *al-Ahbash*.¹⁰⁷⁷³ The fax 'tellingly' does not point to actual associates who might have been involved in his disappearance, like Mr Khaled Taha, Mr Ramadan, Mr Mohsen and Mr Zaaroura.¹⁰⁷⁷⁴

5833. The Prosecution failed to adequately investigate the link between *al-Ahbash* and the targeting of the Abu Adass family.¹⁰⁷⁷⁵ It failed to explain the purpose of the fax.¹⁰⁷⁷⁶ Additionally, UNIIIC identified Mr Abdel Aal as a 'significant' figure by virtue of his involvement in the Hariri investigation, and suggested that Mr Abdel Aal might attempt to hide information from the investigation.¹⁰⁷⁷⁷

5834. The Sabra Defence also argues that Mr Abu Adass's appearance in the false claim video shows that he was tricked into claiming responsibility by *al-Ahbash*.¹⁰⁷⁷⁸ The turban Mr Abu Adass was wearing in the video was associated with attendees of the Imam Ali Mosque, which was also mentioned in the fax.¹⁰⁷⁷⁹

5835. The Sabra Defence argues too that while the Prosecution did not offer evidence linking the Accused to the production of the video, the Lebanese and UNIIIC investigations linked the *al-*

¹⁰⁷⁷⁰ Sabra Defence final trial brief, paras 581-582.

¹⁰⁷⁷¹ Sabra Defence final trial brief, paras 557-558, 561-562.

¹⁰⁷⁷² Sabra Defence final trial brief, paras 560-563.

¹⁰⁷⁷³ Sabra Defence final trial brief, para. 577.

¹⁰⁷⁷⁴ Sabra Defence final trial brief, para. 563.

¹⁰⁷⁷⁵ Sabra Defence final trial brief, paras 581-582.

¹⁰⁷⁷⁶ Sabra Defence final trial brief, paras 557-563.

¹⁰⁷⁷⁷ Sabra Defence final trial brief, para. 577, referring to exhibit 5D490 (UNIIIC report to the United Nations Security Council, 20 October 2005).

¹⁰⁷⁷⁸ Sabra Defence final trial brief, para. 546. The Trial Chamber has considered and dismissed the Sabra Defence's other arguments about Mr Abu Adass's appearance.

¹⁰⁷⁷⁹ Sabra Defence final trial brief, para. 553.

Ahbash member Mr El-Masri—who was connected with the sale of the Red SIM cards—to the video’s creation.¹⁰⁷⁸⁰

5836. Further, the Prosecution failed to consider the ‘stark similarities’ between this case, and the Future TV attack in 2003 and a foiled attack on the Italian Embassy in 2004.¹⁰⁷⁸¹ Both involved consideration of Mr Hariri’s convoy, a large explosive device and a vehicle as a means for delivery—both also were linked to Mr Abu Adass.¹⁰⁷⁸²

3. Findings

5837. The Prosecution made no submissions in its final trial brief on this aspect of the Sabra Defence case.

5838. The Sabra Defence has no burden of proof and need not prove anything. The evidence it points to, however, does not raise an alternative reasonable inference from the admitted evidence that *al-Ahbash* targeted Mr Abu Adass. Many of the Sabra Defence’s arguments rest on evidence that was not admitted for the truth of its contents, as opposed to the fact that someone said something to an investigator.

5839. This includes the following. First, that *al-Ahbash* clashed with Mr Abu Adass because of his ideology. Second, that two of Mr Abu Adass’s cousins were involved in the assassination of a previous president of *al-Ahbash*. Third, that Mr Abdel Aal, *al-Ahbash*’s head of security, sent a fax to Lebanese officials and made assertions about Mr Abu Adass after the attack to steer the investigations. And, fourth, that UNIIIC officials suggested that Mr Abdel Aal might attempt to hide information from the investigation.¹⁰⁷⁸³ The Trial Chamber therefore disregards these arguments.

5840. The Trial Chamber received some evidence deriving from the Lebanese investigating authorities regarding the *al-Ahbash* group generally. This includes that it engaged in religious disputes with other groups and may have acted as informants for the Syrian state security. The

¹⁰⁷⁸⁰ Sabra Defence final trial brief, paras 554-556.

¹⁰⁷⁸¹ Sabra Defence final trial brief, paras 564-572.

¹⁰⁷⁸² Sabra Defence final trial brief, paras 571-572.

¹⁰⁷⁸³ Sabra Defence final trial brief, paras 557-563, 574, 576-577 (citing exhibits 5D254, 5D504, 5D259, 5D490 and 5D507). *See also* Sabra Defence second bar table decision (Abu Adass selection), paras 16, 40, 43; T. 19 July 2016, p. 69; T. 14 December 2017, pp 35-38, 62-63.

Trial Chamber, however, admitted the investigative reports of the Lebanese Army Directorate of Intelligence and the ISF General Directorate concerning *al-Ahbash*¹⁰⁷⁸⁴ into evidence for the limited purpose of providing contextual information regarding the UNIIIC investigation and the Lebanese Government's assessment of *al-Ahbash*, and not for the truth of their content. Additionally, these reports have very limited weight due to their anonymous sources.¹⁰⁷⁸⁵

5841. The evidence from Mr Abu Adass's family and friends was of some antagonism between Mr Abu Adass and the group, including name-calling and avoiding each other. This is consistent with the willingness of *al-Ahbash*'s leader to attempt to direct the investigation towards Mr Abu Adass, as is shown by the fax sent shortly after the assassination.

5842. At its highest, however, this demonstrates only some low-level hostility between Mr Abu Adass and the group. It would be a leap of faith to find, based on this, that *al-Ahbash* targeted Mr Abu Adass and used him to make a video-recorded false claim of responsibility for the attack on Mr Hariri. These arguments are therefore dismissed.

J. Conclusion

5843. The Prosecution, in its final trial brief, when summarising all the factors leading to the conclusion that the three Accused participated in making a false claim of responsibility, submitted that:

Each one of these features, exceptional in themselves, might be argued to be coincidental. However, when assessed holistically, the relationship of these patterns to each and every component of the false claim plot are so exceptional as to be inexplicable on the basis of chance.¹⁰⁷⁸⁶

5844. The Trial Chamber agrees, and most certainly in a circumstantial case such as this, that the patterns have to be 'assessed holistically', meaning in their totality. And, further, that they would have to be 'so exceptional as to be inexplicable on the basis of chance' for it to be satisfied beyond reasonable doubt of the guilt of any of the three Accused. Consistent with assessing the totality of the evidence, the Trial Chamber has carefully reviewed the Purple and Green mobiles' activities,

¹⁰⁷⁸⁴ Exhibits 5D505 and 5D506.

¹⁰⁷⁸⁵ Sabra Defence sixth bar table decision (Abu Adass fax), paras 29, 31.

¹⁰⁷⁸⁶ Prosecution final trial brief, para. 506.

notwithstanding that it could not conclude that Mr Merhi was using Green 071, and Mr Sabra was the principal user of Purple 018.

5845. Had the Prosecution proved its pleaded allegation that Mr Oneissi was ‘Mohammed’, and had Witness 56 testified and provided reliable evidence of ‘Mohammed’ calling the Abu Adass home before and after Mr Abu Adass disappeared, the Prosecution case against the three Accused would have been much stronger. It would have remained circumstantial but there would have been at least a strong piece of direct evidence against one of the Accused that could have been used to strengthen the cell site evidence. The Prosecution, however, did not come up to proof on either point. That has been fatal to its case against the three.

5846. Without evidence that Mr Oneissi was ‘Mohammed’ the only evidence against the three Accused is the cell site evidence of Mr Merhi’s Purple 231, Mr Oneissi’s Purple 095 and Mr Sabra’s shared personal mobile, Purple 018. To this is added calls between Mr Merhi’s attributed Green network mobile, 071, and Mr Badreddine’s Green mobile, 023.

5847. The patterns that the Prosecution reasons must lead to the conclusion of guilt beyond reasonable doubt are as follows. They are Mr Oneissi’s and Mr Sabra’s ‘unusual’ mobile usage around the Arab University Mosque in late December 2004 and early January 2005, coinciding with Mr Abu Adass’s recruitment and disappearance (or ‘abduction’). Their mobile usage on the afternoon of Monday 14 February 2005 at locations ‘near’ payphones used to call Reuters and Al-Jazeera, and the tree. Their mobile contact with Mr Merhi during these two periods, including Mr Sabra’s on the afternoon of 14 February. Their discarding of their mobiles in the two days after the attack is added to this. And there is Mr Merhi’s mobile contact with Mr Badreddine, who was separately in contact with Mr Ayyash, on the three-mobile closed Green network.

5848. Without the direct evidence of Mr Oneissi’s pleaded identification as ‘Mohammed’, however, insufficient evidence exists to find that these patterns are ‘so exceptional as to be inexplicable on the basis of chance’.

5849. The absence of this evidence is further compounded by the loss of the following two pleaded facts. The first is that Mr Oneissi, calling himself ‘Mohammed’, called Mr Abu Adass’s home at 21:00 on Saturday 15 January 2005 and the two agreed to meet early the next morning. The second is that Mr Abu Adass left his home on Sunday 16 January 2005 to meet Mr Oneissi

who was calling himself ‘Mohammed’.¹⁰⁷⁸⁷ There is simply no reliable evidence from which the Trial Chamber could conclude that Mr Oneissi was ‘Mohammed’; that he called Mr Abu Adass on Saturday 15 January; nor that Mr Abu Adass left his home the next morning to meet Mr Oneissi.

5850. The Trial Chamber has carefully examined whether these two pleaded facts could be considered to be ‘material’, thus requiring proof beyond reasonable doubt. It is of the view that the facts are pleaded evidence of the material facts underlying the elements of the crimes charged, namely, making the false claim of responsibility. Meaning, the manner of proving how the claim was made, rather than the acts constituting the false claim, namely, the video and the calls to the media outlets. However, even if the Trial Chamber is legally incorrect on this, the ultimate result would remain unchanged. The lack of reliable evidence, rather than the legal classification of the pleading, is determinative here.

5851. There is no evidence connecting Mr Oneissi with Mr Abu Adass in the mosque, in his disappearance or in his subsequent appearance on the video. The only evidence is that Mr Oneissi’s mobile was connecting to cells near the mosque on eleven days in December 2004 and January 2005,¹⁰⁷⁸⁸ and that this coincided with the Rule 158 evidence that Mr Abu Adass had met someone called ‘Mohammed’ in the mosque at around that time. No reliable evidence connects Mr Oneissi with that ‘Mohammed’, and hence Mr Abu Adass’s recruitment, disappearance and appearance in the video. This link in the circumstantial chain of evidence is missing.

5852. Once the evidence supporting these pleaded material facts is taken from consideration, the only patterns remaining are of the mobile use in December 2004 and January 2005 near the mosque, and those on the afternoon of Monday 14 February. Without more, this cannot prove guilt beyond reasonable doubt; this is notwithstanding the Prosecution’s submissions to the contrary.

5853. The amended consolidated indictment pleads that Mr Oneissi *or* Mr Sabra ‘made a total of four calls to the offices of the Reuters and Al-Jazeera news networks in Beirut’.¹⁰⁷⁸⁹ This was broken down into either one or the other making the first call, to Reuters, and the first and third

¹⁰⁷⁸⁷ Amended consolidated indictment, para. 28.

¹⁰⁷⁸⁸ Namely, 4, 13, 14, 22, 29, 30 and 31 December 2004, and 3, 7, 12 and 17 January 2005. His mobile connected to COLA cells on 29, 30 and 31 December 2004, and 3 and 7 January 2005.

¹⁰⁷⁸⁹ Amended consolidated indictment, para. 44.

calls to Al-Jazeera, while Mr Sabra is pleaded to have made the second call to Al-Jazeera. The evidence from Al-Jazeera, however, is of three different callers.

5854. The Trial Chamber accepts that the combination of the calls between the three Purple mobiles on the afternoon of Monday 14 February 2005, in tandem with calls to Reuters and Al-Jazeera and the collection of the video from the tree, attracts heavy suspicion. And particularly when the evidence of the discarding of the three Purple mobiles within two days of this is factored in.

5855. Once the purported identification of Mr Oneissi as ‘Mohammed’ is discarded, however, the only evidence remaining against the three Accused is of the mobile telephone usage, including that on the Green network. Even when the Trial Chamber examines the broader pattern of mobile activity on 14 February 2005, it cannot be satisfied beyond a reasonable doubt that the Accused helped to disseminate the false claim of responsibility.

5856. The Trial Chamber has considered the role of the Green network mobiles too, even though the evidence was insufficient to establish that Mr Merhi was Green 071’s user. It consists of eighteen calls between Mr Badreddine’s Green 023 and Mr Merhi’s attributed Green 071 between 6 November 2004 and Monday 7 February 2005, and especially five calls on the morning of Sunday 16 January 2005. The two provable facts placed together are thus, first, Mr Merhi’s attributed Green 071 called Mr Badreddine five times on the morning of Sunday 16 January 2005 between 06:19 and 09:00, and second, that Mr Abu Adass most probably left his home between 07:00 and 07:30 that morning.

5857. However, when the link to Mr Oneissi through his alleged involvement in Mr Abu Adass’s disappearance on 16 January 2005 fails, those five calls lose their pleaded context through having a provable connection to Mr Oneissi. The alleged ‘hierarchical’ call flows also lack context because they do not connect to anything for which there is evidence relating to Mr Oneissi’s and Mr Sabra’s actions, if he was using Purple 018 for those calls. They thus cannot be used to prove that Mr Badreddine and Mr Merhi were coordinating and monitoring or supervising what the two were doing. The last call between Mr Merhi’s attributed Green 071 and Mr Badreddine’s Green 023 occurred on Monday 7 February 2005 and the Trial Chamber cannot link it to anything related to the false claim of responsibility or the pleaded conspiracy generally.

5858. The Trial Chamber is not satisfied beyond reasonable doubt that the combination of coincidences and patterns is so compelling that the participation of the three Accused in the false claim of responsibility is the only inference reasonably available on the evidence. The Trial Chamber does not consider that the cell site evidence is sufficiently reliable on its own to place the three Accused where they needed to be for it to find that their guilt is the only conclusion reasonably available from the evidence.

5859. This is especially so when factoring in network congestion on the afternoon of Monday 14 February 2005, after the explosion. Directed retries mean that a mobile could connect to any of six neighbouring cells—or possibly more—rather than that providing predicted best coverage. There was no evidence of network congestion before the explosion nor on any of the other days relevant to events pleaded in the amended consolidated indictment. The combination of the congestion and the uncertainty normally inherent in the sixty to seventy per cent accuracy of the network coverage maps, in determining where the two Accused actually were when making the calls has fatally undermined the reliability of the cell site evidence for the afternoon of 14 February.

5860. In summary, the Trial Chamber has found that:

- Mr Abu Adass was not the suicide bomber;
- The claim of responsibility for the attack was false;
- Contact occurred on Wednesday 22, Tuesday 28 and Friday 31 December 2004 and Friday 7 January 2005—the period in which Mr Abu Adass was allegedly being identified—between Mr Oneissi on Purple 095 and Mr Merhi on Purple 231. These were calls around the time when Mr Oneissi’s mobile was connecting to cells covering an area near the Arab University Mosque in Beirut, where Mr Abu Adass prayed;
- Similarly, on two out of eight days when Mr Sabra’s attributed mobile was also connecting to the cell covering the mosque, namely Saturday 1 and Tuesday 4 January 2005, Mr Sabra’s attributed Purple 018 was in contact with Mr Merhi on Purple 231;
- Mr Merhi’s attributed Green 071 contacted Mr Badreddine on Green 023, on Thursday 23 and Monday 27 December 2004, and Sunday 2 January 2005;

- There were also calls between Mr Badreddine's Green 023 and Mr Merhi's attributed Green 071 between Wednesday 12 and Sunday 16 January 2005, and most particularly five times on the morning of 16 January 2005—the day of Mr Abu Adass's disappearance;
- On Friday 14 and Saturday 15 January 2005, Mr Merhi on Purple 231 called Mr Sabra's attributed Purple 018 three times;
- Mr Abu Adass left his home on Sunday 16 January 2005 and never returned and is most likely deceased;
- On Monday 17 January 2005, Mr Oneissi on Purple 095 called Mr Merhi on Purple 231;
- At an unknown date between Monday 17 January 2005 and Monday 14 February 2005, a video tape was made in which Mr Abu Adass falsely claimed responsibility for the attack;
- Four telephone calls were made on Monday 14 February 2005, to Reuters and Al-Jazeera from those involved in making the false claim, ensuring that the false claim was received and then disseminated to the public;
- A video tape and accompanying letter had been placed in a tree near the Al-Jazeera office at some point before it was collected at 15:53 on Monday 14 February 2005; and
- There were a series of calls between Mr Merhi's Purple 231, Mr Oneissi's Purple 095 and Mr Sabra's attributed Purple 018 on the afternoon of 14 February 2005 from locations near the four payphones and the tree.

5861. The Trial Chamber has been unable, however, to find that:

- Mr Abu Adass met a person named 'Mohammed' in the Arab University Mosque in late December or early January 2005;
- Mr Oneissi posed as 'Mohammed';
- The activity of Mr Merhi's Purple 231, Mr Oneissi's Purple 095 and Mr Sabra's attributed Purple 018 showed that they were involved in the 'Mohammed deceit' around the Arab University Mosque in late December 2004 or early January 2005;

- Mr Oneissi called the Abu Adass family home on Saturday 15 January 2005;
- Mr Abu Adass left with ‘Mohammed’ on Sunday 16 January 2005;
- Mr Oneissi called the Abu Adass family home on Monday 17 January 2005;
- The activity of Mr Merhi’s Purple 231, Mr Oneissi’s Purple 095 and Mr Sabra’s attributed Purple 018 showed their participation in the disappearance of Mr Abu Adass;
- The video tape claiming responsibility was placed in the tree *before* the assassination;
- Either Mr Oneissi or Mr Sabra made the telephone calls to Reuters or Al-Jazeera;
- The Purple mobiles’ activity otherwise connected Mr Oneissi, Mr Sabra or Mr Merhi to the attack on 14 February 2005; and
- The cell site evidence, especially given the state of network congestion after the attack on 14 February 2005, was sufficiently reliable to make findings as to precise locations of mobile users as pleaded.

5862. The Prosecution has therefore not proved its case beyond reasonable doubt of Mr Merhi’s, Mr Oneissi’s and Mr Sabra’s participation in the false claim of responsibility for the attack on Mr Hariri.

XIII. APPLICABLE LAW

A. General legal framework

1. Introduction

5863. As a hybrid international criminal tribunal with the presence of international and Lebanese judges, created pursuant to a resolution of the UN Security Council¹⁰⁷⁹⁰ following a request from the Lebanese Government,¹⁰⁷⁹¹ the Special Tribunal applies mixed sources of law.

5864. For what may be termed substantive crimes, namely those charged in an indictment against Accused persons—and except for offences of contempt and obstruction of justice created by the Rules and listed in Rule 60 *bis*—the Special Tribunal applies the Lebanese Criminal Code. Its Rules, on the other hand, derive from international criminal law procedural rules developed since the establishment of the ICTY in 1993 and indeed before that from the proceedings of the International Military Tribunals in the 1940s. In essence, they combine most of the ICTY’s Rules of Procedure and Evidence with some aspects of the ICC’s statutory framework.

5865. The Special Tribunal’s Statute to a large degree contains provisions identical or similar to those in the ICTY Statute—and the Statutes of the ICTR and SCSL, both of which have a statutory framework deriving from the ICTY’s—and the IRMCT and RSCSL as their successor mechanisms. But it blends other legal sources that include the London Charter of 1945 establishing the International Military Tribunal in Nuremberg, the Lebanese Criminal Code of 1943, as amended, the 1997 *International Convention for the Suppression of Terrorist Bombings*¹⁰⁷⁹² and the 1998 Rome Statute of the ICC.

5866. The Special Tribunal differs from the other international criminal courts and tribunals in several respects. Its jurisdiction is limited ‘solely over persons responsible for the attack of 14 February 2005 or connected attacks’, and it applies a national criminal code to substantive crimes tried before it, including the modes of liability.¹⁰⁷⁹³ Another unique feature is the pre-trial

¹⁰⁷⁹⁰ Security Council resolution 1757.

¹⁰⁷⁹¹ Letter from Lebanese Government dated 13 December 2005.

¹⁰⁷⁹² Adopted 15 December 1997.

¹⁰⁷⁹³ This is common to courts with hybrid characteristics like the presence of international personnel such as judges and prosecutors; for example, the ECCC has jurisdiction over homicide, torture and religious persecution contrary to the Cambodian Penal Code (in addition to jurisdiction over the international crimes of war crimes, crimes against

judge's function which combines aspects of that of the ICC's pre-trial division and the ICTY's confirming judge. An additional one is permitting trials in the absence of an Accused person. Like the ICC, but unlike most of the other courts and tribunals, it permits victims to participate in the proceedings.¹⁰⁷⁹⁴ Having a dedicated Defence Office as an independent organ of the court, which acts to 'protect the rights of the defence',¹⁰⁷⁹⁵ is another structural difference.¹⁰⁷⁹⁶

5867. As the Statute contains a blend of national and international legal sources, interpreting it presents a chamber with some unique challenges. While some notions are legally uncontroversial and appear to be settled law, others appear to be less certain. For example, some difficulties of interpretation arise in relation to the interplay between Articles 2 and 3 of the Statute and in the boundaries of the modes of liability specified in Article 3. Moreover, the Appeals Chamber, in February 2011—and before the confirmation of any indictments—delivered an interlocutory decision on the applicable law ostensibly intended to settle this broad issue *before* the Pre-Trial Judge confirmed any indictments.¹⁰⁷⁹⁷

5868. However, in respect of accessorial liability and the Lebanese law of conspiracy, the Appeals Chamber stopped short of an in-depth examination. The Trial Chamber must thus examine whether the Appeals Chamber's decision coincides with the Trial Chamber's own understanding of the state of the applicable law existing when the crime was committed, when the case was indicted and when the judgment is issued.

humanity and genocide). ECCC Law, Art. 3. The UN special panels in East Timor had jurisdiction over common murder and sexual offences contrary to the East Timor Penal Code. UNTAET Regulation 2000/15, sections 8 and 9. The SCSL, in addition to having jurisdiction to try crimes against humanity, violations of Common Article 3 of the Geneva Conventions and their Additional Protocol II, and other serious violations of international humanitarian law, had jurisdiction over crimes under Sierra Leonean law over sexual abuse of girls contrary to the Prevention of Cruelty to Children Act, 1926, and the wanton destruction of property contrary to the Malicious Damage Act, 1861. SCSL Statute, Art. 5.

¹⁰⁷⁹⁴ Art. 17 of the Statute 'Rights of Victims' is virtually identical to Art. 68 (3) of the Rome Statute 'Protection of the victims and witnesses and their participation in the proceedings'.

¹⁰⁷⁹⁵ Art. 13 (2) of the Statute.

¹⁰⁷⁹⁶ In practice, however, the Defence Office's functions do not differ greatly from those performed by the relevant Registry divisions of the other international courts and tribunals insofar as they concern matters typically performed by an international legal aid 'office', such as appointing and paying defence counsel, monitoring their performance and aiding international requests for assistance. The ICC, for example, has an independent Office of Public Counsel of Defence within the Registry. Art. 13 of the Statute is actually in similar terms to Regulation 77 'Office of Public Counsel for the Defence', ICC Regulations of the Court.

¹⁰⁷⁹⁷ First interlocutory decision on applicable law.

5869. Article 1 of the Statute of the Special Tribunal which gives the Special Tribunal jurisdiction over persons responsible for the attack of 14 February 2005 that resulted in Mr Hariri's death, and in the death and injury of others.¹⁰⁷⁹⁸

5870. Article 2 specifies that the applicable law for crimes falling within its jurisdiction is the Lebanese Criminal Code and the Lebanese law of 11 January 1958 on 'Increasing the penalties for sedition, civil war and interfaith struggle'. The relevant provisions of the Lebanese Criminal Code are those:

relating to the prosecution and punishment of acts of terrorism, crimes and offences against life and personal integrity, illicit associations and failure to report crimes and offences, including the rules regarding the material elements of a crime, criminal participation and conspiracy.

5871. Article 6 of the 1958 law provides the death penalty for some acts of terrorism while Article 7 specifies a maximum penalty of hard labour for life¹⁰⁷⁹⁹ for conspiracy to commit an act of terrorism. However, given that Article 24 of the Statute specifies a different maximum penalty, of life imprisonment, for any offence within the Special Tribunal's jurisdiction, the relevance of the 1958 law to crimes falling within the Special Tribunal's jurisdiction is unclear.

5872. This analysis of the applicable law is divided below into three sections. The first is of the general legal framework for interpreting the law applicable to the crimes charged in this case, including the modes of liability employed, that is, how the crimes were committed. This includes analysing various principles of international human rights law and, in relation to modes of liability, Article 3 (1) (a) of the Statute. The second examines and defines the two relevant modes of liability, namely committing a crime and participating as an accomplice in committing one. The third section examines and defines the relevant crimes.

¹⁰⁷⁹⁸ And additionally, in specified circumstances, other connected attacks, namely any occurring 'in Lebanon between 1 October 2004 and 12 December 2005, or any later date decided by the Parties and with the consent of the Security Council' that 'are connected in accordance with the principles of criminal justice and are of a nature and gravity similar to the attack of 14 February 2005'. (The 'Parties' are the Lebanese Republic and the UN.)

¹⁰⁷⁹⁹ In its First interlocutory decision on applicable law, the Appeals Chamber, at paragraphs 48 and 190, misquotes Article 7 as imposing the death penalty. This does not reflect the content of that Article either at the time of that decision, or subsequently.

5873. As a source of guidance in interpreting the relevant Lebanese law, the Trial Chamber has examined numerous Lebanese judicial decisions. The Appeals Chamber's first interlocutory decision on the applicable law, issued in February 2011, and its second such decision, of October 2017, are also closely examined.

2. The charges against the four Accused

5874. The Prosecutor, in the operative indictment, the amended consolidated indictment filed mid-trial, on 12 July 2016, charges the four Accused, in count 1, with conspiracy aimed at committing a terrorist act.¹⁰⁸⁰⁰ Mr Ayyash is also charged, in count 2, with committing a terrorist act by means of an explosive device, resulting in deaths and the partial destruction of buildings; in count 3 with the premeditated intentional homicide—by using explosive materials—of Mr Rafik Hariri and in count 4, of 21 other people; and with the attempted premeditated intentional homicide—by using explosive materials—of 226 people in count 5.¹⁰⁸⁰¹

5875. Mr Merhi, Mr Oneissi and Mr Sabra are charged as accomplices to: the commission of a terrorist act by means of an explosive device in count 6, the premeditated intentional homicide of Mr Hariri, in count 7 and in count 8 of 21 other persons and, in count 9, the premeditated attempted intentional homicide of 226 persons by using explosive materials.¹⁰⁸⁰²

5876. In the amended consolidated indictment, the Prosecutor has charged the four Accused with committing crimes pursuant to a range of provisions in the Statute and the Lebanese Criminal Code. These are in the list below; it is a blend of provisions relating to jurisdiction, substantive crimes, the modes of liability, and penalties:

- Articles 2 and 3 (1) (a) of the Statute—all counts;¹⁰⁸⁰³
- Article 188 of the Lebanese Criminal Code—all counts;¹⁰⁸⁰⁴
- Article 189 of the Lebanese Criminal Code—counts 4, 5, 8 and 9;¹⁰⁸⁰⁵
- Articles 200 and 201 of the Lebanese Criminal Code—counts 5 and 9;¹⁰⁸⁰⁶

¹⁰⁸⁰⁰ Amended consolidated indictment, paras 53-54.

¹⁰⁸⁰¹ Amended consolidated indictment, paras 55-62.

¹⁰⁸⁰² Amended consolidated indictment, paras 63-70.

¹⁰⁸⁰³ Amended consolidated indictment, paras 1, 53 (c), 55 (c), 57 (b), 59 (b), 61 (b), 63 (c), 65 (c), 67 (b), 69 (b).

¹⁰⁸⁰⁴ Amended consolidated indictment, paras 53 (a), 55 (a), 57 (a), 59 (a), 61 (a), 63 (a), 65 (a), 67 (a), 69 (a).

¹⁰⁸⁰⁵ Amended consolidated indictment, paras 59 (a), 61 (a), 67 (a), 69 (a).

¹⁰⁸⁰⁶ Amended consolidated indictment, paras 61 (a), 69 (a).

- Articles 212 and 213 of the Lebanese Criminal Code—counts 1-5;¹⁰⁸⁰⁷
- Article 219 (4) and (5) of the Lebanese Criminal Code—counts 6-9;¹⁰⁸⁰⁸
- Article 270 of the Lebanese Criminal Code—count 1;¹⁰⁸⁰⁹
- Article 314 of the Lebanese Criminal Code—counts 1, 2 and 6;¹⁰⁸¹⁰
- Articles 547 and 549 (1) and (7) of the Lebanese Criminal Code—counts 3-5 and 7-9;¹⁰⁸¹¹
- Article 6 of the Lebanese law of 1958—counts 1, 2 and 6;¹⁰⁸¹² and
- Article 7 of the Lebanese law of 1958—count 1.¹⁰⁸¹³

5877. These and other relevant articles in the Code are examined in detail below.

3. The Articles of the Lebanese Criminal Code relevant to the charges against the Accused

5878. The following Articles of the Lebanese Criminal Code are relevant to the charges against the Accused. Sub-chapter II of Book I, Chapter III, containing Articles 188 to 199, is headed ‘Mental elements of offences’.¹⁰⁸¹⁴ Articles 188 to 191 refer to intent, with Article 188 defining this mental element as ‘the will to commit an offence as defined by law’.

5879. Articles 189, 190 and 191 state:

Article 189: An offence shall be deemed to be intentional, even if the criminal consequence of the act or omission exceeds the intent of the perpetrator, if he had foreseen its occurrence and thus accepted the risk.

Article 190: Fault exists where a harmful act results from negligence, recklessness or failure to comply with laws and regulations.

¹⁰⁸⁰⁷ Amended consolidated indictment, paras 53 (a), 55 (a), 57 (a), 59 (a), 61 (a).

¹⁰⁸⁰⁸ Amended consolidated indictment, paras 63 (a), 65 (a), 67 (a), 69 (a).

¹⁰⁸⁰⁹ Amended consolidated indictment, para. 53 (a).

¹⁰⁸¹⁰ Amended consolidated indictment, paras 53 (a), 55 (a), 63 (a).

¹⁰⁸¹¹ Amended consolidated indictment, paras 57 (a), 59 (a), 61 (a), 65 (a), 67 (a), 69 (a).

¹⁰⁸¹² Amended consolidated indictment, paras 53 (b), 55 (b), 63 (a).

¹⁰⁸¹³ Amended consolidated indictment, para. 53 (b).

¹⁰⁸¹⁴ The Appeals Chamber explained that Article 2 of the Statute ‘implicitly refers to the subjective elements as well’ as the objective elements of the crimes under Lebanese law. First interlocutory decision on applicable law, fn. 66.

Article 191: An offence is unintentional if the perpetrator did not foresee the consequences of his wrongful act or omission although he could or should have foreseen it, or if he foresaw it and believed that he could prevent it.

5880. Article 192 provides the following definition of motive:

Motive is the reason prompting the perpetrator to act, or his ultimate goal.

It shall not constitute an element of an offence except in cases specified by law.

5881. None of the offences in the amended consolidated indictment, pleaded as having been committed contrary to the Lebanese Criminal Code, requires the Prosecution to prove that the Accused had a motive to commit the crime charged.¹⁰⁸¹⁵

5882. Section III, Articles 200 to 203, is entitled ‘Material elements of offences’.¹⁰⁸¹⁶ Articles 200 and 201¹⁰⁸¹⁷ concern attempted felonies, with Article 200 specifying that:

Any attempt to commit a felony that began with acts aimed directly at its commission shall be deemed to constitute the felony itself if its completion was prevented solely by circumstances beyond the control of the perpetrator.

...

Any person who begins to commit an act and then voluntarily desists shall be punished only for acts that he committed which constituted offences *per se*.

5883. Article 201 provides for the commutation of penalties:

If all acts aimed at the commission of a felony were completed but produced no effect owing to circumstances beyond the control of the perpetrator.

¹⁰⁸¹⁵ This is relevant because the Sabra Defence made submissions, in the alternative, in its final trial brief (paras 427-428) and closing submissions (T. 21 September 2018, pp 14-21, 56-57), arguing that if the crime of terrorism under the Lebanese Criminal Code is interpreted in light of customary international law, the Prosecution must prove an Accused person’s motive as a mental element of the crime. In 2012, the Sabra Defence also challenged the Appeals Chamber’s definition of the *mens rea* required to commit a terrorist act in its unsuccessful attempt to have the Appeals Chamber reconsider its First interlocutory decision on applicable law; Appeals Chamber decision on Defence requests for reconsideration of First interlocutory decision on applicable law, para. 50, as argued in F0293, Sabra Motion for Reconsideration of Rule 176 *bis* Decision—“International Terrorism”, 13 June 2012, para. 4.

¹⁰⁸¹⁶ Article 202 in that section concerns misdemeanours only, so is not relevant in this case.

¹⁰⁸¹⁷ These two provisions also contain penalties for attempted crimes, which are not relevant to the Special Tribunal’s jurisdiction.

5884. Article 203 states:

An attempt shall be punished, even if its aim was unattainable owing to a factual circumstance unknown to the perpetrator. The perpetrator shall not be punished, however, if his act stemmed from a lack of understanding.

Furthermore, a person who commits an act in the mistaken belief that it constitutes an offence shall not be punished.

5885. Sub-section 2 of section III, entitled ‘Plurality of causes’, has a sole provision in Article 204 which provides:

A causal link between an act and omission on the one hand, and the criminal consequence on the other, shall not be precluded by the concurrent existence of other previous, simultaneous or subsequent causes, even if they were unknown to the perpetrator or independent of his act.

If, however, the subsequent cause is independent and sufficient in itself to bring about the criminal consequence, the perpetrator shall incur the penalty only for the act that he committed.

5886. Article 210 of the Lebanese Criminal Code, in a section entitled ‘The perpetrator of the offence’, relevantly provides that ‘No one shall be sentenced to a penalty unless he consciously and willingly committed the act.’

5887. Articles 212, 213 and 219 of the Lebanese Criminal Code concern modes of criminal liability under Lebanese law—with the parts of Article 219 charged in the amended consolidated indictment highlighted in bold—and relevantly provides:

Article 212: The perpetrator of an offence is anyone who brings into being the constituent elements of an offence or who participates directly in its commission.

Article 213: Each of the co-perpetrators of an offence shall be liable to the penalty prescribed by law for the offence.

A heavier penalty ... shall be applicable to anyone who organises the participation in the offence or directs the action of the persons taking part in it.

Article 219: The following shall be deemed to be accomplices to a felony or misdemeanour:

- (1) Anyone who issues instructions for its commission, even if such instructions did not facilitate the act;
- (2) Anyone who hardens the perpetrator's resolve by any means;
- (3) Anyone who, for material or moral gain, accepts the perpetrator's proposal to commit the offence;
- (4) **Anyone who aids or abets the perpetrator in acts that are preparatory to the offence;**
- (5) **Anyone who, having so agreed with the perpetrator or an accomplice before commission of the offence, helped to eliminate the traces, to conceal or dispose of items resulting therefrom, or to shield one or more of the participants from justice;**
- (6) Anyone who, having knowledge of the criminal conduct of offenders responsible for highway robbery or acts of violence against state security, public safety, persons or property, provides them with food, shelter, a refuge or a meeting place.

5888. Since all complicity charges in the amended consolidated indictment are under Articles 219 (4) and (5), only those articles are relevant to those charges. Another provision, Article 222, deals with assisting a person to evade justice in circumstances not covered by Article 219 (5). It relevantly provides:

Anyone who, other than in the cases provided for in Article 219, paragraphs 5 and 6, conceals a person who he knows has committed a felony or who helps such a person to evade justice shall be punishable by a term of imprisonment of three months to two years.

However, the Prosecutor has brought no charges under that Article. An amendment to the amended consolidated indictment expressly charging it in the alternative—as a matter of procedural fairness to the four Accused and hence their right to a fair trial—would have been required before the Trial Chamber could have considered it.

5889. The other provisions of the Lebanese Criminal Code charged in the amended consolidated indictment—Articles 270, 314, 547 and 549 (1) and (7)—concern particular crimes, namely, conspiracy, terrorist act and intentional homicide:

Article 270: Any agreement concluded between two or more persons to commit a felony by specific means shall be qualified as a conspiracy.

Article 314: Terrorist acts are all acts intended to cause a state of terror and committed by means liable to create a public danger such as explosive devices, inflammable materials, toxic or corrosive products and infectious or microbial agents.

Article 547: Anyone who intentionally kills another person shall be punishable by hard labour for a term of between 15 and 20 years.

Article 549: Intentional homicide shall entail the death penalty if it was committed in the following circumstances:

(1) With premeditation;

...

(7) Using explosive materials.

4. Articles 6 and 7 of the Lebanese law of 1958

5890. Article 6 of the Lebanese law of 1958¹⁰⁸¹⁸ prescribes the penalties for terrorist acts in the Lebanese legal system. Under Article 6, while these acts are generally non-capital offences they become capital offences if they cause death or certain other results. Article 6 provides:

Any act of terrorism shall be punishable by hard labour for life. Where the act results in the death of one or more individuals, the total or partial destruction of a building having one or more individuals inside it, the total or partial destruction of a public building, an industrial plant, a ship or other facilities, or disrupts the functioning of telecommunication or transport services, it shall be punishable by death.

¹⁰⁸¹⁸ This superseded the second, third and fourth sentences of Article 315 of the Lebanese Criminal Code. Lebanese law of 1958, Art. 1.

5891. In the amended consolidated indictment, the Prosecutor alleges specifically that the terrorist act in this case resulted in both the deaths of 22 persons and the partial destruction of a hotel ‘and nearby buildings’.¹⁰⁸¹⁹

5892. However, consistent with the international practice that no international criminal court or tribunal has the death penalty, Article 24 of the Statute displaces Article 6 of the 1958 law in the Special Tribunal’s proceedings in relation to the death penalty. It provides a maximum penalty of life imprisonment.¹⁰⁸²⁰

5893. Article 7 of the Lebanese law of 1958¹⁰⁸²¹ prescribes the penalty for conspiracy under Lebanese law, stating that:

Any person who enters into a conspiracy with a view to the commission of any of the offences set out in the preceding articles shall be punishable by hard labour for life.

5894. Because the Prosecutor has charged the Accused with participating in a conspiracy aimed at committing a terrorist act the relevant ‘preceding articles’ are Article 314 of the Lebanese Criminal Code and Article 6 of the Lebanese law of 1958, which is applicable to sentencing only. It is thus subject to Article 24 of the Statute.

5895. Articles 6 and 7 of the 1958 law exclusively concern sentencing and in any event appear to be irrelevant to the Special Tribunal’s jurisdiction. The Trial Chamber has therefore mentioned them only where it is necessary either to quote or summarise judicial decisions that refer to them, or to address, but briefly, the aggravating circumstances charged in this case.¹⁰⁸²²

¹⁰⁸¹⁹ Amended consolidated indictment, para. 56 (g).

¹⁰⁸²⁰ Article 24 provides:

1. The Trial Chamber shall impose upon a convicted person imprisonment for life or for a specified number of years. In determining the terms of imprisonment for the crimes provided for in this Statute, the Trial Chamber shall, as appropriate, have recourse to international practice regarding prison sentences and to the practice of the national courts of Lebanon.
2. In imposing sentence, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

¹⁰⁸²¹ This superseded the first sentence of Article 315 of the Lebanese Criminal Code. Lebanese law of 1958, Art. 1.

¹⁰⁸²² Rule 171 (A) provides that the Trial Chamber determines any sentence separately from and after delivering judgment.

5. Articles 2 and 3 of the Statute

5896. Article 2 of the Statute is entitled ‘Applicable criminal law’. It provides:

The following shall be applicable to the prosecution and punishment of the crimes referred to in article 1, subject to the provisions of this Statute:

- (a) the provisions of the Lebanese Criminal Code relating to the prosecution and punishment of acts of terrorism, crimes and offences against life and personal integrity, illicit associations and failure to report crimes and offences, including the rules regarding the material elements of a crime, criminal participation and conspiracy; and
- (b) Articles 6 and 7 of the Lebanese law of 11 January 1958 on “Increasing the penalties for sedition, civil war and interfaith struggle”.

5897. Thus Article 2 of the Statute specifies, in general terms, the Lebanese criminal law that the Special Tribunal must apply. While it expressly provides that the Special Tribunal must apply the Lebanese Criminal Code in prosecuting and punishing offences, it nevertheless then states that this is ‘subject to the provisions of this Statute’, but without setting any parameters.

5898. The article following, Article 3 ‘Individual criminal responsibility’, provides:

1. A person shall be individually responsible for crimes within the jurisdiction of the Special Tribunal if that person:

- (a) Committed, participated as accomplice, organized or directed others to commit the crime set forth in article 2 of this Statute; or
- (b) Contributed in any other way to the commission of the crime set forth in article 2 of this Statute by a group of persons acting with a common purpose, where such contribution is intentional and is either made with the aim of furthering the general criminal activity or purpose of the group or in the knowledge of the intention of the group to commit the crime.

2. With respect to superior and subordinate relationships, a superior shall be criminally responsible for any of the crimes set forth in article 2 of this Statute

committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

- (a) The superior either knew, or consciously disregarded information that clearly indicated that the subordinates were committing or about to commit such crimes;
- (b) The crimes concerned activities that were within the effective responsibility and control of the superior; and
- (c) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

3. The fact that the person acted pursuant to an order of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the Special Tribunal determines that justice so requires.

5899. Article 3 sets out the modes of liability for crimes within the Special Tribunal's jurisdiction, in other words how someone commits a crime. This is notwithstanding that Article 2 (a) had *already* applied the relevant Lebanese provisions to 'individual criminal responsibility', or the manner in which a crime is committed, by providing that provisions of the Lebanese Criminal Code including the 'rules regarding ... criminal participation' are applicable. The Lebanese code—like any other similar national code—specifies how crimes are committed. It defines the mental elements of offences,¹⁰⁸²³ when motive is applicable,¹⁰⁸²⁴ the material elements of offences such as attempt¹⁰⁸²⁵ and criminal responsibility such as perpetration¹⁰⁸²⁶ and accomplice and concealment offences.¹⁰⁸²⁷

5900. The issue of statutory interpretation here is the meaning of the words 'subject to the provisions of this Statute' in Article 2 in relation to the modes of liability under which an accused

¹⁰⁸²³ Arts 188-199.

¹⁰⁸²⁴ Art. 192.

¹⁰⁸²⁵ Arts 200-203.

¹⁰⁸²⁶ Arts 210, 212, among others.

¹⁰⁸²⁷ Arts 219-222.

person charged before the Special Tribunal may have committed an offence. The Statute, unfortunately, is unclear and provides no guidance as to its interpretation.¹⁰⁸²⁸

5901. Relevantly to the charges in the amended consolidated indictment, Article 3 (1) (a) states that a person is responsible for crimes within the Special Tribunal's jurisdiction if the person 'Committed, participated as accomplice, organized or directed others to commit the crime' referred to in Article 2.

5902. The genesis of Article 3 (1) (a) and (b)¹⁰⁸²⁹ is in Article 2 (3) of the 1997 *International Convention for the Suppression of Terrorist Bombings*.¹⁰⁸³⁰ The following is clear:

- Article 3 (1) (a) of the Statute mirrors Article 2 (3) (a) and (b) of the 1997 convention;

¹⁰⁸²⁸ The Secretary-General's report refers to the *Lebanese Criminal Code* and 'general criminal law principles'—which normally means general principles of criminal law common to domestic legal systems.

¹⁰⁸²⁹ The Secretary-General's report, at para. 26, states:

Under Article 3, paragraph 1, of the statute, all those who committed, participated as accomplice, organised or directed others to commit the crime, or otherwise contributed to the commission of the crime, shall be individually responsible. This is a reflection of the Lebanese Criminal Code and general criminal law principles, evidenced, inter alia, by Article 2, paragraph 3, of the International Convention for the Suppression of Terrorist Bombings of 1997 (General Assembly resolution 52/164, annex). Article 3, paragraph 2, reflects the principle of command responsibility both under international law and national criminal and military codes as more fully articulated in Article 28, subparagraph (b), of the Statute of the International Criminal Court. Under Article 3, paragraph 3, obedience to superior order is no defence, but may be considered in mitigation of punishment.

¹⁰⁸³⁰ As of the date of this judgment this convention had 170 State parties. Lebanon is not one and has not signed the treaty. Article 2 provides (emphasis added):

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:
 - (a) With the intent to cause death or serious bodily injury; or
 - (b) With the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.
2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.
3. Any person also commits an offence if that person:
 - (a) **Participates as an accomplice** in an offence as set forth in paragraph 1 or 2 of the present article; or
 - (b) **Organizes or directs others to commit an offence as set forth in paragraph 1 or 2** of the present article; or
 - (c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1 or 2 of the present article by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

- Article 3 (1) (b) of the Statute comes directly from Article 2 (3) (c) of the 1997 convention;
- Article 3 (1) (b) of the Statute is almost identical to Article 25 (3) (d) of the 1998 Rome Statute of the ICC,¹⁰⁸³¹ which, in turn, comes from Article 2 (3) (c) of the 1997 convention.

5903. The Statute's Article 3 (1) (b) provides for individual criminal responsibility for a person who has:

Contributed in any other way to the commission of the crimes set forth in article 2 of the Statute by a group of persons acting with a common purpose, where such contribution is intentional and is either made with the aim of furthering the general criminal activity or purpose of the group or in the knowledge of the intention of the group to commit the crime.

5904. The wording of Article 3 (1) (a) and (b) of the Statute may represent a general principle of law, given that this derives from a convention that has 170 State ratifications, and, additionally, the Rome Statute, with its 123 State Parties. This provides evidence of *opinio juris*, but finding consistent State practice is more challenging and beyond the scope of this judgment.

5905. However, the *International Convention for the Suppression of Terrorist Bombings* does not define the elements of the modes of liability as set out in its Article 2 (3). Thus, even if it does represent a general principle of law, these elements can be found only by examining the case law of the international criminal courts and tribunals, and if relevant, national legislation and case law.

5906. Only Article 3 (1) (a) of the Statute is charged in the amended consolidated indictment. But as it and Article 3 (1) (b) come directly—and together—from the 1997 convention, Article 3 (1) (b) is also relevant for determining which modes of liability apply to cases before the Special Tribunal.

5907. The Lebanese Criminal Code does not contain a mode of criminal liability expressed precisely as set out in Article 3 (1) (b) of the Statute. However, it is evident that Article 3 (1) (b) also contains elements from three provisions of the Lebanese Criminal Code, namely the mental

¹⁰⁸³¹ Adopted on 17 July 1998. It entered into force on 1 July 2002. Article 25 (3) (d) provides for individual criminal responsibility for a person who, 'In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either: (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or (ii) Be made in the knowledge of the intention of the group to commit the crime'. Lebanon is neither a signatory nor State Party to the Rome Statute.

element or *mens rea* set out in Articles 188 and 189 (intent) and the substantive offence in Article 335, ‘Criminal associations’, which requires that two or more people enter into an agreement to commit a felony.

5908. Article 3 (1) (a) also overlaps in part with some provisions in Chapter IV of the Lebanese Criminal Code, under the heading ‘Responsibility’.¹⁰⁸³² Specifically, Article 210 provides that a person may only be sentenced to a penalty if they ‘consciously and willingly committed the act’ and Article 212 defines ‘the perpetrator of an offence’. Article 217—which is not charged in this case—defines ‘instigator’. Finally, under sub-section 3 ‘Accomplices and concealers’, Articles 219 and 220 define these modes of liability.

5909. Article 3 (2) and (3) of the Statute provide for individual criminal responsibility of those in superior and subordinate relationships. These principles derive from convention and customary international law. International criminal courts and tribunals have found that the individual criminal responsibility of military and other superiors for the conduct of their subordinates forms part of customary international law.¹⁰⁸³³ The original modern statutory source of Article 3 (3)—referring to a person acting pursuant to superior orders—is in the 1945 London Charter establishing the International Military Tribunal, which sat in Nuremberg in 1945 and 1946.¹⁰⁸³⁴ The liability in Article 3 (2) mirrors that in Article 28 (b) of the Rome Statute—which provides

¹⁰⁸³² This chapter is divided into three parts, namely, Part I ‘Responsible persons’ (Articles 210-222), Part II ‘Impediments to prosecution’ (Articles 223-248) and Part III ‘Grounds for exemption from penalty or for mitigation or aggravation of penalty’ (Articles 249-269), and each part is further sub-divided.

¹⁰⁸³³ For example, *Delalić and others (Čelebići)* Trial Judgment, paras 333-343; *Delalić and others (Čelebići)* Appeal Judgment, para. 195; *Fofana and Kondewa* Trial Judgment, para. 233; and the sources referred to by the ICTY and SCSL. See also First interlocutory decision on applicable law, paras 43, 204-207, 210.

¹⁰⁸³⁴ 1945 London Charter for the International Military Tribunal, Article 7, ‘The official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment’ and Article 8, ‘The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires’. Article 6, ‘Responsibility of Accused’ of the 1946 Tokyo Charter for the Far East International Military Tribunal is in similar terms.

liability for non-military superiors¹⁰⁸³⁵—which in turn comes from the London Charter, and the ICTY and ICTR Statutes.¹⁰⁸³⁶

5910. The liability expressed in Article 3 (3)—stating that acting pursuant to an order does not relieve a person of criminal responsibility but may be considered in mitigation of punishment—comes directly from the wording of Article 7 (4) of the ICTY Statute and Articles 6 (4) of the ICTR and SCSL Statutes and originally from Article 8 of the London Charter. This mode of liability, for superior-subordinate relationships in respect of non-military superiors, does not appear in the Lebanese Criminal Code. It is not charged and therefore is not relevant to the amended consolidated indictment. The Lebanese Military Code also contains no equivalent for military commanders. The wording of Article 3 (2) suggests that it encompasses superior responsibility for both military and non-military superiors, unlike in the Rome Statute where the responsibility is separated in two sub-sections.

5911. In summary, the modes of liability set out in Articles 3 (1) (a) and (b), (2) and (3) are evidently concepts of criminal liability taken from international criminal law, customary law and treaty law.

5912. Why Article 3 of the Statute includes modes of liability that are not in the Lebanese Criminal Code is unclear and unexplained: the Secretary-General's report provides no elucidation. The most likely explanation in relation to Articles 3 (2) and (3) is that these modes were added to allow the Special Tribunal's Prosecutor to file an indictment alleging superior responsibility against senior military or civilian officials where there was evidence that crimes within the Special

¹⁰⁸³⁵ Which provides:

With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

- (i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;
- (ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and
- (iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Article 28 (a) provides for the responsibility of military commanders.

¹⁰⁸³⁶ ICTY Statute, Art. 7 (2)-(4); ICTR Statute, Art. 6 (2)-(4). *See also* SCSL Statute, Art. 6 (2)-(4). Articles 86-87, Additional Protocol I to the Geneva Conventions contain similar provisions with respect to military commanders.

Tribunal's jurisdiction had been committed by their subordinate(s), and that they had a legal duty to prevent or punish those crimes. This would have been pursuant to customary law.

5913. And as for Article 3 (1) (a) and (b)? Maybe it was an intended association between the attack on Mr Hariri—as a presumed terrorist attack caused by a large explosion—and the *International Convention for the Suppression of Terrorist Bombings*. But, again this is unexplained. Although the Secretary-General's report notes the convention, it does not illuminate its relevance to the Lebanese Criminal Code, which itself criminalises terrorist acts and how they can be committed.

5914. The modes of liability specified in Article 3 that do not appear in the Lebanese Criminal Code clearly were intended to still apply to cases tried before the Special Tribunal. This is because Article 2 of the Statute is expressed to be subject to the provisions of the Statute, which must logically include Article 3. So to this extent Article 2 is subject to at least some parts of Article 3.

5915. But for the following reasons, this must be subject to overriding principles of international human rights law and of criminal law, the most notable here being that of legality.

5916. Article 2 of the Statute, as noted, provides that the Special Tribunal is to apply the Lebanese Criminal Code for the prosecution and punishment of the listed offences but 'subject to the provisions of this Statute'. The Articles of the Statute falling within the phrase 'subject to the provisions of this Statute' would appear to be Article 3 'Individual criminal responsibility', Article 4 'Concurrent jurisdiction', Article 5 '*Non bis in idem*', Article 6 'Amnesty', Article 16 'Rights of the accused' and Article 24 'Penalties'. The Statute's remaining Articles concern either procedural law or the operation of the Special Tribunal. The prosecution and punishment of offences specified in Article 2—by reference to the Lebanese Criminal Code—therefore could not be 'subject to' any of these remaining Articles.

5917. The only Articles within the phrase 'subject to the provisions of this Statute' relevant to determining whether the Accused have participated in any offence charged in the amended consolidated indictment are Article 3, 'Individual criminal responsibility', and Article 16, 'Rights of the accused'.

5918. Article 16 shows that the Statute’s drafters intended international human rights standards to apply in the Special Tribunal. It explicitly imports a number of these standards into the Special Tribunal’s procedures. Article 16 (2) guarantees an accused person the right to a fair trial, providing ‘The accused shall be entitled to a fair and public hearing, subject to measures ordered by the Special Tribunal for the protection of victims and witnesses.’ Some specific guarantees are then listed in Article 16 (3) and (4). But other relevant principles and their interpretation are found in international human rights instruments and the decisions and comments of their courts and committees, as well as those of international criminal courts and tribunals.

5919. The core feature of the principle of legality is that a person cannot be found guilty of a crime if their conduct was not a crime under national or international law, in terms that were foreseeable and accessible, at the time when the acts that could constitute the crime occurred.¹⁰⁸³⁷ This is otherwise known as *nullum crimen sine lege* (no crime without law) or, in relation to punishment, *nullum poena sine lege* (no punishment without law). The principle is expressly stated in human rights treaties¹⁰⁸³⁸—including the ICCPR, to which Lebanon has been a party since 1972—and in Articles 1 and 6 of the Lebanese Criminal Code.¹⁰⁸³⁹ In addition, the Preamble to Lebanon’s Constitution provides that Lebanon abides by, and that its Government ‘shall embody’ ‘without exception’, the principles of, both the 1948 Universal Declaration of Human Rights and the covenants of the UN generally.¹⁰⁸⁴⁰ The ICCPR is one such covenant.

¹⁰⁸³⁷ *Milutinović and others* Appeal decision on challenging jurisdiction, paras 37-40; *Del Rio Prada* Judgment, paras 91-93; *Scoppola* Judgment, para. 99; *Sunday Times* Judgment, p. 24.

¹⁰⁸³⁸ For example, ICCPR, Art. 15; European Convention on Human Rights, Art. 7; American Convention on Human Rights, Art. 9. See also the (non-binding) Universal Declaration of Human Rights, Art. 11 (2).

¹⁰⁸³⁹ Articles 1 and 6 relevantly state:

No penalty may be imposed and no preventive or corrective measure may be taken in respect of an offence that was not defined by statute at the time of its commission. An accused person shall not be charged for acts constituting an offence or for acts of principal or accessory participation, committed before the offence in question has been defined by statute.

No penalty may be imposed that was not prescribed by statute at the time of commission of the offence.

Various other Articles in the same sub-chapter of the Lebanese Criminal Code, entitled ‘Temporal scope of application of criminal law’, limit retrospective application of law to changes favourable to the accused, for example, Articles 4 and 10. Article 4 relevantly states ‘Any statute that amends the right to prosecute shall be applicable to offences committed previously if it is more favourable to the accused.’ Article 10 relevantly states ‘Any new statute that amends the enforcement of a penalty by changing its nature shall not be applicable to acts committed before its entry into force unless it is more favourable to the accused or convicted person.’

¹⁰⁸⁴⁰ Lebanon, Constitution, Preamble, para. (B), which relevantly states that Lebanon is ‘a founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights. The Government shall embody these principles in all fields and areas without exception’.

5920. The principle of legality applies to both the elements of crimes and the modes of liability.¹⁰⁸⁴¹ Aiding and abetting is a mode of liability. As an example, the ICTY Appeals Chamber, in *Milutinović* held that:

This Tribunal must therefore be satisfied that the crime or the form of liability with which an accused is charged was sufficiently foreseeable and that the law providing for such liability must be sufficiently accessible at the relevant time, taking into account the specificity of international law when making that assessment.¹⁰⁸⁴²

And further, in referring specifically to joint criminal enterprise as a mode of liability:

In order to come within the Tribunal's jurisdiction *ratione personae*, any form of liability must satisfy three pre-conditions: (i) it must be provided for in the Statute, explicitly or implicitly; (ii) it must have existed under customary international law at the relevant time; (iii) the law providing for that form of liability must have been sufficiently accessible at the relevant time to anyone who acted in such a way; and (iv) such person must have been able to foresee that he could be held criminally liable for his actions if apprehended.¹⁰⁸⁴³

5921. Retroactively criminalising a mode of liability, such as for example, that of a superior with respect to the criminal actions of a subordinate—as set out in Article 3 (2) of the Statute—would obviously infringe the principle of legality.

5922. The principle of *in dubio pro reo* is a long established general principle of law, including of international human rights law, and derives from the presumption of innocence.¹⁰⁸⁴⁴ The ICTY Appeals Chamber, for example in *Galić*, defined it in the following manner:

¹⁰⁸⁴¹ *Milutinović and others* Appeal decision on challenging jurisdiction, para. 38, and paras 37-40; *Nuon Chea and Khieu Samphan* Case 002/01 Appeal Judgment, para. 761. There, the Cambodian Supreme Court noted that it had held in the *Duch* Appeal Judgment at para. 96 that ‘that fairness and due process concerns underlying the international principle of legality require that charged offences or modes of responsibility be “sufficiently foreseeable and [...] sufficiently accessible [to the accused] at the relevant time”’. The Appeals Chamber reached the same conclusion but without citing any authority nor providing any reasoning: First interlocutory decision on applicable law, para. 210, stating only that, ‘Third, the principle of *nullum crimen* (in particular, its non-retroactive requirement) applies not only to substantive crimes, but also to modes of criminal responsibility’.

¹⁰⁸⁴² *Milutinović and others* Appeal decision on challenging jurisdiction, para. 38.

¹⁰⁸⁴³ *Milutinović and others* Appeal decision on challenging jurisdiction, para. 21. There are actually four rather than three pre-conditions here.

¹⁰⁸⁴⁴ It is incorporated in the Statute and numerous treaties including the ICCPR, Article 14 (2). This is binding upon Lebanon and recognised through the Preamble to its Constitution. *Al Jadeed and Al Khayat* Appeal Judgment, para. 169; *Limaj and others* Appeal Judgment, para. 21; *Renzaho* Appeal Judgment, para. 474; *Galić* Appeal Judgment, para. 77; see also *Barberà and others* Judgment, para. 77; *Tsalkitzis* Judgment, para. 60; *Delić* Trial Judgment, paras

The principle of *in dubio pro reo* dictates that any doubt should be resolved in favour of the accused and encompasses doubts as to whether an offence has been proved at the conclusion of a case.¹⁰⁸⁴⁵

5923. There is no doubt that it is an evidentiary principle requiring a court to exercise any evidentiary doubt in favour of the Accused. This includes on findings required for a conviction, such as the elements required to prove an offence.¹⁰⁸⁴⁶ The ICC Appeals Chamber has interpreted the principle to extend more generally to interpreting the definition of a crime, holding that:

The Appeals Chamber notes that the principle *in dubio pro reo* is encapsulated in article 22 (2) of the Statute as a general principle of criminal law to be employed, where ambiguity arises, in the interpretation of the definition of a crime.¹⁰⁸⁴⁷

Article 22 (2) of the Rome Statute, under the general heading of ‘*Nullum crimen sine lege*’, provides:

The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted.

5924. The ICC Trial Chamber in *Katanga* and the ECCC Supreme Court Chamber have also stated that it extends to interpreting the law after other methods of interpretation have not resolved doubts.¹⁰⁸⁴⁸ One ICTY Trial Chamber, without using the term *in dubio pro reo*, held that an

23-24; *Tendam* Judgment, para. 37; *Cleve* Judgment, para. 52; Human Rights Committee General Comment No. 32, para. 30, in particular the statement that ‘The presumption of innocence, which is fundamental to the protection of human rights ... ensures that the accused has the benefit of doubt’. For an example of the application of *in dubio pro reo* in Lebanese courts, see *Journalist Kamel Mroue* Judgment, pp 1-2.

¹⁰⁸⁴⁵ *Galić* Appeal Judgment, para. 77, referring to *Tadić* appeal decision on additional evidence, para. 73, holding that any doubt should be resolved in favour of the Appellant in accordance with the principle *in dubio pro reo*; and *Delalić and others (Čelebići)* Trial Judgment, para. 601, which states that at the ‘conclusion of the case the accused is entitled to the benefit of the doubt as to whether the offence has been proved’.

¹⁰⁸⁴⁶ *Limaj and others* Appeal Judgment, para. 21; *Delalić and others (Čelebići)* Trial Judgment, para. 601; *Naletilić and Martinović* Appeal Judgment, para. 120, stating that ‘the existence of an armed conflict or its character has to be regarded, in accordance with the principle of *in dubio pro reo*, as ordinary elements of a crime under customary international law when applying Articles 2 and 3 of the Statute to the conduct at issue in this case’. See also para. 204.

¹⁰⁸⁴⁷ *Gbagbo and Blé Goudé* Appeal Judgment on prior recorded testimony, para. 83.

¹⁰⁸⁴⁸ *Katanga* Trial Judgment, para. 53 held, that ‘this principle only entails that, where doubt cast by an equivocal term or phrase as to the exact meaning of a provision cannot be dispelled by the General Rule or supplementary means of interpretation, it must be resolved in favour of the subject, in this case the Accused, and not in favour of the drafter, who was unclear’. The Cambodian Supreme Court, in the *Khieu Samphan* appeal decision on release, at para. 31, noted that ‘In so far as *in dubio pro reo* is applicable to dilemmas about the meaning of law, it must be limited to doubts that remain after interpretation’. In the *Im Chaem* closing order, para. 26 the Co-Investigating Judges, held that

ambiguity of interpretation of a criminal statute must be exercised in the Accused person's favour.¹⁰⁸⁴⁹

5925. ICTR chambers have resolved statutory ambiguity in an Accused person's favour but without specifically further defining the governing legal principle, other than as a general principle of law.¹⁰⁸⁵⁰ Three Trial Chamber judgments decided, in the Accused's favour, the difference in the French and English versions of Article 2 (2) (a) of the ICTR Statute. In French it was '*meurtre*' (murder) which legally requires an intention to kill, while in English it was 'killing' which includes both intentional and unintentional homicides.¹⁰⁸⁵¹

5926. The Appeals Chamber in its first interlocutory decision referred to a principle it termed *favor rei*, or 'in favour of the accused', that requires that where a legal definition or rule is ambiguous, the definition or rule must be interpreted in favour of the accused.¹⁰⁸⁵² The Trial

'*in dubio pro reo* has a residual role in the interpretation of legal provisions and its application is limited to doubts that remain after the application of the standard rules of interpretation'. In *Limaj and others* Appeal Judgment, Declaration of Judge Shahabuddeen, at para. 3, referred to US Supreme Court case law and noted, 'Also, one recalls the observation of the United States Supreme Court that there is a "familiar rule that, "where there is ambiguity in a criminal statute, doubts are resolved in favor of the defendant". Other judicial statements to that effect are legion. I believe that the principle on which they rely is subsumed by the principle of *in dubio pro reo*. Such statements apply that principle both to questions of fact and to questions of law.' (Footnotes omitted). Judge Shahabuddeen, however, did not note any of these 'legion' of judicial statements.

¹⁰⁸⁴⁹ *Delalić and others (Čelebići)* Trial Judgment, para. 413. 'The effect of strict construction of the provisions of a criminal statute is that where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of construction fail to solve, the benefit of the doubt should be given to the subject and against the legislature which has failed to explain itself. This is why ambiguous criminal statutes are to be construed *contra proferentem*.'

Its footnoted source is an English case, *R. v. Wimbledon JJ, ex p. Derwent* [1953] 1 QB 380, that neither mentions *contra proferentem* nor the principle relied upon. That case simply decided as a jurisdictional matter that the offence of overcharging rent was completed as of the date of signing a lease, and it was not a continuing daily offence. Thus, the prosecution must bring the charge within a six month limitation period, namely from the date of signing the lease. Further, *contra proferentem* is a civil law concept that according to *Black's Law Dictionary* is 'Used in connection with the construction of written documents to the effect that an ambiguous provision is construed most strongly against the person who selected the language'. Why *Delalić* used it in this manner is unclear.

¹⁰⁸⁵⁰ *Akayesu* Trial Judgment, para. 501; *Kayishema and Ruzindana* Trial Judgment, para. 103; *Musema* Trial Judgment, para. 155.

¹⁰⁸⁵¹ Although *Kayishema and Ruzindana* Trial Judgment found that there was 'virtually no difference between the two' for the crime of genocide 'as the term "killing" is linked to the intent to destroy in whole or in part', para. 103.

¹⁰⁸⁵² First interlocutory decision on applicable law, para. 32. It footnoted to six cases, namely *Akayesu* Trial Judgment, paras 500-501; *Krstić* Trial Judgment, para. 502; *Galić* Appeal Judgment, paras 76-78; *Limaj and others* Appeal Judgment, paras 21-22; *DRC* Victims application decision, para. 23; and *Bemba* confirmation decision, para. 31.

However, none of these cases mention the term *favor rei*. *Akayesu* held that given 'the presumption of innocence of the accused, and pursuant to the general principles of criminal law, the Chamber holds that the version more favourable to the accused should be upheld', para. 501. *Krstić*, at para. 502, applied 'the principle that where there is a plausible difference of interpretation or application, the position which most favours the accused should be adopted'. Both *Galić* and *Limaj* applied the *evidentiary* principle of *in dubio pro reo*. In the first ICC case, the *DRC* Victims application decision, a single judge noted that *in dubio pro reo* did not apply to victim's participation applications, while in the

Chamber, however, could not find the term used in any other international criminal law decisions or judgments.¹⁰⁸⁵³

5927. The Trial Chamber has observed a clear trend in international criminal law in the years since the Appeals Chamber's decision to extend the traditional definition of *in dubio pro reo* from one applying only to evidence, to one encompassing legal statutory interpretation after other means of interpretation have resulted in ambiguity.¹⁰⁸⁵⁴ The Trial Chamber will therefore avoid the uncertainty of the lesser known term of *favor rei*.

5928. The Trial Chamber accepts the extended definition of *in dubio pro reo* as both a general principle and, as referred to in Rule 3 (A), a general principle of international criminal law and procedure, as extending to interpreting legal ambiguity in an Accused person's favour, after first exploring other means of statutory interpretation.

5929. Rule 3 (A) specifies that in interpreting the Rules, the Chambers apply, 'in order of precedence', the codified principles of interpretation set out in Articles 31-33 of the 1969 *Vienna Convention on the Law of Treaties*,¹⁰⁸⁵⁵ 'international standards on human rights', 'the general principles of international criminal law and procedure' and 'as appropriate' the Lebanese Code of Criminal Procedure, to the proceedings.

5930. Under Rule 3 (B), any remaining ambiguity must be resolved by an interpretation considered the most favourable to a suspect or accused person. However, there is no provision equivalent to Rule 3, in either the Rules or the Statute, listing and specifying the order of precedence between the principles the Chambers must apply in interpreting the Statute or the applicable or relevant Lebanese legislation.

second, the *Bemba* Pre-Trial Chamber simply confirmed that the principle applies at all stages of the judicial proceedings, including the confirmation stage. Some footnoted cases do not support the proposition in the text.

¹⁰⁸⁵³ Each of the Prosecution, Oneissi Defence and Sabra Defence used the term *favor rei* for this principle. Prosecution closing submissions, T. 13 September 2018, pp 69-71, 73, 75-76; Oneissi Defence final trial brief, para. 646; Sabra Defence final trial brief, para. 801. The Ayyash and Merhi Defence refer only to the evidentiary form of the principle, adopting the term '*in dubio pro reo*', see Ayyash Defence final trial brief, paras 9, 11; Merhi Defence final trial brief, para. 82.

¹⁰⁸⁵⁴ One ICTY Trial Chamber, the *Stakić* Trial Judgment, rejected this approach as only applying to the establishment of facts, para. 416; as did that chamber's presiding judge in *Limaj and others* Appeal Judgment, Partially Dissenting and Separate Opinion and Declaration of Judge Schomburg, paras 15-20.

¹⁰⁸⁵⁵ Adopted 23 May 1969.

5931. So how should a provision as fundamental to the Special Tribunal's existence and operation as Article 3 (1) (a) be interpreted? Does it mean that the Special Tribunal *may* apply *either* international *or* Lebanese modes of individual criminal liability to the prosecution of offences, *or both*? And which prevails—or is to be preferred—in the event of an overlap? Obviously the Trial Chamber must interpret it in light of the general principles of criminal law and international human rights law mandated in Article 16 (2)—both those specified in the Article and any others which are necessary to ensure that accused persons receive a fair trial.

5932. But what would apply if, say, the elements of aiding and abetting an offence accepted in international criminal law were more favourable to an accused person than those specified in the Lebanese Criminal Code, yet the crime charged and its mode of commission were clearly part of Lebanese law in 2004 and 2005? Meaning that no issue of legality could arise.

5933. To answer these questions, the Trial Chamber must examine the relevant parts of the Lebanese Criminal Code and if necessary international criminal law, but within the framework of the Statute and applicable general principles of international human rights law and of criminal law.

5934. And to understand how the relevant provisions of the Code—those that define both the modes of criminal liability and the substantive crimes with which the Accused are charged—are usually interpreted, the Trial Chamber has also surveyed the decisions of Lebanese courts on those provisions.

5935. The Trial Chamber is not obliged to follow any Lebanese judicial interpretation of the applicable Lebanese Criminal Code provisions. The Special Tribunal's Statute does not mandate this. Further, the Lebanese legal system contains no formal doctrine of *stare decisis*, or binding precedent, under which courts should adopt interpretations of the law consistent with their previous decisions, and in which the decisions of 'superior' courts bind courts that are lower in the judicial hierarchy. Lebanese judicial decisions, however, provide some guidance as to the interpretation of the applicable provisions of the Code. Therefore, in general, the Trial Chamber has sought to interpret and apply those provisions consistently with those decisions.

5936. As an interpretative aid, the Trial Chamber has also examined the two interlocutory decisions of the Appeals Chamber on the applicable law.

6. The Appeals Chamber's interlocutory decisions on the applicable law

5937. The Appeals Chamber has issued two interlocutory decisions in relation to the law applicable to the Special Tribunal. Both interpret the applicable law.

(a) Background to the decisions

5938. The Prosecutor submitted an initial indictment, but only against Mr Ayyash, to the Pre-Trial Judge on 17 January 2011. Four days later, on 21 January 2011, using Rules 68 (G) and 176 *bis* to obtain guidance 'that he deems necessary in order to examine and rule on the indictment',¹⁰⁸⁵⁶ the Pre-Trial Judge submitted 15 questions on the interpretation of Articles 2 and 3 of the Statute to the Appeals Chamber.¹⁰⁸⁵⁷ No indictments had then been confirmed against any accused and, consequently, no accused persons were represented or made submissions to the Appeals Chamber.

5939. The Appeals Chamber rapidly dealt with the matter, receiving submissions from the Prosecutor and Head of Defence Office on 31 January and 4 February 2011, holding an oral hearing on 7 February 2011 and receiving two *amicus curiae* filings on 11 February 2011. Five days later, on 16 February 2011, it issued its 153-page, 452-footnote 'Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging'.¹⁰⁸⁵⁸

5940. In its decision and to define particular offences and modes of liability applicable to the Special Tribunal's proceedings, the Appeals Chamber surveyed the Lebanese case law and some pertinent sources of international law. On 18 October 2017, the Appeals Chamber issued a second similar interlocutory decision,¹⁰⁸⁵⁹ in response to questions the Pre-Trial Judge had submitted to examine and rule on an indictment in a connected case.

5941. In the first decision, the Appeals Chamber adopted several 'general principles of interpretation',¹⁰⁸⁶⁰ which it affirmed in its second decision.¹⁰⁸⁶¹

¹⁰⁸⁵⁶ Rule 68 (G).

¹⁰⁸⁵⁷ Pre-Trial Judge 21 January 2011 order on preliminary questions to the Appeals Chamber.

¹⁰⁸⁵⁸ First interlocutory decision on applicable law.

¹⁰⁸⁵⁹ Second interlocutory decision on applicable law.

¹⁰⁸⁶⁰ First interlocutory decision on applicable law, paras 6, 17-41.

¹⁰⁸⁶¹ Second interlocutory decision on applicable law, paras 15-24.

5942. In essence, these combine international law principles concerning the construction of treaties, principles concerning criminal law and processes that are enshrined in international human rights law, such as legality, and principles derived or adapted from other sources, both international and domestic. The Appeals Chamber proposed that these be used to resolve overlaps or tensions between Lebanese law on the one hand and international law, including the Statute, on the other. These principles are examined in more detail below.

(b) Are these decisions binding on the Trial Chamber?

5943. A preliminary issue—arising from closing submissions in the case—is whether these two decisions, issued in the absence of reasoned arguments from counsel for any Accused persons, or the Legal Representatives of Victims, are binding on the Trial Chamber. The short answer is that they are not.

5944. The Trial Chamber first briefly addressed this issue in its decision under Rule 167 delivered in court on 7 March 2018, finding that Mr Oneissi had a case to answer at the close of the Prosecution case.¹⁰⁸⁶² It found that the first interlocutory decision was not necessarily legally binding and effectively is an advisory opinion, stating:

The Trial Chamber does not consider itself necessarily bound by this interlocutory Appeals Chamber decision. The decision was made before an indictment was confirmed and before Defence counsel had been assigned to act for the indicted accused persons. And, additionally, the Appeals Chamber was issuing what is effectively an advisory opinion to assist the Pre-Trial Judge in deciding whether to confirm the indictment against the suspects and on what charges.¹⁰⁸⁶³

The Trial Chamber did not refer to the second interlocutory decision in its decision under Rule 167.

¹⁰⁸⁶² Rule 167 provides:

(A) At the close of the Prosecutor's case, the Trial Chamber shall, by oral or written decision and after hearing submissions of the Parties, enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction on that count.

(B) The Prosecutor may appeal any judgment of acquittal under this Rule. Rule 177 (A) (i) and (B) and Rules 182 and 186 shall apply *mutatis mutandis* to such an appeal.

For the procedural history of this application, *see* Annex A 'Procedural history', (13) (e) 'Rule 167 motion for acquittal at the end of the Prosecution case'.

¹⁰⁸⁶³ Rule 167 decision, p. 42.

5945. Counsel for Mr Oneissi submitted in their closing submissions that the Trial Chamber was legally bound to follow the Appeals Chamber's first interlocutory decision.¹⁰⁸⁶⁴ They had not argued this in their Rule 167 submissions. The Ayyash Defence may have implicitly adopted this submission, by stating that regarding counts 6 to 9 of the amended consolidated indictment, containing the complicity charges against the three Accused other than Mr Ayyash, it 'defers to the arguments of counsel for Mr Merhi, Mr Sabra and Mr Oneissi in their respective closing submissions'.¹⁰⁸⁶⁵ The Merhi Defence assumed that the first interlocutory decision was binding on the Trial Chamber,¹⁰⁸⁶⁶ as did the Sabra Defence in parts of its final trial brief.¹⁰⁸⁶⁷

5946. The Prosecution took no position on this issue. Prosecution counsel confirmed this during closing submissions, stating regarding the Appeals Chamber's first interlocutory decision, 'we have not taken position on the binding nature or not of that decision.'¹⁰⁸⁶⁸ The Prosecutor, Mr Farrell, subsequently submitted orally:

in terms of your last question, implied or otherwise, whether or not you were bound by the Appeals Chamber decision. I would submit that the wording of the Appeals Chamber decision is fairly strongly worded that this Court and the Pre-Trial Judge are to follow the Appeals Chamber's decision. Now, recognizing –

PRESIDING JUDGE RE: On a case-by-case basis I think were the words they used and we might have to interpret it.

MR. FARRELL: Yes, I accept that. And I also recognize that there has been no ruling, similar to -- if I may look to the ICTY, to the *Aleksovski* Appeals Chamber decision on *stare decisis*, though the language seems to be quite clear from the Appeals Chamber. But

¹⁰⁸⁶⁴ Oneissi Defence final trial brief, para. 647; Oneissi Defence closing submissions, T. 20 September 2018, pp 101, 103-120.

¹⁰⁸⁶⁵ Ayyash Defence final trial brief, para. 712; F3318, Joint Defence Submissions on Lebanese Law, 8 September 2017, paras 13, 15 (where the Defence stated, in summary, that given the absence of significant updates or changes to Lebanese law, the First interlocutory decision on applicable law 'continues to apply as the controlling law' on both the elements of the offences and the modes of liability).

¹⁰⁸⁶⁶ Merhi Defence final trial brief, paras 403, 412, 481.

¹⁰⁸⁶⁷ Sabra Defence final trial brief, paras 802, 804, 811, 817, 819, 823, 825-826, 833. Note however Sabra Defence final trial brief, para. 810, referring to the situation if the Trial Chamber 'should be minded' to apply the First interlocutory decision on applicable law.

¹⁰⁸⁶⁸ Prosecution closing submissions (counsel Mr D. Kinnecome), T. 11 September 2018, p. 112.

if on a case-by-case basis, including based on this area that you've identified that this Court must address, then it may be open to you to do so.¹⁰⁸⁶⁹

The Trial Chamber interprets this submission from the Prosecutor as suggesting, at most, that the Appeals Chamber considers that the first interlocutory decision on applicable law legally binds the Pre-Trial Judge and Trial Chamber—not as an acceptance that that view is correct.

5947. For the following reasons, the Trial Chamber maintains the view it expressed in the Rule 167 decision that these decisions are not binding although it considers, as a matter of policy, that it should *generally* follow them. It is emphasised that the Appeals Chamber, in issuing its two interlocutory decisions, was not exercising its statutory appellate function as set out in Article 25 of the Statute.

5948. In the ordinary course of legal proceedings, Rules 68 (G) and 176 *bis* aside, the Trial Chamber is responsible for making both legal and factual findings at first instance regarding all matters arising in the case, other than those for which the Pre-Trial Judge is responsible. The Appeals Chamber, on the other hand, has appellate jurisdiction over specific alleged errors in those findings, as raised by the Parties or participants in an appeal. Therefore, ordinarily the Trial Chamber is the first chamber to make the legal findings necessary to adjudicating a case, while the Appeals Chamber is the second. The Appeals Chamber does so within the framework created by the Trial Chamber's existing decision, the alleged errors raised by the appellant(s), the applicable standard of appellate review and, where applicable, the questions certified for appeal by the Trial Chamber or, where applicable, the Pre-Trial Judge.

5949. The Special Tribunal's legal framework provides for this ordinary distribution of roles between the Trial and Appeals Chambers. The Rules empower and oblige the Trial Chamber to make numerous fundamental legal determinations even during the pre-trial stage, before the case has been formally assigned to it. For example, Rule 90 (A) (i)-(iii) makes the Trial Chamber responsible for determining preliminary motions on challenges to jurisdiction, alleged defects in the indictment or requests for severance of counts or trials. In addition, under Rule 89 (E), the Pre-Trial Judge may 'refer any matter to the Trial Chamber for adjudication'. The Appeals Chamber itself has confirmed that referrals under Rule 89 (E) could include issues as fundamental as

¹⁰⁸⁶⁹ Prosecution closing submissions, T. 13 September 2018, p. 79.

challenges to the legality of the Special Tribunal.¹⁰⁸⁷⁰ Moreover, after assignment of the case to the Trial Chamber, Rule 126 (B) allows it to adjudicate any matter brought before it by a Party's interlocutory motion. Only after the Trial Chamber has made findings on such a matter can they be challenged on interlocutory appeal before the Appeals Chamber.¹⁰⁸⁷¹ This same distribution of roles, in two layers of decision making regarding both legal and factual issues, also exists when adjudicating the Accused's alleged guilt.¹⁰⁸⁷²

5950. It is therefore highly exceptional that Rules 68 (G) and 176 *bis* empower the Appeals Chamber, on the Pre-Trial Judge's request, to be the first judicial entity to make certain legal findings in a case, rather than reviewing the correctness of legal findings already made by another judge or chamber. That is, these Rules exceptionally give the Appeals Chamber a function that is neither appellate nor review. Moreover, if—contrary to the view expressed here—the Appeals Chamber's Rule 68 (G) legal findings were binding on the Trial Chamber, the Appeals Chamber would not only be the first entity to make these findings but indeed the *only* one to do so. Only the Appeals Chamber itself is explicitly empowered to reconsider those findings, upon a Party's application,¹⁰⁸⁷³ and it may refuse to do so as it did in this case. This raises the question of whether this is incompatible with the right to appeal mandated in various international human rights law instruments.

5951. The standard of review, as set out in the Special Tribunal's Statute and Rules and as confirmed by the Appeals Chamber in interlocutory appeals with reference to the case law of other international criminal courts and tribunals, is also instructive with regard to the respective roles of the Trial Chamber and the Appeals Chamber.¹⁰⁸⁷⁴ The Appeals Chamber may review alleged errors of law invalidating a decision and alleged errors of fact that have occasioned a miscarriage of justice, as raised by an appellant, and, where applicable, as certified by the Trial Chamber.¹⁰⁸⁷⁵ An appeal is not a *de novo* review and, therefore, the Appeals Chamber would not ordinarily entertain

¹⁰⁸⁷⁰ Decision on the Defence Appeals against the Trial Chamber jurisdiction, para. 20.

¹⁰⁸⁷¹ Rules 90 (B), 126 (C); Decision on the Defence Appeals against the Trial Chamber jurisdiction, para. 20.

¹⁰⁸⁷² Rule 176 (A); Statute, Art. 26 (A).

¹⁰⁸⁷³ Under Rule 176 *bis* (C).

¹⁰⁸⁷⁴ Rule 176 (A); Statute, Art. 26 (A); *for example*, Decision on the Defence Appeals against the Trial Chamber jurisdiction, paras 9-10; Appeal decision on legality of transfer of call data records, paras 21-22; Interlocutory appeal decision on the death of Mr Badreddine and termination of proceedings, paras 26-27; *see also Al Jadeed and Al Khayat* Appeal Judgment, paras 12-16.

¹⁰⁸⁷⁵ Rules 90 (B), 126 (C), 176 (A); Statute, Art. 26 (A).

arguments which simply put forward a different interpretation of the applicable law to that adopted by the Trial Chamber. Rather, it is necessary to show that the Trial Chamber erred in making the contested legal finding.¹⁰⁸⁷⁶

5952. Nothing in the Special Tribunal's Statute, Rules of Procedure and Evidence or other relevant instruments such as Security Council resolution 1757¹⁰⁸⁷⁷ provides that an interlocutory decision made under Rule 68 (G) and Rule 176 *bis* would bind the Trial Chamber. Likewise, neither the Statute nor the Rules provide that Appeals Chamber decisions bind the Pre-Trial Judge and Trial Chamber in matters not the subject of a direct appeal. And, it is stressed, the decision was not an appellate one.

5953. As no other international criminal courts and tribunals have a process equivalent to that in Rules 68 (G) and 176 *bis* there is no international case law on the legal status of such interlocutory decisions. The Appeals Chamber recognised this, noting in its first interlocutory decision, 'This procedure, sometimes encountered in civil proceedings of some countries, is less common in the context of criminal proceedings'¹⁰⁸⁷⁸ and further, in July 2012, in dismissing a Defence application for reconsideration, after the assignment of counsel to represent the four Accused:

We have taken note of the argument that neither Lebanese law *nor that of* other domestic or *international jurisdictions* provides a similar procedure to the one provided under Rules 68 (G) and 176 *bis*. Contrary to the argument of counsel for Mr Badreddine, however, the Tribunal is not "bound" by the practice of these jurisdictions ... The Tribunal ... is unique in the sense that it is a court of an international nature that is applying Lebanese domestic law. Accordingly, the Tribunal must be able to adapt its unique framework to the specific challenges it faces.¹⁰⁸⁷⁹

5954. And, significantly, unlike at other international criminal courts and tribunals there are no Special Tribunal appellate decisions holding that *all* Appeals Chamber decisions are binding on the Pre-Trial Judge and the Trial Chamber—and by extension, Contempt Judges or Contempt

¹⁰⁸⁷⁶ For example, *Prlić and others* Appeal decision on document presentation in cross-examination, para. 16 and case law cited in fns 60-62; *Rutaganda* Appeal Judgment, para. 505 (*see also* paras 18-19); *Akayesu* Appeal Judgment, para. 177.

¹⁰⁸⁷⁷ Which annexes the Agreement on the establishment of the Special Tribunal for Lebanon.

¹⁰⁸⁷⁸ First interlocutory decision on the applicable law, para. 8.

¹⁰⁸⁷⁹ Appeals Chamber decision on Defence requests for reconsideration of First interlocutory decision on applicable law, para. 36 (emphasis added).

Appellate Panels—in matters not the subject of a direct appeal.¹⁰⁸⁸⁰ No other Special Tribunal decision or governing statutory instrument imposes the doctrine of *stare decisis*, or binding precedent, on these other chambers in such matters, either.

5955. Rules 68 (G) and 176 *bis* by their nature plainly establish a preliminary rather than a final process—including obliging the Appeals Chamber to issue its decision ‘without prejudging the rights of any accused.’¹⁰⁸⁸¹

5956. Moreover, the two Appeals Chamber decisions bear the title ‘Interlocutory Decision’. An *interlocutory* decision—as opposed to an appeal from an interlocutory decision—is by its nature necessarily not a *final* decision on the merits of an issue. To hold otherwise would mean that the issue was *res judicata* between the parties.¹⁰⁸⁸² But there were no ‘parties’ to the decision. The only ‘Party’ to those proceedings within the meaning of Rule 2 was the Prosecutor.

¹⁰⁸⁸⁰ The ‘*Aleksovski* Appeals Chamber decision on *stare decisis*’ to which the Prosecutor referred in his closing submissions (T. 13 September 2018, p. 79) was part of an ICTY Appeals Chamber judgment and addressed only the question of whether the previous decisions of the ICTY Appeals Chamber are binding on an ICTY Trial Chamber or the ICTY Appeals Chamber itself. *Aleksovski* Appeal Judgment, para. 113, where the Appeals Chamber found that the *ratio decidendi* of its decisions binds ICTY Trial Chambers due to the Appeals Chamber’s jurisdiction to hear appeals from Trial Chamber decisions, as set out in the ICTY Statute, and the importance of having certainty and predictability in the law’s application and the accused’s right to have like cases treated alike. *See also Aleksovski* Appeal Judgment, para. 107, where the Appeals Chamber found that, ‘in the interests of certainty and predictability, [it] should follow its previous decisions, but should be free to depart from them for cogent reasons in the interests of justice’. *See further Aleksovski* Appeal Judgment, paras 92-111. Similarly, the IRMCT Appeals Chamber has stated that it considers itself ‘bound to interpret the Statute and the Rules in a manner consistent with the jurisprudence of the ICTR and the ICTY. Consequently, while not bound by the jurisprudence of the ICTR or the ICTY, the Appeals Chamber is guided by the principle that, in the interests of legal certainty and predictability, it should follow previous decisions of the ICTR or the ICTY Appeals Chambers and depart from them only for cogent reasons in the interests of justice’, *Semanza* decision on access and review, para. 15 (internal footnotes omitted). The position in the ICC is different. The Rome Statute, Article 21 (2), relevantly provides that ‘The Court *may* apply principles and rules of law as interpreted in its previous decisions’ (emphasis added). The word ‘may’ in Article 21 (2), rather than ‘shall’ which is used in Article 21 (1), suggests that the ICC is not bound by its previous decisions. This is how ICC chambers to date have interpreted Article 21 (2). *For example, Gbagbo and Blé Goudé* decision of 31 July 2015, para. 14, stating (internal footnotes omitted): ‘Article 21 (2) of the Statute provides that “[t]he Court may apply principles and rules of law as interpreted in its previous decisions”. Thus, the Appeals Chamber is not obliged to follow its previous interpretations of principles and rules of law through binding *stare decisis*; rather it is vested with discretion as to whether to do so. In this respect, the Appeals Chamber has previously stated that absent “convincing reasons” it will not depart from its previous decisions. Thus, in principle, while the Appeals Chamber has discretion to depart from its previous jurisprudence, it will not readily do so, given the need to ensure predictability of the law and the fairness of adjudication to foster public reliance on its decisions’.

¹⁰⁸⁸¹ Rule 176 *bis* (A).

¹⁰⁸⁸² ‘A thing adjudicated’, Black’s Law Dictionary, explaining that ‘The three essential elements are (1) an earlier decision on the issue, (2) a final judgment on the merits and (3) the involvement of the same parties, or parties in privity with the original parties’.

5957. The Head of Defence Office ‘appeared’ and made submissions, but did not, and could not, represent any ‘Party’. The general protection of ‘the rights of the defence’—the Head of Defence Office’s function, as specified in Article 13 (2) of the Statute—does not necessarily coincide with the interests of the Defence of an individual accused person. The defence of the various Accused persons may differ—and sometimes strongly, and even for strategic litigation reasons—on the law and its interpretation. The views of the Head of Defence Office in filing submissions under Rule 176 *bis* cannot be seen as representing those of the defence of an individual accused person. Neither can those of *amicus curiae* briefs filed under the auspices of the Head of Defence Office.

5958. The Appeals Chamber also emphasised that it issued its first interlocutory decision without having seen the indictment.¹⁰⁸⁸³ And it further acknowledged that it was making its legal findings in the abstract, ‘without any reference to facts’.¹⁰⁸⁸⁴ Moreover, it issued the first interlocutory decision without having the benefit of submissions from all Parties or the Legal Representatives of Victims—in fact, before Defence counsel had even been appointed and before any victims were participating in the case.¹⁰⁸⁸⁵ In effect, the Appeals Chamber was making a purely abstract legal ruling without the benefit of pleaded material facts which could have focused its attention more pointedly onto the relevant issues. And at that stage of the proceedings, the Prosecutor had submitted an indictment only against Mr Ayyash.

5959. In 2012, after Defence counsel were appointed to represent the then four Accused, they sought reconsideration of that interlocutory decision.¹⁰⁸⁸⁶ The Appeals Chamber refused the applications, holding:

¹⁰⁸⁸³ First interlocutory decision on applicable law, para. 8; Appeals Chamber decision refusing request to submit preliminary questions on applicable law after confirmation of indictment, para. 29.

¹⁰⁸⁸⁴ Second interlocutory decision on applicable law, para. 11, citing First interlocutory decision on applicable law, paras 8, 10. *See also* the paragraphs of the Appeals Chamber decision refusing request to submit preliminary questions on applicable law after confirmation of indictment and Appeals Chamber decision on Defence requests for reconsideration of First interlocutory decision on applicable law referred to in second interlocutory decision on applicable law, fn. 11.

¹⁰⁸⁸⁵ As summarised in Decision denying Head of Defence Office certification to appeal (Lebanese criminal law), paras 1-2, 4; Rule 167 decision, p. 42; Appeals Chamber decision on Defence requests for reconsideration of first interlocutory decision on applicable law, para. 38 (as to fact that decisions under Rule 176 *bis* are issued in absence of Defence counsel).

¹⁰⁸⁸⁶ F0293, Sabra Motion for Reconsideration of Rule 176 *bis* Decision—“International Terrorism”, 13 June 2012; F0294, Request for Reconsideration of the Interlocutory Decision on the Applicable Law Rendered by the Appeals Chamber on 16 February 2011, 13 June 2012; F0295, Defence for Salim Jamil Ayyash’s Joinder in the Defence for Mustafa Amine Badreddine’s “*Requête en réexamen de la décision préjudicielle sur le droit applicable rendue par la Chambre d’appel le 16 février 2011*”, 13 June 2012; F0296/COR, Corrected Version of the “Request by the Oneissi

It will still be for the Trial Chamber to *apply and shape* the relevant legal principles in the light of the charges contained in the indictment and the evidence adduced by the parties. This judgment will be subject to an appeal and the Appeals Chamber will revisit any legal issue that might be raised by such an appeal under Article 26 of the Statute.¹⁰⁸⁸⁷

There, the Appeals Chamber also stated, ‘the Trial Chamber’s task of trying the facts on the case and applying the underlying legal principles in light of the evidence is not impacted by the holdings of the Interlocutory Decision’¹⁰⁸⁸⁸ and ‘we reject the arguments that “the Appeals Chamber deprives the Trial Chamber of the power to develop its own interpretation of the law”’.¹⁰⁸⁸⁹

5960. This second statement on its face appears to defeat the apparent policy purpose of the Rule 68 (G)/176 *bis* procedure, namely, to settle the law *before* the pre-trial or trial phases of the proceedings. However, another interpretation is that of the Appeals Chamber implicitly recognising the limitation of attempting to settle such fundamental legal issues to finality in the absence of an indictment, facts, accused persons or Parties as contradictors, and hence its obvious non-binding nature.

5961. Moreover, and most significantly, without an indictment and hence the pleading of material facts setting out the case against an accused, delineating in the abstract the extent of an accused person’s legal liability is difficult. A pertinent example in this instance is the degree of knowledge that an accused person must have of an intended crime before they can be held legally liable as an accomplice under Articles 219 (4) and (5) of the Lebanese Criminal Code. The Appeals Chamber did not address this fundamental issue in either interlocutory decision.

5962. The Appeals Chamber has not ruled on the legal status of its decisions under Rule 176 *bis*. Instead, it has described their purpose as providing guidance and clarification¹⁰⁸⁹⁰—both of which

Defence for Reconsideration of the Interlocutory Decision on the Applicable Law of 16 February 2011” dated 13 June 2012, 21 June 2012.

¹⁰⁸⁸⁷ Appeals Chamber decision on Defence requests for reconsideration of first interlocutory decision on applicable law, para. 37 (footnotes omitted, emphasis added).

¹⁰⁸⁸⁸ Appeals Chamber decision on Defence requests for reconsideration of first interlocutory decision on applicable law, para. 43.

¹⁰⁸⁸⁹ Appeals Chamber decision on Defence requests for reconsideration of first interlocutory decision on applicable law, fn. 85.

¹⁰⁸⁹⁰ *For example*, First interlocutory decision on applicable law, paras 7, 11 (specifically the statement, ‘It is the responsibility of the Appeals Chamber to accomplish this task by stating the applicable law in the clearest and most coherent way possible’), 297; Second interlocutory decision on applicable law, paras 10, 82-83, 93; Appeals Chamber decision refusing request to submit preliminary questions on applicable law after confirmation of indictment, para. 27.

are typical functions of an advisory opinion, although the Appeals Chamber does not use that term.¹⁰⁸⁹¹ The Appeals Chamber has also stated that these decisions serve to avoid the risk of the Pre-Trial Judge or Trial Chamber adopting an interpretation of the law contrary to the Appeals Chamber's, with consequent prejudice to the Parties and unreasonable delay in the proceedings.¹⁰⁸⁹² However, the consequent prejudice could actually flow in the other direction; an Accused, who was not a party to the Rule 176 *bis* proceedings, could be prejudiced by an abstract ruling on a fundamental legal issue on which they had no chance to be heard.

5963. The Trial Chamber therefore maintains as a matter of policy, meaning effective judicial management which is consistent with the rights of the Accused to a fair trial and the Prosecution's interest in the process and that of the participating victims, that although not legally bound to do so, it should generally follow the interpretation of the law of the first interlocutory decision unless cogent reasons exist not to. The Trial Chamber may depart from that interpretation if required in the interests of justice to ensure a fair trial,¹⁰⁸⁹³ for example if the Appeals Chamber patently or manifestly erred in law. This would constitute persuasive reasons, or to use another term, cogent reasons in the interests of justice,¹⁰⁸⁹⁴ for the Trial Chamber not to follow the Appeals Chamber's legal findings.

5964. In the circumstances—most especially the lapse of time between the Appeals Chamber's first decision, issued three years before the trial began, and almost seven and a half years before it

¹⁰⁸⁹¹ See further the characterisation of decisions issued under Rule 176 *bis* in 'Appeals and Enforcement' in Cassese's International Criminal Law, p. 394 (describing them as an 'innovative form of appellate advisory opinion'); Webb 2014, p. 90, fn. 8; Michel 2014, p. 29. Compare, Gillet and Schuster 2011, pp 991-997. The Sabra Defence cited this in its submissions on terrorism, referred to later. The authors describe the First interlocutory decision on applicable law as 'more akin to an advisory opinion than to a regular interlocutory decision' and the Rule 176 *bis* procedure as an 'advisory procedure', but also state the decision has 'final effect'. They are very critical of both the Rule 176 *bis* procedure and the content of the decision.

¹⁰⁸⁹² Second interlocutory decision on applicable law, para. 11; see also the similar comment in the First interlocutory decision on applicable law, para. 9. On the need for expedition in the Special Tribunal's proceedings, see Statute, Arts 16 (4) (c), 18 (2), 21 (1) and 28 (2).

¹⁰⁸⁹³ For example, Arts 16 (2), 17, 21 (2), 21 (4) and 28 (2) of the Statute. See also Decision on the Legal Representatives' application to call evidence, para. 18 and accompanying footnote. Regarding the concept of the interests of justice specifically, see footnote 24 of that decision.

¹⁰⁸⁹⁴ *Aleksovski* Appeal Judgment, paras 107-111, considering *stare decisis*. See also *Semanza* decision on access and review, para. 15.

closed—the Trial Chamber is of the view that the interests of justice required it to examine for itself the Lebanese case law cited by the Appeals Chamber.¹⁰⁸⁹⁵

5965. Due to the passage of time since the Appeals Chamber issued its first interlocutory decision and as a matter of fairness to the Parties and the participating victims,¹⁰⁸⁹⁶ the Trial Chamber, on 27 July 2017, sought written submissions from the Parties and the Legal Representatives of Victims concerning the Lebanese law applicable in the proceedings, in anticipation of the close of the Prosecution’s case.¹⁰⁸⁹⁷ The Parties provided their submissions in September 2017, with the Prosecution and the Defence of the four Accused jointly submitting that the applicable law was that set out in the Appeals Chamber’s first interlocutory decision on the applicable law. The Legal Representatives of Victims made no express submissions on this point.¹⁰⁸⁹⁸

5966. The Trial Chamber has conducted its own research to identify and examine relevant Lebanese decisions issued after February 2011—particularly decisions on accomplice liability, as examined below—but has found no relevant change, favouring the Accused, to Lebanese law.¹⁰⁸⁹⁹ This research has also enhanced the Trial Chamber’s own understanding of how Lebanese courts interpret the applicable law.

¹⁰⁸⁹⁵ The apparent haste in the Appeals Chamber issuing its first decision 12 days after receiving the Prosecution’s and Defence Office’s written submissions is another reason to review the underlying source material. Additionally, some critical academic opinion that examined that source material and found some errors was another reason for the Trial Chamber to review it for itself. See Saul LJIL 2011; Saul *amicus curiae* brief 2011; Saul 2013; Gillet and Schuster 2011, *for example*, pp 1011-1014, 1018; Cryer and others 2014, p. 341.

¹⁰⁸⁹⁶ Given the absence of the Accused and participating victims when the First interlocutory decision on applicable law was issued.

¹⁰⁸⁹⁷ Order to file submissions and observations on Lebanese law. See also Decision denying Head of Defence Office certification to appeal (Lebanese criminal law), paras 3-4.

¹⁰⁸⁹⁸ All Parties submitted in effect that the Trial Chamber could continue to rely on the interpretation of Lebanese law set out in the First interlocutory decision on the applicable law. F3317, Prosecution Submissions pursuant to the Trial Chamber’s Order of 27 July 2017, 8 September 2017; F3329, Prosecution Response to the ‘*Observations proprio motu du Chef du Bureau de la Défense suite à l’Ordonnance de la Chambre de Première Instance du 27 juillet 2017 relative au droit applicable*’, 18 September 2017 (see especially para. 7); F3318, Joint Defence Submissions on Lebanese Law, 8 September 2017 (see especially paras 13, 15). The Legal Representatives of Victims made no express submissions about the appropriateness of reliance on the First interlocutory decision on applicable law but cited that decision, apparently with approval, in their submissions on terrorism specifically. Legal Representatives of Victims final trial brief, paras 59-61, 63-64.

¹⁰⁸⁹⁹ In fact, no Party identified any significant change in Lebanese law after the First interlocutory decision on applicable law was issued. F3329, Prosecution Response to the ‘*Observations proprio motu du Chef du Bureau de la Défense suite à l’Ordonnance de la Chambre de Première Instance du 27 juillet 2017 relative au droit applicable*’, 18 September 2017, para. 7; F3318, Joint Defence Submissions on Lebanese Law, 8 September 2017, paras 13, 15.

(c) The Appeals Chamber's reasoning in interpreting the Special Tribunal's applicable law

i. Interpretative principles

5967. The Appeals Chamber in its 2011 interlocutory decision was faced with reconciling an apparent conflict between Article 2 in the Statute, which explicitly provides that the Special Tribunal must apply the Lebanese Criminal Code but 'subject to the provisions of this Statute' and Article 3. This was because Article 3 introduces modes of liability for committing offences that were directly specified not in the Lebanese Criminal Code but rather in Articles 25 and 28 of the Rome Statute—as referred to in Article 3 (1) (b), (2) and (3). But, as noted above, this was not the case for Article 3 (1) (a) which reflected the Lebanese law.

5968. The Appeals Chamber adopted several different approaches to resolve this issue of interpretation. Ultimately, it held that any conflict between international and Lebanese provisions on the liability of an accomplice should be resolved in favour of the Accused. Along the way, it held that consonant with international law on the interpretation of treaties, the Special Tribunal's Statute should be interpreted in good faith in accordance with the ordinary meaning to be given to its words in their context, in light of its object and purpose and in such a manner as to render them effective and operational.¹⁰⁹⁰⁰

5969. The Special Tribunal's Statute is not a treaty but an annex to a Security Council resolution adopted pursuant to Chapter VII of the Charter of the United Nations. However, the Appeals Chamber decided to apply international law on the interpretation of treaties to the Statute, unless the applicable Lebanese law clearly provided otherwise.¹⁰⁹⁰¹

5970. The Appeals Chamber appeared to favour a two-step approach, holding:

With regard to the Tribunal's Statute, the principles of teleological interpretation just referred to require an interpretation that best enables the Tribunal to achieve its goal to administer justice in a fair and efficient manner. If, however, this yardstick does not prove helpful, one should choose that interpretation which is more favourable to the rights of the

¹⁰⁹⁰⁰ First interlocutory decision on applicable law, paras 28-32; second interlocutory decision on applicable law, para. 21. *See also* second interlocutory decision on applicable law, para. 16.

¹⁰⁹⁰¹ First interlocutory decision on applicable law, para. 26; Second interlocutory decision on applicable law, para. 21. *See also* First interlocutory decision on applicable law, paras 17-25, 27.

suspect or the accused. And further, the principles of teleological interpretation require an interpretation that best enables the Tribunal to achieve its goal to administer justice in a fair and efficient manner. If, however, this yardstick does not prove helpful, one should choose that interpretation which is more favourable to the rights of the suspect or the accused.¹⁰⁹⁰²

5971. Later in the same paragraph, the Appeals Chamber referred to ‘the general principle of criminal law of *favor rei* (in favour of the accused)’ and ‘the principle of legality (*nullum crimen sine lege*)’, then stated:

These principles, *favor rei* and *nullum crimen sine lege*, are general principles of law applicable in both the domestic and the international legal contexts. The Appeals Chamber is therefore authorised to resort to these principles as a standard of construction when the Statute or the Lebanese Criminal Code is unclear and when other rules of interpretation have not yielded satisfactory results.¹⁰⁹⁰³

5972. In addition, the Appeals Chamber noted that judges could not invoke the *non liquet* principle, declaring it impossible to reach a decision because a matter was unclear.¹⁰⁹⁰⁴ It held that where the provisions of an instrument or instruments are inconsistent with one another, the dominant provision must be identified.¹⁰⁹⁰⁵ The Appeals Chamber also concluded that it should interpret the Lebanese law referred to in Article 2 in light of any international law that binds Lebanon.¹⁰⁹⁰⁶

5973. The Appeals Chamber stated in paragraph 39 of its first interlocutory decision that the Special Tribunal, ‘As an international court’:

may depart from the application and interpretation of national law by national courts under certain conditions: when such interpretation or application appears to be *unreasonable*, or may result in a *manifest injustice*, or is not consonant with international principles and rules

¹⁰⁹⁰² First interlocutory decision on applicable law, para. 32.

¹⁰⁹⁰³ First interlocutory decision on applicable law, para. 32.

¹⁰⁹⁰⁴ First interlocutory decision on applicable law, para. 23. *See also* Second interlocutory decision on applicable law, para. 19.

¹⁰⁹⁰⁵ First interlocutory decision on applicable law, para. 23; Second interlocutory decision on applicable law, paras 18-19.

¹⁰⁹⁰⁶ First interlocutory decision on applicable law, paras 41, 45-46, 61-62, 114-147, disposition, 3.

binding upon Lebanon. That is indeed what other international tribunals have effectively held.¹⁰⁹⁰⁷

5974. The Appeals Chamber also held, in paragraph 40 of its first interlocutory decision, that if Lebanese judicial decisions are inconsistent, such as if ‘Lebanese courts take different or conflicting views of the relevant legislation’,¹⁰⁹⁰⁸ the Special Tribunal will interpret the Lebanese law in a manner it deems ‘more appropriate and consistent with international legal standards’.¹⁰⁹⁰⁹ The decision, however, neither specified what these standards might be nor how a chamber should determine what they were. It footnoted this to the 1929 PCIJ *Brazilian Loans* case.¹⁰⁹¹⁰ This case concerned whether a party to an international contract—here for the payment to the French bond-holders of Brazilian Government bonds in gold franc—may rely on French municipal law to pay bond-holders in paper franc to defeat its apparent international contractual obligations to pay them in gold franc.¹⁰⁹¹¹

5975. In examining any conflict between the French municipal law and the terms of the international bond contract, the PCIJ held:

Of course, the Court will endeavour to make a just appreciation of the jurisprudence of municipal courts. If this is uncertain or divided, it will rest with the Court to select the interpretation which it considers most in conformity with the law. But to compel the Court to disregard that jurisprudence would not be in conformity with its function when applying municipal law. As the Court has already observed in the judgment in the case of the Serbian loans, it would be a most delicate matter to do so, in a case concerning public policy—a conception the definition of which in any particular country is largely dependent on the opinion prevailing at any given time in such country itself—and in a case where no relevant provisions directly relate to the question at issue. Such are the reasons according to which the Court considers that it must construe Article VI of the Special Agreement to mean that, which the Court is authorized to depart from the jurisprudence of the municipal courts, it

¹⁰⁹⁰⁷ First interlocutory decision on applicable law, para. 39 (original emphasis, footnotes omitted). *See also* Second interlocutory decision on applicable law, para. 22.

¹⁰⁹⁰⁸ First interlocutory decision on applicable law, para. 40.

¹⁰⁹⁰⁹ First interlocutory decision on applicable law, para. 40; Second interlocutory decision on applicable law, para. 23.

¹⁰⁹¹⁰ *Brazilian Loans* Judgment.

¹⁰⁹¹¹ Namely, that under French law ‘whilst a gold clause in respect of a domestic transaction is null and void, this is not the case as regards international contracts, even when payment is to be effected in France’, at p. 123.

remains entirely free to decide that there is no ground for attributing to the municipal law a meaning other than that attributed to it by that jurisprudence.¹⁰⁹¹²

5976. The Trial Chamber is therefore not convinced that strong support for this proposition is found in the PCIJ case referenced. Nor is it sure of the intended meaning of the phrase ‘international legal standards’ in this context. The Appeals Chamber’s use of just ‘international legal standards’ in paragraph 40 of its first interlocutory decision, as distinct from the phrase ‘international legal standards binding upon the State’ or ‘on Lebanon’ which it has used elsewhere,¹⁰⁹¹³ suggests it may have intended the former to include standards other than just those binding on Lebanon.

5977. Standards set out in a treaty to which Lebanon is not party, that do not constitute customary international law or ‘general principles of law’ within the meaning of Article 38 (1) (c) of the Statute of the International Court of Justice, would fall into this category. However, in light of the Appeals Chamber’s other conclusions, the Trial Chamber considers it more likely that in paragraph 40 of its decision the Appeals Chamber was referring only to international legal standards binding upon Lebanon. The Trial Chamber will, therefore, adopt this interpretation.

5978. The Appeals Chamber concluded in its first interlocutory decision that in fact, there was ‘no need to depart from Lebanese law for any of’ the reasons it had described in paragraphs 39 and 40 of that decision.¹⁰⁹¹⁴ This statement suggests that the Appeals Chamber considered that Lebanese courts’ decisions did not conflict with one another—the reason for departure from Lebanese law described in paragraph 40—and that their application and interpretation of relevant Lebanese law was reasonable, would not result in a manifest injustice and was ‘consonant with international principles and rules binding on Lebanon’—the reasons described in paragraph 39.

5979. But concerning the crime of terrorism, the Appeals Chamber in effect departed from the interpretation of the Lebanese Criminal Code in some Lebanese judicial decisions partly because that interpretation was not consonant with principles of customary international law binding on Lebanon. The Appeals Chamber described this course of action as interpreting ‘provisions of the Lebanese Criminal Code as they would be interpreted by Lebanese courts’, consistent with ‘the

¹⁰⁹¹² *Brazilian Loans* Judgment, pp 124-125.

¹⁰⁹¹³ First interlocutory decision on applicable law, paras 41, 124.

¹⁰⁹¹⁴ First interlocutory decision on applicable law, para. 41.

general principle of interpretation common to most States of the world: the principle that one should construe the national legislation of a State in such a manner as to align it as much as possible to international legal standards binding upon the State.’¹⁰⁹¹⁵ The resulting interpretation was less favourable to the Accused than the interpretation in the Lebanese case law.¹⁰⁹¹⁶

5980. Finally, relevant to the interpretation of the words ‘subject to the provisions of this Statute’ in Article 2, in paragraph 211 of its first interlocutory decision the Appeals Chamber held of Lebanese modes of criminal liability¹⁰⁹¹⁷ and the international criminal law modes of liability referred to in Article 3,¹⁰⁹¹⁸ ‘generally speaking’¹⁰⁹¹⁹ and taking into account the circumstances of the case,¹⁰⁹²⁰ it will be appropriate for the Special Tribunal to:

- first evaluate on a case-by-case basis whether there is any conflict between them;
- where no conflict exists, apply the Lebanese mode of liability; and
- where a conflict exists, apply the law that would lead to a more favourable outcome for the Accused.¹⁰⁹²¹

5981. The Appeals Chamber then applied this approach by comparing Lebanese and international law on several different modes of liability, including the two charged in this case.¹⁰⁹²²

5982. In short, regarding committing a crime, the Appeals Chamber found that there was no conflict between the two bodies of law concerning ‘perpetration and the core concept of co-perpetration’, hence Lebanese law should be applied.¹⁰⁹²³ It also found the law applicable to the ‘more complicated instances’ of co-perpetration should be determined ‘on a case-by-case basis’ based on which one proves to be more favourable to the Accused, and ‘in particular, an individual

¹⁰⁹¹⁵ First interlocutory decision on applicable law, para. 41 (footnotes omitted). *See also* First interlocutory decision on applicable law, paras 45-46, 62, 71-82, 114-124, 147 and Appeals Chamber decision on Defence requests for reconsideration of First interlocutory decision on applicable law, paras 6, 48.

¹⁰⁹¹⁶ Some Lebanese judicial decisions have interpreted Article 314 restrictively in one way or another, for example by finding that only acts using one of the means specified in the Article can be terrorist.

¹⁰⁹¹⁷ First interlocutory decision on applicable law, para. 205.

¹⁰⁹¹⁸ First interlocutory decision on applicable law, para. 206.

¹⁰⁹¹⁹ First interlocutory decision on applicable law, para. 211.

¹⁰⁹²⁰ First interlocutory decision on applicable law, disposition, 13.

¹⁰⁹²¹ First interlocutory decision on applicable law, para. 211. *See also* First interlocutory decision on applicable law, disposition, 13.

¹⁰⁹²² *See* First interlocutory decision on applicable law, paras 213-264.

¹⁰⁹²³ First interlocutory decision on applicable law, para. 217.

should not be charged as a co-perpetrator for an act of terrorism if he did not have the special intent to commit the act of terrorism.’¹⁰⁹²⁴

5983. Regarding participation as an accomplice, the Appeals Chamber identified some differences between Lebanese and international law and determined that the Lebanese was more favourable to the Accused, and hence it should be applied in the proceedings.¹⁰⁹²⁵

ii. The Trial Chamber’s observations

5984. The Trial Chamber makes the following observations regarding Appeals Chamber’s findings referred to directly above.

5985. Instead of examining Article 3 to determine whether it was necessary to scrutinise international legal concepts, the Appeals Chamber seems to have assumed the existence of a tension that could only be resolved by recourse to those concepts. The Appeals Chamber cited¹⁰⁹²⁶ case law from the ICTR, ICTY and ICC for the proposition that where a conflict exists, chambers of the Special Tribunal should apply the law that would lead to a more favourable outcome for the accused—the basis upon which it ultimately resolved the issue of the law applicable to accomplice liability. This proposition would appear to be generally consistent with applying international human rights law and general principles of law to interpreting Article 2. But only if indeed that approach was necessary.

5986. If Article 3 (1) (a) contains no express or implicit suggestion that it was intending to impose international law onto the interpretation of the Lebanese Criminal Code—and in circumstances where the Lebanese law was clear—the Trial Chamber does not believe that scrutinising international law will assist.

5987. But if on the other hand the alternative route of reasoning is taken, namely to examine the two bodies of law, it appears to the Trial Chamber that a much neater route of statutory interpretation would be simply to read the words ‘subject to the provisions of this Statute’ to refer to the mandatory imposition in Article 16 (2) of the principles of international human rights law on Articles 2 and 3. Hence, while Article 2 is to an extent subject to Article 3, both are subject to

¹⁰⁹²⁴ First interlocutory decision on applicable law, para. 264.

¹⁰⁹²⁵ First interlocutory decision on applicable law, paras 228, 264.

¹⁰⁹²⁶ In its First interlocutory decision on applicable law, para. 32, fn. 49.

Article 16 (2), meaning that Articles 2 and 3 must be read together and subordinate to the right to a fair trial mandated in Article 16 (2).

5988. The Lebanese legal system, as noted, contains no formal doctrine of precedent and the Trial Chamber is not legally bound to follow Lebanese judicial decisions. In its first interlocutory decision, the Appeals Chamber recognised that Lebanese courts are entitled to depart from their prior interpretations of a legal provision and that ‘This is something to be taken into account by the Tribunal when interpreting the Lebanese Criminal Code.’¹⁰⁹²⁷ But generally, as also recognised by the Appeals Chamber,¹⁰⁹²⁸ the Trial Chamber should interpret and apply these provisions consistently with those decisions.

5989. According to the Appeals Chamber, the Trial Chamber need not do so where a Lebanese judicial interpretation or application of these provisions: appears unreasonable, may result in a manifest injustice, or is inconsistent with international law that is binding on Lebanon.¹⁰⁹²⁹ The Trial Chamber generally agrees with this. The Trial Chamber may depart from a Lebanese judicial interpretation that was clearly untenable in law or might result in unfairness if applied. But the Trial Chamber has difficulty in understanding the relevance of the application of non-binding international law principles to the circumstances of the *Ayyash and others* case. This is because the only charges on the amended consolidated indictment are under Article 3 (1) (a) of the Statute which does not require interpretation in light of Lebanon’s international legal obligations.

5990. However, an issue arose at the conclusion of the trial in which the Prosecution urged the Trial Chamber to adopt an international criminal law definition of aiding and abetting, despite it being less favourable to the Accused. This argument was advanced in the alternative; the Prosecution and the Defence of all four Accused primarily submit that Lebanese law governs this issue. Despite this, the Sabra Defence also referred to international criminal law on aiding and abetting, submitting that it could and should inform the Trial Chamber’s interpretation of Lebanese law.

¹⁰⁹²⁷ First interlocutory decision on applicable law, para. 142.

¹⁰⁹²⁸ First interlocutory decision on applicable law, para. 35; Second interlocutory decision on applicable law, para. 22.

¹⁰⁹²⁹ First interlocutory decision on applicable law, para. 39; Second interlocutory decision on applicable law, para. 22. *See also* First interlocutory decision on applicable law, paras 40-41.

5991. The Trial Chamber uses the term ‘aiding *and* abetting’ here in collectively referring to the relevant international criminal law and the Lebanese mode of liability. It also does so to refer to that mode of liability under international criminal law only.¹⁰⁹³⁰ When examining the equivalent mode of liability under Lebanese law, ‘aiding *or* abetting’ is used to conform with the wording of Article 219 (4) of the Lebanese Criminal Code.

5992. The Prosecution and Defence submissions are examined below. Whichever route is taken—either applying the body of law most favourable to the Accused, namely the Lebanese law, or alternatively holding that there is no need to even examine the international provisions—the Trial Chamber arrives at the same result, namely that it should apply the relevant Lebanese law to interpreting the elements of accomplice liability, as opposed to those of international criminal law.

5993. All Parties submitted, and the Trial Chamber also concludes, that it should apply Lebanese law to the substantive crimes charged in this case.

iii. Submissions on the interpretation of Articles 2 and 3

5994. All Parties except the Ayyash Defence made submissions relevant to applying ‘international legal standards’¹⁰⁹³¹ in the event of conflicting or differing Lebanese interpretations of the applicable law.

5995. In the Prosecution’s submission the term encompasses the standards on modes of liability reflected in Article 3.¹⁰⁹³² The Sabra Defence similarly appeared to accept that ‘international legal standards’ encompassed international criminal law reflected in Article 3.¹⁰⁹³³ No other Party dealt specifically with the issue of the scope of that term.

¹⁰⁹³⁰ This approach is consistent with the wording of most of the relevant international criminal law instruments, and the approach that international criminal courts and tribunals have adopted in their judgments. This includes the ICC, even though the Rome Statute uses the formulation ‘aids, abets or otherwise assists’ rather than ‘aided and abetted’ as is used in the statutes of the ICTY, ICTR and SCSL and ECCC. The ICC Appeals Chamber has confirmed that ‘aiding, abetting or otherwise assisting’ should be understood as a single mode of liability in ICC proceedings, *see Bemba and others* Appeal Judgment, paras 1324-1325.

¹⁰⁹³¹ First interlocutory decision on applicable law, para. 40.

¹⁰⁹³² Prosecution final trial brief, para. 1151. *See also* Prosecution closing submissions, T. 11 September 2018, pp 109-113, T. 12 September 2018, pp 111-113, T. 13 September 2018, pp 66-67, 70-79.

¹⁰⁹³³ *For example*, Sabra Defence final trial brief, para. 823. *Compare*, references to customary international law as such in paras 800-801, 803, 810.

5996. Furthermore, the Prosecution in effect submitted that if Lebanese case law does not clearly or precisely delineate the relevant legal requirement, the Trial Chamber, when faced with competing interpretations, should adopt the interpretation more consistent with international legal standards.¹⁰⁹³⁴ It made this submission specifically in relation to the knowledge requirement for accomplice liability, and only in the alternative. The Prosecution emphasised that it did not accept that Lebanese judicial decisions were actually unclear or inconsistent with one another in this respect.¹⁰⁹³⁵ Nor did it accept that the provisions of the Lebanese Criminal Code on accomplice liability were unclear.¹⁰⁹³⁶

5997. Moreover, the Prosecution argues, there is actually no difference between the relevant international mode of liability, namely, aiding and abetting, and the relevant Lebanese mode, of complicity (or accomplice liability). In its submission, ‘the elements of aiding and abetting under international criminal law’, ‘reflected in Article 3 of the Statute, are consistent with Lebanese law.’¹⁰⁹³⁷ In the alternative—applying the approach it proposed if, contrary to the Prosecution’s position, the Trial Chamber were to find that there were competing interpretations in the Lebanese case law—the Trial Chamber should apply those Lebanese judicial decisions that are ‘most consistent with’ the international mode.¹⁰⁹³⁸

5998. When questioned about this issue in its oral closing submissions, Prosecution counsel responded that the principle of ‘reliance on *favor rei*’¹⁰⁹³⁹ set out by the Appeals Chamber in paragraph 32 of its first interlocutory decision applies in interpreting ‘the statute’, in the sense of both the Tribunal’s Statute and Lebanese criminal statutes, but not in determining which Lebanese judicial decisions to rely on if Lebanese case law is inconsistent.¹⁰⁹⁴⁰ Prosecution counsel argued

¹⁰⁹³⁴ Prosecution final trial brief, para. 1150, citing in support the First interlocutory decision on applicable law, para. 40. The Prosecution’s exact words were: ‘If the Chamber maintains the Lebanese jurisprudence does not “delineate with any clarity or precision the knowledge requirement for accomplice liability under Article 219 of the Lebanese criminal code”, the Chamber should adopt “the interpretation which it deems to be more appropriate and consistent with international legal standards”’. The first quotation is from the Trial Chamber’s Rule 167 decision, p. 46, the second from the First interlocutory decision on applicable law, para. 40. The Prosecution made substantially the same argument in its closing submissions, at T. 11 September 2018, pp 109-110.

¹⁰⁹³⁵ Prosecution closing submissions, T. 11 September 2018, pp 109-121, T. 13 September 2018, pp 72-75, 77. See also Prosecution final trial brief, paras 1147-1149.

¹⁰⁹³⁶ Prosecution closing submissions, T. 11 September 2018, p. 118, T. 13 September 2018, p. 73.

¹⁰⁹³⁷ Prosecution final trial brief, para. 1151.

¹⁰⁹³⁸ Prosecution final trial brief, para. 1154. See also the Prosecution’s similar oral arguments during its closing submissions, at T. 11 September 2018, pp 109-11, T. 13 September 2018, pp 70, 78-79.

¹⁰⁹³⁹ Prosecution closing submissions, T. 13 September 2018, p. 73.

¹⁰⁹⁴⁰ Prosecution closing submissions, T. 13 September 2018, pp 69-70, 73, 75-76.

that, ‘if you were to apply that principle to decide whether a lower court was correct, the higher court would always be bound by whatever decision the lower court made which was more favourable to the accused.’¹⁰⁹⁴¹

5999. The Prosecutor himself argued that the differences the Appeals Chamber had identified between Lebanese and international criminal law concerning accomplice liability, which had led it to conclude that the Lebanese mode of liability was more favourable to an accused person, did not concern the precise level of knowledge required of an accomplice. In fact the Appeals Chamber did not address that issue at all.¹⁰⁹⁴² The Trial Chamber could therefore ‘rely on international criminal law standards on this particular issue’.¹⁰⁹⁴³

6000. The Oneissi Defence opposed this, arguing that the Trial Chamber ‘cannot apply’¹⁰⁹⁴⁴ and ‘should reject the application of’¹⁰⁹⁴⁵ the international mode of liability. It argued that the Appeals Chamber had conducted a ‘detailed comparative analysis’¹⁰⁹⁴⁶ comparing aiding and abetting under international criminal law with the Lebanese mode of accomplice liability and identifying a conflict between the two, which gives precedence to the law more favourable to the accused. This ‘is consistent with the principle of *favour rei* which requires that, where the law is ambiguous, the Chamber choose an interpretation which is more favourable to the rights of Mr Oneissi.’¹⁰⁹⁴⁷ Consistent with its position that the Appeals Chamber’s first interlocutory decision is binding, the Oneissi Defence accepted the Appeals Chamber’s conclusion that Lebanese and international law differ and that the former is more favourable to an accused person.¹⁰⁹⁴⁸

6001. The Merhi Defence also rejected ‘the Prosecution’s suggestion that Lebanese law might be considered less favourable to the accused than international law, resulting in recourse to the latter in the interpretation of Article 219’ of the Lebanese Criminal Code.¹⁰⁹⁴⁹ To the contrary, according to the Merhi Defence, the *mens rea* of complicity under Lebanese law is stricter and therefore more favourable to an accused person than the *mens rea* of the relevant mode of liability under

¹⁰⁹⁴¹ Prosecution closing submissions, T. 13 September 2018, p. 76, *see also* p. 73.

¹⁰⁹⁴² Prosecution closing submissions, T. 13 September 2018, pp 78-79.

¹⁰⁹⁴³ Prosecution closing submissions, T. 13 September 2018, p. 78.

¹⁰⁹⁴⁴ Oneissi Defence final trial brief, VII.A.2, sub-heading i.

¹⁰⁹⁴⁵ Oneissi Defence final trial brief, para. 648.

¹⁰⁹⁴⁶ Oneissi Defence final trial brief, para. 646; Oneissi Defence closing submissions, T. 20 September 2018, p. 113.

¹⁰⁹⁴⁷ Oneissi Defence final trial brief, para. 646 (original spelling).

¹⁰⁹⁴⁸ Oneissi Defence final trial brief, paras 646-647.

¹⁰⁹⁴⁹ Merhi Defence final trial brief, para. 580.

international criminal law.¹⁰⁹⁵⁰ The Merhi Defence did not otherwise comment on the applicable interpretative principles. Instead, in support of its argument that Lebanese, not international law, on complicity should be applied, the Merhi Defence challenged the Prosecution's interpretation of particular Lebanese judicial decisions.

6002. The Sabra Defence took a more complex position on these issues, submitting in relation to Article 2 generally:

Pursuant to Article 2, Lebanese criminal law explicitly and exclusively applies. No reference is made to customary international law as a body of law relevant to the exercise of the Tribunal's jurisdiction *ratione materiae* within the Statute. This is consistent with the intention of the [UN Security Council] and [Lebanon] to exclude resort to international law in relation to Article 2 crimes.¹⁰⁹⁵¹

In the alternative, the Sabra Defence argued:

Even in the event that international customary law may be applicable in interpreting Article 2 crimes, it must only be considered within the general principle of *favor rei*. Any departure from the application and interpretation of national law is permitted within strict conditions when such interpretation or application: (i) appear to be unreasonable; (ii) may result in a manifest injustice; (iii) is not consonant with international principles and rules which are *binding* upon Lebanon. In this regard, in accordance with the principle of legality, the applicable international law must have existed at the relevant time and have been applicable to the accused. Where there is doubt, then the provision should not be applied.¹⁰⁹⁵²

6003. However, in its submissions on the content of some specific substantive crimes—intentional homicide, attempted intentional homicide and conspiracy—the Sabra Defence implied that it considered that a *lack of clarity* of Lebanese law is an additional basis permitting recourse to international law.¹⁰⁹⁵³ The Trial Chamber interprets this as a submission in the alternative that

¹⁰⁹⁵⁰ Merhi Defence closing submissions, T. 18 September 2018, pp 103-104.

¹⁰⁹⁵¹ Sabra Defence final trial brief, para. 800 (footnotes omitted).

¹⁰⁹⁵² Sabra Defence final trial brief, para. 801 (original emphasis, footnotes omitted).

¹⁰⁹⁵³ Sabra Defence final trial brief, paras 803-804, relevantly stating regarding intentional homicide and attempted intentional homicide, '*As both offences are clearly defined and applied within Lebanese law, recourse to customary international law is unwarranted*' and regarding conspiracy, '*Given the clarity of the elements, and in the absence of any equivalent crime in customary international law, no deviation from the application of conspiracy as strictly applied within the Lebanese courts is justified*' (emphasis added).

is consistent with the Sabra Defence's position regarding recourse to international law in interpreting Article 2. On terrorism specifically, the Sabra Defence also made submissions expressed in the alternative on the international standards that the Trial Chamber should apply, if applicable.

6004. Regarding the modes of liability, the Sabra Defence argued that the Appeals Chamber's proposed approach in its first interlocutory decision did not permit international law and Lebanese law modes of liability to be applied either simultaneously¹⁰⁹⁵⁴ or as alternatives to one another. Rather, 'the law of co-perpetration and complicity at this Tribunal must be understood and applied in a uniformly coherent way.'¹⁰⁹⁵⁵ In closing arguments, counsel for Mr Sabra argued that 'Lebanese law exclusively applies to crimes *and modes of liability*'.¹⁰⁹⁵⁶ Yet, they also claimed generally that the charges against Mr Sabra under Article 3 (1) (a) 'are interpreted through Lebanese law *and other legal precedents the Chamber finds of assistance*'¹⁰⁹⁵⁷ and, regarding complicity (accomplice liability) specifically, that "'international legal standards" can assist in *interpreting* the principle of complicity under Lebanese law.'¹⁰⁹⁵⁸

7. Conclusion: the Trial Chamber's approach to interpreting the modes of liability and crimes charged

6005. The Trial Chamber has reached the following conclusions about how, generally, it should determine and interpret the modes of liability and crimes charged in the case.

6006. The Appeals Chamber, at paragraph 40 of the first interlocutory decision, proposed that the Special Tribunal adopt 'the interpretation which it deems to be more appropriate and consistent with international legal standards'¹⁰⁹⁵⁹ if Lebanese *case law* varies, and hence is unclear. But at paragraph 32, as the Prosecution submitted, it invoked *favor rei* to interpret an unclear *statute*. The two are not necessarily consistent.

¹⁰⁹⁵⁴ Sabra Defence final trial brief, para. 811.

¹⁰⁹⁵⁵ Sabra Defence final trial brief, para. 812.

¹⁰⁹⁵⁶ Sabra Defence closing submissions, T. 21 September 2018, p. 15 (emphasis added).

¹⁰⁹⁵⁷ Sabra Defence final trial brief, para. 812 (emphasis added).

¹⁰⁹⁵⁸ Sabra Defence final trial brief, para. 823 (original emphasis), citing Prosecution final trial brief, para. 1151. *See also* Sabra Defence closing submissions, T. 21 September 2018, p. 50, where lead counsel for Mr Sabra confirmed that the Sabra Defence's final trial brief sets out its 'position as to what the law is'. The Sabra Defence also made detailed submissions regarding international criminal law case law on aiding and abetting.

¹⁰⁹⁵⁹ First interlocutory decision on applicable law, para. 40.

6007. To a degree, the Trial Chamber accepts the Prosecution's submission concerning the implications of employing what the Appeals Chamber (uniquely) described as *favor rei* in relation to an inconsistency in national case law. In legal systems featuring a formal doctrine of binding precedent—either common law, or depending upon the higher court's position in the judicial hierarchy, some civil law jurisdictions—obliging courts to always resolve such inconsistencies by making decisions that are more favourable to the accused may appear at odds with the superior courts' adjudicatory powers.

6008. But the Special Tribunal is substantially different to such a national court. To the extent that its chambers must put themselves in the place of a national court, they do so in relation to a national legal system with no formal doctrine of binding precedent.

6009. Additionally, even in a legal system featuring that doctrine, if a lower court adopted a particular interpretation of the law so as not to infringe the rights of the accused under international human rights law standards binding their country, a superior court would be obliged to adopt the same approach in order to comply with those standards. In that sense it could be seen to be 'bound' by the lower court's decision, although this is an artificial construct. A simple example of this would be a lower court of a State party to the ICCPR upholding the right, set out in Article 14 (3) (g) of that covenant, not to compel an accused person to testify against themselves. The superior court's obligation to do the same would arise from the binding nature of the covenant itself as well as, potentially, other sources including that country's legislation implementing that covenant, and further, the 'general principle of interpretation common to most States' that the Appeals Chamber mentioned, of construing such legislation in line with the country's international legal commitments.¹⁰⁹⁶⁰

6010. The Special Tribunal must directly apply some principles of international law, notably the guarantees set out in Article 16 of the Statute, even though Article 2 otherwise designates Lebanese law as the applicable law. The hypothetical scenario mentioned above of a domestic court upholding a specific treaty obligation, also illustrates how international law may remain relevant when interpreting domestic criminal law.

¹⁰⁹⁶⁰ First interlocutory decision on applicable law, para. 41 and fn. 63.

6011. However, taking into account applicable and fundamental principles of international human rights law—or indeed general (domestic) criminal law—is different to applying modes of liability that specifically apply in international criminal courts and tribunals to crimes committed in Lebanon in 2004 and 2005. This would also include using foreign and international practice in, for example, the field of counter-terrorism, to define the modes of liability and substantive crimes charged in a case before the Special Tribunal. That, however, is effectively what the Appeals Chamber proposed in its first decision on the applicable law. And, it is emphasised, that this is even in circumstances where the Lebanese Criminal Code recognises those crimes and modes of liability charged, Lebanese law is not unclear, and the Lebanese courts neither inconsistently nor unreasonably interpret it.

6012. No issue appears to have arisen in relation to the concept of committing a crime contrary to Article 3 (1) (a) of the Statute. That is, each Party accepted that the Lebanese law referred to in Article 2 defines that mode of liability.¹⁰⁹⁶¹ Therefore, the only contested issue regarding Article 3 (1) (a) is whether the Trial Chamber should apply the definition of aiding and abetting in Article 219 (4) and of the other, discrete forms of assistance in Article 219 (5) of the Lebanese Criminal Code, or rather a definition used in international criminal law proceedings. And if so, which one, as they differ between international courts and tribunals.

6013. The Appeals Chamber resolved this issue in its first interlocutory decision by examining these two bodies of law, Lebanese and international. It then determined that the Lebanese was more favourable to the accused and hence it should be applied in the proceedings. The Trial Chamber agrees with *this result*, namely that the Lebanese Criminal Code should be applied. For completeness, in light of the disagreement between the Parties regarding this issue, the Trial Chamber will briefly compare the two bodies of law, in relation to accessorial liability.

6014. However, the Trial Chamber again emphasises that nothing in the wording of Article 3 (1) (a) suggests, much less mandates, that a chamber should look to international criminal law case law to determine the meaning of any of the ordinary criminal law concepts already

¹⁰⁹⁶¹ The Sabra Defence made an alternative submission that the Lebanese Criminal Code's definition of a terrorist act should be interpreted in light of international law. Both the Sabra Defence and some other Parties also invoked international law in relation to discrete aspects of the crimes charged in this case. None of these submissions amounted to a challenge to the application of Lebanese law, overall, on either the mode of liability of committing a crime, or the definition of the crimes themselves.

recognised in Lebanese law, of ‘committed, participated as accomplice, organized or directed others to commit the crime’. Doing so may be necessary if a mode of liability that does not appear to form part of Lebanese law, such as that relating to a superior-subordinate relationship referred to in Article 3 (2) were charged. But it has not been. And if the Statute were indeed imposing a novel mode of liability for crimes committed in Lebanon in 2004 and 2005 that did not form part of Lebanese law at the time, the issue of legality would probably arise.

6015. As for the substantive crimes charged in this case, Article 2 of the Statute could hardly express more clearly that the Special Tribunal must apply the Lebanese Criminal Code relating to ‘the prosecution and punishment of acts of terrorism’ and the other crimes specified. Nowhere does it state, imply or even suggest either that a chamber should look outside Lebanon for the elements of the crimes within the Special Tribunal’s jurisdiction, or attempt to apply them to such crimes. In this respect the Statute neither contemplates nor authorises a chamber to examine the law of other states to ascertain the elements of crimes proscribed in Lebanon in 2004 and 2005 and noted in the Statute.

6016. So whether, for example, in those particular years a customary international law definition of the crime of terrorism existed is irrelevant to the Special Tribunal’s function in relation to the ‘prosecution and punishment of acts of terrorism’ as specified in the Lebanese Criminal Code. The Lebanese Criminal Code itself defines the elements of each crime specified in Article 2—as proscribed under that code—namely, terrorism, crimes and offences against life and personal integrity, illicit association and the failure to report crimes. And the Lebanese courts, in the normal exercise of their judicial function, have interpreted and applied them. It may of course have been relevant if there was some clear evidence that such a definition existed in 2004 and 2005 and that States were bound to apply it. But this is not the case.

6017. Hence attempting—by recourse to the laws of other nations and State practice—to divine a definition of an international crime of terrorism, and then potentially apply it to something as basic as the criminal law of a sovereign State, cannot be relevant to the Special Tribunal’s function to try the crimes specified in Article 2.

6018. To determine the elements of the crimes charged in the case, the Trial Chamber accordingly will not look beyond the code itself and any Lebanese judicial decisions defining the crimes,

although these decisions neither bind other Lebanese courts nor the Special Tribunal. Where ordinary methods of interpretation, including recourse to Lebanese case law, fail to resolve any ambiguities in the code, the Trial Chamber will interpret the relevant provisions strictly, in favour of the Accused—and in accordance with the principles of international human rights law—and thus avoid any expansive definition of substantive criminal law provisions.¹⁰⁹⁶²

6019. As this principle is clear, the Trial Chamber sees no need to examine the law or practice of other States or international institutions in defining the elements of the crimes charged or the modes of liability.

B. Modes of liability

6020. Article 3 (1) (a)¹⁰⁹⁶³ is the only part of Article 3, headed ‘Individual criminal responsibility’, that is relevant to the charges in the amended consolidated indictment. The two relevant modes of liability are ‘committing’ and ‘participating as accomplice to commit’ a crime listed in Article 2. Articles 212 and 213, on perpetrators and co-perpetrators, and Article 219 (4) and (5) on accomplices are the relevant provisions of the Lebanese Criminal Code defining those modes of liability.

6021. The Trial Chamber has examined Lebanese judicial interpretations of the modes of committing a crime and participating as an accomplice, in Articles 212, 213 and 219 (4) and (5) of the code. It has also carefully considered the submissions of the Parties and the Appeals Chamber’s analysis in its two interlocutory decisions of the Lebanese case law interpreting these provisions.

6022. The Parties do not differ in their interpretation of the Lebanese case law on Articles 212 and 213,¹⁰⁹⁶⁴ except in relation to conspiracy. The Prosecution prefers a broad interpretation of how a conspiracy is committed, while the Sabra Defence proposes a narrower interpretation. By

¹⁰⁹⁶² The Appeals Chamber termed this principle *favor rei*, while the Trial Chamber has preferred to follow the international case law and to refer to it as a form of *in dubio pro reo*.

¹⁰⁹⁶³ Namely, ‘Committed, participated as accomplice, organized or directed others to commit the crime set forth in article 2 of this Statute’.

¹⁰⁹⁶⁴ Prosecution final trial brief, paras 1141-1142, 1164-1165; Sabra Defence final trial brief, paras 813, 815. No other Party made submissions specifically concerning Lebanese law applicable to commission of crimes under Articles 212 and 213 of the Lebanese Criminal Code.

contrast, the Parties differ significantly in interpreting the Lebanese case law concerning Article 219.

6023. The Parties essentially accept, and in the absence of any reason to find otherwise, the Trial Chamber agrees that Lebanese law governs the modes of liability. It would normally therefore be unnecessary to consider international criminal law principles on this issue. However, as some submissions were made on the intersection of Lebanese and international criminal law principles, the Trial Chamber has also briefly examined international principles.

1. Committing an offence – Articles 212 and 213

Article 212: The perpetrator of an offence is anyone who brings into being the constituent elements of an offence or who participates directly in its commission.

Article 213: Each of the co-perpetrators of an offence shall be liable to the penalty prescribed by law for the offence.

6024. The Lebanese courts recognise that a crime can be committed either by one person or by multiple people acting as ‘co-perpetrators’—a fact that is also evident from the reference to co-perpetrators in Article 213 of the Lebanese Criminal Code.

6025. Of those two forms of commission, sole and co-perpetration, only co-perpetration is charged in this case. Specifically, the four Accused are charged as co-perpetrators in a conspiracy aimed at committing a terrorist act, or in other words as co-conspirators.¹⁰⁹⁶⁵ Mr Ayyash is additionally charged as a co-perpetrator of each of the other crimes alleged: terrorism, intentional homicide and attempted intentional homicide.¹⁰⁹⁶⁶

6026. The Trial Chamber has not identified any Lebanese judicial decision that clearly defines the words in Article 212 of the Lebanese Criminal Code, ‘brings into being the constituent elements of an offence’.¹⁰⁹⁶⁷ In the decisions the Trial Chamber has examined, convictions for co-

¹⁰⁹⁶⁵ Under count 1, amended consolidated indictment, para. 54 (b). The Prosecutor could not have alleged sole perpetration of conspiracy because, by definition, this crime requires at least two perpetrators.

¹⁰⁹⁶⁶ Under counts 2 to 5, amended consolidated indictment, paras 56 (c), 58 (c), 60 (d). In counts 6 to 9, the Prosecutor alleges the other three Accused were accomplices to rather than perpetrators of those other crimes.

¹⁰⁹⁶⁷ The Appeals Chamber’s analysis of Article 212 in its First interlocutory decision on applicable law, paras 213-215 and (regarding perpetration of intentional homicide specifically) para. 157, does not assist in this respect, since it does not examine the meaning of those words. Nor do any of the Lebanese cases cited in that analysis. The Appeals

perpetration appear to have been based on the second part of the definition of ‘the perpetrator’ in Article 212, namely a person who participated directly in an offence’s commission. Some decisions do not clearly distinguish between that part and the first part, namely, ‘anyone who brings into being the constituent elements of an offence’. Instead, they combine the words of both to describe the role of particular co-perpetrators.¹⁰⁹⁶⁸

6027. Others suggest that the phrase ‘who participates directly in its commission’ defines co-perpetrators only, whereas ‘bringing into being the constituent elements of an offence’ is something that only ‘perpetrators’ do.¹⁰⁹⁶⁹

6028. The Lebanese courts clearly accept that a person may be a co-perpetrator of a crime if they had the *mens rea* to commit that particular crime and performed acts sufficient to fulfil the entire *actus reus*, or the material element, of the crime.¹⁰⁹⁷⁰ That is, that person’s own acts would suffice to complete the crime, as for example where two or more people armed with guns attack another and each has the requisite *mens rea* for intentional homicide, but only one fires the fatal shot.¹⁰⁹⁷¹

Chamber did not examine the definition of perpetration in its second interlocutory decision on the applicable law. Several recent Lebanese decisions, from the same judge, seem to suggest the words ‘brings into being the constituent elements of an offence’ mean ‘committing the material element’ of a crime while having the *mens rea* of that crime. The Trial Chamber is unsure whether this is intended to mean simply committing all acts required to fulfil the *actus reus* and *mens rea*, or something else. Single judge decision 179/2015 and—repeating the relevant analysis *verbatim*—Single judge decision 420/2015, Single judge decision 37/2016, Single judge decision 202/2016, Single judge decision 55/2017, Single judge decision 67/2017, none of which concerned any crime charged in these proceedings.

¹⁰⁹⁶⁸ For example, *Murr* Judgment, pp 54-55, in which the court stated it convicted four co-perpetrators of various crimes under Article 213 but described each co-perpetrator as having ‘participated in bringing about elements of the crimes’—words from both parts of the definition in Article 212—and *Karami* Judgment, p. 131, in which the same court relevantly found the accused Mr Ghassan Touma and Mr Ghassan Menassa contributed directly to the crimes of intentional homicide and attempted intentional homicide and thereby brought into being the constituent elements of those crimes as set out in Article 212.

¹⁰⁹⁶⁹ For example, Indictment Chamber decision 37/1994; *Dany Chamoun* Judgment, p. 71; Cassation decision 155/2007. See also the reference to Cassation decision 155/2007 in Prosecution final trial brief, fn. 2436.

¹⁰⁹⁷⁰ Compare First interlocutory decision on applicable law, paras 213-214, finding that under Lebanese law ‘the perpetrator’ ‘must have accomplished the objective and subjective elements of the crime’ and a “core” co-perpetrator ‘executes the same action as the perpetrator’. See also First interlocutory decision on applicable law, para. 217, describing ‘the core concept of co-perpetration’ as being ‘where all actors engage in the objective and subjective elements of the crime’.

¹⁰⁹⁷¹ *Al-Halabi* Judgment, p. 51, finding two of the 20 accused, Mounir Aboud and Ahmad al-Kasm, to be ‘perpetrators within the meaning of Article 212’ of intentional homicide for together firing the gunshots that killed Sheikh al-Halabi; Indictment Chamber decision 37/1994, an interlocutory decision finding that the accused Mr Fadi Maalouf’s fatal shooting of victim Ms Diana Haddad, when he and several other people had gone to her home to rob it, met the requirements of intentional homicide for the purpose of indicting Mr Maalouf. *Al-Rifai and others* Judgment also dealt with a version of this scenario, at pp 1-2, but in a case that concerned only attempted, not realised, intentional homicide. See also First interlocutory decision on applicable law, para. 214. The Appeals Chamber there cited Cassation decision 170/2000, stating, ‘according to the Lebanese Court of cassation, the second defendant who, sharing the same *mens rea*, had fired on the victim who had remained alive after being shot at by the first defendant must be considered as

6029. Lebanese courts also accept other ways of participating directly in the commission of a crime within Article 212. They appear to consider that a co-perpetrator may have the *mens rea* of the crime and have either done a physical act necessary to commit the crime, or have made some other direct contribution to the crime's execution. For example, the Lebanese Judicial Council—a court comprising experienced judges that is specifically mandated to determine to finality cases of serious, security-related crimes¹⁰⁹⁷²—has stated that Article 212 covers:

anyone who commits material acts that *contribute towards creating* the material element of the crime where criminal intent exists, and also anyone who takes positive action which does not contribute to the creation of its basic material element *but leads directly to the commission of the crime by laying the basis for its execution*.¹⁰⁹⁷³

6030. The second type of co-perpetration is only possible if another co-perpetrator, or co-perpetrators, play(s) a different role in executing the crime.¹⁰⁹⁷⁴ For example, in a case of intentional homicide at least one co-perpetrator must do something to cause the victim's death—such as firing the fatal shot—or omit to do something with the same result.¹⁰⁹⁷⁵

6031. A wide variety of conduct can constitute the co-perpetration of terrorist acts, intentional homicides and attempted intentional homicides. The Lebanese courts have found that accused who planned and supervised the acts of other accused were themselves co-perpetrators of those crimes, even when that planner and supervisor neither performed nor was present during the physical

co-perpetrator.' The Trial Chamber agrees with that description but notes the Lebanese court in that decision, at p. 1, found that it was not possible to identify which of the two accused fired the lethal shot.

¹⁰⁹⁷² Lebanese Code of Criminal Procedure, Chapter V, comprising Articles 355-367. The Lebanese Judicial Council is also known as the Court of Justice. Its judgments are not subject to appeal or review. Article 366 of the Lebanese Code of Criminal Procedure, third sentence, refers to this fact, providing, 'The judgments of the Court of Justice are not open to any kind of review of an ordinary or extraordinary nature'.

¹⁰⁹⁷³ *Dany Chamoun* Judgment, p. 71 (emphasis added).

¹⁰⁹⁷⁴ For example, Indictment Chamber decision 37/1994; *Al-Halabi* Judgment, particularly the findings regarding the accused Mr Khaled Hamid at p. 51; the analysis of co-perpetration and comparison of this mode of liability with complicity under Article 219 of the Lebanese Criminal Code in the *Karami*, pp 126-128, 130-132; *Al-Halabi (Saoud)* Judgment. In the latter judgment, at pp 2-3, the court found the accused Mr Yasser Saoud, who had stored weapons at his house and hosted the other co-perpetrators there on one of the days on which they attempted to murder their victim, 'directly participated in the execution of the attempted homicide of Sheikh Nizar al-Halabi, even if he did not bring about himself the elements of the crime. Therefore he is a co-perpetrator in this act as described in Articles 212 and 213 of the Criminal Code and not an accomplice'. See also the Appeals Chamber's statement that Lebanese law provides for 'co-perpetration of collective crimes where each member of a group plays a *different role* in the commission of the crime' in its First interlocutory decision on applicable law, para. 230 (original emphasis).

¹⁰⁹⁷⁵ The causal connection required between the perpetrator's conduct and the victim's death, to fulfil the *actus reus* of intentional homicide under Lebanese law is examined below under the heading of 'Intentional homicide: *actus reus*'.

action that completed the crimes,¹⁰⁹⁷⁶ such as firing the fatal shot or pressing the button on a detonator.¹⁰⁹⁷⁷ However, Lebanese courts consider that to qualify as co-perpetration of a terrorist act, intentional homicide or attempted intentional homicide, contributions must go beyond mere preparations to commit the crime. As one Lebanese Judicial Council judgment found, a co-perpetrator:¹⁰⁹⁷⁸

is a person who commits part of the material element of the offence, performs any of its executive acts *or plays a primary role therein*.

The “primary role” that a co-perpetrator plays in an offence does not concern its material element as defined by the law; it is the role on which all the other acts effectively completing the material element directly depend. The act of a co-perpetrator is aimed directly at committing the offence, thereby transcending the scope of mere preparatory acts. This is corroborated by article 212 of the Criminal Code, which defines the perpetrator of an offence as anyone who brings into being its constituent elements or contributes directly to its commission. The latter direct contribution describes the act of a co-perpetrator who, under article 213 of the Criminal Code, is liable to the penalty prescribed by law for the perpetrator of the offence.

*The criterion used to determine whether an act is directly aimed at committing the offence, in order to establish the status of co-perpetrator, is the same as that used for criminal attempt, i.e. in the normal course of events the act would lead to achievement of the result even if it does not constitute one of its material elements.*¹⁰⁹⁷⁹

6032. The Appeals Chamber noted this Lebanese expansive approach to co-perpetration, stating in its first interlocutory decision that Lebanese law ‘recognises cases where the co-perpetrator

¹⁰⁹⁷⁶ *Murr* Judgment. The court convicted two of the accused, Mr Ghassan Touma and Mr Antonios Elias, as co-perpetrators of intentional homicide, attempted intentional homicide and terrorism on that basis: *see, especially, Murr* Judgment, pp 46-47, 54. *See further* the discussion of this decision below and in the First interlocutory decision on applicable law, para. 215. Other examples of conduct found to constitute co-perpetration of these crimes is examined below.

¹⁰⁹⁷⁷ As the Lebanese Judicial Council found the accused Mr Rushdi Raad had done in *Murr*. *Murr* Judgment, pp 48-49, 55.

¹⁰⁹⁷⁸ Lebanese courts use a range of synonyms for co-perpetration; the court in this decision apparently used the Arabic term for ‘accomplice’ to describe the mode of liability described in Articles 212 and 213 of the Lebanese Criminal Code. To avoid confusion with the mode of liability described in Article 219 of the Lebanese Criminal Code, in the quoted passage the Trial Chamber has substituted the court’s term ‘accomplice’ for ‘co-perpetrator’ wherever appearing.

¹⁰⁹⁷⁹ *Karami* Judgment, p. 126 (emphasis added).

might commit some but not all of the objective elements of the crime, or even provide a supporting or instigative role in the crime without himself committing it'.¹⁰⁹⁸⁰ It also concluded that Lebanese law on this mode of liability should apply in the Special Tribunal's proceedings, provided—relevantly—that this did not lead to treating an accused as a co-perpetrator of terrorism if they lacked the special intent to commit that crime.

6033. In the Trial Chamber's view, the Lebanese judicial interpretation of co-perpetration with respect to terrorism, intentional homicide and attempted intentional homicide appears reasonable and legally sustainable in light of the wording of Articles 212 and 213.

6034. Article 212 contemplates co-perpetrators participating in the commission of an offence in a variety of ways provided that that participation is 'direct'. Lebanese courts appear to consider that every co-perpetrator—whatever their role in committing the offence—must meet the same *mens rea* standard.

6035. But as the *mens rea* of terrorism under Lebanese law includes a special intent, the hypothetical problem the Appeals Chamber raised regarding terrorism does not arise. No Party challenged the Lebanese courts' general approach to co-perpetration in relation to terrorism, intentional homicide and attempted intentional homicide. The Trial Chamber has carefully examined the Lebanese case law and will follow the Lebanese approach to each of those crimes, although it reiterates that it is not bound by any particular Lebanese judicial decision.

6036. The Trial Chamber has been unable to find any Lebanese judicial decisions specifically determining whether all aspects of the concept of 'participating directly in its commission', apply to conspiracy as defined in Article 270 of the Lebanese Criminal Code. This may be because that crime is relatively rarely charged. Conspiracy is also quite different in nature to the other crimes charged in this case, as it essentially consists of concluding an agreement.

6037. The Sabra Defence submits that to be liable, every person accused of co-perpetrating conspiracy must 'personally meet all the objective and subjective elements of the offence'.¹⁰⁹⁸¹

¹⁰⁹⁸⁰ First interlocutory decision on applicable law, paras 215, 230.

¹⁰⁹⁸¹ Sabra Defence final trial brief, para. 817, *see also* paras 814-816.

Although it cited no legal authority for this view, some Lebanese law textbooks, at least, endorse this position.¹⁰⁹⁸² Neither the Appeals Chamber¹⁰⁹⁸³ nor the Prosecution addressed this issue.

6038. The Prosecution noted the Appeals Chamber's definition of co-perpetration generally and stated:

The Appeals Chamber also highlighted that, under Lebanese law, a participant to a crime that requires multiple actors and actions would be guilty as a co-perpetrator of this if he played a principal and direct role in its commission, even if his role did not fulfil all the objective elements.¹⁰⁹⁸⁴

6039. This submission could imply that a co-perpetrator of conspiracy may either bring into being the constituent elements of the crime or otherwise participate directly in the crime's commission. The Trial Chamber, however, disagrees. Given the nature of conspiracy—as an agreement to commit a crime—all five elements of this crime, logically, must be present in relation to every alleged co-perpetrator. The Trial Chamber therefore accepts the Sabra Defence's submission on this issue, emphasising however that this finding concerns only the minimum requirement to establish that an accused person has committed conspiracy.

6040. Lebanese courts accept that conspirators may play different roles in the overall plot—as the judicial decisions on this crime, surveyed below, show—and the Trial Chamber considers this to be a reasonable and legally sustainable interpretation of the Lebanese Criminal Code.

6041. More detailed findings regarding the scope of the crimes charged and thus what can qualify as co-perpetration in respect of each are made below.

¹⁰⁹⁸² For example, El-Zoghbi 1995, Volume 9, Conspiracy, Chapter 2 'Elements of the Conspiracy'.

¹⁰⁹⁸³ Compare the Pre-Trial Judge's interpretation of how the Appeals Chamber's definition of co-perpetration applies to conspiracy in Pre-Trial Judge decision on 5 June 2013 indictment, para. 73. The Pre-Trial Judge stated, referring to the First interlocutory decision on applicable law, paras 213-217, that 'According to the Appeals Chamber, a co-perpetrator must contribute to bringing into being the objective and subjective constituent elements of the crime of conspiracy aimed at committing a terrorist act.' 'Bringing into being the objective and subjective constituent elements of the crime' would appear to refer to the first part of the definition of a perpetrator in Article 212—'anyone who brings into being the constituent elements of an offence'—while the phrase '*contribute to* bringing into being' those elements closely resembles the Lebanese Judicial Council's description of this kind of perpetration in its *Dany Chamoun* Judgment.

¹⁰⁹⁸⁴ Prosecution final trial brief, paras 1141-1142.

2. Accomplice liability

(a) Lebanese law on accomplice liability—Article 219

Article 219: The following shall be deemed to be accomplices to a felony or misdemeanour:

- (1) Anyone who issues instructions for its commission, even if such instructions did not facilitate the act;**
- (2) Anyone who hardens the perpetrator's resolve by any means;**
- (3) Anyone who, for material or moral gain, accepts the perpetrator's proposal to commit the offence;**
- (4) Anyone who aids or abets the perpetrator in acts that are preparatory to the offence;**
- (5) Anyone who, having so agreed with the perpetrator or an accomplice before commission of the offence, helped to eliminate the traces, to conceal or dispose of items resulting therefrom, or to shield one or more of the participants from justice;**
- (6) Anyone who, having knowledge of the criminal conduct of offenders responsible for highway robbery or acts of violence against state security, public safety, persons or property, provides them with food, shelter, a refuge or a meeting place.**

i. Introduction: the Lebanese case law

6042. As Mr Merhi, Mr Oneissi and Mr Sabra are charged as accomplices under Articles 219 (4) and (5) of the Lebanese Criminal Code, the Trial Chamber has focused on identifying and examining Lebanese judicial decisions on those Articles; those cited by the Parties or the Appeals Chamber and others that its own research has uncovered.

6043. To some extent, the Parties argued that Lebanese judicial decisions set out principles that apply to Article 219 generally. So did the Appeals Chamber in its first interlocutory decision of 16 February 2011.¹⁰⁹⁸⁵

6044. Several general principles recur in the Lebanese case law. However, from surveying decisions cited by the Parties and Appeals Chamber, the Trial Chamber has concluded that some do not apply to the whole of Article 219, or even to both Articles 219 (4) and (5). Where the decision interprets Articles 219 (4) or (5) only, the Trial Chamber has considered it only in relation to that particular provision.

ii. Article 219 generally

a. *Actus reus* and complicity in attempts

6045. Lebanese courts have stated that the list in Article 219 (1) to (6) is exhaustive and that a person cannot be an accomplice under Lebanese law unless their conduct falls into one of those six categories.¹⁰⁹⁸⁶ Given that its clear wording provides a closed list rather than examples, this is a logical and legally sustainable result.

6046. By definition, to fall under Article 219, a person's conduct cannot amount to either 'bringing into being the constituent elements of an offence or ... [participating] directly in its commission',¹⁰⁹⁸⁷ as this would make the accused a co-perpetrator instead of an accomplice.¹⁰⁹⁸⁸

¹⁰⁹⁸⁵ First interlocutory decision on applicable law, paras 219-223, 228.

¹⁰⁹⁸⁶ *For example*, Indictment Chamber decision 304/1993, pp 3-4; Cassation decision 278/2011; Single judge decision 202/2016; Cassation decision 161/2013, p. 1141, cited in the previous decision; Single judge decision 37/2016; Single judge decision 55/2017; Single judge decision 67/2017. *Compare* Cassation decision 8/2000, finding at pp 1, 5 that Articles 219 and 220 specify exhaustively the acts that will give rise to accomplice liability. Article 220 prescribes different penalties for 'An accomplice without whose assistance the offence would not have been committed' and 'Other accomplices'. The Trial Chamber disregards this finding because Article 220 appears to concern sentencing only and all other Lebanese decisions examined interpret it in that way. Regarding Cassation decision 8/2000's interpretation of the *mens rea* under Article 219. *Compare*, First interlocutory decision on applicable para. 219, fn 329-330, relying on this decision, along with Beirut Court of Appeal decision 277/2007, Cassation decision 112/1974 and a secondary source. *See also* Cassation decision 242/2011, stating that in cases of complicity, a court looks for conditions of complicity the law has provided for, not the elements of the crime in which there was an act of complicity.

¹⁰⁹⁸⁷ Lebanese Criminal Code, Art. 212.

¹⁰⁹⁸⁸ As the Lebanese Judicial Council also stated in the *Karami* Judgment, p. 126. For a more recent application of that principle, *see* Cassation decision 39/2014, p. 1.

Article 219 also applies to attempts to commit crimes,¹⁰⁹⁸⁹ as defined in Articles 200 to 203 of the Lebanese Criminal Code.

6047. The Sabra Defence submits, relying on ‘Lebanese commentary’¹⁰⁹⁹⁰—which is a secondary source—that ‘it must be established that if not for the accomplice’s assistance, the perpetrator would not have been able to execute his crime and according to the manner in which he intended to commit it’.¹⁰⁹⁹¹ However, this interpretation of Article 219 would be inconsistent with both the Lebanese Criminal Code and Lebanese case law if it meant that the crime depends upon the accomplice’s assistance.

6048. Lebanese courts have noted¹⁰⁹⁹² that Article 220 of the code—on the sentencing of accomplices—shows that accomplices are both those ‘without whose assistance the offence would not have been committed’ and ‘other accomplices’.¹⁰⁹⁹³ The former may attract a heavier penalty; for example, they may be sentenced to death if the perpetrator receives a death sentence, whereas other accomplices will be sentenced at most to hard labour for life.¹⁰⁹⁹⁴

6049. In a judgment concerning the 1987 murder of the former Lebanese prime minister, Mr Rachid Karami, the Lebanese Judicial Council stated, regarding Article 219 (4) specifically:

whereas, in contrast to paragraph 1 of article 219, for all the elements of complicity as an accessory to be constituted in the manner set out in paragraph 4 of that article there must be a causal relation between the act performed by the accessory and the act performed by the principal which produced the criminal result, and such a relation requires proof that the

¹⁰⁹⁸⁹ *Al-Halabi* Judgment, p. 53; *Al-Tal Bombing* Judgment, pp 4, 71, 75-76, 81; Single judge decision 202/2016, pp 22-23. See also First interlocutory decision on applicable law, para. 223.

¹⁰⁹⁹⁰ Sabra Defence final trial brief, para. 822.

¹⁰⁹⁹¹ Sabra Defence final trial brief, para. 822, citing Aliya 2002, STL unrevised English translation in annex D to Sabra Defence final trial brief, p. 78. This appears to correspond to p. 337 of the original Arabic text. Counsel for Mr Sabra confirmed in closing submissions that the Sabra Defence was unable to find any further support for this proposition in Lebanese legislation or case law. Sabra Defence closing submissions, T. 21 September 2018, pp 48-49.

¹⁰⁹⁹² Cassation decision 161/2013, cited in Single judge decision 202/2016, p. 20.

¹⁰⁹⁹³ Emphasis added. The relevant part of Article 220 provides, ‘An accomplice without whose assistance the offence would not have been committed shall be punished as if he himself were the perpetrator. Other accomplices shall be punishable by hard labour for life or by fixed-term hard labour for 10 to 20 years if the perpetrator is sentenced to death.’ The *Murr* Judgment (rulings V and VI on p. 63), is an example of a Lebanese judgment explicitly convicting accused of one of the forms of complicity set out in Article 219—specifically, Article 219 (4)—based on the second sentence of Article 220.

¹⁰⁹⁹⁴ This is not relevant to sentencing proceedings before the Special Tribunal.

principal would not have been able to commit the offence *in the way that he did* without the act performed by the accessory.¹⁰⁹⁹⁵

6050. In light of the highlighted words and other relevant Lebanese case law, the Trial Chamber interprets this as stating that the accomplice's conduct must assist in some way, that is, have an (assisting) effect.¹⁰⁹⁹⁶ It does not appear to mean that the crime must always depend upon the accomplice's assistance.

b. Agreement with perpetrator and *mens rea* generally

6051. Some Lebanese judicial decisions suggest that an accomplice must have reached an agreement with the perpetrator before the perpetrator commits the crime. Article 219 (3) and (5) refers to an agreement, Article 219 (3) implicitly and Article 219 (5) explicitly.

6052. The wording of Article 219 (3) suggests the accomplice must enter into an agreement with the perpetrator, stating, 'Anyone who, for material or moral gain, accepts the perpetrator's proposal to commit the offence.'

6053. Article 219 (5) requires the accomplice to enter into an agreement with the perpetrator or another accomplice before the commission of the offence. It states that 'Anyone who, *having so agreed with the perpetrator or an accomplice before commission of the offence*, helped to eliminate the traces, to conceal or dispose of items resulting therefrom, or to shield one or more of the participants from justice' will be deemed to be an accomplice.¹⁰⁹⁹⁷

¹⁰⁹⁹⁵ *Karami* Judgment, pp 128-129 (emphasis added).

¹⁰⁹⁹⁶ On the relationship between aiding or abetting under Article 219 (4) and 'assistance'.

¹⁰⁹⁹⁷ Emphasis added.

6054. Some Lebanese judicial decisions implicitly state that an agreement with the perpetrator is necessary for all six categories of accomplice liability listed in Article 219,¹⁰⁹⁹⁸ while a few state this outright.¹⁰⁹⁹⁹ The Trial Chamber noted this in its decision under Rule 167.¹¹⁰⁰⁰

6055. Article 219 (5) requires a prior agreement with the perpetrator *or another accomplice*. Thus, any decision holding that an accomplice must have positively decided in advance with *the perpetrator*—as opposed to a perpetrator *or* another accomplice—on what either of them would do to further a plan for a crime, is inconsistent with that Article.

6056. It would also be difficult to reconcile such a decision with the Lebanese case law on accomplice liability by omission. Lebanese courts have accepted that a person can be an accomplice under Article 219 by failing to take steps to prevent the perpetrator's crime.¹¹⁰⁰¹ Moreover, agreeing with the perpetrator by jointly deciding on a plan is closer to conspiracy under Lebanese law than merely being an accomplice.

6057. The Trial Chamber's conclusion of the prevailing view of the Lebanese case law is that to be an accomplice of any of the six kinds listed, a person need only have a certain level of knowledge of what the perpetrator intends to do, and the consequences of that conduct and their own act or omission, and nonetheless intentionally proceed to carry out that act or omission. They thus 'agree' to their role in the sense that they are aware of and accept those matters. But it is not necessary, for instance, that they explicitly inform the perpetrator of this 'agreement' or that there is any direct evidence of it. The agreement may be inferred from the circumstances.¹¹⁰⁰²

¹⁰⁹⁹⁸ *Zouk Mikayel Church* Judgment, p. 102; Cassation decision 186/2018, p. 1; Cassation decision 38/1999, pp 1-3, 6.

¹⁰⁹⁹⁹ Single judge decision 202/2016, pp 11, 22; Cassation decision 457/2002, cited in First interlocutory decision on applicable law, fn. 328; Cassation decision 458/2002, p. 3, describing the agreement required as 'agreement in intent and intention'. *Compare* Cassation decision 8/2000 finding at p. 5 that an accomplice must 'have known the nature of the means' by which the perpetrator would commit the crime or 'facilitated such means based on a prior agreement' with the principal perpetrator or other accomplices. Both the Merhi Defence and Oneissi Defence cited this aspect of Cassation decision 8/2000. *See also* the Trial Chamber's summary of Cassation decision 8/2000 in its Rule 167 decision, pp 44-45.

¹¹⁰⁰⁰ Rule 167 decision, pp 44-46.

¹¹⁰⁰¹ Cassation decision 64/2013 and Indictment Chamber decision 304/1993. As explained below, the Trial Chamber will not follow Indictment Chamber decision 304/1993 in relation to Article 219 (4). *Compare* the discussion of that decision and other Lebanese case law on omissions in First interlocutory decision on applicable law, para. 223, fn. 336.

¹¹⁰⁰² *Dany Chamoun* Judgment, most notably the findings on pp 72-73 regarding the accused Mr Camille Karam, Mr Jean Chahine and Mr Rafik Saadeh; *Zouk Mikayel Church* Judgment, findings regarding the accused Mr Girgis el-Khoury and Mr Fouad Malek, pp 98-102, 107-109; *Murr* Judgment, findings regarding the accused Mr Naja Kaddoum, Mr Elias Awad and Mr Raji Abdou, pp 56-57; Cassation decision 38/1999, pp 1-3, 5-6; *Al-Tal Bombing*

6058. Lebanese courts also accept that the necessary knowledge and acceptance need not arise or occur long before the crime is completed; some have found it may be either before the perpetrator begins to commit the crime or *during* the crime's commission.¹¹⁰⁰³ Furthermore, if the perpetrator ultimately commits a more serious crime than the perpetrator intended—for example, killing rather than robbing their victim—an accused will still be liable as an accomplice to the more serious crime, provided that they foresaw and accepted the risk that the perpetrator would commit it.¹¹⁰⁰⁴ This is an interpretation of *dolus eventualis* as set out in Article 189 of the code.

6059. In its first interlocutory decision on the applicable law, the Appeals Chamber addressed the concept of an agreement between accomplice and perpetrator, describing it as an 'understanding'

Judgment, findings regarding an unnamed accused minor, p. 81; *Mohammed Chamas and others* Judgment, findings regarding the accused Mr Wissam Ghazi Araabi, Mr Mustafa Omar El-Saiidi, Mr Ayman Fouad Safwan and Mr Saeb Ibrahim El-Daoudouqi, pp 3-5; Cassation decision 106/2017; Assize Court decision 205/2017. In all nine decisions, the Lebanese court found an accused did or did not have the *mens rea* of an accomplice under Article 219 based on whether that accused knew the perpetrator's intentions. *See also* the descriptions of four of these decisions: *Dany Chamoun* Judgment, *Murr* Judgment, *Mohammed Chamas and others* Judgment and Cassation decision 106/2017, in the Oneissi Defence final trial brief, paras 655-657 and Merhi Defence final trial brief, paras 80, 583, 585-586. The Trial Chamber notes however that the Oneissi Defence's description of the *Dany Chamoun* Judgment in para. 657 of its final trial brief appears to concern only the findings regarding the accused Mr Rafik Saadeh, at p. 73 of the judgment, and that both its and the Merhi Defence's references to the *Murr* Judgment in their final trial briefs focus on the findings regarding the accused Manuel Younes—not the findings regarding Mr Naja Kaddoum, Mr Elias Awad and Mr Raji Abdou. *See also* Indictment Chamber decision 304/1993, p. 4, stating that for an omission to constitute complicity under Article 219 (2), 'The accessory must have a criminal intent, i.e. he must be aware of his act, its consequences, the criminal intent of the perpetrator, and accepts that and commits the crime', and Cassation decision 457/2002, stating regarding Article 219 generally, 'the element of complicity to the offence requires prior agreement in intent between the perpetrator and the accomplice ... This has not been proven in the current case.' The Trial Chamber noted these definitions in its Rule 167 decision, pp 45-46, although the record of that decision misquotes the phrase from Cassation decision 457/2002, 'prior agreement in intent', as 'prior agreement or intent'. *Compare*, the reference to an 'understanding' with the perpetrator in the First interlocutory decision on applicable law, paras 219, 228. However, the Trial Chamber notes that its interpretation of Lebanese case law on this issue, referred to above, is similar to the Pre-Trial Judge's summary of paras 221-228 of that decision: 'According to the Appeals Chamber, an accomplice is anyone who must have acted in a form specified by Article 219 of the Lebanese Criminal Code and be motivated by the knowledge of the intent of the primary perpetrators to commit a crime and the intention to assist those perpetrators in carrying out the crime', Pre-Trial Judge decision on 5 June 2013 indictment, para. 56 (footnotes omitted), citing First interlocutory decision on the applicable law, paras 218-228.

¹¹⁰⁰³ Cassation decision 68/2015 regarding Article 219 (5) (emphasis added): 'where the perpetrator agrees with any of the co-perpetrators or accomplices in the crime, before its commission *or during its execution*, on concealing or disposing of items resulting therefrom, shielding one or more of the participants from justice, and eliminating its traces, this constitutes complicity in the crime pursuant to Article 219, paragraph 5 of the Criminal Code.' Similarly, the same chamber in Cassation decision 152/2018, at p. 2, stated of the alleged accomplice and perpetrators that there was no proof of 'a prior agreement between them on any of these crimes, *or at least contemporary with them*, whereby the moral element of collusion is fulfilled in the manner it is provided for in Article 219, paragraph 5, of the Penal Code' (emphasis added). Regarding Article 219 (4), *see also* the examples below of conduct Lebanese courts have found to constitute complicity under that Article.

¹¹⁰⁰⁴ Cassation decision 84/2000, pp 3-4; *Al-Halabi* Judgment, p. 53; *Dany Chamoun* Judgment, p. 74, finding nine of those accused were neither accomplices to nor instigators of the intentional homicide of certain victims because they did not foresee the perpetrators would kill them. *See also* First interlocutory decision on applicable law, paras 221, 233, 260.

and classifying it as one of the ‘objective’ elements of accomplice liability under Lebanese law.¹¹⁰⁰⁵ Meaning the *actus reus* of the offence, or how it is committed—the Appeals Chamber used the terms ‘objective element(s)’, ‘material element(s)’ and *actus reus* interchangeably in its decision.¹¹⁰⁰⁶

6060. The Trial Chamber, however, is not convinced that this is correct. It considers that this element is better characterised as a subjective aspect of this mode of liability, or in other words, an aspect of the *mens rea* needed to be an accomplice. The prevailing interpretation of this element in Lebanese judicial decisions concerns only the accomplice’s state of mind—specifically, their awareness and mental acceptance of certain matters—rather than their actual conduct.

6061. Apart from this difference in characterisation, the Trial Chamber’s interpretation of Lebanese case law on this issue is substantially the same as the Appeals Chamber’s, particularly that in paragraph 220 of its first interlocutory decision. There, regarding complicity under Article 219 generally, it stated, ‘The *subjective* elements are: (i) *knowledge* of the intent of the perpetrator to commit a crime; and (ii) *intent* to assist the perpetrator in his commission of the crime’.¹¹⁰⁰⁷ In paragraph 228 under the heading, ‘Comparison between Lebanese and International Criminal Law’, and following a summary of international criminal law principles, it stated:

¹¹⁰⁰⁵ First interlocutory decision on applicable law, paras 219, 228. The Appeals Chamber cited three Lebanese judicial decisions in support of this conclusion: Cassation decision 457/2002, Cassation decision 30/2003 and Cassation decision 171/2003. However, in written submissions responding to the Oneissi Defence’s application under Rule 167 to enter a judgment of acquittal, the Prosecution argued that two of those decisions—Cassation decision 30/2003 and Cassation decision 171/2003—‘were expressly limited to Article 219 (5)’. F3587/COR, Corrected Version of Prosecution Further Submissions in Response to Oneissi Defence Application for Acquittal Under Rule 167, 1 March 2018, fn. 3. The Trial Chamber was able to obtain only an extract from Cassation decision 30/2003 and Cassation decision 171/2003. Judging by those extracts, the relevant statements of principle in those two decisions concerned Article 219 (5) only, as the Prosecution submitted. The Trial Chamber will therefore take Cassation decision 30/2003 and Cassation decision 171/2003 into account only in relation to Article 219 (5).

¹¹⁰⁰⁶ At para. 89 of the First interlocutory decision on applicable law, it defined *actus reus* as ‘the material element of a crime’ but in other paragraphs it used the term ‘objective element(s)’. See also paras 152-153 and accompanying heading.

¹¹⁰⁰⁷ First interlocutory decision on applicable law, para. 220 (original emphasis), citing in support—in fn. 331—Cassation decision 8/2000, Cassation decision 457/2002 and Cassation decision 171/2003 (misdescribing the year as 2008), and ‘Beirut Criminal court, decision no. 29, 18 December 2007, in *Al-Adel* [Journal of the Beirut Bar], 2008, at 886’. The Trial Chamber has been unable to locate a decision numbered 29 dated 18 December 2007 and, given the similarity of the citation with that of the Appeals Chamber provided in fn. 329 of its decision for Beirut Court of Appeal decision 277/2007, it seems likely the Appeals Chamber intended to refer in its fn. 331 to Beirut Court of Appeal decision 277/2007. However, it is not possible to confirm this from the summary of that decision the Trial Chamber has obtained.

Lebanese law generally requires an accomplice to *know* of the crime to be committed, to join with the perpetrator in an *understanding*, whether immediate or long-standing, to commit the crime, and to share in the intent to further that particular crime.¹¹⁰⁰⁸

This appears to be a brief statement of its conclusions regarding its comparison of ‘the Lebanese notion of complicity’ and ‘the international notion of aiding and abetting’.¹¹⁰⁰⁹ The Appeals Chamber does not, however, cite any legal authority for this passage.

6062. Concerning an accomplice’s intention, the Merhi and Oneissi Defence submit that an accomplice must share the perpetrator’s intent to commit the crime.¹¹⁰¹⁰ This reflects accurately the French translation of paragraph 228 of the Appeals Chamber’s first interlocutory decision, which renders the words ‘*to further that particular crime*’ as ‘*de commettre*’ (literally meaning ‘to commit’). Indeed, counsel for Mr Oneissi quoted that translation in his submissions.¹¹⁰¹¹ However, requiring that the accomplice intends *to commit the crime* is in principle a more onerous standard than that in Lebanese case law and that the Appeals Chamber described in paragraph 220 of its decision, as well as in paragraph 228 of the English original decision, which is authoritative.¹¹⁰¹² The Trial Chamber therefore does not accept this standard and finds instead that under Lebanese law, an intention *to assist in committing* the crime is sufficient.

c. The degree of knowledge of the crime required of an aider and abettor

6063. The Lebanese courts, as is shown above, consider that to satisfy the *mens rea* of Article 219 (4) an accomplice must have some knowledge of the intended crime. But precisely what level of knowledge is necessary requires further analysis. To that end, when determining the

¹¹⁰⁰⁸ First interlocutory decision on applicable law, para. 228 (original emphasis).

¹¹⁰⁰⁹ First interlocutory decision on applicable law, para. 228.

¹¹⁰¹⁰ Merhi Defence closing submissions, T. 18 September 2018, p. 103 (counsel for Mr Merhi stating, ‘Lebanese law stipulates in general that ... especially the accomplice must share the intent of the perpetrator to commit that same and exact crime’); Oneissi Defence closing submissions, T. 20 September 2018, pp 101-103.

¹¹⁰¹¹ Oneissi Defence closing submissions, T. 20 September 2018 (French), p. 103, lines 12-13 (quoting summary published with French version of the First interlocutory decision on applicable law), lines 17-20 (quoting French version of the First interlocutory decision on applicable law, para. 228).

¹¹⁰¹² First interlocutory decision on applicable law, p. 153, which states, ‘Done in English, Arabic and French, the English version being authoritative.’

Oneissi Defence's application under Rule 167 to enter a judgment of acquittal, the Trial Chamber has examined Lebanese judicial decisions.¹¹⁰¹³

6064. In the amended consolidated indictment, the Prosecutor has pleaded that Mr Merhi, Mr Oneissi and Mr Sabra knew that the co-perpetrators intended to commit the precise crimes alleged. Specifically, the Prosecutor alleges:

- regarding terrorism, that each of the three knew 'that others as co-perpetrators intended to, and on the 14th day of February 2005 then did, commit a terrorist act intended to cause a state of terror by a means liable to create a public danger, namely by means of a large explosive device in a public place';¹¹⁰¹⁴ and
- regarding the intentional homicide of Mr Hariri and 21 other people and attempted intentional homicide of a further 226 people, that:
 - each of the three knew 'that others as co-perpetrators intended to, and on the 14th day of February 2005 then did, commit with premeditation by using explosive materials the intentional homicide of ... Rafik HARIRI',¹¹⁰¹⁵ 'as shown by the large quantity of explosive materials used', each also 'intended, or foresaw and accepted the risk,' that this act would kill¹¹⁰¹⁶ and attempt to kill¹¹⁰¹⁷ others in the vicinity of the explosion, and each of them knew 'the intent of the co-perpetrators to attempt to kill others in addition to killing Rafik HARIRI'.¹¹⁰¹⁸

6065. The Prosecutor also pleads, concerning each count of accomplice liability, that 'together with *shared intent*',¹¹⁰¹⁹ Mr Merhi, Mr Oneissi and Mr Sabra *agreed with the co-perpetrators to*

¹¹⁰¹³ Comprising some Lebanese judicial decisions the Appeals Chamber had cited in its First interlocutory decision on applicable law and some additional decisions the Parties had identified. In several instances, at the time, the Trial Chamber was able to obtain only an extract of the decision, and or a version of it that was not translated into English. This was the case with Cassation decision 135/1995 (extract only, no English translation), Cassation decision 457/2002 (extract only), Cassation decision 171/2003 (extract only) and Cassation decision 30/2003 (extract only), and Cassation 8/2000 (extract only), as noted in the Trial Chamber's Rule 167 decision.

¹¹⁰¹⁴ Amended consolidated indictment, paras 64 (b)-(d).

¹¹⁰¹⁵ Amended consolidated indictment, paras 66 (b)-(d), 68 (b)-(c), 70 (b)-(c).

¹¹⁰¹⁶ Amended consolidated indictment, para. 68 (d).

¹¹⁰¹⁷ Amended consolidated indictment, para. 70 (d).

¹¹⁰¹⁸ Amended consolidated indictment, para. 70 (f).

¹¹⁰¹⁹ Amended consolidated indictment, paras 64 (e), 66 (e), 68 (g), 70 (g) (emphasis added).

perform, and then performed, certain acts preparatory to the offence and acts to shield the co-perpetrators and themselves from justice.¹¹⁰²⁰

6066. However, the Prosecution's submissions responding to the Oneissi Defence's application under Rule 167 argued that—as a matter of law—to establish the liability of Mr Merhi, Mr Oneissi and Mr Sabra as accomplices, it need not be proven that they knew all of these pleaded details.¹¹⁰²¹ This is notwithstanding that the amended consolidated indictment pleads that they knew each of these things. The pleaded list is expressed as a cumulative one.

6067. The Trial Chamber's Rule 167 decision noted that:

The Prosecution ... submitted, orally in court on 21 February 2018 and in its written submission (F3587, dated 27 February 2018, paragraphs 3 to 6), that the knowledge required of an accomplice is only that he or she knew that a crime was to be committed.

That is, an accomplice is not required to have full knowledge of the specific factual details of the crime to be committed. Rather, an accomplice would need to know only the nature of the crime to be committed, for example, knowledge that the perpetrator intended to commit homicide.

According to the Prosecution, the Lebanese case law cited by the Appeals Chamber establishes that an accomplice is required to know how he or she will assist the crime. The Appeals Chamber's reference to knowledge of 'the crime to be committed' in paragraph 228 of its decision should not be read as to heighten the requirement for knowledge, as

- (i) it does not expressly state that an accomplice must know the specific factual details of the crime;
- (ii) the fact that the *mens rea* (the accomplice's intention) of complicity is compatible with the legal requirements for *dolus eventualis* (namely, foreseeing a risk and taking it) which makes clear that the accomplice need not know the exact factual details of the intended crime; and

¹¹⁰²⁰ Amended consolidated indictment, paras 64 (f), 66 (f), 68 (h), 70 (h) (emphasis added).

¹¹⁰²¹ Prosecution submissions, T. 21 February 2018, pp 83-90, 95-96, 100-103; F3587/COR, Corrected Version of Prosecution Further Submissions in Response to Oneissi Defence Application for Acquittal Under Rule 167, 1 March 2018, paras 3-6.

- (iii) the Appeals Chamber's reference to knowledge of 'the crime' merely summarizes its earlier assessment of Lebanese law and should not prevail.¹¹⁰²²

6068. The 'earlier assessment' in (iii) was the Appeals Chamber's description of the subjective elements of complicity in paragraph 220 of the first interlocutory decision on applicable law. This refers to knowledge of the perpetrator's intent to commit '*a crime*', and intent to assist the perpetrator in committing '*the crime*'.

6069. In its oral and written submissions in support of its application under Rule 167, the Oneissi Defence argued that under Lebanese law, an accomplice must know that the perpetrator intends to commit a particular crime.¹¹⁰²³ It relied primarily on paragraph 228 of the first interlocutory decision on applicable law, specifically the statement that 'Lebanese law generally requires an accomplice to know of the crime to be committed, to join with the perpetrator in an understanding, whether immediate or long-standing, to commit the crime, and to share in the intent to further that particular crime.'¹¹⁰²⁴ The Oneissi Defence appeared to interpret this to mean that the accomplice must have a full and precise knowledge of the specific crime to be committed.¹¹⁰²⁵

6070. The Oneissi Defence further submitted, in summary, that in this case Mr Oneissi must have known that an act of terrorism was to be committed,¹¹⁰²⁶ the means that was to be used to perform it¹¹⁰²⁷ and that Mr Hariri was the main target of that act.¹¹⁰²⁸ The Trial Chamber understood this to

¹¹⁰²² Rule 167 decision, pp 41-42, referring to Prosecution submissions, T. 21 February 2018, pp 83-90, 95-96, 100-103 and F3587/COR, Corrected Version of Prosecution Further Submissions in Response to Oneissi Defence Application for Acquittal Under Rule 167, 1 March 2018, paras 3-6.

¹¹⁰²³ F3586/COR/PRV, Public Redacted Version of "Corrected Version of the Additional Submissions from the Oneissi Defence pursuant to Rule 167 and to the Oral Order of the Trial Chamber dated 22 February 2018 filed on 27 February 2018", 7 March 2018, para. 28; F3574/A01/PRV, Public Redacted Version of Annex A to the Defence for Hussein Hassan Oneissi Submission Pursuant to the Trial Chamber's Scheduling Order of 8 February 2018—Skeleton Arguments filed on 16 February 2018, 19 February 2018, para. 28; Oneissi Defence submissions, T. 21 February 2018, pp 70, 91. *See also* Oneissi Defence submissions, T. 20 February 2018, pp 26, 43-44, 72, 81, T. 21 February 2018, p. 33.

¹¹⁰²⁴ F3586/COR/PRV, Public Redacted Version of "Corrected Version of the Additional Submissions from the Oneissi Defence pursuant to Rule 167 and to the Oral Order of the Trial Chamber dated 22 February 2018 filed on 27 February 2018", 7 March 2018, para. 26, stating 'Lastly, above all' before quoting that conclusion; Oneissi Defence submissions, T. 20 February 2018, pp 26-27, 69-70, 92.

¹¹⁰²⁵ As the Trial Chamber noted in its Rule 167 decision, pp 40-41.

¹¹⁰²⁶ Oneissi Defence submissions, T. 20 February 2018, pp 43-44. *See also* F3586/COR/PRV, Public Redacted Version of "Corrected Version of the Additional Submissions from the Oneissi Defence pursuant to Rule 167 and to the Oral Order of the Trial Chamber dated 22 February 2018 filed on 27 February 2018", 7 March 2018, para. 40.

¹¹⁰²⁷ Oneissi Defence submissions, T. 21 February 2018, p. 98. *See also* F3586/COR/PRV, Public Redacted Version of "Corrected Version of the Additional Submissions from the Oneissi Defence pursuant to Rule 167 and to the Oral Order of the Trial Chamber dated 22 February 2018 filed on 27 February 2018", 7 March 2018, para. 40.

¹¹⁰²⁸ Oneissi Defence submissions, T. 20 February 2018, pp 71, 81, T. 21 February 2018, p. 100.

mean that the accomplice must have known that Mr Hariri was to be killed in a vehicular bombing.¹¹⁰²⁹ The Oneissi Defence also submitted that it was necessary that Mr Oneissi ‘at least’ knew ‘that the main perpetrator aims at killing, in addition to the main target, everybody else around’.¹¹⁰³⁰

6071. The Trial Chamber’s Rule 167 decision found that the Lebanese case law did not seem to delineate with any clarity or precision the knowledge required for accomplice liability under Article 219 of the Lebanese Criminal Code.¹¹⁰³¹ Further, while the Appeals Chamber’s first interlocutory decision appeared to have concluded that an accomplice must have known that a perpetrator intended to commit a particular crime,¹¹⁰³² it did not examine whether an accomplice must have known the precise factual details of the crime or its minutiae, or the degree of knowledge required to make them criminally liable.¹¹⁰³³ Finally, the Trial Chamber found for the purpose of that decision, regarding each charge of accomplice liability in the case,¹¹⁰³⁴ that:

- it was sufficient for Mr Oneissi, Mr Merhi and Mr Sabra as charged accomplices to have known they were acting pursuant to a plan to commit a terrorist act, namely, to assassinate Mr Hariri by means of a large explosive device in a public place, therefore causing terror, and further that in so doing they were aware that others would die and be injured; and
- they did not need to know details such as where the explosive device would be detonated, the precise location or time or the manner of detonating it, such as on a moving or parked vehicle.¹¹⁰³⁵

6072. Thus the Trial Chamber followed the Appeals Chamber’s apparent interpretation of Lebanese law on this question.¹¹⁰³⁶ The Trial Chamber expressly did so on the basis that that interpretation is reasonable and in the absence of more precise guidance from Lebanese case law.¹¹⁰³⁷ As it has stated subsequently, by doing so, the Trial Chamber also ‘in essence, did not

¹¹⁰²⁹ As the Trial Chamber stated in its Rule 167 decision, p. 41.

¹¹⁰³⁰ Oneissi Defence submissions, T. 21 February 2018, p. 100.

¹¹⁰³¹ Rule 167 decision, p. 46.

¹¹⁰³² Rule 167 decision, pp 43, 47, referring to First interlocutory decision on applicable law, paras 218-228.

¹¹⁰³³ Rule 167 decision, p. 44.

¹¹⁰³⁴ The Trial Chamber found that for the purpose of its Rule 167 decision, the knowledge required for the purpose of the conspiracy charge was identical to that required for the purpose of the complicity charges.

¹¹⁰³⁵ Rule 167 decision, pp 47-50.

¹¹⁰³⁶ Rule 167 decision, p. 47.

¹¹⁰³⁷ As it stated in its Rule 167 decision, pp 46-47.

disagree with the Oneissi Defence submissions on the ambit of Article 219, and adopted a more restrictive interpretation than that argued by the Prosecution'.¹¹⁰³⁸

6073. The Trial Chamber received additional submissions from the Parties on the knowledge required of an accomplice under Lebanese law, in their final trial briefs and oral closing submissions. The Trial Chamber also examined as many additional Lebanese judicial decisions on Article 219 as it could find. Because of their volume, the Trial Chamber will not address each individual submission but instead summarises the Parties' submissions on how to interpret the Lebanese case law.¹¹⁰³⁹

6074. The Prosecution submits that an accomplice to a terrorist act needs to know only that the perpetrators intend to commit an act 'through means that are liable to create a public danger and with the intent to cause a state of terror'.¹¹⁰⁴⁰ An accomplice to intentional homicide or attempted intentional homicide need know only that the perpetrators intend to commit an act aimed at impairing the life of a person¹¹⁰⁴¹—not the actual means to be used to do that.¹¹⁰⁴² In neither case does the accomplice need to know the identity of the targeted victim(s) or the place or time at which the crime is intended to be committed.¹¹⁰⁴³ It characterised Lebanese judgments finding accomplices in fact had detailed knowledge of the intended crime as 'cases where that knowledge was found to be sufficient but not necessary to obtain a conviction'.¹¹⁰⁴⁴

6075. In the Prosecution's submission, therefore, the difference between Lebanese judgments on this issue consists of 'different factual findings',¹¹⁰⁴⁵ not any 'inconsistency',¹¹⁰⁴⁶

¹¹⁰³⁸ Decision denying Oneissi Defence certification to appeal (non-acquittal under Rule 167), para. 16.

¹¹⁰³⁹ The Merhi and Oneissi Defence relied only on this case law, and the First interlocutory decision on applicable law, to interpret Article 219, whereas both the Prosecution and Sabra Defence also referred to international criminal law case law.

¹¹⁰⁴⁰ Prosecution final trial brief, para. 1149.

¹¹⁰⁴¹ Prosecution final trial brief, para. 1149; Prosecution closing submissions, T. 11 September 2018, pp 109-110.

¹¹⁰⁴² Prosecution final trial brief, para. 1148, citing *Mohammed Chamas and others* Judgment, Cassation decision 221/2008 and Cassation decision 84/2000.

¹¹⁰⁴³ Prosecution final trial brief, para. 1148, citing Cassation decision 106/2017, Cassation decision 54/2014, Cassation decision 237/2013, *Mohammed Chamas and others* Judgment, Cassation decision 221/2008 and Cassation decision 84/2000; Prosecution closing submissions, T. 11 September 2018, pp 109-110, T. 13 September 2018, pp 81-84, 87.

¹¹⁰⁴⁴ Prosecution closing submissions, T. 11 September 2018, p. 111, *see also* pp 110, 114-115, 119-121.

¹¹⁰⁴⁵ Prosecution closing submissions, T. 13 September 2018, p. 72.

¹¹⁰⁴⁶ Prosecution closing submissions, T. 11 September 2018, pp 110, 118-119, 121.

‘discrepancies’¹¹⁰⁴⁷ or ‘difference in Lebanese law as to the legal requirement’.¹¹⁰⁴⁸ The Prosecutor further explained, ‘There is no particular pronouncement that is contradicted by other pronouncements of the law, as I understand it.’¹¹⁰⁴⁹

6076. Both the Merhi¹¹⁰⁵⁰ and Sabra Defence¹¹⁰⁵¹ argue that in this case, to be an accomplice, an accused must have known the perpetrators of the alleged terrorist act, intentional homicide and attempted intentional homicide intended to use explosive materials, specifically, to commit those crimes. The Merhi Defence also submits that the alleged accomplices must have known ‘the quantity of explosives’ intended to be used.¹¹⁰⁵² The Merhi Defence does not specify how precise the knowledge of the quantity must be, such as to the kilogram. The Oneissi Defence submits that accomplices to a crime must either know of the means to be used to commit it or—presumably referring to complicity under Article 219 (5)—have facilitated such means on the basis of a prior agreement with the perpetrator of the crime or with the other accomplices.¹¹⁰⁵³ Counsel for each submit that accomplices to the crimes charged legally must have known the identity of the target of the alleged operation, namely Mr Hariri.¹¹⁰⁵⁴

6077. The Oneissi Defence also submits, more generally, that:

- complicity under both Article 219 (4) and (5) ‘requires prior knowledge of the criminal activity of the perpetrator of the crime’;¹¹⁰⁵⁵

¹¹⁰⁴⁷ Prosecution closing submissions, T. 11 September 2018, p. 110.

¹¹⁰⁴⁸ Prosecution closing submissions, T. 13 September 2018, p. 74. *See also* the similar Prosecution closing submissions at T. 11 September 2018, pp 110-111, 113-115, 118-121.

¹¹⁰⁴⁹ Prosecution closing submissions, T. 13 September 2018, p. 72.

¹¹⁰⁵⁰ Merhi Defence final trial brief, paras 582-584, citing *Murr* Judgment, pp 38-39 (which contain the findings regarding the accused Mr Manuel Younes), *Dany Chamoun* Judgment, pp 71-74 (which contain findings regarding all 13 accused), Cassation decision 8/2000, p. 2 (in particular, the *mens rea* finding in that decision); First interlocutory decision on applicable law, para. 147, fn. 331 and Article 314 of the Lebanese Criminal Code; Merhi Defence closing submissions, T. 18 September 2018, p. 107. *See also* Merhi Defence final trial brief, paras 585-587, citing *Mohammed Chamas and others* Judgment, Cassation decision 106/2017 and Assize Court decision 250/2017.

¹¹⁰⁵¹ Sabra Defence final trial brief, paras 809, 827-828.

¹¹⁰⁵² Merhi Defence closing submissions, T. 18 September 2018, p. 107.

¹¹⁰⁵³ Oneissi Defence final trial brief, para. 654, citing Cassation decision 8/2000—in particular, the *mens rea* finding in that decision—and First interlocutory decision on applicable law, fn. 331.

¹¹⁰⁵⁴ Merhi Defence final trial brief, para. 588; Merhi Defence closing submissions, T. 18 September 2018, pp 105, 107; Oneissi Defence closing submissions, T. 21 September 2018, p. 70; Sabra Defence final trial brief, paras 827-828.

¹¹⁰⁵⁵ Oneissi Defence final trial brief, para. 649, citing First interlocutory decision on applicable law, para. 219 (emphasis omitted).

- an accomplice must have ‘a detailed knowledge of the perpetrator’s intent’,¹¹⁰⁵⁶ and
- ‘under the Lebanese law on complicity, it must ... be proven that the accomplice knew of the crime to be committed, of the means to be used to this end, and of the perpetrator’s intent to commit that particular crime’.¹¹⁰⁵⁷

6078. The Merhi and Oneissi Defence further submit that the accused must know the important and main details of the intended crime (Merhi Defence)¹¹⁰⁵⁸ and all the ‘specifics and details’ of the particular crime intended (Oneissi Defence).¹¹⁰⁵⁹

6079. However, lead counsel for Mr Merhi confirmed in oral closing submissions that the Merhi Defence does not argue that the law requires the accomplice to know ‘the small details’.¹¹⁰⁶⁰ He also conceded specifically that an accomplice alleged to be involved in a conspiracy, as in this case, need not know the identities of all of the co-conspirators.¹¹⁰⁶¹ As for the Oneissi Defence, based on its written submissions,¹¹⁰⁶² the Trial Chamber understands its position to be, more specifically, that Mr Oneissi must have at least known in advance that the perpetrators were going to detonate a large quantity of explosives in a public place and that their intention in doing so was to kill Mr Hariri and to create a state of terror.

6080. The Sabra Defence submits that, at a minimum, in addition to knowing the perpetrators intended to use explosive materials and to kill Mr Hariri, the accused must know they were acting pursuant to a plan to do so in a public place, thereby causing terror, and that others would die and be injured. In other words, the minimum knowledge required to convict the Accused as accomplices to the crimes alleged was that which the Trial Chamber found in its Rule 167 decision.¹¹⁰⁶³

¹¹⁰⁵⁶ Oneissi Defence final trial brief, para. 655, citing *Mohammed Chamas and others* Judgment and Cassation decision 106/2017 and, in paras 656-658, *Murr* Judgment, pp 38-39 (which contain the findings regarding the accused Manuel Younes), *Dany Chamoun* Judgment and First interlocutory decision on applicable law, para. 228.

¹¹⁰⁵⁷ Oneissi Defence final trial brief, para. 659.

¹¹⁰⁵⁸ Merhi Defence closing submissions, T. 18 September 2018, pp 106-108.

¹¹⁰⁵⁹ Oneissi Defence closing submissions, T. 21 September 2018, p. 70.

¹¹⁰⁶⁰ Merhi Defence closing submissions, T. 18 September 2018, p. 106.

¹¹⁰⁶¹ Merhi Defence closing submissions, T. 18 September 2018, p. 107.

¹¹⁰⁶² Particularly Oneissi Defence final trial brief, para. 661, entitled ‘Conclusion’.

¹¹⁰⁶³ Sabra Defence final trial brief, paras 827-828.

6081. As part of its submissions on the Prosecution's alleged failure to prove Mr Sabra's liability—separate to the submissions on the law on accomplice liability—the Sabra Defence argues:

If it is now the Prosecution's case that SABRA is alleged to have produced the FCR-Tape, *this would still not fulfil the requisite knowledge requirement given that there is no indication from the text of the FCR-Tape of either the means to be used for the terrorist attack, or the date on which it would be undertaken – both of which are considered by the Chamber to be necessary elements to establish knowledge.*¹¹⁰⁶⁴

6082. No legal authority was cited in support of this. It is unclear what the highlighted words refer to; as stated earlier the Trial Chamber did not find in its Rule 167 decision that an accomplice must know the date of the intended attack to be liable. Moreover, as noted, the Trial Chamber does not now accept that knowledge of this detail is required with respect to either the complicity or the conspiracy charges.

6083. The Oneissi Defence also submits that to satisfy Article 219 (5) specifically, an accused accomplice must know concerning the intended crime: 'its means, the timing, materiality, content and level of details of these instructions'.¹¹⁰⁶⁵ In this case, Mr Oneissi must have agreed before the attack to materially assist in the preparation and dissemination of a 'false claim' of responsibility for it, 'knowing that it would shield the perpetrators'.¹¹⁰⁶⁶

6084. None of these additional submissions, nor any of the additional judicial decisions cited, have altered the Trial Chamber's conclusion that Lebanese case law offers limited guidance on this issue. The Trial Chamber is still unaware of any Lebanese court clearly and precisely stating what, at a minimum, an accused person must know about the perpetrators' intended crime before it is committed, to be an accomplice under Article 219 (4) or (5). Lebanese case law accordingly is of limited assistance in defining this element of accomplice liability under those Articles. The Trial Chamber therefore also agrees with the Prosecution's submission that there is no 'difference'

¹¹⁰⁶⁴ Sabra Defence final trial brief, para. 865 (emphasis added), with 'FCR' meaning 'false claim of responsibility'.

¹¹⁰⁶⁵ Oneissi Defence final trial brief, para. 699.

¹¹⁰⁶⁶ Oneissi Defence final trial brief, para. 662.

in Lebanese judgments on accomplice liability, to the extent that there are no explicit pronouncements on the law, in those judgments, that contradict one another.

6085. At most, the case law on Article 219 (4) and (5) suggests certain features in addition to those already identified, about the knowledge required specifically of a person who aids or abets in acts preparatory to the relevant crimes, or by prior agreement helps to eliminate their traces, conceal or dispose of items resulting from them or shield their participants from justice.

iii. Article 219 (4) specifically

6086. The Trial Chamber has found extensive Lebanese case law on Article 219 (4), ‘**Anyone who aids or abets the perpetrator in acts that are preparatory to the offence**’. There are numerous decisions on complicity in terrorism, intentional homicide and or attempted intentional homicide cases.

6087. Lebanese courts interpret the *actus reus* of Article 219 (4) broadly. Their decisions consistently interpret ‘aiding or abetting’ as being synonymous with assisting,¹¹⁰⁶⁷ helping¹¹⁰⁶⁸ or facilitating.¹¹⁰⁶⁹ However they adopt diverse approaches in interpreting ‘acts preparatory to the offence’ and the relationship between this and ‘aiding or abetting’.

6088. None of the decisions of which the Trial Chamber is aware clearly defines what an ‘act preparatory to the offence’ is. Some paraphrase those words as, simply, preparing for the offence;¹¹⁰⁷⁰ others suggest the term includes acts that facilitate the commission of the offence.¹¹⁰⁷¹

¹¹⁰⁶⁷ *Dany Chamoun* Judgment, pp 71-72; *Zouk Mikayel Church* Judgment, p. 108; Cassation decision 38/1999, p. 6; Cassation decision 457/2011, p. 10.

¹¹⁰⁶⁸ *Zouk Mikayel Church* Judgment, p. 101; Cassation decision 38/1999, p. 6; Cassation decision 457/2011, p. 10; Cassation decision 64/2013, p. 1; Cassation decision 39/2014, p. 1; Cassation decision 113/2014, pp 1-2.

¹¹⁰⁶⁹ *Dany Chamoun* Judgment, pp 71-72; Cassation decision 38/1999, p. 6; *Murr* Judgment, p. 56; *Karami* Judgment, p. 128.

¹¹⁰⁷⁰ Indictment Chamber decision 304/1993, p. 3.

¹¹⁰⁷¹ Cassation decision 224/2011, p. 1, and Cassation decision 342/2012, in each of which the chamber stated the accused assisted the perpetrator by acts that aided and abetted the relevant crime; *Al-Halabi* Judgment, p. 52, describing the accused Mr Rabih Nabah’s and Mr Wasim Abd al-Mo’ti’s role as aiding the acts that paved the way for and facilitated the perpetration of the relevant crime. *See also Karami* Judgment, pp 128-129. The Lebanese Judicial Council there described Mr Aziz Saleh’s and Mr Joseph Sukkar’s filming of certain events as ‘material acts facilitating the commission of the assassination with its ensuing consequences and forming part of the material elements of complicity as an accessory as defined in paragraph 4 of Article 219 of the Criminal Code’ (emphasis added), but determined those two accused were not accomplices because their acts had not ‘played any role in enabling the principals to perpetrate and complete their offence’.

Others yet suggest a preparatory act is distinct from one that facilitates a crime, but that to fulfil the *actus reus* of Article 219 (4) it is sufficient to aid or abet either kind of act.¹¹⁰⁷²

6089. The specific conduct that Lebanese courts have found fulfils the *actus reus* of complicity in committing terrorist acts, intentional homicides and attempted intentional homicides, under Article 219 (4), ranges from discrete acts clearly performed at the planning stage, to more significant participation and acts contemporaneous with committing the crimes. Examples include:

- planning specifically how those crimes would be committed, giving instructions to perpetrators and other accomplices about that and supervising their training in the use of weapons for that purpose. In a judgment concerning the 1990 assassination of Mr Dany Chamoun, the National Liberal Party leader, the Lebanese Judicial Council found the accused, Mr Tony Obeid, had done all of these things before the assassination. The Council convicted him of complicity in Mr Chamoun's intentional homicide on the basis of both this conduct and some other acts, described later in this paragraph;¹¹⁰⁷³
- collecting information about the location of the intended terrorist act or homicide or its intended victim(s)—for example by conducting surveillance¹¹⁰⁷⁴—and or providing that information to the perpetrators;¹¹⁰⁷⁵

¹¹⁰⁷² Cassation decision 38/1999, pp 2-3, 6; Cassation decision 113/2014, pp 1-2; Cassation decision 92/2016, p. 1; Cassation decision 186/2018, p. 1. *Compare* Cassation decision 237/2013, pp 2-3 and Cassation decision 106/2017, pp 2-3, in each of which the Chamber found the accused's conduct both contributed to the preparations for the relevant crimes and aided and abetted in their commission.

¹¹⁰⁷³ *Dany Chamoun* Judgment, pp 28-30, 72. The same court also convicted four accused for participating in both planning specifically how an intentional homicide, attempted intentional homicides and terrorism would be committed, and information-gathering for those crimes, in its *Karami* Judgment, p. 132.

¹¹⁰⁷⁴ *Murr* Judgment, pp 49-50, 56, regarding complicity in intentional homicide and attempted intentional homicide of two of the 12 accused, Mr Elias Awad and Mr Naja Kaddoum). *See also* Cassation decision 209/2013, p. 1321, cited in Single judge decision 202/2016, p. 21, in which the Chamber found 'monitoring' to constitute complicity under Article 219 (4).

¹¹⁰⁷⁵ *Dany Chamoun* Judgment, pp 28-30, 72 (complicity in intentional homicide of one of the 13 accused, Mr Tony Obeid, for this among other conduct); *Zouk Mikayel Church* Judgment, pp 100-101 (complicity in terrorism and intentional homicide of one of the seven accused, Mr el-Khoury, for this conduct, in combination with attending meetings held to plan the operation and helping to assemble one of the explosive devices used in it); *Karami* Judgment, pp 132, 142 (complicity in intentional homicide, attempted intentional homicide and terrorism of four of the 17 accused, Mr Antonio Elias Elias (alias Tony Obeid), Mr Assaad Kassab, Mr Elias Kassab and Mr Gaby Touma, for this conduct in combination with helping to formulate the plan for committing those crimes, and of two others, Mr Mikhael Saneh and Mr Georges Zoghby, for this conduct alone). *See also* *Karami* Judgment, pp 128-129, finding regarding two additional accused, Mr Aziz Saleh and Mr Joseph Sukkar, that either engaging in such conduct or

- obtaining for the perpetrators, and or providing to them, materials either needed to commit the crime or to make it easier to do so, such as weapons,¹¹⁰⁷⁶ ammunition,¹¹⁰⁷⁷ components of explosive devices¹¹⁰⁷⁸ or disguises;¹¹⁰⁷⁹
- storing/hiding such materials for the perpetrators;¹¹⁰⁸⁰
- meeting the ‘everyday needs’ of several members of the *Al-Qaeda* organisation in the period before they murdered and attempted to murder a number of Lebanese soldiers and civilians, ‘by opening fire against them using weapons and hand grenades’, after the soldiers found and surrounded the flat in Lebanon where those *Al-Qaeda* members were hiding;¹¹⁰⁸¹
- helping a perpetrator—the accomplice’s brother—to disguise himself by shaving his beard and putting on a Lebanese army uniform, shortly before he took a suitcase containing explosives to the *Al-Tal* district in Tripoli, ‘where Lebanese Army soldiers were gathered to head to their respective posts’, then detonated it remotely,¹¹⁰⁸² killing 13 people and injuring 46 more;¹¹⁰⁸³

guarding the person who did so would have fulfilled the *actus reus* of complicity, if those acts had facilitated commission of the crimes. *See also* First interlocutory decision on applicable law, para. 224.

¹¹⁰⁷⁶ *Dany Chamoun* Judgment, pp 28-30, 72; Cassation decision 221/2008, pp 1-2 (complicity in intentional homicide and attempted intentional homicide). *See also* the reference to Cassation decision 221/2008, Cassation decision 84/2000 and Assize Court decision 400/2007 in Merhi Defence final trial brief, para. 483, fn. 936.

¹¹⁰⁷⁷ Cassation decision 221/2008, pp 1-2 (complicity in intentional homicide and attempted intentional homicide); Cassation decision 54/2014, pp 1-2 (complicity in terrorism). *See also* the reference to these decisions in Prosecution final trial brief, fns 2391-2392 and Merhi Defence final trial brief, paras 483, 580, fns 936, 938, 1095.

¹¹⁰⁷⁸ *Murr* Judgment, pp 42-44, 57, regarding complicity in intentional homicide, attempted intentional homicide and terrorism of one of the 12 accused, Mr Raji Abdou; Cassation decision 221/2008, pp 1-2 (complicity in intentional homicide and attempted intentional homicide); Cassation decision 237/2013, pp 1-2 (complicity in terrorism). *See also* the reference to the latter two decisions in Prosecution final trial brief, fns 2391-2392 and Merhi Defence final trial brief, paras 483, 580, fns 936, 939, 1095.

¹¹⁰⁷⁹ *Dany Chamoun* Judgment, pp 28-30, 72-73, regarding complicity in intentional homicide of two of the 13 accused, Jean Chahine—for this conduct alone—and Tony Obeid for this among other conduct.

¹¹⁰⁸⁰ Cassation decision 237/2013, pp 1-2 (complicity in terrorism). *See also* the reference to this decision in Merhi Defence final trial brief, para. 483, fn. 939, describing the relevant conduct as ‘concealing and transporting munitions or explosives’ (emphasis added), and Prosecution final trial brief, fn. 2391. The Trial Chamber has been able to obtain only an extract from this decision. However, the summary of facts in that extract suggests that the accused did not actually transport the materials in question, because the authorities seized them before he could do so.

¹¹⁰⁸¹ Cassation decision 221/2008, p. 2.

¹¹⁰⁸² With another perpetrator, Mr Ubeid Mubarak Abdel-Qufail (Abou-Aisha), *Al-Tal Bombing* Judgment, p. 4.

¹¹⁰⁸³ *Al-Tal Bombing* Judgment, pp 38-39, regarding an unnamed minor, one of 32 accused, who was the brother of the accused Mr Abdul Ghani Jawhar.

- luring the victim to the place where the perpetrator killed them,¹¹⁰⁸⁴ or helping the perpetrator to lure the victim there;¹¹⁰⁸⁵
- transporting perpetrators from one location to another, including across an international border to join a terrorist movement in Syria;¹¹⁰⁸⁶ to the flat where they hid while waiting for the opportunity to commit terrorist acts, in the case concerning members of *Al-Qaeda* referred to earlier in this paragraph;¹¹⁰⁸⁷ and during the commission of a terrorist act, by driving the car from which the perpetrator threw a grenade in a crowded area;¹¹⁰⁸⁸
- accompanying the perpetrators to a shop where they killed their victims and helping them to gain entry to that shop;¹¹⁰⁸⁹ and
- keeping watch while the crime was being committed and standing ready to provide other assistance to the perpetrators.¹¹⁰⁹⁰

¹¹⁰⁸⁴ Cassation decision 296/2014, p. 2 (complicity in intentional homicide). The court did not refer to a particular paragraph of Article 219, but implied it considered this conduct fell under Article 219 (4) by stating, ‘*The assistance and aid given by the defendant (Z.M.) to her husband in the actions preparing for the crime and facilitating its undertaking*, by luring the victim to their flat, and in helping the defendant to cover up the evidence of the crime’ after the victim’s death, ‘all constitute the felony of collusion in first degree murder and attempted robbery, as provided for in Article 549 of the Penal Code, paragraphs 1 and 2, in conjunction with Article 219’ (emphasis added).

¹¹⁰⁸⁵ Cassation decision 38/1999, pp 2-3, 5-6 (complicity in intentional homicide, under Article 219 (2) and (4), for this conduct in combination with planning the crime with the perpetrator and accompanying him to the scene of the crime).

¹¹⁰⁸⁶ Cassation decision 106/2017, pp 1-2 (complicity in terrorism, as well as in two other crimes referred to in Articles 4 and 5 of the Lebanese law of 1958, which are not charged in this case). *See also* the brief summary of this decision in Oneissi Defence final trial brief, para. 655.

¹¹⁰⁸⁷ Cassation decision 221/2008, pp 1-2 (complicity in intentional homicide and attempted intentional homicide).

¹¹⁰⁸⁸ Cassation decision 106/2014, p. 2 (complicity in terrorism, as well as in the crime referred to in Article 5 of the Lebanese law of 1958, which is not charged in this case).

¹¹⁰⁸⁹ Cassation decision 283/2015, pp 3-6 (complicity in intentional homicide). *See also* the reference to this decision in Merhi Defence final trial brief, para. 483, fn. 940.

¹¹⁰⁹⁰ *Dany Chamoun* Judgment, pp 28-30, 71-72 (complicity in intentional homicide of five of the 13 accused, namely Mr Elie Akiki, Mr Georges Feghali, Mr Camille Karam, Mr Jean Samia and Mr Farid Saadeh, for such conduct); *Al-Halabi* Judgment, pp 52-54 (complicity in intentional homicide and attempted intentional homicide of two of the 20 accused, Mr Rabih Nabah and Mr Wasim Abd al-Mo’ti, for such conduct in combination with having ‘acted as a motorcycle escort to the car carrying the perpetrators’ to the scene of the crime).

6090. The Merhi Defence cited some of these examples¹¹⁰⁹¹ and submits that they show that only positive, concrete action can be ‘aiding or abetting’.¹¹⁰⁹² If this submission is intended to mean one could never be an accomplice under Article 219 (4) on the basis of an omission, the Trial Chamber rejects it.

6091. In the vast majority of the Lebanese decisions on Article 219 (4) the Trial Chamber has examined, the conduct constituting aiding or abetting was a positive action rather than an omission. However, none of the Lebanese judicial decisions the Merhi Defence cited states that positive action is legally required to satisfy Article 219 (4). Moreover, the Trial Chamber is aware of only one Lebanese judicial decision explicitly stating that such a requirement exists. It is a 1993 decision of a Lebanese indictment chamber that considered whether an accused person, whom the chamber found was ‘passively present’ when her brother shot her husband, was complicit in her husband’s attempted murder for failing to take steps to prevent it.

6092. The indictment chamber briefly discussed each of the six forms of complicity set out in Article 219 and found that none applied in this case. Its entire analysis of Article 219 (4) was:

Whereas by virtue of paragraph (4) of Article 219 of the Criminal Code, aiding and abetting the perpetrator in acts that are preparatory to the crime, supposes that the accessory carry out a positive act that may aid or abet the perpetrator in preparing the crime; and whereas the investigations did not prove that the Defendant wife carried out such a positive act.¹¹⁰⁹³

The chamber did not cite any legal authority for this statement.

6093. The Appeals Chamber in its first interlocutory decision on applicable law did not address the issue of whether Article 219 (4), specifically, extends to omissions. Instead, it stated generally:

Lebanese case law has specified that ... complicity may consist of an omission, in which case the accomplice is punished if he was duty bound to prevent commission of the crime

¹¹⁰⁹¹ Providing materials—specifically ammunition, weapons, money or explosives—to, or obtaining or hiding them for the perpetrators, and accompanying the perpetrators to a shop where they killed their victims and helping them to gain entry to that shop. Merhi Defence final trial brief, para. 483. The Merhi Defence also referred to transporting certain materials for the perpetrators, and cited an example of conduct constituting complicity in a crime not charged in this case, namely ‘driving the vehicle during the robbery, waiting while the robbery takes place’, referring to Cassation decision 92/2016.

¹¹⁰⁹² Merhi Defence final trial brief, paras 483-484.

¹¹⁰⁹³ Indictment Chamber decision 304/1993, p. 4 (emphasis omitted).

and has refrained from accomplishing his duty (this for instance applies to police officers), or where the passive conduct of the accomplice amounts to strengthening the resolve of the perpetrator to commit a crime.¹¹⁰⁹⁴

6094. The only examples and authorities the Appeals Chamber cited in support of this statement appear to relate to the second scenario—strengthening the perpetrator’s resolve—which is the subject of Article 219 (2) of the Lebanese Criminal Code, and is not charged in this case.¹¹⁰⁹⁵ The 1993 indictment chamber decision described above was one of the authorities the Appeals Chamber cited in this connection,¹¹⁰⁹⁶ but it does not deal with a duty to prevent the commission of a crime. The indictment chamber’s description of ‘passive’ conduct capable of constituting complicity is explicitly confined to Article 219 (2).¹¹⁰⁹⁷

6095. The view that positive action is always necessary is contrary to some other Lebanese case law on Article 219 (4). Specifically, a 2013 Lebanese decision that the Trial Chamber has found from its own searches determined that an accused who failed to help a person who was being strangled aided and abetted in acts preparatory to intentional homicide, under that Article.¹¹⁰⁹⁸

6096. Finally, and most decisively, an alleged accomplice’s omission could conceivably assist the preparation for a crime. For instance, a security guard’s failure to report an intruder’s presence, thereby facilitating the theft of materials required to make an explosive device to use in a terrorist act, or their surveillance of the intended location of the explosion. The wording of ‘aids or abets’ in Article 219 (4) supports this interpretation. Thus, the Trial Chamber adopts it.

6097. The Trial Chamber further concludes, regarding the *actus reus* of Article 219 (4), that the Lebanese case law is inconsistent on whether the conduct of the accused accomplice must occur at a preparatory stage. However, the dominant approach in the Lebanese case law is not to differentiate strictly between preparatory and commission stages, but instead to find that the *actus reus* exists if the accused’s conduct facilitated either or both stages.

¹¹⁰⁹⁴ First interlocutory decision on applicable law, para. 223 (footnotes omitted).

¹¹⁰⁹⁵ First interlocutory decision on applicable law, fn. 336.

¹¹⁰⁹⁶ First interlocutory decision on applicable law, fn. 336, misdescribing the judgment date as 21 October 1995.

¹¹⁰⁹⁷ Indictment Chamber decision 304/1993, p. 4.

¹¹⁰⁹⁸ Cassation decision 64/2013, p. 1. The published extract of this decision does not provide any additional information about the circumstances of the victim’s killing, other than that the perpetrator and the accomplice had planned to steal from the victim and did in fact steal from him after his death.

6098. In its first interlocutory decision on applicable law, the Appeals Chamber seemed to accept that an accomplice under Article 219 (4) may facilitate the commission of, rather than the preparation for, an offence. It stated, regarding the *actus reus* of Article 219, ‘the assistance can be provided (i) before the crime, such as in the examples mentioned under subparagraphs 1, 2 and 3, (ii) *during the perpetration of the crime, amounting to the sole example under subparagraph 4*, or (iii) thereafter, as in subparagraphs 5 and 6’.¹¹⁰⁹ But the Appeals Chamber did not cite any legal authority for that statement.

6099. The Merhi Defence submits:

the Prosecution has failed to prove that Merhi ... had the intention of aiding the perpetrators *in committing* the crime using an explosive device. That interpretation is also confirmed by the Judgement of the Judicial Council in the case relating to the attack against Minister Michel Murr.¹¹¹⁰

In support, the Merhi Defence cites a second Lebanese Judicial Council judgment, the *Dany Chamoun* case.¹¹¹⁰¹ However, these two judgments do not appear to the Trial Chamber to suggest that an accomplice under Article 219 (4) must aid in the commission of the relevant crime rather than its preparation—if that is indeed what the Merhi Defence meant, which is unclear. Instead, both judgments are somewhat ambiguous on this issue, seeming to characterise the same conduct as both assistance in preparing for crimes and assistance in committing them.

6100. The *Murr* Judgment, delivered by the Lebanese Judicial Council in 1997, concerns the attempted assassination of the Lebanese Minister of Defence, Mr Michel Murr.¹¹¹⁰² The facts in *Murr* have some similarities to those alleged in the *Ayyash and others* case. These involved an explosion in Beirut in 1991, on a weekday morning, of a car booby-trapped with explosives, on

¹¹⁰⁹ First interlocutory decision on applicable law, para. 219 (emphasis added).

¹¹¹⁰ Merhi Defence final trial brief, para. 583 (emphasis added), citing *Murr* Judgment, pp 38-39 (which, as earlier stated, contain the findings regarding the accused Mr Manuel Younes) and *Dany Chamoun* Judgment, pp 75-78.

¹¹¹⁰¹ Merhi Defence final trial brief, fn. 1102, citing *Dany Chamoun* Judgment, pp 75-78.

¹¹¹⁰² The Trial Chamber referred to this judgment in its Rule 167 decision, pp 41, 46, stating that the judgment did not assist in determining the required level of knowledge for accomplice liability because it involved a situation in which an alleged accomplice had no knowledge of the perpetrator’s criminal intent. These references related specifically to one of the 12 accused, Mr Manuel Younes, and the Lebanese Judicial Council’s finding that there was insufficient evidence to prove he knew any details of the perpetrators’ plan. *See also Murr* Judgment, pp 20-21, 37-39, 62. The Merhi and Oneissi Defence referred to the findings regarding that accused in their final submissions. Merhi Defence final trial brief, paras 80, 583; Oneissi Defence final trial brief, para. 656.

the route along which Mr Murr's vehicle convoy was passing. Mr Murr survived but seven others were killed and about 25 others were injured. Nine days later, a second booby-trapped car exploded, killing and injuring several more people. The Lebanese Judicial Council found this second explosion was deliberately triggered to eliminate the traces of the attempted assassination operation.¹¹¹⁰³

6101. In *Murr*, the Lebanese Judicial Council considered the criminal responsibility of 12 people accused of participating, in various ways, in that operation. It found that two of those accused, Mr Elias Awad and Mr Naja Kaddoum, had been assigned to investigate and monitor Mr Murr's movements.¹¹¹⁰⁴ In convicting Mr Awad and Mr Kaddoum as accomplices in intentional homicide and attempted intentional homicide, under Article 219 (4), the Council concluded they had '*participated in the preparation of the crimes of homicide and attempted homicide committed by the other accused through their surveillance of the movements of Minister Michel Murr's escort, which made it possible to execute the plan to assassinate him*'. But the Council also found that those two accused were '*fully aware that the purpose of their acts was to facilitate the assassination operation*'.¹¹¹⁰⁵

6102. The passage most relevant in the *Dany Chamoun* judgment to the question of whether an accomplice under Article 219 (4) may assist in commission, preparation or both, concerns a different accused, Mr Jean Chahine. It describes him as having known that uniforms he provided would '*facilitate the commission of the crime*', but then states that he was complicit in that crime '*through the provision of assistance for the acts that were being prepared*'.¹¹¹⁰⁶

6103. The interpretation that a person can be an accomplice under Article 219 (4) for aiding or abetting *in the commission of the offence*, rather than in its preparation, also diverges from the wording of the Lebanese Criminal Code.

6104. The code distinguishes on the one hand between the commission of a crime—also known as its execution—and on the other, acts preparatory to that crime. Article 219 itself does so, by

¹¹¹⁰³ *Murr* Judgment, pp 4, 16, 51.

¹¹¹⁰⁴ *Murr* Judgment, pp 19-20.

¹¹¹⁰⁵ *Murr* Judgment, p. 56 (emphasis added).

¹¹¹⁰⁶ *Dany Chamoun* Judgment, p. 72.

using ‘commit/commission’ of ‘the offence’ in several sub-paragraphs—(1), (3) and (5)—in contrast to ‘acts that are preparatory to the offence’ in (4).

6105. Other provisions of the code, on which the Prosecutor does not rely, also point to the existence of a legal distinction between the two. Article 272, for example, states that ‘Anyone who takes part in a conspiracy against state security and who reports it to the authorities before the commencement of any *act preparatory to its execution* shall be exempt from punishment’ while Article 549 (2) provides that ‘Intentional homicide shall entail the death penalty if it was committed ... to *prepare for, facilitate or execute* a felony’.¹¹¹⁰⁷ In addition, as explained below, Lebanese courts clearly interpret preparatory acts as distinct from the start of ‘commission’ of a crime for the purpose of the law on criminal attempts.

6106. Moreover, the Trial Chamber has concluded that Lebanese judicial decisions vary on whether the same conduct will amount to complicity—that is, being an accomplice to the crime, only—or commission of a crime. These include decisions of the Lebanese Judicial Council. That court has found that some of the acts described above were not ‘preparatory’, but instead acts directly contributing to committing a terrorist act, an intentional homicide and attempted intentional homicides—making those who performed those acts co-perpetrators, not accomplices.

6107. For example, the Lebanese Judicial Council in its 1999 judgment concerning the 1987 murder of former Lebanese prime minister, Mr Rachid Karami, made that finding against two accused charged as accomplices. Mr Karami was killed, and several others were injured, by an explosion in their helicopter. The Lebanese Judicial Council seems to have convicted Mr Afif Khoury and Mr Khalil Matar as co-perpetrators of terrorism, intentional homicide and attempted intentional homicide in relation to that explosion because, in addition to having the *mens rea* for each crime, Mr Khoury participated in reconnaissance operations before the day of the explosion

¹¹¹⁰⁷ Emphasis added. The Appeals Chamber both acknowledged that Lebanese law distinguishes between preparatory acts and commission of a crime, and interpreted one further provision of the Lebanese Criminal Code not charged in this case—Article 335—as describing the former. Article 335 concerns ‘two or more persons establishing an association or entering into a written or oral agreement with a view to commit felonies against persons or property, or to undermine the authority of the State, its prestige or its civil, military, financial or economic institutions’. The Appeals Chamber relevantly stated, ‘Article 335 aims at preventing serious offences by criminalizing preparatory steps to commit offences of a particular gravity that would otherwise not be punishable in the absence of implementing acts’ and, in a footnote, elaborated: ‘For instance, purchasing a gun to commit murder is a preparatory act and not the beginning of the execution of the crime. As such, it cannot be punished unless it constitutes a crime in itself, such as a violation of a prohibition to carry weapons.’ Second interlocutory decision on applicable law, para. 58, fn. 66.

then, on that day, drove a boat from which the explosive charge was detonated remotely, while Mr Matar tracked the target helicopter from that boat using a transceiver and alerted another co-perpetrator as soon as it reached a particular location, enabling that co-perpetrator to detonate the charge at the appropriate moment.¹¹¹⁰⁸

6108. This however appears to depart from the strict wording of Article 219 (4), which states, ‘Anyone who aids or abets the perpetrator in acts that are preparatory to the offence’. The Trial Chamber interprets it to mean that the conduct of the accused accomplice must aid or abet the perpetrator’s or co-perpetrators’ *preparation for* the crime.

6109. From the Lebanese case law surveyed, to aid or abet that preparation, the accused’s conduct must somehow facilitate it. The facilitation, however, need not reach the level of ‘assistance without which the offence would not have been committed’.¹¹¹⁰⁹ The Trial Chamber accepts, in addition, that diverse acts may qualify and that whether they will make the accused an accomplice, a perpetrator or not criminally liable at all may depend significantly on the factual circumstances of the case—including, of course, precisely what that person intended and knew.

6110. Regarding the knowledge required of an accomplice under Article 219, and particularly one who aids or abets in acts preparatory to the crimes charged in this case, the Trial Chamber has identified the following four relevant features in Lebanese case law.

6111. The first, included in some Lebanese case law on Article 219 (4) and terrorism, specifically, suggests that an aider or abettor to acts preparatory to a terrorist act must know the specific means used to commit the act. A notable example is the *Murr* Judgment. The Oneissi Defence relied on a short extract from the judgment in its Rule 167 submissions. The Trial Chamber, however, found that it did not assist in determining the required level of knowledge for accomplice liability, because it involved a situation in which an alleged accomplice had no knowledge of the perpetrator’s criminal intent.¹¹¹¹⁰ However, the extract referred to related specifically to one of the

¹¹¹⁰⁸ *Karami* Judgment, pp 126-128, 131-132, 139, 141.

¹¹¹⁰⁹ Paraphrasing the Lebanese Criminal Code, Art. 220.

¹¹¹¹⁰ Rule 167 decision, pp 41, 46.

12 accused, Mr Manuel Younes, and the Lebanese Judicial Council's finding that there was insufficient evidence to prove that he knew any details of the perpetrators' plan.¹¹¹¹¹

6112. In *Murr*, the Lebanese Judicial Council relevantly found a different accused person, Mr Raji Abdou, to be an accomplice to terrorism, and to intentional homicide and attempted intentional homicide. Mr Abdou was the head of the Military Security Unit of the Lebanese Forces, a militia led by Mr Samir Geagea, who, according to the Council, instigated the relevant crimes.¹¹¹¹² Mr Geagea briefed Mr Abdou and another accused, Mr Ghassan Touma, 'on the motives underlying the plan' and instructed them to organise the assassination operation. To carry out these instructions, along with seeking someone to monitor Mr Murr's movements¹¹¹¹³ and generally 'keeping track of' the operation,¹¹¹¹⁴ Mr Abdou arranged for the delivery of detonators and explosives to the Lebanese Forces' Security Unit.¹¹¹¹⁵ The Council concluded:

Whereas it has been ascertained that Raji Abdou was aware that the operation in which he was involved would be executed by means of explosives, which would create panic, cause deaths and injuries, and destroy residential and commercial buildings, it follows that he was an accomplice to the terrorist acts.¹¹¹¹⁶

6113. Conversely, the Lebanese Judicial Council found regarding Mr Kaddoum and Mr Awad, the two accused who had been assigned to monitor Mr Murr's movements:

Whereas there is no evidence that the accused Naja Kaddoum and Elias Awad were aware of the fact that the assassination operation was to be executed by means of explosives, so that they cannot be charged with involvement in the terrorist act defined and punishable

¹¹¹¹¹ *Murr* Judgment, pp 20-21, 37-39, 62; Oneissi Defence submissions, T. 20 February 2018, pp 36-37, T. 21 February 2018, pp 27-31; Prosecution submissions, T. 21 February 2018, pp 83-84; F3586/COR/PRV, Public Redacted Version of "Corrected Version of the Additional Submissions from the Oneissi Defence pursuant to Rule 167 and to the Oral Order of the Trial Chamber dated 22 February 2018 filed on 27 February 2018", 7 March 2018, para. 24. The Merhi and Oneissi Defence referred to the findings regarding that accused in their final trial briefs, Merhi Defence final trial brief, paras 80, 583; Oneissi Defence final trial brief, para. 656.

¹¹¹¹² *Murr* Judgment, pp 16-17, 19, 53.

¹¹¹¹³ *Murr* Judgment, p. 19.

¹¹¹¹⁴ *Murr* Judgment, pp 43-44.

¹¹¹¹⁵ *Murr* Judgment, p. 43.

¹¹¹¹⁶ *Murr* Judgment, p. 57.

under article 6 of the Law of 11 January 1958, it follows that they must be declared innocent of that charge.¹¹¹¹⁷

but their knowledge of the operation *was* enough to convict them as accomplices under Article 219 (4) in intentional homicide¹¹¹¹⁸ and attempted intentional homicide:¹¹¹¹⁹

Whereas it has been ascertained that the accused Elias Awad and Naja Kaddoum participated in the preparation of the crimes of homicide and attempted homicide committed by the other accused through their surveillance of the movements of Minister Michel Murr's escort, which made it possible to execute the plan to assassinate him, it follows that they are accomplices to the crimes of homicide and attempted homicide resulting from the explosion that occurred on 20 March 1991, *and that they were fully aware that the purpose of their acts was to facilitate the assassination operation.*¹¹¹²⁰

6114. In the second, Lebanese courts in cases on terrorism, intentional homicide, or both, have often explicitly found that accused convicted under Article 219 (4) had full knowledge of the perpetrator's, or perpetrators', plan or intentions. Examples include the Lebanese Judicial Council's statements that the accused Mr Girgis el-Khoury acted 'in full awareness of the perpetrators' intent', in a judgment on the bombing of a church at Zouk Mikayel¹¹¹²¹, and, in *Dany Chamoun*, that the accused Mr Karam 'was fully aware of the mission entrusted to the group, including him', that drove to Mr Chamoun's residence on the day of his murder.¹¹¹²²

6115. The Trial Chamber has not found any judicial decision where a Lebanese court patently concluded that an accomplice charged under Article 219 (4) had a more limited knowledge of the intended crime than the perpetrator(s). But this does not mean that Lebanese courts consider that it is a legal requirement, in all cases of complicity under that Article, for the accused to know in

¹¹¹¹⁷ *Murr Judgment*, p. 56. *See also* the reference to this page of the *Murr Judgment* in the Sabra Defence final trial brief, fn. 1546.

¹¹¹¹⁸ As defined in Articles 549 (1) and (7) of the Lebanese Criminal Code; *Murr Judgment*, p. 56.

¹¹¹¹⁹ As defined in Articles 201 and 549 (1) and (7) of the Lebanese Criminal Code; *Murr Judgment*, p. 56.

¹¹¹²⁰ *Murr Judgment*, p. 56 (emphasis added).

¹¹¹²¹ *Zouk Mikayel Church Judgment*, p. 101. *See also* Rule 167 decision, p. 46.

¹¹¹²² *Dany Chamoun Judgment*, p. 72. *See also, for example*, Cassation decision 38/1999, pp 1-3, 5-6, finding the perpetrator and accomplice planned together how the perpetrator would kill the victim and what role each of them would play in the plan. *Compare*, the Lebanese Judicial Council's statement in the *Murr Judgment*, p. 56, regarding Mr Naja Kaddoum and Mr Elias Awad.

advance *all* of the details of the intended crime. It may just be that in each of these cases, coincidentally, the accused knew these details.

6116. Third, when Lebanese courts have found accused to be accomplices under Article 219 (4) to intentional homicide (either realised or attempted) by terrorist or non-terrorist means, even in cases of complex operations with numerous participants, they have consistently found that all accomplices knew the identity of the person who was the primary or sole target. The Lebanese Judicial Council made this finding in the *Karami*,¹¹¹²³ *Murr*,¹¹¹²⁴ *Dany Chamoun*¹¹¹²⁵ and the *Al-Halabi*¹¹¹²⁶ judgments examined below in sections C.1, ‘Terrorist act’ and C.3, ‘Intentional homicide’.¹¹¹²⁷ This might be because Lebanese courts consider that every accomplice to intentional homicide must have that knowledge. Again, however, the Trial Chamber cannot conclude that this is so, based only on the fact that the decisions examined share this feature.

6117. Fourth, similarly, in the one case the Trial Chamber has considered in which the terrorist operation targeted a particular *building*, the *Zouk Mikayel Church* case, the Lebanese Judicial Council found the accomplice knew that church was the target.¹¹¹²⁸ And in its judgment concerning the bombing at *Al-Tal*—the only judgment the Trial Chamber has uncovered that clearly found

¹¹¹²³ *Karami* Judgment, p. 132.

¹¹¹²⁴ In the *Murr* Judgment, the court stated outright regarding the accomplice Mr Raji Abdou that he knew the target’s identity, p. 19, and implied it regarding the other two accomplices, Mr Naja Kaddoum and Mr Elias Awad, by stating that their role was monitoring the target Minister Murr’s movements, p. 19. The Trial Chamber’s comments regarding the *Murr* Judgment in its Rule 167 decision, p. 46 referred to a different accused.

¹¹¹²⁵ The court also stated outright that the accomplices Mr Camille Karam, Mr Tony Obeid, Mr Jean Chahine, Mr Georges Feghali, Mr Elie Akiki and Mr Farid Saadeh knew the target’s identity in the *Dany Chamoun* Judgment, pp 30, *see also* p. 72, and implied the same regarding the final accomplice, Mr Jean Samia, p. 33 (the court omitted the latter from its list, on p. 30 of the judgment, of participants in a meeting at which they would have learned the attack’s target, if they did not already know it. But on p. 33 of its judgment the court described evidence that Jean Samia attended that meeting and it did not question the accuracy of that evidence). As with the *Murr* Judgment, the Trial Chamber has previously stated regarding the *Dany Chamoun* Judgment that it did not assist in determining the required level of knowledge for accomplice liability because it involved a situation in which an alleged accomplice had no knowledge of the perpetrator’s criminal intent. Rule 167 decision, p. 46. This statement referred to the Lebanese Judicial Council’s finding at p. 73 of the judgment that one of the 13 accused, Mr Rafik Saadeh, was innocent even though he had distributed weapons and uniforms to other accused, because he was merely performing his duties as officer in charge of a weapons warehouse and did not ‘[wish] to become involved ... in the crime of murdering Dany Chamoun’.

¹¹¹²⁶ *Al-Halabi* Judgment, p. 27, *see also* pp 52-54.

¹¹¹²⁷ For an example of a Lebanese court finding the accomplice under Article 219 (4) knew the victim’s identity in a case of intentional homicide by a sole perpetrator, Cassation decision 38/1999. *See also* Cassation decision 135/1995, finding an accused was not an accomplice under Article 219—the court did not specify any particular part of the Article—to a sole-perpetrator intentional homicide where the perpetrator hid his intention to kill the victim from the accused, as noted in Rule 167 decision, p. 46.

¹¹¹²⁸ *Zouk Mikayel Church* Judgment, p. 101, regarding Mr el-Khoury; *see also* the descriptions of this judgment in Rule 167 decision, p. 46.

that a terrorist operation aimed to kill a particular *group of people*, namely Lebanese army soldiers—the Council concluded the accomplice who had helped to disguise his brother, one of the perpetrators, as a soldier ‘knew about his brother Abdul Ghani Jawhar’s plans’.¹¹¹²⁹ From the context it seems likely that the court considered this accomplice knew the target was that particular group of people. But the same caveat applies to the findings regarding what the accomplices knew in these judgments. That is, they were findings of fact and the Trial Chamber simply cannot confirm, from the judgments, whether these findings were or were not legally significant.

iv. Article 219 (5) specifically

Anyone who, having so agreed with the perpetrator or an accomplice before commission of the offence, helped to eliminate the traces, to conceal or dispose of items resulting therefrom, or to shield one or more of the participants from justice.

6118. The Trial Chamber has not found any Lebanese judicial decisions finding an accused to be an accomplice under Article 219 (5), specifically, to any of the crimes whose commission the Prosecutor alleges Mr Merhi, Mr Oneissi and Mr Sabra assisted, namely terrorism, intentional homicide and attempted intentional homicide.¹¹¹³⁰ A common example, in the Lebanese case law, of conduct found to satisfy Article 219 (5) is selling¹¹¹³¹ or buying¹¹¹³² items after they were stolen, such as cars.

6119. Some Lebanese courts state, generally, that Article 219 covers only conduct by the accomplice *before* the relevant crime is committed. If the accused did something to assist the perpetrator or co-perpetrators *thereafter*, according to these decisions,¹¹¹³³ they cannot be liable as an accomplice under Article 219.¹¹¹³⁴ This limitation is not apparent from Article 219 itself. To

¹¹¹²⁹ *Al-Tal Bombing Judgment*.

¹¹¹³⁰ The *Karami Judgment* considered at p. 133 whether certain accused were accomplices under Article 219 (5) to terrorism, intentional homicide and attempted intentional homicide. However, it determined they were not, for lack of evidence that those accused had a prior agreement with a perpetrator or accomplice as the Article requires.

¹¹¹³¹ Cassation decision 171/2003. However, the court in that case found the accused was not an accomplice because it was not proven he agreed to sell the item, a car, before it was stolen.

¹¹¹³² Cassation decision 68/2015; *see also* Cassation decision 92/2015.

¹¹¹³³ *See, for example*, Cassation decision 457/2002 and Cassation decision 458/2002, pp 2-4, both of which state that there are two types of complicity, namely complicity prior to the offence and complicity after it, and that Article 219 concerns the former only; Cassation decision 186/2018, stating that Article 219 requires, relevantly, the accomplice’s participation in *preparing for* the crime.

¹¹¹³⁴ As the relevant Lebanese case law acknowledges, some post-crime acts may still constitute one of the less serious forms of criminal liability set out in Articles 221 and 222 of the Lebanese Criminal Code.

the contrary, based on the wording of Article 219 (5) a person could do one of the acts described after the commission of the crime, as long as they had agreed to do so before that point. Indeed all of those acts, ‘helping to eliminate the traces, to conceal or dispose of items resulting therefrom, or to shield one or more of the participants from justice’, normally would occur afterwards. The Trial Chamber is therefore satisfied that the plain wording of Article 219 (5) encompasses acts committed after the crime so long as the agreement to do so was reached before the crime was completed.

6120. Article 219 (6) concerns ‘Anyone who, having knowledge of the criminal conduct of offenders responsible for highway robbery or acts of violence against state security, public safety, persons or property, provides them with food, shelter, a refuge or a meeting place.’ This Article too could conceivably cover acts performed by the accomplice after the crime was committed.¹¹¹³⁵ As there are no charges in this case under this Article, the Trial Chamber has not extensively considered Lebanese case law on its scope.

6121. Lebanese judicial decisions on Article 219 (5) interpret that Article to encompass providing one of the specified kinds of help *after* the crime is committed, having agreed to do so beforehand. For example, in a case in which an accused was charged under Article 219 (5) with complicity in a drug-related felony, the Lebanese Court of Cassation stated:

for the elements of the crime of collusion by shielding to be fulfilled, there has to be an agreement between the colluder and the participants in a specific crime. Further, the colluder has to have shielded the participants from justice *after the crime occurred*, or to hide the items resulting from the crime, used in order to commit it or prepared for it.

The court accepted that the accomplice—after two others had trafficked in and distributed drugs—had assisted them by using his car to transport them so that they would not be stopped at security checkpoints, knowing that they were ‘wanted’ for those crimes. But it upheld a judgment of nonsuit against the accused for lack of proof that before the crimes’ commission, he ‘knew about’ those crimes and agreed to provide this assistance.¹¹¹³⁶

¹¹¹³⁵ The Appeals Chamber found that it does. First interlocutory decision on applicable law, para. 219.

¹¹¹³⁶ Cassation decision 211/2018.

6122. In other cases where the accomplice's conduct occurred *after* the crime, the Court of Cassation found that an accused was not liable under Article 219 (5) for lack of a prior agreement—but not, apparently, because the conduct post-dated the crime.¹¹¹³⁷ The Lebanese Judicial Council's judgment in *Karami* also briefly considered charges under Article 219 (5), in addition to those under Article 219 (4). And in that judgment too, the finding that Article 219 (5) liability was not proven seems to have turned on the lack of prior agreement, not the timing of the accused's act.¹¹¹³⁸

6123. In light of these decisions and the wording of the code, the Trial Chamber finds that in relation to Article 219 (5), the decisions suggesting that Article 219's temporal scope is limited to pre-crime conduct should be interpreted to refer only to the requisite agreement with the perpetrator or accomplice 'before commission of the offence'—not the 'help' agreed on.¹¹¹³⁹

6124. Regarding the *mens rea* of an accomplice under Article 219 (5) specifically, Lebanese judicial interpretations include:

- the 'accomplice knows about the crime that is going to be committed and has a previous agreement with the perpetrator or one of the participants in the crime',¹¹¹⁴⁰—meaning by the latter another accomplice;
- the accomplice must have agreed 'before the commission of the offence, to conceal the traces of, or the persons who participated in, the offence';¹¹¹⁴¹ and

¹¹¹³⁷ See for example, Cassation decision 30/2003; Cassation decision 171/2003; Cassation decision 152/2018. Regarding the interpretation of the *mens rea* of accomplice liability in Cassation decision 30/2003, see further, Trial Chamber's summary in its Rule 167 decision, p. 46. See also the reference to Cassation decision 171/2003 in Rule 167 decision, p. 45.

¹¹¹³⁸ *Karami* Judgment, p. 133.

¹¹¹³⁹ The Appeals Chamber appears to have interpreted Article 219 (5) in the same way. First interlocutory decision on applicable law, paras 219, 220, 228.

¹¹¹⁴⁰ Cassation decision 90/2015.

¹¹¹⁴¹ *Karami* Judgment, p. 133. The Lebanese Judicial Council also stated there that to meet the conditions of Article 219 (5) the accomplice must agree on these matters 'with the perpetrator'. Article 219 (5) plainly also encompasses agreement with other accomplices, thus the Trial Chamber interprets this statement to refer only to the knowledge the accomplice must have about the intended crime before it is committed.

- if they did not do so, they cannot be criminally liable even if they knew before the crime took place that the perpetrator was going to commit it and expressed a desire and intention to participate in its commission.¹¹¹⁴²

No decision on Article 219 (5) that the Trial Chamber has found analyses whether the accomplice must know, specifically, who the intended victim is when the crime targeted a particular individual.¹¹¹⁴³

(b) International criminal law principles on aiding and abetting

6125. The Trial Chamber has briefly contrasted the Lebanese law of accessorial liability with the international criminal law mode of liability known as aiding and abetting. This is only for completeness in addressing the Parties' submissions, rather than because the Trial Chamber considers that Article 3 (1) (a) of the Statute requires the Special Tribunal to consider international legal principles on this issue.

6126. The statutes of international criminal courts and tribunals, under general headings of international criminal responsibility, describe how a crime may be committed. All list aiding and abetting as a basis for individual criminal liability.¹¹¹⁴⁴ The formulation 'participated as an accomplice' in Article 3 (1) (a) of the Special Tribunal's Statute comes directly from Article 2 (3) of the *International Convention for the Suppression of Terrorist Bombings*. However, as no international prosecutions have ever been brought for an offence proscribed under that convention—for indeed no mechanism exists to do so—there is no case law of an international institution using that particular definition of 'participates as an accomplice'. That convention therefore cannot help in *defining* the elements of aiding and abetting, irrespective of whether it can be considered as a general principle of law.

6127. International criminal courts and tribunals treat aiding and abetting as a form of accomplice or accessory liability, sometimes interchangeably using the terms 'accomplice' and

¹¹¹⁴² Cassation decision 30/2003.

¹¹¹⁴³ The published versions of these decisions do not disclose whether the indictment alleged the accused in fact knew the victim's identity before the crime was committed. Nor is it clear, from any of the decisions examined, whether the court concluded that the accused did, indeed, have that knowledge.

¹¹¹⁴⁴ ICTY Statute, Art. 7 (1); ICTR Statute, Art. 6 (1); SCSL Statute, Art. 6 (1); Rome Statute, Art. 25 (3) (a), (c); *see also* ECCC Law, Art. 29.

‘accessory’.¹¹¹⁴⁵ The features common to these courts and tribunals’ definitions of aiding and abetting are the following:

- The objective or conduct element, namely the *actus reus* of aiding and abetting a crime, requires an accused to engage in acts or omissions that provide either practical assistance, encouragement or moral support to the commission of the crime.¹¹¹⁴⁶ The act or omission must have a ‘substantial effect’ on the crime;¹¹¹⁴⁷
- The *mens rea* is that the accused knows that their actions or omissions would assist the commission of a specific crime,¹¹¹⁴⁸ such as murder, rape or torture;¹¹¹⁴⁹
- The accused need not have known the precise crime that was intended and in fact committed.¹¹¹⁵⁰ In other words, they need not have been certain which of a number of crimes would ultimately be committed,¹¹¹⁵¹ provided that they knew that one of those crimes would probably be committed, and the one that was actually committed was among

¹¹¹⁴⁵ *Furundžija* Trial Judgment, para. 257; *Tadić* Appeal Judgment, para. 229; *Šainović and others* Appeal Judgment, para. 1642.

¹¹¹⁴⁶ *Furundžija* Trial Judgment, paras 235, 249; *Blaškić* Appeal Judgment, para. 46; *Šainović and others* Appeal Judgment, paras 1626, 1649, 1677. *See also* *Tadić* Appeal Judgment, para. 229 (iii). In that paragraph the ICTY Appeals Chamber described the relevant component of the *actus reus* for aiding and abetting as ‘acts *specifically directed to* assist, encourage or lend moral support to the perpetration of a certain specific crime’ (emphasis added) and some subsequent judgments followed this approach. However, a majority of the ICTY Appeals Chamber (differently constituted) shortly after this judgment determined that ‘specific direction’ is not an element of aiding and abetting liability under customary international law and the SCSL has reached the same conclusion.

¹¹¹⁴⁷ *Furundžija* Trial Judgment, paras 234-235, 249; *Tadić* Appeal Judgment, para. 229 (iii); *Blaškić* Appeal Judgment, para. 46; *Brima and others* Trial Judgment, para. 775; *Taylor* Appeal Judgment, paras 362, 368, 482; *Šainović and others* Appeal Judgment, paras 1626, 1649, 1677.

¹¹¹⁴⁸ *Stanišić and Simatović* Appeal Judgment, para. 104; *Šainović and others* Appeal Judgment, paras 1649, 1772; *Lukić and Lukić* Appeal Judgment, paras 428, 440; *Haradinaj and others* Appeal Judgment, para. 58; *Mrkšić and Šljivančanin* Appeal Judgment, para. 49; *Orić* Appeal Judgment, para. 43; *Blagojević and Jokić* Appeal Judgment, paras 127, 221; *Simić* Appeal Judgment, para. 86; *Kvočka and others* Appeal Judgment, para. 89; *Blaškić* Appeal Judgment, para. 46; *Vasiljević* Appeal Judgment, para. 102 (i); *Krnojelac* Appeal Judgment, para. 51; *Tadić* Appeal Judgment, para. 229 (iv); *Furundžija* Trial Judgment, paras 245, 249; *Ntawukulilyayo* Appeal Judgment, para. 222; *Kalimanzira* Appeal Judgment, para. 86; *Rukundo* Appeal Judgment, para. 53; *Karera* Appeal Judgment, para. 321; *Ntakirutimana and Ntakirutimana* Appeal Judgment, para. 530; *Sesay and others* Appeal Judgment, para. 546; *Sesay and others* Trial Judgment, para. 280; *Fofana and Kondewa* Appeal Judgment, para. 366; *Brima and others* Appeal Judgment, paras 242-243.

¹¹¹⁴⁹ *Šainović and others* Appeal Judgment, para. 1773; *Haradinaj and others* Appeal Judgment, para. 58; *Blaškić* Appeal Judgment, para. 45; *Vasiljević* Appeal Judgment, para. 102 (i); *Tadić* Appeal Judgment, para. 229 (iv).

¹¹¹⁵⁰ *Šainović and others* Appeal Judgment, para. 1772; *Mrkšić and Šljivančanin* Appeal Judgment, paras 49, 159; *Simić* Appeal Judgment, para. 86; *Blaškić* Appeal Judgment, para. 50; *Furundžija* Trial Judgment, para. 246; *Karera* Appeal Judgment, para. 321; *Sesay and others* Appeal Judgment, para. 546; *Sesay and others* Trial Judgment, para. 280; *Fofana and Kondewa* Appeal Judgment, para. 366; *Brima and others* Appeal Judgment, paras 242-243.

¹¹¹⁵¹ *Haradinaj and others* Appeal Judgment, para. 58.

them.¹¹¹⁵² In addition, the accused need not have known every detail of the crime in question,¹¹¹⁵³ just the essential elements of that crime;¹¹¹⁵⁴ and

- The accused must have known the principal's specific intent, in instances where specific intent is an element of the crime,¹¹¹⁵⁵ such as persecution as a crime against humanity or genocide. However, the accused need not have shared the principal's *mens rea* to commit the crime in question.¹¹¹⁵⁶

6128. Aiding and abetting in ICC proceedings differs slightly. Article 25 (3) (c) of the Rome Statute specifies that to be liable for aiding or abetting the commission or attempted commission of a crime within the ICC's jurisdiction, an individual must have done so 'For the purpose of facilitating the commission of such a crime.'¹¹¹⁵⁷ The ICC has nonetheless mostly used the same interpretation as the other international criminal courts and tribunals,¹¹¹⁵⁸ but characterising any departures from it as deriving from the specific wording of the Rome Statute,¹¹¹⁵⁹ rather than deciding that those principles are not generally accepted in international criminal law.

¹¹¹⁵² *Šainović and others* Appeal Judgment, para. 1772; *Haradinaj and others* Appeal Judgment, para. 58; *Mrkšić and Šljivančanin* Appeal Judgment, paras 49, 159; *Simić* Appeal Judgment, para. 86; *Blaškić* Appeal Judgment, para. 50; *Furundžija* Trial Judgment, para. 246; *Karera* Appeal Judgment, para. 321; *Sesay and others* Appeal Judgment, para. 546; *Sesay and others* Trial Judgment, para. 280; *Fofana and Kondewa* Appeal Judgment, para. 366; *Brima and others* Appeal Judgment, paras 242-243.

¹¹¹⁵³ *Šainović and others* Appeal Judgment, para. 1773.

¹¹¹⁵⁴ *Šainović and others* Appeal Judgment, paras 1772-1773; *Lukić and Lukić* Appeal Judgment, paras 428, 440; *Haradinaj and others* Appeal Judgment, para. 58; *Mrkšić and Šljivančanin* Appeal Judgment, paras 49, 146, 159; *Orić* Appeal Judgment, para. 43; *Blagojević and Jokić* Appeal Judgment, para. 221; *Simić* Appeal Judgment, para. 86; *Krnojelac* Appeal Judgment, para. 51; *Aleksovski* Appeal Judgment, para. 162; *Karera* Appeal Judgment, para. 321; *Taylor* Appeal Judgment, para. 445; *Sesay and others* Trial Judgment, para. 280. *See also* *Brima and others* Appeal Judgment, paras 244-245.

¹¹¹⁵⁵ *Lukić and Lukić* Appeal Judgment, para. 458; *Krnojelac* Appeal Judgment, para. 52; *Ntawukulilyayo* Appeal Judgment, para. 222; *Kalimanzira* Appeal Judgment, para. 86; *Rukundo* Appeal Judgment, para. 53; *Ntakirutimana and Ntakirutimana* Appeal Judgment, paras 500-501; *Sesay and others* Trial Judgment, para. 280; *Fofana and Kondewa* Appeal Judgment, para. 367.

¹¹¹⁵⁶ *Lukić and Lukić* Appeal Judgment, para. 428; *Haradinaj and others* Appeal Judgment, para. 58; *Blagojević and Jokić* Appeal Judgment, para. 221; *Krnojelac* Appeal Judgment, paras 51-52; *Aleksovski* Appeal Judgment, para. 162; *Furundžija* Trial Judgment, para. 245; *Ntawukulilyayo* Appeal Judgment, para. 222; *Sesay and others* Trial Judgment, para. 280; *Fofana and Kondewa* Appeal Judgment, para. 367.

¹¹¹⁵⁷ Rome Statute, Art. 25 (3) (c). On the significance of this difference, *see for example*, *Bemba and others* Trial Judgment, para. 97 (where the ICC Trial Chamber stated that 'this wording introduces a higher subjective mental element' compared to 'other international instruments' 'and means that the accessory must have lent his or her assistance with the aim of facilitating the offence'). *See also* Sabra Defence final trial brief, fn. 1554, acknowledging that Article 25 (3) (c) sets a 'higher' *mens rea* standard.

¹¹¹⁵⁸ *See for example*, *Bemba and others* Appeal Judgment, paras 1326-1327, 1329-1330 (as to the *actus reus* of aiding and abetting) and paras 1399-1401 (as to the *mens rea*).

¹¹¹⁵⁹ *See for example*, *Bemba and others* Appeal Judgment, paras 1326-1327.

6129. The Sabra Defence made submissions about several concepts that appear in the decisions of international criminal courts and tribunals on aiding and abetting. First, the ‘ICC’s control theory, under which the co-perpetrator must make an “essential contribution” to the crime’.¹¹¹⁶⁰ Second, the requirement that the accomplice’s conduct have a substantial effect on the crime.¹¹¹⁶¹ Third, the requirement that the accomplice know that conduct assisted the commission of a specific crime.¹¹¹⁶² Finally, the Sabra Defence also refers to ‘the specific direction requirement as set out in parts of the ICTY’s jurisprudence’.¹¹¹⁶³

6130. Specifically, regarding the *actus reus* of complicity, the Sabra Defence argues that at a minimum, the international criminal law ‘substantial effect’ threshold ‘should apply’ in this case.¹¹¹⁶⁴ It elaborated:

Doing so leads to a proper delineation of criminal responsibility and preserves the Appeals Chamber’s intention that the concept of complicity, which is more protective of the rights of the accused, is to be applied. For these reasons, the accused can only meet the second objective element specified above¹¹¹⁶⁵ if their assistance had an essential, or at minimum, a substantial effect upon the commission of the crimes.¹¹¹⁶⁶

6131. On the *mens rea* of complicity—in particular its ‘second subjective element’ of ‘intent to assist the perpetrator in his commission of the crime’¹¹¹⁶⁷—the Sabra Defence challenges the Appeals Chamber’s analysis of international criminal law case law in its first interlocutory decision. It argued that:

There is no equivalent jurisprudence to assist in understanding a second subjective threshold for aiding and abetting other than the specific direction requirement. The Appeals

¹¹¹⁶⁰ Sabra Defence final trial brief, para. 823, citing *Lubanga* Appeal Judgment, para. 469; *see also* para. 821, fn. 1536, citing *Mbarushimana* decision on confirmation of charges, paras 276-285 and a secondary source, DeFalco 2013.

¹¹¹⁶¹ Sabra Defence final trial brief, para. 823, citing First interlocutory decision on applicable law, para. 226 and noting the Appeals Chamber there relied ‘solely on ICTY jurisprudence’.

¹¹¹⁶² Sabra Defence final trial brief, para. 823, citing *Šainović and others* Appeal Judgment, no paragraph specified.

¹¹¹⁶³ Sabra Defence final trial brief, para. 831. In the same paragraph, in relation to this issue, the Sabra Defence cites the *Perišić* Appeal Judgment, para. 26—citing *Tadić* Appeal Judgment, para. 229—and paras 36, 44-48.

¹¹¹⁶⁴ Sabra Defence final trial brief, para. 823.

¹¹¹⁶⁵ The Sabra Defence had earlier defined this element, as ‘assistance in a form specified in Article 219’ of the Lebanese Criminal Code. Sabra Defence final trial brief, para. 819, citing First interlocutory decision on applicable law, paras 219, 228.

¹¹¹⁶⁶ Sabra Defence final trial brief, paras 823-824.

¹¹¹⁶⁷ Sabra Defence final trial brief, paras 825, 829-834.

Chamber indicates that international criminal law provides a second subjective element for aiding and abetting, however this is not provided for in the citations it relies upon.¹¹¹⁶⁸

6132. Moreover, it submits, referring to a doctrine adopted by one ICTY Appeals Chamber¹¹¹⁶⁹—and swiftly rejected by another¹¹¹⁷⁰—termed ‘specific direction’ in aiding and abetting liability, that, ‘Something akin to the specific direction requirement is necessary and appropriate for the proper interpretation of the second subjective element derived from Lebanese law.’¹¹¹⁷¹

6133. This requirement, however, cannot be viewed as generally accepted in international criminal law. The ICTY Appeals Chamber, which adopted this requirement in a majority decision in February 2013 in *Perišić*,¹¹¹⁷² reversed it a mere 11 months later in *Šainović and others* finding that “‘specific direction’ was not in fact an element of aiding and abetting liability under customary international law’.¹¹¹⁷³ And, in between these two judgments, the Appeals Chamber of the SCSL, in *Taylor*, reached the same conclusion.¹¹¹⁷⁴ The Sabra Defence acknowledges this international post-*Perišić* case law,¹¹¹⁷⁵ and the slightly differing definition of aiding and abetting under the Rome Statute.¹¹¹⁷⁶

6134. It explains that resorting to using international criminal law principles was necessary to ‘coherently’ interpret the applicable Lebanese law.¹¹¹⁷⁷ This, however, contradicts other Sabra Defence arguments that Lebanese law applies exclusively and the two bodies of law cannot apply either simultaneously or alternatively. Logically, if Lebanese law applies exclusively how can it

¹¹¹⁶⁸ Sabra Defence final trial brief, para. 833 (footnotes omitted).

¹¹¹⁶⁹ And as a result, was subsequently (properly, as a binding precedent) applied by one ICTY Trial Chamber, *Stanišić and Simatović* Trial Judgment, paras 1264, 2360, 2405.

¹¹¹⁷⁰ In the *Šainović and others* Appeal Judgment.

¹¹¹⁷¹ Sabra Defence final trial brief, para. 833. The brief, at para. 834, went on: ‘This second subjective element for aiding and abetting is of significance in the adjudication of the case against SABRA. The accused are not charged with having criminal political beliefs. If any assistance they provided was (for example) specifically directed at fulfilling the ideological aims of Hezbollah, this would be a distinct intention from a situation where they specifically directed their assistance towards the commission of a terrorist act. Only the latter intent would sufficiently qualify as giving rise to criminal complicity, and it is the responsibility of the Prosecution to prove beyond reasonable doubt that this intent exists’.

¹¹¹⁷² *Perišić* Appeal Judgment, paras 36-40.

¹¹¹⁷³ *Šainović and others* Appeal Judgment, para. 1649; *see also* para. 1663.

¹¹¹⁷⁴ *Taylor* Appeal Judgment, paras 466-481, 486.

¹¹¹⁷⁵ Sabra Defence final trial brief, para. 832, citing *Šainović and others* Appeal Judgment and *Stanišić and Simatović* Appeal Judgment, no paragraphs specified.

¹¹¹⁷⁶ Sabra Defence final trial brief, fn. 1554.

¹¹¹⁷⁷ Sabra Defence final trial brief, para. 812.

be legally ‘necessary’ to draw on international criminal law concepts to ‘properly’ interpret Lebanese law?

6135. The Trial Chamber is not convinced that the Lebanese domestic law on aiding and abetting should be interpreted by using international criminal law case law. The Trial Chamber, moreover, does not accept that it must consider international criminal law principles on this issue at all.

6136. But even if it were obliged to take this route, logically it should first determine the common features of the definitions of aiding and abetting of the various international criminal courts and tribunals, and then contrast them with their Lebanese equivalents. And then ascertain which are more favourable to an accused. This is essentially the method used by the Appeals Chamber.

6137. The Appeals Chambers of *ad hoc* international criminal tribunals have found the principles summarised above to constitute customary international law, in relation to accessorial liability.¹¹¹⁷⁸ Assuming for argument’s sake that this is correct—and it is stressed here that not every State defines accessorial liability in the same manner, as is graphically illustrated by the difference between Article 219 (5) of the Lebanese Code and the ICTY and other international case law—the customary principle will only apply to international crimes being tried internationally.¹¹¹⁷⁹ And not to crimes defined by domestic legislation, here Lebanon’s, albeit being tried in an international context under a Statute annexed to a Security Council resolution.

6138. In attempting to introduce an international mode of liability that was not part of Lebanese law at the relevant time, and given that some aspects of the international definitions are less favourable to an accused person, the Sabra Defence’s approach may also breach the principle of legality. The Trial Chamber recognises that imposing a requirement of ‘specific direction’ would be more favourable to an accused person, but this doctrine existed for less than a year in the ICTY case law before it was overturned, and is not generally accepted in other international criminal

¹¹¹⁷⁸ For example, *Furundžija* Trial Judgment, paras 234-235; *Šainović and others* Appeal Judgment, para. 1626; *Taylor* Appeal Judgment, paras 482-486. See also *Tadić* Appeal Judgment, paras 194-229, see also paras 185-186 on the principle of personal culpability in international criminal law generally. Most of the ICTY Appeals Chamber’s analysis of customary international criminal law in that judgment concerns a different mode of liability that is not relevant in these proceedings (liability based on participation in the realisation of a common design or purpose, which corresponds to Article 3 (1) (b) of the Special Tribunal’s Statute). However, the judgment (particularly para. 226) implies that the Appeals Chamber also concluded that the principles it set out in para. 229 concerning aiding and abetting reflect customary international criminal law.

¹¹¹⁷⁹ The *Šainović and others* Appeal Judgment’s survey of national jurisdictions and definitions, revealing a divergence of practice, illustrates this, paras 1643-1646.

courts and tribunals. The Trial Chamber therefore disagrees with the Sabra Defence's proposed approach. It is hence unnecessary to reach a finding on whether it accurately characterised either the international criminal law case law it sought to have applied, or the Appeals Chamber's interpretation of particular decisions.

6139. The Prosecution too made submissions regarding international criminal law case law and aiding and abetting. It emphasised that an aider and abettor in international criminal law proceedings need not know the precise crime that was either intended or committed.¹¹¹⁸⁰ This is legally correct. However, the Prosecution went further submitting that the elements of aiding and abetting under international criminal law 'are consistent with Lebanese law'.¹¹¹⁸¹

6140. In fact, the international criminal law concept of aiding and abetting differs in some respects from those in the Lebanese Criminal Code. That code limits the *actus reus* for liability as an accomplice to the six categories of acts listed in Article 219 (1) to (6). International criminal law generally, on the other hand, does not constrict the *actus reus* like this.¹¹¹⁸² In international criminal law proceedings an accused person may be liable for aiding and abetting a crime because of what they did *after* the crime occurred, although the accused's acts or omissions must nevertheless have had a substantial effect on the crime.¹¹¹⁸³ Article 219 (5) of the code, on the

¹¹¹⁸⁰ Prosecution final trial brief, paras 1152-1153, fns 2396-2399, citing the *Šainović and others* Appeal Judgment, paras 1772-1775; *Haradinaj and others* Appeal Judgment, para. 58; *Mrkšić and Šljivančanin* Appeal Judgment, para. 159; *Simić* Appeal Judgment, para. 86; *Blaškić* Appeal Judgment, para. 50; *Vasiljević* Appeal Judgment, para. 102 (i); *Tadić* Appeal Judgment, para. 229 (iii); *Karera* Appeal Judgment, para. 321; *Nahimana and others* Appeal Judgment, para. 482.

¹¹¹⁸¹ Prosecution final trial brief, para. 1151; *see also* para. 1154.

¹¹¹⁸² The Appeals Chamber reached the same conclusion in its First interlocutory decision on applicable law, para. 228.

¹¹¹⁸³ *For example*, *Tadić* Trial Judgment, para. 692; *Blaškić* Appeal Judgment, para. 48; *Simić* Appeal Judgment, para. 85; *Sesay and others* Trial Judgment, para. 278; *Taylor* Trial Judgment, para. 484. *See also* First interlocutory decision on applicable law, para. 226, fn. 338. *Compare* *Nuon Chea and Khieu Samphan* Case 002/01 Trial Judgment, paras 712-713; *Nuon Chea and Khieu Samphan* Case 002/02 Trial Judgment, para. 3723. For the position in the ICC *see for example*, *Bemba and others* Appeal Judgment, para. 1399. The ECCC Trial Chamber in *Nuon Chea and Khieu Samphan* (Case 002/01), referring to *Blaškić*, considered that 'the ICTY approach reflects an understanding that an offer made before or during the commission of a crime, of assistance to be provided after the fact, may encourage or morally support the perpetrator and thereby have a substantial effect on the commission of a crime.' *Nuon Chea and Khieu Samphan* Case 002/01 Trial Judgment, para. 712 (citing *Blaškić* Appeal Judgment, para. 48, and other ICTY cases). *See also* *Nuon Chea and Khieu Samphan* Case 002/02 Trial Judgment, para. 3723. However, although this principle is clearly accepted and repeatedly stated in international criminal court and tribunal judgments, it has not often been applied. In practice, accused persons have been convicted of aiding and abetting a crime on the basis of conduct that occurred not just after, but also before the commission of the crime. For instance, in the *Nuon Chea and Khieu Samphan* (002/01) case, the Trial Chamber found that the accused Mr Nuon Chea provided encouragement and moral support to the perpetrators of crimes committed during the forced transfer of inhabitants from Phnom Penh (defined as 'movement of population (phase one)'), through his role, both before and after the crimes, in disseminating

other hand, requires an agreement to commit one of the acts listed in that Article *before* the offence is committed. But the acts listed could occur either *before* or *after* the crime.

6141. The only conduct covered by Article 219 (4), aiding or abetting acts *preparatory* to the crime, occurs *before* the crime occurred or at most, according to the Appeals Chamber, and some Lebanese decisions, during its commission. In deciding cases under Article 219 (4), Lebanese courts have suggested that the accused must have some prior knowledge of the specific crime the perpetrator intends to commit. But the cases do not define the extent of this knowledge. Thus, whether Lebanese case law differs from the international case law in this respect is unclear.

6142. Under Lebanese law, the accused also needs to know to some extent, and accept, the consequences of both the perpetrator's intended conduct and their own conduct, beforehand. Some Lebanese judicial decisions find that the accused must agree with the perpetrator on at least these things. And, Article 219 (5) explicitly requires the accused to have agreed with the perpetrator or accomplice before the commission of the crime to do one of the acts specified in that provision.

6143. No such agreement is generally required under international criminal law. Rather, as explained above, the accused person only need know that their acts or omissions will assist the crime.¹¹¹⁸⁴

6144. In summary, therefore, accomplice liability under Lebanese law, and in particular under Article 219 (4) and (5), covers a narrower range of conduct than aiding and abetting under international criminal law and requires proof of some additional matters. For these reasons, the Lebanese mode of liability in certain respects is more favourable to the accused than the relevant

the forced movement, praising past crimes and targeting policies and advocating their implementation. Mr Nuon Chea's words and actions encouraged the perpetrators to commit the crimes and therefore had a substantial effect on their commission. On this basis, the Trial Chamber found Mr Nuon Chea responsible for aiding and abetting the direct perpetrators to commit crimes against humanity of murder, persecution on political grounds and other inhumane acts, *Nuon Chea and Khieu Samphan*, Case 002/01 Trial Judgment, paras 889-891; *see also* para. 547. The Trial Chamber also found Mr Nuon Chea responsible for aiding and abetting the crime against humanity of extermination during the movement of population (phase one). However, on appeal, the Supreme Court Chamber reversed this conviction on the basis that neither the scale element—that Khmer Republic soldiers and officials had been killed on a large scale—nor the requisite *mens rea* for the crime of extermination had been established beyond reasonable doubt. *See Nuon Chea and Khieu Samphan* Case 002/01 Appeal Judgment, paras 536-541, 1099, disposition.

¹¹¹⁸⁴ *See above*, at paras 6127-6128. *See also* First interlocutory decision on applicable law, para. 227.

international criminal law mode, as the Appeals Chamber concluded¹¹¹⁸⁵ and the Merhi and Oneissi Defence submitted.¹¹¹⁸⁶

(c) Conclusion: the law applicable to accomplice liability

6145. In conclusion, the Trial Chamber finds that the Lebanese Criminal Code is the relevant applicable law to participating in a crime as an accomplice, under Article 3 (1) (a) of the Statute. The words in that Article ‘participated as accomplice’ do not describe a mode of liability specific to international criminal law, but rather one familiar to domestic legal systems, including Lebanon’s, and explicitly defined in Article 219 of the code. From its brief examination of international criminal law on aiding and abetting, the Trial Chamber agrees with the Appeals Chamber’s conclusion that, of the two, the Lebanese concept of accomplice liability is the more favourable to the accused. This is not determinative, since the Trial Chamber does not accept that such examination was legally necessary in the first place or that there is an ambiguity in Article 219. However, it is an additional consideration in favour of applying the Lebanese instead of an international definition.

6146. In the present case, therefore, the *actus reus* of participating in a terrorist act, intentional homicide or attempted intentional homicide as an accomplice is, for Article 219 (4) complicity, an act or omission that assists the perpetrator’s or perpetrators’ preparation for the crime, and for Article 219 (5) complicity of the kind charged, an act or omission that helps to shield one or more of the participants in the crime from justice. Based on the wording of those Articles, the Trial Chamber has concluded that to fulfil Article 219 (4) the accused accomplice’s conduct must occur before the crime is committed, whereas Article 219 (5) covers conduct occurring either before or after the crime’s commission.

6147. To fulfil Article 219 (5), the person who performed the shielding act or omission must have agreed, before the crime was committed, with either the perpetrator(s) or another accomplice or accomplices, to help to shield one or more of the participants in the crime from justice. This finding, too, follows from the words of the Article itself.

¹¹¹⁸⁵ First interlocutory decision on applicable law, paras 228, 264.

¹¹¹⁸⁶ Merhi Defence final trial brief, para. 580; *see also*, regarding the *mens rea* only, Merhi Defence closing submissions, T. 18 September 2018, pp 103-104; Oneissi Defence final trial brief, para. 646, fn. 1420, citing First interlocutory decision on applicable law, para. 228.

6148. The Trial Chamber further finds that to be an accomplice under either Article, the person must know which particular crime (or crimes) the perpetrator(s) intend to commit. They must also know the likely consequences of both the perpetrator's or perpetrators' commission of that crime, and their own act or omission. They must accept that these are the likely consequences. And they must know and accept these matters before the crime begins to be committed. In this limited sense, therefore, for the purpose of both Article 219 (4) and Article 219 (5), to be an accomplice the person must have a prior understanding or agreement concerning the crime—as the Appeals Chamber found and all Parties professed to accept.

6149. The Trial Chamber thus does not follow the approach of those Lebanese decisions that suggest that an accomplice may learn and accept the necessary details during the crime's commission. It is more consistent with the wording of the provisions, in particular the fact that Article 219 (4) concerns 'preparatory' acts and Article 219 (5) requires agreement 'before commission of the crime', to find that they require prior knowledge on the accomplice's part. Consistent with the case law, however, the Trial Chamber finds that an accomplice may gain the necessary knowledge very shortly before the perpetrator begins to commit the crime; there is no minimum period for it.

6150. The Trial Chamber accepts as reasonable, and will follow, the approach observed in some Lebanese judicial decisions, of requiring that an accomplice to a terrorist act know before the crime begins to be committed which particular means the perpetrator intends to use to commit that act. Thus, to be an accomplice to the terrorist act alleged in this case, the Accused must have known that it was intended to be committed using an explosive device. This interpretation is open on the language of Articles 219 (4) and (5) and 314 of the Lebanese Criminal Code. As the requirements of Lebanese law in this respect are unclear, this interpretation is also preferable because it is stricter and consequently more favourable to the Accused than the alternative, namely that they need not have known this detail to be criminally liable.

6151. Otherwise, the level of knowledge required of an accomplice will depend on the nature of the principal crime and the circumstances of the particular case, but in any event need not extend to all details of the principal crime. As the Trial Chamber stated in its decision under Rule 167, it would suffice in this case if those charged as accomplices knew they were acting pursuant to a plan to commit a terrorist act, namely, to assassinate Mr Hariri by means of a large explosive

device in a public place, therefore causing terror, and further that in so doing they were aware that others would die and be injured.

6152. It is unclear whether, as a matter of Lebanese law, an accomplice to a terrorist act, an intentional homicide or an attempted intentional homicide that targeted a particular person must know that person's identity. The Trial Chamber therefore considers it preferable to accept the stricter standard of knowledge that the Merhi, Oneissi and Sabra Defence proposed. That is, those charged as accomplices must, legally, have known before the crimes were committed that Mr Hariri was the target of the attack. However, when determining the individual criminal responsibility of Mr Merhi, Mr Oneissi and Mr Sabra, the Trial Chamber has also briefly considered the alternative—that Mr Hariri's identity was a detail or 'particular' that they did not need to know to have been accomplices to any of the crimes charged.

C. Substantive crimes

1. Terrorist act

6153. Article 314 of the Lebanese Criminal Code defines terrorist acts as 'all acts intended to cause a state of terror and committed by means liable to create a public danger such as explosive devices, inflammable materials, toxic or corrosive products and infectious or microbial agents.'

6154. The Appeals Chamber in its first interlocutory decision, ultimately—but only after a lengthy search for a possible definition of an international crime of terrorism—decided that the crime of terrorism in Article 314 of the Lebanese Criminal Code was largely as set out in the Article itself.

(a) *Actus reus*

6155. In the first interlocutory decision on the applicable law, the Appeals Chamber concluded that the objective or material element, namely the *actus reus* of this offence, was any act using a means liable to create a public danger¹¹¹⁸⁷ 'or the credible threat of' such an act.¹¹¹⁸⁸

¹¹¹⁸⁷ First interlocutory decision on applicable law, paras 49, 147, disposition, 3 (a)-(b). *See also* Appeals Chamber decision on Defence requests for reconsideration of First interlocutory decision on applicable law, para. 48.

¹¹¹⁸⁸ First interlocutory decision on applicable law, disposition, 3 (a).

6156. All of the ‘means’ listed in Article 314 are physical means—in particular, devices, materials, products and agents. This suggests that Article 314 refers to a physical means, rather than a manner or method of doing something. The Appeals Chamber referred to this fact, stating, ‘the Lebanese legislature appears to have adopted a physical connotation to the term “means”, as further demonstrated by the use of the Arabic word “wassila”.’¹¹¹⁸⁹

6157. Notably, Article 314, in relation to the ‘means’ also uses the term ‘such as’ meaning that it is an illustrative rather than a closed list. In legislative terms, it is the equivalent of stating ‘for example’ and is commonly used to list examples of what *may* constitute the means for committing a crime. In particular, the words ‘such as’ after ‘means liable to create a public danger’ signal that the list in the provision is not exhaustive. This was also the Appeals Chamber’s interpretation.¹¹¹⁹⁰

6158. Some Lebanese courts, however, have interpreted this more restrictively, seeming to consider that only an act using one of the means listed in the Article will qualify. An example of this, which the Appeals Chamber highlighted, occurred in the case concerning the 1995 homicide of Sheikh Nizar al-Halabi. Sheikh al-Halabi, a religious leader, was ambushed by masked attackers and shot and killed immediately after getting into a car outside his home to travel to work one morning. His son and two bodyguards were present and injured in the attack.¹¹¹⁹¹

6159. The Lebanese Judicial Council found that those accused did not commit a terrorist act—apparently for the sole reason that they did not use one of the means listed in Article 314. The Council stated:

Whereas Article 6 of the Act of 11 January 1958 punishes all terrorist acts.

Whereas Article 314 of the Criminal Code defines terrorist acts as all acts aimed at creating a state of panic and committed by such means as explosive devices, inflammable materials, toxic or corrosive products and infectious or microbial agents that are liable to cause a public danger.

While it is true that the actions of the defendants Hamid, Aboud, Al-Kasm, Nabah and Abd al-Mo‘ti pertaining to the homicide of Sheikh Nizar al-Halabi were liable to cause a state

¹¹¹⁸⁹ First interlocutory decision on applicable law, para. 50.

¹¹¹⁹⁰ First interlocutory decision on applicable law, para. 50, disposition, 3 (b), fn. 432.

¹¹¹⁹¹ *Al-Halabi* Judgment, p. 24.

of panic in view of the Sheikh's religious and social standing and the fact that the offence was committed in broad daylight in a street full of residents, shopkeepers and pedestrians, *the offence was not committed by any of the means listed in Article 314.*

Whereas the defendants must be acquitted of the offence defined in Article 6 of the Act of 11 January 1958 inasmuch as its elements have not been fulfilled.¹¹¹⁹²

6160. In its *Dany Chamoun* judgment two years earlier, the same court seemed to take a more nuanced approach, finding:

While it may be true that the crime that is being prosecuted was intended and succeeded in creating panic, it was not perpetrated by any of the means referred to in the Article, and the means used (handguns and submachine guns), the place in which they were used, a private and closed apartment, and the persons targeted were not designed to bring about a public emergency.¹¹¹⁹³

6161. This passage suggests that, besides the fact that Article 314 does not list handguns or submachine guns, the Lebanese Judicial Council also considered relevant, first, whether the 'means used' were inherently liable to create a public danger, second, whether those means were employed in public or in private and third, who the target was. However, the Appeals Chamber concluded that both this and the *Al-Halabi* judgment exemplified a 'narrow interpretation of the "means" element of Article 314',¹¹¹⁹⁴ according to which a 'means' not listed in the Article could only constitute the *actus reus* of terrorism under Article 314 if it was 'likely *per se* to cause a danger to the general population'.¹¹¹⁹⁵

¹¹¹⁹² *Al-Halabi* Judgment, pp 55-56 (emphasis added), examined in First interlocutory decision on applicable law, paras 52, 125. Despite the Council's characterisation in this passage, Article 6 of the 1958 law does not 'define' terrorist acts as such. Rather, Article 314 contains the crime's definition and Article 6 of the 1958 law deals with penalties for it.

¹¹¹⁹³ *Dany Chamoun* Judgment, p. 70.

¹¹¹⁹⁴ First interlocutory decision on applicable law, para. 55.

¹¹¹⁹⁵ First interlocutory decision on applicable law, para. 54; *see also* paras 51-53, 125. In support of its statement at para. 51 that 'Some Lebanese courts have propounded a strict interpretation of Article 314', the Appeals Chamber cited one additional decision, Military cassation decision 125/1964, and stated that according to that decision, 'it is not the conduct, but the *means or instrument or device* that must be such as to create a public danger.' First interlocutory decision on applicable law, para. 51. Based on the published extract of the decision—which is very brief—the Trial Chamber agrees that the Military Court of Cassation interpreted Article 314 as it is written, that is, as requiring the use of 'means liable to create a public danger' such as one of those listed. However, that decision does not otherwise seem to have interpreted the Article restrictively.

6162. Some Lebanese judgments suggest that even using one of the listed ‘means’ will not fulfil the *actus reus* of the crime, if it does not in fact create a public danger. For example, in a judgment issued in 1998, the Lebanese Court of Cassation found that the use by three accused of an unspecified ‘small quantity of explosives’,¹¹¹⁹⁶ on a number of occasions, was insufficient to create a public danger within the meaning of Article 314.¹¹¹⁹⁷ The size and power of the explosive materials used seems to have ranged from a nine-volt battery and a wire to charges of unspecified size made using explosive materials extracted from a missile.¹¹¹⁹⁸ Another example is the Lebanese Judicial Council’s 1999 judgment in the case of *Al-Rifai and others*. The case concerned a series of incidents that occurred at different times and places and involved varying degrees of violence, including several bombings and attempted murders, perpetrated by a number of alleged supporters of the so-called Islamic State in Lebanon and the Levant. The Lebanese Judicial Council stated regarding Article 314:

it can be understood from this Article that an act is considered a terrorist act where it is intended to cause a state of terror, *and where there is a material element, i.e. the means whose usage must be liable to create public danger*;

Whereas public danger refers to a wide-scaled danger that arises when the damage resulting from the means used is liable to propagate to a larger scale because of its force and violence, leading to an increase in the risks and the seriousness of the damage resulting from its usage;

Whereas *if the usage of explosive materials can lead in theory to the risks and damage as described above, it is not always the case* given that the force and violence of the blast of the explosive devices and materials differs from one device to another. The result might be a wide-scaled danger or might be limited to the location where the explosive charge was placed. Both possibilities depend on the nature and quantity of the used material, their mechanisms, and the locations where they were placed.¹¹¹⁹⁹

¹¹¹⁹⁶ Cassation decision 85/1998, p. 1.

¹¹¹⁹⁷ Cassation decision 85/1998.

¹¹¹⁹⁸ Cassation decision 85/1998, pp 2-3. Six-hundred kilograms of explosive materials were extracted from the missile, in two lots of 300 kilograms, but the judgment does not state the size of the charges created using those materials.

¹¹¹⁹⁹ *Al-Rifai and others* Judgment, pp 9-10 (emphasis added).

6163. Applying this interpretation, the Lebanese Judicial Council found that detonating explosive devices in the relevant locations did not fulfil the *actus reus* of a terrorist act, even though it injured some people, because:

it did not ... cause wide-scaled danger as described in article 314 of the Criminal Code, since the force of the blast was not strong enough and its mechanism was not very advanced. The damage caused by the blast did not go beyond the limited and direct location where it was used.¹¹²⁰⁰

6164. By contrast, according to the Appeals Chamber, ‘means’ that produce more modest effects—such as guns—may satisfy the means requirement under Article 314 if, due to the circumstances in which they are used, they are likely to pose a public danger.¹¹²⁰¹ The Appeals Chamber reached this view in part by interpreting Article 314 in light of a definition of terrorism that it considered constituted customary international law and was therefore binding on Lebanon.¹¹²⁰²

6165. The definition of terrorism that it considered to exist under international law also appears to have been the sole basis for the Appeals Chamber’s view—not explicitly stated until the disposition of its first interlocutory decision¹¹²⁰³—that *the credible threat of* an act using means liable to create a public danger will fulfil the *actus reus* of Article 314.¹¹²⁰⁴ The Appeals Chamber did not identify, nor is the Trial Chamber aware of, any Lebanese case law suggesting that Article 314 encompasses threats. And, that Article itself is, patently, expressed to be limited to acts actually committed—‘Terrorist acts are all acts intended to cause a state of terror and committed by means liable to create a public danger’.

¹¹²⁰⁰ *Al-Rifai and others* Judgment, p. 10.

¹¹²⁰¹ First interlocutory decision on applicable law, paras 125-129, disposition, 3 (b), fn. 432.

¹¹²⁰² See First interlocutory decision on applicable law, paras 63-113, disposition, 3. For the Appeals Chamber’s justification for taking into account customary international law.

¹¹²⁰³ The Appeals Chamber’s summary of the elements of Article 314 ‘interpreted in consonance with international law’ in the body of its First interlocutory decision on applicable law, at para. 147, relevantly refers only to ‘the volitional commission of an act’. But the disposition, 3 (a), adds after those words ‘or the credible threat of an act’.

¹¹²⁰⁴ First interlocutory decision on applicable law, paras 65, 85-113, 139-141, 145-147—analysing terrorism under international law and referring to various international and non-Lebanese domestic legal definitions that extend to threats—and disposition, 3, asserting that the interpretation of Article 314 including this element was ‘in light of international rules binding upon Lebanon.’

6166. In fact, the Appeals Chamber concluded that every element of the crime of terrorism under Article 314 should be interpreted in light of international law, although it acknowledged that this approach must be subject to the principle of legality. As it stated in the disposition of its first interlocutory decision:

Article 314 of the Lebanese Criminal Code and Article 6 of the Law of 1958, *interpreted in the light of international rules binding upon Lebanon, provided such interpretation does not run counter to the principle of legality*, require the following elements for the crime of terrorism (see above paras 47-60, 124-30).¹¹²⁰⁵

6167. However, in the Trial Chamber's view, for several reasons, such recourse to international law was and is unnecessary. First, Lebanese judicial interpretations are binding on neither other Lebanese courts nor the Special Tribunal. Indeed, the Appeals Chamber explicitly took this fact into account in interpreting Article 314.¹¹²⁰⁶ A chamber of the Special Tribunal may legitimately disagree with an interpretation or distinguish it on its facts. Second, Article 2 of the Statute is crystal clear in requiring the Special Tribunal to apply the Lebanese Criminal Code to its proceedings. Third, the wording of Article 314 is unambiguous, meaning that there is no need to construe an (absent) ambiguity in favour of an accused person, either in the Article's wording or in its interpretation.

6168. The Sabra Defence submits that the Appeals Chamber should not have referred to international law to interpret the words 'means liable to create a public danger' in Article 314. Specifically, counsel for Mr Sabra contends that Lebanese law exclusively applies when interpreting the offences referred to in Article 2 of the Statute, including terrorism.¹¹²⁰⁷ For the reasons earlier stated, the Trial Chamber agrees that it is sufficient in this case to rely on the clear wording of Article 314 itself. The Trial Chamber does not accept however that *only* Lebanese law must guide its interpretation of these offences. For instance, the principles set out in Article 16 of the Special Tribunal's Statute, importing international human rights law, also apply.

¹¹²⁰⁵ First interlocutory decision on applicable law, disposition, 3 (emphasis added).

¹¹²⁰⁶ First interlocutory decision on applicable law, para. 142.

¹¹²⁰⁷ Sabra Defence final trial brief, paras 800, 808 (describing the offence under Article 314 by reference to 'Lebanese law and precedent' only); Sabra Defence closing submissions, T. 21 September 2018, p. 15. *See also* Sabra Defence final trial brief, para. 810 (stating, 'In light of the [amended consolidated] [i]ndictment, no further expansion or application of international customary law is required' (footnotes omitted)).

6169. But in any event, the Trial Chamber need not attempt to determine the exact scope of the words ‘means liable to create a public danger’. This is because the charges against the Accused specify one of the means listed in the Article, namely an explosive device, and on the face of that Article, such a means is, inherently ‘liable to create a public danger’; there is no need to prove that it has that capacity.

6170. This was always the case in relation to Mr Hariri’s death, meaning that not having seen the pleaded material facts in an indictment should have made no difference to the Appeals Chamber’s analysis under Rule 176 *bis* of Article 314. In other words, the Appeals Chamber could have reached the same result without needing to see the material facts that were pleaded in the indictment. It was public knowledge and the subject of 11 UNHCR reports to the UN Secretary-General and Security Council, that Mr Hariri and others had been killed in a massive explosion that had to reach the threshold of a ‘means liable to create a public danger such as explosive devices’ under Article 314.¹¹²⁰⁸

6171. Equally, since the charges concern the commission of an act, not the credible threat of one, it is unnecessary in this case to determine whether Article 314 could cover such a threat notwithstanding its clear language to the contrary. No Party addressed that question explicitly. That said, the Sabra Defence rejected importing elements not found in Lebanese law into the definition¹¹²⁰⁹ and the Prosecution omitted the ‘credible threat’ aspect of the Appeals Chamber’s definition when purporting to summarise it, in its final trial brief.¹¹²¹⁰

¹¹²⁰⁸ See also Appeals Chamber decision on Defence requests for reconsideration of First interlocutory decision on applicable law, para. 49, noting that ‘In the instant case the indictment charges the accused with participating in the commission of a terrorist act “by means of an explosive device”. [...] Therefore, neither the indictment nor the confirmation decision relies on the definition of terrorism as set out in the Interlocutory Decision’, meaning the First interlocutory decision on applicable law. While the indictment there referred to was later amended, this aspect of it did not change.

¹¹²⁰⁹ Consistent with this position, when defining terrorism in its final trial brief, para. 808, the Sabra Defence cited only para. 49 of the First interlocutory decision on applicable law—where the Appeals Chamber summarised the definition under Lebanese law—not subsequent paragraphs or the disposition of that decision, where the Appeals Chamber proposed that that Lebanese definition be interpreted in light of international law.

¹¹²¹⁰ Prosecution final trial brief, para. 1127, stating that the Appeals Chamber had concluded that the relevant element was ‘the volitional commission of an act’ and citing only para. 147 of the First interlocutory decision on applicable law, not its disposition.

6172. The Prosecution otherwise appears to accept the Appeals Chamber's interpretation of the *actus reus* of the crime, as do counsel for Mr Ayyash and Mr Oneissi.¹¹²¹¹ The Merhi Defence did not directly address that interpretation, confining its legal submissions related to terrorism to the elements of conspiracy to commit that crime and complicity in doing so. But none of those submissions suggests that the Merhi Defence contests the Appeals Chamber's interpretation of Article 314.

6173. The Appeals Chamber also noted,¹¹²¹² and no Party has challenged,¹¹²¹³ that deaths and destruction of property caused by a terrorist act are aggravating circumstances only, pursuant to Article 6 of the Lebanese law of 1958. In other words, these are circumstances in which the crime *may* be committed and if proven to exist, entail a harsher penalty in the Lebanese legal system, but are not necessary for the legal characterisation of an accused person's conduct as that crime.

(b) *Mens rea*

6174. The Lebanese Criminal Code defines intent in Article 188, as 'the will to commit an offence as defined by law.' The amended consolidated indictment uses Article 188 for each charge against the Accused. Article 314 expressly provides that the intention of the offence is 'to cause a state of terror'.

6175. The Appeals Chamber gave this phrase its normal meaning, finding that the subjective or mental element (*mens rea*) is that the person deliberately acts with the intent to cause a state of terror.¹¹²¹⁴ Terrorism is therefore a crime of specific, or special, intent, namely, *dolus specialis*. Further, as the Appeals Chamber noted, the *mens rea* of any additional crime resulting from the

¹¹²¹¹ Prosecution final trial brief, paras 1127, 1129-1130; Ayyash Defence final trial brief, para. 712, accepting the Appeals Chamber's First interlocutory decision on applicable law as to the applicable law generally; Oneissi Defence final trial brief, para. 654. In addition, the Legal Representatives of Victims expressly accept the Appeals Chamber's interpretation of both the *actus reus* and *mens rea* of terrorism under Article 314. Legal Representative of Victims final trial brief, paras 59-64. In their closing submissions, the Legal Representatives of Victims distinguished between findings necessary to establish the guilt of the Accused and those necessary to 'justice and truth'. Legal Representatives of Victims closing submissions, T. 14 September 2018, p. 99. In light of this and the Legal Representatives of Victims' written submissions, the Trial Chamber does not interpret the Legal Representatives of Victims' submissions concerning the motive or purpose behind the attack (closing submissions, T. 14 September 2018, pp 95-102, 105-106) as contending that that motive or purpose is an element of the definition of a terrorist act under Article 314.

¹¹²¹² First interlocutory decision on applicable law, paras 59, 145, 148.

¹¹²¹³ The Prosecutor positively asserts this is so in the amended consolidated indictment, para. 56 (g). No Defence submissions were made on the issue.

¹¹²¹⁴ First interlocutory decision on applicable law, paras 49, 57, 147 (c), disposition: 3 (c).

terrorist offence, such as murder, is not an element of the *mens rea* of terrorism under Article 314.¹¹²¹⁵

6176. Lebanese judicial decisions on terrorism by use of an explosive device suggest that it is not difficult to establish the required *mens rea* for a terrorist act under Article 314. In some cases the court appears to have found the *mens rea* from the fact that an accused deliberately used such a device and or its effect. This is logical. For example, detonating a bomb in a crowded market place by this very action will obviously ‘cause a state of terror’ at least among the crowd and those in the immediate area affected by the blast, thus satisfying the *mens rea* requirement. The Appeals Chamber also recognised the close link between the aim of the crime namely to ‘cause a state of terror’ and the result, which is to create ‘a public danger’.¹¹²¹⁶

6177. Lebanese courts do not appear to consider that the perpetrator’s sole or principal aim must be to cause a state of terror among the *general public*. Having the intent to cause terror in a particular area and or among a particular group has sufficed. For example, in 1993 three men placed an explosive device at a bridge near a monastery in Balamand, in northern Lebanon, aiming to attack a bus carrying Christian religious leaders who were participating in a meeting at the monastery on the topic of unity between the Catholic and Eastern Orthodox churches. The device exploded early—when the bus was 100 metres from the bridge—killing one of the three men.¹¹²¹⁷ In a 1994 judgment regarding this incident, the Lebanese Judicial Council found that the surviving two men:

in view of the circumstances surrounding the event, and its outcome in all senses if the bus carrying the prelates had been struck by the explosive device which had been prepared and placed under the bridge where the convoy would have passed—did, with their deceased companion Abdallah Al-Helou, intend to cause terror in the area, thereby violating the security of the State. This corresponds to the offence stipulated in article 314 of the Criminal Code, and in article 6 of the Law enacted on 11 January 1958.¹¹²¹⁸

¹¹²¹⁵ First interlocutory decision on applicable law, para. 57.

¹¹²¹⁶ First interlocutory decision on applicable law, para. 128.

¹¹²¹⁷ *Balamand Monastery Judgment*, pp 6-9.

¹¹²¹⁸ *Balamand Monastery Judgment*, p. 14. *See also Al-Tal Bombing Judgment*, where the perpetrators’ particular target was Lebanese army soldiers.

The Trial Chamber considers that this interpretation of Article 314 is reasonable and legally correct, given that it simply requires the acts be ‘intended to cause a state of terror’.

6178. The Lebanese case law, however, is not consistent on what may constitute the special intent needed for an offence under Article 314. In *Fatieh*, for example, a 1953 case, an accused who twice threw unspecified explosives at a house was found to have committed a terrorist act even though his obvious intention was to influence someone for personal reasons, specifically his wish to marry their daughter.¹¹²¹⁹ On its face this does not appear to be a terrorist act and the Trial Chamber is therefore not convinced that it should follow this decision’s reasoning.

6179. In the 1997 judgment concerning the attempted assassination of Minister Michel Murr, the Lebanese Judicial Council found for the purpose of convicting Mr Samir Geagea of instigating terrorism:

Whereas the attempted assassination of Minister Michel Murr on 20 March 1991 and the second car-bomb operation on 29 March 1991 involved the use of explosives, created panic among the population, killed and injured a number of persons, and destroyed residential and commercial buildings, they constituted terrorist acts within the meaning of article 314 of the Criminal Code, entailing the penalty prescribed in article 6 of the Law of 11 January 1958.¹¹²²⁰

It did not elaborate further on the *mens rea* of this crime.

6180. By contrast, in the 1998 judgment on the use of an unspecified ‘small quantity of explosives’, the Court of Cassation determined that the intention of the three accused did not reach the threshold for terrorism under Article 314. One explosion occurred at midnight in November 1997, 700 metres from a home in Al Jarran in the *Muhafaza* of Nabatieh, southern Lebanon. Another occurred in Al Marout, at an unspecified date in or after 1997, and a third in *Magharet el Leimoune*, around two weeks later. The court found that the accused intended only to achieve personal objectives, in the case of the Al Jarran explosion, or to test the explosives in the two others.¹¹²²¹

¹¹²¹⁹ *Fatieh* cassation decision 334/1953. The Trial Chamber has relied in part on the Appeals Chamber’s description of this decision, since the Trial Chamber has been able to obtain only a short extract from the decision.

¹¹²²⁰ *Murr* Judgment, p. 53. *See also* First interlocutory decision on applicable law, paras 60, 128.

¹¹²²¹ Cassation decision 85/1998, p. 5. *See also* First interlocutory decision on applicable law, fn. 84.

6181. In *Al-Rifai and others*, the Lebanese Judicial Council reached a similar finding in relation to bombings. As well as finding the absence of the *actus reus* for terrorism, the Council also concluded a lack of *mens rea*, because the accused did not intend to cause a state of terror. Instead, it found that the accused intended to harass shop owners to prevent them from selling alcohol or trading, as they considered these activities contradicted Islamic Sharia.¹¹²²² This finding and that in the 1998 explosives judgment described above can be limited to the facts of the cases.

6182. The Appeals Chamber referred to some of these decisions and concluded that establishing the special intent to cause a state of terror must be done on a case-by-case basis.¹¹²²³ The Trial Chamber agrees that this is the only way to determine whether an accused has the special intent necessary for a crime which requires it.

6183. The Appeals Chamber also accepted a Prosecution submission¹¹²²⁴ that in addition to the use of explosives, Lebanese courts consider relevant things such as: the social or religious status of the principal target, the commission of the attack in daylight in a street full of people, the collateral killing of bystanders and the destruction of residential and commercial buildings.¹¹²²⁵ The Trial Chamber agrees that these factors could also be considered according to the facts of each case. Moreover, these factors are pertinent to the attack on Mr Hariri in February 2005.

6184. The Prosecution and the Ayyash and Oneissi Defence appeared to accept the Appeals Chamber's characterisation of the *mens rea* of the crime as deliberately acting with the intent to cause a state of terror.¹¹²²⁶ The Merhi Defence did not directly address the Appeals Chamber's definition of this crime. The Oneissi Defence separately argues, concerning the Lebanese law on accomplice liability, that 'when the accused is alleged to be an accomplice to a terrorist act ... the required special intent to spread terror *may only* be inferred from the means used'.¹¹²²⁷ If this

¹¹²²² *Al-Rifai and others* Judgment, p. 10.

¹¹²²³ First interlocutory decision on applicable law, para. 60.

¹¹²²⁴ F0929, Prosecutor's Brief Filed Pursuant to the President's Order of 21 January 2011 Responding to the Questions Submitted by the Pre-Trial Judge (Rule 176 *BIS*), 31 January 2011, para. 30.

¹¹²²⁵ First interlocutory decision on applicable law, para. 60, fn. 85; *see also* paras 126-128.

¹¹²²⁶ Prosecution final trial brief, paras 1127-1130; Ayyash Defence final trial brief, para. 712, accepting the First interlocutory decision on applicable law as to the applicable law generally; Oneissi Defence closing submissions, T. 20 September 2018, pp 101, 103-120; Oneissi Defence final trial brief, para. 647—submitting generally that the First interlocutory decision on applicable law is binding—and para. 661, implicitly accepting the Appeals Chamber's definition by submitting that the perpetrators of the terrorist act alleged in this case must have intended 'to create a state of terror'.

¹¹²²⁷ Oneissi Defence final trial brief, para. 654 (emphasis added).

submission means that the *only* way to establish the requisite special intent of the perpetrator to cause a state of terror is by inference from the means used, the Trial Chamber rejects it, in light of the Lebanese case law considered above. But the Trial Chamber recognises that the *mens rea could* be inferred from the means, for example, a powerful bomb deliberately detonated in a crowded public place as in the hypothetical scenario above.

6185. Additionally, some Lebanese case law supports the view that to be liable for committing a terrorist act, the accused perpetrator must have known of the means to be used to commit the act. For example, in the *Murr* case the Lebanese Judicial Council apparently considered it necessary for even those accused as accomplices, rather than perpetrators, of terrorism, to know the operation in question ‘was to be executed by means of explosives’.¹¹²²⁸

6186. Considering these Lebanese judicial interpretations, the Trial Chamber believes that it is legally correct and reasonable to interpret Article 314 as requiring some level of knowledge of the means intended or used to commit the crime. This is also consistent with the Appeals Chamber’s interpretation.¹¹²²⁹ Accordingly, to commit a terrorist act by means of an explosive device, in contravention of Article 314, the Trial Chamber finds that the accused perpetrator must at least have known that it was to be committed by means of an explosive device.

6187. The Sabra Defence argues that if the Trial Chamber is ‘minded to apply international customary law *as per* the Appeals Chamber’s first interlocutory decision then it must consider *all* the elements of the offence of terrorism in international customary law including the requisite motive for the commission of a terrorist act, namely for a political, religious or ideological purpose’.¹¹²³⁰

6188. However, counsel conceded during their oral closing submissions, as they had to, that Lebanese law on its own contains no specific motive requirement in the definition of a terrorist act—that is, if that law is not interpreted in light of the customary international law

¹¹²²⁸ *Murr* Judgment, p. 56.

¹¹²²⁹ *For example*, First interlocutory decision on applicable law, para. 128, acknowledging that the aim and the result of the crime are ‘closely intertwined’.

¹¹²³⁰ Sabra Defence final trial brief, para. 810 (original emphasis). *See also* Sabra Defence final trial brief, paras 427-428; Sabra Defence closing submissions, T. 21 September 2018, pp 14-20, 56-57.

definition¹¹²³¹—assuming that definition’s existence of course. Moreover, as the Trial Chamber understood those closing submissions, the Sabra Defence’s primary submission concerning the alleged non-personal motive or purpose behind the attack of February 2005 was that this was a material fact the Prosecution should have pleaded in the amended consolidated indictment.¹¹²³² In other words, that it was directed more towards an alleged lack of notice of the details of the Prosecution’s case rather than the strict requirements of Article 314. In response, during its oral closing submissions the Prosecution explicitly, and in the Trial Chamber’s view correctly, rejected that motive must be proven to establish a terrorist act under Article 314.¹¹²³³

6189. The Appeals Chamber considered this issue in its first interlocutory decision and concluded that the customary international law definition that it had determined to exist did not include such a motive requirement.¹¹²³⁴ Although the Sabra Defence did not challenge this conclusion in its response to the Trial Chamber’s order in July 2017 to file legal submissions on the applicable law,¹¹²³⁵ the Sabra Defence later argued that the Appeals Chamber erred in this respect.¹¹²³⁶ Some academic commentary supports this view.¹¹²³⁷

6190. The Sabra Defence also submits that interpreting Article 314 in light of international law including this ‘additional requirement’¹¹²³⁸ would be consistent with Article 3 of the Lebanese Criminal Code, ‘which allows retroactive application of statutes that benefit the accused.’¹¹²³⁹

¹¹²³¹ Sabra Defence closing submissions, T. 21 September 2018, pp 15, 18. The Sabra Defence contrasted this with the definition of ‘political offences’ in Article 196 of the Lebanese Criminal Code, which specifically refers to motive, Sabra Defence closing submissions, T. 21 September 2018, p. 54.

¹¹²³² As discussed above at chapter II ‘The Prosecution’s pleaded case’, (B) (5) ‘Hezbollah and the political context’. As to it being the Sabra Defence’s primary submission concerning this issue, Sabra Defence closing submissions, T. 21 September 2018, pp 13-14, 57-59.

¹¹²³³ Prosecution closing submissions, T. 11 September 2018, p. 37, T. 14 September 2018, p. 74.

¹¹²³⁴ First interlocutory decision on applicable law, para. 98.

¹¹²³⁵ Order to file submissions and observations on Lebanese law; F3318, Joint Defence Submissions on Lebanese Law, 8 September 2017.

¹¹²³⁶ Sabra Defence final trial brief, paras 427-428; Sabra Defence closing submissions, T. 21 September 2018, pp 15-19.

¹¹²³⁷ Gillet and Schuster 2011, pp 1008-1009, cited by the Sabra Defence in its final trial brief, para. 427, fn. 818, and closing submissions, T. 21 September 2018, pp 15-16.

¹¹²³⁸ Sabra Defence final trial brief, paras 427-428.

¹¹²³⁹ Sabra Defence final trial brief, para. 428. Article 3 of the Lebanese Criminal Code provides, ‘Any statute that amends the definition of an offence in a manner that benefits the accused shall be applicable to the acts committed prior to its entry into force, unless an irrevocable judgment has been rendered.’

6191. The Trial Chamber does not agree. Lebanese law on this is clear. Article 192 of the Lebanese Criminal Code specifies that motive ‘shall not constitute an element of an offence except in cases specified by law.’ And Article 314 does not require a motive.

6192. But substantively, indeed conclusively, nothing in Article 2 of the Statute suggests that the Special Tribunal should examine the law of other nations, the case law of international criminal courts or tribunals or treaties and other international instruments, including those that are not legally binding—as the Appeals Chamber did in finding the existence of a customary international law definition of the offence of terrorism—in applying the ‘provisions of the Lebanese Criminal Code relating to the prosecution and punishment of acts of terrorism’. Despite the Appeals Chamber’s lengthy (41 page)¹¹²⁴⁰ *obiter dicta* on the apparent existence of a customary international law definition of terrorism, the Trial Chamber is not convinced that one exists. The Appeals Chamber extensively considered the international law that is binding on Lebanon and took it into account in interpreting Article 314.¹¹²⁴¹ In the Trial Chamber’s view this was unnecessary.

6193. The Statute contains only two obvious references to the laws of other nations or international law. Article 3 refers to superior responsibility and takes some modes of liability from the 1998 Rome Statute and the 1997 *International Convention for the Suppression of Terrorist Bombings*. Article 16 imposes some principles from international human rights law. So, even if an international customary definition of terrorism exists—which the Trial Chamber does not accept on the analysis in the Appeals Chamber’s decision—where substantive crimes are concerned, the Special Tribunal is only permitted by Article 2 of its Statute to apply the provisions of the Lebanese Criminal Code. It would thus be legally impermissible to apply an additional element of an alleged international offence to a crime specified in the Lebanese Criminal Code.

¹¹²⁴⁰ It has been critiqued in academic writings; *see for example*, Ambos LJIL 2011; Ambos *amicus curiae* brief 2011; Gillet and Schuster 2011, pp 1011-1014, 1018; Saul LJIL 2011; Saul *amicus curiae* brief 2011; Saul 2013; Kirsch and Oehmichen 2011. The Sabra Defence referred to some of this criticism in its final trial brief, para. 427, and closing submissions. T. 21 September 2018, pp 15-17. For the single example of this criticism that the Sabra Defence specifically identified.

¹¹²⁴¹ First interlocutory decision on applicable law, paras 63-113, disposition, 3. The Appeals Chamber did this so as to interpret the provisions of Lebanese legislation as it considered Lebanese courts would interpret them, namely, in light of applicable international law. First interlocutory decision on applicable law, para. 41, *see also* paras 45-46, 62, 71-82, 114-124, 147; Appeals Chamber decision on Defence requests for reconsideration of First interlocutory decision on applicable law, paras 6, 48.

6194. This approach may appear at first sight to be paradoxical, because as a matter of international law, Lebanon's customary obligations are part of the law applicable in that country. In the Trial Chamber's view, however, the clear language of the Statute must take precedence over an unwritten general policy aim of interpreting applicable Lebanese legislation exactly as Lebanese courts should, in theory, interpret them.

6195. In any event, as a matter of Lebanese *domestic* law and practice, customary international law rules criminalising an individual's conduct are not generally applied in criminal proceedings unless implemented in Lebanese legislation. The Appeals Chamber itself acknowledged this.¹¹²⁴² It also conceded that the Statute 'makes clear that codified Lebanese law, not customary international law',¹¹²⁴³ applies in the Special Tribunal and therefore a customary international law definition of terrorism 'cannot be directly applied' in its proceedings.¹¹²⁴⁴

6196. Finally—on the issue of the apparent existence of a customary rule that binds Lebanon after morphing into its national criminal laws—the Sabra Defence only very briefly described the sources that the Trial Chamber presumes it relies on to demonstrate the general State practice conforming with this alleged additional element of the definition and acceptance by States of its supposedly legally-binding nature.¹¹²⁴⁵ Those sources consist of several treaties, a draft treaty, UN General Assembly pronouncements and 'judicial and commisional analyses and national legislation'.¹¹²⁴⁶ The only further reference for these sources is the Appeals Chamber's discussion of them in its first interlocutory decision.¹¹²⁴⁷

6197. The Sabra Defence also cited one journal article criticising that decision.¹¹²⁴⁸ The Trial Chamber, however, does not consider this superficial examination of sources of customary law

¹¹²⁴² First interlocutory decision on applicable law, paras 114, 120, stating that 'customary rules *which are self-executing*' are binding within Lebanon (emphasis added); *see also* para. 76, defining self-executing and non-self-executing norms.

¹¹²⁴³ First interlocutory decision on applicable law, para. 123.

¹¹²⁴⁴ First interlocutory decision on applicable law, para. 123, original emphasis removed.

¹¹²⁴⁵ Or, to adopt the commonly used short-hand, the requisite State practice and *opinio juris sive necessitatis*. *See* Statute of the International Court of Justice, Art. 38 (1) (b); *North Sea Continental Shelf Judgment*, para. 77.

¹¹²⁴⁶ Sabra Defence final trial brief, para. 427. *See also* para. 810, in particular the assertion 'This [motive] requirement is reflected in various international conventions and domestic practice, and widely considered to be reflective of the definition of terrorism under international customary law'.

¹¹²⁴⁷ Sabra Defence final trial brief, fns 815-816.

¹¹²⁴⁸ Gillet and Schuster 2011. Sabra Defence final trial brief, para. 427, fn. 818; Sabra Defence closing submissions, T. 21 September 2018, pp 15-16.

sufficiently demonstrates the existence of this alleged customary motive requirement. For these additional reasons, the Trial Chamber is satisfied that, consistent with the plain wording of Articles 192 and 314 of the Lebanese Criminal Code, proof of motive is not an element of the offence of terrorism.

6198. Evidence of facts giving rise to a motive can still have some value when considering terrorism and the other offences charged in the case. In particular, where such evidence is before the Trial Chamber, it serves to contextualise the offences and will or may provide a reason for their commission. It can also provide evidence of an accused person's intent.

(c) Conclusion: the elements of a terrorist act

6199. In summary, the Trial Chamber has concluded that under the law applicable in the Special Tribunal, to commit a terrorist act by means of an explosive device, a person must:

1. perform an act using an explosive device that is liable to create a public danger;
2. know that the act is to be committed using an explosive device that is liable to create a public danger; and
3. intend to cause a state of terror.

2. Conspiracy aimed at committing a terrorist act

6200. Conspiracy is a substantive crime under Lebanese law, rather than a mode of liability as in some other legal systems. As earlier noted, Article 270 of the Lebanese Criminal Code provides that 'Any agreement concluded between two or more persons to commit a felony by specific means shall be qualified as a conspiracy'.

6201. Article 2 (a) of the Statute specifically identifies 'the rules regarding ... conspiracy' as being applicable in the Special Tribunal when they form part of the 'provisions of the Lebanese Criminal Code relating to the prosecution and punishment of acts of terrorism'.

6202. In this case, the Prosecutor alleges that the aim of the agreement was to commit a terrorist act by means of an explosive device, in order to kill Mr Hariri.¹¹²⁴⁹ More specifically, the

¹¹²⁴⁹ Amended consolidated indictment, paras 48, 51, 53-54.

Prosecutor alleges the Accused agreed to achieve their aim of killing Mr Hariri by detonating a large quantity of explosives in a public place¹¹²⁵⁰ and that:

- the Accused agreed on the conspiracy's aims with Mr Badreddine and as yet unidentified others;¹¹²⁵¹
- Mr Ayyash and Mr Merhi, together with Mr Badreddine, agreed on those aims at some time between 11 November 2004 and the morning of 14 February 2005 prior to the attack;¹¹²⁵²
- Mr Oneissi and Mr Sabra joined the conspiracy between 22 December 2004 and 14 February 2005, but again, no later than the morning of that day, before the attack;¹¹²⁵³ and
- either Mr Hariri's assassination by the alleged means 'intentionally with premeditation should',¹¹²⁵⁴ or each of the Accused 'foresaw and accepted the risk would',¹¹²⁵⁵ 'kill and attempt to kill others in the immediate vicinity of the explosion, and cause the partial destruction of buildings.'¹¹²⁵⁶

(a) The Appeals Chamber's interpretation of Article 270

6203. The Appeals Chamber concluded that conspiracy under Lebanese law consists of five elements.¹¹²⁵⁷ In its first and second interlocutory decisions on the applicable law, it described those elements as follows:

- first, conspiracy requires the participation of two or more people, though they need not all be identified for one of them to be prosecuted;¹¹²⁵⁸ 'a single person can be tried for

¹¹²⁵⁰ Amended consolidated indictment, paras 51, 54 (d).

¹¹²⁵¹ Amended consolidated indictment, paras 48, 54 (a).

¹¹²⁵² Amended consolidated indictment, para. 48 (a).

¹¹²⁵³ Amended consolidated indictment, para. 48 (c).

¹¹²⁵⁴ Amended consolidated indictment, para. 54 (e).

¹¹²⁵⁵ Amended consolidated indictment, para. 54 (f).

¹¹²⁵⁶ Amended consolidated indictment, para. 54 (g).

¹¹²⁵⁷ First interlocutory decision on applicable law, para. 194, fn. 302, citing in support (misdescribing the decision number as 124/1994) the *Balamand Monastery* Judgment cited in Elias Abou Eid, *Al-qararat al-kubra fi al-ijtihad al-loubnani wal-moukaran* [The major decisions in Lebanese and comparative jurisprudence], volume 22, p. 98.

¹¹²⁵⁸ First interlocutory decision on applicable law, para. 194, fn. 303 (citing in support El-Fadel 1963, p. 83), paras 195, 202 (a), disposition, 7 (a); second interlocutory decision on applicable law, paras 82, 84. There is a discrepancy

conspiracy, when it is proved that he agreed with others to commit the relevant crime, even though these “others” remain unknown’;¹¹²⁵⁹

- second, an agreement between those persons—a merger of their wills—is necessary.¹¹²⁶⁰ Not all the participants must reach this agreement at the same time; rather, additional participants can join the agreement later.¹¹²⁶¹ That occurs when the additional participant’s will merges with the other conspirators.¹¹²⁶² The agreement need not be secret; need not have any ‘specific form’¹¹²⁶³ or particular time-line;¹¹²⁶⁴ and can be conditional on the occurrence of a circumstance or event;¹¹²⁶⁵
- third, the aim of the agreement must be to commit a crime against State security. The position of Article 270 of the Lebanese Criminal Code and Article 7 of the Lebanese law of 1958 in the code shows that their scope is limited to this set of crimes.¹¹²⁶⁶ A terrorist act is a crime against State security.¹¹²⁶⁷ Since it is the only one of those crimes listed in Article 2 of the Statute, ‘for purposes of this Tribunal, the aim of the conspiracy *must be* a terrorist act’;¹¹²⁶⁸

between the year of publication of the textbook by Mohammed El-Fadel that the Appeals Chamber cited—1963—and that stated on the extract the Trial Chamber has obtained, 1965. An English translation of the latter forms part of Annex D to the Sabra Defence’s final trial brief, pp 104-111 (referring to the publication as ‘*Al-Jaraa’im Al-Waqi’a ‘ala Amin Al-Dawla*’). Other than this discrepancy, all signs are that it is the same publication.

¹¹²⁵⁹ First interlocutory decision on applicable law, para. 195, fn. 304, citing in support El-Fadel 1963, p. 89.

¹¹²⁶⁰ First interlocutory decision on applicable law, paras 194 (citing in support El-Fadel 1963, p. 83), 196, 202 (b), disposition, 7 (b); second interlocutory decision on applicable law, paras 82, 84.

¹¹²⁶¹ First interlocutory decision on applicable law, paras 194, 196, 202 (b), disposition, 7 (b); second interlocutory decision on applicable law, para. 82.

¹¹²⁶² First interlocutory decision on applicable law, para. 196.

¹¹²⁶³ First interlocutory decision on applicable law, para. 196.

¹¹²⁶⁴ The Appeals Chamber stated regarding this issue, ‘no explicit time-line is required for the validity of the agreement. The agreement stands, even though it is a long-term one or has no predefined or foreseen term.’ First interlocutory decision on applicable law, para. 196.

¹¹²⁶⁵ First interlocutory decision on applicable law, para. 196.

¹¹²⁶⁶ Article 270 of the Lebanese Criminal Code is located in Book II of that Code, in Chapter I, ‘Offences against State security’. Article 7 of the Lebanese law of 1958, since it replaces Article 315 of the Lebanese Criminal Code, is located in the same chapter, specifically in sub-chapter II which concerns offences against internal State security. First interlocutory decision on applicable law, paras 193-194 (citing in support El-Fadel 1963, p. 83), 197-198, 202 (c), disposition, 7 (c); second interlocutory decision on applicable law, paras 82, 85 (citing in support El-Fadel 1963, pp 92-93 and El-Zoghbi 1995, volume 10, p. 39), disposition, C (a).

¹¹²⁶⁷ First interlocutory decision on applicable law, paras 197-198; second interlocutory decision on applicable law, fn. 73.

¹¹²⁶⁸ First interlocutory decision on applicable law, para. 202 (c), disposition, 7 (c) (emphasis added). *See also* para. 198; second interlocutory decision on applicable law, para. 85, fns 73, 85.

- fourth, the participants must agree on the means to carry out the crime.¹¹²⁶⁹ They must ‘predetermine’ that means.¹¹²⁷⁰ The Appeals Chamber also stated in its first interlocutory decision that the participants’ agreement must ‘contemplate the means *and tools* that the conspirators want to use to commit the crime’¹¹²⁷¹—but elsewhere in that decision seemed to use ‘means’ and ‘tools’ interchangeably,¹¹²⁷² and did not otherwise refer to ‘tools’ when analysing the crime of conspiracy in either of its decisions on the applicable law.¹¹²⁷³ Where the charge is conspiracy aimed at committing a terrorist act, as is charged in this case, the conspirators must agree on means that fall within Article 314 of the Lebanese Criminal Code, namely, means liable to create a public danger.¹¹²⁷⁴ However, provided that requirement is met, ‘a precise determination of the means is not required. If the conspirators agree that they will use a means described as terrorist, it is sufficient to say that they agree on the means to execute the agreement’;¹¹²⁷⁵ and
- finally, the participants must have criminal intent.¹¹²⁷⁶ If a participant has reached or joined an agreement that meets the criteria set out in the bullet points above, they automatically have the requisite criminal intent,¹¹²⁷⁷ unless they believe that the conspiracy is lawful. As the Appeals Chamber expressed it, ‘the mere existence of the agreement fulfils the criminal intent. Criminal intent does not materialise if a co-conspirator believed that the conspiracy, which afterwards turned out to be unlawful, was instead lawful’.¹¹²⁷⁸

¹¹²⁶⁹ First interlocutory decision on applicable law, paras 199 (citing in support El-Fadel 1963, p. 94), 202 (d), disposition, 7 (d); second interlocutory decision on applicable law, paras 82, 86-87, disposition, c (a).

¹¹²⁷⁰ First interlocutory decision on applicable law, para. 194 (citing in support El-Fadel 1963, p. 83); second interlocutory decision on applicable law, para. 82.

¹¹²⁷¹ First interlocutory decision on applicable law, para. 199.

¹¹²⁷² First interlocutory decision on applicable law, paras 154-155, 162.

¹¹²⁷³ Except when quoting para. 199 of its First interlocutory decision on applicable law—including the sentence referring to ‘tools’—in a footnote in its second interlocutory decision on applicable law, fn. 86.

¹¹²⁷⁴ First interlocutory decision on applicable law, paras 199, 202 (d), disposition, 7 (d).

¹¹²⁷⁵ First interlocutory decision on applicable law, para. 199.

¹¹²⁷⁶ First interlocutory decision on applicable law, paras 194 (citing in support El-Fadel 1963, p. 83), 200, 202 (e), disposition, 7 (e); second interlocutory decision on applicable law, para. 82.

¹¹²⁷⁷ First interlocutory decision on applicable law, para. 200, citing in support Alia 1999, p. 88. *See also* First interlocutory decision on applicable law, disposition, 7 (e), describing this element of the crime as ‘criminal intent *relating to the object of the conspiracy*’ (emphasis added).

¹¹²⁷⁸ First interlocutory decision on applicable law, para. 200.

6204. The Appeals Chamber also observed, regarding the intent required for conspiracy, that ‘As with all intentional crimes, the motive is not taken into consideration, unless to mitigate or aggravate the sentence.’¹¹²⁷⁹ In light of Article 192 of the Lebanese Criminal Code and the Lebanese case law, the Trial Chamber interprets the statement that ‘the motive is not taken into consideration’ as meaning that motive is not an element of the crime of conspiracy itself. Applying Article 192, Lebanese courts still need to take motive ‘into consideration’ if motive is a specified element of the crime against State security that is the alleged object of the conspiracy.¹¹²⁸⁰

6205. In addition, the Appeals Chamber concluded that, provided that the five elements of conspiracy are established, for the conspirators to incur criminal liability it does not matter that the envisaged crime was not actually executed. Once the merger of wills has taken place, so has the crime of conspiracy. Therefore, Lebanese law does not recognise ‘attempted’ conspiracy.¹¹²⁸¹

(b) Sources of principles on conspiracy

6206. The Appeals Chamber noted that ‘the Lebanese case law on conspiracy is very sparse’.¹¹²⁸² It confined its analysis to one Lebanese judgment, the 1994 *Balamand Monastery* judgment concerning the premature explosion of a device that was intended to detonate under a bus carrying religious leaders.¹¹²⁸³ It also cited some publications¹¹²⁸⁴ and submissions made by the Prosecution and the Defence Office in 2011 and 2017.¹¹²⁸⁵

¹¹²⁷⁹ First interlocutory decision on applicable law, para. 200.

¹¹²⁸⁰ In the *Camille Chamoun* Judgment, the Lebanese Judicial Council adopted this approach at pp 10-11, finding motive was a specified element of the crime defined in Article 2 of the Lebanese law of 1958. See also the summary of principles on conspiracy from Lebanese Judicial Council judgments in Alia 1987, p. 168, specifically the statement ‘Criminal intent is inferred from motive if it is deemed an element of crimes against the security of the state’, and the similar statement in Alia 1999, p. 89.

¹¹²⁸¹ First interlocutory decision on applicable law, para. 200, fns 308-309, citing in support F0929, Prosecutor's Brief Filed Pursuant to the President's Order of 21 January 2011 Responding to the Questions Submitted by the Pre-Trial Judge (Rule 176 *BIS*), 31 January 2011, para. 51, quoting the *Balamand Monastery* Judgment and El-Fadel 1963, p. 97.

¹¹²⁸² First interlocutory decision on applicable law, fn. 302.

¹¹²⁸³ First interlocutory decision on applicable law, fns 302, 308. For the facts of the *Balamand Monastery* Judgment.

¹¹²⁸⁴ First interlocutory decision on applicable law, fns 303-304, 306-307, 309, 311; second interlocutory decision on applicable law, fn. 84, referring to Alia 1999; Elias Abou Eid, *Al-qararat al-kubra fi al-ijtihad al-loubnani wal-moukaran* [The major decisions in Lebanese and comparative jurisprudence], volume 22; El-Fadel 1963, pp 86-87; El-Zoghbi 1995, volume 9, Conspiracy, Chapter 2.1.2: ‘Simple Agreement’.

¹¹²⁸⁵ First interlocutory decision on applicable law, paras 191-192, fn. 308, referring to F0929, Prosecutor's Brief Filed Pursuant to the President's Order of 21 January 2011 Responding to the Questions Submitted by the Pre-Trial Judge (Rule 176 *BIS*), 31 January 2011; F0930, Defence Office's Submissions Pursuant to Rule 176 *bis* (B), 31 January 2011; second interlocutory decision on applicable law, paras 5, 7, 90, fn. 102, referring to STL-17-07/I/AC/R176bis, F0013, Prosecution Submissions pursuant to the Appeals Chamber Scheduling Order of 24 August

6207. The Lebanese Judicial Council in *Balamand* neither found that any accused had committed conspiracy¹¹²⁸⁶ nor analysed its application to terrorism, the felony against State security alleged. It identified the elements of the crime, then proceeded to consider instead whether the accused had committed the crimes of terrorism and attempted intentional homicide and find some of them had.¹¹²⁸⁷ Apparently this was because it considered that ‘if the plotters dispense with preparatory or preliminary measures and begin directly to execute their plot, the conspiracy becomes an attack on the security of the state, and the perpetrators are liable to penalties as attackers rather than conspirators’.¹¹²⁸⁸

6208. The Lebanese Criminal Code, however, does not require this approach.¹¹²⁸⁹ It also diverges from some earlier judgments of the Council, where it appears to have accepted that an accused could be convicted of both conspiracy to commit terrorism and terrorism itself.¹¹²⁹⁰

6209. *Balamand* and *Murr* were the only two Lebanese judgments cited by the Parties in their submissions on conspiracy that actually referred to the crime defined in Article 270.¹¹²⁹¹ In *Murr*, for reasons that are unclear, the Lebanese Judicial Council declined to apply that crime to the facts

2017, 7 September 2017; STL-17-07/I/AC/R176bis, F0012, Public Redacted Version of the “Defence Office Submissions Following the Order of the Appeals Chamber Dated 24 August 2017” Dated 7 September 2017, 11 September 2017; STL-17-07/I/AC/R176bis, F0015, Prosecution Response to Defence Office Submissions of 7 September 2017 and Request to the Appeals Chamber arising from Defence Office Submissions, 14 September 2017; STL-17-07/I/AC/R176bis, F0016, Defence Office Response to the Prosecution Submissions on the Applicable Law of 7 September 2017, 14 September 2017; and oral submissions made at a public hearing on 11 October 2017.

¹¹²⁸⁶ As the Appeals Chamber acknowledged this in its First interlocutory decision on applicable law, fn. 302.

¹¹²⁸⁷ *Balamand Monastery* Judgment, pp 12-16.

¹¹²⁸⁸ *Balamand Monastery* Judgment, p. 13, citing El-Fadel, *Crimes against State security*, pp 80-119.

¹¹²⁸⁹ The only relevant restriction appears in Article 181, in a sub-section of the code entitled ‘Notional plurality of offences’. Article 181 provides, ‘If an act has several qualifications, they shall all be mentioned in the judgement and the Judge shall impose the heaviest penalty. However, if both a general provision of criminal law and a special provision are applicable to the act, the special provision shall be applied.’

¹¹²⁹⁰ For example, see the extracts from Judicial Council judgment 76/1959 and Judicial Council judgment 79/1959 in Alia 1987, appendix. The Trial Chamber has been unable to obtain a complete copy of either judgment.

¹¹²⁹¹ The Sabra Defence cited the *Balamand Monastery* Judgment in its written submissions on the law applicable to conspiracy in its final trial brief, fns 1511, 1514-1515, 1517. The Merhi Defence cited both the *Murr* Judgment and the *Dany Chamoun* Judgment in its final trial brief, para. 583, fn. 1102, in support of a legal submission apparently concerning both conspiracy and complicity, but in fact the passages cited relate only to complicity. The *Dany Chamoun* Judgment does not refer to the crime of conspiracy under Article 270 at all.

of the case, even though it was charged.¹¹²⁹² The only felonies that it considered¹¹²⁹³ were terrorism, intentional homicide and attempted intentional homicide. It found that several of those accused either co-perpetrated or were accomplices to those crimes, while another accused, Samir Geagea, instigated the relevant crimes.¹¹²⁹⁴

6210. The Trial Chamber therefore undertook its own searches in an attempt to identify more Lebanese case law on conspiracy, but found scant case law generally, and only a few judgments that determined that an accused had committed the crime.

6211. They include one judgment concerning a plot to assassinate a political leader, the Lebanese Judicial Council's 1969 judgment on the attempted assassination of the former Lebanese president, Mr Camille Chamoun. In that case, two Syrians became aware that Mr Muhammad Nabil Akkari had been saying that he wished to assassinate Mr Chamoun. In 1966, they approached him offering their assistance, including money, weapons and help in securing his escape after the murder. In 1968, after some meetings between the three and unsuccessful efforts to carry out their plan, they drove to the offices of the Lebanese National Liberal party, outside where Mr Akkari shot and wounded Mr Chamoun while the other two waited in the car. Mr Akkari was arrested, while the two Syrians escaped and 'the investigation was unable to uncover' their identities. Two others alleged to have been involved were tried with Mr Akkari.¹¹²⁹⁵

6212. The Council found that Mr Akkari had conspired with the Syrians to assassinate Mr Chamoun and thus co-perpetrated a conspiracy to commit the crime against State security

¹¹²⁹² The Lebanese Judicial Council's only comment on the crime of conspiracy in the *Murr* Judgment was at p. 53: 'Whereas the indictment decision charged Samir Geagea with the two criminal offences defined in Articles 270 and 271 of the Criminal Code; Whereas the said Articles 270 and 271 define the offence of conspiracy and specify cases involving an attack on state security, but contain no provisions regarding charges or penalties, it would be inappropriate to apply their provisions in the context of the offences defined and the penalties prescribed in respect of the facts ascertained in the case of the accused. The conclusion that may be drawn from this with respect to the accused Samir Geagea is also applicable to the other accused mentioned in the indictment decision in connection with those two Articles'. It is unclear why the Lebanese Judicial Council did not consider Article 7 of the Lebanese law of 1958 which, as set out above, prescribes the penalty for conspiracy.

¹¹²⁹³ The Lebanese Judicial Council in the *Murr* Judgment also considered, and convicted some accused of, a misdemeanour relating to weapons.

¹¹²⁹⁴ *Murr* Judgment, pp 52-53. As the Lebanese Judicial Council explained, it convicted Mr Geagea of instigation of terrorism and intentional homicide only, not attempted intentional homicide, because under Article 218 of the Lebanese Criminal Code, instigation of a crime is punishable with the penalty for the crime the instigator wished to cause the commission of, irrespective of whether the crime was complete, attempted or abortive.

¹¹²⁹⁵ *Camille Chamoun* Judgment, pp 1-10.

defined in Article 2 of the Lebanese law of 1958.¹¹²⁹⁶ That crime requires certain specified acts intended to provoke civil war or sectarian conflict, or to incite murder, pillage or vandalism. It found that the two other accused were accomplices to Mr Chamoun's attempted murder, for having given Mr Akkari some help, but had not joined the three conspirators' agreement.¹¹²⁹⁷

6213. In 1959, the same court appears to have found that six accused had conspired to commit a terrorist act. One, a Mr Farouk, had 'repeatedly contacted' another, Mr Georges, telling him that he (Mr Farouk) intended to detonate bombs to cause unrest and terror, and requesting Mr Georges's vehicle and help. Subsequently, one night, Mr Georges went to Mr Farouk's house with two others, Mr Nasri and Mr Farid. There, after a discussion, the four decided it was 'a suitable opportunity to detonate a bomb' at a particular bus stop. They travelled to the house of another person, Mr Salim, to invite him to participate and 'as soon as he knew about the matter' he summoned the sixth man, Mr Hussein, 'by telephone from his place of work, and Hussein arrived immediately'. The five informed Mr Hussein 'of their idea and their intent' and Mr Georges, Mr Nasri and Mr Farid showed the other three 'the location of the bus'. The first three then left, while Mr Salim drove Mr Farouk and Mr Hussein to where Mr Hussein detonated a grenade in the middle of a crowded street, injuring a passer-by and causing fragments to hit the walls of buildings.¹¹²⁹⁸

6214. The Council found that 'the actions of the six accused regarding their final meeting in Salim's house, in which they agreed to commit the act being considered in this case, pertain to a conspiracy and its sentence as stipulated in Article 7 of the Law of 11 January 1958.'¹¹²⁹⁹ It also seems to have found that Mr Salim's, Mr Farouk's and Mr Hussein's involvement in detonating the grenade constituted co-perpetration of a terrorist act and that Mr Georges and Mr Nasri were accomplices to the commission of that act.¹¹³⁰⁰

¹¹²⁹⁶ *Camille Chamoun* Judgment, pp 10-12, 14.

¹¹²⁹⁷ *Camille Chamoun* Judgment, pp 12-14.

¹¹²⁹⁸ Extract from Judicial Council judgment 79/1959 in Alia 1987, appendix. The Trial Chamber was unable to obtain a complete copy of this judgment.

¹¹²⁹⁹ Extract from Judicial Council judgment 79/1959 in Alia 1987, appendix.

¹¹³⁰⁰ Under Article 219 (1) of the Lebanese Criminal Code in conjunction with Article 6 of the Lebanese law of 1958. It is unclear from the Trial Chamber's extract of the judgment why the court did not make the same finding concerning the sixth accused, Mr Farid.

6215. In a 1964 decision, the Military Court of Cassation noted that a previous judgment had found that:

- some people who attended certain meetings at two different houses, including an accused named Mohamed, had agreed to perform acts including ‘assaults using terrifying means against persons and against an official institution, namely the Embassy of the Republic of ... in Beirut’;¹¹³⁰¹
- ‘breaching security was the primary motive behind the intended acts, which were to be executed by means of explosives expressly prepared for that purpose’;¹¹³⁰² and
- these circumstances ‘amounted to terrorist acts intended to be committed on the basis of an agreement with others, and therefore amounted to a conspiracy by the accused named Mohamed, which is the offence stipulated and provided for in Articles 6 and 7 of the Law of 11 January 1959’.¹¹³⁰³

However, no additional information is available regarding either the facts of this case or the Court’s ultimate finding.¹¹³⁰⁴

6216. Given the dearth of Lebanese case law on conspiracy, the Trial Chamber has also examined in detail several academic texts that analyse this crime under Lebanese law, including all of those cited by the Appeals Chamber.¹¹³⁰⁵ While the Trial Chamber has taken these sources into account, like the case law they are at best aids to interpretation. The only binding source of Lebanese legal

¹¹³⁰¹ Name omitted in the Trial Chamber’s extract. Extract from Military cassation decision 125/1964 in Judge Jabran Mansour, Collected Decisions of the Military Court of Cassation, p. 2.

¹¹³⁰² Extract from Military cassation decision 125/1964 in Judge Jabran Mansour, Collected Decisions of the Military Court of Cassation, p. 2.

¹¹³⁰³ Extract from Military cassation decision 125/1964 in Judge Jabran Mansour, Collected Decisions of the Military Court of Cassation, p. 2. The date ‘1959’ in the passage quoted appears to be a typographical error, the correct year being 1958, as stated above. The Appeals Chamber referred to the Lebanese Judicial Council’s definition of terrorism in this decision, in its First interlocutory decision on applicable law, para. 51. For the Trial Chamber’s analysis of that definition.

¹¹³⁰⁴ The Trial Chamber is also unaware of the factual basis for the Lebanese Judicial Council’s apparent finding that an accused committed the crime of conspiracy to commit terrorism—as well as the crime of terrorism itself—in Judicial Council judgment 76/1959. Likewise, the Trial Chamber does not know the facts underlying Judicial Council judgment 79/1958. In that judgment, the Lebanese Judicial Council apparently rejected an appeal from another court’s decision finding an accused guilty of conspiracy to commit a crime, or crimes, not charged in this case.

¹¹³⁰⁵ Alia 1999; El-Fadel 1965, pp 86-87; El-Zoghbi 1995, volume 9, Conspiracy, Chapter 2.1.2: ‘Simple Agreement’. The Appeals Chamber also referred to a fourth publication, in fn. 302 of its First interlocutory decision on applicable law, by citing the *Balamand Monastery* Judgment ‘cited in Elias Abou Eid, *Al-qararat al-kubra fi al-ijtihad al-loubnani wal-moukaran* [The major decisions in Lebanese and comparative jurisprudence], volume 22, at 98’.

principles on this crime remains the Lebanese Criminal Code itself.¹¹³⁰⁶ The Trial Chamber must also consider any applicable principles of international human rights law.

(c) Elements 1 to 3 and 5: participants, agreement, aim and intent

6217. The first and third elements of the crime of conspiracy are straightforward and the Trial Chamber agrees with the Appeals Chamber's description of them, set out in the first and third bullet points above. The need to show that there were two or more participants and—in this case—that their aim was to commit a terrorist act as defined in Article 314 is apparent from the Lebanese Criminal Code itself, read in conjunction with Article 2 of the Statute. The code does not contain any requirement that the prosecuting authority must identify every participant in the conspiracy to prove that the crime occurred.

6218. The *Camille Chamoun* case illustrated that when the prosecuting authority cannot do so, Lebanese courts will still convict an accused of this crime.¹¹³⁰⁷ In any event, in the Special Tribunal, the question of precisely what information about alleged co-conspirators must appear in an indictment is a procedural one, of notice, and is thus to be determined principally by reference to non-Lebanese legal sources.¹¹³⁰⁸

6219. The Trial Chamber also agrees with the Appeals Chamber's description of the second element of conspiracy, namely the requirement for an agreement, set out in the second bullet point of paragraph 6203 above. Most of the specific features the Appeals Chamber described do not appear in the applicable Lebanese legislation. Article 270 relevantly confirms only that an 'agreement' must be 'concluded'.

6220. However, the Lebanese Judicial Council elaborated on this element of the crime in *Balamand*, as follows:

The agreement: This is the offence in itself. It means convergence of intent and unity of will among the conspirators, with the firm, final, definitive and uncontested aim of achieving a single goal; with the coordination of the various roles which they distribute

¹¹³⁰⁶ Ostensibly Article 7 of the Lebanese law of 1958—which concerns the penalty for entering into a conspiracy—also applies in the Special Tribunal's proceedings. However, it is subject to Article 24 of the Statute. In any case, this Article offers no guidance regarding the definition of the crime.

¹¹³⁰⁷ *Camille Chamoun* Judgment, pp 10, 14.

¹¹³⁰⁸ Rule 3 (A). See chapter II 'The Prosecution's pleaded case', (B) (2) 'Legal standard—notice'.

among themselves and the existence of a definitive decision supported by a positive intention to commit a specific crime. This need not necessarily take the form of a permanent organisation or of an ongoing organised association with ranks, structures and leaders to direct its activities. It is sufficient for there to be unity of wills, which come together and aim at the intended goal. Moreover it need not be secret, but could also be conceived as being a public affiliation.¹¹³⁰⁹

6221. The references to the ‘form’ of the agreement in that description centre on the form of the relationship between the participants. The same is true of all of the secondary sources the Appeals Chamber relied on regarding conspiracy.¹¹³¹⁰

6222. The Trial Chamber therefore interprets the Appeals Chamber’s conclusion as that the participants’ agreement need not have any ‘specific form’ as encompassing that issue. It is immaterial whether the participants’ agreement is oral or written. And the participants need not belong to a formal, ongoing or permanent organisation. The Lebanese judicial decisions in which conspiracy was found to have been committed, surveyed above, support this interpretation.

6223. Neither the *Balamand Monastery* judgment, nor any other Lebanese judicial decision of which the Trial Chamber is aware, considered whether any particular time frame is necessary or whether the relevant agreement may be conditional, meaning that the participants will proceed only if a specified future event occurs. No decisions the Trial Chamber has surveyed examined whether, *as a matter of law*, co-conspirators may join the conspiracy at different times, either, although in at least two of them—*Camille Chamoun* and the 1959 judgment summarised above—the Lebanese Judicial Council apparently found that the conspirators reached their agreement at the same time.¹¹³¹¹ The Lebanese case law surveyed therefore neither supports nor contradicts the Appeals Chamber’s view on the issues of timing and conditionality of the agreement.

¹¹³⁰⁹ *Balamand Monastery* Judgment, pp 12-13.

¹¹³¹⁰ Alia 1999, pp 82-83, relevantly states that the agreement constituting a conspiracy ‘does not have to take place through an organisation, an association or an existing political party. It can be valid through any union of wills towards the crime regardless of the form or nature of the organisation’. Similar statements appear in El-Fadel 1965, pp 86-87 and El-Zoghbi 1995, volume 9, Conspiracy, Chapter 2.1.2: ‘Simple Agreement’.

¹¹³¹¹ *Camille Chamoun* Judgment; Judicial Council judgment 79/1959.

6224. But several commentators, including three the Appeals Chamber cited in its analysis of other elements of this crime, expressly share that view.¹¹³¹² As this view also appears to the Trial Chamber to be reasonable in light of the broad wording of Article 270, namely ‘*Any* agreement concluded between two or more persons’ the Trial Chamber accepts it as legally correct. That is, the agreement need not have any particular time frame, it may be conditional in the sense described and conspirators may either initially ‘reach’ or later ‘join’ it.

6225. Whenever a conspirator joins, however, it is essential that at that point, their own will unites with that of every other conspirator, in the sense described by the Lebanese Judicial Council in *Balamand*. This is implicit in Article 270’s description of an ‘agreement’—in the singular—‘between’ the conspirators. The Merhi and Sabra Defence specifically emphasise this requirement.¹¹³¹³

6226. In support, both cite the Appeals Chamber’s first interlocutory decision on the applicable law.¹¹³¹⁴ The Sabra Defence cites *Balamand*¹¹³¹⁵ and several secondary sources.¹¹³¹⁶ The Merhi Defence also relies on the ICTR’s *Seromba* Appeal Judgment and in particular its analysis of the *actus reus* of conspiracy to commit genocide.¹¹³¹⁷ This judgement, however, merely confirmed the existing international case law that the ‘*actus reus* of conspiracy to commit genocide is the making of an agreement between two or more persons to commit genocide’ and, further, that this could be established by circumstantial evidence.¹¹³¹⁸ While this is legally correct on both points, it takes things no further. For the reasons earlier stated, the Trial Chamber considers it unnecessary to refer to international case law to interpret the crimes under Lebanese law charged in this case.

¹¹³¹² On participants joining at different times and conditionality: El-Zoghbi 1995, volume 9: ‘Crimes against the security of the State’, chapter 2: ‘Elements of the Conspiracy’, section 2.1.4, chapter 3: ‘Legal Issues’, section 3.2.1; Jaafar 2000, pp 27-28, 32. On conditionality and time frame: El-Fadel 1965, pp 86-87; Alia 1999, p. 83. On participants joining at different times: Nasr 2009, p. 534. The Appeals Chamber cited El-Zoghbi 1995, in its Second interlocutory decision on applicable law, fn. 84; El-Fadel 1963, in its First interlocutory decision on applicable law, fns 303-304, 306, 309, 311 and Second interlocutory decision on applicable law, fn. 84; and Alia 1999, in its First interlocutory decision on applicable law, fns 307, 311.

¹¹³¹³ Merhi Defence final trial brief, paras 415-416, 422; Sabra Defence final trial brief, para. 805.

¹¹³¹⁴ Merhi Defence final trial brief, fn. 808, citing the First interlocutory decision on applicable law, paras 195-196; Sabra Defence final trial brief, fns 1511-1512, also citing the First interlocutory decision on applicable law, para. 196.

¹¹³¹⁵ Sabra Defence final trial brief, fn. 1511, citing *Balamand Monastery* Judgment.

¹¹³¹⁶ Sabra Defence final trial brief, fn. 1511, citing El-Zoghbi 1995, Jaafar 2000 and Alia 1987.

¹¹³¹⁷ Merhi Defence final trial brief, para. 422, fn. 809, citing *Seromba* Appeal Judgment, paras 218-221.

¹¹³¹⁸ *Seromba* Appeal Judgment, para. 221.

6227. The Trial Chamber also accepts that the crime of conspiracy is automatically, and wholly, committed once an agreement meeting the definition in Article 270 exists; the agreement is the essence of the crime. It follows that there is no such thing as an attempted conspiracy and that conspirators are criminally liable under Article 270 whether or not they actually achieve their aim. The Lebanese Judicial Council has adopted this view,¹¹³¹⁹ most commentators agree with it¹¹³²⁰ and it is a reasonable and legally valid interpretation of the Lebanese Criminal Code.

6228. The Trial Chamber agrees with the core of the Appeals Chamber's definition of the fifth element of conspiracy that it identified, namely criminal intent. It is logical that if accused persons reach or join the relevant agreement—that is, satisfying the four other elements—they necessarily have the intention to carry out the aim of the conspiracy and nothing else is needed to prove the crime's mental component. Nothing in the code contradicts this interpretation. It is also consistent with the required intent found in *Balamand*, namely, 'The criminal intent: a conspiracy is a deliberate criminal offence. That is to say, an individual seriously and sincerely intends to participate in the agreement, knowing that the purpose is to commit a specific criminal offence against state security.'¹¹³²¹

6229. The Trial Chamber, however, disagrees with the Appeals Chamber's apparent conclusion that intent cannot exist if the accused believed the conspiracy was lawful, since on its face this is inconsistent with the Lebanese Criminal Code. To perpetrate any crime an accused must meet the

¹¹³¹⁹ For example, in the *Balamand Monastery* Judgment, the Lebanese Judicial Council stated at p. 13: 'The issue of whether a conspiracy exists is unaffected by the fact that the purpose has been determined, for it is a separate and complete offence in itself. Nor is it affected by the fact that the plotters have agreed on the execution of their plot or have been unable to execute it'. The Lebanese Judicial Council also implicitly agreed there can be no attempted conspiracy, for example by stating that the agreement 'is the offence itself', and that 'Where it is the case that the means have not been designated and agreed on, the agreement is incomplete, and consequently the conditions for the existence of a conspiracy are not fully met and no penalty is incurred.' *Balamand Monastery* Judgment, p. 13. See also Judicial Council judgment 241/1963, in which the Lebanese Judicial Council overturned another court's decision purporting to apply Article 201 of the Lebanese Criminal Code to conspiracy—and thus 'considering the offence a conspiracy attempt'—on the basis that it contradicted the same court's finding that the accused was guilty of conspiracy itself.

¹¹³²⁰ Jaafar 2000, pp 30, 35; Nasr 2009, p. 534; El-Zoghbi 1995, volume 9, Conspiracy, chapter 1: 'Legal Status', section 1.B.1, chapter 3.3: 'Legal Issues: Prosecution and Withdrawal'. The Appeals Chamber cited in relation to this issue El-Fadel 1963, p. 97, First interlocutory decision on applicable law, fn. 309. However, the Trial Chamber's copy of El-Fadel's publication does not mention either the concept of attempted conspiracy or the irrelevance of whether the conspirators achieve their aim.

¹¹³²¹ *Balamand Monastery* Judgment, p. 13.

code's general standard of consciously and willingly committing the act.¹¹³²² Under Article 224, a mistake of *fact*—not law—will also preclude an accused from being criminally liable.¹¹³²³

6230. However, Article 223 of the code makes clear that it is generally irrelevant if an accused was ignorant of or misinterpreted criminal law.¹¹³²⁴ The Lebanese judicial decisions on conspiracy surveyed by the Trial Chamber do not support the view that a mistaken belief in the legality of the conspiracy, *as opposed to a mistake of fact*, will preclude liability. Some secondary sources express a similar view,¹¹³²⁵ but the Trial Chamber considers that in each instance either it is unclear whether the commentator was referring to an accused's mistaken belief that the conspiracy was lawful, or their analysis was inaccurate in light of Article 223.

6231. The Parties appear to accept, in substance, the first, second, third and fifth elements of the crime of conspiracy, as interpreted by the Trial Chamber above.¹¹³²⁶ The Parties' submissions on the intent required to establish the *mens rea* of conspiracy are framed in quite different ways,¹¹³²⁷ but the Trial Chamber has not identified any substantive legal difference between them regarding this issue.

¹¹³²² Set out in Article 210 of the code.

¹¹³²³ Article 224 provides:

Anyone who acted on the basis of an error of fact pertaining to one of the elements of an offence shall not be punishable as a perpetrator or instigator of, or as an accomplice to, an intentional offence.

If the error related to an aggravating circumstance, he shall not be held responsible for it. On the contrary, he shall benefit from the excuse that he was unaware of its existence.

These provisions shall be applicable in the case of the identity of the victim being mistaken.

¹¹³²⁴ Article 223 provides:

No one may plead ignorance of criminal law or misinterpretation of its provisions. The following, however, shall be deemed to constitute an impediment to conviction:

1. Ignorance or a material error pertaining to a civil or administrative law on which conviction depends;
2. Ignorance of a new law if the offence is committed within three days of its promulgation;
3. Ignorance on the part of a foreigner who has been in Lebanon for not more than three days of a positive-law offence that is not punishable under the laws of his country or the laws of the country in which he resided.

¹¹³²⁵ Alia 1999, p. 88; Nasr 2009, p. 532; El-Zoghbi 1995, volume 9, Conspiracy, chapter 2.5: 'Elements of the Conspiracy: Criminal Intent'.

¹¹³²⁶ Prosecution final trial brief, paras 1138-1139; Ayyash Defence final trial brief, paras 712, 721-727; Merhi Defence final trial brief, paras 403-456; Merhi Defence closing submissions, T. 18 September 2018, pp 94-95; Oneissi Defence final trial brief, paras 637-643; Sabra Defence final trial brief, paras 437, 453, 804-807.

¹¹³²⁷ Ayyash Defence final trial brief, paras 721-722, 726-727, particularly para. 726 referring to 'a conspiracy with shared intent'; Merhi Defence final trial brief, paras 574-578; Oneissi Defence final trial brief, paras 638, 721; Sabra Defence final trial brief, para. 807. The Prosecution simply summarised—without comment—the elements identified by the Appeals Chamber, in a way consistent with the Trial Chamber's interpretation of them, in its final trial brief, para. 1138.

6232. An additional question regarding the second element—the need for an agreement—is whether a group can conclude an agreement, within the meaning of Article 270, if some members do not know each other and do not know that each of them belongs to the group. The Appeals Chamber did not deal with this question in its interlocutory decisions.¹¹³²⁸

6233. One view is that it would distort the concept of a conspiracy that appears in Article 270 and Lebanese judicial decisions to find accused can mentally ‘converge’¹¹³²⁹ and ‘unite’¹¹³³⁰ with one another as required, without at least knowing of each other’s participation. The Merhi Defence more or less made this argument in written submissions,¹¹³³¹ but subsequently resiled from it in oral closing submissions.¹¹³³² Unquestionably, the scenario of conspirators being unaware of one another—either their existence or their identity—is very different to the known examples of judicially-determined conspiracy in Lebanon, described above, where all co-conspirators apparently met face-to-face.¹¹³³³

6234. However, the contrary view is that accused can still ‘conclude’ an ‘agreement’ to commit a felony by specific means without knowing even of the existence of all their fellow conspirators. This is because each one individually can still know they are part of a group, have the required common aim to perpetrate a crime against the security of the State, know what means the group intends to use to perpetrate that crime¹¹³³⁴ and make a definite commitment to carrying out that aim.

6235. Each person may communicate with a lead conspirator who provides them with the necessary information and to whom they convey their personal commitment. Arguably, *Balamand*

¹¹³²⁸ Compare, the Appeals Chamber’s conclusion that some participants may ‘remain unknown’. From the context, including the sources the Appeals Chamber cited, it is clear that that conclusion concerned whether prosecuting authorities know or can prove all the conspirators’ identities—not the conspirators’ knowledge of one another.

¹¹³²⁹ *Balamand Monastery* Judgment, p. 12.

¹¹³³⁰ *Balamand Monastery* Judgment, pp 12-13.

¹¹³³¹ Specifically, the Merhi Defence submitted that if the users of Green 300 and Green 071 (Mr Ayyash and Mr Merhi, according to the Prosecution) ‘did not know each other and did not know that the other was part of the Green Network, it would be difficult to accept the suggestion that there could have been a merger of wills between Merhi and Ayyash, and that there had been a consolidation and union of their wills.’ Merhi Defence final trial brief, para. 418.

¹¹³³² Lead counsel for Mr Merhi relevantly stated during closing submissions, ‘The Prosecutor talked about ten co-conspirators. I’m not saying that all the ten conspirators must know one another’. Merhi Defence closing submissions, T. 18 September 2018, p. 107.

¹¹³³³ Judicial Council judgment 79/1959; unknown judgment described in Military cassation decision 125/1964; *Camille Chamoun* Judgment.

¹¹³³⁴ Though what exactly they need to know about that means is a separate question, discussed below.

contemplated this scenario, since the Lebanese Judicial Council clearly considered that conspiracies can be highly organised and hierarchical, even though legally they do not have to be.¹¹³³⁵ Article 270 does not preclude this interpretation. Indeed, in the Trial Chamber's view, it is the more logical and legally correct interpretation. Therefore, the Trial Chamber accepts it.

(d) Element 4: agreement to commit a terrorist act 'by specific means'

6236. The final legal question regarding conspiracy, and the only one on which the Parties fundamentally differ, is what do the words '*by specific means*' signify in the definition in Article 270, 'Any agreement concluded between two or more persons to commit a felony by specific means'?

6237. As with accomplice liability, the Prosecution on the one hand, and the Defence of the four Accused on the other, disagree about the extent of knowledge that each accused must have of an alleged terrorist plot to incur criminal liability under Lebanese law.

6238. The Appeals Chamber apparently concluded that to be liable for conspiracy to commit a terrorist act, first, those accused must have agreed to use a means liable to create a public danger and, second, they need not have precisely determined how to execute their agreement. But neither the meaning of, nor the basis for,¹¹³³⁶ these conclusions is entirely clear. In the Trial Chamber's view, the Appeals Chamber's analysis leaves uncertain whether, to establish this element of the crime of conspiracy to commit a terrorist act, it is necessary to prove:

- only that those accused agreed they would use 'means liable to create a public danger' within the meaning of Article 314, not that they agreed on *a particular means* in that category; or
- that they agreed they would use those particular means, meaning that they agreed to use an explosive device; or
- that they also agreed on any other details of how they would achieve their aim.

¹¹³³⁵ *Balamand Monastery* Judgment, pp 12-13.

¹¹³³⁶ The only authority the Appeals Chamber cited for them was an analysis in a 1963 textbook of this element of conspiracy generally—not under Lebanese law alone and not on the crime of conspiracy to commit a terrorist act in particular. El-Fadel 1963, p. 94, cited in the First interlocutory decision on applicable law, fn. 306.

And if the answer lies in the third point, *which* additional details must they have agreed on?

6239. The Trial Chamber has previously considered this issue, when determining the Oneissi Defence's application under Rule 167 for Mr Oneissi's acquittal at the close of the Prosecution case.

6240. In its decision, the Trial Chamber adopted the third approach but to a limited extent, stating:

to participate in a conspiracy to kill Mr Hariri—namely, to enter into an agreement to kill him (it is pleaded that he “concluded or joined an agreement”), Mr Oneissi, as an indicted co-conspirator, did not have to know of the specific details of the crime. It was sufficient that he and Mr Sabra and Mr Merhi were aware that they were acting pursuant to a plan to commit a terrorist act, namely, to assassinate Mr Hariri by means of a large explosive device in a public place, thereby causing terror, and further that in doing so they were aware that others would die and be injured. They did not need to know details such as where it would be detonated, the precise location or time, or the manner of detonating it, such as on a moving or a parked vehicle.¹¹³³⁷

6241. Thus, the Trial Chamber found that to be liable for the conspiracy alleged, it was sufficient for the participants to have known—and by implication, agreed on—both the particular physical means of committing the alleged terrorist act, namely an explosive device, and four additional matters.

6242. The first is that that device would be large. The second is that it would be used in a public place. The third is that the purpose was to assassinate Mr Hariri. The fourth is that this would kill and injure other people in addition to Mr Hariri. However, the Trial Chamber found the participants need not know more specific details of the plan.

6243. In its finding for purposes of the Rule 167 decision, the Trial Chamber grouped these four matters based on how the Prosecutor framed the conspiracy charge in the amended consolidated indictment. It pleads the fourth—the awareness that others would die and be injured—in paragraphs 54 (e) to (g), separately and subsequently to the first three. It described the first three

¹¹³³⁷ Rule 167 decision, pp 47-48.

matters collectively, in paragraph 54 (d), immediately after describing the alleged agreement between the conspirators in paragraph 54 (c):

(c) concluded or joined an agreement, aimed at committing a terrorist act intended to cause a state of terror by a predetermined means liable to create a public danger,

(d) *namely by the assassination by means of a large explosive device in a public place of the former Prime Minister, and leading political figure, Rafik HARIRI.*¹¹³³⁸

6244. The amended consolidated indictment does not specify whether the Prosecutor alleges that *all three together* constituted, as a matter of either fact or law, the predetermined means of causing a state of terror. Or whether, for instance, using a large explosive device in a public place in itself was sufficient to cause a state of terror, and the purpose of assassinating Mr Hariri was a separate matter on which the participants in the conspiracy allegedly agreed.

6245. By contrast, in its closing submissions the Prosecution explicitly argued that to establish the alleged conspiracy aimed at committing a terrorist act it need not prove those participants knew the alleged purpose of assassinating Mr Hariri.¹¹³³⁹

6246. The Trial Chamber maintains the view it expressed in its Rule 167 decision.

6247. The first two approaches above interpret ‘specific means’ as confined to physical means, the sense in which Article 314 apparently uses ‘means’. The Appeals Chamber, however, may have been advocating either;¹¹³⁴⁰ it is unclear which. But the Lebanese case law and secondary sources on conspiracy interpret ‘specific means’ in Article 270 more broadly, as referring generally to how conspirators have agreed to realise the felony. That felony, by contrast, is the

¹¹³³⁸ Amended consolidated indictment, paras 54 (c)-(d) (emphasis added).

¹¹³³⁹ Prosecution closing submissions (counsel David Kinnecome), T. 11 September 2018, pp 114-117. *See also* Prosecution closing submissions, T. 13 September 2018, p. 87, particularly lines 19-22 where the Prosecutor, Mr Farrell, stated it ‘would logically follow’ regarding everything charged in the case that the Accused need not know Mr Hariri was the target, but that he wished to consult some of his team and that he or one of his team would ‘come back to’ the Trial Chamber about the issue, and T. 14 September 2018, pp 34-35, at which Senior Trial Attorney Mr Povoas stated of Mr Oneissi and Mr Sabra, ‘They needed to know who the victim was’, but then clarified, ‘My submissions are factual, on the evidence, and it’s something which I invite you to find. Mr Farrell’s submissions were what legally we are required to do under the terms of the law. So in my submission, we can go beyond what is necessary by law.’

¹¹³⁴⁰ First interlocutory decision on applicable law, para. 199.

conspirators' aim, 'end' or 'purpose'. It is *what* they will do rather than *how* they will do it. For example, the Lebanese Judicial Council stated in *Balamand*:

The designation of means to achieve the purpose of the conspiracy: the conspirators must decide on the means intended for use to carry out the offence for which they have agreed on. It cannot be said that full agreement exists unless the plotters have agreed on both the end and the means. Where it is the case that the means have not been designated and agreed on, the agreement is incomplete, and consequently the conditions for the existence of a conspiracy are not fully met and no penalty is incurred.¹¹³⁴¹

It had earlier defined the purpose element of conspiracy in this way:

Its purpose is to commit some crime detrimental to State security: A conspiracy does not subsist unless the agreement between two or more persons states the purpose and goal the perpetrators intend, which must be clear, explicit and unambiguous; i.e. to commit a specific crime detrimental to the security of the State.¹¹³⁴²

6248. But *Balamand* neither found nor specifically analysed the crime of conspiracy to commit terrorism. And neither do any of the secondary sources the Trial Chamber has examined. Each of those secondary sources interprets the words 'by specific means' in Article 270 in a similarly broad way to *Balamand*.¹¹³⁴³

6249. The 1959 and 1964 decisions on conspiracy to commit terrorism do not examine the meaning of 'by specific means'. In both cases, the conspirators were found to have known what physical means were to be used—explosive devices—and some more information about the plot. In the 1959 case that information was, at least, the exact location of the intended terrorist act, a particular bus stop, and by implication the fact that the device in question was a grenade. In the case referred to in the 1964 decision, the additional information was, at least, that the plot targeted persons and a particular 'official institution' that was also a physical location, namely a foreign embassy.

¹¹³⁴¹ *Balamand Monastery Judgment*, p. 13 (emphasis added).

¹¹³⁴² *Balamand Monastery Judgment*, p. 13 (emphasis added).

¹¹³⁴³ Alia 1999, pp 87-88; El-Fadel 1963, p. 95; Nasr 2009, p. 532; El-Zoghbi 1995, volume 9, Conspiracy, chapter 2.2.4: 'Means Leading To The Crime'; Jaafar 2000, p. 31.

6250. In its 1969 judgment in *Camille Chamoun*, regarding conspiracy to commit the different crime against State security set out in Article 2 of the 1958 law, the Lebanese Judicial Council did not define ‘by specific means’. But it found that the ‘specific means’ the three co-conspirators agreed on, to achieve their aim of committing the Article 2 crime, was to murder Mr Chamoun.¹¹³⁴⁴

6251. Not only did all three co-conspirators know of the intention to murder that particular person but, the court found, two of them gave ‘the necessary orders and directions to’¹¹³⁴⁵ Mr Akkari as to how he was to commit the murder. The Council implicitly found that the specific additional matters the three agreed on about the murder were, at least, that Mr Akkari would go to a particular place to try to kill the victim and that the other two would accompany him and wait to help him to escape. However, the judgment does not suggest that the court thought it was necessary, to find conspiracy, to prove the participants’ agreement on those additional matters.

6252. In its final trial brief, the Prosecution essentially submits that to fulfil the definition of conspiracy aimed at committing a terrorist act under Lebanese law, it need only prove the five elements of such a conspiracy described by the Appeals Chamber.¹¹³⁴⁶ Regarding the minimum knowledge required to prove agreement ‘by specific means’, the Prosecution simply quoted one of the Appeals Chamber’s descriptions of this element of the crime in its first interlocutory decision, ‘an agreement on the means to be used to commit the crime (which for conspiracy to commit terrorism must satisfy the ‘means’ element of Article 314)’.¹¹³⁴⁷

6253. In oral closing submissions, the Prosecution specifically rejected the proposition that to establish any of the elements of the conspiracy, alleged participants must know, or agree on, the identity of the particular person that the alleged terrorist act targeted—here, Mr Hariri. Counsel for the Prosecution submitted that the pleading, in the amended consolidated indictment, that the conspirators knowingly agreed to commit the alleged terrorist act ‘in order to kill Hariri’¹¹³⁴⁸ was notice of the material facts of the Prosecution’s case only. Notice of this kind goes ‘beyond what

¹¹³⁴⁴ *Camille Chamoun* Judgment, p. 14.

¹¹³⁴⁵ *Camille Chamoun* Judgment, p. 6.

¹¹³⁴⁶ Prosecution final trial brief, paras 1138-1139. For the Prosecution’s application of the principles stated there to each accused, Prosecution final trial brief, paras 1155 (Mr Ayyash), 1168 (Mr Merhi) and 1182 (Mr Oneissi and Mr Sabra).

¹¹³⁴⁷ Prosecution final trial brief, para. 1138, citing First interlocutory decision on applicable law, para. 202.

¹¹³⁴⁸ Amended consolidated indictment, para. 51.

is strictly required at law’ and ‘doesn’t change the legal elements that are required to obtain a conviction and cannot do so’.¹¹³⁴⁹

6254. The Oneissi Defence argues that to prove the conspiracy alleged, the Prosecutor must prove not just that all alleged co-conspirators agreed on the creation of a public danger, but that they agreed on using a large explosive device to do so.¹¹³⁵⁰ The Oneissi Defence further submits that it must also be proven that Mr Oneissi knew and agreed to use such a device in a public place to assassinate Mr Hariri.¹¹³⁵¹ In support it cites the Appeals Chamber’s description of the elements of conspiracy and the Trial Chamber’s decision under Rule 167.¹¹³⁵²

6255. The Merhi Defence goes further than the Oneissi Defence. It submits that Lebanese law requires¹¹³⁵³ that the means to which the alleged co-conspirators must have agreed were not only using a particular type of device¹¹³⁵⁴ and doing so in a public place,¹¹³⁵⁵ but also making the movements of the target—in this case Mr Hariri—subject to surveillance¹¹³⁵⁶ and organising the allegedly false claim of responsibility for the attack.¹¹³⁵⁷ In oral closing submissions, the Merhi Defence also implicitly submitted that under Lebanese law the alleged co-conspirators must have known the target’s identity.¹¹³⁵⁸

¹¹³⁴⁹ Prosecution closing submissions, T. 11 September 2018, pp 116-117, T. 13 September 2018, p. 87, T. 14 September 2018, pp 34-35.

¹¹³⁵⁰ Oneissi Defence final trial brief, paras 640, 642.

¹¹³⁵¹ Oneissi Defence final trial brief, para. 643.

¹¹³⁵² First interlocutory decision on applicable law, para. 202 and Rule 167 decision, pp 30-31, cited in Oneissi Defence final trial brief, fn. 1417.

¹¹³⁵³ This was clearly a legal submission, notwithstanding that in its final trial brief the Merhi Defence combined it with its procedural submissions on the framing of the indictment, discussed in chapter II ‘The Prosecution’s pleaded case’, (B) ‘Issues arising from the Prosecution’s pleadings’. *For example*, the characterisation of these four matters as ‘means’ for the purpose of the definition of conspiracy in Merhi Defence final trial brief, paras 424-427, 432, 438-439, 453, 455. The Merhi Defence also relevantly stated regarding the location of the attack, in para. 429 of its final trial brief, ‘the choice of location is one of the means used by the conspirators to cause a “state of terror”’ (quoting Article 314 of the Lebanese Criminal Code).

¹¹³⁵⁴ Specifically a VBIED. Merhi Defence final trial brief, paras 437, 439, 443.

¹¹³⁵⁵ Merhi Defence final trial brief, paras 428-430. Counsel for Mr Merhi also relevantly submitted orally: ‘The Prosecutor did not provide evidence that Mr Merhi concluded an agreement with the rest of the accused and co-conspirators on the means and resources to be used to commit the crime of conspiracy. The Prosecutor did not prove that Mr Merhi agreed with the other accused and co-conspirators *on the location of the attack*. Therefore, the Prosecution failed to prove that Mr Merhi had joined an agreement with a view to commit a crime against State security, and had prior knowledge and had agreed on the means to be used by the co-conspirators, of which he was part, to commit the crime’, Merhi Defence closing submissions, T. 18 September 2018, p. 97 (emphasis added).

¹¹³⁵⁶ Merhi Defence final trial brief, paras 433, 436.

¹¹³⁵⁷ Merhi Defence final trial brief, paras 444, 446, 451.

¹¹³⁵⁸ *For example*, Merhi Defence closing submissions, T. 18 September 2018, p. 97, at which lead counsel for Mr Merhi stated: ‘The Prosecutor needed to prove that Mr Merhi knew that a terrorist attack, as it was alleged by the

6256. The Ayyash Defence submits generally that all members of an alleged conspiracy must be ‘fully aware of the objective of the conspiracy and the means to achieve that objective’.¹¹³⁵⁹ The Sabra Defence submits that the Prosecution must prove ‘the existence of a specific agreement on the part of Sabra to use one of the means to commit a terrorist act as provided for within Article 314.’¹¹³⁶⁰ In its final trial brief, the Sabra Defence argued that to prove the alleged conspiracy, the Prosecution must prove that the conspirators knew that Mr Hariri was the intended target.¹¹³⁶¹ However, counsel for Mr Sabra clarified in oral closing submissions that this was a procedural submission on the framing of the indictment, not a submission on the elements of this crime under Lebanese law.¹¹³⁶² Meaning that it went to notice to the Defence of the Prosecution’s case.

6257. The Trial Chamber does not find any of the Parties’ submissions decisive in resolving the issue, since they cited little legal authority. However, the Lebanese Criminal Code, and the limited Lebanese case law on the issue appear to support the view the Trial Chamber reached in its decision under Rule 167.

6258. The better interpretation of the words in Article 270 ‘by specific means’, directly after the words ‘to commit a felony’, is that they refer to *how* the felony is to be committed; those words would be meaningless if they did not refer to something additional to the definition of the felony itself. And ‘specific’ suggests the conspirators must agree to commit their intended crime in a particular manner as opposed to just in some or any way. The code does not assist in determining what will be specific enough to qualify.

6259. However, the Lebanese case law and commentary on this crime, and the Appeals Chamber’s interlocutory decisions, suggest it is not necessary for the conspirators to agree on many

Prosecution, targeting Mr Hariri would be committed’ and pp 107-108, at which he stated: ‘the accomplices must know at least that the target was Prime Minister Hariri ... These are important details, important information that the accomplice must have knowledge of ... What we are talking about is that the accomplice must be aware of the important details of the attack, of the plot’. Although the latter submission ostensibly concerned complicity under Article 219 of the Lebanese Criminal Code, it followed questions from the judges that also concerned conspiracy under Article 270, in particular the questions set out at pp 105-106 (starting with ‘How far does knowledge need to go?’ and ending with ‘is it sufficient that they’re aware that it’s a plan to kill Mr Hariri by means of an explosive device?’).

¹¹³⁵⁹ Ayyash Defence final trial brief, para. 725. It cited no authority in support of that submission.

¹¹³⁶⁰ Sabra Defence final trial brief, para. 806, citing the First interlocutory decision on applicable law, para. 199.

¹¹³⁶¹ Sabra Defence final trial brief, paras 458, 859.

¹¹³⁶² Sabra Defence closing submissions, T. 21 September 2018, pp 6-7.

details of the alleged plot. None of the Parties argued that Article 270 requires this. This interpretation is reasonably open on the face of Article 270 and infringes neither the rights of the Accused to a fair trial nor other principles of general criminal and international human rights law.

6260. The Trial Chamber has not found any Lebanese case law determining whether conspirators need know a person's identity where a conspiracy to commit a terrorist act aims to kill a particular person. The Appeals Chamber's interlocutory decisions—despite Article 1 of the Statute referring specifically to Mr Hariri's death—do not address this issue.

6261. In the Trial Chamber's view, it is reasonable to conclude that the law requires knowledge of the main target's identity at least in a conspiracy to commit a terrorist act aimed at killing a particular person, because of that person's public profile, for example, holding high public office. This is because their murder—or alternatively, their murder *by a terrorist means as defined in Article 314*—itself will be liable to cause a state of terror. The murder of a prominent and important political, religious or cultural figure, for example, could fulfil this requirement.

6262. Given the lack of guidance concerning this issue, however, when determining the individual criminal responsibility of the Accused, the Trial Chamber will also briefly consider the alternative scenario—that the Accused did not need to know Mr Hariri was the target in order to have committed the crime of conspiracy to commit a terrorist act. In other words, adopting a doctrine used in common law jurisdictions—and relied upon by the Prosecutor in closing submission—Mr Hariri's identity was a mere particular. Meaning that knowing that he was the target is not an element of the crime.

6263. Accordingly, the Trial Chamber finds that to prove a conspiracy to commit a terrorist act by specific means, it must be shown that the alleged conspirators agreed to use some means liable to create a public danger, and specifically which one, and that they agreed on some other key details of the plot. In particular, based on the definition of a terrorist act in Article 314, the alleged conspirators must also have agreed on using the relevant means in a way that would cause a state of terror. While not legally necessary in all cases, to satisfy this requirement it would be sufficient for the participants to have agreed on using a large explosive device in a public place, and that people would die and be injured as a consequence of this act.

6264. Furthermore, where, as in this case, the alleged aim of the planned terrorist act was to kill a particular person, namely Mr Hariri, and his death itself was liable to cause a state of terror—the better view is that the alleged conspirators must also have agreed on that aim, and therefore known who that targeted person was. That is, in the circumstances of this particular case, they must have known that Mr Hariri was the target. If however this conclusion is legally incorrect—in that knowing that Mr Hariri was the object of the conspiracy is not an element of conspiracy under Lebanese law—the Accused must have agreed on the matters described above.

6265. To be criminally liable for participating in a conspiracy to commit a terrorist act, however, they do *not* need to have agreed on more specific details than those. For instance, they do not need to have agreed on precisely when, where and how the device they intended to use would be detonated; whether and precisely how the conspirators would conduct surveillance in preparation for committing the intended crime; or what steps they would take to elude detection.

6266. Lastly, the Trial Chamber recognises that the required knowledge, as well as other elements of the crime, may be inferred from the circumstances; there need not be ‘direct’ evidence of them. Moreover, in a case such as this one, where the conspiracy allegedly achieved its aim of committing a terrorist act, the relevant circumstances may include the way in which that act was committed. For example—and pertinently for the present case—evidence that several people co-perpetrated a terrorist attack, that they did so in an organised way that would have been impossible without prior planning and coordination and that their particular part in committing the attack required them to know its specific means of commission beforehand, could establish or assist in establishing that they were conspirators.

6267. The relatively few Lebanese decisions concerning conspiracy, surveyed above, do not expressly endorse this view.¹¹³⁶³ Neither did the Appeals Chamber in the discussion of this crime in its interlocutory decisions. But it follows from the principles of procedural law, both international and Lebanese.¹¹³⁶⁴ The approach Lebanese courts have taken when assessing

¹¹³⁶³ The closest equivalent to an endorsement of this view in the case law is the Lebanese Judicial Council’s statement in the *Camille Chamoun* Judgment, p. 10, that it took into account the evidence of the accused’s attack on Mr Chamoun, along with that of earlier events, to reach its verdict on the charges in that case. As set out earlier, those charges included conspiracy, but to commit a crime against State security other than terrorism.

¹¹³⁶⁴ See chapter III ‘Assessment of evidence’ generally, and (C) (4) ‘Circumstantial evidence’.

evidence of *mens rea* in cases concerning other crimes¹¹³⁶⁵ also appears to the Trial Chamber to be consistent with this view.

(e) Conclusion: the elements of conspiracy aimed at committing a terrorist act

6268. In summary, the Trial Chamber has concluded that under the law applicable in the Special Tribunal, to commit the crime of conspiracy aimed at committing a terrorist act, two or more people must agree to commit a terrorist act, each of them knowing:

1. that the act will be committed using a means that is liable to create a public danger;
2. which particular means liable to create a public danger will be used; and
3. that that means will be used in a way that is liable to create a state of terror.

6269. If the terrorist act is intended to kill a particular person *and* killing that person would be likely to create a state of terror, each of them must also know:

4. that the act is intended to kill that person.

However, the Trial Chamber will also consider whether any Accused would be individually criminally responsible if they need only have known the first three things.

3. Intentional homicide

6270. Chapter VIII, sub-chapter I, section 1, sub-section 1 in book II of the Lebanese Criminal Code deals with intentional homicide. Sub-section 1 comprises Articles 547 to 550 but, as earlier noted, all counts on the amended consolidated indictment concerning this crime¹¹³⁶⁶ are charged under Articles 547 and 549 (1) and (7) specifically¹¹³⁶⁷—alleging Mr Ayyash committed the crimes of intentional homicide and attempted intentional homicide, each with premeditation using explosive materials, and the other Accused participated as accomplices in those crimes.

¹¹³⁶⁵ For example, the *mens rea* of perpetrators of intentional homicide and accomplices to that and other crimes charged in this case.

¹¹³⁶⁶ Under counts 3-4 and 7-8. Regarding the attempt counts (5 and 9).

¹¹³⁶⁷ In conjunction with provisions of the code concerning the elements of offences and modes of liability generally. As explained earlier, in relation to modes of liability, the Prosecution also brings those charges under Article 3 (1) (a) of the Statute.

6271. The Lebanese Criminal Code classifies intentional homicide as a type of felony against persons, specifically, a felony against human life and physical integrity.¹¹³⁶⁸ Articles 547 and 549 (1) and (7) are thus provisions of the code ‘relating to the prosecution and punishment of ... crimes and offences against life and personal integrity’ to which Article 2 (a) of the Statute refers.

6272. Article 547 provides:

Anyone who intentionally kills another person shall be punishable by hard labour for a term of between 15 and 20 years,

while Article 549 (1) and (7) provides:

Intentional homicide shall entail the death penalty if it was committed in the following circumstances:

(1) With premeditation;

...

(7) Using explosive materials.

6273. Since Article 24 of the Statute, not Lebanese law, governs sentencing in the Special Tribunal, the only relevant aspects of these provisions are those that provide guidance about the elements of the crimes charged. A brief definition of intentional homicide appears in Article 547, namely, intentionally killing another person.¹¹³⁶⁹ Article 549 (1) and (7) relevantly shows that, under the Lebanese Criminal Code, neither premeditation nor the use of explosive materials need

¹¹³⁶⁸ In book I of that code, Article 179 essentially defines a felony as one punishable as such; chapter II, sub-chapter I, section 1, ‘Penalties in general’, in particular Article 37 which lists the penalties prescribed in Articles 547-550—death, hard labour for life and fixed-term hard labour—as ‘ordinary penalties’ for felonies, only; and the headings to chapter VIII and sub-chapter I of that chapter, respectively: ‘Felonies and misdemeanours *against persons*’ and ‘Felonies and misdemeanours *against human life and physical integrity*’ (emphasis added).

¹¹³⁶⁹ The Special Tribunal’s official English translation of Article 547 uses the words ‘intentionally kills *another person*’ (emphasis added). The Prosecution submits that ‘*a person*’, which the Appeals Chamber used in the disposition section of its First interlocutory decision on applicable law, para. 11, more closely reflects the Arabic text of Article 547. Prosecution final trial brief, fn. 2356. The Trial Chamber does not see a substantive difference between the two versions and, taking into account the fact that no other Party raised any concern about this, considers it reasonable to rely on the official English translation.

be established for a person to have committed intentional homicide. Instead, these are aggravating circumstances, as defined above.¹¹³⁷⁰

(a) *Actus reus*

6274. The *actus reus* of intentional homicide, as described in Article 547, is the killing of another person. Inherent in this description is that a person must have died. To determine what else, beyond a victim's death, must be proven to establish the *actus reus* of this crime it is necessary to consult other provisions of the Lebanese Criminal Code and Lebanese case law.

6275. Article 204 of the Lebanese Criminal Code provides:

A causal link between an act and omission on the one hand, and the criminal consequence on the other, shall not be precluded by the concurrent existence of other previous, simultaneous or subsequent causes, even if they were unknown to the perpetrator or independent of his act.

If, however, the subsequent cause is independent and sufficient in itself to bring about the criminal consequence, the perpetrator shall incur the penalty only for the act that he committed.

6276. Article 204 requires a 'causal link' between the 'criminal consequence'—in this case, the victim's death—and the conduct of the accused and that that conduct may be either an act or an omission.

6277. Article 204 also suggests that where the crime alleged is intentional homicide:

- the required causal link may exist even if the victim's death also had 'other previous, simultaneous or subsequent causes', but

¹¹³⁷⁰ The Appeals Chamber agreed with this interpretation in its First interlocutory decision on applicable law, paras 151, 167, fn. 271. All of the Lebanese case law on Article 549 (1) and (7) discussed below also supports this interpretation. Both the Prosecution and the Sabra Defence explicitly agreed with this interpretation. Prosecution final trial brief, para. 1135; Prosecution closing submissions, T. 13 September 2018, p. 85; Sabra Defence final trial brief, para. 802. Of the Parties, only the Prosecution and Sabra Defence made any submissions specifically on the definition of intentional homicide. As earlier stated, the Ayyash Defence relied on the Appeals Chamber's First interlocutory decision on applicable law generally, Ayyash Defence final trial brief, para. 712.

- if there was a subsequent cause of the victim's death that was independent of the accused's conduct and sufficient in itself to kill the victim, the accused will not be liable for intentional homicide, only 'the act that he committed'.

6278. After examining the Lebanese Criminal Code and some Lebanese decisions and secondary sources, the Appeals Chamber summarised the *actus reus* of intentional homicide under Article 547 as consisting of: first, an act or culpable omission aimed at impairing the life of another¹¹³⁷¹ person; second, the result of the death of a person; and third, a causal connection between that conduct¹¹³⁷² and that result.¹¹³⁷³ Only the Prosecution and the Sabra Defence made submissions specifically on the law of intentional homicide, and both accepted this summary as substantially accurate.¹¹³⁷⁴ The Trial Chamber considers that this summary, in itself, is reasonable and legally correct in light of the wording of Articles 547 and 204 and Lebanese case law. Further, the Trial Chamber relies on most—but not all—aspects of the Appeals Chamber's analysis of the requisite causal connection, for the following reasons.

6279. The Appeals Chamber stated in its first interlocutory decision on applicable law that Article 204 provides for two different theories of causation 'in an ambiguous manner', as it 'sets the theory of equivalence of causes as a general rule, but adds'—in the second sentence of the Article—'an important exception in the form of the theory of adequate or sufficient cause'.¹¹³⁷⁵

6280. It contrasted that exception with Article 568 of the code.¹¹³⁷⁶ Article 568 is in the same sub-chapter as Article 549 and applicable in principle in the Special Tribunal, as relating to the punishment of offences against life and personal integrity. It essentially provides that where there were other circumstances, unknown to the perpetrator and independent from their act, that caused death or harm, intentional or unintentional, the perpetrator's sentence may be reduced as specified

¹¹³⁷¹ First interlocutory decision on applicable law, para. 185 (a); the Appeals Chamber used 'a person' in the disposition, 11.

¹¹³⁷² The Appeals Chamber in para. 185 (c) and disposition, 11 (c), described the relevant conduct as 'the act', but it is clear from the context, including para. 185 (a) and disposition, 11 (a), that this term encompasses both acts and omissions.

¹¹³⁷³ First interlocutory decision on applicable law, para. 185 (a)-(c), disposition, 11 (a)-(c), *see also* paras 153-154, 156, 158.

¹¹³⁷⁴ Prosecution final trial brief, para. 1131; *compare*, its submission regarding the wording of the first element; Sabra Defence final trial brief, para. 802.

¹¹³⁷⁵ First interlocutory decision on applicable law, para. 158.

¹¹³⁷⁶ First interlocutory decision on applicable law, para. 159.

in Article 200—the provision of the code that defines attempt, examined in detail in section 4 below.

6281. Thus, as the Appeals Chamber noted, Article 568 appears to provide that where there was a cause of a person's death independent from the accused's act, the accused remains responsible for the victim's death, but the sentence is mitigated.¹¹³⁷⁷ Whereas the second sentence of Article 204 suggests that in such cases the accused will be responsible only for the act they committed. However, the Appeals Chamber went on:

Nonetheless, it can be inferred from a comprehensive reading of the Code together with the jurisprudence that Lebanese law applies mainly the theory of the adequate or sufficient cause. In other words, the perpetrator is held liable for his criminal act coupled with criminal intent even if he ignored¹¹³⁷⁸ other reasons which, combined with his act, led to the victim's death. This analysis is also in line with the origins of the Lebanese Criminal Code. Indeed, the Lebanese text in this respect is originally taken from the Italian criminal code of 1930, which in turn adopts the theory of the adequate or sufficient cause.¹¹³⁷⁹

6282. The Parties neither contested the Appeals Chamber's interpretation of Article 204 nor made any submissions about it.

6283. The Trial Chamber is not persuaded that there is an ambiguity in Article 204 itself. The first sentence provides generally that a causal link between the accused's act and a victim's death can exist even if there was also another cause, including one independent of the accused's act. The second sentence addresses the specific scenario of an independent cause sufficient in itself to bring about that death.

6284. On the face of the code, there does appear to be some ambiguity, and indeed potential inconsistency, in the relationship between Articles 204 and 568. However, as the two are linked to one another, they are probably intended to address different scenarios. The Trial Chamber

¹¹³⁷⁷ First interlocutory decision on applicable law, para. 160.

¹¹³⁷⁸ The words 'even if he ignored' in this passage appear to mean 'even if he did not know', translating the French phrase '*même s'il ignorait*', which has that meaning. The French version of the First interlocutory decision on applicable law, para. 160, uses that phrase. Moreover, the relevant words in the Special Tribunal's official English and French translations of Article 204 itself, 'causes... unknown to the perpetrator'/'*causes... inconnues de l'auteur*', unquestionably mean causes that the perpetrator does not know—not causes that the perpetrator 'ignores' in the sense that they know those causes but disregard them.

¹¹³⁷⁹ First interlocutory decision on applicable law, para. 160 (footnotes omitted).

interprets the Appeals Chamber's conclusion to mean that Article 204—not Article 568—reflects the dominant approach to causation in Lebanese law and should therefore be applied. Considering the absence of any contest from the Parties on this matter, the Trial Chamber accepts that view.

6285. For the purposes of Article 204, many possible interventions could cause a victim's death but without severing the causal link with the accused's actions. As an example, a case of intentional homicide where explosives have caused a building to collapse and trap people under the rubble. There, a failure to rescue a trapped person, whose life could have been saved with timely medical intervention and treatment, will not preclude the causal link with the actions of the accused.

6286. The Appeals Chamber also stated, regarding the *actus reus* of intentional homicide under Lebanese law, that the victim's death 'has to be a direct result of the criminal activity'.¹¹³⁸⁰ It did not cite any authority for this statement, although it may have drawn the phrase 'direct result' from Lebanese decisions it referred to elsewhere.

6287. In particular, in a 1999 judgment convicting an accused who had shot someone multiple times with a pistol of intentional homicide, the sixth Chamber of the Lebanese Court of Cassation found that the victim's 'death occurred as a direct result of this act'.¹¹³⁸¹ However, the court did not examine whether directness of the result was legally required to establish the *actus reus* of this crime. No Party has argued that it was and the Trial Chamber has not found any other Lebanese case law suggesting this. Accordingly, based on the wording of Article 204, the Trial Chamber finds that it is necessary only for the accused's conduct to be *a* cause of the victim's death.

6288. In its first interlocutory decision on applicable law, the Appeals Chamber further concluded that under Lebanese law, if a victim's death results from the acts of multiple people who share the same intention, they are all co-perpetrators of that death. It is not necessary for all of them to have performed the same act or 'administered the fatal blow'.¹¹³⁸² Again, the Parties did not contest this

¹¹³⁸⁰ First interlocutory decision on applicable law, para. 156.

¹¹³⁸¹ Cassation decision 38/1999, p. 5. *See also* the references to this decision in relation to accomplice liability. The Appeals Chamber, in its First interlocutory decision on applicable law referred to this decision in its discussion of means of proving that the death itself had occurred, not causation, fn. 258. In fn. 265, the Appeals Chamber also used the phrase 'direct result' when describing the *mens rea* of intentional homicide, citing Court of Appeal of North Lebanon decision 1/1952,

¹¹³⁸² First interlocutory decision on applicable law, para. 157.

view and the Trial Chamber considers it a reasonable and correct interpretation of Article 212 of the Lebanese Criminal Code, discussed above, and relevant Lebanese case law.

6289. As the Appeals Chamber noted, in Lebanon accused have been convicted of co-perpetrating intentional homicide where each had fired a gun but it was not possible to determine which of them fired the bullet that killed the victim.¹¹³⁸³

6290. More relevantly, the *Al-Halabi* and *Karami* cases show conduct that Lebanese courts consider sufficient to establish the *actus reus* for co-perpetration of intentional homicide in the context of an assassination operation with a number of participants. Of the twenty accused in *Al-Halabi*, the Lebanese Judicial Council convicted three as co-perpetrators of Sheikh al-Halabi's intentional homicide.¹¹³⁸⁴ These were the two who fatally shot him¹¹³⁸⁵ and a third, Mr Khaled Mohammed Hamid. Mr Hamid had recruited some of the participants in the operation, arranged the car and the weapons, was present and armed at the scene of the crime, waiting for the Sheikh to emerge, blocked his path with a car which enabled the others to shoot him and then drove them away.¹¹³⁸⁶

6291. For the four accused convicted as co-perpetrators of intentional homicide in *Karami*, the relevant conduct appears to have been:

- recruiting others to execute the scheme of killing the victim and coordinating their actions, participating personally in reconnaissance operations for that crime and being present on the day of the crime on the boat from which the lethal explosive charge was detonated remotely (Mr Ghassan Touma);¹¹³⁸⁷
- participating personally in reconnaissance operations for the crime, participating in testing the device used to detonate the lethal explosive charge, carrying both that device

¹¹³⁸³ Cassation decision 170/2000, pp 1-2; Cassation decision 75/2004, pp 3-5; First interlocutory decision on applicable law, fn. 259.

¹¹³⁸⁴ As well as the attempted intentional homicide of the three injured victims. *Al-Halabi* Judgment, pp 63-64.

¹¹³⁸⁵ Mr Mounir Salih Aboud and Mr Ahmad Munthir al-Kasm.

¹¹³⁸⁶ *Al-Halabi* Judgment, p. 51. In the *Al-Rifai and others* Judgment, the same court applied similar reasoning at pp 1-4, 6-7, 15 to convict several accused as co-perpetrators of the attempted intentional homicides of Mr Mufti El-Sabounji, Mr Haji Taha Naji, Mr Hussein El-Oueik and his companions and Mr Oum-Georges, in four separate incidents. Their acts ranged from firing shots, throwing a grenade or giving weapons to another co-perpetrator, to driving the other co-perpetrators to the scene of the crime, then going elsewhere to wait for those other co-perpetrators' call alerting them to return and collect those other co-perpetrators after they had committed it.

¹¹³⁸⁷ *Karami* Judgment, pp 130-131.

and that charge, being present on the day of the crime on the boat from which the lethal explosive charge was detonated remotely and pressing the button on the device, detonating the charge (Mr Ghassan Menassa);¹¹³⁸⁸ and

- participating personally in reconnaissance operations for the crime, then driving the boat on the day of the crime (Mr Afif Khoury)¹¹³⁸⁹ and while present on that boat, tracking the passage of the victim's helicopter and alerting another co-perpetrator—Mr Menassa—to its location (Mr Khalil Elias Matar).¹¹³⁹⁰

6292. Lebanese case law suggests that different items may be 'explosive materials' within the meaning of Article 549 (7) of the code, thereby aggravating the crimes of intentional homicide and attempted intentional homicide. In *Karami*, the Lebanese Judicial Council accepted this aggravating element in the explosive charge in the helicopter—specifically, a charge or bomb weighing about 2.7 kilograms, hidden behind Mr Karami's usual seat.¹¹³⁹¹ Another example, in a case of attempted intentional homicide, is a hand grenade.¹¹³⁹²

(b) *Mens rea*

6293. The Trial Chamber has also examined relevant Lebanese decisions and the Appeals Chamber's first interlocutory decision on applicable law, plus the applicable legislative provisions, for guidance regarding the *mens rea* of intentional homicide. Since the aggravating circumstance of 'premeditation' focuses on the accused's mental state, the Trial Chamber also briefly deals with that.

6294. To satisfy the definition in Article 547, the killing must be 'intentional'. Article 188 of the code defines intent as 'the will to commit an offence as defined by law'. Article 189 is also relevant, providing a form of indirect intent¹¹³⁹³ or *dolus eventualis*,

¹¹³⁸⁸ *Karami* Judgment, pp 130-131.

¹¹³⁸⁹ *Karami* Judgment, p. 131.

¹¹³⁹⁰ *Karami* Judgment, pp 126-128. *Compare*, the statement in the Prosecution final trial brief, para. 1165, that the Lebanese Judicial Council found Mr Matar was a co-perpetrator 'since Matar knowingly used a device to signal to the perpetrator when Karami's helicopter was passing by a specific location to facilitate the use of explosives to kill Karami'. This is correct, but in the relevant finding, the court specifically referred to Mr Matar's presence on the boat and tracking of the helicopter's passage as well.

¹¹³⁹¹ *Karami* Judgment, pp 25, 138-142.

¹¹³⁹² *Al-Rifai and others* Judgment, pp 5-6.

¹¹³⁹³ *Dany Chamoun* Judgment, p. 74.

An offence shall be deemed to be intentional, even if the criminal consequence of the act or omission exceeds the intent of the perpetrator, if he had foreseen its occurrence and thus accepted the risk.

6295. Articles 190 and 191 of the Lebanese Criminal Code provide further precision regarding the scope of Article 189. On the one hand, ‘fault exists where a harmful act results from negligence, recklessness or failure to comply with laws and regulations’ (Article 190). On the other, by virtue of Article 191, if either ‘the perpetrator did not foresee the consequences of his wrongful act or omission although he could or should have foreseen it’ or ‘he foresaw it and believed that he could prevent it’, the offence will be unintentional—namely, Article 189 will not apply.

6296. Notwithstanding that Article 191 appears to refer to actual, or in other words subjective, foresight—what consequences the perpetrator *in fact* ‘*did not foresee*’ or ‘*foresaw*’—in the judicial decisions examined below, Lebanese courts have sometimes interpreted the Article as setting a constructive or objective standard—what consequences the perpetrator *should have foreseen*.¹¹³⁹⁴

6297. So far as the Trial Chamber can ascertain from the published versions of the decisions,¹¹³⁹⁵ even when purporting to apply a subjective standard—to find that the perpetrator in fact foresaw the relevant consequences—Lebanese courts have not required any direct evidence of what the accused actually thought. Rather, they have consistently inferred the required foresight from facts suggesting the consequences were foreseeable. Or, to put it another way, they have apparently found that the accused *did* foresee a consequence based on evidence that showed he or she could reasonably have been expected to foresee that consequence.

6298. In its first interlocutory decision on applicable law, the Appeals Chamber divided the *mens rea* for intentional homicide into two parts, intent and knowledge—once more drawing on a combination of the Lebanese Criminal Code itself, Lebanese decisions and secondary sources for its conclusions. It agreed that this crime requires the ‘intent to cause death, whether direct or *dolus eventualis*’,¹¹³⁹⁶ and suggested the requisite knowledge was ‘knowledge of the circumstances of

¹¹³⁹⁴ For example, the Lebanese Court of Cassation adopted this approach in Cassation decision 317/2002. The Appeals Chamber cited this decision in its First interlocutory decision on applicable law, fn. 268 but mistakenly described the decision number as 318.

¹¹³⁹⁵ Some of which are brief extracts only.

¹¹³⁹⁶ First interlocutory decision on applicable law, para. 185 (e), disposition, 11 (e).

the offence (including that the act is aimed at a living person and conducted through means that may cause death)'.¹¹³⁹⁷

6299. No Party contested this two-part characterisation of the *mens rea* of intentional homicide under Lebanese law.¹¹³⁹⁸ The Trial Chamber also accepts it to be consistent in substance with the code and relevant case law, although neither addresses intent distinctly from knowledge to the same degree as the Appeals Chamber. The Appeals Chamber's suggested knowledge requirement, in part, appears to the Trial Chamber to logically flow from the description of a perpetrator in Article 210, in particular the words 'No one shall be sentenced to a penalty unless he *consciously* and willingly committed the act'.¹¹³⁹⁹ As for the importance of knowing the means, Lebanese courts seem to have imputed the *mens rea* to an accused from the fact that they used means capable of causing death, for example, a gun,¹¹⁴⁰⁰ a cleaver¹¹⁴⁰¹ or a bomb,¹¹⁴⁰² and aimed it directly at the victim,¹¹⁴⁰³ or at vulnerable bodily locations such as the head or chest,¹¹⁴⁰⁴ shot or stabbed more than once,¹¹⁴⁰⁵ shot at close range¹¹⁴⁰⁶ or threw the bomb into premises where people were.¹¹⁴⁰⁷

6300. Some straightforward illustrations from Lebanese case law of how an accused may be deemed to have intentionally killed their victim due to *dolus eventualis*, under Article 189, are:

- An accused fired a machine gun in the direction of quarrelling people; two bullets hit the victim, 20 metres from the accused, killing him. In convicting the accused of intentional homicide under Article 547, the Lebanese Court of Cassation found that he intentionally fired the shots; that even if he did not intend to kill the victim, he should

¹¹³⁹⁷ First interlocutory decision on applicable law, para. 185 (d), disposition, 11 (d), *see also* para. 162.

¹¹³⁹⁸ The Prosecution and Sabra Defence specifically accepted it. Prosecution final trial brief, paras 1133-1134; Sabra Defence final trial brief, para. 802.

¹¹³⁹⁹ Emphasis added.

¹¹⁴⁰⁰ Cassation decision 127/1998, pp 3-5; Cassation decision 37/1999, p. 1.

¹¹⁴⁰¹ Cassation decision 8/2004, pp 1-2.

¹¹⁴⁰² *Al-Rifai and others* Judgment, pp 6-7. While this judgment concerned attempted intentional homicides, the *mens rea* analysis is the same as for the completed crime.

¹¹⁴⁰³ Cassation decision 127/1998, pp 3-5.

¹¹⁴⁰⁴ Cassation decision 127/1998, p. 4; Cassation decision 47/1999, p. 2; Cassation decision 275/2004, pp 1-3.

¹¹⁴⁰⁵ Cassation decision 37/1999, p. 1; Cassation decision 8/2004, pp 1-2; Cassation decision 275/2004, p. 2.

¹¹⁴⁰⁶ Cassation decision 37/1999, p. 1; Cassation decision 47/1999, p. 2. *See also* First interlocutory decision on applicable law, para. 164, fn. 266. *Compare*, Cassation decision 317/2002, and Cassation decision 24/2004, both of which the Appeals Chamber referred to in its First interlocutory decision on applicable law. The chamber in Cassation decision 24/2004 determined an accused had the intention to kill the victim where he had fired a pistol at close range to—specifically, less than 30 centimetres from—the victim's head. However, its decision suggests the chamber may also have based its determination partly on statements the accused made shortly before the shooting.

¹¹⁴⁰⁷ *Al-Rifai and others* Judgment, pp 6-7.

have expected that aiming and firing his machine gun in the direction of the quarrelling people would injure one or more of them; and that he accepted that risk;¹¹⁴⁰⁸

- An accused who had been having an affair with the victim's wife had two vigorous physical fights on the same day with the victim, who died from his injuries. During the first fight, the accused hit the victim hard on the head with a stone and during the second, either hit him again on the head with a stone or pushed him so hard that he fell and hit his head on a rock (it could not be determined which). The Lebanese Court of Cassation concluded that the accused could have expected death to occur as a result of targeting his blows to the victim's head. Further, the accused had had time to collect himself in the interval between the fights. It rejected that the accused had committed unintentional killing—a lesser offence which is also known as 'manslaughter', as described in Article 550 of the Lebanese Criminal Code—and replaced a lower court's conviction under Article 550 with one under Article 547.¹¹⁴⁰⁹

6301. The more complex Lebanese assassination cases, involving death or injury to several people with evidence of a plot targeting someone, provide examples of the requirements under Article 189. In the *Dany Chamoun* case, in addition to being the leader of the National Liberal Party, Mr Chamoun was the son of the former Lebanese President Chamoun.¹¹⁴¹⁰ The operation to assassinate Dany Chamoun caused his, his wife's and two sons' deaths. The Lebanese Judicial Council found that three armed attackers had entered the family's apartment and shot each victim multiple times, while several more waited at the building entrance or near their cars.¹¹⁴¹¹

6302. Apart from the three who shot the victims, none of the other accused—neither those who had incited the perpetrators to assassinate Mr Chamoun nor those who had remained outside the building—had committed any crime against Mr Chamoun's wife and children, because the circumstances did not suggest that:

¹¹⁴⁰⁸ Cassation decision 317/2002.

¹¹⁴⁰⁹ Cassation decision 458/2002, pp 1-2, 4. The Appeals Chamber also discussed this decision, in its First interlocutory decision on applicable law, paras 164-165, fns 267-268.

¹¹⁴¹⁰ *Dany Chamoun* Judgment, pp 22, 26.

¹¹⁴¹¹ *Dany Chamoun* Judgment, pp 26, 30-31.

it occurred to the inciters or accomplices to the assassination that [those three] perpetrators ... would also murder Dany Chamoun's wife and children, and that they accepted the possibility of this outcome.¹¹⁴¹²

6303. Conversely, in its subsequent decisions in *Al-Halabi* and *Karami*, the Lebanese Judicial Council applied Article 189 to determine that some accused had the requisite intention to commit various crimes against Sheikh Al-Halabi's son, his bodyguards and the others aboard Mr Karami's helicopter. In *Al-Halabi*, the court found Mr Aboud, Mr Al-Kasm and Mr Hamid guilty of the attempted intentional homicide of the Sheikh's bodyguards and son because they had 'anticipated the possibility of injuring and killing his bodyguards and anyone with him in the car'. The court appears to have considered that they knew the number of bodyguards in advance and when they ambushed the car fired shots landing 'all over' it.¹¹⁴¹³

6304. In *Karami*, the Lebanese Judicial Council found the accused Mr Matar:

being aware of the plan, was aware of the fact that Prime Minister Karami would not be alone in the targeted helicopter and that the manner in which it was to be blown up would lead to the death of the persons accompanying him, notwithstanding which he accepted the risk of that anticipated outcome and carried out the above-mentioned acts in a resolute and purposeful manner, having prior knowledge of their potential consequences, thereby manifesting a constructive intent to kill the persons accompanying Prime Minister Karami in the helicopter as provided in article 189 of the Criminal Code.¹¹⁴¹⁴

Consequently, it convicted Mr Matar, as a co-perpetrator, of the attempted intentional homicides of the helicopter's other passengers and crew under Article 549 (1) and (7)—in conjunction with Article 201, concerning attempt, discussed below.¹¹⁴¹⁵ It applied the same reasoning to convict Mr Touma, Mr Menassa and Mr Khoury of the same crimes.¹¹⁴¹⁶

6305. Lebanese case law is also the main source of guidance about what 'premeditation' for the purpose of Article 549 (1) means, as the code does not define the term. The Trial Chamber will

¹¹⁴¹² *Dany Chamoun Judgment*, p. 74.

¹¹⁴¹³ *Al-Halabi Judgment*, p. 53.

¹¹⁴¹⁴ *Karami Judgment*, p. 127.

¹¹⁴¹⁵ *Karami Judgment*, p. 127.

¹¹⁴¹⁶ *Karami Judgment*, pp 130-131.

address this issue only briefly since premeditation is not an element of the crime of intentional homicide under Lebanese law, only an aggravating factor for sentencing purposes.

6306. Lebanese decisions suggest that premeditated intentional homicide requires that the perpetrator decided in advance to commit that crime and had a clear and calm state of mind when preparing or planning to do so.¹¹⁴¹⁷ No minimum time period of premeditation is specified;¹¹⁴¹⁸ one court found that the accused premeditated the crime only minutes before committing it.¹¹⁴¹⁹

6307. The Appeals Chamber took essentially the same view of the definition suggested by Lebanese case law,¹¹⁴²⁰ and the Prosecution, as the only Party to make submissions on this issue, accepted that view.¹¹⁴²¹ The Appeals Chamber also examined how premeditation interacts with *dolus eventualis*¹¹⁴²² and concluded that Lebanese law treats premeditation as an aggravating factor of the intentional homicide both of the victim actually intended and any additional victims whose deaths were reasonably foreseeable.¹¹⁴²³ The Trial Chamber agrees with this conclusion, noting again however that premeditation under Article 549 (1) bears only on sentencing.

(c) Conclusion: the elements of intentional homicide

6308. In summary, the Trial Chamber has concluded that under the law applicable in the Special Tribunal, to commit an intentional homicide, a person must:

1. perform an act or omission that is a cause of another person's death; and
2. intend to cause the death of another person.

¹¹⁴¹⁷ Cassation decision 154/1998, p. 1; Cassation decision 127/1998, pp 4-5; Cassation decision 37/1999, p. 1; Cassation decision 38/1999, pp 5-6; Cassation decision 47/1999, p. 2; Cassation decision 170/2000, pp 1-2; Cassation decision 8/2004, pp 1-2; Cassation decision 275/2004, p. 2; *Balamand Monastery* Judgment, pp 14-16; Cassation decision 8/2000, pp 2-3.

¹¹⁴¹⁸ Cassation decision 8/2000, p. 2.

¹¹⁴¹⁹ Cassation decision 37/1999, p. 1.

¹¹⁴²⁰ First interlocutory decision on applicable law, paras 168, 186.

¹¹⁴²¹ Prosecution final trial brief, para. 1135, fn. 2362.

¹¹⁴²² Based on the Pre-Trial Judge's question, 'xii) Can an individual be prosecuted before the Tribunal for intentional homicide with premeditation for an act which he is alleged to have perpetrated against victims who might be considered not to have been personally or directly targeted by the alleged criminal act?'. Pre-Trial Judge 21 January 2011 order on preliminary questions to the Appeals Chamber, p. 14.

¹¹⁴²³ First interlocutory decision on applicable law, paras 169-175, 188, disposition, 12.

4. Attempted intentional homicide

6309. Articles 200 and 201 of the Lebanese Criminal Code concern attempt in relation to felonies such as intentional homicide. Article 203 also contributes to defining a criminal attempt—that is, one for which a person will be criminally responsible—to commit an intentional homicide under Lebanese law. Articles 200 and 203 relevantly provide:

Article 200: Any attempt to commit a felony that began with acts aimed directly at its commission shall be deemed to constitute the felony itself if its completion was prevented solely by circumstances beyond the control of the perpetrator.

...

Any person who begins to commit an act and then voluntarily desists shall be punished only for acts that he committed which constituted offences *per se*.

Article 203: An attempt shall be punished, even if its aim was unattainable owing to a factual circumstance unknown to the perpetrator. The perpetrator shall not be punished, however, if his act stemmed from a lack of understanding.

6310. Article 201 provides for the commutation of penalties ‘If all acts aimed at the commission of a felony were completed but produced no effect owing to circumstances beyond the control of the perpetrator’.

6311. Thus Lebanese law gives certain attempts to commit an intentional homicide the same legal status as an intentional homicide. It is only in sentencing such attempts that it will take into account the fact that the victim did not die. Read together, Articles 200, 201 and 203 provide that as long as the perpetrator’s act(s) did not ‘stem from a lack of understanding’,¹¹⁴²⁴ the perpetrator will incur the same criminal responsibility as for an intentional homicide once their attempt has begun, ‘with acts aimed directly at’¹¹⁴²⁵ committing that crime, if only circumstances beyond the perpetrator’s control prevented the victim’s death.

¹¹⁴²⁴ Lebanese Criminal Code, Art. 203.

¹¹⁴²⁵ Lebanese Criminal Code, Art. 200.

6312. If, on the contrary, the perpetrator voluntarily desisted after failing to complete that crime, they cannot be criminally liable for attempted intentional homicide—but only for their conduct up to that point and if it was a separate crime.

6313. Under Article 203, it is irrelevant whether the victim could never have been killed because of a particular factual circumstance, provided the perpetrator did not know that circumstance. For instance, if the victim were not where the perpetrator thought they would be. Further, Article 201 shows that Lebanese law also penalises attempted intentional homicide where all acts aimed at the commission of that crime were completed. The difference between this scenario and that of the completed crime, in which the victim dies—and between it and the kind of attempt described in the first sentence of Article 200—affects only sentencing.

6314. In its first interlocutory decision on applicable law, the Appeals Chamber’s summary was that there are three elements to attempted intentional homicide under Lebanese law. They are:

- an objective element, specifically a preliminary physical action that marks the beginning of the execution of the crime;¹¹⁴²⁶
- a subjective element, specifically the intent to commit that crime.¹¹⁴²⁷ In other words, the alleged perpetrator of attempted intentional homicide must have the *mens rea* for intentional homicide;¹¹⁴²⁸ and
- the absence of a voluntary abandonment of the offence before it is committed.¹¹⁴²⁹

The Appeals Chamber considered that Article 201 refers to ‘a specific kind of attempt: the abortive offence’.¹¹⁴³⁰

6315. Only the Prosecution and the Sabra Defence made (brief) submissions specifically on the law applicable to attempted intentional homicide. Both accepted the Appeals Chamber’s summary.¹¹⁴³¹ Having examined the code and Lebanese case law, the Trial Chamber agrees that

¹¹⁴²⁶ First interlocutory decision on applicable law, paras 177-178, 187 (a), disposition, 11 (a).

¹¹⁴²⁷ First interlocutory decision on applicable law, paras 177-178, 187 (b), disposition, 11 (b).

¹¹⁴²⁸ First interlocutory decision on applicable law, paras 177-178.

¹¹⁴²⁹ First interlocutory decision on applicable law, paras 177, 179, 187 (c), disposition, 11 (c).

¹¹⁴³⁰ First interlocutory decision on applicable law, para. 180.

¹¹⁴³¹ The Prosecution relied specifically on the Appeals Chamber’s summary in the First interlocutory decision on applicable law, para. 187, as stating the elements of attempted intentional homicide. Prosecution final trial brief,

in substance, the kind of attempt described in the first sentence of Article 200 consists of the three elements the Appeals Chamber listed.

6316. On its face, the Appeals Chamber’s description of the objective element only covers that kind of attempt, not the other, ‘abortive offence’ kind described in Article 201. However, in light of the wording of the Lebanese Criminal Code, particularly the heading ‘Attempt’ to the subsection containing Articles 200-203, and the Appeals Chamber’s own analysis of Article 201, the Trial Chamber considers the Appeals Chamber’s description must be read as referring to the *minimum* conduct that must be proven to establish the objective element of an attempted intentional homicide—not as excluding the Article 201 scenario of ‘completed’ acts aimed at committing that crime.¹¹⁴³²

6317. The code is unambiguous regarding the requirement the Appeals Chamber described as the absence of voluntary abandonment. The circumstances that prevent the victim’s death must be beyond the perpetrator’s control. Examples of such circumstances include the administration of medical treatment to the victim by third parties,¹¹⁴³³ the malfunctioning of the device intended to be used to commit the crime¹¹⁴³⁴ and the intended victim’s failure to appear in a particular location at the expected time.¹¹⁴³⁵

6318. The Appeals Chamber stated in its first interlocutory decision on applicable law that ‘a mere preparatory act is insufficient to establish the existence of an attempt’ under Lebanese law.¹¹⁴³⁶ The Trial Chamber agrees with this conclusion. Numerous Lebanese decisions

para. 1132. The Sabra Defence relied on both the First interlocutory decision on applicable law, paras 177-183, and Articles 200-203 and 547-549 of the Lebanese Criminal Code. Sabra Defence final trial brief, para. 803.

¹¹⁴³² Lebanese case law varies in the terminology it uses to describe the different kinds of attempt, with some judgments using ‘attempt’ for the Article 200, first paragraph scenario only and ‘abortive offence’ for the Article 201 scenario, but others describing the latter as ‘attempt’ as well. This appears to be a semantic difference only. *Compare, for example, Camille Chamoun Judgment*, pp 1, 12, 14 with *Al-Halabi Judgment*, pp 52-54, 56-58, 63-65 and *Balamand Monastery Judgment*, p. 15, defining ‘attempt’ in terms corresponding to the Article 200, first paragraph scenario only—admittedly the only relevant scenario in that case. Article 202 of the Lebanese Criminal Code similarly distinguishes between ‘attempted’ and ‘abortive’ misdemeanours and provides for a more severe penalty for the latter.

¹¹⁴³³ *Camille Chamoun Judgment*, pp 8, 12; *Zouk Mikayel Church Judgment*, pp 102, 104; *Al-Halabi Judgment*, pp 24, 52-54; *Al-Rifai and others Judgment*, pp 5-6; Cassation decision 275/2004, p. 2.

¹¹⁴³⁴ *Balamand Monastery Judgment, Al-Rifai and others Judgment*, p. 1.

¹¹⁴³⁵ *Al-Halabi Judgment*, p. 54. *See also* Cassation decision 102/2002, which the Appeals Chamber cited as authority for this element of attempt in its First interlocutory decision on applicable law, fn. 292. Cassation decision 102/2002 concerned involuntary abandonment of an attempted misdemeanour (theft), not an attempted intentional homicide. The circumstance beyond the perpetrator’s control that prevented the crime’s completion was that a person other than the perpetrator raised the alarm.

¹¹⁴³⁶ First interlocutory decision on applicable law, para. 178.

characterise attempt as involving, at least, the beginning of a criminal phase that is distinct from preparatory acts.¹¹⁴³⁷ Moreover, this conclusion is consistent with the Lebanese Criminal Code. Several provisions of the code including Article 219 specifically differentiate between the commission of a crime and its preparation.

6319. In the *Zouk Mikayel Church* judgment, in considering the crime of an attack aimed at changing the Lebanese constitution by unlawful means,¹¹⁴³⁸ the Lebanese Judicial Council described a criminal attempt as requiring ‘overt material acts aimed directly at the commission of the offence and indicating, through their attendant circumstances and in an unequivocal manner, the actor’s definite resolve to achieve the intended result’.¹¹⁴³⁹ The perpetrators there had placed two explosive devices inside a church in Zouk Mikayel, in central Lebanon, and managed to detonate one of them, killing 11 people and injuring 54 others. The second device was discovered before it could explode.¹¹⁴⁴⁰

6320. In *Karami*, the Lebanese Judicial Council described criminal attempt as requiring action that would normally achieve the intended result even if it does not constitute one of the material elements of the crime.¹¹⁴⁴¹ The court found that these were the same conduct criteria as for co-perpetrating a crime by participating directly in its commission.¹¹⁴⁴² *Karami* however, actually involved an attempted intentional homicide under Article 201, since with the explosion on the helicopter, all acts aimed at the crime’s commission were completed. In the *Al-Halabi* case, similarly, the act of firing the shots that injured the Sheikh’s bodyguards and son completed the attempt, or ‘abortive offence’, against those three victims, contrary to Article 201.¹¹⁴⁴³

6321. *Al-Halabi* also offers examples of partially completed attempted intentional homicides contrary to Article 200, since the case concerned not only the ambush that killed the Sheikh and

¹¹⁴³⁷ For example, *Al-Halabi (Saoud)* Judgment, pp 2-3; *Al-Rifai and others* Judgment, pp 1-4. Additionally, the *Al-Halabi* Judgment, pp 52-54, and *Karami* Judgment, pp 108, 111, 122-123, 126-127, 130-133 while not stating outright that attempt is distinct from preparation, implicitly support this view. The *Karami* Judgment also analysed attempt. See also First interlocutory decision on applicable law, fn. 289.

¹¹⁴³⁸ Article 301 of the Lebanese Criminal Code.

¹¹⁴³⁹ *Zouk Mikayel Church* Judgment, p. 105.

¹¹⁴⁴⁰ *Zouk Mikayel Church* Judgment, p. 37.

¹¹⁴⁴¹ The Appeals Chamber used a similar description, ‘action ... that should lead, within the normal course of events, to achieving the criminal purpose’, relying on a submission from the Head of Defence Office. First interlocutory decision on applicable law, para. 178, fn. 288.

¹¹⁴⁴² *Karami* Judgment, p. 126.

¹¹⁴⁴³ *Al-Halabi* Judgment, pp 52-53, 63-64.

injured the three other victims, but also three previous attempts on his life. The Lebanese Judicial Council applied Article 200 to convict seven accused of co-perpetrating one or more of the three attempted murders, in its judgment in that case issued in January 1997.¹¹⁴⁴⁴ In a subsequent judgment, it convicted an eighth accused, Mr Yasser Saoud, for co-perpetrating one of those attempts.¹¹⁴⁴⁵ Each of the first seven accused had travelled to an agreed ambush spot and lain in wait there—in vain—for the Sheikh to arrive, on one or more of the three relevant occasions.¹¹⁴⁴⁶ Mr Saoud had voluntarily stored weapons at his house and some of the other co-perpetrators met there before the second attempt, armed themselves and waited for the signal to travel to the ambush spot.¹¹⁴⁴⁷

6322. All eight had also participated in some prior activities related to the assassination operation, such as planning, firearms exercises or obtaining a car for that operation,¹¹⁴⁴⁸ and the court did not state in this judgment what conduct, exactly, it considered marked the beginning of each attempted murder.¹¹⁴⁴⁹ However, in its subsequent judgment against Mr Saoud the court clarified that it considered the second attempt began at the moment the other co-perpetrators came to Mr Saoud's house, took up their weapons and waited for the signal.¹¹⁴⁵⁰

6323. Other acts that Lebanese courts have found to meet the Article 200 threshold for beginning an attempted intentional homicide have included, in each case on the same day the crime was intended to be committed:

¹¹⁴⁴⁴ *Al-Halabi* Judgment, pp 54, 56, 63-64.

¹¹⁴⁴⁵ *Al-Halabi (Saoud)* Judgment.

¹¹⁴⁴⁶ *Al-Halabi* Judgment, pp 28-30, 54.

¹¹⁴⁴⁷ *Al-Halabi (Saoud)* Judgment, pp 2-3.

¹¹⁴⁴⁸ *Al-Halabi* Judgment, pp 27-29, 54; *Al-Halabi (Saoud)* Judgment, pp 2-3.

¹¹⁴⁴⁹ Regarding five of the seven accused in question, the court relevantly stated at p. 54 of its *Al-Halabi* Judgment (emphasis added): 'The defendants Khaled Hamid, Mounir Aboud, Ahmad al-Kasm, Rabih Nabah and Wasim Abd al-Mo'ti jointly attempted to kill him on three occasions ... *They planned these three operations, prepared weapons, kept watch on Sheikh al-Halabi and divided their roles after his ambush*, as described in the chapter on the facts and substantiated by evidence. However, Sheikh al-Halabi failed to pass the spot where they were lying in wait, thereby preventing the perpetrators from achieving the desired outcome, even though they commenced the acts that were directly aimed at perpetrating the offence.' The Appeals Chamber appears to have interpreted this passage as identifying each of the listed acts as 'acts that were aimed directly at the commission of the crime, as required by Article 200', First interlocutory decision on applicable law, para. 178. In the Trial Chamber's view, the passage does not clearly do so.

¹¹⁴⁵⁰ *Al-Halabi (Saoud)* Judgment, p. 3.

- at the intended detonation site in the *Balamand Monastery* case, beginning to prepare the explosive charge and stringing the wire that would set it off;¹¹⁴⁵¹
- travelling with weapons to the location of the intended murder;¹¹⁴⁵² and
- similarly to the finding in the second *Al-Halabi* judgment—one person giving others the weapons the latter took to the location of the intended murder.¹¹⁴⁵³

6324. The Trial Chamber concludes from this that Lebanese courts do not necessarily have a precise or entirely consistent position on what conduct, exactly, will meet the minimum threshold under Article 200 of having ‘begun’ an attempted intentional homicide. However, one factor Lebanese courts clearly take into account is proximity, in time, to the moment the attempt ended or was aborted. They consistently find that attempts began within hours or minutes of that moment, on the same day. The Trial Chamber considers this to be a reasonable approach.

6325. The case law examined here also shows that Lebanese courts apply the principle of *dolus eventualis*, set out in Article 189 of the Lebanese Criminal Code, to convict accused of the attempted intentional homicide of unintended victims. In its first interlocutory decision on applicable law, the Appeals Chamber concluded that with regard to such victims, Lebanese law holds a person ‘responsible for an aborted intentional homicide, because although the perpetrator has executed all elements of the crime of intentional homicide with *dolus eventualis*, he did not achieve the expected result for reasons beyond his control.’¹¹⁴⁵⁴ The Parties accepted this conclusion, as does the Trial Chamber.

6326. Lastly, the Trial Chamber notes for avoidance of doubt that despite the overlapping analysis in some Lebanese decisions, particularly *Karami*, of what can amount to an attempt and what level of involvement will constitute co-perpetration of that attempt, they are two distinct questions.

6327. On its face, the definition of perpetration, whether by a sole or several perpetrators, in Article 212 of the Lebanese Criminal Code, still applies in attempt cases. The Lebanese decisions

¹¹⁴⁵¹ *Balamand Monastery* Judgment.

¹¹⁴⁵² *Al-Rifai and others* Judgment, pp 3-4, 13, 15.

¹¹⁴⁵³ *Al-Rifai and others* Judgment, p. 15.

¹¹⁴⁵⁴ First interlocutory decision on applicable law, para. 183.

the Trial Chamber has examined do not suggest otherwise. Hence, for a finding of co-perpetration of attempted intentional homicide, the court must establish that each accused had the *mens rea* for a co-perpetrator of intentional homicide. If that *mens rea* is present, an accused may be a co-perpetrator either for bringing into being the constituent elements of the attempted intentional homicide or for participating directly in its commission; there is no requirement that each accused engage in the same acts.

6328. The *Al-Rifai and others* case provides examples of both kinds of co-perpetration of an Article 201 attempted intentional homicide—where all relevant acts have been completed. The Lebanese Judicial Council convicted as co-perpetrators both the person who had shot the intended murder victim, a Mufti—finding he had brought into being both the *mens rea* and *actus reus* of intentional homicide, although the victim did not die—and three others who had, variously, driven him to and from the scene, helped him to climb into the Mufti’s apartment and stood guard, armed, at the building or get-away car—finding they participated directly in the execution of the crime.¹¹⁴⁵⁵ The Trial Chamber considers these findings were reasonable and legally sustainable. Although some other Lebanese judicial decisions have found people who did the acts the three latter accused did to be accomplices only, it is consistent with the wording of the Lebanese Criminal Code to find all four to have been co-perpetrators instead.

6329. In summary, the Trial Chamber has concluded that under the law applicable in the Special Tribunal, to commit an attempted intentional homicide:

1. a person must perform an act or omission that either:
 - a. begins the execution of an intentional homicide of another person, or
 - b. executes completely the act(s) or omission(s) aimed at committing that crime, except that the other person does not die;
2. the first person must intend to cause the death of another person; and
3. circumstances beyond the first person’s control must prevent the other person’s death.

¹¹⁴⁵⁵ *Al-Rifai and others* Judgment, pp 1-2.

XIV. LEGAL FINDINGS ON ELEMENTS OF THE CRIMES AND INDIVIDUAL CRIMINAL RESPONSIBILITY

A. Legal findings on charged crimes (Counts 2-9)

1. Committing a terrorist act by means of an explosive device

(a) The crime

6330. The Trial Chamber finds that the explosion in Beirut on 14 February 2005 was a terrorist act within the meaning of Article 314 of the Lebanese Criminal Code. This defines a terrorist act as one ‘intended to cause a state of terror and committed by means liable to create a public danger such as explosive devices, inflammable materials, toxic or corrosive products and infectious or microbial agents.’

6331. Detonating an ‘explosive device’ of 2,500 to 3,000 kilograms of TNT equivalent high explosives, set on the back of a light truck, falls squarely within Article 314 as one ‘committed by means liable to create a public danger’.

6332. This particular device was of such a powerful explosive, RDX, and so large that it was inevitably going to kill or injure numerous people who were nearby when it exploded. Detonating a device of that magnitude likewise was inevitably going to destroy or damage proximate buildings and vehicles, and ignite fires. The explosion endangered any property and anyone nearby.

6333. The device exploded in a busy city street in the middle of a weekday: it was detonated approximately 50 to 80 centimetres above ground level in a street lined by multi-storey buildings. This created a ‘canyon effect’ that increased its destructive power.

6334. Numerous members of the public were bound to be have been inside buildings or passing by in vehicles or on foot, and within the explosion’s range, regardless of the fact that the target was Mr Rafik Hariri. And hundreds were, as is shown by the proportion of those killed and injured who were not members of Mr Hariri’s convoy. More than half of the 22 killed by the

explosion,¹¹⁴⁵⁶ other than the suicide bomber, and almost all of the 226 others who were injured,¹¹⁴⁵⁷ had no connection with Mr Hariri's convoy.

6335. The Trial Chamber is also satisfied beyond reasonable doubt that the explosion was an act intended to cause a state of terror. It has found the required intention to cause a state of terror from the circumstances of the explosion.

6336. The Trial Chamber has relied on the size and power of the explosive device, the manner, time and place of its detonation, and its intended target. Detonating the device in those circumstances obviously had the potential to cause fear and panic among, at least, members of the public in the area of the detonation. The evidence proves that it did. Anyone knowing that the attack was to be committed in this manner must have foreseen these consequences.

6337. Additionally, the Trial Chamber is satisfied that the fact that a suicide bomber targeted Mr Hariri shows that the explosion was intended to cause a state of terror.

6338. Mr Hariri was a former prime minister of Lebanon and a prominent political figure who, at the time of his death, was preparing for parliamentary elections in May 2005. His murder, or attempted murder, in a huge explosion would attract enormous publicity and cause many Lebanese to experience fear, insecurity and loss. The evidence from participating victims and witnesses proves that this occurred. Anyone who knew that the explosion was to be triggered in the street when Mr Hariri's convoy was passing, must have foreseen that numerous people would be killed or injured, regardless of whether it succeeded in killing him.

6339. It was also foreseeable that the public would learn that a suicide bomber triggered the attack and that this too would frighten and horrify them.

6340. Lebanese law does not define 'a state of terror', but the ordinary meaning of the word 'terror' and the Lebanese judicial interpretation of Article 314 convinces the Trial Chamber that these foreseeable consequences amounted to 'a state of terror'. The Trial Chamber also concludes

¹¹⁴⁵⁶ Amended consolidated indictment, Schedule A at p. 28, identifying 13 of those killed as bystanders; First decision on agreed facts, paras 1, 8, disposition; Second decision on agreed facts (Merhi), paras 1, 3, disposition; Agreed facts, no. (i).

¹¹⁴⁵⁷ All Parties signed agreements as to evidence under Rule 122, that 226 people were injured in the explosion. First decision on agreed facts, paras 1, 8, disposition; Second decision on agreed facts (Merhi), paras 1, 3, disposition; Agreed facts, no. (ii); Amended consolidated indictment, Schedule B at pp 39-44.

that the state of terror was not just intended for the immediate area of the attack. The attack was intended to resonate throughout Lebanon and in the region, and its intended effects were not just confined to Mr Hariri's supporters. Rather, the evidence of the political background to the attack shows that it was designed to destabilise Lebanon generally.

6341. This attack is also larger in magnitude than other terrorist incidents tried by the Lebanese courts under Article 314. The attack perhaps most closely compares to the car-bombing intended to assassinate Mr Michel Murr in 1991, which likewise 'created panic among the population, killed and injured a number of persons, and destroyed ... buildings.'¹¹⁴⁵⁸ In the present case, however, each impact was on a greater scale, and foreseeably so.

(b) Aggravating circumstances: deaths and destruction of buildings

6342. The explosion on 14 February 2005 caused deaths and the partial destruction of buildings with people inside, such as the St Georges and Byblos Hotels. Although neither is required to prove that a terrorist act was committed, these aggravating circumstances under Article 6 of the Lebanese law of 11 January 1958 are therefore established as a matter of fact. The Article is, however, irrelevant in these proceedings, as it prescribes the death penalty in such circumstances and that punishment does not exist in the Special Tribunal.¹¹⁴⁵⁹

2. Intentional homicide and attempted intentional homicide

6343. The Trial Chamber is satisfied beyond reasonable doubt that the objective elements of both intentional homicide and attempted intentional homicide are established, as is the aggravating circumstance of the use of explosive materials.¹¹⁴⁶⁰

(a) Intentional homicide

6344. The *actus reus* of this crime is the performance of an act, or omission, that is a cause of a person's death.¹¹⁴⁶¹ All Parties agreed that the explosion killed Mr Hariri, and the Trial Chamber

¹¹⁴⁵⁸ *Murr Judgment*, p. 53.

¹¹⁴⁵⁹ See chapter XIII 'Applicable law', (A) (4) 'Articles 6 and 7 of the Lebanese law of 1958'.

¹¹⁴⁶⁰ For the Trial Chamber's findings on the subjective element (*mens rea*) of these crimes, see sub-sections (C) 'Salim Jamil Ayyash', (4) (a) (iii) b. 'Mens rea for intentional homicide', (4) (b) (ii) 'Findings', (4) (c) (ii) 'Findings'.

¹¹⁴⁶¹ See para. 6308.

entered this as an agreement as to evidence.¹¹⁴⁶² This agreed fact establishes the *actus reus* of his intentional homicide.

6345. Firstly, and most obviously, this fact fulfils the requirement of death. Secondly, the fact that the explosion caused Mr Hariri's death fulfils the conduct and causation requirements for this crime.

6346. Applying the same reasoning, the Trial Chamber finds that the agreed fact that the explosion killed 21 other people, who are listed in schedule A of the amended consolidated indictment,¹¹⁴⁶³ satisfies all components of the *actus reus* of the intentional homicide of those 21 people. Specifically, it is established that they died and that the explosion caused their deaths.

(b) Attempted intentional homicide

6347. The Trial Chamber is also satisfied that the first and third of the three elements of the crime of attempted intentional homicide of 226 other people are established. Those first and third elements are the *actus reus*—requiring conduct that either began to execute the intentional homicide of the 226 people, or executed the necessary act(s) or omission(s) completely, except that those people did not die—and the requirement that circumstances beyond the perpetrator's or perpetrators' control prevented their deaths.¹¹⁴⁶⁴

6348. Under Article 200 of the Lebanese Criminal Code, the minimum *actus reus* of this crime is an act or omission that begins to execute the intentional homicide of a person, while Article 201 of that code applies to completed attempts to commit intentional homicide that have 'no effect'.¹¹⁴⁶⁵ Lebanese case law makes clear that 'no effect' in this context means simply that the person did not die, not that they were uninjured.¹¹⁴⁶⁶ Consequently, Lebanese courts have treated explosions of powerful explosive devices that injured many people near them¹¹⁴⁶⁷ as completed attempts to commit intentional homicide.

¹¹⁴⁶² Agreed facts, no. (i).

¹¹⁴⁶³ Agreed facts, no. (i).

¹¹⁴⁶⁴ See para. 6329.

¹¹⁴⁶⁵ See chapter XIII 'Applicable law', (C) (4) 'Attempted intentional homicide'.

¹¹⁴⁶⁶ See chapter XIII 'Applicable law', (C) (4) 'Attempted intentional homicide'.

¹¹⁴⁶⁷ Such as that in the *Zouk Mikayel Church* case. See para. 6319.

6349. The explosion of 14 February 2005 is in the same category. The explosive device triggered that day, both in itself and in the circumstances of its detonation, was likely to kill multiple people when detonated. The Trial Chamber further finds that the device's detonation either was the sole act, or completed fully the acts, required to realise its lethal potential. And that potential was, sadly, realised in the case of 23 people,¹¹⁴⁶⁸ but was not in that of the 226 other people whom it physically injured—some of them severely, some less so.

6350. All Parties agreed that the explosion injured those 226 people, and the Trial Chamber has entered this as an agreement as to evidence.¹¹⁴⁶⁹ The fact that each person was physically injured shows that each was within the range of the explosion.¹¹⁴⁷⁰ Further, no dispute exists that the explosion was likely to cause the death of these 226 people. In these circumstances, the Trial Chamber is satisfied beyond reasonable doubt that an act likely to cause death was committed in respect of each of these 226 people.

6351. With so large a group affected, the reasons why the injured did not die were unlikely to be the same for each person. Medical treatment after the attack would likely have saved some people's lives. Others may have avoided serious injury in the first place, by virtue of where they were at the moment of the blast. The Trial Chamber is satisfied on the evidence that these as well as a range of other circumstances prevented the 226 injured people's deaths.

6352. There is no evidence that any perpetrator of the attack played a part in the circumstances that spared these 226 lives. If circumstances such as where precisely some people were at the moment of detonation meant that the explosion could never have killed them, there is also nothing to suggest the perpetrator or perpetrators would have known those circumstances. Without such knowledge, as explained above,¹¹⁴⁷¹ whether or not the explosion could actually have killed each person is irrelevant in determining liability for their attempted intentional homicide.

6353. The Trial Chamber therefore finds that the death of each of these 226 people was prevented solely by circumstances beyond the perpetrator's or perpetrators' control. The attack on them

¹¹⁴⁶⁸ Including the suicide bomber.

¹¹⁴⁶⁹ Agreed facts, no. (ii).

¹¹⁴⁷⁰ The Trial Chamber deals with the question of the foreseeability of their presence there and the effect of Article 189 of the Lebanese Criminal Code (concerning *dolus eventualis*), for the purpose of determining individual criminal responsibility for this crime, *see* sub-section (C) 'Salim Jamil Ayyash', (4) (a) (iii) 'Findings', below.

¹¹⁴⁷¹ *See* para. 6313.

hence falls under Article 201: all acts required to commit a felony, intentional homicide, ‘were completed, but produced no effect owing to circumstances beyond the control of’ the perpetrator or perpetrators.

(c) Aggravating circumstance: use of explosive materials

6354. Finally, the Trial Chamber finds beyond reasonable doubt that the explosive device used in the attack contained explosive materials within the meaning of Article 549 (7) of the Lebanese Criminal Code. Specifically, the Trial Chamber has already found that the device contained RDX. This is a form of high explosives material, also known as explosives.

6355. Further, taking into account both the wording of Article 549 (7) itself and Lebanese case law such as the *Karami Judgment*,¹¹⁴⁷² the Trial Chamber is satisfied beyond reasonable doubt that committing intentional homicide and attempted intentional homicide by detonating that device would constitute ‘using explosive materials’ to commit those crimes. That aggravating circumstance is therefore established, although as such, it is not necessary for proving either crime. Moreover, as with the circumstances aggravating the crime of committing a terrorist act, the punishment that Article 549 (7) prescribes for committing these crimes using explosive materials—the death penalty—cannot apply in this case.¹¹⁴⁷³

B. Conspiracy to commit a terrorist act (Count 1)

6356. Each of the four Accused are charged with participating in a conspiracy, in which it is alleged that they together with Mustafa Amine Badreddine ‘and others as yet unidentified, including the assassination team agreed to commit a terrorist act by means of an explosive device’ in order to assassinate Mr Hariri.¹¹⁴⁷⁴ The short heading in count one of the amended consolidated indictment is ‘Conspiracy aimed at committing a Terrorist Act’.

6357. The Prosecutor pleads that the ‘aim of the conspiracy, to which all conspirators knowingly agreed, was to commit a terrorist act by detonating a large quantity of explosives in a public place, in order to kill’ Mr Hariri.¹¹⁴⁷⁵

¹¹⁴⁷² See para. 6292.

¹¹⁴⁷³ See paras 6272-6273, *see also* para. 5892.

¹¹⁴⁷⁴ Amended consolidated indictment, paras 1 (count one), 48.

¹¹⁴⁷⁵ Amended consolidated indictment, para. 51.

6358. Each co-conspirator is pleaded to have had a separate role. Mr Ayyash is alleged to have been the ‘assassination team coordinator’. Mr Merhi was ‘the coordinator of the false claim of responsibility’. Mr Badreddine was the ‘monitor/coordinator’ of the conspiracy. Mr Oneissi and Mr Sabra had the pleaded roles of performing ‘supporting tasks for the assassination’. These were seeking a suitable individual, namely Mr Abu Adass, to use ‘to make the false claim of responsibility, in a video, for the attack’ on Mr Hariri, and ‘to ensure the delivery of the video, with a letter attached, for broadcast after the assassination’.¹¹⁴⁷⁶

6359. The evidence underlying the conspiracy is set out and analysed in other sections.

1. The crime of conspiring to commit a terrorist act

6360. The elements of the crime of conspiring to commit a terrorist act are thoroughly analysed at chapter XIII ‘Applicable law’, (C) (2) ‘Conspiracy aimed at committing a terrorist act’. The evidence and the facts must prove the legal elements of the conspiracy charged.

6361. To assassinate someone as closely guarded and protected as Mr Hariri required much careful planning and preparation in the context of this case. This included:

- obtaining a detailed knowledge of his movements, his convoy, its personnel and his usual position within it;
- establishing closed mobile networks for communications between those having some role in the plot, knowing or otherwise;
- choosing a method of assassination;
- obtaining the Mitsubishi Canter, the vehicle used for the assassination;
- picking a suitable site for an explosion;
- selecting a manner of detonation including recruiting the suicide bomber;
- procuring the explosives; and
- setting up the claim of responsibility, including arranging Mr Abu Adass’s role in it.

¹¹⁴⁷⁶ Amended consolidated indictment, para. 48 (b)-(c).

6362. For the conspiracy to exist it was not necessary that everyone having some role in the plot knew that they were part of a conspiracy that involved killing Mr Hariri. For example, the evidence establishes beyond reasonable doubt that at least some users of the Green, Red, Blue and Yellow mobile networks had the common aim of assassinating Mr Hariri, but others may not have. A number of people appear to have been involved in the essential preparatory work, but the number who had to have known of the objective of the plot, namely to kill Mr Hariri, of necessity, would have been smaller.

6363. Legally, to find the existence of a conspiracy to commit a terrorist act, the objective of which was to kill Mr Hariri, the Trial Chamber must be satisfied that, before the attack, two or more people knew and agreed on the four things required by Article 270 of the Lebanese Criminal Code. In this case, this means that they knew and agreed:

1. to kill Mr Hariri;
2. by a means liable to create a public danger;
3. namely, a large explosive device; and
4. that the device would be used so as to create a state of terror—specifically, as charged, that it would be detonated in a public place, consequently killing and injuring people.

6364. However, even if they were not legally required to have known that Mr Hariri was their target,¹¹⁴⁷⁷ the conspirators must have known of and agreed to the last three things in the list, namely, numbers (2) to (4). After carefully reviewing the evidence, the Trial Chamber has concluded that all participants to this conspiracy—in which murdering Mr Hariri was its object—were aware of and agreed with all four. The Trial Chamber is satisfied that all conspirators were aware that they were participating in a conspiracy to murder Mr Hariri and how it was to be done. This required only a small tight-knit group.

6365. The Trial Chamber has determined that the evidence establishes the existence of a conspiracy to commit a terrorist act aimed at killing Mr Hariri. This applies whether or not

¹¹⁴⁷⁷ Given the lack of Lebanese case law on the question of whether conspirators to commit a terrorist act must know the identity of the target, the Trial Chamber has also considered the legal framework that would apply where knowledge of the target is not an element of the crime, *see* chapter XIII ‘Applicable law’, (B) (2) (c) ‘Conclusion: the law applicable to accomplice liability’, *see also* paras 6262-6267.

knowledge of the ultimate objective of killing Mr Hariri is a required element of the crime under Lebanese law. This means that for the purposes of the findings below, on the facts of this case, it does not matter whether Lebanese law requires knowledge of the objective of killing Mr Hariri. This is because the evidence establishes that those who were using the Red mobiles on Monday 14 February 2005 must have known on that day that Mr Hariri was the target of the attack.¹¹⁴⁷⁸

(a) Findings on the elements of the crime of conspiracy: a brief summary

6366. The Trial Chamber has found that Article 270 of the Lebanese Criminal Code defines the crime of conspiracy for the purpose of proceedings before the Special Tribunal.¹¹⁴⁷⁹ It applies to felonies that are crimes against State security, such as terrorist acts. A conspiracy to commit a felony is an agreement between at least two people to commit that felony by specific means.

6367. If the felony is a terrorist act, each conspirator must have agreed to commit the act using a means liable to create a public danger. They must also have agreed on the particular ‘means’ to be used, and on using it in a manner likely to create a state of terror. Furthermore, if the terrorist act aims to kill a particular person, and killing that person would *itself* be likely to create a state of terror, each person must also have agreed to that aim.¹¹⁴⁸⁰

6368. Additionally, the Trial Chamber has found that a conspiracy to commit a terrorist act in order to kill Mr Hariri exists if at least two people agreed to use a large explosive device in a public place, accepted that this act would kill and injure people, and aimed to kill Mr Hariri.

6369. Each would be a conspirator even if some knew details of the plot that others did not, some had no contact with others, some joined the plot after it was formed, and each played a different part in effecting it. The conspirators need not—though they may—belong to a formal organisation. And, to find that a conspiracy occurred the Trial Chamber need not determine who all the conspirators were, and it need not exist for any defined length of time.

6370. A conspiracy to commit a terrorist act in order to kill Mr Hariri need not achieve its aim; the agreement is the crime. In this case though, sadly the conspiracy did achieve its deadly aim.

¹¹⁴⁷⁸ The Trial Chamber has concluded, in determining the applicable law that it is reasonable to conclude that the law requires knowledge of the main target’s identity at least in a conspiracy to commit a terrorist act aimed at killing a particular person, because of that person’s public profile, for example, holding high public office.

¹¹⁴⁷⁹ See chapter XIII ‘Applicable law’, (C) (2) ‘Conspiracy aimed at committing a terrorist act’.

¹¹⁴⁸⁰ See paras 6261-6264.

On 14 February 2005, a large explosive device detonated on a public Beirut city street killing Mr Hariri and 21 others, while injuring many others. This terrorist act also fulfilled the objective elements of the intentional homicide of Mr Hariri and 21 others, and the attempted intentional homicide of the other injured 226.¹¹⁴⁸¹

(b) Charges

6371. In count one of the amended consolidated indictment, the Prosecutor charges the four Accused with participating in a conspiracy to commit a terrorist act, with others, including the former Accused, Mr Mustafa Amine Badreddine, and five unidentified people referred to as Subjects 5, 6, 7, 8 and 9, abbreviated as S5, S6, S7, S8 and S9.¹¹⁴⁸²

6372. These five and Mr Ayyash were allegedly the ‘assassination team’. The six in the ‘assassination team’ used Red and Blue network mobiles, and four, Mr Ayyash, and Subjects 6, 8 and 9, also used Yellow network mobiles.¹¹⁴⁸³ Paragraph 48 pleads that Mr Ayyash, Mr Merhi, Mr Oneissi and Mr Sabra together with Mr Badreddine ‘and others as yet unidentified, including the assassination team, agreed to commit a terrorist act by means of an explosive device in order to assassinate’ Mr Hariri. This is the objective of the conspiracy.

6373. All conspirators, according to the amended consolidated indictment, knowingly agreed to commit a terrorist act by detonating a large quantity of explosives in a public place, in order to assassinate Mr Hariri.¹¹⁴⁸⁴ It was intended to cause a state of terror by a predetermined means liable to create a public danger. The conspirators also either acted intentionally and with premeditation, or foresaw and accepted the risk that their actions would kill and attempt to kill others in the immediate vicinity of the explosion and partially destroy buildings.¹¹⁴⁸⁵

¹¹⁴⁸¹ As set out above in sub-sections, (A) (1) ‘Committing a terrorist act by means of an explosive device’ and (2) ‘Intentional homicide and attempted intentional homicide’.

¹¹⁴⁸² Amended consolidated indictment, paras 1, 3, 15 (a), 48, 50-51, 53, 54 (a)-(c), (h).

¹¹⁴⁸³ Amended consolidated indictment, para. 15 (a), (c)-(d). On the Prosecution’s case, Mr Ayyash used mobiles Red 741, Blue 233 and Yellow 294; Subject 5 used mobiles Red 636 and Blue 585; Subject 6 used mobiles Red 678, Blue 610 and Yellow 457; Subject 7 used mobiles Red 946 and Blue 324; Subject 8 used mobiles Red 893, Blue 817 and Yellow 933; and Subject 9 used mobiles Red 652, Blue 864 and Yellow 024; *see* amended consolidated indictment, para. 18.

¹¹⁴⁸⁴ Amended consolidated indictment, paras 1, 3, 48, 51, 54 (a), (d).

¹¹⁴⁸⁵ Amended consolidated indictment, para. 54 (c), (e)-(g).

6374. The amended consolidated indictment pleads that Mr Ayyash as the alleged coordinator of the assassination team, Mr Merhi as the alleged coordinator of the false claim of responsibility and Mr Badreddine as the alleged ‘monitor/coordinator’ entered into this agreement between 11 November 2004 and the morning of 14 February 2005, before the attack.¹¹⁴⁸⁶ These three and the five unidentified members of the assassination team—Subjects 5, 6, 7, 8 and 9—according to the amended consolidated indictment, were ‘early members’ of the conspiracy.¹¹⁴⁸⁷

6375. The Prosecutor also alleges that Mr Ayyash, Mr Merhi and Mr Badreddine used a closed network of three Green mobiles to monitor and coordinate all aspects of the conspiracy, including the preparation and perpetration of the attack and the preparation of the false claim of responsibility.¹¹⁴⁸⁸

6376. The pleadings specify that Mr Ayyash and the other members of the assassination team used Red, Blue and Yellow network mobiles for the surveillance of Mr Hariri. The so-called ‘assassination team’, under Mr Ayyash’s coordination, also used the Red network mobiles on 14 February 2005.¹¹⁴⁸⁹ Mr Ayyash and Mr Badreddine coordinated the purchase of the Mitsubishi Canter that was used to perpetrate the attack.¹¹⁴⁹⁰ Mr Ayyash was also in contact with Mr Merhi in preparations for the attack, including making the false claim of responsibility.¹¹⁴⁹¹

6377. Mr Oneissi and Mr Sabra, according to the amended consolidated indictment, joined the conspiracy between 22 December 2004 and the morning of 14 February 2005, before the attack. They performed the supporting but necessary tasks of seeking a suitable individual, Mr Ahmad Abu Adass, to make a videoed false claim of responsibility for the attack. They also ensured the delivery of the video, and an attached letter, for broadcast after the attack.¹¹⁴⁹²

6378. Mr Oneissi, it is alleged, also participated in Mr Abu Adass’s disappearance by posing as ‘Mohammed’ who befriended him at the Arab University Mosque.¹¹⁴⁹³ Mr Merhi, Mr Oneissi and

¹¹⁴⁸⁶ Amended consolidated indictment, paras 48 (a)-(b), 54.

¹¹⁴⁸⁷ Amended consolidated indictment, para. 48 (b).

¹¹⁴⁸⁸ Amended consolidated indictment, paras 15 (b), 19 (a).

¹¹⁴⁸⁹ Amended consolidated indictment, paras 15 (a), (c)-(d), 19 (b).

¹¹⁴⁹⁰ Amended consolidated indictment, para. 3 (a).

¹¹⁴⁹¹ Amended consolidated indictment, paras 3 (a), 19 (c), 31.

¹¹⁴⁹² Amended consolidated indictment, paras 48 (c) (i)-(ii), 54.

¹¹⁴⁹³ Amended consolidated indictment, para. 3 (b).

Mr Sabra used their personal mobiles—termed as a group of ‘Purple phones’—to communicate with each other regarding the preparation and carrying out of the false claim of responsibility.¹¹⁴⁹⁴

6379. The Prosecutor also alleges that the four Accused were—as was Mr Badreddine—Hezbollah supporters.¹¹⁴⁹⁵

(c) Findings of fact

6380. The Trial Chamber, as set out above in other sections, has found the following facts established, including those where it is necessary to make the finding beyond reasonable doubt:

i. Political background

- Mr Hariri was a prominent political figure in Lebanon. He had served as prime minister in five governments before resigning in October 2004 and was preparing for parliamentary elections, due to start in May 2005, when he was killed.¹¹⁴⁹⁶

ii. Role of coloured network mobiles

- Some of the users of the Green, Red, Blue and Yellow networks were involved in a common mission, namely, to assassinate Mr Hariri;¹¹⁴⁹⁷
- During the period alleged in the amended consolidated indictment, the Green network comprised Green 023, Green 300 and Green 071. It was a closed network between the three mobiles. It had the appearance of functioning, at least in part, as a ‘mission command’.¹¹⁴⁹⁸ However, a mission command, in particular when it relates to separate limbs of the mission as is the case here, does not automatically

¹¹⁴⁹⁴ Amended consolidated indictment, paras 15 (e), 19 (c)-(d). Further details of the charged involvement of each of the Accused in the conspiracy are summarised in the relevant sections below, *see* (B) (3) ‘Findings on the charged conspiracy to commit a terrorist act’, (D) (3) ‘Findings on individual criminal responsibility’.

¹¹⁴⁹⁵ Amended consolidated indictment, para. 49.

¹¹⁴⁹⁶ These are facts agreed by all Parties that the Trial Chamber has exercised its discretion to consider to be proven. Agreed facts, nos (v)-(vii).

¹¹⁴⁹⁷ *See* para. 4736.

¹¹⁴⁹⁸ *See* chapter VIII ‘Nature and purpose of colour-coded mobile networks and Purple group of mobiles’, (C) (7) ‘Findings; chapter X ‘Chronology of network mobile activity before Mr Hariri’s assassination on Monday 14 February 2005’, (E) (7) ‘Role of the Green network’; *see also* paras 2407-2408.

make all of its members equally responsible for or knowledgeable about the mission;¹¹⁴⁹⁹ and

- Communication between the three Green mobiles followed a structure in which Green 023 communicated only with Green 071 and with Green 300. The users of Green 071 and Green 300 had no contact with each other on their Green mobiles.¹¹⁵⁰⁰

iii. Attribution of Green network mobiles to Mr Badreddine, Mr Ayyash and Mr Merhi

- Mr Ayyash was the user of Green 300; and Mr Badreddine was the user of Green 023; while the Trial Chamber could not be satisfied beyond reasonable doubt that Mr Merhi was the user of Green 071.¹¹⁵⁰¹

iv. Surveillance of Mr Hariri

- The users of the six core Red mobiles, the six core Blue mobiles and the four core Yellow mobiles, conducted surveillance of Mr Hariri and his movements on fourteen different days between 20 October 2004 and Monday 14 February 2005;¹¹⁵⁰²
- Mr Ayyash was the user of at least one mobile in each of these three core groups, namely Red 741, Blue 233 and Yellow 294;¹¹⁵⁰³
- Before Monday 14 February 2005, the day of the attack, the following instances of surveillance were recorded (some of which overlap):

¹¹⁴⁹⁹ See sub-section (3) (f) (ii) 'Mr Badreddine's Green network activity', paras 6623-6635, below.

¹¹⁵⁰⁰ See chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles', (C) 'Green network', (7) 'Findings'.

¹¹⁵⁰¹ See paras 3189, 3671 4262.

¹¹⁵⁰² See chapter X 'Chronology of network mobile activity before Mr Hariri's assassination on Monday 14 February 2005', (E) 'Findings'.

¹¹⁵⁰³ See paras 3067, 3141, 3255. Mr Ayyash may also have been using Blue 322, but as this was not pleaded, the Trial Chamber has made no findings to this effect against him.

- Red 741, Mr Ayyash's Red mobile was involved in at least four instances of surveillance. This mobile was in contact with other Red mobiles while their users conducted mobile surveillance of Mr Hariri, on:
 - Monday 31 January 2005 (Higher Shiite Council);
 - Thursday 3 February 2005 (St Georges Marina);
 - Tuesday 8 February 2005 (near the Parliament); and
 - Saturday 12 February 2005 (during trips to churches in Badaro and Mazraa).¹¹⁵⁰⁴
- Mr Ayyash's Blue 233 was involved in at least four separate surveillance operations. It was in contact with other Blue mobiles while their users were engaged in mobile surveillance of Mr Hariri, namely on:
 - Saturday 29 January 2005 (a visit to Mr Hamade's residence from Quraitem Palace and a trip to Al-Naameh Villa);
 - Monday 31 January 2005 (Higher Shiite Council);
 - Monday 7 February 2005 (trip from airport to Quraitem Palace); and
 - Tuesday 8 February 2005 (near the Parliament).¹¹⁵⁰⁵
- Mr Ayyash's Yellow 294 was in contact with other Yellow mobiles while their users twice conducted mobile surveillance of Mr Hariri, on:
 - Tuesday 21 December 2004 (during a meeting with the Hezbollah leader, Mr Hassan Nasrallah in Dahyieh, south Beirut); and

¹¹⁵⁰⁴ See chapter X 'Chronology of network mobile activity before Mr Hariri's assassination on Monday 14 February 2005', (C) (2) 'Surveillance of Mr Hariri and preparations for the attack—Wednesday 20 October 2004 to Sunday 13 February 2005'.

¹¹⁵⁰⁵ See chapter X 'Chronology of network mobile activity before Mr Hariri's assassination on Monday 14 February 2005', (C) (2) 'Surveillance of Mr Hariri and preparations for the attack—Wednesday 20 October 2004 to Sunday 13 February 2005'.

- Friday 31 December 2004 (during a journey between Faqra Villa and Quraitem Palace).¹¹⁵⁰⁶
- Mr Ayyash was also the user of another Blue mobile, Blue 322, between 18 October 2004 and Monday 27 December 2004, but because this was not pleaded in the amended consolidated indictment no findings in this respect are made against him;¹¹⁵⁰⁷
 - Blue 322 was in contact with other Blue mobiles while their users were conducting mobile surveillance of Mr Hariri on Tuesday 21 December 2004, when he was meeting Mr Nasrallah;¹¹⁵⁰⁸
- Subject 6 was the user of Red 678 and Blue 610;¹¹⁵⁰⁹ and
 - Red 678 was involved in two surveillance operations. It was in contact with other Red mobiles, including Mr Ayyash's Red 741, while their users conducted mobile surveillance of Mr Hariri on:
 - Monday 31 January 2005 (Higher Shiite Council); and
 - Saturday 12 February 2005 (during trips to churches in Badaro and Mazraa). Red 678 was also in areas relevant to the surveillance and participated in it.¹¹⁵¹⁰
 - Blue 610 was involved in seven instances of surveillance. It was in contact with other Blue mobiles, including Mr Ayyash's Blue 233, while their users

¹¹⁵⁰⁶ See chapter X 'Chronology of network mobile activity before Mr Hariri's assassination on Monday 14 February 2005', (C) (2) 'Surveillance of Mr Hariri and preparations for the attack—Wednesday 20 October 2004 to Sunday 13 February 2005'.

¹¹⁵⁰⁷ See para. 3096.

¹¹⁵⁰⁸ See chapter X 'Chronology of network mobile activity before Mr Hariri's assassination on Monday 14 February 2005', (C) (2) 'Surveillance of Mr Hariri and preparations for the attack—Wednesday 20 October 2004 to Sunday 13 February 2005'.

¹¹⁵⁰⁹ See para. 4274.

¹¹⁵¹⁰ See chapter X 'Chronology of network mobile activity before Mr Hariri's assassination on Monday 14 February 2005', (C) (2) 'Surveillance of Mr Hariri and preparations for the attack—Wednesday 20 October 2004 to Sunday 13 February 2005'.

were engaged in mobile surveillance of Mr Hariri. Blue 610 was also in areas relevant to the surveillance and participated in it. This occurred on:

- Monday 27 December and Friday 31 December 2004 (trips from Faqra Villa to Quraitem Palace);
- Saturday 1 January 2005 (visiting Mr Marwan Hamade's residence and returning to Quraitem Palace);
- Saturday 29 January 2005 (trip to Mr Hamade's residence from Quraitem Palace, and to Al-Naameh Villa);
- Monday 31 January 2005 (Higher Shiite Council);
- Friday 4 February 2005 (from Quraitem Palace to the airport); and
- Saturday 12 February 2005 (trip to church in Badaro).

v. 'Hierarchical' call flows

- The patterns of call flows from the Green network users to the Blue and Red networks reveal several that *could* be considered 'hierarchical'.¹¹⁵¹¹ Several calls from Mr Badreddine on Green 023 to Mr Ayyash on Green 300 were followed, within a short time, by calls from Mr Ayyash—either on Blue 233 or Red 741—to, respectively, another Blue or Red mobile;¹¹⁵¹² and
- There were at least six call flows from Mr Ayyash on Green 300 to Mr Badreddine on Green 023 after Mr Ayyash had been contacted by other network mobiles.¹¹⁵¹³

¹¹⁵¹¹ See chapter X 'Chronology of network mobile activity before Mr Hariri's assassination on Monday 14 February 2005', (E) 'Findings', (7) 'Role of the Green network'.

¹¹⁵¹² See chapter X 'Chronology of network mobile activity before Mr Hariri's assassination on Monday 14 February 2005', (C) (2) 'Surveillance of Mr Hariri and preparations for the attack—Wednesday 20 October 2004 to Sunday 13 February 2005'.

¹¹⁵¹³ See chapter X 'Chronology of network mobile activity before Mr Hariri's assassination on Monday 14 February 2005', (C) (2) 'Surveillance of Mr Hariri and preparations for the attack—Wednesday 20 October 2004 to Sunday 13 February 2005', (3) 'The day of the attack—Monday 14 February 2005'.

vi. Mitsubishi Canter

- The attack on Monday 14 February 2005 involved an explosion of RDX of 2,500-3,000 kilograms of TNT equivalent, laid out in the rear of a Mitsubishi Canter, weighing around two tonnes;¹¹⁵¹⁴
- The explosives were triggered by an unknown suicide bomber;¹¹⁵¹⁵
- Obtaining the Canter was part of the conspiracy to kill Mr Hariri;¹¹⁵¹⁶
- A ‘dealership’ in Tripoli sold the Canter to two unidentified men on either Monday 17 or Tuesday 25 January 2005. Of those two dates, 25 January 2005 is the more probable;¹¹⁵¹⁷
- On Tuesday 25 January 2005, in the afternoon, there were seven network mobile calls with Subject 6’s attributed Blue 610, connecting to cells in Tripoli. Four of them were with Mr Ayyash on Blue 233. Mr Ayyash’s Green 300 called Mr Badreddine’s Green 023 at 15:10 that day. That was in between two of Blue 610’s seven calls in Tripoli—approximately eleven minutes after the fourth call and 27 minutes before the fifth;¹¹⁵¹⁸
- Green or Blue mobile users had activated cells that provide predicted best server coverage in Tripoli on five days earlier in January 2005:
 - On Tuesday 11 January 2005, Mr Ayyash’s Green 300 mobile had activated cells that provided predicted best coverage to the Tripoli ‘showroom’ or ‘dealership’ where the Canter was bought, with two calls to Mr Badreddine’s Green 023; and

¹¹⁵¹⁴ See para. 1448.

¹¹⁵¹⁵ See para. 1448.

¹¹⁵¹⁶ See para. 4793.

¹¹⁵¹⁷ See chapter XI ‘Importation and sale of Mitsubishi Canter’, (C) ‘Findings’.

¹¹⁵¹⁸ See para. 4780.

- On Wednesday 12, Friday 14, Saturday 15 and Saturday 22 January 2005, Blue 817 (allegedly Subject 8) had activated cells in Tripoli with calls to Subject 6's Blue 610 and Blue 510.¹¹⁵¹⁹
- vii. Explosion on Monday 14 February 2005
- The six core Red mobiles, including Mr Ayyash's Red 741, played a crucial role in executing the attack on Monday 14 February 2005:¹¹⁵²⁰
 - specifically, on Monday 14 February 2005, the six Red mobiles used by Mr Ayyash and Subjects 5, 6, 7, 8 and 9, tracked Mr Hariri and his convoy's movements, made calls that alerted other members of the Red network to Mr Hariri's location, and prepared for the final surveillance and for the execution of the attack along the route that he was expected to take; and
 - aimed at ensuring that the explosive device detonated at the exact time the convoy would pass.¹¹⁵²¹
- Thirty-three calls occurred between the six core Red mobiles in the two hours before the attack. Mr Ayyash's Red 741 mobile was the only one that was in contact with all of the other five Red mobiles that day. Mr Ayyash's calls on Red 741 to Subject 6's Red 678, Subject 8's Red 893 and Subject 9's Red 652, at 11:33:33, 11:34:31 and 11:35:05, triggered the relocation of the users of those three mobiles from Quraitem Palace to the Parliament area, substantially launching the beginning of the operation;¹¹⁵²²

¹¹⁵¹⁹ See paras 4777-4778.

¹¹⁵²⁰ See chapter X 'Chronology of network mobile activity before Mr Hariri's assassination on Monday 14 February 2005', (C) (3) 'The day of the attack—Monday 14 February 2005'.

¹¹⁵²¹ See chapter X 'Chronology of network mobile activity before Mr Hariri's assassination on Monday 14 February 2005', (C) (3) 'The day of the attack—Monday 14 February 2005', (E) 'Findings'; see also paras 4718-4720.

¹¹⁵²² See chapter X 'Chronology of network mobile activity before Mr Hariri's assassination on Monday 14 February 2005', (C) (3) 'The day of the attack—Monday 14 February 2005', (E) 'Findings'.

- Mr Ayyash's last call using his Red 741 was at 12:50:55,¹¹⁵²³ less than five minutes before the explosion. After the explosion, neither Red 741 nor any other Red mobile was ever used again;¹¹⁵²⁴
- Mr Ayyash coordinated the movements of the users of the three other Red mobiles, Subject 6's Red 678, Subject 8's Red 893 and Subject 9's Red 652 that day;¹¹⁵²⁵
- Just before the attack, there were calls involving Mr Badreddine's Green 023, Mr Ayyash's Green 300 and Mr Ayyash's Red 741:
 - At 11:57, Subject 5's Red 636 called Red 741, then near the crime scene on the PHENMB1 cell. Red 636 was south of the crime scene near the Suleiman Frangieh tunnel, using the ZOUKAK2 cell at the call's start and the PHENMB1 cell at its end. Forty seconds later, at 11:58:31, Mr Ayyash used Green 300 to call Mr Badreddine's Green 023 for 14 seconds. This was the last call within the Green network. Mr Ayyash's Green 300 activated cell towers approximately 100 to 300 metres from the crime scene.¹¹⁵²⁶

viii. False claim of responsibility

- On the afternoon of Monday 14 February 2005, Al-Jazeera broadcast a video in which Mr Ahmad Abu Adass claimed responsibility for the attack on Mr Hariri on behalf of an unknown group, 'Victory and Jihad in Greater Syria', but without referring to the date or manner of his death. A more specific claim, naming the date of the attack as 14 February 2005, was made in the letter that accompanied this video.¹¹⁵²⁷

¹¹⁵²³ From Red 893 for ten seconds. Red 741 used ZOUKAK1, Red 893 activated ETOILE1. *See* para. 4652.

¹¹⁵²⁴ *See* paras 4654-4655, 4669.

¹¹⁵²⁵ *See* chapter X 'Chronology of network mobile activity before Mr Hariri's assassination on Monday 14 February 2005', (C) (3) 'The day of the attack—Monday 14 February 2005'; chapter XIV 'Legal findings on elements of the crimes and Individual criminal responsibility', (C) 'Salim Jamil Ayyash', (3) (e) 'Findings' (on count two).

¹¹⁵²⁶ *See* paras 4644-4645.

¹¹⁵²⁷ *See* chapter XII 'Claim of responsibility for the attack on Rafik Hariri', (G) 'Whether the claim of responsibility was false', (3) 'Findings'.

ix. Disappearance of Ahmad Abu Adass on Sunday 16 January 2005

- Mr Abu Adass disappeared from his home in Beirut on the morning of Sunday 16 January 2005. His family reported him missing on Wednesday 19 January 2005 and never saw him again.

x. Attribution and activity of Purple mobiles

- Mr Merhi was the user of his personal mobile Purple 231; Mr Oneissi was the user of his personal mobile Purple 095; and Mr Sabra was a user of mobile Purple 018;¹¹⁵²⁸
- During the period pleaded for the conspiracy, Mr Oneissi and Mr Sabra used Purple 095 and Purple 018. Mr Oneissi's mobile and Mr Sabra's shared mobile called each other and Mr Merhi on Purple 231, and Mr Oneissi and Mr Sabra's mobile were present in locations near the Arab University Mosque in Beirut, where Mr Abu Adass prayed daily, in late December 2004 and early January 2005;¹¹⁵²⁹
- The Purple mobiles were inactive on Sunday 16 January 2005, but Green 071 and Mr Badreddine's Green 023 had five calls to each other early in the morning that day;¹¹⁵³⁰
- Mr Oneissi's Purple 095 briefly connected to a cell providing coverage to the mosque on the evening of Monday 17 January 2005;
- From Tuesday 18 January 2005 to Saturday 13 February 2005, there was limited contact between the Purple mobiles, and between the Green mobiles; and
- The final call between Green 071 and Mr Badreddine on Green 023 was on Monday 7 February 2005.

¹¹⁵²⁸ See paras 3616, 3826, 4038-4039.

¹¹⁵²⁹ See chapter XII 'Claim of responsibility for the attack on Rafik Hariri', (D) (3) 'Activity of Mr Merhi's Purple 231, Mr Oneissi's Purple 095 and Mr Sabra's attributed Purple 018, between December 2004 and Friday 7 January 2005'.

¹¹⁵³⁰ See paras 5372-5378.

xi. Video of false claim of responsibility

- The video featuring Mr Abu Adass must have been made between Sunday 16 January 2005, when he left his home, and the attack on Monday 14 February 2005, but on an unknown date, in an unknown location and by unknown people.¹¹⁵³¹

xii. Dissemination of false claim video on Monday 14 February 2005

- On Monday 14 February 2005, a call was made to Reuters news agency at 14:11 from a payphone, in which the caller claimed responsibility for the attack in the name of the *Nusra* and *Jihad* group in Greater Syria. Eight minutes earlier at 14:03, Mr Sabra's shared mobile, Purple 018, had activated a cell providing coverage to an area a few hundred metres from this payphone;
- This call was followed by one to Al-Jazeera at 14:19, from a second payphone. The caller read a statement, claiming responsibility for the attack in the name of the same *Nusra* and *Jihad* group. Mr Oneissi's Purple mobile and Mr Sabra's shared Purple mobile activated a cell at least one kilometre from this payphone within twenty minutes of the call;
- A second call to Al-Jazeera was made at 15:27, from a third payphone, saying that a video tape had been placed in a tree near the Al-Jazeera building. Mr Sabra's shared Purple 018 activated cells providing coverage to this payphone, 26 minutes later;
- At 15:55, Al-Jazeera employees recovered an enclosed letter and the video tape featuring Mr Abu Adass from a tree near the Al-Jazeera office. Mr Sabra's shared Purple 018 activated cells providing coverage to the area around the tree with the videotape, five minutes after the collection of the tape. Mr Oneissi's Purple 095 connected to a cell providing predicted coverage to the tree containing the videotape at the time it was collected;

¹¹⁵³¹ See chapter XII 'Claim of responsibility for the attack on Rafik Hariri', (G) 'Whether the claim of responsibility was false', (3) 'Findings'.

- A third call was made to Al-Jazeera at 17:04, from a fourth payphone, in which the caller demanded that the video be broadcast. Eleven minutes later, at 17:15, Mr Sabra's attributed shared Purple 018 called Mr Merhi's Purple 231 while connecting to a cell, adjacent to that covering the fourth payphone, about 750 metres away;
- The calls from the four payphones were made with the same telecard;
- According to Al-Jazeera's Beirut chief, Mr Ghassan Ben-Jeddo, who took each call, there were three different callers. Following the final call to Al-Jazeera at 17:04, when the caller urged the broadcast of the video tape, the footage was eventually shown at 17:30;
- On Monday 14 February 2005, Mr Oneissi's Purple 095 and Mr Sabra's shared Purple 018 were used in areas near or *relatively* near to the four payphones from which media outlets were called, and the tree from which the video was collected;
- There were nineteen calls between the three Purple mobiles that day; and
- Mr Merhi used his personal mobile Purple 231 which was in southern Beirut, ten times, seven of which were contacts with Mr Sabra's shared personal mobile, Purple 018, during the afternoon. Mr Merhi's Purple 231 was in contact with Mr Sabra's shared Purple 018 before the call to Reuters, after the three calls to Al-Jazeera, and just before and just after the collection of the video tape and the letter.

xiii. Discarding of Purple mobiles after the attack

- Mr Oneissi, Mr Sabra and Mr Merhi stopped using those personal mobiles, Purple 095, 018 and 231 shortly after the attack; Purple 231 on Tuesday 15 February, and Purple 018 and Purple 095 on Wednesday 16 February 2005.¹¹⁵³²

¹¹⁵³² See paras 5610-5615.

xiv. Mobile network congestion after the attack on Monday 14 February 2005

- After the attack, the mobile telecommunications networks in Beirut were experiencing congestion, in which calls could not be made, or were redirected to neighbouring cells; and
- This diminishes the reliability of the cell site evidence that afternoon and hence where Mr Oneissi's mobile and Mr Sabra's shared mobile were when calls were made.

6381. The Trial Chamber has found that it is not satisfied beyond reasonable doubt that Mr Merhi, Mr Oneissi or Mr Sabra participated in targeting Mr Abu Adass at the Arab University Mosque in late December 2004 or early January 2005, his reported disappearance on Sunday 16 January 2005 or disseminating the claim on the day of the attack. It is also not satisfied beyond reasonable doubt that Mr Oneissi was the 'Mohammed' pleaded in the amended consolidated indictment.

6382. It is also not satisfied that Mr Abu Adass was abducted on Sunday 16 January 2005, as opposed to his voluntarily leaving his home. Nor that any of the three Accused participated in abducting him on that day or any other. Nor that he was forced to participate in making the false claim of responsibility for the attack. Nor that any of the three took part in producing the video of the claim of responsibility, or any of the necessary preparations for it.¹¹⁵³³

6383. The Trial Chamber has set out above, in detail, the historical and political background to the attack on Mr Hariri.¹¹⁵³⁴ As to the alleged links between the attack, the Accused and Hezbollah specifically, the Trial Chamber has found or accepted that the evidence establishes that:¹¹⁵³⁵

- Hezbollah is a political grouping with a military wing;¹¹⁵³⁶
- Those responsible for coordinating the attack had access to what could correctly be described as 'military-grade explosives';¹¹⁵³⁷

¹¹⁵³³ See paras 5459, 5771; chapter XII 'Claim of responsibility for the attack on Rafik Hariri', (J) 'Conclusion'.

¹¹⁵³⁴ See generally, chapter IV 'Historical and political background to the attack'.

¹¹⁵³⁵ See chapter IV 'Historical and political background to the attack'.

¹¹⁵³⁶ See para. 421.

¹¹⁵³⁷ See chapter IV 'Historical and political background to the attack', (T) 'Summary'.

- Mr Badreddine was a senior Hezbollah military official, at least during the war in Syria between 2011 and May 2016;¹¹⁵³⁸
- Mr Ayyash, Mr Oneissi and Mr Sabra were Hezbollah supporters, and Mr Ayyash had Hezbollah connections;¹¹⁵³⁹
- Mr Merhi's younger brother was a Hezbollah member; Mr Merhi used his personal mobile Purple 231 to contact a Hezbollah MP;¹¹⁵⁴⁰
- Numerous people including many close to Mr Hariri viewed the attack on Mr Marwan Hamade on 1 October 2004 as a warning to him and Mr Walid Jumblatt; and
- The Syrian regime and elements in Hezbollah may have had motives to eliminate Mr Hariri, but there is no evidence that the Hezbollah leadership was involved in Mr Hariri's assassination; nor is there direct evidence of Syrian involvement in it.¹¹⁵⁴¹

2. Who participated in the conspiracy charged?

6384. The Trial Chamber has found that Mr Ayyash was using Red 741, one of the Red mobiles that was active in the assassination of Mr Hariri on Monday 14 February 2005 and in his surveillance in the weeks before this. Mr Badreddine is alleged in the amended consolidated indictment to have conspired with him and unidentified others to commit the terrorist attack.

6385. From the findings set out above, the Trial Chamber cannot find beyond reasonable doubt that Mr Oneissi and Mr Sabra participated in the conspiracy charged.

6386. Mr Merhi, as pleaded in the amended consolidated indictment, is alleged to have coordinated their roles in the events surrounding Mr Abu Adass's disappearance, including making a false claim of responsibility for the attack. Mr Badreddine is alleged to have monitored, and with Mr Merhi, coordinated the preparation of the false claim of responsibility. It should logically follow that if the Trial Chamber is not satisfied beyond reasonable doubt that Mr Oneissi and

¹¹⁵³⁸ See chapter IV 'Historical and political background to the attack', (T) 'Summary'.

¹¹⁵³⁹ See chapter IV 'Historical and political background to the attack', (T) 'Summary'.

¹¹⁵⁴⁰ See paras 757-758.

¹¹⁵⁴¹ See chapter IV 'Historical and political background to the attack', (T) 'Summary'.

Mr Sabra had the criminal responsibility alleged, then neither could Mr Merhi who was allegedly coordinating acts that the Trial Chamber cannot find proven.

6387. The Trial Chamber has been unable to conclude beyond reasonable doubt that Mr Merhi was using Green 071. Despite this, an issue for determination would be whether, if Mr Merhi had been communicating by a Green network mobile with Mr Badreddine, he nonetheless could have been participating in the conspiracy.

6388. A further issue is whether the evidence is capable of proving that Mr Badreddine likewise had the pleaded role in respect of either aspect of the conspiracy, namely, the false claim of responsibility or the surveillance and actual attack on Mr Hariri. And if so, whether this affects Mr Ayyash's criminal liability for participating in the conspiracy.

6389. The Parties submissions on the conspiracy are set out below. To determine whether Mr Merhi could be found guilty of participating in the conspiracy it is therefore necessary to briefly examine the submissions relating to Mr Oneissi, Mr Sabra and Mr Badreddine.

(a) Prosecution submissions

6390. In its pre-trial briefs, the Prosecution submitted that the four Accused and Mr Badreddine, as shown by their actions in the preparation, execution and aftermath of the attack, agreed among themselves and with unidentified others, including the assassination team, to commit a terrorist act by means of an explosive device to assassinate Mr Hariri.¹¹⁵⁴²

6391. The conspirators, as noted above, entered into, or joined the agreement on the following dates: Mr Ayyash, Mr Merhi, Mr Badreddine and the assassination team joined sometime between 11 November 2004 and the morning of 14 February 2005, before the attack. Mr Sabra and Mr Oneissi entered it between 22 December 2004 and the morning of 14 February 2005, likewise before the attack.¹¹⁵⁴³

¹¹⁵⁴² Prosecution's updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), para. 60; Prosecution pre-trial submissions (Merhi case), annex A at para. 51.

¹¹⁵⁴³ Prosecution's updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), paras 60-61; Prosecution pre-trial submissions (Merhi case), annex A at paras 51-52.

6392. Of Mr Oneissi's and Mr Sabra's roles in the conspiracy, the Prosecution's pre-trial brief states the following:

ONEISSI's and SABRA's actions demonstrate that they had joined the conspiracy to commit a terrorist act by assassinating HARIRI with the agreed role of participating in the preparation and dissemination of a false claim of responsibility in order to shield the perpetrators from justice. The statements made in the phone calls to Al-Jazeera and the contents of the video-tape demonstrate their knowledge of the crimes committed, including that HARIRI was the target and had been killed, the means used, and the intentions of the perpetrators.¹¹⁵⁴⁴

6393. In opening the case against Mr Merhi, the Prosecution stated that 'the nature of this conspiracy was sufficiently complex as to require not only division of labour among the co-conspirators, but in addition, a hierarchy of management among its membership to ensure that the acts necessary to achieve its ends were completed in a co-ordinated manner'.¹¹⁵⁴⁵

6394. The conspiracy was alleged to have occurred in five distinct phases: from 1 October to 10 November 2004; 11 November to 20 December 2004; 21 December 2004 to 13 January 2005; 14 January to 7 February 2005 and from 8 February to 14 February 2005.¹¹⁵⁴⁶

6395. During the first phase, from 1 October to 10 November 2004, Blue 585 and Blue 324 communicated with each other on ten days in the areas of Quraitem Palace and the Parliament. In this first stage of the planning, perhaps triggered by Mr Hariri's anticipated resignation as prime minister, the Blue and Green networks were created and the initial process of watching Mr Hariri began.¹¹⁵⁴⁷ During the second phase—11 November to 20 December 2004—the nature of the information gathering about Mr Hariri's routines changed. The Blue network's surveillance became dynamic, with the Blue mobiles starting to follow Mr Hariri as he moved.¹¹⁵⁴⁸

¹¹⁵⁴⁴ Prosecution's updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), para. 166.

¹¹⁵⁴⁵ Prosecutor's opening statement regarding Hassan Habib Merhi, T. 16 June 2014, p. 24.

¹¹⁵⁴⁶ Prosecutor's opening statement, T. 16 January 2014, pp 88-89, 92, T. 17 January 2014, pp 3, 9-10, 20-21, 42; Prosecutor's opening statement regarding Hassan Habib Merhi, T. 18 June 2014, p. 41.

¹¹⁵⁴⁷ Prosecutor's opening statement, T. 16 January 2014, pp 88-89; Prosecutor's opening statement regarding Hassan Habib Merhi, T. 18 June 2014, pp 41-42.

¹¹⁵⁴⁸ Prosecutor's opening statement, T. 16 January 2014, p. 89; Prosecutor's opening statement regarding Hassan Habib Merhi T. 18 June 2014, p. 42.

6396. The third phase—21 December 2004 to 13 January 2005—was marked by a significantly heightened degree of activity. First, a number of Yellow mobiles joined the Blue mobiles in the surveillance of Mr Hariri. Second, the Blue network expanded from three to 15 mobiles, while the Yellow network eventually shut down. Third, the triangular protocol adhered to by the original three Blue mobiles was set aside. Fourth, Mr Sabra and Mr Oneissi became actively involved through their Purple mobiles. Fifth, the Red network was created. Sixth, initial steps in relation to the purchase of a vehicle to deliver the bomb were taken. Lastly, the level of surveillance of Mr Hariri increased dramatically.¹¹⁵⁴⁹

6397. The fourth phase, from 14 January to 7 February 2005, was a period where preparatory steps were acted upon and the final tools to co-ordinate the attack emerged.

6398. First, the Red network became operational as the primary surveillance network. Second, Mr Ayyash started using a new Blue mobile (Blue 233) and also became the user of Red 741. Third, Mr Abu Adass was abducted from his home on 16 January never to be seen alive again, with the false claim video having been prepared. Fourth, the Mitsubishi Canter van was purchased on 25 January. Finally, efforts continued to lay a false trail by connecting the conspirators to Tripoli. The abandonment of Mr Merhi's Green 071 brought to an end the fourth phase of the conspiracy.¹¹⁵⁵⁰

6399. The final phase, which lasted from Tuesday 8 February to Monday 14 February 2005, concentrated on three things; these were the continued surveillance of Mr Hariri, coordination of the participants on the day of the assassination and the delivery of the false claim of responsibility.¹¹⁵⁵¹ The Blue and Red mobiles narrowed to a core group of co-conspirators.¹¹⁵⁵²

6400. In its final trial brief and oral closing submissions, the Prosecution argued that the level of sophistication, detailed planning and commitment involved in the attack means that it could only have resulted from a conspiracy to commit a terrorist act by means of an explosive device, led by

¹¹⁵⁴⁹ Prosecutor's opening statement, T. 16 January 2014, pp 92-93, T. 17 January 2014, pp 3, 9-10; Prosecutor's opening statement regarding Hassan Habib Merhi, T. 18 June 2014, p. 43.

¹¹⁵⁵⁰ Prosecutor's opening statement, T. 17 January 2014, pp 10-12, 20-21; Prosecutor's opening statement regarding Hassan Habib Merhi, T. 18 June 2014, p. 43.

¹¹⁵⁵¹ Prosecutor's opening statement, T. 17 January 2014, p. 21; Prosecutor's opening statement regarding Hassan Habib Merhi, T. 18 June 2014, p. 44.

¹¹⁵⁵² Prosecutor's opening statement regarding Hassan Habib Merhi, T. 18 June 2014, p. 43.

a sophisticated military actor.¹¹⁵⁵³ Mr Badreddine was that actor, according to the Prosecution, by virtue of his senior role in Hezbollah, being a ‘Hezbollah military commander of the first order’.¹¹⁵⁵⁴

6401. The Prosecution pointed to a number of specific actions. These were the preparatory surveillance of Mr Hariri, the purchase of the Canter in Tripoli and laying a false investigative trail to Tripoli using Red network mobiles. The Red mobiles were intentionally bought, set up and used there to mislead the eventual investigation into the attack, by diverting its attention from other relevant mobile use during the preparatory stages that could be linked back to the perpetrators.¹¹⁵⁵⁵

6402. Further, there was the execution of the attack. This included the use of military-grade explosives, in the middle of the capital, targeting a person travelling in an armoured convoy. The Prosecution also submitted that the sophistication of the mobile networks used for these activities, and the preparation and execution of the false claim of responsibility pointed to the existence of an agreement among numerous people for this criminal purpose.¹¹⁵⁵⁶

6403. The Prosecution maintained in its closing submissions that at least the ten people specified in the amended consolidated indictment knew about the plot and were part of the conspiracy. These were Mr Badreddine, the four Accused, and the unidentified members of the assassination team,¹¹⁵⁵⁷ namely Subjects 5, 6, 7, 8 and 9.

6404. Mr Badreddine, according to the Prosecution, masterminded and oversaw the attack and led a group of co-conspirators including the four Accused, who were all trusted to fulfil crucial

¹¹⁵⁵³ Prosecution final trial brief, paras 1124-1126, 1140, 1094-1095; Prosecution closing submissions, T. 11 September 2018, pp 22-26, T. 14 September 2018, pp 5-6.

¹¹⁵⁵⁴ Prosecution closing submissions, T. 11 September 2018, pp 21-22, T. 14 September 2018, pp 5-6, in response to the Trial Chamber’s written questions, ‘Why does the Prosecution allege in the sub-heading preceding paragraph 1094, that the attack could only have been carried out “being led by a sophisticated military actor”? And what is meant by that expression?’, Questions for closing submissions, para. 21. Elsewhere in its brief, the Prosecution describes Hezbollah as the sophisticated actor, with Mr Badreddine’s operational abilities ascribed by virtue of his membership in that organisation; Prosecution’s final trial brief, para. 1095, describing ‘a sophisticated, experienced group supported by an unusually well-resourced sponsor.’

¹¹⁵⁵⁵ Prosecution closing submissions, T. 11 September 2018, p. 25; Prosecution final trial brief, paras 458-467, 720-726, 897. The Trial Chamber has accepted that the Red mobile activity shows a deliberate effort to create a misleading forensic trail. *See also* chapter VIII ‘Nature and purpose of colour-coded mobile networks and Purple group of mobiles’, (D) ‘Red network’, (7) ‘Findings’.

¹¹⁵⁵⁶ Prosecution final trial brief, paras 1124, 1140, referring to the detailed submissions made in sections V to VIII of the final trial brief.

¹¹⁵⁵⁷ Prosecution closing submissions, T. 14 September 2018, pp 38, 44-45.

roles in the conspiracy and were therefore necessarily at the ‘very core’ of the planning and execution of the plot.¹¹⁵⁵⁸ Mr Badreddine was ‘the superior at the top of the plot’ and ‘at the very head of the conspiracy’.¹¹⁵⁵⁹ Mr Ayyash was ‘at the epicentre’ of planning and executing the attack, leading the assassination team and a wider group of conspirators to carry out the preparatory surveillance and purchase of the van, and the attack itself.¹¹⁵⁶⁰

6405. Mr Badreddine, Mr Ayyash and the remainder of the assassination team must therefore have known of the plot to assassinate Mr Hariri. In particular, they must have agreed with the others to commit the terrorist act by means of an explosive device to kill him, known that the public explosion would cause additional deaths and intended to cause a state of terror.¹¹⁵⁶¹ The assassination team of Mr Ayyash and Subjects 5 to 9 used the core six Red mobiles, the core six Blue mobiles and the core four Yellow mobiles.¹¹⁵⁶²

6406. Mr Ayyash’s and Mr Badreddine’s mobile activity suggests that they met in person on 20 October 2004, 17 January 2005 and 18 January 2005.¹¹⁵⁶³ Prosecution counsel submitted in their closing arguments that the ‘core six’, the ‘inner core’ who ‘were involved in the coordination on the 14th of February’ all knew of the plan to assassinate Mr Hariri.¹¹⁵⁶⁴

6407. Of Mr Merhi’s role, the Prosecution submitted that the evidence established that he was in charge of creating and delivering the false claim of responsibility—a crucial part of the overall conspiracy—in leading Mr Oneissi and Mr Sabra, who were the trusted central actors in this part of the plot.¹¹⁵⁶⁵ These three Accused must therefore have known, in advance of the attack, of the perpetrators’ purpose, including the objective of the attack and the means of perpetration, and

¹¹⁵⁵⁸ Prosecution closing submissions, T. 11 September 2018, pp 20, 33, T. 13 September 2018, p. 98, T. 14 September 2018, pp 5-6.

¹¹⁵⁵⁹ Prosecution closing submissions, T. 13 September 2018, pp 98-99, T. 14 September 2018, p. 5.

¹¹⁵⁶⁰ Prosecution closing submissions, T. 11 September 2018, pp 20-21, 31-32, T. 14 September 2018, pp 39-42; Prosecution final trial brief, paras 1156-1166.

¹¹⁵⁶¹ Prosecution closing submissions, T. 14 September 2018, pp 37-38; Prosecution final trial brief, paras 1155, 1167.

¹¹⁵⁶² Prosecution final trial brief, paras 358, 389 (i), fn. 620. It is the Prosecution’s case that Mr Ayyash used mobiles Red 741, Blue 233 and Yellow 294; Subject 5 used mobiles Red 636 and Blue 585; Subject 6 used mobiles Red 678, Blue 610 and Yellow 457; Subject 7 used mobiles Red 946 and Blue 324; Subject 8 used mobiles Red 893, Blue 817 and Yellow 933; and Subject 9 used mobiles Red 652, Blue 864 and Yellow 024; *see* amended consolidated indictment, para. 18.

¹¹⁵⁶³ Prosecution final trial brief, paras 399, 438, 477 (iv), 782, 818-823, 828-829. In these submissions, the Prosecution alleged outright that the meeting on 18 January 2005 occurred, but characterised the call activity on 20 October 2004 and 17 January 2005, respectively, as ‘consistent with’ and ‘suggesting’ a meeting, only.

¹¹⁵⁶⁴ Prosecution closing submissions, T. 14 September 2018, pp 36-37.

¹¹⁵⁶⁵ Prosecution closing submissions, T. 14 September 2018, pp 36-37.

agreed to shield them from justice.¹¹⁵⁶⁶ The Prosecution specifically submitted in relation to Mr Merhi that his:

knowledge of the plot, and intentional agreement with the co-conspirators, is further established through his ongoing use of his Purple Phone to supervise and coordinate the false claim component of the plot. **MERHI** co-ordinated the actions of **ONEISSI** and **SABRA** as they located, identified, approached, and abducted a suitable individual to make the false claim of responsibility, which in turn required sufficient knowledge of the nature of the plot, including the means of execution.¹¹⁵⁶⁷

6408. In oral closing submissions, Prosecution counsel stated that Mr Merhi ‘was the coordinator. He was in charge of the false claim. He was in charge of making sure the false claim could take place and creating the video and the letter and then delivering it’.¹¹⁵⁶⁸ However, he ‘was not at the forefront of events in executing the plot. He selected people to do that’.¹¹⁵⁶⁹

6409. Tripoli also featured in the conspiracy. The mention of Tripoli and jihad during the calls to his family following Mr Abu Adass’s disappearance mirrors the false trail to Tripoli that the assassination team left by purchasing, setting up and using the Red mobiles there, to mislead investigators.¹¹⁵⁷⁰ This dovetailing of the two parts of the plot shows that these three Accused, Mr Merhi, Mr Oneissi and Mr Sabra, knew about the entire plot and its purpose.¹¹⁵⁷¹ The timing of their mobile telephone activity on 13 January 2005 is consistent with their having had ‘a conspiratorial meeting’ that day.¹¹⁵⁷²

6410. Further, their involvement in delivering the video and letter after the attack—which described the aim of the plot as Mr Hariri’s assassination—and their pattern of conduct, as evidenced by their mobile call activity, reveals their prior knowledge of the creation of the tape, its content and its purpose.¹¹⁵⁷³ Moreover, Mr Sabra and Mr Oneissi must have known of the plot

¹¹⁵⁶⁶ Prosecution closing submissions, T. 11 September 2018, pp 32-34, T. 14 September 2018, pp 22-24, 33, 38; Prosecution final trial brief, paras 1168, 1174-1182, 1186-1194.

¹¹⁵⁶⁷ Prosecution final trial brief, para. 1177.

¹¹⁵⁶⁸ Prosecution closing submissions, T. 14 September 2018, p. 22.

¹¹⁵⁶⁹ Prosecution closing submissions, T. 14 September 2018, p. 33.

¹¹⁵⁷⁰ See para. 6401.

¹¹⁵⁷¹ Prosecution closing submissions, T. 11 September 2018, p. 34, T. 14 September 2018, pp 71-72; Prosecution final trial brief, paras 458-467.

¹¹⁵⁷² Prosecution final trial brief, para. 477 (iii).

¹¹⁵⁷³ Prosecution closing submissions, T. 11 September 2018, p. 35, T. 14 September 2018, pp 61, 70; Prosecution final trial brief, paras 1179-1181, 1192-1194.

to kill Mr Hariri, as this was necessary for the selection of an individual with the characteristics needed to create a believable claim of responsibility for the attack.¹¹⁵⁷⁴

6411. Although the Accused therefore knew that the conspiracy's aim was to assassinate Mr Hariri, the Prosecution submitted in its final trial arguments that it need not prove this.¹¹⁵⁷⁵ Even if the Trial Chamber were not satisfied that Mr Oneissi and Mr Sabra had the requisite *mens rea* or knowledge to be conspirators, it could still find Mr Merhi guilty of participating in the conspiracy.

6412. The Prosecution submitted—in response to the Trial Chamber's written questions regarding whether it could convict Mr Merhi if it acquitted Mr Oneissi and Mr Sabra—that only a finding that Mr Oneissi and Mr Sabra did not perform the preparatory and shielding acts alleged may affect any findings against Mr Merhi.¹¹⁵⁷⁶ The question was:

If the Trial Chamber were not satisfied beyond reasonable doubt of the guilt of Mr Oneissi and Mr Assad Hassan Sabra, what flow-on effect, if any, would there be in relation to Mr Hassan Habib Merhi's pleaded role, given that he is alleged to have coordinated their activities?

The answer by the Prosecution's lead counsel was:

The only way in which it would have an impact is if you found that all of the allegations made against Mr. Sabra and Mr. Oneissi and their *actus reus*, their acts and conduct, if you didn't find any of that took place and that the Purple Phone patterns just didn't betray the pattern we say, then obviously that's problematic. But otherwise, it has absolutely no effect.

6413. This point is crucial to the Trial Chamber's findings in relation to whether the Prosecution has proved its case against Mr Merhi, either as a co-conspirator or for aiding and abetting the crimes charged.

6414. The separation, according to the Prosecution, between the two sides of the plot—preparing and executing the attack, and the false claim—evidenced by the bifurcated use of the Green

¹¹⁵⁷⁴ Prosecution closing submissions, T. 14 September 2018, pp 34, 37.

¹¹⁵⁷⁵ Prosecution closing submissions, T. 11 September 2018, pp 116-117, T. 13 September 2018, p. 87; *see also* Prosecution closing submissions, T. 13 September 2018, pp 79-81, with respect to knowledge of this on the part of Mr Oneissi and Mr Sabra prior to the disappearance of Mr Abu Adass, as it pertains to aiding and abetting.

¹¹⁵⁷⁶ Questions for closing submissions, para. 5; Prosecution closing submissions, T. 14 September 2018, pp 72-73.

network, and the existence of separate Blue, Red and Yellow networks, was, according to the Prosecution, ‘only forensic’.¹¹⁵⁷⁷ The Trial Chamber understands the expression ‘only forensic’ to mean a merely formal or technical separation, intended to prevent the discovery of links between the different aspects of the plot during an eventual investigation.

6415. In reality, the Prosecution argued, the core conspirators operating the networks acted in tandem as a single entity, overseen by Mr Badreddine through the Green network, with a common purpose of executing the attack.¹¹⁵⁷⁸ For example, Mr Ayyash and Mr Merhi, who were each responsible for one side of the plot, at key moments were in contact directly and involved in hierarchical call flows involving the Green network mobiles.¹¹⁵⁷⁹ These are the clearest examples of the four Accused’s involvement in the conspiracy through their respective parts of the plot.¹¹⁵⁸⁰

6416. The four Accused and Mr Badreddine shared a common support for Hezbollah;¹¹⁵⁸¹ the Green network, according to the Prosecution, was ‘a Hezbollah network’.¹¹⁵⁸² The political context surrounding the plot, while not required for the legal definition of the crime, explains the conspiracy’s evolution, timing and stages.¹¹⁵⁸³ Finally, the Prosecution pointed to a correlation between the activities of others, such as the Syrian military intelligence chief, Mr Rustom Ghazaleh, and the senior Hezbollah official, Mr Wafik Safa, and developments in the plot to assassinate Mr Hariri.¹¹⁵⁸⁴

6417. Defence submissions stated the Prosecution had characterised Mr Ghazaleh and Mr Safa as co-conspirators. Consequently, the Trial Chamber had asked the following question of the Prosecution:

Is the Prosecution now alleging, as stated at paragraph 434 of the Sabra brief, that the Syrian President Mr Bashar Al-Assad, the then Syrian Military Intelligence Chief in Lebanon, Mr Rustom Ghazaleh, and ‘the head of the central unit for liaison and

¹¹⁵⁷⁷ Prosecution closing submissions, T. 11 September 2018, p. 24, T. 13 September 2018, p. 90.

¹¹⁵⁷⁸ Prosecution closing submissions, T. 11 September 2018, pp 24, 30-31, T. 13 September 2018, p. 90, T. 14 September 2018, p. 6; *see also* Prosecution closing submissions, T. 14 September 2018, pp 18-20, 22.

¹¹⁵⁷⁹ Prosecution closing submissions, T. 11 September 2018, p. 33, T. 13 September 2018, pp 91-93, 115-116.

¹¹⁵⁸⁰ Prosecution closing submissions, T. 13 September 2018, pp 90-93, 115-116.

¹¹⁵⁸¹ Prosecution closing submissions, T. 11 September 2018, p. 21, T. 13 September 2018, p. 108.

¹¹⁵⁸² Prosecution closing submissions, T. 14 September 2018, pp 7-12.

¹¹⁵⁸³ Prosecution closing submissions, T. 11 September 2018, pp 37-38.

¹¹⁵⁸⁴ Prosecution final trial brief, paras 412, 625, 656-660, 744-746.

coordination in Hezbollah' Mr Wafik Safa, were co-conspirators in the plot to murder Mr Hariri?¹¹⁵⁸⁵

6418. Prosecution counsel clarified that the Prosecution does not seek, nor does the Trial Chamber need to make, any findings on anyone not named in the amended consolidated indictment.¹¹⁵⁸⁶

(b) Defence submissions

6419. The **Ayyash Defence** submits that the Prosecution could not prove the existence of a conspiracy. It submits that the Prosecution infers the alleged conspiracy from the size of the explosion and certain mobile telephone activity. This conspiracy is impossible to prove. The meetings that the Prosecution alleges occurred are speculative and the calls it relies on are 'contentless'.¹¹⁵⁸⁷

6420. Even if a 'collaborative group' existed, it is likely that some of the alleged conspiracy's unidentified members did not know the true purpose or the ultimate objective of the conspiracy.¹¹⁵⁸⁸ The Canter was more likely purchased on Monday 17 than Tuesday 25 January 2005, and on 17 January, Blue 233 (attributed to Mr Ayyash) was not active.¹¹⁵⁸⁹

6421. If the Canter had been purchased on Monday 17 January 2005, the Prosecution's theory on the network mobile activity in Tripoli before and on that day makes no sense.¹¹⁵⁹⁰ Furthermore, the Prosecution wrongly alleges a correlation between the progress of the alleged conspiracy and contemporaneous political events in Lebanon.¹¹⁵⁹¹ The Ayyash Defence also submits that the Prosecution, in its final trial brief and for the first time, elevated Mr Ghazaleh and Mr Safa to the role of co-conspirators.¹¹⁵⁹²

¹¹⁵⁸⁵ Questions for closing submissions, para. 11 (footnote omitted).

¹¹⁵⁸⁶ Prosecution closing submissions, T. 11 September 2018, pp 26-27.

¹¹⁵⁸⁷ Ayyash Defence final trial brief, paras 724-725; Ayyash Defence closing submissions, T. 17 September 2018, p. 6.

¹¹⁵⁸⁸ Ayyash Defence final trial brief, para. 726.

¹¹⁵⁸⁹ Ayyash Defence final trial brief, paras 126, 149-157; Ayyash Defence closing submissions, T. 17 September 2018, pp 82, 84, 86.

¹¹⁵⁹⁰ Ayyash Defence final trial brief, paras 99-100; Ayyash Defence closing submissions, T. 17 September 2018, p. 88.

¹¹⁵⁹¹ Ayyash Defence final trial brief, para. 45; Ayyash Defence closing submissions, T. 17 September 2018, p. 14.

¹¹⁵⁹² Ayyash Defence final trial brief, para. 67; Ayyash Defence closing submissions, T. 17 September 2018, p. 19; *see also* para. 114.

6422. Regarding the Prosecution's allegation that the Green network was a 'Hezbollah network', the Ayyash Defence argues that this is not supported by the evidence; Mr Nasrallah made no mention of it at the press conference the Prosecution relies upon, and it does not corroborate Mr Wissam Al-Hassan's evidence, which has limited relevance and is unreliable. The Prosecution's argument that the Accused, as supporters of Hezbollah, would thus have had access to the use of this network is an 'illogical leap'.¹¹⁵⁹³

6423. The **Merhi Defence** submits that the Prosecution failed to demonstrate a merger of wills between all of the alleged co-conspirators¹¹⁵⁹⁴ or that Mr Merhi, specifically, had the knowledge required to be a co-conspirator. There was no contact between Green 071 and Green 300 or other network mobiles and only minimal contact between a personal mobile attributed to Mr Ayyash and Purple 231.¹¹⁵⁹⁵ This is insufficient to infer that Mr Merhi knew and agreed to all facets of the conspiracy.¹¹⁵⁹⁶

6424. In closing submissions, the Merhi Defence emphasised that Green 071 never went to any of the locations related to the crime or had any significant activity on any of the key dates. The eighteen Green mobile calls were 'unrelated to the phones used to survey Mr Hariri or the phones of those who executed the assassination', and had nothing to do with the coloured networks or the purchase of the Canter. The mobiles attributed to him 'were clearly absent during each and every important phase of the alleged conspiracy'.¹¹⁵⁹⁷

6425. Additionally, there is no evidence that Mr Merhi knew and agreed to the means and tools used to carry out the conspiracy, including the location of the explosion, the surveillance of Mr Hariri, the acquisition and use of a bomb transported in a vehicle and the organisation of the false claim.¹¹⁵⁹⁸

¹¹⁵⁹³ Ayyash Defence final trial brief, paras 69-73. This is dealt with in more detail in chapter IV 'Historical and political background to the attack', (S) 'The Accused's and Mustafa Amine Badreddine's alleged associations with Hezbollah'.

¹¹⁵⁹⁴ Merhi Defence final trial brief, paras 404-423; Merhi Defence closing submissions, T. 18 September 2018, pp 97-100.

¹¹⁵⁹⁵ Merhi Defence final trial brief, paras 418-420, 453; Merhi Defence closing submissions, T. 18 September 2018, pp 67-69, 75-76, 98.

¹¹⁵⁹⁶ Merhi Defence final trial brief, para. 418.

¹¹⁵⁹⁷ Merhi Defence closing submissions, T. 18 September 2018, pp 67-69.

¹¹⁵⁹⁸ Merhi Defence final trial brief, paras 424-451; Merhi Defence closing submissions, T. 18 September 2018, p. 97. The Trial Chamber has rejected that the Accused must legally have known of *all* of these specific things to have committed a conspiracy to commit a terrorist act. The Merhi Defence also implicitly submitted, in oral closing

6426. Further, the Prosecution presented no evidence about the date on which the conspiracy was concluded, which is a material fact.¹¹⁵⁹⁹ Any date that precedes the time-frame alleged in the amended consolidated indictment constitutes an expansion of the charges and would therefore be invalid.¹¹⁶⁰⁰ The Merhi Defence also challenges the Prosecution in including Mr Ghazaleh and Mr Safa as members of the conspiracy, on the procedural ground that they were not named in the amended consolidated indictment.¹¹⁶⁰¹

6427. The Merhi Defence, in closing submissions, in response to the Prosecution stating that it was not necessary to prove that Mr Oneissi was ‘Mohammed’, noted that the Prosecution was alleging that Mr Merhi coordinated the kidnapping of Mr Abu Adass, and:

Therefore, the Prosecution failed to prove the identity of the kidnapper, and this failure is a failure to prove the charge of coordinating the kidnapping by Mr. Merhi. And if Oneissi was not the alleged Mohammed, is not Mohammed, that would have serious consequences on the Prosecution’s theory.¹¹⁶⁰²

6428. In response to the Prosecution’s suggestions that the user of Green 071 and Purple 231 participated in meetings with other mobile users, the Merhi Defence noted that the Prosecution in-house expert witness Mr Gary Platt had used four elements to support this proposition. These were short calls, convergent movements, activation of the same cells and a period of silence or inactivity. These, however, were not available regarding Mr Merhi. ‘Basically, the Prosecution simply interpreted here phone calls, and a call there, to conclude there were possible meetings’. Counsel described it as ‘a virtual story that was created by the Prosecution in which he determined the actors, directed its scenario, and presented it to you in a pattern that varies with the interests of the Prosecution in this case’.¹¹⁶⁰³

arguments, that Lebanese law requires the conspirators to have known the target’s identity. The Trial Chamber has accepted that such knowledge is required in this case. *See* para. 6152.

¹¹⁵⁹⁹ Merhi Defence final trial brief, paras 404-414; Merhi Defence closing submissions, T. 18 September 2018, pp 94-95, T. 19 September 2019, pp 16-18.

¹¹⁶⁰⁰ Merhi Defence final trial brief, paras 406-408; Merhi Defence closing submissions, T. 18 September 2018, pp 94-95.

¹¹⁶⁰¹ Merhi Defence final trial brief, paras 37-50, 415; *see also* para. 115.

¹¹⁶⁰² Merhi Defence closing submissions, T. 18 September 2018, p. 82, responding to Prosecution final trial brief, para. 518.

¹¹⁶⁰³ Merhi Defence closing submissions, T. 18 September 2018, p. 84.

6429. The **Oneissi Defence** takes no position on whether there was a conspiracy, but submits that the Prosecution has not proven that Mr Oneissi entered into an agreement to commit a crime against State security or had the requisite knowledge to be liable as a conspirator.¹¹⁶⁰⁴

6430. The **Sabra Defence** submits that there is insufficient evidence to prove that the Accused knew or agreed with the aim of assassinating Mr Hariri by detonating a large quantity of explosives in a public place.¹¹⁶⁰⁵ Moreover, in the absence of concrete evidence about the circumstances in which each Accused came to participate in the alleged conspiracy, the increase in contact between the Purple mobiles is insufficient evidence on its own to infer that the Accused joined a conspiracy.¹¹⁶⁰⁶

6431. The Prosecution also failed to prove a motive underpinning the conspiracy, which rendered the amended consolidated indictment defective.¹¹⁶⁰⁷ Additionally, given the circumstantial nature of the Prosecution case, without evidence of the Accused's motive, the Trial Chamber cannot find that the Accused's guilt is the only reasonable inference.¹¹⁶⁰⁸

6432. The Prosecution failed to name known co-conspirators, including the Syrian President Bashar Al-Assad, Mr Ghazaleh, Mr Safa and other mobile users, and failed to allege their specific acts and omissions.¹¹⁶⁰⁹ The Prosecution was obliged to name, if not to indict, all known co-conspirators.¹¹⁶¹⁰ In closing submissions, counsel for Mr Sabra argued that the 'Prosecution needed to implicate Hezbollah, and others such as Ghazaleh, to prove the motive and the capacity of the conspiracy'. Both of these were material facts requiring pleading.¹¹⁶¹¹

¹¹⁶⁰⁴ Oneissi Defence final trial brief, paras 671-693, 703-714, 721; Oneissi Defence closing submissions, T. 19 September 2018, pp 120-121, T. 20 September 2018, pp 97-103, 138-140.

¹¹⁶⁰⁵ Sabra Defence final trial brief, paras 453-458; Sabra Defence closing submissions, T. 21 September 2018, pp 29-32; Sabra Defence pre-trial brief, para. 12 (v).

¹¹⁶⁰⁶ Sabra Defence final trial brief, para. 439.

¹¹⁶⁰⁷ Sabra Defence final trial brief, paras 421-430; Sabra Defence closing submissions, T. 21 September 2018, pp 13-28. On both procedural and substantive legal grounds, the Trial Chamber has rejected the Sabra Defence's submissions that the Prosecution must prove a motive for committing the alleged terrorist act. *See* paras 126, 6191, 6197, 6204.

¹¹⁶⁰⁸ Sabra Defence final trial brief, paras 429-430, 438.

¹¹⁶⁰⁹ Sabra Defence final trial brief, paras 431-436; Sabra Defence closing submissions, T. 21 September 2018, pp 26-29; Sabra Defence pre-trial brief, para. 12 (i).

¹¹⁶¹⁰ Sabra Defence final trial brief, paras 431, 435-436. The Trial Chamber has found that the Prosecution met its pleading obligations regarding the identification of co-conspirators. *See* para. 100.

¹¹⁶¹¹ Sabra Defence closing submissions, T. 21 September 2018, p. 13.

6433. The Prosecution also failed to prove the dates and circumstances in which each Accused joined the alleged conspiracy, which impacted the Accused's fair trial rights.¹¹⁶¹² Finally, there is insufficient evidence that any of the Accused are supporters of Hezbollah, which goes to the Prosecution's allegation of the Accused's motive for the attack.¹¹⁶¹³

(c) Legal Representatives of Victims submissions

6434. The Legal Representatives of Victims submit that irrespective of their individual roles and responsibilities, there is ample evidence that the four Accused, Mr Badreddine and others were involved in a conspiracy to assassinate Mr Hariri.¹¹⁶¹⁴ The intricate planning and logistical support, substantial financial investment, ability to acquire a large amount of military-grade explosives and number of unattributed mobiles make it inconceivable that only just five people planned and executed the attack.¹¹⁶¹⁵

6435. Therefore, they submit that, in addition to the Accused and Mr Badreddine, 'there was a larger scale of network or organisation that is responsible for the 14 February attack'. Further, the conspirators had a common political purpose—to kill Mr Rafik Hariri.¹¹⁶¹⁶ Based on the evidence, they submit that the 'organisation' in question is Hezbollah and that 'there is an irresistible inference that the conspiracy or joint criminal enterprise was inspired by' the Accused's and Mr Badreddine's 'association with that organization rather than any other more personal motive'.¹¹⁶¹⁷

¹¹⁶¹² Sabra Defence final trial brief, paras 437-439; Sabra Defence pre-trial brief, para. 12 (ii)-(iv). The Trial Chamber has rejected this submission. *See* chapter II 'The Prosecution's pleaded case', (B) (3) 'The dates of the alleged conspiracy', (c) 'Findings'.

¹¹⁶¹³ Sabra Defence final trial brief, paras 440-452; Sabra Defence closing submissions, T. 21 September 2018, pp 12-13, 20-27; Sabra Defence pre-trial brief, paras 24-26. As explained immediately above, the Trial Chamber has rejected the Sabra Defence's submissions that the Prosecution must prove a motive for committing the alleged terrorist act on both procedural and substantive legal grounds. For the Trial Chamber's general approach to submissions concerning Hezbollah. *See also* chapter II 'The Prosecution's pleaded case', (B) (5) 'Hezbollah and the political context', (c) 'Findings'; chapter IV 'Historical and political background to the attack', (S) 'The Accused's and Mustafa Amine Badreddine's alleged associations with Hezbollah'.

¹¹⁶¹⁴ Legal Representatives of Victims closing submissions, T. 14 September 2018, p. 81; Legal Representatives of Victims final trial brief, paras 88-90.

¹¹⁶¹⁵ Legal Representatives of Victims final trial brief, para. 88.

¹¹⁶¹⁶ Legal Representatives of Victims final trial brief, para. 89.

¹¹⁶¹⁷ Legal Representatives of Victims closing submissions, T. 14 September 2018, pp 81-82.

3. Findings on the charged conspiracy to commit a terrorist act

(a) The conspiracy generally

6436. The only inference reasonably available from the totality of the evidence is that there must have been an agreement between two or more people to commit a terrorist act by means of an explosive device in order to assassinate Mr Hariri. That is exactly what occurred. The evidence establishes that many people were involved in the preparatory steps, with numerous different mobile users having conducted surveillance, for instance. Moreover, it would be unreasonable to find that the commission of the crime, that required such a level of planning and coordination, as is set out above, could only have involved one person.

6437. The evidence, however, does not permit the Trial Chamber to establish how many knowing participants there were in the overall conspiracy. The Trial Chamber's view is that a conspiracy of this type required some but not necessarily all of the 'actors' identified above¹¹⁶¹⁸ to know what it was intended to achieve, namely, Mr Hariri's death.

6438. Breaking it down by the actions and actors necessary for its success: those involved in the surveillance of Mr Hariri's movements in December 2004 and January and February 2005 must have known that he and his convoy were the targets *of the surveillance*. This is the only reasonable conclusion available from the totality of the evidence regarding the Red, Blue, Yellow and Green networks.

6439. The user of every core Red, Blue and Yellow mobile, including Mr Ayyash, who conducted surveillance of Mr Hariri and his movements, would have known, by virtue of having participated in that activity, that Mr Hariri was the person under watch. Although they did not need to know the precise reason why, they had to have been trusted associates. This could have been through common membership in an organisation.

6440. The six core Red mobile users must have known who they were tracking on the day of the attack, both from their actions that day and their role in the surveillance leading to it. As for the claim of responsibility, anyone who was aware of the content of the video tape or its accompanying letter *before* the attack necessarily knew that Mr Hariri was the intended victim of a 'martyrdom',

¹¹⁶¹⁸ Namely, Subjects 5, 6, 7, 8, 9 and Mr Ayyash.

the term used in the video of the claim of responsibility,¹¹⁶¹⁹ or a suicide¹¹⁶²⁰ operation. But knowledge of this fact alone does not necessarily extend to awareness that Mr Hariri was going to die in a *terrorist* attack using an explosive device, as opposed to another manner of attack, for example, by shooting him in a public place. Further, the video does not mention how Mr Hariri was to die, nor when.

6441. Whoever triggered the explosive device that was on the Canter knew that they were detonating an explosive device in a public location in a manner intended to spread terror, and that it would kill and injure people. They must have known that they were going to detonate the explosives when Mr Hariri's convoy passed and that it was the target of the attack. The driver of the Canter was required to move towards Mr Hariri's convoy as it passed the St Georges Hotel and to detonate the explosives. After eliminating other possibilities as not reasonably available on the evidence, the Trial Chamber has concluded beyond reasonable doubt that the suicide bomber himself detonated the explosives.¹¹⁶²¹ The suicide bomber, therefore, at least legally, was a member of the conspiracy.

6442. The evidence establishes that two men bought the Mitsubishi Canter, and some Blue and Green mobile users may have known this and participated in the purchase. However, this does not establish that either those men or the Blue and Green mobile users were aware that it was intended to be used in an attack on Mr Hariri or that it was to be loaded with RDX or placed the explosives on it with or without this knowledge.

6443. Further, there is no evidence of mobile use *directly* connecting Mr Ayyash or any other Accused person with its purchase. Mr Ayyash's Green 300 twice connected to a cell covering the truck 'dealership' in Tripoli on 11 January 2005, at 14:30 and an adjacent one at 14:55, calling Mr Badreddine's Green 023, which was in Beirut.

6444. The Canter, however, was not sold to the two buyers until either Monday 17 or Tuesday 25 January 2005. Mr Ayyash may well have been there looking around for a suitable vehicle to use in the attack; that is one inference available from the evidence.

¹¹⁶¹⁹ The term used in the video tape. *See* para. 5702.

¹¹⁶²⁰ The term used in the letter. *See* para. 5703.

¹¹⁶²¹ *See* para. 1448.

6445. But there are others, such as that he was in Tripoli for some other reason. The evidence as to when the Canter was placed on show for sale at the dealership is vague; it was purchased in December 2004, but the dealers were unable to say with any precision when it was actually displayed for sale. So there is no evidence from which the Trial Chamber could positively conclude that the Canter was on display on Tuesday 11 January 2005 *and* that Mr Ayyash either saw it, *or* further, made inquiries about it.

6446. There was Blue network activity in Tripoli in January 2005. Blue 817 was in Tripoli on 12, 14, 15 and 22 January, and Subject 6's Blue 610 was there on Tuesday 25 January 2005. On Monday 14 February 2005, Subjects 6 and 8 were using their Red mobiles, respectively Red 678 and Red 893, while near the Parliament, to communicate with Mr Ayyash on Red 741. Subject 6 on Red 678, was also near Quraitem Palace when Mr Hariri departed for Parliament that day.

6447. On Tuesday 25 January 2005, Mr Ayyash's Blue 233, in Beirut, and Subject 6's Blue 610, in central Tripoli, exchanged calls at 14:40, 14:54 and 14:59. Mr Ayyash's Green 300 then called Mr Badreddine's Green 023 at 15:10. At 15:37, Subject 6's Blue 610, activating the cell providing coverage to the dealership, called Mr Ayyash's Blue 233, in Beirut. This may have coincided with the Canter's purchase.

6448. It is possible that whoever purchased the Canter—or at least one of the two—either knew of or participated in placing the RDX on it. On the other hand, it is equally conceivable that they did not. Both scenarios are plausible. Again, it stands to reason that whoever bought the Canter, or alternatively, provided it to those who loaded the explosives onto it, had to have been trusted. This is for the obvious reason that their involvement in this aspect of the conspiracy may have become evident after the explosion, if an investigation revealed its use in the explosion. As it indeed did. These people had to be relied upon not to reveal their participation—knowing or unknowing—in this. However, at the time of its purchase, they did not need to have known that it was to be used in Mr Hariri's assassination.

6449. Logically, those involved in the plot to kill Mr Hariri would have participated in some way in the Canter's purchase and employed a certain discipline while doing so. They most probably selected this particular truck yard in Tripoli because it sold trucks for cash, with little documentation and without verifying buyers' identities. Its location in Tripoli also, as the

Prosecution contends, moved the purchasers away from Beirut where the explosion was to occur. Nevertheless, those who actually bought the Canter did not need to have been aware of the objective of the conspiracy.

6450. The Trial Chamber has examined the evidence holistically, in its totality, by examining each piece of evidence separately; it has also connected these pieces together and re-examined them as a whole.

6451. However, it cannot conclude from the combination of calls made in Tripoli on Tuesday 11, Wednesday 12, Friday 14, Saturday 15, Saturday 22 and Tuesday 25 January 2005—when combined with the other relevant evidence—that the only reasonable inference available is that the two men who bought the Canter knew that it was intended to be used in a terrorist attack on Mr Hariri. It is equally plausible that whoever bought it did not know the purpose of its purchase.

6452. There is no firm evidence about who bought the vehicle, or where it went thereafter. There is a gap in the evidence between its purchase and its reappearance in the explosion several weeks later. It is highly probable that Subject 6, using Blue 610 in Tripoli on Tuesday 25 January 2005 at a relevant time and location was involved in its purchase, especially given his role in the wider surveillance and his use of Red 678, and hence his knowing involvement in the attack, on Monday 14 February 2005.

6453. The Trial Chamber, however, cannot conclusively determine that Subject 6 was one of the two men who physically purchased the vehicle, as opposed to being someone who was nearby and possibly supervising its acquisition, or watching while it happened. It would appear from the activities of Red 678 and Blue 610, both attributed to Subject 6—who was clearly involved in both the surveillance of and attack against Mr Hariri—that this person was involved in some way in the Canter's purchase.

6454. It is indeed possible—based upon the call data records showing the movement of Blue 610 between Tripoli and Beirut—that the user of Blue 610 was driving the Canter from Tripoli to Beirut, if it had in fact been purchased on Tuesday 25 January. However, this is not the only inference available from the call data records as it is likewise conceivable that the user of Blue 610 was travelling to Beirut in another vehicle. There is no evidence outside of the call data records as to what Blue 610 was doing, nor of that person's identity.

6455. So who, then could have been in the conspiracy? In the Trial Chamber's view, from the evidence, there are two equally reasonable possibilities, namely, a tight conspiracy restricted to a handful of participants, or one with a broader but still restricted membership, possibly limited to the ten or so suggested by the Prosecution.

(b) A broader conspiracy?

6456. From the evidence, it could appear that the conspiracy involved, as the Prosecution argued, as many as ten or more participants. In this scenario, the participants had varying roles, but each part was sufficiently important to the plan's success that, before the attack on 14 February 2005, each of them knew its essential elements. That is, not just that their operation focused on Mr Hariri, but also that the aim was to kill him, and how this was to be done.

6457. The members of such a conspiracy would have included some or all of those who executed the terrorist attack, including the six core Red mobile users on 14 February 2005 and, at least legally, the suicide bomber. They may also have included the two men who purchased the Canter and the person(s) who loaded the explosives onto it. In addition, such a conspiracy could also have included those who persuaded or directed others to do the acts needed to prepare for and execute the attack, even if they did not themselves participate directly in any of those acts; and those who prepared the false claim of responsibility for the attack.

6458. The dissemination of the claim of responsibility was clearly meant to divert attention away from the attackers and to avoid detection and apprehension,¹¹⁶²² but the conspirators may also have intended to foster a state of terror by broadcasting a claim by an unknown, fictitious militant group.

6459. Preparing the false claim involved committing serious criminal acts including the possible abduction and murder of Mr Abu Adass, who disappeared in mid-January 2005. The planning of and propagating the claim of responsibility—including preparing Mr Abu Adass for the video and then filming him—required strict secrecy and particular skills. Evidently, at least one person who participated in it knew of its connection with Mr Hariri's intended assassination before it occurred.

¹¹⁶²² See chapter XII 'Claim of responsibility for the attack on Rafik Hariri', (G) 'Whether the claim of responsibility was false', (3) 'Findings'.

The video, however, does not say how Mr Hariri was to be murdered; there is no mention of an explosion.

6460. Whoever made the video must have known of its connection with Mr Hariri's intended death. Logic dictates that more than one person would have been involved in making the video and preparing Mr Abu Adass for his role in it. However, there is no evidence of when this occurred; the video must have been made between Sunday 16 January 2005 when Mr Abu Adass left his home, and the time when the attack occurred on Monday 14 February 2005. But exactly when is a matter of speculation, as nothing connects any of the Accused with anything related to making the video, including when, where and how it was made.

6461. Whoever called Al-Jazeera and Reuters on Monday 14 February 2005, after the attack, must have known at the time that they were participating in activities related to it. In this respect, at least, they were legally accessories to the terrorist act under Article 219 (5) of the Lebanese Criminal Code if they were aware that it was a *false* claim of responsibility for the attack *and* had entered into the agreement to do so *before* the attack occurred.

6462. If, however, they were unaware that the calls related to a *false* claim, the caller(s) could not have been legal accessories under Article 219 (5) as alleged. Its *actus reus* requires that they 'helped to eliminate the traces, to conceal or dispose of items resulting therefrom, or to shield one or more of the participants from justice', or, as alleged in this case 'to shield one or more of the participants from justice'.¹¹⁶²³ The Prosecution alleges only the third kind of assistance, help in shielding participant(s) in the crimes from justice.

6463. If the caller(s) believed that the real culprit, as the letter accompanying the video claimed, was the *El-Nusra-wal-Jihad-fi-Bilad-El-Sham* 'Society for Support and Jihad in Greater Syria', *Abou Hafass El-Chami*,¹¹⁶²⁴ they could not have thought that they were 'shielding the participants

¹¹⁶²³ In the video, Mr Abu Adass said: 'In the name of Allah, Lord of the Worlds, Blessings and Peace be upon his Beloved Prophet and his family and all his companions. In support of our brothers, the Mujahedeen in the Land of the Two Holy Mosques, and to avenge their innocent martyrs, who were killed by the security forces of the infidel Saudi regime in the Land of the Two Holy Mosques, we have resolved, having placed our trust in God Almighty, to inflict just punishment upon the agent of that regime and its cheap tool in Greater Syria, the sinner and holder of ill-gotten gains Rafiq Hariri, through the execution of a resounding martyrdom operation; such as to confirm our promise of Victory and jihad and to herald numerous martyrdom operations against the infidels, apostates and tyrants in the Greater Syria. Praise be to Allah, Lord of the Worlds.', exhibit P499 (The digital format of the video tape containing the claim of responsibility); exhibit P499.1 (Transcript of text read by Ahmad Abu Adass on the tape).

¹¹⁶²⁴ Exhibit P500 (Letter accompanying the video tape) (emphasis omitted).

from justice’. Rather, they would have thought that they were publicising the atrocity, as opposed to diverting attention away from the true perpetrators and thus helping to cover up the crime. Their criminal liability would have been different.

6464. However, on the facts found—namely that the Trial Chamber is not satisfied beyond reasonable doubt of either Mr Oneissi’s or Mr Sabra’s involvement in any aspect of making the false claim—the Trial Chamber does not have to explore whether this is an inference reasonably available from the evidence.

6465. Apart from the six core Red mobile users, the suicide bomber, those who purchased the Canter or loaded the explosives, those who prepared the false claim and those who directed them, unknown others *may* have helped to prepare the attack and, legally, participated in the conspiracy.

(c) A tighter conspiracy?

6466. However, another alternative inference, namely that only a much smaller subset had the necessary knowledge to be conspirators, is also available on the evidence. The conspiracy plausibly could have comprised only those who *definitely had to* know the assassination operation’s aim in order to fulfil their role in it.

6467. Thus, it is equally conceivable that the conspirators deliberately kept that aim secret from as many people involved as possible—by doing critical tasks themselves, such as assembling the explosive device—or restricting the information flow between their operatives, or both. The networks’ hierarchical and compartmentalised communication structure would have facilitated this.

6468. If membership of the conspiracy was on a ‘need-to-know’ basis, this eliminates several potential conspirators. First, someone tasked only with conducting surveillance before the day of the attack did not need to know that its objective was to murder Mr Hariri. Indeed this may not have been the sole purpose of much of the surveillance.

6469. The Trial Chamber could therefore not conclude that all of those involved in the surveillance were knowingly participating in the conspiracy alleged. Rather, because of

Mr Hariri's status and the prevailing political environment,¹¹⁶²⁵ they could reasonably have thought they were just engaged in routine monitoring of his movements. The evidence that Mr Hariri thought that he was under surveillance also supports this possible inference. His security detail certainly believed this,¹¹⁶²⁶ and must have factored this into the measures they adopted to protect him in the months before his death.¹¹⁶²⁷

6470. Mr Hariri also thought that his telephones were bugged, and the evidence shows that he sometimes used this fact to convey messages to those he believed were monitoring his communications.¹¹⁶²⁸ The Trial Chamber also heard evidence that Lebanese state agencies such as the ISF had Mr Hariri under active surveillance.¹¹⁶²⁹ From the evidence—given the extent of their penetration into Lebanese life and their apprehension about Mr Hariri at the time—a logical inference is available that the Syrian agencies operating in Lebanon were also actively monitoring Mr Hariri. It is similarly highly probable that other State and non-State actors with an interest in Mr Hariri and Lebanon were also interested in his movements, his communications and his contacts, although to what extent and in what manner, is a matter of speculation.

6471. Naturally, whoever was engaged in the surveillance would have had to have been trusted enough not to have revealed their roles in the enterprise which would have become evident after the attack. In other words, anyone who had been involved in the surveillance of Mr Hariri before 14 February 2005, using mobiles that they were instructed either to discard or to return to someone afterwards for collection, would have realised at least *after the explosion* that their surveillance activities were connected with the attack. Only trusted associates could have been assigned such a task. But this does not mean that all of them must also have been entrusted, before the attack, with the information that it would happen, nor how, nor when, nor that they agreed to commit it.

¹¹⁶²⁵ See chapter IV 'Historical and political background to the attack'.

¹¹⁶²⁶ See paras 4284-4288, *see also* chapter IV 'Historical and political background to the attack', (H) 'Security arrangements and concerns in late 2004'.

¹¹⁶²⁷ Described in chapter IV 'Historical and political background to the attack', (H) 'Security arrangements and concerns in late 2004'.

¹¹⁶²⁸ See paras 706-707, 4287. *See also* Mr Hariri's statement, in an audio-recorded meeting with the Syrian Deputy Minister of Foreign Affairs on 1 February 2005, that Syria 'announce that they are monitoring the El-Hariri residence and recording everything', extracted in para. 673.

¹¹⁶²⁹ See paras 4284-4288.

6472. Similarly, while those whose role was confined to preparing either the claim of responsibility or the explosive device—if there were any such people—*may* have been fully aware of the conspiracy’s aim, the evidence does not establish that they *had to be*.

6473. Rather, it is also reasonably conceivable that someone involved in the plot met Mr Abu Adass in the Arab University Mosque and lured him from his home, but did not know that these actions were connected with Mr Hariri’s intended assassination, nor that he was to be killed specifically by a large explosive device. Contrary to the Prosecutor’s pleading in the amended consolidated indictment and to the Prosecution’s submissions, merely knowingly participating in the false claim of responsibility does not lead to the inevitable conclusion that the participants knew that they were engaged *in agreeing to commit a terrorist act* to assassinate Mr Hariri *and with an explosive device*.

6474. The Trial Chamber received no evidence from which it could conclude when, where and how the explosives came to be on the Canter. The evidence can only establish that it must have been between Monday 17 January and Monday 14 February 2005. For operational security and safety reasons, it can probably safely be assumed that the explosives were loaded onto the light truck only after firm decisions had been made to use the Canter, and when.

6475. Moreover, whoever put the explosives on the Canter did not have to have known why, namely, that a suicide bomber was to drive it into Mr Hariri’s convoy, nor even that it was to be detonated in a public place. Placing explosives on a truck and their detonation at a later point are not necessarily connected activities, especially as it is unknown when the explosives were put on the Canter. However, it is far more likely that whoever did this *was* involved in the conspiracy. It was a core activity in the conspiracy and, of necessity, such an action should have been restricted to those in on the plot.

6476. This is for the obvious reason that once the explosion occurred anyone who had *unknowingly* assisted would have realised what they had done, thus potentially compromising the secrecy of the operation.

6477. However, this also goes two ways as a trusted operative could have been tasked with putting the explosives on the Canter without being informed of precisely why—but nonetheless still sufficiently trusted not to reveal this afterwards. The expert evidence the Trial Chamber

received suggests that even if the device used the smallest amount of RDX possible on the evidence, that is, 2,500 kilograms of TNT equivalent, the explosives would still have had a volume of around 1.3 cubic metres and weighed close to two tonnes.¹¹⁶³⁰ Thus, the mere fact of placing or loading this quantity of RDX onto the Canter would have been inherently suspicious.

6478. This too points to the involvement in the conspiracy of people with a commonality such as membership of an organisation, namely a tight-knit organisation in which trusted operatives are delegated particular sensitive tasks. The Trial Chamber therefore believes that the most logical inference available from the evidence is that whoever put the explosives on the Canter was either part of the conspiracy or was trusted enough not to reveal their role in it. But it cannot be satisfied which, if either, occurred. It simply has no direct evidence one way or another as to what occurred. Additionally, there is no circumstantial evidence from which it could draw an inference establishing how the RDX came to be on the Canter, or who put it there.

6479. Of those known to have been involved in the assassination operation, this leaves as possible conspirators, with the unidentified suicide bomber, the users of the six core Red mobiles who participated in executing the attack on 14 February 2005, and the users of Green mobiles one of whom—Green 300's user (Mr Ayyash)—was also a core Red mobile user.¹¹⁶³¹

6480. The evidence does not rule out the possibility that one person alone procured the RDX explosives, wired or prepared them for detonation and put them in the Canter. It is intrinsically unlikely that this was the suicide bomber himself. However, theoretically at least, one Red and or Green mobile user who had oversight of the whole assassination plot could have carried it out *with* the suicide bomber, coordinating the surveillance and other necessary activities before and on 14 February 2005, without anyone else knowing what that person and the bomber aimed to do.

6481. Whether the conspiracy was thus restricted to two, or was larger, its members might have decided together to assassinate Mr Hariri, in a large explosion in a public place, before the Red, Blue and Yellow mobiles' surveillance or any other preparation began.

¹¹⁶³⁰ As the Prosecution submitted. *See above*, at para. 1214; exhibit P277 (Report of Gerard Murray), annex 1; exhibit P378 (International College of Experts report on attack of 14 February 2005), p. 21. *See also* para. 1144.

¹¹⁶³¹ *See* paras 3189, 3255.

6482. However, the conspirators may also have reached that decision later; perhaps as late as mid-January 2005, which is the earliest time on the evidence when the Canter could have begun to have been fitted for the attack. Alternatively, if it were a larger conspiracy some members, such as some of the Red mobile users, may have joined that conspiracy well after it was formed, possibly even learning the full or real objective only on the morning of the attack. All of these scenarios are possible on the evidence and any of them would fulfil the definition of a conspiracy, namely an agreement to commit the pleaded crime.

6483. The Trial Chamber does not believe that the assassination of the former Lebanese prime minister occurred in a vacuum, nor that it was organised by the six core users of the Red network. The extensive political and background evidence points to it being a political act directed by those whose activities Mr Hariri's were threatening. There is no evidence that Mr Ayyash or the other five core Red users fell into this category. The evidence is of their involvement in the conspiracy at least on 14 February 2005 and the immediate period leading to it, but the evidence does not establish affirmatively who directed them to murder Mr Hariri and thus eliminate him as a political opponent.

- (d) Salim Jamil Ayyash and the other core Red mobiles users were conspirators

6484. The Trial Chamber has concluded that the conspiracy must have included at least Mr Ayyash as the user of Red 741, Blue 233 and Green 300, and it has found that he was using these and other mobiles at the relevant time.

6485. The Trial Chamber, after carefully reviewing the evidence, is of the view that Subject 6, using Red 678 and Blue 610 was a conspirator. Overall, it is also satisfied, by virtue of their activities on 14 February 2005 and their surveillance of Mr Hariri in the preceding weeks, that the six core Red mobile users had the role the Prosecution alleged of an 'assassination team'. Accordingly, they all knowingly agreed to murder Mr Hariri using an explosive device; they are thus conspirators.

6486. The Trial Chamber is also satisfied that even if the conspiracy was deliberately kept 'tight', the users of the six core Red mobiles were participants, as the Prosecution alleged. Some of those

mobiles made significantly more calls than others did on 14 February 2005.¹¹⁶³² The evidence of their activity that day has shown that all six played a crucial role in executing the attack.¹¹⁶³³

6487. It also suggests that each Red mobile user also knew beforehand that the aim behind their tracking of Mr Hariri that day was his murder using an explosive device in a public place. Besides the times and places that day at which they made and received calls, it is particularly relevant that every core Red mobile user then stopped using that mobile, forever, shortly *before* the attack. It is improbable that all of them would do this, if some of them did not know that the attack was going to happen.

6488. In the Trial Chamber's view, a mobile user in any of the covert networks who had a supervision role, meaning someone who not only reported on developments but also coordinated, directed and or supervised others, must have known more about the mission than the users under their direction. And the more extensive the contact that user had with other network mobile users and with the acts needed to prepare for and then execute the terrorist attack to kill Mr Hariri, the more likely they would know that the mission's overall aim was the attack.

6489. My Ayyash as Red 741's user fits this profile. That mobile's call activity in the hours before the attack on 14 February 2005, in itself, makes it inconceivable that its user did not know the aim of the conspiracy by then.

6490. Red 741's calls to three other core Red mobiles—Subject 6's Red 678, Subject 8's Red 893 and Subject 9's 652—between 11:33:33 and 11:35:05 that day triggered their users' relocation to the Parliament area and by doing so, launched the beginning of the operation. The Trial Chamber is satisfied that this is the only reasonable inference available from the evidence.

6491. This evidence also supports the inference that Red 741's user coordinated at least some of the acts that executed the attack. Red 741's contact within the Red network on the day of the attack was also uniquely extensive; only Red 741 had calls with every other core Red mobile.¹¹⁶³⁴

¹¹⁶³² See chapter X 'Chronology of network mobile activity before Mr Hariri's assassination on Monday 14 February 2005', (C) (3) 'The day of the attack—Monday 14 February 2005'.

¹¹⁶³³ See chapter X 'Chronology of network mobile activity before Mr Hariri's assassination on Monday 14 February 2005', (E) 'Findings', in particular, paras 4669, 4718-4720.

¹¹⁶³⁴ See paras 4669, 4718-4720; *see generally* chapter X 'Chronology of network mobile activity before Mr Hariri's assassination on Monday 14 February 2005', (C) (3) 'The day of the attack—Monday 14 February 2005'.

Moreover, on four different days before 14 February 2005, Red 741 had had calls with various other Red mobile users at the same time that they were conducting mobile surveillance.¹¹⁶³⁵

6492. The Trial Chamber, for these reasons and those set out at chapter X ‘Chronology of network mobile activity before Mr Hariri’s assassination on Monday 14 February 2005’, is therefore convinced beyond reasonable doubt of Mr Ayyash’s participation in the conspiracy alleged. It is the only reasonable inference available from the totality of the evidence.

6493. Regarding the date of the commencement of the conspiracy, it is not possible to find a definite date on which those responsible for organising the conspiracy agreed that Mr Hariri was to be assassinated. They may have initially formed the intention to murder him in late 2004, given the volatile political environment and events at that time, following President Lahoud’s mandate extension.¹¹⁶³⁶ Among other political developments that the Trial Chamber has described in chapter IV ‘Historical and political background to the attack’, by that time the first two Bristol group meetings had occurred—on 22 September and 13 December 2004—Mr Hariri was planning to run for office again and was known to wish to loosen Syrian dominance over Lebanon.

6494. Factually, the following demonstrates that the planning for a *possible* attack on Mr Hariri must have started from at least mid-January 2005: the Red network handsets and SIM cards were purchased in Tripoli in late December 2004/early January 2005, and were initialised on 4 January 2005. The Red network—the assassination team, of which Mr Ayyash was a member—began surveillance of Mr Hariri’s movements from Friday 14 January and continued doing so until his death. Mr Abu Adass disappeared on Sunday 16 January, and the video was made between then and the attack. The Canter was purchased on either 17 or 25 January, but most probably on 25 January.

6495. It is highly probable that those responsible for organising Mr Hariri’s assassination decided to murder him only if he continued on his foreshadowed political path away from Syria, and had commenced their preparations for this by at least January 2005. Assassinating the former, and probable, future prime minister was an act that those responsible must have known would have had significant regional and international consequences. They could only have decided to go

¹¹⁶³⁵ On Monday 31 January 2005, Thursday 3 February 2005, Tuesday 8 February 2005 and Saturday 12 February 2005. See paras 4705-4708, 4715-4717.

¹¹⁶³⁶ See chapter IV ‘Historical and political background to the attack’.

through with it after having made a careful cost-benefit analysis in which they judged that the advantages of eliminating Mr Hariri would significantly outweigh the disadvantages.

6496. Despite the implementation of these preparatory steps outlined above none, either individually or collectively, inevitably led to Mr Hariri's assassination. The video could have been made and never used, as Mr Abu Adass was clearly dispensable; the Canter could have been purchased and then used for some other purpose, or sold; and, the information gained from the surveillance could have been stored for future use. The intended possible attack could have been aborted at any time. It is most likely that those responsible were prepared either way, namely, to continue to the attack if necessary, or to call it off.

6497. This decision to kill Mr Hariri, and in an enormous explosion in a public place, would not have been taken lightly. Mr Hariri had numerous powerful regional and international allies and connections, including in the United States, France, Saudi Arabia and the United Nations. It is thus highly likely that the decision to give the go ahead only occurred in February 2005 after the third Bristol Group meeting on Wednesday 2 February 2005. Mr Hariri had sent his delegates to the meeting. It was at this third meeting that its participants had agreed to call for the immediate and total withdrawal of Syrian forces from Lebanon, a position that Mr Hariri, according to his confidantes, had by then adopted. They had also called for the dismantling of the Syrian security apparatus in Lebanon,¹¹⁶³⁷ with Mr Hariri's tacit support.

6498. Significantly, the meeting had occurred the day after the Syrian Deputy Foreign Minister, Mr El-Moallem, had visited Mr Hariri at his home, for the final time, on Tuesday 1 February 2005. The transcript of its audio recording reveals that Mr Hariri had told Mr El-Moallem that 'Lebanon will not be ruled by Syria forever', as it was 'unacceptable', that he could 'bear no more orders'

¹¹⁶³⁷ Exhibit P407 (*Al-Mustaqbal* article on Bristol meeting), p. 2, which stated that its two main goals were the following, 'First: To end Syrian hegemony in Lebanon, restore sovereignty and restructure national authority on the basis that the Lebanese people are the sole source of power. The opposition also acknowledges the importance of finding an honourable settlement with Syria based on the full withdrawal of the Syrian army from Lebanon pursuant to the Taif Agreement in order to put an end to the serious crisis between the government and the international legitimacy which followed resolution 1559. Second: To restore the Lebanese democratic system by dismantling the security apparatus and putting an end to the interference of Syrian intelligence and their Lebanese accessories in public political life'.

from Syria, that ‘three quarters of me is already on the opposition side’ and that there was ‘interference in every small detail in the country’.¹¹⁶³⁸

6499. Despite Mr El-Moallem’s approach to Mr Hariri, the Bristol Group’s public statement, reported on Thursday 3 February 2005, went much further in relation to Syria’s involvement in Lebanon than in its previous statements. A significant cross-section of the Lebanese political class was by then publicly advocating the full implementation of the Taif Agreement, and Syria’s political, security and military redeployment from Lebanon.

6500. The Trial Chamber is therefore satisfied, based on the confluence of these events, that the *final* decision to commit the terrorist act was made only in the two weeks preceding Mr Hariri’s death. This is the only inference reasonably available from the evidence.

6501. Because of his role in the conspiracy, Mr Ayyash as the user of Red 741, Blue 233 and Green 300 must have known its aim, whether conditional or final, for some time before the attack. This was most likely by mid to late January 2005 at the latest, on the basis that the Canter was most probably purchased on 25 January, and preparations for its use in the attack could have begun. From the available evidence, the Trial Chamber cannot determine whether Mr Ayyash as the user of Red 741, Blue 233 and Green 300 did anything in relation to either the claim of responsibility, or the preparation of the Canter and the explosive device. In any event, it need not do this in order to determine his criminal responsibility.

6502. For the purposes of Mr Ayyash’s criminal responsibility it is legally sufficient for the Trial Chamber to find that the evidence establishes beyond reasonable doubt that he had agreed to commit the crimes charged by the day of the attack, namely Monday 14 February 2005. The Trial Chamber therefore finds that Mr Ayyash was a member of the conspiracy in having agreed to commit the terrorist act charged from at least sometime in early February and at the very latest by Monday 14 February 2005. It is satisfied that this is the only inference reasonably available from the totality of the evidence.

¹¹⁶³⁸ Exhibit P409.

(e) Whether Hasan Habib Merhi had a role in the conspiracy

6503. The Trial Chamber's analysis below is partly based on the assumption that Mr Merhi was the user of Green 071. The Trial Chamber, as set out in analysing the claim of responsibility, is not satisfied beyond reasonable doubt that Mr Oneissi or Mr Sabra participated in this component of the assassination plot.¹¹⁶³⁹ It follows logically from this that Mr Merhi, likewise, cannot be found guilty of coordinating their alleged participation in these activities that the Prosecutor pleaded were essential to the plot to assassinate Mr Hariri. The Prosecution effectively conceded this in final trial submissions in court.

6504. Mr Merhi's sole pleaded role in the conspiracy is as the coordinator of the false claim of responsibility. In relation to the actual disappearance of Mr Abu Adass, the only reliable evidence supporting it is of mobile calls between the three Accused over two separate periods.

6505. The evidence against him is in two strands. Both aspects derive solely from the call data records of two mobiles that he was using in 2004 and 2005, namely, his personal mobile Purple 231 and the Green network mobile, 071. This Green mobile, Green 071, was used solely for contacting Mr Badreddine at times the Prosecution alleges were crucial to the conspiracy in relation to the claim of responsibility. Mr Merhi's personal mobile contacted Mr Oneissi's Purple 095 and Mr Sabra's shared mobile 018, also at times (generally) related to events related to Mr Abu Adass and the dissemination of the claim of responsibility.

6506. The first period is between Wednesday 22 December 2004 and Friday 7 January 2005. Contact occurred in this period—on Wednesday 22, Tuesday 28 and Friday 31 December 2004 and Friday 7 January 2005—between Mr Oneissi on Purple 095 and Mr Merhi on Purple 231. This included times when Mr Oneissi's mobile was connecting to cells providing predicted best server coverage to areas 'near', meaning within one kilometre of, the Arab University Mosque in Beirut on 22 and 28 December 2004 and 7 January 2005.

6507. Mr Sabra's attributed mobile was also connecting to cells covering the mosque or the area adjacent on eight days namely, on Thursday 30, Friday 31 December 2004 and Saturday 1, Tuesday 4, Thursday 6 and Friday 7 January 2005. On two of these, 1 and 4 January, his Purple

¹¹⁶³⁹ See chapter XII 'Claim of responsibility for the attack on Rafik Hariri', (J) 'Conclusion'.

018 was in contact with Mr Merhi's Purple 231. Mr Merhi, on Green 071, contacted Mr Badreddine on Green 023, on Thursday 23 and Monday 27 December 2004, and Sunday 2 January 2005.

6508. The second set of contacts occurred in the days preceding Mr Abu Adass's officially reported disappearance of Sunday 16 January 2005.

6509. There were calls between Mr Badreddine and Green 071 between Wednesday 12 and Sunday 16 January 2005 on their Green mobiles, and most particularly five times on the morning of Sunday 16 January 2005. On Friday 14 and Saturday 15 January 2005, Mr Merhi on Purple 231 called Mr Sabra's shared mobile three times. On Monday 17 January 2005, Mr Oneissi on Purple 095 called Mr Merhi on Purple 231.

6510. Further, and crucial to the pleaded allegation that Mr Merhi was coordinating the false claim of responsibility, which included identifying Mr Abu Adass and his subsequent abduction to make the video, the Prosecution is using what it termed as a series of 'hierarchical' calls between Mr Badreddine and Mr Merhi to prove this. The Prosecution alleges that there were three hierarchical calls between the relevant Green and Purple mobiles on Wednesday 12, Friday 14 and Saturday 15 January 2005. Allegedly, these show instructions being passed down from Mr Badreddine to Mr Merhi, and then from Mr Merhi to Mr Oneissi, Mr Sabra or to one of the Purple Associate mobiles.

6511. Specifically, and additional to the finding in relation to Mr Merhi regarding his alleged involvement that logically must follow an acquittal of Mr Oneissi and Mr Sabra, the Trial Chamber has also carefully analysed all the calls between Mr Merhi and Mr Badreddine, and Mr Merhi and Mr Oneissi and Mr Sabra's attributed mobile.

6512. This was to determine whether these did involve the hierarchical calls flows alleged by the Prosecution and if so, whether they could be found beyond reasonable doubt to prove their involvement in the conspiracy related to the attack on Mr Hariri. Here, the Trial Chamber has also factored in, as is analysed in greater detail in examining the claim of responsibility, at paragraphs 5802-5818, that Mr Merhi, Mr Oneissi and Mr Sabra were using their personal mobiles to communicate with each other at times alleged to be crucial to the indictment period.

6513. However, it is stressed that even if it can be accepted that they were ‘hierarchical’ in the sense of reporting upwards, namely, Green 071 to Green 023, and receiving instructions downwards, Green 023 to Green 071, they must be viewed in the context of the other available evidence, namely, what was happening and what the calls could be connected to. Without context anchoring them to some evidence, it is no more than meaningless metadata.

6514. The three supposedly hierarchical call flows are the following:

- On **Wednesday 12 January 2005**, at 20:20, Mr Badreddine’s Green 023 called Mr Merhi’s attributed Green 071 for 101 seconds. Two minutes later, Mr Merhi’s Purple 231 called Associate Purple 744. Associate Purple 744, according to Mr Donaldson is linked to Mr Merhi’s brother, and Mr Platt stated that it had contact with other Purple mobiles;
- Two days later, on **Friday 14 January 2005**, at 19:55, Green 071 made a three-minute call to Mr Badreddine’s Green 023. Four minutes later, Mr Merhi’s Purple 231 called Associate Purple 744. A minute later, at 20:00, Mr Merhi’s Purple 231 called Mr Sabra’s attributed Purple 018. At 20:01 and 20:04, Purple 018 called Mr Oneissi’s Purple 095; and
- The following day, **Saturday 15 January 2005**, at 18:51, Green 071 called Mr Badreddine’s Green 023 for 31 seconds. At 18:52, Mr Merhi’s Purple 231 called Purple 018.

6515. None of these calls connected to cells relevant to Mr Abu Adass’s address. The first call, on **Wednesday 12 January 2005**, in the Trial Chamber’s view is not an example of a ‘hierarchal’ call flow. A call from Mr Badreddine to Green 071 followed by Mr Merhi calling a mobile associated with his own brother does not fit within the Prosecution’s case theory that Mr Badreddine was coordinating Mr Merhi’s activities, who in turn was coordinating those of Mr Oneissi and Mr Sabra. Mr Merhi is not accused of co-ordinating his brother in any kind of criminal activity.

6516. The Trial Chamber has carefully considered how the remaining two so-called hierarchical call flows can be linked to any evidence in the conspiracy. The Trial Chamber is satisfied that Mr

Abu Adass disappeared on the morning of Sunday 16 January 2005, as was reported by his father to the police on Wednesday 19 January 2005. However, it cannot be satisfied based on untested, and hence unreliable, hearsay evidence of what occurred in the preceding days, namely, the circumstances of Mr Abu Adass leaving his home for the final time.

6517. There is no reliable evidence of anything relevant to the case regarding the making of the claim of responsibility, including its preparatory activities involving Mr Abu Adass, occurring on either Wednesday 12 or Friday 14 January 2005.

6518. Friday 14 January may have been the day when a witness, Witness 87, testified that he saw Mr Abu Adass teaching a young man to pray in the Arab University Mosque, but the Trial Chamber has been unable to positively link this with either Mr Oneissi or Mr Sabra. Regarding Saturday 15 January 2005, the Trial Chamber has been unable to find that someone called ‘Mohammed’ called Mr Abu Adass on that night, around 21:00 arranging to meet him the next day. It has therefore been unable to link this call to Mr Oneissi, who is pleaded to have been the ‘Mohammed’.

6519. Without these connections, however, these three calls between Green 071, attributed to Mr Merhi, and Mr Badreddine on Green 023, made on **Wednesday 12, Friday 14 and Saturday 15 January 2005**, are devoid of context. To link these calls and the Accused to Mr Abu Adass’s disappearance, some evidence would be needed connecting them with him. Using the Purple mobile activity on the afternoon of Monday 14 February 2005 does not fill in the missing gap. This is because these two strands of the case—namely, the recruitment of Mr Abu Adass and the calls disseminating the false claim of responsibility—depend upon each other. This is not just for reinforcement but, most essentially, to allow the Trial Chamber to draw the inferences necessary from their combination to find the Accused guilty beyond reasonable doubt. Here, combining the two strands of evidence, and considering them in their totality does not permit the Trial Chamber to conclude that the only inference available from the combination is guilt.

6520. The Trial Chamber therefore cannot determine from the context why the calls were made. It cannot find that they were hierarchical call flows between Mr Merhi and Mr Badreddine in which either Mr Merhi reported information to Mr Badreddine or Mr Badreddine issued coordination instructions, which in turn were passed on. The Trial Chamber has insufficient evidence to connect these calls to Mr Abu Adass’s disappearance.

6521. The Prosecution also submitted that on Sunday 16 January 2005, Mr Merhi's Purple 231, Mr Sabra's Purple 018, Mr Oneissi's Purple 095, Associate Purple 375 and Associate Purple 744 entered an 'exceptional' period of inactivity,¹¹⁶⁴⁰ connected with Mr Abu Adass's abduction.

6522. While it may be technically correct to describe the inactivity as 'exceptional' in the sense that no calls were made that day, the Trial Chamber cannot link it to any reliable positive evidence about the claim of responsibility. This is especially so in light of the Prosecution's case that Mr Oneissi and Mr Sabra used their personal mobiles during the period in which they were engaging in initially contacting Mr Abu Adass in the mosque and then again in organising the claim of responsibility on Monday 14 February 20105. Thus, any reason for the mobiles' non-use on Sunday 16 January is speculative, particularly as this fact is being used to support the argument that they were involved in his 'abduction' that day.

6523. The Prosecution is using their non-activity of their mobiles on Sunday 16 January to prove that the Accused were 'abducting' Mr Abu Adass, but in tandem with unreliable evidence that Mr Abu Adass left his house to meet Mr Oneissi, whom he thought was 'Mohammed'. The Trial Chamber, however, has been unable to find that Mr Abu Adass disappeared in the company of someone called 'Mohammed' on Sunday 16 January 2005—this hypothesis being only one of other reasonable possibilities available from the evidence.

6524. Additionally, the Trial Chamber cannot find beyond reasonable doubt that Mr Oneissi was 'Mohammed', as the Prosecutor initially alleged in the amended consolidated indictment.¹¹⁶⁴¹ The Trial Chamber has also been unable to conclude that Mr Abu Adass was 'abducted' on 16 January, as opposed to going somewhere freely and voluntarily, irrespective of what happened to him afterwards.

6525. The Trial Chamber is satisfied that there was indeed a person in the mosque, in about early January 2005, calling himself 'Mohammed' and seeking assistance in learning how to pray, but there is no evidence connecting this person to either Mr Oneissi, as is pleaded, or Mr Sabra. Further, as is dealt with at paragraphs 5851 and 5861, the evidence is insufficient to persuade the

¹¹⁶⁴⁰ Prosecution final trial brief, paras 550-552, 776-780.

¹¹⁶⁴¹ The Prosecution, in response to a written question from the Trial Chamber (Questions for closing submissions, para. 3.) did not positively assert that Mr Oneissi was Mohammed, but rather that the evidence provided 'some indication that Mr Oneissi was Mohammed', Prosecution closing submissions, T. 14 September 2018, p. 67.

Trial Chamber that Mr Abu Adass met *this particular* ‘Mohammed’ and assisted him in praying at this time.

6526. The Trial Chamber has also been unable to conclusively find that on Monday 17 January 2005 the family of Mr Abu Adass received an early morning call from ‘Mohammed’ claiming that he and Mr Abu Adass were in Tripoli, where their vehicle had broken down. Nor that they received a second call, in the evening, informing them that he had decided to go on jihad to Iraq, and would not be coming home. The only evidence for this is untested and contested Rule 158 hearsay evidence from Witness 56 that the Trial Chamber cannot safely rely upon in relation to its most important points.

6527. In connection with this, the Prosecution submitted that Mr Oneissi’s Purple 095 became active about half an hour before the first call was made to the Abu Adass residence in the morning on Monday 17 January 2005. It then travelled back to the Arab University Mosque area in the evening, which coincided with the calls the abductors made.¹¹⁶⁴²

6528. However, the evidence reveals only that Mr Oneissi’s Purple 095—activating the SFEIR3 cell in southern Beirut—received service text messages at 07:01, and—connecting to the COLA2 cell, which provided predicted best server coverage to the Arab University Mosque—texted Mr Merhi’s Purple 231 at 21:02. It was connecting to that cell until 21:02, also receiving text messages. Purple 231 then called Purple 095 at 21:04 and, again at 21:05, by which time Purple 095 was connecting to another cell, GHOBAl 3, a few kilometres away.

6529. Even if the Trial Chamber could accept that the ‘abductors’ made the two calls alleged, as the Prosecution argues in its final trial brief, nothing connects these calls with any of the Accused. A person’s mere presence in the form of a mobile call connecting to a cell covering the mosque—and for several minutes—does not prove that they were there making the relevant calls from an unidentified payphone. And why they would have needed to return to the area of the mosque to make a night-time call—for which, it is stressed, there are no records of calls from any unknown numbers, such as from payphones—after Mr Abu Adass had already left, is inexplicable.

¹¹⁶⁴² Prosecution final trial brief paras 555-557, 760; *see also* Amended consolidated indictment, para. 29.

6530. In closing arguments, Prosecution counsel posited, in response to Trial Chamber questioning on this point, that the conspirators must have returned to the mosque area to use a payphone to make the call. This was because in their eyes Mr Abu Adass needed to be seen as a Sunni extremist who had been recruited and groomed in his local mosque, so it made perfect sense to go back to the area and to make a payphone call from nearby.¹¹⁶⁴³

6531. This explanation may well be correct; a call may have been made from a payphone somewhere near the Abu Adass home, and for these reasons. However, against this is that there is no evidence of from where the call was made; there are no call data records of calls from a payphone to the family home on that day. And Lebanese landline-to-landline call data records were not generally available before 2006.

6532. The Trial Chamber accordingly cannot link Mr Oneissi's mobile briefly connecting to the COLA2 cell on the evening of Monday 17 January either with Mr Abu Adass's reported disappearance at least 36 hours earlier, or to a subsequent call to his home—the evidence for which in any event comes from untested and contested Rule 158 statements.

6533. Analysing the totality of the calls between the two Green mobiles leads to the same conclusion concerning the absence of context with any other evidence.

6534. There were eighteen calls between Green 071 and Green 023 between 13 October 2004 and Monday 7 February 2005. The longest was on Thursday 13 January 2005 and lasted nineteen and a half minutes. Five of the eighteen calls occurred on Sunday 16 January 2005 and the last call occurred on Monday 7 February 2005 early in the morning, at 00:34, when Green 300 called Green 023 for a 23-second call. Both mobiles were then in Dahyieh in southern Beirut.

6535. On Sunday 16 January 2005, Green 071 called Mr Badreddine's Green 023 five times between 06:19 and 09:00. Indeed this coincides with the time of the officially reported departure of Mr Abu Adass for the last time from his home.

6536. However, neither Mr Oneissi's mobile nor Mr Sabra's attributed mobile were active that day. If they participated in Mr Abu Adass leaving his home that day, how this was communicated

¹¹⁶⁴³ Prosecution closing submissions, T. 14 September 2018, pp 25-26, in response to a question from Judge Braidy as to why the alleged abductors had to return to the area of the Abu Adass home on 17 January 2005.

to Mr Merhi, and presumably then in turn to Mr Badreddine as the pleaded coordinator of the conspiracy, is unexplained. If it occurred as alleged, it may have been in person, but there is no evidence of this.

6537. There is nothing connecting any of the three Accused to Mr Abu Adass leaving his home that day. It therefore follows that there is nothing connecting Green 071's calls to Mr Badreddine's Green 023 that morning with the disappearance, notwithstanding their temporal coincidence with his leaving home for the last time.

6538. The evidence has not connected either Mr Oneissi or Mr Sabra to any activities concerning Mr Abu Adass's disappearance on Sunday 16 January 2005. Mere proximity to the mosque on thirteen days in those two months, namely between Wednesday 1 December 2004 and Monday 17 January 2005—and then only by virtue of their mobiles connecting to cells providing coverage to the mosque and adjacent areas, and assuming here that Mr Sabra was actually using Purple 018 on those days—without more, cannot establish their involvement in the disappearance.

6539. When the pleading regarding 'Mohammed' is taken from the equation—as a consequence of the finding that the evidence does not prove that Mr Oneissi was 'Mohammed'—all that remains are the calls between Mr Merhi and Mr Oneissi and Mr Sabra's shared mobile in the weeks before Mr Abu Adass's disappearance. Of itself, no matter how holistically the evidence is viewed, this cannot provide sufficient proof of their involvement in the alleged abduction of Mr Abu Adass, and certainly not for the pleaded purpose, namely of finding someone suitable to make a false claim of responsibility.

6540. To complete the picture, there were also calls between Green 071 and Mr Badreddine's Green 023 on 6 November, 23 and 27 November 2004 and on Sunday 2 January and Thursday 20 January 2005.

6541. Prosecution counsel, in the opening statement in the case against Mr Merhi, argued that the increase in communication between Mr Sabra and Mr Oneissi and the corresponding increase in contact between Mr Merhi and Mr Sabra and Mr Oneissi is evidence that Mr Merhi 'had taken steps to assemble his team to advance the false claim of responsibility'.¹¹⁶⁴⁴

¹¹⁶⁴⁴ Prosecutor's opening statement regarding Hassan Habib Merhi, T. 18 June 2014, pp 45-47.

6542. On **Sunday 2 January 2005**, at 19:18, Green 071 contacted Mr Badreddine's Green 023 for a 38-second voice call.¹¹⁶⁴⁵ Earlier that day, at 15:13, Mr Ayyash's Green 300 had also called Mr Badreddine's Green 023.¹¹⁶⁴⁶ As there was no Purple mobile activity near the area of the mosque, and Green 071 had been inactive for the previous five days, Mr Platt concluded that this call was pre-arranged and could not be an update call. Rather, it was consistent with the users of these Green mobiles arranging a meeting.¹¹⁶⁴⁷

6543. However, there is no evidence connecting these calls with anything related to Mr Abu Adass, the mosque, anyone called 'Mohammed', Mr Abu Adass's disappearance, the video—its making, or its broadcast. Essentially, the calls are devoid of context when viewed singly and as a whole. There is insufficient evidence linking this metadata with anything solid from which the Trial Chamber can conclude that they were calls made by a command network coordinating the claim of responsibility for the attack, which included abducting Mr Abu Adass for this purpose.

6544. The same holds in relation to Mr Merhi's pleaded role in the dissemination of the false claim of responsibility. The only evidence against him—once the evidence of the calls in the previous period is taken from the frame—is of seven calls between Mr Merhi's personal mobile Purple 231 and Mr Sabra's shared personal mobile Purple 018 on Monday 14 February 2005 between 14:03 and 17:24.

6545. Additionally, between 15:54 and 16:02 Mr Sabra's shared Purple 018 was in contact five times with Mr Oneissi on Purple 095, namely at 15:54, 15:58, 16:00, 16:01 and 16:02. In the last two calls these mobiles were activating cell BNPI3, a cell closely adjacent to that providing the predicted best server coverage to the tree near Al Jazeera where the video was placed.

6546. Al-Jazeera's Beirut chief, Mr Ben-Jeddo, who spoke to the caller in each call, testified that he spoke to three different people. The Trial Chamber, as is set out in detail above in analysing the

¹¹⁶⁴⁵ Gary Platt, T. 8 February 2017, pp 22-24; exhibit P1205 (Call sequence table of Green 071), p. 8; exhibit P1211 (Call sequence table of Green 023), p. 3; exhibit P1782 (Narrative overview of telephone activity and relevant events), para. 455; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 470, 474. *See also* exhibit P1807 (Chronology PowerPoint presentation – 1 January 2005 to 17 January 2005), slides 71, 73.

¹¹⁶⁴⁶ Gary Platt, T. 8 February 2017, pp 22-24; exhibit P1207 (Call sequence table of Green 300), p. 3; exhibit P1211, p. 3.

¹¹⁶⁴⁷ Gary Platt, T. 8 February 2017, pp 22-25.

evidence related to the claim of responsibility,¹¹⁶⁴⁸ cannot conclude beyond reasonable doubt that either Mr Oneissi or Mr Sabra put the video in the tree or made the calls to Al-Jazeera or Reuters. Nor can it come to the same conclusion as to whether they were aware of the conspiracy—namely to commit an act of terrorism with an explosive device with the aim of murdering Mr Hariri—*before* the explosion occurred.

6547. Further, the Trial Chamber has concluded, at paragraphs 5560 to 5563, that the general reliability of the cell site evidence for the afternoon of Monday 14 February 2005 had been undermined as a result of the network congestion that occurred after the attack on Mr Hariri. This has diminished the overall strength of the Prosecution’s evidence in relation to inferences that could be drawn from the Purple mobile activity that afternoon.

6548. Again, Mr Merhi’s sole role in the conspiracy is connected with the false claim of responsibility and coordinating Mr Oneissi and Mr Sabra. As the Trial Chamber is not satisfied beyond reasonable doubt that that pair did any of the pleaded activities—namely, those connected with Mr Abu Adass’s alleged grooming, luring, disappearance, alleged ‘abduction’ and subsequent appearance on the broadcast video—it likewise follows that Mr Merhi cannot be found guilty of coordinating those activities.

6549. Essential to this finding is the absence of context to the calls between Mr Merhi and Mr Oneissi and Mr Sabra’s shared mobile on those days in December 2004 and January 2005 when their mobiles were in contact. In light of these findings in relation to Mr Oneissi and Mr Sabra, the Trial Chamber cannot be satisfied beyond reasonable doubt that Mr Merhi had the role alleged in relation to Mr Abu Adass’s disappearance.

6550. The Trial Chamber therefore cannot find that Mr Merhi—or Mr Oneissi or Mr Sabra—were conspirators under Article 270, nor, as the underlying evidence is the same, as accessories under either Article 219 (4) or Article 219 (5), of the Lebanese Criminal Code. The accessory liability is further set out in paragraphs 6892 to 6896 below.

¹¹⁶⁴⁸ See paras 4897-4904, 5853-5862. See further, chapter XIV ‘Legal findings on elements of the crimes and Individual criminal responsibility’, (D) ‘Hussein Hassan Oneissi and Assad Hassan Sabra’, (3) ‘Findings on individual criminal responsibility’, below.

6551. It follows that without such evidence, the Trial Chamber cannot find beyond reasonable doubt that Green 071's and Mr Badreddine's calls related to Mr Abu Adass or the claim of responsibility for the attack. Even if the Trial Chamber has incorrectly not found that Mr Merhi was using Green 071, the result would be the same.

(f) Whether Mustafa Amine Badreddine had a role in the conspiracy

6552. The Trial Chamber cannot make any findings as to Mr Badreddine's role, if any, in coordinating the claim of responsibility for the attack. It has received insufficient evidence to find that Mr Badreddine was coordinating the claim of responsibility. How this impacts on the remainder of the pleaded allegations that Mr Badreddine was the conspirator responsible for coordinating the entire assassination plot is analysed below.

6553. The Prosecution, as noted above, argues that the level of sophistication, detailed planning and commitment involved in the attack means that it could only have resulted from a conspiracy to commit a terrorist act by means of an explosive device, led by a sophisticated military actor. That actor was Mr Badreddine, by virtue of his senior role in Hezbollah.

6554. The evidence against Mr Badreddine consists essentially of three threads of proof. The first is his use of Green 023 in the three-member Green network and his role, which is described by the Prosecution as its commander/coordinator. This evidence comes from a combination of call data records and Prosecution expert opinion evidence.¹¹⁶⁴⁹ This is analysed below in detail.

6555. The second is of the so-called hierarchical call flows involving calls to and from Green 023 and Mr Ayyash's Green 300, which, the Prosecution states accord with reporting and instructing, and as analysed above in relation to the claim of responsibility, a similar calling pattern with Mr Merhi. This too is a combination of call data records and expert opinion evidence. The third thread is knowledge of who Mr Badreddine was, as a senior Hezbollah official.

6556. Judge Braidy disagrees with the Trial Chamber in its proceeding to analyse and make legal findings on whether Mr Badreddine had a role in the conspiracy. This is because he is no longer an Accused in this case. She has appended to the judgment a dissenting opinion on this issue.

¹¹⁶⁴⁹ Essentially, that of Mr Philips and Mr Platt. Mr Donaldson's evidence was analytical overview opinion evidence.

i. Mustafa Badreddine and Hezbollah

6557. The evidence in this third category comes from information released by Hezbollah after Mr Badreddine's reported death in May 2016. Under the heading, 'Relationship with Hezbollah & Badreddine with Hezbollah', the Prosecution in its final trial brief argues that Mr Badreddine was 'an experienced operative with the necessary skills, knowledge and ability to train others in the sophisticated preparation and execution of the Attack'.¹¹⁶⁵⁰ The Prosecution argued that he 'was a senior military commander of vast experience and importance in Hezbollah and the history of the Resistance movement'.¹¹⁶⁵¹

6558. The evidence supporting this is that of Hezbollah's Secretary-General, Mr Hassan Nasrallah, describing Mr Badreddine as a military leader in confronting Israel in the war in July 2006. And that 'among his achievements was dismantling the networks of collaborators with the "Israeli" enemy in 2008 and the years that followed'. Further, he 'was in charge of leading and commanding the Hezbollah military and security units inside Syrian territories' after Hezbollah entered the conflict in Syria. This would have been from 2011.

6559. An *Al-Manar* television commemoration stated that Mr Badreddine had assumed the 'leadership of the Military Central Command in Hezbollah' in 1995, was a military leader in July 2006 and by 2016 commanded Hezbollah military and security units in Syria.¹¹⁶⁵²

6560. Contradictory information however was given on *Alahed's* website, stating that his leadership role began in 1992 (not 1995) when he 'became in charge of the Central Military Unit Command, and built formations and set out military plans'. Further, Mr Badreddine 'planned many of heroic and martyrdom operations and especial operations such the assault on hostile positions, planting explosive and clashes, which forced the Zionist occupier to withdraw in 2000'. His part in the conflict in July 1993 was said to have been significant in that he 'played a prominent role in facing the aggression in July 1993 and forced the enemy's Prime Minister Rabin, at the time to

¹¹⁶⁵⁰ Prosecution final trial brief, para. 321.

¹¹⁶⁵¹ Prosecution final trial brief, para. 317. In admitting the evidence, the Trial Chamber held that the evidence went to 'Mr Badreddine's position as a senior Hezbollah military commander and his military operational history, which the Prosecution claims can support the inference that he had the ability to orchestrate an operation like the 14 February 2005 attack'; Decision admitting documents on the death of Mr Badreddine, para. 27. In finding it admissible, the Trial Chamber did not determine how it could be used.

¹¹⁶⁵² See para. 744.

admit defeat by Hezbollah’. And in 1996, ‘during the aggression of the Grapes of Wrath, he established the foundations for a new stage which made the world recognise the legitimacy of resistance and its right to defend its territory’.

6561. The Trial Chamber, though, received no other evidence of Mr Badreddine’s activities nor of his leadership experience or capacities *in 2004 and 2005*—namely, the period relevant to the amended consolidated indictment—other than general assertions of his overall utility to the resistance.

6562. That Hezbollah sent fighters into Syria to assist President Al-Assad in the conflict there from 2011 onwards is well-known and undisputed. The Trial Chamber has no reason to disbelieve that Mr Badreddine was one of these fighters, nor that he was a senior Hezbollah official who had some command role in Syria between 2011 and 2016. However, the evidence of his role as a commander in 2004 to 2005 is not strong.

6563. The two news outlets referred to directly above, *Al-Manar* and *Alahed*, gave different dates for his alleged promotion to Hezbollah’s Central Military Unit Command, either 1992 or 1995, and there is no evidence of what his role was in this body, or indeed if that information is correct.

6564. Moreover, the Trial Chamber is cognisant that an element of propaganda may have been present in how Mr Badreddine’s achievements were extolled in relation to what occurred in 1993 and 1996. His contribution to both campaigns have been presented in a manner that make them appear singular.

6565. With this in mind, the Trial Chamber thus has to carefully assess whether Mr Badreddine’s alleged command role has for some reason been embellished. If Mr Badreddine were the acclaimed military commander presented by Hezbollah, his reported death in May 2016 near Damascus may have represented a setback for Hezbollah’s operations. To motivate its supporters, Mr Badreddine’s achievements may have been presented in a glowing light, even to the point of overstating them.

6566. Essentially, though, the evidence about Mr Badreddine’s precise role in Hezbollah at the time relevant to this case and whether it involved military command, is unclear. Thus, the Trial Chamber has no *reliable* evidence that Mr Badreddine had a command role in 2004 or 2005. He

may have but what it was and how much experience he had, relevant to the pleaded allegations in the amended consolidated indictment, is not in evidence.

6567. It is also useful to approach this issue by analogy with international criminal law cases that have alleged the criminality of military commanders. These typically fall into three categories. The first is via command responsibility where the commander is accused of having individual criminal responsibility for the actions of subordinates in failing to either prevent or punish their criminal acts.¹¹⁶⁵³ The second is of participation as a commander by ordering or directly participating in the crimes alleged.¹¹⁶⁵⁴ The third is of aiding and abetting the crimes of others, such as by not preventing crimes occurring—which rises to this level—or facilitating their commission, for example by supplying materiel and personnel to units known to be breaching international humanitarian law.¹¹⁶⁵⁵

6568. To prove these crimes, the commander's precise role, either *de jure* or *de facto*, has to be pleaded and established. This is normally through proving the indicia of command, such as through lines of subordination and orders that are issued and obeyed. Strict proof of these matters is required.

6569. While this is not such a case, and Mr Badreddine was not alleged to have incurred criminal responsibility by virtue of his role as a military commander, the Prosecution's final trial submissions are tantamount to alleging Mr Badreddine's culpability as being at least in part based upon who he was alleged to be. That he was a long-standing senior Hezbollah military commander is asserted in the sub-heading to the final trial brief of '**A. The Commander of the Network coordinating the Preparation for and Attack on Hariri, Mustapha BADREDDINE was a Hezbollah Military Commander**'.¹¹⁶⁵⁶

6570. Further, it explains 'how the person leading the operation at the apex of the Green Network, BADREDDINE, had the capabilities to carry out such a carefully orchestrated attack'.¹¹⁶⁵⁷

¹¹⁶⁵³ For example, *Hadžihasanović and Kubura* Appeal Judgment; *Halilović* Appeal Judgment.

¹¹⁶⁵⁴ For example, *Prlić and others* Appeal Judgment; *Popović and others* Appeal Judgment.

¹¹⁶⁵⁵ For example, *Perišić* Appeal Judgment; *Taylor* Appeal Judgment.

¹¹⁶⁵⁶ Prosecution final trial brief, sub-heading under, **IV. RELATIONSHIP OF ACCUSED & BADREDDINE WITH HEZBOLLAH**.

¹¹⁶⁵⁷ Prosecution final trial brief, para. 341.

Nevertheless, reliable evidence of this is lacking at the relevant time, namely, in late 2004 and 2005 when he was allegedly coordinating the activities of the conspirators to Mr Hariri's death.

6571. Thus, if the allegations of who Mr Badreddine was in the sense that he was a senior Hezbollah military commander, are taken out of the equation, the Trial Chamber is left only with the alleged Green command network, and a number of calls between Mr Badreddine and Mr Ayyash—but without evidence of their content. This of course raises the fundamental question of the strength of the case against Mr Badreddine's alleged participation as a co-conspirator absent any probative evidence of who he was alleged to be in 2004 and 2005. Without it, only a series of calls between Green mobiles remains.

6572. A domestic criminal law analogy could assist in analysing this. Such a parallel could be of a bank robbery where a lone fully masked and heavily disguised armed robber enters and robs a bank.

6573. Cell site evidence reveals calls between two people, one of whom is a known and convicted bank robber, including on the day of the robbery, from that known robber to someone whose mobile is connecting to a cell covering the bank just before the robbery. The two are using mobiles that only communicate with each other in the week before the robbery and are never used again after the robbery. The case rests solely on three factors: namely, the metadata in the form of call data records establishing calls between a mobile near the bank when the robbery occurred and the known bank robber, but without call content; that the second person is a known robber; and a weak description of the masked robber from those in the bank. To this could be added a series of robberies displaying exactly the same calling patterns.

6574. Obviously, neither person could be convicted on these facts if they were charged with committing just one robbery, without evidence of the patterns emerging from the other robberies and calls. If they were charged with committing multiple robberies, it would be based on the patterns of communication coinciding with the robberies. If the court did not permit the evidence that one was a convicted armed robber—as it would normally not, absent a compelling exception such as its use as similar fact or propensity evidence—the evidence against the suspects would be reduced to the pattern of the content-less mobile calls, and a weak description of the armed robber.

6575. The obvious question would be of how that person could be convicted, without more, of participating in a conspiracy to rob the bank. On that evidence, which is of course circumstantial, a trier of fact would surely have to have a reasonable doubt as to whether either was an actual criminal participant in the robberies, no matter how suspicious the mobile telephone activity was.

6576. To return to Mr Badreddine's situation: if he had indeed been a senior Hezbollah military commander at the relevant time, he would undoubtedly have had access to resources that an 'ordinary' criminal would not have had, that could have facilitated the planning, directing and executing of such a large-scale attack. If this is correct, it may have included an extensive experience of military leadership and, at least potentially, access to a large quantity of military-grade explosives, such as those used in the attack. However, again, reliable evidence of this is lacking for 2004 to 2005. For this reason, the Trial Chamber cannot find that Mr Badreddine had to have been a conspirator at that time based in part upon his known activities as a senior Hezbollah military commander with extensive military leadership experience and presumed access to RDX. Further, the Trial Chamber received no evidence as to the provenance of the RDX used in the attack.

ii. Mr Badreddine's Green network activity

6577. The alleged hierarchical call flows in combination with the use of a closed network, restricted on the Prosecution's pleading to three people, Mr Badreddine, Mr Ayyash and Mr Merhi, using their Green mobiles, is the other major strand in the Prosecution's case that Mr Badreddine coordinated the operation to assassinate Mr Hariri.

6578. The following calls may be examples of hierarchical call flows; the Prosecution's cell site expert Mr Philips testified that some of these were hierarchical, and the Prosecution made submissions to this effect about some of them.

6579. They must of course be analysed in their totality to ascertain whether patterns emerge from which findings beyond reasonable doubt may be made of Mr Badreddine's involvement:

- **Tuesday 18 January 2005:** on that day, Mr Hariri was at home at Quraitem Palace all day. At 16:49, Mr Badreddine's Green 023 called Mr Ayyash's Green 300, which activated PORT3, north-east of Parliament, for 22 seconds. Seven minutes later, at 16:56, Mr

Ayyash's Blue 233 called Blue 501 for 58 seconds. Blue 233 connected to CoastRoad_C. Blue 501—described as the 'Blue base' mobile—activated Sfeir_B. At 17:07, Mr Badreddine's Green 023 called Mr Ayyash's Green 300 for 68 seconds. Both mobiles activated PORT2, east of the Parliament;

- The Prosecution submitted that the two met at that time. Mr Platt thought that they had met in the port area.¹¹⁶⁵⁸ He relied on the sequence of calls showing one user travelling to the area and then the other; the silence of the mobiles attributed to them shortly after they both connected to PORT2; that Mr Badreddine's personal mobile 633 was turned off; the absence of further calls between Green 023 and Green 300 on 18 January 2005; and the significance of the location;¹¹⁶⁵⁹
- **On Wednesday 19 January 2005**, Mr Hariri was at Quraitem Palace all day. In the early hours of the morning, at 00:09 and 00:11, Mr Ayyash's Blue 233, activating cells in south Beirut, called Blue 742, which connected to cells between Beirut and the Syrian border. At 00:26, Blue 742, activating another cell along the same route, called Mr Ayyash's Blue 233 for 13 seconds. Thirty-three minutes later, at 00:59, Mr Ayyash's Green 300 called Mr Badreddine's Green 023 for two minutes and 20 seconds. Six minutes later, at 01:05, Green 023 called Green 300 for just over a minute and a half. For both of these calls, Green 300 connected to a cell in south Beirut and Green 023 connected to cells near Jounieh;
 - The Prosecution submits that Blue 742 went to Anjar and that Mr Ayyash took a unique interest in this journey;
- At 15:25 that day, Mr Badreddine's Green 023 called Mr Ayyash's Green 300 for 12 seconds; both mobiles activated cells in south Beirut. At 15:28, Mr Ayyash's Blue 233, activating a cell in southern Beirut, called Blue 501—described as the 'Blue base' mobile—for 12 seconds. At 15:33, Mr Ayyash's Blue 233 called Blue 864 for a minute and 42 seconds. Blue 233 activated a cell in south Beirut and Blue 864 activated a cell near the airport;

¹¹⁶⁵⁸ Exhibit P1782, para. 10 (pp 198-199); Gary Platt, T. 15 February 2017, p. 33, T. 16 February 2017, pp 29-30, 34, 37-38.

¹¹⁶⁵⁹ Exhibit P1782, para. 10 (pp 198-199); Gary Platt, T. 16 February 2017, p. 37.

- The Prosecution submits that this hierarchical call flow occurred on the first day when Blue 864 used cells in an industrial area east of the airport;¹¹⁶⁶⁰
- **On Tuesday 25 January 2005**, Mr Hariri was at Quraitem Palace all day. At 14:59, Mr Ayyash's Blue 233, activating Sfeir_A in south Beirut, called Blue 610, which connected to MAARAD2 in Tripoli, for a minute and a half. At 15:10, Mr Ayyash's Green 300 called Mr Badreddine's Green 023 for one minute and 21 seconds. Both mobiles were in south Beirut;
 - The Prosecution ties these calls to the purchase of the Mitsubishi Canter;
- **On Friday 28 January 2005**, Mr Hariri remained at Quraitem Palace. At 14:14, Mr Ayyash's Green 300 called Mr Badreddine's Green 023 for just over a minute. Green 300 connected to MOSBEH2 near Zouk-Mosbeh and Green 023 connected to TRIANO1, between Beirut and Zouk-Mosbeh. Three minutes later, Mr Ayyash's Red 741 activating MOSBEH2, called Subject 9's Red 652 for 57 seconds, with Red 652 connecting to FARAYA2 in the Faraya area. At 16:25, Green 023 called Green 300 for 35 seconds. Mr Ayyash's Green 300 activated NDU2, near Zouk-Mosbeh just north of Beirut. At 16:27, his Red 741, still connecting to NDU2, called Subject 6's Red 678 for 58 seconds. At 16:46, Mr Ayyash's Red 741, connecting to a cell west of Zouk-Mosbeh, called Red 678, which activated RAOUCH3 near Quraitem Palace, for 19 seconds. Two minutes later, at 16:48, Mr Ayyash's Green 300, connecting to MOSBEH2 in the Zouk-Mosbeh area, called Mr Badreddine's Green 023 for 20 seconds;
 - In the Prosecution's view these calls were linked to surveillance of the route between Quraitem Palace and Faqra Villa;
- **On Monday 31 January 2005**, Mr Hariri visited the Higher Shiite Council between 11:00 and 11:45. Just before his departure from Quraitem Palace, Subject 6's Red 678 and Subject 8's Red 893 were in contact connecting to cells covering the palace at 09:54. At

¹¹⁶⁶⁰ In closing submissions, Prosecution counsel submitted that Blue 742's activity on 18 January 2005 in the Anjar area and in the area described as 'East of Airport' is evidence of the Blue mobile network's covert conduct, but it does not seek positive findings on these non-material facts, Prosecution closing submissions, T. 14 September 2018, pp 12-14.

10:54:10, Mr Ayyash's Red 741 called Red 636 for 36 seconds with both connecting to PORT2. Immediately afterwards, at 10:54:54, Mr Ayyash's Green 300 called Mr Badreddine's Green 023 for 17 seconds. At 11:13, Mr Badreddine's Green 023, connecting to ZOUKAK1, located between Parliament and the crime scene, called Mr Ayyash's Green 300 connecting to SABRA3, near the Higher Shiite Council, for 23 seconds. At 11:16, Mr Ayyash's Red 741, activating SABRA3, called Subject 8's Red 893 in the same cell for nine seconds;

- The Prosecution made no submissions that these were hierarchical;
- At 11:44, Mr Badreddine's Green 023, called Mr Ayyash's Green 300 for just over a minute with Green 023 activating ZOUKAK1 and Green 300 still connecting to SABRA3. Four minutes later, at 11:48:11, Mr Ayyash's Red 741, activating SABRA3, called Subject 5's Red 636, activating ETOILE1 near Parliament, for 14 seconds. At 11:48:45, Mr Ayyash's Green 300, still connecting to SABRA3, called Green 023, which activated ZOUKAK1, for 10 seconds. A minute later, at 11:50, Green 023 called Green 300 for 19 seconds. Green 023 connected to PHENMB1 near the crime scene. Green 300 connected to GHOBAl3, which was north of SABRA3. At 11:51, Mr Ayyash's Red 741 called Subject 9's Red 652 for 11 seconds. Red 741 connected to PINS2, north of GHOBAl3. Red 652 activated SODECO3, further north;
- At 11:55, Mr Badreddine's Green 023, activating MRAICI2, which was west of the crime scene, called Green 300 for 26 seconds. Mr Ayyash's Green 300 connected to BASTA1, which was next to SODECO3 in the direction of Quraitem Palace. At 11:56, Mr Ayyash's Red 741 called Subject 5's Red 636 for 38 seconds. Red 741 activated BASTA3, which was next to BASTA1, again in the direction of Quraitem Palace. Subject 5's Red 636 connected to ZOUKAK1. At 12:03, Subject 6's Red 678, activating CARLTO3 in north-west Beirut, called Mr Ayyash's Red 741 for 23 seconds, with Red 741 connecting to KRAYTM1, next to Quraitem Palace. At 12:04, Mr Ayyash's Green 300 called Mr Badreddine's Green 023 for 42 seconds. Green 300 connected to RAOUCH1, next to Quraitem Palace. Green 023 connected to OUZAII1, north of the Higher Shiite Council;

- The Prosecution seeks to tie these calls to surveillance of Mr Hariri's journey from the Higher Shiite Council to Quraitem Palace. Mr Platt concluded that the seven calls between Green 300 and Green 023 during this short period were consistent with Green 023 getting information from Green 300 regarding the security detail's movements, and whether it was heading toward Mr Ayyash's location; and
- After the 11:54 call, when it had become clear that the convoy would not travel to Parliament, Mr Badreddine's Green 023 started moving toward southern Beirut.¹¹⁶⁶¹ According to Mr Platt, on this day, Mr Ayyash and Mr Badreddine wanted to gather first-hand detailed observations of the security detail's behaviour, in order to make decisions about the eventual attack;¹¹⁶⁶²
- **On Thursday 3 February 2005**, Mr Hariri visited Mufti Qabbani between 13:18 and 13:51 and then lunched with Deputy Prime Minister Fares on his yacht at the St Georges Marina at 14:00. At 15:43, Mr Ayyash's Red 741, connecting to MRAICI2, west of the crime scene, called Subject 5's Red 636 at SIMON3, in west Beirut, for just under two minutes. A minute later, at 15:44, Mr Ayyash's Green 300, activating MRAICI2, called Mr Badreddine's Green 023, for 23 seconds, connecting to the same cell;
 - The Prosecution submits that these calls relate to surveillance of Mr Hariri during his journey from the St Georges Marina to Quraitem Palace;
- **On Tuesday 8 February 2005**, Mr Hariri went to the Parliament at midday, leaving at 13:25 and returning to Quraitem Palace at 13:39. At 13:39, Subject 5's Red 636 called Mr Ayyash's Red 741 for 25 seconds. Subject 5's Red 636 activated MRAICI2, west of the crime scene. Red 741 activated MANARA2, in north-west Beirut along the coastal road. A minute later, at 13:40, Mr Ayyash's Green 300, connecting to MANARA2, called Mr Badreddine's Green 023 for 67 seconds, connecting to ROUEIS3 in south Beirut;

¹¹⁶⁶¹ Gary Platt, T. 23 February 2017, pp 90-91.

¹¹⁶⁶² Gary Platt, T. 23 February 2017, pp 83-84.

- The Prosecution submits that was a rehearsal of the attack and the hierarchical call flow was linked to surveillance of Mr Hariri's journey from Parliament to Quraitem Palace;
- **On Friday 11 February 2005**, Mr Hariri was at home at Quraitem Palace receiving visitors. From just before midday there was Red network activity near Quraitem Palace, including Mr Ayyash's Red 741. At 12:45, Mr Ayyash's Green 300, activating PORT3 east of Parliament, called Mr Badreddine's Green 023 for 49 seconds. Green 023 activated ROUEIS3 in south Beirut. At 12:46, Mr Ayyash's Red 741, activating PORT3, called Subject 6's Red 678, which connected to TOURBO3, in Tripoli for just under two minutes;
 - Mr Philips identified these calls as a hierarchical call flow but the Prosecution made no submissions about this;
- **On Saturday 12 February 2005**, Mr Hariri visited the Sacré Cœur Church at around 10:48 for twelve minutes. At 10:49, Mr Ayyash's Red 741, activating HOTELD2, north of the church, called Subject 9's Red 652, which activated MPT2, next to the church, for just under a minute and a half. At 10:51, Mr Ayyash's Green 300, activating SASSIN1 in north-east Beirut, called Mr Badreddine's Green 023;
 - The Prosecution submits that this hierarchical call flow is linked to the surveillance of Mr Hariri at the church;
- Several hours later, at 14:27, Subject 5's Red 636, connecting to FARAYA1, called Mr Ayyash's Red 741, which connected to MOSBEH2 in the Zouk-Mosbeh area, just north of Beirut, for 40 seconds. At 14:28, Mr Ayyash's Green 300, activating the same cell, called Mr Badreddine's Green 023, in ROUEIS3 in south Beirut, for 33 seconds;
 - Mr Philips thought that this was a hierarchical call flow, but the Prosecution made no submissions about it;
- At 15:47, Mr Badreddine's Green 023 called Mr Ayyash's Green 300, which activated RIMAL1 west of Zouk-Mosbeh, for 35 seconds. At 15:48, Mr Ayyash's Red 741 called Subject 6's Red 678 for 28 seconds. Red 741 activated MOSBEH2 and Red 678 activated MANARA2, in north-west Beirut;

- Mr Philips testified that this was hierarchical but the Prosecution made no submissions about it;
- At 17:07, Mr Ayyash's Green 300, connecting to RIMAL1 west of Zouk-Mosbeh, called Mr Badreddine's Green 023, which activated GHAZIR2, near Jounieh. The call lasted 29 seconds. Two minutes later, at 17:09, Mr Ayyash's Red 741 called Subject 5's Red 636 for 55 seconds. Red 741 activated MOSBEH2, and Red 636 connected to FAYTRO1, near Faraya. At 17:10, Red 741, still activating MOSBEH2, called Subject 7's Red 946, which also connected to MOSBEH2, for 25 seconds;
 - According to the Prosecution these calls relate to the surveillance of the route from Quraitem Palace to Faqra Villa;
- **On Monday 14 February 2005**, at 11:57, Subject 5's Red 636 called Mr Ayyash's Red 741, in the area of the crime scene on the PHENMB1 cell for 50 seconds. Red 636 was south of the crime scene in the area of the Suleiman Frangieh tunnel, using the ZOUKAK2 cell at the start of the call and the PHENMB1 cell at the end of the call;
 - Mr Platt considered that Subject 5's Red 636's movements were consistent with the mobile travelling from the south northwards through the tunnel, in tandem with the Mitsubishi Canter's direction of travel;
- Immediately after, Green 300 and Green 023 were used for the last time when Mr Ayyash's Green 300 called Mr Badreddine's Green 023 at 11:58 for 14 seconds, connecting to the PHENMB1 and MRAICI1 cells. The PHENMB1 relay cell mast was approximately 100 metres from the crime scene, while the predicted best coverage area of MRAICI1 was less than 30 metres away from it; and
- At 12:04, Mr Ayyash's Red 741, connecting to ZOUKAK1, called Subject 7's Red 946, which also connected to ZOUKAK1, for 14 seconds. Forty-five minutes later, between 12:49 and 12:50, Mr Hariri's convoy left the Parliament taking the coastal route to Quraitem Palace, arriving at the crime scene where the explosion occurred at 12:55:05.
 - The Prosecution submits that these described calls relate to the Mitsubishi Canter's arrival at the crime scene.

6580. From these call flows the Trial Chamber can conclude that Mr Ayyash and Mr Badreddine were in regular contact on their Green network mobiles during the indictment period—and for a period before—but for calls of a very short duration. Here, the Trial Chamber stresses that it has no direct evidence of what was said, and can only attempt to draw inferences from the surrounding circumstances as to why and about what the two were communicating. It also has no evidence of any meetings between any conspirators, or how or when they met, nor of what may have been said.

6581. There are two further calls that the Prosecution alleges had a hierarchical function; the first is before the pleaded indictment period:

- **On 30 September 2004**, at 22:19, Mr Ayyash's Green 300 called Mr Badreddine's Green 023 for 21 seconds. Mr Ayyash's Green 300 connected to SFEIR2 in southern Beirut. Mr Badreddine's Green 023 activated GANOUM3, which was also in southern Beirut. Less than a minute later, Mr Ayyash's Yellow 294, connecting to SFEIR2, called Yellow 024, which activated Bir_Abed_C, for 23 seconds;
 - The Prosecution submits that this call occurred on the eve of the attack on Mr Marwan Hamade on 1 October 2004, but makes no specific submissions linking the calls to this event. It argues that this hierarchical call flow occurred within hours of Mr Ayyash joining the Green mobile network, which demonstrates his role as the lead coordinator of the covert networks; and
- **On Tuesday 28 December 2004**, Mr Hariri was at Quraitem Palace. At 13:11, Yellow 457 called Mr Ayyash's Yellow 294 for 24 seconds. Yellow 457 activated TRIPOL2, which was in the area of the Nejme cell shop in Tripoli. Yellow 294 activated PORT1, which was north-east of Parliament. At 13:14, Mr Ayyash's Green 300, connecting to PORT1, called Mr Badreddine's Green 023, which activated ROUEIS3 in southern Beirut;
 - The Prosecution submits that these calls relate to the purchase of the Red SIM cards.

6582. The Trial Chamber can draw no conclusions about the first of these two calls, on **30 September 2004**, as its context is uncertain even when considered in the totality of the evidence of all the Green network calls. Of the second, on **Tuesday 28 December 2004**, the Trial Chamber

cannot positively find that the Red SIM cards were bought on that day, meaning that no inferences in that respect can be drawn from this sequence of calls.

6583. To connect Mr Badreddine to the conspiracy to commit the terrorist act and to murder Mr Hariri, the Trial Chamber must be satisfied beyond reasonable doubt that the only conclusion available from the evidence is that Mr Badreddine had both the *mens rea* and the *actus reus* to commit the crimes charged. Such a finding would not of course be one of finding Mr Badreddine's guilt beyond reasonable doubt as he is no longer an accused person.

6584. The Trial Chamber has already positively decided that it could make findings on Mr Badreddine's pleaded role as an unindicted co-conspirator. From 11 July 2016, when the Trial Chamber, on the Appeals Chamber's order, terminated the case against Mr Badreddine, he has not been an accused in the proceedings facing criminal charges before the Special Tribunal.¹¹⁶⁶³

6585. In the decision terminating those proceedings, the Trial Chamber held that international criminal law principles and practice permit the Prosecution to plead and lead evidence of the conduct of deceased or unindicted alleged accomplices. Furthermore, as a general principle of pleading indictments in international criminal law, the Prosecution must plead the identity of known alleged co-conspirators. Where the participation of more than one person is a legal requirement for conspiracy, international criminal procedural law indisputably allows a court to accept the pleading of the name and role of the unindicted and to hear evidence and make findings in relation to them. Any findings will be binding only in relation to the individual criminal responsibility of the four Accused, thus any potential findings concerning Mr Badreddine's alleged role would be factual, limited to the confines of the case and having no legal impact upon his 'interests'.¹¹⁶⁶⁴

6586. The Trial Chamber based its findings on the case law of the ICTY, ICTR, SCSL, and of the Nuremberg and Tokyo tribunals. Those international criminal courts and tribunals allowed the names of deceased alleged accused in indictments alleging their (uncharged) criminal conduct.

¹¹⁶⁶³ Decision amending the consolidated indictment, paras 24-25, based on the Appeals Chamber's three-two majority decision on the issue, substituting its own final decision for that of the Trial Chamber's interim decision.

¹¹⁶⁶⁴ Decision amending the consolidated indictment, paras 37-38, 44, 46-47.

6587. At the ICTY, for example, the names and alleged roles of unindicted individuals and deceased accused were pleaded in indictments in cases alleging their participation in joint criminal enterprises.¹¹⁶⁶⁵ In *Prlić and others* the Trial Chamber made findings about the role in the joint criminal enterprise of three deceased senior Croatian officials and one deceased Bosnian-Croat official, whose role was pleaded in the indictment.¹¹⁶⁶⁶ In a post-conviction interlocutory appeal in that case, the ICTY Appeals Chamber held that findings of criminal responsibility were binding only upon the accused in a specific case and that since the Croatian officials found to have been members of the joint criminal enterprise were not indicted or charged, their presumption of innocence was not impacted.¹¹⁶⁶⁷

6588. The ICTR also permitted the names of deceased co-conspirators in indictments where the accused and others were alleged to have engaged in a conspiracy to commit genocide. In *Karemera and Ngirumpatse*, the ICTR also described and made findings on the acts and conduct of deceased co-conspirators.¹¹⁶⁶⁸ Similarly, the SCSL, in *Fofana and Kondewa*, made multiple adverse findings of fact concerning the acts and conduct of the co-accused Sam Hinga Norman, who had died between the close of evidence and the rendering of the judgment, including that he had ordered the commission of crimes.¹¹⁶⁶⁹ At the ICC, in *Ongwen*, in the context of co-perpetration, a deceased co-accused, Raska Lukwiya, was referred to in the document containing the charges and in decisions confirming the charges against Mr Ongwen.¹¹⁶⁷⁰

6589. International standards on human rights, in light of which the Trial Chamber must interpret the law, neither prohibit a criminal court from hearing evidence concerning the actions of a deceased or unindicted person, nor from naming that person in a charging document, nor from using their name in the proceedings. International human rights law also does not prevent a court from hearing evidence of the actions of an unindicted co-perpetrator or using it against the accused

¹¹⁶⁶⁵ Such as in the *Prlić and others*, *Brđanin*, *Šešelj*, *Karadžić*, *Mladić* and *Haradinaj and others* indictments.

¹¹⁶⁶⁶ These were the late Croatian President Franjo Tuđman, the Croatian Defence Minister Gojko Šušak, the Chief of the Croatian Army Main Staff, General Janko Bobetko and the president of the self-proclaimed breakaway republic of Herceg-Bosna in Bosnia and Herzegovina, Mate Boban, *Prlić and others* Indictment.

¹¹⁶⁶⁷ *Prlić and others* appeal decision on Croatia's amicus curiae application, para. 9.

¹¹⁶⁶⁸ *Karemera and Ngirumpatse* trial decision on indictment and evidence after co-accused's death, paras 11, 14; *Karemera and Ngirumpatse* appeal decision on indictment and evidence after co-accused's death.

¹¹⁶⁶⁹ *Fofana and Kondewa* Trial Judgment, paras 722, 724, 736, 738-739, 743, 765 (iv), 766, 782, 809 (i) and (v), 812, 849.

¹¹⁶⁷⁰ ICC, *Prosecutor v. Ongwen*, ICC-02-04-01/15, Prosecution's Submission of the Document Containing the Charges, the Pre-Confirmation Brief, and the List of Evidence, Annex A, Document Containing the Charges, 21 December 2015 (public redacted version filed 22 December 2015), para. 15; *Ongwen* confirmation decision para. 66.

persons before the court. It does not prohibit a court from making findings in a judgment about the role of an unindicted person in a criminal enterprise.¹¹⁶⁷¹

6590. Using these guiding principles, the Trial Chamber decided that it could make factual findings concerning Mr Badreddine even after his reported death insofar as it affects factual and legal findings against the Accused.

6591. The core Prosecution allegation is that the Green network operated as a command mission network with Mr Badreddine at its peak; that in effect he was the main conspirator. On one hand, the case is that Mr Badreddine is directing the three-part operation, namely the purchase of the Canter, the assassination of Mr Hariri and the claim of responsibility. While conversely, the other two are using their Green mobiles to communicate relevant information to him about these strands of the case, thus presumably permitting him to make informed decisions about directing the operation.

6592. Thus, to be satisfied beyond reasonable doubt that that was indeed what was occurring—and that no other reasonable conclusion is available from the evidence—the Trial Chamber must connect each of the calls, individually and together, to evidence of what was occurring when the calls were made. The Trial Chamber must do this to provide context and hence a reason—and in the absence of any call content—for the calls. The Trial Chamber cannot speculate; the inference must be the only one reasonably available from the evidence.

6593. The Trial Chamber must therefore examine the calls, whether hierarchical or otherwise, individually and in the context of every other call. Context is all important, as the essence of the Prosecution's case of Mr Badreddine's, Mr Ayyash's and Mr Merhi's involvement in the conspiracy charged is of hierarchal call flows in which Mr Badreddine is directing the purchase of the Canter, the assassination of Mr Hariri and the claim of responsibility. Without these call flows there would only be calls between the three mobiles, seemingly operating as a closed network. It is only from the overall patterns of calls that the Trial Chamber could draw any inferences as to their context and hence about what the callers were communicating.

¹¹⁶⁷¹ See *generally*, Decision amending the consolidated indictment.

6594. Indeed, the Prosecution's lead counsel described them as a 'key theme in the case',¹¹⁶⁷² and the 'most clear reflection of the roles' attributed to Mr Ayyash and Mr Merhi, submitting that:

The most clear reflection of the roles which the Prosecution attribute to Mr. Ayyash and Mr. Merhi comes in the so-called Green-coloured phone hierarchal call flows. You see those repeated throughout the evolution of the narrative of the Prosecution case, and it occurs with each and every coloured phone right through to the Purple Phones. By that, I mean this: You will see a call coming in for Mr. Badreddine, the overall overarching principal conspirator. He will call Mr. Ayyash at a certain time. And then Mr. Ayyash will lift up his other phone once that call is finished, and sometimes towards the end of the call while it's still operating, and then call a Yellow Phone holder, a Blue Phone holder, and Red Phone holder. And you see those sequences repeated, but not just repeated, but at key times.¹¹⁶⁷³

6595. But patterns need context; they must connect to something concrete. The Prosecution's evidence consists only of metadata in the form of call data records, extracted into readable call sequence tables, approximating the location of a mobile when in a call. These must be considered in tandem with, and connected to known provable events, such as Mr Hariri's movements, Mr Abu Adass's disappearance, the purchase of the Canter and the calls to Reuters and Al-Jazeera. To find the connection, and hence to determine the existence of a conspiracy and who was participating in it, the Trial Chamber has carefully analysed the Green network calls.

6596. The evidence establishes that the three Green mobiles were operational for 42 days between 13 October 2004 and Monday 14 February 2005 and that they were in communication on 39 days and active on 41 days of this period.¹¹⁶⁷⁴

¹¹⁶⁷² Prosecution closing submissions, T. 11 September 2018, p. 33, 'The evidence reflects that, like Ayyash, Merhi used the Green Network to report to Badreddine on the progress of the false claim and to be directed on it, especially, you'll remember, at key moments, such as the days leading up to the abduction of Ahmad Abu Adass, the Green-Purple call flows, you'll recall, which reflect the preparation and the oversight of Badreddine through Merhi to Oneissi and Sabra. A compelling pattern reflected across the entire plot, because, of course, Ayyash had similar call flows from Green to Red, Green to Yellow, Green to Blue, all at key moments of the plot. That's a key theme in the case.'

¹¹⁶⁷³ Prosecution closing submissions, T. 13 September 2018, p. 91.

¹¹⁶⁷⁴ See para. 2203; see also chapter X 'Chronology of network mobile activity before Mr Hariri's assassination on Monday 14 February 2005', (C) (2) 'Surveillance of Mr Hariri and preparations for the attack—Wednesday 20 October 2004 to Sunday 13 February 2005', (3) 'The day of the attack—Monday 14 February 2005'.

6597. There were nine calls between Mr Badreddine and Mr Ayyash between 20 October and 10 November 2004. There were four calls on the evening of 20 October 2004; one on the evening of 28 October 2004; one in the afternoon of 1 November 2004; one on 6 November 2004; and two on 10 November 2004. No calls then occurred for forty days.

6598. Calls were then made in December 2004:

- on Monday 20, Tuesday 21, Wednesday 22 and Thursday 23 December 2004. There were three calls on Monday 27 December 2004; one call each on Tuesday 28 and Thursday 29 December 2004; and one on Friday 31 December 2004.

6599. In January 2005, calls occurred as follows:

- one on 2 January 2005; four on 11 January 2005; one on 12 January 2005; two on Saturday 15 January 2005; one on Monday 17 January 2005; four on Tuesday 18 January 2005; five on Wednesday 19 January 2005; four on Thursday 20 January 2005; one each on Friday 21 and Monday 24 January 2005; and four each on Friday 28 and Monday 31 January 2005.

6600. In February 2005, there were the following calls:

- one on Tuesday 1 February 2005; four on Thursday 3 February 2005; one on Monday 7 February 2005; two on Tuesday 8 February 2005; three on Friday 11 February 2005; six on Saturday 12 February 2005; and one each on Sunday 13 and Monday 14 February 2005.

6601. Despite the volume of the calls—namely, eighty Green network calls between 13 October 2004 and Monday 14 February 2005, 78 of which were made between 20 October 2004 and Monday 14 February 2005, into which must be factored their brevity in lasting only between five and 248 seconds—it is difficult to reconcile their timing and the location of the callers with the Prosecution’s pleaded allegation that Mr Badreddine was at the peak of a conspiracy to commit a terrorist act in murdering Mr Hariri.

6602. Similarly, there is no evidence about anything that might have happened in the area to the east of Beirut Airport nor at Anjar, nor on the road between it and Beirut. During the trial, Prosecution counsel submitted that there were inferences available to the Trial Chamber about both locations, arguing that these related to obtaining or picking up the explosives for the

construction of the VBIED, or something else in relation to the procurement of materials to be used in the attack.¹¹⁶⁷⁵ The Prosecution, however, ultimately sought no findings on this and the Trial Chamber is unable to connect these calls to any evidence.

6603. Even viewing the calls detailed above in their most suspicious light the Trial Chamber can only note that they represent communications between the network users. There is no evidence—on any bar eight calls—connecting them to the surveillance of Mr Hariri, the purchase of the Canter, Mr Abu Adass's disappearance, the claim of responsibility or any other preparations for the attack. The Trial Chamber has therefore examined in detail the eight Green network calls that may be connected to events for which there is concrete evidence:

6604. The calls on **Tuesday 25 January 2005** may connect to the purchase of the Canter. They are consistent with Blue 610, in Tripoli, informing Mr Ayyash that the Canter had been purchased, and Mr Ayyash in turn informing Mr Badreddine of this fact, if this is what occurred. However, the Trial Chamber has been unable to conclusively determine that the Canter was actually purchased on that day, although it is the most likely date of sale.

6605. The calls on **Friday 28 January 2005** are indeed consistent with surveillance of the route between Faqra Villa and Beirut. However, as Mr Hariri was at Quraitem Palace all day, they otherwise do not connect with Mr Hariri's actual movements. There is no other context to these calls. Attempting to determine why Mr Ayyash and Mr Badreddine were briefly communicating with each other, for 35 and 20 seconds respectively, in two calls that afternoon is speculative. Their communication may, or may not have been, connected with surveillance of the route. It is difficult to construe these calls as examples of Mr Badreddine coordinating the surveillance.

6606. The Green network calls on **Monday 31 January 2005** may connect to the mid-morning surveillance of Mr Hariri's journey to the Higher Shiite Council, and his return to Quraitem Palace. For example, two Red network mobiles, Red 678 and Red 893, connected to cells near Quraitem Palace before his departure. Red 741, Red 678 and Red 893 connected to cells near the Higher Shiite Council while Mr Hariri was there. At the time of Mr Hariri's return to Quraitem Palace,

¹¹⁶⁷⁵ T. 5 September 2016, p. 53; T. 16 January 2017, pp 65-67; T. 17 January 2017, pp 50-52.

Red 741 and Red 678 activated cells along the route between the Higher Shiite Council and the palace.

6607. From when Mr Hariri's security detail left the Higher Shiite Council, Mr Ayyash and Mr Badreddine called each other five times, between 11:49 and 12:04, and Mr Ayyash's Green 300 activated cells along the route to the palace before ending on RAOUCH1, to its immediate west. The calls between Mr Ayyash and Mr Badreddine thus may have been connected with the surveillance.

6608. Likewise, the calls on **Thursday 3 February 2005** link to Mr Hariri's lunch at the St Georges Marina and are consistent with the presence of nearby Red and Blue network mobile users watching him. However, as with the calls on 31 January nothing in the call patterns reveals a reason for the calls, other than perhaps of information, namely, that Mr Hariri was lunching at the marina.

6609. The Prosecution also submitted that Mr Badreddine and Mr Ayyash may have met. This is indeed also possible, but this is not the only inference available from the proximity of the callers to each other, determined only by the cell to which their mobiles were briefly connecting, namely MRAICI2. The Trial Chamber has calculated, from the electronic presentation of evidence, that the predicted best server coverage of this cell extends for around 1.8 kilometres between its furthest eastern and western edges, and for 400 metres inland from its predicted coverage at the coast, with at least seven pockets of coverage outside the main area.

6610. The calls on **Sunday 8 February 2005** could be linked to a 'rehearsal' for the attack on 14 February 2005. The relevant network mobile activity reveals that Mr Hariri was the subject of Blue, Red and Green network surveillance that day on his trip from his home to the Parliament and back.

6611. The relevant call sequence, however, is of Subject 5's Red 636, connecting to a coastal cell west of the crime scene, calling Mr Ayyash's Red 741, which was in an adjoining cell, immediately followed by a call on his Green 300 to Mr Badreddine's Green 023. These calls occurred at 13:39 and 13:40, coinciding with Mr Hariri's return to Quraitem Palace. This 67-second call could represent Mr Ayyash informing Mr Badreddine that Mr Hariri had returned home. Why he needed

to do so, and how this could have allowed Mr Badreddine to coordinate the operations is unexplained.

6612. The calls on **Friday 11 February 2005** have no specific context that the Trial Chamber can connect to Mr Badreddine and the attack. The call pattern is of Mr Ayyash, then along the coast road in Beirut, but after having previously been near Quraitem Palace, where Mr Hariri was, calling Mr Badreddine for 49 seconds, and then immediately thereafter on Red 741 calling Subject 6's Red 678, which was in Tripoli, for around two minutes. The connection between a call from someone engaged in surveillance in Beirut to someone in Tripoli, after speaking to Mr Badreddine, is unexplained. It is difficult to connect this call—to someone far from the scene then under surveillance—to the pleaded allegation that Mr Badreddine was coordinating the assassination, including the surveillance.

6613. The morning calls on **Saturday 12 February 2005** link with the surveillance of Mr Hariri when he visited the Sacré Cœur Church. The Prosecution generally submits that these were updating calls, which may explain a call in which Mr Ayyash *may* be informing Mr Badreddine that Mr Hariri was at the church, just after receiving a call from Subject 9's Red 652. The afternoon calls, at 14:28, 15:47 and 17:07, could have context and *may* be associated with surveillance of the route between Faqra Villa and Quraitem Palace. Although why such surveillance should continue if the attack location had already been carefully selected, and rehearsed on 8 February 2005, is unexplained. In this sense, it is difficult to ascribe reasons for Mr Ayyash's and Mr Badreddine's calls that afternoon. And especially how it related to Mr Badreddine's pleaded role of commanding and coordinating the entire operation.

6614. Finally, the calls on **Monday 14 February 2005** appear to be connected with the attack. On its face, Mr Ayyash's call to Mr Badreddine at 11:58 for fourteen seconds seems linked to the attack.

6615. The most likely conclusion is of Mr Ayyash informing Mr Badreddine of something related to the attack. The Prosecution suggests that it was to inform him that the Canter was in place ready for the attack. However, the Trial Chamber has been unable to positively determine whether the Canter was *in situ* 57 minutes before the explosion, or where it then was. The Prosecution could not positively submit that the white van emerging from the tunnel at around that time was the

Canter. Thus, absent any evidence of the time of the Canter's arrival near the St Georges Hotel, the Trial Chamber cannot positively link this call to *that particular event* as opposed to the assassination in general.

6616. Four so-called hierarchical calls between the two thus appear to have a significance that may connect to the evidence of Mr Hariri's movements, and possibly the Canter's purchase. Two calls, namely those on **31 January** and **12 February 2005**, are contemporaneous with surveillance of Mr Hariri. One call, on **25 January 2005**, may connect to the purchase of the Canter, but the Trial Chamber, as is noted above, has been unable to positively conclude that the Canter was purchased on Tuesday 25 January although this seems to be the most likely date.

6617. The call on **14 February 2005** appears connected to the attack on Mr Hariri. The remaining calls, however, cannot be linked to anything directly connecting to Mr Hariri, his movements or any other evidence relating to the conspiracy pleaded.

6618. This leads to the question of whether these four calls, without any evidence of what was said—by themselves, and taken together, or added to all the other calls lacking context—provide sufficient evidence beyond reasonable doubt of Mr Badreddine's pleaded role as the person at the apex of the conspiracy, directing and commanding the entire operation against Mr Hariri.

6619. To put it another way, does adding all the other calls to the four that may represent what the Prosecution alleges they do, provide them—and the other calls—with the context from which the Trial Chamber can conclude that the only reasonable inference available is of Mr Badreddine's pleaded role? Can the Trial Chamber therefore deduce that if these four calls had some connection with the attack, the remaining calls must therefore also have been connected with the attack—by virtue of the Green network—thus strengthening the context of the four possibly contextual calls?

iii. Conclusion regarding Mustafa Badreddine's pleaded role in the conspiracy

6620. The resulting question is therefore whether the fact that the calls occurred—which provides the only evidence of Mr Badreddine's alleged connection with the conspiracy—provide sufficient evidence that he was the conspirator with the alleged pleaded peak masterminding, coordinating role? The answer is in the negative.

6621. The Trial Chamber has carefully examined the inferences that are reasonably available from the totality of the evidence. From the combination of calls and events it can only find that Mr Badreddine could have been aware that Mr Hariri was under surveillance on certain dates and that he was informed just before the assassination that something was happening, and hence inferentially, of the assassination. This means that there are competing inferences available as to what he was doing in making and receiving calls on his Green network mobile.

6622. The Trial Chamber cannot exclude as an inference reasonably available from the evidence that Mr Badreddine was a conduit for passing this information to someone else, or in various calls doing something unrelated to the explosion. There are other inferences available as to his possible role that do not mean that he was the coordinator of Mr Hariri's assassination, including his having a far more passive role. The Prosecution, it is emphasised, argued that he 'masterminded' the attack.

6623. There is no evidence that Mr Badreddine himself conceived or executed the plot to murder Mr Hariri. The call flows at best reveal his probable awareness of what was occurring. But they do not, taken in any combination, reveal that he did anything to further the conspiracy, including as is pleaded, coordinating it or even monitoring it. Mere knowledge does not equate to participation in a conspiracy. The essence of participation in a conspiracy is the agreement; here to commit a terrorist act by means of an explosive device with the objective of murdering Mr Hariri. It is only from the telecommunications metadata, in combination with other pleaded events, that the Trial Chamber is supposed to infer this agreement.

6624. This conclusion is further strengthened when considered in tandem with the evidence of the so-called false claim of responsibility and Mr Merhi's, Mr Oneissi's and Mr Sabra's pleaded roles. Once their roles are removed—on the basis that the underlying evidence is insufficiently reliable to find that they had the roles pleaded—the evidence of the Green network functioning as a mission command for executing Mr Hariri's assassination, no matter how suspicious its calls might appear, substantially diminishes. Moreover, the last call between Mr Merhi's attributed Green 071 and Mr Badreddine's Green 023 occurred on Monday 7 February 2005, and nothing links it to anything connected to the pleaded activities.

6625. Examining this in further detail, the Prosecution's opening statement explained this final call between Green 023 and Green 071, by stating that because the Canter had been purchased on Tuesday 25 January 2005:

as of 7 February, the co-conspirators, and particularly the accused Badreddine, must no longer have considered it necessary for Merhi to continue to communicate through his Green phone, so he stopped it a week before the assassination.¹¹⁶⁷⁶

Further, 'it was an available inference' that the video had been prepared by Monday 7 February.¹¹⁶⁷⁷ In its final trial brief, the Prosecution argued that this call:

indicates that the preparatory elements necessary for MERHI to discharge his role in enacting the false claim were nearing or at completion. This is another example of the structured co-ordination in the operating hierarchy beneath BADREDDINE and directly associates all three co-conspirators.¹¹⁶⁷⁸

6626. It is difficult, however, to reconcile this with the Prosecution's other arguments that Mr Badreddine 'masterminded' the attack, including coordinating the false claim of responsibility.

6627. If Mr Merhi's role indeed was to enact the false claim, his role was certainly not complete, on the pleaded facts, on Monday 7 February, as the claim was not broadcast for another week. It is also unclear what the 'preparatory elements' referred to were, as there is no evidence of Mr Merhi doing anything connected with the video, or Mr Abu Adass's alleged abduction.

6628. Mr Ayyash's Green 300 made its last ever call to Mr Badreddine's Green 023, forty seconds after Subject 5's Red 636 had called Mr Ayyash's Red 741 and less than an hour before the explosion.¹¹⁶⁷⁹ The direction of the calls may certainly suggest that Mr Ayyash as Red 741's and Green 300's user, was reporting information to Mr Badreddine on Green 023. Mr Ayyash was undoubtedly then very close to the crime scene, probably within one hundred metres of it.¹¹⁶⁸⁰ Call

¹¹⁶⁷⁶ Prosecutor's opening statement, T. 17 January 2014, pp 21-22.

¹¹⁶⁷⁷ Prosecutor's opening statement, T. 17 January 2014, p. 22.

¹¹⁶⁷⁸ Prosecution final trial brief, para. 933.

¹¹⁶⁷⁹ See para. 4644.

¹¹⁶⁸⁰ See paras 4644-4645; chapter X 'Chronology of network mobile activity before Mr Hariri's assassination on Monday 14 February 2005', (E) (7) 'Role of the Green network'. The Trial Chamber has determined from its calculations in the electronic presentation of evidence that of the two cells that Mr Ayyash's Green 300 activated during the final call on 14 February 2005, the most of one, the portable relay cell PHENMB1, was around 100 metres from the crime scene. The shortest distance between the predicted best coverage of the other, MRAIC11, and the crime

flows on earlier days starting with Green 023 could also be consistent with calls conveying instructions downwards.¹¹⁶⁸¹

6629. The Trial Chamber has also found that Mr Ayyash's Green 300 and Mr Badreddine's Green 023 were in contact on Monday 11 January 2005, the sole day in the amended consolidated indictment period when Green 300 activated a cell in Tripoli. They were also in contact on Friday 15 January 2005 when another network mobile user, Blue 817 was in Tripoli and communicated with Subject 6 on Blue 610 who was in Beirut. Subject 6 on Blue 610 called Mr Ayyash as user of Red 741, Green 300 and Blue 233. Further contact occurred on Tuesday 25 January 2005 when the Canter was most likely purchased from the Tripoli 'dealership'.¹¹⁶⁸²

6630. The Prosecution's argument is that the Green network was the 'communication hub' that commanded and oversaw the preparation of each limb of the plot, including the attack, and the delivery and dissemination of the false claim. It had a limited direct association with the attack itself, namely the single call an hour before on Monday 14 February 2005, but its users used a high degree of covertness, discipline and focus to protect their anonymity.¹¹⁶⁸³

6631. Its behaviour, the Prosecution argues, showed a strong degree of co-ordination, cohesion and focus demonstrating an organised, well-resourced entity. This includes the open triangle formation of contact and the call flow, and the restricted number of short and sometimes co-ordinated calls.¹¹⁶⁸⁴

6632. While the Trial Chamber can accept that a covert network with such characteristics would operate in a manner rendering it difficult to make sense of the communications, the corollary is that because there is no direct evidence of their content almost all calls lack context.

scene was less than 30 metres. While the longest distance between the most remote portion of MRAICI1's predicted best server coverage and the crime scene was around 800 metres, Green 300's call to Green 023 started at 11:58:31, lasted only 14 seconds and activated MRAICI1 at the start of the call and PHENMB1 at the end of the call. Further, in a call immediately before, at 11:57:01, that lasted 50 seconds, Mr Ayyash's Red 741 had activated PHENMB1 at the start of the call and MRAICI1 at the end of the call.

¹¹⁶⁸¹ See chapter X 'Chronology of network mobile activity before Mr Hariri's assassination on Monday 14 February 2005', (C) (2) 'Surveillance of Mr Hariri and preparations for the attack—Wednesday 20 October 2004 to Sunday 13 February 2005', (E) (7) 'Role of the Green network'.

¹¹⁶⁸² See paras 4777, 4779-4780, 4794-4795.

¹¹⁶⁸³ Prosecution final trial brief, paras 354-355.

¹¹⁶⁸⁴ Prosecution final trial brief, para. 356.

6633. If the Green network existed only as a command network to organise Mr Hariri's assassination, as is pleaded, it follows logically that the calls should have been confined to matters connected with this. However, the lack of context to most of the calls makes it difficult to attempt to construe patterns from which this allegation could be found proven beyond reasonable doubt. For example, the first Green mobile call was between Mr Badreddine's Green 023 and Mr Merhi's attributed Green 071 on 6 September 2004. In noting this, the Trial Chamber does recognise that not every call had to be connected to the conspiracy.

6634. Mr Ayyash's calls to Mr Badreddine, however, point to him at least knowing that Mr Hariri was under surveillance and that on Monday 14 February 2005 he was the subject of the attack. But this is insufficient to place him in the conspiracy at its head as the organiser and coordinator of all of its activities, as is pleaded.

6635. The Trial Chamber has already found that it is not satisfied from the evidence that the Green network functioned as 'mission command'. It considered the numerous instances of call flows from the Green to the Blue and Red network and the attribution of various mobiles, and was satisfied that there was a connection between these calls and, further that there was clear sequencing. In the absence, however, of any content of any of these calls, or any other evidence, the finding is that it would be too speculative to infer a hierarchy from mere call 'sequencing'. Accordingly, it was not the only reasonable conclusion from the evidence that the Green network acted as mission command to coordinate Mr Hariri's assassination.

6636. This finding, however, does not alter the Trial Chamber's conclusion in relation to Mr Ayyash. It is not necessary that the Trial Chamber find that Mr Badreddine had the pleaded role alleged by the Prosecutor to find that Mr Ayyash participated in the conspiracy.

4. Conclusion

6637. The Trial Chamber is satisfied beyond reasonable doubt that Mr Ayyash participated in the conspiracy charged. The Prosecution has not proved Mr Oneissi's and Mr Sabra's pleaded roles as members of the conspiracy.

6638. Mr Merhi is alleged to have coordinated their pleaded roles in the false claim of responsibility. As their pleaded roles have not been proved, it follows that he cannot be guilty of

coordinating actions that have not been proved beyond reasonable doubt. Likewise—with Judge Braidy dissenting on the legal point of not analysing Mr Badreddine’s alleged complicity—for the same reason, Mr Badreddine’s pleaded role of coordinating the false claim aspect of the conspiracy cannot be established.

6639. The Trial Chamber—with Judge Braidy dissenting on whether it should have analysed this issue at all—is also not convinced that Mr Badreddine had the role pleaded in the amended consolidated indictment. The evidence of the Green network consisted only of calls between Mr Badreddine and Mr Ayyash, and between Mr Badreddine and Mr Merhi’s attributed Green 071. His pleaded role was of coordinating and monitoring the surveillance of Mr Hariri in preparation for the attack, purchasing the Canter and monitoring the physical perpetration of the attack and coordinating the false claim of responsibility. The Trial Chamber is not satisfied that he ‘masterminded’ the attack, as the Prosecutor alleged.

6640. The result of this is that Mr Merhi, Mr Oneissi and Mr Sabra must be acquitted of count one of conspiracy to commit a terrorist act. In the case of Mr Ayyash, a conviction must be entered on count 1.

C. Salim Jamil Ayyash

1. Introduction

6641. Salim Jamil Ayyash is charged in the amended consolidated indictment with having committed five offences contrary to the Lebanese Criminal Code.

6642. In short form these are, in count one, with conspiracy aimed at committing a terrorist act. In count two, with committing a terrorist act by means of an explosive device. In count three, with the intentional homicide of Mr Hariri. In count four, with the intentional homicide of 21 others, and, in count five, with the intentional attempted homicide of 226 others. Counts three to five plead that the crimes were committed ‘with premeditation by using explosive materials’.

6643. The same Prosecution evidence supports each count charged against Mr Ayyash. The Prosecution’s evidentiary submissions are effectively one for all offences, although its legal submissions are tailored to the elements necessary to prove each crime charged.

2. Count one—conspiracy aimed at committing a terrorist act

6644. The evidence supporting the count of conspiracy aimed at committing a terrorist act is analysed in detail directly above in assessing the evidence. This count has been examined separately because all four Accused are charged with having conspired, aimed at committing a terrorist act—together with Mr Badreddine and others unidentified—whereas Mr Ayyash alone is charged with committing the crimes alleged in counts two to five of the amended consolidated indictment.

6645. The Trial Chamber concluded in analysing the conspiracy charge that the Prosecution had proved beyond reasonable doubt its case that Mr Ayyash was guilty of the conspiracy charged, but that it had not proved its case in relation to Mr Merhi, Mr Oneissi and Mr Sabra. Further, it concluded—with Judge Braidy dissenting on the legal point of whether the Trial Chamber should have analysed Mr Badreddine's pleaded role—that the Prosecution had led insufficient evidence to establish the pleaded role of Mr Badreddine in the conspiracy alleged, namely as the 'monitor/coordinator' of the attack on Mr Hariri.¹¹⁶⁸⁵

3. Count two—committing a terrorist act by means of an explosive device

6646. Mr Ayyash is charged under count two of the amended consolidated indictment with having committed as a co-perpetrator—with the former Accused, Mr Badreddine, and others unidentified—a terrorist act by the assassination of Mr Hariri by means of an explosive device in a public place.¹¹⁶⁸⁶

6647. The evidence of the mobile activity of some users of the Blue, Red and Green networks on Monday 14 February 2005 is essential to the case against Mr Ayyash. Without it there is no case.

6648. The Trial Chamber has separately analysed the evidence relating to the purchase, in January 2005, of the Canter used in the attack. It has found that there is insufficient evidence to link Mr Ayyash with anything connected to its purchase or its preparation for its use in the explosion before the day of the attack. There is no evidence of either Mr Ayyash's knowledge of

¹¹⁶⁸⁵ Amended consolidated indictment, para. 48 (b).

¹¹⁶⁸⁶ Amended consolidated indictment, paras 55-56. The amended consolidated indictment refers to Article 3 (1) (a) of the Special Tribunal's Statute and Articles 188, 212-213 and 314 of the Lebanese Criminal Code and Article 6 of the Lebanese Law of 11 January 1958 on 'Increasing the penalties for sedition, civil war and interfaith struggle'.

the type or quantity of explosives used in the attack. There is also no evidence from which the Trial Chamber could infer Mr Ayyash's knowledge of either.

6649. Similarly, in analysing the evidence supporting the pleaded false claim of responsibility, the Trial Chamber has likewise been unable to find a connection between Mr Ayyash and that other limb of the plan to assassinate Mr Hariri from which it could draw a conclusion of either his knowledge of or involvement in it. The evidence and findings in relation to these pleaded allegations, therefore, are not repeated here.

6650. Accordingly, the Trial Chamber's assessment of the evidence connecting Mr Ayyash to the attack has been confined to the surveillance of Mr Hariri in the months before his death and, most specifically, to the mobile activity of the Red network including and especially Mr Ayyash's Red 741 on the day of the attack.

6651. The evidence of what occurred on the day of the attack is analysed directly below; it supports all counts charged against Mr Ayyash.

(a) Surveillance of Mr Hariri before Monday 14 February 2005

6652. The acts of surveillance of Mr Hariri between 20 October 2004 and 14 February 2005 are listed in the analysis of the evidence of the conspiracy, above, and more extensively in the analysis of the chronology of events leading to the attack. To provide perspective in relation to Mr Ayyash's *mens rea* or knowledge that Mr Hariri was the intended target of a terrorist attack, the surveillance in which Mr Ayyash participated, either directly in the field or by a network mobile from elsewhere, is briefly noted.

6653. In December 2004, using his Yellow 294,¹¹⁶⁸⁷ and in January 2005 on his Blue 233, Mr Ayyash was three times indirectly involved in the surveillance of Mr Hariri's movements, on:

- Tuesday 21 December 2004 when Mr Hariri visited Mr Hassan Nasrallah. Blue 322 contacted Blue mobile users, and Mr Ayyash's Yellow 294 contacted Yellow mobiles, both engaged in the same surveillance;

¹¹⁶⁸⁷ Mr Ayyash may also have been using Blue 322, but as this was not pleaded the Trial Chamber has made no findings to this effect against him.

- Friday 31 December 2004, his Yellow 294 was in contact with Yellow mobiles conducting surveillance of Mr Hariri travelling between Faqra Villa and Quraitem Palace; and
- Saturday 29 January 2005, using Blue 233—when Mr Hariri travelled from Quraitem Palace to Mr Marwan Hamade's residence, followed by a trip to his Al-Naameh Villa.

6654. Although Mr Ayyash was involved in this surveillance, the Trial Chamber, for the reasons set out analysing to the latest commencement date of the conspiracy, is not satisfied that the plan to kill Mr Hariri had materialised in December 2004. These acts of surveillance may have been preparatory to the plan to murder Mr Hariri or they may have been for general intelligence gathering of Mr Hariri's movements for other purposes. Either is equally possible and the Trial Chamber will not make a finding that they were directly connected with the attack on 14 February 2005.

6655. The surveillance involving the Red and Blue network mobiles in the weeks before Mr Hariri's death, however, was clearly connected to the assassination. This is irrespective of whether the decision to murder him had been taken in January, or alternatively was made in early February. Mr Ayyash was directly involved in the surveillance of Mr Hariri himself on the following five occasions between 31 January and 12 February 2005:

- Monday 31 January 2005, using both Red 741 and Blue 233—when Mr Hariri visited the Higher Shiite Council;
- Thursday 3 February 2005, on Red 741—when Mr Hariri was at the St Georges Marina;
- Monday 7 February 2005, using Blue 233—when Mr Hariri travelled from Beirut Airport to Quraitem Palace;
- Tuesday 8 February 2005, with both Red 741 and Blue 233—near the Parliament when Mr Hariri was there; and
- Saturday 12 February 2005, using Red 741—when Mr Hariri visited churches in Badaro and Mazraa.

(b) Mr Ayyash's mobile activity on Monday 14 February 2005

6656. The Trial Chamber has found beyond reasonable doubt that Mr Ayyash was the user of Yellow 294, Red 741, Blue 233 and Green 300.¹¹⁶⁸⁸ The review here focusses specifically on the activity of Mr Ayyash's three network mobiles on Monday 14 February 2005, in combination with that of the other users of the Blue, Red and Green networks. This overview includes the opinion evidence of the Prosecution investigator, Mr Gary Platt, who testified as an expert on the surveillance of criminal networks and the identification and organisation of covert communication networks. The totality of the network call activity that occurred on the day of the attack is analysed in greater detail above.¹¹⁶⁸⁹

i. Early morning mobile activity—use of Blue network mobiles

6657. The explosion in which Mr Hariri died occurred at 12:55 on Monday 14 February 2005. At different times on that day before this, Mr Ayyash used both his Red and Blue network mobiles to communicate with others. The others involved in the attack and using the Red network mobiles were Subjects 5, 6, 7, 8 and 9. The Prosecution's case is that they were also using Blue network mobiles.

6658. Mr Ayyash's mobile activities started in the early hours of the morning when he was active on his Blue mobile, Blue 233, and also on his personal mobile number 170. This started at 00:56 when Mr Ayyash's Blue 233 was connecting to a cell in southern Beirut.¹¹⁶⁹⁰ Substantial activity on the Blue network mobiles followed.¹¹⁶⁹¹

6659. Later that morning, at 10:51, his Blue 233 activated the Tabet El Dahra C cell, and at 11:19 his personal mobile 170 activated Ras_Nabah_A. According to Mr Platt, this activation of this cell

¹¹⁶⁸⁸ While Mr Ayyash may also have been using Blue 322 until 27 December 2004, this was not pleaded against him, so the Trial Chamber has made no findings to this effect.

¹¹⁶⁸⁹ See chapter X 'Chronology of network mobile activity before Mr Hariri's assassination on Monday 14 February 2005', (C) (3) 'The day of the attack—Monday 14 February 2005'.

¹¹⁶⁹⁰ Exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1127, 1141. See also exhibit P1923 (Chronology PowerPoint presentation – 13 February 2005 to 16 February 2005), slides 34-35; exhibit P1122 (ArcView shape files Touch).

¹¹⁶⁹¹ In the early morning of 14 February 2005, there was substantial Blue call activity in southern Beirut. Mr Ayyash's Blue 233 had three calls between 00:56 and 01:05 and two between 04:55 and 05:01. His personal mobile 170 was called by 'Subject 816' at 03:33 from an area east of the airport. See above, at paras 4631-4632; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1141-1143; Gary Platt, T. 13 March 2017, p. 12; exhibit P1259 (Call sequence table of ten numbers—Mr Ayyash), p. 364; see also exhibit P1923, slides 34-36, 38-40.

was consistent with Mr Ayyash travelling towards the Parliament area.¹¹⁶⁹² At that point, Mr Hariri had just left his home at Quraitem Palace—leaving at around 10:40 to drive to the Parliament.

ii. Departure of Mr Hariri's convoy for Parliament

6660. At approximately 10:45, Mr Hariri's security detail prepared to leave Quraitem Palace for the Parliament,¹¹⁶⁹³ and at around 10:54, his convoy was there.¹¹⁶⁹⁴ At around that time, three Red mobiles users were present in the area of Quraitem Palace, with their first call activity at 11:00, fifteen minutes after Mr Hariri's departure. There were two calls, at 11:00 and 11:01, involving Subject 8 on Red 893, Subject 6 using Red 678 and Subject 9 on Red 652.¹¹⁶⁹⁵

6661. The evidence, according to Mr Platt, does not suggest that any of the Red mobiles' users attempted to follow Mr Hariri to Parliament. In his view, this was because they knew where he was going because the timing of the Parliamentary session was 'already known, quite publicly, from the 8th of February onwards'.¹¹⁶⁹⁶

iii. Red network mobile activity while Mr Hariri was at the Parliament, after 11:00

6662. At 11:33, Mr Ayyash made his first call on Red 741. He was at that point connecting to ETIOLE1, which provided the predicted best server coverage to the Parliament.¹¹⁶⁹⁷ Mr Hariri was by then in the Parliament building itself, although in Mr Platt's view, 'Mr Ayyash, on his attributed phones ...would not be able to view Mr. Hariri at this stage'.¹¹⁶⁹⁸ A network coverage map of ETOILE1, created in the Prosecution's electronic presentation of evidence software, is extracted below. The Parliament is marked with a 'P' and the map shows its location on the border of ETOILE1's predicted best server coverage area:

¹¹⁶⁹² Gary Platt, T. 13 March 2017, pp 33-34, 44, 46-47; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1151, 1159; exhibit P1259, p. 364; *see also* exhibit P1923, slides 52-53, 61, 63.

¹¹⁶⁹³ *See* para. 4621; *see also* exhibit P1923, slides 50-51.

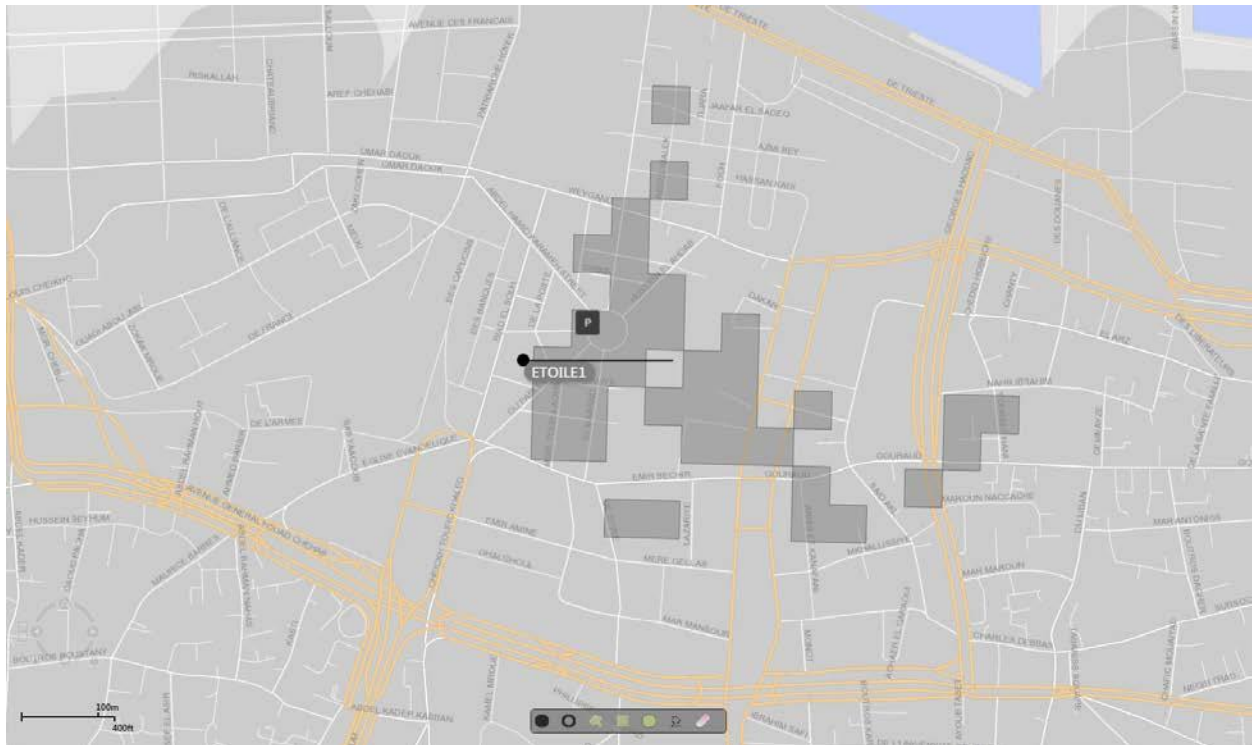
¹¹⁶⁹⁴ *See* para. 4623. It could also have been 10:56, based upon calls from Mr Hariri's security detail, but nothing turns on this possible difference of two minutes; *see also* exhibit P1923, slides 54-55.

¹¹⁶⁹⁵ *See* para. 4634.

¹¹⁶⁹⁶ Gary Platt, T. 13 March 2017, p. 44; *see also* exhibit P1923, slides 58-59.

¹¹⁶⁹⁷ *See* para. 4637.

¹¹⁶⁹⁸ Gary Platt, T. 13 March 2017, p. 49.



Map created by Trial Chamber using the electronic presentation of evidence, from exhibit P592.1 of the predicted best server coverage of ETOILE1

6663. In that call at 11:33, Mr Ayyash called Subject 6, on Red 678. Within one to two minutes, this call was followed by calls from Subject 6 to both Subject 8 (Red 893) and Subject 9 (Red 652). At that time, the three Subjects were still connecting to cells providing coverage near Quraitem Palace.¹¹⁶⁹⁹

6664. In Mr Platt's opinion, Mr Ayyash made this call to coordinate the movement of these three from their positions around Quraitem Palace to the Parliament and the crime scene areas.¹¹⁷⁰⁰

6665. These three Red mobiles then moved in that direction, between 14 and 18 minutes after the calls.¹¹⁷⁰¹ According to Mr Platt, this led to 'almost a changeover of the surveillance team'. This

¹¹⁶⁹⁹ See para. 4637. Subject 6 (on Red 678) called Subject 8 (on Red 893) and Subject 9 (on Red 652) at 11:34:31 and 11:35:05, respectively, exhibit P1204 (Call sequence table of Red 678), p. 6.

¹¹⁷⁰⁰ See para. 4637. Red 678 (Subject 6), Red 893 and Red 652 activated, respectively, the CARLTO3, CONCOR2 and MOVPIK1 cells, in the area of Quraitem Palace, see para. 4637; see also Gary Platt, T. 13 March 2017, pp 50-51.

¹¹⁷⁰¹ At 11:48, Red 893 (Subject 8) activated PHENMB1, the mast of which was approximately 100 metres from the crime scene. At 11:49, Red 652 (Subject 9) activated ETOILE3. At 11:53, Subject 6 (Red 678) activated ETOILE2. See para. 4640. Using the EPE software (exhibit P592.1), the Trial Chamber measured the shortest and longest distances between ETOILE2's predicted best coverage and (a) the Parliament as around 80 metres and 730 metres,

was, in his expert opinion, a surveillance technique where you ‘replace yourself with someone else so you don’t draw attention to yourself by being there for too long’.¹¹⁷⁰²

- iv. Blue network mobile activity while Mr Hariri was at the Parliament, after 11:00

6666. On the Prosecution’s case, both Subjects 5 and 7, using their Blue network mobiles, Blue 585 and Blue 324, were in southern Beirut before 11:00.¹¹⁷⁰³

6667. A few minutes after Mr Ayyash, using Red 741, had called Subject 6 on Red 678 who was near Quraitem Palace at 11:33, Mr Ayyash using Blue 233 contacted Blue 585. This was at 11:35.¹¹⁷⁰⁴

6668. Immediately after this call, Subject 5 (Blue 585) first tried to contact, and then contacted Subject 7 (Blue 324). Both were in the same area in southern Beirut, connecting to Touch’s Mar_Michael_C cell.¹¹⁷⁰⁵ As noted above, Subjects 6, 8 and 9 had been using their Red mobiles in the vicinity of Quraitem Palace at around 11:00, just after Mr Hariri’s departure to the Parliament.

6669. On the Prosecution’s case both Subjects 5 and 7 had Red and Blue network mobiles. Subject 5 was also using Red 636 and Subject 7 had Red 946. However, they did not use them until a little later. Mr Platt concluded that they switched to using their Red mobiles later, because using them in the morning would have ‘located’ them in Dahyieh, an area ‘which is a usual area that their phones are constantly active before, during, and after operations’.¹¹⁷⁰⁶

6670. According to the Prosecution, after these calls on the Blue network mobiles, Subjects 5 and 7 moved northwards from Dahyieh in southern Beirut towards the crime scene. To Mr Platt, the call at 11:35 from Mr Ayyash to Subject 5 using the Blue network mobiles was consistent with his coordination, command and control of the operation. This was because immediately after

and (b) the crime scene as around 450 and 1,560 metres. The shortest and longest distances between ETOILE3’s predicted best server coverage and the crime scene were around 630 and 1,600 metres.

¹¹⁷⁰² Gary Platt, T. 13 March 2017, p. 57.

¹¹⁷⁰³ See paras 4632-4633.

¹¹⁷⁰⁴ See para. 4638.

¹¹⁷⁰⁵ See para. 4638.

¹¹⁷⁰⁶ Gary Platt, T. 13 March 2017, pp 59, 90; see also exhibit P1923, slides 70-71, 80.

Mr Ayyash's call to Subject 5, Subject 5 then called Subject 7, both using their Blue network mobiles.¹¹⁷⁰⁷

6671. Twelve minutes later, at 11:47, while Mr Hariri was still at the Parliament, Mr Ayyash used the Blue network again, using Blue 233 to make a second call to Subject 5 on Blue 585. A minute later, at 11:48, Subject 5 on Blue 585 attempted to call Subject 7 on Blue 324, but the call did not connect. Mr Ayyash's Blue mobile activated the CoastRoad_C cell.¹¹⁷⁰⁸

6672. This was the last time Mr Ayyash used his Blue mobile—or that any Blue mobile was used—before the attack.¹¹⁷⁰⁹ According to Mr Platt, this call and Mr Ayyash's attempt to call Subject 7 was consistent with Mr Ayyash getting an update from the other two, Subjects 5 and 7, on their movements, and therefore with him coordinating the operation.¹¹⁷¹⁰

v. Movement of the Mitsubishi Canter towards the crime scene

6673. Conclusive evidence as to the Canter's movements in the hours before it was used in the explosion is lacking. The strongest piece of evidence is that at 11:56:57, while Mr Hariri was speaking to journalists and others at the café opposite the Parliament, a white van that resembled a Canter was in CCTV images taken in the President Suleiman Frangieh tunnel (the St Georges tunnel).¹¹⁷¹¹ According to the Prosecution, this was the Canter used in the explosion.¹¹⁷¹²

6674. In Mr Platt's view, the northward movement of Blue mobile users Subject 5 and Subject 7—who were according to the Prosecution, and in Mr Platt's evidence, also using Red 636 and Red 946—from southern Beirut towards the crime scene, was consistent with them being involved in transporting the Canter carrying the explosives to the crime scene area.¹¹⁷¹³

¹¹⁷⁰⁷ Gary Platt, T. 13 March 2017, p. 60.

¹¹⁷⁰⁸ See paras 4638-4639.

¹¹⁷⁰⁹ Gary Platt, T. 13 March 2017, p. 62. Blue 233 received or made calls again in the evening, at 18:50 and 20:24, exhibit P1259, p. 364. The Blue network mobiles remained in use until the closure of the network when Alfa deactivated them as a result of their non-use in October 2005, but with an exception, see chapter VIII 'Nature and purpose of colour-coded mobile networks and Purple group of mobiles', (E) 'Blue network', (7) 'Findings'.

¹¹⁷¹⁰ Gary Platt, T. 13 March 2017, p. 75.

¹¹⁷¹¹ See para. 4625; see also para. 1267.

¹¹⁷¹² Prosecution final trial brief, para. 987.

¹¹⁷¹³ Gary Platt, T. 13 March 2017, pp 76-77.

6675. Mr Platt explained that their movements after they switched to their Red mobiles coincided with the Canter's movement through the tunnel as shown in the CCTV images.¹¹⁷¹⁴ He based this conclusion on, among other things, 'a process of elimination'. This was because Subject 6 (on Red 678), Subject 8 (on Red 893) and Subject 9 (on Red 652) were 'around the Parliament area during this period,' and Mr Ayyash's mobiles were north of the Parliament.¹¹⁷¹⁵

6676. Mr Ayyash's two calls on Blue 233—at 11:35 and 11:47—activated the Riad_El_Soloh_B and CoastRoad_C cells, respectively.¹¹⁷¹⁶ Concerning the last activation, Mr Philips stated that 'no other Blue Phone is cell sited in this area around this time'.¹¹⁷¹⁷

- vi. Mr Ayyash's movement from the Parliament towards the crime scene area—from 11:47

6677. After 11:47,¹¹⁷¹⁸ according to Mr Platt, Mr Ayyash's attributed mobiles moved from the Parliament area immediately towards the crime scene area,¹¹⁷¹⁹ in Mr Platt's words they moved there a 'good hour' before the convoy left. He thought that the reason was that as 'other Subjects' were located around the Parliament area and were therefore able to carry out surveillance, Mr Ayyash could move to a location relevant to the second part of the operation: namely, the actual attack.¹¹⁷²⁰ Mr Platt explained, in relation to Mr Hariri, that 'there was no real need to follow him. All they needed to know is when he left the Parliament'.¹¹⁷²¹

6678. Mr Ayyash on Red 741 then made two calls, at 11:48:58 and at 11:49:36, to Subject 8 (on Red 893) and Subject 9 (on Red 652).¹¹⁷²² His first call activated a cell, the portable relay cell

¹¹⁷¹⁴ Gary Platt, T. 13 March 2017, pp 77, 84-85, T. 14 March 2017, pp 8-9. *See also* exhibit P1927 (EPE snapshot related to exhibit P1923, slides 71, 77, 80); exhibit P1928 (EPE snapshot related to exhibit P1923, slides 71, 80).

¹¹⁷¹⁵ Gary Platt, T. 13 March 2017, p. 78.

¹¹⁷¹⁶ Exhibit P1259, p. 364. Using exhibit P592.1, the Trial Chamber measured the shortest and longest distances between Riad_El_Soloh_B's predicted best server coverage and (a) the Parliament: around 120 and 860 metres and (b) the crime scene: around 1,030 and 1,900 metres. The shortest and longest distances between CoastRoad_C's predicted best server coverage and (a) the Parliament were around 45 and 715 metres and (b) the crime scene were around 830 and 1,650 metres. *See also* exhibit P1923, slides 71, 77.

¹¹⁷¹⁷ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), para. 5.7.1.9 (p. 59).

¹¹⁷¹⁸ Mr Ayyash's Blue 233 called Blue 585 and activated CoastRoad_C, *see* para. 4639.

¹¹⁷¹⁹ *See* paras 4639-4640; *see also* Gary Platt, T. 13 March 2017, p. 74.

¹¹⁷²⁰ Gary Platt, T. 13 March 2017, p. 64 (in response to a question from Judge Braidy).

¹¹⁷²¹ Gary Platt, T. 13 March 2017, p. 66.

¹¹⁷²² *See* paras 4640-4641. Red 893 activated the PHENMB1 cell. It is the only call by Red 893 activating a different cell than ETOILE1 (Gary Platt, T. 13 March 2017, pp 82-83). Red 652 activated ETOILE3.

PHENMB1, that was—based on calculations in the electronic presentation of evidence—within around 100 metres of the crime scene.¹¹⁷²³

6679. Mr Ayyash's second call activated ZOUKAK1. This cell provided coverage to an area between Parliament and the crime scene.¹¹⁷²⁴ Mr Platt noted that Mr Ayyash's Red 741 remained in the area between the crime scene and Parliament.¹¹⁷²⁵

6680. The extract below from the slides that Mr Platt used in court shows the cells that Mr Ayyash's mobiles connected to in the hour before Mr Hariri's assassination and the route taken by his convoy from Parliament. The Parliament is marked as 'P', the exit of the tunnel as 'SGT'¹¹⁷²⁶ and the crime scene as 'CS', while the convoy route is the black line. The three cells from right to left, are Touch's CoastRoad_C and Alfa's ZOUKAK1 and MRAICI1. The azimuth and mast of the portable relay cell PHENMB1 is marked between MRAICI1 and ZOUKAK1:

¹¹⁷²³ Red 741 activated PHENMB1 as the start cell and ZOUKAK1 as the end cell. *See* paras 4641, 4645; exhibit P592.1; exhibit P1123 (ArcView shape files Alfa); *see also* exhibit P1923, slide 73. PHENMB1, south-west of the marina, across from the Phoenicia Hotel, had a 150-metre radius coverage. Exhibit P777 (Annex 5 to Witness PRH707's statement), p. 5; exhibit 2D71 (Information regarding Alfa's relay station PHENMB1). It provided coverage within a 500-metre radius of the crime scene, exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1268. *See also* exhibits P330-P332 (Photographs of the portable mobile telephone base station, annotated by Ali Diab).

¹¹⁷²⁴ *See* para. 4640; exhibit P1930 (Snapshot 108 to Chronology PowerPoint); *see also* exhibit P1923, slide 79. ZOUKAK1 provided coverage within a 500-metre radius of Parliament and the crime scene, exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1267-1268. Using the EPE software (exhibit P592.1), the Trial Chamber measured the shortest and longest distances between ZOUKAK1's predicted best server coverage and (a) the crime scene, as around 75 metres and 3.32 kilometres, and (b) the Parliament, as around 130 metres and 2.5 kilometres. Subject 9, who received the call on Red 652, activated ETOILE3, exhibit P1199 (Call sequence table of Red 652), p. 6.

¹¹⁷²⁵ Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1164; *see above*, at para. 4640. *See also* exhibit P1926 (EPE snapshot related to exhibit P1923, slide 73).

¹¹⁷²⁶ According to Prosecution counsel (Mr Povoas), T. 13 March 2017, p. 72.

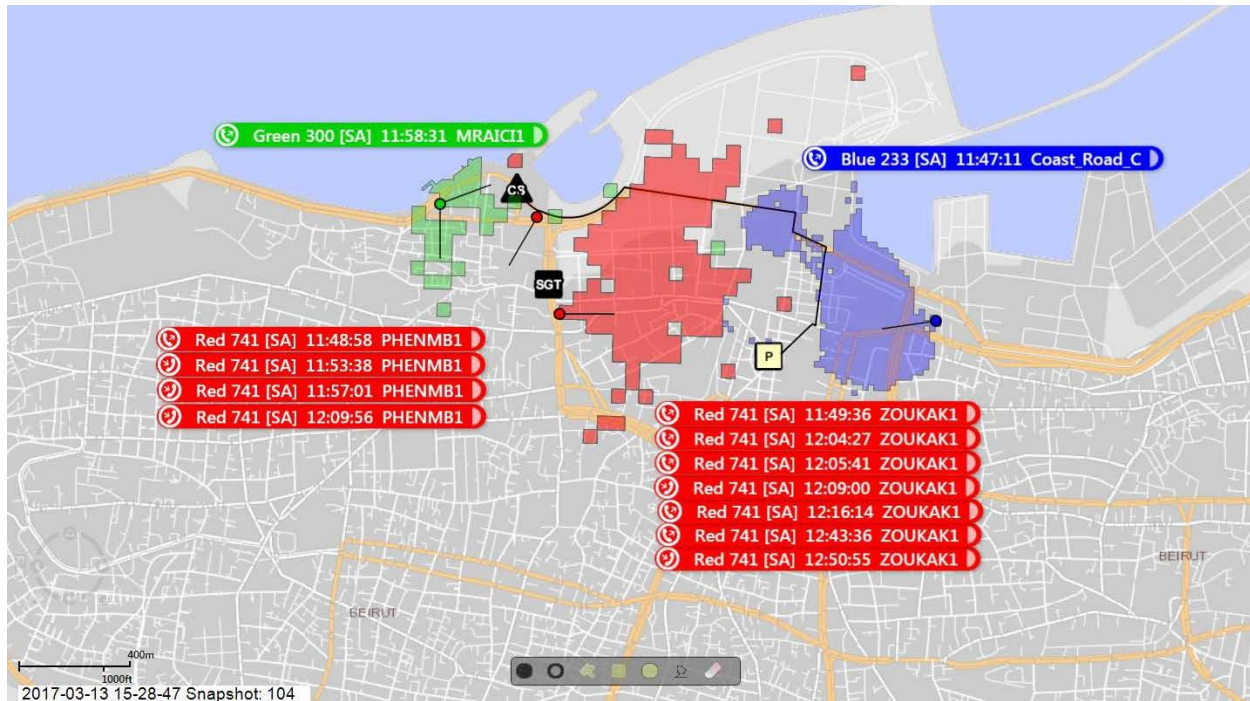


Exhibit P1926 (EPE snapshot related to exhibit P1923, slide 73)—cells activated by Mr Ayyash’s attributed mobiles between 11:47 and 12:50 and the route taken by the convoy

6681. At around 11:54, Mr Hariri left the Parliament and crossed the road to the *Café de l’Étoile*, where he met journalists.¹¹⁷²⁷ At 11:53:38, Subject 6 (on Red 678) called Mr Ayyash’s Red 741.¹¹⁷²⁸ Mr Ayyash’s Red 741 activated PHENMB1 again; its mast is close to the exit from the President Suleiman Frangieh tunnel and the crime scene¹¹⁷²⁹—at the start of this call.¹¹⁷³⁰

6682. Three other Red network calls followed within three minutes. Two were from Subject 6 (on Red 678), both to Subject 9 (Red 652). One was from Subject 9 to Subject 8 (Red 893). In Mr Platt’s view, these calls were possibly initiated because of Mr Hariri’s movement from

¹¹⁷²⁷ See para. 4624.

¹¹⁷²⁸ Exhibit P1259, p. 364.

¹¹⁷²⁹ Exhibit P1923, slide 73; exhibit P1926. Using exhibit P592.1, the Trial Chamber measured the PHENMB1 mast as around 270 metres from the tunnel’s north entrance, and about 100 metres from the crime scene.

¹¹⁷³⁰ See paras 4640-4641, 4643. Mr Ayyash’s call on Red 741 at 11:48 had also activated PHENMB1 at the beginning of the call. Its mast was within 100 metres of the crime scene and had a small coverage radius of around 150 metres, exhibit P1112 (Expert report of John Edward Philips – Single user analysis, Suspects 4, 5, 6, 7, and 8), paras 4.2.5.11, 4.2.5.13; exhibit P777 (Annex 5 to Witness PRH707’s statement), p. 5. Red 741 had activated ZOUKAK1 at the end of that call, within 23 seconds. This suggests that it was most probably not in the patches of ZOUKAK1’s predicted best server coverage furthest from the crime scene, namely, around three kilometres away. In three consecutive calls, between 11:53 and 11:58, Red 741 activated again—as a start or end cell—PHENMB1, ZOUKAK4 and MRAICI1. This too strongly suggests his presence in the immediate vicinity of the crime scene.

Parliament to the café.¹¹⁷³¹ Further, the call by Subject 6's Red 678 to Mr Ayyash's Red 741 at 11:53 was, in Mr Platt's opinion, consistent with Red 678 updating Red 741 'on the activities around Parliament'.¹¹⁷³²

6683. At 11:57:01, Subject 5 (on Red 636) called Mr Ayyash's Red 741. Subject 5 activated ZOUKAK2 at the start of the call¹¹⁷³³ and PHENMB1 at the end.¹¹⁷³⁴ Mr Platt commented that this was consistent with Subject 5 travelling from the south northwards through the tunnel and to the area on the other side of the tunnel.¹¹⁷³⁵

6684. According to Mr Platt, the 'previous activity from the Dahyieh area through central Beirut towards the crime scene' of both Subjects 5 and 7 was consistent with both of them being involved in the transportation of the Canter towards the crime scene. Mr Platt identified as Subjects 5 and 7 the two users of Blue 585 and Red 636 on one side, and Blue 324 and Red 946 on the other—who, in his evidence, are the same.¹¹⁷³⁶

6685. At 11:56:57, when a white van was in CCTV camera images in the tunnel, Subject 5, according to Mr Platt was travelling 'in line with the truck in its direction of travel'.¹¹⁷³⁷ Mr Platt also stated that Subject 5 was not the suicide bomber because his Blue mobile 585 was used for

¹¹⁷³¹ See para. 4643.

¹¹⁷³² Gary Platt, T. 13 March 2017, p. 92.

¹¹⁷³³ This cell provided coverage within a 500-metre radius of the crime scene and a 500-1,000 metre radius of Parliament. Exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1267-1268; exhibit P592.1 (Electronic Presentation of Evidence). Using exhibit P592.1, the Trial Chamber measured the shortest and longest distances between ZOUKAK2's predicted best server coverage area and (a) the crime scene, as around 480 and 935 metres, (b) the Parliament, as 520 and 975 metres and (c) the tunnel's northern exit, onto Suleiman Franjeh Boulevard, as around 130 and 580 metres. ZOUKAK2 is south of the tunnel. Exhibit P1923, slide 96.

¹¹⁷³⁴ Mr Ayyash's Red 741 also activated it as the call's recipient; Gary Platt, T. 13 March 2017, p. 94; exhibit P1203 (Call sequence table of Red 636), p. 3; exhibit P1259, p. 364. Two subsequent calls involving Red 636, at 12:01:45 and at 12:02:18, activated PHENMB1 and ZOUKAK4. ZOUKAK4 provided coverage within a 500-metre radius of the crime scene and within a 500-1,000 metre radius of the Parliament. Using exhibit P592.1, the Trial Chamber measured that ZOUKAK4 provided predicted best server coverage to the crime scene and the tunnel. The furthest portions of its predicted best server coverage from (a) the crime scene or tunnel, were around 890 metres and a kilometre, and (b) the Parliament, were around 675 metres and 1.28 kilometres. See also exhibit P1930; exhibit P1783 (Expert report of Gary Platt – Chronology), paras 1267-1268.

¹¹⁷³⁵ Gary Platt, T. 13 March 2017, p. 93. As noted in chapter X 'Chronology of network mobile activity before Mr Hariri's assassination on Monday 14 February 2005', fn. 8887, the tunnel is the roadway underpass between the *Fu'ad Shahab* and St Georges (Ain-El-Mreisseh) areas of Beirut. It has an entry and exit point on *Fakhr Ed Dine* Street, south of the Phoenicia and Monroe Hotels and of *Adnan El Hakim* Street, which runs east to west behind the Monroe Hotel. Exhibit P5 (Robyn Fraser report on CCTV evidence) paras 10, 115; Robyn Fraser, T. 22 January 2014, p. 41.

¹¹⁷³⁶ Gary Platt, T. 13 March 2017, pp 77, 84-85, T. 14 March 2017, pp 7-9, 16-18; exhibits P1927-P1928.

¹¹⁷³⁷ Gary Platt, T. 13 March 2017, p. 94.

weeks and months after the attack.¹¹⁷³⁸ Further, Prosecution counsel also stated that it was illogical for the suicide bomber to have had a mobile, due both to his state of mind and his close proximity to two and half tonnes of explosives on the Canter.¹¹⁷³⁹

6686. According to Mr Platt, Subject 5's call on Red 636 to Mr Ayyash on Red 741 was consistent with Subject 5 updating Mr Ayyash about Subject 5's arrival at the crime scene area.¹¹⁷⁴⁰ In his view, if Subject 5 was not 'inside the Canter van at the time he made this phone call...he must have had some sort of visual awareness of the movements of the Canter'. Further, if 'Subject 5, for instance, was aware of the ultimate destination of the Canter van and the driver wasn't, you could have Subject 5 leading the Canter van to the appropriate destination'.¹¹⁷⁴¹

vii. Mr Ayyash's call on Green 300 to Mr Badreddine on Green 023—
11:58

6687. Within 40 seconds of the end of the call from Subject 5 to Mr Ayyash on Red 741, at 11:58, Mr Ayyash used his Green mobile 300 to call Mr Badreddine on Green 023. At the start of the call, Green 300 activated MRAICI1, which provided coverage within a 500-metre radius of the crime scene, and at the end of the call it activated PHENMB1.¹¹⁷⁴² Mr Badreddine's Green 023 activated the ROUEIS3 cell, in southern Beirut.¹¹⁷⁴³ This was the last call between the Green network mobiles. In Mr Platt's view, this was because 'the operation succeeds on that day'.¹¹⁷⁴⁴

6688. According to Mr Platt, the timing of the final Green call and its immediate relationship with the call from Subject 5's Red 636 to Mr Ayyash's Red 741 is consistent 'with coordination

¹¹⁷³⁸ Gary Platt, T. 13 March 2017, p. 81.

¹¹⁷³⁹ Mr N. Povoas, during Mr Platt's testimony; Gary Platt, T. 13 March 2017, pp 96-97.

¹¹⁷⁴⁰ See para. 4644.

¹¹⁷⁴¹ Gary Platt, T. 14 March 2017, p. 9.

¹¹⁷⁴² See paras 4644-4645. See also exhibit P1923, slide 73; exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1268. Using exhibit P592.1, the Trial Chamber measured the shortest and longest distances between MRAICI1's predicted best server coverage and the crime scene as approximately 25 and 800 metres. These measurements are of course imprecise and depend upon the estimations of predicted coverage in the network maps. According to Mr Platt's report MRAICI1 also provided coverage within a 500 metre radius of Parliament. Exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1266. Using exhibit P592.1, the Trial Chamber also measured the shortest and longest distances between MRAICI1's predicted best server coverage and Parliament as approximately 400 metres and 1.42 kilometres.

¹¹⁷⁴³ Exhibit P1118 (PowerPoint presentation on common mission phones, John Edward Philips), slide 60. See fn. 8958.

¹¹⁷⁴⁴ Gary Platt, T. 14 March 2017, p. 8.

and a command structure, whereby clearly the people involved in the transportation of the Canter carrying the explosives were in contact with Mr Ayyash's Red mobile.¹¹⁷⁴⁵

6689. On the Prosecution's case, the 'next chain of command' call was to Mr Badreddine's Green mobile. Mr Platt explained that Mr Badreddine was then far away from the crime scene. He did not need to have any direct involvement, because the person in charge of the operation—given the activity of his mobile—was Mr Ayyash. Further, being remote from the crime scene, he distanced himself from the crime. Thanks to the Green mobiles, this created a 'sterile corridor between Mr Badreddine and the actual plot'. On some rare occasions, however, Mr Badreddine had direct involvement in the surveillance.¹¹⁷⁴⁶

6690. Mr Platt stated that by this time—just before the explosion—'the people involved, especially these six principal Subjects' would have been aware that the attack was due to take place.¹¹⁷⁴⁷ This was because since 'you're transporting a Canter van to the crime scene, it's clearly not going to be used in surveillance. You're adding something new to the equation'.¹¹⁷⁴⁸

viii. Red network mobile activity between 12:04 and Mr Hariri's departure from the Parliament

6691. Just after midday, Mr Ayyash and Subject 7 were somewhere between the Parliament and the crime scene, while Subjects 8 and 9 remained near the Parliament.

6692. At 12:04:27 and 12:05:41, Mr Ayyash on Red 741 called Subject 7 on Red 946. Both were then connecting to ZOUKAK1, which provided coverage between the crime scene and Parliament.¹¹⁷⁴⁹ Subject 8, on Red 893, and Subject 9, on Red 652, contacted Mr Ayyash's Red 741 at 12:09:00 and 12:09:56. Red 741 activated ZOUKAK1 and then PHENMB1.¹¹⁷⁵⁰

¹¹⁷⁴⁵ Gary Platt, T. 14 March 2017, p. 8.

¹¹⁷⁴⁶ Gary Platt, T. 14 March 2017, pp 7-8, 20-22.

¹¹⁷⁴⁷ In response to a question from Judge Re who asked, 'And in your view would those leading the Canter to its destination, if that is the correct scenario, have been aware that it was packed with explosives on the Prosecution case?'; Gary Platt, T. 14 March 2017, pp 9-10.

¹¹⁷⁴⁸ Gary Platt, T. 14 March 2017, p. 10; *see* para. 4642.

¹¹⁷⁴⁹ *See* para. 4648. From 12:04, Red 741 and Red 946 activated the same cell, ZOUKAK1.

¹¹⁷⁵⁰ *See* para. 4649. For the first call, at 12:09:00, Red 741 activated ZOUKAK1 at the start of the call and PHENMB1 at the end of the call. For the second call, it activated PHENMB1 at the start of the call and BEACH1 at the end of the call. BEACH1 provided coverage within a 500-metre radius of the crime scene, exhibit P1783 (Expert report of Gary Platt – Chronology), para. 1268. Using exhibit P592.1, the Trial Chamber measured the shortest and longest distances between its predicted best server coverage and the crime scene as around 45 and 135 metres.

6693. Both Subject 8 and Subject 9 were still near the Parliament when they made these calls. According to Mr Platt, they were in a position to observe Mr Hariri's movements and to update Mr Ayyash, who—according to Mr Platt—had a prominent role in the operation that he was coordinating.¹¹⁷⁵¹

6694. As noted above, at around 11:54, Mr Hariri had left the Parliament building and had gone to the café where he met journalists, MPs and others. Within a few minutes, two calls on the Red network involved Subjects 6, 8 and 9, whose mobiles were activating cells near the Parliament or in its area.¹¹⁷⁵²

6695. Mr Platt commented that the operation was then in two parts. One was in getting the Canter to the crime scene. The other was in observing Mr Hariri's movements around the Parliament area to inform the Canter side to be in place in time for the attack.¹¹⁷⁵³ After 12:00, four Subjects, numbers 5, 6, 8 and 9—the users of Red 636, Red 678, Red 893 and Red 652—were near the general area of the Parliament.¹¹⁷⁵⁴

6696. Two others, Mr Ayyash on Red 741 and Subject 7 on Red 946, were 'between the Parliament area and the crime scene and close to the crime scene'.¹¹⁷⁵⁵ Mr Platt also commented that after midday, and after escorting the Canter, Subject 5 (Red 636's user) moved away from the area close to the crime scene. He was then redeployed to assist the other three Red mobiles' users in the surveillance around the Parliament area. At 12:12, Red 636 activated ETOILE2, which provided coverage in the area.¹¹⁷⁵⁶

6697. At 12:16, Mr Ayyash's Red 741, activating ZOUKAK1, called Subject 8, on Red 893. Mr Ayyash's Red 741 was then inactive for almost half an hour. Mr Platt commented that in that period there was only one Red call—between Red 652 (Subject 9) and Red 678 (Subject 6). As Mr Hariri was still at the café there was no reason, in Mr Platt's view, to trigger any movement or activity.¹¹⁷⁵⁷

¹¹⁷⁵¹ See para. 4649; Gary Platt, T. 14 March 2017, pp 41-42.

¹¹⁷⁵² See para. 4643.

¹¹⁷⁵³ Gary Platt, T. 14 March 2017, pp 42-43.

¹¹⁷⁵⁴ See paras 4647-4649.

¹¹⁷⁵⁵ Gary Platt, T. 14 March 2017, p. 42.

¹¹⁷⁵⁶ Gary Platt, T. 14 March 2017, p. 17.

¹¹⁷⁵⁷ See paras 4649-4650.

6698. Red 741 made its last call, at 12:43, again activating the ZOUKAK1 cell, and again to Subject 8 on Red 893, who was still in the Parliament area. In Mr Platt's view, this was consistent with Mr Ayyash getting an update on what was occurring there.¹¹⁷⁵⁸ This was six to seven minutes before Mr Hariri left the café.

ix. Mr Hariri's departure from the Parliament—12:49-12:50

6699. Between 12:49 and 12:50, Mr Hariri departed the café in his convoy, intending to return to Quraitem Palace; the last call involving his security detail was at 12:50, from the Parliament area.¹¹⁷⁵⁹

6700. Mr Ayyash's Red 741 received its last call just after that, at 12:50:55, again from Subject 8 on Red 893, activating ETOILE1, which provided the predicted best server coverage to the Parliament.¹¹⁷⁶⁰ Mr Ayyash's Red 741 also activated ZOUKAK1 in this final call, and was still somewhere in an area between the crime scene and the Parliament.¹¹⁷⁶¹

6701. Mr Platt noted that at the time of the attack, only two Subjects were close to the crime scene, namely Mr Ayyash on Red 741 and Subject 7 on Red 946. The other four were all located in the general Parliament area. As noted above, Subject 5, on Red 636, had left the crime scene area and by 12:12 had joined the other three in the Parliament area.¹¹⁷⁶²

6702. At 12:50:34—immediately before its call to Mr Ayyash's Red 741—Subject 8 on Red 893 called Subject 7 on Red 946. According to Mr Platt, this was consistent with Subject 8—after having seen Mr Hariri departing the Parliament—alerting Subject 7 that the Canter carrying the explosives had to move to the crime scene.¹¹⁷⁶³ In Mr Platt's view, Subject 7 was with the Canter, and 'any communication made to the driver of the Mitsubishi would have had to have been made physically; in other words, verbally'.¹¹⁷⁶⁴

¹¹⁷⁵⁸ See para. 4651; Gary Platt, T. 14 March 2017, p. 46.

¹¹⁷⁵⁹ See para. 4626.

¹¹⁷⁶⁰ Subject 8's Red 893 activated ETOILE1 on all its calls from 12:05. Previously, it had activated cells in the Quraitem Palace area (CARACA3 and CONCOR2) at 11:00, 11:01 and 11:34, and PHENMB1 at 11:48; Gary Platt, T. 13 March 2017, pp 82-83; exhibit P1198 (Call sequence table of Red 893), p. 6.

¹¹⁷⁶¹ See para. 4652; see also exhibit P1926, exhibit P1930.

¹¹⁷⁶² Gary Platt, T. 14 March 2017, pp 14, 16-17, 24-25, 42; exhibit P1927; exhibit P1928.

¹¹⁷⁶³ See para. 4653.

¹¹⁷⁶⁴ Gary Platt, T. 14 March 2017, p. 13.

6703. Subject 8, according to Mr Platt, using ‘the coverage of ETOILE1, had the best line of sight of the movements of the convoy’.¹¹⁷⁶⁵ Subject 8’s Red 893 had called both Subject 7’s Red 946 and Mr Ayyash’s Red 741 within 20 seconds. The two calls lasted, respectively, five and ten seconds. Subject 7, in Mr Platt’s view, was ‘the access or the trigger point for the movement of the Canter towards the crime scene’. The second call was to Mr Ayyash who was coordinating the operation.¹¹⁷⁶⁶

6704. While there are no images of where the Canter was stationed for 50 minutes after—on the Prosecution’s case at 11:56:57—exiting the tunnel and then turning right, the Canter, according to Mr Platt, was potentially in close proximity of the crime scene, namely somewhere in the ZOUKAK1 and ZOUKAK4 cell areas.¹¹⁷⁶⁷ Both ZOUKAK1 and ZOUKAK4, in the Prosecution’s submission, provided coverage to the slip road where—or not far from which—the Canter would have stationed itself, but ZOUKAK4’s coverage ‘is nearer to the mouth of the slip road as it merges into the road towards the crime scene’.¹¹⁷⁶⁸

6705. As a result, by ‘a process of elimination’ or ‘a deduction of logic’ and based on cell coverage, Subject 7, on Red 946, was with the Canter and was the access or the trigger point for the Canter’s movement towards the crime scene. Further, consistent with this, Mr Platt noted that Subject 7 only received three incoming calls on his Red mobile and did not make any outgoing calls.¹¹⁷⁶⁹

6706. The last ever calls of the Red network mobiles occurred between 12:51:32 and 12:53:42. There were four calls between Subject 8 (Red 893), Subject 9 (Red 652), Subject 5 (Red 636) and Subject 6 (Red 678). These four calls and the two previous calls from Subject 8 to both Subject 7 and Mr Ayyash involved all six who were active on the Red network that day. At 12:54:57, an HSBC CCTV camera recorded Mr Hariri’s convoy passing the HSBC bank, preceded by a white

¹¹⁷⁶⁵ Gary Platt, T. 14 March 2017, p. 48. Around that time, the other Red mobiles in the Parliament area activated the BACHOU3 and BNPI3 cells. *See* paras 4654-4655.

¹¹⁷⁶⁶ Gary Platt, T. 14 March 2017, pp 48-49.

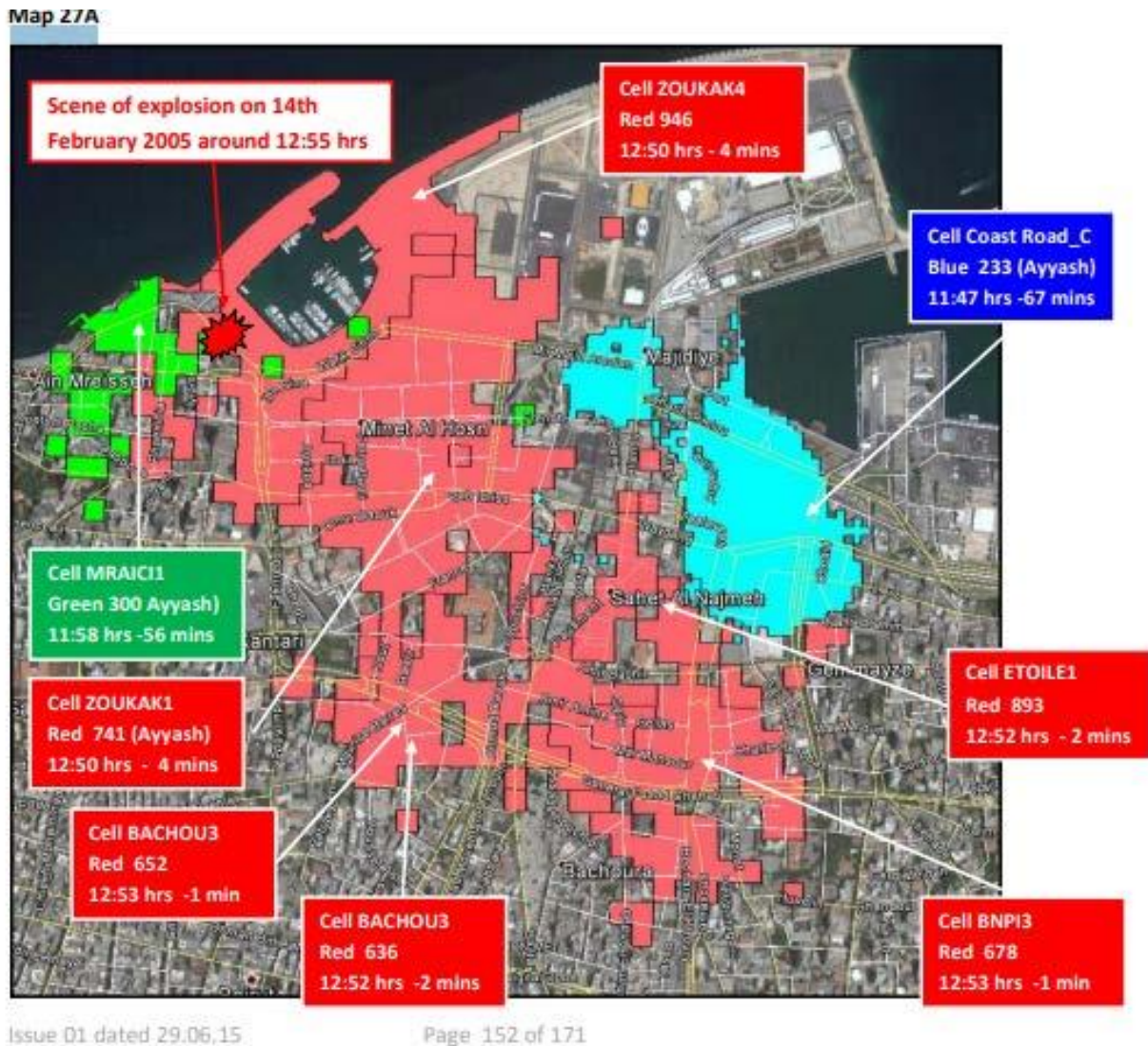
¹¹⁷⁶⁷ Mr Platt and Ms Robyn Fraser testified that images from the tunnel’s last CCTV show that the truck exited and merged onto a side street in front of the Monroe Hotel. For Mr Platt, ‘our contention is’ that the Canter was behind, to the east of the Monroe hotel, after taking a slip road that could be picked up once exiting the St Georges tunnel, in front of the Monroe hotel. Exhibit P49 (Marked image); exhibit P1930.1 (Marked version of exhibit P1930); exhibit P1923.3 (Marked version of slide 100 of exhibit P1923); Gary Platt, T. 14 March 2017, pp 27-31, 36-39; Robyn Fraser, T. 23 January 2014, pp 47-48. *See also* exhibit P1923.6 (EPE snapshots related to exhibit P1923, slide 129).

¹¹⁷⁶⁸ Prosecution submission during Mr Platt’s evidence; Gary Platt, T. 14 March 2017, pp 55-56.

¹¹⁷⁶⁹ Gary Platt, T. 14 March 2017, pp 12-15, 18-19, 48.

van entering the view about a minute earlier. At 12:55:05, the explosion occurred.¹¹⁷⁷⁰ The Red network mobiles were never used again.

6707. The map below, from Mr Philips's report 'Common mission phones?' shows the cells used by six Red mobiles, and Mr Ayyash's Blue 233 and Green 300, near the crime scene and Parliament—the area north-west of central Beirut—in the hour before the explosion.¹¹⁷⁷¹



¹¹⁷⁷⁰ See para. 4627.

¹¹⁷⁷¹ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), map 27A (p. 152).

(c) Prosecution submissions

6708. The evidence is common to all the crimes charged in the amended consolidated indictment. The Prosecution submits that it has proved beyond reasonable doubt that Mr Ayyash is guilty of committing a terrorist act by means of an explosive device.¹¹⁷⁷²

6709. As to Mr Ayyash's intention to commit the crime, the *mens rea*, the Prosecution submits that he participated directly and intentionally in it.¹¹⁷⁷³ His conduct and role demonstrate his underlying intent. Mr Ayyash's contribution to the surveillance activities establishes that he knew Mr Hariri was the main target. His involvement in choosing the Canter and his coordination of the network responsible for guiding the Canter into position just before the detonation of the carried explosive device demonstrates his knowledge of the means of the attack.¹¹⁷⁷⁴

6710. Further, Mr Ayyash's surveillance of, and presence at, the crime scene demonstrates that he necessarily would have foreseen the likelihood that the public explosion would cause additional deaths. This confirms that Mr Ayyash acted with the intention to cause terror.¹¹⁷⁷⁵

(d) Ayyash Defence submissions

6711. The Ayyash Defence in its final trial brief did not directly address each count charged in the amended consolidated indictment, with the exception of the conspiracy. Rather, it attacked the reliability of the Prosecution's telecommunications evidence, including the attribution of mobiles to Mr Ayyash, which underpins all the charges.

6712. According to the Ayyash Defence, the Prosecution failed to prove Mr Ayyash's participation in any of the crimes charged and hence Mr Ayyash's guilt beyond reasonable doubt.¹¹⁷⁷⁶ It submits that the Prosecution has based his alleged participation in the crimes and his criminal intent on content-less calls on mobiles that have not been attributed to Mr Ayyash and unreliable telecommunications evidence and analysis.¹¹⁷⁷⁷

¹¹⁷⁷² Prosecution final trial brief, paras 1124, 1126, 1195.

¹¹⁷⁷³ Prosecution final trial brief, para. 1125.

¹¹⁷⁷⁴ Prosecution final trial brief, para. 1167.

¹¹⁷⁷⁵ Prosecution final trial brief, para. 1167.

¹¹⁷⁷⁶ Ayyash Defence final trial brief, para. 720.

¹¹⁷⁷⁷ Ayyash Defence final trial brief, paras 713-718.

6713. Further, the allegation that Mr Ayyash shared the intent to commit each of the crimes with Mr Badreddine and unidentified others ‘presents the obvious difficulty of proving shared intent with unknown persons’.¹¹⁷⁷⁸

(e) Findings

i. Introduction

6714. The evidence connecting Mr Ayyash with the attack on Mr Hariri stems from his use of mobile Red 741. Without this there would be no evidence linking him with the explosion on 14 February 2005.

6715. The Red network undoubtedly was used in the assassination. It functioned as a closed network that ceased operation immediately before the attack, after having been used in the previous month in the surveillance of Mr Hariri and his convoy’s movements.

6716. It operated extensively on the day of the attack. Red network mobile users were near or in the area of Quraitem Palace just after Mr Hariri had left for the Parliament and they were active in monitoring him at the Parliament, when he was in the Parliament area. They must also have assisted in preparing the Canter for the attack at the crime scene. The Trial Chamber agrees with the Prosecution’s description of the Red network in the amended consolidated indictment and its final trial brief as the ‘assassination team’.¹¹⁷⁷⁹

6717. The evidence—albeit circumstantial—that mobile Red 741 was used by someone involved in the attack is overwhelming. Its movements and calls on Monday 14 February 2005 *vis-à-vis* Mr Hariri, when combined with its presence over four days between Monday 31 January and Saturday 12 February in movements coincidental to Mr Hariri’s, and its calls within a closed network that shut down immediately before the attack, provide proof beyond reasonable doubt of its role in the attack. This is the only inference reasonably available from the totality of the evidence concerning its use and movements. Mr Ayyash’s presence, using his Blue 233, in surveillance of Mr Hariri’s movements on four days between Saturday 29 January and Tuesday

¹¹⁷⁷⁸ Ayyash Defence final trial brief, para. 719.

¹¹⁷⁷⁹ Amended consolidated indictment, paras 15 (a), 22, 24, 32-34, 38-39, 48, 50; Prosecution final trial brief, paras 10-11, 1167.

8 February—and on two of them with both Red 741 and Blue 233—provides further support to this conclusion.¹¹⁷⁸⁰

6718. The Trial Chamber therefore finds that the surveillance of Mr Hariri's movements from at least Saturday 29 January 2005 was connected to the possibility of assassinating him. Consistent with the finding that a decision was made to assassinate him in at least early February 2005—as set out in analysing the conspiracy charge—the Trial Chamber finds that the surveillance in which Mr Ayyash was engaged from at least Thursday 3 February was an act preparatory to the assassination.

6719. It was only through analysing the possible co-location of the mobiles in that network with any other mobiles that the other networks, the Blue, Yellow and Green, were discovered. Further cell site analysis of potentially co-locating mobiles led to the attribution of mobiles to Mr Ayyash, Mr Badreddine and Mr Merhi. Thereafter, cell site analysis apparently led the investigators to Mr Oneissi and Mr Sabra. But it is Red 741 that holds the key to Mr Ayyash's involvement in the attack.

6720. It is thus fair to state that establishing who was using that mobile is the key to determining who bears responsibility for the terrorist attack on Mr Hariri—at least on Monday 14 February 2005—and thus whether the Prosecution has proved its case that Mr Ayyash was one of those responsible as charged in the amended consolidated indictment.

6721. The Trial Chamber, after carefully analysing the cell site evidence relating to Red 741 concluded that it was co-locating and moving in concert with Blue 233, Green 300 and with Mr Ayyash's personal mobiles 091 and 170, and that these mobiles had a single user, namely, Mr Ayyash. Mr Ayyash was also using Yellow 294.¹¹⁷⁸¹ The Trial Chamber has also found that the Red, Yellow, Green and Blue networks were connected and at least some of the users of the Red, Yellow, Green and Blue networks had a common mission, namely the assassination of Mr Hariri,¹¹⁷⁸² and that the Red network played a crucial role in executing the attack on 14 February 2005.¹¹⁷⁸³

¹¹⁷⁸⁰ The total is six days, Mr Ayyash was using both his Blue 233 and Red 741 on 31 January and 8 February 2005.

¹¹⁷⁸¹ See paras 3411-3412.

¹¹⁷⁸² See paras 2423, 4669, 4736.

¹¹⁷⁸³ See para. 4670.

6722. The issue is whether this is sufficient to establish beyond reasonable doubt his alleged culpability in committing the offences charged in the amended consolidated indictment.

ii. *Actus reus* for terrorism

6723. The Trial Chamber has found that a rectangular charge of 2,500 to 3,000 kilograms of TNT equivalent high explosives material, situated on the rear of a Mitsubishi Canter, was detonated on 14 February 2005. This was self-evidently an explosive device and therefore one of the physical means that Article 314 of the Lebanese Criminal Code specifies as liable to create a public danger.¹¹⁷⁸⁴

6724. The Trial Chamber has also found that the explosion on 14 February 2005 was a terrorist act within the meaning of Article 314 of the code.¹¹⁷⁸⁵

6725. Under Lebanese case law, a co-perpetrator may have either performed a physical act necessary to commit the crime, or have made some other direct contribution to the crime's execution.¹¹⁷⁸⁶ Different actions can constitute the co-perpetration of terrorist acts, intentional homicide and attempted intentional homicide, including planning and supervising the acts of other co-perpetrators.¹¹⁷⁸⁷

6726. The question here is not whether Mr Ayyash detonated the explosive with his own hands—which he did not—but whether his actions directly contributed to the execution of the crime, thereby satisfying the *actus reus* for co-perpetration of a terrorist act.

6727. On 14 February 2005, the Red mobiles tracked the movement of Mr Hariri and his convoy, alerted other members of the Red network to his location and prepared for the surveillance and for the execution of the attack along the route that he was expected to take. These actions were necessarily aimed at ensuring that the explosives detonated at the exact point when the convoy would pass.

6728. Three Red mobiles were active in the area of Quraitem Palace in the morning before the attack. Six were then active in the Parliament and crime scene areas. During the last two hours

¹¹⁷⁸⁴ See para. 6331.

¹¹⁷⁸⁵ See para. 6330.

¹¹⁷⁸⁶ See paras 6028-6029.

¹¹⁷⁸⁷ See para. 6031.

before the attack, there were 33 calls between the six Red mobiles. Significantly, between 12:49:33 and 12:53:42, Red 741, Red 636, Red 678, Red 946, Red 893 and Red 652 were involved in the final seven calls of the Red network. The explosion that killed Mr Hariri and others occurred at 12:55:05. After the explosion, the mobiles in the Red network were never used again.¹¹⁷⁸⁸

6729. The only reasonable inference available from the evidence is that, on 14 February 2005, the Red mobiles tracked the movement of Mr Hariri and his convoy, alerted the others of his location and prepared for surveillance and for the execution of the attack along the route that he was expected to take. This must have also aimed at ensuring that the explosive detonated at the exact time the convoy would pass. The users of Red mobiles had prepared the attack through repeated operations of surveillance and reconnaissance in previous days.

6730. On the evidence received, as set out in analysing the conspiracy in sub-section (B) ‘Conspiracy to commit a terrorist act (Count 1)’ above, the Trial Chamber is satisfied that Mr Ayyash had a central role in the execution of the attack on Monday 14 February 2005. The mission was to assassinate Mr Hariri. Mr Ayyash participated in the preparations for the attack from at least sometime in early February 2005, until four minutes before its completion. His last call, of ten seconds on Red 741, occurred at 12:50:55.¹¹⁷⁸⁹

6731. Blue 233 had contact with the highest number of the other Blue mobiles and, along with another Blue mobile, the most calls between 14 January and 14 February 2005.¹¹⁷⁹⁰ Mr Philips concluded that Mr Ayyash, as the user of Blue 233, was a “senior” member of the *Blue Phone Group* or ‘quite possibly the “leader” of the group’.¹¹⁷⁹¹ He also concluded that the user of Green 300, Red 741 and Blue 233—representing the only use of three what he termed ‘mission phones’, meaning network mobiles by a single person—had to be a ‘dominant player’.¹¹⁷⁹²

¹¹⁷⁸⁸ See para. 2272.

¹¹⁷⁸⁹ That Red 741 received from Red 893.

¹¹⁷⁹⁰ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), para. 5.2.18.3.

¹¹⁷⁹¹ Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), paras 5.5.2.4, 5.6.2.14, referred to as ‘Suspect 1’; exhibit P1111 (Expert report of John Edward Philips – Single user analysis, Suspect 1, Mr Ayyash).

¹¹⁷⁹² Exhibit P1117 (Expert report of John Edward Philips – Common Mission Phones), p. 4, while concluding that ‘whilst, given their relationship with Green 023, Green 023 would appear to be at the top of any hierarchy and therefore the head of any command structure’. At para. 5.6.2.14 on p. 57, Mr Philips drew the following conclusion in relation to ‘Mission hierarchy’: ‘One pair of these mobile phones features Blue 233 which, based upon usage, is quite possibly the ‘leader’ of the group of *Blue Phones* and this would appear to be supported by this pair of *Red* and *Blue Phones* also having a common user with that of Green 300, the only pair of mobile phones to do so’.

6732. The Trial Chamber accepts this to the extent that Mr Ayyash's use of Red 741 on Monday 14 February, in combination with his participation in surveillance of Mr Hariri's movements in the preceding weeks using that mobile and Blue 233, reveals his leading role in the assassination. It is only through working backwards from Mr Ayyash's use of Red 741 on 14 February that his role in the attack can be established. This includes his surveillance activities using either Red 741 or Blue 233, or both, on six occasions between 29 January and 12 February, as seen in their context, the only reasonable inference available from the totality of the evidence is that they were preparatory to the attack.

6733. The Trial Chamber, as is set out above, is not convinced of the pleaded role of the Green network in the assassination. Thus, in this respect it partially accepts Mr Philips's opinion. It does not consider that Mr Philips's opinion that Mr Ayyash was a 'dominant player' is predicated on the combination of the use of Red and Blue *and* Green network mobiles. In the Trial Chamber's view, Mr Ayyash's use of the Blue and Red network mobiles in the period leading to the attack suffices to provide the necessary inferences beyond reasonable doubt.

6734. On that day, Mr Ayyash was physically present in the area between Parliament and the crime scene and in the crime scene area.¹¹⁷⁹³ His Red 741 mobile was the only mobile that, on the day of the attack, was in contact with all the other Red mobiles,¹¹⁷⁹⁴ namely those in the Parliament area throughout a large part of the operation and those closer to the crime scene.

6735. The Trial Chamber is aware that, according to the expert evidence, apparently there was no single dominant mobile in the Red network. Further, while Mr Philips identified Red 741 as the most dominant of the Red mobiles on 20 January and 11 February 2005—on the latter day together with two other Red mobiles—Red 652 was 'the most dominant' on 14 February 2005, with its user being involved in about 50 per cent of the calls in that network.¹¹⁷⁹⁵

¹¹⁷⁹³ Mr Platt testified that the mobiles attributed to Mr Ayyash took a more active role in the actual surveillance operations—on the ground rather than coordinating the operations remotely—from 31 January 2005, Gary Platt, T. 7 March 2017, p. 22.

¹¹⁷⁹⁴ Compare exhibit P1259 (Call sequence table of ten numbers—Mr Ayyash), p. 364, with exhibit P1198 (Call sequence table of Red 893), p. 6, exhibit P1199 (Call sequence table of Red 652), p. 6, exhibit P1202 (Call sequence table of Red 946), p. 4, exhibit P1203 (Call sequence table of Red 636), pp 3-4 and exhibit P1204 (Call sequence table of Red 678), p. 6.

¹¹⁷⁹⁵ Exhibit P1114 (Expert report of John Edward Philips – Red mission phones), paras 6.3.4.4-6.3.4.6, 6.3.12.7-6.3.12.9, 6.3.14.7.

6736. The Trial Chamber has however considered that, according to Mr Philips's evidence, several factors are relevant to identify a dominant number. These include the call volume, whether a number had contacts 'with the most numbers' of a certain network or whether 'often all calls routed' via that number. Mr Philips, for example, considered that, in a certain period, Blue 233 had contact with the highest number of the other Blue mobiles before concluding that its user was a senior member of the Blue network, if not its leader.

6737. The Trial Chamber has considered that Red 741 was the only mobile that, on the day of the attack, was in contact with all the other Red mobiles. In the totality of the circumstances, which includes the movements of Red 741 and its call patterns, the Trial Chamber has concluded that this mobile had a central role in the attack.

6738. It has also factored in that the call from Mr Ayyash's Red 741 to Subject 6 (Red 678), at 11:33:33, was followed within a very short time by calls from Subject 6 (on Red 678) to two other Subjects—Subject 8 (on Red 893) and Subject 9 on (Red 652)—at 11:34:31 and 11:35:05.

6739. In the Trial Chamber's view, this call from Red 741 at 11:33:33 must have triggered the relocation of the other three from the vicinity or area of Quraitem Palace to the Parliament and crime scene areas, thus substantially launching the beginning of the operation.

6740. Despite Mr Hariri having already left Quraitem Palace at approximately 10:45—to reach Parliament at around 10:54—Subject 8 (Red 893), Subject 9 (Red 652) and Subject 6 (Red 678) moved from the area of Quraitem Palace to the area of the Parliament or the crime scene area only around an hour later. This was by 11:48, 11:49 and 11:53, respectively. The Trial Chamber is satisfied that the evidence taken in its totality establishes—and it accepts Mr Platt's expert evidence on this point—that Mr Ayyash coordinated the movement of the three other Red mobiles' users.

6741. Accordingly, the Trial Chamber also finds that Mr Ayyash directly contributed to the execution of the crime of a terrorist act through his central and leading role in the execution of the attack. The Prosecution has not proved, for the reasons described below, Mr Ayyash's or the other Red mobiles' users' role in specific aspects of the operation—namely escorting or ensuring that the Canter carrying the explosive device was placed at the crime scene or its purchase. This,

however, does not affect the Trial Chamber's overall conclusion that Mr Ayyash directly participated in committing the crime charged.

6742. The evidence cannot categorically establish that the white truck in the CCTV footage exiting from the President Suleiman Frangieh tunnel, just before 11:57, and passing the Phoenicia Hotel and HSBC Bank, was a Mitsubishi Canter.¹¹⁷⁹⁶ Although it is highly likely that the white truck was the Canter used in the explosion, no witness could identify it as a Canter.

6743. The Trial Chamber therefore cannot conclusively accept Mr Platt's opinion that the Canter *may* have been stationed in a slip road close to the Monroe Hotel before moving to the crime scene. It is one possibility but the evidence is equivocal. Mr Platt's opinion relies on or assumes that the white truck in the CCTV images was the Mitsubishi Canter. This also applies to the possible roles of Mr Ayyash or the users of other Red mobiles.

6744. The Trial Chamber posed the following question to the Prosecution before its closing final trial submissions in court:

At paragraphs 1078 to 1080, the brief refers to CCTV (closed circuit television) footage of what could be the Mitsubishi canter allegedly carrying the explosives that were used in the attack. Does the Trial Chamber have to be satisfied beyond reasonable doubt that the canter is in fact depicted in the evidence referred to here?¹¹⁷⁹⁷

6745. The Prosecution responded that was not an essential fact for conviction, namely, it is not a material fact of which the Trial Chamber needs to be satisfied beyond reasonable doubt.¹¹⁷⁹⁸ The Trial Chamber agrees.

6746. While the evidence does not establish that the truck in the CCTV footage was the Canter used in the explosion, the Trial Chamber is satisfied regardless—for the reasons illustrated above—that Mr Ayyash's conduct suffices to constitute the *actus reus* of committing the act of terrorism charged.

¹¹⁷⁹⁶ See para. 1288.

¹¹⁷⁹⁷ Questions for closing submissions, para. 19.

¹¹⁷⁹⁸ Prosecution closing submissions, T. 13 September 2018, pp 103-104.

6747. As to the other Prosecution submissions that Mr Ayyash coordinated the purchase of the Canter used to carry the explosive device, the Trial Chamber is also not satisfied that the Prosecution has proved this.¹¹⁷⁹⁹ The Trial Chamber found that obtaining the Canter was part of the plot to commit the attack and kill Mr Hariri and that it is plausible that the network activity in Tripoli on certain dates in January 2005 related to obtaining the Canter in order to use it in the attack.¹¹⁸⁰⁰

6748. In particular, calls on 25 January 2005 were consistent with the user of Blue 610, attributed to Subject 6, in Tripoli, informing Mr Ayyash that the Canter had been purchased, and that Mr Ayyash in turn informed Mr Badreddine of this fact. If this is in fact what occurred. However, ‘consistency with’ something and proof are different matters. Consequently, the Trial Chamber was unable to find conclusively either that the Canter was purchased that day, or that any particular network mobile user had a role in the Canter’s purchase.¹¹⁸⁰¹

6749. The Trial Chamber is not of the view that Mr Ayyash’s alleged role in purchasing the Canter in Tripoli is a material pleaded fact that is indispensable to a conviction. Whether it is viewed as evidence supporting a pleaded material fact, namely, that Mr Ayyash was using Red 741, which was used in the attack, or a material fact is immaterial in the circumstances. The evidence of Mr Ayyash’s mobile use on 14 February 2005 provides the necessary proof beyond reasonable doubt of his involvement in the attack.

6750. The Trial Chamber is also not satisfied, for the reasons elaborated above, that the Prosecution has proved that the Green network functioned as ‘mission command’.¹¹⁸⁰² It is not satisfied that the pleaded so-called ‘hierarchical call flows’ from the Green network to the Blue and Red networks proved a reporting or supervisory relationship between Mr Badreddine and Mr Ayyash and other users of the Blue and Red network mobiles. This, however, does not matter for the purposes of the finding here. There is sufficient evidence, from Mr Ayyash’s actions on 14 February 2005, to prove his involvement in the attack, irrespective of the role of the pleaded Green network.

¹¹⁷⁹⁹ See para. 4795.

¹¹⁸⁰⁰ See para. 4795.

¹¹⁸⁰¹ See paras 4792, 4795.

¹¹⁸⁰² See para. 4743.

6751. The Trial Chamber finds that, by the actions detailed above, the conduct of the Red mobiles' users directly contributed to the execution of the crime and therefore establishes the *actus reus* for committing a terrorist attack by means of an explosive device. Mr Ayyash, on his Red 741, directly contributed to and had a central role in its execution¹¹⁸⁰³ by directly participating in it from the Parliament and the crime scene areas on 14 February 2005 and by contributing to its preparation in previous days.

6752. Further, the preparatory acts of surveillance of Mr Hariri, at least in February 2005, in which Mr Ayyash participated using both his Red and Blue mobiles, also support this finding.

6753. However, proof that his actions equate to criminal responsibility for the crime also depends upon his knowledge of what he was doing and his intention, or *mens rea*.

iii. *Mens rea* for committing a terrorist act

6754. The subjective or mental element for committing a terrorist act includes two parts: the first is knowledge that the act is to be committed using an explosive device that is liable to create a public danger, and the second is an intention to cause a state of terror. This is a specific intention, or *dolus specialis*.¹¹⁸⁰⁴

6755. The call patterns of Red 741 on Monday 14 February 2005 prove that Mr Ayyash was coordinating the operation on the ground. The Canter had to have been somewhere near the crime scene while Mr Hariri was at the Parliament, given the few minutes it was going to take his convoy to travel the distance between there and the St Georges Hotel. When Mr Ayyash was near the Parliament he made calls at strategic moments to those who must have been near the Canter.

6756. This must have been to communicate that it should be manoeuvred into position when the convoy passed. Mr Ayyash also called those who were at Quraitem Palace just after Mr Hariri had left, and who most probably had been engaged in surveillance of Mr Hariri, although, as Mr Platt

¹¹⁸⁰³ For further details see chapter 'Chronology of network mobile activity before Mr Hariri's assassination on Monday 14 February 2005', (C) (3) (b) 'Network activity'.

¹¹⁸⁰⁴ See para. 6175.

noted, they may have been there for ‘operational reasons’.¹¹⁸⁰⁵ Mr Ayyash was also himself placed in strategic positions, and finally close to the crime scene.

6757. As Mr Platt noted, at this point the Red network mobiles did not have to follow Mr Hariri’s convoy. They knew where it was travelling and what was going to happen to it.

6758. In respect of his calls to those who must have been near or with the Canter, they must have been near the St Georges Hotel for a period before the explosion. Mr Hariri’s convoy had a choice, generally, of taking one of two routes between the Parliament and his residence. The Canter was loaded with 2.5 tonnes of explosives and would have needed sufficient advance warning to move into position as it was something that could only be done slowly and with care. And as the convoy was taking the coastal route and would have to pass the hotel, the Canter had to have been positioned so as to be near when the convoy passed. It would have had to have been ready to move and for the suicide bomber to have been situated to be in a position to detonate the charge at the correct moment.

6759. This required someone, who was near the Parliament observing Mr Hariri, alerting those responsible for ensuring the Canter was in position that the convoy was leaving. That person would presumably also have informed those who were with the Canter of where Mr Hariri’s vehicle was in the convoy and that he was as usual driving himself.

6760. It took the convoy less than five minutes to travel from outside the Parliament to the St Georges Hotel. The Red network users, having spent some time in the previous month observing the convoy’s routes and movements, which would have included things such as the order in which vehicles drove and its usual security practices, would have known how it typically behaved. The Blue network users had engaged in mobile surveillance of the convoy as it travelled along the coastal route between Quraitem Palace and Faqra Villa and the way back.¹¹⁸⁰⁶ The Red mobile users in the Parliament and the crime scene areas must have known how long the convoy would

¹¹⁸⁰⁵ Gary Platt, T. 13 March 2017, pp 43-44. He could not exclude, however, that they were already *in situ* there before making the calls.

¹¹⁸⁰⁶ Mr Hariri had attended Parliament on 27 January and 8 February 2005. On 27 January, the security convoy used the coastal route to travel to Parliament, but there was no evidence of the return route. On 8 February—when mobile surveillance occurred—the convoy took the ‘inland’ route, Gary Platt, T. 22 February 2017, pp 17-18, 22, 26-27, T. 7 March 2017, pp 46, 57.

need to reach the hotel from the Parliament, based upon its usual behaviour, including its normal speed, and that it had to slowly traverse a bend near the hotel.

6761. Thus, the assassination team members would have known how much time they had between Mr Hariri's departure from the Parliament and having the Canter ready to move into position. This should also have included sufficient time for those assisting the Canter driver to move themselves to a safe distance from the scene. The quickest and most logical way of doing this would have been by motorbike which could have been maybe a kilometre away, and thus potentially out of harm's way, within less than a minute. As Mr Platt noted, motorbikes, due to their flexibility, are used quite extensively in surveillance, and could have been used by Subjects 5 and 7 on the day.¹¹⁸⁰⁷

6762. There is no direct evidence of either Mr Ayyash's knowledge or his intention to commit a terrorist act by means of an explosive device. Mr Ayyash's mental state, as is normal in prosecutions relying on circumstantial evidence, can only be inferred from his proven actions. These are detailed above.

6763. The only reasonable inference available from the totality of the evidence is that Mr Ayyash, by virtue of his actions on the day of the attack, must have known that Mr Hariri was to be murdered by an explosion in a VBIED in a public place and exactly where it was to occur. He must have been aware of the circumstances in which the device was to have been detonated, including that its detonation was intended on a public street, in the middle of a weekday, as Mr Hariri's convoy passed along a busy road.

6764. Inevitably, by virtue of its detonation at that time and place, an explosion of that nature and one killing Mr Hariri in particular, was going to create a state of terror. In this respect, the Trial Chamber has also taken into account that the target of the attack, Mr Hariri, was a prominent political figure whose assassination was likely to, and in fact did, cause feelings of fear, insecurity and loss among the Lebanese people. The Trial Chamber heard abundant evidence during the trial of the assassination's negative effect on Lebanon. Mr Ayyash, in participating in the plan to murder Mr Hariri, must have known this; no other inference is reasonably available from the evidence.

¹¹⁸⁰⁷ Gary Platt, T. 14 March 2017, pp 8-9.

6765. This provides the evidence of his specific intention to commit the terrorist act as charged. The only conclusion available from the totality of the evidence therefore is that Mr Ayyash by his actions intended to commit a terrorist act by means of an explosive device.

6766. The Prosecution also positively submitted of Mr Ayyash that:

His involvement in choosing the Canter Van demonstrates knowledge of the means of the Attack through a VBIED, as does his co-ordination of the network responsible for guiding the VBIED into position just prior to its detonation.¹¹⁸⁰⁸

6767. This submission relies upon a positive finding that Mr Ayyash was involved in the Canter's purchase and with knowledge of its intended use in the attack. The evidence concerning Mr Ayyash's alleged 'involvement in choosing the Canter Van', however, is weak. Additionally, it does not follow logically, and the evidence does not establish, that whoever bought the Canter must have known at the time of its purchase—namely, in mid to late January 2005—that it was intended to be turned into a VBIED for the purpose of assassinating Mr Hariri.

6768. However, legally and factually, there was no need to prove that he was involved in the Canter's purchase nor in preparing the false claim of responsibility. Mr Ayyash's actions on Monday 14 February 2005 in combination with his actions in the previous weeks suffice to provide the necessary evidence of his knowledge and thus his intention. His involvement in the surveillance of Mr Hariri's movements in the weeks before the assassination, and at the latest from 3 February 2005, is corroborative of his actions on Monday 14 February 2005. The Trial Chamber is satisfied that the surveillance was a necessary preparatory act for the assassination. The only inference reasonably available from the evidence is that Mr Ayyash, using his Red and Blue network mobiles, participated in it knowing that the surveillance was part of the plan to assassinate Mr Hariri.

6769. The Trial Chamber is therefore satisfied beyond reasonable doubt that Mr Ayyash possessed the requisite knowledge that the explosive device was liable to create a public danger. That is the only conclusion that is reasonably available from the evidence. The Trial Chamber therefore concludes that Mr Ayyash possessed the *mens rea* to commit a terrorist act.

¹¹⁸⁰⁸ Prosecution final trial brief, para. 1167.

6770. Accordingly, the Trial Chamber finds Mr Ayyash guilty, as a co-perpetrator, of terrorism (count two) under Articles 188, 212, 213 and 314 of the Lebanese Criminal Code and Article 3 (1) (a) of the Statute of the Special Tribunal.

4. Counts three, four and five—intentional homicide and attempted intentional homicide

6771. Each of counts three, four and five aver that Mr Ayyash committed intentional homicide or attempted intentional homicide. The evidence underlying each count is identical, but the counts have different legal elements. For this reason, the Trial Chamber has assessed the legal elements separately.

6772. The wording of the pleading of these counts in the amended consolidated indictment, however, is slightly inconsistent. Count three, of the intentional homicide of Mr Hariri with premeditation by using explosive materials, pleads in paragraph 58 that Mr Ayyash committed the offence with Mr Badreddine, and that:

- c. each bearing individual criminal responsibility as co-perpetrators with shared intent to cause Rafik HARIRI's death and by knowingly bringing about the detonation of a large explosive device resulting in his death,
- d. committed the intentional homicide of Rafik HARIRI,

6773. As an aggravating circumstance, which is applicable on sentence, premeditation is pleaded, and added to this is a pleading of committing the offence, that:

- e. ii. by knowingly bringing about the detonation at 12:55 at Rue Minet el Hos'n Beirut, Lebanon, of explosives equivalent to approximately 2500 kilogrammes of TNT that may cause death.

6774. This pleads that as an aggravating circumstance Mr Ayyash knew of the approximate quantity and type of explosives used in the attack.

6775. Count four, of the intentional homicide with premeditation and by using explosive materials of the 21 others who died as a result of the explosion, however, pleads in paragraph 60 that Mr Ayyash committed this offence in the following manner:

- e. by using a large quantity of explosive materials in a public place with shared intent and premeditation to commit the intentional homicide of former Prime Minister, and leading political figure, Rafik HARIRI, within his motor convoy,

[and]

- h. by then knowingly bringing about the detonation at 12:55 at Rue Minet el Hos'n, Beirut, Lebanon, being a public street, of explosives equivalent to approximately 2500 kilogrammes of TNT that may cause death.

6776. For this count the aggravating circumstances are described as premeditation and 'by bringing about the said detonation of explosive materials', without specifying Mr Ayyash's knowledge of their type or approximate quantity.

6777. In count five, which is the attempted intentional homicide with premeditation by using explosive materials of 226 people, repeats this pleading at paragraph 62, and with the same aggravating circumstances:

- d. by using a large quantity of explosive materials in a public place with shared intent and premeditation to commit the intentional homicide of former Prime Minister, and leading political figure, Rafik HARIRI, within his motor convoy,

[and]

- g. by then knowingly bringing about the detonation at 12:55 at Rue Minet el Hos'n, Beirut, Lebanon, of explosives equivalent to approximately 2500 kilogrammes of TNT that may cause death.

6778. It would appear that the Prosecutor, in the amended consolidated indictment, is pleading on one hand, for the charge of the intentional homicide of Mr Hariri, that Mr Ayyash knew only that the quantity of explosives was large. However, on the other hand, for the charges of the intentional homicide of the additional 21 people and the attempted intentional homicide of 226 others, the Prosecutor is alleging that Mr Ayyash had specific knowledge, but not as an aggravating feature, of the type and approximate quantity of explosives used in the attack.

6779. These pleadings go to Mr Ayyash's *mens rea*, or intention, and thus what the Prosecutor must prove beyond reasonable doubt to establish his guilt.

6780. Thus, the literal wording of the amended consolidated indictment requires the Trial Chamber to consider whether the Prosecutor has proved that Mr Ayyash knew that the Canter contained 'explosives equivalent to approximately 2500 kilogrammes of TNT' in respect of counts four and five. However, it need only consider this in count three for the purposes of aggravation in sentencing.

6781. Why the Prosecutor chose to plead Mr Ayyash's specific knowledge of the type and quantity of explosives used is unclear, given that the Prosecution led no evidence capable of establishing this. Premeditation and use of explosive material are not elements of the crime of intentional homicide under Lebanese law, but are aggravating factors in sentencing a convicted offender.¹¹⁸⁰⁹ Resolution of this matter is thus one for sentencing proceedings.

- (a) Count three—Intentional homicide of Mr Rafik Hariri with premeditation by using explosive materials

6782. Mr Ayyash is charged under count three of the amended consolidated indictment with having committed as a co-perpetrator—with the former Accused, Mr Badreddine, and others unidentified—the crime of intentional homicide of Mr Hariri with the aggravating circumstances of premeditation and using explosive materials equivalent to approximately 2,500 kilogrammes of trinitrotuene (TNT).¹¹⁸¹⁰ The Prosecutor specifies in count three of the amended consolidated indictment that Mr Ayyash, Mr Badreddine and others unidentified:¹¹⁸¹¹

- c. each bearing individual criminal responsibility as co-perpetrators with shared intent to cause Rafik HARIRI's death and by knowingly bringing about the detonation of a large explosive device resulting in his death,
- d. committed the intentional homicide of Rafik Hariri
- e. in the aggravating circumstances of

¹¹⁸⁰⁹ See para. 6273.

¹¹⁸¹⁰ Amended consolidated indictment, paras 57-58. The amended consolidated indictment refers to Article 3 (1) (a) of the Special Tribunal's Statute and Articles 188, 212-213, 547 and 549 (1) and (7) of the Lebanese Criminal Code.

¹¹⁸¹¹ Amended consolidated indictment, para. 58.

- (i) premeditation, and
 - (ii) by knowingly bringing about the detonation at 12:55 at Rue Minet el Hos'n Beirut, Lebanon, of explosives equivalent to approximately 2500 kilogrammes of TNT that may cause death.
- i. Prosecution submissions

6783. The Prosecution submits that it has proved Mr Ayyash's guilt beyond reasonable doubt.¹¹⁸¹² It argues that Mr Ayyash was using mobiles from each of the networks involved in the attack. He coordinated and participated in the surveillance of Mr Hariri from the very early stages of preparation of the attack until its execution. He coordinated the purchase of the Canter used to carry the explosive device. He also coordinated the execution of the attack from the vicinity of the crime scene on 14 February 2005.¹¹⁸¹³

6784. These activities, in the Prosecution's submission, establish beyond reasonable doubt that Mr Ayyash played a principal and direct role in the commission of the attack and thus is responsible as a co-perpetrator of the underlying crimes.¹¹⁸¹⁴

6785. In particular, he participated in and coordinated the surveillance of Mr Hariri directly before his assassination on 14 February 2005. He also coordinated the placement of the Canter carrying the explosive device, enabling the detonation of the explosives to kill Mr Hariri and the others, as well as the execution of the attack.¹¹⁸¹⁵

6786. Specifically, regarding Mr Ayyash's acts on the day of the attack, the Prosecution argues that there was an overnight concentration of activity by Mr Ayyash on the Blue network. With his call on Blue 233 call at 10:50 to Blue 585 while he was *en route* to the crime scene, where he converged with Subject 5, the user of both Red 636 and Blue 585. This reinforces the direct significance of Mr Ayyash's role in ensuring that the Canter was in place at the crime scene before the arrival of Mr Hariri's convoy.¹¹⁸¹⁶

¹¹⁸¹² Prosecution final trial brief, paras 1124, 1126, 1195.

¹¹⁸¹³ Prosecution final trial brief, para. 1162.

¹¹⁸¹⁴ Prosecution final trial brief, para. 1163.

¹¹⁸¹⁵ Prosecution final trial brief, para. 1166.

¹¹⁸¹⁶ Prosecution final trial brief, paras 975-976, 978.

6787. At 11:33, Mr Ayyash, on Red 741, called Subject 6 (Red 678's user). This triggered Subject 6's calls to Red 893 and Red 652 to move to the vicinity of *Place de l'Étoile* where Mr Hariri was. In this way, Mr Ayyash 'was making sure that the Red Phones would be well placed to update him on Hariri's movements after he exited the Parliament'.¹¹⁸¹⁷

6788. Subject 5 (Red 636's user) who was using a cell in the vicinity of the President Suleiman Frangieh tunnel,¹¹⁸¹⁸ called Mr Ayyash one minute after 'the Mitsubishi Canter Van was recorded on CCTV camera travelling through the ... tunnel', to announce his arrival and receive further directions.¹¹⁸¹⁹ Mr Ayyash therefore 'was able to confirm his own direct observations that the bomb had physically arrived in the immediate vicinity of the planned location of the Attack'.¹¹⁸²⁰

6789. Mr Ayyash updated Mr Badreddine on this and—knowing that Mr Hariri had yet to depart the Parliament area through calls with the Red mobiles users there—'was in a position to direct the VBIED to turn off and wait as planned, if necessary'.¹¹⁸²¹ According to the Prosecution, the Canter 'waited on the side of the road' until the signal was given to Subject 7, using Red 946, of the moment Mr Hariri departed from café *Place de l'Étoile*.¹¹⁸²²

6790. Only forty seconds after his last contact with Subject 5, Mr Ayyash's Green 300 made a short call to Mr Badreddine's Green 023 to update him that the means of the attack, the Canter carrying the explosives, had arrived in the immediate vicinity of the crime scene.¹¹⁸²³ Mr Ayyash's Green 300 activated a cell in the immediate vicinity of the crime scene.¹¹⁸²⁴ After calling Mr Badreddine, Mr Ayyash immediately joined Subject 7, Red 946's user, 'to wait with the suicide bomber in the side road, receiving updates from the Parliament area ensuring that everything was in place as the suicide bomber was made to wait'.¹¹⁸²⁵ Sixteen seconds after Red 893 gave the signal to Red 946 that Mr Hariri's convoy had left, Red 893 also called Mr Ayyash's Red 741.

¹¹⁸¹⁷ Prosecution final trial brief, para. 981.

¹¹⁸¹⁸ At 11:57:01, Red 636 activated the ZOUKAK2 cell at the beginning of the call and the PHENMB1 cell at the end.

¹¹⁸¹⁹ Prosecution final trial brief, para. 988.

¹¹⁸²⁰ Prosecution final trial brief, para. 990.

¹¹⁸²¹ Prosecution final trial brief, paras 991-992.

¹¹⁸²² Prosecution final trial brief, para. 993.

¹¹⁸²³ Prosecution final trial brief, para. 991.

¹¹⁸²⁴ Prosecution final trial brief, para. 444. Mr Ayyash's Green 300 activated the MRAICI1 cell.

¹¹⁸²⁵ Prosecution final trial brief, para. 996.

That both Red 946 user and Mr Ayyash were called suggests that Mr Ayyash had already separated from Red 946 and the suicide bomber.¹¹⁸²⁶

6791. Relying on the Appeals Chamber's first interlocutory decision on the applicable law and the Lebanese case law, and specifically in the *Murr* and *Karami* cases, the Prosecution submits that someone who plays a principal role in the execution of a crime is guilty as co-perpetrator even if his underlying acts do not constitute an element of the crime.¹¹⁸²⁷ The Prosecution submitted:

Like in the *Michel Murr* case, AYYASH is guilty of helping to plan, supervise, surveil, and prepare the execution of a car bombing, and is therefore responsible as a co-perpetrator for the underlying crimes.¹¹⁸²⁸

6792. Further, Mr Ayyash's 'activities on the day of the assassination were much more pronounced' than those of the accused Mr Khalil Mattar in the *Karami* case.¹¹⁸²⁹ Mr Mattar had knowingly used a device to signal to the perpetrator when Mr Karami's helicopter was passing by a specific location to facilitate the use of explosives to kill him. Based on Mr Mattar's 'activities', the Lebanese Judicial Council requalified his criminal conduct from complicity to direct participation in the underlying crimes of terrorism and intentional homicide.¹¹⁸³⁰

6793. As to Mr Ayyash's intention to commit the crime—the *mens rea*—the Prosecution submits that his contribution to the surveillance activities establishes that he knew Mr Hariri was the main target. Further, Mr Ayyash's involvement in choosing the Canter and his coordination of the network responsible for guiding it into position just before the detonation of the explosive device demonstrates his knowledge of the means of the attack.¹¹⁸³¹

ii. Defence submissions

6794. The Ayyash Defence submits generally that the Prosecution failed to prove Mr Ayyash's guilt beyond reasonable doubt.¹¹⁸³² It submits that the Prosecution has based his alleged

¹¹⁸²⁶ Prosecution final trial brief, para. 999.

¹¹⁸²⁷ Prosecution final trial brief, paras 1164-1166, *see also* paras 1141-1142.

¹¹⁸²⁸ Prosecution final trial brief, para. 1166.

¹¹⁸²⁹ Prosecution final trial brief, para. 1166.

¹¹⁸³⁰ Prosecution final trial brief, para. 1165, referring to *Karami* Judgment, pp 171-174.

¹¹⁸³¹ Prosecution final trial brief, para. 1167.

¹¹⁸³² Ayyash Defence final trial brief, para. 720.

participation in the crimes and his criminal intent on content-less calls on mobiles that have not been attributed to Mr Ayyash and unreliable telecommunications evidence and analysis.¹¹⁸³³

6795. The allegation that Mr Ayyash shared the intent to commit each of the crimes with Mr Badreddine and unidentified others ‘presents the obvious difficulty of proving shared intent with unknown persons’.¹¹⁸³⁴

iii. Findings

a. *Actus reus* for co-perpetration

6796. The Trial Chamber has determined that the acts necessary, or the *actus reus* of intentional homicide consists of the following three elements. These are first: an act or culpable omission aimed at impairing the life of another person; second, the result of the death of a person; and third, a causal connection between that conduct and the death. It decided that killing Mr Hariri on 14 February 2005 satisfied the *actus reus* of intentional homicide.¹¹⁸³⁵

6797. In analysing the applicable law, the Trial Chamber also decided, based on Lebanese case law, that a co-perpetrator may have done either a physical act necessary to commit the crime, or made some other direct contribution to the execution of the crime.¹¹⁸³⁶

6798. The Lebanese courts have considered what suffices to establish the *actus reus* for co-perpetration of intentional homicide in the context of an assassination operation that included multiple participants. These include, recruiting others to execute the scheme of killing the victims and coordinating their actions; participating personally in reconnaissance operations for the crime; tracking the victim’s passage; and alerting other co-perpetrators of his location.¹¹⁸³⁷

6799. Neither Mr Ayyash nor any of the Red mobiles’ users physically perpetrated the crime in the sense of detonating the explosion—the Trial Chamber has found that a suicide bomber triggered the attack and detonated the explosive.¹¹⁸³⁸ However, committing a crime through co-perpetration, according to Lebanese law, is not limited to physical perpetration. Co-perpetration in

¹¹⁸³³ Ayyash Defence final trial brief, para. 713.

¹¹⁸³⁴ Ayyash Defence final trial brief, para. 718.

¹¹⁸³⁵ See paras 6344-6345.

¹¹⁸³⁶ See paras 6028-6029.

¹¹⁸³⁷ See para. 6291.

¹¹⁸³⁸ See para. 1448.

its context here is taking the preparatory steps necessary to ensure that the explosives were detonated when Mr Hariri's convoy passed the chosen spot.

6800. Mr Ayyash did not detonate the explosive with his own hands, so the legal issue is whether his actions directly contributed to the execution of the crime and therefore satisfy the *actus reus* for co-perpetration of intentional homicide. The Trial Chamber, for all the reasons set out above in relation to count two, is satisfied beyond reasonable doubt that they did.

6801. The Trial Chamber has analysed the evidence proving Mr Ayyash's actions and intention, namely, his *mens rea* and *actus reus*, in its findings above concerning count two, with committing a terrorist act by means of an explosive device.

6802. The evidence supporting all counts is the same. The terrorist act was aimed at killing Mr Hariri in a public place with an explosive device. The only real difference in the legal elements required to satisfy the crimes charged in counts two (the terrorist act) and three and four (intentional homicide) is that for count two the Prosecution must prove a specific intention in relation to the terrorist act. Count five (attempted intentional homicide) has a separate legal element of *dolus eventualis*, or an acceptance of a probable outcome, here being the likely death of people other than Mr Hariri. In the circumstances of this case, the same evidence establishes the legal *mens rea* for counts two to five. That is, detonating a large explosion—aimed at a motor convoy—in a public place that was crowded with people.

6803. Mr Ayyash was the user of Green 300, Red 741, Blue 233 and Yellow 294 during the relevant periods.¹¹⁸³⁹ The Red, Yellow, Green and Blue networks were connected and at least some of the users of the Red, Yellow, Green and Blue networks had a common mission, namely the assassination of Mr Hariri.¹¹⁸⁴⁰ The Red network played a crucial role in executing the attack on 14 February 2005.¹¹⁸⁴¹

6804. The only reasonable conclusion available from the evidence is that, on Monday 14 February 2005, the Red mobiles tracked the movement of Mr Hariri and his convoy, alerted the others involved of his location and prepared for surveillance and for the execution of the attack

¹¹⁸³⁹ See para. 3411.

¹¹⁸⁴⁰ See paras 2423, 4669, 4736.

¹¹⁸⁴¹ See para. 4670.

along the route that he was expected to take. This must have also aimed at ensuring that the explosive detonated at the exact time the convoy would pass. The users of the Red mobiles had prepared the attack through repeated operations of surveillance and reconnaissance in previous days.

6805. The Trial Chamber can infer from Mr Ayyash's actions that he must have been aware of what he was doing. This is the only conclusion reasonably available on the evidence. The evidence establishes that Mr Ayyash had a central role in the execution of the attack. The mission was to assassinate Mr Hariri. Mr Ayyash participated in the preparations for the attack from at least early February 2005 until four minutes before its completion. His last call¹¹⁸⁴² occurred at 12:50:55 and lasted ten seconds.

6806. By these actions, the conduct of the Red mobiles' users directly contributed to the execution of the crime and therefore establishes the *actus reus* for co-perpetration of intentional homicide. The Trial Chamber is therefore satisfied that Mr Ayyash, on his Red 741, directly contributed to the execution of the intentional homicide of Mr Hariri by directly participating in it from the Parliament and the crime scene areas on 14 February 2005 and by contributing to its preparation in previous days.¹¹⁸⁴³

6807. Accordingly, the Trial Chamber also finds that Mr Ayyash's actions directly contributed to the execution of the crime of intentional homicide of Mr Rafik Hariri through his central and leading role in the execution of the attack. Again, the legal issue is whether he knowingly did so and with the requisite intention to commit premeditated intentional homicide with explosive materials.

b. *Mens rea* for intentional homicide

6808. The *mens rea* for intentional homicide under Lebanese law has two parts. The first is the intention to cause death, whether direct or by *dolus eventualis*. The second is knowledge of the circumstances of the offence, including the use of means capable of causing death.¹¹⁸⁴⁴

¹¹⁸⁴² That Red 741 received from Red 893.

¹¹⁸⁴³ Prosecution final trial brief, para. 1162.

¹¹⁸⁴⁴ See paras 6298-6299.

6809. The Prosecutor specifically charged that Mr Ayyash and Mr Badreddine knowingly brought about the detonation of the explosives that killed Mr Hariri. In their context here, the words ‘bringing about’ must mean ‘causing’. Their knowledge that it was a ‘large explosive device’ is pleaded.

6810. Again, there is no direct evidence of Mr Ayyash’s knowledge or intention. It must be inferred from the totality of the evidence. Using the same reasoning employed for the findings in relation to count two above, the Trial Chamber finds that the evidence proves beyond reasonable doubt that Mr Ayyash intended to kill Mr Hariri and had the requisite knowledge about the circumstances of the offence. This is the only conclusion reasonably available from the evidence.

6811. Mr Ayyash was the user of a mobile in the networks that the Trial Chamber has found were involved in Mr Hariri’s assassination, namely, the Red and Blue networks. He also used a Yellow mobile and was one of three users in the Green network. The Trial Chamber has found that, through his mobiles, Mr Ayyash was in contact with other network mobiles during mobile surveillance operations of Mr Hariri’s movements and therefore contributed to them.

6812. The only reasonable inference available from the evidence is that Mr Ayyash was aware of the object of the mission—namely that Mr Hariri was the target of the operation and explosives material were to be used to kill him—and that he intended to kill Mr Hariri.

6813. As to the Ayyash Defence’s general submissions concerning the ‘difficulty of proving shared intent with unknown persons’, the Trial Chamber notes that, in the amended consolidated indictment, the Prosecution pleads ‘each bearing individual criminal responsibility as co-perpetrators with shared intent to cause Rafik HARIRI’s death’.¹¹⁸⁴⁵

6814. However, under Lebanese law, no ‘shared’ intent by co-perpetrators needs to be established. Under Article 547 of the Lebanese Criminal Code ‘Anyone who intentionally kills another person shall be punishable’. Under Article 213 of the code, ‘Each of the co-perpetrators

¹¹⁸⁴⁵ In the tracked-changed version filed on 12 July 2016, the amended consolidated indictment, para. 58, reads: ‘~~MUSTAFA AMINE BADREDDINE and~~ SALIM JAMIL AYYASH,

a. on the 14th day of February 2005,

b. ~~together~~ with Mustafa BADREDDINE and others unidentified,

c. each bearing individual criminal responsibility as co-perpetrators with shared intent to caused Rafik HARIRI’s death and by knowingly bringing about the detonation of a large explosive device resulting in his death’.

of an offence shall be liable to the penalty prescribed by law for the offence'. Therefore, the intent of any other unidentified co-perpetrator is not relevant to determine whether Mr Ayyash had the required *mens rea* for intentional homicide.

6815. In the amended indictment, the Prosecutor used the wording 'shared intent'. This was when Mr Badreddine was an accused in the case and was jointly charged with Mr Ayyash under this count. By pleading 'each bearing individual criminal responsibility as co-perpetrators with shared intent...' the Prosecutor was clearly referring to each of Mr Ayyash and Mr Badreddine. No other interpretation is reasonably available. The expression 'each bearing individual criminal responsibility' in combination with the words 'with shared intent', is used in each count in the amended consolidated indictment.

6816. In any event—irrespective of whether or not it is a legal requirement under the Lebanese code—it is clear that those who were involved in the operation to murder Mr Hariri in a terrorist attack using a large quantity of explosives, and knew what they were doing, had a 'shared intent'. No other conclusion is reasonably available on the evidence. All users of the Red network mobiles on Monday 14 February 2005 had this 'shared intent'.

6817. For the same reasons set out above in analysing Mr Ayyash's *mens rea* for count two, the same evidence establishes beyond reasonable doubt his knowledge and his intention to murder Mr Hariri with explosive materials.

6818. In light of the findings above, the Trial Chamber finds Mr Ayyash guilty beyond reasonable doubt, as a co-perpetrator, of the intentional homicide of Mr Rafik Hariri (count three) under Articles 188, 212, 213 and 547 of the Lebanese Criminal Code and Article 3 (1) (a) of the Statute of the Special Tribunal.

- (b) Count four—Intentional homicide (of 21 persons in addition to the intentional homicide of Rafik Hariri) with premeditation by using explosive materials

6819. Under count four of the amended consolidated indictment, Mr Ayyash is charged with having committed, as a co-perpetrator, the intentional homicide of 21 other people with the aggravating circumstances of premeditation and using explosive materials equivalent to approximately 2,500 kilogrammes of trinitrotuene. Mr Ayyash either intended to kill members of

Mr Hariri's convoy and members of the general public in the vicinity, or foresaw and accepted the risk that such deaths would occur. These victims of the attack died either on 14 February 2005 or subsequently as a result of the injuries sustained in the attack.¹¹⁸⁴⁶

6820. In paragraphs 60 (e) and (h) of the amended consolidated indictment, under particulars of the offence, the Prosecutor charges Mr Ayyash:

- e. by using a large quantity of explosive materials in a public place with shared intent and premeditation to commit the intentional homicide of former Prime Minister, and leading political figure, Rafik HARIRI, within his motor convoy,

....

- h. by then knowingly bringing about the detonation at 12:55 at Rue Minet el Hos'n Beirut, Lebanon, being a public street, of explosives equivalent to approximately 2500 kilogrammes of TNT that may cause death.

6821. Here, the Prosecutor appears to be alleging that Mr Ayyash had specific knowledge of the approximate quantity of the explosives employed. As noted above, in this respect the wording of counts three and four of the amended consolidated indictment is inconsistent.

i. Submissions

6822. The Prosecution submits that Mr Ayyash's surveillance of, and presence at, the crime scene demonstrates that he necessarily would have foreseen the likelihood that the public explosion would cause additional deaths.¹¹⁸⁴⁷ The Ayyash Defence did not separately address this charge.

ii. Findings

6823. The Parties entered into an agreement as to evidence that the explosion killed 21 people in addition to Mr Hariri, as listed in schedule A of the amended consolidated indictment.¹¹⁸⁴⁸ This is

¹¹⁸⁴⁶ Amended consolidated indictment, paras 59-60. The amended consolidated indictment refers to Article 3 (1) (a) of the Special Tribunal's Statute and Articles 188, 189, 212-213, 547 and 549 (1) and (7) of the Lebanese Criminal Code.

¹¹⁸⁴⁷ Prosecution final trial brief, para. 1167.

¹¹⁸⁴⁸ Agreed facts, no. (i).

uncontested and the Trial Chamber finds it proven beyond reasonable doubt in the case against Mr Ayyash.

6824. For the same reasons the Trial Chamber has found that Mr Ayyash's conduct satisfies the *actus reus* of co-perpetration of the intentional homicide of Mr Hariri,¹¹⁸⁴⁹ it is also satisfied that Mr Ayyash directly contributed to the execution of the intentional homicide of the 21 additional people.

6825. Regarding Mr Ayyash's *mens rea*, the only reasonable inference available from the evidence is that he was aware that explosive materials were to be used in the attack. And further, that these were of a sufficient quantity to detonate in Mr Hariri's moving convoy and to kill him and anyone else in the vicinity.

6826. Additionally, Mr Ayyash directly participated in mobile surveillance of Mr Hariri and, at other times, was in contact with those conducting mobile surveillance. From this he must have known that Mr Hariri always travelled in a convoy, would not have been alone in his car and that others would be in the convoy. Further, the calls he received from the users of the Red network who were watching Mr Hariri's departure from the Parliament must have informed him that Mr Hariri was travelling in his convoy of five vehicles.

6827. Mr Ayyash must have therefore known that the explosives that were to be detonated when Mr Hariri's convoy passed the St Georges Hotel may cause the deaths of anyone either in the convoy or in the immediate vicinity of the intended explosion. Mr Ayyash was also in an area near the crime scene immediately before the explosion. From moving between the Parliament and the crime scene area he must have been aware of how many people were on the streets in the general vicinity of the hotel.

6828. Detonating a device of that size and power inevitably was going to kill many people who were at least in the immediate vicinity of the blast. This is especially because it was planned to detonate on a public city street in the middle of a weekday. Numerous members of the public could reasonably have been expected to have been within its range. The explosives mounted on a moving VBIED necessarily had to be of a magnitude greater than, for example, those deployed in a car

¹¹⁸⁴⁹ See sub-section (C) (4) (a) (iii) a. '*Actus reus* for co-perpetration'.

bomb in a stationary vehicle, which is detonated either remotely when the target was in the vehicle, or by the ignition being switched on. That is a targeted explosion designed to cause much less damage.

6829. The Trial Chamber has comprehensively analysed the effect of the explosion and the 11,000 square metre crime scene that resulted.¹¹⁸⁵⁰ The explosion was massive, and the explosives were designed to target an armoured convoy moving at speed. The photographs and videos in evidence, accompanied by eyewitness and expert testimony graphically demonstrated the extent of the effect of the explosion, including the colossal damage caused to the buildings in its immediate vicinity. These buildings of course had people inside them.

6830. The evidence therefore proves beyond reasonable doubt that Mr Ayyash, by his actions on Monday 14 February 2005, intended to commit the intentional homicide of those who died in or as a result of the explosion. The Trial Chamber therefore concludes that Mr Ayyash intended to kill members of Mr Hariri's convoy and members of the general public, or at least foresaw that deaths would occur and accepted the risk that this would happen.

6831. The Trial Chamber therefore finds Mr Ayyash guilty, as a co-perpetrator, of the intentional homicide of 21 persons, in addition to Mr Rafik Hariri, as listed in schedule A of the amended consolidated indictment (count four), under Articles 188, 189, 212, 213 and 547 of the Lebanese Criminal Code and Article 3 (1) (a) of the Statute of the Special Tribunal.

- (c) Count five—Attempted intentional homicide (of 226 persons in addition to the intentional homicide of Rafik Hariri) with premeditation by using explosive materials

6832. Under count five, Mr Ayyash is charged with the attempted intentional homicide of 226 other persons—listed in schedule B of the amended consolidated indictment—who were injured in the explosion.

6833. The aggravating factors of premeditation and using explosive materials equivalent to approximately 2,500 kilogrammes of trinitrotuene are also pleaded. Mr Ayyash either intended to kill members of Mr Hariri's convoy and members of the general public in the vicinity or foresaw

¹¹⁸⁵⁰ See chapter VI 'Explosion on 14 February 2005'.

and accepted the risk that such deaths would occur. However, the attempt failed to reach the intended result due to circumstances beyond the control of the co-perpetrators.¹¹⁸⁵¹

i. Submissions

6834. The Prosecution submits that Mr Ayyash's surveillance of, and presence at, the crime scene demonstrates that he necessarily would have foreseen the likelihood that the public explosion would cause additional deaths.¹¹⁸⁵² The Ayyash Defence made no specific submissions about this charge.

ii. Findings

6835. The Parties agreed to the fact that the explosion injured 226 people—as listed in schedule B of the amended consolidated indictment—as uncontested.¹¹⁸⁵³ The Trial Chamber has already found that an act likely to cause death was committed in respect of each of these 226 people, and that their death was prevented solely by circumstances beyond the perpetrators' control.¹¹⁸⁵⁴ The Trial Chamber therefore finds this fact proven beyond reasonable doubt in the case against Mr Ayyash.

6836. For the same reasons, the Trial Chamber has found that Mr Ayyash's conduct satisfies the *actus reus* of co-perpetration of the intentional homicide of Mr Hariri, and the 21 others killed in the explosion,¹¹⁸⁵⁵ it is also satisfied that Mr Ayyash directly contributed to the attempted intentional homicide of 226 other people.

6837. As noted earlier, a perpetrator of attempted intentional homicide must have the *mens rea* to commit the crime of intentional homicide. Based on the same reasoning applied in relation to count four above,¹¹⁸⁵⁶ the Trial Chamber is satisfied beyond reasonable doubt that Mr Ayyash intended to kill the members of Mr Hariri's convoy and the members of the public who were

¹¹⁸⁵¹ Amended consolidated indictment, paras 61-62. The amended consolidated indictment refers to Article 3 (1) (a) of the Special Tribunal's Statute and Articles 188-189, 200-201, 212-213, 547 and 549 (1) and (7) of the Lebanese Criminal Code.

¹¹⁸⁵² Prosecution final trial brief, para. 1167.

¹¹⁸⁵³ Agreed facts, no. (ii).

¹¹⁸⁵⁴ See paras 6350-6353.

¹¹⁸⁵⁵ See sub-sections (C) (4) (a) (iii) a. '*Actus reus* for co-perpetration' and (C) (4) (b) (ii) 'Findings'.

¹¹⁸⁵⁶ See sub-section (C) (4) (b) (ii) 'Findings'.

injured in the attack. Or, alternatively, he at least foresaw that deaths would occur and accepted that risk.

6838. There is no other conclusion reasonably available from the evidence. Detonating a truckload of explosives in a busy street near occupied buildings will inevitably kill many people. Some may not die but instead sustain injury. Some injuries will be severe. However, whether or not these people died from their injuries the act of participating in the detonation of the explosion was an act likely to cause death. In this respect the conduct amounted to an attempted intentional homicide with premeditation by using explosive materials. Mr Ayyash did not act alone; he had an important role in the operation against Mr Hariri.

6839. Accordingly, the Trial Chamber finds Mr Ayyash guilty, as a co-perpetrator, of the attempted intentional homicide of the 226 people listed in schedule B of the amended consolidated indictment (count five) under Articles 188, 189, 201, 212, 213 and 547 of the Lebanese Criminal Code and Article 3 (1) (a) of the Statute of the Special Tribunal.

5. Conclusion

6840. Mr Ayyash had a central role in the execution of the attack and directly contributed to it. Mr Ayyash intended to kill Mr Hariri and had the required knowledge about the circumstances of the assassination mission, including that explosives were the ‘means’ to be used.

6841. For all the reasons outlined above, the Trial Chamber is satisfied beyond reasonable doubt that the Prosecution has proved the guilt of Salim Jamil Ayyash on all counts charged in the amended consolidated indictment.

D. Hussein Hassan Oneissi and Assad Hassan Sabra

6842. The allegations in the amended consolidated indictment against Hussein Hassan Oneissi and Assad Hassan Sabra inextricably link the two in the conspiracy alleged; they are alleged to have acted together. Thus, for convenience and the ease of analysis, their alleged individual criminal liability is jointly reviewed, but with separate findings on each.

6843. The Prosecutor alleges in the amended consolidated indictment in count one that: Mr Oneissi and Mr Sabra, from 22 December 2004, until the morning of Monday 14 February 2005 before the attack, and Mr Ayyash and Mr Merhi, from 11 November 2004 until the morning of 14 February 2005 before the attack—together with Mr Badreddine and unidentified others—concluded or joined an agreement aimed at committing a terrorist act intended to cause a state of terror by a predetermined means liable to create a public danger, namely the assassination of Mr Hariri by means of a large explosive device in a public place.¹¹⁸⁵⁷

6844. He also pleads that, from 22 December 2004 until 14 February 2005, Mr Oneissi and Mr Sabra were: accomplices to the crimes of committing a terrorist act (count six); the intentional homicide of Mr Hariri (count seven); the intentional homicide of 21 others (count eight); and the attempted intentional homicide of 226 people (count nine), through their participation in the false claim of responsibility.¹¹⁸⁵⁸

6845. Under the conspiracy count, the Prosecutor pleads that Mr Oneissi and Mr Sabra:

performed supporting tasks for the assassination, namely:

- i. to seek a suitable individual, later identified as Abu Adass, who would be used to make a false claim of responsibility, on a video, for the attack against Hariri; and,
- ii. to ensure delivery of the video, with a letter attached, for broadcast after the assassination.¹¹⁸⁵⁹

6846. While for counts six to nine, it is specifically pleaded that they:

¹¹⁸⁵⁷ Amended consolidated indictment, para. 54.

¹¹⁸⁵⁸ Amended consolidated indictment, paras 64-70.

¹¹⁸⁵⁹ Amended consolidated indictment, para. 48 (c).

agreed with the said co-perpetrators to perform, and then performed, acts preparatory to the offence, and acts to shield the co-perpetrators and themselves from justice, which would falsely blame others in a fictional fundamentalist group, as follows:

- i. as preparatory to the offence and/or acts to shield the co-perpetrators and themselves from justice, by identifying and then using a 22-year-old Palestinian man named Ahmad Abu Adass in order to create a false claim of responsibility from him on video for the forthcoming offence on behalf of a group called 'Victory and Jihad in Greater Syria'; and
- ii. as acts to shield the co-perpetrators and themselves from justice, by then ensuring the video, with the attached letter, of the false claim of responsibility would be broadcast on the television in Lebanon immediately after the said offence.¹¹⁸⁶⁰

1. Trial Chamber's findings on the conspiracy charge, count one

6847. The ambit of the conspiracy and the facts underlying it, including the alleged role of each Accused, Mr Badreddine and the unnamed co-conspirators, are detailed above.¹¹⁸⁶¹

6848. The Trial Chamber's conclusions below are based on the factual findings relating to Mr Oneissi's and Mr Sabra's role in the events charged, in particular as to their pleaded involvement in making the false claim of responsibility for the attack on Mr Hariri.¹¹⁸⁶² To recapitulate, the Trial Chamber has found the following facts established beyond a reasonable doubt in relation to their conduct, namely that:

- During the amended consolidated indictment period, Mr Oneissi was the user of mobile Purple 095, while Mr Sabra was a user of mobile Purple 018. His wife also used the mobile;¹¹⁸⁶³

¹¹⁸⁶⁰ Amended consolidated indictment, paras 64 (f), 66 (f), 68 (h) and 70 (h).

¹¹⁸⁶¹ See sub-section (B) 'Conspiracy to commit a terrorist act (Count 1)', above.

¹¹⁸⁶² See chapter XII 'Claim of responsibility for the attack on Rafik Hariri' for further details.

¹¹⁸⁶³ See chapter IX 'Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine', (D) (3) 'Findings' and (E) (4) 'Conclusion'.

- From December 2004 through February 2005, Mr Oneissi's mobile and Mr Sabra's shared mobile regularly contacted each other and Mr Merhi, the user of mobile Purple 231;¹¹⁸⁶⁴
- Mr Oneissi's Purple 095 or Mr Sabra's attributed mobile Purple 018 activated cells near the Arab University Mosque in Beirut nearly every day from 29 December 2004 until 7 January 2005;¹¹⁸⁶⁵
- Mr Oneissi's Purple 095 activated a cell near the mosque around the time of the second call to Mr Abu Adass's home on 17 January 2005;¹¹⁸⁶⁶
- On 25 January 2005, Mr Sabra's attributed mobile Purple 018 called Mr Merhi, activating a cell near the tree where the false claim video was found on 14 February 2005;¹¹⁸⁶⁷ and
- On 4 February 2005, Mr Sabra's attributed mobile Purple 018 called Mr Merhi, activating a cell near the payphone used to make the third call to Al-Jazeera on 14 February 2005.¹¹⁸⁶⁸

And on 14 February 2005:

- Mr Oneissi's mobile Purple 095 and Mr Sabra's attributed mobile Purple 018 activated cells near the payphones where the first two calls to the news organisations were made at around the time of these calls;¹¹⁸⁶⁹
- Mr Sabra's attributed mobile Purple 018 activated cells near the payphone where the third and fourth calls to the news organisations were made around the time of the calls;¹¹⁸⁷⁰ and

¹¹⁸⁶⁴ See paras 2471-2473.

¹¹⁸⁶⁵ See chapter XII 'Claim of responsibility for the attack on Rafik Hariri', (D) (3) (c) (ii) a. 'Mr Oneissi's and Mr Sabra's presence 'near' the mosque around prayer times' for further details.

¹¹⁸⁶⁶ See para. 5476.

¹¹⁸⁶⁷ See paras 5532, 5687.

¹¹⁸⁶⁸ See para. 5687.

¹¹⁸⁶⁹ See paras 5656-5660.

¹¹⁸⁷⁰ See paras 5661-5665.

- Mr Oneissi's mobile Purple 095 and Mr Sabra's attributed mobile Purple 018 activated cells near the tree containing the video at around the time it was collected.¹¹⁸⁷¹

And further, on 16 February 2005:

- Mr Oneissi abandoned his personal mobile Purple 095, after having used it since January 2003;¹¹⁸⁷² and
- Mr Sabra's attributed mobile Purple 018 ceased use, after it had been used by Mr Sabra and his wife since November 2001.¹¹⁸⁷³

6849. However, the Trial Chamber also found that it had not been established beyond a reasonable doubt in respect of Mr Oneissi and Mr Sabra that:

- Either had met Mr Abu Adass at the Arab University Mosque in late December 2004 or early January 2005;¹¹⁸⁷⁴
- Mr Oneissi had posed as 'Mohammed' and thereby befriended Mr Abu Adass;¹¹⁸⁷⁵
- Either had called Mr Abu Adass on 15 January 2005 to lure him from his home;¹¹⁸⁷⁶
- Either had abducted Mr Abu Adass after he left his home on 16 January 2005;¹¹⁸⁷⁷
- Either had called Mr Abu Adass's family on 17 January 2005 to tell them that Mr Abu Adass was going on jihad and would not return home;¹¹⁸⁷⁸
- Either had created the false claim video or accompanying letter, or had any role in this;¹¹⁸⁷⁹

¹¹⁸⁷¹ See paras 5667-5678.

¹¹⁸⁷² See para. 5808.

¹¹⁸⁷³ See para. 5808; chapter IX 'Attribution of mobile telephones to the Accused and Mustafa Amine Badreddine', (E) (4) 'Conclusion'.

¹¹⁸⁷⁴ See para. 5296.

¹¹⁸⁷⁵ See chapter XII 'Claim of responsibility for the attack on Rafik Hariri', (D) (3) (c) (i) 'Whether the Prosecution has proved that Mr Oneissi was 'Mohammed''.

¹¹⁸⁷⁶ See chapter XII 'Claim of responsibility for the attack on Rafik Hariri', (E) (2) (d) (i) 'Ahmad Abu Adass's disappearance on Sunday 16 January 2005'.

¹¹⁸⁷⁷ See para. 5459.

¹¹⁸⁷⁸ See paras 5475-5480.

¹¹⁸⁷⁹ See chapter XII 'Claim of responsibility for the attack on Rafik Hariri', (F) (2) (c) 'Findings', (3) (c) 'Findings'.

- On 9 or 10 February 2005, either Mr Oneissi or Mr Sabra had purchased the telecard used at the payphones to make the calls to the news organisations;¹¹⁸⁸⁰
- Either had placed the video and letter in the tree near Al-Jazeera;¹¹⁸⁸¹ nor that
- On 14 February 2005, either Mr Oneissi or Mr Sabra had made any of the telephone calls to Reuters or Al-Jazeera from the four payphones.¹¹⁸⁸²

6850. In sum, the Trial Chamber found that Mr Oneissi's and Mr Sabra's participation in the false claim aspect of the case had not been proven beyond a reasonable doubt.

2. Submissions

6851. The Prosecution, in its final trial brief, submits that the evidence establishes beyond reasonable doubt that Mr Oneissi and Mr Sabra each played a central role and actively participated in the false claim of responsibility, which required knowing the assassination plot's objectives. The nature and extent of their role establishes that they must have known the crimes they agreed to support.¹¹⁸⁸³ Mr Oneissi and Mr Sabra's participation in the false claim of responsibility aided and abetted the perpetrators and showed their agreement to do so in the months leading up to the attack. Their dissemination of the false claim after the attack helped shield the participants from justice.¹¹⁸⁸⁴

6852. Further, Mr Oneissi and Mr Sabra were aware of the perpetrators' intent and knowingly agreed to join and support the conspiracy, given their involvement in the false claim of responsibility. The false claim was so important that those involved were part of the full conspiracy and knew that they were assisting the perpetrators to commit a terrorist act and homicide.¹¹⁸⁸⁵

6853. At the very least, they were trusted operatives who would have deduced the perpetrators' objective given the nature of their task.¹¹⁸⁸⁶ Advance planning before the attack was required, so

¹¹⁸⁸⁰ See chapter XII 'Claim of responsibility for the attack on Rafik Hariri', (F) (2) (c) 'Findings', (3) (c) 'Findings'.

¹¹⁸⁸¹ See para. 5538.

¹¹⁸⁸² See chapter XII 'Claim of responsibility for the attack on Rafik Hariri', (F) (4) (e) 'Findings'.

¹¹⁸⁸³ Prosecution final trial brief, para. 1194.

¹¹⁸⁸⁴ Prosecution final trial brief, para. 1188.

¹¹⁸⁸⁵ Prosecution final trial brief, paras 1189-1190; Prosecution closing submissions, T. 11 September 2018, pp 32-35.

¹¹⁸⁸⁶ Prosecution final trial brief, para. 1191.

that they could plan the delivery of the false claim video and letter.¹¹⁸⁸⁷ They would also have been instructed before the attack as to what was to be said by those making calls to Reuters and Al-Jazeera.¹¹⁸⁸⁸ Evidence of the advance planning includes Mr Sabra activating cells on 25 January and 4 February 2005 to call Mr Merhi near a payphone used to call Al-Jazeera and near the tree where the video would be placed.¹¹⁸⁸⁹

6854. The Oneissi Defence submits that the Prosecution has not proved that Mr Oneissi entered into an agreement to commit a crime against state security, knew that a terrorist act would be carried out, took the risk that other crimes could be committed, knew the conspirators' intent or the means and tools to be used or intended to be an accomplice.¹¹⁸⁹⁰ Neither has it been proved that he participated in either Mr Abu Adass's disappearance or the dissemination of the false claim.¹¹⁸⁹¹ Mr Oneissi did not know the purpose of the so-called 'COLA Phase'.¹¹⁸⁹² He was not informed before the attack of the terrorist plot against Mr Hariri or the role of the false claim.¹¹⁸⁹³

6855. The Sabra Defence submits that there is neither evidence to suggest Mr Sabra had the propensity to commit the crimes nor that he knew or met the other Accused or conspirators, nor that he was a member of or associated with Hezbollah.¹¹⁸⁹⁴ The Prosecution cannot prove what preparatory steps Mr Sabra agreed to and what his contribution was to the disappearance of Mr Abu Adass or the dissemination of the false claim video.¹¹⁸⁹⁵ Mr Sabra did not know in advance of the target, means or date of the attack.¹¹⁸⁹⁶ Mr Sabra was not aware of the conspiracy or its

¹¹⁸⁸⁷ Prosecution final trial brief, paras 1018, 1193.

¹¹⁸⁸⁸ Prosecution final trial brief, para. 1192.

¹¹⁸⁸⁹ Prosecution final trial brief, paras 931-932, 1018, 1193; Prosecution closing submissions, T. 11 September 2018, pp 34-35.

¹¹⁸⁹⁰ Oneissi Defence final trial brief, para. 721.

¹¹⁸⁹¹ Oneissi Defence final trial brief, paras 671-679, 703-714; Oneissi Defence closing submissions, T. 19 September 2018, pp 120-121, T. 20 September 2018, pp 97-103, 138-140.

¹¹⁸⁹² Oneissi Defence final trial brief, paras 680-693.

¹¹⁸⁹³ Oneissi Defence final trial brief, paras 697-702, 715-720. *See also* Oneissi Defence closing submissions, T. 19 September 2018, pp 120-121, T. 20 September 2018, pp 97-103, 138-140.

¹¹⁸⁹⁴ Sabra Defence final trial brief, paras 835-843.

¹¹⁸⁹⁵ Sabra Defence final trial brief, paras 844-858; Sabra Defence closing submissions, T. 21 September 2018, pp 40-42, 44-48.

¹¹⁸⁹⁶ Sabra Defence final trial brief, paras 859-867; Sabra Defence closing submissions, T. 21 September 2018, pp 66, 69.

purpose and so did not intend to join it and he did not understand that his assistance would facilitate a terrorist attack.¹¹⁸⁹⁷

3. Findings on individual criminal responsibility

(a) General analysis

6856. During the amended consolidated indictment period, Mr Sabra's attributed mobile Purple 018 and Mr Oneissi's Purple 095 called each other, and Mr Merhi on Purple 231, and were present in the area of locations where false claim-related activities took place, such as the Arab University Mosque in late December 2004 and early January 2005. Additionally, Mr Oneissi used his personal mobile—and Mr Sabra's attributed mobile Purple 018 was used—near relevant payphones on Monday 14 February 2005, and the tree from which the video was collected, and they stopped using their mobiles shortly after the attack.

6857. The most incriminating piece of evidence against the two Accused—if Mr Sabra was in fact using Purple 018 on the day, which is a fact that the Trial Chamber cannot find established beyond reasonable doubt—in the Trial Chamber's view, is the discarding of long-used mobiles within two days of the attack. Of itself, this act is inherently suspicious and it could provide strong supporting evidence of guilt when combined with other pieces of circumstantial evidence. It could suggest that the mobile users had a good reason not to continue using them, such as a fear of apprehension and that they were taking steps to minimise this possibility.

6858. However, even when considered with the other pieces of evidence—as set out directly above—this is not persuasive. In the Trial Chamber's view—for argument's sake—even if it were satisfied that the two Accused physically participated in making the false claim of responsibility on the afternoon of 14 February 2005, discarding the mobiles raises competing inferences.

6859. One is the obvious, namely, of a consciousness of guilt in taking positive steps to conceal their own actions. But, on the other hand, in the Trial Chamber's view, it is equally consistent with someone realising *after the event* that what they had done was connected with making the false claim and thus attempting to distance themselves from their involvement in the event—in this

¹¹⁸⁹⁷ Sabra Defence final trial brief, paras 868-871; Sabra Defence closing submissions, T. 21 September 2018, pp 50-52.

scenario the Trial Chamber assumes that the *actus reus* is satisfied, and from this it would have to infer their knowledge, or *mens rea*, from a time before the attack.

6860. In other words, in the absence of positive evidence that is capable of establishing beyond reasonable doubt that the Accused knew *before* the explosion that they were going to participate in making a false claim of responsibility—which was designed to shield the perpetrators of an as yet unrealised terrorist act—the mere act of discarding mobiles two days later does not of itself provide additional circumstantial evidence of their *mens rea*.

6861. This piece of evidence would have to be considered with the other relevant facts. However, adding the evidence of what in the circumstances was clearly a suspicious act to the other facts does not strengthen those other facts. This is because these facts are insufficient—either taken together with or without the fact of the discarding of the mobiles—to prove their participation in the false claim of responsibility beyond reasonable doubt. Putting it another way, using the single most (proven) incriminating piece of evidence against the two Accused does not bolster the other facts that the Trial Chamber has established beyond reasonable doubt to the point that they could be found guilty of committing the offences charged.

6862. And, as is explained below, the most incriminating *pleaded* fact, and indeed the only direct piece of evidence led against either Mr Oneissi or Mr Sabra in relation to their alleged participation in the crimes, was that Mr Oneissi was ‘the Mohammed’ who befriended Mr Abu Adass before he disappeared. But this crucial piece of evidence has not been proved beyond reasonable doubt and cannot be viewed with the discarding of the mobiles.

6863. The Trial Chamber’s determination is reinforced by the Prosecution’s submission that Mr Oneissi’s and Mr Sabra’s knowing assistance of the perpetrators in acts preparatory to the crime and knowing assistance to shield the perpetrators from justice, and their knowing agreement to join and support the conspiracy, is based on their participation in the false claim of responsibility.¹¹⁸⁹⁸

6864. In particular, the Prosecution’s case against the two Accused—as pleaded in each version of the indictment and pre-trial briefs—was fundamentally premised on Mr Oneissi being

¹¹⁸⁹⁸ Prosecution final trial brief, paras 1188-1189; Prosecution closing submissions, T. 11 September 2018, p. 32.

‘Mohammed’. Whatever the Prosecution might have said in its final trial brief and closing submissions to the effect that the Trial Chamber could find the two Accused guilty without finding proven their involvement in Mr Abu Adass’s abduction, its case theory was in fact based on their positive involvement in this preparatory act.¹¹⁸⁹⁹ But the Trial Chamber has not been satisfied beyond reasonable doubt that Mr Oneissi was ‘Mohammed’. Nor of their participation in any aspect of Mr Abu Adass’s disappearance and appearance in the video.

6865. Their pleaded awareness—that *before* the explosion on Monday 14 February 2005—they were assisting in diverting responsibility for the explosion was essentially based on Mr Sabra’s and Mr Oneissi’s alleged participation in what happened to Mr Abu Adass in early to mid-January 2005, namely, his recruitment, abduction and video appearance.¹¹⁹⁰⁰ And this in turn rested strongly on Mr Oneissi’s positive identification as ‘Mohammed’ from photo boards and the contemporaneous presence of their mobiles, at times, near the mosque.

6866. The Prosecution’s case theory regarding their roles was therefore heavily premised upon Mr Oneissi being Mohammed. If established, this would have allowed the Trial Chamber to employ a form of backwards reasoning in respect of their *mens rea* on 14 February, based upon their earlier participation in the setting up of the false claim by finding and perhaps ‘abducting’ Mr Abu Adass. In other words, if they were involved in Mr Abu Adass’s disappearance or ‘abducting’ him—and knowing that it was connected with Mr Hariri’s intended assassination—this would have provided the necessary knowledge and hence intention for their actions on the afternoon of 14 February 2005.

6867. The Trial Chamber notes here that the allegation that they were involved in abducting Mr Abu Adass from his home on Sunday 16 January 2005 appears in neither the amended consolidated indictment nor the Prosecutor’s pre-trial brief. This is explained further in analysing the false claim of responsibility at paragraphs 5451-5459.

¹¹⁸⁹⁹ Amended consolidated indictment, paras 3 (b)-(c), 23, 27-29, 48 (c) (i)-(ii), 54; Prosecution’s updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case), annex A, paras 62, 114, 118-130. *See also* Prosecution pre-trial submissions (Merhi case), annex A, paras 53, 105, 109-121.

¹¹⁹⁰⁰ This is not intended to suggest that the video was made in mid-January 2005 as there is no evidence as to when it was made.

6868. If, however, their participation in the disappearance of Mr Abu Adass cannot be proved, a major plank in the Prosecution's case theory disappears. This is insofar as it could go to prove that they knew that they were participating in covering up Mr Hariri's death on the afternoon of 14 February by virtue of a prior agreement to do so—as is charged. And that is what has happened here. The Trial Chamber—as explained above¹¹⁹⁰¹—is not satisfied beyond reasonable doubt that they were involved in Mr Abu Adass's non-pleaded but argued 'abduction', nor his disappearance.

6869. And in any event, even if the Trial Chamber were convinced beyond doubt of their involvement in the 'Mohammed deceit'—which it is stressed, it is not—according to the Prosecution, this would mean that they must have known the full scope of the assassination plot. But this does not follow logically; it cannot be the only inference reasonably available from the evidence.

6870. It is equally plausible, in the Trial Chamber's view, that those responsible for Mr Abu Adass's disappearance, such as enticing him away from his home—as opposed to those who planned the entire operation—did not need to know the purpose for which they were either kidnapping or leading him away.

6871. Crucially, no evidence was led of anything relating to the filming of the video. Naturally, those involved in making the video, by virtue of its content, must have known that Mr Abu Adass's participation in it was linked to Mr Hariri's future assassination. But there is no evidence of (a) who made the video nor (b) when and where it was made nor (c) that those who were involved in his disappearance also made the video. The conspiracy could have comprised a mere handful of people, of which maybe only one or two had actually made the video, and thus knew of its contents before it was broadcast. But this is unknown. In a conspiracy of two, one could have made the video.

6872. In this respect there are inferences available both ways as to the size of the conspiracy and hence as to whether those who were supposed to participate in the false claim knew before the explosion that their actions were connected with it.

¹¹⁹⁰¹ See para. 5459.

6873. One possibility, which is reasonably available on the evidence, is that the operation was segmented by dividing different people, who were unaware that the aim was to kill Mr Hariri, into performing separate but essential tasks. Under this scenario, knowledge of the ultimate objective of the operation, namely, Mr Hariri's assassination, could well have been confined to a handful of people inside and outside of Lebanon. Those responsible for ensuring that the false claim was broadcast on 14 February 2005 would not necessarily have known before the explosion that they would be calling Al-Jazeera afterwards to instruct it to collect a video and to broadcast it.

6874. A trusted operative was indeed needed, but, in the Trial Chamber's view, that person did not need to be a co-conspirator. Their knowledge of their role could be confined to a 'need to know' basis. The evidence does not prove that it was essential to the operation that *only* a co-conspirator could make the calls on 14 February, or put the envelope containing the video in the tree at some unknown time. To the contrary, the fewer who knew about the aim of the operation, the better. Under this scenario, a small group of trusted operatives—in other words, conspirators—performed all tasks requiring knowledge of the objective.

6875. The other potentially plausible explanation is that the combination of the recruitment and abduction of Mr Abu Adass and the calls to the media outlets on 14 February 2005 was so integral to the overall operation that these essential actions could only be entrusted to those who knew why they were doing it, namely, as part of the plot to assassinate Mr Hariri—either as co-conspirators or as accomplices.

6876. But in the absence of any direct evidence on this, the Trial Chamber is unable to make a finding either way. Thus, in the Trial Chamber's view, it is as equally plausible that those who made the calls and put the video in the tree knew in advance of the attack on Mr Hariri, as it is that they did not. There is no evidence which conclusively establishes either scenario, one way or another.

6877. The possibility that both are equally sustainable must therefore inevitably raise a reasonable doubt as to the Prosecution theory that Mr Oneissi and Mr Sabra—if they were involved in the false claim on 14 February 2005—must have known in advance that their actions were connected to Mr Hariri's intended assassination. The evidence does not establish this either factually or as a matter of logic, or inferential reasoning from circumstantial evidence.

6878. Another factor militating against Mr Oneissi or Mr Sabra knowing of the explosion in advance—assuming it could be proved that they in fact made the calls on 14 February 2005—is of their personal mobiles communicating with each other and Mr Merhi. None were using network mobiles to communicate on this vital part of the plot.

6879. The Prosecution’s explanation for this is that none thought that this would lead to their detection, and they took some precautions in using public payphones and an anonymous telecard to make the calls. And this is a plausible explanation, for there is no right or wrong way to communicate a false claim of responsibility after a terrorist attack.

6880. However, if this is the case, in the Trial Chamber’s view, it reveals a remarkable lapse in discipline in communication among those who were said to be indispensable to the operation. The evidence has established the existence of tightly controlled networks that only communicated either with other mobiles in that single network or with another related network.¹¹⁹⁰² The use of personal mobiles thus also goes against the Prosecution’s theory that they must have known in advance that their actions were contributing towards the operation to assassinate Mr Hariri, either before or after the explosion, or both.

(b) Accomplice liability under Articles 219 (4) and (5) of the Lebanese Criminal Code

6881. During the amended consolidated indictment period—as noted above—Mr Sabra’s attributed mobile Purple 018 and Mr Oneissi using his personal mobile Purple 095 called each other, and Mr Merhi on Purple 231. Their mobiles were present in the area of locations where false claim-related activities took place, such as the Arab University Mosque in late December 2004 and early January 2005. The two personal mobiles were used near relevant payphones on 14 February 2005, and the tree from which the video was collected. Their personal mobiles stopped use shortly after the attack.

6882. This conduct is insufficient either to prove conduct that assisted the perpetrators’ preparation for the attack or that helped to shield the perpetrators or accomplices from justice.

¹¹⁹⁰² See chapter VIII ‘Nature and purpose of colour-coded mobile networks and Purple group of mobiles’.

Their actions, in Mr Oneissi being in these locations and Mr Sabra's attributed mobile Purple 018 also being there therefore do not satisfy the *actus reus* for accomplice liability.

6883. Similarly, the Prosecution has failed to establish the mental element, or *mens rea*, of accomplice liability for either Accused. Using or not using a mobile, calling each other and being somewhere in the area of locations where false claim-related activities took place is likewise insufficient to demonstrate beyond a reasonable doubt that Mr Oneissi or Mr Sabra knew and accepted that the perpetrators would carry out an attack using an explosive device that was likely to kill people and spread terror. This is assuming that Mr Sabra was using his attributed mobile at all relevant times.

6884. Moreover, there is no evidence from which the Trial Chamber could conclude beyond reasonable doubt—even if it was found proved that they did participate in calling the news agencies *after* the attack on 14 February 2005—that they were aware *in advance* of the attack, which occurred at around 12:55, that calling Al-Jazeera and Reuters later that afternoon was connected with the attack. This is an essential requirement under Articles 219 (4) and (5).

6885. The Trial Chamber accepts that if they indeed participated in making the calls to either news outlet—by virtue of the content of the letter that was read during the call—they would have known *then* that their actions were connected with the attack. However, this would not of itself prove their knowledge of this before the attack, as is required by Article 219 of the Lebanese Criminal Code, to incur criminal liability as an accomplice.

6886. The Trial Chamber's conclusion as to the lack of evidence that Mr Oneissi or Mr Sabra participated in the 'Mohammed deceit', the abduction of Mr Abu Adass or the dissemination of the false claim therefore precludes their liability as accomplices.

6887. Accordingly, the Trial Chamber finds that Mr Oneissi's and Mr Sabra's liability as accomplices for the crimes of committing a terrorist act (count six), the intentional homicide of Mr Hariri (count seven), the intentional homicide of 21 other persons (count eight) and the attempted intentional homicide of 226 persons (count nine) has not been proven beyond a reasonable doubt.

(c) Conspiracy

6888. The same underlying facts and conduct are used to prove Mr Oneissi's and Mr Sabra's alleged participation in the conspiracy to commit a terrorist act by means of an explosive device in order to assassinate Mr Hariri. To find them guilty of participating in the conspiracy charged in count one, the Trial Chamber must be satisfied beyond reasonable doubt of the same facts that would have proved their criminal liability as accomplices as charged in counts six to nine of the amended consolidated indictment.

6889. Given the Trial Chamber's determination, for purposes of accomplice liability, that Mr Oneissi and Mr Sabra did not know of or accepted that the perpetrators would carry out a terrorist act with an explosive device, homicide or attempted homicide, it follows that the Trial Chamber cannot be convinced beyond a reasonable doubt that they knew and agreed with the conspirators to commit a terrorist act using a large explosive device in a public place to assassinate Mr Hariri.

6890. To be clear, the fact of these personal mobiles calling the other mobile, and Mr Merhi, and Mr Oneissi's Purple 095's and Mr Sabra's attributed mobile Purple 018's presence in the area of false claim-related activities at the Arab University Mosque, payphones and the tree, is insufficient evidence on its own to demonstrate that Mr Oneissi or Mr Sabra entered into an agreement to commit a terrorist act during the amended consolidated indictment period. And most especially so in the absence of evidence that they participated in what happened to Mr Abu Adass. Indeed, the Prosecution's argument that Mr Oneissi and Mr Sabra knowingly joined the conspiracy is premised on their involvement in the false claim of responsibility.¹¹⁹⁰³ So the Trial Chamber's determination that the Prosecution failed to prove the two Accused did take part in the false claim is fatal to the charge of conspiracy.

6891. Accordingly, the Trial Chamber finds that Mr Oneissi and Mr Sabra cannot be found responsible for conspiracy to commit a terrorist act as charged in count one.

¹¹⁹⁰³ Prosecution final trial brief, para. 1189; Prosecution closing submissions, T. 11 September 2018, p. 35.

E. Hassan Habib Merhi

6892. According to the amended consolidated indictment, Mr Merhi, together with Mr Badreddine, coordinated the preparation of the false claim of responsibility. He specifically co-ordinated the activities of Mr Oneissi and Mr Sabra in the lead-up and aftermath of the attack.¹¹⁹⁰⁴

6893. The Prosecution further submits that Mr Merhi supported the terrorist attack by co-ordinating one of its integral components—the false claim of responsibility—which in turn also helped shield the perpetrators of the attack from justice.¹¹⁹⁰⁵

6894. Mr Merhi is charged as an accomplice—under Articles 219 (4) and (5) of the Lebanese Criminal Code—to the homicide, attempted homicide and terrorist act. Specifically, his alleged contributions to the crimes are described in the amended consolidated indictment as: (a) preparatory to the offence and as acts shielding the co-perpetrators and himself from justice by participating in the identification and subsequent use of an individual in creating a false claim of responsibility video; and (b) acts shielding the co-perpetrators and himself from justice by ensuring that the false claim of responsibility is broadcast on TV after the offence.¹¹⁹⁰⁶

6895. The Merhi Defence submits that there is no evidence demonstrating beyond reasonable doubt that Mr Merhi committed before or after the attack any concrete act which would have aided, abetted and or facilitated the commission of the alleged terrorist act.¹¹⁹⁰⁷ The Prosecution does not accuse Mr Merhi of any specific act relating to the false claim of responsibility.¹¹⁹⁰⁸

6896. Mr Merhi's alleged contributions to the crimes are solely related to the false claim of responsibility. For the Trial Chamber to assess whether his actions amount to criminally relevant contributions to crimes, it must be established factually what exactly he did. Evidence of Mr Merhi's actions is generally lacking. Mr Merhi's call activity on Purple 231 may link him to Mr Oneissi and Mr Sabra. However, even if the Trial Chamber were to be satisfied that Mr Merhi—

¹¹⁹⁰⁴ Amended consolidated indictment, para. 3 (d).

¹¹⁹⁰⁵ Prosecution final trial brief, para. 1168.

¹¹⁹⁰⁶ Amended consolidated indictment, paras 64 (f), 66 (f), 68 (h), 70 (h). *See also* Prosecution final trial brief, para. 1172.

¹¹⁹⁰⁷ Merhi Defence final trial brief, paras 482, 569.

¹¹⁹⁰⁸ Merhi Defence final trial brief, para. 540.

on Purple 231—supervised Mr Oneissi and Mr Sabra, the Trial Chamber found that it was unable to link Mr Oneissi and Mr Sabra to the false claim of responsibility. Accordingly, the link between Mr Merhi and the false claim of responsibility is missing.

F. Conclusion

6897. As explained above, the Trial Chamber finds Mr Ayyash criminally responsible in relation to counts 1 to 5 of the amended consolidated indictment. The Trial Chamber has also determined that Mr Merhi, Mr Oneissi and Mr Sabra are not criminally responsible in relation to counts 1 and 6 to 9 of the amended consolidated indictment.

6898. The Trial Chamber, as part of its obligation to provide a reasoned opinion, addresses what a casual reader could perhaps view as an inconsistency in reasoning, and hence the result of the case.

6899. In examining the evidence supporting the pleaded false claim of responsibility, the Trial Chamber made a detailed analysis of mobile cell activations and—in light of the somewhat limited reliability of the telecommunications evidence—whether these could establish the particular locations of their users. This was especially important in that context, as the Prosecutor had pleaded that Mr Oneissi and Mr Sabra were in specific, precise locations, such as the Arab University Mosque, the four payphones used to make calls to Reuters and Al-Jazeera on the afternoon of Monday 14 February 2005, or near the tree where the video-taped claim of responsibility was deposited.

6900. In relation to Mr Ayyash's individual criminal responsibility, the Trial Chamber also closely examined the cell activations of Red 741, and the other Red mobiles, on the morning of Monday 14 February 2005 before the attack on Mr Hariri, and on all other key dates before then, including where and when the Blue mobiles were used.

6901. The Trial Chamber, however, did not attempt specific calculations—with the assistance of the electronic presentation of evidence—on the precise areas of these cell activations. This is primarily because the Prosecution did not allege that Mr Ayyash was at any *precise* location, and it was not necessary to determine that he was. In other words, where the Prosecutor alleges that Mr Oneissi and Mr Sabra were *at the mosque* or made telephone calls from payphone boxes,

specificity in placing a mobile's user at a location matters immensely. Where this is not the case, as for Mr Ayyash, it does not matter much that the mobile user's location can only be approximated in relation to a larger area, and most particularly vis-à-vis Mr Hariri's provable movements.

6902. The Trial Chamber's conclusion that Mr Ayyash bears individual criminal responsibility is not based on determining his or the other Red mobiles' precise locations. Rather, it comes from the combination of the several strands of evidence. These include: the increased activity of Red mobile contact on the morning of 14 February 2005, the closed nature of the Red network, the involvement of the Red mobiles in the surveillance of Mr Hariri in the weeks before the attack, the calls right before the attack, their cell activations in the general area of the crime scene—including of the portable relay cell PHENMB1—and their discarding of the network mobiles minutes before the attack.

6903. In these circumstances, the Trial Chamber's decision to acquit Mr Merhi, Mr Oneissi and Mr Sabra, but to convict Mr Ayyash using a similar type of evidence—the telecommunications evidence—was consistent with the distinctions in pleading and context.

XV. DISPOSITION

6904. For the reasons above and having considered the Parties' submissions, and pursuant to Article 23 of the Statute of the Special Tribunal for Lebanon and Rule 168 of the Rules of Procedure and Evidence, the Trial Chamber finds the Accused:

SALIM JAMIL AYYASH

GUILTY, pursuant to Articles 2 and 3 (1) (a) of the Statute of the Special Tribunal for Lebanon, and Article 212 of the Lebanese Criminal Code, of the following counts charged on the amended consolidated indictment, as a co-perpetrator of:

COUNT 1—Conspiracy aimed at committing a terrorist act (Articles 270 and 314 of the Lebanese Criminal Code);

COUNT 2—Committing a terrorist act by means of an explosive device (Article 314 of the Lebanese Criminal Code);

COUNT 3—Intentional homicide of Rafik Hariri with premeditation by using explosive materials (Articles 547 and 549 (1) and (7) of the Lebanese Criminal Code);

COUNT 4—Intentional homicide (of 21 persons in addition to the intentional homicide of Rafik Hariri) with premeditation by using explosive materials (Articles 547 and 549 (1) and (7) of the Lebanese Criminal Code); and

COUNT 5—Attempted intentional homicide (of 226 persons in addition to the intentional homicide of Rafik Hariri) with premeditation by using explosive materials (Articles 200, 547 and 549 (1) and (7) of the Lebanese Criminal Code).

AND

HASSAN HABIB MERHI

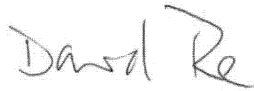
HUSSEIN HASSAN ONEISSI

ASSAD HASSAN SABRA

NOT GUILTY of all counts charged in the amended consolidated indictment, namely counts one, six, seven, eight and nine.

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

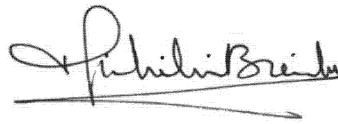
Leidschendam,
The Netherlands
18 August 2020



Judge David Re, Presiding



Judge Janet Nosworthy



Judge Micheline Braidy

XVI. SEPARATE OPINION OF JUDGE DAVID RE

A. Introduction

1. This separate opinion examines several aspects of the proceedings before the Special Tribunal. It makes some general observations that might be useful in future proceedings either in this tribunal or in other international criminal courts and tribunals and United Nations and other inter-governmental fact-finding missions. The five issues explored here are:

- 1) whether a court may make findings against an absent unindicted co-conspirator, co-accused or co-perpetrator to establish individual criminal liability based on accessorial liability. This is as a response to Judge Micheline Braidy's short dissent on the issue;
- 2) the treatment of the 'four generals' by the United Nations International Independent Investigation Commission (UNIIC) and the Lebanese authorities, and a possible solution to the protracted litigation before the Special Tribunal;
- 3) some general observations about the Defence Office;
- 4) observations on the pre-trial phase of the case, including the Prosecution's record-keeping practices; and
- 5) referrals to the Appeals Chamber under Rule 68 (G) for interlocutory decisions on the applicable law.

B. Whether a court may make a finding on the role of an unindicted co-conspirator, co-perpetrator or accessory

2. I had the advantage of reading Judge Braidy's dissenting opinion in which she disagrees with the Trial Chamber making any findings on whether the former Accused, Mustafa Amine Badreddine, had a role in the conspiracy alleged. My learned colleague held that the Trial Chamber 'should not even have analysed the individual criminal responsibility of someone who is not (anymore) an accused and whose proceedings have been terminated'.

3. The fact that her view is contrary to that of the long established international criminal law case law is beside the point. As she is entitled to, she disagrees with it, and eloquently says so.

4. It is axiomatic that a majority is not always correct merely by virtue of numerical judicial superiority, and that a lone dissent may eventually gain acceptance and transform into established principle. Over time, social conventions change, and the law eventually catches up. However, here and with great respect, I do not believe that this particular minority view will gain traction with the passage of time. This is because of the potentially significant consequences of its practical application.

5. One difficulty with acceding to the legal approach advocated is that logically it cannot be restricted to conspiracy charges. Besides stating the obvious, that this would provide the greatest incentive for a potential co-accused to eliminate their co-conspirator(s)/co-accused to ensure that neither ever faced justice, the approach attacks the legal foundation of conspiracy, co-perpetration and accessorial liability.

6. The very concept of co-perpetration and conspiracy, depends upon more than one person agreeing to commit a crime and then doing so. Likewise, accessorial liability whether before, during or after the commission of a crime, requires other principal perpetrators to have engaged in criminal conduct.

7. In any offence in which conspiracy, co-perpetration or accessorial liability is charged, a legal element of the crime or mode of liability is that someone else is *legally* implicated in what occurred. The alleged actions of that other person have to be pleaded and specified. This is irrespective of whether that person is dead or alive or their whereabouts are unknown.

8. Taking the approach advocated in Judge Braidy's dissent would defeat the possibility of ever trying anyone in the absence of a co-perpetrator, irrespective of the reasons for their absence from the proceedings. This would apply regardless of the level of seriousness of the crime or the degree of complicity alleged.

9. It would apply as equally to aiding and abetting genocide as to knowingly disposing of an inexpensive stolen item.¹ The person who knowingly assisted the sole but now absent or deceased

¹ Also known in some jurisdictions as the crime of 'receiving stolen property'.

mastermind of a terrorist incident in which thousands of people perished could never face justice. Anyone who allegedly conspired to commit genocide with a deceased, or even an absent long on the run accused, could never be tried, whatever the strength of the evidence against the alleged genocidaire.

10. There is nothing legally special about Mr Badreddine and his pleaded role in the crimes charged. He is no more than an unindicted former co-accused, whatever may have been his position in Hezbollah, and at any time.

11. Conspiracy requires an agreement between at least two people. If a court legally cannot find its existence merely because only one conspirator is before the court, this novel way of viewing accessorial liability, if it gained acceptance, would mean that the charge would always fail. Had Mr Ayyash been the only other person alleged on the Prosecutor's indictment to have conspired with Mr Badreddine, on the position advocated in the dissent, the charges would fail on that basis alone. He could never have been brought before a court anywhere.

12. Thus, on that view, termination of the charges against the one who was no longer before the court would automatically terminate the proceedings against the other. To put it another way, when Mr Badreddine's name leaves the indictment, he takes Mr Ayyash's with him. This illustrates quite simply the logical but inevitable consequence of following the approach of the dissent. Respectfully, I disagree with its legal foundations and the unintended legal and social consequences that would flow from applying it. These must be contrary to public policy in bringing suspected perpetrators of crimes to justice.

C. The 'four generals' and the UN and UNHCR's public silence—the case of Jamil El-Sayyed

13. Between August and October 2005, eight Lebanese nationals were arrested, ostensibly in connection with the attack on Mr Rafik Hariri. They were detained for a lengthy period without charge or the notification of a trial date. Four of these were senior Lebanese officials, who came to be known as the 'four generals'. These were General Jamil El-Sayyed, General Raymond Azar, General Ali El-Haj and General Mustapha Hamdan.² They were released only in the month

² There are variations in the spellings of these names in their transliteration from Arabic into English.

following the Special Tribunal for Lebanon's establishment, pursuant to an order of its Pre-Trial Judge, issued on 29 April 2009.

14. Mr El-Sayyed was the director of the Lebanese *Sûreté Générale* between 1998 and 25 April 2005, and was imprisoned and held without charge by first the UNIIC and then the Lebanese authorities between 30 August 2005 and his release on 29 April 2009, a period of three years and eight months.³ His initial arrest and subsequent detention, however, was according to either a 'warrant' or a 'recommendation' of the first UNIIC Commissioner, Mr Detlev Mehlis.

15. Mr Mehlis was appointed by the UN Secretary-General as the first UNIIC Commissioner in May 2005 and remained in the position for less than a year, until January 2006. He produced two reports for the Security Council, in October and December 2005.

16. Mr Serge Brammertz, who was the UNIIC Commissioner from 11 January 2006 until 1 January 2008, succeeded him. The third UNIIC Commissioner was Mr Daniel Bellemare, who remained in that post until the UNIIC ceased operation on 28 February 2009. The following day he became the Prosecutor of the newly established Special Tribunal for Lebanon.

17. Mr Mehlis's first report to the Security Council, issued on 19 October 2005, accused the four generals of being among the main organizers of Mr Hariri's assassination, stating:

On 30 August 2005, the Lebanese authorities arrested and detained four high-level officials of the Lebanese security and intelligence apparatus, pursuant to arrest warrants issued by the Lebanese Prosecutor General based on recommendations from the Commission that there was probable cause to arrest and detain them for conspiracy to commit murder in connection with the assassination of Rafik Hariri.⁴

18. The lengthy detention without charge of the four generals and four others was the subject of a referral to the UN Human Rights Council's Working Group on Arbitrary Detention (WGAD)

³ Jamil El-Sayyed, T. 5 June 2018, pp 2-3, 67, 86. Mr El-Sayyed testified from 5 to 7 June 2018. *See also* Order regarding the detention of four Generals.

⁴ S/2005/662, Report of the International Independent Investigation Commission established pursuant to Security Council resolution 1595 (2005), Detlev Mehlis, Commissioner, Beirut, 19 October 2005, para. 174. The Trial Chamber, on the application of the Defence of Mr Assad Hassan Sabra that had requested that it admit each in its entirety into evidence, examined all the UNIIC reports in deciding the application; *for example*, F2722, Decision on Agreements as to Evidence Between Prosecution and Sabra Defence on United Nations Fact-Finding Mission and UNIIC Reports, 16 September 2016.

in 2007. The Working Group investigated the circumstances surrounding their arrest and detention, and communicated with the UNHCR—which was another UN agency—and the Lebanese government about what had and was occurring. It reported in its Opinion 37/2007 that:⁵

The deprivation of liberty of Jamil El Sayed, Mustapha Hamdan, Raymond Azar and Ali El Haj, Ayman Tarabay, Mustapha Talal Mesto, Ahmad Abdel Aal and Mahmud Abdel Aal is arbitrary, being in contravention of articles 9 and 14 of the International Covenant on Civil and Political Rights, to which Lebanon is a party, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.⁶

19. Relevant to Mr El-Sayyed's case, the Working Group in its report outlined the following background facts:

- On 30 August 2005, at 5:30 a.m., patrols came to Mr El-Sayyed's home with an order signed by Mr Mehlis, describing Mr El-Sayyed as a 'suspect'. He was taken to the UNHCR headquarters and interrogated in the absence of a lawyer. He was then placed in detention at the ISF (Lebanese Internal Security Forces) headquarters;⁷
- On 1 September 2005, he was taken to the UNHCR headquarters and confronted with a witness, in the presence of his lawyer and UNHCR investigators. The interview was recorded and filmed. 'The witness had his head covered by a bag, apart from his eyes. The witness affirmed that General El Sayed had visited Damascus seven times between November 2004 and February 2005 for meetings with the Chief of the Syrian Presidential Guard and the head of the Syrian intelligence services to plan the assassination of President Hariri and that on the last occasion he had been accompanied by General Mustapha Hamdan, at that time Chief of the Lebanese Presidential Guard';⁸

⁵A/HRC/10/21/Add.1 Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development. Opinions adopted by the Working Group on Arbitrary Detention 4 February 2009, Opinion 37/2007, para. 101, stating that:

'General Al-Sayyed, according to the witness, cooperated closely with General Mustapha Hamdan and General Raymond Azar in the preparation of the assassination of Mr. Hariri. He also coordinated with General Ghazali (and, among others, people from Ahmad Jibreel in Lebanon). General Hamdan and General Azar provided logistical support, including money, telephones, cars, walkie-talkies, pagers, weapons, identification cards, etc'.

The communication of the opinion was 'addressed to the Government on 27 April 2007'.

⁶ WGAD report, para. 47.

⁷ WGAD report, para. 10.

⁸ WGAD report, para. 12.

- Mr El-Sayyed denied these meetings and requested more details on their dates. He invited the investigators to check every date in his diaries. The masked witness was unable to specify any of the dates of the seven alleged meetings. Mr El-Sayyed remained in detention at UNIIIC's disposal on the basis of a verbal order notified to him by one of the investigators on the night of 30 August;⁹
- On 3 September 2005, he was brought before the Lebanese examining magistrate, who subjected him to a purely formal interrogation which did not last more than one hour. Following this investigation, the magistrate issued a warrant for his detention;¹⁰
- From 3 September to 19 October 2005, five interrogation sessions took place with UNIIIC investigators. Each time that the investigator alluded to an individual, Mr El-Sayyed 'asked to be confronted with this individual, and the question was immediately shelved';¹¹
- The accusations against Mr El-Sayyed were based primarily on the declarations of two individuals (identified as 'witnesses'). 'The first, Mr. Hussam Hussam, is probably the masked individual with whom Mr El-Sayyed was confronted on 1 September 2005.' On 27 November 2005, the witness withdrew his declaration at a press conference;¹²
- On 19 January 2006, Mr El-Sayyed was taken to the UNIIIC headquarters for interrogation;¹³
- On 15 March 2006, the third UNIIIC report, Mr Brammertz's first, was published. It did not mention Mr El-Sayyed. Neither did the fourth and fifth UNIIIC reports of 6 June and 25 September 2006;¹⁴
- On 7 and 8 April 2006, and at his request, UNIIIC had a 'discussion' with Mr El-Sayyed '(the investigator refuses to describe the session as an interrogation)'. This discussion is to date his only discussion with the present UNIIIC officials;¹⁵

⁹ WGAD report, para. 12.

¹⁰ WGAD report, para. 13.

¹¹ WGAD report, para. 14.

¹² WGAD report, para. 15.

¹³ WGAD report, para. 16.

¹⁴ WGAD report, para. 17.

¹⁵ WGAD report, para. 18.

- On the basis of this discussion, Mr El-Sayyed presented a statement on 23 May 2006, requesting UNHCR to revoke its recommendation to keep him detained. On 6 June 2006, UNHCR replied, ‘indicating that all the questions raised in the statement fell within the exclusive competence of the Lebanese judicial authorities’;¹⁶
- On 20 June 2006, Mr El-Sayyed’s lawyers requested the examining magistrate to withdraw the warrant for his detention. The request went unanswered, so on 12 October 2006, Mr El-Sayyed lodged a further application with UNHCR to revoke its detention recommendation. On 24 October 2006, Mr Brammertz stated that the Lebanese authorities had exclusive competence to deal with any questions of detention;¹⁷
- Mr El-Sayyed presented an application for release on 25 March 2007;¹⁸

The Working Group also found:

- ‘The Lebanese examining magistrate responsible for the case acknowledges that he has no evidence against General El Sayed or against the other detainees but has to date not taken any decision pending completion by the International Investigation Commission of its investigations and its transmission to him of details concerning the detainee. Mr. Brammertz’s report dated 12 December 2006 indicates that the International Investigation Commission has transmitted to the Lebanese courts information on the individuals who are in detention, being aware that this can help the Lebanese authorities take the steps which they deem appropriate or necessary concerning their detention, and reaffirms the exclusive responsibility of the Lebanese courts for decisions relating to the detention of these persons’;¹⁹
- ‘In its response, the Government states that it cannot be held liable for any violations that may have occurred in regard to the investigations conducted by the International Investigation Commission, in particular those concerning the interrogation of Jamil El-Sayed carried out by the international investigator in the absence of his lawyer and without

¹⁶ WGAD report, para. 19.

¹⁷ WGAD report, para. 20.

¹⁸ WGAD report, para. 21.

¹⁹ WGAD report, para. 26.

his having been informed of this right. The Government contends that the Lebanese authorities and courts have no connection with investigative acts of the International Investigation Commission’;²⁰ and

- ‘A real grey area exists regarding which authority considers itself competent to rule on the judicial situation of these detainees. According to the information obtained by the source, the Investigation Commission states that it is the Lebanese courts that are competent to decide on questions of detention. This position was reaffirmed in Commissioner Brammertz’s last report dated 12 December 2006’.²¹

1. Mr El-Sayyed’s testimony in the trial

20. Mr El-Sayyed testified during the trial for the defence of Mr Hussein Hassan Oneissi and described the circumstances of his arrest and detention without charge.

21. In preparation for Mr El-Sayyed’s testimony, I viewed a video recording of the UNIIC investigator’s interview with him of 2 September 2005. It had been disclosed to the Trial Chamber in advance of Mr El-Sayyed’s evidence for its possible use during his testimony, but ultimately was not used in court nor admitted into evidence.²² It was a strange sight, especially when it became evident that Mr El-Sayyed recognised the voice coming from under the paper bag.

22. When Mr El-Sayyed testified, as Presiding Judge, I made the following introductory comments to him, which put on the record some disturbing aspects of his treatment by UNIIC officials when he was in its custody:

I’d also note from a transcript of a recording of a suspect statement on the 2nd of September 2005, where you were interviewed by the United Nations International Independent Investigations Commission, that you participated in what in international terms is a fairly bizarre procedure, in which a witness was brought in to confront you with a bag over his head and holes cut for his eyes, and an investigator then spoke to you in English in a lengthy

²⁰ WGAD report, para. 27.

²¹ WGAD report, para. 7.

²² R128-4-0046, disclosure 3521, transcript of recording suspect statement, 2 September 2009, ERN 10009238C-10009238C_TS_D_EN_AR.

conversation afterwards and treated you, I would assess, as very badly and in a very unprofessional manner.

It was quite extraordinary that an investigator would speak to you in that manner, especially when you're in custody at the time as a prisoner, and he basically accused you of lying.

Just to give some context to it, I put this on the record to give some context to your evidence here. After you were arrested, I think, on the 30th of August 2005, the transcript shows -- I viewed the video, too, and I've heard the tone used by the investigator.

23. To provide context to these remarks, I then read onto the trial record part of the transcript of the interview, saying:

Just for a background context here, the situation you were in at that point, at that time you were in custody as a suspect. The investigator, you and him were in the room, and transcript goes, you:

El-Sayyed: "Don't hit on the table."

Investigator: "I hit the table when I want. Is it clear?"

El-Sayyed: "No, no, you can hit me if you want."

Investigator: "No, I don't hit you."

El-Sayyed: "You are strong enough."

Investigator: "Yes, but I'm a German police officer working for the United Nations."

El-Sayyed: "I won't be provoked."

Investigator: "And I ask the questions."

El-Sayyed: "Please be calm with me."

Investigator: "We stay with the rules. You stayed calm with the witness? No, you were shouting all the time."

El-Sayyed: "We were discussing."

Investigator: “And you were bullshitting.”

El-Sayyed: “No, no, no.”

Investigator: “You were bullshitting about talking the thing off the head, whatever.”

El-Sayyed: “I was bullshitting. What do you have to tell me? I’m hearing you.”

Investigator: “So you deny that you know the people he was asking you, yes, Marhi Assad?”

El-Sayyed: “No, no, no, please.”

Investigator: “Did you not meet him?”

El-Sayyed: “Please, please.”

Investigator: “You did not meet Marhi Assad?”

El-Sayyed: “Please.”

Investigator: “Yes or no?”

El-Sayyed: “No.”

Et cetera. That was at page 59 to 60 of the transcript. Then at 68, the investigator says:

“So he is a liar.”

And you say: “Surely he is not to be a liar.”

Investigator: “He is known to be a liar, yes, and you are telling only the the truth.”

23

24. As the Presiding Judge, I then said to Mr El-Sayyed:

I’m just putting on the record how badly you were treated in custody. You’re not going to be treated like that here. My assessment is what happened in that interview was disgraceful.

²³ T. 5 June 2018, pp 7-10. The video and transcript of the interview were on the Oneissi Defence’s second updated exhibit list, F3650, Annex F.

It does not withstand scrutiny and it is far below accepted international standards. So we thank you very much for coming here. You'll be treated with dignity and courtesy here'.²⁴

2. Background to Mr El-Sayyed's arrest

25. Mr El-Sayyed, in his testimony during the trial, provided some background information to his arrest. He testified that on 31 May, 2 June, 15 August and 21 August 2005, he was approached by a UNIIC investigator and told that he had to, 'Find a victim or it could be you'.²⁵

26. The approach included, he said, one from western intelligence officials proposing that he go to visit President Bashar Al-Assad in Syria and ask him to constitute a Syrian judicial investigation commission and to:

choose a heavy -- heavy weighted victim like Rustom Ghazaleh and more, one of those who served in Lebanon.

This sort of victim -- this victim would confess having assassinated Hariri based on a personal or a financial disagreement, and this victim would give this written confession, and then this victim would be found later killed in a car accident or in a suicide action. Then the Syrian authorities would convene us as an investigation committee, and then we will have an agreement with Assad similar to the agreement we had with Gadaffi for the Lockerbie case. For the Lockerbie case.²⁶

27. Mr El-Sayyed also testified about his interrogation by the UNIIC Commissioner, Mr Mehlis and the same investigator, on 30 August very late in the evening, after 23:00. These corresponded in substance with details in the Working Group's report extracted above. Referring first to a conversation with a British UNIIC investigator earlier that evening, Mr El-Sayyed stated:

He said Detlev Mehlis and Gerhard Lemon will come. So they did come. They sat next to each other, and they said: "I propose that you produce a victim now you are in our hands. It's still not a wasted opportunity. You can go back home. Just give us a victim."

I looked at Detlev Mehlis. I told him you are the judge and he is the policeman. "I am addressing myself to you as a judge: Would this be acceptable?" He looked down and he

²⁴ T. 5 June 2018, pp 10-11.

²⁵ T. 5 June 2018, pp 117-122.

²⁶ T. 5 June 2018, pp 117-118.

didn't answer. So I asked: "As a judge, would you find this acceptable?" I told him: "I will not cooperate with you." "He said: "Now, you will go to prison. And believe me, you will stay in prison for a long time and we will take you to the international tribunal. There will be an international tribunal. You have two days to think before I refer you to the Lebanese judge." I said, "No need for me to think. I will not think".²⁷

3. Continued detention after the key witness retracted his statement against Mr El-Sayyed

28. The detention of the four generals continued, notwithstanding that the key witness publicly retracted his statement in November 2005. Their names were not mentioned in any UNIIC report subsequent to the first report of October 2005.

29. Commissioner Brammertz in the sixth UNIIC report, dated 12 December 2006, stated that:

The Commission regularly shares with the appropriate Lebanese authorities the substance of all relevant information that it obtains in a manner that does not compromise the interest of the source of this information, be it an individual, an organization or a State. This includes an analytical report on the credibility of a witness, recently transmitted to the Prosecutor General and the investigative judge assigned to the Hariri case. This process is of particular importance where the information is relevant to individuals who are detained, as it may assist the Lebanese authorities in taking any steps they deem appropriate or necessary in relation to detention.²⁸

30. This appears to have been an oblique reference to the circumstances of the four generals and the credibility of the witness upon whom the UNIIC relied to recommend their arrests. However, it neither names them nor categorically states that the evidence against them was not credible.

31. This broad hint, however, was not taken and the four remained in detention until the Special Tribunal became seized of their case in 2009.

²⁷ T. 5 June 2018, pp 123-124.

²⁸ S/2006/962, Sixth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005) and 1644 (2005), 12 December 2006, para. 96.

32. On the conditions of their detention, the Working Group reported that ‘all are being held in isolation in cells without light and ventilation, 2 metres long and 1.3 metres wide. Three of the detainees are said to be suffering from serious physical and mental health problems.’²⁹

33. During his detention, Mr El-Sayyed, through his lawyers, sent a number of memoranda to the UNHCR Commissioners and the UN Secretary-General asking them to facilitate his release from custody.

34. The final UNHCR interview with Mr El-Sayyed appears to have occurred on 14 February 2009, when UNHCR’s Chief of Investigations and an investigator interviewed him about ‘matters that you are willing to tackle and things that you think could be useful to the Commission’. The Chief of Investigations, Mr Najib Kaldas, commenced the interview by stating:

We understand everything that happened before today. What I can say and I’ll just say it on the record here; is that the Commissioner at the moment Mr. Bellemare and I’m the chief of investigations are very committed to treat people fairly and to investigate this murder and other matters that we’re investigating fairly, but we are very, very committed to resolving the crime; we have a mostly new team of investigators; so, there is perhaps a new approach to the investigation. You have had some concerns about what’s happened in the past and I will convey those concerns to Mr. Bellemare at your request. I’m happy to that. The main purpose of today that we would like to, and thank you for signing the document, just the document the fact that we are here at your request.³⁰

4. Special Tribunal’s Pre-Trial Judge’s order to release the four generals

35. In the month following Mr El-Sayyed’s final interview with the UNHCR, on 27 March 2009, the Pre-Trial Judge ordered the Lebanese judicial authorities to defer to the Special Tribunal’s competence, and to provide a list of all persons detained in connection with the investigation of the ‘Hariri case’. On 8 April 2009, the Lebanese judicial authorities provided the

²⁹ WGAD report, para. 9.

³⁰ R128-4-0046, disclosure 3521, D0361908_U_EN, ‘UNHCR audio recorded interview of AL-SAYYED Jamil 14 Feb 09 (60111009A). The Oneissi Defence disclosed this interview to the Trial Chamber before Mr El-Sayyed testified.

list, which contained only the names of the four generals, and on 10 April 2009, the results of the investigation and a copy of the relevant court records.³¹

36. On 27 April 2009, the new Prosecutor, Mr Bellemare, filed a submission before the Pre-Trial Judge, stating that the four should be released with immediate effect.

37. He stated that he had reviewed all the records and ‘taken account, in light of a review of all this information, of inconsistencies in the statements of key witnesses and of a lack of corroborative evidence to support these statements’ and ‘taken account of the fact that some witnesses had modified their statements and one key witness had expressly retracted his original statement incriminating the persons’.³² On 29 April 2009, the Pre-Trial Judge ordered the release of the four, ‘unless they are held on another basis’.³³ They were immediately released.

38. With due respect to Mr Bellemare—who was the UNIIC Commissioner from 1 January 2008—and his submission to the Pre-Trial Judge arguing that the four should be released, none of this could have been new to him. The relevant key witness retraction had occurred three years and five months before, in November 2005. As the third UNIIC Commissioner he had to have known all of this, and, additionally, that his predecessor, Mr Serge Brammertz had formed the view that there was no credible evidence against any of the detained four.

39. At the time when the Pre-Trial Judge ordered Lebanon to defer the *Hariri* case to the Special Tribunal, namely in March 2009, Mr Bellemare—as is evident from the indictment confirmed in June 2011—was investigating those whose mobile telephones might be connected with the attack. There has never been any suggestion, so far as I am aware, that Mr El-Sayyed’s mobiles had any connection with the attack or the five Accused.

5. Proceedings before the Special Tribunal

40. Well over ten years ago, on 17 March 2010, Mr El-Sayyed filed an application before the Special Tribunal’s President requesting the ‘release of evidentiary material related to the crimes of libellous denunciations and arbitrary detention’. The President assigned the matter to the Pre-

³¹ Order regarding the detention of four Generals, paras 3-4.

³² Submission of the Prosecutor to the Pre-Trial Judge Under Rule 17 of the Rules of Procedure and Evidence, 27 April 2009, para. 30.

³³ Order regarding the detention of four Generals, disposition.

Trial Judge, who, on 17 September 2010, ruled that he had jurisdiction to determine the substance of the application.³⁴

41. The Prosecutor, Mr Bellemare, had opposed Mr El-Sayyed's application, and appealed the decision. The Appeals Chamber dismissed the appeal on 10 November 2010, and remanded the matter to the Pre-Trial Judge to consider the merits of Mr El-Sayyed's application, namely his request for access to documents that may be contained in his criminal file.

42. Mr El-Sayyed filed his application before the then President four and a half years after the commencement of his detention without trial. Another ten years has elapsed, meaning that almost fifteen years have now passed since he was detained on the recommendation/request of the UNHCR Commissioner, Mr Mehlis. According to the UN Working Group report, as is noted above, one of the two 'false witnesses' against him 'withdrew his declaration publicly at a press conference held on 27 November 2005'.³⁵

43. The litigation regarding Mr El-Sayyed's access to the material sought continues at the Special Tribunal, with the Prosecutor filing regular updates every six months to the Pre-Trial Judge on his disclosure of material to Mr El-Sayyed. The Prosecutor's last filing was on 11 June 2020, referring to an order made almost eight years earlier by the Pre-Trial Judge.³⁶

6. Who bears responsibility?

44. At the conclusion of Mr El-Sayyed's testimony, I said the following to him:

We thank you for coming and providing evidence, which we will of course assess in the same way as we will assess the evidence of all the other witnesses who have given evidence on points. Look, we do understand that there are some emotions here because of your incarceration for I think it was three years and eight months. I think between the 30th of August, 2005 and the 29th of April, 2009.

³⁴ CH/PTJ/2010/005, F0019, Order relating to the jurisdiction of the Tribunal to rule on the application by Mr El Sayed dated 17 March 2010 and whether Mr El Sayed has standing before the Tribunal, 17 September 2010.

³⁵ WGAD report, para. 15.

³⁶ STL-El Sayed/PTJ, F0182, Prosecution's Submission in Compliance with the "Decision Setting a Deadline for the Prosecutor to Disclose to Mr. El Sayed the Documents Mentioned in the Pre-Trial Judge's Order of 12 May 2011" of 8 October 2012, 11 June 2020.

And we understand it's difficult for you to be detached and objective about the Tribunal itself, as you're associating the continuation of the Tribunal with what happened at the UNHCR. But you appreciate the Prosecutor came in 2012, and Mr. Povoas some years later. They have nothing to do with what occurred to you and the others who were detained, and they are doing their job professionally. And the investigation has proceeded after the establishment of the Tribunal, and you know one of the first -- the first judicial acts was to release you.

Now, the media reported the other day that I'd said that I was offering an apology on behalf of the Tribunal to you. I didn't and I can't. It's not my role. But I can certainly recognize, as an independent Judge, that your detention was unlawful and it was contrary to international human rights. It was reported by the Human Rights Council, and even after that it continued.

And whatever the motivations in arresting you in the first place, and I make no judgement about that. You were arrested under the -- in accordance with Lebanese law. The detention clearly wasn't and just -- it wasn't in accordance with international human rights standards. Lebanon is a signatory to the International Convention on Civil and Political Rights. And this is my view as a Judge, an independent Judge, that once a commissioner working for the United Nations, an independent commissioner forms a view that there is no evidence against someone who is in detention, even if they're detained by other authorities but at the behest of the commission, the commissioners have a moral and legal duty to do something about it. They have no legal power to do anything but they do have what's called the moral -- that they do -- that they can take steps such as included in communications or reports, and the reports of the UNHCR from the 3rd through to the 11th report, nine reports were silent on the detention. In my view, that was something which should not have occurred.

Once those who were in higher position had formed the view that there is no credible evidence against detainees, it's incumbent upon them to take the appropriate action to ensure that someone in your position is released. You can't be detained for three years and eight months without charge or trial. It's a clear breach of your rights.

So it's not an apology on behalf of the Tribunal. It wasn't the Tribunal that did it. It's just a recognition that it should never occur again.³⁷

³⁷ T. 7 June 2018, pp 35-37.

45. So, how should this shameful episode be resolved? Nothing on the trial record gives any confidence that Mr El-Sayyed will receive compensation, an *ex-gratia* payment or an apology from the Lebanese government. The Trial Chamber received much evidence at trial concerning aspects of dysfunctionality in Lebanese state institutions.

46. The essential matter of causation, which does not seem to be in dispute, is that Mr El-Sayyed was detained on Mr Mehlis's 'recommendation' or request, for interrogation by UNIIIC officials. Mr El-Sayyed was detained by the UNIIIC for three or four days before being taken before a Lebanese judge. That judge continued the detention on the basis that the UNIIIC was investigating his possible role in Mr Hariri's assassination.

47. However, the main witness against Mr El-Sayyed, Mr Hussam, publicly recanted in a televised press conference on 27 November 2005, thus raising real questions about his credibility in any investigation or court proceedings. This is irrespective of his reasons for withdrawing his allegations.

48. Mr Mehlis's first report to the Security Council, of 19 October 2005, had relied upon Mr Hussam's account as the basis for the continuing detention of the four generals. His second report, of December 2005, however, stated that Mr Hussam's televised appearance was 'coerced' at 'the behest of the Syrian Judicial Commissions charged with investigating the Hariri assassination'.³⁸ Of the four generals, the second report referred to a new, unnamed witness who had provided a report that 'strengthens the evidence confirmed to date against the Lebanese officers in custody, as well as high-ranked Syrian officers'.³⁹

49. In March 2006, the third UNIIIC report—the first produced by Mr Brammertz—stated that '10 individuals are still held in custody in connection with the Hariri investigation', and all were suspected of committing crimes under the Lebanese Criminal Code, including 'persons suspected of instigating and participating in the planning and execution of the crime'.⁴⁰ It did not mention that they then had remained in custody for six and a half months, without any formal charges.

³⁸ S/2005/775, Second report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005) and 1636 (2005), 10 December 2005, para. 30.

³⁹ Second UNIIIC report, para. 34.

⁴⁰ S/2006/161, Third report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005) and 1644 (2005), 14 March 2006, paras 48-49.

50. It is unclear from when the UNHCR Commissioner(s) realised that there was no admissible evidence against Mr El-Sayyed, and presumably his fellow detainees, who are the subject of the Working Group's report. But from whenever that moment was, they should have insisted on his immediate release from unlawful detention. In other words, when the UNHCR stopped investigating Mr El-Sayyed as a suspect and turned its attention elsewhere—unless the Lebanese authorities had a lawful reason to keep him in detention—he should have been released, or charged with committing a crime.

51. The Working Group found that it had no mandate to rule on human rights violations caused by the UN's actions. Concerning the UN's responsibility (in 2007) for the continuing unlawful detentions in Lebanon, it concluded that:

The Working Group considers that it is thus not competent to rule on the arbitrariness of detentions resulting from violations imputed to investigators acting within the framework of an international investigation commission set up by the Security Council.⁴¹

52. This is what could be termed a 'legal loophole', rather than the 'grey area' referred to above. The Working Group also reported that:

The Lebanese examining magistrate responsible for the case acknowledges that he has no evidence against General El Sayed or against the other detainees but has to date not taken any decision pending completion by the International Investigation Commission of its investigations and its transmission to him of details concerning the detainee. Mr. Brammertz's report dated 12 December 2006 indicates that the International Investigation Commission has transmitted to the Lebanese courts information on the individuals who are in detention, being aware that this can help the Lebanese authorities take the steps which they deem appropriate or necessary concerning their detention, and reaffirms the exclusive responsibility of the Lebanese courts for decisions relating to the detention of these persons.⁴²

53. It concluded as follows:

⁴¹ WGAD report, para. 36.

⁴² WGAD report, para. 26.

The Working Group concludes that, if from the examination of the communication it is concluded that the detention is of an arbitrary character, the Lebanese Government bears full responsibility for it.⁴³

7. What the UN and UNIIC should have done

54. Senior UN officials must act courageously and according to international human rights instruments, many of which emanate from the UN itself, including the International Covenant on Civil and Political Rights (ICCPR). The Working Group found that Lebanon was breaching this human rights instrument by its continued arbitrary detention of Mr El-Sayyed and the others.

55. Putting to one side Mr Mehlis, who clearly was not going to take action, in my view, his two successors as UNIIC Commissioner should have taken *active public* steps for the immediate release of anyone detained at the UNIIC's behest against whom there was no admissible evidence. Once it was apparent that the reasons for their arrest, at the UNIIC's request were flawed, and that there was no reliable evidence against them—such as a formerly star witness recanting his testimony—they should have sent a loud and clear *public* message to the Lebanese authorities that the continued detentions breached international human rights law.

56. The Commissioners could have done this in their regular annual reports to the Secretary-General or addresses to the Security Council. Or they could have issued a separate public report on the topic. They did neither. The situation was that on one hand, one UN agency—the Human Rights Council—was investigating and determining that the detention was arbitrary and breaching the ICCPR, while, on the other, the agency responsible for the breach, the UNIIC, remained publicly silent about it.⁴⁴

57. To summarise: Mr El-Sayyed was arrested and detained at the UNIIC's behest; held incommunicado in the initial phases without access to a lawyer; accused of committing a terrorist

⁴³ WGAD report, para. 39.

⁴⁴ Alamuddin and Bonini, 'The UN Investigation of the Hariri Assassination', at p. 60, fn. 57, refers to an interview with Mr Brammertz. However, as of 4 August 2020, the link on the UN website was broken. 'Informal Comments to the Media by the Commissioner of the UN International Independent Investigation Commission into the Assassination of Former Lebanese Prime Minister Rafiq Hariri, Mr Serge Brammertz, on the Situation in the Middle East', UN Webcast Archives(19 July 2007)6m15–6m30) accessed 2 December 2013). In his addresses to the Security Council in 2006 and 2007, Mr Brammertz made no mention of the plight of the detainees. S/PV.5597, provisional, Monday 18 December 2006; and S/PV.5790, provisional, 5790th meeting, Wednesday, 5 December 2007. Neither did Mr Bellemare in his address, S/PV.6047, provisional, 6047th meeting, Wednesday 17 December 2008.

act and lying about it; bullied and threatened by an investigator while in custody; and, on his sworn testimony before the Special Tribunal, told to go find a suitable victim or it would be him. He was then detained without charge or trial until 28 April 2009, but without mention in the UNHCR's regular reports to the Security Council that it had no reliable evidence justifying his continued detention.

58. Lebanon ignored the Working Group's opinion, addressed to its government on 27 April 2007. The opinion forcefully stated that the responsible Lebanese investigating magistrate acknowledged having no evidence against Mr El-Sayyed, although the government had disputed that the magistrate had said this, as the investigation was secret.⁴⁵ Yet he remained in detention for another two years.

59. The detainees should have been released. There was no legal 'grey area'. They were detained long after the original reasons for their arrests had gone. There is no indication that Mr El-Sayyed was under investigation for involvement in the attack on Mr Hariri, at least from the time of Commissioner Brammertz's report in December 2006, which appears to suggest although not explicitly, that he was not.

8. Resolution of the matter

60. The cost to the international community, and Lebanon, through its annual contributions to the Special Tribunal's budget, of dealing with the El-Sayyed litigation—specifically, the cost of the time spent by Prosecution and Registry officials, and the judges and staff of the Pre-Trial and Appeals Chamber—must surely by now greatly exceed the cost of any reasonable compensation payable by the Lebanese Republic to Mr El-Sayyed. And this unending litigation before the Special Tribunal continues.

61. This matter cries out for national and international resolution. The UN and Lebanon, in my view, jointly share responsibility for what occurred to the 'four generals'. The UNHCR, a UN agency, was responsible for their arrest and detention. The Lebanese investigating and judicial authorities then detained them without charge for three years and eight months, but on a number

⁴⁵ WGAD report, paras 26, 29.

of occasions during what was obviously an unlawful detention, UNIIIC officials were given access to interview them.

62. The UN, through its agency the UNIIIC, clearly bears some culpability here, irrespective of the legal niceties about the detainees being the responsibility of the Lebanese investigating authorities who were conducting their own investigations into the attack on Mr Hariri. In my view, the legal and moral responsibility is shared between the UN and Lebanon.

63. Lebanon and the UN, in my view, should therefore jointly compensate Mr El-Sayyed and the others who were unlawfully detained, and offer a public apology. And lessons should be learned from this unfortunate episode in UN investigatory and fact-finding missions.

64. Of course I am not privy to any discussions between the UN and Mr El-Sayyed's lawyers, but if the UN has not already reached a settlement with Mr El-Sayyed, it should; it has a legal and moral duty to compensate him for the consequences of its actions, and inactions, from 30 August 2005 onwards.

9. Why it is unlikely that Lebanon will compensate Mr El-Sayyed for his unlawful detention

65. Confidence that Lebanon will assume any responsibility for these injustices, however, is slight. During the trial, the Trial Chamber received evidence of dysfunctionality in the Lebanese state related to its government and governance, including its judicial and law enforcement authorities. Collectively, this provides little reason for optimism that Lebanon will right the wrongs here. It is worth highlighting how I have reached this view.

66. One aspect was of the mismanagement of the investigation into the attack on Mr Hariri. The judgment details some of the basic issues, such as how the crime scene was not secured, was contaminated and evidence was lost, and a senior Lebanese official correctly described the scene as 'chaotic'. There was no clear line of responsibility for the investigation. The FitzGerald fact-finding report reached the same conclusions.⁴⁶

⁴⁶ 'The review of the investigation indicates that there was a distinct lack of commitment on the part of the Lebanese authorities to investigating the crime effectively, and that this investigation was not carried out in accordance with acceptable international standards. The Mission is also of the view that the Lebanese investigation lacks the confidence

67. The ISF forensic team that retrieved vehicle parts from the crime scene took them to their office without photographing them *in situ*. The investigating judge then ordered them to take the parts back to the crater and to photograph them where they found them. The team then tried to do this. The forensic officials also did not use protective equipment such as forensic suits, nor even gloves.

68. On the night of the attack, the military investigating judge ordered the burnt-out vehicles at the crime scene to be removed, apparently because the authorities wanted the road reopened the next day. Bulldozers and tow trucks then drove onto the crime scene area to remove the vehicles in Mr Hariri's convoy. They were then taken to a police holding yard where they were left in the open and exposed to the elements for another six months.

69. The body of one victim, Mr Zahi Abou-Rjeileh, was found a day after the attack, and the medical examiner reported he had been alive for twelve hours after the explosion. The body of another, Mr Abdul Hamid Ghalayini, was found seventeen days later, and by his family rather than by investigating authorities.

70. Another matter of concern explored in the judgment is the arbitrary way in which some victims of the attack on Mr Rafik Hariri received compensation, while others received nothing. Participating victims complained about this in their evidence at trial. The payment of compensation to victims of the attack was indiscriminate, and according to the evidence, often based upon connections rather than an objective assessment of injury or need.

71. Evidence was also given of Syrian military intelligence officials attempting to obtain information about the investigation.

72. The envelope and VHS cassette containing the video of the false claim of responsibility disappeared after Al-Jazeera's Beirut bureau chief, Mr Ghassan Ben-Jeddo, gave them to Mr El-Sayyed, the day after the attack. Mr El-Sayyed says that he gave them to the military investigating judge. What happened to these crucial pieces of evidence is a mystery.

of the population necessary for its results to be accepted.' S/2005/203, Report of the Fact-finding Mission to Lebanon inquiring into the causes, circumstances and consequences of the assassination of former Prime Minister Rafik Hariri, 24 March 2005, executive summary.

73. Innocent people were rounded up, interrogated, held without charge and eventually released.⁴⁷

74. The long detention of the ‘four generals’ was the subject, as noted above, of this UN Human Rights Council’s report. The Lebanese government and judiciary refused to take steps to release the four men long after it was apparent that no legal basis existed to continue what had become an unlawful detention. The Working Group on Arbitrary Detention strongly makes this point.

75. There was an attack on Mr Marwan Hamade’s life on 1 October 2004. Despite his position as a prominent public figure, his case was never properly investigated. Mr Hamade testified in the trial that he had given a statement before an investigating judge. About ten days after the attack the Minister for the Interior visited him in hospital and told him that ‘the Syrian intelligence came, took over the file, and took all the evidence and files and reports to the Syrian intelligence headquarters in Anjar’.⁴⁸ Despite the Syrians leaving Lebanon in April 2005, the attack on Mr Hamade appears not to have been investigated between then and its transfer to Special Tribunal as a connected case under the Statute of the Special Tribunal for Lebanon, in 2009.

76. Mr Wissam Al-Hassan, on loan from the ISF to Mr Hariri as his chief of security at the time of the attack, returned to the ISF to take up a senior position in the investigation into Mr Hariri’s death. He also liaised extensively with the UNIIIC and the Office of the Prosecutor. This was despite the conflict of roles and his obvious lack of neutrality in the investigation.

77. While he was the prime minister of Lebanon, Mr Hariri also had extensive media, property and construction interests that overlapped with his governmental duties.

78. For at least eleven years before his death, Mr Hariri was giving monthly cash payments to the chief of Syrian military intelligence in Lebanon, Mr Rustom Ghazaleh. The evidence was of Mr Hariri paying the late Mr Ghazaleh, who died soon after the evidence was adduced, millions

⁴⁷ Mr Mehlis’s first report to the Security Council stated that ‘As a result of the Commission’s investigation to date, a number of people have been arrested and charged with conspiracy to commit murder and related crimes in connection with the assassination of Mr. Hariri and 22 others. The Commission is of course of the view that all people, including those charged with serious crimes, should be considered innocent until proven guilty following a fair trial’. First UNIIIC report, para. 223. Not one of this ‘number of people’ who were ‘charged with conspiracy to murder’ faced trial before the Special Tribunal, nor so far as I am aware, a Lebanese court. The ‘four generals’ were never charged with committing crimes connected with Mr Hariri’s murder, and self-evidently had not been so charged when the report was written in October 2005.

⁴⁸ Marwan Hamade, T. 8 December 2014, pp 31-36.

of US dollars over the period. The payments started at USD 40,000 per month and increased to USD 67,000 per month, with Mr Ghazaleh demanding an extra month's payment two days before Mr Hariri's murder.

79. The Lebanese government also repeatedly failed to cooperate with the Special Tribunal by responding to legitimate requests for assistance from Defence counsel through the Defence Office. The Trial Chamber had to issue two orders to Lebanon to comply.⁴⁹ Thereafter, it had to engage in a time-wasting exercise of what basically was a lengthy period of negotiation in an effort to convince Lebanon to comply with its international legal obligations pursuant to Security Council resolution 1757.

80. The Trial Chamber expended a great deal of effort into dividing the documents sought into easily understood categories, including specifying the government agency that should have been expected to hold the documents, if they existed. Despite this, Lebanese government officials responded effectively stating that they did not understand the nature of the requests. The Trial Chamber then rewrote what had been perfectly clear orders. It took over four years to resolve an issue that should have resolved itself within weeks, if not a few months at the most, had the Lebanese government been inclined to cooperate with the Defence requests for assistance.

81. These random examples, and it is emphasized that these come from the trial record, suggest that little hope exists that the Lebanese authorities will right the wrong against those who were arbitrarily detained. It is of course appreciated that some of these incidents date back to 2005. But against this, the fact that Mr El-Sayyed's litigation continues before the Special Tribunal indicates that he has not yet attained justice in Lebanon for what occurred.

82. In these circumstances, the United Nations should, if it has not already, move to compensate those who were wrongly detained for years on the basis of the recommendations of its officials. It should formally apologise for what occurred.

⁴⁹ This is detailed in the procedural history, annex A, to the judgment.

D. Some observations on the Defence Office

83. Some observations are made here regarding the experience of having an independent Defence Office, with a head who has a right of audience before the chambers. The points made may assist in critically evaluating this experiment, and hence in deciding whether the model requires modification for adoption in any future international institution.

84. This model does not exist in any other operational international criminal court or tribunal. It has not been replicated in any functioning international criminal court or tribunal established post the Special Tribunal's establishment, namely, the International Residual Mechanism for Criminal Tribunals (2010), the Residual Special Court for Sierra Leone (2012), and the Kosovo Specialist Chambers and Specialist Prosecutor's Office (2016).⁵⁰ No head of a defence office situated with an international court registry has an automatic right of audience before a chamber.

85. The Statute specifies that the Defence Office is an independent organ with an independent Head of the Defence Office, who, under Article 13 (1), 'shall be responsible for the appointment of the Office staff and the drawing up of a list of defence counsel'. Article 13 (2) specifies that the Defence Office:

shall protect the rights of the defence, provide support and assistance to defence counsel and to the persons entitled to legal assistance, including, where appropriate, legal research, collection of evidence and advice, and appearing before the Pre-Trial Judge or a Chamber in respect of specific issues.

86. It bears some similarities to Regulation 77 (2) 'Office of Public Counsel for the defence' of the International Criminal Court's Regulations of the Court that establishes the Office of Public Counsel as a 'wholly independent office' that falls within the Registry 'solely for administrative purposes'. Regulations 77 (4) (a), (b) and (c) provide:

4. The tasks of the Office of Public Counsel for the defence shall include:

⁵⁰ Article 22C of the 2014 Protocol to the Amendments to the Protocol on the Statute of the African Court of Human Rights and Justice (Malabo Protocol) combines the Special Tribunal's and ICC's regulatory framework in establishing an independent Defence Office, including a right of audience before the court. It has not entered into force, having as of 7 August 2020, received fifteen signatures but no ratifications: fifteen ratifications of the 55 State Parties are required for it to enter into force.

(a) Representing and protecting the rights of the defence during the initial stages of the investigation, in particular for the application of article 56, paragraph 2 (d), and rule 47, sub-rule 2.⁵¹

(b) Providing general support and assistance to defence counsel and to the person entitled to legal assistance, including legal research and advice ...;

(c) Appearing, on the instruction or with the leave of the Chamber, in respect of specific issues.

1. How the Head of the Defence Office exercised the rights of audience before a chamber

87. The manner in which successive Heads of the Defence Office have exercised their statutory right to appear before the Trial Chamber has raised some real issues as to whether the ICC model is preferable, namely, where appearance is permitted only on a chamber's direction or with its leave.

88. The Rules give the Head of the Defence Office, or their delegate, a right of audience before a chamber. Under Rule 57 (F):

At the request of a Judge or Chamber, the Registrar, the Defence or where the interests of justice so require, *proprio motu*, the Head of Defence Office or a person designated by him shall have rights of audience in relation to matters of general interest to defence teams, the fairness of the proceedings or the rights of a suspect or accused.

89. Rule 57 (C) specifies that:

The Head of Defence Office shall, for all purposes connected with pre-trial, trial and appellate proceedings, enjoy equal status with the Prosecutor in respect of rights of audience and negotiations *inter partes*.

90. The ICC Regulations do not permit this for its chief of Office of Public Counsel for the defence, specifying in Regulation 77 (4) (c) and (d) that the Office may appear only 'on the

⁵¹ Article 56 (2) (d) relates to having counsel appearing for someone who has been arrested or appears before the court in response to a summons, while Rule 47 (2) relates to the presence of counsel if the Prosecutor is authorized to take testimony pursuant to Article 15 (2).

instruction or with the leave of the Chamber'. The office also acts for suspects or accused persons and advances submissions on the instructions or with the leave of the Chamber. When necessary, this office has filed *amicus* briefs in cases, or appeared with leave. This, in my view, is an efficient model that has worked well in practice.

91. By contrast, the experience at trial at the Special Tribunal was of the Head of the Defence Office not always properly exercising this right of audience during the trial. To provide some insight in this respect and thus to illustrate the issues the Trial Chamber faced in the proceedings, several instances are highlighted below.

(a) Intervention during the Prosecutor's opening statement in *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*

92. The Prosecutor made a very late application to join the case of Hassan Habib Merhi to that of the case of the initial four Accused.⁵² He did this on 18 December 2013, only four weeks before the scheduled commencement of the trial, when he asked the Pre-Trial Judge to refer the issue of joinder to the Trial Chamber.⁵³ The Merhi Defence opposed the referral,⁵⁴ and the Pre-Trial Judge made the referral on 2 January 2005.⁵⁵ The Prosecutor, meanwhile, on 30 December 2013, had applied directly to the Trial Chamber asking it to join the two cases.⁵⁶

93. The Trial Chamber invited counsel for Mr Merhi to attend the opening of the *Ayyash* case as observers. Instead of doing this, the three assigned counsel sat in the public gallery of the court, wearing their court robes. The Head of the Defence Office, Mr François Roux, on the other hand, appeared in the court room, accompanied by four lawyers from his office and announced that he was 'representing in these hearings the counsel, defence of Mr. Merhi, Mr. Aouini and Jad Khalil from Beirut, they are both here in the gallery'.⁵⁷

⁵² Annex A to the judgment, of the procedural history, fully sets this out.

⁵³ STL-13-04/I/PTJ, *Prosecutor v. Merhi*, F0033, Prosecution Request for Rule 89 (E) Referral of the Matter of Joinder, 18 December 2013; STL-11-01/PT/TC, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, F1272, Prosecution Notice of Request for Pre-Trial Judge to Refer the Matter of Joinder of the Merhi Case to the Ayyash et al. case to the Trial Chamber, 18 December 2013.

⁵⁴ STL-13-04/I/PTJ, *Prosecutor v. Merhi*, F0046, Observations de la Défense relatives à la requête du Procureur aux fins de transfert à la Chambre de première instance de la question de la jonction, 30 December 2013.

⁵⁵ Joinder referral decision.

⁵⁶ STL-11-01/PT/TC, *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*, F1289, Prosecution Motion for Joinder, 30 December 2013.

⁵⁷ T. 16 January 2014, p. 3.

94. This was legally incorrect. The Head of the Defence Office has no representational role for Defence counsel who are already assigned to represent an Accused.

95. The Trial Chamber had decided to allow Mr Roux to make a brief statement ‘concerning the rights of a fifth accused who is not a party to this trial’.⁵⁸ Mr Roux, however, objected to the Trial Chamber’s expressed order of proceedings, and stood up to demand a right to address it before the Prosecutor made his opening. He said:

This is just a question of procedure. We’re not following the right procedure. I believe I need to present my express reservations before any address of the merits. This is why -- this needs to be done according to procedures, according to the Lebanese procedure. Express reservations need to be made before addressing the substance of the case, the merits of the case, and of course we are following Lebanese procedure.⁵⁹

96. This too was legally incorrect. Nowhere does the Special Tribunal’s Statute or Rules specify that this international hybrid tribunal follows what Mr Roux described as ‘Lebanese procedure’. In fact, its Rules of Procedure and Evidence essentially combine the procedures of the ICC and the International Criminal Tribunal for the Former Yugoslavia (ICTY), but with some procedural innovations, such as the addition of a Pre-Trial Judge. The applicable procedural law is international criminal procedural law.

97. By analogy, Mr Roux’s intervention in this manner would be tantamount to his equivalent at the ICC, the Principal Counsel of the ICC’s Office of Public Counsel for the defence, informing the court that it was not following ‘correct procedure’ by not permitting him to address the court before the Prosecutor. And after this, telling the court that it should be applying the court procedures of, say, the Democratic Republic of the Congo or the Central African Republic—depending on the case—rather than those in the Rome Statute or the ICC’s Rules of Procedure and Evidence. It is difficult to imagine this occurring.

98. When Mr Roux had the opportunity to make his comments the following week, he again complained about not being allowed to make them before the Prosecutor’s opening, and criticised the Prosecutor for mentioning Mr Merhi’s name 124 times in his opening statement. And further,

⁵⁸ T. 16 January 2014, p. 6.

⁵⁹ T. 16 January 2014, p. 8.

that the Merhi Defence could not respond to this, and thus was unable to properly defend Mr Merhi.⁶⁰ He also stated:

Since Mr. Merhi's Defence team has no leave to address the Court in this hearing, it has asked me to speak on its behalf. The Merhi Defence team - again, let's remember we're still last Thursday morning – thanks the Bench for its invitation to attend this hearing as guest observers, a notion *sui generis* that does not exist in our Rules.⁶¹

99. Again, these statements are legally and factually incorrect. The indictment filed by the Prosecutor on 21 June 2013 named Mr Merhi as a co-conspirator to the conspiracy charged; his name is mentioned 48 times in the document. The indictment against Mr Merhi, filed on 5 June 2013 and confirmed on 31 July 2013, also charged him with participating in a conspiracy and of being an accomplice to committing a terrorist act by means of an explosive device, among other charges.

100. In these circumstances, no legal basis could exist to suppress the name of a co-accused—although indicted in another, as yet, not joined case—from a Prosecutor's opening statement, which is based on the pleadings in the indictment. These included the allegation that Mr Merhi had participated in the conspiracy and other counts charged. He was alleged to have had an integral role in the conspiracy.

101. Mr Roux also had no basis to state that counsel acting for Mr Merhi had 'no leave to address the Court in this hearing'. The Trial Chamber had expressly invited them to attend as observers and would have allowed them to address the court if they had requested this. Mr Roux as the Head of the Defence Office had no role in second-guessing whether the Trial Chamber would grant a right of audience to counsel in another intrinsically connected case.

102. The Trial Chamber, in its written decision to join the two cases, responded to Mr Roux's intervention. It is worth extracting a portion of the decision, if only to highlight how misguided and time-wasting the interruption was, including having to deal with it in a written decision. The Trial Chamber held:

⁶⁰ T. 20 January 2014, p. 9.

⁶¹ T. 20 January 2014, p. 8.

At a pre-trial conference in the *Ayyash* case on 9 January 2014, the Head of the Defence Office stated that the Defence Office was the ‘sole entity’ to represent the interests of Mr. Merhi in the *Ayyash* case, a point he repeated on 20 January 2014 after the Prosecutor’s and Legal Representatives of Victims’ opening statements in the *Ayyash* case. However, at the same time he stated, somewhat paradoxically, that it was not his role to respond on behalf of counsel for Mr. Merhi to the Prosecutor’s opening statement because ‘I don’t have any knowledge of the merits of the case file.’

The Trial Chamber, applying the Statute and the Rules, decides who will appear before it and in what capacity. Despite the provisions of Rule 57 (F), the Trial Chamber does not agree that Mr. Merhi’s interests required the intervention of the Head of the Defence Office in that manner as ‘sole entity’ *after* he had appointed three counsel to represent Mr Merhi at trial. Moreover, the Trial Chamber repeatedly invited counsel for Mr. Merhi to be present’ in the *Ayyash* proceedings as ‘observers, and they chose to observe the proceedings from the court’s public gallery during the opening of the case, and for the first three days of evidence. This was despite the Trial Chamber’s invitation for them to sit in the courtroom. Doing so could have enabled them to raise any concerns or reservations—not as a Party, as no joinder had been ordered—but by through the Trial Chamber’s general powers under Rules 130 and 131 to control its proceedings and ensure that they remain fair, impartial, and expeditious.⁶²

103. The Trial Chamber also rejected as ‘without legal foundation’ his arguments that the Prosecutor should not have named Mr Merhi in his opening.⁶³

(b) Intervention in the litigation concerning the reported death of Mustafa Amine Badreddine

104. After Mr Badreddine’s reported death in Syria in mid-May 2016, the Head of the Defence Office several times decided to intervene in the proceedings. He did this to support general Defence submissions, but also, additionally, to make representations on behalf of someone that he was arguing was deceased.

⁶² F1424, Decision on Trial Management and Reasons for Decision on Joinder, 25 February 2014, paras 7-8 (footnotes omitted).

⁶³ Decision on Trial Management and Reasons for Decision on Joinder, 25 February 2014, para. 59.

105. The Trial Chamber, on 11 July 2016, on the Appeals Chamber's three to two majority instruction, had terminated the proceedings against Mr Badreddine and ordered the Prosecutor to file an amended indictment to reflect this.⁶⁴ While it was doing this, the trial continued.

106. Mr Roux, however, again decided to intervene. In his filing, he observed that Mr Badreddine, whether dead or no longer in the proceedings, continued to have a presumption of innocence. He stated that:

The Head of Defence Office reiterates his observations aimed at ensuring that the presumption of innocence of Mr Badreddine is respected, including notably the prohibition of admitting into evidence any material relating exclusively to Mr Badreddine.⁶⁵

107. He submitted that Mr Badreddine's name must be removed from the intended amendment to the indictment, because he was no longer an Accused person. Consequently, the Trial Chamber should '**DECLARE** inadmissible any evidence presented exclusively against Mr Mustapha Amine Badreddine following his death'.⁶⁶

108. The Defence Office, however, had no mandate to intervene to protect the 'rights' of someone who was neither a suspect nor an Accused before the Special Tribunal.

109. Employees from his office, who were daily attending court, also twice stood up and attempted to prevent the Prosecution from leading relevant evidence relating to counts in the consolidated indictment. They were doing this—not to protect the rights of the defence as specified in Article 13 (2) of the Statute—but rather to protect the rights of Mr Badreddine, who the Appeals Chamber had decided by majority, was deceased, and was therefore no longer an accused, a suspect or a person (namely a live one) otherwise entitled to legal assistance.

110. On 30 August 2016, just before the resumption of the evidence of the Prosecution's cell site expert witness, Mr J. E. Philips, a Defence Office lawyer who was sitting in the courtroom

⁶⁴ F2633, Order Terminating Proceedings Against Mustafa Amine Badreddine Without Prejudice and Ordering the Filing of an Amended Consolidated Indictment, 11 July 2016.

⁶⁵ F2702, Observations of the Head of Defence Office on the Trial Chamber's Decision of 29 July 2016, 25 August 2016, para. 1.

⁶⁶ Observations of the Head of Defence Office on the Trial Chamber's Decision of 29 July 2016, 25 August 2016, p. 7. (bold emphasis in original).

rose to tell the Trial Chamber that it should not permit Mr Badreddine's name to be used on a slide prepared by the expert during his evidence. She referred to Defence Office filings and stated:

And in those filings, we submitted that the name of Badreddine ought to be removed from the indictment. And this is only to put on the record that right now there is a dispute on the indictment, and so that we understand that the PowerPoint names Mr. Badreddine and attributes phone numbers to Mr. Badreddine.⁶⁷

111. And, 'we are protecting the rights for presumption of innocence that Badreddine benefits from and which goes beyond the interested party's death.' The Trial Chamber sought but did not receive, an answer from her as to the Defence Office's standing to make this intervention during the Prosecution's presentation of its evidence.⁶⁸

112. Five hearings days later, on 6 September 2016, and still during Mr Philips's evidence, another Defence Office lawyer again stood up in court in an attempt to prevent the Prosecution from leading evidence in which Mr Badreddine was named as a co-conspirator.

113. The lawyer was objecting to the expert witness testifying about a slide, in exhibit P1118, slide number 148 entitled, 'Green 023: Mustafa Badreddine', below which was a text box stating, 'The apex of the command group'. That evidence was consistent with the Prosecutor's case as pleaded in the consolidated indictment. The lawyer stood up and interrupted Prosecution counsel—mid-question and mid-sentence—in an attempt to prevent the Prosecution leading evidence in a case to which the Defence Office was not a party.⁶⁹

114. But even after being told he had no standing to make these submissions, and to resume his seat,⁷⁰ the lawyer continued, stating 'Mr. Badreddine today is no longer a suspect, and therefore I

⁶⁷ T. 30 August 2016, p. 129.

⁶⁸ As Presiding Judge I asked, 'What is your standing to make submissions in relation to someone who is neither an accused person nor a suspect before the Court? Article 16 doesn't provide that. It refers to an accused person'. MS. BARBEAU: [Interpretation] Once again, I can't tell you anything more. This is our submission. That we are protecting the rights for presumption of innocence that Badreddine benefits from and which goes beyond the interested party's death'. T. 30 August 2016, p. 130.

⁶⁹ T. 6 September 2016, p. 47.

⁷⁰ PRESIDING JUDGE RE: You appear to be making, Mr. Soufi, an intervention, it would appear, under Rule 57 of the Rules of Procedure and Evidence. Can I please remind you of the terms of the Practice Direction on the Role of the Head of Defence Office in Proceedings before the Tribunal, dated the 30th of March, 2011, in particular paragraph 8, which reads: "If the Head of Defence Office considers that the interests of justice require his intervention orally or in writing *proprio motu*, pursuant to Rule 57(F), he shall inform the Pre-Trial Judge or Chamber in advance whenever possible. The Pre-Trial Judge or Chamber shall hear the other parties to the proceedings on the issue of whether the

fail to understand why the Prosecutor in open session presents him as having been involved in the crime. That was the only reason'.⁷¹

115. It would be inconceivable that employees from the defence offices situated within the registries of other international court and tribunals could come into a courtroom and try to assert in this manner the rights of someone they were arguing was deceased. And further, to attempt to prevent the court from hearing evidence of that person's alleged involvement in a conspiracy alleged in an indictment. Yet, this is exactly what happened here.

116. The Trial Chamber issued its decision confirming the amended consolidated indictment the following day, 7 September 2016. It noted that, as the case against Mr Badreddine had been terminated, neither Defence counsel nor the Head of the Defence Office had standing to make submissions relating to his 'interests'. Nor could they represent a deceased person in criminal proceedings.⁷² The Trial Chamber then made the following order to Mr Roux:

The Head of the Defence Office is obliged, under the relevant Practice Direction, to inform a Chamber in advance of making submissions *proprio motu* in the interests of justice. This was not done. Article 8 of the Practice Direction under the heading 'Section 2 Submissions during Proceedings', states:

If the Head of Defence Office considers that the interests of justice require his intervention orally or in writing *proprio motu*, pursuant to Rule 57(F), he shall inform the Pre-Trial Judge or Chamber in advance whenever possible. The Pre-Trial Judge or Chamber shall hear the other parties to the proceedings on the issue of whether the intervention is in the interests of justice only if the exceptional circumstances of the Case so require.

The Trial Chamber reminds the Head of Defence Office of the wording of, and his obligations under, the Practice Direction and orders him to comply with it in any future anticipated interventions under Rule 57 (F). Cogent policy reasons exist to allow a Chamber to decide whether it should hear the Parties on whether the Head of Defence

intervention is in the interests of justice only if the exceptional circumstances of the case so require". The Trial Chamber directs the Head of the Defence Office to comply with paragraph 8 of the practice direction I have just read. If you wish to make an intervention, you must notify the Chamber in advance in writing. Please resume your seat, Mr. Soufi. Please continue, Mr. Povoas'. T. 6 September 2016, p. 48. He did not. He continued arguing.

⁷¹ T. 6 September 2016, p. 51.

⁷² F2713, Decision Amending the Consolidated Indictment, 7 September 2016, para. 25.

Office—who is not a Party to proceedings, and has assigned Defence counsel to represent the Accused—may intervene in the proceedings.⁷³

117. These three examples demonstrate the Defence Office’s intervention in the proceedings in a manner that could be construed as disruptive.

2. Daily appearances in the trial by multiple representatives of the Defence Office

118. The Defence Office is not a party to proceedings at the Special Tribunal. The proceedings are brought in the name of the Prosecutor and are against the Accused persons named in an indictment. The legal representatives of victims participating in the proceedings are participants. The Head of the Defence Office is not.

119. The Defence Office is the equivalent of an international legal aid office that appoints defence counsel, provides them with assistance, and makes international requests for assistance on their behalf. Its Head also has some statutory functions in relation to the oversight of effective legal representation and others, including consultation in the management of the Special Tribunal and in amendments to the Rules of Procedure and Evidence.

120. Defence Office lawyers, however, sat in the courtroom on every day of the trial, and in every court session. They also did this when the court moved into closed and private session without seeking the Trial Chamber’s permission to remain there. Sometimes the number of Defence Office lawyers exceeded that of the Prosecution or counsel for an Accused. It generally exceeded the number of Trial Chamber staff who were in the courtroom assisting the judges, normally one or two. Sometimes the Head or his (or her) Deputy came to court, and sometimes both. But the rationale for the Defence Office having lawyers in the courtroom every day was never adequately explained.

121. These daily appearances cannot have been to monitor the effectiveness of the legal representation of the Accused, as this could have been done by reading the live transcript, or the daily corrected version, out of court. Reading a transcript of a day’s session is much quicker and more efficient than sitting, for unexplained reasons, in a courtroom all day. And in any event, as

⁷³ Decision Amending the Consolidated Indictment, 7 September 2016, paras 61-62, and disposition.

noted above, Mr Roux took the firm view that he could make no substantive submissions on any evidentiary issue before the Trial Chamber because his Office was not following the proceedings as such. This was with the obvious exception, noted above, of his Office twice attempting to stop the Prosecution from leading evidence in its case.

122. Sending lawyers into court every day must have come at a considerable cost to the Special Tribunal. In this respect, it is noted that the Defence Office throughout the proceedings, with its eleven budgeted posts,⁷⁴ had more staff than the Trial Chamber, which was actually trying the case and simultaneously writing hundreds of decisions, and then drafting the judgment.

123. In the first few weeks of the trial, as the daily presence of representatives of the Defence Office was unexplained, in my capacity as the Presiding Judge of the Trial Chamber, I queried it. It did not appear to be an efficient use of the Special Tribunal's limited resources. The first response to the query was that:

it strikes me that it was taken for read that the Defence Office would be present when it wished to do so and we have been present right from the beginning of these proceedings and we will continue to do so with each passing day.⁷⁵

124. On the second occasion, two weeks later, the same lawyer from the Defence Office attempted to introduce himself by stating on the record who the Defence Office was 'represented by' that day. When told that the Defence Office was not a party to the proceedings, but rather an observer, he insisted that the names of Defence Office lawyers sitting in the courtroom must be

⁷⁴ The Head of the Defence Office is also remunerated at the level of D2 (Director) level in the UN common system, and the Deputy at P5 (Professional) level. The Prosecutor, who has an office of 100 lawyers, investigators, analysts and other staff is remunerated two levels above as an Under Secretary-General. There is an incomparable difference between their different roles and responsibilities.

⁷⁵ T. 24 January 2014, p. 2.

recorded in the court transcript.⁷⁶ The lawyer also stated that to accomplish its mission, it was essential that the Defence Office was in court every day.⁷⁷

125. This continued throughout the trial right through the closing submissions, when Mr Roux's successor as the Head of the Defence Office, Ms Dorothée Le Fraper du Hellen, and her Deputy and other Defence Office lawyers, appeared in the courtroom. This was despite Ms Le Fraper du Hellen's conflict of role and interest in having formerly acted as co-counsel for Mr Merhi.⁷⁸

126. An analogous situation would be of a body with statutory oversight over the workings of a prosecution service sending lawyers into every trial, every day, to watch the proceedings. This simply would not occur. Or of international trial monitors in transitional justice situations observing court proceedings to report on whether they met international standards. The Special Tribunal's trials, however, are not comparable to this situation.

3. Lebanon's cooperation with the Special Tribunal's request for assistance from the Defence Office

127. Mr Roux, as Head of the Defence Office, also did not adequately fulfil his mandate of protecting the rights of the defence by assisting Defence counsel in obtaining assistance from Lebanon.

128. The Special Tribunal, like every other international criminal court and tribunal, has no enforcement arm and relies upon the cooperation of States. The Special Tribunal for Lebanon was established by United Nations Security Council resolution 1757, pursuant to Chapter VII of the

⁷⁶ PRESIDING JUDGE RE: I just want to make an observation here that the Defence Office isn't actually a party to the proceedings and you're not actually – we're noting that the Defence Office has had two people sitting in the proceedings observing, but you're not actually making an appearance for anybody because the parties are the Prosecutor and the four accused and their lawyers and the Legal Representative for the Victims of course are participating parties. So in that sense, all we're doing is noting the fact that the Defence Office has a lawyer and a case manager sitting in the court, for reasons we are not privy to and haven't quite been explained to us why the Defence Office has two people in the court every day. But maybe Mr. Roux can explain that at some point.

MR. SOUFI: [Interpretation] Yes, perhaps he will come and explain that. I just wanted to point it out for the accuracy of the record. I know that it's something that's important for you, Your Honour. I'm very sorry if I have delayed the proceedings; T. 25 January 2014, pp 1-2.

⁷⁷ T. 25 January 2014, p. 3, saying, 'in order to accomplish our mission, which includes observing the proceedings in order to be best able to defend the interests of the accused and the Defence - Defence with a capital D – we believe it's essential, very important, for us to be present to attend the hearings on a daily basis and that's why we are present in court and we shall be in the future'.

⁷⁸ This is detailed in my 'Declaration by Judge David Re in relation to certain fair trial aspects concerning the Defence of Hassan Habib Merhi', chapter XVII of the judgment, below.

UN Charter, and Lebanon accordingly must comply with the Special Tribunal's requests for assistance, irrespective of which of its four independent organs they emanate from. The Rules specifically provide for cooperation with Defence requests for assistance. This is an essential feature of equality of arms between the prosecution and defence, as part of the right to a fair trial mandated under international human rights.

129. The Defence Office thus has a vital role in assisting Defence counsel in obtaining Lebanon's cooperation in their investigations and preparation for trial. Non-cooperation could provide a valid basis to stay a case, either conditionally or permanently, if a chamber could not guarantee a fair trial to an Accused by virtue of a failure to provide such information to the defence.

130. Rule 15, 'Cooperation between National or International Entities and the Defence' provides that:

The Head of Defence Office may seek cooperation in a manner consistent with the Statute from any State, entity or person to assist with the defence of suspects and accused before the Tribunal. In a particular case, such cooperation shall be upon request of the Defence.

131. Under Rules 16 (C) and 18 (C), the Head of the Defence Office may make requests for assistance and cooperation to Lebanon and Third States at the request of the Defence, unless the Head of the Defence Office considers the request to be frivolous.

132. From March 2012 onwards, the Sabra Defence sent some 119 requests for assistance to the Lebanese authorities through the Head of the Defence Office, under a Memorandum of Understanding between the Government of the Lebanese Republic and the Defence Office on the Modalities of Their Cooperation, signed on 28 July 2010. Mr Roux and the Lebanese Minister for Justice were its signatories. The procedural background to the non-cooperation issue is detailed in the procedural history, annex A to the judgment.⁷⁹

133. It was obvious by the time the Trial Chamber assumed jurisdiction in the case, on 25 October 2013, that Lebanon was not cooperating with the Special Tribunal, as the 119 requests for assistance remained outstanding. The Defence Office's memorandum was not achieving its desired aim, namely, to assist the Defence of the Accused in their trial preparations. It was flawed. It had

⁷⁹ At paras 7048-7073.

no enforcement mechanism and only related to the pre-trial phase. Evidently, it required modification or renegotiation.

134. Relevantly, Article 5 (3) of the memorandum, headed, ‘Assistance for Coercive Measures’, provided that:

The Government shall designate the President of the Court of Cassation as Liaison Judge to enforce orders for cooperation issued by the Pre-Trial Judge. To this end, and in accordance with the Statute and the Rules, the Liaison Judge shall, without delay:

- a. maintain the confidentiality of the orders, unless the Pre-Trial Judge considers them to be public;
- b. take any measures necessary to ensure enforcement of the orders issued by the Pre-Trial Judge;
- c. enforce the aforementioned orders or transmit them directly to the competent authorities for enforcement, without delay.

135. The First President of the Lebanese Court of Cassation correctly brought to the Special Tribunal’s attention, in a letter dated 27 November 2013, that he had no enforcement powers as the ‘Liaison Judge’, and that he did not represent the Lebanese Government. He also pointed to the separation of powers between the judiciary and the executive that prevented him from acting as the enforcement mechanism.⁸⁰ He was effectively operating as a post-box and no longer wanted this function.

136. After exploring the issue further, and in an order issued on 13 January 2014, the Trial Chamber agreed. It noted that it was ‘not convinced that this is the most effective or expeditious way to convey a request for assistance to a State’, namely to send requests for assistance to a body that had no means to make compulsive orders to produce documents. It also suggested that Mr Roux should enter into arrangements similar to those that the Prosecutor had with the Lebanese Prosecutor-General, namely with an entity having direct enforcement powers. It also pointed out that the memorandum only referred to the Pre-Trial Judge and not to the Trial Chamber.⁸¹

⁸⁰ Order to cooperate and provide information sought by Badreddine Defence, paras 19-20.

⁸¹ Order to cooperate and provide information sought by Badreddine Defence, paras 21-22.

137. This was urgent: the trial was due to commence on 16 January 2014. Mr Roux, however, resisted this suggestion. On 31 January 2014, the Trial Chamber invited him to ‘make submissions on the most effective way to ensure cooperation with the Lebanese authorities.’⁸²

138. Almost three weeks later, on 19 February 2014, Mr Roux responded, stating that he did not intend to take steps to amend the memorandum. His reasoning was the Lebanese Government had agreed to be bound by the terms of the memorandum because it referred to Security Council resolution 1757, and:

As a consequence, the Head of Defence Office does not intend to undertake steps with a view to amending the Memorandum of Understanding, which fully satisfies the signatories.⁸³

139. However, the signatories who apparently were fully satisfied with the memorandum were Mr Roux, and the *former* Lebanese Minister for Justice, Mr Ibrahim Najjar. Moreover, it was negotiated before there were any Accused persons or even a pre-trial phase. It was no more than a theoretical document that was not working in practice.

140. Mr Roux had never negotiated or put in place an effective mechanism for Defence requests for assistance to Lebanon. Moreover, even after the trial’s commencement and in the face of abundant evidence that the Sabra and Badreddine Defence were not receiving the material necessary to defend the Accused, he was still refusing to accept this reality.

141. On 4 March 2014, the Trial Chamber held a status conference. It again heard submissions on the issue of Lebanon’s cooperation with the Special Tribunal from the Badreddine and Sabra Defence, and Mr Roux. Counsel for Mr Sabra stated that they had received material from ‘the Lebanese’, some of which was within the terms of their requests for assistance relevant to this decision. Mr Roux stated, however, he did not ‘envisage in any shape or form to request any modification at all’ to his memorandum.⁸⁴

⁸² F1379, Decision on Second and Fifth Motions by Counsel for Assad Hassan Sabra and Two Orders to Lebanon to Cooperate with the Tribunal, 31 January 2014. (Decision granting in part Sabra Defence motion for cooperation and orders to cooperate), paras 15-16, disposition.

⁸³ STL-11-01/T/TC, F1412, Conclusions of the Defence Office on the Cooperation of Lebanon, 19 February 2014, para. 4.

⁸⁴ T. 4 March 2014, p. 54.

142. The Trial Chamber consequently, on 31 March 2014, ordered Lebanon to cooperate and to provide the requested material. In doing this, it deliberately bypassed the Defence Office and its (non-functional) memorandum and issued its orders under Rule 20 (A) directly to Lebanon. In the decision it pointed out, regarding Mr Roux's expressed position, that:

whether the text of the Memorandum 'fully satisfies' the signatories—the Head of the Defence Office and the former Lebanese Minister for Justice—is not the test; the issue is whether it is producing the required results for the Defence counsel who need assistance in preparing their cases for trial.⁸⁵

And, further:

The Trial Chamber's view is that the Head of the Defence Office should renegotiate or amend the Memorandum of Understanding to ensure that it contains the necessary additional enforcement mechanisms for Defence requests for assistance. One possibility could be for the Head of the Defence Office to approach the Lebanese authorities to have designated an official with the necessary judicial enforcement powers to act in relation to Defence requests for assistance made under the Memorandum of Understanding. There could be other possibilities.⁸⁶

143. The matter continued, but without Mr Roux budging from his entrenched position that he and Mr Najjar were fully satisfied with the memorandum, irrespective of the reality of whether it was working or not, and sidestepping by omission the fact that Mr Najjar was the *former* minister.

144. The Trial Chamber dealt with this matter again in a status conference on 16 June 2014, attended by the Deputy Head of the Defence Office. As Presiding Judge, I pointed out that:

It is obvious to the Trial Chamber that the MOU has not been working, and so far as we can ascertain, no requests have been ascertained pursuant to this Memorandum of Understanding.⁸⁷

...

⁸⁵ F1471, Further Decision on Motions Under Rule 20 (A) by Counsel for Assad Hassan Sabra and Four Orders to Lebanon to Cooperate with the Tribunal, 31 March 2014, (Further order to cooperate with Tribunal), para 25.

⁸⁶ Further order to cooperate with Tribunal, para 35.

⁸⁷ T. 16 June 2014, p. 29.

The Trial Chamber again stated that the Head of the Defence Office should renegotiate or amend the MOU to ensure that it contains the necessary additional enforcement mechanism. The Trial Chamber, hoping that the Head of the Defence Office would cooperate in this respect, stopped short of issuing an order to him.

In the meantime, the Chamber, not having received a response from Lebanon, intervened and sought the assistance of our -- the Tribunal's Beirut office to find out what had happened. Now, this resulted in a second identical letter from the minister -- almost identical letter from the minister of justice which was sent and received last Thursday, the 9th of June, in which the minister said he'd already responded on the 5th of May, and this, of course, is completely correct. However, the minister said that he had not executed the order of the 31st of March because of the non-existence of an accord between the Lebanese government and the Defence Office to execute these orders and that the Registrar had specifically asked that the Prosecutor-General of Lebanon not be asked to assist in executing in the orders.

The minister of justice said that the MOU between the Lebanese government and the Defence Office must be amended to have a designated person enforce the Trial Chamber's and the Appeals Chamber's orders. Now, this is of course precisely what the Trial Chamber has three times said to the Head of the Defence Office. Now it is abundantly clear that one of the parties to the MOU, that is the minister of justice of Lebanon, is unhappy with it and wants it renegotiated. It is clear that the Lebanese authorities are not satisfied with it. As a result of this, the Trial Chamber will now order the Head of the Defence Office to do this, to renegotiate it. We'll issue a written decision shortly to that effect.⁸⁸

145. Mr Roux did not wait for the written order, and on 27 June 2014, filed a notification stating that he and the Registrar had agreed on a method to renegotiate the memorandum.⁸⁹

146. This, however, was seven months after Lebanon's First President of the Court of Cassation had notified the Special Tribunal that the memorandum was unenforceable, and five and a half

⁸⁸ T. 16 June 2014, pp 31-33. The Deputy Head of the Defence Office also informed the Trial Chamber that the Defence Office had been notified two days earlier that 'for the first time that the Lebanese government wishes to amend this MOU'. And further, that following the status conference on 10 April 2014, 'We informed the Lebanese authorities that the Defence Office was available to the Lebanese government to undertake, if it so wished, and amendment to the protocol'. T. 16 June 2014, p. 39.

⁸⁹ F1600, Notification from the Defence Office further to the oral order dated 16 June 2014 and the "Clarification Regarding Orders to Lebanon to Cooperate with the Special Tribunal" dated 23 June 2014, 27 June 2014.

months into the trial. As set out in the procedural history, in annex A to the judgment, the issue of Lebanon's cooperation with the defence was not resolved until August 2016, some four years after the initial requests had been sent to Lebanon through the Defence Office.

147. The only conclusion available from the facts above, and as incredible as it sounds, is that Mr Roux's intransigence certainly delayed, if not actually impeded Lebanon's cooperation with the defence. This fits uneasily with his statutory mandate to 'protect the rights of the defence'.

4. Head of the Defence Office's intervention when the Trial Chamber sought submissions on the applicable law

148. The Head of the Defence Office also intervened when the Trial Chamber, on 27 July 2017, ordered the Parties, and invited the Legal Representative of Victims, to file submissions on the applicable law on the counts charged in the amended consolidated indictment.⁹⁰

149. On 25 August 2017, Mr Roux sent an *ex-parte* email directly to the three Trial Chamber and two alternate judges, stating that he intended *proprio motu* to make submissions under Rule 57 (F). It was not, however, an administrative email; rather it contained substantive legal arguments concerning the interpretation of the rule. Mr Roux's email also contained a memorandum labelled 'strictly confidential' that in effect was asking the Trial Chamber to reconsider a previous decision it had made.

150. It is highly improper to communicate directly with judges in such a manner, namely, on a substantive legal issue and additionally, without informing or copying the Parties. This is regulated by the Special Tribunal's 'A Code of Professional Conduct for Counsel Appearing Before the Tribunal'—that is binding on the Head of the Defence Office—that specifies, at clause 40 that:

Counsel shall not contact a Judge directly in regard to any matters relevant to proceedings, unless otherwise invited or instructed by the judge and only if the other party is also represented.

⁹⁰ F3254, Order to Parties and Legal Representatives of Victims to file submissions and observations on Lebanese law, 27 July 2017.

151. The Trial Chamber immediately had the email forwarded to the Parties and the Legal Representative of Victims, asking the Prosecution if it wished to make submissions on the matter. It did. Of Mr Roux's conduct, the Trial Chamber noted in a decision on 7 September 2017, that:

Communications of this nature should go through the Trial Chamber's senior legal officer, must be copied to the Parties and Legal Representatives of Victims, and preferably, should be filed. Substantive legal submissions should not be made in *ex-parte* emails.⁹¹

152. The Trial Chamber, on 29 August 2017, and by email, then sought from Mr Roux a submission outlining the reasons for his anticipated intervention. Instead of responding to this, Mr Roux filed submissions on 31 August 2017 stating why he had the right to make submissions. He failed, as requested, to state the reasons for his intervention in the matter.

153. In its decision of 7 September 2017, the Trial Chamber decided to permit Mr Roux to file observations on the applicable law, but limited to 3,000 words and confined to the terms of its order to the Parties. Namely, submissions on the elements of the offences charged and the applicable modes of liability.

154. But instead of doing this, Mr Roux, the following day, 8 September 2017, filed an application to the Trial Chamber asking it to:

- STAY the ruling on the issue of the applicable law opened by the Chamber following its Order of 27 July 2017;

- INVITE the parties and the Head of Defence Office to be heard on the consequences of the ongoing proceedings on the applicable law with respect to the fairness of the proceedings and the rights of the accused in the *Ayyash et al.* case.⁹²

155. The basis for his application was that the Pre-Trial Judge had filed an application under Rule 68 (G) to the Appeals Chamber seeking a ruling on the applicable law on an indictment filed in a connected case, and the Trial Chamber's order related to matters the subject of this. This, however, was misconceived.

⁹¹ F3313, Decision on observations from Head of Defence Office on Lebanese criminal law, 7 September 2007, para. 7.

⁹² F3316, Submissions *proprio motu* from the Head of Defence Office following the Trial Chamber's Order of 27 July 2017 on the Applicable Law, 8 September 2017.

156. The Trial Chamber dismissed Mr Roux's application, which had not been supported by the Defence of any of the four Accused. It noted that Mr Roux's application was factually and legally incorrect, and that it was proceeding on two flawed premises, namely:

The first is that there is a connection between the pre-indictment proceedings before the Appeals Chamber and the legal issues in the *Ayyash* case, whereas there is none. The second is that the Trial Chamber was intending to make findings before hearing any submissions under Rule 167, or indeed final trial submissions, on the applicable law. This is not only speculative, but is misconceived and wrong. This application is without merit.⁹³

157. Mr Roux, however, on 8 September 2017, had sought to have the Trial Chamber certify its decision of 7 September 2017 for interlocutory appeal, with a question of:

Can the right of audience of the Head of Defence Office, in the absence of duly justified exceptional circumstances, be subject to oversight *a priori* by the Chamber?

158. The Trial Chamber dismissed it, holding:

The Trial Chamber's decision to confine the Head of the Defence Office's observations on a specific legal issue to the same topic as that of the Parties and participants—especially in the absence of any information about the topic of his proposed intervention—cannot in any way, much less significantly, 'affect the fair and expeditious conduct of the proceedings, or the outcome of the trial'. The application is without merit and is therefore dismissed.⁹⁴

159. The Head of the Defence Office also did not file any submissions on the applicable law.

160. The sequence of events outlined above, demonstrating how the Defence Office used the Special Tribunal's limited resources, speaks for itself.

⁹³ F3332, Decision dismissing the Head of the Defence Office's application to stay any ruling on the applicable law in the proceedings, 21 September 2017, para. 8.

⁹⁴ Decision denying the Head of the Defence Office certification to appeal the Trial Chamber's 'Decision on Observations from Head of Defence Office on Lebanese criminal law', 22 September 2017.

5. Conclusion

161. In my declaration on whether in certain respects Mr Merhi received a fair trial,⁹⁵ I outlined the conflict of role and interest that the current Head of the Defence Office has, in continuing to monitor the effectiveness of the legal representation of the Accused, in a trial in which she was co-counsel for Mr Merhi until all the evidence was received in the case. I have also pointed out how she and her Deputy had sixteen times disregarded two Trial Chamber orders.

162. The point about Mr Roux, as of the close of 2013, having appointed fifteen counsel to represent the five Accused, of whom fourteen were male, with the sole exception of his former law partner from Montpellier, Ms Le Fraper du Hellen, has already been made in the procedural annex. I only add that this occurred, not in 1913, but in 2013.

163. Nothing more need be said on those matters. However, collectively, these things should raise real concerns about the Defence Office's operation, and how effectively it has fulfilled its statutory mandate 'to protect the rights of the defence'.

164. Specifically, as identified above, the Defence Office: several times disrupted the trial by attempting to assert the rights of someone declared deceased and prevent the Prosecution from leading evidence in a trial; without any legitimate reason and at considerable cost had lawyers in the courtroom every day; impeded the facilitation of defence requests for assistance to Lebanon; improperly directly emailed the Trial Chamber judges, *ex parte*, on substantive legal matters; and repeatedly disobeyed clear Trial Chamber orders.

165. Further, as is set out in my declaration, its current Head cannot fulfil a core statutory function in monitoring the effective legal representation of the Accused in this trial, and potentially in another.

166. Despite the matters pertaining to Mr Roux, and in particular the deficient memorandum of understanding that he negotiated and then refused to renegotiate, he was reappointed by the UN Secretary-General to another three-year term commencing on 1 March 2015.

⁹⁵ Declaration by Judge David Re in relation to certain fair trial aspects concerning the Defence of Hassan Habib Merhi, chapter XVII of the judgment.

167. These observations are necessarily brief, as this is a separate opinion to a judgment. It does not qualitatively evaluate the filings and submissions made by the Defence Office, including to the plenary of judges, about which I have my own personal reservations. The observations are also confined to the conduct of the Defence Office before the Trial Chamber. They do not touch upon anything that has occurred before the Pre-Trial Chamber, the Appeals Chamber, or in two contempt cases, STL-14-05 and STL-14-06. An examination of the record in those other chambers would reveal similar experiences.

168. Having a statutory and independent focal point for the defence is an excellent idea, especially in coordinating international requests for assistance, and in providing defence training, support and assistance. However, the strength of any institution, and its sub-departments, depends upon its leadership. Others can judge for themselves the quality of the leadership described here. These matters set out above, in my view, raise serious issues that must be properly considered in any review of the functions of the Defence Office or its office-holders.

169. In light of what I have highlighted here, the Head of the Defence's statutory right of audience and intervention under Rule 57 (C) and (F) should be reconsidered. In my view, the ICC model is a better theoretical and practical model.

E. The pre-trial phase

170. The delays engendered by lengthy pre-trial processes are also of concern and require careful consideration in any attempt to replicate the Special Tribunal's pre-trial procedures in future international institutions.

171. The procedural history in annex A to this judgment outlines in detail what occurred in the lengthy pre-trial phase before the Pre-Trial Judge in the *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra* case, and its contrast with the much shorter and more efficient pre-trial phase, solely before the Trial Chamber, in the joined case of *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*. This was between the Trial Chamber's decision to join the two cases on 11 February 2014, and the recommencement of the trial on 18 June 2014.

172. The Special Tribunal, uniquely, has a Pre-Trial Chamber in which the Pre-Trial Judge both reviews and confirms the indictment submitted by the Prosecutor, and then retains jurisdiction

over the case in a pre-trial phase until he transfers it to the Trial Chamber for trial. During this pre-trial phase, the Trial Chamber only deals with specified matters such as challenges to the Special Tribunal's jurisdiction, challenges to the form of the indictment, and deciding whether to proceed to a trial *in absentia*. The Pre-Trial Judge may also refer matters to the Trial Chamber for determination. Thus, different aspects of the proceedings may simultaneously be in the two chambers.

173. Rule 89 'Functions after Review of the Indictment' sets out some of Pre-Trial Judge's duties, namely:

(A) After an indictment has been confirmed by the Pre-Trial Judge, he shall coordinate communication between the Parties during the pre-trial phase.

(B) The Pre-Trial Judge shall ensure that the proceedings are not unduly delayed. He shall take any measures necessary to prepare the case for a fair and expeditious trial.

174. The Pre-Trial Judge, under Rule 91 (c), also establishes a 'working plan' under which the Parties and participating victims must file witness and exhibit lists and pre-trial briefs and the Prosecution completes its disclosure of categories of material to the Defence. The Pre-Trial Judge's role is so extensive in this stage that he even sets the trial date, after consultation with the Presiding Judge of the Trial Chamber, Registrar and President, a function reserved in all other international criminal courts and tribunals for the chamber hearing the case at trial.

175. Much has been written about this innovation. However, nothing has yet been published from the perspective of the chamber, the Trial Chamber, which was on at the receiving end of the pre-trial phase. This, in my view, is another Special Tribunal internal mechanism that requires serious review.

176. The Special Tribunal's first President, Judge Antonio Cassese, who assisted in drafting the Statute, and produced the first draft of its Rules of Procedure and Evidence, in his explanatory memorandum of the Rules explained his vision of the Pre-Trial Judge's role:

Like the ICTY Pre-Trial Judges, the STL Pre-Trial Judge is vested with managerial powers over cases; his main task is to organize and speed up pre-trial proceedings. However, unlike the ICTY Pre-Trial Judges, who are members of the Trial Chamber assigned to a particular

case, under the Statute of the STL, the Pre-Trial Judge is not a member of the Trial Chamber, but rather a separate and autonomous Judge, who cannot sit on the Trial Chamber (see Article 2 of the Agreement and Articles 7(a) and 18 of the Statute). While the equivalent body in other tribunals must avoid being “contaminated” by contact with the evidence, the Pre-Trial Judge of the STL is free to deal with the evidential material submitted by the parties and may take a more active role during the initial stages of proceedings.⁹⁶

177. The theory was that the case should be ‘trial-ready’ when the Trial Chamber receives it, and as such should rapidly proceed to an expeditious and effective fair trial, all preparatory work by then having been done. But the reality, like many theories and particularly those proposed in an academic context, does not always match the theory. Perhaps what occurred in the pre-trial phase of this case is an extreme example of this incongruity.

178. The case was anything but trial ready when the Trial Chamber received the ‘case file’ on Friday 25 October 2013, with a trial commencement date of Monday 13 January 2014 already set by the Pre-Trial Judge. The following points are highlighted:

- the Prosecution was still investigating the case, obtaining witness statements and documents and disclosing them to the Defence;
- the *Merhi* case had been indicted but the Accused had not been apprehended and no referral had been made to the Trial Chamber to consider trying him *in absentia*;
- Defence investigations were ongoing and nowhere near complete;
- the Prosecution was still disclosing material to the Defence;
- the translation of thousands of pages of documents from Arabic into English for Defence disclosure was ongoing;
- Lebanon was refusing to provide requested material to the Defence,
- the Sabra Defence, consequently, was seeking a conditional stay of the trial;

⁹⁶ Rules of Procedure and Evidence (as of 25 November 201), Explanatory Memorandum by the Tribunal’s President, para. 11.

- the Prosecution's pre-trial brief was cursory and inadequate, and
- the Prosecution witness and exhibit lists had swollen beyond anything realistic and was in a state of flux:
 - its witness list of 540 names contained twice the number of witnesses, namely the 269, whose evidence was received at trial; and
 - its exhibit list of 8,642 was almost three and a half times larger than the 2,487 Prosecution exhibits received at trial.

179. The Trial Chamber was faced with a virtually unmanageable task, namely, from these thousands of potential exhibits and the lengthy witness list, of trying to familiarise itself with the evidence so as to make the necessary pre-trial decisions in a period of eleven and half weeks. Additionally, it was receiving strong internal and external diplomatic pressure to commence the trial immediately, given the perceived significant delays in the pre-trial phase.

180. Looking at just some of these matters: the overloading of the Prosecution's witness and exhibit lists graphically demonstrates just how problematic things were.

181. The first witness list, of 197 pages, and filed on 15 November 2012, contained 557 names. For most, the summary of the witnesses' expected evidence did not explain much about the content of their anticipated testimony. The corresponding exhibit list contained some 13,170 exhibits. This is what could only be described as a 'just in case' form of 'document dump'.

182. No one person could have had the necessary overview or oversight to have approved an exhibit list of 13,170 exhibits. No trial chamber could possibly deal, in any meaningful manner, with 13,170 documents. Nor could a Pre-Trial Judge or Defence counsel.

183. It was also unclear at this point how many experts and reports the Prosecution intended to use at trial. The Pre-Trial Judge, on 28 February 2013, had transferred to the Trial Chamber the Prosecution's notices filed under Rule 161 to determine the qualifications of the Prosecution's

proposed expert witnesses.⁹⁷ The expert witness summaries, however, were unclear as to the content and significance of their proposed testimony.

184. As an example, the description of the evidence of the two crucial explosives experts, the Argentinian professors whose evidence the Trial Chamber relied upon in the judgment, was described in the most bare terms in the Prosecution's witness list, as:

Witness no. 47, AMBROSINI Daniel PRH188, and Witness no. 337, LUCCIONI Bibiana PRH187:

The witness, an expert on the structural effect of explosions, will testify as to the contents of the joint reports on the explosion in the case of Rafic HARIRI. The witness will also testify about the contents of the joint report of the International College of Experts (ICE).

185. That was it. The Trial Chamber, in an order issued on 19 March 2013, noted that the summaries were not linked to the qualifications of the experts, something essential for determining whether they could be declared as experts pursuant to Rule 161. It ordered the Prosecution to file a short summary of each proposed report explaining how the expert was qualified to give the opinion expressed.⁹⁸

186. The Prosecution, however, expressed surprise at the proposition that this should have been considered before filing the witness list. To put this into perspective, the Office of the Prosecutor had been established on 1 March 2009, and it succeeded an almost four year investigation by the UNIIIC, whose last Commissioner was also the first Prosecutor. The case concerned an explosion, yet no one had apparently thought it necessary to summarise the lengthy and technical forensic reports about the detonation of explosives. Or if they had, it had not been done.

187. In a status conference before the Pre-Trial Judge on 10 April 2013, the Prosecution's acting Chief of Prosecutions stated that the order was 'unforeseen and unforeseeable' and would have a 'significant impact on the Prosecution's resources'. He stated that:

The Trial Chamber order results in the Prosecution to having to summarize 152 expert reports of 134 expert witnesses. And taking into account that several expert witnesses

⁹⁷ Pre-Trial Judge referring Sabra Defence request relating to expert witness notices to Trial Chamber.

⁹⁸ Decision on expert witnesses notices.

provided a number of expert reports and a number of them provided expert reports of several hundreds of pages, we are dealing - and this is a rough estimate - we are dealing with about 8.700 pages that require summaries. And it will not come as a surprise to you, Your Honour, that the expert reports repeatedly, as a common occurrence, deal with complex matters. And this meaning that they have to be very carefully summarized, considering the use the Trial Chamber obviously wishes to make of those summaries.⁹⁹

188. But summarising evidence is a basic function of investigation and trial preparation. This should have been done well *before* the proposed expert witnesses were added to the list.

189. For each proposed expert, the Trial Chamber was required to carefully examine the accompanying report and assess whether that person was qualified to provide an expert opinion. And only then, could it decide whether the report should be received into evidence and, if so, whether the expert had to attend court for questioning. Moreover, before making the decision, for each expert it would have to receive submissions from the Prosecution and counsel for the (then) four Accused, on both the expert's qualifications and the relevance and probative value of each report.

190. At that stage, the Prosecution was seemingly relying upon the evidence of some 134 experts whose qualifications and reports had not been summarised, with 8,700 pages of expert opinion, on complex and technical matters. The Trial Chamber, clearly, was in no position to make any decisions on expert qualifications at that point, particularly given the apparent fluidity in the Prosecution's witness and exhibit lists.

191. Ultimately, however, the Prosecution only relied upon the evidence of twenty experts at trial. This means that the evidence of at least 114 of the then 134 proposed expert witnesses put on the exhibit list in November 2012—fourteen months before the trial commenced—was irrelevant to the trial. That is why it would have been a pointless exercise for the Trial Chamber to attempt to read 8,700 pages of possible expert opinion, and especially so in the absence of any formal motion to admit to declare them as qualified experts and to admit their reports into evidence.

192. The unfairness to the Defence in having to attempt to absorb the evidence of 114 proposed expert witnesses whose evidence was ultimately not used at trial is manifest. As indeed it was in

⁹⁹ T. 10 April 2013, pp 3-4.

its having to attempt to decipher the relevance and probative value of 13,170 exhibits, and therefore make strategic litigation decisions while acting for Accused persons being tried *in absentia* who could not provide instructions to counsel. The cost of this exercise to the Special Tribunal must have been enormous.

193. Moreover, the Prosecution's two senior trial counsel who took the case to trial only commenced their employment in the first quarter of 2013. They could never have been expected to have gained the necessary familiarity with the case between then and the trial's commencement less than a year later. They could never have mastered 13,170 exhibits and the evidence of 557 witnesses in that time and thus made fully informed litigation decisions for trial. They had to have been making evidentiary decisions 'on the run'. They were formally introduced onto the court record only in the pre-trial status conference held on 10 April 2013.

194. In March and April 2013, the Prosecution added 1,351 exhibits to the exhibit list. On 31 May 2013, it then filed a consolidated updated witness list containing 587 witnesses. However, its consolidated updated exhibit list had also ballooned—this time to 14,737 exhibits. This was its high point.

195. Six weeks later, in mid-July 2013, the Prosecution filed revised lists, this time of 590 witnesses and 8,293 exhibits. The exhibit list thus went up by 1,407 documents and then down by 6,393 documents between November 2012 and July 2013.

196. But the exhibit list expanded again in mid-September 2013, this time to add another 2,249 documents to a new total of 8,642 exhibits; the number of witnesses was 540, of whom 135 were expected to testify live. Yet another iteration of the witness list was filed on 23 October 2013.

197. Thus, on 25 October 2013, the Trial Chamber received jurisdiction to try a case in which half of the anticipated witnesses would never provide evidence, close to three-quarters of the exhibits would be discarded from the list, and less than one sixth of the listed experts would provide evidence.

198. Then yet another version of the witness and exhibit list appeared, when on 8 January 2014 in the *Merhi* case, that was then in its (short) pre-trial phase before the Pre-Trial Judge, the Prosecution filed an exhibit and witness list in its case against Mr Merhi. In his case, the list was

of 6,524 exhibits and 461 witnesses, of whom 112 were expected to testify live. Most were common to the case against the other four Accused, but these lists were filed before the Pre-trial Judge, who was then seised of the *Merhi* case.

199. The issue of the pre-trial disclosure here is beyond the scope of this opinion; a PhD could be written on the topic. Suffice it to say that the Prosecution disclosed hundreds of thousands of documents to the defence in several thousand electronic disclosure ‘batches’ in no particular order.

200. A critical unresolved issue, however, was that Lebanon was not cooperating with Defence requests for assistance submitted through the Defence Office. As I have detailed above in my observations on the Defence Office, the 2010 memorandum of understanding between the Head of the Defence Office and the Lebanese Minister of Justice on this issue was defective in having no enforcement mechanism.

201. This should have been both recognised and rectified during the dedicated pre-trial phase. The Trial Chamber received jurisdiction to try the case on 25 October 2013 with this crucial issue for defence preparations still very much a live issue. The Trial Chamber then had to divert considerable attention away from its own preparations for trial to resolve it, while faced with a Defence Office Head who was refusing to acknowledge the fatal flaw in the memorandum that he had negotiated, and most specifically, that it did not work.

202. Another issue that should be briefly touched upon is of the Prosecution taking witness statements that it intended to tender into evidence under Rule 155—without the witness attending the court for questioning—that did not comply with the Special Tribunal’s requirements to make them admissible. The President, in January 2010, had issued a ‘Practice Direction on the Procedure for Taking Depositions under Rules 123 and 157 and for Taking Witness Statements for Admission in Court under Rule 155’.¹⁰⁰ This set out the requirements for making the statements admissible.

203. Many statements taken by the UNHIC or the Lebanese investigating authorities would not have complied with the requirements of the Practice Direction. The Prosecution, however, was on notice from January 2010 that its statements had to comply, and in reality even earlier because the relevant rules had been adopted in March 2009. Yet some statements taken after these dates did

¹⁰⁰ STL-PD-2010-02, 15 January 2010.

not, meaning that the Prosecution had to re-contact these witnesses and have them sign a declaration that did conform to the Practice Direction's requirements. The Trial Chamber made an order to this effect in May 2013.¹⁰¹

204. This goes directly to whether there had been adequate centralised pre-trial legal oversight of the investigation, at least from the perspective of ensuring that witness statements were taken in a manner that made them admissible in the proceedings. That, after all, is the purpose of a witness statement.

205. The inadequate nature of the Prosecution's pre-trial briefs was also of concern. The final pre-trial brief filed in the pre-trial phase, on 23 August 2013 was of a scanty 61 pages, with 389 footnotes unhelpfully referenced to documents disclosed according to a Rule. Taking a random example, the first line of paragraph 162, which read, 'At 17:15, SABRA called MERHI, at which time SABRA was in the area of the Fourth Payphone', was referenced to footnote 329, which read 'R91-200334, paras. 1037 and 1039'. This presumably referred to a document in a disclosure to the Defence made under Rule 91. Every reference was like this.

206. And only 52 pages were relevant to the case, as the last eight substantive pages related to connected attacks and a consistent pattern of conduct, evidence of which was not led in the trial. The pre-trial brief, a document of 19,711 words, was attempting to summarise and put the Defence on notice of a case involving at that point, 590 witnesses and 8,293 exhibits. And this was before another 2,249 exhibits were added to the list in mid-September 2013.

207. The pre-trial brief should have been much longer and properly summarised the different evidentiary themes and linked the relevant evidence—documents and exhibits—to evidence charts and summaries. It did not do this but it did comply with the (arbitrary) 21,000-word limit specified in the Practice Direction regulating word limits.¹⁰² To my mind, this was a real failure of the pre-trial phase. This should have been more properly supervised and considered from the perspective of both the Defence, and the chamber that was to try the case.

¹⁰¹ Rule 155 compliance decision.

¹⁰² Practice Direction on Filing of Documents before the Special Tribunal for Lebanon, STL/PD/2010/01/Rev.2, 14 June 2013, Article 5 (1) (g), Length of Documents. As an aside, the purpose of such a practice direction is unclear; the chambers, if necessary, should set word limits according to the need of the situation, rather than a formulation. Twenty-one thousand words for a pre-trial brief in a case of this length and complexity is too short and unrealistic.

208. The record-keeping of the Prosecution, and before it, the UNIIIC, was also found—during the trial—to have some deficiencies that should have come to light in the dedicated pre-trial phase. As an example, in deciding a Defence application to compel the Prosecution to disclose documents relating to the evidence of a Prosecution analyst, Mr Andrew Donaldson, the Trial Chamber noted that:

this litigation has revealed that the Prosecution’s record-keeping is inadequate in significant aspects with regard to its disclosure obligations. The Prosecution has admitted that, for the thousands of documents it classifies as internal work product, it has not gathered them into a central database. Instead, these documents are scattered across various computer drives, including the personal drives of Prosecution employees. As a result, searching for and identifying documents responsive to the category of records of questions and answers would have required the Prosecution to manually review around 70,000 computer files and around 60,000 emails, a process that would have taken weeks or months to complete and would have delayed Mr Donaldson’s testimony in the meantime.

As the Pre-Trial Judge rightly stated, ‘a wide measure of discretion is afforded to the Prosecution, with the full expectation that it will fulfil its disclosure obligations in an organised, comprehensible, useful and effective manner so as to ensure delays are minimised and the accused’s fundamental rights to a fair trial are respected’. The Trial Chamber finds it highly unlikely that the Prosecution would be able to meet this standard in the event it was required to conduct an extensive review of its internal documents as part of its obligation to search and categorise its documents that are disclosable. Moreover, when there is a voluminous amount of material to be properly categorised, the Prosecution cannot, for all practical purposes, throw up its hands but must establish a suitable process for reviewing and disclosing documents in batches as appropriate. The Trial Chamber expects the Prosecution to take appropriate steps going forward—such as maintaining a ‘correspondence log’ or something similar for communications relating to a witness’ evidence—to ensure it can meet its disclosure obligations under the Rules in an appropriate and timely manner.¹⁰³

209. In my view, appropriate corrective guidance should have been given, and if necessary, orders made on this issue in the dedicated pre-trial phase.

¹⁰³ Decision on disclosure re Andrew Donaldson’s reports, paras 102-103 (footnotes omitted).

210. I make no comment here on the protracted indictment ping-pong between the Prosecutor and the Pre-Trial Judge in the *Merhi* case and the connected cases, in STL-18-10.

211. The pre-trial phase also produced agreements as to evidence under Rule 122 relating only to nine uncontroversial facts, such as the location of the Lebanese Parliament, and Mr Rafik Hariri's date of birth and the dates of his terms as prime minister.

212. It is difficult to see how the pre-trial phase can be seen to have met Judge Cassese's vision, as noted above, of an expeditious pre-trial period run by an independent Pre-Trial Judge, that concentrated on ensuring that the Trial Chamber received a 'trial-ready' case. But in the circumstances described above, this could never have been the case. Also, the reality of litigation, and especially once counsel for multiple Accused are appointed, will inevitably disturb otherwise pristine theoretical visions of procedural perfection.

213. The first Prosecutor, Mr Bellemare, as is evident from his filing of three separate indictments between January and May 2011 against four Accused persons and then another one against Mr Merhi in February 2012, had no prepared 'trial-ready' case against any Accused when the indictments were filed. The numerous additions and subtractions to the exhibit list, over the next two years, some of which were equally dramatic in either direction, manifests a lack of centralised legal oversight over the Prosecution's pre-trial preparation. The nine different pre-trial indictments filed also show this. That the Prosecution was still investigating its case at the commencement of the trial is another indication.

214. Somewhat incredibly, in a highly circumstantial case that largely relied upon cell site evidence and its accuracy or reliability, the Special Tribunal's first Prosecutor did not file cell site expert evidence in submitting his initial indictments to the Pre-Trial Judge. The Pre-Trial Judge accordingly confirmed the indictments against Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra, but without the benefit of Mr Philips's, or anyone else's, cell site expertise.

215. The Pre-Trial Judge noted in his report under Rule 95 transferring the case to the Trial Chamber that, in reviewing the indictments, he had not considered Mr Philips's reports on this 'fundamental' issue 'because they were not produced as exhibits' then.¹⁰⁴ The Prosecution did not

¹⁰⁴ Pre-Trial Judge Rule 95 (A) transfer of case file to Trial Chamber, para. 83.

engage Mr Philips until mid-2012—which coincided with the appointment of the new Prosecutor—and he produced his first version of his general report, ‘An introduction to cell site analysis as applied to GSM networks’, exhibit P549, only on 1 August 2012, over a year after the first indictment was confirmed in the case.

216. Regarding the timing of the transfer of the case to the Trial Chamber, in a separate concurring opinion to a decision relating to challenges to defects alleged to the indictment, on 5 July 2013, I expressed the view that:

The Trial Chamber requires a transfer of the case-file under Rule 95 to enable it to oversee the preparation by the Parties of their respective cases for trial and to allow it to make the necessary pre-trial decisions relating to receiving evidence at trial and the conduct of the trial itself. Without this the Trial Chamber is quite constrained in what it can do.¹⁰⁵

217. The experience of the Trial Chamber only receiving jurisdiction to try the case in late October 2013, in a case listed for trial for 13 January 2014, has merely hardened my view on this.

218. The Trial Chamber should have received the case much earlier. It needed a minimum of six months, and ideally more time, before the trial’s commencement to work with the Parties to reduce the length of the case and to make as many pre-trial commencement evidentiary decisions as possible. The Pre-Trial Judge lacked competence as only the Trial Chamber can do this.

219. The purpose of this opinion is not to attribute blame but rather to highlight significant deficiencies in the efficient functioning of the pre-trial phase. The size of the case—as is evident from the sheer volume of exhibits and witnesses on lists filed in the pre-trial phase that the Prosecution appeared to be trying to present at trial—was beyond the capacity of anyone to manage it: Pre-Trial Judge, Prosecution or Defence counsel.

220. This cannot recur. Hard lessons must be learnt here. Any future institution contemplating replicating the Special Tribunal’s framework in this respect should carefully examine what occurred in the pre-trial phase of this case and reconsider. The ICC’s experience, although employing a different model with its confirmation proceedings, has shown that adding judicial

¹⁰⁵ Decision certifying interlocutory appeal on challenge to form of indictment, 5 July 2013, para. 7.

layers to the pre-trial phase can often elongate and complicate rather than accelerate and streamline proceedings.

F. Interlocutory decisions on the applicable law

221. The final issue explored here is the utility of the mechanism in the Rules through which the Pre-Trial Judge may refer to the Appeals Chamber a matter regarding the applicable law before confirming an indictment. The procedure, it appears, has delayed rather than streamlined proceedings.

222. Under Rule 68 (G), ‘The Pre-Trial Judge may submit to the Appeals Chamber any preliminary question, on the interpretation of the Agreement, Statute and Rules regarding the applicable law, that he deems necessary in order to examine and rule on the indictment.’

223. The Appeals Chamber, pursuant to Rule 176 *bis*, ‘shall issue an interlocutory decision on any question raised by the Pre-Trial Judge under Rule 68 (G), without prejudging the rights of any accused’. It must first hear the Prosecutor and Head of Defence Office in public session. The Accused, according to Rule 176 *bis* (C), has a right to ‘request the reconsideration of the interlocutory decision’ within no later than thirty days of specified Prosecution disclosure.

224. The Rules of Procedure and Evidence were amended in a judicial plenary on 10 November 2010 to insert these two Rules. The then President, Judge Cassese, explained their rationale:

Further, the Pre-Trial Judge has the unique ability to submit to the Appeals Chamber interlocutory questions on legal issues that arise during the confirmation of the indictment (Rule 68(G)), a procedure aiming at ensuring consistency in applicable law throughout the legal proceedings and at speeding up pre-trial and trial deliberations.¹⁰⁶

225. The Appeals Chamber in its Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging’, stated much the same thing:

The Tribunal’s Judges adopted Rules 68(G) and 176bis(A) to enable the Appeals Chamber to clarify in advance the law to be applied by the Pre-Trial Judge and the Trial Chamber,

¹⁰⁶ Rules of Procedure and Evidence (as of 25 November 2010), Explanatory Memorandum by the Tribunal’s President, para. 11.

thereby expediting the justice process in a manner supported by both the Prosecutor and the Head of the Defence Office.¹⁰⁷ (emphasis added)

226. These statements, however, are at odds with the law, the practice and reality. The Trial Chamber has explained in the judgment why it does not consider itself bound by what is essentially an abstract advisory opinion. The judgment states:

It is therefore highly exceptional that Rules 68 (G) and 176 *bis* empower the Appeals Chamber, on the Pre-Trial Judge's request, to be the first judicial entity to make certain legal findings in a case, rather than reviewing the correctness of legal findings already made by another judge or chamber.¹⁰⁸

227. I would take it a step further. In my view, the two Rules are not only unnecessary, but are possibly *ultra vires* the Statute of the Special Tribunal, and for the reasons explained below, should be removed.

228. The Special Tribunal for Lebanon is a trial court established by a Security Council resolution. Its Statute does not authorise it to issue advisory opinions such as those the International Court of Justice (ICJ) may render pursuant to Articles 65 to 68 of its Statute, and Article 96 of the Charter of the United Nations. This provides (1) 'The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question'. The Appeals Chamber of the Special Tribunal for Lebanon also does not have the function of the International Law Commission or the ICJ. It is not charged with finding and declaring customary international law.

229. Further, it is difficult to see how such a procedure could be authorised pursuant to a court's inherent jurisdiction to do all things necessary to fulfil its basic judicial functions. Issuing an abstract non-binding legal advisory opinion in the absence of an indictment, facts or accused persons, cannot fall within such inherent powers.

230. Moreover, the procedure logically cannot ensure 'consistency in applicable law throughout the legal proceedings' if the Appeals Chamber's decision is not binding on the Trial Chamber,

¹⁰⁷ First interlocutory decision on the applicable law, para. 7.

¹⁰⁸ Judgment, para. 5950.

which after all, has to apply the law when there are defended Accused facing trial, either in person or *in absentia*.

231. The aim of introducing the procedure seemingly was aimed at ‘speeding up pre-trial and trial deliberations’, but how it could do this was not explained. To illustrate the incongruity of this statement, in 2012, the Appeals Chamber refused to reconsider its first applicable law decision, holding:

It will still be for the Trial Chamber to *apply and shape* the relevant legal principles in the light of the charges contained in the indictment and the evidence adduced by the parties. This judgment will be subject to an appeal and the Appeals Chamber will revisit any legal issue that might be raised by such an appeal under Article 26 of the Statute.¹⁰⁹

232. This statement contradicts Judge Cassese’s explanation of the aim of the 2010 November amendments, and the Appeals Chamber’s own view of the Rule’s purpose and function. This leads to the question of what was the purpose of the amendments.

233. The content of the Appeals Chamber’s first interlocutory decision in reality did not assist the Trial Chamber in its deliberations. Its existence forced the judges (and the Parties) to expend much time in examining it. Its lengthy deviation into searching for the existence of customary rules defining terrorism—that took up 60 pages of the judgment—was irrelevant and *obiter dicta*, meaning that it was not necessary for the resolution of the matter. Article 2 of the Statute expressly specifies that the applicable law for crimes falling within its jurisdiction is the Lebanese Criminal Code and the Lebanese law of 11 January 1958 on ‘Increasing the penalties for sedition, civil war and interfaith struggle’.

234. Furthermore, its treatment of the possible crimes that could be charged under the Lebanese Criminal Code was in many respects cursory, and there were no facts before the Appeals Chamber from which it could analyse potentially relevant crimes. Its analysis also had two crucial omissions.

235. First, it did not analyse the ambit of aiding and abetting, namely, the degree of knowledge that an accused person must have of an intended crime before they can be held legally liable as an

¹⁰⁹ Appeals Chamber decision on Defence requests for reconsideration of first interlocutory decision on applicable law, para. 37 (footnotes omitted, emphasis added).

accomplice under Articles 219 (4) and (5) of the Lebanese Criminal Code. This would include, for example, whether the accomplices had to have known that Mr Hariri was to be murdered by the use of explosives in a public street.¹¹⁰

236. This omission is inexplicable given that the circumstances of his death were well-known. More significantly, it is the basis of the criminal liability of the charges against three of the Accused persons, Mr Merhi, Mr Oneissi and Mr Sabra. It is noted, however, that only Mr Ayyash was the subject of the first indictment and he was never alleged to have been an accomplice, as opposed to a conspirator or co-perpetrator. But this of itself highlights the flaws in the Rule 68 (G) referral process in which the Appeals Chamber provides an abstract opinion in the absence of facts that it could anchor to the elements of any crimes charged.

237. Second, the Appeals Chamber also omitted to analyse another critical legal element, this time of the crime of conspiracy aimed at committing a terrorist act under Articles 270 and 314 of the Lebanese Criminal Code.

238. Article 314 defines terrorist acts, as ‘all acts intended to cause a state of terror and committed by means liable to create a public danger such as explosive devices’. The Appeals Chamber, however, failed to analyse whether the Prosecution had to prove, for example, that the alleged conspirators had agreed on a particular ‘means’ such as using an explosive device.¹¹¹ Nor whether it was essential that they knew that Mr Hariri was the target of their actions. In their final trial submissions, the Prosecution and Defence disagreed on the interpretation of the elements of

¹¹⁰ In the judgment, at para. 6071 (footnotes omitted), the Trial Chamber held, ‘Further, while the Appeals Chamber’s first interlocutory decision appeared to have concluded that an accomplice must have known that a perpetrator intended to commit a particular crime, it did not examine whether an accomplice must have known the precise factual details of the crime or its minutiae, or the degree of knowledge required to make them criminally liable.’

¹¹¹ In the judgment, the Trial Chamber held at para. 6238 (with footnotes omitted), that ‘The Appeals Chamber apparently concluded that to be liable for conspiracy to commit a terrorist act, first, those accused must have agreed to use a means liable to create a public danger and, second, they need not have precisely determined how to execute their agreement. But neither the meaning of, nor the basis for these conclusions is entirely clear. In the Trial Chamber’s view, the Appeals Chamber’s analysis leaves uncertain whether, to establish this element of the crime of conspiracy to commit a terrorist act, it is necessary to prove:

- only that those accused agreed they would use ‘means liable to create a public danger’ within the meaning of Article 314, not that they agreed on a particular means in that category; or
- that they agreed they would use those particular means, meaning that they agreed to use an explosive device; or
- that they also agreed on any other details of how they would achieve their aim’.

this crime, and the Appeals Chamber's decision did not assist the Trial Chamber's deliberations on this issue.

239. The process did not expedite the Trial Chamber's deliberations, and how it could have expedited the Pre-Trial Judge's consideration of an indictment, likewise is left unexplained. The time-line below also shows how misconceived the aim of the dual amendment to the Rules was.

240. The Prosecutor submitted his first indictment, against Salim Jamil Ayyash, on 17 January 2011. Four days later, the Pre-Trial Judge submitted questions to the Appeals Chamber under Rule 58 (G). The Appeals Chamber issued its 153-page, 452-footnote decision on 16 February 2011.¹¹² The Pre-Trial Judge confirmed an indictment against the first four Accused on 28 June 2011. The indictment against the fifth Accused, Hassan Habib Merhi, was not confirmed until 31 July 2013. The Trial Chamber received jurisdiction to try the first four Accused only on 25 October 2013, and then, when it could, it joined the trial of Mr Merhi to that of the other four, on 11 February 2014.

241. This recurred in a connected case, in which the Pre-Trial Judge, on 11 August 2017, submitted questions under Rule 68 (G) to the Appeals Chamber, concerning the crime of 'criminal association' under the Lebanese code and its relationship with the crime of conspiracy. The Appeals Chamber rendered its decision two months later on 18 October 2017.¹¹³

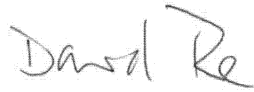
242. Despite this, the indictment in that case was not confirmed, it appears, until June 2019. Count two of this indictment charged 'criminal association' as an alternative to count one's conspiracy. The expedition here from the Rule 68 (G) procedure is not evident. The Appeals Chamber's decision defining 'criminal association' is not binding on a trial chamber. It thus has the potential to cause rather than alleviate delays in deliberations.

¹¹² It is unlikely that the 153-page, 452-footnote decision was written in the seventeen days between receiving the written filings and its issuance. Or even in the 26 days from 21 January, when the Pre-Trial Judge submitted his questions. Undoubtedly, significant work had to have been done on the applicable law, in advance of the Rule amendment in November 2010 and the Pre-Trial Judge's referral in mid-January 2011, and most particularly on its substantial analysis of terrorism. The Appeals Chamber, surprisingly, even refused to accept an *amicus* brief filed on 14 February 2011 by a leading academic expert on international terrorism law, Professor Ben Saul, on the basis that it was 'submitted outside time' by several days.

¹¹³ Second interlocutory decision on applicable law.

243. The procedure is also inherently unfair to an accused person. It is evident from the Appeals Chamber's failure to countenance a reconsideration of its first interlocutory decision in mid-2012, that they must await either: (a) the determination of an application under Rule 167 for an acquittal at the close of the Prosecutor's case; (b) a trial judgment; or (c) an appeal judgement after a trial, many years later, to have their views heard on the definitions of the charges on an indictment on which they have been tried. This cannot be in the interests of justice.

244. Rules 68 (G) and 176 *bis* in my view, serve no practical utility, probably exceed the scope of the Appeals Chamber's statutory jurisdiction, are not within the Special Tribunal's inherent jurisdiction, are unfair to the defence and lengthened the deliberation process. Hence, these Rules should either be no longer used, or, preferably, repealed.



Judge David Re
Presiding Judge

XVII. DECLARATION BY JUDGE DAVID RE IN RELATION TO CERTAIN FAIR TRIAL ASPECTS CONCERNING THE DEFENCE OF HASSAN HABIB MERHI

A. Introduction

1. The right to a fair trial is an essential feature of the rule of law and is an indispensable safeguard against arbitrary injustice. It lies at the heart of international human rights law and its importance cannot be overstated. Without a fair trial, there can be no justice.

2. This declaration concerns the right of the Accused, Hassan Habib Merhi, to a fair trial, and my concern that the Trial Chamber was unable, in certain respects, to guarantee this.

3. The direct cause of this is the conduct of the Head of the Defence Office, Ms Dorothée Le Fraper du Hellen, who was co-counsel for Mr Merhi throughout the Prosecution case against him, and during the presentation of a Defence case at trial. After the end of the receipt of evidence in the trial, Ms Le Fraper du Hellen resigned from her position as Mr Merhi's co-counsel and took office as the Head of the Defence Office.

4. The Head of the Defence Office has statutory oversight over the conduct of assigned Defence counsel at all stages of the proceedings including whether they are providing effective legal representation to an accused person. In accepting her appointment to that office, Ms Le Fraper du Hellen immediately assumed the statutory oversight over first, her own conduct when she was Mr Merhi's co-counsel, second over that of her former Merhi Defence counsel colleagues who continued acting for Mr Merhi, and, third, over the conduct of the counsel for the other three Accused, with whom she, as part of the Defence of Mr Merhi, had made joint litigation decisions in defending the four Accused.

5. The essence of my concern is twofold. The first is the fundamental conflict of roles intrinsic in someone monitoring and judging their *own* past professional conduct, and of those with whom they made joint litigation decisions, including their former lead counsel. The second is that because of this conflict of roles, the effective neutral oversight of the Defence of Mr Merhi—and that of

the other three Accused—ceased from the date that Ms Le Fraper du Hellen commenced her duties as the Head of the Defence Office. The unfortunate result was the Trial Chamber lost its proper oversight over whether their legal representation was effective.

6. The situation was exacerbated by Ms Le Fraper du Hellen's own role while conducting the Defence of Mr Merhi, as his assigned co-counsel. During her assignment as co-counsel she engaged in professional litigation decisions that assisted the Prosecution's case by presenting evidence that tended to incriminate the Accused person whose legal rights and interests she was assigned to defend. This raised a real issue about Mr Merhi's effective legal representation. The legal consequences of this, and Ms Le Fraper du Hellen's own professional actions, could become important issues in any appeal.

7. Further, there were procedural irregularities in Ms Le Fraper du Hellen's appointment as Head of the Defence Office. This arose because the President of the Special Tribunal, Judge Ivana Hrdličková, failed to consult the Special Tribunal's Council of Judges about the proposed appointment. This meant that the Secretary-General of the United Nations, who appointed Ms Le Fraper du Hellen to the post, did not have the benefit of fully informed advice about the legal ramifications of this proposed appointment.

8. The Trial Chamber should have intervened during the trial, as part of its overriding duty in matters affecting the fair trial rights of the Accused, in circumstances where questions arose regarding the effective legal representation of an Accused person. A chamber must intervene if the Head of the Defence Office is either unable or unwilling to do so. It should have intervened to put in place an effective system for monitoring the effectiveness of the legal representation. Its failure to do so has raised an issue of unfairness to Mr Merhi during the trial, irrespective of his acquittal on all counts charged in the amended consolidated indictment.

9. I sincerely regret that the Trial Chamber did not issue the appropriate corrective orders during the trial that would have remedied this situation at the time. It is my firm view that such action should have been taken then.

B. Relevant legal provisions

1. The right to a fair trial

10. Various international human rights law instruments mandate a fair and public trial in which an accused person has the right to be presumed innocent until proved guilty according to law. Each sets out a series of minimum rights.

11. Article 14 of the International Covenant on Civil and Political Rights (ICCPR), for example, sets out the minimum guarantees for a fair trial, including that an accused person must have ‘adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing’.¹ Article 14 (3) (d) elaborates on this stating:

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.

12. Article 6 ‘Right to a Fair Trial’ of the European Convention on Human Rights sets out the same ‘minimum rights’ in similar terms, including in Article 6 (3) (d), that an accused has the right,² ‘to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require’.

13. The American Convention on Human Rights likewise provides ‘minimum guarantees’, including an accused having ‘adequate time and means for the preparation of his defense’ and the right ‘to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel’.³

¹ Article 14 (3) (b). *See also* the Universal Declaration on Human Rights, article 11 (1), according to which everyone ‘charged with a penal offence has the right to be presumed innocent until proved guilty according to law *in a public trial at which he has had all the guarantees necessary for his defence* [emphasis added]’.

² Article 6 (3) (b) specifies that an accused must ‘have adequate time and facilities for the preparation of his defence’.

³ Article 8 (2) (c) and (d) ‘Right to a Fair Trial’.

14. The Special Tribunal is obligated to apply these standards. Article 16 of the Special Tribunal's Statute is entitled 'Rights of the Accused' and effectively mirrors those set out in Article 14 of the ICCPR, including as 'minimum guarantees, in full equality', to have 'adequate time and facilities for the preparation of his or her defence and to communicate without hindrance with counsel of his or her own choosing',⁴ and under Article 16 (4) (d):

Subject to the provisions of article 22,⁵ to be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require and without payment by him or her in any such case if he or she does not have sufficient means to pay for it.

15. Further, Rule 3 'Interpretation of the Rules', provides (with emphasis added):

(A) The Rules shall be interpreted in a manner consonant with the spirit of the Statute and, in order of precedence, (i) the principles of interpretation laid down in customary international law as codified in Articles 31, 32 and 33 of the Vienna Convention on the Law of Treaties (1969), (ii) *international standards on human rights*, (iii) the general principles of international criminal law and procedure, and, as appropriate, (iv) the Lebanese Code of Criminal Procedure.

2. The right to effective legal representation as part of the right to a fair trial

16. International human rights courts and organisations have interpreted the right to legal representation, and hence a fair trial, as meaning that it must amount to effective legal representation.⁶ In *Artico v. Italy*, for example, the European Court of Human Rights (ECtHR) held that:

⁴ Article 16 (4) (b).

⁵ Article 22 'Trials in absentia' specifies the circumstances in which a chamber may proceed to conduct a trial in the absence of the accused person.

⁶ For example, ECtHR, *Artico v. Italy*, 6694/74, Judgment, 13 May 1980 ('*Artico v. Italy*'), paras. 33, 36; *Imbrioscia v. Switzerland*, 13972/88, Judgment, 24 November 1993, paras. 37-38; *Steel and Morris v. The United Kingdom*, 68416/01, Judgment, 15 February 2005, para. 59; *Mihai Moldoveanu v. Romania*, 4238/03, Judgment, 19 June 2012, paras. 74-76. See also Basic Principles on the Role of Lawyers (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990), article 21;

the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective; this is particularly so of the rights of the defence in view of the prominent place held in a democratic society by the right to a fair trial, from which they derive.⁷

17. Ineffective legal assistance breaches these fundamental human rights law guarantees. A court must ensure that an accused person is effectively represented in proceedings and intervene if it is apparent that this is not occurring. For example, the ECtHR in *Sannino v. Italy* held that the domestic court which had assigned unprepared lawyers to the applicant, had failed to ensure an *effective* defence, even though the applicant did not complain about the situation.⁸ Breaches of fundamental human rights law guarantees can result in appeals, retrials or orders nullifying trial proceedings.

18. The issue of ineffective legal representation at trial has arisen on appeal in international criminal law proceedings. For example, in the *Krajišnik* appeal at the International Criminal Tribunal for the former Yugoslavia (ICTY). There, *amicus curiae* counsel for the accused raised appeal grounds that the ineffectiveness of counsel at trial, and by former counsel in the pre-trial phase, had resulted in an unfair trial.⁹

3. The role of the Head of the Defence Office in ensuring effective legal representation

19. The Head of the Defence Office is responsible both for assigning counsel to act for suspects and accused persons and for monitoring their effective legal representation. This statutory role is separate from that of a court in ensuring that this occurs.

20. Under Article 13 of the Statute of the Special Tribunal under the heading, ‘The Defence Office’, the Head of the Defence Office is responsible for ‘the drawing up of a list of defence

European Union Directive 2013/48/EU, Article 3 (3) (b); G. Sluiter and others (eds), *International Criminal Procedure*, 2013, chapter 9, B.1.3.i (p. 1268); D. Harris and others, *Law of the European Convention on Human Rights*, 2018, pp 479-482.

⁷ *Artico v Italy*, para. 33.

⁸ *Sannino v. Italy*, ECtHR, 30961/03, Judgment, 27 April 2006, paras 50-52.

⁹ *Prosecutor v. Krajišnik*, IT-00-39-A, Judgment, 17 March 2009, paras 29-72.

counsel’. Rule 57 (D) ‘Functions of the Head of Defence Office’¹⁰ widens this role to appointing and assigning defence counsel where relevant, while Rule 59 specifically governs the assignment of counsel by the Head of the Defence Office.

21. Rule 57 (G) sets out the general principles for the quality of defence legal representation, stating:

The Head of Defence Office shall, in the interests of justice, ensure that the representation of suspects and accused meets internationally recognised standards of practice and is consistent with the provisions of the Statute, the Rules, the Code of Professional Conduct for Counsel, the Directive on the Appointment and Assignment of Defence Counsel and other relevant provisions. To this end, subject to lawyer-client privilege and confidentiality, where valid reasons exist to do so, he may:

- (i) monitor the performance and work of counsel and the persons assisting them;
- (ii) request all necessary information in order to exercise the function referred to in (i);
- (iii) ensure that the appropriate advice is given to the lead counsel as would contribute to an effective defence of the suspect or accused; and
- (iv) in exceptional circumstances and after considering the opinion of the lead counsel, invite the suspect or accused to provide his views on the adequacy and effectiveness of his legal representation and the performance of the Defence counsel. Any statement made by the suspect or the accused in this regard shall be recorded in writing and kept by the Head of Defence Office. A copy of the record shall be provided to the suspect or accused and his counsel.

22. Rule 57 (I) provides:

Neither the Head of Defence Office nor its members shall take any instructions from suspects or accused persons or be involved in factual allegations or matters

¹⁰ The Statute uses the term, ‘Head of the Defence Office’, while the Rules omit the definite article and state, ‘Head of Defence Office’.

relating to a specific case, which may raise conflicts of interest and affect the independence of the Office.¹¹

23. Rule 58 provides for the qualifications of Defence counsel.¹² Rule 57 (H) addresses the procedure in case the Head of the Defence Office is not satisfied that the representation meets the required standards, stating:

If the Head of Defence Office is not satisfied that the representation of a suspect or accused meets the standards set forth in Rule 58 (B), he may, in the interests of justice and after giving counsel an opportunity to be heard:

- (i) if Defence counsel has been assigned, withhold the payment of the fees of the assigned counsel or part thereof until there is a satisfactory resolution of the matter. Such decision may be reviewed by the President;
- (ii) make representations to a Judge or Chamber for the removal of counsel or for other measures intended to ensure the effective representation of the suspect or accused; and
- (iii) where appropriate, initiate disciplinary proceedings against the counsel concerned.

24. Article 27 (F) of the Directive on the Appointment and Assignment of Defence Counsel, states that:

Without prejudice to counsel-client privilege, the Head of Defence Office may, if he determines that reasonable cause exists, require assigned counsel to allow the Head of

¹¹ The Directive on the Appointment and Assignment of Defence Counsel, STL/BD/2009/03/REV.5. under Article 28 (A) goes further by stating 'To preserve the full independence and neutrality of the Defence Office, neither the Head of Defence Office nor any of his staff shall take any instructions from a suspect or accused or adopt a stance on any factual allegations of the Prosecution or the factual position of the Defence which *might* raise conflicts of interest.' (emphasis added)

¹² Rule 58 'Appointment, Qualification and Duties of Counsel' in paragraph (B) states that 'In the performance of their duties, counsel shall be subject to the relevant provisions of the Statute, the Rules, Practice Directions, the Rules of Detention, the Host State Agreement, the Code of Professional Conduct for Counsel and the codes of practice and ethics governing their profession, the Directive on the Appointment and Assignment of Defence Counsel, and if applicable, the Legal Aid Policy and any other Regulations adopted by the Head of Defence Office.'

Defence Office, or a person designated by him, on a strictly confidential basis, to inspect and examine counsel's work product.

Article 34 (A) of this Directive provides (with emphasis added) that:

With a view to the fairness of the proceedings, and after consulting the Pre-Trial Judge or Chamber, the Head of Defence Office may decide, at the request of counsel in question, to withdraw the appointment or assignment of counsel, by a written reasoned decision applying the standards set out in Article 7 of the Defence and Victims Code of Conduct.

4. The principles of natural justice—actual or apprehended bias by a decision-maker

25. A universal principle of human rights law, and also of administrative law, is that a decision-maker must not display bias in their decisions. The bias may be apprehended or actual and may be manifested in an actual or potential conflict of interest.

26. The ECtHR has held that when assessing whether an appearance or apprehension of bias exists, a court considers 'whether the fear can be held to be objectively justified'. In *Kyprianou v. Cyprus* it held in relation to judicial decision-making—but the principle is equally applicable to non-judicial decision-makers and especially those acting within the confines of a judicial system—that:

An analysis of the Court's case-law discloses two possible situations in which the question of a lack of judicial impartiality arises. The first is functional in nature: where the judge's personal conduct is not at all impugned, but where, for instance, *the exercise of different functions within the judicial process by the same person* [...], or hierarchical or other links with another actor in the proceedings [...], objectively justify misgivings as to the impartiality of the tribunal, which thus fails to meet the Convention standard under the objective test [...]. The second is of a personal character and derives from the conduct of the judges in a given case.¹³ (emphasis added)

27. The accepted test in international criminal law proceedings was first set out by the ICTY Appeals Chamber in *Furundžija* where it held that 'there is an unacceptable appearance of bias' if

¹³ *Kyprianou v. Cyprus*, 73797/01, Judgment (GC), 15 December 2005, para. 121.

‘the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias’.¹⁴

28. Thus, a statutory decision-maker cannot make decisions on designated matters in which they have a potential or actual conflict of interest; they must recuse themselves. An example could be the decision-maker designating someone of their choice to inquire into their (the decision-maker’s) professional conduct. Or, once the inquiry is complete, receiving a report and taking decisions about its content and recommendations into their own conduct. This point is further developed below.

29. Another, which is pertinent here, is of a decision-maker who is entrusted with monitoring the professional conduct of a defined category of persons—here of assigned Defence counsel—ending up monitoring their own professional conduct. This involves assessing whether they have conducted themselves according to professionally accepted standards. Or, as formally set out in Rule 57 (G), to ‘ensure that the representation of suspects and accused meets internationally recognised standards of practice’.

C. Ms Le Fraper du Hellen’s actions as co-counsel for Mr Merhi at trial

30. During the trial, responsibility for different parts of the defence of each Accused was divided between the three lead and co-counsel, with their legal assistants. Like Prosecution counsel, Defence counsel divide complex cases into parts or themes to which different counsel are assigned responsibility. This is no secret as they willingly announce to the chamber who has responsibility for the preparation of different aspects of a case, and chambers may accordingly schedule evidence according to the preparedness of counsel to deal with matters for which they have responsibility. This is practical, efficient and quite normal.

31. Ms Le Fraper du Hellen evidently had responsibility for challenging parts of the Prosecution’s telecommunications evidence against Mr Merhi. The essence of the Prosecutor’s case, as pleaded in the amended consolidated indictment, was that he was using his own personal mobile telephone, termed as mobile ‘Purple 231’, to communicate with two co-Accused, Mr

¹⁴ *Prosecutor v. Furundžija*, IT -95-17/1-A, Appeal Judgment, 21 July 2000, para. 189.

Oneissi and Mr Sabra, in relation to the pleaded false claim of responsibility for the attack on Mr Rafik Hariri on Monday 14 February 2005.

32. Further, he was alleged to have been communicating exclusively with the former Accused, Mustafa Amine Badreddine, in a closed three-mobile network of what the Prosecutor described as a ‘Green’ network of mobiles. The Prosecutor pleaded that Mr Merhi was using a mobile, ‘Green 071’ and Mr Badreddine was using a mobile termed Green 023, and the two were in communication in this manner. The Prosecutor attempted to prove this by showing that Purple 231 and Green 071 were co-locating—meaning that they were travelling together and making and receiving calls and SMS—in such a manner that the only reasonable conclusion was that they had a single user in Mr Merhi.

33. The Trial Chamber, ultimately, was not satisfied beyond reasonable doubt that these two mobiles were co-locating and that Mr Merhi was using Green 071, as pleaded in the amended consolidated indictment.

34. However, during the trial, Ms Le Fraper du Hellen put into evidence a third mobile, termed the ‘Grey’ mobile, as one that was potentially co-locating with Green 071. Hence, the defence was that someone other than Mr Merhi could have been using the Grey and the Green mobiles. This was designed to cast a reasonable doubt on the Prosecution case. The Prosecution, however—as soon as she did this—then investigated this new Grey mobile and discovered that it was potentially co-locating with both Purple 231 and Green 071. It then presented expert evidence of this. Further, evidence was then found and presented that incontrovertibly proved that Mr Merhi was the sole user of the Grey mobile.

35. Ms Le Fraper du Hellen had neglected to ascertain whether the Grey mobile was potentially co-locating with Purple 231. The Prosecution did and found that it was. The Trial Chamber accepted its expert evidence on this point. Further, the Merhi Defence obviously failed to investigate who the Grey mobile was contacting. After Ms Le Fraper du Hellen’s actions alerted the Prosecution to the existence of this third mobile, the Prosecution did the investigations that the Merhi Defence should have done before putting evidence of the Grey mobile before the Trial Chamber. This of course raised immediate issues of Mr Merhi’s effective legal representation.

36. The Trial Chamber has found in the judgment that the Grey mobile and Purple 231 were co-locating and that Mr Merhi was the single user of both. It found that the Grey mobile provided the strongest piece of evidence that Mr Merhi was using his Purple mobile. In this respect, Ms Le Fraper du Hellen put this mobile into evidence, and therefore introduced evidence, that if accepted in a potential appeal in relation to its possible co-location with the Green network mobile, or generally, could result in Mr Merhi's conviction on appeal, or a retrial.¹⁵

D. Procedural history and submissions

37. The procedural background to Ms Le Fraper du Hellen's appointment to the post of Head of the Defence Office reveals that potential and actual conflicts of interest have arisen in relation to her statutory role in monitoring the effective representation of the Accused by virtue of her former role as Mr Merhi's co-counsel and her current role in monitoring the performance of counsel in that role. This extends past the termination of her appointment as co-counsel and into any potential appeal.

1. Assignment of Ms Le Fraper du Hellen as co-counsel for Mr Merhi

38. The relevant starting point is 20 December 2013, when the Head of the Defence Office, Mr François Roux, assigned Mr Mohamed Aouini as lead counsel to represent Mr Hassan Habib Merhi in the proceedings before the Special Tribunal.¹⁶

39. On 30 December 2013, he assigned two co-counsel, Ms Le Fraper du Hellen and Mr Jad Khalil, to work with Mr Aouini.¹⁷ Mr Khalil's assignment continues. Mr Roux and Ms Le Fraper du Hellen had been co-directors of the same law firm in Montpellier, France, *SCM Gambetta Avocats*.¹⁸ This of course raises the issue of whether Mr Roux himself had a sufficient 'arms'

¹⁵ The judgment states, at para. 3654, 'The Trial Chamber is of the view that the Prosecution could not establish co-location between Purple 231 and Green 071 without the Grey mobile. Similarly, the Prosecution could not rely only on a combination of the cell activations of Green 071 and the Grey mobile to prove that they were co-locating and had a single user. Only the combination of the Grey mobile and Green 071, and Purple 231 and Green 071, could prove that Mr Merhi's personal mobiles were co-locating with the Green network mobile.'

¹⁶ STL-13-04/I/PTJ, *Prosecutor v. Merhi*, F0039, Assignment of a Counsel for the *In Absentia* Proceedings Held Pursuant to Rule 106 of the Rules, 20 December 2013.

¹⁷ STL-13-04/I/PTJ, *Prosecutor v. Merhi*, F0049, Assignment of Co-counsel, 30 December 2013.

¹⁸ *SCP d'avocats*, François Roux - Guylaine Lang-Cheymol - Marie-Paule Canizares – Dorothée Le Fraper Du Hellen - Hélène Bras. Publicly available French corporate documents show their association in this firm including Mr Roux and Ms Le Fraper du Hellen entering into private deeds between themselves relating to its affairs.

length’ distance from which he could apply, if necessary, Rule 57 (G) against Ms Le Fraper du Hellen in investigating any perceived breach of ‘internationally recognised standards of practice’.

2. The trial of Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra

40. The trial in the case of *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra* commenced on 16 January 2014. On 11 February 2014, on the Prosecutor’s application, which was not opposed by counsel for Mr Merhi, the Trial Chamber joined his case to that of the other four Accused on a consolidated indictment, meaning that the trial continued but against the then five Accused.¹⁹

41. The Prosecution closed its case against the four Accused on 7 February 2018. After dismissing an application filed by counsel for Mr Oneissi to acquit him under Rule 167, the Trial Chamber then heard and received Defence evidence, with the last hearing day being 28 June 2018.²⁰ Ms Le Fraper du Hellen was co-counsel for Mr Merhi at all of these times.

3. Ms Le Fraper du Hellen’s appointment as Head of the Defence Office

42. Mr Roux retired on 28 February 2018 when his appointment was not renewed, and from 1 March 2018, his deputy, Ms Héleyn Uñac, became the acting Head of the Defence Office. Until then Mr Roux had been responsible for monitoring the effectiveness of Mr Merhi’s legal representation, which of course included Ms Le Fraper du Hellen’s conduct. The vacant post was advertised.

43. On 18 June 2018, the Secretary-General of the United Nations announced the appointment of Ms Le Fraper du Hellen as Head of the Defence Office, with immediate effect. Effectively, this meant that from that day, not only was she acting for Mr Merhi but was simultaneously also responsible for monitoring her own performance as his counsel under Rule 57.

¹⁹ Transcript of 11 February 2014, pp 92-96; F1424, Decision on Trial Management and Reasons for Decision on Joinder, 25 February 2014. Pursuant to an order of the Appeals Chamber, the Trial Chamber terminated the case against Mr Badreddine on 11 July 2016. F2633, Order Terminating Proceedings against Mustafa Amine Badreddine Without Prejudice and Ordering the Filing of an Amended Consolidated Indictment, 11 July 2016.

²⁰ The Trial Chamber issued its final evidentiary decision on 16 July 2018. F3711, Decision admitting one Sabra Defence *aide-memoire* into evidence and declining to admit another two, 16 July 2018.

44. The panel that interviewed candidates for the position and made recommendations to the Secretary-General included a high-ranking United Nations official. Mr Roux was also involved in the process.

45. The Secretary-General was required to consult the Special Tribunal's President on the appointment under Article 13 (1) of the Statute, which reads:

The Secretary-General, in consultation with the President of the Special Tribunal, shall appoint an independent Head of the Defence Office, who shall be responsible for the appointment of the Office staff and the drawing up of a list of defence counsel.

46. The President, however, neither consulted nor informed the Trial Chamber. Nor did she inform or consult the Special Tribunal's statutory Council of Judges, pursuant to Rule 37 (B), either that the Secretary-General had consulted her, or the result of the consultations, in other words, what she had advised the Secretary-General.

4. Ms Le Fraper du Hellen ceasing to represent Mr Merhi

47. On 20 June 2018, two days after Ms Le Fraper du Hellen's immediate appointment to her new role, the acting Head of the Defence Office, Ms Uñac, wrote to the Trial Chamber stating that Ms Le Fraper du Hellen, on 14 June 2018 in an email to her, had requested the withdrawal of her assignment as co-counsel for Mr Merhi as of 27 June 2018. Ms Le Fraper du Hellen, she explained, felt ethically unable to carry out her duties as co-counsel due to a risk of persistent major conflict of interest between her new and old roles.

48. Ms Uñac also sought consultation with the Trial Chamber pursuant to Article 34 (A) (ii) of the Directive on the Appointment and Assignment of Defence Counsel. This mandates consultation with a chamber *before* the Head of the Defence Office intervenes in the legal representation of counsel assigned to represent an accused, and is consistent with the Trial Chamber's role as the ultimate guarantor of the right to a fair trial, which includes monitoring the effectiveness of an accused's legal representation.

49. On 26 June 2018—while the Trial Chamber was still receiving evidence from the Defence—as the Presiding Judge of the Trial Chamber, I met Ms Uñac, Ms Le Fraper du Hellen and lead counsel for Mr Merhi, Mr Aouini, in the presence of the Trial Chamber's senior legal officer. The

Trial Chamber at that point had already issued scheduling orders, after the lengthy trial, for the Parties and the Legal Representatives of Victims to file their final trial briefs, and to hear oral closing submissions.²¹ The potential withdrawal of co-counsel for an Accused at this critical point in the trial was of obvious concern to the Trial Chamber.

50. During that meeting, Mr Aouini assured me that he could finalise his written final trial brief for Mr Merhi and prepare for the oral closing arguments without seeking a replacement for Ms Le Fraper du Hellen.²²

51. On 28 June 2018, the Trial Chamber held a court session to receive the remaining Defence evidence. It then adjourned to allow the Parties and Legal Representatives of Victims to prepare their written and oral closing submissions which were at that stage scheduled for 16 July 2018, for the Prosecution and Legal Representatives of Victims, and from 13 August 2018 for the Defence. Oral closing submissions were scheduled from 27 August to 7 September 2018.

52. The following day, 29 June 2018, I wrote to Ms Uñac stating that the Trial Chamber was satisfied that Ms Le Fraper du Hellen's withdrawal—in the manner described, and at that late stage of the trial—was consistent with Mr Merhi's right to a fair and expeditious trial. I stated that I was confident that Ms Le Fraper du Hellen was cognisant of the need to avoid any potential conflict between her former and new roles.²³

53. Consequently, the same day, 29 June 2018, Ms Uñac withdrew Ms Le Fraper du Hellen's assignment as co-counsel.²⁴

²¹ F3623, Scheduling Order for Final Trial Briefs and Closing Arguments under Rule 147, 11 April 2018; F3687, Order Rescheduling Final Trial Briefs and Closing Arguments, 12 June 2018.

²² F3732/ADD, Addendum to Publication of Correspondence with Head of Defence Office on Potential Conflict of Interest, 28 September 2018 (Addendum), p. 3.

²³ Addendum, p. 4.

²⁴ F3701, Withdrawal of the Assignment of Ms Dorothée Le Fraper du Hellen, Co-counsel of the Defence team for Mr Hassan Habib Merhi, pursuant to Article 34 (A) of the Directive on the Appointment and Assignment of Defence Counsel, 29 June 2018.

5. Ms Le Fraper du Hellen's commencement as the Head of the Defence Office

54. Three weeks later, on 23 July 2018, Ms Le Fraper du Hellen was sworn in as Head of the Defence Office and commenced her duties. Ms Uñac reverted to her position as the Deputy Head of the Defence Office.

55. From that day, Ms Le Fraper du Hellen became formally responsible under Rule 57 for monitoring the quality of the legal representation of all four Accused throughout the proceedings—namely, from the moment of their appointment as counsel. This included her own performance as counsel from 30 December 2013 until 29 June 2018, and the performance of her former lead counsel, Mr Aouini, and her former co-counsel Mr Khalil, from the dates of their assignments, respectively 20 and 30 December 2013, onwards. And, additionally counsel acting for the other three Accused.

6. Ms Le Fraper du Hellen's delegation of some statutory functions to her deputy

56. Four weeks later, on 24 August 2018, Ms Le Fraper du Hellen wrote to the President, the Registrar, the Prosecutor, and me as the Presiding Judge of the Trial Chamber, informing us that she was delegating some of her functions under Rules 57 (G) and (H) to Ms Uñac, in respect of matters concerning the conduct of the defence of Mr Merhi.²⁵

57. She explained that she had executed this delegation due to her former role as co-counsel for Mr Merhi and 'out of concern for transparency and in order to avoid any potential conflict of interests'.

7. The Trial Chamber's correspondence with Ms Le Fraper du Hellen concerning the conflict

58. On 31 August 2018, as Presiding Judge, I responded to Ms Le Fraper du Hellen's memorandum of 24 August 2018. I noted that there was a potential conflict between her former

²⁵ F3732, Publication of Correspondence with Head of Defence Office on Potential Conflict of Interest, 10 September 2018 (Publication of correspondence), pp 3-6.

and current positions and that this conflict extended to the conduct of the defence of *all* four Accused.

59. I also pointed out that counsel acting for the four Accused—or five, while Mr Badreddine was still an Accused—had acted in coordination on numerous occasions and that Ms Le Fraper du Hellen, as Mr Merhi’s co-counsel throughout the presentation of evidence at trial, had been part of this coordination. The coordination manifested itself in filings, oral submissions and the cross-examination of Prosecution witnesses.

60. I noted that delegating her functions to Ms Uñac in relation to Mr Merhi’s effective representation had created another irresolvable conflict. Namely—as a matter of employment law or according to the principles of natural justice— Ms Uñac would be placed in an untenable situation in which she may have to take a reasoned decision as to her immediate superior’s professional conduct in her former capacity as co-counsel for Mr Merhi. I invited all recipients to consider mechanisms to resolve the matter and suggested that an amendment to the Special Tribunal’s Rules of Procedure and Evidence may be necessary.²⁶

61. On 5 September 2018, Ms Le Fraper du Hellen replied, stating that she maintained her decision to delegate those functions to Ms Uñac. She submitted that the Secretary-General of the United Nations had appointed her to fulfil the role as Head of the Defence Office with the utmost integrity, dignity and independence. She argued that she remained the sole competent authority to assess the most suitable measures to protect the rights of the Defence and asked the Trial Chamber to respect her decision.²⁷

62. On 10 September 2018, to ensure public transparency in this matter, in my functions as Presiding Judge I published the correspondence of 24 August, 31 August and 5 September.

63. Between 11 and 21 September 2018, the Trial Chamber held court sessions to hear the oral closing arguments of the Parties and the Legal Representatives of Victims. Ms Le Fraper du Hellen, in her new role as the Head of the Defence Office, was present in the courtroom during

²⁶ Publication of correspondence, pp 1-12.

²⁷ Publication of correspondence, pp 13-14.

some of the sessions on 11, 17 and 21 September 2018,²⁸ but not when counsel for Mr Merhi presented their closing submissions.²⁹

64. During this time, namely, the written and oral Defence final trial submissions, Ms Le Fraper du Hellen was responsible for monitoring the quality of the legal representation of the four Accused. This included Defence counsel—including those she had worked with on Mr Merhi's defence—making legal submissions on matters on which she had participated in taking decisions while acting for Mr Merhi. Most pertinently, this included submissions in the Merhi Defence's final trial brief and oral closing arguments on Mr Merhi's alleged use of the Green, Grey and Purple mobiles.

8. Trial Chamber's order for submissions on the conflict of roles, and submissions received

65. On 21 September 2018, in an order delivered in court, the Trial Chamber sought written submissions from the Parties, the Head of the Defence Office and the Deputy Head of the Defence Office, by 1 October 2018, addressing the potential conflict of interest between the Head of the Defence Office's previous and present roles, and specifically, whether judicial intervention was required.³⁰

66. On 28 September 2018, in my function as the Presiding Judge, I supplemented my earlier publication of relevant correspondence and reacted to the Head of the Defence Office's submission of 5 September 2018 that 'the matter of effective representation ... falls within my exclusive jurisdiction'. I pointed out how the general principles of international criminal procedural law provide for judicial scrutiny, thereby squarely contradicting the Head of the Defence Office's submissions.³¹

67. On 1 October 2018, the Head of the Defence Office informed the Trial Chamber that she had reconsidered and revoked her previous decision to delegate some of her functions under Rules 57 (G) and (H) to Ms Uñac, in respect of matters concerning the conduct of the defence of

²⁸ Transcript of hearing of 11 September 2018, p. 11; T. 17 September 2018, p. 3; T. 21 September 2018, pp 2-3.

²⁹ T. 18 September 2018, p. 2; T. 19 September 2018, pp 1-2.

³⁰ Order for Written Submissions Addressing the Potential Conflict of Interest Between the Head of Defence Office's Previous and Present Roles, T. 21 September 2018, pp 72-74.

³¹ Addendum.

Mr Merhi. She explained that she did so to ‘avoid any inappropriate speculation as to the manner in which each of us performs our respective duties’.

68. Ms Le Fraper du Hellen, however, maintained that she could see no actual or potential conflict of interest on her part and submitted that judicial intervention was unnecessary because the Defence Office’s resources allowed the establishment of an alternative mechanism to address any potential conflict of interest in relation to her role vis-à-vis the Merhi Defence.³² The Deputy Head of the Defence Office did not make observations with respect to the desirability of any judicial intervention, but informed the Trial Chamber that she agreed with the withdrawal of the delegated functions to her.³³

69. The Parties filed submissions on this issue on 1 October 2018. The Merhi and Sabra Defence took no position. The Oneissi Defence argued that the Trial Chamber does not have the power to interfere in the relations between the Defence Office and Defence counsel. The Ayyash Defence submitted only that judicial intervention was not warranted at this time.³⁴

70. The Prosecution submitted that judicial intervention would be warranted only if the lack of effective representation led to material prejudice to the Accused, thus impacting the fairness of the proceedings. The theoretical possibility that counsel for the Accused may not meet the standards in Rules 57 (G) and 58 (B) and the possibility that the Head of the Defence Office would not properly assess the effective representation of the Accused due to her conflict of interest did not at

³² F3740, *Observations de la Chef du Bureau de la Défense suite à l’ordonnance de la Chambre de première instance du 21 Septembre 2018*, 1 October 2018.

³³ F3741, *Observations de la Chef Adjointe du Bureau de la Défense suite à l’ordonnance de la Chambre de première instance du 21 Septembre 2018*, 1 October 2018.

³⁴ F3737, Ayyash Defence Submissions Pursuant to the Trial Chamber’s Request of 21 September 2018, 1 October 2018, paras 2-3; F3738, Merhi Defence Submissions Relating to Filing F3732, 1 October 2018; F3739, Sabra Defence Submissions in Relation to Oral Order Dated 21 September 2018, 1 October 2018, para. 2; F3743, *Soumissions de la Défense de M. Oneissi en réponse à l’Ordonnance de la Chambre du 21 septembre 2018*, 1 October 2018, paras 3-4. The Sabra Defence filed its submissions confidential and *ex parte* the Prosecution. The Trial Chamber ordered the reclassification of this filing to public in F3744, Order Reclassifying Sabra Defence Submissions of 1 October 2018, 3 October 2018.

this stage require a judicial remedy to rectify an unfairness at trial. Other avenues, such as amending the Rules or the Code of Professional Conduct of Counsel,³⁵ could also be considered.³⁶

9. Trial Chamber's instruction to Ms Le Fraper du Hellen on her proposed 'alternative mechanism'

71. On 5 October 2018, the Trial Chamber instructed Ms Le Fraper du Hellen to provide details of the envisaged 'alternative mechanism', including any legal basis for it.³⁷ It noted that her submissions 'do not elaborate on this envisaged alternative mechanism' and 'her submissions provide no suggested timeline for resolving the matter'. The Trial Chamber also emphasised that it sought an expeditious solution.

72. On 12 October 2018, as Presiding Judge, I notified the Parties and the Legal Representatives of Victims of a proposed amendment to Rule 57.³⁸

73. On 15 October 2018, Ms Le Fraper du Hellen submitted that Rule 57 (G), read in conjunction with Article 27 (F) of the Directive on the Appointment and Assignment of Defence Counsel, allowed her to appoint a qualified independent consultant to monitor the effectiveness of the representation of the Accused by Defence counsel. The consultant's mandate and the modalities should remain strictly confidential and internal to the Defence Office. This was necessary to safeguard the Office's independence. The consultant would make recommendations to her.³⁹

³⁵ Code of Professional Conduct for Counsel Appearing Before the Tribunal, 28 February 2011; Code of Professional Conduct for Defence Counsel and Legal Representatives of Victims appearing before the Special Tribunal for Lebanon, STL/CC/2012/03, 14 December 2012.

³⁶ F3742, Prosecution's Submissions pursuant to the Trial Chamber's Order of 21 September 2018, 1 October 2018. *See also* F3742/ADD, Addendum, with Full Citation Details for Footnotes 2-4, to "Prosecution's Submissions pursuant to the Trial Chamber's Order of 21 September 2018", 4 October 2018.

³⁷ F3745, Order in Relation to Head of Defence Office's Observations of 1 October 2018, 5 October 2018, paras 5-6.

³⁸ F3748, Notification of Proposed Amendment to Rule 57 'Functions of the Head of Defence Office' to Provide a Mechanism to Deal with Conflicts of Interest in the Defence Office, 11 October 2018. Publicly noting a proposed Rule change is not without precedent: in F1424, Decision on Trial Management and Reasons for Decision on Joinder, 25 February 2014, at para. 40, the Trial Chamber noted that the then Head of Defence Office, Mr Roux, had proposed to the Rules Committee to amend Rule 57 to permit him to assign Defence counsel to an accused *before* the Trial Chamber had decided under Rule 106 to proceed to try accused *in absentia*. The proposed amendment was rejected by the plenary meeting of judges. And in any event, proposed Rule amendments—which are a form of legislation—as a matter of public policy should not be kept secret any more than proposed amendments to national legislation, including amendments to criminal codes or rules of evidence and procedure.

³⁹ F3749, *Observations de la Chef du Bureau de la Défense suite à l'Ordonnance de la Chambre de première instance du 5 octobre 2018*, 15 October 2018 (Observations), paras 3-4.

74. Specifically, of her own role, Ms Le Fraper du Hellen stated, at paragraph 4:

Given the very nature of the mission entrusted to that independent consultant, its modalities of implementation shall remain a confidential and internal matter of the Defence Office, without the possibility of intervention or monitoring by a Judge, a Chamber or another organ of the Tribunal. Indeed, the statutory independence of the Defence Office, acting through its Head, but also the independence of those Defence Counsel acting with due regard to their professional and ethical obligations, must be safeguarded.

75. For the reasons discussed below this is both misconceived and legally wrong. Moreover, engaging an independent consultant to review the conduct of the defence does not constitute an ‘alternative mechanism’. Rather, it does no more than seek advice from a qualified outsider, a course that is always open—in the absence of a statutory prohibition—to a statutory office-holder. The Registrar, Prosecutor, or a chamber could also seek the advice of an independent consultant so long as it did not involve the delegation of a non-delegable decision-making function.

76. In respect of monitoring the effective representation of the remaining three Accused, Ms Le Fraper du Hellen simply asserted, but without providing any reasoning, that ‘I maintain my position that there is no conflict of interest which would prevent me from performing my duties with respect to them’.⁴⁰

77. The result of Ms Le Fraper du Hellen’s actions is that at least since 1 October 2018—or whenever the delegation was actually revoked, as the notification did not specify its date—she has been responsible for monitoring the effectiveness of Mr Merhi’s legal representation, both during and after her assignment as his co-counsel. To put it another way, she has again made herself responsible for monitoring her own past professional conduct and that of her former colleagues.

⁴⁰ Observations, para. 6.

E. Discussion

1. Ms Le Fraper du Hellen's conflict of roles and interest

78. There are four identifiable conflicts of interest here.⁴¹ The most serious and obvious is that between Ms Le Fraper du Hellen's current role and her earlier role as Mr Merhi's co-counsel. She cannot perform her statutory functions under Rule 57 (G) by monitoring her own professional conduct, nor that of those she had acted jointly with. To do so would breach the general principle of law known as *nemo judex in causa sua* (or *nemo judex in sua causa*), meaning that no-one is a judge in their own cause. A decision maker must be impartial. They cannot judge their own conduct, including that in which they have participated with others.

79. The second conflict relates to the performance of her statutory functions over the professional conduct of counsel with whom she jointly acted for four and a half years. Ms Le Fraper du Hellen co-signed each filing made by the Merhi Defence during the pre-trial and trial phases of the proceedings, until 29 June 2018.

80. Ms Le Fraper du Hellen eventually recognised the existence of the conflict, and—for a mere five weeks, and for ethical reasons—delegated her statutory monitoring functions to her deputy, Ms Uñac, before realising that this created another irresolvable conflict and revoked this delegation. This exacerbated the situation as Ms Le Fraper du Hellen had once again assumed responsibility for monitoring her own professional conduct while she had been acting for Mr Merhi.

81. The third conflict is in relation to monitoring the conduct of counsel for the other Accused, with whom she and the Merhi Defence had made numerous joint litigation decisions while she was assigned to represent Mr Merhi. This conflict of interest also relates to Ms Le Fraper du Hellen's

⁴¹ A fifth conflict may arise out of Article 8 (E) of the Code of Professional Conduct for Defence Counsel and Legal Representatives of Victims appearing before the Special Tribunal, which states that 'Defence Counsel who is assigned to an *in absentia* accused shall not have contact with the accused. If Defence Counsel is contacted, directly or indirectly, by the *in absentia* accused he shall, due to his awareness of the risk such contact may pose to the accused's right to a retrial, and without this act amounting to acceptance of Defence Counsel by the *in absentia* accused: (i) refuse to discuss any element of the case with the *in absentia* accused; and, (ii) refer the accused to the Head of the Defence Office to receive independent legal advice.'

duty under Article 13 of the Statute and Rule 57 (G) to *independently* monitor the performance and work of counsel and persons assisting them.

82. The fourth arises as a result of Trial Chamber's findings in the judgment that the introduction into evidence of the Grey mobile provided the strongest piece of evidence it could use to find beyond reasonable doubt that Mr Merhi was using his personal mobile Purple 231, as pleaded in the amended consolidated indictment.⁴² Ms Le Fraper du Hellen is responsible for this, notwithstanding the ultimate responsibility of lead counsel for the conduct of the defence. If the Prosecutor appeals the acquittal, the issue of whether the Grey mobile could also establish that Mr Merhi was using the pleaded Green network mobile 071 would inevitably arise, thus exacerbating the conflict arising from her professional actions during the trial.

83. In my letter to Ms Le Fraper du Hellen of 31 August 2018, as Presiding Judge, I identified how counsel for the five different Accused had acted in co-ordination during the trial, by stating:

On numerous occasions since the joinder of the *Merhi* and *Ayyash* cases counsel acting for the five (or four) Accused have acted in co-ordination in filings and in oral submissions and in cross-examining Prosecution witnesses. This is normal practice, is procedurally proper, and promotes judicial efficiency. Statistically, in relation to written litigation, this is shown in at least 24 filings between F2201 on 17 September 2015 and F3648 on 7 May 2018 that the Merhi Defence jointly filed before the Trial or Appeals Chambers with counsel acting for the other Accused – seeking relief or opposing Prosecution motions. You signed each of these as co-counsel for Mr Merhi.⁴³

In six other filings the Merhi Defence joined the submissions of other Defence counsel,⁴⁴ and in one other⁴⁵ the Ayyash Defence joined a motion filed by the Merhi Defence. Additionally, in numerous oral submissions in court, Defence counsel supported the legal and factual submissions of other Defence counsel. You did this yourself in court. This revealed some commonality of legal representational interest which naturally involved

⁴² At paras 3611-3616 of the judgment, finding at para. 3611, 'The Trial Chamber is therefore satisfied beyond reasonable doubt that Mr Merhi was using Purple 231. The strongest piece of evidence comes from that identifying the Grey mobile as Mr Merhi's'.

⁴³ Filings F2201, F2298, F2321, F2434, AR126.10_F0001, AR126.10_F0008, AR126.10_F0010, F2668, F2693, F2814, F2833, F2925, F2954, F3098, F3117, F3118, F3183, F3215, F3222, F3318, F3372, F3399, F3627 and F3648.

⁴⁴ Filings AR126.11_F0006, F2476, F2505, F2610, F2614, F2682, F2684, F2968, F3181 and F3395.

⁴⁵ F2919.

coordination with the counsel assigned to act for other Accused, which as noted above, is quite normal and proper.

This, like questioning opposing witnesses and making decisions on dealing with Prosecution evidence and presenting your own evidence, including calling witnesses, is the essence of Defence litigation strategy. And, regardless of whether it is conceived and executed by Defence counsel acting jointly or individually for their own assigned Accused, it falls directly within the head of effective legal representation, regulated by Rule 57.

84. The Merhi Defence, and Ms Le Fraper du Hellen personally, acted with commonality of legal representational interest vis-à-vis the defence lawyers acting for the other Accused, including Mr Badreddine. The perception of a conflict of interest therefore encompasses matters relating to the conduct of *all* defence counsel in the *Ayyash, Merhi, Oneissi and Sabra* case.

85. Furthermore, information about the representation of the Accused, which was unavailable to the Trial Chamber but is relevant to the issue of effective representation and hence a fair trial, may be known to Ms Le Fraper du Hellen as a consequence of her previous role. This additionally creates the perception of a conflict between her former and present functions. A chamber cannot accept any tainting of an Accused person's right to a fair trial. Any such tainting could also diminish the reputation of the Defence Office and the Special Tribunal as a whole and could bring the administration of justice into disrepute.

86. The conflict of roles, and of interest, here is obvious. Ms Le Fraper cannot be a judge in her own cause. She cannot be neutral in determining whether she and her colleagues provided effective legal representation to Mr Merhi and the other Accused persons. Her failure to divest herself of this role has breached the right of an Accused person to a fair trial.

2. The continuing duty to monitor the effectiveness of legal representation

87. Central to this matter is the right of an accused person to legal assistance at all stages of criminal proceedings. This fundamental procedural defence right, as noted above, is set out in the Statute's 'minimum guarantees' for the accused. To be meaningful, however, the legal assistance must be effective. Ineffective legal assistance breaches these human rights law guarantees.

88. Consequently, to ensure a fair trial, the effectiveness of an accused's legal representation must be closely monitored. A chamber trying a case is 'the ultimate guardian of the fairness of the proceedings'.⁴⁶ As this guardian of a fair trial, a chamber has an overriding duty to ensure that an accused is effectively represented and to intervene in the interests of justice where the representation does not meet that standard.

89. A fundamental conflict of roles and interest exists between Ms Le Fraper du Hellen's current and previous roles at the Special Tribunal. She cannot independently monitor her own professional conduct and has failed to divest herself of responsibility for monitoring either her own conduct or that of colleagues with whom she made joint litigation decisions.

90. It is emphasised that the duty of a court to monitor the effectiveness of legal representation lasts from the moment of a lawyer's appointment or assignment as defence counsel until its withdrawal. It follows that this duty continues after the close of the evidence at trial and even after the trial judgment rendered under Rule 168. It continues into any appeal proceedings.

91. The declaration that I made under Rule 148 (A) in my capacity as the Presiding Judge on 21 September 2018, that the case is over⁴⁷—after the Parties concluded the presentation of their cases—terminates neither the duty of the Trial Chamber nor the Head of the Defence Office to monitor the quality of legal representation at trial. This duty continues both *retrospectively* and *prospectively*, as logically it must.

92. Conceivably, issues relating to the effectiveness of legal representation at trial—such as allegations of Defence representational incompetence, or even malpractice—could potentially come to light only after a trial has concluded, as has occurred for example at the ICTY. It is not always evident to 'outsiders', namely, those not privy to the inside details of professional incompetence, when it is actually occurring. In this sense, it is analogous to fraud which is often only detected after the event, such as through an audit. Defence incompetence at trial could be revealed in a trial judgment or detected by counsel newly assigned on appeal scrutinising the trial record and judgment in light of decisions taken at trial by Defence counsel.

⁴⁶ ECtHR, *Kononov v. Russia*, 41938/04, Judgment, 27 January 2011, para. 43.

⁴⁷ T. 21 September 2018, p. 110.

93. Hence, in Ms Le Fraper du Hellen's case, her duty to monitor the effectiveness of the legal representation of the Accused is not only prospective, in the sense of the professional conduct of counsel from 23 July 2018 onwards. Rather, it extends to the entirety of the representation, from the moment of assignment—including of course her own and the other counsel on the Merhi Defence team. Lead counsel of course takes the final decisions.

94. Although Mr Roux had this statutory responsibility under Rule 57 until his retirement on 28 February 2018, this does not mean that the responsibility for monitoring the effectiveness of Defence counsel until that date finished when he left office. The responsibility for the same period continues *retrospectively* with his two successors, Ms Uñac and now Ms Le Fraper du Hellen.

95. This demonstrates that the conflict between Ms Le Fraper du Hellen's former role as co-counsel for the entirety of the evidence in the trial—in which she participated in taking numerous joint strategic litigation decisions with counsel for the other Accused—and her current role, is thus irresolvable. She must delegate this duty.

3. Procedural irregularities in Ms Le Fraper Du Hellen's appointment as Head of the Defence Office

96. The duties of the President of the Special Tribunal are spelt out under Rule 32 (B) and specify that the President 'shall coordinate the work of the Chambers and be responsible for the effective functioning of the Tribunal and the good administration of justice'.

(a) Failure to consult the Council of Judge's on the proposed appointment

97. Rule 37 establishes a 'Council of Judges', composed of the President, the Vice-President, the Presiding Judge of the Trial Chamber and the Pre-Trial Judge. Rule 37 (B) mandates consultation by the President with the Council. It states, in obligatory terms, that 'The President shall consult the other members of the Council on all major questions relating to the functioning of the Tribunal.' This is a statutory check and balance against the arbitrary and capricious exercise of presidential power. The Council should also serve as an advisory body.

98. This Council, however, for all intents and purposes is defunct. It has met only three times since 1 March 2015;⁴⁸ the last time was more than three years ago in May 2017.

99. The Secretary-General is required to consult the President of the Special Tribunal in appointing a Head of the Defence Office. There is no reason to believe that he did not. The President, however, neglected to consult either the Council of Judges or the Trial Chamber on Ms Le Fraper du Hellen's proposed appointment. This is not the first time that she has failed to consult the Council of Judges on 'major questions relating to the functioning of the Tribunal'.⁴⁹

(b) Consequences of breaching a mandatory requirement to consult

100. The issue of Judge Hrdličková's failing to consult the Council of Judges arose in recent litigation before the Appeals Chamber, after she had acted without transparency and consultation or warning to convene a second trial chamber, known as 'Trial Chamber II'.

101. In separate opinions, two international judges of the Appeals Chamber ruled on the legal meaning of 'consultation' and in the context of the President's failure to consult the Council of Judges on such a major question.⁵⁰ Referring to Rule 37 (B)'s mandatory exhortation that the President consult the Council of Judges, Judge Nsereko wrote:

The general tenor of these provisions require the President to consult individuals and the organs of the Tribunal concerned before exercising her mandate or responsibilities. For instance, the very responsibility of coordinating the work of the Chambers necessarily calls for such consultation with the judges of the Chambers or at least the Presiding Judges. According to the Oxford English Dictionary, the word "coordinate" means "to cause (things or persons) to function together or occupy their proper place as parts of an interrelated whole order". Of particular significance is the obligation of the President to

⁴⁸ When Judge Hrdličková assumed office.

⁴⁹ The President likewise failed to consult the Council of Judges in late 2017 and January 2018 on the introduction of a judicial disciplinary mechanism, which was drafted by her office and then presented to the other ten judges as a *fait accompli*. Moreover, she drafted this mechanism so that she controls judicial complaints herself, which effectively makes it very difficult to complain against perceived presidential breaches of the Code of Professional Conduct for the Judges of the Special Tribunal for Lebanon (STL-CC-2016-04). The President also failed to inform, much less, consult the Council on the establishment of 'Trial Chamber II' in November 2019. In fact, the only issue on which the President has consulted the Council, in the last three years—and then by email—was on the dates of the annual judicial break.

⁵⁰ STL-18-10/MISC.2/AC, Decision on "Appeal Against Decision Of President Convening Trial Chamber II", 13 December 2019.

consult the Council of Judges on all major questions relating to the functioning of the Tribunal. By establishing the Council and requiring the President to consult it on all such questions, the drafters of the Rules sought to ensure that when making decisions or taking initiatives of such magnitude, the President does not act in the solitude of his or her office, but in council.

....

Although consultation does not necessarily oblige the decision-maker to agree with the views of the consultees, it at least helps to ensure that his or her ultimate decision is informed or has benefited from the input of the views of the consultees and thus minimises the risk of bad decisions.⁵¹

102. On the legal ramifications of failing to consult the Council of Judges where it was mandatory to do so, Judge Nsereko held:

It is a general principle of administrative law that the failure to consult before taking any administrative action, when consultation is required as in this case, vitiates the action taken. [footnote 23 – see below⁵²] Consequently, the President’s Order convening Trial Chamber II might be said to have been tainted with illegality. The Order was, figuratively speaking, “the fruit of a poisonous tree”, i.e. the President’s alleged request to the UN Secretary General to create Trial Chamber II was based on incorrect information or an uninformed view.⁵³

⁵¹ Opinion of Judge Daniel David Ntanda Nsereko, paras 27-28.

⁵² [footnote 23] See, for example, H.W.R. Wade & C.F. Forsyth, *Administrative Law*, 8th ed. (Oxford University Press, 2000) at p. 229, citing United Kingdom, *House of Lords, Grunwick Processing Laboratories Ltd. v. ACAS* [1978] AC 655, 14 December 1977; United Kingdom, Queen’s Bench Division, *Agricultural etc. Training Board v. Aylesbury Mushrooms Ltd.* [1972] 1 WLR 190, 22 October 1971; United Kingdom, Queen’s Bench Division, *R. v. Camden LBC ex p. Cran*, *The Times*, (1996) 94 LGR 8, 25 January 1995; United Kingdom, Privy Council, *Re Union of Benefices of Whippingham and East Cowes, St James’* [1954] AC 245, 30 March 1954; United Kingdom, Privy Council, *The Mayor and Corporation of Port Louis v. Attorney-General of Mauritius*, [1965] AC 1111, 27 April 1965. For a codification of obligations to inform and consult on the part of administrative decision-makers see Germany, Law of 25 May 1976 (VwVfG), § 28; Spain, Law n. 30 of 26 November 1992, Art. 85; Italy, Law n. 241 of 7 August 1990, Arts 7, 9, 29. For case law recognising the existence of obligations to inform and consult in administrative matters see France, *Conseil d’État*, sections I and VI, n. 267251, 11 January 2006; Italy, *Consiglio di Stato*, VI, n. 5105, 1 October 2002; ECJ, *Transocean Marine Paint Association v Commission of the European Communities*, Case 17-74, Judgment of 23 October 1974; ECJ, *Hoffmann-La Roche & Co. AG v Commission of the European Communities*, Case 85/76, Judgment of 13 February 1979.

⁵³ Opinion of Judge Daniel David Ntanda Nsereko, para. 29.

103. Judge Baragwanath, on the same topic, and interpreting the meaning of the need to ‘consult’ under Rule 37 (B), held:

Specifically, “consult” (as used in Rule 32 (B)),⁵⁴ is a powerful term that carries legal weight and significance. In the much cited case *Port Louis Corporation v Attorney-General of Mauritius*, Lord Morris outlined the requirements of consultation:

The [consultees] must know what is proposed; they must be given a reasonably ample and sufficient opportunity to express their views or to point to problems or difficulties; they must be free to say what they think. [footnote 21]⁵⁵

And in *R v. Secretary of State for Social Services, ex parte Association of Metropolitan Authorities*, Webster J spelled out its implications:

[...] it must go without saying that to achieve consultation sufficient information must be supplied by the consulting party to enable it to tender helpful advice [...] [that is] sufficiently informed and considered information or advice about aspects of the form or substance of the proposals, or their implications for the consulted party [...] [footnote 22]⁵⁶⁵⁷

104. On the legal implications of the Secretary-General being misinformed on a matter upon which the President failed to consult the Council of Judges, in circumstances in which she should have done so, Judge Baragwanath held:

If the Secretary-General was indeed misinformed, as impliedly alleged, the letters of appointment issued to the judges of Trial Chamber II are arguably “fruit of the poisoned tree”. If so, the decision of the Secretary-General, if based on inaccurate information from the President may, although does not necessarily, taint a subsequent decision – such as, in

⁵⁴ The reference to Rule 32 (B) is an obvious typographical error, as within context, Judge Baragwanath is clearly referring to Rule 37 (B).

⁵⁵ [Footnote 21] United Kingdom, Privy Council, *The Mayor and Corporation of Port Louis v. Attorney-General of Mauritius*, [1965] AC 1111, 27 April 1965, 1124.

⁵⁶ Opinion of Judge David Baragwanath, paras 53-54.

⁵⁷ [Footnote 22] United Kingdom, Queen’s Bench Division, *R v. Secretary of State for Social Services, ex parte Association of Metropolitan Authorities*, [1986] 1 All ER 164, 21 May 1985, 167.

this case, the creation of the second Trial Chamber and appointment of its judges: *A (FC) v. Secretary of State for the Home Department*. [footnote 31⁵⁸]

105. These two opinions powerfully underline what is required where consultation is legally mandated and the legal consequences flowing from breaching such obligatory requirements. These are that the decision itself is defective, with the legal effect that an appointment stemming from a flawed decision could consequently be found to be void. This, in my view, is apposite here.

106. Whatever the President advised the Secretary-General was without the benefit of the input of the Council of Judges, and the Trial Chamber, which was best-placed to advise her, and hence the Secretary-General, on the real conflict that would occur with Ms Le Fraper du Hellen's appointment.

107. In the circumstances, namely the potentially deleterious effect on the rights of the Accused to a fair trial, it is self-evident that the President should have consulted the Trial Chamber on the appointment *before* it was made. Had it been so consulted, the Trial Chamber could have pointed to some of the pertinent considerations raised in this declaration, so as to allow the appointing authority to consider them. Regrettably, neither the Council nor Trial Chamber was either consulted or informed.

108. Had the President consulted me I would have strongly counselled her to advise the Secretary-General that the appointment was unwise and that it could embarrass the Special Tribunal, the United Nations and his own office. I have no doubt that the Council of Judges would have advised her in similar terms; it could not have done otherwise.

109. Further, had I been aware that the Secretary-General had consulted the President before he made the appointment, and that she had not consulted me in my capacity as a member of the Council of Judges, I would have separately written to the Secretary-General pointing out the concerns that I have identified in this declaration. He would then have received the information and advice necessary to make an informed decision as to whether he should follow the selection

⁵⁸ [Footnote 31] United Kingdom, House of Lords, *A (FC) v. Secretary of State for the Home Department* [2005] UKHL 71, 8 December 2005, paras 34, 51, 59, 88, 120, 161.

panel's recommendation to appoint Ms Le Fraper du Hellen to the position. However, as the Council of Judges was kept in the dark, such a course was impossible.

110. It follows from the President's breach of Rule 37 (B) that the appointment process was irregular and legally flawed. The Secretary-General cannot have received proper advice on all relevant aspects of Ms Le Fraper du Hellen's appointment.

111. The Secretary-General acted, as is normal, on the advice of the selection panel that had interviewed the candidates for the post. However, as he was uninformed of some major issues concerning this candidate, he could not consider relevant factors that, as the decision-maker, he should have considered. These were: Ms Le Fraper du Hellen's conflict of roles in acting as both Defence counsel and the statutory monitor of Defence counsels' conduct in the same case (and potentially on appeal), Ms Le Fraper's professional conduct during *Prosecutor v. Ayyash, Merhi, Oneissi and Sabra* case, and the potential conflict she had in relation to the connected case of STL-18-10 of *Prosecutor v. Ayyash*. Without this information the Secretary-General could not make an informed decision.

4. The need for judicial intervention during the proceedings

112. Ms Le Fraper du Hellen, in her submissions to the Trial Chamber, insisted that the matter was out of the Trial Chamber's hands as she had been appointed by the Secretary-General of the United Nations to the post, essentially in good faith. Further, according to these submissions, she alone was responsible for all decisions relating to the effectiveness of the legal representation of the Accused.

113. No issue is taken here with the proposition that she was appointed by the Secretary-General of the United Nations to the post in good faith. However, for two essential reasons her views are legally misconceived.

114. The first is that the identity of the appointing authority is *generally* an irrelevant consideration in determining whether the appointee has a conflict of issue or role. The conflict here exists independently of the appointing authority.⁵⁹ The problem at hand is that Ms Le Fraper

⁵⁹ It is of course recognised that an appointing authority could in some circumstances have a conflict in making certain appointments, either of a post or a person, such as an appointing authority choosing a favoured individual to inquire

du Hellen's appointment to this particular position thrust her into an immediate conflict of interest *vis-à-vis* the legal representation of the Accused in the *Ayyash, Merhi, Oneissi and Sabra* case and her statutory duty to monitor its effectiveness.

115. Secondly, as emphasised above, the Trial Chamber is mandated by Article 16 of the Special Tribunal's Statute to ensure that the Accused receive a fair trial, a vital component of which is having the effective legal representation of the Accused properly monitored. Ms Le Fraper du Hellen's apparent belief to the contrary is legally wrong.

116. The Special Tribunal's Head of the Defence Office has an important and specified statutory role in this, but whatever she does in this respect is subject to a chamber's ultimate oversight. Ms Le Fraper du Hellen is neither the sole, nor final, arbiter of whether the Accused are effectively represented—as is clear from the abundance of international human rights case law on this point, as referred to above.

117. In international criminal law proceedings, such as at the ICTY, Trial Chambers have intervened in the interests of justice in relation to issues of the effectiveness of Defence representation of accused persons.⁶⁰ It is indeed surprising, if not unsettling, that the Head of the Defence Office was unaware that courts have an overriding duty to ensure that accused persons have effective legal representation.

118. Regrettably, Ms Le Fraper du Hellen's views on this endanger the rights of an accused person to receive a fair trial. They are at odds with her independent statutory role under Article 13 (2) of the Statute which requires her to 'protect the rights of the defence', namely, of suspects and accused persons.

into the authority's own alleged wrongdoing. This appears to have occurred here with Ms Le Fraper du Hellen nominating an independent counsel to monitor, if necessary, the effective legal representation of Mr Merhi.

⁶⁰ For example, ICTY, *Prosecutor v. Kunarac, Kovač and Vuković*, IT-96-23 & 23/1, Decision on the Request of the Accused Radomir Kovač to Allow Mr Milan Vujin to Appear as Co-Counsel Acting Pro Bono, 14 March 2000, para. 9. Mr Vujin was a defence lawyer who had appeared for a former accused. But he himself had been convicted of contempt before the Tribunal in relation to that representation, and at that time his case was under appeal. Mr Kovač's lawyers sought the Trial Chamber's permission to permit Mr Vujin to appear as 'pro-bono counsel' pending resolution of his appeal against conviction. The Trial Chamber refused, finding, at para. 13, 'The Trial Chamber considers the inherent power by necessity to include the power to refuse audience to counsel, notwithstanding that he may be otherwise qualified'.

119. The Prosecution's and Ayyash Defence's submissions that judicial interference at the stage was not warranted as no material prejudice had then occurred did not fully address the matter. This was because in its deliberations on the charges the Trial Chamber may have had to consider whether any of the Accused suffered material prejudice as a result of Ms Le Fraper du Hellen's occupying the role of Head of the Defence Office, despite this conflict of interest. Rule 57 (I) makes it clear that the present situation should be avoided.

120. Moreover, another important consideration is that the proceedings have been conducted *in absentia* and those representing the Accused do not have the benefit of instructions from those they represent. The Accused may not currently be in a position to make informed decisions about the quality of their representation, nor protest, as some have at, for example, the International Criminal Tribunal for Rwanda (ICTR) and the ICTY, that their representation is less than adequate.⁶¹

121. Furthermore, it is established international criminal law procedural case law that counsel enjoy the presumption of competence. This is premised on guarantees that assigned counsel have the requisite professional qualifications and meet the formal requirements as set out in the various international criminal courts' and tribunals' rules of procedure and evidence and internal directives on the assignment of defence counsel. This presumption places the burden on the accused to draw the Trial Chamber's attention to any infringement to his or her right to assistance of counsel unless 'counsel's incompetence was so manifest as to oblige the Trial Chamber to act'.⁶² This is not going to occur when Defence counsel are acting for accused persons who are being tried *in absentia*. In

⁶¹ For example, ICTR, *Nahimana, Barayagwiza and Ngeze v. Prosecutor*, ICTR-99-52-A, Judgment, 28 November 2007, paras 130-192; ICTY, *Prosecutor v. Krajišnik*, IT-00-39-A, Judgment, 17 March 2009, paras 38-72. Before dismissing points raised on appeal regarding ineffective representation by counsel, both Appeals Chambers scrutinised the alleged failures and incompetence of defence counsel, and any alleged failure from the Trial Chambers to intervene; ICTY, *Prosecutor v. Blagojević*, IT-02-60-AR73.4, Decision on Appeal by Vidoje Blagojević to Replace his Defence Team, 15 September 2003, upholding the Trial Chamber's decision in *Prosecutor v. Blagojević & Jokić*, IT-02-60-T, Decision on Independent Counsel for Vidoje Blagojević's Motion to Instruct the Registrar to Appoint new Lead and Co-Counsel, 3 July 2003, refusing the Accused's application to replace his entire (assigned) defence team on the basis of his lack of trust in its members and a breakdown in communications between lawyer and client.

⁶² *Prosecutor v. Nahimana, Barayagwiza and Ngeze*, ICTR-99-52-A, Judgment, 28 November 2007, para. 131; *Prosecutor v. Bikindi*, ICTR-01-72-A, Judgment, 18 March 2010, paras 21-22; *Prosecutor v. Akayesu*, ICTR-96-4-A, Judgment, paras 77-78; *Prosecutor v. Krajišnik*, IT-00-39-A, Judgment, 17 March 2009, para. 42. See also, ECtHR, *Kamasinski v. Austria*, 9783/82, Judgment, 19 December 1989, para. 65.

such a situation, it is especially important for the Trial Chamber to uphold the rights of those who are not participating in the proceedings.

122. To take this a step further—and only hypothetically to demonstrate the principle—had the Trial Chamber convicted Mr Merhi and, on appeal new counsel are assigned to act in an appeal against the conviction, counsel who appeared for Mr Merhi at trial could be obliged to provide affidavits, or even testify, on appeal relating to their professional actions at trial. This is in fact what occurred in the *Krajišnik* appeal at the ICTY, where *amicus curiae* counsel for the accused raised appeal grounds that the ineffectiveness of counsel at trial, and by former counsel in the pre-trial phase, had resulted in an unfair trial. This resulted in (former) lead counsel at trial having to testify before the Appeals Chamber as to his own professional conduct and that of co-counsel during trial, including providing internal defence documents.⁶³

123. This is no mere hypothetical possibility. The Prosecution may appeal Mr Merhi's acquittal on all counts. The Trial Chamber has found, and it is noted, based substantially on Ms Le Fraper du Hellen's actions in providing the Prosecution with additional evidence against Mr Merhi, that he was the single user of the mobile Purple 231. The Merhi Defence's contention at trial was that the Prosecution had not proved that Mr Merhi was using Purple 231. However, Ms Le Fraper du Hellen's professional conduct resulted in the Prosecution uncovering the additional evidence that allowed the Trial Chamber to make a finding that was contrary to the Merhi Defence's case, and thus Mr Merhi's personal interests, at trial.

5. The remedy

124. To minimise the risk that any prejudice would become material, all involved, and in particular, a Trial Chamber as the ultimate guarantor of a fair trial, should have remedied the situation. In this regard, Ms Le Fraper du Hellen's involvement in the *Ayyash, Merhi, Oneissi and Sabra* case should have been addressed, sooner rather than later, through delegation to her deputy or to an alternative mechanism.

125. There is no suggestion here that the Head of the Defence Office is actually biased or unprofessional and the legal assumption that she professionally performs her functions is noted.

⁶³ *Prosecutor v. Krajišnik*, IT-00-39-A, Judgment, 17 March 2009, paras 29-72.

However, her current role and duties of oversight of the conduct of the defence in the *Ayyash, Merhi, Oneissi and Sabra* case cannot be satisfactorily executed given her prior role in the same proceedings. This would apply in the event of any appellate proceedings after the judgment. Furthermore, no suggestion is made here that Mr Aouini, the lead counsel for Mr Merhi, has not at all times acted properly and professionally in representing Mr Merhi.

126. The Special Tribunal's Statute and Rules lack a regulatory framework to deal with situations of conflicts of interest such as these relating to the Head of the Defence Office in relation to oversight of the defence of Mr Merhi. In light of this, internal efforts have been undertaken to amend the Rules to provide a statutory solution.

127. However, in the absence of any such Rule amendment over the last two years, the difficulty is finding a solution which permits the Head of the Defence Office to legally delegate her functions outside of the Defence Office. Delegating her powers to her deputy in respect of the monitoring of the representation of Mr Ayyash, Mr Oneissi and Mr Sabra is legally permissible, and to avoid the continuation of the conflict identified above, she must do this without further delay.

128. The problematic aspect is delegating her powers in respect of the Merhi Defence to someone outside of the Defence Office. The Rules do not provide a mechanism that permits her to delegate her essential decision-making powers elsewhere. Ms le Fraper du Hellen suggests that she has the authority to delegate her functions outside of the Defence Office on the basis of Article 27 of the Directive on the Appointment and Assignment of Defence Counsel.

129. On this point, she is also legally mistaken. Article 27 of the Directive on the Appointment and Assignment of Defence Counsel addresses the inspection and examination of counsel's work product. It does not, and legally cannot, delegate or abrogate the Head of the Defence Office's statutory decision-making powers such as, under Rule 57 (H) (ii) and (iii), to make representations to a chamber to remove counsel or to initiate disciplinary proceedings against them.

130. These are decision-making powers entrusted by the Rules to the Head of the Defence Office. They cannot be delegated to someone outside her Office. Similarly, the Special Tribunal's other statutory office-holders cannot unilaterally delegate their functions to outsiders. The Prosecutor cannot withdraw and put an outsider in his place. A Judge cannot stand aside and select an external legal consultant to take his or her place on the bench.

131. In fact, Rule 60 *bis* (E) (ii) in the context of a contempt investigation or prosecution,⁶⁴ demonstrates that the involvement of an external entity must be judicially sanctioned.

132. The Head of the Defence Office may delegate matters to her deputy where there is no conflict of interest but absent express statutory authorisation she may not delegate her statutory role to an outsider. And, as Ms Le Fraper du Hellen has recognised herself, she cannot delegate such matters to her deputy as this would place Ms Uñac in the professionally untenable position of having to monitor her superior's professional competence.

133. The Trial Chamber in exercising its duty to ensure a fair trial cannot wait if and until a regulatory framework is put in place through an amendment of the Rules. This is why I have written this declaration in the absence of a formal order to this effect from the Trial Chamber.

134. In principle, as I stated in my correspondence with Ms Le Fraper du Hellen, an independent alternative mechanism that could address all aspects that fall into the ambit of the conflict of interest identified by the Trial Chamber could have cured its concerns. These were expressed in the Trial Chamber's correspondence with her.

135. Ms Le Fraper du Hellen, however, has stated that *she* would appoint an independent consultant herself, and apparently has done so. The Head of the Defence Office must act professionally and independently, but the very nature of a recusal due to a conflict of interest means that the recused person cannot choose their own replacement. Rule 57 (H) contains serious sanctions that may be taken against Defence counsel. Ms Le Fraper du Hellen cannot choose the person who *could* judge her professional conduct as counsel and make recommendations to *her* as to what she should do about *her own* conduct. This raises an actual conflict of interest.

136. In comparison, under Rule 60 *bis* (E) (ii) in a contempt investigation or prosecution—which the Prosecutor would normally undertake—if he has a conflict of interest, the Registrar rather than the Prosecutor selects *amicus curiae* to take the Prosecutor's role. In light of this, and

⁶⁴ Rule 60*bis* 'Contempt and Obstruction of Justice' in paragraph (E) (ii) states that 'When the Contempt Judge has reason to believe that a person may be in contempt of the Tribunal, he may where the Prosecutor indicates a preference not to investigate the matter or submit an indictment himself, or where in the view of the Contempt Judge, the Prosecutor has a conflict of interest with respect to the relevant conduct, direct the Registrar to appoint an *amicus curiae* to investigate the matter and report back to the Contempt Judge as to whether there are sufficient grounds for instigating contempt proceedings'.

in an effort to avoid *any* tainting of the Accused's fair trial rights, Ms Le Fraper du Hellen cannot herself choose any independent consultant who is to have a role in the oversight of the defence of Mr Merhi. But this is what she appears to have done.

137. Most crucially, as is noted above, Ms Le Fraper du Hellen, recognizing the existence of her own actual conflict of interest, proposed to delegate her non-delegable statutory powers to an outsider. But even if it were legally permissible, which it is not, it would leave a reporting lacuna.

138. The independent consultant would have no-one to report to. They cannot report to Ms Uñac given that legally contractually she cannot supervise her own supervisor's professional conduct. And they cannot report to Ms Le Fraper du Hellen herself because of her own conflict, although this is what she says that she is putting into effect. On both levels the proposal is thus legally and practically unworkable.

139. In conclusion, Ms Le Fraper du Hellen's proposal was legally impermissible but further, even if it were permitted, it would not cure the conflict of interest. If she cannot recognise the inherent conflict of interest and take appropriate action, and the Rules do not (currently) allow a delegation of her functions outside of her office, the only satisfactory solution to the problem is intervention by a chamber in the interests of justice.

140. The Trial Chamber, in my view, should have intervened in the interests of justice to ensure that the Accused continued to have a fair trial, especially in circumstances in which the Accused were not participating in the trial and cannot monitor the effectiveness of their legal representation *in absentia*. As noted in the introduction above, I sincerely regret that this did not occur.

141. The Head of the Defence Office must delegate her duties under Rule 57 to her deputy in respect of the defence of Mr Ayyash, Mr Oneissi and Mr Sabra.

142. Ms Le Fraper du Hellen cannot continue to have a monitoring or oversight role in respect of the Merhi Defence at any stage of the proceedings. Therefore, in respect of her duties under the Rule in respect of his defence, the Registrar must appoint independent *amicus curiae* who can report directly to the appropriate chamber if and when required on any matter related to the conduct of the Merhi Defence as it concerns the trial.

143. It would be acceptable for the Registrar to choose counsel from the list of counsel maintained by the Defence Office under Rule 59 (B).

6. Possible conflict of roles in STL-18-10, *Prosecutor v. Ayyash*

144. The identified conflict of interest does not only affect Ms Le Fraper du Hellen's role in defence matters related to the conduct of the *Ayyash, Merhi, Oneissi and Sabra* proceedings.

145. Another issue is the possibility of conflict in relation to her duties with respect to the monitoring of Defence counsel in the connected case of STL-18-10, *Prosecutor v. Ayyash*. One of the named victims in that case is Mr Marwan Hamade, who was the subject of an attack against him, on 1 October 2004 in Beirut. He is named in all five counts of the indictment in that case.⁶⁵ Salim Jamil Ayyash, the former Accused Mustafa Amine Badreddine, and unnamed others are alleged to have been responsible for Mr Hamade's attempted murder and the murder of his bodyguard.

146. Mr Hamade testified in the *Ayyash, (Badreddine), Merhi, Sabra and Oneissi* trial for eight days, on 17 to 20 November, and 8 to 11 December 2014. The Trial Chamber heard evidence of the attack on him, and he gave extensive political and background evidence that is comprehensively referenced in the judgment. However, on 13 November 2014, just before he was due to testify, the Prosecution sought a ruling from the Trial Chamber in relation to the opposition of the Defence of all (then) five Accused to the Prosecution calling Mr Hamade to testify on any political matters, and its leading related evidence.

147. The Trial Chamber heard detailed submissions from the Prosecution and counsel for the five Accused that day and the next. Ms Le Fraper du Hellen herself made submissions on behalf of the Merhi Defence, opposing Mr Hamade's evidence.⁶⁶ Mr Roux, as the Head of the Defence Office, was also present in the court.

148. When Mr Hamade appeared for questioning in court the following week, Ms Le Fraper du Hellen was present in court on each of the four days of his evidence in chief, representing Mr

⁶⁵ STL-18-10/I/PTJ, *Prosecutor v. Ayyash*, F0012, Public Redacted Indictment, 14 June 2019.

⁶⁶ T. 13 November 2014, pp 92-100.

Merhi.⁶⁷ She was not present when Mr Hamade returned for Defence cross-examination in December 2014 and counsel for Mr Merhi did not cross-examine him.

149. This illustrates that the role of the Head of the Defence Office in both cases is so intertwined that the conflict of roles is not confined to the present case. In case STL-18-10, Ms Le Fraper du Hellen is also monitoring the conduct of counsel she has appointed to represent Mr Ayyash in a second trial, including lead counsel, Mr Emile Aoun, with whom she made joint strategic litigation decisions throughout the *Ayyash, Merhi, Oneissi and Sabra* trial. These include, on 13 November 2014, in opposing Mr Hamade's testimony.

F. Head of the Defence Office—and Deputy Head of the Defence Office—disobeying two Trial Chamber orders, sixteen times

150. Also of serious concern here is that Ms Le Fraper du Hellen, in her capacity as the Head of the Defence Office, disregarded the Trial Chamber's explicit orders—between 30 September and 20 December 2019—in sixteen different filings she personally signed.

151. On 20 September 2019, after reviewing how many filings and decisions in the case remained confidential, the Trial Chamber issued a 'Decision and orders relating to the Public nature of the proceedings and reclassifying filings from "Confidential" To "Public"'.⁶⁸

152. Because of the obvious conflict of roles and interest between Ms Le Fraper du Hellen's former and current roles, the Trial Chamber specifically ordered her Deputy Head of the Defence Office to review some relevant confidential filings, including those filed by the Defence of the former Accused, Mustafa Amine Badreddine.

153. The order was for Ms Uñac, as the Deputy Head of the Defence Office, to either immediately (a) file public redacted versions or (b) seek their reclassification as 'public'.⁶⁹

154. The Trial Chamber put the Deputy Head of the Defence Office's name, in lieu of that of Ms Le Fraper du Hellen, on the coversheet of the order. This, additionally, signified that it was

⁶⁷ Mr Roux was also present on 17 and 20 November 2014.

⁶⁸ F3777, Decision and Orders Relating to the Public Nature of the Proceedings and Reclassifying Filings from 'Confidential' to 'Public', 20 September 2019.

⁶⁹ Decision and orders regarding confidentiality of filings, para. 12.

addressed to the Deputy, rather than the official who had the conflict of interest. In the decision and order, the Trial Chamber held:

So far as the Trial Chamber can ascertain, only a small number of its decisions and orders remain ‘confidential’, and it is currently reviewing the extent of any necessary redactions to these.

The Trial Chamber notes with concern that, in respect of a number of these, it ordered the Parties to file public redacted versions or to have them reclassified, but this has not yet occurred, and without explanation. As for the Badreddine Defence filings, the Trial Chamber on 29 July, 31 October and 25 November 2016 ordered the former Head of Defence Office (Mr François Roux) to file public redacted versions of specified confidential filings—or have them reclassified as “public”. But more than three years have passed in respect of the first order, and almost three in respect of the other two, without this occurring. This is inexplicable.

The Trial Chamber therefore orders the Parties, the Legal Representatives of Victims, the Registrar, and the *Deputy Head of Defence Office* to review the relevant confidential filings and to either immediately (a) file public redacted versions or (b) seek their reclassification as ‘public’. This must be done by **Friday 4 October 2019**.

Finally, the Trial Chamber orders the Parties, the *Deputy Head of Defence Office*, the Legal Representatives of Victims and the Registrar to provide a progress report to the Trial Chamber by **Friday 4 October 2019** in relation to this decision and order, providing reasons in respect of each remaining confidential filing as to why it is still classified as ‘confidential’ and what steps, if any, have been taken to have it reclassified or redacted.⁷⁰ (italics added)

155. Ms Le Fraper du Hellen, however, responded to this explicit order by simply ignoring it—as indeed did her Deputy—and filing and signing it herself in direct contravention of the Trial Chamber’s explicit order. She did this on the following thirteen occasions, namely:

⁷⁰ Decision and orders regarding confidentiality of filings, paras 9, 11-13.

- 30 September 2019—the Head of the Defence Office submitted a public redacted version of a previous confidential filing;⁷¹
- 1 October 2019—the Head of the Defence Office sought reclassification of two filings;⁷²
- 2 October 2019—the Head of the Defence Office submitted a public redacted version of a previous confidential filing;⁷³
- 2 October 2019—the Head of the Defence Office submitted a public redacted version of a previous confidential filing;⁷⁴
- 3 October 2019—the Head of the Defence Office submitted a public redacted version of a previous confidential filing;⁷⁵
- 3 October 2019—the Head of the Defence Office submitted a public redacted version of a previous confidential filing;⁷⁶
- 3 October 2019—the Head of the Defence Office submitted a public redacted version of a previous confidential filing;⁷⁷
- 4 October 2019—the Head of the Defence Office sought reclassification of one filing;⁷⁸

⁷¹ F2439, *Notification du dépôt de la version publique expurgée des « Observations du Bureau de la Défense suite à l'ordonnance « Requesting submissions on access to private or closed session proceedings from outside the courtroom » en date du 29 Janvier 2016 », datées du 5 février 2016*, 30 September 2019.

⁷² F3779, *Motion for reclassification*, 1 October 2019.

⁷³ F2162, *Notification du dépôt de la version publique expurgée du document intitulé « Badreddine Defence Consolidated Response to six Prosecution Motions for Admission of Call Sequence Tables and Related Statements », daté du 1^{er} septembre 2015*, 2 October 2019.

⁷⁴ F2530, *Notification du dépôt de la version publique expurgée du document intitulé « Badreddine Response to Prosecution Rule 154 Motion for the Admission of Passport Applications », daté du 31 mars 2016*, 2 October 2019.

⁷⁵ F2191, *Notification du dépôt de la version publique expurgée du document intitulé « Badreddine Defence Response to the "Prosecution Motion for the Admission of Call Sequence Tables Related to the Movements of Rafik Hariri and Related Events" », daté du 10 septembre 2015*, 3 October 2019.

⁷⁶ F2333, *Notification du dépôt de la version publique expurgée du document intitulé « Badreddine Defence Response to "Prosecution Motion for Video-conference Link Testimony for PRH009 and PRH078" », daté du 24 novembre 2015*, 3 October 2019.

⁷⁷ F2355, *Notification du dépôt de la version publique expurgée du document intitulé « Badreddine Defence Response to "Prosecution Motion to add PRH705 to its Witness List" », daté du 2 décembre 2015*, 3 October 2019.

⁷⁸ F3785, *Motion for Reclassification*, 4 October 2019.

- 17 October 2019—the Head of the Defence Office submitted a public redacted version of a previous confidential filing;⁷⁹
- 22 October 2019—the Head of the Defence Office submitted a public redacted version of a previous confidential filing;⁸⁰
- 31 October 2019—the Head of the Defence Office submitted a public redacted version of a previous confidential filing;⁸¹
- 11 December 2019—the Head of the Defence Office submitted a public redacted version of a previous confidential filing;⁸² and
- 20 December 2019—the Head of the Defence Office submitted a public redacted version of a previous confidential filing.⁸³

156. The order could not have been clearer: *the Deputy Head of Defence Office* was ordered to review the relevant confidential filings and to either immediately (a) file public redacted versions or (b) seek their reclassification as ‘public’.

157. On 12 December 2019, the Trial Chamber issued further ‘Orders regarding declassification of exhibits’. In this order, the Trial Chamber directed the Parties and Legal Representatives of Victims to review all exhibits tendered during the proceedings to identify those that must remain confidential and those that could be made public or done so with redactions, and to file an update report.⁸⁴

⁷⁹ F2237, *Notification du dépôt de la version publique expurgée du document intitulé « Badreddine Defence Response to “Prosecution Motion for Protective Measures for [REDACTED]” »*, daté du 1 octobre 2015, 17 October 2019.

⁸⁰ F2351, *Notification du dépôt de la version publique expurgée du document intitulé « Confidential Badreddine Defence Response to “Prosecution Motion to Add PRH707 to its Witness List” »*, daté du 2 décembre 2015, 22 October 2019.

⁸¹ F2411, *Notification du dépôt de la version publique expurgée des « Observations du Chef du Bureau de la Défense au soutien de la requête de la Défense de M. Oneissi aux fins de reconsidération de la décision de la Chambre en date du 20 janvier », datées du 21 janvier 2016*, 31 October 2019.

⁸² F2240, *Notification du dépôt de la version publique expurgée du document intitulé « Badreddine Defence Notice of Reclassification of its Response to the “Prosecution Motion for Protective Measures for Witness [Redacted]” »*, daté du 2 octobre 2015, 11 December 2019.

⁸³ F2338, *Notification du dépôt de la version publique expurgée du document intitulé “Badreddine Defence Response to “Prosecution Motion to Add [Redacted] to its Witness List””*, daté du 26 novembre 2015, 20 December 2019.

⁸⁴ F3802, *Orders Regarding Declassification of Exhibits*, 12 December 2019, para. 4.

158. In respect of exhibits tendered by the Badreddine Defence, the Trial Chamber ordered that:

As before, the Trial Chamber orders the *Deputy Head of Defence Office* to proceed in the same way with respect to exhibits tendered by the Badreddine Defence.⁸⁵ (italics added)

159. As was the case with the decision and order of 20 September 2019, the Trial Chamber placed the name of the Deputy, and not the Head of the Defence Office, on the order's coversheet. Ms Le Fraper du Hellen again ignored the Trial Chamber's explicit order and filed the report herself on 17 December 2019.⁸⁶

160. Ms Le Fraper du Hellen's disregard of the Trial Chamber's orders—and it would appear her Deputy's—was deliberate. In the two progress reports that Ms Le Fraper du Hellen filed on 4 October 2019, she directly quoted the Trial Chamber's orders to her Deputy. In identical footnotes in these reports, she stated:

As she did previously, the Deputy Head of Defence Office referred the matter to the Head of Defence Office. See, for illustrative purposes, the email from the Deputy Head of Defence Office to the Legal Officer of the Trial Chamber of 24 October 2018 by way of which she requested the Legal Officer to inform the Trial Chamber that its email of 23 October 2018 had been transmitted to the Head of Defence Office.⁸⁷

161. The Special Tribunal's Rules of Procedure of Evidence, its Staff Rules and its Codes of Conduct all apply to the Head of the Defence Office and her Deputy. Neither Ms Le Fraper du Hellen nor Ms Uñac asked the Trial Chamber to reconsider its orders directed to the Deputy Head of the Defence Office. Neither explained why they were disregarding judicial orders.

162. Disobeying a judicial order is a serious matter in any jurisdiction, national or international, and penalties may apply. It is difficult to imagine that conduct in disobeying a lawful court order some sixteen times without a justifiable reason, in a national jurisdiction, would be ignored. There is no reason in principle why the Special Tribunal's chambers should ignore this disobedience of

⁸⁵ Orders regarding declassification of exhibits, para. 6.

⁸⁶ F3809, *Rapport relatif aux pièces déposées par l'équipe de Défense de M. Badreddine dans le cadre du procès, conformément à l'Ordonnance de la Chambre de première instance du 12 décembre 2019*, 17 December 2019.

⁸⁷ F3791, Report regarding documents filed by the Defence Office in the trial, submitted in accordance with the Trial Chamber's Order of 20 September 2019, 4 October 2019, fn. 3; F3792, Defence Office Report Regarding the Confidential Exhibits and Documents Filed by the Badreddine Defence Team in the Trial, submitted in Accordance with the Trial Chamber's Order of 20 September 2019, 4 October 2019, fn. 2.

its orders, and by staff members and counsel who are subject to its statutory and internal regulations.

163. Rule 60 provides for ‘Misconduct of Counsel or other Persons Appearing before the Tribunal’ and provides that:

(A) If a Judge or Chamber finds that counsel or anyone appearing in proceedings before the Tribunal is offensive, abusive or obstructing the proper conduct of the proceedings, or is negligent, or otherwise fails to meet the acceptable standards of professional competence and/or ethics in the performance of his duties, the Judge or Chamber may, after giving them the opportunity to be heard:

- (i) issue a formal warning;
- (ii) defer, suspend, or refuse audience to them; or
- (iii) determine that they are no longer eligible to represent a suspect or an accused before the Tribunal, a victim participating in the proceedings, or to appear before the Tribunal.

164. Further, Rule 60 *bis* (A) under the heading ‘Contempt and Obstruction of Justice’ provides:

The Tribunal, in the exercise of its inherent power, may hold in contempt those who knowingly and wilfully interfere with its administration of justice, upon assertion of the Tribunal’s jurisdiction according to the Statute.

165. The Special Tribunal’s Staff Regulations and Staff Rules govern the conduct of staff members. The Head of the Defence Office, although appointed by the Secretary-General, and like the Prosecutor, is a Special Tribunal staff member. So is the Deputy Head. The relevant rules provide that:

A failure to ‘observe the standards of conduct expected of an international civil servant, may amount to unsatisfactory conduct’ and disciplinary proceedings.⁸⁸

⁸⁸ Rule 110.1 (a) ‘Alleged Misconduct’.

It also provides under ‘Conflict of interest’ that:

- (v) Staff members shall abstain from any conduct which may be directly or indirectly in conflict with the discharge of their official duties.

166. The conduct of counsel who appear before the Special Tribunal is governed by ‘A Code of Professional Conduct for Counsel Appearing Before the Tribunal’, and the ‘Code of Professional Conduct for Defence Counsel and Legal Representatives of Victims appearing before the Special Tribunal for Lebanon’. The Head of the Defence Office has a right of audience in proceedings and that Code applies to her. That general code which applies to all counsel, under the heading ‘Professional Conduct’, states that:

- 1 Counsel shall, within his or her respective role in proceedings:
 - a. conduct himself or herself professionally and in accordance with the law, rules and ethics of the legal profession;

Article 17, ‘Professional misconduct’, in the Code of Conduct for Defence Counsel, provides that:

Counsel commits professional misconduct in particular when he:

- (i) violates or attempts to violate any provisions of the Statute, the Rules, the Defence or Victims’ Directive as appropriate, the Joint Code or this Code, imposing an ethical or professional duty on Counsel.

167. Ms Le Fraper du Hellen obviously disagreed with the Trial Chamber’s expressed view, in applying long settled law and international human rights principles that she had a conflict of interest and roles between her former and current roles. She refused to implement the Trial Chamber’s proposed solution, stating that she disagreed with it.

168. Mere disagreement with a court order provides insufficient justification to ignore or to deliberately flout one. Doing so attacks the rule of law and foundations of justice. This is aggravated when an advocate appearing before a court, who is bound by professional codes—national and international—does so, and repeatedly and without explanation or excuse. The appropriate course is to appeal a court order, or to seek its reconsideration, rather than to ignore it. Ms Le Fraper du Hellen is not above the law.

169. In the circumstances outlined above, namely, what appears to be a wilful disregard of two Trial Chamber orders, and in sixteen separate filings, an appropriate measure would be to invoke Rule 60 (A) and to direct the Head of the Defence Office, and her Deputy, to show cause as to why they should not be formally warned or excluded from the proceedings under sub-headings (i) and (ii). I have seriously considered whether this should be done, although other options, as outlined above, are also available.

170. Finally, this declaration should be sent directly to the UN Secretary-General.


DECLARATIONS

FOR THESE REASONS, I MAKE THE FOLLOWING DECLARATIONS:

- 1) **THE HEAD OF THE DEFENCE OFFICE**, Ms Le Fraper du Hellen, has an irresolvable conflict of interest in her dual roles as former co-counsel for Hassan Habib Merhi, and her current role in monitoring the conduct of Defence counsel in the same case under Rule 57 (G);
- 2) **THE EFFECTIVE LEGAL REPRESENTATION OF THE ACCUSED, HASSAN HABIB MERHI** has been jeopardised by the Head of the Defence Office's appointment to that position;
- 3) **THE HEAD OF THE DEFENCE OFFICE** must delegate her duties under Rule 57 (G) and (H) in relation to the conduct of the defence of Salim Jamil Ayyash, Hussein Hassan Oneissi and Assad Hassan Sabra to the Deputy Head of the Defence Office;
- 4) **THE REGISTRAR** should appoint *amicus curiae* to report to the relevant chamber, when and if necessary, on any matters relating to the conduct of the defence of Hassan Habib Merhi under Rule 57;
- 5) **THE HEAD OF THE DEFENCE OFFICE'S** conflict of roles potentially extends to her role in monitoring the performance of Defence counsel in the case of STL-18-10, *Prosecutor v. Salim Jamil Ayyash*;
- 6) **THE APPOINTMENT OF THE HEAD OF THE DEFENCE OFFICE** was irregular and legally flawed by virtue of the failure of the President of the Special Tribunal to consult the

Council of Judges on such an issue, as is mandated by Rule 37 (B), and thus to provide the Secretary-General with its advice; and

- 7) **THE SECRETARY-GENERAL OF THE UNITED NATIONS** was not properly informed of the conflict of roles in appointing Ms Le Fraper du Hellen to the position of Head of the Defence Office.



Judge David Re
Presiding Judge

XVIII. SEPARATE OPINION OF JUDGE JANET NOSWORTHY

A. Introduction

1. As the Trial Chamber delivers its Judgment, I am fully appreciative of the enormous privilege which has been accorded to me, as a member of the Trial Chamber in this historic matter. The first terrorism case within more recent international criminal history. This extraordinary case being completed in most extraordinary times has yielded many new, diverse and profound issues for determination by Special Tribunal judges at every level—challenges to jurisdiction, trial *in absentia*, cell site and telecommunications evidence. These matters are of great interest, to not only the Lebanese community but those in the sphere of international criminal law as also the wider international and diplomatic community.

2. I am hugely aware that the process is not about me the Judge, but the delivery of Justice consistent with human rights standards.

3. I write this, my Opinion, in view of certain differences which separate me from my learned brother and sister, Judges Re and Braidy, on a number of issues and conclusions drawn. In some instances my own views and how the matter at hand should be resolved, will or might not always ultimately affect the determination of guilt, so much as the reasoning and route which led to and affected material findings of fact and law which instruct and inform judicial assessment and determination.

4. I provide in this Opinion my views on a number of matters relating to the law applicable in the Special Tribunal. These matters particularly concern one of the substantive crimes charged in the present case, terrorism under Article 314 of the Lebanese Criminal Code, and one of the charged modes of individual criminal responsibility, namely accomplice liability (or complicity). I will begin by setting out the principles that I consider to govern the exercise of statutory interpretation both generally and in this Tribunal specifically, in section B below.

5. As I explain below, the interpretation of Article 314 of the Lebanese Criminal Code raises the issue of whether customary international law could have been properly used by the Trial Chamber to inform its application and therefore interpretation in the present case. While I agree—

erring on the side of judicial caution—with my learned colleagues that a definition of terrorism has not yet crystallised under customary international law, I am of the view that, had such a definition crystallised, it would have been proper to use it to inform the Trial Chamber’s interpretation of Article 314.¹ I will therefore also set out in section B the definition of customary international law, the use of customary international law by domestic courts, its use by other international criminal courts and tribunals, and the processes or methodologies which these courts have used to determine whether a rule of customary international law has come into existence or emerged. I will then go on to discuss in section C the crime of terrorism, as applicable in the Special Tribunal, specifically.

6. Finally, in section D, I will address three matters relating to complicity: the interpretation of Article 3 (1) (a) of the Statute of the Special Tribunal; the precise scope of the concept of complicity under Lebanese law; and the power of the Trial Chamber to convict an Accused for the lesser offence defined in Article 222 of the Lebanese Criminal Code.

B. The interpretative framework

7. The Appeals Chamber set out, in its first interlocutory decision on the applicable law, in a fairly comprehensive manner its general approach to interpretation, before proceeding to the specific application of this framework while addressing *preliminary questions* posed by the STL’s Pre-Trial Judge, in exercise of one of his special powers under Rule 68 (G) of the Rules and Procedure and Evidence, in order to assist in confirmation of the indictment, as set out below. The questions relevant to this discussion are set out elsewhere in my Opinion.

8. While my learned colleagues engage with the application of these interpretative parameters, I consider that a clearer general position would assist the subsequent more specific assessments and approaches to interpretation. Further, I wish to address a number of material interpretative methods and findings made in the Judgment, not all of which I am fully in accordance with. Therefore I consider it necessary to examine a Judge’s duty to interpret the law, general applicable principles of interpretation as well as specific issues of interpretation which arose during the course of the case.

¹ See section C (4) below.

9. It was in this context that the Appeals Chamber, pursuant to Article 176 *bis* issued its first interlocutory decision on the above and other questions.

1. Judges' duty to interpret

10. Like the Appeals Chamber, I consider that judicial interpretation is an exercise that is always required when considering the operation of any legal rule.² This involves a 'process of bringing clarity to the law through interpretation', which 'is an ordinary, vital core function of the judiciary.'³ Judicial 'interpreters' have an abiding duty, 'as far as practicable to give consistency, homogeneity and due weighting to the different elements of a diverging or heterogeneous set of provisions'.⁴ Further, I unreservedly concur in the view of the Appeals Chamber that in contemporary times the ancient legal maxim, *in claris not fit interpretatio* (when the text is clear there is no need for interpretation) is no longer *du jour* and that for modern day judges it is no longer acceptable interpretative protocol. It undermines the value and importance of the words themselves and the nuances and layers properly within the interpretation process.

11. Consideration has also been given to the fact that by contrast to the international arena Lebanese law is more highly codified, however, from observation, the interpretative hands of Lebanese Judges are not completely restrained, as a matter of law and practice. There is evidence of continuous and vibrant interpretation of the law from courts and judges at every level of the Judiciary. Of course, they are bound by interpretative rules such as ensuring that in the course of interpretation they do not thereby *create* new law or engage and employ an interpretation or end result which is not *foreseeable* to an Accused or prospective offender.

2. Principles of interpretation

12. I draw reference to certain common general principles of interpretation which, in my view, govern the interpretation of both international and national laws; albeit with some variations. I believe that the principle of legality or the *nullum crimen sine lege* principle, is applicable in two respects, Firstly: the conduct charged must have been criminalised under *national* or *international* law at the date that the offence was committed. This imports that if there is no criminalisation then

² First interlocutory decision on applicable law, para. 19.

³ STL, Appeals Panel, Decision on Interlocutory Appeal Concerning Personal Jurisdiction in Contempt Proceedings, 23 January 2015, para. 61.

⁴ First interlocutory decision on applicable law, para. 23.

the act is not prosecutable. No *jurisdiction ratione materiae* or subject matter jurisdiction may be asserted in the circumstances. Secondly: The principle of *nullum crimen sine lege* frames judicial interpretation and Judges must remain fully within the scope of this rule when called upon to interpret the law. The Legality principle applies to the elements of crimes and modes of liability,⁵ and is a rule of customary international law⁶ requiring that the accused's conduct was criminalised under national or international law at the time of commission in terms which were foreseeable and accessible. It is also accepted and codified in modern democratic states, including in Lebanon, as a basic requirement of the rule of law.⁷ This rule is founded on the firm principle that it is for the Legislature and not the court or judge to define a crime and prescribe its punishment.⁸ It has the further extremely important purpose of protection of the Accused persons from arbitrary arrest, detention, charge and conviction on a non-existent charge.

13. I consider the position of the Appeals' Chamber⁹ in first requiring engagement of the teleological approach, is not entirely without merit, in that the intent of the Legislature will be a measure again which to judge or determine whether the interpretation offends the principle of

⁵ *Milutinović and others* Appeal decision on challenging jurisdiction, paras. 37-38, paras. 39-40 (holding that legality is not infringed for a mode of liability under international law as long as the same conduct was criminalised under national law); *Nuon Chea and Khieu Samphan* Case 002/01 Appeal Judgement, 23 November 2016, para. 761; Cassese 2009, pages 91-92; Gallant 2009, pages 357-358.

⁶ ICTY, *Hadžihasanović and others*, IT-01-47-AR72, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July 2003 ('*Hadžihasanović and others* Appeal decision on command responsibility'), para. 55; *Milutinović and others* Appeal decision on challenging jurisdiction, para. 37-38, *see also* paras 39-40. The principle appears in numerous international human rights instruments, including the ICCPR (Article 15), the Arab Charter on Human Rights (Article 15), the American Convention on Human Rights (Article 9) and the European Convention on Human Rights (Article 7).

⁷ STL, Decision on Motion Challenging Jurisdiction, 6 November 2014, para. 31. For the key Lebanese legislative provisions on this issue, *see* the Judgment, Applicable law, para. 5919.

⁸ *Delalić and others (Čelebići)* Trial Judgment, para. 408.

⁹ The Appeals Chamber appears to find that the principle of legality should be applied after the operation of other interpretative precepts. The Appeals Chamber considered that after the teleological exercise is exhausted, recourse can be had to 'the general principle of criminal law of *favor rei* (in favour of the accused)' and 'the principle of legality (*nullum crimen sine lege*)', stating that these 'are general principles of law applicable in both the domestic and the international legal contexts.' First interlocutory decision on applicable law, para. 32. The Appeals Chamber does, however, appear to accommodate a broader understanding of the principle of legality when it comes to appraising domestic case law, *see* First interlocutory decision on applicable law, paras 114, 131-144, disposition, para. 3, chapeau. The Appeals Chamber also makes clear elsewhere that the principle of *favor rei* is part of the broader principle of legality, *see* STL, Decision on Interlocutory Appeal Concerning Personal Jurisdiction in Contempt Proceedings, 2 October 2014 ('Contempt personal jurisdiction decision'), para. 29 (As per the hierarchical structure of Rule 3, only if these principles are not helpful or capable of resolving the ambiguity should one then turn to Rule 3 (B)—the interpretation which is more favourable to the accused taking into account the general principle of the non-retroactive application of criminal law (*nullum crimen sine lege*), a specific aspect of the principle of legality and when in case of doubt, one should rule in favour the accused (*in dubio pro reo* or *favor rei*)).

Legality or whether it does not. And strict interpretation itself must be viewed within that context and that of Legislative will.

14. On the matter of the prohibition of retroactive application of the law my colleagues opined that where an offence is criminalised under Lebanese law at the date of the alleged offence (2004-2005), yet under current day international law the elements of aiding and abetting were more favourable to the Accused then no issue of Legality could arise, with which I generally agree.¹⁰ However those cases must be distinguished from the instant case where the offence or modes of liability existed under both national and international law at the date of commission of the offence. Furthermore, where a law is enacted or is in existence there is a presumption of regularity unless a challenge is made to the law for example by invoking the principle of *nullum crimen sine lege*. Then the issue is not whether the existing law may be applied but whether the subsequent interpretation of the law contravenes the principle of Legality, such as the rule of restrictive interpretation also known as *lex stricta*.

15. Significantly, for these purposes, whether the principle of Legality is employed without first engaging teleological methods, or after, I consider it is imperative that it be viewed within the context of contemporary human rights standards. I have to set out my understanding of how the rule is applied and its scope within the contemporary context including the material date, 14 February 2005.

16. Importantly as in relation to international instruments, including the Tribunal's Statute itself, I take the view, like the Appeals Chamber, that the framework interpretative precepts are those out in the Vienna Convention. To the extent that the Majority disputes the application of these principles to the Tribunal's Statute,¹¹ I disagree. While the Statute is not itself a treaty, it is well-established that international criminal instruments may be considered with reference to these

¹⁰ Judgment, Applicable law, para. 5932.

¹¹ The Majority states in the Judgment, Applicable law, para. 5969, that 'The Special Tribunal's Statute is not a treaty but an annex to a Security Council resolution adopted pursuant to Chapter VII of the Charter of the United Nations. However, the Appeals Chamber decided to apply international law on the interpretation of treaties to the Statute, unless the applicable Lebanese law clearly provided otherwise.' However, in its section setting out the interpretative principles applicable, the Majority do not take a further view on the applicability of this framework.

principles,¹² including for interpretative guidance.¹³ There is arguably support for this position within some international courts and international criminal law courts, while conceding that equally some do not support this view. Closer, stronger and concrete support is found the Special Tribunal's Rules which make express reference to the Vienna Convention approach as part of the Tribunal's interpretative regime,¹⁴ and the Tribunal has adopted these precepts in numerous previous decisions.¹⁵

17. I also consider that in broad terms, these same interpretative principles apply in domestic courts, as principles of customary international law.¹⁶ As the Appeals Chamber expressed, these rules 'are general principles of judicial interpretation that are at the basis of any serious attempt to interpret and apply legal norms consistently.'¹⁷ The 'Vienna Convention codifies logical and practical norms which are consistent with domestic law',¹⁸ and 'reflect customary rules of interpretation which originate from principles found in 'systems of municipal law "expressive of common sense and of normal grammatical usage"'.¹⁹

¹² See, e.g., *Delalić and others (Čelebići)* Trial Judgment, para. 1161 ('It is well settled that an interpretation of the Articles of the Statute and provisions of the Rules should begin with resort to the general principles of interpretation as codified in Article 31 of the Vienna Convention on the Law of Treaties').

¹³ ICTY, *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-AR73.6, Decision on Appeal Regarding the Admission into Evidence of Seven Affidavits and One Formal Statement, 18 September 2000 ('*Kordić and Čerkez* 18 September 2000 decision'), fn. 39, stating 'In interpretation, the Tribunal *is guided by* the principles which may be drawn from Article 31 (1) of the Vienna Convention on the Law of Treaties' (emphasis added); ICTY, *Prosecutor v. Slobodan Milošević*, IT-02-54-AR73, Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, 18 April 2002, para. 16, stating, 'Although neither the Tribunal's Statute nor its Rules of Procedure and Evidence are, strictly speaking, treaties, the principles of treaty interpretation have been used by the Appeals Chamber *as guidance* in the interpretation of the Tribunal's Statute, as reflecting customary rules', citing *Tadić* Appeal Judgment, 15 July 1999, para. 282 and *Delalić and others (Čelebići)* Appeal Judgment, paras 67-70, and '[s]uch principles may also be used appropriately *as guidance* in the interpretation of the Tribunal's Rules of Procedure and Evidence.'

¹⁴ Rule 3 (A). See also Decision on Interlocutory Appeal Concerning Personal Jurisdiction in Contempt Proceedings, 12 June 2015, para. 22 (As Rule 3 (A) commands, this treaty, in so far as it reflects customary international law, is relevant to the interpretation of the Rules).

¹⁵ See Public Redacted Version of "Decision on the Prosecutor's Connected Case Submission of 30 June 2011" of 5 August 2011, 16 September 2019, para. 12 ('The Pre-Trial Judge will interpret Article 1 of the Statute and Rule 1 of the Rules in conformity with the rules on treaty interpretation as spelled out in the Vienna Convention on the Law of Treaties, taking into account the specific features of acts of the Security Council as opposed to treaties.)

¹⁶ As set out below, I believe that customary international law has interpretative relevance in domestic courts.

¹⁷ First interlocutory decision on applicable law, para. 26.

¹⁸ ICTR, *Nsengiyumva*, Joint and Separate Opinion of Judge McDonald and Judge Vovrah, 3 June 1999, para. 14, cited in First interlocutory decision on applicable law, fn. 41.

¹⁹ ICTR, *Kanyabashi*, Joint and Separate Opinion of Judge Wang and Judge Nieto-Navia, 3 June 1999, para. 11, cited in First interlocutory decision on applicable law, fn. 41, quoting R. Jennings and A. Watts (eds), *Oppenheim's International Law*, vol. I, 9th ed. (Longman, 1996) ('*Oppenheim's International Law*'), p. 1270; see also *Delalić and others (Čelebići)* Appeal Judgment, para. 67 (noting the Vienna Convention 'reflect[s] customary rules' of interpretation and citing *Case Concerning the Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, Judgment, I.C.J.

18. The Vienna Convention precepts require that '[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose'.²⁰ Under this framework, the usual starting point for interpretation is 'the ordinary meaning'. The interpreter of a provision will focus on the 'express language of the provision';²¹ 'start with a statute's language';²² and 'begi[n] with the words'.²³ The ECCC Pre-Trial Chamber, interpreting a provision of the Cambodian Code of Criminal Procedure, considered that '[p]ursuant to recognized principles of interpretation, 'in construing statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity or inconsistency with the rest of the instrument.'²⁴ An 1857 British civil judgment defined this as a 'universal rule' of statutory interpretation (as quoted).²⁵

19. While the starting point is plain wording of the text, 'one must take into account the ordinary meaning of the terms interpreted in the context of the provisions of the Statute and the Rules, their object and purpose.'²⁶ No hierarchy exists between the principles set out in Article 31 (1), and the contextual, or teleological, reading takes place alongside the plain English one. This process is designed to ensure that interpretation renders provisions 'effective and operational with a view to attaining the purpose for which they were agreed upon.'²⁷ The teleological approach is 'based on the search for the purpose and the object of a rule with a view

Reports (1994), at 21, para. 41, for the customary status of Article 31 of the Vienna Convention on the Law of Treaties).

²⁰ Vienna Convention on the Law of Treaties, Art. 31 (1).

²¹ *Delalić and others (Čelebići)* Trial Judgment, para. 411.

²² First interlocutory decision on applicable law, para. 38.

²³ *Ibid.*

²⁴ ECCC, Case 002, Decision on Ieng Sary's Appeal Against the Closing Order, 11 April 2011, D427/1/30, para. 122.

²⁵ *Grey v. Pearson* (1857) 10 ER 1216, 1234.

²⁶ Contempt personal jurisdiction decision, para. 35.

²⁷ First interlocutory decision on applicable law, para. 28. *See also* First interlocutory decision on applicable law, para. 30 ('Accompanying the process of teleological interpretation is the principle of effectiveness, also expressed in the maxim *ut res magis valeat quam pereat* (in order that a rule be effective rather than ineffectual)'); Contempt personal jurisdiction decision, para. 73 (In the present circumstances, this case concerns the integrity of our judicial proceedings and the proper administration of justice – cornerstones of the rule of law. Therefore, we find that the principle of effectiveness requires that the Tribunal guard its primary jurisdiction from contemptuous attacks by adopting an effective approach to its inherent jurisdiction.); Second interlocutory decision on applicable law, para. 23 (The Appeals Chamber also reiterates that the principle of teleological interpretation calls for a construction of the provisions of the Statute in such manner as to render them effective and operational with a view to bringing to fruition their purpose).

to bringing to fruition as much as possible the potential of the rule.’²⁸ The teleological approach also applies to the interpretation of domestic law.²⁹

20. It has been advanced that the objects and purpose based approach, according to the principle of *effectiveness* is subject to certain parameters, again offered by the principle of legality. As the ICTY Appeals Chamber in *Hadžihasanović et al.* stated: ‘[...] an expansive reading of criminal texts violates the principle of legality, widely recognised as a peremptory norm of international law, and thus of the human rights of the accused.’³⁰ However in response my own view is that applying an objects and purpose based *effectiveness* approach to a particular provision, logically, would or could *not* offend the principle of legality as the judicial interpreter is seeking to discern and effect the intent and will of the Legislator, as expressed through the relevant provisions and its own object and purpose, within its context—and to fulfil it. Now, as to the wider component of the need to administer justice in a fair and efficient manner, I categorically consider that to fulfil the intent of parliament, rendering an objects and purpose, effective methodology cannot be considered ‘inefficient’ or ‘unfair’. It is fully in keeping with *lex stricta* requirements.

21. Generally in respect of how judges may permissibly interpret and develop the law, Professor Antonio Cassese, who was also the first President of the Special Tribunal, had underlined how the concept of legality in international criminal law had moved towards a strict, non-expansive, approach.³¹ He concluded that the principle of non-retroactivity of criminal rules is now solidly embodied in criminal law. That it followed that courts may only apply substantive criminal rules that existed at the time of commission of the alleged crime.³² Professor Cassese acknowledged, consistent with current procedural and human rights law, that judges had the right to engage in law development without infringing the principle of Legality. He set the following parameters engaging a tri-partite test for such instances of law development, which I embrace:

²⁸ *Ibid.*, para. 29.

²⁹ See Second interlocutory decision on the applicable law, para. 60.

³⁰ *Hadžihasanović and others* Appeal decision on command responsibility, para. 55.

³¹ Cassese’s International Criminal Law, pp 24 *et seq.*

³² *Ibid.*, p. 149.

- a. Development must be in keeping with the rules of criminal of criminal liability defining the essence of the offence;
- b. It must conform with fundamental principles of international law; and
- c. The particular development must be reasonably foreseeable by the defendant.³³

22. This, in my view, at the highest, highlights the potential for a judicial misstep, when not interpreting as *strictly* required. This is a risk and an error which judges strive, and should continually strive to avoid. Clearly Professor Cassese did not intend to prohibit teleological interpretation³⁴ and indeed as the President of the Appeals Chamber in the first interlocutory decision on the applicable law, that Chamber, including him, jointly expressed that it is a valid process for interpretation of the Tribunal's Statute.

23. The duty of strict construction operates 'in addition to the well-recognised paramount duty of the judicial interpreter, or judge, to read into the language of the legislature, honestly and faithfully, its plain and rational meaning and to promote its object.'³⁵ The interpretative approach should be within the scope of the law, not beyond it; as is stressed by the various approaches which emphasise furtherance of the law itself as the object and purpose.³⁶

³³ *Ibid.*, p. 152.

³⁴ The fight against impunity is sometimes treated as a component of the teleological approach which has received adverse scrutiny from highly respected judicial and academic members of the international community. The goal of seeking to end impunity is not lacking in legal *bona fides*, as it affirms the existence of the Rule of Law, in my opinion. That hallowed rule is equally based on the principle that no one is above the law and that officials of State and persons of high stature and influence should be also subject to the bounds of the law as is the common and ordinary citizen, and should not avoid criminal responsibility when deserved. Very significantly, this Special Tribunal does not search for "those most responsible". It concerns jurisdiction *ratione personae* over "the persons *responsible* for the attack which resulted in the death of Mr. Hariri and others", without any reference to their stature. Further no international court or tribunal has legal authority to seek out persons (allegedly) responsible, solely on the basis of their official governmental capacity, high office or stature, in the absence of relevant facts supporting investigation, suspicion and charge. All international courts, including the Special Tribunal for Lebanon, have legal mechanisms and systems for trial of persons who come before them. All have very precise rules, consistent with human right standards concerning, suspects and accused persons which exist at every stage of proceedings: pre-trial, trial and appellate. There are highly precise and complicated rules procedure and evidence. These are the operable standards that govern international criminal proceedings. I am therefore not persuaded as to the force of criticisms in this regard.

³⁵ *Delalić and others (Čelebići)* Trial Judgment, para. 408.

³⁶ The Appeals Chamber has, for example, held that the goal of the Tribunal is 'to administer justice in a fair and efficient manner', see First interlocutory decision on applicable law, para. 32. The ICC *Al Bashir* Trial Chamber interpreted the object and purpose of the Statute – i.e. the focus of the 'teleological approach - as the need to further the NCSL principle itself, 'by providing a priori legal certainty on the content of the definition of the crimes provided for in the Statute.' ICC, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009, para. 131.

24. A final point I would like to note concerning teleological interpretation is that it is, in my opinion, consistent with what is described in a human rights context as the ‘progressive evolution of the law.’ This permits, within the scope of interpretation, a judge to situate the law in the ‘conditions of the day’, and adapt to changing circumstances. Christos Rozakis, a Vice President of the European Court of Human Rights, has argued that the ‘living instrument’ interpretative approach to the Convention is ‘the paramount concept which permeates the whole case law of the ECHR and conceptually determines the evolution of the interpretation of the clauses of the Convention’.³⁷

25. I would also wish to refer to *malum in se* crimes which by their very nature are abhorrent and repulsive to humanity. I accept that as a matter of law they do not *per se* import criminal responsibility or fall within the concept of an act which has been criminalised. Rather the abhorrent nature of the crime may be applied to repel and counter an assertion by the offender that he did not know the act was criminalised at the date of the offence. In other words, by virtue of its abhorrent nature it is so improbable that such act or conduct could possibly be lawful, that all sane and reasonable persons would or will have been put on “notice” or “foreseen” that it was criminalised.

26. Finally, I come now to the rule of construction of *favor rei*. Here, I concur with the view that it is only where the teleological framework has failed to offer any positive results and ambiguity remains, it then becomes appropriate to deploy the principle of *favor rei*. As the Co-Investigating Judges held at the ECCC, the principle of ‘*in dubio pro reo*’ has a residual role in the interpretation of legal provisions, and its application is limited to doubts that remain after the application of the standard rules of interpretation.³⁸ I believe that *favor rei* should be employed only where there is residual *ambiguity*. That is when all interpretative means have been employed and not brought resolution, with the result that two interpretations of the law present themselves after other means or methods of interpretation have been employed and have failed. Only then may

³⁷ Rozakis C., ‘The European Judge as Comparatist’ (2005) 80 *Tul L Rev* 257, p. 261.

³⁸ ECCC, Case 004/1, Closing Order, D308, 10 July 2017, para. 26. The Co-Investigating Judges went on, less persuasively, to consider the principle as substantively identical to the principle of strict construction. The two are separate, and the principle of *favor rei* operates when strict construction has failed to provide a solution, *see, e.g., Delalić and others (Čelebići)* Trial Judgment, para. 413 (‘The effect of strict construction of the provisions of a criminal statute is that where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of construction fail to solve, the benefit of the doubt should be given to the subject and against the legislature which has failed to explain itself. This is why ambiguous criminal statutes are to be construed *contra proferentem*.’)

Judges of the Special Tribunal resort to *favor rei*, otherwise they act prematurely. The presence of the two results—one favourable to the Accused and one which is adverse to him, requires that the Judicial interpreter, resolve the issue his favor (*favor rei*). I consider it a rule of construction rather than falling neatly under the umbrella of *in dubio pro reo* which concerns a standard related to evidence and proof beyond reasonable doubt. However, in reflection, wherever this honoured principle falls as a rule of construction or a component of *in dubio pro reo*, the spirit and intent is identical: that a finding adverse to the Accused should not be reached in the circumstances.³⁹

3. Definition of customary international law

27. First, I note that customary international law is widely recognised as a primary source of international law. It is included in Article 38 (1) of the Statute of the International Court of Justice—the principal judicial organ of the United Nations, of which Lebanon is a founding member⁴⁰—which enumerates the sources of law which the ICJ can apply in determining an international legal dispute.

28. The ICJ Statute defines it as ‘evidence of a general practice accepted as law’.⁴¹ A noted legal scholar and author⁴² (a subsidiary source of law under Article 38 (1) (d) of the ICJ Statute) has stated that jurists and scholars alike concur in the opinion that the above text reflects the view that customary international law is composed of two elements: general state practice—termed the ‘objective element’—which is required to be relatively uniform and constant.⁴³ Secondly, there is a psychological element consisting of a subjective conviction of a State that it is legally bound to follow the practice giving rise to the norm or principle, termed the ‘subjective element’. This mental element is known as *opinio juris sive necessitas*,⁴⁴ referred to in its shortened form as *opinio juris*. Its underlying rationale is to distinguish the practice that a state may engage in without

³⁹ The Majority prefers to term the rule of construction *in dubio pro reo*. See Judgment, Applicable law, paras 5922- 5928.

⁴⁰ According to the preamble to the Lebanese Constitution, Lebanon declares itself as a founding and active member of the United Nations and states that it abides by its covenants.

⁴¹ Statute of the International Court of Justice, Art. 38 (1) (b).

⁴² Michael P. Scharf, *Customary International Law in Times of Fundamental Change: Recognizing Grotian moments* (Cambridge University Press, 2013) (‘Scharf 2013’), p. 33.

⁴³ *Ibid.*, p 38: Scharf opines that although the ICJ refers to ‘constant and uniform usage’ as a yardstick, it has made clear that perfect consistency is not required.

⁴⁴ See also Alina Kaczorowska, *Public International Law* (4th ed.) (Routledge, 2010), (‘Kaczorowska 2010’) p. 27.

any sense of *obligation* to follow the practice, and instead does it routinely out of courtesy or habit, termed as *usage*.⁴⁵

29. This ‘two-element’ approach to identifying customary international law has also been adopted by the International Law Commission⁴⁶ and international criminal courts and tribunals,⁴⁷ noting that customary international law ‘results from the gradual development of international instruments and national case-law into general rules’.⁴⁸

30. The judgments of the ICJ itself and those of its predecessor, the Permanent Court of International Justice, have also consistently stated that a customary rule requires the presence of both of these elements, and have expanded on the definition of each of the two elements.

31. It has been held in respect of the objective element of state practice that it must be: firstly, constant and uniform; secondly, generally accepted by states; and thirdly, be of a certain duration. The ICJ in the *North Sea Continental Shelf Case* found that state practice must be both ‘extensive and virtually uniform’, but need not necessarily be of long duration.⁴⁹ For its acceptance as a customary rule, it must have crystallised and be of certain maturity when it is sought to be relied on as a customary rule. Complete uniformity is not required. As to the requirement of generality it imports widespread practice, but not necessarily universal or global adherence to the rule.

32. In the well-known *Lotus* case,⁵⁰ the PCIJ opined that international law is based on the will of states expressed in conventions and in ‘usages generally accepted as expressing principles of law’. The ICJ has also expressed that states’ action must not only ‘amount to settled practice, but

⁴⁵ *Ibid.*

⁴⁶ UN Doc. A/73/10, *Report of the International Law Commission Seventieth Session (30 April-1 June and 2 July-10 August 2018)*, Supplement No. 10.

⁴⁷ *Delalić and others (Čelebići)* Trial Judgment, para. 302; *Hadžihasanović and Kubura* Trial Judgment, para. 254; ICTR, *Prosecutor v. Rwamakuba*, ICTR-98-44-AR72.4, Decision on Interlocutory Appeal Regarding Joint Criminal Enterprise to the Crimes of Genocide, 22 October 2004 (‘*Rwamakuba* joint criminal enterprise decision’), para. 14 (the Appeals Chamber pointed to ‘[n]orms of customary international law characterised by the two familiar components of State practice and *opinio juris*’); ICC, *Situation in Darfur, Sudan; Prosecutor v. Al Bashir*, ICC-02/05-01/09, Decision Pursuant to Article 87 (8) of the Rome Statute on the Failure by the Republic of Malawi to Comply with the Cooperation Requests Issued by the Court with Respect to the Arrest and Surrender of Omar Hassan Ahmad Al Bashir, 12 December 2011 (‘*Bashir* decision on Malawi cooperation’), paras 39-43; ICTY, *Prosecutor v. Kupreškić*, IT-95-16-T, Judgement, 14 January 2000, para. 527; *Hadžihasanović and others* Appeal decision on command responsibility, paras 44-51 (The Appeals Chamber surveyed ‘practice’ and ‘*opinio juris*’ to conclude their finding.).

⁴⁸ *Tadić* Appeal Judgment, para. 292.

⁴⁹ *North Sea Continental Shelf* Judgment, para. 74.

⁵⁰ PCIJ, *S.S. Lotus* Judgment, P.C.I.J. Rep. Series A No. 10, p. 18.

they must also be carried out in such a way as to be evidence of a belief that this practice is rendered obligatory by the existence of the rule of law requiring it'.⁵¹ It is often emphasised that, where the above two elements are satisfied (manifest), a rule of customary international law will be deemed to bind *all* states (with the exception of persistent objectors, as discussed below), without needing to demonstrate that the particular state allegedly bound by the rule had participated in its formation or had otherwise accepted it as a norm or principle of law. In other words, customary international law is a source of law that is of global application.⁵²

33. The 'persistent objector rule' (treated by jurists and scholars as axiomatic⁵³) has been recognised by the ICJ in the *Asylum* and *Anglo-Norwegian Fisheries* cases, for example.⁵⁴ It expresses the principle that where, during the formative stage of a customary international law principle, a State *persistently objects* to that developing rule and informs other states of its objection, then it will not be bound by it. Silence, in face of the emerging rule, will amount to acquiescence in the rule, with the burden of proof being on the objecting state.⁵⁵ Hence, a state need not participate directly in the emergence or creation of the customary rule in order for it to apply to that state. The persistent objector rule does not apply to peremptory norms or *jus cogens*.⁵⁶

34. I understand the practical result of the above with reference to this case to be as follows. In the event that—as was found by the Special Tribunal's Appeals Chamber—there had been an established rule of customary international law setting out a more expansive definition of the 'means' employed to commit and act of terrorism than those set out in Article 314 of the Lebanese Criminal Code, it would bind Lebanon even if it had not expressly participated in the emergence of the rule, as it would be regarded as having *acquiesced* in this emerging customary international law rule unless it had registered its *constant* and *persistent* objection with other States.

⁵¹ *North Sea Continental Shelf* Judgment, para. 77.

⁵² See, e.g., International Law Commission, *Draft conclusions on identification of customary international law, with commentaries*, 2018, forming part of UN Doc. A/73/10, *Report of the International Law Commission Seventieth Session (30 April-1 June and 2 July-10 August 2018)*, General commentary, para. 5; Commentary on Conclusion 8, para. 3; Commentary on Conclusion 9, para. 5.

⁵³ Scharf 2013, p. 41.

⁵⁴ ICJ, *Asylum Case (Columbia v. Peru)*, Judgment of 20 November 1950, I.C.J. Reports 1950 266, pp 277-278; ICJ, *Fisheries Case (United Kingdom v. Norway)*, Judgment of 18 December 1951, I.C.J. Reports 1951 116, p. 131.

⁵⁵ Kaczorowska 2010, pp 27-28.

⁵⁶ Latin name *jus cogens* (compelling law) A norm accepted and recognised by states generally and the international community as a whole as one from which no derogation is permitted. It can only be modified by a subsequent like norm of the same character of general international law.

35. While the definition of the two limbs of customary international law is relatively clear, there are noted challenges in identifying what these two elements demand in practice. In other words, what is the correct methodology for courts to employ when trying to determine whether the two elements exist, thereby demonstrating that a rule of customary international law has crystallised.

36. Courts have relied on an extremely wide range of sources as evidence of custom. Treaties, national legislation, state declarations, domestic and international case law, as well as reports from the ICRC and other international agencies are amongst the sources that have been reviewed by international and internationalised criminal courts and tribunals.⁵⁷

37. In the *Norman* case, the SCSL reviewed international legal instruments, the jurisprudence of the ICTY, and municipal laws to find that child recruitment was a crime under international law during the relevant time of the indictment.⁵⁸ In the *Krstić* case, the ICTY looked at the codification work undertaken in international treaties, international case law, the codification work undertaken by the International Law Commission and other international committees, the drafting work leading to the Rome Statute and its Elements of Crimes (even though the latter post-dated the relevant events), and, lastly, the legislation and practice of states, in particular their judicial interpretations and decisions.⁵⁹

38. As Crawford notes in relation to ICJ jurisprudence,⁶⁰ international criminal courts have also often inferred the existence of *opinio juris* from state practice.⁶¹ In *Tadić*, the Appeals Chamber held that:

When attempting to ascertain State practice with a view to establishing the existence of a customary rule or a general principle, it is difficult if not impossible to pinpoint the actual

⁵⁷ ICTY, *Prosecutor v. Tadić*, IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 ('*Tadić* Decision on the Defence motion for Interlocutory Appeal on Jurisdiction'), paras 83, 97, 108-109, 121-122, 131-133; ICTY, *Prosecutor v. Stakić*, IT-97-24-A, Judgement, 22 March 2006, paras 296-297; *Nahimana and others* Trial Judgment, paras 1075-1077; SCSL, *Prosecutor v. Norman*, SCSL-2004-14-AR72E, Decision on Preliminary Motion Based on Lack of Jurisdiction, ('*Norman* child recruitment decision') 31 May 2004, paras 44-49.

⁵⁸ *Norman* child recruitment decision, paras 30-56.

⁵⁹ *Krstić* Trial Judgment, para. 541.

⁶⁰ James Crawford, *Brownlie's Principles of Public International Law*, 9th ed. (Oxford University Press, 2019), p. 24.

⁶¹ Thomas Rauter, *Judicial Practice, Customary International Criminal Law and Nullum Crimen Sine Lege* (Springer, 2017), pp 128-131. In his book, the author conducts a comprehensive study of almost all cases of international and internationalised courts and tribunals. He found that until 2017, only 11 judgments of ICTY Trial Chambers make

behavior of the troops in the field for the purpose of establishing whether they in fact comply with, or disregard, certain standards of behavior... In appraising the formation of customary rules or general principles, one should therefore be aware that, on account of the inherent nature of this subject-matter, reliance must primarily be placed on such elements of official pronouncements of States, military manuals and judicial decisions.⁶²

39. The Appeals Chamber does not specify whether it regarded ‘pronouncements of States, military manuals and judicial decisions’ as forms of State practice or *opinio juris*,⁶³ or indeed as both,⁶⁴ suggesting that it has followed the approach of inferring *opinio juris* from state practice. It is indeed unsurprising that courts would be able to infer the mental element (*opinio juris*) of customary international law from the states’ actual behavior (practice). It would be impossible to enter a state’s ‘mind’ and ascertain the intention behind its behavior, and it would be unreasonable to require that *opinio juris* be proven exclusively through statements from states about their motivations. Such stringent evidential separation between the two limbs of customary international law would render it impossible to prove in practice.

40. International criminal courts and tribunals have also taken a variety of approaches when applying the test in the *North Sea Continental Shelf Case* requiring State practice to be both ‘extensive and virtually uniform’⁶⁵ in ascertaining customary international law does not in itself appear to be uniform across international criminal courts and tribunals.⁶⁶

41. The SCSL in the *Norman* case has also noted that ‘the number of states needed to create a rule of customary law varies according to the amount of practice which conflicts with the rule and

explicit reference to State practice and/or *opinio juris*, 7 judgments of the ICTY Appeals Chamber make explicit reference to State practice and/or *opinio juris*, 2 judgments from the Trial Chambers and Appeals Chambers each at the Special Court for Sierra Leone make explicit reference to State practice and/or *opinio juris*, and twice have the Trial Chambers at the ECCC made explicit reference to State practice and/or *opinio juris*. His study revealed that there are even fewer instances where specific evidence was allocated to ‘State practice’ or ‘*opinio juris*’.

⁶² *Tadić* Decision on the Defence motion for Interlocutory Appeal on Jurisdiction, para. 99.

⁶³ Legal scholars are also divided on this matter. See, e.g., W. Heintschel von Heinegg, ‘Criminal International Law and Customary International Law’ in *International Criminal Law and the Current Development of Public International Law*, Zimmermann (ed.) (Duncker and Humblot, 2003), pp 27-47, p. 35.

⁶⁴ Theodor Meron, ‘The Continuing Role of Custom in the Formation of International Humanitarian Law’ [1996] 90 *American Journal of International Law* 235, p. 239.

⁶⁵ *North Sea Continental Shelf* Judgment, para. 74.

⁶⁶ Compare *Tadić* Appeal Judgment, paras 224-226; *Delalić and others (Čelebići)* Trial Judgment, paras 255-256; *Fofana and Kondewa* Appeal Judgment, para. 405; *Kayishema and Ruzindana* Trial Judgment, paras 141-147; ICTY, *Prosecutor v. Vasiljević*, IT-98-32-T, Judgment, 29 November 2002, para. 227, especially fn. 586 where the Trial Chamber criticises *Kayishema and Ruzindana* for not reviewing State practice in its finding.

even a practice followed by a very small number of states can create a rule of customary law if there is no practice which conflicts with the rule'.⁶⁷ Judge Robertson's dissenting opinion in this case points out that global criminalisation of a particular conduct as evidence that such conduct can amount to the status of an international crime would, for example, provide for an act such as theft to qualify as an international crime.⁶⁸

42. This case also demonstrates some of the divergence of academic and judicial opinion on the matter.

43. The appellate majority judges in *Norman* raised a credible case for the existence of a rule or norm under customary international law, providing clear underlying reasoning as to why its application did not offend the principle of legality. They rationally pursued resolution of the issue before them in the preliminary jurisdiction motion which was: whether the crime as defined in Article 4 (c) was recognized as a crime entailing individual criminal responsibility under customary international at the time of the alleged acts. They looked first at Article 38 (1) (b) of the ICJ Statute.

44. They then proceeded to examine whether the prohibition on child recruitment had crystallized. They took the view that, since a high amount of States, 185 of them, including Sierra Leone, were parties to the Geneva Convention prior to 1996, it followed that the provisions of the conventions were widely recognised as customary international law.⁶⁹ All but six states had ratified the Convention, giving it the highest number of states parties of all international conventions, and therefore demonstrating that it had become customary international law. There was not a single reservation.⁷⁰

45. They also considered *nullum crimen sine lege* and *sine poena* to determine whether the principle of retroactivity had been breached and answered in the negative.⁷¹ The majority considered that the discussion during the preparation of the Rome Statute showed a focus on the

⁶⁷ *Norman* child recruitment decision, para. 49.

⁶⁸ *Norman* child recruitment decision, Dissenting Opinion of Justice Robertson, 31 May 2004 ('*Norman* Dissenting Opinion of Justice Robertson'), para. 33.

⁶⁹ *Norman* child recruitment decision, para. 17.

⁷⁰ *Ibid.*, para. 18.

⁷¹ *Ibid.*, para. 25 *et seq.*, para. 53.

codification of the existing rule prohibiting child recruitment.⁷² It also noted in this regard that a rule of customary international law need not be codified in a treaty before it can be said to have crystallised, nor is it necessary for individual criminal responsibility to be explicitly codified in a treaty in order for individual responsibility to arise under customary international law.⁷³

46. Judge Robertson's dissent challenged the application of the 1977 Geneva Conventions and the Conventions of the Rights of the Child, on the basis that those conventions may have created an obligation on the part of States to refrain from recruiting child soldiers, but did not criminalize such activity.⁷⁴ The Rome Statute had indeed criminalized child recruitment, but did not constitute codification of customary international law.⁷⁵ Judge Robertson warned of risk of potential contravention of the *nullum crimen sine lege* principle.⁷⁶ He challenged the contention that *malum in se* crimes could, by virtue of their intrinsically *abhorrent* nature, be exempted from the operation of the principle of legality which would result in retroactive application of law. He cited Professor Cassese in support of this contention.⁷⁷ However, in my view, the majority's assessment of the available sources had made a credible case for finding that customary international law on the matter had crystallised, while Judge Robertson seemed to place the threshold somewhat higher.

47. It is therefore apparent that, although customary international law has a clear *definition*, there is considerable variation in the way in which courts have undertaken the task of looking at the information before them to determine whether it conforms with that definition and therefore whether a rule of customary international law has emerged. On the one hand, this level of variation is intrinsic in the exercise, because the information put before the court as evidence of the formation of customary international law will be different in each case. This is an inevitable feature of customary international law's emergence. However, I am cognizant of the fact that, for the purposes of the current case, we are considering whether a rule of customary international law has emerged with regard to the definition of a crime and therefore affecting an accused's individual criminal responsibility. I therefore believe that, in this situation in particular, a high level of rigour and a high evidential standard is necessary in the exercise of considering whether a rule of

⁷² *Ibid.*, para. 33.

⁷³ *Ibid.*, para. 38.

⁷⁴ *Norman Dissenting Opinion of Justice Robertson*, paras 1-2.

⁷⁵ *Ibid.*, para. 2.

⁷⁶ *Ibid.*, paras 11-17.

⁷⁷ *Ibid.*, para. 11.

customary international law has emerged. I believe that applying the evidential standard of ‘beyond reasonable doubt’ when considering whether the existence of a rule of customary international law had been proven, would serve to adequately protect the rights of the accused in a criminal trial.

4. Customary international law in domestic courts

48. Specifically with respect to customary international law, the Appeals Chamber held that it ‘will apply Lebanese law as interpreted and applied by Lebanese courts’.⁷⁸ All Trial Chamber members concur that they would generally, apply Lebanese law as applied by Lebanese Judges unless there was reason to depart from so doing.⁷⁹

49. The Appeals Chamber has stated that Lebanese statutory law did not expressly provide for implementation of customary international law rules or for their ranking within the Lebanese legal system and that it was for the courts to determine their applicability and rank. That where they were provided for in the Constitution, they enjoyed the standing of legislation, however this meant that they could be repealed or amended by legislation.⁸⁰ That in the case of self-executing customary international law rules, in addition to being binding in interstate relations, they also take effect within Lebanese law and are binding on state officials and individuals.⁸¹ However their scope and content changes or ceases to apply as soon as the corresponding rule applicable in the world community changes. My opinion is not divided from that of the Appeals Chamber in these respects.

50. In the Appeals Chamber’s opinion, there are two clear ways in which binding international law will be relevant in domestic courts. The first is as a source of directly applicable law.⁸² This includes treaties that have been ratified by the Head of State after authorization or approval by the legislature.⁸³ Accordingly, ‘international customary rules which are self-executing, in addition to binding Lebanon in interstate relations, also take effect within Lebanese domestic law and are binding on State officials and individuals.’ These are ‘the international obligations undertaken by

⁷⁸ First interlocutory decision on applicable law, para. 35.

⁷⁹ *See, especially*, Judgment, Applicable law, paras 5988-5989; *see also* paras 6012-6019.

⁸⁰ First interlocutory decision on applicable law, paras 119, 121-122.

⁸¹ *Ibid.*, para. 120.

⁸² *Ibid.*, para. 74.

⁸³ *Ibid.*, para. 74.

Lebanon with which, in the absence of very clear language, it is presumed any legislation complies'.⁸⁴

51. The Appeals Chamber was also of the opinion that binding customary international law that was not self-executing applied in Lebanese Courts subject to the limitation that it could not be directly applied in the absence of enactment in Lebanese law but could be utilised as an interpretative aid in construing the provisions of the Lebanese Criminal Code.⁸⁵ The Appeals Chamber describes the interpreting of the provisions of the Lebanese Code as they would be by Lebanese Courts consistent with the general principles of interpretation common to most States of the world: the principle that one should construe the Legislation of a State in such a manner as to align it as much as possible with international legal standards binding on the State.⁸⁶ It also points to Article 4 of the Lebanese Code of Civil Procedure, which makes reference to the application of custom which I do not necessarily consider as strong support for its application within a criminal law context, but view it objectively as a demonstration of its acceptance as a valid and applicable source of law, and fit for application within Lebanon.⁸⁷

52. The Appeals Chamber and the Trial Chamber are all in agreement that Lebanese courts will not apply customary international law in a *direct* manner, even when customary international law is binding. The point at issue is therefore whether there is a general principle—of national or international origin—which requires interpretative recourse to customary international law which was binding, and *not* directly applicable to the provisions of the Code, by reason of the fact that it had not been enacted into law in the Lebanon.

53. Here, I am compelled to join in the view of the Appeals Chamber as I consider that such a general principle of interpretation *is* in existence.⁸⁸ I believe that to find a general principle—

⁸⁴ *Ibid.*, para. 20.

⁸⁵ First interlocutory decision on applicable law, para. 114.

⁸⁶ *Ibid.*, para. 123.

⁸⁷ See Article 4 which reads in the relevant part: If the law is obscure, the Judge shall interpret shall interpret it in a manner which consistent with its purpose and with other texts. In the absence of the law, the judge shall apply the general principles of law, customs, and the principles of justice. First interlocutory decision on applicable law, fn. 38.

⁸⁸ See First interlocutory decision on applicable law, fns 63, 231, referring to U.K., Court of Appeal, *Salomon v Commissioners of Customs and Excise*, [1967] 2 Q.B. 139, at 143, *reprinted in* 41 I.L.R. 1 at 7; U.K., Court of Appeal, *Post Office v Estuary Radio Ltd*, [1968] 2 Q.B. 752 at 756 (Lord Diplock), *reprinted in* 43 I.L.R. 114, at 121; U.K., House of Lords, *Garland v British Rail Engineering Ltd*, [1983] 2 A.C. 751, at 771 (Lord Diplock); J.L. Brierly, *The Law of Nations*, 6th ed. (H. Waldock, ed.) (Clarendon Press, 1963) ('Brierly 1963'), p. 89; Oppenheim's International

whether of national or international origin—requires a careful consideration of sources. In identifying a general principle drawn from national jurisdictions, it is usual to explore both civil and common law systems. Reference to the Lebanese framework for civil interpretation does not assist the finding of a general principle with reference to criminal law, however its presence, although in a civil capacity serves as a demonstration that it is a valid source of law which is applied in the Lebanon by Lebanese Judges, the recorded instances, albeit not profuse.

54. As for the substance of the sources referred to by the Appeals Chamber, they support the proposition that in general, a court will not disregard its international obligations. In the words of Lord Denning, ‘Parliament does not intend to act in breach of international law, including therein specific treaty obligations.’⁸⁹ According to Brownlie, too, ‘there is a general duty to bring internal law into conformity with obligations under international law.’⁹⁰ However, these sources, by themselves might not resolve the specific question of when binding customary international law applies as an interpretative source.

55. The need to fully interrogate the existence of such a general principle is further made out due to the potential for certain ambiguities in the case-law, even in relation to the seemingly uncontroversial position that domestic courts should apply clearly binding international law. The Irish High Court, for example, ruled that ‘one can only conclude therefore that principles of international law enter domestic law only to the extent that no constitutional, statutory or other judge made law is inconsistent with the principle in question. Where a conflict arises, the rule of international law must in every case yield to domestic law.’⁹¹ However, the Chilean Appeals Court

Law, sec. 21; I. Brownlie, *Principles of Public International Law*, 7th ed. (Oxford University Press, 2008) (‘Brownlie 2008’), p. 35.

The reason for this rule is that, in the words of Lord Denning, “Parliament does not intend to act in breach of international law, including therein specific treaty obligations”. U.K., Court of Appeal, *Salomon v Commissioners of Customs and Excise*, [1967] 2 Q.B. 139, at 143, *reprinted In* 41 I.L.R. 1 at 7; U.K., Court of Appeal, *Post Office v Estuary Radio Ltd*, [1968] 2 Q.B. 752 at 756 (Lord Diplock), *reprinted in* 43 I.L.R. 114, at 121; U.K., House of Lords, *Garland v British Rail Engineering Ltd*, [1983] 2 A.C. 751, at 771 (Lord Diplock); Brierly 1963, p. 89.

⁸⁹ U.K., Court of Appeal, *Salomon v Commissioners of Customs and Excise*, [1967] 2 Q.B. 139, at 143, *reprinted In* 41 I.L.R. 1 at 7. See also Court of Appeal, *Post Office v Estuary Radio Ltd*, [1968] 2 Q.B. 752 at 756 (Lord Diplock), *reprinted In* 43 I.L.R. 114, at 121; U.K., House of Lords, *Garland v British Rail Engineering Ltd*, [1983] 2 A.C. 751, at 771 (Lord Diplock). See also Brierly 1963, p. 89, ‘there is [...] a presumption that neither Parliament nor Congress will intend to violate international law, and a statute will not be interpreted as doing so if that conclusion can be avoided.

⁹⁰ Brownlie 2008, p. 35.

⁹¹ *Edward Horgan v An Taoiseach and ors, Application for Declaratory Relief* (2003 No. 3739P); (2003) 2 IR468; (2003) IEHC 64. See also First interlocutory decision on applicable law, para. 75, referring to Civil Court of Appeal, Mount Lebanon, 13th Chamber, decision No. 398, 18 May 2010 (holding judicial tribunals may not refer to the

ruled that, on the flipside: ‘a state could not invoke municipal laws to justify non-compliance with duties arising from a treaty.’⁹²

56. Specific concerns arise, too, in relation to reliance on customary international law in domestic courts, given the difficulty of clearly identifying customary international norms. The Dutch Supreme Court in *Bourtese* ruled that customary international law could not supersede an act of Parliament; and, in *H v Prosecutor*, ruled that Article 94 of the Dutch Constitution implicitly precluded courts from testing Acts against rules of customary international law.⁹³ One author commented that ‘especially in the context of customary international law, it is an oversimplification to state that domestic courts just apply international law [...] [d]omestic courts sometimes find rules of a customary nature, and sometimes play a vital role in the emergence of new rules.’⁹⁴ To the extent that domestic courts are involved in creating custom, it might be hard to argue that they are under a hard-and-fast obligation to apply it.

57. Despite these limitations, however, I consider that it can be reasonably stated that there has emerged a general principle that domestic courts should direct themselves to relevant customary international law as an interpretative source—but only where such customary international law has clearly crystallised as a binding source, and both conditions referred earlier in this Opinion have been satisfied.

58. In general, I believe that a domestic judge works within both national and international frameworks. Antonio Cassese described the ‘role-splitting’ of the domestic judge as an agent of both the domestic and international legal order.⁹⁵

59. A significant number of courts, across a range of civil and common law backgrounds, have confirmed the position taken in the British cases referred to by the Appeals Chamber. The Malawi

conventions that may be applied in Lebanon such as the Covenant of 1966, the international jurisprudence, the general principles of international law and customary international law, when these instruments contradict domestic legislation.)

⁹² *Peru v Chile*, Appeal Decision, Rol No. 2242-06, ILDC 1443 (CL 2007), 21 September 2007, Chile; Supreme Court.

⁹³ *Bourtese*, Judgment on Appeal, HR00749/01 CW 2323; ILDC 80 (NL 2001) The Netherlands Supreme Court, 18 September 2001. *H v Public Prosecutor*, Appeal Judgment, LJN; AZ7143; Judgment on merits, Case No. 07/10063 (E); LJN BG1476, Court of Appeal and Supreme Court, ILDC 636 (NL 2007) 29 January 2007 and ILDC 1071 (NL 2008) 8 July 2008.

⁹⁴ Andre Nollkaemper, ‘General Aspects, in Andre Nollkaemper and August Reinisch (eds), ‘International Law in Domestic Courts, A Casebook’, p. 243.

⁹⁵ A. Cassese, ‘Remarks on Scelle’s Theory of Role-Splitting (*dédoublement fonctionnel*) in international law’ (1990) 1 EJIL 210, 212.

High Court has held, for example, that ‘the courts will try as much as possible to avoid a clash between what our laws say on the subject and what international agreements or conventions are saying on the subject.’⁹⁶ The Supreme People’s Court in China ruled on the question of whether China is required to choose an interpretation consistent with the relevant provisions of international treaty obligations of the People’s Republic of China. It concluded that if two or more reasonable interpretations and one is consistent with the relevant provisions of the international treaty, then will follow that interpretation.⁹⁷ The Australian court considered that ratification of a convention is a positive statement [that is] an adequate foundation for a legitimate expectation, absent statutory or executive indications to the contrary, that administrative decision-makers will act in conformity with the Convention.⁹⁸

60. While there is, of course, a greater degree of variability when it comes to customary international law, a significant number of other courts have also held that domestic courts should consider such norms, where clearly binding.

61. The U.S. Supreme Court referred to the customary international law principle of non-intervention when applying US antitrust laws to foreign anti-competitive conduct and gave a restrictive interpretation to its Sherman Antitrust Act.⁹⁹ In *Roper v. Simmons*, a case on juvenile capital punishment, the United States Supreme Court read the Eighth Amendment in line with customary international law referring not only to state practice and *opinio juris*, but *a fortiori* the Court’s consistent practice of referring to customary international law.¹⁰⁰

62. The Canadian Court of Appeal has also held that domestic law should be interpreted, as far as possible, consistently with conventional and customary international law.¹⁰¹ In the 1986 case of *Mills v. The Queen*, the Supreme Court of Canada referred to the Universal Declaration of Human Rights and the ICCPR as interpretive aids to reading the Canadian Charter of Rights and

⁹⁶ Adoption of Children Act 26:01, Re, Ciccone, Decision on merits, Adoption Case No. 1 of 2009, [2009] MWHC 3, ILDC 1280 (MW 2009), 3 April 2009, Malawi; High Court, para. 34

⁹⁷ Interpretation No. 27, Re, Judicial interpretation, [2002] No. 27, ILDC 263 (CN 2002), 27 August 2002, China; Supreme People’s Court.

⁹⁸ Teoh’s case, Minister of State for Immigration and Ethnic Affairs v Teoh, Final appeal judgment, Case No FC 95/013, ILDC 779 (AU 1995), (1995) 183 CLR 273, (1995) 128 ALR 353, (1995) 69 ALJR 423, (1995) EOC 92-696 (extract), [1995] HCA 20, 7 April 1995, Australia; High Court [HCA], para. 25. This case distinguishes, however, between a ‘legitimate expectation’ and a binding rule of law, see para. 36.

⁹⁹ *F Hoffmann-La Roche Ltd et al v Empagran SA et al*, 124 S Ct 2359 (2004).

¹⁰⁰ Canada, *Roper v. Simmons*, 125 S.Ct. 1183 (2005), pp 1198 – 1200.

¹⁰¹ Canada, Ontario Court of Appeal, *Bouzari and ors v Iran*, 30 June 2004, ILDC 175 (CA 2004).

Freedoms.¹⁰² Since then, Canadian courts have regularly applied international human rights instruments – as customary international law – to statutory interpretation.¹⁰³ In another Supreme Court case, the Court took into consideration Canada’s international obligations *vis-à-vis* the rights of a child and noted that while parliament, at the time, had yet to implement the Convention on the Rights of the Child, ‘the values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review.’¹⁰⁴ The Court further emphasised that ‘the legislature is presumed to respect the principles enshrined in international law, both customary and conventional. These constitute part of the legal context in which legislation is enacted and read. In so far as possible, therefore, interpretations which reflect these values are preferred.’¹⁰⁵

63. In *Amaratunga v. Northwest Atlantic Fisheries Organization*, a case concerning wrongful dismissal by an international organization, the issue hinged on legal interpretation.¹⁰⁶ The Supreme Court of Canada found it necessary to discuss customary international law on state immunity and whether the same exists for international organisations,¹⁰⁷ and in finding that the applicant’s claim was accepted in part, considered the ICCPR and comments of the United Nations Human Rights Committee.¹⁰⁸

64. In *Nguyen*, a case on capital punishment of a non-citizen, the Singapore Court of Appeal accepted that although it was not bound to the Vienna Convention on Consular Relations 1963 since Singapore was not a party to that Convention, a similar rule applies to Singapore pursuant to customary international law.¹⁰⁹ The Court further cited an International Court of Justice decision in clarifying the meaning of the rule contained in the Convention.¹¹⁰

¹⁰² *Mills v. The Queen* [1986] S.C.R. 863, para. 27.

¹⁰³ See *de Guzman v. Canada (Minister of Citizenship and Immigration)* 2005 FCA 436 which traces Canadian jurisprudence regarding the application of international human rights instruments to statutory interpretation.

¹⁰⁴ *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, AppBk 6 T 3-18 p. 1951 para. 70.

¹⁰⁵ *Ibid.*, para. 70, citing R. Sullivan, *Drieger on the Construction of Statutes*, (3rd ed., 1994), p. 330.

¹⁰⁶ *Amaratunga v. Northwest Atlantic Fisheries Organization* [2013] 3 SCR 866, para. 35.

¹⁰⁷ *Ibid.*, paras 26-31.

¹⁰⁸ *Ibid.*, para 62.

¹⁰⁹ Singapore Law Watch, ‘Singapore and International Law’ available at <https://www.singaporelawwatch.sg/About-Singapore-Law/Overview/ch-05-singapore-and-international-law>, para. 5.4.9 citing *Nguyen Tuong Van v Public Prosecutor* [2005] 1 SLR(R) 103.

¹¹⁰ *Ibid.*

65. Finally, while the Lebanese case-law pointed to by the Appeals Chamber does not by itself show the existence of a general principle of interpretation, it demonstrates that at least within Lebanon, courts have regularly taken account of customary international law.¹¹¹ For example, the Lebanese Court of cassation (Civil Chamber) allowed lower judges to refer to international customary law in commercial matters since at least 1968, when it stated that ‘these customs constitute an unwritten law which the judge is assumed to know in the same way as he knows other laws’.¹¹²

5. Use of customary international law by international criminal courts and tribunals

66. Although the case at hand deals with the application of customary international law within a domestic legal system, namely Lebanon, I find it instructive nonetheless to consider how other international criminal courts and tribunals have used customary international law in their jurisprudence.

67. Customary international law has been widely used by international or hybrid criminal courts and tribunals. The Special Court for Sierra Leone (SCSL) Rules of Procedure and Evidence expressly invoked custom as an independent source of applicable law¹¹³ and the United Nations Secretary-General’s report on the establishment of that court explained that the international crimes enumerated in its Statute ‘are crimes considered to have had the character of customary international law at the time of the alleged commission of the crime.’¹¹⁴ The court relied on custom to identify the recruitment of child soldiers as a crime.¹¹⁵ The governing instruments of the ICTY and ICTR did not contain any reference to custom as a source of law, although the Secretary-General, in establishing the ICTY, stated that the courts would reflect only ‘rules of international

¹¹¹ See First interlocutory decision on applicable law, paras 75-76.

¹¹² *Ibid.*, para. 117.

¹¹³ Special Court for Sierra Leone Rules of Procedure and Evidence, Art. 72 *bis*.

¹¹⁴ *Report of the Secretary-General on the establishment of a Special Court for Sierra Leone*, UN Doc. S/2000/915, 4 October 2000, para. 12.

¹¹⁵ *Norman* child recruitment decision, paras 30-53.

humanitarian law that are beyond any doubt part of customary law'.¹¹⁶ Various ICTY and ICTR chambers relied on customary international law to establish criminal norms or principles.¹¹⁷

68. Moreover, the ICC relied on customary international law when it found that 'customary international law creates an exception to Head of State immunity when international courts seek a Head of State's arrest for the commission of international crimes' in *Al Bashir*.¹¹⁸ More recently, the ICC found that if customary law stipulates an additional element of a crime contained in the Rome Statute, 'the Court cannot be precluded from applying it to ensure consistency of the provision with international humanitarian law'.¹¹⁹

69. The international criminal courts and tribunals have also relied on customary international law as an interpretative aid, including citing Article 31 of the Vienna Convention on the Law of Treaties 1969 as setting out customary principles of interpretation.¹²⁰ The Pre-Trial Chamber in *Katanga and Ngudjolo* relied on ICTY and ICTR jurisprudence that had looked to customary international law to interpret the terms 'widespread' and 'systematic',¹²¹ while the Appeals Chamber in *Nyiramasuhuko et al.* similarly looked to customary international law to interpret the terms 'race' and 'ethnicity'.¹²²

¹¹⁶ *Report of the Secretary-General pursuant to paragraph 2 of SC Resolution 808 (1993)*, UN Doc S/25704, 3 May 1993, para. 34. See also ICTR, *Akayesu* Trial Judgment, para. 605; ICTR, *Prosecutor v. Rutaganda*, ICTR-96-3-T, Judgement and Sentence, 6 December 1999, para. 86 (discussing similar points with regard to the establishment of the ICTR).

¹¹⁷ *Tadić* Decision on the Defence motion for Interlocutory Appeal on Jurisdiction, paras 98-99; *Akayesu* Trial Judgment, paras 603-605; ICTY, *Prosecutor v. Erdemović*, IT-96-22-A, Judgement, 7 October 1997, para. 44; ICTY, *Prosecutor v. Kunarac, Kovač and Vuković*, IT-96-23/1-A, Judgement, 12 June 2002, paras 98-101; ICTY, *Prosecutor v. Šainović and others* Appeal Judgment, paras 1626-1650; ICTR, *Prosecutor v. Nahimana, Barayagwiza and Ngeze*, ICTR-99-52-T, Judgement and Sentence, 3 December 2003 ('*Nahimana and others* Trial Judgment'), paras 1075-1077; *Kayishema and Ruzindana* Appeal Judgment, para. 51; *Rwamakuba* joint criminal enterprise decision, para. 14.

¹¹⁸ *Bashir* decision on Malawi cooperation, para. 43.

¹¹⁹ ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06 OA5, Judgment on the Appeal of Mr Ntaganda Against the "Second Decision on the Defence's Challenge to the Jurisdiction of the Court in Respect of Counts 6 and 9", 15 June 2017, para. 54.

¹²⁰ *Nyiramasuhuko and others* Appeal Judgment, para. 2137. See also ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06, Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 (2) and (4) of the Statute, 19 May 2006, paras 6-7, describing the principles set out in Article 31 of the Vienna Convention on the Law of Treaties as 'general principles of interpretation'.

¹²¹ ICC, *Prosecutor v. Katanga and Ngudjolo Chui*, ICC-01/04-01/07-717, Public Redacted Version of Decision on the Confirmation of Charges, 30 September 2008, para. 412.

¹²² *Nyiramasuhuko and others* Appeal Judgment, 14 December 2015, para. 2137.

70. I agree with the Appeals Chamber's reasoning that customary international law can—if found to have crystallised on the issue at hand—be used by a chamber of the Special Tribunal to interpret provisions of the Lebanese Criminal Code.¹²³ Using customary international law in this manner would not, in my view, infringe the principle of legality—or *nullum crimen sine lege*.

71. In this context, I agree with a set of the Appeals Chamber's findings in relation to treaty law, which I consider to be equally pertinent to customary international law. Looking at the definition of terrorism in the Arab Convention on the Suppression of Terrorism—as a treaty to which Lebanon is a party—the Appeals Chamber appeared to implicitly find that the principle of legality would not be violated where a source of international law does not seek to create a *new* crime within Lebanese law, but rather expands on the definition of a crime which already *exists* within its domestic legal system. It found that it could not apply the definition of terrorism in the Convention *directly*, as an independent source of law. Although this definition could not override the provisions of the Lebanese Criminal Code, it still formed part of the Lebanese domestic system, and could therefore aid the interpretation of the definition of terrorism under Article 314 of the Lebanese Criminal Code. In so doing, the Appeals Chamber invoked the well-known principle of international law, referred to above, of interpreting national law as far as possible in a manner consistent with Lebanon's international obligations.¹²⁴ This appears to me to be consistent with contemporary human rights standards. It accommodates judges carrying out their judicial function of interpreting and developing *existing* law, not *creating* new law.

72. The Appeals Chamber noted that the Convention did not intend to substitute its own definition of terrorism for that of the states parties' domestic legal systems,¹²⁵ but allowed each state to enact its own definition of terrorism. The Appeals Chamber found that the Convention's definition could not be applied directly, and hence the definition was under the Lebanese Criminal Code. The Convention's extraneous definition could therefore be used to aid the interpretation of Article 314, as part of the overall context relevant to its interpretation.¹²⁶ The specific content of that Article and the Convention definition are discussed in section C below.

¹²³ First interlocutory decision on applicable law, para. 114 *et seq.*

¹²⁴ *Ibid.*, paras 78-82.

¹²⁵ *Ibid.*, para. 80.

¹²⁶ *Ibid.*, para. 82.

6. The Appeals Chamber's approach to the interpretation of Articles 2 and 3

73. I will now address an area of divergence between myself and the Majority, which goes to the characterization of the Appeals Chamber's analysis of Articles 2 and 3. On examination of the pronouncements in the Judgment, I believe that the Majority could be found to have mischaracterised the Appeals Chamber's approach. I consider that it is important to clarify this matter in order to avoid misapprehension about the manner in which international law is deployed as an interpretative aid by this Tribunal.

74. The interpretative issue at question stems from a reading of Articles 2 and 3 of the Statute. Article 2 of the Statute, entitled 'Applicable criminal law', provides that 'subject to the provisions of this Statute,' the provisions of the Lebanese Criminal Code shall be applicable 'including the rules regarding the material elements of a crime, criminal participation and conspiracy'.¹²⁷ Article 3 (1) (a) states that a person is responsible for crimes within the Special Tribunal's jurisdiction if the person 'Committed, participated as accomplice, organized or directed others to commit the crime' referred to in Article 2. Article 3 (1) (b) derives directly from Article 25 (3) (d) of the Rome Statute of the ICC.¹²⁸ The indicted charges fall under Article 3 (1) (a) of the Statute.

75. The Majority correctly characterises the interpretative issue arising, as follows:

The issue of statutory interpretation here is the meaning of the words 'subject to the provisions of this Statute' in Article 2 in relation to the modes of liability under which an accused person charged before the Special Tribunal may have committed an offence. The Statute, unfortunately, is unclear and provides no guidance as to its interpretation.¹²⁹

76. I believe that, at this juncture, accepting that the Statute is unclear, there is no necessity to examine the two laws with a view to discovery of which is more favourable and therefore most apt for application. It is a clear matter of interpretation according to the teleological methodology. The Appeals Chamber's characterises the interpretive challenge as an *ambiguity*. The provision is

¹²⁷ Statute, Art. 2(a).

¹²⁸ Adopted on 17 July 1998.

¹²⁹ Judgment, Applicable law, para. 5900.

at the very least *unclear*. I will set out my own interpretation of Article 3 (1) (a) in section D (1) below.

77. However I make the following preliminary statements in the matter: I categorically challenge my Learned colleagues' assertion that the Statute offers no guidance to its interpretation. I find this approach unconvincing, given that Article 2, in its body commences: The following shall be applicable to the prosecution and punishment of crimes referred to in Article 1, *subject to the provisions of this Statute*. We cannot erase these words and their significance from the Statute.

- a. In respect of Article 2 (a) of the statute, the reference to *criminal participation* is taken to refer to criminal modes of liability or forms of individual criminal responsibility.
- b. Article 3 is entitled Individual criminal responsibility and reads as follows:
 1. A person shall be *individually responsible* for crimes within the jurisdiction of the Special Tribunal if that person:
- c. It then lists a number of modes including those in sub article 3 (1) (a), the pertinent article for these purposes.

In my view this imports a connection between articles 2 and 3 and an intention by the legislature to render the modes of liability in Article 3 (1) (a) applicable to modes set out under the Lebanese Criminal Code as referred to in Article 2.

78. The Appeals Chamber and the Majority have different answers to this question. The Appeals Chamber considered there to be a conflict between the two Articles, because 'the matters covered by Article 2 are regulated by Lebanese law, whereas the concepts envisaged in Article 3 are governed by international criminal law.'¹³⁰ The wording of Article 2 makes clear that Lebanese law applies, subject to the provisions of the Statute, and that the applicable Lebanese provisions include ones defining modes of criminal liability. However, in the Appeals Chamber's view, Article 3 'incorporates some norms of international criminal law',¹³¹ specifically, 'principles of international criminal law regarding various modes of criminal liability.'¹³² The Appeals Chamber

¹³⁰ First interlocutory decision on applicable law, para. 207.

¹³¹ *Ibid.*, para. 22.

¹³² *Ibid.*, para. 206.

went on to conclude that this conflict must be resolved ‘in light of the general principles of interpretation outlined above,’¹³³ and compared Lebanese law and international criminal law with reference to the principle of *favor rei*.

79. The Majority disagreed that any reading of these two articles meant that international criminal law should be applied, because of the express wording of Article 2. In reaching this position, the Majority critically engages with the Appeals Chamber’s approach. My learned colleagues reiterate that in certain circumstances international law might remain of relevance: ‘[t]he hypothetical scenario ... of a domestic court upholding a specific treaty obligation illustrates how international law may remain relevant when interpreting domestic criminal law.’¹³⁴ However, Article 3 (1) (a) does not require ‘interpretation in light of Lebanon’s international legal obligations’.¹³⁵ And ‘nothing in the wording of Article 3 (1) (a) suggests, much less mandates, that a chamber should look to international criminal law case law to determine the meaning of any of the ordinary criminal law concepts already recognised in Lebanese law.’¹³⁶

80. It is my view that in respect of these findings, the Judgment does not state with complete clarity the underlying rationale for the Appeals Chamber’s election to apply international law. Indeed, the Majority’s phrasing could lead to a mis-apprehension concerning the Appeals Chamber’s approach to applying international law as an interpretative aid.

81. The Majority implies that the Appeals Chamber was—accepting that Lebanese law applied—seeking to interpret it with reference to international criminal law. This appears to invoke the Appeals Chamber’s conclusion that customary international law could be applied as an external aid to interpret domestic legislation. To the extent that this is the Majority’s position, it is arguably

¹³³ *Ibid.*, para. 210.

¹³⁴ Judgment, Applicable law, para. 6010.

¹³⁵ *Ibid.*, para. 5989.

¹³⁶ Judgment, Applicable law, para. 6014. In considering the circumstances in which the Appeals Chamber considered the Tribunal might depart from domestic case-law, the Majority appears to consider that the Appeals Chamber’s framework is directed only at the conflict between Article 2 and 3. *See*, for example, para. 5989 (‘According to the Appeals Chamber, the Trial Chamber need not do so where a Lebanese judicial interpretation or application of these provisions: appears unreasonable, may result in a manifest injustice, or is inconsistent with international law that is binding on Lebanon. The Trial Chamber generally agrees with this. The Trial Chamber may depart from a Lebanese judicial interpretation that was clearly untenable in law or might result in unfairness if applied. But the Trial Chamber has difficulty in understanding the relevance of the application of non-binding international law principles to the circumstances of the *Ayyash and others* case. This is because the only charges on the amended consolidated indictment are under article 3 (1) (a) of the Statute which does not require interpretation in light of Lebanon’s international legal obligations.’)

incorrect, both as a reflection of the Appeals Chamber's interpretative framework and as a characterisation of its specific application. In fact, the Appeals Chamber did not consider international criminal law on modes of liability as an external aid to interpret domestic legislation.

82. The Appeals Chamber looked at international criminal law in this instance because it considered that as a matter of simple statutory construction, international criminal law was incorporated into Article 3.

83. I pause for a moment, to deal with how I perceive the principle of Legality to operate within contemporary times, given that it originated from ancient times, when it was believed that judicial power and arbitrary decisions and judgments were oppressive and prejudicial to the rights of the populace. In those days, laws were handwritten without modern day amenities such as the computer, telephone, notepad, Internet, Facebook or twitter. In those days the daily news was presented by a town-crier. Now everywhere there is information and high technology. A humble farmer tending his crops in his field at 5 am in the morning in Jamaica may watch breaking news from Japan, Bolivia or Timbuktu. Access to information is rife. On the information highway a wealth of information is available. And so it was in the year 2005. Progressive development of the law beckons so far as accessibility and foreseeability are concerned.

84. I therefore turn to examination of the principle of legality as it exists today and in the process to examine how it has developed and how it affects judicial interpretation and law development, also bearing in mind Professor Cassese's three-pronged criteria in these matters. From a human rights perspective, reference is also made to case law emanating from the European Court of Human Rights (ECHR), involving *civil law* jurisdictions including France. This is not done to fly in the face of Lebanese Judges or to subjugate Lebanon's legal system to extraneous values, so much as to demonstrate how that Court has dealt with Legality provisions which are somewhat more similar to those under the Lebanese Constitution, in respect of other civil law countries. France is referenced as the country to which the Lebanese system is more akin, for historical reasons. In this regard I cite below the pertinent human rights instrument, and provision which figures in these cases, being Article 7 of the European Convention on Human Rights:

Article 7

(1) No one shall be held guilty of any offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier sentence be imposed than the one that was applicable at the time the criminal offence was committed.

(2) This article shall not prejudice the trial and punishment of any person, for any act or omission which at the time when it was committed, was criminal according to the general principles of law recognised via by civilized nations.

85. I now review the jurisprudence of the European Court of Human Rights on the principle of legality as expressed in Article 7 of the European Convention to discover what may be gleaned as to how the *nullum crimen sine lege* principle operates and how its modern version controls the scope of the material judicial functions of interpretation and development of the crime.

86. It has been held that the requirement that the crime *be prescribed by law* encompasses both legislation and case law, and imposes qualitative requirements, notably accessibility and foreseeability.¹³⁷ It also encompasses customary international law,¹³⁸ even though the law may not have been ever formally published in the state in question.¹³⁹ Regarding accessibility, the Court found that the law, including case law, must have been made public.¹⁴⁰ The customary international law (provision, rule or principle) relevant to the definition of the crime in question should also be accessible in the circumstances.¹⁴¹

87. Significantly, regarding foreseeability, the Court found that an accused must be able to know what conduct will render him criminally liable and what the applicable penalty will be from the wording of the legal provision, though if necessary assisted by legal advice and by case law interpreting the provision.¹⁴² This must be assessed from the convicted person's perspective, even after taking necessary legal advice, at the time of the charged offence.¹⁴³ That the class and level of education, or profession of the prospective offender may affect how the court views matters of

¹³⁷ *Del Río Prada v. Spain* [GC], para. 91.

¹³⁸ *Vasiliauskas v. Lithuania* [GC], paras 171-175.

¹³⁹ *Kononov v. Latvia* [GC], para. 237.

¹⁴⁰ *Kokkinakis v. Greece*, para. 40.

¹⁴¹ *Vasiliauskas v. Lithuania* [GC], paras 167-168.

¹⁴² *Cantoni v. France*, para. 29; *Jorgic v. Germany*, para. 113.

¹⁴³ *Del Río Prada v. Spain* [GC], paras 112, 117.

accessibility and *foreseeability*. On the precision or certainty of legal provisions, the Court has held that:

[...] it is a logical consequence of the principle that laws must be of general application that the wording of statutes is not always precise. One of the standard techniques of regulation by rules is to use general categorisations as opposed to exhaustive lists. The need to avoid excessive rigidity and to keep pace with changing circumstances means that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague. The interpretation and application of such enactments depend on practice [...]

When the legislative technique of categorisation is used, there will often be grey areas at the fringes of the definition. This penumbra of doubt in relation to borderline facts does not in itself make a provision incompatible with Article 7 (Art. 7), provided that it proves to be sufficiently clear in the large majority of cases. The role of adjudication vested in the courts is precisely to dissipate such interpretational doubts as remain, taking into account the changes in everyday practice.¹⁴⁴

88. However, the use of overly broad notions and vague criteria in interpreting and applying a provision may render that provision incompatible with requirements of clarity and foreseeability as to its effects.¹⁴⁵ Moreover, ‘the scope of the notion of foreseeability depends to a considerable degree on the content of the particular text in issue, the field it is designed to cover and the number and status of those to whom it is addressed’.¹⁴⁶ Importantly, where the offence in question referred to principles of international law, the Court assessed foreseeability in light of the standards applicable at the material time, including customary international law.¹⁴⁷

89. Regarding judicial interpretation of legal provisions, the Court found that:

However clearly drafted a legal provision may be, in any system of law, including criminal law, there is an inevitable element of judicial interpretation. There will always be a need for elucidation of doubtful points and for adaptation to changing circumstances. Indeed, in the United Kingdom, as in the other Convention States, the progressive development of the criminal law through judicial law-making is a well-entrenched and necessary part of legal

¹⁴⁴ *Cantoni v. France*, paras 31-32.

¹⁴⁵ *Liivik v. Estonia*, para. 101.

¹⁴⁶ *Cantoni v. France*, para. 35.

¹⁴⁷ *Vasiliauskas v. Lithuania* [GC], paras 171-175.

tradition. Article 7 (art. 7) of the Convention cannot be read as outlawing the gradual clarification of the rules of criminal liability through judicial interpretation from case to case, provided that the resultant development *is consistent with the essence of the offence and could reasonably be foreseen*.¹⁴⁸ (Emphasis supplied)

90. Consistency with the essence of the offence concerns whether the interpretation fell within the wording of the provision as read in its context, and whether it was reasonable.¹⁴⁹ Consistency with the essence of the offence is also applicable when the domestic court is interpreting a legal provision based on international law.¹⁵⁰ The foreseeability of the judicial interpretation concerns whether it continued a perceptible line of case law development, or whether the court had taken an unforeseeable new approach.¹⁵¹ The lack of comparable precedents or previous instances of interpretation is not decisive.¹⁵² The foreseeability requirement was not met where there was an extensive interpretation to the accused's disadvantage,¹⁵³ or where the legal provision was ambiguous coupled with unforeseeable interpretation by the interpreting judge before whom the matter was heard.¹⁵⁴ This appears to mean that in the case of ambiguity in the law judges must still seek to interpret and bring clarity and meaning to the words and interpret the law in a *foreseeable manner*.

91. The court found that there was a prohibition on the retrospective application of criminal law to an accused's disadvantage.¹⁵⁵ However, it was also found that there was no breach where the acts in question were already punishable under legal provisions in force at the material time, even if not punishable as an independent offence.¹⁵⁶

92. Finally, the Court clarified that the reference to 'general principles of law recognised by civilized nations' in Article 7 (2) represented a mere contextual clarification of the ambit of the

¹⁴⁸ *S.W. v. the United Kingdom*, para. 36.

¹⁴⁹ *Jorgic v. Germany*, paras 105.

¹⁵⁰ *Jorgic v. Germany*, paras 103

¹⁵¹ *S.W. v. the United Kingdom*, para. 43; *Pessino v. France*, para. 36.

¹⁵² *K.A. and A.D. v. Belgium*, para. 55; *Jorgic v. Germany*, para. 109.

¹⁵³ *Dragotoniū and Militaru-Pidhorni v. Romania*, paras 39-48.

¹⁵⁴ *Žaja v. Croatia*, paras 102-103.

¹⁵⁵ *Del Río Prada v. Spain* [GC], para. 116.

¹⁵⁶ *Ould Dah v. France* Decision.

principle of legality, so that the prohibition on retroactivity applied equally when the offence was based on general principles of law.¹⁵⁷

93. I consider this to be the appropriate legal context within which the principle of legality currently operates and operated in February of 2005.

C. The crime of terrorism

1. Introduction: the elements of the crime and my approach to its interpretation

94. I turn now to the crime of terrorism applicable in the Special Tribunal. For convenience, I set out below the text of Article 314 of the Lebanese Criminal Code which provides as follows:

Terrorist acts are all acts intended to cause a state of terror and committed by *means liable to create a public danger* such as explosive devices, inflammable materials, toxic or corrosive products and infectious or microbial agents.¹⁵⁸

As expressed in the Judgment, Article 6 of the Lebanese law of 11 January 1958 deals with penalties for this offence under the Lebanese law, and circumstances that will aggravate the offence, but does not contribute to defining the offence.

95. The elements of this offence under Lebanese law are discussed in paragraphs 6155-6199 of the Judgment. In summary, the following findings are made concerning those elements.

96. Regarding the *actus reus* of the crime, firstly, the term ‘such as’ in Article 314 imports that it is an illustrative rather than a closed list.¹⁵⁹ Secondly, the means listed and the term for ‘means’ in the original (Arabic) version suggest that in that Article, ‘means’ refers to a physical means, not a manner or method of carrying out or execution of an act.¹⁶⁰ Thirdly, the Trial Chamber need not attempt to determine the exact scope of the words ‘means liable to create a public danger’ because the Accused are charged using one of the specified means. Consequently, the Trial Chamber’s summary of its findings concerning the *actus reus*, for the purpose of proceedings in this Tribunal,

¹⁵⁷ *Maktouf and Damjanović v. Bosnia and Herzegovina* [GC], para. 72.

¹⁵⁸ Emphasis added.

¹⁵⁹ Judgment, Applicable law, para. 6157.

¹⁶⁰ *Ibid.*, para. 6156.

is confined to committing a terrorist act by means of an explosive device. In the precise circumstances of the means alleged in this case, to satisfy the ‘means’ test a person must perform an act using an explosive device that is liable to create a public danger.¹⁶¹

97. Fourthly, regarding the *mens rea* of this crime, it is concluded in the Judgment that:

- to fulfil this element a person must intend to cause a state of terror;¹⁶²
- that person must also have some level of knowledge of the means intended or used to commit the crime, so that where the act is alleged to have been committed by means of an explosive device, they must have known that it was to be committed by means of such a device;¹⁶³ and
- responding to a Sabra Defence submission to the contrary—proof of motive is not required.¹⁶⁴

98. For reasons that follow, I agree with each of these findings in substance. However, applying the interpretative principles that I have set out in section B above, I would not have discounted any relevant binding international law, including established principles of customary international law, in interpreting the words of Article 314. While I share my colleagues’ doubt that a customary definition of terrorism as an international crime currently exists, or indeed existed at the material time (that of alleged commission of the offence charged), I consider that the many international and domestic sources that the Appeals Chamber surveyed on this matter may appropriately be used as sources of guidance in interpreting the Lebanese provision. I also consider that the words of Article 314 themselves, interpreted purposively and in their context, admit a broader reading of the ‘means’ element and that this reading, properly, facilitates application of the provision to contemporary forms of terrorism. Consequently, I would go somewhat further than my colleagues in the Majority regarding the *potential* scope of the Article, notwithstanding that in the present case there is no need to address definitively that question because of the nature of the acts charged and proven.

¹⁶¹ *Ibid.*, para. 6199. In light of the charges in this case, the Majority at para. 6171 expressly declined to determine whether Article 314 could also cover the threat of an act, although they did opine that the language of the Article is ‘clear[ly]... to the contrary’. I address the Appeals Chamber’s approach to this question at paras 104-106, 117 below.

¹⁶² *Ibid.*, paras. 6174, 6199.

¹⁶³ *Ibid.*, paras 6186, 6199.

¹⁶⁴ *Ibid.*, paras 6187-6197.

99. Specifically, in this case, the facts that the Prosecutor alleges amounted to a terrorist act contrary to Article 314, and that the Trial Chamber has found to be proven on the evidence or treated as proven based on an agreement between the Parties, indisputably, fall squarely within the terms of Article 314. Whether viewed objectively or subjectively, there was a positive act patently intended to cause a state of terror, the explosion on 14 February 2005, and it was committed by one of the means mentioned in the Article, namely an explosive device. That device thus satisfies the requirement of use of a means liable to create a public danger by the terms of the Article itself; there is no need to look further. So the Judgment finds.¹⁶⁵ Equally, these facts satisfy the extended interpretation of ‘means’ employed by the Appeals Chamber in its first interlocutory decision on the applicable law, which I will describe below.¹⁶⁶

100. My judicial colleagues in the Majority also found, implicitly referring to the *actus reus* of the offence, that the wording of Article 314 is unambiguous and clear.¹⁶⁷ I have a number of reservations about this observation on their part. To commence, clarity or the absence of ambiguity in the terms of a provision does not avoid the necessity to interpret them. Furthermore, the exact scope of the phrase ‘means liable to create a public danger, such as’ in the Article is uncertain. The scope of the phrase could be a pertinent or a live issue in connected cases where the means employed are evidently not expressly stated in Article 314, unlike the means in this case. Additionally, even if the Trial Chamber is not strictly called upon to make this determination within the context of the Ayyash *et al.* case, it fell within the ambit of the questions addressed by the Pre-Trial Judge to the Appeals Chamber in exercise of his discretion under Rule 68 (G) and which that Chamber in turn addressed acting under Rule 176 *bis* (A) as a *preliminary issue*. Those questions were:

- (i) Taking into account the fact that Article 2 of the Statute refers exclusively to the relevant provisions of the Lebanese Criminal Code in order to define the notion of terrorist acts, should the Tribunal also take into account the relevant applicable international law?

¹⁶⁵ Judgment, Legal findings on charged crimes (Counts 2-9), paras 6331-6334; *see also* Applicable law, paras 6169, 6171, 6199.

¹⁶⁶ In subsection 2.

¹⁶⁷ Judgment, Applicable law, paras 6167-6168.

- (ii) Should the question raised in paragraph i) receive a positive response, how, and according to which principles, may the definition of the notion of terrorist acts set out in Article 2 of the Statute be reconciled with international law? In this case, what are the constituent elements, intentional and material, of this offence?
- (iii) Should the question raised in paragraph i) receive a negative response, what are the constituent elements, material and intentional, of the terrorist acts that must be taken into consideration by the Tribunal, in the light of Lebanese law and case law pertaining thereto?¹⁶⁸

101. In the following sections, I will first describe the Appeals Chamber's examination of the crime of terrorism and the view the Majority adopts regarding recourse to international law and other sources on this issue. I will then deal with the question of recourse to customary international law and, finally, my own view as to the proper interpretation of Article 314.

2. The critical features of the Appeal's Chamber's examination

102. The Appeals Chamber's examination of the crime of terrorism accounts for a significant proportion of its first interlocutory decision and refers to a plethora of material which time and circumstance do not permit me to summarise in full. I will, therefore, not attempt an overly exhaustive review in this Opinion, but instead highlight what I suggest are the most critical features of that examination for present purposes.

103. I have already set out, above,¹⁶⁹ my understanding of the Appeals Chamber's general conception of customary international law, its view on the significance of that and other sources of international law within the Lebanese domestic legal system, and its overall conclusion regarding all substantive crimes that come within the jurisdiction of this Tribunal, including terrorism. I understand that conclusion to be that Lebanese law governs the definition of those crimes in this Tribunal and international law definitions of them, if any, do not apply directly by virtue of the Statute, unlike the definitions of modes of responsibility under Article 3 of the Statute.

¹⁶⁸ Pre-Trial Judge 21 January 2011 order on preliminary questions to the Appeals Chamber, questions (i) to (iii) under the heading 'With regard to the notion of terrorist acts', pp 12-13.

¹⁶⁹ Section B, 'The interpretative framework'.

104. For the Appeals Chamber, the result of the application of these conclusions to the crime of terrorism specifically (in order to answer a question from the Pre-Trial Judge concerning which definition or definitions of that crime govern in the Special Tribunal),¹⁷⁰ was a broader definition than that apparent on the face of Article 314 or in Lebanese case law interpreting it. That definition first appears in paragraph 147 of its First Interlocutory decision. It is then repeated in largely the same terms in the Disposition of that decision, paragraph 3. The significance of this definition is such that I repeat below the relevant part of the Disposition in full here, including its footnote:

[Disposition, paragraph 3:]

Article 314 of the Lebanese Criminal Code and Article 6 of the Law of 1958, interpreted in the light of international rules binding upon Lebanon, provided such interpretation does not run counter to the principle of legality, require the following elements for the crime of terrorism (see above paras 47-60, 124-30):

- a. the volitional commission of an act *or the credible threat of an act*;
- b. through means that are likely to pose a public danger; [footnote 432] and
- c. with the special intent to cause a state of terror.

[Footnote] 432. In particular, the Appeals Chamber notes that whether certain means are liable to create a public danger within the meaning of Article 314 should always be assessed on a case-by-case basis, having regard to the non-exhaustive list in Article 314 as well as to the context and the circumstances in which the conduct occurs. This way, Article 314 is more likely to be interpreted in consonance with international obligations binding upon Lebanon.¹⁷¹

105. The definition in the Disposition contains one addition, in the form of the words ‘or the credible threat of an act’ in the first identified element, not present in paragraph 147. Arguably, there are parts of the first interlocutory decision that raise some doubt that the Appeals Chamber intended the *actus reus* of the applicable definition to encompass both acts and threats and, if it did, that it viewed this as a substantial or significant departure from the purely domestic definition. It is not stated explicitly anywhere in the body of the decision until the Disposition that threats are

¹⁷⁰ See para. 100, above.

¹⁷¹ First interlocutory decision on applicable law, disposition, 3, fn. 432, emphasis added.

covered for the purpose of proceedings in the Special Tribunal.¹⁷² In addition, parts of the preceding analysis refer only to acts, not threats, and it is stated outright in paragraph 145 that there are only two ‘significant differences’ between the Lebanese Criminal Code and customary international definition, neither of which refers to the credible threat of as opposed to the commission of the relevant acts. The non-authoritative Headnote to the decision reinforces this impression, by omitting the reference to threats that appears in the Disposition and instead seeming to use the definition from paragraph 147.¹⁷³

106. Yet I am inclined to consider that the definition in the Disposition to that decision is the intended one, not only by reason of its appearance within the confines of the Disposition. It is also because there is no doubt that the Appeals Chamber considered that Article 314 must be interpreted in light of international rules binding upon Lebanon¹⁷⁴ and had earlier identified not only acts but the credible threat of them as forming part of applicable international law.¹⁷⁵ I will, accordingly, assume in the following analysis that the definition in the Disposition is the intended one. However, as will be seen, I am inclined to the view that the ‘credible threat’ element of it should not be applied in matters before this Tribunal.

107. The Appeals Chamber examined two bodies of international law on terrorism to identify the ‘relevant applicable international law’ as an ‘aid’ or ‘guidance’ in interpreting Article 314.¹⁷⁶ Those bodies were conventional, that is, treaty law, and customary international law.¹⁷⁷ Regarding the first body of law, the Chamber noted, ‘The only international treaty *ratified by Lebanon* that provides a general definition of terrorism is the Arab Convention for the Suppression of Terrorism of 22 April 1998’.¹⁷⁸ The Arab Convention’s definition of terrorism is:

¹⁷² As the Majority states in the Judgment. Judgment, Applicable law, para. 6165.

¹⁷³ First interlocutory decision on applicable law, Headnote, section IIB, last paragraph.

¹⁷⁴ *See, especially*, First interlocutory decision on applicable law, disposition, 3, chapeau (which as noted in para. 104 above states, ‘Article 314 of the Lebanese Criminal Code and Article 6 of the Law of 1958, *interpreted in the light of international rules binding upon Lebanon*, provided such interpretation does not run counter to the principle of legality, require the following elements for the crime of terrorism (see above paras 47-60, 124-30)’, emphasis added).

¹⁷⁵ First interlocutory decision on applicable law, paras 65, 85-113, 139-141, 145-147.

¹⁷⁶ *Ibid.*, para. 45. The first quoted phrase adopts the language used in one of the Pre-Trial Judge’s questions to the Appeals Chamber submitted to it under Rules 68 (G) and 176 *bis*.

¹⁷⁷ *See, e.g.*, First interlocutory decision on applicable law, paras 45-46, 61 and the sub-sections of the decision that follow.

¹⁷⁸ First interlocutory decision on applicable law, para. 63, original emphasis.

Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize a national resource.¹⁷⁹

108. The Arab Convention also defines as a ‘terrorist offence’, firstly, any offence or attempted offence in furtherance of a terrorist objective in the territory of any of the States party to the convention, or against their nationals, property or interests, that is punishable by those States’ domestic law. Secondly, specific offences stipulated in six other conventions (to all of which Lebanon is a party), or particular provisions of them, unless those specific offences have been excluded by the State party’s legislation. These conventions and provisions concern such matters as acts upon and against aircraft, hostage-taking and piracy on the high seas.¹⁸⁰

109. The Appeals Chamber further noted that the Arab Convention ‘itself clearly indicates that it does not intend to substitute its own definition of terrorism for those contained in the national law of each contracting party. [...] The purpose of the Arab Convention’s definition of terrorism is to enable prosecution, not to change domestic criminal codes.’¹⁸¹ Consequently, the Appeals Chamber found, the Special Tribunal cannot apply the Convention directly, as an independent source of law. But ‘its definition can nonetheless be used to help identify a persuasive interpretation of the Lebanese Criminal Code as part of the overall context relevant to its interpretation.’¹⁸² It was also stressed that it is an established principle of international law that, as much as possible, national law should be construed so as to make it consistent with a State’s international obligations.¹⁸³

110. Regarding customary international law on terrorism, the Appeals Chamber found that there is currently a crime of terrorism under that body of international law where the conduct in question occurs in peacetime, as opposed to during an armed conflict. In other words, there are not just

¹⁷⁹ League of Arab States, Arab convention for the suppression of terrorism, Adopted 22 April 1998 (‘Arab Convention’), Art. 1 (2).

¹⁸⁰ Arab Convention, Art. 1 (3). The application of the listed conventions, or provisions of them, is also excluded in the case of States that, unlike Lebanon, are not party to them.

¹⁸¹ First interlocutory decision on applicable law, para. 80.

¹⁸² *Ibid.*, paras 81-82.

¹⁸³ *Ibid.*, paras 75, 82.

particular types of terrorist offences defined in the issue-specific conventions previously mentioned, and crimes defined as terrorism in states' own (domestic) laws. There is also an *international* crime entailing the criminal responsibility of any individual, regardless of his or her nationality, whose existence all countries in the world accept. The Appeals Chamber further found that the elements of this international crime were:

- a. the perpetration of a criminal act, *e.g.* murder, or threatening such an act;
- b. the intent to spread fear among the population, which would generally entail creation of public danger, or directly or indirectly coerce a national or international authority to take some action, or to refrain from taking it;
- c. when the act involves a transnational element.¹⁸⁴

111. While the Appeals Chamber admitted that both scholars and legal experts doubted whether a widely accepted definition of customary law principle existed or had evolved in the world society,¹⁸⁵ it nonetheless felt that such a definition had gradually emerged. The Appeals Chamber also acknowledged that the existence of a customary rule outlawing terrorism does not necessarily mean that terrorism is a criminal offence under international law. It cited the test set out by the ICTY in *Tadić*, that for individual criminal responsibility to arise at the international level, it must be shown that violation of the international rule in question entails the individual criminal responsibility of the person breaching that rule.¹⁸⁶ The Appeals Chamber found the requisite state practice and *opinio juris* to be evidenced by a wide range of sources, including the aforementioned treaties, other treaties, resolutions of the United Nations Security Council and national legislation.¹⁸⁷ In other words, a full and extensive review was conducted. Based on the same survey of sources at both the international and national level, it concluded that 'a broader norm that would outlaw terrorist acts *during times of armed conflict* may also be emerging'¹⁸⁸ but does not yet exist—it is 'incipient (*in statu nascendi*)', only.¹⁸⁹

¹⁸⁴ *Ibid.*, para. 85; *see also* paras 111-113.

¹⁸⁵ *Ibid.*, para. 83, fn. 127.

¹⁸⁶ *Ibid.*, para. 103, citing *Tadić* Decision on the Defence motion for Interlocutory Appeal on Jurisdiction, paras 94, 128-137.

¹⁸⁷ *Ibid.*, para. 85 *et seq.*

¹⁸⁸ *Ibid.*, para. 107.

¹⁸⁹ *Ibid.*, para. 109, original emphasis.

112. The Appeals Chamber opined that there is a ‘requirement, in the legislation of a number of common law states and civil law states, as well as in some of the UN Terrorism Conventions and the draft Comprehensive Convention [on terrorism], for a political, religious, racial or ideological purpose’.¹⁹⁰ It concluded, however, that such purpose or motive does not yet form part of the customary definition of the crime.¹⁹¹

113. As to the definition of the Lebanese *domestic* crime of terrorism, the Appeals Chamber found that it was ‘clear from’ Article 314 of the Lebanese Criminal Code and Articles 6 and 7 of the 1958 Law that the crime’s elements were:

- a. an act, whether that act constituted an offence under other provisions of the Lebanese Criminal Code or not;
- b. which is intended to cause a state of terror; and
- c. the use of a means liable to create a public danger.¹⁹²

114. Relevantly, it was further noted, that Lebanese courts appear to have concluded that the provision is confined in its application to ‘those means which *as such* are likely to create a public danger, namely a danger to the general population. It would follow that the definition does not embrace any non-enumerated means referred to in Article 314 [...] unless these means are similar to those enumerated in their effect to creating a public danger *per se*.’ As the Appeals Chamber went on to observe, applying this approach, the definition of a terrorist act under Article 314 would not encompass acts committed using a gun, a semi-automatic or automatic machine gun, a revolver, or a knife and perhaps even a letter-bomb.¹⁹³

115. The Appeals Chamber relied on a number of considerations to determine the proper meaning and scope of the term ‘means liable to create a public danger’, as set out hereunder:

- a. Firstly, it noted as I have just described the highly restrictive approach adopted by Lebanese courts. It next opined this was not the only or more persuasive resolution to interpretation. Further that it believes ‘that a more congruous

¹⁹⁰ *Ibid.*, para. 98; *see also* paras 88, 94-95, 106.

¹⁹¹ *Ibid.*, paras 98, 100, 106.

¹⁹² *Ibid.*, paras 47-49.

¹⁹³ *Ibid.*, para. 52. *See further* paras 53-54, 145.

construction of the expression used by Article 314 is warranted'. It then proceeded to construe the term, with reference to the 314 provision itself. In this regard, in my view, it looked *internally*, within Lebanese law, namely, the provisions of the Lebanese Criminal Code, without reference to or applying *international* law. It also addressed the peculiar circumstances (facts and evidence) within the specific context of each case and its role and value in judicial determination of whether a particular means employed fell within or without the terms of Article 314.¹⁹⁴ The Appeals Chamber confirmed, with which I agree,¹⁹⁵ that the essential controlling element, was whether 'the means' are 'capable' or 'liable to create a public danger'. The concept of 'public danger' within the context of the discharging a means such as a firearm at a political or military leader whether in a public domain or private was also examined.¹⁹⁶ The close link between the aim of the crime (to cause a state of terror) and the result of the terrorist act (to create a public danger) was stated.

- b. Secondly, it concluded that the above wider interpretation, was better suited to address contemporary forms of terrorism, than that employed by some Lebanese courts.¹⁹⁷
- c. Thirdly,¹⁹⁸ it referred to international law, namely conventional law—the Arab Convention—and the 'customary international rule on terrorism' having regard to the fact that neither of those laws envisage a restriction on means. It found that its finding on the means element of this crime was 'warranted by the need to interpret national legislation as much as possible in such a manner as to bring it into line with binding relevant international law'.

¹⁹⁴ *Ibid.*, paras 125-129.

¹⁹⁵ As I will elaborate below, at para. 136.

¹⁹⁶ For example, the Appeals Chamber found that 'regardless of the weapon used', the definition in Article 314 could be satisfied when a terrorist shoots at a person in a public road and thereby imperils a large number of other people simply due to their presence at that location. It could also be satisfied when a prominent political or military leader is killed or wounded, even if this occurs in a closed place with no one else present. In the latter case, 'the danger may consist in other leaders belonging to that same faction or group being assassinated or in causing a violent reaction by other factions'. First interlocutory decision on applicable law, paras 125-129.

¹⁹⁷ First interlocutory decision on applicable law, para. 129.

¹⁹⁸ *Ibid.*, paras 129-130.

116. I consider that a significant result of the above treatment of ‘means liable to create a public danger’ by the Appeals Chamber, is that whether by properly construing the Lebanese provisions of the Lebanese Criminal Code (without reference to international law) or when applying the Arab Convention, or customary international law as the Appeals Chamber described it, the scope of means is broader than that determined by some Lebanese Judges and could also encompass means which are *not* specifically categorised or are not of similar species to those set out in Article 314.

117. The Appeals Chamber considered whether this broadening of one of the objective elements of the crime as applied in Lebanon was permissible in light of the principle of legality,¹⁹⁹ but concluded that it was permissible, it being foreseeable to a Lebanese national or anyone living in Lebanon.²⁰⁰ As discussed above, the Appeals Chamber also appeared, albeit implicitly, to consider it appropriate to expand the objective elements of the crime for the purposes of Special Tribunal proceedings to encompass not only the volitional commission of an act, but also the credible threat of one. Observation is made fairly and respectfully that it did not consider or discuss the legality implications of this expansion.

118. The Appeals Chamber did not adopt the requirement, which forms part of both of the Arab Convention’s definition of terrorism and the customary international definition that it had identified,²⁰¹ that the underlying conduct—in other words the act or threat of the act—should also be a crime. I understand this approach or decision to have derived from its finding that pursuant to Article 2 of the Statute, Article 314 is the principal and governing source of the definition that this Tribunal must apply. That finding is also understood to have prompted the Appeals Chamber’s decision not to import the requirements, from its suggested customary international definition, of a transnational element to the conduct of the accused and a coercive intention on his or her part (as an alternative to the intention to spread fear).

¹⁹⁹ *Ibid.*, paras 130 *et seq.*

²⁰⁰ First interlocutory decision on applicable law, para. 138; *see, further*, its detailed discussion of the issue in paras. 131-144.

²⁰¹ In para. 85 of First interlocutory decision on applicable law, as described in para. 110, above.

3. The Majority view on recourse to international law and other sources on terrorism

119. My colleagues in the Majority reject the notion that if there is a customary international crime corresponding to a crime under the Lebanese Criminal Code provisions specified in Article 2 of the Special Tribunal's Statute, the Chambers of the Tribunal should consider that international crime in interpreting the applicable Lebanese one. The Majority stated that is irrelevant to this Tribunal's function of trying the crime of terrorism specified in Article 2 of the Statute whether there was a customary international law definition of that crime in 2004 and 2005.²⁰² I have set out in section B above my general disagreement with this position.

120. However, all members of the Trial Chamber are of the view that no customary international law definition of the crime of terrorism yet exists.²⁰³ The Trial Chamber considered in this regard, but was not persuaded by, submissions from the Sabra Defence that proffered an alternative customary definition to that identified by the Appeals Chamber.²⁰⁴

121. The Majority of the Trial Chamber also appears, relevantly, to reject that it is necessary to resort to 'foreign and international practice in ... the field of counter-terrorism' to define a crime charged in this forum, at least where—as the Majority considers to be the case here—Lebanese legislation recognises that crime, is not unclear, and is not inconsistently or unreasonably interpreted by the courts of that country.²⁰⁵ The Majority further asserted that to interpret this and the other applicable substantive crimes, it relied only on the Code itself and relevant Lebanese judicial decisions, bearing in mind however that such decisions are not binding, and would in the event of any residual ambiguity after the application of ordinary principles of statutory interpretation, interpret the provision strictly in favour of the Accused without examining 'the law or practice of other States or international institutions'.²⁰⁶

122. This suggests that the Majority would have rejected those aspects of the Appeal Chamber's suggested definition that in their view do not align with the definition apparent in Article 314 itself,

²⁰² Judgment, Applicable law, paras 6016-6017.

²⁰³ *Ibid.*, paras 6192-6193. I further explain my own view in section 4 below.

²⁰⁴ As explained in the Judgment, Applicable law, paras 6196-6197. For the details of this submission, which the Sabra Defence presented as an alternative to its primary position rejecting resort to customary international law, see Judgment, Applicable law, paras 6002-6003, 6187-6190.

²⁰⁵ Judgment, Applicable law, para. 6011.

²⁰⁶ *Ibid.*, paras 6015-6019.

that is, its more expansive interpretation of the ‘means’ element and incorporation of not only acts but credible threats of them. As I have indicated,²⁰⁷ however, the Majority declined to express a final view on either matter, finding that this was unnecessary in light of the charges in this case.

4. Recourse to customary international law

123. In contrast to my colleagues, applying the general principle of interpretation I have accepted above,²⁰⁸ I consider the Trial Chamber would be bound to have interpretative recourse to a binding customary international law definition of the crime of terrorism, if one existed.

124. The Appeals Chamber’s comprehensive review of sources, in its interlocutory decision, to me demonstrates persuasively that by 14 February 2005, a customary definition of an international crime of terrorism in peacetime was in the making, or nascent. Among other notable developments, there was by then a series of widely accepted treaty definitions of terrorism and/or related offences in peacetime. These were applicable at the regional level²⁰⁹ or (as earlier mentioned) in specific contexts, such as civil aviation²¹⁰ and the financing of terrorists and terrorist organisations.²¹¹ By wide acceptance, I mean that a large proportion of States²¹² participate in many²¹³ of the treaties

²⁰⁷ In para. 96 and fn. 161 above.

²⁰⁸ In section B.

²⁰⁹ See the Appeals Chamber’s summary and list of the relevant regional treaties in First interlocutory decision on applicable law, para. 88 and fns 135, 140.

²¹⁰ Convention on Offenses and Certain Other Acts Committed on Board Aircraft, Adopted 14 September 1963 (‘Tokyo Convention’); Convention for the Suppression of Unlawful Seizure of Aircraft, Adopted 16 December 1970 (‘Hague Convention’); Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Adopted 23 September 1971 (‘Montreal Convention’); Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Adopted 24 February 1988 (‘1988 Protocol to the Montreal Convention’). Three more treaties on this issue have since entered into force: the Convention on the Suppression of Unlawful Acts Relating To International Civil Aviation, adopted in Beijing on 10 September 2010 (‘Beijing Convention’) (which, pursuant to Art. 24 of that Convention, between State parties to it prevails over the Montreal Convention and 1988 Protocol); the Protocol to the Hague Convention adopted on the same date (‘2010 Protocol to the Hague Convention’); and the Protocol to the Tokyo Convention adopted on 4 April 2014 (‘2014 Protocol to the Tokyo Convention’).

²¹¹ International Convention for the Suppression of the Financing of Terrorism, Adopted 9 December 1999 (‘Financing Convention’). As the Appeals Chamber noted, other contexts are maritime, nuclear, hostage-taking, the harming of diplomatic representatives and terrorist bombings. The UN Office of Counter-Terrorism also includes plastic explosives in its list of terrorism-related issues that are the subject of universal (as opposed to regional) treaties. See UN Office of Counter-Terrorism, ‘International Legal Instruments’, <https://www.un.org/counterterrorism/international-legal-instruments>; First interlocutory decision on applicable law, para. 89 and accompanying footnotes.

²¹² Or of States entitled to participate, in the case of the regional treaties.

²¹³ At present, in late July 2020, taking just the issue-specific treaties as an example, 189 States are party to the Financing Convention; 188 to the Montreal Convention; 186 to the Tokyo Convention; 185 to the Hague Convention; 180 to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, Adopted 14 December 1973 (‘New York Convention’); 176 to the International

in question. While that fact cannot be assumed to signify that those States also recognise corresponding customary obligations,²¹⁴ it may constitute evidence that such obligations exist.²¹⁵ There were also resolutions of the UN General Assembly and Security Council containing a general definition of sorts, notably General Assembly resolution 49/60 of 1994²¹⁶ and its successors²¹⁷ and Security Council resolution 1566 of 2004.²¹⁸

125. Moreover, there was undoubtedly commonality or convergence in various respects between definitions of offences in those treaties, resolutions and other relevant international instruments, including a draft of a UN comprehensive convention on international terrorism;²¹⁹

Convention Against the Taking of Hostages, Adopted 17 December 1979 ('Hostage Convention') and the 1988 Protocol to the Montreal Convention; 170 to the International Convention for the Suppression of Terrorist Bombings, Adopted 15 December 1997 ('Terrorist Bombings Convention'); 166 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Adopted 10 March 1988 ('SUA Maritime Convention') and 156 to its Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, Adopted 10 March 1988 ('Fixed Platforms Protocol'); 161 to the Convention on the Physical Protection of Nuclear Material, Adopted 26 October 1979; and 156 to the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Adopted 1 March 1991.

²¹⁴ *North Sea Continental Shelf* Judgment, para. 76.

²¹⁵ See, e.g., Eritrea-Ethiopia Claims Commission, *Partial Award: Prisoners of War, Ethiopia's Claim 4*, 1 July 2003, UNRIAA, vol. XXVI (Sales No. E/F.06.V.7) 73–114, pp 86–87, para. 31; *Norman* child recruitment decision, paras. 17–20; International Law Commission, *Draft conclusions on identification of customary international law, with commentaries*, 2018, forming part of UN Doc. A/73/10, *Report of the International Law Commission Seventieth Session (30 April-1 June and 2 July-10 August 2018)*, Commentary on Conclusion 11, para. 3, referring to these authorities. See also the case law of other internationalised and international courts and tribunals referred to in paras 36-38 above. Cf. the dissenting opinion of Judge Sørensen in the ICJ's *North Sea Continental Shelf* Judgment discussed in First interlocutory decision on applicable law, para. 108.

²¹⁶ *Measures to eliminate international terrorism*, GA Res. 49/60, UN Doc. A/RES/49/60, 17 February 1995, Annex, 'Declaration on Measures to Eliminate International Terrorism', para. 3.

²¹⁷ See the lists in First interlocutory decision on applicable law, fn. 136 and, for resolutions subsequent to the issuing of that decision, on the website of the UN Security Council Counter-Terrorism Committee, 'General Assembly Resolutions relevant to the Global Counter-Terrorism Strategy', <https://www.un.org/sc/ctc/resources/general-assembly/resolutions/>.

²¹⁸ SC Res. 1566, UN Doc. S/RES/1566, 8 October 2004 ('Security Council resolution 1566'), operative para. 3, which states that the Security Council:

Recalls that criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and *calls upon* all States to prevent such acts and, if not prevented, to ensure that such acts are punished by penalties consistent with their grave nature.

²¹⁹ Proposed in 2002 by the coordinator of the drafting process. This process is ongoing. See 'Text Circulated by the Coordinator for Discussion' in *Report of the Ad Hoc Committee established by General Assembly Resolution 51/210 of 17 December 1996*, UN Doc. A/57/37 (28 January-1 February 2002) Annex IV, p. 18 ('2002 coordinator's proposal'). Although formally no text is yet agreed in the negotiations of this instrument, that proposal is still apparently 'the basis of discussions on the outstanding issues': Amrith Rohan Perera, 'The draft United Nations Comprehensive Convention on International Terrorism' in Ben Saul (ed.), *Research Handbook on International Law*

definitions in domestic penal legislation; and ones set out in domestic jurisprudence. This included a strong trend across each of these definitional sources of *not* limiting the means of carrying out the terrorist act to particular physical means.²²⁰

126. As there was no evidence of Lebanon entering constant and persistent objections to the potentially emerging definition of terrorism under customary international law—and indeed Lebanon engaged with this emerging area of law by becoming a party to relevant treaties including the Arab Convention on the Suppression of Terrorism—it cannot be said that Lebanon would be excluded from the binding nature of any rule of customary international law which may arise in this area.

127. However, full crystallization and maturity are the essential characteristics which any customary international law principle must demonstrate as possessing. After careful consideration, I am not convinced that States’ practice in the area of terrorism was sufficiently consistent, or that their acceptance that they were legally bound to follow the same practice—the *opinio juris*—was sufficiently evident, for a customary definition to have clearly crystallised by that time. For that matter, it does not appear to have crystallised by February 2011 when the Appeals Chamber issued its decision, or since the date of that pronouncement.

128. It is important in this respect to be cognizant of the fact that the relevant inquiry is not whether there are *any* customary international law rules concerning terrorism. It is, as the Appeals Chamber itself acknowledged, whether terrorism ‘is a criminal offence under international law’, entailing individual criminal responsibility.²²¹ Although complete certainty is not required as a matter of law, in my view a relatively high degree of precision and certainty is required as to all elements of the definition, in order to satisfy the principle of legality.²²² Even though many of the source definitions have much in common, my view is that the differences between them, and

and Terrorism (Elgar, 2014) (‘Terrorism Research Handbook’), pp 151-162, p. 161. *See also* UN General Assembly Sixth Committee website, list of periodic reports of the relevant *ad hoc* committee and working group at <https://legal.un.org/committees/terrorism/reports.shtml> and summary of mandate, working methods and progress to date at <https://legal.un.org/committees/terrorism/>.

²²⁰ In contrast to the way in which Lebanese courts have interpreted the definition in Article 314 of the Lebanese Criminal Code, as the Appeals Chamber remarked. First interlocutory decision on applicable law, *e.g.* para. 113. For examples attesting to the trend of non-limitation of physical means, *see* paras 138-140, and their footnotes, below.

²²¹ First interlocutory decision on applicable law, para. 103.

²²² *See, e.g.*, Kai Ambos and Anina Timmermann, ‘Terrorism and Customary International Law’ in *Terrorism Research Handbook*, pp 20-38, p. 22, drawing from the first author’s earlier work, particularly Ambos LJIL 2011. *See further* my analysis of this principle in section B above.

between them and other relevant approaches, could be regarded as too significant for that threshold to be met. This contradicts the notion that States, generally, believe they are bound by the same core definition of the crime—or, adapting the Appeals Chamber’s words, that they share the ‘intention to criminalise’ basically the same thing.²²³

129. The presence of a motive or purpose element in various definitions of the crime, in both domestic law and international instruments, is one illustration of this. The Appeals Chamber considered this to be a discrepancy or minority approach that is not fatal to the existence of a customary definition, emphasising that total uniformity of practice is unnecessary.²²⁴ While I accept this interpretation of the ‘uniformity’ requirement,²²⁵ this particular difference could reasonably have been characterised instead as confirming that there is a lack of international consensus on the definition. Simply put, where is a variety of substantively different approaches to a particular element, this calls into question whether the definition of the crime overall is sufficiently certain.

130. Other substantive differences between relevant definitions around the world, which lead me to question the existence of a customary crime, relate to the scope of the *actus reus*. For example, the criminal law of a number of countries specifies that a terrorist act may be directed at *either* individuals (or ‘the public’) *or* other, non-human targets such as property and the environment. But many other countries’ legislation confines it to the former. Further, it appears to me that under some definitions including that in Article 314 of the Lebanese Criminal Code, no person need be injured or any property damaged for the crime to have been committed. Others require proof of such concrete effects. Some domestic law definitions explicitly extend to threats of particular acts; some, like the Article 314 definition, refer only to the acts themselves.²²⁶ Then there are the crimes defined in the terrorism treaties I have termed ‘issue-specific’. As already stated, many of those crimes are limited to—for instance—particular sorts of targets (human and non-human), locations or physical means of commission.²²⁷

²²³ First interlocutory decision on applicable law, para. 103.

²²⁴ *See, especially*, First interlocutory decision on applicable law, para. 106.

²²⁵ As explained in para. 31 above.

²²⁶ *See, e.g.*, the national laws referred to in First interlocutory decision on applicable law, paras 93-96 and accompanying footnotes.

²²⁷ *See further*, raising these and other issues, Saul LJIL 2011; Saul *amicus curiae* brief 2011; Gillet and Schuster 2011; Ambos LJIL 2011; Ambos *amicus curiae* brief 2011; Kirsch and Oehmichen 2011; Saul 2013; Nidal

131. I acknowledge that the above may seem a perfunctory treatment of a complex subject on which a great deal has been written. I go no further, nonetheless, as my conclusion does not differ from the Majority's on this point. I turn instead to recording how I would have arrived at largely the same definition as the Appeals Chamber's, by a somewhat different interpretative route.

5. Proposed interpretation of Article 314

132. I start by emphasising that I do not consider it is entirely necessary to resort to international law or practice in other states to interpret the 'means' element of a terrorist act more expansively than Lebanese courts may have done. One can instead reach the result that the Appeals Chamber did through a contextual and teleological interpretation of the words of Article 314 of the Lebanese Criminal Code.

133. I acknowledge that one reading of the words 'committed by means liable to create a public danger such as explosive devices, inflammable materials, toxic or corrosive products and infectious or microbial agents' is that only a physical means that is inherently public-endangering will qualify. I am intentionally brief here, as this reading of the provision, including examples of it in Lebanese case law, is elaborated on in both the Appeals Chamber's first interlocutory decision and the Judgment itself.

134. However, part of the immediate context to those words is the intention element or *mens rea* of the provision, (acts) 'intended to cause a state of terror'. I, like the other Trial Chamber Judges, accept that that element and the public-endangering result element of this crime are closely linked,²²⁸ consistent with the Appeals Chamber's statement.²²⁹ The textual context also includes Article 314's location in Chapter I of Book II of the Code, that is, the chapter on 'Offences against State security', and Article 271 which provides that 'An attack *on State security* is made whether the act constituting the offence is complete, abortive or attempted'.²³⁰ This wording and the

Nabil Jurdi, 'The Crime of Terrorism in Lebanese and International Law' in Amal Alamuddin and others (eds), *The Special Tribunal for Lebanon: Law and Practice* (Oxford University Press, 2014), pp 73-87; and, in the Terrorism Research Handbook, the chapters by Marcello Di Filippo; Kai Ambos and Anina Timmermann; Amrith Rohan Perera; Michael Wood; Roberta Arnold (*cf.* her treatment of the customary status of terrorism as a war crime); and Guénaél Mettraux. One counter-example known to me is *R v Gul* [2012] EWCA Crim 280 (UK), paras 32-36, where a domestic court endorsed the Appeals Chamber's conclusion as to the customary definition of the crime, albeit by agreement of the parties to the case.

²²⁸ Judgment, Applicable law, para. 6176.

²²⁹ First interlocutory decision on applicable law, para. 128.

²³⁰ Emphasis added.

position of Article 271 within Chapter I indicate that that Article applies to all offences in that chapter, including the crime of a terrorist act under Article 314.

135. In my view, the object and purpose of the Code overall may reasonably be presumed to be proscribing and punishing conduct that harms individuals or society in a range of ways, both physical and non-physical. I have considered equally that this particular chapter of it therefore focuses on harm *to State security* specifically. Other appropriate descriptions or synonyms for the harm that this chapter targets, I suggest, are *destabilising* the government, country and/or people in it generally—*i.e.* the public, and *rendering less safe* that political institution or entity, that place, and/or those people. ‘Caus[ing] a state of terror’, obviously, has both of those connotations. These connotations are noted in the Judgment.²³¹

136. The ordinary meaning of the words ‘committed by means liable to create a public danger’, taken on their own—without reference to the subsequent words ‘such as’ and the list that follows—appears to me to be, committed by a means that is capable or likely to create a public danger. When one considers, further, the aforementioned context to the words in question and the object and purpose of the Code and relevant chapter in it, I believe that it confirms that this is the better interpretation of the Article. That is, as the Appeals Chamber found, the essential controlling element for deciding whether a means falls under the Article is capacity or liability to create a public danger.²³² Once this interpretation is adopted, committing an act using a means that does not inherently have, for example, widespread or indiscriminate effects, like a gun or a vehicle, would in some circumstances fulfil this element of the crime.

137. Three additional matters that I adverted to earlier, and to which the Appeals Chamber also referred, cement my view that this is the most appropriate interpretation of the ‘means’ element of the crime defined in Article 314. First is that this interpretation better equips the provision to address contemporary forms of terrorism. Acknowledgement is made by me that the *modus* or *modi* of those who wish to sow terror continually evolve, sometimes responding to authorities and governance becoming vigilant to particular methods and means, which has rendered it more difficult to use them. Bringing explosives and edged weapons onto an aircraft are examples of the latter, whereas stabbing or driving a van into members of the public in a crowded public place has

²³¹ Judgment, Legal findings on charged crimes (Counts 2-9), paras 6335-6341.

²³² See para. 115 (a) above.

become more common. I see the extension of the ‘means’ element to such new *modus* or *modi* as an application of the progressive, ‘living instrument’ approach to interpretation that I have described—and embraced—above.²³³

138. Second, this interpretation is consistent with a number of international instruments on terrorism that pre-date the attack on which this case centres and are legally binding upon Lebanon. They include the Arab Convention, whose definition of terrorism generally²³⁴ does not prescribe any particular physical means. Instead ‘[a]ny act or threat’ may qualify as terrorism under that Convention provided that it is violent, occurs in advancement of a criminal agenda, and is done with one of the specified intentions.²³⁵

139. The relevant binding international instruments also include Security Council resolution 1566 of 2004. The definition appearing in the resolution itself is not expressed to be restricted to particular physical means. Instead it suggests that any criminal act, or the taking of hostages, using any such means will qualify if done with the specified intent and one of the specified purposes.²³⁶ It is also explicitly confined in scope to acts that also constitute crimes defined in terrorism treaties,²³⁷ but many of the treaty definitions are, likewise, not restricted in terms of physical means of commission.²³⁸ Lebanon as a UN member State is directly bound by resolution 1566, it being a decision of the Security Council.²³⁹ Moreover, many of the relevant treaties were also legally binding upon Lebanon as a State party to them at the time of the events in question.²⁴⁰

²³³ See especially para. 24.

²³⁴ As opposed to its ‘terrorist offence’ definition, which is tied to, *inter alia*, domestic criminal legislative definitions and thus to the definition in Article 314. See para. 108 above.

²³⁵ Arab Convention, Art. 1 (2), extracted in para. 107 above, emphasis added.

²³⁶ Security Council resolution 1566, operative para. 3, extracted in fn. 218 above.

²³⁷ *Ibid.*, The Appeals Chamber mentioned this feature, in its First interlocutory decision on applicable law, fn. 137.

²³⁸ E.g. the Financing Convention (Art. 2 (1) (b)), Tokyo Convention (Art. 1), Hague Convention (Art. 1), Montreal Convention (Art. 1—some offences there defined must be committed by particular physical means, but not all), New York Convention (Art. 2), Hostage Convention (Art. 1), SUA Maritime Convention and Fixed Platforms Protocol to the SUA Maritime Convention (arts 3 and 2 respectively, each of which restricts the physical means of commission for some but not all offences it defines). One treaty definition that obviously does limit the physical means is that in the Terrorist Bombing Convention, Art. 2.

²³⁹ UN Charter, Art. 25.

²⁴⁰ E.g. the Tokyo Convention, Hague Convention, Montreal Convention, New York Convention, Hostage Convention, SUA Maritime Convention and Fixed Platforms Protocol to the SUA Maritime Convention. Lebanon has since become a party to additional relevant treaties, including the Terrorism Financing Convention.

140. Thirdly, my proposed interpretation of the ‘means’ element of the offence under Article 314 is consistent with a large body of terrorism law and practice that was not binding on Lebanon,²⁴¹ such as definitions in the laws of countries in many different parts of the world,²⁴² and the principal one under consideration for the UN comprehensive convention on terrorism. The latter definition expressly does not limit the physical means of commission, through inclusion of the phrase ‘by any means’.²⁴³

141. I do not share my Trial Chamber colleagues’ seeming view that there must first be lack of clarity, inconsistency or unreasonableness in Lebanese judicial approaches before Judges of the Special Tribunal can look to such sources in interpreting Article 314. As I have shown, what they term ‘foreign and international practice in ... the field of counter-terrorism’²⁴⁴ includes a series of instruments that Lebanon has ratified or are legally binding upon it for other reasons. These instruments therefore form part of the Lebanese domestic legal system, notwithstanding that, as the Appeals Chamber explained, they may not be self-executing or operate in a way that overrides the Lebanese Criminal Code.

142. Further, I consider that even where is no legal obligation to apply a particular principle (even indirectly in the sense referred to above), there is nothing intrinsically wrong in examining and, in some circumstances, adopting approaches found in the international and foreign domestic sphere, when searching for guidance as to interpretation of Article 314. Provided that this occurs within the bounds of the principle of legality, such consideration of external sources may furnish real assistance to the judge or court seeking to interpret a provision applicable in a particular jurisdiction. This may be so where, for example, factual circumstances arise that have not previously been considered in that jurisdiction.

²⁴¹ Cf. the view expressed in First interlocutory decision on applicable law—that there is now a customary and thus universally legally binding definition of the crime—which relied on this law and practice among other sources. As set out above, I am doubtful that this is yet the case.

²⁴² As described by the Appeals Chamber in First interlocutory decision on applicable law, fns 157-161, 167, 169, 182, 185-186, 188 and para. 94, they include Jordan, Iraq, the United Arab Emirates, Egypt, Tunisia, France, the United Kingdom, the United States, the Philippines, Uzbekistan and Saudi Arabia.

²⁴³ 2002 coordinator’s proposal.

²⁴⁴ Judgment, Applicable law, para. 6011.

143. In this instance, consideration of both binding and non-binding legal sources beyond the Lebanese Code and case law has not only reinforced a view of the scope of the Code provision that, as I have explained, I consider arises from the terms of the provision itself, interpreted contextually and teleologically. It also has some significance from the perspective of legality. The fact that acts by means other than those listed in Article 314 or of their genre were widely criminalised in other parts of the world, by 14 February 2005, substantially strengthens the conclusion that a prospective offender in Lebanon at that time must have been on notice that this, too, may constitute terrorism. In my view, the requirements of foreseeability of criminalisation of the conduct and accessibility are satisfied, as the Appeals Chamber rightly found.

144. Respectfully, I consider it my duty to observe that the expansion of the concept of a terrorist act in the Special Tribunal to include credible threats of such acts appears to be substantively different in both respects. This interpretation is not as clearly available from the terms of the Code itself and, taking this factor into account, I have some doubt whether it could be considered to have been sufficiently accessible and foreseeable to a prospective offender at the material time. I am unaware of any Lebanese court judgment or decision applying Article 314 to convict an accused person for making a credible threat that they would commit a terrorist act, rather than committing one (either in an attempted or abortive fashion, or fully realising the act as in the present case).²⁴⁵ On the other hand, on the charges and facts in this case, there was no need for the Parties to draw such case law to the attention of the Trial Chamber nor for us to seek it out. I therefore do not wish to express a final view on the matter. Suffice it to say that I am inclined, from the information presently available to me, to think that this is an instance in which amendment by the Parliament would have been necessary to expand the *actus reus* of the crime, before this Tribunal should accept it to be so expanded.

D. Accomplice liability and Article 222

145. Before proceeding to discussion of Accomplice liability under Article 219 (4) and (5) of the Lebanese Criminal Code and the relative interaction and scope of Article 222 (and its companion, Article 221) having regard to the former Articles, relevant contextual background is in order. The record in this matter discloses that the Accused, Messrs. Oneissi, Sabra and Merhi,

²⁴⁵ Pursuant to Article 271, as set out in para. 134 above, each of these scenarios will suffice for the crime to have been committed.

are charged pursuant to Counts 6-9 of the Amended Consolidated Indictment with being an Accomplice to the felonies of Committing a Terrorist Act by means of an explosive device; Intentional Homicide of Rafik Hariri, with premeditation, by using explosive materials; Intentional Homicide of 21 others with premeditation by using explosive materials and of Attempted Intentional Homicide of 226 other persons, with premeditation by using explosive materials.²⁴⁶ The charges are grounded pursuant to Articles 2 and 3 of the STL Statute and consequently, under the Lebanese Criminal Code, per Article 219 (4) & (5). The provisions of these Articles are set out below. They concern the applicable modes of liability or individual criminal responsibility in respect of crimes (attacks) falling under the jurisdiction of the Tribunal when exercising its primary jurisdiction derived under Article 1.

146. Article 2 of the Statute relevantly makes ‘[t]he provisions of the Lebanese Criminal Code relating to the prosecution and punishment of acts of terrorism, crimes and offences against life and personal integrity, [...] including the rules regarding [...] criminal participation’²⁴⁷ applicable in the Special Tribunal, ‘subject to the provisions of this Statute’.²⁴⁸ Article 3 (1) (a) relevantly provides that ‘[a] person shall be individually responsible for crimes within the jurisdiction of the Special Tribunal if that person: (a) [...] participated as accomplice [...] to commit the crime set forth in Article 2’.

147. Articles 219, 221 and 222 of the Lebanese Criminal Code are as follows.

Article 219

The following shall be deemed to be accomplices to a felony or misdemeanour:

1. Anyone who issues instructions for its commission, even if such instructions did not facilitate the act;
2. Anyone who hardens the perpetrator’s resolve by any means;
3. Anyone who, for material or moral gain, accepts the perpetrator’s proposal to commit the offence;

²⁴⁶ Amended consolidated indictment, Preamble.

²⁴⁷ Statute, Art. 2 (a).

²⁴⁸ Statute, Art. 2, chapeau.

4. Anyone who aids and abets the perpetrator in acts that are preparatory to the offence;
5. Anyone who, having so agreed with the perpetrator or an accomplice before commission of the offence, helped to eliminate the traces, to conceal or dispose of items resulting therefrom, or to shield one or more of the participants from justice;
6. Anyone who, having knowledge of the criminal conduct of offenders responsible for highway robbery or acts of violence against state security, public safety, persons or property, provides them with food, shelter, a refuge or a meeting place.

Article 221

Anyone who, other than in the case provided for in Article 219, paragraph 5, knowingly conceals or disposes of items belonging to a third party that were appropriated, embezzled or obtained by a felony or misdemeanour shall be punishable by a term of imprisonment of three months to two years and by a fine of between 20,000 and 400,000 Lebanese pounds.

However, if the items concealed or disposed of are the product of a misdemeanour, the penalty may not exceed two thirds of the heaviest penalty for the misdemeanour.

Article 222

Anyone who, other than in the cases provided for in Article 219, paragraphs 5 and 6, conceals a person who he knows has committed a felony or who helps such a person to evade justice shall be punishable by a term of imprisonment of three months to two years.

Ascendants or descendants concealing perpetrators, their husbands or wives, including divorcees, and their brothers, sisters and relatives by marriage of the same degree, shall be exempt from any penalty.

148. In its first interlocutory decision on applicable law the Special Tribunal's Appeals Chamber opined, *inter alia* that Article 2 of the Tribunal's Statute requires the Tribunal to apply Lebanese

law regarding ‘criminal participation’ (as a mode of responsibility);²⁴⁹ that Article 3 specifies modes of individual criminal responsibility utilised in international criminal law, including *complicity*;²⁵⁰ and importantly, for these purposes, that Special Tribunal judges could elect, as appropriate, whether to apply either Lebanese law or international law (as contained in Article 3 of the Statute). It proffered a formula whereby Judges who are faced with determination of which of these laws to apply, should:

- a. Evaluate on a case-by-case basis whether there is any conflict between the two laws.
- b. In the event that there is an absence of conflict, apply Lebanese law.
- c. In the event that conflict exists, then apply the body of law more favourable to the accused to the particular mode of liability.²⁵¹

149. The Appeals Chamber noted marked overlapping between the Lebanese notion of the mode of liability and that under international criminal law. Ultimately, however, it concluded that generally speaking the Lebanese concept of complicity is *more protective of the rights of the accused*, including the principle of legality (*nullum crimen sine lege*). This mandated its application in the Special Tribunal.

150. All Trial Chamber Judges agree that the provisions of the Lebanese Criminal Code govern the forms of individual criminal responsibility charged in this case, including participation as an accomplice. Further, all agree that it was not legally necessary to compare Lebanese and international criminal law to reach this result. However, my reasons for these conclusions differ from those of Majority.

151. In my respectful opinion, had the Appeals Chamber and, in turn, my colleagues, applied the principles of statutory interpretation in the manner and order I have described, there would have been no necessity to resort to consideration of which of the two notions, the Lebanese or the international, was more favourable to an accused. The principle mandating such consideration, if rightly employable, is a last, remote stage of judicial determination. The same result to which both

²⁴⁹ First interlocutory decision on applicable law, para. 205.

²⁵⁰ *See, especially*, First interlocutory decision on applicable law, paras 206-207.

²⁵¹ First interlocutory decision on applicable law, paras 210-211, disposition, 13.

the Appeals Chamber and the Majority came, namely that the Lebanese definition controls, may be reached through purposive interpretation.

152. It is also my view that Article 3 (1) (a) incorporates modes of individual criminal responsibility which are general criminal law principles found in the Lebanese criminal order, domestic jurisdictions and in international criminal law, as such. On this basis, reference may be had to commensurate international and domestic law being applied to the provisions of the Lebanese Criminal Code regarding modes of liability.

153. I explain my position on these fundamental, threshold issues of interpretation of the Statute, and in particular Article 3 (1) (a), in section 1 below.

154. Moreover, as is noted in the Judgment,²⁵² the Appeals Chamber did not enter into an in-depth examination of accessorial liability under Lebanese law. Like my colleagues, I consider that further analysis of this subject is useful and necessary for this and other reasons stated in the Judgment.

155. The Judgment analyses Article 219, relevant Lebanese case law, the Appeals Chamber's approach to that Article, and the Parties' submissions on the foregoing in great detail. I take the opportunity to share that in order to assist in the process of analysis, the Trial Chamber made diligent searches for Lebanese decisions and judgments on Article 219 complicity beyond those to which the Appeals Chamber referred or as brought to our attention by the Parties. I am mindful of the great care and effort that was taken by the Trial Chamber not only to discover, but also to painstakingly examine relevant Lebanese case law (and learning), in order to be properly informed and advised, as also to more ably execute judicial function and duties. This proved to be a very large task, given the depth and breadth of Lebanese judicial pronouncement generally and in relation to the issues, which specifically concern the Trial Chamber, and which have confronted us on an ongoing basis. I record my own deep appreciation of the store of jurisprudence produced by the Lebanese judges, at every level of proceedings, judicial opinion and pronouncements on numerous areas of law. These have greatly aided my own understanding, as also the shaping and settling of my ultimate opinions.

²⁵² Judgment, Applicable law, para. 5868.

156. The Trial Chamber's searches and, ultimately, much of the discussion of Article 219 in the Judgment focused on cases concerning Article 219 (4) and 219 (5). The Judgment acknowledges accordingly, the stated reason being that only those two paragraphs of the Article were charged.²⁵³

157. All Trial Chamber Judges agree that in the circumstances it was appropriate and practically sound to concentrate on those two paragraphs of Article 219, as distinct from paragraphs (1)-(3) or (6), however I have considered an additional reason to that identified by my colleagues. In this regard, I am further of the view that the admitted evidence concerning the three alleged accomplices, Mr Merhi, Mr Oneissi and Mr Sabra, does not suggest that any other paragraph of Article 219 applies to the conduct of those three Accused. By comparison, when we examine the case of the Accused, Mr Ayyash, then some acts that he has been found by the Trial Chamber to have carried out, might arguably have fallen under Article 219 (1), concerning complicity by issuing instructions, had they not been found to have reached the threshold of co-perpetration of the crimes charged. However, in light of the determination that he is guilty as charged on all counts, no expression of final opinion is made by me on this matter. I take the opportunity to make brief observations below on the significance of the uncharged paragraphs of Article 219, to the overall scope of the Lebanese concept of complicity.

158. In its first interlocutory decision on applicable law, no discussion was engaged in by the Appeals Chamber concerning the application of Articles 221 and 222 as alternative means of charge and ultimately resulting in a possible conviction under Lebanese law.

159. In the Judgment only brief reference is made to the Lebanese lesser form of criminal participation provided for in Article 222, underlining that no charges have been brought under Article 222 so as to permit trial or conviction for the alternative lesser.²⁵⁴ Though further mention is made in a footnote, to the effect that acts a person performs after a crime is committed to which Article 219 does not apply 'may still constitute one of the less serious forms of criminal liability set out in Articles 221 and 222', and that Lebanese case law acknowledges this.²⁵⁵

²⁵³ *Ibid.*, paras 6021, 6042.

²⁵⁴ *Ibid.*, para. 5888.

²⁵⁵ Judgment, fn. 11134.

160. Yet, on its face, the first paragraph²⁵⁶ of Article 222, set out above, has an obvious relevance to the present case. This, given the fact that the Prosecutor's case against Messrs. Merhi, Oneissi and Sabra rests in part on acts they are alleged to have committed after the principal crimes, whose aim, it is argued, was to help the perpetrators and themselves elude detection by the authorities.

161. I share the underlying rationale for not applying this Article to the specific circumstances of this Ayyash case and in light of the totality of the evidence before the Court. I consider that based on how the Prosecutor and the Defence have marshalled their cases, the Defence for the Accused persons have at no time proceeded on the basis or expectation that a conviction could result under Article 222, in face of charge under Article 219 (5). It would therefore strike at the fairness and integrity of the proceedings for the Trial Chamber to proceed to enter any finding under Article 222.

162. I remain of the view, however, that this issue merits elevation to the text of the Judgment rather than to be placed in a footnote beneath the text. I consider that given the importance of this issue to Prosecutors, the Defence and, certainly, STL Judges, a greater level of discussion is required, certainly at first instance if not at the Appellate level. It will also be pertinent at the charging and pre-trial stage of proceedings.

163. I also consider it pertinent, for its potential importance to future proceedings, to catalogue some specific aspects of the Lebanese concept of complicity, on which my interpretation differs from the Majority's. I will do so in section 2 below. As I will explain, I am inclined to classify the offences defined in Articles 221 and Article 222 as forms of complicity. I will then discuss in section 3 the question of whether a Trial Chamber of this Tribunal may reclassify the facts proven in a case as a lesser offence in the nature of Article 222—finding that in some circumstances, it could properly do so.

164. For avoidance of doubt, I emphasise at the outset that adopting the interpretation of Article 3 (1) (a) of the Statute, and Articles 219, 221 and 222 of the Lebanese Criminal Code, that I propose below would not have resulted in the conviction of any of the three Accused alleged to be accomplices in this case.

²⁵⁶ The remaining paragraph solely concerns relatives of perpetrators, so can be ignored.

1. Interpretation of Article 3 (1) (a) of the Statute

(a) My approach: contextual and teleological interpretation

165. To explain my view of Article 3 (1) (a), applying the interpretative principles stated elsewhere,²⁵⁷ I begin with the ordinary meaning of the terms of Article 3 (1) (a) in their context and in the light of the Statute's object and purpose.

166. Considered in themselves, that is, in the absence of a contextual and teleological reading, the terms of the chapeau paragraph, 3 (1), and the sub-paragraph, (a), are of limited assistance. Together they show only that participation as an accomplice is one of the bases for individual criminal responsibility for crimes within the Special Tribunal's jurisdiction. Since the same word, 'accomplice', is used in Lebanon, in other domestic jurisdictions and in international criminal law, it is not possible to determine from Article 3 (1) (a) alone how a Chamber of the Tribunal should define the concept.

167. However, other provisions of the Statute provide relevant guidance. Crucially, Article 2 (a) explicitly imposes the obligation to apply the provisions of the Lebanese Criminal Code on criminal participation in this Tribunal, subject to other provisions of the Statute. Article 3 (2) and (3) implicitly, by the terminology used and the non-existence of equivalent Lebanese concepts, impose the obligation to apply some modes of such participation developed and defined in the international criminal law sphere.²⁵⁸ Moreover, a number of other provisions of the Statute clearly demonstrate an intention for the Special Tribunal to apply principles of international law on various matters, as well as, on a few matters, general principles of law and other specified concepts or sources other than Lebanese law.²⁵⁹

168. Thus, in my view, the terms of the Statute itself leave open the possibility that participation as accomplice under Article 3 (1) (a) may be interpreted to mean a mode of liability other than the purely Lebanese concept of complicity. Also relevant in this respect are the origins of the Special

²⁵⁷ Section B, 'The interpretative framework', above.

²⁵⁸ See Judgment, Applicable law chapter, paras 5909-5912.

²⁵⁹ See, e.g., Arts 15, 16 (which I further discuss in subsection iii below), 29, 21 (4), 24, 28 (2), 30.

Tribunal, in a request to create a tribunal of an *international* character, and the references to this in both the Security Council resolution adopting the Statute²⁶⁰ and the Statute's Preamble.

169. As mentioned in the Judgment,²⁶¹ the Secretary-General of the United Nations referred to Article 3 (1) (a) in paragraph 26 of his November 2006 report to the Security Council on the establishment of the Special Tribunal. From my searches, it seems that the Secretary-General's November 2006 report is one of only a few public documents setting out the drafting history of the Statute,²⁶² and is the most specific and comprehensive of them. It is therefore the closest equivalent to the official record or records of a treaty's drafting known as preparatory work, or *travaux préparatoires*. Paragraph 26 of the report focuses on individual criminal responsibility.

170. With its title, and the relevant statement highlighted in bold, paragraph 26 reads:

D. Individual criminal responsibility

26. Under article 3, paragraph 1, of the statute, all those who committed, participated as accomplice, organized or directed others to commit the crime, or otherwise contributed to the commission of the crime, shall be individually responsible. **This is a reflection of the Lebanese Criminal Code and general criminal law principles, evidenced, inter alia, by Article 2, paragraph 3, of the International Convention for the Suppression of Terrorist Bombings of 1997 (General Assembly resolution 52/164, annex).** Article 3, paragraph 2, reflects the principle of command responsibility both under international law and national criminal and military codes as more fully articulated in Article 28, subparagraph (b), of the Statute of the International Criminal Court. Under Article 3, paragraph 3, obedience to superior order is no defence, but may be considered in mitigation of punishment.

171. From the words the Secretary-General used and the international convention he referred to, I am compelled to the view that the most likely intended meaning of the phrase 'general criminal law principles' in that paragraph was general principles of criminal law accepted by all States,

²⁶⁰ Security Council Resolution 1757, preambular para. 4, and its Annex, Agreement on the establishment of the Special Tribunal for Lebanon, preambular para. 2.

²⁶¹ Judgment, Applicable law, fn. 10829; *see also* fn. 10828.

²⁶² Another is the account of Nicolas Michel, who led the UN Secretariat team and Organizations' delegation in the negotiations to create the Special Tribunal, in a book on the Tribunal's law and practice. Nicolas Michel, 'The Creation of the Special Tribunal in its Context' in Amal Alamuddin and others (eds), *The Special Tribunal for Lebanon: Law and Practice* (Oxford University Press, 2014), pp 10-31.

common to Lebanese, domestic and the international spheres, not principles of *international criminal law per se*.²⁶³

172. Specifically, he appears to have stated that the modes *commission; participation as accomplice; organization; direction of others; and intentional contribution in any other way to commission by a group acting with a common purpose with the aim of furthering the general criminal activity or purpose of the group or knowledge of the intention of the group to commit the crime* are a reflection of the Lebanese Criminal Code and principles that are found everywhere—in all criminal legal systems including Lebanon’s—of which one demonstration is their appearance in the Terrorist Bombings Convention. I consider that his Report therefore does not support the direct application of the *international criminal law* notion of complicity.

173. On initial reading, the Secretary-General’s explanation might seem to require the Tribunal first to identify, and then to apply, *primarily* a *general criminal law* definition of complicity rather than the Lebanese definition. However, based on the method of interpretation employed by me and the intention clearly evinced by Article 2 of the Statute, my view is that a definition from the Lebanese Criminal Code should take precedence over such a general definition. I mean by taking precedence that its application is mandatory, as the primary definitional source.

174. This is not to say, however, that the Tribunal cannot consider external sources at all in determining the applicable definition of complicity. On the contrary, in principle the applicable modes of liability under the provisions of the Code should be interpreted in light of legal interpretations of the general criminal law modes set out in Article 3, as well as international criminal law definitions where there is a corresponding mode or element or they are otherwise relevant. This appears to me both necessary to give effect to the drafters’ intent, and consistent with the authority that general principles of law hold as a source of international law under Article 38 (1) (c) of the Statute of the International Court of Justice. Provided that interpretation did not create a new unforeseeable element or unforeseeable interpretation, I do not consider that unfairness or inefficiency in the administration of justice would result from this approach.

²⁶³ In this respect, I am aligned with the Majority. Judgment, Applicable law chapter, fn. 10828. *See further*, on the genesis of the words in Article 3 (1) (a), paras 5902, 5908, 6126, 6145.

175. I consider it relevant here that scholars have acknowledged that general principles of law and customary international law principles are very often indistinguishable. In my view this strengthens rather than undermines the application of modes from both, to interpret or develop the Lebanese modes.

176. As it transpired in this case, however, no reference to complicity at general criminal law was made nor, in my view, required to determine the elements. Nor did the employment of any specific concept from international criminal law appear to be warranted.²⁶⁴

(b) Resort to *favor rei*

177. For these reasons I am strongly of the opinion that to make a determination that Lebanese law controls in defining participation as an accomplice in Special Tribunal crimes, it was not legally necessary for the Appeals Chamber in a comparison of international and Lebanese law to discover and resolve which was/is more favourable to an Accused.

178. Some historical background to their determination of the issue is in order. The examination unfolded within the context of the Pre-Trial Judge's question (xiii), pursuant to which the Appeals Chamber dealt with harmonising Articles 2 and 3 of the Statute in respect of the applicable modes of liability within the Special Tribunal's jurisdiction.²⁶⁵ The importance and desirability of resolving, with certainty, the issue of which definitions of modes of liability apply in this Tribunal's proceedings is self-evident.

179. The Appeals Chamber held or opined that a methodology consistent with the provisions of Article 31 of the Vienna Convention on the Law of Treaties should be employed²⁶⁶ on the basis that its rules on interpretation translate into the international realm as general principles of judicial interpretation that form the base of any 'serious attempt' to apply legal norms consistently. It demanded a teleological approach according to the principle of effectiveness, which was stated as requiring an interpretation that allows the Tribunal to 'achieve its goal to administer justice in a

²⁶⁴ The Trial Chamber considered some submissions of the Sabra Defence, on concepts referred to in international criminal case law, including 'specific direction', as set out in the Judgment. *See* Applicable law, paras 6129-6138. Although I accept that the Trial Chamber may properly consider international criminal law in interpreting applicable Lebanese modes of liability, I share the Majority's conclusion that these submissions ultimately did not advance our determination of the elements of complicity to be applied in the Special Tribunal.

²⁶⁵ Pre-Trial Judge 21 January 2011 order on preliminary questions to the Appeals Chamber, p. 15.

²⁶⁶ First interlocutory decision on applicable law, paras 19-26.

fair and efficient manner”. However, where that yardstick does not prove helpful, there was an obligation to employ the interpretation which is more favourable to the rights of the Accused.²⁶⁷ It was clear in its view that the authors of the Statute intended some international criminal law modes of liability to be employed.²⁶⁸

180. Further it opined that the principle of *nullum crimen sine lege* applied (including its retroactivity requirement) and was equally applicable to modes of liability. The Appeals Chamber also expressed that both *favor rei* and *nullum crimen sine lege* principles are general principles of law applicable in both the domestic and the international context with which I concur.

181. In the Appeals Chamber’s treatment of the interplay between Articles 2 and 3 and how to resolve the interpretative challenge I respectfully observe the following. As mentioned in the Introduction to this section, a three- step approach was recommended or dictated, by the Appeals Chamber involving the following processes:

- a. Evaluate on a case by case basis whether there is any conflict between the application of Lebanese law and international criminal law embodied in Article 3.
- b. If there is no conflict apply Lebanese law.
- c. If there is conflict, employ the law most favourable to the Accused.

182. In the comparative process the Appeals Chamber appeared to invoke international criminal law, rather than general criminal law principles according to the intent of the authors of the Special Tribunal’s Statute as evident from the UN Secretary-General’s report, above referred to. Examination of the two sets of laws was made in order to determine which was more favourable to the Accused. Again, respectfully, it appeared to employ *favor rei* as means of resolution of *conflict*, between Lebanese law and *international criminal law* before resort to any other means of interpretation against its own opinion or dictates, elsewhere in the decision that *favor rei* should only be employed in the case of ambiguity, when all other interpretative means have failed.²⁶⁹

²⁶⁷ First interlocutory decision on applicable law, para. 32.

²⁶⁸ *Ibid.*, paras 22, 206.

²⁶⁹ *See, especially*, First interlocutory decision on applicable law, paras 30-32.

183. I concur in the latter opinion: that this principle is only operable after other prior means of interpretation have failed. This is reflected in Rules 3 (A) and (B) of the Rules of Procedure and Evidence of the Special Tribunal, in particular the wording of (B), ‘Any ambiguity that has not been resolved in the manner provided for in paragraph (A) shall be resolved by the adoption of such interpretation as is considered to be the most favourable to any relevant suspect or accused in the circumstances then under consideration.’²⁷⁰

184. I would also add that, applying the definition of this principle that I have set out above,²⁷¹ it is confined to instances of real ambiguity only and does not incorporate other interpretative challenges, such as vagueness, lack of clarity, uncertainty, gaps or even inconsistency. There must be an interpretative condition where the only prospective interpretative resolution is dual in nature: in one instance resulting in an interpretation adverse to him and in the other that favours him. In these circumstances the judicial interpreter is required to interpret the law in the manner which *favours* him.

185. This imports, in my view, that premature resort was had to examination of the two laws and effective employment of the *favor rei* method. In particular whereas the Appeals Chamber proposed an interpretative formula for reconciling *conflict* in the language of a Statute’s provisions, namely a teleological interpretation, according to the principle of effectiveness, requiring an interpretation which best permits the trial to administer justice in a fair and efficient, manner, before resort to *favor rei*, no engagement of that prior method of interpretation was employed.

186. A further reason for the absence of necessity to employ *favor rei*, is that at this stage determination is only being made as to which law is the applicable law. The interpretative resolutions concern whether Lebanese modes of liability are exclusively the applicable modes, on the one hand and on the other, whether the general principles of law modes of liability or forms of individual criminal responsibility including definitions may be directly imported and applied in substitution of the modes of liability under the Lebanese Criminal Code. This issue very clearly

²⁷⁰ Regarding Rule 3 (A) *see further* section C below.

²⁷¹ In section B (2), ‘Principles of interpretation’.

does not require a comparison of the two laws or employment of *favor rei* or certainly not as a preliminary enquiry.

187. Consideration has also been given by me that at the pertinent date, that of the commission of the offence and participation by means of the forms of liability alleged—14 February 2005, then the modes of liability and the principles or definition sought to be applied under Article 3 (1) (a) were in existence in international criminal courts and tribunals, as well as in domestic legal systems, and accessible to Accused persons. Any potential offender at that time would have been imputed with *knowledge* based on issues of foreseeability that these modes were criminalised under both international law and as a general criminal law principle in accordance with Article 7 of the European Convention on Human Rights.

188. On the issue of the application of *nullum crimen sine lege* and the principle of legality, then flowing from the finding that the provisions of the Lebanese Criminal Code should be interpreted in light of Article 3 (1) (a) modes—that is, ones that constitute general criminal law principles—substantively, there is no apparent or potential breach of the principle of legality. When all relevant considerations are brought to bear, it emerges that legality is a general principle of criminal law, and a human rights provision. It is not of *unlimited* application in how it may limit the scope of or control judicial interpretation. In my view therefore, although, at first blush it appears absolute and unyielding in its application, it is a more layered legal criminality concept, when being practically applied in practice rather than purely theoretically, particularly in contemporary times.

189. The state of affairs that exists surrounding the applicable law for modes of liability, is that all members of the Trial Chamber and the Appeals Chamber agree, though for differing reasons that Lebanese law is the applicable law. At that juncture, flowing from that finding, it is for the Trial Chamber, when resolving the issue of the Accused's individual criminal responsibility for the charged modes, to ensure that in interpretation or application of international law definitions to the provisions of the Lebanese Criminal Code there is no contravention of the principle of legality or other unfairness that results in injustice or otherwise threatens the integrity of the proceedings. It is for them to discern, when interpreting the provisions of the Lebanese Criminal Code or other law whether there are instances of ambiguity, and which cannot be resolved by prior methods which inform interpretation, and identify when *favor rei* may be applied with legal

justification. Adopting such a course when the circumstances are unwarranted may equally lead to injustice.

190. Lastly I emphasise that I do not object to utilization of *favor rei* where a genuinely insoluble, residual ambiguity presents itself. In that instance reverting to the stricter of two definitions would not only be permissible, it would be a required course. But had the Appeals Chamber first employed a teleological methodology in harmonising the Articles 2 and 3 on the basis of the interpretation which would allow the Tribunal to achieve justice in a fair and efficient manner—being its own test—there would have been no necessity to compare the two bodies of law, or indeed, to resort to employment of *favor rei*.

191. As that teleological methodology leads to application of the Lebanese concept of complicity, I next make some specific observations on the scope of that concept.

2. Scope of complicity under Lebanese law

(a) *Actus reus* of complicity under Articles 219 (4) and (5)

192. Taking first the charged heads of accomplice liability, that is, those defined in Articles 219 (4) and (5): clearly the former covers a far broader range of conduct than the latter. The seemingly far greater number of Lebanese cases considering Article 219 (4) illustrates this. Article 219 (5) is a discrete, statutorily defined form of complicity, covering three kinds of assistance after the commission of a crime: elimination of its traces, concealing or disposing of items resulting therefrom and shielding participants in the crime from justice. Article 219 (4), by contrast, addresses aiding and abetting, a more general concept that is well-known at the domestic and international levels.²⁷²

193. Indeed, at the international level, ‘aiding and abetting’ is often used synonymously with complicity itself. The Appeals Chamber adopted this practice when summarising the relevant international criminal law mode of responsibility in its first interlocutory decision on the law

²⁷² In this opinion I follow the same approach to this terminology as that of the Majority, using aiding *or* abetting where referring solely to the Lebanese concept as defined in Article 219 (4) of the Lebanese Criminal Code, but aiding *and* abetting for either the corresponding concept in international criminal law, or both.

applicable in the Special Tribunal.²⁷³ So did my colleagues in the Majority, for the purpose of the Judgment.²⁷⁴

194. I accept that the precise terms of Article 219 (5) confine its *actus reus* in the way that the Judgment describes. However, I am not certain that the *actus reus* of Article 219 (4) is as confined in some respects as my two colleagues have found.

195. Like my colleagues, I interpret the Lebanese decisions and judgments examined as confirming that ‘aid or abet’ in Article 219 (4) encompasses any form of assistance²⁷⁵—similar to the international definitions surveyed and distilled in the Judgment²⁷⁶—and that this assistance can be given at any stage before the commission of the crime, with some finding it can also be given during commission.²⁷⁷ As they also recognised,²⁷⁸ the Appeals Chamber implied in its comments on Article 219 (4) that that provision applies to assistance provided ‘during the perpetration of the crime’.²⁷⁹

196. From the words of Article 219 (4), when considered in the context of certain other Articles of the Lebanese Criminal Code, my colleagues concluded instead that in the Special Tribunal, only assistance before commission could be complicity as defined in that provision.²⁸⁰ On the one hand, this is a reasonable—even obvious—interpretation of the words ‘aids or abets the perpetrator in acts that are preparatory to the offence’ in the Tribunal’s official English translation of Article 219. On the other, some French translations of that provision, including that published on the Tribunal’s website, use the words ‘*aidé ou assisté l’auteur dans les faits qui ont préparé ou facilité*

²⁷³ See First interlocutory decision on applicable law, Section II (II), subheading B, ‘Complicity (Aiding and Abetting)’ and paras 225-228. In footnote 340 of that decision, the Appeals Chamber included the mode of liability in Article 25 (3) (c) of the Rome Statute, which covers ‘aid[ing], abet[ting] or otherwise assist[ing] in’ a crime’s commission or attempted commission (emphasis added), but described this too as ‘aiding and abetting’ and did not comment there or elsewhere on the fact that this and some other codified international definitions of the relevant mode of liability either do not use the terms aiding and abetting alone, or do not use them at all. An example of the latter, albeit from an instrument that is rather different in nature, is that in Article III (e) of the Convention on the Prevention and Punishment of the Crime of Genocide, Adopted 9 December 1948. It refers instead to ‘complicity’.

²⁷⁴ See Judgment, Applicable law, subsection B (2) (b), ‘International criminal law principles on aiding and abetting’.

²⁷⁵ Judgment, Applicable law, paras 6087, 6109, 6146.

²⁷⁶ *Ibid.*, paras 6127-6128. See also para. 6140.

²⁷⁷ *Ibid.*, paras 6088-6089, 6097, 6099-6102, 6141.

²⁷⁸ *Ibid.*, para. 6098.

²⁷⁹ First interlocutory decision on applicable law, para. 219.

²⁸⁰ Judgment, Applicable law, paras 6103-6105, 6108, 6146; see also para. 6149.

l'infraction'.²⁸¹ I understand that to mean literally, 'aided or abetted the perpetrator in the acts that prepared or facilitated the offence'.

197. One could perhaps interpret the highlighted words as not adding anything substantive, with 'prepare or facilitate' being a single concept denoting activities before a crime begins that pave the way for it. I presume that my colleagues read it thus; this reading reconciles it with the English version. However, since the phrase uses '*ou*' ('or'), the more plausible interpretation on the face of the French version is that '*ou facilité*' / 'or facilitated' is an alternative, expanding the *actus reus* beyond assistance with strictly pre-crime acts. If that is more faithful to the Arabic original that is applied in Lebanon, it would explain the lack of distinction between aiding and abetting *preparation* and *commission* in much of the case law on Article 219 (4), and in turn, both the Appeals Chamber's and some of the Parties' characterisations of the objective scope of that provision.

198. More investigation, in consultation with language experts, would be needed to confirm which translation best reflects the Arabic original. I have not undertaken this course, being conscious that in this case it would not affect the result with respect to any Accused, and no Party has made submissions on the differing language or been asked to do so. It suffices for present purposes to observe that the Lebanese case law, the Appeals Chamber's interpretation and the French version together suggest that the *actus reus* of Article 219 (4) may be even broader in this respect than the Majority has found.

199. I am also inclined to agree with the Appeals Chamber's position²⁸² that the necessary agreement with the perpetrator, which I examine further in subsection (c) below, constitutes part of the *actus reus* rather than the *mens rea* of this category of complicity. If that is so, then in this second respect, the *actus reus* also differs from that which my colleagues in the Majority described.

²⁸¹ *Code pénal libanais: Extraits, Version française (publiée par la Librairie Antoine, éd. de 2009)* [Lebanese Criminal Code: Extracts, French version (published by Librairie Antoine, 2009 edition)], https://www.stl-tsl.org/sites/default/files/documents/legal-documents/relevant-lebanese-law/CHA_09_0048_1July2010_FR.pdf (last accessed on 21 May 2020).

²⁸² Adopted in First interlocutory decision on applicable law, paras 219, 228.

(b) *Actus reus* of complicity under Article 219 (1), (2), (3) and (6)

200. Next, I turn to Article 219 (1), (2), (3) and (6). The Trial Chamber is unanimous that these describe further categories of complicity, of the six closed categories in Article 219. ‘Closed’ means that under the Code, no conduct not covered by any of the six can be that of an ‘accomplice’ as such.²⁸³ To this and the descriptions of these provisions in the Judgment,²⁸⁴ I add the following brief observations. All are easily deduced from the Article alone and are in themselves, I believe, uncontroversial.

201. These four uncharged paragraphs define either specific, statutory forms of complicity, like Article 219 (5) does (the clearest example being Article 219 (6) complicity), or forms that cover a wider range of acts (for example, complicity by hardening the perpetrator’s resolve by any means, under Article 219 (2)). But even the latter address a more limited range of conduct than Article 219 (4) does. In other words, all of the other specified ways to act as an accessory are discrete in comparison to aiding or abetting—even if that is limited to assistance before the offence as the Majority has found, and all the more so if it covers assisting in the course of the offence as well.

202. Furthermore, if the *actus reus* of Article 219 (4) in fact does not extend that far, none of the other paragraphs of Article 219 can encompass *all* kinds of assistance at the time of an offence. Instead they manifestly either concern only acts done before that point in time (like Article 219 (3), as noted in the Appeals Chamber’s first interlocutory decision)²⁸⁵ or are restricted to particular types of acts. This lends some more weight to the hypothesis that Article 219 (4) is meant to fill the gap, by applying to other facilitating acts that occur during a crime’s commission. However, as explained above, further investigation would be required to confirm this position.

(c) Agreement and *mens rea* of complicity under Article 219 (1) to (6)

203. Concerning the *mens rea* of Article 219 complicity, I agree with my colleagues’ ultimate conclusions in the Judgment, paragraphs 6147 to 6152, which are confined to the two charged paragraphs of the Article. I also agree with their remarks on the *mens rea* requirement for all

²⁸³ See Judgment, Applicable law chapter, paras 6045, 6140. See further my comments on the significance of Articles 221 and 222 in subsection d below.

²⁸⁴ In Applicable law chapter, paras 6045-6052, 6057, 6094, 6104, 6120, 6140.

²⁸⁵ First interlocutory decision on applicable law, para. 219.

paragraphs of the Article, in the preceding analysis of statute and case law, with one qualification. This relates to the requirement of a prior agreement with the perpetrator.

204. As the Trial Chamber notes in paragraph 6054 of the Judgment, some Lebanese judicial decisions implicitly state that an agreement with the perpetrator is necessary for all six categories of accomplice liability listed in Article 219, while a few state this outright. Three decisions are cited in support of each proposition.²⁸⁶ The Appeals Chamber cited one of them and two additional decisions, from 2003, to support its conclusion that the objective elements of complicity under Lebanese law include ‘an understanding (whether immediate or long-standing)’.²⁸⁷

205. Thus, as far as I can ascertain, there is a relatively small body of Lebanese case law clearly suggesting that accomplices generally must, as an objective element of this mode of liability, reach an ‘understanding’ with the perpetrator to commit the crime.²⁸⁸ At first reading, this may appear to support the Majority’s position that this element is *not* always required, for every category of complicity under Article 219 of the Code.

206. However, my view is that once consideration is given to the following factors, that position should be rejected. First, and foremost, the notion that all six modes under Article 219 import agreement with the perpetrator or perpetrators is not unreasonable. It is unlikely that an accomplice would unilaterally insinuate himself or herself into the criminal business of the perpetrator(s) without their specific consent or acceptance. This might be express or tacit, and given directly or through another accomplice on their behalf. It may be that in the instances in Article 219 forms of liability when agreement is not expressed, it is so naturally implicit and part of the fabric of the criminal arrangement that it does not have to be expressly proved on the facts. It is raised and inferred from the facts and the evidence.

207. Further, I am mindful that Lebanese case law, while instructive, is not binding upon this Tribunal nor, technically, even in Lebanon itself. The provisions of the Lebanese Criminal Code

²⁸⁶ The Majority mentions in fn. 10999 a fourth decision after the three that it identifies as stating the requirement ‘outright’ but—correctly—as a contrast (using the signal ‘*compare*’). The Lebanese court in that decision, Cassation decision 8/2000, relevantly found only that an accomplice must *either* have facilitated the means by which the perpetrator would commit the crime based on a prior agreement with the principal perpetrator or other accomplices, *or* known the nature of those means.

²⁸⁷ First interlocutory decision on applicable law, para. 219, fn. 328.

²⁸⁸ *Ibid.*, paras 219, 228.

itself, rendered applicable under Article 2 of the Statute and interpreted in light of the principles I have outlined above, are paramount. Whether or not supported by extensive case law, therefore, it was open to the Appeals Chamber to interpret all heads of liability under Article 219 as incorporating a requirement for agreement or understanding with the perpetrator. As this is also a reasonable interpretation for the reasons given in the preceding paragraph, I am not persuaded that the Trial Chamber should have departed from it.

(d) Relevance of Articles 221 and 222

208. My final point of difference from the Majority's interpretation of the scope of complicity in Lebanese law concerns Articles 221 and 222 of the Lebanese Criminal Code. To explain this point, it is necessary to revisit Chapter IV, Part I, subsection 3 of the Code, entitled 'Accomplices and concealers'.

209. Subsection 3 comprises Articles 219 to 222. As described above and in the Judgment, Article 219 begins, 'The following shall be deemed to be accomplices to a felony or misdemeanour', then sets out six categories, while Article 220 prescribes the penalties for acting as an 'accomplice'. Article 221 prescribes the range of prison terms and fines imposable on '[a]nyone who, other than in the case provided for in Article 219, paragraph 5, knowingly conceals or disposes of items belonging to a third party that were appropriated, embezzled or obtained by a felony or misdemeanour'. Then Article 222 deals with concealing a person who has committed a felony or helping them to evade justice, other than in the cases provided for in Article 219 (5) or (6).

210. I do not deny that in subsection 3, the term 'accomplices' is used only in Articles 219 and 220. This, coupled with the fact that the subsection is captioned 'Accomplices and concealers', could be taken to imply that 'concealers' is the Code's shorthand for those who contravene Article 221 or 222, as distinct from 'accomplices', who are the subject of Articles 219 and 220 alone—even though Article 219 (5) refers to concealment as such and both Article 221 and Article 222 refer to other acts besides that one.

211. In the scheme created by the Code, one of these forms of criminal conduct is also undeniably more serious than the other. Complicity under Article 219 can be a felony or a misdemeanour, depending on what offence the accomplice assisted and how exactly he or she

assisted it. Breaching Article 221 or 222 is, only, a misdemeanour. This difference is revealed by the penalties prescribed in Articles 220 to 222, when read in conjunction with a series of other provisions of the Code defining felonies and misdemeanours with reference to the punishments they attract.²⁸⁹

212. Nevertheless, the conduct that Articles 219, 221 and 222 address obviously has a common, fundamental characteristic: each is a form of knowing assistance to the perpetrator or perpetrators of a crime. A concealer or disposer of property from the crime, contrary to Article 221, supports the perpetrator(s) both by hiding, and possibly by ensuring they profit from, that crime's tangible products. His or her assistance may also encourage the perpetrator's or perpetrators' further appropriation, embezzlement or other criminal obtaining of property in future, knowing a means of its concealment or disposal exists. Similarly, a concealer or helper under Article 222 supports the perpetrators to 'get away with' their original criminal project and potentially to re-offend, by protecting those perpetrators themselves from apprehension.

213. The essential difference from an Article 219 accomplice is that they not only give this assistance after the crime has been committed, but need not have previously 'agreed with the perpetrator or an accomplice' to do that (in the case of 219 (5)), or known 'of the criminal conduct of offenders responsible for highway robbery or acts of violence against state security, public safety, persons or property' (in the case of 219 (6)). That is, Articles 221 and 222 apply to assisting 'after the fact', in the sense that both doing the act and acquiring the knowledge necessary to be criminally liable happen after the principal crime. And since Article 219 (5) and (6) deal with the same sorts of assisting acts, the assister's lack of foreknowledge, rather than any profound difference in the *actus reus*, seems to account for the comparatively less severe punishment he or she may incur.

214. The wording of Articles 221 and 222 leads me to adopt this interpretation. I note in particular the use of the past tense—'items that *were* appropriated, embezzled or obtained by a felony or misdemeanour' in 221, 'a person... who *has* committed a felony' in 222—and the phrase

²⁸⁹ Regarding complicity under Article 219, *see especially* Articles 37, 44, 179, 220. Regarding the offences under Articles 221 and 222, *see especially* Articles 39, 51, 53, 179, and 221 and 222 themselves.

‘other than in the case [/cases] provided for in Article 219, paragraph (5) [paragraphs (5) and (6)]’.²⁹⁰ Lebanese case law also supports this interpretation.²⁹¹

215. Despite the terminological distinction that arguably is drawn in the Lebanese Criminal Code, some Lebanese courts apparently describe not only criminal assistance falling under Article 219, but also that falling under Article 221 or 222, as complicity. For example, the third chamber of the Lebanese Court of Cassation, Criminal Division, commented in a decision issued in 2002:

Whereas it is true that *for a person to be accomplice*, the following conditions and elements stipulated in Articles 219, 221, and 222 of the Criminal Code must be met;

Whereas it is concluded from the aforementioned texts that there are two types of criminal complicity, the first is prior to the occurrence of the crime or during the commission of the crime. The second is the complicity after the commission of the crime.

As it is clearly shown, there are no elements of complicity prior to the occurrence of the crime or during its commission in this case, that is to say the elements set out in Article 219 of the Criminal Code [...]

See also:

Pandectes françaises, Tome V, Complicité, Page 513.

No 411 – Logiquement, la complicité postérieure à l’infraction n’existe pas, lorsque le crime ou le délit est consommé, lorsque les auteurs principaux on [sic] accompli le dernier acte d’exécution aucune participation ne paraît possible.

No 414 – Mais les faits des complices postérieurs à l’infraction n’ont pas au point de vue pénal, le même caractère, les uns ne sont [sic] pas punissable, *les autres, au contraire, sont considérés par la loi comme véritables actes de complicité* et son [sic] réprimés soit en

²⁹⁰ Emphasis added.

²⁹¹ Regarding Article 221, *see, e.g.*, Cassation decision 171/2003; Cassation decision 68/2015; Cassation decision 90/2015; Cassation decision 138/2018. Regarding Article 222, *see, e.g.*, Cassation decision 152/2018 and Cassation decision 155/2007, referred to in Part 3, subsection b below. On both, *see* Cassation decisions 457/2002 and 458/2002, discussed in para 215 and fn. 292 below. *See also* the references to a number of these decisions in the Judgment.

vertu des dispositions de droit commun [...] soit en vertu des dispositions particulières du même code, ou des lois spéciales.²⁹²

As I interpret it, the quoted French passage observes that even though, logically, there can be no complicity in a crime after the crime has been fully realised, and the law will not punish every act of assistance following a crime, legislation designates some such acts as complicity.

216. I do not say that such comments are decisive, especially since I am relying on translations of the relevant Lebanese decisions. But, equally, the fact that a Lebanese court, and a French law commentary that it has consulted, would call this sort of assistance after the fact ‘complicity’ is not surprising. Another description of it, often encountered in common law jurisdictions, is ‘accessory after the fact’. The modern form of this concept, as defined in those jurisdictions, ‘typically consist[s] of securing the proceeds of a crime or helping the perpetrator to evade criminal prosecution’.²⁹³ Australia’s federal Crimes Act, for example, provides under the heading ‘accessory after the fact’, ‘Any person who receives or assists another person, who has, to his or her knowledge, committed any offence against a law of the Commonwealth, in order to enable him or her to escape punishment or to dispose of the proceeds of the offence commits an offence.’²⁹⁴ The Canadian Criminal Code defines an ‘accessory after the fact to an offence’ as ‘one who, knowing that a person has been a party to the offence, receives, comforts or assists that person for the purpose of enabling that person to escape’.²⁹⁵

217. In my view, the use in many legal systems of the same or similar terms for the pre- and post-crime forms of criminal participation—even where, as in the Lebanese Code, the term ‘accomplice’ may formally have a narrower meaning—is a further illustration that there is a significant common thread between the two. This common thread, alone, makes it arguable that

²⁹² Cassation decision 458/2002, pp 2-3, emphasis added. The same chamber made a briefer statement to the same effect in Cassation decision 457/2002. The Trial Chamber briefly noted both in its Judgment, Applicable law chapter, fn. 11133.

²⁹³ Ines Peterson, ‘Open questions regarding aiding and abetting liability in international criminal law: a case study of ICTY and ICTR jurisprudence’ [2016] *International Criminal Law Review* 565, p. 588.

²⁹⁴ Australia, Crimes Act 1914 (Commonwealth), s. 6

²⁹⁵ Canada, Criminal Code, s. 23 (1). Section 463 provides for the criminal liability of accessories after the fact. A somewhat similar definition appears in the United States Criminal Code: ‘Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.’ United States, Criminal Code, 18 U.S.C. para. 3.

Articles 219 to 222 together define, in Lebanese law, the mode of criminal responsibility that the Statute terms ‘participat[ing] as an accomplice’.²⁹⁶

218. In Special Tribunal proceedings, I consider that there is an additional reason to take this view. Namely, no other mode of responsibility listed in Article 3 of the Statute seems capable of covering the kind of participation defined in Articles 221 and 222. It would be a curious and artificial result if a relatively common domestic form of criminal participation such as accessory after the fact—which would otherwise unquestionably be covered by the general words ‘the rules regarding... criminal participation’ in Article 2 (a)—were excluded from the Tribunal’s jurisdiction simply because the Lebanese Criminal Code does not clearly employ the word used in Article 3 (1) (a), ‘accomplice’, in defining it.

219. Under international criminal law, there is not an established concept of liability as accessory or accomplice after the fact.²⁹⁷ In other words, unlike liability as an accomplice in the sense described in Article 219 (and especially Article 219 (4), aiding or abetting), there is no direct international criminal law equivalent of the liability under Lebanese law that is incurred by breaching Article 221 or 222. I have given consideration to the thought that this may be because such complicit or accessorial acts performed subsequent to the crime might not satisfy the ‘gravity’ requirements for acts falling under the jurisdiction of the other international criminal courts and tribunals, and the core international crimes.

220. However, in my view, this fact should not prevent the concept from existing at the Special Tribunal. As explained above, unlike other provisions of Article 3 of the Statute, the words ‘participated as accomplice’ and the other words used to describe modes of responsibility in Article 3 (1) (a) do not come from the governing instrument of an international criminal tribunal, but instead from a transnational crime cooperation convention in the counter-terrorism sphere. The provision refers to modes of responsibility that are common not only to Lebanese law, but also domestic legal systems generally and the international criminal law sphere. I consider that there is therefore no presumption that ‘participated as accomplice’ must be ‘read down’ to be as limited,

²⁹⁶ Statute, Art. 3 (1) (a).

²⁹⁷ Complicity after the fact in the sense in which I use the term here is, of course, distinct from complicity by performing assisting acts after the crime’s commission with some prior knowledge. Complicity under international criminal law does encompass this, in principle, as discussed in the Judgment, Applicable law, para. 6140, fn. 11183.

in this respect, as the international criminal law notion, as there might be with a purely international mode of responsibility.

221. It is observed that the Appeals Chamber expressed no opinion on this particular matter, which would have served to further guide and shape my opinion. When defining the Lebanese concept of ‘complicity’ in its 2011 interlocutory decision, the Appeals Chamber referred solely to Articles 219 and 220, and judicial interpretations of those Articles.²⁹⁸ My colleagues in the Majority took the same approach when they compared ‘the Lebanese law of accessorial liability’ and international criminal law principles on aiding and abetting, in section B (2) (b) of chapter XIII of the Judgment.

(e) Conclusions

222. In summary, for the reasons given above, I have reached the following conclusions about the scope of complicity under Lebanese law.

- a. Aiding or abetting under Article 219 (4) covers a very broad range of conduct. The provision has a much wider scope than either Article 219 (5), or any of the other paragraphs of Article 219, under which the Prosecutor has brought no charges in this case. Contrary to the Majority’s view, it may apply to assistance an accomplice provides while a crime is being committed, as the Appeals Chamber suggested.
- b. Unlike my judicial colleagues in the Majority, I also accept and would have adopted the Appeals Chamber’s conclusion that all categories of complicity under Article 219 require an ‘understanding’ with the perpetrator, as an additional, objective element of this mode of liability.
- c. It would be reasonable to define participating in a crime as an accomplice, under the applicable provisions of the Lebanese Criminal Code referred to in Article 2 of the Statute, to include participation after the fact, in the ways specified in Articles 221 and 222 of the Code. In this respect, too, I respectfully diverge

²⁹⁸ In First interlocutory decision on applicable law, paras 218-224, 228.

from the contrary approach, above referred to, of my noble colleagues—albeit their preference for application of Lebanese law did not rely on this factor.

223. If my interpretation rather than the Majority's is correct, and were adopted, how would this affect determination of the liability of a person accused of participating as an accomplice in a crime under the Tribunal's jurisdiction?

224. On the facts of this case, my interpretation of the elements of Article 219 (4) and (5) complicity, had my two colleagues in the Majority adopted it in full, would not have led to a different finding as to whether those provisions were satisfied. That is, the Trial Chamber would still have found that none of Messrs. Merhi, Oneissi or Sabra was liable under either of those provisions. On assistance given 'during' the crime—*i.e.* after the point when preparation must be considered to have ceased and the crime itself begun—the Trial Chamber has in effect already considered this, by examining all alleged acts of these three Accused on the day of the attack, including after it, in order to consider the Article 219 (5) complicity charge. And if an understanding with the perpetrator is accepted to be a further, objective element under both provisions, this could not have altered the outcome, given that the Chamber has determined that the evidence was insufficient to prove the other elements of either form of complicity.

225. My position that the offences under Articles 221 and 222 of the Code may be considered to be forms of complicity, likewise, could not in my view alter the ultimate finding concerning the liability of these three Accused, for different reasons which I set out in section 3 (e) below.

226. I consider it important to have presented this alternative interpretation nonetheless because, if applied in a case with different facts, it has *at least the potential to* lead to a different final determination on the liability of an accused person than would have resulted from the Majority's interpretation. Perhaps all the more so if it is further accepted that a Trial Chamber of this Tribunal could, in principle, convict an accused person for a lesser form of complicity even if only complicity under Article 219 was charged. It is to that issue that I turn now.

3. Could the Trial Chamber convict an Accused for the lesser offence under Article 222?

(a) The relevant pleaded facts, charges and submissions

227. The charges against each of Messrs. Oneissi, Sabra and Merhi rest in part on acts that the Prosecutor alleges they committed after the attack of 14 February 2005. In its overview of their alleged role in the conspiracy to commit the attack, the amended consolidated indictment states that on the same day, ‘immediately following the attack’:²⁹⁹

- a. Mr Oneissi and Mr Sabra participated in disseminating statements falsely attributing responsibility for the attack, ensuring the delivery to Al-Jazeera of the video and attached letter containing the false claim of responsibility, and ensuring the video would be broadcast;³⁰⁰ and
- b. Mr Merhi coordinated those activities of Messrs. Oneissi and Sabra.³⁰¹

228. The amended consolidated indictment then proceeds to specify that those activities began with either Mr Oneissi or Mr Sabra calling Reuters about 75 minutes after the attack. It states further that Mr Merhi was in contact with Mr Sabra, each using his Purple mobile, about eight minutes before that Reuters call, then several more times throughout that afternoon.³⁰² The Judgment provides more detailed descriptions of what the Prosecution alleges each man did in that period, including some ambiguities and alterations over time in these allegations.³⁰³ I accept those descriptions to be accurate and will not repeat them here.

229. While some of the factual allegations have evolved since the filing of the amended consolidated indictment, the Prosecution case has remained that Messrs. Oneissi’s, Sabra’s and Merhi’s acts immediately after the attack constituted ‘help... to shield one or more participants [in

²⁹⁹ Amended consolidated indictment, paras 3 (b), 3 (c), 3 (d).

³⁰⁰ *Ibid.*, paras 3 (b), 3 (c).

³⁰¹ *Ibid.*, paras 3 (d).

³⁰² *Ibid.*, paras 44-45; *see also* para. 19 (d).

³⁰³ I refer particularly—but not only—to the chapter ‘Claim of responsibility for the attack on Rafik Hariri’, paras 4799-4801, 4804-4805, 4834-4836, 4886-4887, 5617-5627 and in the chapter containing the Trial Chamber’s legal findings on the elements of the crimes and individual criminal responsibility, under ‘Conspiracy to commit a terrorist act (Count 1)’, paras 6392, 6407-6408, 6410.

the principal crimes] from justice’, falling within Article 219 (5) of the Lebanese Criminal Code.³⁰⁴ The Prosecutor in the amended consolidated indictment alleges that their acts *before* the attack were acts preparatory to the offences of terrorism, intentional homicide and attempted intentional homicide ‘*and/or*’ acts to shield the co-perpetrators of those offences, and themselves, from justice.³⁰⁵ That is, the Prosecutor relies on Article 219 (4) and (5) cumulatively or alternatively. But the charges in that instrument regarding their conduct *afterwards* relevantly refer only to Article 219 (5), not Article 222 or any other provision of Lebanese law that defines a mode of criminal responsibility. And the Prosecution has not since sought to rely on any in addition or as an alternative to Article 219 (5).³⁰⁶

230. I will not speculate concerning the Prosecution’s reasons for adopting this approach, but note that it has had two natural, and related, consequences. One is that the evidence that the Parties have presented in relation to this aspect of the case focuses on the elements of the form of complicity defined in Article 219 (5). In the event, all Judges of the Trial Chamber agree, that evidence is insufficient to establish those elements in full, concerning any of these three Accused. The other consequence has been that the Parties’ submissions have likewise focused on those elements—arguably most heavily on those of an agreement ‘with the perpetrator or an accomplice *before commission of the offence*’³⁰⁷ and the matters that the Accused must have known, before the attack, to be liable.

231. No Defence Party raised the possible application of Article 222 in either its final trial brief or oral closing arguments. There was just a brief exchange about this between the Trial Chamber and lead counsel for Mr Oneissi, during the hearing of the Oneissi Defence’s application for acquittal at the close of the Prosecution case, under Rule 167. In that exchange, responding to questions from the Chamber, the Oneissi Defence submitted that the Trial Chamber would not be entitled to apply Article 222, due to—counsel implied—the late stage the proceedings had reached,

³⁰⁴ See, especially, Amended consolidated indictment, paras 63 (a), 64 (f) (ii), 65 (a), 66 (f) (ii), 67 (a), 68 (h) (ii), 69 (a), 70 (h) (ii); Prosecution final trial brief, paras 1168, 1174, 1182, 1188.

³⁰⁵ Amended consolidated indictment, paras 63 (a), 64 (f) (i), 65 (a), 66 (f) (i), 67 (a), 68 (h) (i), 69 (a), 70 (h) (i), emphasis added. Cf. Amended consolidated indictment, para. 50.

³⁰⁶ During closing arguments, the Presiding Judge asked the Prosecutor whether there was a possibility of accessory after the fact in this case, but the Prosecutor stated that as far as he could recall, that was not charged. There was no further substantive discussion of the issue with him or any Prosecution counsel. Prosecution closing submissions, T. 13 September 2018, pp 121-122.

³⁰⁷ Lebanese Criminal Code, Art. 219 (5), emphasis added.

the fact that no notice of the alternative characterization had been given, and the Special Tribunal being an 'adversarial system'.³⁰⁸

232. For the following reasons, I consider that the first factor that I described in paragraph 230 above, of the evidence having been intended to prove a different offence, does not, of itself, preclude the Trial Chamber from recharacterising the conduct of these Accused as help in evading justice, contrary to Article 222, and convicting them accordingly. By contrast, the second—the way in which the Parties have marshalled and argued their cases—in combination with other considerations may, and in this case does, preclude our doing so.

(b) The nature of the offence under Article 222: a lesser alternative capable of being included in complicity under Article 219 (5)

233. The misdemeanour proscribed by Article 222 of the Lebanese Criminal Code, when considered in light of Article 219 (5) and (6) of that Code, has some hallmarks of what the laws of

³⁰⁸ Oneissi Defence submissions, T. 21 February 2018, pp 32-34:

JUDGE AKOUM: [...] You focused a lot in your submissions yesterday and today on the provisions of paragraph 5 of Article 219, which talks about complicity.

And you focused a lot on the need for the perpetrator or an accomplice to have had an agreement -- sorry, for -- the need for an accomplice to have had an agreement with the perpetrator before commission of the offence. We are listening to what you are saying today. In light of Article 167 that asks the Chamber to issue a judgement of acquittal, what if one of the accomplices had agreed with the perpetrator after the commission of the offence and not before? Does that allow the Chamber to issue a judgement of acquittal, or does this give mitigating circumstances to the accomplice, pursuant to the Lebanese law?

MR. COURCELLE-LABROUSSE: [Interpretation] For me, Your Honour, there are two provisions which are brought by the Prosecutor regarding being an accomplice. 219, paragraph 4, aiding and assisting. So before and during the commission of the crime. And 219, paragraph 5, which I can read again.

You will agree with me that I'm focusing on characterizations against my client. Well, I mean, obviously if other texts are given from the Lebanese law, but I haven't been notified of the other characterizations for the time being, if any.

[...]

JUDGE AKOUM: [...] in your opinion, let's say that the Chamber agrees with you and with what you have submitted regarding paragraph 5 of Article 219. Let's say that the Chamber considers, for example, that there was a later agreement, that the agreement happened subsequently. Don't you think that the Chamber has the right to change the characterization of the offence and convict the accused pursuant to Article 222?

MR. COURCELLE-LABROUSSE: [Interpretation] No, Your Honour. Let's go back to the procedural aspect, the way the law should be applied.

In this adversarial system, you cannot -- after how many years of trial? When was I notified? Eight years ago, I think. My client has been accused eight years ago. I've prepared my Defence case, and now because some charges are unfounded we're going to allow for a re-characterization at the very end of the proceedings? [In English] If you don't have something to convict, you must acquit. Okay? Thank you.

[...]

JUDGE NOSWORTHY: But the search for truth?

MR. COURCELLE-LABROUSSE: [Interpretation] Ah, Judge Nosworthy, the search for truth. Well, the Prosecutor needs to search for truth.

(Original spelling.)

various common law jurisdictions refer to as a ‘lesser included offence’. I use the term here to mean an offence all of whose elements are included in a more serious offence, such that if proven, the same facts relied on to establish that the more serious offence was committed would also establish the lesser offence.

234. An ICTY Trial Chamber in the *Kupreškić and others* case discussed such offences and reviewed national laws defining them.³⁰⁹ Examples of lesser included offences that the *Kupreškić* Trial Chamber identified include:

- a. manslaughter, where the crime charged was murder;³¹⁰
- b. theft, where the charge was robbery;³¹¹ and
- c. at the international level, the war crime of murder of civilians, where that murder was charged as a crime against humanity or genocide consisting of the killing of members of an ethnic group.³¹²

The chamber in *Kupreškić* saw as distinct lesser included offences as such, and modes of liability different³¹³ to the one charged, although as I shall discuss below,³¹⁴ it concluded that it could adopt substantively the same approach to both.

235. I am not certain that such a formal distinction between crimes and modes is appropriate or necessary, at least where the two being compared fall under the same overarching mode of liability,

³⁰⁹ It did so as part of its analysis of the broader question of when the Prosecutor or a chamber of that tribunal could modify the Prosecutor’s original legal characterization of particular facts. I discuss its response to that question in section d (iii) below.

³¹⁰ ICTY, *Prosecutor v. Kupreškić, Kupreškić, Kupreškić, Josipović and Šantić*, IT-95-16, Trial Judgement, 14 January 2000 (*‘Kupreškić and others Trial Judgment’*), paras 729, 731, referring to the law of England and Wales, the United States, Zambia, Nigeria and South Africa.

³¹¹ *Kupreškić and others Trial Judgment*, para. 729, 731, referring to the law of England and Wales, the United States, Zambia, Nigeria and South Africa.

³¹² *Kupreškić and others Trial Judgment*, para. 742 (c); see also paras 745-746. The ICTY Trial Chamber also cited both this and other examples of lesser included offences at international law earlier in the judgment, when discussing ‘[i]ssues of substantive international criminal law’ concerning multiple offences (in paras 673-719) and procedural principles applicable to charging in the ICTY (in paras 720-727). The other examples included, at para. 679 (b), cruel treatment as a lesser offence included in torture, contrary to common Article 3 of the Geneva Conventions.

³¹³ The Trial Chamber in the *Kupreškić and others Trial Judgment* did not state definitively whether it thought both modes it mentioned as examples of alternatives (to perpetration), aiding and abetting and participating in a common design, were less serious than perpetration, not just different to it and capable of being ‘included’ on the facts. It did, at para. 742 (a), describe aiding and abetting as ‘a modality of participation in the commission of the crime [that] is different from (albeit *perhaps* less serious than) actual perpetration’, emphasis added.

³¹⁴ Section d (iii).

as I have suggested is the case here. But, in any event, there is no doubt either that Article 222 defines a *lesser* offence or that it is an *alternative*, which could apply to the conduct of Mr Oneissi, Mr Sabra or Mr Merhi only if that conduct did not fall under Article 219 (5). Both of these matters are apparent from the words of the Code itself, as earlier discussed. In this instance, specifically, the acts that these Accused are alleged to have performed immediately after the attack could only constitute helping a known felon ‘to evade justice’ contrary to Article 222 if they were neither help ‘to shield one or more of the participants’ in the felony (or felonies) ‘from justice’³¹⁵ ‘provided for’³¹⁶ in Article 219 (5), nor any other ‘case provided for in Article 219, paragraphs 5 and 6’.³¹⁷

236. It can also be inferred from the language of Articles 219 (5) and 222 that if the Accused had not ‘agreed with the perpetrator or an accomplice before commission’ of the terrorist act, intentional homicides and attempted intentional homicides to disseminate the false claim as alleged, or in Mr Merhi’s case coordinate this, but they nonetheless did the acts alleged and knew at the time they did them that the perpetrators had committed a felony, they would contravene Article 222. In other words, facts alleged in this case to prove the elements of Article 219 (5) complicity, while falling short of proving the required prior knowledge and agreement for that offence, could suffice to prove all elements of this lesser form of complicity. It is thus in my view a lesser alternative to Article 219 (5) complicity that, at least in some cases, is *capable of being included* in it.

237. It should be noted that I have not found any Lebanese judgment or decision that concerned acts of assistance after a crime’s commission similar to those alleged in this case. Rather, in the clearest example that I have been able to identify, one of two people convicted under Article 222 drove the perpetrator of an intentional homicide to a hiding place, with the court seemingly finding his conduct contrary to that Article³¹⁸ to be ‘concealing a fugitive criminal’,³¹⁹ specifically by ‘hid[ing the perpetrator] and help[ing] him to go into hiding’.³²⁰ The other person convicted under

³¹⁵ Lebanese Criminal Code, Art. 219 (5).

³¹⁶ Lebanese Criminal Code, Art. 222.

³¹⁷ Lebanese Criminal Code, Art. 222.

³¹⁸ That accused, Miim Khaa, had also hidden a bag containing the murder weapon and agreed to put the victim’s body in acid. Cassation decision 155/2007, p. 6. However the court’s finding that the *actus reus* of Article 222 was fulfilled did not rely on these acts.

³¹⁹ Cassation decision 155/2007, p. 6, concerning the accused Miim Khaa.

³²⁰ Cassation decision 155/2007, p. 6, concerning the accused Miim Khaa.

Article 222 relevantly³²¹ helped that perpetrator ‘to run away’;³²² there are no more details in the published extract of the court’s decision.

238. On diligent enquiry, no Lebanese case law to my knowledge contradicts the interpretation I have put forward—that helping a perpetrator to ‘evade’ justice, satisfying Article 222, is a lesser alternative capable of being established in full by facts originally alleged to amount to helping to ‘shield from’ justice contrary to Article 219 (5).

(c) The absence of direct or specific guidance in the Statute, Rules or decisions of the Special Tribunal

239. The governing instruments of the Special Tribunal do not address the question of whether a Trial Chamber of the Tribunal may change the legal classification of facts from that which the Prosecutor has charged in an indictment—in instances where they would prove a lesser offence, or in any other circumstances. The Statute, of course, relevantly establishes the parameters of the crimes and modes of participation in them that the Prosecutor may charge, and for which a Trial Chamber may convict, particularly in Articles 1 to 3 defining the Tribunal’s jurisdiction and applicable law. Article 16 of the Statute, concerning the minimum guarantees to which the accused is entitled, also appears to me to be particularly relevant to resolution of this question. I shall return to that Article in sub-sections d (i) and e below. However, no provision of the Statute directly or specifically concerns Chambers’ powers of legal classification (or lack thereof).

240. The same is true of the Rules of Procedure and Evidence. They specifically provide only for changes *by the Prosecutor* in the legal classification of the conduct of accused in the course of the trial, permitting the Prosecutor to amend an indictment at this stage, including to add new charges,³²³ with leave if the Trial Chamber is satisfied that there is *prima facie* evidence to support the amendment and it would not result in improper prejudice to the accused.³²⁴

³²¹ That accused too, Alef Baa, had also given other assistance, namely lending the perpetrator his gun and a sound suppressor before the murder. These acts having occurred before the crime, however, they were not the basis for the finding that he had breached Article 222.

³²² Cassation decision 155/2007, p. 6, concerning the accused Alef Baa.

³²³ See, especially, Rule 71 (E), (F).

³²⁴ Rule 71 (A) (iii), (B). The Rules also permit the Prosecutor to withdraw a charge during the trial, by motion. See Rule 72 (A) (iii).

241. Regarding the deliberations phase of a trial, Rule 148 (B) requires the Trial Chamber to ‘vote separately on each charge contained in the indictment’. This rule might be taken to imply that the Trial Chamber can make findings of guilt *only* upon offences charged, not lesser included ones or any others. Some other provisions of the Rules, for instance those on sentencing and appeals, might seem at first look to suggest the same thing.³²⁵ However, in my opinion, these rules cannot be determinative. None of them clearly and specifically prohibits reclassification of proven facts by a chamber. Furthermore, chambers in other international criminal courts³²⁶ and tribunals³²⁷ have been subject to similarly expressed rules, yet considered themselves to have reclassification powers.

242. As yet, there has been no judicial decision in this Tribunal determining this issue, or even directly examining it. In its interlocutory decisions on the applicable law, the Appeals Chamber answered questions submitted to it by the Pre-Trial Judge about whether the Prosecutor could charge particular offences cumulatively or in the alternative.³²⁸ When doing so in the first decision, it touched on the judicial power to reclassify at the conviction stage, but in my view, without deciding whether it may or should exist in the Special Tribunal. I interpret the comments it made simply as leaving open the possibility of an affirmative answer to both questions.

243. Specifically, the Appeals Chamber noted that this power exists in Lebanon³²⁹ and at the ICC under its Regulation 55.³³⁰ It also very briefly addressed the position at the *ad hoc* international criminal tribunals, by acknowledging they have no regulation comparable to ICC Regulation 55,³³¹ and describing their ‘practice’ to date as entering findings of guilt for the first

³²⁵ E.g. Rules 171 (D), requiring the Trial Chamber to impose a sentence in respect of each count in the indictment upon which the accused has been convicted, and 177 (A) (i) and 189 (B), referring to acquittal ‘of all counts in the indictment’ and ‘on all charges’, respectively.

³²⁶ A rule similar to Rule 148 (B), namely ICC Rules of Procedure and Evidence, Rule 142 (2), exists at the International Criminal Court, where chambers have a codified power to reclassify *proprio motu*, as discussed in section d (iii) below.

³²⁷ E.g. ICTY Trial Chambers were subject to the ICTY Rules of Procedure and Evidence, Rules 87 (B) (identical to Rule 148 (B)), 87 (C) (similar to Rule 171 (D)), yet declared themselves able to reclassify facts in certain circumstances, as discussed in section d (iii) below.

³²⁸ Pre-Trial Judge 21 January 2011 order on preliminary questions to the Appeals Chamber, paras 23-25, questions xiv, xv; First interlocutory decision on applicable law, paras 5, 265-301; F0003, Public Redacted Version of the “Order on Preliminary Questions Addressed to the Appeals Chamber Pursuant to Rule 68 (G) of the Rules of Procedure and Evidence” of 11 August 2017, 11 September 2017, question C (d); Second interlocutory decision on applicable law, paras 8 (C) (d), 92-97.

³²⁹ First interlocutory decision on applicable law, para. 281.

³³⁰ First interlocutory decision on applicable law, paras 291-292.

³³¹ First interlocutory decision on applicable law, para. 292.

time on appeal ‘only in instances where the relevant charges have been included in the indictment’.³³² I will deal with each of these jurisdictions in turn in sections (d) (ii) and (iii) below. Finally, as one of the ‘conclusions’ offered in that decision to guide the Pre-Trial Judge on questions of charging,³³³ the Appeals Chamber stated in paragraph 300, ‘we emphasise the evaluative role of the judiciary’, without elaborating.

(d) Relevant considerations

244. In the absence of more specific guidance in Special Tribunal instruments or case law, the following considerations should in my view guide resolution of this question.

i. Reclassification is a procedural matter, necessitating reference to both Lebanese and international sources

245. The reclassification of facts by a judge or chamber in criminal proceedings is ordinarily treated as a procedural matter. This is so in both domestic, and international or hybrid, criminal jurisdictions, and whether the power of reclassification is broad or limited. Illustrating this, the written provisions delimiting it (where they exist) tend to be found in procedural instruments such as codes or rules of procedure, or related regulations, not the statute(s) that articulate principles of substantive criminal law.³³⁴ When considering the position in international criminal tribunals that lack such a provision, judges³³⁵ and external commentators³³⁶ alike have also presented the issue as procedural in nature.

³³² First interlocutory decision on applicable law, fn. 419. As an illustration, it cited there the appeal judgment and a partially dissenting opinion in one ICTY case, *Mrkšić and Šljivančanin*.

³³³ First interlocutory decision on applicable law, para. 297.

³³⁴ Domestic examples of such provisions include those applied in Albania, Austria, Croatia, Italy, Germany, Japan, the Netherlands and Spain, as well as the Lebanese provisions discussed in section d (ii) below. For examples of domestic criminal procedural instruments permitting judicial reclassification at least to a lesser included offence, from common law system countries, see those listed by the ICTY Trial Chamber in the *Kupreškić and others* Trial Judgment, fn. 966, para. 732 and Elinor Fry, ‘Legal Recharacterization and the Materiality of Facts at the International Criminal Court: Which Changes Are Permissible?’ [2016] 29 *Leiden Journal of International Law* 577 (‘Fry 2016’), fn. 42. *Contra*, the provisions cited by the *Kupreškić* Trial Chamber in para. 730 and Fry in fn. 42, which appear in substantive criminal law statutes (English and Canadian) not procedural ones *per se*. For examples from procedural instruments of international and internationalised/hybrid criminal judicial bodies, see section d (iii) below. *Cf.* the provision in Law No. 05/L-053 on the Kosovo Specialist Chambers and Specialist Prosecutor’s Office, 3 August 2015 (‘Kosovo Specialist Chambers Law’) also discussed in that section.

³³⁵ *E.g.* *Kupreškić and others* Trial Judgment, discussed in section d (iii) below.

³³⁶ *E.g.* Cryer and others 2014, who deal with this issue in their chapter entitled ‘Procedures of International Criminal Investigations and Prosecutions’, pp 459-461.

246. I am unaware of any serious challenge to this approach and I adopt it here. I emphasise however that my characterization of this issue as procedural concerns only the specific practice or process of judicial reclassification itself, not all principles that may determine whether it exists or guide its exercise.

247. My reason for raising this characterization point is, of course, the hybrid legal framework of this Tribunal. Accepting that we are in the realm of procedural rather than substantive law means turning, not to Article 2 of the Statute and its relatively clear direction to apply Lebanese law, but to a collection of principles and sources, of which only one is Lebanon's criminal procedure code.

248. Article 28 (2) of the Statute obliged the Judges to be guided by the aim of 'ensuring a fair and expeditious trial', and reference materials reflecting the highest standards of international criminal procedure, not just the Lebanese Code of Criminal Procedure, when they adopted the Rules of Procedure and Evidence. And both Articles 15 and 16 implicitly oblige us to apply the human rights principles that those Articles articulate, rather than Lebanese legislation, if the two conflict. Many of these principles are either wholly or partly procedural. They include, in Article 16 (4) (a) to (c), the right to:

- a. be informed promptly and in detail in a language which the accused understands of the nature and cause of the charge against him or her;
- b. have adequate time and facilities for the preparation of his or her defence; and
- c. be tried without undue delay.

249. Since the adoption of the Rules of Procedure and Evidence, *if interpreting a provision of those Rules*, under Rule 3 we have been obliged to consult first customary international law interpretative principles, then other specified international sources, before that Code:

Rule 3: Interpretation of the Rules

- (A) The Rules shall be interpreted in a manner consonant with the spirit of the Statute and, in order of precedence, (i) the principles of interpretation laid down in customary international law as codified in Articles 31, 32 and 33 of the Vienna Convention on the Law of Treaties (1969), (ii) international standards on human rights, (iii) the general principles of international criminal

law and procedure, and, as appropriate, (iv) the Lebanese Code of Criminal Procedure.

- (B) Any ambiguity that has not been resolved in the manner provided for in paragraph (A) shall be resolved by the adoption of such interpretation as is considered to be the most favourable to any relevant suspect or accused in the circumstances then under consideration.

250. Further, if the question of whether and how chambers of this Tribunal may reclassify the proven facts were an *evidentiary* rather than a procedural one for which the Rules make no provision—as articulated in Rule 149 (A), an instance of a ‘lacuna’ in the ‘rules of evidence’—then under that Rule a chamber would be obliged to apply ‘provisions of the Lebanese Code of Criminal Procedure *consistent with the highest standards of international criminal procedure*’.³³⁷ Article 21 (4) of the Statute, adopted before Rule 149 (A) existed, also addressed ‘rules of evidence’ not provided for in the Rules of Procedure and Evidence. It is expressed rather differently, directing the Chamber to rules ‘that will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law’. But in any event—under either provision—clearly the specified governing law is again mixed or qualified, not purely Lebanese.

251. There is no express provision akin to Rule 149 (A) or Article 21 (4) on how to determine rules of *procedure* in the event of a lacuna in those, which is the situation at hand. There is however some guidance in the Appeals Chamber’s first interlocutory decision on the applicable law. When faced with another procedural (or at least partly procedural) issue that the Rules did not deal with, concerning cumulative and alternative charging, the Appeals Chamber took broadly the same approach as it had taken to determine the law defining modes of individual criminal responsibility. This was to examine both Lebanese and international criminal law on the issue and determine whether they substantively differed,³³⁸ insisting throughout on the ultimate object of a fair and expeditious trial.³³⁹

³³⁷ Emphasis added.

³³⁸ First interlocutory decision on applicable law, paras 270-301.

³³⁹ See especially First interlocutory decision on applicable law, para. 32, fn. 48, and paras 266, 297. See also, affirming the same principle, second interlocutory decision on applicable law, para. 95.

252. The similarity to the present situation is only partial because on that issue, the Appeals Chamber found, Lebanese and international criminal law were substantially the same, avoiding any need to choose between them.³⁴⁰ On this one, as will be shown below, the two markedly differ.³⁴¹ But the Appeals Chamber's approach remains instructive both for its clear reliance on the object and purpose of the Statute, and its implicit suggestion that in analogous situations, before the applicable rule can be determined, both Lebanese and international procedure warrant consideration.

253. Taking into account this decision, the approaches reflected in the provisions of the Statute and Rules summarised in paragraphs 248-250 above, and the general principles of interpretation that I have identified and applied in the preceding sections of this Opinion, I conclude that:

- a. The rules that apply to judicial reclassification of facts in this Tribunal must be determined with reference to both the Lebanese Code of Criminal Procedure and international criminal procedural law. The latter does not simply displace the former. This would be at odds with the respect accorded to Lebanese procedural law in the Statute, as well as in the only provision of the Rules specifically concerning lacunae, Rule 149 (D), and the Appeals Chamber's implicit position.
- b. Nonetheless, an approach drawn from international criminal law should be preferred if it represents the highest international standards in this area and is the most consistent with the object and purpose of the Statute. The Tribunal should use the same criteria to select between different approaches taken regarding this matter in the international criminal law sphere.

ii. The position in Lebanon

254. Lebanese procedural law permits judges to change the legal classification of facts from that pleaded, at the deliberations stage of a criminal case and without notice to the parties. This is a common approach in civil law legal systems, applying the principle *jura novit curia*,³⁴² which the

³⁴⁰ First interlocutory decision on applicable law, paras 270, 294, disposition, 14.

³⁴¹ See sections d (ii), (iii) and section e below.

³⁴² See, e.g., *Kupreškić and others* Trial Judgment, 14 January 2000, paras 733-737; Fry 2016, p. 584 and the sources there referred to.

Appeals Chamber in its first interlocutory decision described as meaning, ‘it is for the court to apply the law, whereas it is for the Prosecution to submit the facts in support of its allegations’.³⁴³ The Appeals Chamber also considered that Article 370 of Lebanon’s civil procedure code gives *all* judges of that country the power to ‘give the correct legal classification of’ ‘the facts propounded by the parties’.³⁴⁴

255. The Lebanese Code of Criminal Procedure articulates this power in a series of provisions, which address different circumstances and levels of the criminal court system. For example, Article 233 empowers the Criminal Court, a three-Judge body that examines felonies and misdemeanours,³⁴⁵ to ‘amend the legal qualification of the acts described in the indictment’.³⁴⁶ Article 366 provides that the rules that govern proceedings before the Criminal Court also apply to trial proceedings before and judgments of the Judicial Council, also known as the Court of Justice.³⁴⁷ Under Article 176, single judges, too—who hear only cases involving lesser offences—are ‘not bound by the legal qualification of the alleged offence’.³⁴⁸

256. Article 274 specifically permits the scenario with which I am concerned here, of reclassification to a lesser offence. It applies to the Criminal Court and thus, pursuant to Article 366, the Judicial Council as well. Article 274 provides, ‘If [the Criminal Court] ascertains that some elements of the felony attributed to the accused are incomplete and that the act constitutes a

³⁴³ First interlocutory decision on applicable law, fn. 396. In a later decision, then Presiding Judge of the Appeals Chamber, Judge Baragwanath, also defined the principle in a different context, quoting from ICTY case law. That definition was ‘no party has a ‘burden’ in relation to establishing or interpreting legal norms; rather it is for the Chamber to set out and interpret the law’. STL-14-05/PT/PRES, *In the Case against Al Jadeed [Co.] S.A.L./New T.V. S.A.L. (N.T.V.) and Al Khayat*, F0083, Decision on “Defence request to the President for disclosure related to the matter of the personal jurisdiction of the Tribunal”, 13 November 2014, para. 14.

³⁴⁴ First interlocutory decision on applicable law, para. 281.

³⁴⁵ Lebanese Code of Criminal Procedure, Art. 233, first paragraph.

³⁴⁶ *Ibid.*, Art. 233, second paragraph.

³⁴⁷ *Ibid.*, Art. 366, first paragraph. As the Judgment, Applicable law, para. 6029 explains, this is a court whose judgments are not open to review and whose mandate relevantly includes serious, security-related crimes.

³⁴⁸ Lebanese Code of Criminal Procedure, Art. 176, second paragraph; *see also* Art. 204, second paragraph. Where a single judge considers that the offence committed constitutes a felony, he or she must declare their lack of jurisdiction and refers the case file to the Public Prosecution Office: Arts 176, third paragraph, 177, 195, first paragraph. Article 227, first paragraph, imposes a similar obligation on the Court that hears appeals from single judge decisions, the Appeal Court. Art. 195, second paragraph, also mandates referral of the case file where the single judge ‘finds evidence when hearing the case of offences of which he has not been seized’.

misdemeanour, it shall amend the legal qualification contained in the indictment, convict the accused of a misdemeanour, and sentence him accordingly.’³⁴⁹

257. The Code of Criminal Procedure prohibits the Criminal Court from ‘examin[ing] any offence that is not included in the indictment’³⁵⁰ and requires it, in such situations, to return the matter to the Public Prosecution Office.³⁵¹ In light of the other provisions of that Code,³⁵² this must be understood as restricting the Court to considering the facts that the indictment covers, not as preventing it from deciding that those facts establish a different offence to the one the prosecuting authority has alleged.

258. In practice, Lebanese judges regularly exercise their powers of legal reclassification, in circumstances including but not limited to reclassification to a lesser offence. The Lebanese decisions and judgments examined for the purpose of these proceedings contain numerous examples.³⁵³ One is the Lebanese Judicial Council’s judgment in the *Karami* case. In it, as outlined in the Judgment in the present case, the Council reclassified the conduct of two of the 17 accused from complicity, with which they had been charged, to a different form of responsibility that can entail a heavier penalty, co-perpetration.³⁵⁴ It also convicted a third accused, Samir Geagea, of two uncharged forms of responsibility—instigation of Mr Karami’s premeditated intentional homicide, and complicity in terrorism and the attempted premeditated intentional homicide of the helicopter’s other passengers—instead of co-perpetration of each of those crimes, as the prosecution had alleged.³⁵⁵

³⁴⁹ Lebanese Code of Criminal Procedure, Art. 274, second paragraph. As stated in Article 5 of that Code, second paragraph, ‘accused’ is that instrument’s term for ‘a person accused of a committing a felony’. *See also*, reflecting the same power of reclassification from felony to misdemeanour, Article 279 and the second paragraph of Article 290.

³⁵⁰ Lebanese Code of Criminal Procedure, Art. 233, second paragraph.

³⁵¹ *Ibid.*, Art. 276, second and third paragraphs. Art. 195, second paragraph, seems to prescribe an equivalent process for single-judge proceedings.

³⁵² Both those just described, and others, *e.g.* Article 194, sixth paragraph. This prohibits a single judge from referring in his or her judgment to facts that were not invoked.

³⁵³ Besides the *Karami* case discussed below, *see, e.g.*, *Balamand Monastery* Judgment (deciding that terrorism, not the charged crime of conspiracy, was committed); Cassation decision 8/2000 (finding that the accused ‘HZ’ committed not intentional homicide as charged, but the lesser offence of intentional killing under Article 547 of the Lebanese Criminal Code); *Zouk Mikayel Church* Judgment (convictions for complicity instead of perpetration, pp 101-102, 111, and for a felony that was not charged, p. 108).

³⁵⁴ *See* Judgment, Applicable law, paras 6107, 6291 concerning Messrs. Afif Khoury and Khalil Matar.

³⁵⁵ *Karami* Judgment, pp 4, 10-13, 117, 122-124, 138.

259. In the same case, the Council expressly affirmed its broad power of reclassification, stating of one of the three accused mentioned above, ‘the categorization in the bill of indictment is not binding on the Court of Justice, which has a right and an obligation to attribute to the established facts the legal categorization that it deems most applicable thereto’.³⁵⁶ It made similar comments regarding several of the other 14 accused.³⁵⁷ Such assertions appear in the case law of various other Lebanese courts, too, including the Court of Cassation. A chamber of that court noted in the Article 222-related case discussed in paragraph 237 above, ‘according to the law and to the jurisprudence, the criminal court of first instance is not bound by legal qualification of the actions mentioned in the indictment decision; it is however bound by the facts’.³⁵⁸

260. From this brief review, then, it is clear that if the Lebanese Code of Criminal Procedure solely and entirely governed the question, and the evidence presented concerning Mr Merhi, Mr Oneissi and/or Mr Sabra satisfied the elements of complicity under Article 222, the Trial Chamber could proceed to convict that—or those—Accused of that offence even though it is not charged, nor has the Prosecution otherwise raised it.

iii. The divergent approaches in international and hybrid criminal fora

261. There is no uniform or generally accepted international criminal law rule of procedure on the judicial power to reclassify facts proven at trial. Instead there are at least two main positions, exemplified respectively in the approach of the ICC and that of the *ad hoc* international criminal tribunals. They diverge significantly from one another. To different degrees, both also diverge from the Lebanese position, by being more restrictive than it.

³⁵⁶ *Karami* Judgment, p. 127, referring to Khalil Matar.

³⁵⁷ *Ibid.*, pp 133-134, concerning Messrs. Keitel Hayek, Camille Rami and Hassan Ali Ahmad, all of whom the Council found not guilty of any offence, in part due to the expiry of a limitation period. *See also* the Lebanese Judicial Council’s similar statement regarding Samir Geagea in the *Zouk Mikayel Church* Judgment, p. 106.

³⁵⁸ Cassation decision 155/2007, p. 1.

262. In ICC proceedings, Regulation 55 entitled ‘Authority of the Chamber to modify the legal characterization of facts’ gives the Court a broad power, not limited to reclassification to a less serious offence. To summarise this relatively lengthy regulation:

- a. It allows an ICC Trial Chamber in the final trial judgment to modify the legal characterization—both crimes and modes of liability—from that charged, provided this does not ‘[exceed] the facts and circumstances described in the charges’.³⁵⁹
- b. However—diverging from the Lebanese approach—it requires a Trial Chamber to give participants notice as soon as it appears that the legal characterization of facts may be subject to change, and the opportunity to make oral/written submissions.³⁶⁰
- c. Further, the chamber must safeguard the accused’s rights to have adequate time and facilities for the preparation of his defence, as well as to examine witnesses against him, and call witness and present evidence on his behalf.³⁶¹
- d. To that end, the Trial Chamber ‘may suspend the hearing to ensure that the participants have adequate time and facilities for effective preparation’³⁶² and it may give the accused ‘the opportunity to examine again, or have examined again, a previous witness, to call a new witness or to present other evidence’.³⁶³

263. Justifications for the ICC approach include avoiding over-charging in indictments, with its consequent burden on the defence, and in the ICC Appeals Chamber’s own words, ‘clos[ing] accountability gaps’³⁶⁴ that might be occasioned by acquittals on the technicality of an incorrect

³⁵⁹ Regulation 55 (1), ICC Regulations of the Court. This echoes Article 74, Rome Statute. Article 74 sets out requirements for the trial judgment, and in sub-paragraph 2 provides that ‘[t]he decision shall not exceed the facts and circumstances described in the charges and any amendments to the charges.’

³⁶⁰ Regulation 55 (2), ICC Regulations of the Court.

³⁶¹ Regulation 55 (3), ICC Regulations of the Court, making explicit reference to Articles 67 (1) (b) and (e), Rome Statute.

³⁶² Regulation 55 (2), ICC Regulations of the Court.

³⁶³ Regulation 55 (3) (b), ICC Regulations.

³⁶⁴ ICC, *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06, Judgment on the appeals of Mr Lubanga Dyilo and the Prosecutor against the Decision of Trial Chamber I of 14 July 2009 entitled “Decision giving notice to the parties and participants that the legal characterization of the facts may be subject to change in accordance with Regulation 55(2) of the Regulations of the Court”, 8 December 2009 (‘Lubanga Appeal Decision’), para. 77; *see also* ICC, *Prosecutor v. Germain Katanga*, ICC-01/04-01/07, Judgment on the appeal of Mr Germain Katanga against the decision of Trial Chamber II of 21 November 2012 entitled “Decision on the implementation of regulation 55 of the Regulations of the Court and severing the charges against the accused persons”, 27 March 2013 (‘Katanga Appeal Decision’), para. 22.

pre-trial legal qualification.³⁶⁵ Use of Regulation 55 has been controversial nonetheless.³⁶⁶ Contention has centred, first, on whether a proposed change exceeds the facts and circumstances described in the specific indictment and second, whether it would infringe the accused person's fair trial rights. However, the ICC Appeals Chamber in *Katanga* ruled, basing itself on decisions of the European Court of Human Rights, that legal reclassification at the deliberations stage will not necessarily infringe the accused's rights so long as this does not exceed the facts and circumstances described in the indictment, and the Trial Chamber gives full notice to the accused, and implements measures aimed at safeguarding those rights.³⁶⁷ Examination of decisions of the European Court of Human Rights has led other ICC chambers to reach similar conclusions.³⁶⁸

264. There is a codified broad power of judicial reclassification at the Extraordinary Chambers in the Courts of Cambodia as well. The ECCC is best considered not as an international criminal court or tribunal *per se*, but instead as a hybrid or internationalised one whose legal framework, like that of the Special Tribunal, is partly that of a civil law system country. ECCC Internal Rule 98 (2) provides, in relevant part, that the trial 'judgment shall be limited to the facts set out in the Indictment. The Chamber may, however, change the legal characterization of the crime as set out in the Indictment, as long as no new constitutive elements are introduced.' There is also some provision for judicial alteration of the legal classification from one *mode of liability* to another, in the Law regulating the Specialist Chambers for Kosovo—another hybrid international

³⁶⁵ *Ibid.*; Cryer and others 2014, 460; Carsten Stahn, *A Critical Introduction to International Criminal Law* (Cambridge University Press, 2019), p. 363.

³⁶⁶ See, e.g., Fry 2016, generally; Cryer and others 2014, pp 460-461; Yvonne McDermott, *Fairness in International Trials* (Oxford University Press, 2016); pp 65-66; Kevin Jon Heller, "A Stick to Hit the Accused With": The Legal Recharacterization of Facts under Regulation 55' in Carsten Stahn (ed.), *The Law and Practice of the International Criminal Court* (Oxford University Press, 2015), pp 981-1006.

³⁶⁷ *Katanga* Appeal Decision, paras 1, 14-24, 93-94, 100, additionally citing ECtHR, *Sipavicius v. Lithuania*, No. 49093/99, Judgment, 21 February 2002; ECtHR, *Bäckström and Andersson v. Sweden*, No. 67930/01, Final Decision as to the Admissibility, 5 September 2006; ECtHR, *Borisova v. Bulgaria*, No. 56891/00, Judgment, 21 December 2006, para. 41; ECtHR, *Varela Geis v. Spain*, No. 61005/09, Arrêt, 5 March 2013, para. 44; ECtHR, *Drassich v. Italy*, Arrêt, 11 December 2007, para. 34; ECtHR, *Mattoccia v. Italy*, No. 23969/94, Judgment, 25 July 2000.

³⁶⁸ ICC, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, ICC-01/04-01/07, Decision on the implementation of regulation 55 of the Regulations of the Court and severing the charges against the accused persons, 21 November 2012, paras 16-22, citing additionally ECtHR, *Vesque v. France*, No. 3774/02, Judgment, 7 March 2006, paras 42-43; ICC, *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06, Minority Opinion on the "Decision giving notice to the parties and participants that the legal characterization of the facts may be subject to change in accordance with Regulation 55 (2) of the Regulations of the Court", 17 July 2009, paras 21-30; see also *Lubanga* Appeal Decision, para. 85.

and domestic (Kosovar, i.e. civil) law mechanism whose operations are, at the time of writing of this Opinion, still at an early stage.³⁶⁹

265. As there is no written rule on this issue at the *ad hoc* international criminal tribunals nor at the Special Court for Sierra Leone,³⁷⁰ their position must be discerned from jurisprudence. Most notably, in 2000, an ICTY Trial Chamber in the above-mentioned *Kupreškić* judgment decided that trial chambers of that tribunal could, at judgment, reclassify proven facts of their own volition and without notice to the Parties, in limited circumstances only. These circumstances, nonetheless, seem to encompass the one at issue here. That is so whether Article 222 complicity is understood as a lesser alternative offence in the same overarching category of liability, as I suggest it should, or a different, lesser mode of liability.

266. Specifically, the chamber in *Kupreškić* found that if an ICTY Trial Chamber concluded that a more serious offence had not been proved, it could convict the accused of a lesser included offence, ‘despite the fact that [that] crime has not been charged in the indictment’ and without needing to order the Prosecutor to amend that indictment.³⁷¹ It could also reclassify without prior notice the proven facts under a different mode of liability:

Similarly, the Trial Chamber may conclude that the facts proven by the Prosecutor do not show that the accused is guilty of having *perpetrated* a war crime; they show instead that he *aided and abetted the commission of* the crime. In this case, the Trial Chamber may classify the offence in a manner different from that suggested by the Prosecutor, without previously notifying the Defence of the change in the *nomen iuris*. For the same reason the Trial Chamber may find that the accused, charged with *perpetrating* a murder as a crime

³⁶⁹ Article 46 (6) of the Kosovo Specialist Chambers Law provides, ‘When the Court of Appeals Panel overturns a Trial Panel’s finding of guilt based on one mode of liability and the Trial Panel has failed to make findings on alternative modes of liability, the Court of Appeals Panel shall consider the evidence contained in the trial record, as well as any other Trial Panel findings, to determine whether to enter convictions under an alternative mode of liability. Alternatively, if the Trial Panel is available and could more efficiently address the matter, the Court of Appeals Panel may return the case to the Trial Panel to review its findings and the evidence to determine whether to enter findings of guilt under an alternative mode of liability.’ There was also a provision on reclassification of facts in the Transitional Rules of Criminal Procedure that applied in the Special Panels for Serious Crimes in East Timor (section 32 (4)).

³⁷⁰ Pursuant to Article 14 of its Statute, the Special Court’s Rules of Procedure and Evidence derived from those of the ICTR, though under Art. 14 (2) they could be and in fact were substantially amended.

³⁷¹ *Kupreškić and others* Trial Judgment, para. 745.

against humanity, is instead guilty of *participating in a common design to commit* murder as a crime against humanity.³⁷²

267. In all other circumstances, such as where the evidence established a more serious uncharged offence, the chamber found that it would not be permitted to proceed straight to conviction.³⁷³ The chamber carefully considered whether the *jura novit curia* principle should apply more extensively in ICTY proceedings, but ruled this out.³⁷⁴

268. This conclusion was due in part to the lack of a uniform domestic approach to the issue (and thus of a general principle of criminal law to follow in this area).³⁷⁵ But the chamber also decided that in international criminal proceedings, adopting the broad, civil law-associated approach to reclassification would be incompatible with the rights of the accused, unacceptably impairing his or her ability to prepare a defence. It highlighted particularly the right of an accused to be informed promptly and in detail of the charges against him or her.³⁷⁶ The requirement to safeguard those rights, in this instance, outweighed the other ‘basic requirement’ upon the chamber. That requirement ‘relat[ed] to the efficient discharge of the Tribunal’s functions in the interest of justice’. It entailed *inter alia* enabling the Prosecutor to exercise all powers necessary to fulfil his or her mission efficiently and in the interests of justice.³⁷⁷ Essentially the same two requirements apply under the Statute of the Special Tribunal.

269. Moreover, despite the clear finding in *Kupreškić*—not since overturned—that conviction for an uncharged lesser without notice to the defence may occur in principle, other and subsequent case law of the *ad hoc* tribunals suggests that in practice, it would be highly exceptional. The majority of the case law in this area focuses on other scenarios, such as the Prosecution having given some notice of its reliance on the alternative but not, or not clearly, pleaded it in the indictment. To provide an extremely concise assessment of a large body of decisions, their findings

³⁷² *Ibid.*, para. 746, emphasis added. *Nomen iuris* (or *nomen juris*) is not defined in that judgment. It means ‘[a] legal name or designation’, as stated in Black’s Law Dictionary, ‘Nomen’.

³⁷³ *Kupreškić and others* Trial Judgment, especially paras 747-748.

³⁷⁴ *Ibid.*, para. 738 *et seq.*

³⁷⁵ *Ibid.*, para. 738.

³⁷⁶ *Ibid.*, paras 739-740.

³⁷⁷ *Ibid.*, paras 739, 741.

are mixed, and suggest that the outcome of the balancing exercise between the two ‘requirements’ will, necessarily, depend a great deal on the facts and procedural circumstances in each case.³⁷⁸

270. The case law of the *ad hoc* international criminal tribunals also, unquestionably, affirms the principle that the Trial Chamber has applied in this case, that amendment of an indictment in the event of a change of case is not always necessary to safeguard adequately the rights of the accused.³⁷⁹ Reflecting this, as part of its guidance on ‘change’ scenarios besides ones that judges might initiate, the *Kupreškić* Trial Chamber found that the ICTY Prosecutor need not seek leave to amend an indictment upon determining that the evidence establishes only a lesser offence to the one charged. He or she need only notify the trial chamber and the defence that this is proposed as a submission. ‘For’—the chamber found—in this scenario ‘the accused has been given the opportunity to contest all the elements of the crime charged’.³⁸⁰

(e) Conclusions

271. Having reviewed both the Lebanese and the relevant international and hybrid bodies’ stances on the matter, I observe first of all that none absolutely prohibits a trial chamber from *in any circumstances* convicting an accused person for a lesser offence of the kind defined in Article 222 of the Lebanese Criminal Code when it was not charged, nor otherwise previously raised. ICC Regulation 55, for instance, would seem to allow this if the chamber took specified action, principally notifying the Parties and inviting submissions from them. In theory, applying *Kupreškić*, this could have occurred at the ICTY without any notice at all. Thus the two key sources of procedural law that, I have found, should be used to determine the rule applicable in this

³⁷⁸ See—as a small sample, and none directly addressing whether a trial chamber may convict for an uncharged mode or crime—*Krnojelac* Appeal Judgment, paras 125, 137-139, 142-145; ICTR, *Prosecutor v. Ntagerura, Bagambiki and Imanishimwe*, ICTR-99-46-T, Judgement and Sentence, 25 February 2004, paras 36-38; ICTR, *Prosecutor v. Karemera and others*, ICTR-18-11-T, Decision on the Prosecutor’s Motion for Leave to Amend the Indictment – Rule 50 of the Rules of Procedure and Evidence, 13 February 2004, para. 47; ICTR, *Prosecutor v. Semanza*, ICTR-97-20-T, Judgment and Sentence, 15 May 2003, paras 14, 59. As the Special Tribunal’s Appeals Chamber noted (*see* para. 243 and *fn.* 332 above), there have been appeal judgments of the *ad hoc* tribunals convicting accused for, e.g., a mode of responsibility not found at first instance, but this was when the Prosecutor had charged the accused with it. In any event, such case law goes to the different, though related, question of the legal classification powers of an *appellate* chamber. Neither the majority appeal judgment nor the partially dissenting opinion in *Mrkšić and Šljivančanić*, which the Appeals Chamber cited as an example, discusses the issue of a trial chamber’s power to reclassify to and convict for an uncharged mode or crime. The jurisprudence of the Special Court for Sierra Leone does not appear to have addressed that issue in its jurisprudence either.

³⁷⁹ See Judgment, chapter II B, ‘Issues arising from the Prosecution’s pleadings’ and the authorities to which that section refers.

³⁸⁰ *Kupreškić and others* Trial Judgment, para. 743.

Tribunal, the Lebanese and the international, align to the extent that all accept this judicial power may exist.

272. It has been shown that there is no ‘standard of international criminal procedure’³⁸¹ on this issue in the sense of a shared procedure, applied ‘across the board’. There are real differences between the approaches taken at different international and hybrid criminal courts and tribunals. However the majority, if not all, of those approaches have two relevant common features. The first is greater restriction on the power of reclassification than that which exists under the Lebanese Code of Criminal Procedure. The second is that they are shaped by two fundamental obligations, with each instance of a potential reclassification of the facts requiring consideration or ‘balancing’ of both. One obligation centres on the fairness of the trial and more particularly the rights of an accused in this respect. The other centres on the efficiency of the proceedings.

273. I suggest that these common features represent the ‘highest standards of international criminal procedure’ in this area. In addition, their requirement to weigh and seek to ensure both efficiency and the fair trial rights of the accused exists, equally, at the Special Tribunal. It is wholly consistent with the Statutory object and purpose—which the Appeals Chamber described and for the reasons earlier stated I accept—of fair and efficient, or expeditious, administration of justice.

274. This leads me to conclude that these standards, rather than those set out in the Lebanese Code of Criminal Procedure, should be applied to determine whether in this instance, the Trial Chamber is free to convict an Accused for the uncharged lesser form of complicity if the evidence supports it. Further, applying those standards, I conclude that it is not. In the circumstances, this course of action would unacceptably prejudice the Defence of those Accused, contrary to the human rights principles enshrined in Article 16 of the Statute and the overarching imperative to ensure a fair trial.

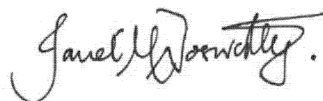
275. Therefore my reservations surround reasons of fairness, the integrity of such a conviction and that of the trial itself *in these specific circumstances*: of a near-total absence of submissions on, or any other signalling of the prospect of conviction under Article 222, before the Trial Chamber withdrew to deliberate. Had the prospect been raised by Prosecution Counsel in the opening statements or brief; had the Defence been alerted to the need to address the issue in

³⁸¹ Statute, Art. 28 (2).

evidential terms, to respond equally with a defence, and to make full submissions on the law and the facts, in those circumstances, I believe that an alternative conviction could have been entered, should the evidence support the lesser offence. The lack of either a charge in the amended consolidated indictment, or a formal further amendment to that instrument to add the charge, would not have been fatal. This in my view would have struck the appropriate balance between the dual objectives of fairness and efficiency in the trial's administration, and be consistent with international criminal practice.

276. I also remain firmly of the view that the principle of legality would not be contravened if a Prosecutor, Judge or Chamber of the Tribunal were to invoke the terms of Article 222 where the factual allegations and evidence advanced support such a course, given that requirements of 'notice' and 'accessibility' at the time of commission would have been satisfied. It is also the same genre of offence as falls under Article 219, but of a lesser degree.

277. In light of my conclusion that the Trial Chamber may not exercise the power of reclassification in this instance, I will not proceed to assess whether the evidence would in fact have established all elements of complicity as defined in Article 222, in respect of any Accused. Had this been raised at trial, to guide such assessment I would have wished to hear more detailed submissions on those elements, and examine a more extensive body of Lebanese case law on the Article, than are presently at my disposal.



Judge Janet Nosworthy

XIX. DISSENTING OPINION OF JUDGE MICHELINE BRAIDY

1. I consider it important to voice my disagreement with the approach taken by the majority in chapter XIV ‘Legal findings on elements of the crimes and Individual criminal responsibility’ of the judgment, specifically in sub-section (B) (3) (f) ‘Whether Mustafa Amine Badreddine had a role in the conspiracy’, in relation to Mr Badreddine’s role in the conspiracy. My disagreement relates to the majority’s decision to *analyse* Mr Badreddine’s role and make *legal* findings, specifically with regard to whether he was a co-conspirator.

2. My disagreement is irrespective of the outcome of that question. In other words, I am not in a position to agree or disagree with the majority’s finding that there is insufficient evidence to conclude beyond a reasonable doubt that Mr Badreddine was a co-conspirator, because I believe that the Trial Chamber should not even have analysed the individual criminal responsibility of someone who is not (anymore) an accused and whose proceedings have been terminated.

3. The Trial Chamber terminated the proceedings in relation to Mr Badreddine on 11 July 2016.¹ From that point onwards, Mr Badreddine was not an accused anymore. At that moment, the Trial Chamber lost its authority to assess his individual criminal responsibility, or—as the SCSL put it—‘from the moment of [the accused’s] death, the Chamber lost its jurisdiction *ratione personae* against [him]’.² Mr Badreddine died with his presumption of innocence. This presumption should not be questioned posthumously.

4. Jurisdiction *ratione personae* is limited to living persons and therefore proceedings cannot continue after an accused’s death.³ The Trial Chamber complied with this principle when it terminated the proceedings in relation to Mr Badreddine. Although a trial chamber may—or must even—undertake a detailed review of all the evidence brought before it and assess it in light of the ‘totality of the evidentiary record’, thus including evidence relating to a deceased former accused,

¹ Order terminating proceedings against Mr Badreddine without prejudice and ordering the filing of an amended consolidated indictment.

² *Norman and others* decision terminating proceedings, para. 13.

³ *Delić* decision on the outcome of proceedings, para. 6; *Kony and others* decision terminating proceedings, p. 4 – Pre-Trial Chamber II held that ‘the purpose of criminal proceedings is to determine individual criminal responsibility and that the Chamber cannot exercise jurisdiction over a person who has deceased’; *Niyitegeka* Appeal Chamber decision dismissing a request, pp 1-2; *Popović and others* Appeal decision terminating proceedings’, para. 5.

it must then confine itself to an assessment of the guilt of any ‘remaining’ accused and not cross the line between factual and legal findings and explicitly or implicitly venture into areas that determine the guilt of the deceased former accused.

5. An ICTR Trial Chamber addressed this scenario in the *Karemera and Ngirumpatse* judgment. Former co-accused Joseph Nziroera had died and the Trial Chamber terminated proceedings in relation to him, with the case against Mr Karemera and Mr Ngirumpatse continuing. The Trial Chamber stated:

Nevertheless, several paragraphs remain in the Indictment, which refer to Joseph Nziroera while alleging facts that would affect the criminal liability of Karemera and Ngirumpatse, if proven. When assessing these paragraphs, the Chamber will not consider Nziroera’s liability for these acts. It will, however, consider evidence of Nziroera’s participation to the extent that it has probative value regarding the potential criminal liability of Karemera and Ngirumpatse.⁴

6. In fact, the Trial Chamber itself held, following the termination of proceedings in relation to Mr Badreddine, that ‘any potential findings concerning Mr Badreddine’s alleged role will be *factual*, limited to the confines of this case and [...] will have no legal impact upon his “interests”’.⁵

7. The majority follows international criminal law precedents on the issue. In particular, at the ICTY, trial chambers have made findings in relation to unindicted and sometimes deceased persons, for example in relation to membership in joint criminal enterprises (JCEs).⁶ I do not dispute that this case law exists or is on point. I just disagree with it.

8. The case law essentially justifies making legal findings in relation to unindicted persons by stating that such findings are only made as necessary as they pertain to the individual criminal responsibility of accused persons, for example in relation to the requirement of a ‘plurality of

⁴ *Karemera and Ngirumpatse* Trial Judgment, para. 115.

⁵ Decision Amending the Consolidated Indictment, 7 September 2016, para. 44 (emphasis added).

⁶ For example, *Mladić* Trial Judgment, Volume IV, para. 4238; *Prlić and others* Trial Judgment, Volume 4, paras 66, 273.

persons' for JCE liability or conspiracy. Further, it underlines that no findings of guilt are entered for such unindicted persons, thereby not affecting their presumption of innocence.⁷

9. I find this distinction too artificial. The presumption of innocence means that everyone is innocent until *proven* guilty—not until *found* guilty. In my view, a chamber making affirmative legal findings on all elements of a crime proves that someone is guilty. There is no extra step before establishing that someone is guilty. Distinguishing such findings from the dispositive finding—usually in the disposition part of a judgment—is artificial and technical. As such, in my view, the presumption of innocence is affected. In other words, making affirmative legal findings on all elements of a crime is tantamount to a finding of guilt.

10. I believe that the Trial Chamber should have stopped short of making any legal findings in relation to Mr Badreddine. It should have limited itself to making factual findings necessary for making legal findings in relation to the Accused.

11. I am not blind to the consequences of the above. There may be a situation where a lone surviving conspirator is charged. There, to analyse the accused's individual criminal responsibility, a legal finding on an unindicted co-conspirator would be necessary. I do not necessarily want to take a principled position on the issue. Perhaps, in a situation as described, relying on the legal fiction of 'a positive finding on all elements of the crime does not equal a finding of guilt' may be permissible. There is, however, no need to consider this scenario because in the instant case, there are more co-conspirators. The Trial Chamber found that Mr Ayyash, together with others yet unidentified—namely subjects 5-9 and the suicide bomber—conspired at some point between 11 November 2004 and 14 February 2005 to commit a terrorist attack by means of an explosive device to assassinate Mr Hariri. There was therefore no need to additionally assess Mr Badreddine's role,

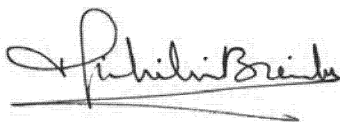
⁷ Specifically, this was set out in *Prlić and others* appeal decision on Croatia's *amicus curiae* application, para. 9. The Appeals Chamber held that the Trial Chamber 'made no explicit findings concerning their participation in the JCE'. It also stated that 'the Trial Chamber's findings regarding the mere existence and membership of the JCE do not – and cannot – constitute findings of criminal responsibility on the part of any persons who were not charged and convicted in this case'. In my view, this is splitting hairs. A JCE can only exist if a plurality of persons with a common purpose, which amounts to or involves the commission of a specified crime, participates in this common purpose. As such, any member of such a JCE by definition must share the purpose and participate in it. If they did not share the purpose or participate, they would not be a JCE member.

if any, in the conspiracy and thereby wade into his presumed innocence, when he is in fact not on trial.⁸

12. Lastly, it may be argued that while making legal findings is not necessary for the determination of the charges against the Accused, it is necessary to provide a reasoned opinion in relation to Mr Badreddine's individual criminal responsibility and because his acts were pleaded in the amended consolidated indictment.

13. In my view, just because 'something' was pleaded in an indictment does not require a trial chamber to address it in the judgment. The Prosecution's pleading obligations are not limited to facts essential to an adjudication of the charges. Further, the requirement of providing a reasoned opinion relates, in my view, to matters 'essential to the adjudication of the charges', not to side issues that require no determination. Moreover, there is no objective threshold for when a judgment is 'reasoned'. In my view, a trial chamber does not need to analyse every possible aspect of a case to comply with that requirement.

14. Mr Badreddine is not on trial anymore after his death. For the above reasons, I therefore disagree with the majority's approach in making legal findings on his membership in the conspiracy.



Judge Micheline Braidy

⁸ I slightly distinguish the situation of the unidentified co-conspirators from that of Mr Badreddine. The former are unidentified, so any stigma of a *de facto* guilty finding cannot attach to any specific person. Furthermore, some may be alive and, if later identified, would at least have the chance of defending themselves, unlike Mr Badreddine.

XX. ANNEXES

A. ANNEX A: Procedural history

1. The trial was legally and evidentially complex. The proceedings were likewise complex. Almost six years passed between the attack and the Prosecutor's submission of an indictment to the Pre-Trial Judge. The case was in pre-trial for another three years. The trial itself took over four years.

2. The procedural history reveals that the case, especially in the indictment and pre-trial phase, was plagued with delays. The most notable procedural aspects are summarised thematically below.

1. Brief background to Special Tribunal's establishment

3. The attack against Mr Rafik Hariri occurred on Monday 14 February 2005. Such was its effect that four days later, on 18 February 2005, the United Nations Secretary-General dispatched a fact-finding mission to Beirut, headed by Mr Peter FitzGerald, to inquire into the causes, circumstances and consequences of the assassination. Mr FitzGerald submitted his report on 24 March 2005.¹ He concluded that:

The review of the investigation indicates that there was a distinct lack of commitment on the part of the Lebanese authorities to investigating the crime effectively, and that this investigation was not carried out in accordance with acceptable international standards. The Mission is also of the view that the Lebanese investigation lacks the confidence of the population necessary for its results to be accepted.²

4. Consequently, on 7 April 2005, the United Nations Security Council, in Resolution 1595, decided 'to establish an international independent investigation Commission ... based in Lebanon to assist the Lebanese authorities in their investigation of all aspects of this terrorist act, including to help identify its perpetrators, sponsors, organizers and accomplices'.³ The Commission worked for almost four years, until 28 February 2009. The three successive United Nations International

¹ Fact-finding mission report.

² Fact-finding mission report, p. 2.

³ Security Council Resolution 1595, para. 1.

Independent Commission (UNIIC) Commissioners, Mr Detlev Mehlis, Mr Serge Brammertz and Mr Daniel Bellemare, prepared 11 reports. The final report was transmitted to the Security Council through the Secretary-General on 2 December 2008.⁴

5. The Special Tribunal was established pursuant to Security Council Resolutions 1664 (2006) and 1757 (2007), acting under Chapter VII of the Charter of the United Nations.⁵ It eventually commenced operation on 1 March 2009, with the newly formed Office of the Prosecutor continuing the UNIIC's investigations. The third and final UNIIC Commissioner, Mr Bellemare, became the Special Tribunal's Prosecutor. Almost two years later, he submitted an indictment for confirmation against one person, Salim Jamil Ayyash.

2. The indictment: submission, confirmation and amendments and challenges to jurisdiction and the form of the indictment

(a) The various indictments

6. The Prosecutor filed at least 11 indictments in the case between January 2011 and September 2016. This encompasses those filed against the initial four Accused and the fifth Accused, Hassan Habib Merhi, and amendments to their various iterations.

7. The first indictment was filed on 17 January 2011, when the Prosecutor, Mr Bellemare, submitted an indictment against Salim Jamil Ayyash to the Pre-Trial Judge for confirmation under Rule 68.⁶

8. On 11 March 2011, he submitted an amended indictment, adding as accused persons Assad Hassan Sabra and Hussein Hassan Oneissi, who was then named as Hassan Hussein 'Issa'.⁷ On 6

⁴ Eleventh UNIIC report.

⁵ United Nations Charter, Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression.

⁶ F0001, Submission of an Indictment for Confirmation (Rule 68) and (1) Motion for an Arrest Warrant and Order for Transfer (Rule 79); (2) Urgent Motion for the Non-disclosure of the Indictment (Rule 74); and (3) Urgent Motion for an Order for Interim Non-disclosure of the Identities of Witnesses Protection Measures (Rules 77 and 115), 17 January 2011.

⁷ F0003, Submission of an Amended Indictment for Confirmation (Rules 68 and 71) and Motion for Arrest Warrants and Orders for Transfer (Rule 79), 11 March 2011.

May 2011, the Prosecutor submitted another amended indictment, this time adding Mustafa Amine Badreddine as an accused.⁸

9. On 10 June 2011, the Prosecutor submitted a further amended indictment against these four Accused.⁹ In this indictment, he charged them with crimes related to the explosion on Monday 14 February 2005 that killed Mr Hariri and 21 others, and injured 231 people.¹⁰ The Pre-Trial Judge confirmed the indictment against the four on 28 June 2011.¹¹ He ordered that the indictment and his decision remain confidential until the indictment could be effectively served on the Accused, or until further notice.¹²

10. In the following year, in February 2012, the outgoing Prosecutor, Mr Bellemare, unsuccessfully attempted to add Mr Merhi's name to the existing indictment. The Pre-Trial Judge rejected this and the indictment against Mr Merhi was eventually confirmed, seventeen months later, on 31 July 2013. This is detailed below.

11. On 17 August 2012, the Prosecutor again sought the Pre-Trial Judge's leave to amend the indictment against the four Accused.¹³ This application was granted two months later, on 25 October 2012.¹⁴ The Prosecutor then filed an amended indictment, on 8 November 2012.¹⁵

12. On 6 February 2013, the Prosecutor sought to amend the indictment filed on 8 November 2012.¹⁶ The Pre-Trial Judge granted the application two months later, on 12 April 2013.¹⁷ The Prosecutor duly filed his (by then) final indictment on 17 April 2013.¹⁸

⁸ F0004, Combined Motion of the Prosecutor (1) Submission of an Indictment for Confirmation (Rule 68), (2) Motion for Continuation of Pre-Trial Judge's Order Dated 19 January 2011 Pursuant to Rule 96(B), and (3) Motions in the Event of Confirmation of the Indictment Pursuant to Rules 74, 77, and 79, 6 May 2011.

⁹ F0007, Submission of an Amended Indictment for Confirmation under Rule 71 and in Response to the Order of the Pre-Trial Judge Dated 09 June 2011, 10 June 2011.

¹⁰ F0007, Annex A to "Submission of an Amended Indictment for Confirmation under Rule 71 and in Response to the Order of the Pre-Trial Judge Dated 09 June 2011, 10 June 2011" Indictment, 10 June 2011, para. 1.

¹¹ Decision relating to the examination of the indictment of 10 June 2011, disposition.

¹² Decision relating to the examination of the indictment of 10 June 2011, disposition.

¹³ F0379, Prosecution Request for Leave to Amend the Indictment Pursuant to Rule 71(A)(ii), 17 August 2012.

¹⁴ Decision granting leave to file an amended indictment.

¹⁵ F0513, Amended Indictment, 8 November 2012.

¹⁶ F0707, Prosecution Request for Leave to Include Further Amendments to its Proposed Amended Indictment, 6 February 2013.

¹⁷ Decision for the filing of an amended indictment.

¹⁸ Indictment of 6 February 2013.

13. In this indictment, he charged the four Accused with participating in a conspiracy aimed at committing a terrorist act. Mr Badreddine and Mr Ayyash were charged as co-perpetrators, and Mr Oneissi and Mr Sabra as accomplices, with committing a terrorist act by means of an explosive device, the intentional homicide of Mr Hariri and 21 others, and the attempted intentional homicide of 226 others.¹⁹ Notably, the indictment extended the duration of the alleged conspiracy to commit a terrorist act, alleging that Mr Ayyash and Mr Badreddine had joined it sometime between 11 November 2004 and 14 February 2005. The Prosecutor also pleaded that Mr Oneissi and Mr Sabra joined the conspiracy sometime between 22 December 2004 and 14 February 2005.²⁰

14. On 31 July 2013, the Pre-Trial Judge granted another Prosecution motion to amend the indictment, making the indictment filed by the Prosecutor on 21 June 2013 the new operative indictment.²¹ The Prosecutor filed a signed version of the indictment on 2 August 2013.²²

15. The indictment against the four Accused was amended twice more. On 7 March 2014, following the joinder of the case against Mr Hassan Habib Merhi, the Prosecutor submitted a consolidated indictment against all five Accused.²³ The Trial Chamber on 4 April 2014 confirmed this ‘consolidated indictment’ as the operative indictment in the case at trial.²⁴

16. The final operative indictment in this case, the ‘amended consolidated indictment’ dated 12 July 2016, was filed following Mr Badreddine’s presumed death and the termination of the proceedings against him.²⁵ It was against Mr Ayyash, Mr Merhi, Mr Oneissi and Mr Sabra, while Mr Badreddine’s name remained on the charging document as an unindicted alleged co-conspirator. The Trial Chamber confirmed the ‘amended consolidated indictment’ as the operative

¹⁹ Indictment of 6 February 2013, para. 1.

²⁰ Indictment of 6 February 2013, para. 42.

²¹ Pre-Trial Judge decision granting amendment of the indictment; F0959, Public Redacted Version of “Prosecution Further Request for Leave to Amend the Indictment” dated 21 June 2013, 1 July 2013.

²² F1026, Annex B to “Prosecution’s Filing of the Signed Version of the Amended Indictment in Compliance with the Pre-Trial Judge’s Decision of 31 July 2013 & Request for Amended Arrest Warrants and Orders Requests for Transfer and Detention”, Public Redacted Amended Indictment (dated 21 June 2013), 2 August 2013.

²³ F1444, Prosecution Submission of Consolidated Indictment, Witness and Exhibit Lists, 7 March 2014. The joinder of the proceedings against Mr Merhi and consequent amendment of the indictment is further detailed below in sub-section (11) (c) ‘Joinder of Merhi and Ayyash and others cases’.

²⁴ Decision confirming consolidated indictment.

²⁵ F2640, Annex A to “Prosecution Submission of the Consolidated Amended Indictment Pursuant to the Trial Chamber’s Order of 11 July 2016”, Amended Consolidated Indictment, 12 July 2016. The termination of the proceedings against Mr Badreddine and consequent amendment to the indictment is referred to below in sub-section (12) ‘Mustafa Badreddine’s reported death, termination of the proceedings and amending the consolidated indictment’.

indictment on 7 September 2016, and the Prosecution filed the signed amended consolidated indictment on 15 September 2016.²⁶

(b) Defence challenges to the form of the indictment

17. Rule 90 (A) provides that ‘preliminary motions’ challenging jurisdiction or alleging defects in the form of the indictment shall be filed not later than 30 days after the Prosecutor has disclosed all material and statements, meaning ‘copies of the supporting material that accompanied the indictment when confirmation was sought’. These are filed before the Trial Chamber.

18. The Trial Chamber, on 1 February 2012, as is set out below, ordered the trial to proceed *in absentia*,²⁷ and Defence counsel were immediately assigned to represent the four Accused.²⁸

19. Four months later, on 6 June 2012, the Pre-Trial Judge set a deadline of 25 June 2012 for Defence counsel to file, before the Trial Chamber, any preliminary motions alleging defects in the form of the indictment.²⁹ On 25 June 2012, the Badreddine, Oneissi and Sabra Defence filed preliminary motions before the Trial Chamber.³⁰

20. On 22 January 2013, the Pre-Trial Judge dismissed a Sabra Defence motion seeking further particulars in relation to the charges in the indictment, finding that he lacked jurisdiction to deal with the matter due to its timing and its substantive similarity to preliminary motions that were already before the Trial Chamber.³¹

21. On 18 April 2013, the Trial Chamber declared the Defence motions challenging the earlier indictment to be moot, and gave Defence counsel until 3 May 2013 to file new motions.³² On 2 May 2013, the Sabra Defence filed a consolidated motion challenging the indictment.³³ The next

²⁶ Decision amending the consolidated indictment; F2720, Prosecution’s Filing of the Signed Version of the Amended Consolidated Indictment and Request for Modified Arrest Warrants, Orders, and Requests for Transfer and Detention, 15 September 2016.

²⁷ Decision to hold trial *in absentia*.

²⁸ F0113, Assignment of Counsel for the Proceedings Held in Absentia Pursuant to Rule 106 of the Rules, 2 February 2012. On the assignment of Defence counsel, *see* sub-section (5) ‘Assignment of counsel and changes of assignment’.

²⁹ Order setting a time limit for filing of preliminary motion.

³⁰ F0304, Public Redacted Version of Sabra’s Preliminary Motion Challenging the Form of the Indictment, 25 June 2012; F0305, Preliminary Motion Submitted by the Defence for Mr Mustafa Amine Badreddine on the Basis of Rule 90 (A) (ii) of the Rules of Procedure and Evidence, 25 June 2012; F0306, The Defence for Hussein Hassan Oneissi Preliminary Motion on Defects in the Form of the Indictment, 25 June 2012.

³¹ Pre-Trial Judge decision on Sabra Defence request for further particulars on charges in indictment.

³² Order authorising the Defence to file preliminary motions challenging defects.

³³ F0877, Consolidated Motion on Form of Indictment, 2 May 2013.

day, the Badreddine and Oneissi Defence filed similar motions.³⁴ The Trial Chamber dismissed the motions on 12 June 2013, finding that the amended indictment was not defective.³⁵

(c) Challenges to jurisdiction—challenging the Special Tribunal’s legality

22. On 4 May 2012, the Ayyash Defence filed a motion before the Trial Chamber challenging the Special Tribunal’s jurisdiction to hear the case on the basis that it lacked legality.³⁶ A week later, counsel for the other three Accused filed their own motions.³⁷ On 6 June 2012, the Legal Representatives of Victims filed their observations and the Prosecution filed a consolidated response.³⁸ The Trial Chamber held a hearing on the issue on 13 and 14 June 2012.³⁹

23. On 27 July 2012, the Trial Chamber dismissed the motions—finding that the Special Tribunal had been legally established by the United Nations Security Council, that this did not violate the sovereignty of Lebanon and that it had been established by law. In addition, the Trial Chamber found that the Defence motions did not challenge the Tribunal’s jurisdiction—but rather its legality—and therefore were not preliminary motions under Rule 90.⁴⁰ On 23 August 2012, the Trial Chamber granted the Badreddine and Oneissi Defence certification to appeal this decision under Rule 126 (C).⁴¹ The Ayyash Defence did not seek certification to appeal.

³⁴ F0882, *Version Publique Expurgée de l’Exception Préjudicielle Formée Contre l’Acte d’Accusation du 6 Février 2013 par la Défense de M. Oneissi en Vertu de l’Article 90(A)(ii) Déposée le 3 mai 2013*, 25 October 2013; F0883, Dual Preliminary Motion presented by the Badreddine Defence against the “Decision relating to the Prosecution Requests of 8 November 2012 and 6 February 2013 for the Filing of an Indictment and “the Amended Indictment”, 3 May 2013.

³⁵ First decision on the form of the amended indictment.

³⁶ F0222, Motion on Behalf of Salim Ayyash Challenging the Legality of the Special Tribunal for Lebanon, 4 May 2012.

³⁷ F0237, Sabra’s Preliminary Motion Challenging the Jurisdiction of the Special Tribunal for Lebanon, 9 May 2012; F0238, The Corrected Version of the Defence for Mr Hussein Hassan Oneissi’s Motion Challenging the Legality of the Tribunal, 10 May 2012; F0239, *Version corrigée de l’Exception préjudicielle d’incompétence du Tribunal spécial pour le Liban déposée par la Défense de M. Badreddine*, 6 June 2012.

³⁸ F0280, Observations of Legal Representative for Victims on Illegality Motions, 6 June 2012; F0282, Prosecution Consolidated Response to the Defence Preliminary Motions Challenging the Legality of the Special Tribunal for Lebanon, 6 June 2012.

³⁹ Hearing (Rule 90), T. 13 June 2012; Hearing (Rule 90), T. 14 June 2012.

⁴⁰ Decision on the Defence challenges to the jurisdiction and legality of the Tribunal.

⁴¹ Decision certifying for interlocutory appeal the decision on the Special Tribunal’s legality.

24. On 24 August 2012, the Ayyash, Badreddine, and Oneissi Defence appealed the decision.⁴² The Prosecution filed a consolidated response on 14 September 2012.⁴³ On 19 September 2012, the Badreddine Defence replied, and the Legal Representatives of Victims filed their observations.⁴⁴ The Appeals Chamber held a hearing on 1 October 2012.⁴⁵

25. In its decision of 24 October 2012, the Appeals Chamber agreed with the Trial Chamber's finding that the Defence motions did not fall under Rule 90, meaning that interlocutory appeals could not be filed as of right. The Appeals Chamber therefore found the Ayyash Defence's appeal inadmissible for lack of certification to appeal; although finding the other two appeals admissible, it also dismissed the Badreddine Defence and Oneissi Defence's appeals, finding no error on the Trial Chamber's part.⁴⁶

3. Interlocutory decisions on the applicable law

26. In the process of confirming the indictment, the Pre-Trial Judge submitted a number of preliminary questions on applicable law to the Appeals Chamber, under Rule 68 (G).⁴⁷

27. On 21 January 2011, the Pre-Trial Judge submitted 15 preliminary questions to the Appeals Chamber relating to the interpretation of the Statute.⁴⁸ The questions concerned the definitions of terrorism and conspiracy, accomplice liability, and cumulative charging and plurality of offences.

⁴² F0001-AR90.1, Interlocutory Appeal on Behalf of Mr. Ayyash Against the Trial Chamber's "Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal" Dated 30 July 2012, 24 August 2012; F0002-AR90.1, Appellate Brief of the Defence for Mr Badreddine Against the "Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal", 24 August 2012; F0003-AR90.1, Appeal Brief of the Oneissi Defence Against the Trial Chamber Decision Relating to the Defence Challenges to the Jurisdiction and Legality of the Tribunal, 24 August 2012.

⁴³ F0005-AR90.1, Prosecution Consolidated Response to Ayyash, Badreddine and Oneissi Defence Appeals of the Trial Chamber's "Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal", 14 September 2012.

⁴⁴ F0008-AR90.1, Badreddine Defence Reply to "Prosecution Consolidated Response to Ayyash, Badreddine and Oneissi Defence Appeals of the Trial Chamber's 'Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal'", 19 September 2012; F0009-AR90.1, Observations of the Legal Representative of Victims on the Interlocutory Appeal Briefs and Responses to the Trial Chamber's Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal, 19 September 2012.

⁴⁵ Appeals Hearing, T. 1 October 2012.

⁴⁶ Decision on the Defence Appeals against the Trial Chamber jurisdiction.

⁴⁷ Rule 68 (G) provides that the Pre-Trial Judge 'may submit to the Appeals Chamber any preliminary question, on the interpretation of the Agreement, Statute and Rules regarding the applicable law, that he deems necessary in order to examine and rule on the indictment.'

⁴⁸ Pre-Trial Judge 21 January 2011 order on preliminary questions to the Appeals Chamber.

A few weeks later, on 16 February 2011, the Appeals Chamber rendered a lengthy interlocutory decision on the applicable law.⁴⁹

28. On 2 March 2012, the Pre-Trial Judge submitted another preliminary question to the Appeals Chamber to interpret Lebanese law relating to the crime of criminal association, following another application by the Prosecutor to amend the indictment.⁵⁰ The Appeals Chamber determined that the Pre-Trial Judge's question was inadmissible because, in the intervening period, he had rejected the application.⁵¹

29. On 13 June 2012, counsel for each of the four Accused asked the Appeals Chamber to reconsider its interlocutory decision on the applicable law of 16 January 2011.⁵² On 18 July 2012, the Appeals Chamber dismissed the applications, finding that Defence counsel had failed to demonstrate that the interlocutory decision had caused an injustice to the Accused.⁵³

4. Arrest warrants and decision to hold trial *in absentia*

30. The Prosecutor, on 6 May 2011, asked the Pre-Trial Judge, confidentially and *ex parte*, to issue arrest warrants against the four Accused.⁵⁴ The Pre-Trial Judge did so on 28 June 2011, and ordered that the arrest warrants and the redacted indictment not be made public until the indictment could be served on the Accused, or until further notice.⁵⁵

⁴⁹ First interlocutory decision on applicable law. This is analysed in detail in chapter XIII 'Applicable law'.

⁵⁰ Order on preliminary questions concerning the crime of criminal association.

⁵¹ Appeals Chamber decision refusing request to submit preliminary questions on applicable law after confirmation of indictment.

⁵² F0293, Sabra Motion for Reconsideration of Rule 176 *bis* Decision – "International Terrorism", 13 June 2012; F0294, Request for Reconsideration of the Interlocutory Decision of the Applicable Law Rendered by the Appeals Chamber on 16 February 2011, 13 June 2012; F0295, Defence for Salim Jamil Ayyash's Joinder in the Defence for Mustafa Amine Badreddine's "Requête en réexamen de la décision préjudicielle sur le droit applicable rendue par la Chambre d'appel le 16 février 2011", 13 June 2012; F0296, Corrected Version of the "Request by the Oneissi Defence for Reconsideration of the Interlocutory Decision on the Applicable Law of 16 February 2011" Dated 13 June 2012, 21 June 2012.

⁵³ Appeals Chamber decision on Defence requests for reconsideration of first interlocutory decision on applicable law.

⁵⁴ F0004, Combined Motion of the Prosecutor (1) Submission of an Indictment for Confirmation (Rule 68), (2) Motion for Continuation of Pre-Trial Judge's Order Dated 19 January 2011 Pursuant to rule 96(B), and (3) Motions in the Event of Confirmation of the Indictment Pursuant to Rules 74, 77, and 79, 6 May 2011.

⁵⁵ F0013, Warrant to Arrest Mr Salim Jamil Ayyash Including Transfer and Detention Order, 28 June 2011; F0014, Warrant to Arrest Mr Mustafa Amine Badreddine Including Transfer and Detention Order, 28 June 2011; F0015, Warrant to Arrest Mr Hussein Hassan Oneissi Including Transfer and Detention Order, 28 June 2011; F0016, Warrant to Arrest Mr Assad Hassan Sabra Including Transfer and Detention Order, 28 June 2011.

31. On 8 July 2011, on the Prosecutor's application, the Pre-Trial Judge issued international arrest warrants against the four Accused, and again ordered that these arrest warrants and the redacted indictment not be made public before the indictment had been served on the Accused or until further notice.⁵⁶

32. On 16 August 2011, the Pre-Trial Judge lifted the confidentiality of the indictment, the decision confirming the indictment and the arrest warrants of 8 July against the four Accused.⁵⁷

33. On 18 August 2011, the Special Tribunal's President, having found that the Lebanese authorities' unsuccessful attempts to serve the indictment and arrest warrants on the Accused had been reasonable, ordered the 'authorities of Lebanon' to effect alternative means of service on the Accused. They were to take all reasonable steps to notify the public of the indictment and urge the Accused to surrender to the Tribunal's jurisdiction.⁵⁸

34. On 29 August 2011, the Pre-Trial Judge lifted the confidentiality of the international arrest warrants against the Accused.⁵⁹ Advertisements listing the charges against each of the Accused were published in five different newspapers in Lebanon, and the Special Tribunal's President issued a public service announcement informing the Accused of their right to participate in the proceedings.⁶⁰ The advertisement poster can be seen below:









⁵⁶ F0019, International Warrant to Arrest Mr Salim Jamil Ayyash Including Transfer and Detention Order, 8 July 2011; F0020, International Warrant to Arrest Mr Mustafa Amine Badreddine Including Transfer and Detention Order, 8 July 2011; F0021, International Warrant to Arrest Mr Hussein Hassan Oneissi Including Transfer and Detention Order, 8 July 2011; F0022, International Warrant to Arrest Mr Assad Hassan Sabra Including Transfer and Detention Order, 8 July 2011.

⁵⁷ Order on lifting the confidentiality of the Indictment.

⁵⁸ Order pursuant to Rule 76 (E) 18 August 2011.

⁵⁹ Order relating to the lifting of the confidentiality of the international arrest warrants.

⁶⁰ F0148, Registrar's Letter to the Pre-Trial Judge – Objet: Réponse à votre lettre concernant l'application des articles 76bis et 105bis du Règlement, 28 September 2011; F0149, Registrar's Letter to the Pre-Trial Judge of 12 October 2011 re the implementation of Rules 76bis and 105 bis of the Rules of Procedure and Evidence, 12 October 2011.

WARRANTS OF ARREST ISSUED BY THE SPECIAL TRIBUNAL FOR LEBANON	
SALIM JAMIL AYYASH  	FATHER'S / MOTHER'S NAME: Jamil Dakhil AYYASH / Mahasen Issa SALAMEH DATE AND PLACE OF BIRTH: 10 November 1963, Harout, Lebanon CHARGES: Conspiracy aimed at committing a Terrorist Act; Committing a Terrorist Act by means of an explosive device; Intentional Homicide (of Rafik HARIJI) with premeditation by using explosive materials; Intentional Homicide (of 21 persons in addition to the intentional Homicide of Rafik HARIJI) with premeditation by using explosive materials; and Attempted Intentional Homicide (of 231 persons in addition to the intentional Homicide of Rafik HARIJI) with premeditation by using explosive materials.
MUSTAFA AMINE BADREDDINE  	ALSO KNOWN AS: Mustafa Youssef BADREDDINE, Sami ISSA, Elias Fouad SAAB FATHER'S / MOTHER'S NAME: Amine/ Fatima JEZEINI DATE AND PLACE OF BIRTH: 6 April 1961, Al-Ghobeiry, Beirut, Lebanon CHARGES: Conspiracy aimed at committing a Terrorist Act; Committing a Terrorist Act by means of an explosive device; Intentional Homicide (of Rafik HARIJI) with premeditation by using explosive materials; Intentional Homicide (of 21 persons in addition to the intentional Homicide of Rafik HARIJI) with premeditation by using explosive materials; and Attempted Intentional Homicide (of 231 persons in addition to the intentional Homicide of Rafik HARIJI) with premeditation by using explosive materials.
HUSSEIN HASSAN ONEISSI  	FATHER'S / MOTHER'S NAME: Hassan/ Fatima DARWISH DATE AND PLACE OF BIRTH: 11 February 1974, Beirut, Lebanon CHARGES: Conspiracy aimed at committing a Terrorist Act; and Being an Accomplice to the felony of Committing a Terrorist Act by means of an explosive device; Being an Accomplice to the felony of Intentional Homicide (of Rafik HARIJI) with premeditation by using explosive materials; Being an Accomplice to the felony of Intentional Homicide (of 21 persons in addition to the intentional Homicide of Rafik HARIJI) with premeditation by using explosive materials; and Being an Accomplice to the felony of Attempted Intentional Homicide (of 231 persons in addition to the intentional Homicide of Rafik HARIJI) with premeditation by using explosive materials.
ASSAD HASSAN SABRA  	FATHER'S / MOTHER'S NAME: Hassan Tahan SABRA / Leila SALEH DATE AND PLACE OF BIRTH: 15 October 1976, Beirut, Lebanon CHARGES: Conspiracy aimed at committing a Terrorist Act; and Being an Accomplice to the felony of Committing a Terrorist Act by means of an explosive device; Being an Accomplice to the felony of Intentional Homicide (of Rafik HARIJI) with premeditation by using explosive materials; Being an Accomplice to the felony of Intentional Homicide (of 21 persons in addition to the intentional Homicide of Rafik HARIJI) with premeditation by using explosive materials; and Being an Accomplice to the felony of Attempted Intentional Homicide (of 231 persons in addition to the intentional Homicide of Rafik HARIJI) with premeditation by using explosive materials.
IF YOU HAVE ANY INFORMATION CONCERNING THESE INDIVIDUALS, PLEASE CONTACT:	
Lebanese Authorities	Special Tribunal for Lebanon (in Lebanon) +961 71 186176 (24hrs)
	Special Tribunal for Lebanon (in The Netherlands) +31 (0) 70 800 3410 (24hrs)
UPDATED AS OF: 23 August 2011	

35. On 17 October 2011, the Pre-Trial Judge seized the Trial Chamber under Rule 105 *bis* (A), to determine whether to initiate proceedings *in absentia* against the four Accused.⁶¹

36. On 19 October 2011, the Lebanese Prosecutor-General reported to the Special Tribunal's President on the actions taken to serve the indictment and apprehend the Accused.⁶² On 20 October 2011, the Trial Chamber scheduled a hearing for 11 November 2011 and sought submissions from the Prosecution, the Accused and the Defence Office.⁶³

37. On 23 November 2011, after first holding a hearing on 11 November 2011, the Trial Chamber adjourned its consideration of whether the requirements for a trial *in absentia* under Rule 106 had been met, pending the receipt of responses from the Prosecutor-General of Lebanon to ten

⁶¹ Order to seize the Trial Chamber pursuant to Rule 105 *bis* (A).

⁶² F0058, Report of the Prosecutor General before the Court of Cassation of 19 October 2011, 19 October 2011.

⁶³ Scheduling order in respect of Rule 106.

outstanding Prosecution requests for assistance. The Trial Chamber also instructed the Registrar to take the necessary steps to ensure that the four Accused were notified of the Special Tribunal President's public statement to them—made on 11 August 2011 and essentially urging the Accused to submit to the Tribunal's jurisdiction—and of the modes of participation in a trial set out in Rules 104 and 105.⁶⁴

38. The Trial Chamber decided, on 1 February 2012, under Article 22 of the Statute and Rule 106, to proceed to try the four Accused *in absentia*. The Trial Chamber concluded that they were aware of the charges against them and the possibility of participating in the trial, and had absconded or otherwise could not be found.⁶⁵

39. The Trial Chamber's Presiding Judge granted leave to the Badreddine Defence and Oneissi Defence, on 15 May 2012, and then to the Ayyash Defence and Sabra Defence on 22 May 2012, to seek reconsideration of the decision.⁶⁶ On 22 and 24 May 2012, the Badreddine Defence and Oneissi Defence respectively filed motions to reconsider the Trial Chamber's decision to hold a trial *in absentia*.⁶⁷ The Sabra Defence asked the Trial Chamber on 23 May 2012 to stay the decision to hold a trial *in absentia*, which the Ayyash Defence joined on 24 May 2012.⁶⁸ The Trial Chamber dismissed all four motions on 11 July 2012.⁶⁹

40. On 23 August 2012, the Trial Chamber granted applications filed by counsel for the four Accused for certification to appeal the decision of 11 July 2012 under Rule 126 (C).⁷⁰ The Appeals Chamber unanimously dismissed all four appeals on 1 November 2012.⁷¹

⁶⁴ Interim decision under Rule 106.

⁶⁵ Decision to hold trial *in absentia*.

⁶⁶ Decision authorising the Badreddine Defence and the Oneissi Defence to file a request for reconsideration; Decision authorising the Ayyash Defence and the Sabra Defence to file a request for reconsideration.

⁶⁷ F0259, Request of the Defence for Mr Badreddine for Reconsideration of the "Decision to Hold Trial *in Absentia*" Rendered by the Trial Chamber on 1 February 2012, 22 May 2012; F0266, Request by the Oneissi Defence for Reconsideration of the Decision to Hold Trial *In Absentia* of 1 February 2012, 24 May 2012.

⁶⁸ F0263, Sabra Motion for Reconsideration of the Trial Chamber's Order to Hold a Trial in Absentia, 23 May 2012; F0267, Ayyash Motion Joining Sabra Motion for Reconsideration of the Trial Chamber's Order to Hold a Trial in Absentia, 24 May 2012.

⁶⁹ Decision on reconsideration of trial *in absentia*.

⁷⁰ Decision certifying for appeal 23 August 2012.

⁷¹ Decision on Defence appeals against reconsideration of trial *in absentia* decision.

5. Assignment of counsel and changes of assignment

41. On 25 October 2011, the Head of Defence Office assigned duty counsel and co-counsel, respectively, to represent the interests of the four Accused. The counsel were: Mr Eugene O'Sullivan and Mr Émile Aoun for Mr Ayyash; Mr Antoine Korkmaz and Mr John Jones for Mr Badreddine; Mr Vincent Courcelle-Labrousse and Mr Yasser Hassan for Mr Oneissi; and Mr David Young and Mr Guénaél Mettraux for Mr Sabra.⁷²

42. The legal basis for an assignment to represent the four Accused was unclear to the Trial Chamber as this was done before the Trial Chamber had made its decision to proceed to trial *in absentia*. The Trial Chamber, on 27 October 2011, asked the Head of Defence Office to clarify his legal basis for doing this.⁷³

43. The following day, the Head of Defence Office submitted that he had made the assignments under Rules 57 (D) (ii) and (iii), to represent the rights of the Accused before the Trial Chamber on the question of the trial *in absentia*. The Head of Defence Office also requested the Trial Chamber's authorisation for duty counsel to make written and oral submissions before it.⁷⁴

44. On 2 November 2011, the Trial Chamber found that the requirements of Rules 57 (D) (ii) and (iii) had not been met at that stage, as a decision had not yet been made to initiate proceedings *in absentia*. Specifically, as there had been no agreement from the Accused to appoint the duty counsel, the Head of Defence Office's competence extended only to identifying suitable counsel. The Trial Chamber, however, authorised these counsel to participate in the proceedings on behalf of the Defence Office, representing the rights of all of the Accused.⁷⁵

45. On 2 February 2012, following the Trial Chamber's decision to try the Accused *in absentia*, the Head of Defence Office appointed these eight counsel to represent the four Accused.⁷⁶

⁷² F0057, Assignment of Duty Counsel Pursuant to Rule 57 (B) (ii) and (iii) of the Rules of Procedure and Evidence, 25 October 2011.

⁷³ Order for clarification from Defence Office.

⁷⁴ F0060, Response to the Trial Chamber's Order of 27 October 2011, 28 October 2011.

⁷⁵ Decision on assignment of duty counsel.

⁷⁶ F0113, Assignment of Counsel for the Proceedings Held *in Absentia* Pursuant to Rule 106 of the Rules, 2 February 2012.

46. On 31 December 2013, the Head of Defence Office—considering it to be in the interest of justice given the nature and complexity of the proceedings—assigned a second co-counsel for the four Accused. They were Mr Thomas Hannis for Mr Ayyash, Mr Geoffrey Roberts for Mr Sabra, Mr Philippe Larochelle for Mr Oneissi, and Mr Iain Edwards for Mr Badreddine.⁷⁷

47. At this point therefore, the Head of Defence Office had appointed twelve male Defence counsel to represent the four Accused facing trial. In the Merhi case, he had just appointed one female co-counsel—out of three counsel—to represent Mr Merhi. Thus, at the commencement of the trial, fourteen of the fifteen assigned Defence counsel were men. Moreover, two of the three Legal Representatives of Victims were male, and the two lead Prosecution senior trial counsel were also men. Thus, the gender balance in the legal representation, comprising the twenty counsel appearing before the Trial Chamber—and in February 2014, it is emphasised—was of 18 men and two women.

48. During the trial some changes occurred to the composition of Defence counsel representing the four, and then five, and then four Accused.

49. On 16 September 2015, after consulting the Trial Chamber, the Head of Defence Office withdrew Mr John Jones' appointment as co-counsel for Mr Badreddine, and on 21 September 2015 assigned Ms Mylène Dimitri as Mr Badreddine's second co-counsel.⁷⁸

50. As of 1 March 2016, after consulting the Trial Chamber, the Head of Defence Office withdrew Mr Philippe Larochelle's assignment as second co-counsel for Mr Oneissi, and appointed Ms Natalie von Wistinghausen in his place.⁷⁹

51. Effective 1 June 2016, after consulting with the Trial Chamber, the Head of Defence Office withdrew Mr Eugene O'Sullivan's appointment as lead counsel for Mr Ayyash, and assigned Mr

⁷⁷ F1290, Assignment of a Second Co-Counsel, 31 December 2013; F1291, Assignment of a Second Co-Counsel, 31 December 2013; F1292, Assignment of a Second Co-Counsel, 31 December 2013; F1293, Assignment of a Second Co-Counsel, 31 December 2013.

⁷⁸ F2200, Withdrawal of the Assignment of Co-counsel, Mr John Jones QC, Pursuant to Article 34 (A) of the Directive on the Appointment and Assignment of Defence Counsel, 16 September 2015; F2210, Assignment of Ms Mylène Dimitri as Second Co-counsel to the Defence Team of Mr Mustafa Amine Badreddine, 21 September 2015.

⁷⁹ F2423, Withdrawal of the Assignment of Second Co-counsel, Mr Philippe Larochelle, Pursuant to Article 34 (A) of the Directive on the Appointment and Assignment of Defence Counsel, 28 January 2016; F2424, Assignment of Ms Natalie Von Wistinghausen as Second Co-counsel of the Defence Team for Mr Hussein Hassan Oneissi, 28 January 2016.

Emile Aoun in his place.⁸⁰ He appointed Mr Chad Mair as second co-counsel for Mr Ayyash, as of 10 June 2016.⁸¹

52. On 12 July 2016, the Head of Defence Office terminated the mandates of Mr Antoine Korkmaz, Mr Iain Edwards and Ms Mylène Dimitri as counsel for Mr Badreddine, following the Trial Chamber's termination of the proceedings against Mr Badreddine after the Appeals Chamber determined that he was deceased.⁸²

53. As of 3 February 2017, after consulting with the Trial Chamber, the Head of Defence Office withdrew Mr Guénaél Mettraux's assignment as co-counsel for Mr Sabra.⁸³ He assigned Ms Sarah Bafadhel as second co-counsel for Mr Sabra on 22 May 2017.⁸⁴

54. The assignment of co-counsel for Mr Merhi also changed; this is dealt with below.

6. Convening of the Trial Chamber and changes to the bench

55. The Special Tribunal's President convened the Trial Chamber on 8 September 2011. The Trial Chamber was composed of Judge Robert Roth as its Presiding Judge, Judge Micheline Braidy, and Judge David Re, with Judges Janet Nosworthy and Walid Akoum as alternate judges.⁸⁵

⁸⁰ F2602, Withdrawal of the Assignment of Mr Eugene O'Sullivan, Lead Counsel for the Defence of Mr Salim Jamil Ayyash, pursuant to Article 34 (A) of the Directive on the Appointment and Assignment of Defence Counsel, 26 May 2016; F2604, Notice of Appointment of Émile Aoun as Lead Counsel of the Defence Team for Salim Jamil Ayyash, 26 May 2016.

⁸¹ F2603, Assignment of Mr Chad Mair as Second Co-counsel of the Defence Team for Mr Salim Jamil Ayyash, 26 May 2016.

⁸² F2655, Corrected Version of the "Notice of the Termination of Assignment of Mr Antoine Korkmaz, Mr Iain Edwards and Ms Mylène Dimitri, Lead Counsel and Co-Counsel respectively of the Defence team for Mr Mustafa Amine Badreddine" dated 15 July 2016, 18 July 2016; Interlocutory appeal decision on the death of Mr Badreddine and termination of proceedings; Order terminating proceedings against Mr Badreddine without prejudice and ordering the filing of an amended consolidated indictment.

⁸³ F2971, Withdrawal of the Assignment of Mr Guénaél Mettraux, Co-counsel for the Defence team for Mr Assad Hassan Sabra, pursuant to Article 34 (A) of the Directive on the Appointment and Assignment of Defence Counsel, 3 February 2017.

⁸⁴ F3153, Assignment of Ms Sarah Bafadhel as Second Co-counsel in the Defence Team for Mr Assad Hassan Sabra, 22 May 2017.

⁸⁵ Order on composition of the Trial Chamber 8 September 2011. The order may not have been necessary, given that the Statute provides for a trial chamber composed of three judges, to which two alternate judges may be assigned to a trial, upon the request of the Presiding Judge. The order does not mention any consultation with the Presiding Judge on this, thus it appeared to breach the clear terms of Article 8 (3) which provides, 'At the request of the presiding judge of the Trial Chamber, the President of the Special Tribunal may, in the interest of justice, assign the alternate judges to be present at each stage of the trial and to replace a judge if that judge is unable to continue sitting'.

56. On 9 September 2013, Judge Roth resigned. The next day, following a joint letter from the remaining judges, the Special Tribunal's President assigned Judge Nosworthy to replace Judge Roth as a Trial Chamber Judge.⁸⁶ Judge Re was elected as Presiding Judge on 10 September 2013, and subsequently re-elected in March 2015, September 2016, March 2018 and September 2019.

57. On 15 January 2014, the Special Tribunal's President assigned the newly appointed international alternate judge, Judge Nicola Lettieri, to the trial.⁸⁷

7. The pre-trial phase before the Pre-Trial Judge: meetings and conferences, disclosure, pre-trial briefs, and witness and exhibit lists

58. The lengthy indictment and pre-trial phase extended from 11 January 2011 until 25 October 2013. Rule 91 (A) requires the Pre-Trial Judge, at the beginning of the pre-trial proceedings, to establish a 'working plan' with specified dates and obligations. These include the filing of Prosecution and Defence pre-trial briefs, and Prosecution and participating victims' witness and exhibit lists.

(a) Pre-trial status conferences before the Pre-Trial Judge

59. The Pre-Trial Judge held nine status conferences with the Parties in the pre-trial phase. These were on 12 April, 12 June, 26 July, 28 September, 27 November 2012, and 30 January, 10 April, 3 July and 11 September 2013.⁸⁸

60. He also held six working meetings with the Parties and Legal Representatives of Victims: on 5 July, 5 September, 30 October and 19 December 2012, and 5 March and 23 May 2013.⁸⁹

⁸⁶ Order on composition of the Trial Chamber 10 September 2013.

⁸⁷ Order on composition of the Trial Chamber 15 January 2014.

⁸⁸ Order convening status conference on 12 April 2012; Order convening status conference on 12 June 2012; Order convening status conference on 26 July 2012; Order convening status conference on 28 September 2012; Order convening status conference on 27 November 2012; Order convening status conference on 30 January 2013; Order convening status conference on 10 April 2013; Memorandum delaying status conference; Order convening status conference on 3 July 2013; Order convening status conference on 11 September 2013; Status conference, T. 12 April 2012 (partly closed session); Status conference, T. 12 June 2012 (closed session); Status conference, T. 26 July 2012 (closed session); Status conference, T. 28 September 2012 (partly closed session); Status conference, T. 27 November 2012 (closed session); Status conference, T. 30 January 2013; Status conference, T. 10 April 2013 (partly closed session); Status conference, T. 3 July 2013 (partly closed session); Status conference, T. 11 September 2013 (partly closed session).

⁸⁹ Memorandum organising periodic working meetings; Memorandum organising working meeting on 5 September 2012; Memorandum convening working meeting on 30 October 2012; Memorandum convening working meeting on 19 December 2012; Memorandum convening working meeting on 5 March 2013; Memorandum convening working

(b) Prosecution exhibit and witness lists and pre-trial brief

61. On 28 August 2012, the Pre-Trial Judge ordered the Prosecution to file its witness and exhibit lists, and its pre-trial brief by 15 November 2012.⁹⁰

62. On 25 October 2012, the Pre-Trial Judge, after consulting with the Parties, established a working plan under Rule 91 (A).⁹¹ He ordered the Prosecution, among other things, to file its pre-trial brief, and witness and exhibit lists by 15 November 2012, and to file periodic disclosure reports, and to complete disclosure by 30 November 2012.⁹² He also ordered the Legal Representatives of Victims to file lists of witnesses and exhibits by 17 December 2012, and the Defence to file pre-trial briefs by 9 January 2013.⁹³

63. On 15 November 2012, the Prosecution submitted its pre-trial brief, and its witness and exhibit lists.⁹⁴

64. On 13 December 2012, the Legal Representatives of Victims filed lists of witnesses and exhibits that they wished the Trial Chamber to call or admit into evidence on their behalf.⁹⁵

65. The Sabra Defence filed its pre-trial brief on 8 January 2013,⁹⁶ followed the next day by the Ayyash, Badreddine, and Oneissi Defence.⁹⁷

meeting on 23 May 2013; Rule 91 (D) and (E) meeting, T. 5 July 2012 (closed session); Rule 91 (D) and (E) meeting, T. 5 September 2012 (closed session); Rule 91 (D) and (E) meeting, T. 30 October 2012 (closed session); Rule 91 (D) and (E) meeting, T. 19 December 2012 (closed session); Rule 91 (D) and (E) meeting, T. 5 March 2013 (closed session); Rule 91 meeting, T. 23 May 2013 (closed session).

⁹⁰ Order setting a date for filing the Prosecution's Pre-Trial Brief.

⁹¹ Order on a working plan and on the joint Defence motion regarding trial preparation.

⁹² Order on a working plan and on the joint Defence motion regarding trial preparation, pp 15-16. The Prosecutor submitted a total of eight disclosure reports: F0553, Prosecution's Disclosure Report, 23 November 2012; F0603, Prosecution's Second Disclosure Report, 17 December 2012; F0683, Prosecution's Disclosure Report, 28 January 2013; F0759, Redacted Version of the Prosecution's Disclosure Report, Filed 1 March 2013, 4 March 2013; F0838, Prosecution's Disclosure Report, 8 April 2013; F0902, Prosecution's Disclosure Report, 21 May 2013; F0975, Prosecution's Disclosure Report, 1 July 2013; F1098, Prosecution's Disclosure Report, 9 September 2013.

⁹³ Order on a working plan and on the joint Defence motion regarding trial preparation, p. 15.

⁹⁴ F0534, Prosecution's Submission Pursuant to Rule 91, 15 November 2012.

⁹⁵ F0597, List of Witnesses and Exhibits Filed on Behalf of the Participating Victims with Confidential and *Ex Parte* Annexes, 13 December 2012. The presentation of the 'Victims' case' is further considered in chapter V 'Participation of Victims', (E) 'The victims' case'.

⁹⁶ F0632, *Sabra* Pre-Trial Brief – Public Redacted, 9 January 2013.

⁹⁷ F0634, Public Redacted Version of: Ayyash Defence Pre-Trial Brief, 17 January 2013; F0636, Pre-Trial Brief Submitted by the Defence for Mr Mustafa Amine Badreddine Pursuant to Rule 91(I), 9 January 2013; F0637, *Version Publique Expurgée de la Version Corrigée du Mémoire d'Avant Procès pour la Défense de M. Hussein Hassan Oneissi Déposé le 9 Janvier 2013*, 20 February 2013.

66. On 27 February 2013, the Pre-Trial Judge granted a Prosecution motion to amend its witness and exhibit lists, authorised disclosures relating to this, and ordered that it file updated witness and exhibit lists within two working days.⁹⁸ On 1 March 2013, the Prosecution filed an amended witness list, containing 587 witnesses.⁹⁹ On 19 March 2013, the Pre-Trial Judge granted the Prosecution's application to extend the deadline to disclose the material concerned, and authorised the Prosecution to file its updated exhibit list in instalments by 15 April 2013.¹⁰⁰

67. On 21 March 2013, the Pre-Trial Judge granted a Prosecution application to extend the time to disclose some witness statements and to redact certain statements.¹⁰¹

68. The Prosecution filed instalments of its additions to its exhibit list on 15 March, and 11 and 15 April 2013, in total adding 1,351 exhibits to the list.¹⁰²

69. On 24 May 2013, the Pre-Trial Judge partly allowed a Sabra Defence application for disclosure relating to the Prosecution's expert witnesses.¹⁰³

70. On 31 May 2013, the Prosecution filed a consolidated updated witness list containing 587 witnesses and a consolidated updated exhibit list containing 14,737 exhibits.¹⁰⁴

71. On 10 June 2013, the Pre-Trial Judge ordered the Prosecution to inform the Defence of the links between the witnesses on its witness list and the exhibits on its exhibit list.¹⁰⁵ On 18 June 2013, the Pre-Trial Judge made orders on the modalities in which the Prosecution would give Defence counsel access to certain material in electronic format, notably call data records.¹⁰⁶

72. On 5 July 2013, following a Prosecution application for the Pre-Trial Judge to order the Defence to file new pre-trial briefs complying with Rule 91 (I), the Pre-Trial Judge ordered the Prosecution to file an updated pre-trial brief and updated witness and exhibit lists by 15 July 2013;

⁹⁸ Pre-Trial Judge decision granting 21 December 2012 Prosecution request to amend its witness and exhibit lists.

⁹⁹ F0758, Redacted Version of Prosecution Request to File Updated Exhibit List and Notice on Disclosure, 8 March 2013.

¹⁰⁰ Pre-Trial Judge decision authorising Prosecution to amend its exhibit list.

¹⁰¹ Pre-Trial Judge decision on Prosecution motion regarding disclosure of statements.

¹⁰² F0802, Prosecution Request to Amend Exhibit List Forensics, 15 March 2013; F0846, Notice of Amendment to Exhibit List (Pattern Evidence), 11 April 2013; F0856, Final Notice of Amendment to Exhibit List, 15 April 2013; F0856, Corrigendum to Final Notice of Amendment to Exhibit List, 31 May 2013.

¹⁰³ Pre-Trial Judge decision granting in part Sabra Defence seventh disclosure motion.

¹⁰⁴ F0939, Prosecution Submission of Consolidated and Updated Rule 91 Exhibit and Witness Lists, 31 May 2013.

¹⁰⁵ Pre-Trial Judge order on links between exhibits and witnesses.

¹⁰⁶ Pre-Trial Judge decision on Defence inspection of evidentiary material.

the Defence to file updated pre-trial briefs by 15 August 2013, and invited the Legal Representatives of Victims to file updated witness and exhibit lists by 19 July 2013.¹⁰⁷

73. The Prosecution filed its lists on 15 July 2013, containing 590 witnesses and 8,293 exhibits.¹⁰⁸ On 11 July 2013, the Legal Representatives of Victims informed the Pre-Trial Judge that they did not wish to update their witness and exhibit lists.¹⁰⁹

74. On 25 July 2013 and 5 August 2013, the Pre-Trial Judge granted Prosecution applications to amend its witness and exhibit lists.¹¹⁰

75. On 7 August 2013, on a Defence application, the Pre-Trial Judge set new deadlines, ordering the Prosecution to file an updated pre-trial brief and updated witness and exhibit lists by 19 August 2013. He also invited the Legal Representatives of Victims to file updated witness and exhibit lists by 23 August 2013, and ordered the Defence to file updated pre-trial briefs by 2 September 2013.¹¹¹

76. On 16 August 2013, the Pre-Trial Judge granted Prosecution's motion, to file amended or revised material supporting the confirmed indictment. He extended the deadlines for filing the Prosecution's updated pre-trial brief, witness list and exhibit list—to 23 August 2013—the Legal Representatives of Victims' updated lists of witnesses and exhibits—to 29 August 2013—and the Defence updated pre-trial briefs—to 6 September 2013.¹¹²

77. The Prosecution filed its updated pre-trial brief on 23 August 2013.¹¹³ On 29 August 2013, the Legal Representatives of Victims filed updated witness and exhibit lists, containing 60

¹⁰⁷ Decision on "Prosecution Motion Regarding the Defence Pre-Trial Briefs".

¹⁰⁸ F0999, Redacted Version of Prosecution's Submission Pursuant to Rule 91, Filed on 15 July 2013, 7 August 2013.

¹⁰⁹ F0993, Notice of the Legal Representative of Victims as Regards the Decision of the Pre-Trial Judge on "Prosecution Motion Regarding the Defence Pre-Trial Briefs", 11 July 2013.

¹¹⁰ Pre-Trial Judge decision authorising Prosecution to withdraw exhibits from its exhibit list; Decision on two Prosecution submissions to amend Rule 91 filings.

¹¹¹ Pre-Trial Judge decision on extension of deadlines for pre-trial briefs and witness and exhibit lists 7 August 2013.

¹¹² Pre-Trial Judge decision extending deadlines for pre-trial briefs and witness and exhibit lists.

¹¹³ F1077, Redacted Version of the Prosecution's Updated Pre-Trial Brief, Dated 23 August 2013, 31 October 2013.

witnesses and 373 exhibits, respectively.¹¹⁴ The Sabra Defence filed its updated brief on 5 September 2013, and the remaining updated Defence briefs were filed the following day.¹¹⁵

78. On 18 September 2013, the Pre-Trial Judge granted a Prosecution application to amend its witness and exhibit lists, accepting the filing of the updated witness and exhibit lists attached to the Prosecution's motion of 19 August 2013, containing 532 witnesses and 8,642 exhibits.¹¹⁶

79. On 18 October 2013, the Pre-Trial Judge allowed the Prosecution to amend its witness and exhibit lists, but deferred determination in relation to one exhibit. He also accepted the updated witness and exhibit lists attached to the Prosecution motion of 10 September 2013 (containing 540 witnesses and 8,478 exhibits, respectively), save for the deferred exhibit, and ordered the Prosecution to file submissions regarding time estimates for the proposed witnesses.¹¹⁷ On 23 October 2013, the Prosecution filed a witness list containing these estimates.¹¹⁸

80. On 24 October 2013, the Pre-Trial Judge rejected a Prosecution motion claiming that the Defence pre-trial briefs did not conform to the Rules, and that two included improper arguments.¹¹⁹

(c) Disclosure issues

81. The Prosecution has statutory obligations under the Rules to disclose categories of material to the Defence. Some material is exempt from disclosure. During the pre-trial proceedings and the trial, Defence counsel sought relief from both the Pre-Trial Judge and the Trial Chamber for alleged Prosecution disclosure violations. These issues were far from resolved when the Trial Chamber received jurisdiction to try the case on 25 October 2013. The issue of Lebanon's failure to provide material to the Defence is dealt with separately below.

¹¹⁴ F1083, Amended and Updated Lists of Witnesses and Exhibits of the Legal Representative of Victims, 29 August 2013.

¹¹⁵ F1092, Public Redacted Version of "Updated Sabra Pre-Trial Brief", 29 October 2013; F1094, Updated Defence Pre-Trial Brief on Behalf of Mr Ayyash, 6 September 2013; F1095, *Version publique expurgée du second Mémoire d'avant procès pour la Défense de M. Hussein Hassan Oneissi déposé le 6 septembre 2013*, 25 October 2013; F1096, Public Redacted Version of the "Updated Pre-Trial Brief Submitted by the Defence for Mr Mustafa Badreddine Pursuant to Rule 91(I)", 10 September 2013.

¹¹⁶ Pre-Trial Judge decision granting Prosecution request to amend its witness and exhibit lists and late disclosure; F1068, Prosecution Submission Pursuant to Rule 91(G)(ii) and (iii), 19 August 2013.

¹¹⁷ Pre-Trial Judge decision granting in part Prosecution motion to amend its witness and exhibit lists; F1102, Prosecution Submission Pursuant to Rules 91(G)(ii) and (iii), 10 September 2013.

¹¹⁸ F1173, Prosecution Submission Pursuant to Rule 91(G)(ii)(f), 23 October 2013.

¹¹⁹ Pre-Trial Judge decision denying Prosecution challenges to Defence pre-trial briefs.

82. On 8 November 2012, the Pre-Trial Judge ruled on six disclosure motions filed by the Sabra Defence, seeking relief for alleged non-disclosure of material, granting the first four in part and dismissing the other two.¹²⁰

83. On 15 November 2012, he dismissed a Defence motion seeking to prevent him from accessing material disclosed by the Prosecution with its pre-trial brief pursuant to the Pre-Trial Judge's order of 25 October 2012.¹²¹ He subsequently dismissed Defence applications to certify for appeal this decision and his decision of 25 October 2012 regarding the working plan.¹²²

84. On 30 November 2012, the Pre-Trial Judge granted a Prosecution application to suspend its disclosure obligations in respect of some materials.¹²³

85. On 17 December 2012, the Pre-Trial Judge partly granted a Prosecution application to extend some deadlines in the working plan regarding disclosure.¹²⁴

86. On 21 December 2012, the Pre-Trial Judge granted in part an outstanding aspect of an earlier Sabra Defence motion for disclosure, on which he had already partly ruled on 8 November 2012.¹²⁵ That same day, he granted three Prosecution applications for extensions of deadlines applicable to its disclosure obligations pursuant to the working plan.¹²⁶

87. On 25 January and 8 February 2013, the Pre-Trial Judge granted a further extension of time for the Prosecution to comply with its disclosure obligations in relation to certain material.¹²⁷

88. On 14 August 2013, the Pre-Trial Judge rejected two further Sabra Defence motions for disclosure, and subsequently certified the decision for appeal.¹²⁸

¹²⁰ Pre-Trial Judge decision on Sabra Defence disclosure motions.

¹²¹ Pre-Trial Judge decision on his access to disclosed material.

¹²² Pre-Trial Judge decision denying certification of decisions on his access to disclosed materials and on the working plan.

¹²³ Order publicising Pre-Trial Judge decision on suspension of Prosecution disclosure obligations.

¹²⁴ Pre-Trial Judge decision on extending working plan deadlines 19 December 2012.

¹²⁵ Pre-Trial Judge decision on Sabra Defence fourth disclosure motion.

¹²⁶ Pre-Trial Judge decision extending disclosure timelines.

¹²⁷ Pre-Trial Judge decision extending timelines for disclosure of expert reports; Pre-Trial Judge decision on extending disclosure deadlines 8 February 2013.

¹²⁸ Pre-Trial Judge decision denying Sabra Defence motion for disclosure of potentially exculpatory material; Pre-Trial Judge decision granting certification of decision denying Sabra Defence motion for disclosure of potentially exculpatory material.

89. On 27 September 2013, the Pre-Trial Judge rejected a Sabra Defence motion concerning the effectiveness of the Prosecution's compliance with its disclosure obligations.¹²⁹

(d) Agreements as to evidence

90. Under Rule 122 'Agreements as to Evidence', the Prosecutor and Defence may agree that an alleged fact is not contested. A Chamber may accept the alleged fact as being proved unless it is not in the interests of justice to do so.

i. Before the Pre-Trial Judge

91. On 24 December 2012, the Pre-Trial Judge set out the process by which the Parties and Legal Representatives of Victims should work to reach agreements on facts that may not be contested at trial.¹³⁰

92. On 19 March 2013, the Prosecutor filed a notice under Rule 122 setting out that the Defence of the four Accused had agreed not to contest nine uncontroversial facts. These included Mr Hariri's date of birth, and the dates of his terms as Prime Minister in Lebanon, the location of the Lebanese Parliament, and that the explosion killed and injured those named in the indictment.¹³¹

ii. Before the Trial Chamber

93. The Trial Chamber recorded the agreement of the Prosecutor and the Ayyash, Badreddine, Oneissi and Sabra Defence as to these nine uncontested facts, on 2 April 2014, and between the Prosecutor and the Merhi Defence on 11 April 2014.¹³²

94. On 16 September and on 6 October 2016 the Trial Chamber recorded, respectively, 18 facts as agreements as to evidence, between the Prosecutor and the Sabra Defence, and seven between the Prosecutor and Merhi Defence, on facts extracted from UNIIC reports.¹³³ On 12 December

¹²⁹ Pre-Trial Judge decision on Prosecution disclosure obligations.

¹³⁰ Pre-Trial Judge order on narrowing contested issues.

¹³¹ F0813, Prosecution's Notice on the Implementation of the Pre-Trial Judge's "Order Regarding Narrowing Issues Contested at Trial", 19 March 2013.

¹³² First decision on agreed facts; Second decision on agreed facts (Merhi).

¹³³ First decision on agreed facts in UNIIC reports (Sabra); Second decision on agreed facts in UNIIC reports (Merhi).

2017, it recorded agreements as to evidence between the Prosecutor and Ayyash and Sabra Defence, on 172 facts arising from the case of the participating victims.¹³⁴

95. During the trial, on 7 September 2016, and under Rule 36 (A) the Presiding Judge, after consultation with the Trial Chamber, designated himself as the Judge Rapporteur for reaching agreement between legal and factual matters in dispute between the Parties, including trial scheduling.¹³⁵

(e) Decision on working languages in the case

96. On 16 September 2011, after seeking submissions from the Prosecution, Defence Office and Registry, the Pre-Trial Judge set the working languages in the case under Rule 10 (B). All three of the Tribunal's official languages—Arabic, English and French—could be used in oral proceedings, alongside an accused's own language. Written submissions would be in English or French, or in Arabic if filed by an unrepresented accused. Arabic written submissions would be translated into English; other types of translation would have to be authorised first. Persons other than counsel could file submissions in any language if authorised; these would be translated into English only, unless other translations were authorised. The Pre-Trial Judge also set out the filing languages and translation requirements for pre-trial briefs, witness lists and other material governed by Rule 91, and for the disclosure of materials.¹³⁶

97. The Pre-Trial Judge also stated that it would be advisable for the real time transcript of hearings to be provided in English, with French and Arabic versions being made available within a reasonable time after each hearing.¹³⁷ The Trial Chamber twice modified this decision, as is set out below.

¹³⁴ Decision on agreed facts (participating victims) (Ayyash and Sabra).

¹³⁵ Order designating Judge Rapporteur for legal and factual disputes.

¹³⁶ Pre-Trial Judge decision on languages.

¹³⁷ Pre-Trial Judge decision on languages, p. 19.

8. Other pre-trial matters and submission of the case file to the Trial Chamber

98. During the pre-trial phase, the Pre-Trial Judge referred a number of matters to the Trial Chamber for determination under Rule 89 (E),¹³⁸ before the Trial Chamber became formally seized of the case. For example, the Trial Chamber dealt with a Defence application to strike part of the Prosecution's pre-trial brief, Prosecution notices regarding its proposed expert witnesses, and issues concerning the admissibility impact of proposed written statements' non-compliance with formal requirements under Rule 155.¹³⁹

99. On 25 May 2012, the Trial Chamber also directed the Parties to file within 24 hours—rather than the 14 days provided for in the Rules—any responses to motions seeking to vary time or word limits for filings.¹⁴⁰ This innovation was intended to establish a practice that would expedite the resolution of potentially uncontentious procedural issues.

100. On 12 August 2013, and with a view to expediting proceedings—as he could not comply with the requirements of Rule 95 (A) on the transfer of the case file to the Trial Chamber as of that time—the Pre-Trial Judge transferred to the Trial Chamber part of the case file, namely the approximately 8,250 exhibits filed by the Prosecution under Rule 91.¹⁴¹

101. On 25 October 2013, the Pre-Trial Judge submitted the full case file to the Trial Chamber, as set out in Rule 95 (A), consisting of filings, evidence and other materials relevant to the case, together with a report.¹⁴²

102. Under Rule 95 (B), the Trial Chamber was formally seized of the case on receipt of the case file. This included 12 unresolved motions which had been filed before the Pre-Trial Judge but

¹³⁸ Rule 89 (E) provides that, 'The Pre-Trial Judge shall keep the Trial Chamber informed of all relevant matters. The Pre-Trial Judge may, before the Trial Chamber is seized of the case, refer any matter to the Trial Chamber for adjudication.'

¹³⁹ Pre-Trial Judge referring Badreddine Defence challenges to Prosecution pre-trial brief to Trial Chamber; Pre-Trial Judge referring Sabra Defence request relating to expert witness notices to Trial Chamber; Pre-Trial Judge referring Prosecution Rule 155 motion to Trial Chamber; Decision dismissing Defence challenge to Prosecution pre-trial brief; Decision on expert witnesses notices; Decision dismissing Prosecution request for clarification; Order for submissions on witness statement non-compliance with formal requirements; Rule 155 compliance decision.

¹⁴⁰ Direction shortening time to respond to requests to vary word or time limits.

¹⁴¹ Order on partial transfer of case file to Trial Chamber; *see also* Pre-Trial Judge decision regarding implementation of partial transfer of case file to Trial Chamber.

¹⁴² Pre-Trial Judge Rule 95 (A) transfer of case file to Trial Chamber.

remained outstanding at that time.¹⁴³ For example, the Trial Chamber was seised of a Sabra Defence motion requesting a stay of the proceedings because the Lebanese Government had not provided material necessary for preparing Mr Sabra's defence, as detailed below.

103. In the 12 weeks between the transfer of the case to the Trial Chamber on Friday 25 October 2013, and the commencement of trial on Thursday 16 January 2014, explained in detail below, the Trial Chamber dealt with these outstanding motions referred with the case transfer. These included:

- granting a Prosecution application for redactions under Rule 116;¹⁴⁴
- granting a Prosecution application to add an exhibit to its exhibit list and to redact it;
- a ruling—on remand to the Pre-Trial Judge from the Appeals Chamber—on the scope of the telecommunications data held by the Prosecution that it must provide to the Defence; and
- an application by the Sabra Defence regarding redacted Prosecution disclosure.¹⁴⁵

104. The most substantial matter left unresolved in the pre-trial phase before the Pre-Trial Judge was the Sabra Defence's motion for a stay of the proceedings until the Lebanese authorities responded to its requests for assistance and provided it with the material sought. This is dealt with in more detail in a separate section below which explains how it took more than four years to resolve the issue.

105. In total, between being seised of the case on 25 October 2013 and the start of the trial on 16 January 2014, the Trial Chamber issued 27 written decisions and orders.

¹⁴³ Pre-Trial Judge Rule 95 (A) transfer of case file to Trial Chamber, paras 3-4, annexes D-F. Redacted versions of two of the motions listed in Annex F were also listed in Annex D. The redacted version of one motion listed in Annex D was contained in the same list as the un-redacted version.

¹⁴⁴ Rule 116 allows the Prosecutor not to disclose, with the Trial Chamber's authorisation, material that should ordinarily be disclosed to the Defence, because disclosure may prejudice ongoing investigations, pose a grave security risk to a witness or family member, or is contrary to the public interest or the rights of third parties. Proposed counter-balancing measures are required.

¹⁴⁵ Decision authorising the redaction of three witness statements; Decision granting Prosecution motion to amend exhibit list; Decision on access to call data records and disclosure of results of agreed searches; Order to Prosecution to provide documents to Trial Chamber for review of internal work product categorisation and disclosure.

106. During this pre-trial phase, the Trial Chamber also held pre-trial conferences, under Rule 127, on 29 October and 2 December 2013, and on 9 January 2014.¹⁴⁶ During these hearings, it made 13 oral orders in court, for example on the modes of witness questioning, the modes of victim participation and the filing of replies to responses.¹⁴⁷

107. As a procedural innovation, the Trial Chamber, on 2 December 2013, made a general order in relation to filing replies to responses to the motions filed by the Parties. Rule 8 requires leave of a chamber before doing so. The Trial Chamber in this general order allowed the Parties—without seeking the Trial Chamber’s leave—to file a reply to any response to a motion within five days, on condition that ‘a reply must generally be limited to circumstances where new issues arise out of the respondent’s brief.’¹⁴⁸ This effectively eliminated wasteful procedural litigation over whether a Party could reply to a response to its own motion, and avoided repetition of submissions or arguments already made.

9. The commencement of trial and opening statements

108. On 19 July 2012, acting under Rule 91 (C),¹⁴⁹ the Pre-Trial Judge set 25 March 2013 as the tentative commencement date of the trial.¹⁵⁰ On the Parties’ motion, on 21 February 2013 he postponed the start of the trial, without setting a new date.¹⁵¹ On 2 August 2013, he set another tentative trial commencement date as Monday 13 January 2014.¹⁵²

109. The trial against the four Accused began on Thursday 16 January 2014, after the Trial Chamber itself set a new date, following submissions from the Parties and Legal Representatives

¹⁴⁶ Pre-trial conference, T. 29 October 2013 (open session and closed session); Pre-trial conference, T. 2 December 2013; Pre-trial conference, T. 9 January 2014. The pre-trial conference held following the joinder of the Merhi case, is outlined below.

¹⁴⁷ Order on the mode of questioning witnesses; Order on the modes of victim participation; Order on filing replies.

¹⁴⁸ Order on filing replies, T. 2 December 2013, p. 26.

¹⁴⁹ Rule 91 (C) requires that the Pre-Trial Judge, ‘in consultation with the Parties, the Registrar, the Presiding Judge of the Trial Chamber and, if necessary, the President, shall set a tentative date for the start of trial proceedings at least four months prior to that date’. It is without equivalent in international criminal law proceedings, where, normally the chamber hearing the matter sets the commencement of trial date.

¹⁵⁰ Pre-Trial Judge order on start of trial.

¹⁵¹ Pre-Trial Judge postponement of start of trial.

¹⁵² Pre-Trial Judge order setting tentative start date of trial proceedings. The Trial Chamber was not consulted on this, irrespective of whether the Pre-Trial Judge consulted its then Presiding Judge, the Registrar, or the President, paras 13, 20-22, 54 of the order.

of Victims setting out how Monday 13 January potentially overlapped with a significant Lebanese religious holiday.¹⁵³

110. This same day, after consulting with the participants, the Trial Chamber issued directions on the conduct of the proceedings, under Rule 130 (A).¹⁵⁴ Specifically, it ordered:

1. the filing, each Friday, of a witness schedule for the following two weeks;
2. the disclosing of documents intended to be used during examination-in-chief of a witness—three days in advance, or two weeks in advance for expert witnesses—or showing good cause for seeking the admission of documents not disclosed in this way;
3. the disclosing of documents intended to be used during cross-examination of witness—before the end of the examination-in-chief;
4. the Parties to read into the record the summaries of tendered witness statements, and to disclose this summary one day in advance;
5. the order in which the participants will question a witness, the right to re-examine witnesses on new issues arising in cross-examination, and the Trial Chamber's ability to pose questions at any time;
6. the hearing of submissions on the tendering of evidence through a witness, at the end of questioning;
7. the participants not to communicate with witnesses after they have taken the solemn declaration or commenced testifying, unless allowed by the Trial Chamber, and the prompt disclosure of new exculpatory or material information obtained by the Prosecution or Legal Representatives of Victims when preparing a witness for testimony;
8. the participating victims' ability to call witnesses and tender evidence, through the Trial Chamber, and the Legal Representative of Victim's ability to participate in meetings and conferences, continue to have access to written materials as ordered by the Pre-

¹⁵³ Trial Chamber's trial commencement scheduling order; Pre-trial conference, T. 2 December 2013, pp 5-6.

¹⁵⁴ Directions on the conduct of the proceedings.

Trial Judge, and make written or oral submissions on issues affecting the participating victims' personal interests; and

9. a general daily hearing schedule of 10:00-11:30, 12:00-13:15 and 14:30-16:30.

111. The participants made opening statements as follows: the Prosecution on 16 and 17 January 2014; the Legal Representatives of Victims on 17 January 2014; and the Badreddine Defence and the Oneissi Defence on 20 January 2014.¹⁵⁵ The Ayyash Defence and the Sabra Defence did not make opening submissions.¹⁵⁶

112. The Trial Chamber also invited counsel for Mr Merhi to attend these opening hearings as observers, but instead they elected to sit, robed, in the public gallery. On 20 January 2014, the Head of Defence Office made opening observations on their behalf, with the Trial Chamber's leave.¹⁵⁷

113. Between 16 January and 11 February 2014, when it adjourned the trial, the Trial Chamber received the evidence of 30 witnesses—15 of them testifying live, and 15 of them having their statements admitted into evidence without being required to testify. The Trial Chamber also declared admissible the statements of 33 additional witnesses—meaning that it would receive them as exhibits at a convenient point in the proceedings—and received 214 exhibits into evidence.¹⁵⁸

(a) Further amendment of the Prosecution's witness and exhibit lists

114. On 24 January 2014, the Trial Chamber authorised the Prosecution to amend its witness and exhibit lists, and accepted the updated lists filed by the Prosecution together with its motion of 18 December 2013, containing 459 witnesses and 6,617 exhibits.¹⁵⁹

¹⁵⁵ Prosecutor's opening statement, T. 16 January 2014, pp 9-107, T. 17 January 2014, pp 2-50; Legal Representatives of Victims' opening statement, T. 17 January 2014, pp 53-87; Badreddine Defence opening statement, T. 20 January 2014, pp 13-26; Oneissi Defence opening statement, T. 20 January 2014, pp 26-55.

¹⁵⁶ Procedural matters, T. 16 January 2014, p. 6.

¹⁵⁷ Procedural matters, T. 16 January 2014, pp 3, 6, 37; Defence Office opening statement, T. 20 January 2014, pp 5-12.

¹⁵⁸ Procedural matters, T. 18 June 2014, pp 6-7.

¹⁵⁹ Decision authorising the Prosecution to amend its witness and exhibit lists 24 January 2014; F1273, Prosecution Submission Pursuant to Rules 91(G)(ii) and (iii), 18 December 2013.

(b) Case management meetings during the trial

115. The Presiding Judge, often joined by Judges Nosworthy and Braidy, held regular case management meetings throughout the trial. As an example, in 2017 and 2018 they were held on 1 February, 6 July, 12 September, 11 October and 12 December 2017, and on 21 March, 7 May and 25 July 2018.

116. The case management meetings with the Merhi Defence in respect of the joinder and resumption of trial are outlined below.

10. Applications for orders to the Lebanese government on cooperation and non-compliance

117. Rule 16 ‘Request to Lebanon for Information and Cooperation’ governs cooperation between the Special Tribunal and Lebanon. Under Rule 16 (B) and (C) the Prosecutor or Head of Defence Office may request of the Lebanese authorities assistance with measures for questioning witnesses, seizing documents and other investigative measures. These are termed ‘requests for assistance’.

118. Rule 20 ‘Non-compliance by Lebanon with a Tribunal Request or Order’ sets out what may occur. Rule 20 (A) provides that Lebanon must provide the assistance sought without delay and in accordance with the timeframe specified. If this does not occur within 30 days, the Party may seek an order from the Pre-Trial Judge or Chamber for an order to compel the requested assistance, under Rule 20 (A). A failure to comply, under Rule 20 (C) may lead to a judicial finding to this effect. The President then consults with the Lebanese authorities, and if the Pre-Trial Judge or Chamber, after consultation with the President, is of the view that a satisfactory response has still not been provided, the President shall make a judicial finding to that effect and refer it to the Security Council for consideration and further action as deemed appropriate.

119. Prompt compliance with the Special Tribunal’s requests for assistance is essential for the orderly and efficient functioning of its processes. Unfortunately, the process during the pre-trial and trial proceedings was anything but expeditious and efficient.

120. The Trial Chamber had to make two orders to Lebanon to comply, with several additional notifications of encouragement, and it took over four years from the Sabra Defence’s first requests

for assistance, sent in August 2012, until the Trial Chamber was satisfied that the Government of Lebanon—to whom it had directed its orders—had complied with its judicial orders and provided the requested material.

(a) Prosecution

121. The first application under Rule 20 (C) came from the Prosecutor who, on 31 October 2011, asked the Trial Chamber to find that the Lebanese Government had failed to comply with the arrest warrants against the Accused.¹⁶⁰ At that stage of the proceedings, the case was before the Pre-Trial Judge, and the Trial Chamber was seised of the question whether to proceed with the case *in absentia*, as detailed above.

122. On 2 November 2011, the Trial Chamber declined to make the finding sought, deciding that it was not the appropriate chamber to decide the matter at that stage of the proceedings, and declined to stay its determination of the *in absentia* question.¹⁶¹

123. On 15 November 2011, the Prosecution refiled the application before the Pre-Trial Judge.¹⁶² On 22 December 2011, the Pre-Trial Judge rejected the application, finding that it could not be decided at that stage of the proceedings.¹⁶³

124. The Prosecutor did not renew the application either before the Pre-Trial Judge or the Trial Chamber.

(b) Sabra Defence

125. Beginning in March 2012, the Sabra Defence sent some 119 requests for assistance to the Lebanese authorities through the Head of Defence Office, under a Memorandum of Understanding between the Government of the Lebanese Republic and the Defence Office on the Modalities of Their Cooperation signed on 28 July 2010.¹⁶⁴

¹⁶⁰ F0062, Prosecution's Request for a Judicial Finding that the Lebanese Authorities Have Failed to Comply with the Arrest Warrants Pursuant to Rule 20(C), 31 October 2011.

¹⁶¹ Decision on non-compliance motion.

¹⁶² F0077, Prosecution's Request for a Judicial Finding that the Lebanese Authorities Have Failed to Comply with the Arrest Warrants Pursuant to Rule 20(C), 15 November 2011.

¹⁶³ Pre-Trial Judge decision denying Prosecution non-compliance motion.

¹⁶⁴ F0440, Motion Seeking the Cooperation of Lebanon, 27 September 2012, paras 3-4.

126. Between September 2012 and August 2013, the Sabra Defence filed six motions under Rule 20 (A) before the Pre-Trial Judge, arguing that the Lebanese Government had failed to provide most of the requested material, which was essential to its case preparation.¹⁶⁵ It sought to compel the Lebanese Government to provide this material without further delay.

127. On 11 February 2013, the Pre-Trial Judge dealt with the first motion, inviting the Lebanese Government to provide the requested information or its reasons for being unable to do so.¹⁶⁶

128. On 11 October 2013, the Sabra Defence asked the Pre-Trial Judge to conditionally stay the proceedings and to suspend the transfer of the case file to the Trial Chamber pending resolution, including at the appellate stage, of the request for a conditional stay of proceedings. It argued that the fruitless efforts to obtain information from the Lebanese Government—and from other States and the United Nations—had seriously prejudiced its investigations and case preparation.¹⁶⁷

129. The Sabra Defence reiterated its motions and provided additional information on 18 October 2013, and subsequently reiterated its application to stay the proceedings and suspend the trial.¹⁶⁸

130. On 25 October 2013, the Pre-Trial Judge dismissed the Defence application to suspend the transfer of the case file to the Trial Chamber in light of the Lebanese Government's failure to

¹⁶⁵ F0440, Motion Seeking the Cooperation of Lebanon, 27 September 2012; F0702, Second Motion Seeking the Cooperation of Lebanon – Telecommunications Information, 4 February 2013; F0834, Third Motion Seeking the Cooperation of Lebanon – Terrorist Groups, 4 April 2013; F0835, Fourth Motion Seeking the Cooperation of Lebanon – Information on Mr Sabra, 4 April 2013; F1079, Fifth Motion Seeking the Cooperation of Lebanon – [...], 28 August 2013; F1080, Sixth Motion Seeking the Cooperation of Lebanon – [...], 28 August 2013. The first Sabra Defence motion was joined by counsel for the other three Accused, F0441, Ayyash Joinder in "Motion Seeking the Cooperation of Lebanon", 27 September 2012; F0442, Joinder of the Defence for Mr Badreddine to the Sabra Defence Request to Obtain the Cooperation of Lebanon, 27 September 2012; F0443, Joinder of the Defence for Mr Oneissi to the Sabra Defence Request to Obtain the Cooperation of Lebanon, 27 September 2012. The second Sabra Defence motion was joined by the Badreddine Defence, F0718, *Adjonction de la Défense de M. Badreddine à la seconde requête de la Défense de M. Sabra aux fins d'obtenir la coopération du Liban*, 11 February 2013.

¹⁶⁶ Pre-Trial Judge decision granting Sabra Defence cooperation motion.

¹⁶⁷ F1142, Sabra Defence Motion for Stay of Proceedings Due to Lebanon's Failure to Cooperate with the Defence, 11 October 2013. Counsel for the other three Accused joined this motion, F1145, Badreddine Defence Joinder to "Sabra Defence Motion for Stay of Proceedings Due to Lebanon's Failure to Cooperate with the Defence", 11 October 2013; F1149, Ayyash Defence Joinder to "Sabra Defence Motion for Stay of Proceedings Due to Lebanon's Failure to Cooperate with the Defence", 16 October 2013; F1152, The Defence for Hussein Hassan Oneissi Joinder to "Sabra Defence Motion for Stay of Proceedings Due to Lebanon's Failure to Cooperate with the Defence", 16 October 2013.

¹⁶⁸ F1159, Addendum to "Sabra Defence Motion for Stay of Proceedings Due to Lebanon's Failure to Cooperate with the Defence", 18 October 2013; F1215, Further Submissions to "Sabra Defence Motion for Stay of Proceedings Due to Lebanon's Failure to Cooperate with the Defence", 14 November 2013.

cooperate with the Defence.¹⁶⁹ The Pre-Trial Judge declined to rule on the related Defence application for a conditional stay of the proceedings based on the same cooperation failures.¹⁷⁰ As detailed above, the Pre-Trial Judge transferred the case file to the Trial Chamber that same day.

131. After being seised of the case and therefore of any unresolved motions, the Trial Chamber, on 20 November 2013, ordered the Sabra Defence to clarify which requested material was still outstanding.¹⁷¹ It reiterated this order on 29 November 2013 after failing to receive the necessary information.¹⁷²

132. On 16 December 2013, the Trial Chamber dismissed in part the Sabra Defence application for orders against the Lebanese Government, ordered the Prosecution to provide certain information to the Sabra Defence and ordered the Sabra Defence to file proposed orders to the Lebanese Government in respect of any outstanding material.¹⁷³

133. On 24 December 2013, the Sabra Defence sought certification to appeal parts of this decision, and sought leave from the Presiding Judge to ask the Trial Chamber to reconsider other parts of the decision.¹⁷⁴ On 17 January 2014, it withdrew the application for reconsideration and instead filed a new motion for a Rule 20 (A) order in respect of the material it sought.¹⁷⁵ On 27 January 2014, the Trial Chamber dismissed the application for certification.¹⁷⁶ On 30 January 2014, the Sabra Defence filed a further application for an order under Rule 20 (A).¹⁷⁷

134. On 31 January 2014, the Trial Chamber ordered the Lebanese Government under Rule 20 (A) to cooperate with the Special Tribunal, by providing some of the information sought by the Sabra Defence and invited further submissions from the Sabra Defence.¹⁷⁸

¹⁶⁹ Pre-Trial Judge decision denying request to suspend transfer of case file to Trial Chamber.

¹⁷⁰ Pre-Trial Judge decision denying request to suspend transfer of case file to Trial Chamber, p. 8, paras 35-37.

¹⁷¹ Order requesting clarifications on cooperation requests.

¹⁷² Further order to Sabra Defence regarding cooperation request.

¹⁷³ Orders on Sabra Defence motions for cooperation orders.

¹⁷⁴ F1283, Defence Request for Leave to Appeal the “Orders Relating to Five Defence Motions for Orders to Lebanon on State Cooperation”, 24 December 2013; F1284, Defence Request for Leave to file a Motion for Reconsideration of the “Orders Relating to Five Defence Motions for Orders to Lebanon on State Cooperation”, 24 December 2013.

¹⁷⁵ F1331, Motion for Order for Cooperation Addressed to the Lebanese Authorities and Withdrawal of Request for Reconsideration, 17 January 2014.

¹⁷⁶ Decision denying certification to appeal cooperation decision.

¹⁷⁷ F1372, Further Motion for Order for Cooperation Addressed to the Lebanese Authorities, 30 January 2014.

¹⁷⁸ Decision granting in part Sabra Defence motion for cooperation and orders to cooperate.

135. On 5 February 2014, the Sabra Defence filed additional submissions and reiterated its application for an order under Rule 20 (A) for outstanding material.¹⁷⁹ On 13 March 2014, the Sabra Defence sought a finding of non-compliance against the Lebanese Government under Rule 20 (C), arguing that it had failed to comply in full with the Trial Chamber's order of 31 January 2014 by the specified deadline.¹⁸⁰

136. On 31 March 2014, the Trial Chamber issued additional Rule 20 (A) orders to the Lebanese Government, concerning the remaining material sought by the Sabra Defence.¹⁸¹ On 12 June 2014, the Sabra Defence again sought an order under Rule 20 (C), arguing that the Lebanese Government had failed to comply with the Trial Chamber's orders of 31 March 2014.¹⁸²

137. Following the receipt of some material from the Lebanese Government, the Sabra Defence withdrew this application on 14 April 2014 and filed a consolidated application for a finding of non-compliance in respect of the remaining outstanding material.¹⁸³ On 12 May 2014, the Trial Chamber decided to defer its determination of the application, while continuing to monitor the situation.¹⁸⁴

138. On 23 June 2014, the Trial Chamber clarified the legal basis for its orders of 31 January and 31 March 2014, and granted the Lebanese Government a further 21 days to comply with them.¹⁸⁵ As a result, the Sabra Defence withdrew its second application for a finding of non-compliance under Rule 20 (C).¹⁸⁶

139. However, on 8 January 2015, it renewed its application for a finding of non-compliance, arguing that more than half of the requests for assistance, which had been the subject of Trial Chamber orders, remained outstanding.¹⁸⁷

¹⁷⁹ F1390, Further Submissions to "Decision on Second and Fifth Motions by Counsel for Assad Hassan Sabra and Two Orders to Lebanon to Cooperate with the Tribunal", 5 February 2014.

¹⁸⁰ F1449, Request for Finding of Non-Compliance, 13 March 2014; *see also* F1451, Notification to "Request for Finding of Non-Compliance", 19 March 2014.

¹⁸¹ Further order to cooperate with Tribunal.

¹⁸² F1570, Second Request for Finding of Non-Compliance, 12 June 2014.

¹⁸³ F1494, Notice of Withdrawal of Defence Filings of 13 March 2014 (F1449) and 19 March 2014 (F1451), 14 April 2014; F1495, Consolidated Request for Finding of Non-Compliance, 14 April 2014.

¹⁸⁴ Interim decision on Sabra Defence request for finding of non-compliance.

¹⁸⁵ Clarification regarding cooperation orders to Lebanon.

¹⁸⁶ F1605, Notification of Withdrawal of "Second Request for Finding of Non-Compliance", 1 July 2014.

¹⁸⁷ F1810, Public Redacted Version of "Updated Request for a Finding of Non-Compliance", 8 January 2015.

140. The Trial Chamber, on 27 March 2015, granted the Lebanese Government a further 21 days to respond to any outstanding requests for assistance—attaching annexes categorising the requests in detail with a view to assisting compliance with the order—and ordered the Sabra Defence to file updates on any such responses every two weeks.¹⁸⁸

141. On 23 April 2015, the Registrar filed correspondence he had received from the Lebanese Government concerning the Trial Chamber’s cooperation orders.¹⁸⁹ On 22 May 2015, the Trial Chamber granted the Lebanese Government a further 21 days to respond to the outstanding requests for assistance, and filed annexes reorganising and giving even more detail regarding the Sabra Defence’s requests for assistance, in particular focusing on categorising them according to the specific Lebanese authority to which a request for assistance should be directed.¹⁹⁰

142. The Sabra Defence filed 13 updates between April and November 2015, detailing the progress made by the Lebanese Government in furtherance of the Trial Chamber’s orders.¹⁹¹

143. As part of its ninth update, on 24 August 2015, the Sabra Defence again sought a finding of non-compliance under Rule 20 (C) against the Lebanese Government with regard to 21 of its requests for assistance.¹⁹² On 17 November 2015, the Trial Chamber invited the Lebanese Government to make submissions in this regard and instructed the Sabra Defence to respond to these submissions.¹⁹³

¹⁸⁸ Decision extending timeline for the enforcement of orders on outstanding Defence requests for assistance.

¹⁸⁹ F1925, Notice of Response from the Government of Lebanon Regarding the “Decision on Updated Request for a Finding of Non-Compliance”, 23 April 2015.

¹⁹⁰ Clarification of decision on non-compliance request.

¹⁹¹ F1895, First Notice to “Decision on Updated Request for a Finding of Non-Compliance”, 8 April 2015; F1930, Second Notice to “Decision on Updated Request for a Finding of Non-Compliance”, 28 April 2015; F1946, Third Notice to “Decision on Updated Request for a Finding of Non-Compliance”, 12 May 2015; F2005, Fourth Notice to “Decision on Updated Request for a Finding of Non-Compliance”, 15 June 2015; F2028, Fifth Notice to “Decision on Updated Request for a Finding of Non-Compliance”, 26 June 2015; F2076, Sixth Notice to “Decision on Updated Request for a Finding of Non-Compliance”, 13 July 2015; F2101, Seventh Notice to “Decision on Updated Request for a Finding of Non-Compliance”, 24 July 2015; F2118, Eighth Notice to “Decision on Updated Request for a Finding of Non-Compliance”, 10 August 2015; F2139, Ninth Notice to “Decision on Updated Request for a Finding of Non-Compliance” and Request for a Finding of Non-Compliance, 24 August 2015; F2221, Tenth Notice to “Decision on Updated Request for a Finding of Non-Compliance”, 28 September 2015; F2259, Eleventh Notice to “Decision on Updated Request for a Finding of Non-Compliance”, 12 October 2015; F2288, Twelfth Notice to “Decision on Updated Request for a Finding of Non-Compliance”, 26 October 2015; F2310, Thirteenth Notice to “Decision on Updated Request for a Finding of Non-Compliance”, 9 November 2015.

¹⁹² F2139, Ninth Notice to “Decision on Updated Request for a Finding of Non-Compliance” and Request for a Finding of Non-Compliance, 24 August 2015; *see also* F2322, Clarification to Notices to “Decision on Updated Request for a Finding of Non-Compliance”, 16 November 2015.

¹⁹³ Invitation to Lebanon for submissions on Sabra Defence non-compliance request.

144. On 9 December 2015, the Trial Chamber granted the Lebanese Government's application for additional time to make its submissions.¹⁹⁴ On 21 January 2016, the Sabra Defence made submissions, noting the lack of submissions from the Lebanese Government and some further responses it had received to its requests for assistance, and renewing its motion for a finding of non-compliance in respect of the 17 still outstanding requests.¹⁹⁵

145. On 31 March, 26 April, 29 June and 17 August 2016, the Sabra Defence informed the Trial Chamber of some additional material received from the Lebanese authorities.¹⁹⁶ On 26 August 2016, the Trial Chamber found that only four requests for assistance remained outstanding, granted the Government of Lebanon a further 21 days to comply, and instructed the Sabra Defence to continue submitting fortnightly updates.¹⁹⁷

146. Finally, on 18 November 2016, the Sabra Defence withdrew its application for a finding of non-compliance, having received material responding to the last four outstanding requests for assistance.¹⁹⁸

147. It took over four years to resolve this issue to the satisfaction of Defence counsel who had first requested material from the Lebanese Government in September 2012. An enormous amount of judicial time was wasted in ensuring Lebanon's compliance with the Rules and judicial orders, and that the Sabra Defence had the material necessary to prepare its defence at trial.

(c) Badreddine Defence

148. On 24 October 2013, the Badreddine Defence asked the Pre-Trial Judge to issue an order under Rule 20 (A) to the Lebanese Government, claiming that it had failed to respond to a request

¹⁹⁴ Order varying time limit for Lebanese Government response.

¹⁹⁵ F2412, Submissions in Relation to the Trial Chamber's "Invitation to the Government of the Lebanese Republic to Make Submissions in Relation to the Sabra Defence Request for a Finding of Non-Compliance", 21 January 2016.

¹⁹⁶ F2527, Further Submissions in Relation to the Trial Chamber's "Invitation to the Government of the Lebanese Republic to Make Submissions in Relation to the Sabra Defence Request for a Finding of Non-Compliance", 31 March 2016; F2571, Further Submissions in Relation to the Trial Chamber's "Invitation to the Government of the Lebanese Republic to Make Submissions in Relation to the Sabra Defence Request for a Finding of Non-Compliance", 26 April 2016; F2629, Further Submissions in Relation to the Trial Chamber's "Invitation to the Government of the Lebanese Republic to Make Submissions in Relation to the Sabra Defence Request for a Finding of Non-Compliance", 29 June 2016; F2692, Further Submissions in Relation to the Trial Chamber's "Invitation to the Government of the Lebanese Republic to Make Submissions in Relation to the Sabra Defence Request for a Finding of Non-Compliance", 17 August 2016.

¹⁹⁷ Decision extending timeline to provide information.

¹⁹⁸ F2841, Update to "Further Decision on Sabra Defence Motion for a Finding of Non-Compliance with the Special Tribunal", 18 November 2016.

for assistance essential to its preparation for trial.¹⁹⁹ After being seised of the case and consequently the Badreddine Defence's application, the Trial Chamber, through its Presiding Judge, ordered the Registrar on 15 November 2013 to request, in writing, for the Lebanese Government's cooperation or for the reasons for non-compliance.²⁰⁰

149. Finding that no substantive response to the request for assistance had been provided, the Trial Chamber issued an order for cooperation on 13 January 2014 directed to the Lebanese Government.²⁰¹

150. On 21 May 2014, the Badreddine Defence sought a further order, in respect of material omitted from the scope of the initial Trial Chamber order.²⁰² The Trial Chamber granted this motion in part.²⁰³ While dealing with a Sabra Defence application on a similar issue, the Trial Chamber, on 27 March 2015, invited the Badreddine Defence to inform the Registrar of any request for assistance which had been the subject of a Trial Chamber decision and to which counsel believed a satisfactory answer had not been given.²⁰⁴

11. The separate proceedings against Hassan Habib Merhi and joinder with the *Ayyash, Badreddine, Oneissi and Sabra* case

151. Alongside the proceedings in the *Ayyash, Badreddine, Oneissi and Sabra* case, the Prosecutor initiated separate proceedings against a fifth Accused, Hassan Habib Merhi, in 2013, two years after the other four were indicted. The Trial Chamber joined the *Merhi* case to that of the other four Accused but, because of the timing of the filing of the indictment against Mr Merhi, this could occur only after the trial had commenced. Notable procedural steps before the joinder are summarised below.

¹⁹⁹ F1177, *Requête de la Défense de M. Badreddine aux fins d'obtenir la coopération du Liban*, 24 October 2013; see also F1300, Observations of the Badreddine Defence relating to the Response of the Lebanese Authorities to the Instructions from the Presiding Judge of the Trial Chamber, 7 January 2014.

²⁰⁰ Instructions to Registrar on cooperation.

²⁰¹ Order to cooperate and provide information sought by Badreddine Defence.

²⁰² F1534, Public Redacted Version - Badreddine Defence Request for the Issuance of a Supplementary Order to that of 13 January 2014, 21 May 2014.

²⁰³ Second order to cooperate and provide information sought by Badreddine Defence.

²⁰⁴ Decision extending timeline for the enforcement of orders on outstanding Defence requests for assistance.

(a) Indictment, arrest warrants and decision to hold trial in absentia

152. On 8 February 2012, the outgoing Prosecutor, Mr Bellemare, sought the Pre-Trial Judge's leave to add Mr Merhi as a fifth co-accused on the indictment against Mr Ayyash, Mr Badreddine, Mr Oneissi and Mr Sabra, relating to the attack on 14 February 2005.²⁰⁵

153. The Pre-Trial Judge denied the application, on 13 March 2012, finding that a separate indictment would be required against a new accused person.²⁰⁶ Almost nine months later, on 8 October 2012, the new Prosecutor, Mr Norman Farrell, filed an indictment against Mr Merhi. However, he withdrew it on 7 December 2012 after discussing a number of issues with the Pre-Trial Judge.²⁰⁷

154. Six months later, on 5 June 2013, the Prosecutor submitted another indictment against Mr Merhi for confirmation by the Pre-Trial Judge and asked the Pre-Trial Judge to issue arrest warrants for Mr Merhi.²⁰⁸ He submitted two corrigenda to the indictment, on 20 June 2013 and 25 July 2013.²⁰⁹ On 29 July 2013, the Prosecution applied to present additional material in support of the indictment filed on 5 June 2013.²¹⁰

155. On 31 July 2013, the Pre-Trial Judge authorised the filing of corrigenda to the indictment and of the additional supporting material, and confirmed the indictment against Mr Merhi.²¹¹ The Prosecutor, in the indictment, charged Mr Merhi with participating in a conspiracy aimed at committing a terrorist act, and as being an accomplice to the intentional homicide of Mr Hariri and

²⁰⁵ Pre-Trial Judge decision on 5 June 2013 indictment, para. 5; F0118, Prosecution Request for Leave to Amend the Indictment Pursuant to Rule 71(A) (ii), Submission of an Amended Indictment, and Related Prosecution Applications, 8 February 2012.

²⁰⁶ Pre-Trial Judge decision on 5 June 2013 indictment, para. 6.

²⁰⁷ Pre-Trial Judge decision on 5 June 2013 indictment, paras 7-9.

²⁰⁸ STL-13-04/I/PTJ, *Prosecutor v. Merhi*, F0001, Prosecution's Submission of an Indictment for confirmation and Order to Keep this Filing and its Annexes Confidential and *Ex Parte*; and Motion for an Arrest Warrant, Order for Transfer and Detention; and Order for Non-Disclosure, 5 June 2013.

²⁰⁹ STL-13-04/I/PTJ, *Prosecutor v. Merhi*, F0001, Corrigendum to Annex A of "Prosecution's Submission of an Indictment for Confirmation and Order to Keep this Filing and its Annexes Confidential and *Ex Parte*; and Motion for the Arrest Warrant, Order for Transfer and Detention; and Order for Non-Disclosure, 20 June 2013; STL-13-04/I/PTJ, *Prosecutor v. Merhi*, F0001, Second Corrigendum to the Merhi Indictment, 25 July 2013.

²¹⁰ STL-13-04/I/PTJ, *Prosecutor v. Merhi*, F0007, Corrected Version of the "Prosecution Application to Present Additional Material in Support of the Indictment filed on 5 June 2013," filed on 29 July 2013, 1 August 2013.

²¹¹ Pre-Trial Judge decision on 5 June 2013 indictment.

21 others who were killed in the attack, and the attempted intentional homicide of the 226 injured people.²¹²

156. The Pre-Trial Judge ordered that the indictment remain confidential until it had been effectively served on Mr Merhi.²¹³ On the same day, the Pre-Trial Judge also issued national and international warrants for his arrest.²¹⁴

157. On 3 October 2013, the Lebanese Prosecutor-General informed the Special Tribunal's President of the unsuccessful but continuing measures taken to locate Mr Merhi.²¹⁵

158. On 10 October 2013, the President found that reasonable attempts had been made by the Tribunal and Lebanese authorities to serve the indictment and arrest warrants on Mr Merhi.²¹⁶ He ordered the 'authorities of Lebanon' to effect alternative service on the Accused by public advertisement, namely to take all reasonable steps to inform the public of the indictment and call upon the Accused to surrender to the Special Tribunal.²¹⁷

159. The confidentiality of the indictment was then partially lifted by the Pre-Trial Judge.²¹⁸ Advertisements listing the charges against the Accused were published in five different newspapers in Lebanon,²¹⁹ and on 14 October 2013, the Special Tribunal issued a public service announcement informing the Accused of his rights and encouraging the public to provide information concerning his whereabouts.²²⁰ The advertisement poster is reproduced below:

²¹² STL-13-04/I/PTJ, *Prosecutor v. Merhi*, F0011, Indictment, 5 June 2013.

²¹³ Pre-Trial Judge decision on 5 June 2013 indictment, disposition.

²¹⁴ STL-13-04/I/PTJ, *Prosecutor v. Merhi*, F0009, Warrant to Arrest Mr Hassan Habib Merhi and Order for Transfer and Detention, 31 July 2013; STL-13-04/I/PTJ, *Prosecutor v. Merhi*, F0010, International Warrant to Arrest Mr Hassan Habib Merhi and Request for Transfer and Detention, 31 July 2013.

²¹⁵ Order pursuant to Rule 76 (E) 10 October 2013, paras 18 (b), 20.

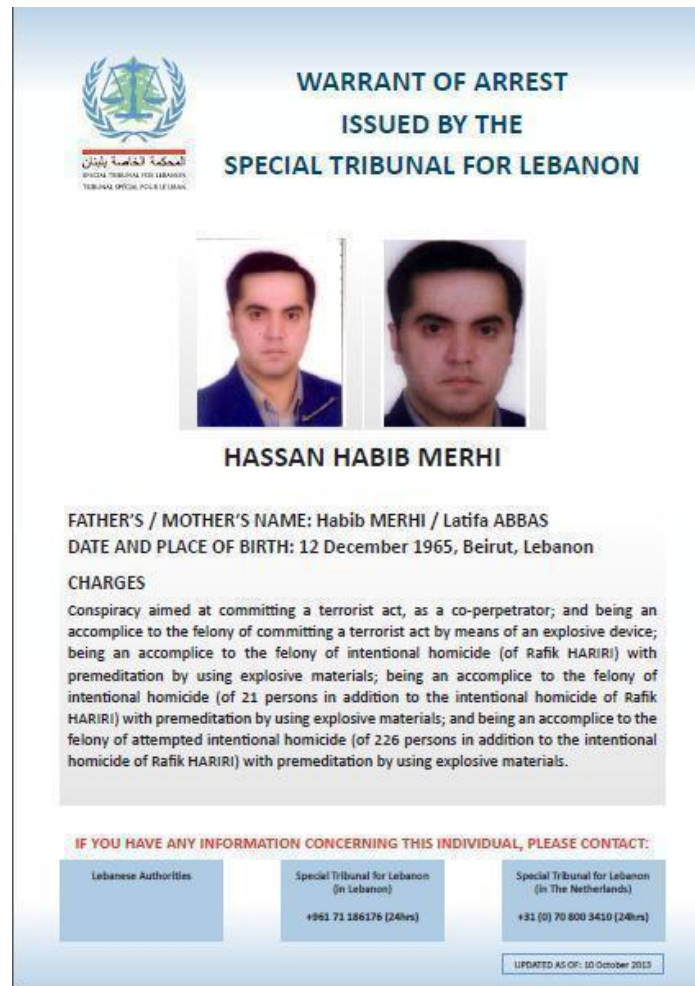
²¹⁶ Order pursuant to Rule 76 (E) 10 October 2013, paras 30-35, disposition.

²¹⁷ Order pursuant to Rule 76 (E) 10 October 2013, disposition.

²¹⁸ Order on partially lifting the confidentiality of the indictment against Mr Merhi.

²¹⁹ Decision to hold trial *in absentia* 20 December 2013.

²²⁰ Public Service Announcement by the Special Tribunal for Lebanon, 14 October 2013; Decision to hold trial *in absentia* 20 December 2013.



160. Given Mr Merhi's failure to appear before the Special Tribunal and the Lebanese Government's inability to apprehend him, on 25 November 2013, the Pre-Trial Judge seised the Trial Chamber under Rule 105 *bis* (A) to determine whether proceedings against him should be initiated *in absentia*.²²¹

161. The Trial Chamber acted rapidly, and sought written submissions from the Prosecution, the Accused and the Defence Office as to the application of Rule 106 (A) in the proceedings against the Accused, by 9 December 2013.²²² Just over three weeks after the Pre-Trial Judge's referral, on 20 December 2013, the Trial Chamber concluded that the Accused had absconded or otherwise

²²¹ Order to seise the Trial Chamber pursuant to Rule 105 *Bis* (A) to determine whether to initiate proceedings *in absentia*.

²²² Rule 106 scheduling order.

could not be found, and issued a reasoned written decision that the trial would proceed *in absentia* under Article 22 of the Statute and Rule 106 (A).²²³

162. While seised of the *in absentia* determination, and in the face of an upcoming trial, the Trial Chamber also issued an interim order on working languages in the *Merhi* case. On 17 December 2013, after receiving submissions from the Registry, Prosecution and Defence Office, the Trial Chamber designated English as the working language for filings made during the pre-trial phase in the *Merhi* case before the Trial Chamber. Filings could be made in French or Arabic if good cause was shown in advance, and translation of filings from English to French or Arabic would be done only with judicial authorisation.²²⁴

163. On 30 January 2014, the Trial Chamber limited the application of its interim order to a limited number of pre-trial filings before it, and stated that in other respects it would apply the working language regime set out in the Pre-Trial Judge's decision of 16 September 2011 in the *Ayyash* case.²²⁵

164. On 10 February 2014—the day before the Trial Chamber joined the two cases after a pre-scheduled hearing on the issue—and in the pre-trial proceeding then before the Pre-Trial Judge, the Pre-Trial Judge ruled that the same working language regime would apply in pre-trial proceedings before him in the pre-trial phase of the *Merhi* case as those set out in his decision of 16 September 2011 in the *Ayyash* case.²²⁶ At that stage there were parallel pre-trial proceedings in both chambers in respect of Mr Merhi's case; the trial in the *Ayyash* case, however, had commenced weeks earlier, on 16 January 2014.

(b) Assignment of counsel and changes of assignment

165. On 20 December 2013, the Head of Defence Office assigned Mr Mohamed Aouini as lead counsel for Mr Merhi.²²⁷ On 30 December 2013, he also assigned Mr Jad Khalil and Ms Dorothée Le Fraper du Hellen as co-counsel for Mr Merhi.²²⁸

²²³ Decision to hold trial *in absentia* 20 December 2013.

²²⁴ Decision on languages in the *Merhi* case.

²²⁵ Second decision on languages in the *Merhi* case.

²²⁶ Pre-Trial Judge decision on languages in the *Merhi* case.

²²⁷ STL-13-04/I/PTJ, *Prosecutor v. Merhi*, F0039, Assignment of a Counsel for the *In Absentia* Proceedings Held Pursuant to Rule 106 of the Rules, 20 December 2013.

²²⁸ STL-13-04/I/PTJ, *Prosecutor v. Merhi*, F0049, Assignment of Co-counsel, 30 December 2013.

166. The mandate of the Special Tribunal's first Head of Defence Office, Mr François Roux, expired on 28 February 2018 and he was not reappointed to the position. On 8 June 2018, the United Nations Secretary-General appointed Ms Le Fraper du Hellen as the Special Tribunal's new Head of Defence Office. On 29 June 2018, her assignment as co-counsel for Mr Merhi was withdrawn, after the Acting Head of Defence Office consulted the Trial Chamber.²²⁹

167. Over the following months, the Trial Chamber exercised its duty to ensure the Accused's right to effective representation by seeking submissions, holding meetings and making practical suggestions on how the new Head of Defence Office could avoid real or perceived conflicts of interest in her current supervisory functions, given her former role as co-counsel for Mr Merhi.²³⁰

(c) Joinder of Merhi and Ayyash and others cases

168. On 18 December 2013, the Prosecution asked the Pre-Trial Judge to refer to the Trial Chamber the possible joinder under Rule 70 (B) of the cases of *Ayyash and others* and that of *Merhi*.²³¹

²²⁹ F3701, Withdrawal of the Assignment of Ms Dorothée Le Fraper du Hellen, Co-counsel of the Defence team for Mr Hassan Habib Merhi, pursuant to Article 34 (A) of the Directive on the Appointment and Assignment of Defence Counsel, 29 June 2018.

²³⁰ On 10 and 28 September 2018, the Presiding Judge of the Trial Chamber placed on the record correspondence dated 29 June, 24 August, 31 August and 5 September 2018, primarily concerning the new Head of Defence Office's decision to delegate some of her supervisory functions—namely concerning Mr Merhi's legal team—to the Deputy Head of Defence Office, Publication of correspondence on Head of Defence Office potential conflict of interest; Addendum to publication of correspondence on Head of Defence Office potential conflict of interest. On 21 September 2018, the Trial Chamber sought submissions from the Parties, Head of Defence Office and Deputy Head of Defence Office on this issue, Order seeking submissions on Head of Defence Office potential conflict of interest. On 5 October 2018, the Trial Chamber instructed the Head of Defence Office to provide details of the alternative supervisory mechanism she mentioned in her submissions, after she revoked the delegation of duties to the Deputy Head of Defence Office, Order seeking explanation of alternative supervision mechanism from Head of Defence Office. On 11 October 2018, the Presiding Judge of the Trial Chamber notified the Parties and the Legal Representatives of Victims of a proposed amendment to Rule 57, Notification of proposed amendment to Rule 57. On 14 February 2019, the Trial Chamber issued an internal memorandum questioning the Head of Defence Office's suggestion of appointing an independent consultant to monitor the effectiveness of the Accused's representation and make recommendations to the Head of Defence Office; instead, the Trial Chamber suggested the appointment of an *amicus curiae*, Internal memorandum to Head of Defence Office on monitoring effective legal representation. On 22 February 2019, the Head of Defence Office informed the Trial Chamber that a consultant had already been appointed in December 2018, and that she would implement any recommendations made by the consultant regarding Mr Merhi's representation; however, she maintained her opposition to delegating the supervision of counsel for the other Accused, F3764, Internal Memorandum – Response to the Internal Memorandum from the Trial Chamber of 14 February 2019, 19 March 2019.

²³¹ STL-13-04/I/PTJ, *Prosecutor v. Merhi*, F0033, Prosecution Request for Rule 89 (E) Referral of the Matter of Joinder, 18 December 2013; F1272, Prosecution Notice of Request for Pre-Trial Judge to Refer the Matter of Joinder of the Merhi Case to the Ayyash et al. case to the Trial Chamber, 18 December 2013.

169. The Merhi Defence responded on 30 December 2013, opposing the referral.²³² On the same day, the Prosecution applied to the Trial Chamber, in the *Ayyash* case, asking it to join the two cases under Rule 70.²³³ The Pre-Trial Judge referred the issue to the Trial Chamber on 2 January 2014.²³⁴

170. In the meantime, on 8 January 2014—eight days before the commencement of the trial of *Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra*—the Prosecution filed its pre-trial brief in the separate case against Mr Merhi.²³⁵

171. The Trial Chamber held a preliminary hearing on the issue on 14 January 2014, and invited counsel for Mr Merhi to participate in the ongoing *Ayyash* proceedings as ‘interested observers’.²³⁶ It set a deadline of 31 January 2014 for submissions by the Merhi Defence on the issue of a joinder.²³⁷

172. The Merhi Defence’s response of 30 January 2014, while not opposing joinder, emphasised the necessity of completing the pre-trial phase in the *Merhi* case, but before the Pre-Trial Judge, to protect Mr Merhi’s rights.²³⁸ On 4 February 2014, the Head of Defence Office filed an observation supporting the Merhi Defence’s application to maintain pre-trial proceedings before the Pre-Trial Judge.²³⁹ The effect of this application, if accepted, would have been separate proceedings before two chambers in respect of the five Accused, but with an adjourned trial against four of them.

173. On 11 February 2014, the Trial Chamber held a joint hearing in the two cases to decide the issue of joinder. The same day, and with substantial written reasons filed on 25 February 2014, the

²³² STL-13-04/I/PTJ, *Prosecutor v. Merhi*, F0046, *Observations de la Défense relatives à la requête du Procureur aux fins de transfert à la Chambre de première instance de la question de la junction*, 30 December 2013.

²³³ F1289, Prosecution Motion for Joinder, 30 December 2013.

²³⁴ Joinder referral decision.

²³⁵ STL-13-04/I/PTJ, *Prosecutor v. Merhi*, F0052, Redacted Version of the Prosecution’s Pre-Trial Brief, 13 January 2014.

²³⁶ STL-13-04/I/PTJ, *Prosecutor v. Merhi*, T. 14 January 2014, p. 48.

²³⁷ Order varying time-limits for submissions on joinder.

²³⁸ STL-13-04/PT/TC, *Prosecutor v. Merhi*, F0072, Merhi Defence Response to the Prosecution Motion for Joinder of the Cases of *Merhi* and *Ayyash et al.*, 30 January 2014.

²³⁹ STL-13-04/PT/TC, *Prosecutor v. Merhi*, F0076, Observations from the Head of Defence Office on Maintaining the Pre-Trial Proceedings in the Merhi Case before the Pre-Trial Judge, 4 February 2014.

Trial Chamber, acting under Rule 70 (A),²⁴⁰ decided that the two cases should be joined and tried on the same indictment, and postponed resumption of the trial until at least early to mid-May 2014.²⁴¹

174. After consultation with the Pre-Trial Judge under Rule 70 (C),²⁴² the Trial Chamber also decided on the division of tasks between itself and the Pre-Trial Judge, in assisting the Parties—particularly the Merhi Defence—to prepare for trial.

175. Specifically, it decided that it would perform all pre-trial functions that were not within the Pre-Trial Judge's exclusive competence. His exclusive competence was confined to questioning anonymous witnesses, hearings on security interests of States and other international entities and submissions on information not subject to disclosure without consent of the provider. In addition, the Trial Chamber would continue to consult with the Pre-Trial Judge on his possibly performing certain functions that he may more appropriately perform, namely unique investigative opportunities, exceptional gathering of evidence, taking depositions and ruling on applications for the status of participating victims.²⁴³

176. On 31 March 2014, the Trial Chamber certified for appeal its decision on the joinder of the two cases.²⁴⁴ On 21 May 2014, the Appeals Chamber unanimously dismissed the Merhi Defence Appeal.²⁴⁵

177. On 12 February 2014, the Trial Chamber ordered the Prosecution to file a consolidated indictment by 7 March 2014; it maintained 14 February 2014 as the date for filing preliminary motions challenging the separate indictment against Mr Merhi.²⁴⁶

²⁴⁰ Rule 70 (A) provides that 'Two or more crimes may be joined in one indictment if the conduct falls within Article 1 of the Statute and the alleged crimes were committed by the same accused.'

²⁴¹ Joint Hearing, T. 11 February 2014, pp 91-96; F1477, Certificate, 2 April 2014; STL-13-04/PT/TC, *Prosecutor v. Merhi*, F0086, Certificate, 2 April 2014. Trial management decision, p. 8.

²⁴² Rule 70 (C) specifies that 'In cases under paragraphs (A) and (B) the Trial Chamber, in consultation with the Pre-Trial Judge, may perform any of the Pre-Trial Judge's functions in Rules 89 (A)-(D), (F), 90 (A) (iv), 91 and 94. Rule 95 may be wholly or partly dispensed with.'

²⁴³ Trial management decision, paras 70-75.

²⁴⁴ Certification decision on joinder.

²⁴⁵ Appeal decision on joinder.

²⁴⁶ T. 12 February 2014, pp 26-27, 48.

178. On 14 February 2014, the Merhi Defence filed a preliminary motion on defects in the form of the indictment, arguing that it lacked specificity regarding important points of the charges.²⁴⁷ The Trial Chamber dismissed the motion on 28 March 2014.²⁴⁸

179. On 4 March 2014, the Trial Chamber held a status conference, and issued an oral decision on the timeframe for the Merhi Defence to seek the recall of witnesses.²⁴⁹

180. On 7 March 2014, the Prosecution filed a consolidated indictment, and consolidated witness and exhibit lists, containing 462 witnesses and 6,707 exhibits.²⁵⁰ On 25 April 2014, the Merhi Defence filed a motion alleging defects in the consolidated indictment.²⁵¹ On 22 May 2014, the Trial Chamber dismissed this motion.²⁵²

181. Meanwhile, in an attempt to facilitate the Merhi Defence's preparation for trial, the Presiding Judge held case management meetings with the Merhi Defence, Prosecution, Registry officials and the Defence Office. These meetings occurred on 8 January, and 14 and 21 February 2014. The aim was to ensure that the Merhi Defence would have adequate resources to prepare of trial in the event of a joinder and a resumed joined trial.²⁵³

182. The Merhi Defence, however, complained about this and sought the suspension of these meetings.²⁵⁴ On 1 April 2014, the Trial Chamber dismissed this complaint against holding regular case management meetings outside of court hearings.²⁵⁵

183. On 10 April 2014, the Trial Chamber held another status conference, and issued various oral decisions, for example setting the date for a pre-trial conference and for the Merhi Defence to

²⁴⁷ Preliminary Motion on Defects in the Form of the Indictment, 14 February 2014.

²⁴⁸ Decision on the form of the indictment against Mr Merhi.

²⁴⁹ Status conference, T. 4 March 2014; Order setting timeframe for Merhi Defence to request recall of witnesses.

²⁵⁰ F1444, Prosecution Submission of Consolidated Indictment, Witness and Exhibit Lists, 7 March 2014.

²⁵¹ F1506, Preliminary Motion on Defects in the Form of the Consolidated and Amended Indictment of 7 March 2014, 25 April 2014.

²⁵² Decision dismissing a motion alleging defects in the form of the consolidated indictment.

²⁵³ Decision on case management meetings.

²⁵⁴ F1447, Merhi Defence Request Relating to Holding Confidential Meetings and the Public Nature of the Proceedings, 11 March 2014.

²⁵⁵ Decision on case management meetings.

submit its pre-trial brief, and extending time limits for the Merhi Defence to file its notices regarding expert witnesses.²⁵⁶

184. On 17 April 2014, at the Prosecution's motion and as a consequence of the trial now proceeding on a 'consolidated indictment', the Trial Chamber issued new domestic and international arrest warrants against all five Accused.²⁵⁷

185. On 12 May 2014, the Trial Chamber held another status conference, during which it ordered that hearings in the *Ayyash and others* trial resume on 18 June 2014,²⁵⁸ and certified this decision for interlocutory appeal.²⁵⁹ The Merhi Defence appealed the decision on 22 May 2014.²⁶⁰ The Appeals Chamber confirmed that the trial could commence on the date set by the Trial Chamber.²⁶¹

186. The Merhi Defence filed its pre-trial brief on 26 May 2014,²⁶² and on 16 June 2014 the Trial Chamber held a pre-trial conference preceding the resumption of trial.²⁶³

187. The trial resumed on 18 June 2014.²⁶⁴ The Trial Chamber noted that, before it joined the two cases, it had received 214 exhibits into evidence, heard the live evidence of 15 witnesses and 15 witness statements were admitted into evidence without the witness being required to give live evidence. It declared admissible the statements of a further 33 witnesses, without requiring them to attend for cross-examination. It noted that the Merhi Defence could ask it to reconsider these decisions and to seek the recall of any of the witnesses for cross-examination.²⁶⁵ The Merhi Defence sought neither the reconsideration nor the recall of any of the witnesses.

²⁵⁶ Status conference, T. 10 April 2014; Decision extending time limits for Merhi Defence to file notices on expert witnesses; Scheduling order for pre-trial conference and Merhi Defence pre-trial brief.

²⁵⁷ Decision on new arrest warrants following joinder.

²⁵⁸ Scheduling order for recommencement of trial, pp 61-74.

²⁵⁹ Status conference, T. 12 May 2014, p. 80; Oral Decision granting certification to appeal the Trial Chamber's scheduling order for recommencement of trial, T. 12 May 2014, pp 77-80.

²⁶⁰ F0005-AR126.8, Interlocutory Appeal Brief from the Merhi Defence against the Decision Setting the Date of Trial, 22 May 2014.

²⁶¹ Appeals decision denying the appeal of the scheduling order for recommencement of trial.

²⁶² F1543, Merhi Defence Pre-Trial Brief, 26 May 2014.

²⁶³ Pre-trial conference, T. 16 June 2014.

²⁶⁴ Procedural matters, T. 18 June 2014, p. 3.

²⁶⁵ Procedural matters, T. 18 June 2014, pp 6-7.

188. The Prosecutor and Prosecution counsel made opening statements in the case against Mr Merhi on this day.²⁶⁶ The Merhi Defence made its opening statement the following day.²⁶⁷

12. Mustafa Badreddine's reported death, termination of the proceedings and amending the consolidated indictment

189. On 13 May 2016, Lebanese media reported that 'Haji Mustafa Badreddine' had been killed in an explosion in Syria, while commanding Hezbollah fighters near Damascus.²⁶⁸

190. The Trial Chamber held a hearing on this matter on 31 May 2016 and 1 June 2016, during which the Prosecution and counsel for Mr Badreddine led evidence of his alleged death.²⁶⁹ At the end of the hearings, the Trial Chamber by majority, with Judge Braidy dissenting, held in a decision delivered in court—followed by written reasons—that sufficient evidence had not yet been presented to establish Mr Badreddine's death and therefore terminate the proceedings against him. For this reason the decision was termed an 'interim decision'.²⁷⁰

191. It decided that the trial would continue pending additional material being received in response to the Prosecution's outstanding requests for assistance to the Lebanese Government.²⁷¹ These included a request for a death certificate and firm evidence that he was deceased.

192. On the same day, on 1 June 2016, counsel for Mr Badreddine sought certification, under Rule 126 (C), to appeal the Trial Chamber's decision and sought a stay of proceedings pending the resolution of the appeal.²⁷² The Trial Chamber heard further submissions from Defence counsel the next day, 2 June 2016.²⁷³ It ordered the Badreddine Defence to file any application for certification to appeal the interim decision within 24 hours of the filing of the Trial Chamber's written reasons, and adjourned the proceedings for the remainder of the week.²⁷⁴

²⁶⁶ Prosecutor's opening statement regarding Hassan Habib Merhi, T. 18 June 2014, pp 14-70.

²⁶⁷ Merhi Defence opening statement, T. 19 June 2014, pp 3-12.

²⁶⁸ Reasons for interim decision on the death of Mr Badreddine and termination of proceedings, para. 4.

²⁶⁹ T. 31 May 2016, T. 1 June 2016.

²⁷⁰ Interim decision delivered in court on the reported death of the Accused Mustafa Amine Badreddine, T. 1 June 2016, pp 55-57, 62.

²⁷¹ Interim decision delivered in court on the reported death of the Accused Mustafa Amine Badreddine, T. 1 June 2016, p. 56.

²⁷² T. 1 June 2016, pp 61-62; F2609, Badreddine Defence Request for Certification to Appeal the Oral Decision of 1 June 2016, and for Stay of Proceedings, 1 June 2016.

²⁷³ Badreddine Defence Submission, T. 2 June 2016, pp 2-33.

²⁷⁴ Order setting a time limit for filing requests for certification.

193. The Trial Chamber's written reasons, and Judge Braidy's written dissent, were issued on 7 and 8 June 2016, respectively.²⁷⁵ The Trial Chamber reiterated that it was premature to conclude that Mr Badreddine was deceased²⁷⁶—particularly when the Prosecution's request for a number of forms of official proof, including a death certificate, from the Government of Lebanon was still outstanding.²⁷⁷ It held that neither counsel for Mr Badreddine nor the other Accused would suffer any prejudice as a result of deferring the determination of the matter, to give the Lebanese Government time to obtain the additional material.²⁷⁸

194. On 8 June 2016, counsel for Mr Badreddine, joined by the Defence of the other four Accused and the Head of Defence Office, filed an application for certification to appeal the decision of 7 June 2016, renewing its application of 1 June 2016.²⁷⁹ The Defence argued that continuing the trial without a final legal determination of the issue of Mr Badreddine's death could result in unfairness because the Trial Chamber may lack personal jurisdiction to continue hearing the case.²⁸⁰ The Prosecution responded on 8 June 2016 and the Legal Representatives of Victims filed their response and observations on 9 June 2016.²⁸¹ On the same day, the Trial Chamber certified the issue for interlocutory appeal.²⁸²

195. The Badreddine Defence filed its interlocutory appeal on 15 June 2016, additionally asking that the proceedings be suspended pending its resolution.²⁸³ It was supported by the Head of

²⁷⁵ Reasons for interim decision on the death of Mr Badreddine and termination of proceedings; F2616, Dissenting Opinion of Judge Micheline Braidy on the Trial Chamber's Interim Decision Regarding the Death of Mr Mustafa Amine Badreddine and Possible Termination of Proceedings, 8 June 2016.

²⁷⁶ Reasons for interim decision on the death of Mr Badreddine and termination of proceedings, paras 33, 35, 39.

²⁷⁷ Reasons for interim decision on the death of Mr Badreddine and termination of proceedings, paras 36-37.

²⁷⁸ Reasons for interim decision on the death of Mr Badreddine and termination of proceedings, para. 38.

²⁷⁹ F2613, Badreddine Defence Perfected Request for Certification to Appeal the Interim Decision of 1 June 2016, 8 June 2016; F2609, Badreddine Defence Request for Certification to Appeal the Oral Decision of 1 June 2016, and for Stay of Proceedings, 1 June 2016; F2614, Defence Joinder to 'Badreddine Defence Perfected Request for Certification to Appeal the Interim Decision of 1 June 2016', 8 June 2016; F2617, Observations from the Head of Defence Office in Support of the Badreddine Defence Request Dated 8 June 2016 for Certification to Appeal the Oral Decision of 1 June 2016, 8 June 2016.

²⁸⁰ F2613, Badreddine Defence Perfected Request for Certification to Appeal the Interim Decision of 1 June 2016, 8 June 2016, para. 3; F2609, Badreddine Defence Request for Certification to Appeal the Oral Decision of 1 June 2016, and for Stay of Proceedings, 1 June 2016, paras 7-8.

²⁸¹ F2615, Prosecution Response to the Badreddine Defence Perfected Request for Certification to Appeal the Interim Decision of 1 June 2016, 8 June 2016; F2618, Observations of the Legal Representative of Victims to the Badreddine Defence Perfected Request for Certification to Appeal the Interim Decision of 1 June 2016, 9 June 2016.

²⁸² Certification for interlocutory appeal of the interim decision on the death of Mr Badreddine and termination of proceedings.

²⁸³ F0001-AR126.11, Badreddine Interlocutory Appeal of the 'Interim Decision on the Death of Mr Mustafa Amine Badreddine and Possible Termination of Proceedings', 15 June 2016, paras 27-31.

Defence Office and joined by the Ayyash, Merhi and Oneissi Defence.²⁸⁴ The Prosecution and Legal Representatives of Victims opposed the appeal.²⁸⁵ While the Prosecution did not oppose the application to suspend the proceedings, the Legal Representatives of Victims submitted that such a suspension should be ordered only if certain conditions were met.²⁸⁶

196. On 21 June 2016, the Appeals Chamber, with Judges Baragwanath and Nsereko dissenting, granted the suspensive relief.²⁸⁷ The Appeals Chamber's written reasons followed on 23 June 2016.²⁸⁸

197. On 30 June 2016, the Badreddine Defence asked the Appeals Chamber to lift the suspensive effect of its previous decision on the trial proceedings, to allow the Trial Chamber to receive and consider a certified copy of Mr Badreddine's death certificate and a medical report annexed to it.²⁸⁹ This was opposed by the Prosecution.²⁹⁰ On 1 July 2016, the Trial Chamber asked the Appeals Chamber for access to the additional documents, appended confidentially to the Badreddine Defence motion.²⁹¹

²⁸⁴ F0004-AR126.11, Observations from the Head of Defence Office in support of the Badreddine Appeal against the 'Interim Decision on the Death of Mr Mustafa Amine Badreddine and Possible Termination of Proceedings', 16 June 2016; F0006-AR126.11, Joinder from the Defence of Messrs Oneissi and Merhi to the Badreddine Defence Appeal Against the 'Interim Decision on the Death of Mr Mustafa Amine Badreddine and Possible Termination of Proceedings', 17 June 2016; F0009-AR126.11, Ayyash Defence Joinder to 'Badreddine Interlocutory Appeal of the "Interim Decision on the Death of of Mr Mustafa Amine Badreddine and Possible Termination of Proceedings"', 21 June 2016.

²⁸⁵ F0008-AR126.11, Prosecution Response to the Interlocutory Appeal of the 'Interim Decision on the Death of Mr Mustafa Amine Badreddine and Possible Termination of Proceedings', 20 June 2016; F0012-AR126.11, Submissions of the Legal Representative of Victims on the Interlocutory Appeal of the 'Interim Decision on the Death of Mr Mustafa Amine Badreddine and Possible Termination of Proceedings', 27 June 2016.

²⁸⁶ F0003-AR126.11, Prosecution Submissions on the Badreddine Defence Application for Suspensive Relief, 16 June 2016; F0007-AR126.11, Submissions of the Legal Representative of Victims on the Badreddine Defence Application for Suspensive Relief, 17 June 2016.

²⁸⁷ Decision on Badreddine Defence request for suspensive effect of its interlocutory appeal against the Trial Chamber's decision regarding Mr Badreddine's death.

²⁸⁸ Reasons for decision on Badreddine Defence request for suspensive effect of its interlocutory appeal, with the dissenting opinion of Judge Baragwanath and Judge Nsereko.

²⁸⁹ F0013-AR126.11, Public Redacted Version of Badreddine Request for Lifting of Suspensive Effect in re. Interlocutory Appeal of the Interim Decision on the Death of Mr Mustafa Amine Badreddine, 30 June 2016.

²⁹⁰ F0015-AR126.11, Redacted Version of the Corrected Version of Prosecution Response to the Badreddine Request for Lifting of Suspensive Effect in re Interlocutory Appeal of the Interim Decision on the Death of Mr Mustafa Amine Badreddine, filed 4 July 2016, 6 July 2016.

²⁹¹ F0014-AR126.11, Request to Appeals Chamber for Access to Documents Relating to the Death of Mustafa Amine Badreddine, 1 July 2016.

198. On 11 July 2016, the Appeals Chamber—with Judges Baragwanath and Nsereko dissenting—granted the appeal, finding that Mr Badreddine’s death had been sufficiently proven on the evidence presented.²⁹²

199. It directed the Trial Chamber to terminate the proceedings against Mr Badreddine, without prejudice to resume the proceedings, if evidence that he was alive was adduced in the future.²⁹³ On the same day, the Trial Chamber terminated the proceedings against Mr Badreddine without prejudice, and ordered the Prosecution to file an amended consolidated indictment.²⁹⁴ As noted above, the operative amended consolidated indictment was filed on 12 July 2016.²⁹⁵

13. The trial proceedings, including the Prosecution’s case and motion for a judgment of acquittal

200. The Prosecution called its first witnesses on 22 January 2014.²⁹⁶ It completed the presentation of its evidence on 7 February 2018, after the evidence of 269 witnesses was received, and 2,487 exhibits had been tendered into evidence.²⁹⁷

201. Some relevant procedural matters occurring during the trial are highlighted below.

(a) In-court summaries of evidence admitted under Rules 154, 155 and 156

202. In its directions on the conduct of the proceedings, the Trial Chamber ordered the Parties to read into the record the summaries of tendered witness statements, and to disclose this summary one day in advance.²⁹⁸ During the trial, the Trial Chamber also adopted a practice in which the Parties summarised the content of any documents tendered under Rule 154, and where possible displayed relevant portions of the document for public broadcast. This was also a procedural innovation in international criminal law proceedings. The Trial Chamber explained:

²⁹² Interlocutory appeal decision on the death of Mr Badreddine and termination of proceedings, para. 53, disposition; F0019-AR126.11, Dissenting Opinion of Judge Daniel David Ntanda Nsereko, 11 July 2016; F0020-AR126.11, Dissenting Opinion of Judge Baragwanath on the Appeals Chamber’s “Decision on Badreddine Defence interlocutory appeal of the interim decision regarding Mr Badreddine’s death and termination of proceedings”, 13 July 2016.

²⁹³ Interlocutory appeal decision on the death of Mr Badreddine and termination of proceedings, para. 53, disposition.

²⁹⁴ Order terminating proceedings against Mr Badreddine without prejudice and ordering the filing of an amended consolidated indictment.

²⁹⁵ Amended consolidated indictment.

²⁹⁶ Evidentiary Matters, T. 22 January 2014, p. 5.

²⁹⁷ Procedural matters, T. 7 February 2014, p. 69.

²⁹⁸ Directions on the conduct of the proceedings, para. 8.

The public policy purpose of this, as at the ICTY, is to allow those following the proceedings—such as the public and the media—to better understand the evidence. It also assists the Trial Chamber, the Parties and Legal Representative of Victims in contextualising the evidence, in summarised form, in the transcript.²⁹⁹

203. It also noted the considerable saving of court time by admitting the evidence of numerous witnesses under Rules 155 and 156 and that:

The time taken to read summaries of their statements onto the record is but a tiny percentage of the time that would have been required for oral testimony. It also guarantees the transparency of the proceedings.

The right to a public hearing, unlike other procedural rights, involves more than the interest of the Accused. It also ensures both the public's right to know and the integrity of the judicial process.

The public filings, including the Trial Chamber's decisions, on the admissibility of evidence declared admissible under Rules 154, 155 and 156 do not necessarily of themselves properly inform the public about the content of the written evidence. As their focus is on the relevance and probative value of the evidence proposed for admission, the contents of the relevant statements or documents are not always or sufficiently summarised in those decisions or submissions. Moreover, some evidence is subject to protective measures ordered under Rule 133 and is redacted or not made public. Furthermore—unlike transcripts—evidence admitted under Rules 154, 155 and 156 is not, pursuant to a decision of the Registrar, available on the Special Tribunal's website.³⁰⁰

(b) Amending the directions on the conduct of proceedings to allow mid-trial thematic summaries

204. As another innovation in international criminal law proceedings, the Trial Chamber permitted the Parties and participating victims to present mid-trial thematic summaries.

205. After first hearing from the Parties and Legal Representatives of Victims, the Trial Chamber held that it may require or grant leave to the Parties and Legal Representatives of Victims

²⁹⁹ In-court summaries decision, para. 30.

³⁰⁰ In-court summaries decision, paras 32, 33, 34 (footnote omitted).

to present in-court mid-trial thematic summaries of the evidence. In a decision delivered in court on 4 April 2016—with written reasons filed on 7 April 2016—the Trial Chamber supplemented its Rule 130 (A) directions on the conduct of the proceedings to allow in court mid-trial summaries.³⁰¹

206. After noting the technicality and complexity of the proceedings, the Trial Chamber stated that:

Mid-trial thematic summaries could be very useful to the Trial Chamber. But, like an opening or closing statement, they are not evidence. And, as the Prosecution has submitted with regard to its thousands of pieces of circumstantial evidence, in most instances, ‘the potential relevance of these individual pieces may only be considered in the context of other related pieces of evidence’. Such summaries can therefore aid the Trial Chamber, Parties and participating victims—and the public—in understanding the voluminous evidence and how some pieces of evidence relate to other pieces and to the evidence as a whole. For this reason, they can promote the overall efficiency of the trial.³⁰²

207. The Trial Chamber further reasoned that:

Mid-trial summaries are extremely useful in contextualising a case as complex and technical as this one. They are permissible under Rule 130 (A). There is no prejudice to the rights of the Accused to a fair, impartial and expeditious trial. The Trial Chamber will therefore supplement its guidelines attached to the directions on the conduct of the proceedings to permit intermittent mid-trial thematic summaries of evidence.³⁰³

208. Several mid-trial summaries were made in court, for example by the Prosecution on 4 April 2016, and by the Sabra Defence on 9 September and 9 November 2016.³⁰⁴ The Sabra Defence also filed a written mid-trial thematic summary on 28 April 2017. The Trial Chamber formally authorised this on 29 November 2017.³⁰⁵

³⁰¹ Decision on periodic in-court summaries; In-court summaries decision.

³⁰² In-court summaries decision, para. 15 (footnote omitted).

³⁰³ In-court summaries decision, para. 38.

³⁰⁴ Prosecution submissions, T. 4 April 2016, pp 4-30; Sabra Defence submissions, T. 9 September 2016, pp 31-32, T. 9 November 2016, pp 27-50.

³⁰⁵ F3108, Request for Leave to File Defence Thematic Summary of Information Relevant to the Chamber in Relation to the False Claim of Responsibility, 28 April 2017; Decision allowing Sabra Defence supplement.

(c) Amending the decision on the working languages of the case

209. On 14 July 2016, on the Registrar's motion and after consulting the Parties and Legal Representatives of Victims, the Trial Chamber varied the Pre-Trial Judge's decision on the working language regime, which required that exculpatory material disclosed to the Defence under Rule 113 be in English and Arabic, and its original language, if that language is neither English nor Arabic.

210. This variation removed the costly requirement that all such material be translated into Arabic, and instead allowed the Defence to request translation into Arabic only when necessary.³⁰⁶

211. On 21 March 2018, after running its own technical tests, the Trial Chamber varied the Pre-Trial Judge's decision to allow for the addition of a French real time transcript of hearings, alongside the English one.³⁰⁷

(d) Disclosure issues

212. Issues relating to disclosure of Prosecution material to the Defence, as noted above, were far from resolved when the Trial Chamber, on 25 October 2013, received jurisdiction to try the case. During the trial, Defence counsel brought to the Trial Chamber's attention, and for its adjudication, a number of alleged violations of the Prosecutor's duties to disclose material that was either material to Defence preparations for trial or exculpatory, pursuant to Rules 110 (B) and 113

213. On a number of occasions, the Trial Chamber ordered the Prosecution to provide it with the material, *ex parte*, to allow the Trial Chamber to decide whether the material should be disclosed, or that it was exempt from disclosure, as for example, the internal work product of a Party, pursuant to Rule 111. Several times the Trial Chamber, after inspecting the material or samples of it, ordered its full or partial disclosure to the Defence.³⁰⁸ On other occasions, it ruled that the material had been properly disclosed.³⁰⁹

³⁰⁶ Decision on translating exculpatory material into Arabic.

³⁰⁷ Decision permitting French simultaneous transcription.

³⁰⁸ *For example*, Decision reconsidering decision on Oneissi Defence requests for assistance; Decision on Oneissi Defence request for assistance re mobile 095; Decision on disclosure re Andrew Donaldson's reports.

³⁰⁹ *For example*, Order to Prosecution to provide documents to Trial Chamber for review of internal work product categorisation and disclosure; Decision on Oneissi Defence requests for assistance; Decision denying the Sabra Defence application for disclosure of a UNHCR Internal Memorandum on Mr Wissam Al-Hassan.

(e) Rule 167 motion for acquittal at the end of the Prosecution case

214. At a case management meeting held on 2 February 2018, counsel for Mr Oneissi informed the Trial Chamber that he intended to move the Trial Chamber under Rule 167 to acquit Mr Oneissi.³¹⁰ As the Sabra Defence had left open the possibility that it might make a similar application, it was ordered to inform the Trial Chamber of its intention by 13 February 2018.³¹¹ The Trial Chamber scheduled hearings on the Oneissi Defence's motion to acquit for 20 and 21 February 2018.³¹²

215. The Prosecution's case was formally closed on 7 February 2018.³¹³ The Oneissi Defence confirmed its intention to move for acquittal, whereas counsel for the other Accused informed the Trial Chamber that they would not make submissions under Rule 167.³¹⁴

216. On 8 February 2018, the Trial Chamber ordered the Oneissi Defence to file a skeleton outline of its arguments by 16 February 2018 and the Prosecution to make a similar filing by 19 February 2018,³¹⁵ which they did.³¹⁶

217. The Oneissi Defence made oral submissions in support of its motion to acquit on 20 and 21 February 2018.³¹⁷ The Prosecution responded on 21 and 22 February 2018.³¹⁸ The same day, on 22 February, the Trial Chamber ordered the parties to file written submissions by 27 February 2018.³¹⁹ These were duly filed.³²⁰

³¹⁰ Scheduling Order Regarding Close of Prosecution Case and Defence Submissions under Rule 167, para. 2; Procedural Matters, T. 7 February 2018, pp 70-71.

³¹¹ Scheduling order on the close of the Prosecution case and Rule 167 submissions, paras 2, 5.

³¹² Scheduling order on the close of the Prosecution case and Rule 167 submissions, para. 4.

³¹³ Procedural Matters, T. 7 February 2018, p. 69.

³¹⁴ Procedural Matters, T. 7 February 2018, pp 72-74, T. 20 February 2018, p. 8. Counsel for Mr Ayyash felt ethically bound to submit that the Prosecution had not met its burden of proof, but clarified that this would not entail a formal motion under Rule 167, T. 7 February 2018, pp 72-73, T. 20 February 2018, pp 8-11. The Prosecution nevertheless outlined its case against Mr Ayyash, Prosecution submissions, T. 22 February 2018, pp 20-39.

³¹⁵ Scheduling order on Rule 167 submissions, paras 5-6.

³¹⁶ F3574, Corrected Version of "Defence for Hussein Hassan Oneissi Submission Pursuant to the Trial Chamber's Scheduling Order of 8 February 2018" filed on 16 February 2018, 16 February 2018; F3577, Skeleton Argument in Response to Rule 167 Motion by Oneissi Defence, 19 February 2018.

³¹⁷ Submissions by Oneissi Defence, T. 20 February 2018, pp 19-95, T. 21 February 2018, pp 3-37.

³¹⁸ Response by Prosecution, T. 21 February 2018, pp 39-113; Reply by Oneissi Defence, T. 21 February 2018, pp 114-121; Prosecution rejoinder, T. 22 February 2018, pp 7-10.

³¹⁹ T. 22 February 2018, pp 7-10.

³²⁰ F3586, Public Redacted Version of the "Corrected Version of the Additional Submissions from the Oneissi Defence Pursuant to Rule 167 and to the Oral Order of the Trial Chamber dated 22 February 2018 Filed on 27 February 2018",

218. On 23 February 2018—before reaching a decision on the Oneissi Defence motion to acquit—the Trial Chamber ordered counsel for each Accused to state whether they would present a Defence case and file associated documents.³²¹ On 5 March 2018, the Oneissi Defence asked that this be suspended, pending a decision on its Rule 167 motion.³²² The Trial Chamber dismissed the Oneissi Defence application the next day.³²³

219. The Trial Chamber denied the Oneissi Defence motion for a judgment of acquittal in a decision delivered in court on 7 March 2018, finding that the Prosecution had provided sufficient evidence upon which it could convict Mr Oneissi under all counts.³²⁴ The Oneissi Defence reiterated its application for suspension of the Rule 128 order pending the resolution of any appeal against the Rule 167 decision.³²⁵

220. On 14 March 2018, the Oneissi Defence sought certification from the Trial Chamber to appeal its decision of 7 March 2018 and asked for a stay in the proceedings until the appeal was resolved.³²⁶

221. The Legal Representatives of Victims filed observations on 29 March 2018; they submitted that the Trial Chamber should dismiss the certification request and deny the motion for suspension, noting that the victims sought an expeditious conclusion to the trial.³²⁷ The Prosecution replied the same day, also arguing for dismissal of the motion for a stay in proceedings.³²⁸ On 6 April 2018,

7 March 2018; F3587, Public Redacted Version of the Corrected Version of the Prosecution Further Submissions in Response to an Oneissi Defence Application for Acquittal Under Rule 167, 1 March 2018.

³²¹ Rule 128 scheduling order on presentation of a Defence case.

³²² F3592, Oneissi Defence Request for Suspension of Rule 128 Scheduling Order, 5 March 2018. Defence Counsel for Mr Sabra also requested a stay in the proceedings, F3591, Sabra Defence Request Pursuant to Rule 165 and For Suspensive Effect of Rule 128 Order, 5 March 2018.

³²³ Order scheduling a pre-defence conference and dismissing suspension requests.

³²⁴ Rule 167 decision.

³²⁵ Procedural Matters, T. 7 March 2018, pp 64-66.

³²⁶ F3603, Public Redacted Version of the Request for Certification of the Chamber's Decision of 7 March 2018 Dismissing the Application for the Acquittal of Mr Oneissi Filed Pursuant to Rule 167, 15 March 2018.

³²⁷ F3612, The Legal Representative of Victims Observations on "Requête en certification de la Decision de la Chambre en date du 7 Mars 2018 rejetant la demande d'acquittement de M. Oneissi déposée en application de l'article 167", 29 March 2018.

³²⁸ F3613, Prosecution Response to Oneissi Defence "Requête en certification de la décision de la Chambre en date du 7 Mars 2018 rejetant la demande d'acquittement de M. Oneissi déposée en application de l'article 167", 29 March 2018.

the Oneissi Defence replied to the Prosecution and the Legal Representatives of the Victims.³²⁹ The Trial Chamber dismissed the application for certification to appeal on 14 May 2018.³³⁰

14. Representation of victims during the trial and the presentation of the victims' case

(a) Decisions on victims' participation and legal representation

222. On 9 February 2012, the Victims' Participation Unit transmitted to the Pre-Trial Judge the applications of 73 people seeking the status of victim participating in the proceedings.³³¹ The Pre-Trial Judge granted this status to 58, finding *prima facie* evidence that they suffered physical, material or mental harm as a direct result of the attack on 14 February 2005.³³²

223. The Pre-Trial Judge decided that the victims authorised to participate in the proceedings could only do so through a legal representative, and that they formed a single group for the purpose of their legal representation before the Special Tribunal.³³³

224. On 16 May 2012, the Registrar, pursuant to the Pre-Trial Judge's decision, designated Mr Peter Haynes as lead Legal Representative, and Mr Mohammad Mattar and Ms Nada Abdelsater-Abusamra as Co-Legal Representatives, to represent the interests of the participating victims.³³⁴

225. In his second decision on victim participation of 3 September 2012, the Pre-Trial Judge granted a further nine applicants participating victim status.³³⁵ In his third decision on victim participation of 28 November 2012, the Pre-Trial Judge granted another applicant participating victim status.³³⁶ In a fourth decision on 2 May 2013, the Pre-Trial Judge denied four applications

³²⁹ F3618, Reply to the Responses of the Prosecution and of the Legal Representative of Victims to the "Requête de la Defence en certification de la décision de la Chambre en date du 7 mars 2018 rejetant la demande d'acquittement de M. Oneissi déposée en application de l'article 167", 6 April 2018.

³³⁰ Decision denying Oneissi Defence certification to appeal (non-acquittal under Rule 167).

³³¹ F0119, Transmission of Applications for the Status of Victim Participating in the Proceedings, 9 February 2012 (corrigenda filed on 15 February 2012).

³³² Pre-Trial Judge decision on victims' participation in the proceedings, para. 104.

³³³ Pre-Trial Judge decision on victims' participation in the proceedings, paras 112, 127, disposition.

³³⁴ Designation decision for Legal Representatives of Victims, para. 18, disposition.

³³⁵ Second decision on victim participation, para. 12.

³³⁶ Third decision on victim participation, para. 9.

for participating victim status as they had not demonstrated the required nexus between the harm they each claim to have suffered, and a crime pleaded within the indictment against the Accused.³³⁷

226. On 18 July 2014, in his fifth decision, the Pre-Trial Judge granted participating victim status to three new applicants who had applied late—as they had learned of the possibility to participate after the start of the trial, or had reconsidered their previous reluctance.³³⁸ In the decision the Pre-Trial Judge noted that while the Trial Chamber was now seised of the case, he and the Trial Chamber had decided, in consultation, that under Rule 86 the Pre-Trial Judge would continue to consider any new applications for participating victim status.³³⁹

227. On 6 November 2014, the Pre-Trial Judge granted participating victim status to two more applicants who were unaware, before the trial started, that they could participate in the proceedings.³⁴⁰ In his seventh victim participation decision, issued on 5 May 2015, the Pre-Trial Judge found the applications admissible although were overdue, and granted both applicants victim participation status.³⁴¹ In the eighth and final decision on victim participation issued on 13 July 2017, the Pre-Trial Judge granted participating victim status to one applicant unable to apply earlier for medical reasons.³⁴²

228. Over the course of the proceedings, the participating status of six victims was withdrawn either by the Pre-Trial Judge or the Trial Chamber—for four of them at the motion of the Legal Representatives of Victims following their deaths.³⁴³ The number of victims participating in the trial at the time of delivery of judgment was 70.³⁴⁴

³³⁷ Fourth Decision on victim participation.

³³⁸ Fifth decision on victim participation, paras 3, 12-14, disposition; F1599, Sixth Transmission by the VPU Pursuant to Rule 51(B)(iii), 27 June 2014, para. 5.

³³⁹ Fifth decision on victim participation, para. 5. *See also* Trial management decision, para. 73.

³⁴⁰ Sixth decision on victim participation, paras 3, 11-13, disposition.

³⁴¹ Seventh decision on victim participation, paras 3, 11-13, disposition.

³⁴² Eighth decision on victim participation, paras 2, 11, disposition.

³⁴³ Decision authorising two victims to withdraw their participation; Decision authorising a victim to withdraw their participation; Decision delivered in court authorising one victim to withdraw their participation; Decision withdrawing one participating victim; Decision withdrawing participating victim (2020).

³⁴⁴ *See also* para. 796.

(b) Decisions on modalities of victims' participation

229. Both the Pre-Trial Judge and the Trial Chamber, after hearing the Parties, issued guidelines governing the modalities of victims' participation in the proceedings, supplementing the existing applicable Rules.³⁴⁵

230. On 1 March 2012, the Registrar asked the Pre-Trial Judge for clarification, under Rule 84 (E), on whether the Legal Representatives of Victims were entitled to receive filings classified as 'confidential'.³⁴⁶ The Pre-Trial Judge invited the Parties to file responses to the Registrar's submission by 9 March 2012,³⁴⁷ which they did.³⁴⁸

231. On 28 March 2012, the Pre-Trial Judge invited the Parties, including the Victims' Participation Unit, to make additional submissions on participating victims' access to disclosure materials by 4 April 2012,³⁴⁹ which were then filed.³⁵⁰ On 18 May 2012, the Pre-Trial Judge granted the Legal Representatives of Victims access to all confidential filings and all material disclosed by the Prosecution, subject to any protective measures.³⁵¹ The Pre-Trial Judge also ruled on the modality of the victims' participation at the pre-trial stage, permitting them to attend and participate in meetings, status conferences and hearings, and to file motions or briefs on issues that affect their interests.³⁵²

232. On 1 November 2013, the Legal Representatives of Victims applied to the Trial Chamber to set out in concrete terms the modalities of victim participation at trial, and asked that the victims

³⁴⁵ On this, *see further* chapter V 'Participation of victims', (C) 'Modes of victims' participation in the trial'.

³⁴⁶ F0136, Submission on Receipt of Confidential Documents by Victims' Legal Representatives and the Victims' Protection Unit, 1 March 2012, para. 20.

³⁴⁷ F0139, CMSS Memorandum Filing Instructions from the PTJ Pursuant to Rule 8 Regarding the Submission on Receipt of Confidential Documents by Victims' Legal Representatives and the Victims' Participation Unit, filed by the Registry on 1 March 2012, 2 March 2012.

³⁴⁸ F0143, Prosecution's Response to the Registry's Submission on Receipt of Confidential Documents by Victims' Legal Representatives and the Victims' Participation Unit, 9 March 2012; F0144, Defence Response to the Registrar's "Submission on Receipt of Confidential Documents by Victims' Legal Representatives and the Victims' Participation Unit", 9 March 2012.

³⁴⁹ F0170, Memorandum re. Scheduling Directive from Pre-Trial Judge, 28 March 2012.

³⁵⁰ F0181, Joint Defence Submission Regarding Access to Disclosure Material by the Victims' Legal Representatives and the Victims' Participation, 4 April 2012; F0182, Prosecution's Additional Submissions Pursuant to the Pre-Trial Judge's Scheduling Directive Dated 28 March 2012, 4 April 2012; F0183, VPU Submission Pursuant to the Pre-Trial Judge's Scheduling Directive of 28 March 2012, 4 April 2012.

³⁵¹ The Legal Representative were not entitled to receive documents classified as confidential and *ex parte*, or as under seal and *ex parte* with limited distribution; Decision on modalities of victim participation.

³⁵² Decision on modalities of victim participation.

be granted a number of procedural rights.³⁵³ The Prosecution and, in a consolidated submission, the Badreddine, Oneissi and Sabra Defence filed their observations on 18 November 2013.³⁵⁴ On 16 January 2014, as noted above, the Trial Chamber, acting under Rule 130 (A), issued directions on the conduct of the proceedings, including guidelines on the participation of victims in the trial.³⁵⁵

233. Consistent with the applicable Rules and directions, through their Legal Representatives, the participating victims made opening submissions, questioned witnesses, filed motions and observations, filed a final trial brief, presented closing arguments, received documents filed by the Parties and participated in status conferences and trial case management meetings.³⁵⁶

(c) Attendance of participating victims in court

234. On 4 November 2014, the Legal Representatives of Victims asked the Trial Chamber to elaborate on how they should seek permission for future attendance of participating victims, both public and confidential.³⁵⁷ The Trial Chamber issued general directions on the attendance of participating victims in the courtroom and permitted it on a case-by-case basis.³⁵⁸

235. Following applications by the Legal Representatives of Victims, 33 participating victims attended proceedings in the courtroom.³⁵⁹

(d) Presentation of the ‘Victims’ case’

236. On 3 May 2017, the Legal Representatives of Victims sought the Trial Chamber’s permission to call ten live witnesses and present the evidence of 18 other witnesses in written

³⁵³ F1200, Observations of the Legal Representative of Victims on the Modalities of Victim Participation at Trial, 1 November 2013, para. 58.

³⁵⁴ F1220, Prosecution Response to LRV Observations on the Modalities of Victim Participation at Trial, 18 November 2013; F1223, Defence Submissions on the Observations of the Legal Representative for Victims on the Modalities of Victim Participation at Trial, 18 November 2013.

³⁵⁵ Directions on the conduct of the Proceedings.

³⁵⁶ On this, *see further* chapter V ‘Participation of victims’, (C) ‘Modes of victims’ participation in the trial’.

³⁵⁷ F1728, Public Redacted Version of the ‘Request of the Legal Representative of Victims for Clarification of the Conditions Under which Participating Victims May Attend Proceedings’, 4 November 2014, para. 23.

³⁵⁸ Decision on Participating Victims’ attendance of proceedings.

³⁵⁹ For example, Decision allowing a participating victim to attend courtroom proceedings of 25 November 2016; Decision allowing a participating victim to attend courtroom proceedings of 24 August 2017; Decision allowing a participating victim to attend courtroom proceedings of 6 September 2018; Decision allowing a participating victim to attend courtroom proceedings of 11 September 2018.

statements, under Rules 155 or 158.³⁶⁰ On 10 May 2017, they sought leave to amend their witness list.³⁶¹ On 31 July 2017, the Trial Chamber granted the Legal Representatives of Victims' application to present their evidence.³⁶² The evidence was heard and received in August, September and December 2017.

15. Pre-defence conference, disqualification motion and presentation of the Oneissi Defence case

237. On 23 February 2018, as noted above, after the close of the Prosecution's case, the Trial Chamber ordered under Rule 128 that the Defence for each Accused state by 7 March 2018 whether they would present a defence case.³⁶³

238. On 5 March 2018, the Sabra Defence asked the Trial Chamber to call four witnesses under Rule 165; it further asked the Trial Chamber to suspend the Rule 128 scheduling order until the application was resolved.³⁶⁴ On the same day, the Oneissi Defence asked the Trial Chamber to suspend the order until determination of its motion for acquittal under Rule 167.³⁶⁵ On 6 March 2018, the Trial Chamber dismissed both applications and scheduled the pre-defence conference for 8 March 2018.³⁶⁶

239. On 7 March 2018, the Sabra Defence notified the Trial Chamber that it was not yet in a position to elect to present a case as it was awaiting the resolution of pending motions.³⁶⁷ The Merhi Defence stated that it did not intend to offer any evidence.³⁶⁸ The Ayyash Defence was unresponsive to the Rule 128 scheduling order. Only the Oneissi Defence elected to present a case,

³⁶⁰ F3116, Request of the Legal Representative of Victims to Call Witnesses and Tender Other Evidence and for Guidance on Its Disclosure Obligations, in Compliance with the Judge Rapporteur's 11 April 2017 Order, with Confidential Annexes A, B and C, 3 May 2017, paras 2, 33.

³⁶¹ F3132, Request of the Legal Representative of Victims to add four Witnesses to its Witness List, with confidential Annex A, 10 May 2017.

³⁶² Decision on the Legal Representatives' application to call evidence.

³⁶³ Rule 128 scheduling order on presentation of a Defence case.

³⁶⁴ F3591, Sabra Defence Request Pursuant to Rule 165 and for Suspensive Effect of Rule 128 Order, 5 March 2018. The Rule 165 motion is further discussed in sub-section (16) 'One witness called by the Trial Chamber under Rule 165'.

³⁶⁵ F3592, Oneissi Defence Request for Suspension of Rule 128 Scheduling Order, 5 March 2018.

³⁶⁶ Order scheduling a pre-defence conference and dismissing suspension requests.

³⁶⁷ F3597, Notification in Relation to the Trial Chamber's 'Scheduling Order to the Defence under Rule 128', 7 March 2018.

³⁶⁸ F3598, Merhi Defence Submissions Pursuant to Rule 128 of the Rules of Procedure and Evidence, 7 March 2018.

consisting of two witnesses—one expert witness and one witness providing political background evidence.³⁶⁹

240. The Trial Chamber held a pre-defence conference on 8 March 2018.³⁷⁰ At the conference, counsel for Mr Merhi and Mr Oneissi confirmed their positions, and the Ayyash Defence informed the Trial Chamber that it would not present a case.³⁷¹ The Trial Chamber ordered the Sabra Defence to notify it by 9 March 2018 whether it would present a case,³⁷² to which the Sabra Defence responded that it would not present one.³⁷³

241. On 12 April 2018, the Oneissi Defence filed a motion to disqualify the entire Trial Chamber, Judges Re, Nosworthy and Braidy, alleging perceived bias against the Defence since the close of the Prosecution's case.³⁷⁴ The next day, the Special Tribunal's President designated a Panel to rule on the matter, composed of Judges Nsereko, Akoum and Lettieri.³⁷⁵ On 16 April 2018, the Panel invited Judges Re, Nosworthy and Braidy to submit their views on the motion.³⁷⁶

242. On 18 April 2018, Judges Re and Nosworthy asked the President to set aside the designation of Judges Akoum and Lettieri to the Panel and to re-designate the Panel, submitting that the two alternate judges in the main trial have an irreconcilable conflict of interest in participating in the disqualification Panel.³⁷⁷ The following day, the President invited Judges Akoum and Lettieri, and the Oneissi Defence, to submit their views on the application of Judges Re and Nosworthy.³⁷⁸ On 20 April 2018, Judges Akoum and Lettieri stated that while they would have considered the matter in an independent and impartial manner, they nonetheless wished to be

³⁶⁹ F3596, Defence for Hussein Hassan Oneissi Submission Pursuant to the Trial Chamber's Scheduling Order of 23 February 2018, 7 March 2018; F3596, Public Redacted Version of Second Updated Annex A to Defence for Hussein Hassan Oneissi Submission Pursuant to the Trial Chamber's Scheduling Order of 23 February 2018 Filed on 29 March 2018, 12 April 2018.

³⁷⁰ Pre-Defence Conference, T. 8 March 2018.

³⁷¹ Pre-Defence Conference, T. 8 March 2018, pp 5-8, 179-23.

³⁷² Pre-Defence Conference, T. 8 March 2018, p. 52.

³⁷³ Counsel for Mr Sabra confirmed their election not to call a case, and notified to the Trial Chamber via email on 9 March 2018 that the Sabra Defence would not lead evidence, Pre-Defence Conference, T. 22 March 2018, pp 3-4.

³⁷⁴ F3628, Public Redacted Version of Oneissi Defence Rule 25 Motion for the Disqualification and Withdrawal of Presiding Judge David Re, Judge Janet Nosworthy, and Judge Micheline Braidy, 12 April 2018.

³⁷⁵ Order designating a panel under Rule 25 (C).

³⁷⁶ Order inviting Judge's views.

³⁷⁷ F3633, Application by Judges Re and Nosworthy to Set Aside the President's Designation of Alternate Judges Akoum and Lettieri to a Panel Designated Pursuant to Rule 25 (C) on the Oneissi Defence's Application to Disqualify the Three Trial Chamber Judges, 18 April 2018.

³⁷⁸ Order for submissions on request to set aside panel judges, para. 20.

excused from the disqualification Panel.³⁷⁹ The Oneissi Defence filed observations on the submissions of Judges Akoum and Lettieri on 23 April 2018.³⁸⁰

243. On 25 April 2018, the President designated a new Panel consisting of Judges Baragwanath, Chamseddine and Nsereko.³⁸¹ On 26 April 2018, Judges Re, Nosworthy and Braidy were invited to submit their views on the disqualification motion,³⁸² which they did on the same day.³⁸³ The Oneissi Defence, on the same day, filed its observation that the composition of the new Panel effectively nullified its right to impartial appellate review as it was composed of a majority of the Appeals Chamber's judges.³⁸⁴ On 1 May 2018, the Oneissi Defence sought leave to reply, and replied, to the views of Judges Re, Nosworthy and Braidy.³⁸⁵ On 4 May 2018, the Panel dismissed the motion for disqualification in its entirety, finding that the allegations of bias were unfounded.³⁸⁶

244. The two Oneissi Defence witnesses testified in May and June 2018.³⁸⁷ The Trial Chamber granted, in one case in part, two Oneissi Defence applications to amend its witness and exhibit lists.³⁸⁸ The Oneissi Defence updated exhibit list contained 116 exhibits.³⁸⁹

16. One witness called by the Trial Chamber under Rule 165

245. On 5 March 2018, the Sabra Defence moved the Trial Chamber³⁹⁰ to order the attendance of four former Prosecution investigators—involved in investigating the disappearance of

³⁷⁹ F3637, Submissions by Judges Akoum and Lettieri, 20 April 2018.

³⁸⁰ F3638, Observations from the Oneissi Defence filed pursuant to the President's Order dated 19 April 2018, 23 April 2018.

³⁸¹ Order on the composition of a Panel under Rule 25 (C).

³⁸² Order inviting Judge's views on disqualification request.

³⁸³ F3641, Views of Judges David Re, Janet Nosworthy and Micheline Braidy to a Rule 25 Panel Concerning the Oneissi Defence Application for Disqualification, 26 April 2018.

³⁸⁴ F3642, Oneissi Defence Observations on the President's 25 April 2018 order on the Composition of the Rule 25(C) Panel, 26 April 2018, para. 17.

³⁸⁵ F3643, Request for Leave to Reply to Rule 25(C) Views of Judges David Re, Janet Nosworthy and Micheline Braidy, 1 May 2018.

³⁸⁶ Decision on Oneissi Defence disqualification motion.

³⁸⁷ Siegfried Sporer, T. 14 May 2018, T. 15 May 2018, T. 16 May 2018; Jamil El-Sayyed, T. 5 June 2018, T. 6 June 2018, T. 7 June 2018. *See also* F3657, Defence for Hussein Hassan Oneissi Witness Schedule for the Week Commencing 14 May 2018, 11 May 2018.

³⁸⁸ Decision admitting evidence in Oneissi Defence case; Decision granting the Oneissi Defence to amend its witness and exhibit lists; Corrigendum to decision granting the Oneissi Defence to amend its witness and exhibit lists.

³⁸⁹ F3698, Defence for Hussein Hassan Oneissi Submission of Third Updated Exhibit List, 26 June 2018, annex A.

³⁹⁰ F3591, Sabra Defence Request Pursuant to Rule 165 and for Suspensive Effect of Rule 128 Order, with confidential Annexes A, B and C, 5 March 2018.

Mr Ahmad Abu Adass—to testify as Chamber witnesses under Rule 165.³⁹¹ In a decision delivered in court on 8 March 2018, the Trial Chamber mentioned several pending motions by the Sabra Defence, including the Rule 165 motion.³⁹²

246. Acting under the misapprehension that the Trial Chamber had dismissed the motion, the Sabra Defence filed a motion for the Trial Chamber to reconsider its ‘decision’ on the following day.³⁹³ During the pre-defence conference on 22 March 2018, the Trial Chamber clarified that the motion was still pending.³⁹⁴ On 26 March 2018, the Prosecution filed a motion asking that the Trial Chamber dismiss the Sabra motion.³⁹⁵ The Sabra Defence filed a reply to the Prosecution’s response on 6 April 2018.³⁹⁶

247. On 13 April 2018, the Trial Chamber granted the motion in part, and ordered the attendance of Mr Michael Taylor, Chief of Investigations at the Office of the Prosecutor of the Special Tribunal between 2010 and 2015.³⁹⁷ The Prosecution sought reconsideration of the Trial Chamber’s order for Mr Taylor to testify on 29 May 2018.³⁹⁸ The Sabra Defence responded on 7 June 2018,³⁹⁹ and the Prosecution filed a reply on 12 June 2018.⁴⁰⁰ On the same day, the Trial Chamber dismissed the Prosecution’s motion for reconsideration and scheduled the Mr Taylor’s testimony for 25 July 2018.⁴⁰¹ Mr Taylor testified on 25 and 26 June 2018.⁴⁰²

³⁹¹ Rule 165 ‘Power of Chambers to Order Production of Additional Evidence’ provides that, ‘After hearing the Parties, the Trial Chamber may, *proprio motu* or at the request of Party, order either Party or a victim participating in the proceedings to produce additional evidence. It may, after hearing the Parties, *proprio motu* summon witnesses and order their attendance’.

³⁹² Pre-Defence Conference, T. 8 March 2018, p. 13.

³⁹³ F3600, Motion for Reconsideration of Sabra Defence Request Pursuant to Rule 165 (confidential, a public redacted version was filed 15 March 2018), 9 March 2018.

³⁹⁴ Pre-Defence Conference, T. 22 March 2018, p. 30.

³⁹⁵ F3609, Prosecution Response to Sabra “Motion for Reconsideration of Sabra Defence Request Pursuant to Rule 165”, 26 March 2018.

³⁹⁶ F3619, Reply to “Prosecution Response to ‘Sabra Defence Request Pursuant To Rule 165 and for Suspensive Effect of Rule 128 Order’”, 6 April 2018.

³⁹⁷ Decision under Rule 165.

³⁹⁸ F3674, Public Redacted Version of Corrected Version of “Prosecution Motion for Partial Reconsideration of the Decision”, 4 June 2018; F3674 Public Redacted Version of Corrigendum and Addendum to “Prosecution Motion for Partial Reconsideration of the Decision”, 6 June 2018.

³⁹⁹ F3681, Sabra Defence Response to “Prosecution Motion for Partial Reconsideration of the Decision”, 7 June 2018.

⁴⁰⁰ F3685, Prosecution Reply to the Sabra Defence Response to “Prosecution Motion for Partial Reconsideration of the Decision”, 12 June 2018.

⁴⁰¹ Reconsideration decision regarding Rule 165.

⁴⁰² Michael Taylor, T. 25 June 2018, pp 7-40, 41-124, T. 26 June 2018, pp 2-79, 88-144.

17. Final trial briefs, closing submissions and the end of trial

248. On 11 April 2018, the Trial Chamber extended the word limits for the final trial briefs, allowing 150,000 words for the Prosecution, 60,000 words for Defence of each of the Accused, and 45,000 words for the Legal Representative of Victims.⁴⁰³ On 12 June 2018, the Trial Chamber set final deadlines for filing these briefs.⁴⁰⁴

249. The Prosecution filed its final trial brief, seeking conviction on all counts, on 16 July 2018. The Legal Representatives of Victims also filed their final trial brief on 16 July 2018.⁴⁰⁵ The Prosecution filed a corrected version on 27 July 2018.⁴⁰⁶

250. The Ayyash, Sabra and Oneissi Defence filed their final trial briefs on 13 August 2018.⁴⁰⁷ The Merhi Defence filed its on 18 August 2018.⁴⁰⁸ These were followed by corrected versions filed by the Oneissi Defence on 23 August 2018 and 27 November 2018, and the Merhi Defence on 5 September 2018.⁴⁰⁹

251. The Prosecution made its oral closing submissions on 11, 12, 13 and 14 September 2018.⁴¹⁰ The Legal Representatives of Victims made their closing submissions on 14 September 2018.⁴¹¹ Closing submissions for the Ayyash Defence were made on 17 September 2018;⁴¹² for the Merhi

⁴⁰³ Order scheduling final trial briefs and final submissions; Order rescheduling final trial briefs and closing submissions.

⁴⁰⁴ Order rescheduling final trial briefs and closing submissions.

⁴⁰⁵ F3713, Redacted Corrected Version of the Prosecution Final Trial Brief, filed 16 July 2018 & filed Corrected 27 July 2018, 7 August 2018; F3712, The Legal Representative of Victims Final Trial Brief with Annexes A and B, 16 July 2018.

⁴⁰⁶ F3713, Corrected Version of the Prosecution Final Trial Brief, filed 16 July 2018, 27 July 2018.

⁴⁰⁷ F3718, Public Redacted Version of Ayyash Defence Final Trial Brief, 31 August 2018; F3720, Public Redacted Version of Sabra Defence Final Brief, 7 September 2018; F3721, Public Redacted Version of the "Second Corrected Version of 'Defence for Hussein Hassan Oneissi Final Trial Brief'", 27 November 2018.

⁴⁰⁸ F3719, Public Redacted Version of the Corrected Version of: Final Trial Brief of the Defence for Hassan Habib Merhi, 5 September 2018.

⁴⁰⁹ F3721, Public Redacted Version of the "Second Corrected Version of 'Defence for Hussein Hassan Oneissi Final Trial Brief'", 27 November 2018; Public Redacted Version of the Corrected Version of: F3719, Final Trial Brief of the Defence for Hassan Habib Merhi, 5 September 2018.

⁴¹⁰ Prosecution closing submissions, T. 11 September 2018, pp 11-123, T. 12 September 2018, pp 2-122, T. 13 September 2018, pp 2-122, T. 14 September 2018, pp 2-75.

⁴¹¹ Legal Representatives of Victims closing submissions, T. 14 September 2018, pp 77-112.

⁴¹² Ayyash Defence closing submissions, T. 17 September 2018, pp 3-121.

Defence on 18 and 19 September 2018;⁴¹³ for the Oneissi Defence on 19 and 20 September 2018;⁴¹⁴ and for the Sabra Defence on 21 September 2018.⁴¹⁵

252. The Trial Chamber adjourned for deliberations on 21 September 2018.⁴¹⁶

18. Ensuring the publicity of the proceedings

253. While the Trial Chamber's deliberations were ongoing, it also turned its attention to ensuring the public nature of the proceedings against the Accused.

254. On 23 October 2018, the Trial Chamber emailed the Parties, Legal Representatives of Victims and Defence Office—on behalf of counsel for the former Accused, Mr Badreddine—asking them to assess and seek agreement on the declassification or redaction of confidential exhibits in the case.⁴¹⁷ On 20 September 2019, the Trial Chamber ordered them to conclude these discussions and either reach an agreement or provide reasons for failing to do so.⁴¹⁸

255. The Trial Chamber also ordered the Parties, Legal Representatives of Victims, Registrar and Deputy Head of Defence Office to review their respective confidential filings⁴¹⁹ and either: seek their reclassification to public; file public redacted versions; or provide reasons for continuing confidentiality and or what steps have been taken to have it redacted or reclassified.⁴²⁰ The Trial Chamber issued further orders on the matter on 12 December 2019.⁴²¹

⁴¹³ Merhi Defence closing submissions, T. 18 September 2018, pp 12-120, T. 19 September 2018, pp 2-27.

⁴¹⁴ Oneissi Defence closing submissions, T. 19 September 2018, pp 28-137, T. 20 September 2018, pp 6-51, 53-141.

⁴¹⁵ Sabra Defence closing submissions, T. 21 September 2018, pp 4-72.

⁴¹⁶ Procedural matters, T. 21 September 2018, p. 110.

⁴¹⁷ Decision and orders regarding confidentiality of filings, para. 4.

⁴¹⁸ Decision and orders regarding confidentiality of filings, para. 6.

⁴¹⁹ The Registrar was additionally ordered to review filings from anyone external to the proceedings, and the Deputy Head of Defence Office was additionally ordered to review filings from Defence counsel for the former Accused, Mr Badreddine.

⁴²⁰ Decision and orders regarding confidentiality of filings, paras 12-13.

⁴²¹ Orders regarding declassification of exhibits.

B. ANNEX B: Glossary

ABBREVIATION	FULL NAME
Agreed facts	Nine facts recorded as agreed and uncontested between the Prosecution and the Defence, that the Trial Chamber may accept as being proven at trial against the Accused, as listed in Second decision on agreed facts (Merhi)
Art./Arts	Article/Articles
CCTV	Closed-circuit television
CD	Compact Disc
CDR	Call Data Records
Cell dump	Mr Philips explained a cell dump as follows in exhibit P549 (Expert report of John Edward Philips – Cell site analysis introduction), p. 105: ‘The police will then request the identities of all cells, on all networks, providing best server coverage of the salient locations and then request a list of calls using these cells over a particular time period from each network operator.’
CEO	Chief Executive Officer
CPR	Cardiopulmonary resuscitation
CST	Call sequence table
CT	Computerized Tomography
CV	<i>Curriculum Vitae</i>
Witness DHO + number, for example, ‘Witness DHO123’	Witness for the Defence of Hussein Hassan Oneissi (‘Defence Hariri Oneissi’)
DNA	Deoxyribonucleic acid
DVD	Digital Versatile Disc
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECtHR	European Court of Human Rights

EPE	Electronic Presentation of Evidence
ERN	Evidence Registration Number
EUR	Euros
Exhibit 1D + number, for example, 'exhibit 1D123'	Ayyash Defence exhibit
Exhibit 1V + number, for example, 'exhibit 1V123'	Legal Representatives of Victims exhibit
Exhibit 2D + number, for example, 'exhibit 2D123'	Badreddine Defence exhibit
Exhibit 3D + number, for example, 'exhibit 3D123'	Merhi Defence exhibit
Exhibit 4D + number, for example, 'exhibit 4D123'	Oneissi Defence exhibit
Exhibit 5D + number, for example, 'exhibit 5D123'	Sabra Defence exhibit
fn./fns	Footnote/footnotes
GHz	Gigahertz
GPS	Global Positioning System
GSM	Global System for Mobile communication
HRC	Lebanese High Relief Commission
HSBC	Hongkong and Shanghai Banking Corporation
IATA	International Air Transport Association
IBM	International Business Machines Corporation
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda

ICTY	International Criminal Tribunal for the former Yugoslavia
ID	Identification
IED	Improvised Explosive Device
IMEI	International Mobile Equipment Identity
IMSI	International Mobile Subscriber Identity
INSEAD	<i>Institut Européen d'Administration des Affaires</i>
IRMCT	International Residual Mechanism for Criminal Tribunals
ISF	Lebanese Internal Security Forces
Judicial notice facts	Nine facts judicially noticed by the Trial Chamber as listed in Decision on taking judicial notice
LAU	Lebanese American University
LBP	Lebanese pound
LED	Light-emitting diode
MEA	Middle East Airlines
Merhi Defence – Prosecution agreements	Seven facts as agreed between the Prosecution and the Merhi Defence, that the Trial Chamber may accept as being proven at trial against Mr Merhi, as listed in Second decision on agreed facts in UNIIIC reports (Merhi)
MFI (for example, number + MFI: 'P123 MFI')	A document that was presented and used in court, and identified on the court record through being 'marked for identification' either until its receipt into evidence, or its rejection by the Trial Chamber, as an exhibit.
mg	milligrams
MHz	Megahertz
MP	Member of Parliament
MTC	Mobile Telecommunications Company

N/A	Not applicable
NGO	Non-governmental organisation
no./nos	Number/numbers
Exhibit P + number, for example, 'exhibit P123'	Prosecution exhibit
p./pp	Page/pages
para./paras	Paragraph/paragraphs
PCIJ	Permanent Court of International Justice
PDF	Portable document format
PENT/PETN	Pentaerythritoltetranitrate
Witness PRH + number, for example, 'Witness PRH123'	A witness for the Prosecution ('Prosecution Rafik Hariri')
Prosecution	Office of the Prosecutor
PTSD	Post-Traumatic Stress Disorder
RDX	Research developed explosive (<i>see</i> exhibit P244 (Report of forensic investigations, Ministry of Justice, Netherlands Forensic Institute)) - cyclotrimethylenetrinitramine
RFA	Request for assistance – a formal communication from an international court or tribunal, including from its chambers, registry, prosecutor's office or defence, to an international institution or a government seeking a specified form of assistance
RSCSL	Residual Special Court for Sierra Leone
Rules	Rules of Procedure and Evidence of the Special Tribunal
Sabra Defence – Prosecution agreements	Eighteen facts as agreed between the Prosecution and the Sabra Defence, that the Trial Chamber may accept as being proven at trial against Mr Sabra, as listed in First decision on agreed facts in UNIIIC reports (Sabra) and Second decision on agreed facts in UNIIIC reports (Merhi)
SCSL	Special Court for Sierra Leone

SIM	Subscriber Identity Module
SMS	Short message service
Special Tribunal	Special Tribunal for Lebanon
Statute	Statute of the Special Tribunal for Lebanon
THz	Terahertz
TNT	Trinitrotoluene
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNIC	United Nations Information Centre
UNIIC	United Nations International Independent Investigation Commission established by UN Security Council resolution 1595, 7 April 2005, S/RES/1595 (2005)
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNTAET	United Nations Transitional Administration in East Timor
US/USA	United States/United States of America
USD	United States of America dollar
V + number, for example, 'V123'	A victim participating in the proceedings or who provided evidence for the Legal Representatives of Victims
VBIED	Vehicle-borne improvised explosive device
Victims agreed facts	172 facts proposed by the Legal Representatives of Victims and recorded as agreed and uncontested between the Prosecution and the Ayyash and Sabra Defence, and that the Trial Chamber may accept as being proven at trial against Mr Ayyash and Mr Sabra, as listed in the Decision on agreed facts (participating victims) (Ayyash and Sabra)

C. ANNEX C: Table of authorities and submissions

1. Special Tribunal for Lebanon instruments

Security Council Resolution 1595	SC Res. 1595, UN Doc. S/RES/1595, 7 April 2005
Memorandum of understanding on the establishment of the UNIIC, 16 June 2005	<i>Letter dated 16 June 2005 from the Secretary-General addressed to the President of the Security Council</i> , UN Doc. S/2005/393, 20 June 2005, Annex, ‘Memorandum of Understanding between the Government of the Republic of Lebanon and the United Nations Regarding the Modalities of Cooperation for the International Independent Investigation Commission’
Security Council Resolution 1664	SC Res. 1664, UN Doc. S/RES/1664, 29 March 2006
Security Council Resolution 1757	SC Res. 1757, UN Doc. S/RES/1757, 30 May 2007
Agreement on the establishment of the Special Tribunal for Lebanon	SC Res. 1757, UN Doc. S/RES/1757, 30 May 2007, Annex, ‘Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon’

2. Special Tribunal for Lebanon case law and some filings

Addendum to decision allowing the Prosecution to recall Mr John Edward Philips	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , Addendum to Decision Allowing the Prosecution to Recall Mr Edward Philips (Witness PRH435) to Testify, T. 8 November 2017, pp 78-80
Addendum to publication of correspondence on Head of Defence Office potential conflict of interest	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3732/ADD, Addendum to Publication of Correspondence with Head of Defence Office on Potential Conflict of Interest, 28 September 2018
<i>Al Jadeed and Al Khayat</i> Appeal Judgment	STL-14-05/A/AP, <i>In the Case against Al Jadeed [Co.] S.A.L./New T.V. S.A.L. (N.T.V.) and Al Khayat</i> , F0028, Public Redacted Version of Judgment on Appeal, 8 March 2016

Amended consolidated indictment	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2720, Amended Consolidated Indictment, 12 July 2016
Appeal decision on joinder	STL-11-01/T/AC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F0013, Decision on Appeal by Counsel for Mr Merhi against Trial Chamber's "Decision on Trial Management and Reasons for Decision on Joinder", 21 May 2014
Appeal decision on legality of transfer of call data records	STL-11-01/T/AC/AR126.9, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F0007, Decision on Appeal by Counsel for Mr Oneissi against the Trial Chamber's Decision on the Legality of the Transfer of Call Data Records, 28 July 2015
Appeal decision on victims' request to respond to Badreddine Defence interlocutory appeal	STL-11-01/T/AC/AR126.11, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F0005, Decision on the Request of the Legal Representative of Victims Seeking Leave to Respond to the Badreddine Defence Interlocutory Appeal, 17 June 2016
Appeal decision regarding inspection room and call data records	STL-11-01/PT/AC/AR126.4, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0004, Public Redacted Version of 19 September 2013 Decision on Appeal by Counsel for Mr Oneissi Against Pre-Trial Judge's "Decision on Issues Related to the Inspection Room and Call Data Records", 2 October 2013
Appeals Chamber decision on Defence requests for reconsideration of first interlocutory decision on applicable law	STL-11-01/PT/AC/R176bis, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0327, Decision on Defence Requests for Reconsideration of the Appeals Chamber's Decision of 16 February 2011, 18 July 2012
Appeals Chamber decision refusing request to submit preliminary questions on applicable law after confirmation of indictment	STL-11-01/PT/AC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0171/COR, Decision on the Pre-Trial Judge's Request Pursuant to Rule 68 (G), 29 March 2012

Arrest warrant for Mr Ayyash	STL-11-01/I/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0019, International Warrant to Arrest Mr Salim Jamil Ayyash Including Transfer and Detention Request, 8 July 2011
Arrest warrant for Mr Badreddine	STL-11-01/I/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0020, International Warrant to Arrest Mr Mustafa Amine Badreddine Including Transfer and Detention Request, 8 July 2011
Arrest warrant for Mr Merhi	STL-13-04/I/PTJ, <i>Prosecutor v. Hassan Habib Merhi</i> , F0009, Warrant to Arrest Mr Hassan Habib Merhi and Order for Transfer and Detention, 31 July 2013
Arrest warrant for Mr Oneissi	STL-11-01/I/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0021, International Warrant to Arrest Mr Hussein Hassan Oneissi Including Transfer and Detention Request, 8 July 2011
Arrest warrant for Mr Sabra	STL-11-01/I/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0022, International Warrant to Arrest Mr Assad Hassan Sabra Including Transfer and Detention Request, 8 July 2011
Ayyash Defence final trial brief	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3718, Ayyash Defence Final Trial Brief, 13 August 2018
Call sequence table decision (Ayyash and Merhi Defence)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3463, Decision Admitting into Evidence Call Sequence Tables Tendered by the Ayyash and Merhi Defence – Exhibits 1D453, 3D431, 3D433, 3D436 and 3D437 Marked for Identification, 7 December 2017
Certification decision on joinder	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1472, Decision on Certification of ‘Decision on Trial Management and Reasons for Decision on Joinder’, 31 March 2014

Certification for interlocutory appeal of the interim decision on the death of Mr Badreddine and termination of proceedings	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F2620, Certification for Interlocutory Appeal of ‘Interim Decision on the Death of Mr Mustafa Amine Badreddine and Possible Termination of Proceedings’, 9 June 2016
Decision admitting single user report (Grey mobile)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3477, Decision Admitting into Evidence an Expert Report of J. E. Philips Demonstrating Single Person Use of Green 071, Purple 231 and the ‘Grey Phone’ Through Cell Site Analysis, 12 December 2017
Clarification decision on exclusion of Mr Platt’s evidence	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , Decision Clarifying the “Decision on Defence Request for the Exclusion of Mr Gary Platt’s Evidence”, T. 7 February 2017, pp 2-3
Clarification of decision on non-compliance request	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1960, Order Clarifying Decision on Updated Request for a Finding of Non-Compliance of 27 March 2015, 22 May 2015
Clarification regarding cooperation orders to Lebanon	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1590, Clarification Regarding Orders to Lebanon to Cooperate with the Special Tribunal, 23 June 2014
Corrected decision under Rule 158 (Witness PRH024)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3107, Corrected Version of “Decision on ‘Prosecution Motion to Admit the Statement of PRH024 under Rule 158’ – with Partially Dissenting Opinion of Judge David Re” dated 28 April 2017, 1 May 2017
Corrected version of decision on Prosecution motion to admit Witness PRH707’s statements	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F2552, Corrected Version of Decision on Prosecution Motion for the Admission of Statements by Witness PRH707 and on Ayyash Defence Motion to Strike the Prosecution Reply, 11 May 2016

Corrigendum to decision granting the Oneissi Defence to amend its witness and exhibit lists	STL-11-01/T/T, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3697, Corrigendum to ‘Decision Allowing the Oneissi Defence to Add 26 Documents Relating to Ahmed Abu Adass to Its Exhibit List and to Admit Them into Evidence’ of 22 June 2018, 25 April 2019
Decision adding a witness and granting protective measures	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3513, Decision Granting Leave to Add a Witness to the Prosecution Witness List and Ordering Protective Measures, 11 January 2018
Decision admitting documentary evidence on the Legal Representatives of Victims’ application	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3456, Decision Admitting Documentary Evidence on the Legal Representatives of Victims’ Application, 4 December 2017
Decision admitting documents on the death of Mr Badreddine	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3196, Decision Admitting 10 Documents Related to the Death of Mustafa Amine Badreddine, 23 June 2017
Decision admitting evidence in Oneissi Defence case	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , Decision Allowing the Oneissi Defence to Amend its Witness and Exhibit Lists and Admitting into Evidence Ten Witness Statements and Material Relied Upon in Professor Sporer’s Expert Report, T. 14 May 2018, pp 5-10
Decision admitting evidence under Rule 158 (PRH249 and PRH093)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1953, Decision on Prosecution Motion to Admit the Statements of Deceased Witnesses PRH249 and PRH093, 18 May 2015
Decision admitting evidence under Rule 158 (Witness PRH056)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3480, Decision Admitting into Evidence Statements of Witness PRH056 under Rule 158, 13 December 2017

Decision admitting Hezbollah-related documents	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3104, Decision Admitting 12 Documents and a Witness' Statements Related to Hezbollah, Its Officials and Telephone Numbers, 26 April 2017
Decision admitting into evidence statements of participating victims	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3309, Decision Admitting into Evidence 18 Witness Statements under Rules 155 and 158, and Reasons for Admitting Two Witness Statements of Participating Victims, 5 September 2017
Decision admitting into evidence the statements of Victims 27 and 73	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , Oral Decision Admitting into Evidence under Rule 155 the Statements of Victims V027 and V073, 30 August 2017
Decision admitting into evidence the statements of Victims 8, 10, 14 and 80	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , Oral Decision Granting Legal Representative of Victims' Rule 155 Motion with Respect to V008, V010, V014 and V080, 29 August 2017
Decision admitting statements of Witness PRH056 under Rule 158	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3550, Decision Admitting into Evidence Two Statements of Witness PRH056 under Rule 158, 5 February 2018
Decision admitting statements related to Mr Ayyash and Mr Merhi	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2963, Decision on the Prosecution Motion to Admit Ten Witness Statements Relating to Salim Jamil Ayyash and Hassan Habib Merhi and to Admit One Exhibit, 31 January 2017
Decision admitting witness statements by Witness PRH056 and Witness PRH087	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F2224, Corrected Version of 'Decision on Prosecution Motion for The Admission of The Statements of Witnesses PRH056 and PRH087' of 29 September 2015

Decision allowing a participating victim to attend courtroom proceedings of 11 September 2018	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3733, Decision Allowing Participating Victim V059 to Attend Proceedings in the Courtroom, 11 September 2018
Decision allowing a participating victim to attend courtroom proceedings of 24 August 2017	STL-11-01/T/TC, F3292, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , Decision Allowing Participating Victims to Attend Proceedings in the Courtroom, 24 August 2017
Decision allowing a participating victim to attend courtroom proceedings of 25 November 2016	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2854, Decision Allowing a Participating Victim to Attend Proceedings in the Courtroom, 25 November 2016
Decision allowing a participating victim to attend courtroom proceedings of 6 September 2018	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3728, Decision Allowing Participating Victims to Attend Proceedings in the Courtroom, 6 September 2018
Decision allowing amendment of the Prosecution's exhibit list of 20 November 2014	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , Decision Granting Prosecution Request to Amend its Exhibit List (exhibit with ERNs 60301568 to 60301577), T. 20 November 2014, pp 35-38
Decision allowing Sabra Defence supplement	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3436, Decision Allowing Sabra Defence's Supplement to Its Six Evidentiary Motions, 29 November 2017
Decision allowing the Prosecution to recall Mr John Edward Philips	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , Decision Allowing the Prosecution to Recall Mr Edward Philips (Witness PRH435) to Testify, T. 8 November 2017, pp 64-66
Decision amending the consolidated indictment	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2713, Decision Amending the Consolidated Indictment, 7 September 2016

Decision and orders regarding confidentiality of filings	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3777, Decision and Orders Relating to the Public Nature of the Proceedings and Reclassifying Filings from ‘Confidential’ to ‘Public’, 20 September 2019
Decision authorising the redaction of three witness statements	STL-11-01/PT/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1212, Decision on Prosecution’s Application to Authorise Necessary Redactions Pursuant to Rule 116 Dated 18 October 2013, 8 November 2013
Decision authorising a victim to withdraw their participation	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1253, Decision on the Request of the Legal Representative of Victims to Authorise the Withdrawal of a Victim Participating in the Proceedings, 5 December 2013
Decision authorising live courtroom streaming	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3294, Decision Authorising Live Courtroom Streaming During the Presentation of the Participating Victims' Evidence, 24 August 2017
Decision authorising Prosecution to amend its exhibit list	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1415, Decision Authorising the Prosecution to Amend its Exhibit List, 20 February 2014
Decision authorising the Ayyash Defence and the Sabra Defence to file a request for reconsideration	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0260, Decision Authorising the Ayyash Defence and the Sabra Defence to File a Request for Reconsideration, 22 May 2012
Decision authorising the Badreddine Defence and the Oneissi Defence to file a request for reconsideration	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0246, Decision Authorising the Badreddine Defence and the Oneissi Defence to File a Request for Reconsideration, 15 May 2012
Decision authorising the Prosecution to amend its witness and exhibit lists 24 January 2014	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1344, Decision Authorising the Prosecution to Amend its Witness and Exhibit Lists, 24 January 2014

Decision authorising the Prosecution to amend its witness and exhibit lists 8 December 2014	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1780, Decision Authorising the Prosecution to Amend its Witness and Exhibit Lists, 8 December 2014
Decision authorising two victims to withdraw their participation	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0611, Decision Relating to the Request of the Legal Representative of Victims to Authorise Two Victims to Withdraw their Participation, 19 December 2012
Decision certifying for appeal 23 August 2012	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0384, Decision Certifying for Appeal the “Decision on Reconsideration of the Trial In Absentia Decision”, 23 August 2012
Decision certifying for interlocutory appeal the decision on the Special Tribunal’s legality	STL-11-01/PT/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0385, Decision Certifying for Appeal the “Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal”, 23 August 2012
Decision certifying for interlocutory appeal the scheduling order for recommencement of trial	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , Decision Granting Certification to Appeal the Trial Chamber’s Decision Scheduling the Date for the Recommencement of Trial, T. 21 May 2014, pp 77-80
Decision clarifying decision on admission of documents (Abu Adass)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3459, Decision Clarifying Decision of 25 September 2017 Admitting Exhibit 5D251MFI (Relevant to Mr Ahmed Abu Adass) and Denying Prosecution Application for Reconsideration, 6 December 2017
Decision certifying interlocutory appeal on challenge to form of indictment	STL-11-01/PT/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0980, Decision on the Requests for Certification to Lodge an Appeal against the Trial Chamber Decision of 12 June 2013, 5 July 2013

Decision clarifying Mr Platt's area of expertise	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , Decision Clarifying Mr Gary Platt's Area of Expertise, T. 25 January 2017, pp 36-41
Decision confirming consolidated indictment	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1484, Decision on Prosecution Motion on a Consolidated Indictment and Amending Witness and Exhibit Lists, 4 April 2014
Decision delivered in court authorising one victim to withdraw their participation	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , Decision on the request of the Legal Representatives of Victims to withdraw one participating victim from the proceedings, T. 24 April 2017, pp 2-3
Decision denying adjournment of hearing Mr Donaldson's evidence	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , Decision on the Defence Request for Adjournment of the Hearing of Evidence of Witness PRH230, T. 27 June 2017, pp 38-41
Decision denying admission of statements tendered by Ayyash Defence	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3441, Decision Denying Ayyash Defence Application to Admit into Evidence Witness Statements Tendered during the Cross-Examination of Prosecution Analyst Andrew Donaldson, 30 November 2017
Decision denying admission of two call sequence tables	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3537, Decision Denying Admission into Evidence of Two Call Sequence Tables Tendered by the Oneissi Defence, 26 January 2018
Decision denying certification to appeal (admission of Witness PRH707's evidence)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2913, Decision Denying Certification to Appeal the 'Written Reasons for Admitting Witness PRH707's Statements and Annexes into Evidence' and 'Reasons for Decision Admitting Prosecution's Cell Site Evidence', 16 December 2016

Decision denying certification to appeal (photo boards)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3248, Decision Denying the Oneissi Defence Request for Certification to Appeal ‘Decision Admitting Two Photo Boards into Evidence’, 24 July 2017
Decision denying certification to appeal (Rule 158 admission)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3554, Decision Denying Sabra Defence Application for Certification to Appeal Decision Admitting Statements of Witness PRH056 under Rule 158, 5 February 2018
Decision denying certification to appeal (Witness PRH024)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3328, Decision Denying ‘Sabra Request for Certification to Appeal Decision Admitting Statement of PRH024 under Rule 158’, 15 September 2017
Decision denying certification to appeal cooperation decision	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1347, Decision on Request for Certification to Appeal Orders Concerning Five Defence Motions on State Cooperation, 27 January 2014
Decision denying certification to appeal decision admitting ten call sequence tables	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3175, Decision Denying Certification to Appeal ‘Decision Admitting 10 Call Sequence Tables Related to Mr Salim Jamil Ayyash and Mr Hassan Habib Merhi under Rule 154 and Two Related Witness Statements under Rule 155’, 8 June 2017
Decision denying certification to appeal decision on Powerpoints	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , Decision Denying Merhi Defence’s Request (F2946) for Certification of the Trial Chamber’s Decision on Powerpoints <i>etc.</i> , T. 24 January 2017, pp 70-76
Decision denying certification to appeal of 1 February 2018	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3547, Decision Denying Oneissi Defence Application for Certification to Appeal Decision Admitting Statements of Witness PRH056 under Rule 158, 1 February 2018

Decision denying exclusion of Mr Philips's evidence	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , Decision Denying the Ayyash Defence's Request to Exclude a Portion of Mr Philips's Report of 29 June 2015, T. 31 August 2016, pp 2-3
Decision denying Head of Defence Office certification to appeal (Lebanese criminal law)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3335, Decision Denying the Head of the Defence Office Certification to Appeal the Trial Chamber's 'Decision on Observations from Head of Defence Office on Lebanese Criminal Law', 22 September 2017
Decision denying Merhi Defence certification to appeal Rule 158 decision (Witness PRH103)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3368, Decision Denying Merhi Defence Application for Certification to Appeal Decision Admitting Statements of Witness PRH103 under Rule 158, 20 October 2017
Decision denying Oneissi Defence certification to appeal (non-acquittal under Rule 167)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3662, Decision Denying Certification to Appeal Decision Under Rule 167 not to Acquit Hussein Hassan Oneissi and to Stay the Trial, 14 May 2018
Decision denying Oneissi Defence certification to appeal Rule 158 decision (Witness PRH103)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3370, Decision Denying Oneissi Defence Application for Certification to Appeal Decision Admitting Statements of Witness PRH103 under Rule 158, 20 October 2017
Decision denying Oneissi motion to exclude photo board evidence	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F2406, Decision on Oneissi Defence Motion Requesting Non Admission of Photo Board, 18 January 2016
Decision denying Prosecution certification to appeal Rule 158 decision (Witness PRH103)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3367, Decision Denying Prosecution Application for Certification to Appeal 'Decision Admitting Statements of Witness PRH103 under Rule 158 into Evidence', 20 October 2017

Decision denying reconsideration of decision on Mr Platt's area of expertise	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3345, Decision Denying Merhi Defence Application to Reconsider 'Decision Clarifying Mr Gary Platt's Area of Expertise', 2 October 2017
Decision denying request to exclude evidence of Witness PRH038	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , Decision Denying the Defence Request to Exclude Certain Portions of the Evidence of PRH038, T. 17 November 2014, pp 2-15
Decision denying Sabra Defence certification to appeal Rule 158 decision (Witness PRH103)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3369, Decision Denying Sabra Defence Application for Certification to Appeal Decision Admitting Statements of Witness PRH103 under Rule 158, 20 October 2017
Decision denying the Sabra Defence application for disclosure of a UNHCR Internal Memorandum on Mr Wissam Al-Hassan	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3562, Decision Denying the Sabra Defence Application for Disclosure of a UNHCR Internal Memorandum on Mr Wissam Al-Hassan (Witness PRH680) under Rules 110 (B) and 113, 7 February 2018
Decision dismissing certification to appeal reconsideration decision on defects in the form of the consolidated indictment	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1630, Decision Dismissing Merhi Defence Motion for Certification to Appeal the Decision of 3 July 2014 on Defects in the Form of the Consolidated Indictment, 25 July 2014
Decision dismissing Defence challenge to Prosecution pre-trial brief	STL-11-01/PT/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0774, Decision on Defence Motion to Strike Out Part of the Prosecutor's Pre-Trial Brief, 8 March 2013
Decision dismissing a motion alleging defects in the form of the consolidated indictment	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1537, Decision Dismissing Merhi Motion Alleging Defects in the Form of the Consolidated Indictment, 22 May 2014

Decision dismissing certification to appeal the second decision on the form of the amended indictment	STL-11-01/PT/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1140, Decision on Defence Motions for Certification for Appeal of the Trial Chamber's 13 September 2013 'Decision on Alleged Defects in the Form of the Indictment', 9 October 2013
Decision dismissing Prosecution request for clarification	STL-11-01/PT/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0867, Decision on Prosecution's Request for Clarification of Order of 19 March 2013, 22 April 2013
Decision extending time limits for Merhi Defence to file notices on expert witnesses	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , Decision Granting Merhi Defence's Request (F1464) for Suspension of Time Limits for Rule 161 (B) Notices, and Setting a Time Limit for Rule 161 (B) Notices Regarding PRH287, 386, 462, 406, and 135, T. 10 April 2014, pp 43-45
Decision extending timeline for the enforcement of orders on outstanding Defence requests for assistance	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1889, Decision on Updated Request for a Finding of Non-Compliance, 27 March 2015
Decision extending timeline to provide information	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2704, Further Decision on Sabra Defence Motion for a Finding of Non-Compliance with the Special Tribunal, 26 August 2016
Decision for the filing of an amended indictment	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0848, Decision Relating to the Prosecution Requests of 8 November 2012 and 6 February 2013 for the Filing of an Amended Indictment, 12 April 2013
Decision granting in part Sabra Defence motion for cooperation and orders to cooperate	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1379, Decision on Second and Fifth Motions by Counsel for Assad Hassan Sabra and Two Orders to Lebanon to Cooperate with the Tribunal, 31 January 2014

Decision granting leave to file an amended indictment	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0491, Decision on the Prosecution Request of 17 August 2012 for Leave to File an Amended Indictment, 25 October 2012
Decision granting Prosecution motion to amend exhibit list	STL-11-01/PT/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1228, Decision Authorising the Prosecution to Amend its Exhibit List and to Redact Exhibit 55, 19 November 2013
Decision granting the Oneissi Defence to amend its witness and exhibit lists	STL-11-01/T/T, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3697, Decision Allowing the Oneissi Defence to Add 26 Documents Relating to Ahmed Abu Adass to its Exhibit List and to Admit them into Evidence, 22 June 2018
Decision in relation to Rule 125 witness	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3180, Order and Decision in Relation to a Witness Testifying under Rule 125, 14 June 2017
Decision on “Prosecution Motion Regarding the Defence Pre-Trial Briefs”	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0981, Decision on “Prosecution Motion Regarding the Defence Pre-Trial Briefs”, 5 July 2013
Decision on access to call data records and disclosure of results of agreed searches	STL-11-01/PT/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1252, Decision on Call Data Records and Disclosure to Defence (On Remand from Appeals Chamber), 4 December 2013
Decision on admissibility of Wikileaks documents	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1955, Decision on the Admissibility of Documents Published on the Wikileaks Website, 21 May 2015
Decision on admission of attribution documents for Mr Ayyash, Mr Merhi and Mr Sabra	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3230, Decision on Prosecution Motion to Admit Seven Documentary Exhibits Pursuant to Rule 154 Relating to the Attribution of Telephone Numbers to the Accused Salim Jamil Ayyash, Hassan Habib Merhi and Assad Hassan Sabra, 17 July 2017

Decision on admission of attribution documents for Mr Badreddine	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3209, Decision on Prosecution Motion to Admit 33 Documentary Exhibits Pursuant to Rule 154 Relating to the Attribution of Telephone Numbers to the Named Co-Conspirator, Mustafa Amine Badreddine, 4 July 2017
Decision on admission of attribution documents for Mr Merhi	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3202, Decision on the Admission of 27 Documents and One Witness Statement Relating to the Attribution of Mobile Numbers to Hassan Habib Merhi, 29 June 2017
Decision on admission of attribution documents for Mr Oneissi	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2988, Decision on Prosecution Motion for the Admission of Nine Documents Relating to the Attribution of Telephone Numbers to the Accused Hussein Hassan Oneissi, 14 February 2017
Decision on admission of attribution documents for Mr Sabra	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2955, Decision on Prosecution Motion for the Admission of Seven Documents Relating to the Attribution of Telephone Numbers to the Accused Assad Hassan Sabra, 26 January 2017
Decision on admission of call sequence tables related to Mr Hariri's movements	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2798, Decision on the Admission of Call Sequence Tables Related to the Movements of Mr Rafik Hariri and Related Events, and Four Witness Statements, 31 October 2016
Decision on admission of documents (Abu Adass)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3337, Decision Granting, in Part, Sabra Defence Motion for the Admission of Documents Relating to Mr Ahmed Abu Adass – Character, Religious Beliefs and Associates, 25 September 2017

Decision on admission of documents (movements and events)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1802, Decision on Prosecution's Motion for Admission into Evidence of 485 Documents, Photographs and Witness Statements Relevant to Rafik Hariri's Movements and to Political Events, 30 December 2014
Decision on admission of documents (Passport applications)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2857, Decision on Prosecution Motion to Admit Passport Applications, 25 November 2016
Decision on admission of documents (Subscriber and user information)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2815, Decision on the Admission of Documents Related to Telephone Subscriber and User Information, 4 November 2016
Decision on admission of documents (Subscriber records Alfa)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F2584, Decision on Prosecution Rule 154 Motion for the Admission of Documents Relating to Telephone Subscriber Records from the Alfa Company, 3 May 2016
Decision on admission of documents (Subscriber records Touch)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2819, Decision on Prosecution Motion to Admit Documents Relating to Telephone Subscriber Records from the Touch Company, 7 November 2016
Decision on admission of documents (Traffic authority)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2899, Decision on the Prosecution Motion for the Admission of Records Received from the Traffic, Truck, and Vehicle Management Authority, 9 December 2016
Decision on admission of documents used with a witness by the Oneissi Defence	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3575, Decision Partly Granting Oneissi Motion to Admit into Evidence Documents Used with a Prosecution Witness, 16 February 2018

Decision on admission of documents used with Witness PRH707	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3611, Corrected Version of ‘Decision Admitting into Evidence Four Documents the Oneissi Defence Used with Witness PRH707’ of 29 March 2018, 4 April 2018
Decision on admission of evidence of 31 January 2017	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2965, Decision on the Prosecution Motion for the Admission of 36 Documentary Exhibits and Four Witness Statements, 31 January 2017
Decision on admission of geographic documents	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1781, Corrected Version of “Decision on Prosecution Motion to Admit into Evidence Geographic Documents” of 8 December 2014, 10 December 2014
Decision on admission of Hajj applications	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2871, Decision on the Prosecution Motion for the Admission of Hajj Applications, 5 December 2016
Decision on admission of locations related evidence	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F2062, Decision on ‘Prosecution Motion for the Admission of Locations Related Evidence’, 9 July 2015
Decision on admission of Mr Al-Hassan’s interview	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3371, Decision Admitting into Evidence the Audio Recordings and Transcripts of the Prosecution Interview of Mr Wissam Al-Hassan (Witness PRH680) under Rule 158 and Three Related Documents under Rule 154, 20 October 2017
Decision on admission of photographs, videos, maps and 3-D models	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1308, Decision on Prosecution’s Motion to Admit into Evidence Photographs, Videos, Maps, and 3-D Models, 13 January 2014
Decision on admission of Prosecution’s cell site evidence	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2793, Reasons for Decision Admitting Prosecution’s Cell Site Evidence, 26 October 2016

Decision on admission of Sabra Defence documents of 28 March 2018	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3610, Decision Partly Granting Sabra Defence Application for Admission into Evidence of 19 Exhibits Marked for Identification and 50 Call Sequence Tables, 28 March 2018
Decision on admission of statements (movements and events)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1785, Corrected Version of Decision on the Prosecution Motion for Admission under Rule 155 of Written Statements in Lieu of Oral Testimony Relating to Rafik Hariri's Movements and Political Events' of 11 December 2014, 13 January 2015
Decision on admission of statements of Witness PRH402 and Witness PRH636	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1890, Decision on Prosecution Motion to Admit the Statements of Witnesses PRH402 and PRH636, 27 March 2015
Decision on admission of statements of Witnesses PRH082, PRH041 and PRH459	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1869, Decision on Prosecution Motion to Admit the Statements of Witnesses PRH082, PRH041 and PRH459, and to Amend the Rule 91 Exhibit List, 27 February 2015
Decision admitting two photo boards into evidence	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3055, Decision Admitting Two Photo Boards into Evidence, 28 March 2017
Decision on admission of Witness PRH424's evidence	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F2035, Decision on Prosecution Motion to Admit the Statements of Witness PRH424, 30 June 2015
Decision on admission of Witness PRH705's statements and annexes into evidence	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2750, Reasons for Admitting Witness PRH705's Statements and Annexes into Evidence, 30 September 2016
Decision on admission of Witness PRH707's statements and annexes into evidence	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2767, Written Reasons for Admitting Witness PRH707's Statements and Annexes into Evidence, 10 October 2016

Decision on agreed facts (participating victims) (Ayyash and Sabra)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3476, Decision on Rule 122 Agreements as to Evidence between the Prosecution, Ayyash and Sabra Defence on the Effects of the 14 February 2005 Explosion on the Victims Participating in the Proceedings, 12 December 2017
Decision on assignment of duty counsel	STL-11-01/I/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0064, Decision Relating to the Assignment of 'Duty Counsel' by the Head of Defence Office, 2 November 2011
Decision on Badreddine Defence request for suspensive effect of its interlocutory appeal against the Trial Chamber's decision regarding Mr Badreddine's death	STL-11-01/T/AC/AR126.11, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F0010, Decision on Badreddine Defence Request for Suspensive Effect of its Interlocutory Appeal against the Trial Chamber's Decision Regarding Mr Badreddine's Death, 21 June 2016
Decision on call sequence tables of 31 October 2016	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2797, Decision on Four Prosecution Motions on Call Sequence Tables Related to Salim Jamil Ayyash, Hassan Habib Merhi, Assad Hassan Sabra, Mustafa Amine Badreddine, and Five Witness Statements, 31 October 2016
Decision on call sequence tables of network mobiles	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2799, Decision on the Prosecution Motions for the Admission of the Call Sequence Tables Related to the Five Colour-Coded Mobile Telephone Groups and Networks, 31 October 2016
Decision on case management meetings	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1474, Decision on 'Merhi Defence Request Relating to Holding Confidential Meetings and the Public Nature of the Proceedings', 1 April 2014

Decision on certification to appeal (admission of 485 documents)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1841, Decision on ‘the Defence for Hussein Hassan Oneissi Request for Certification of the “Decision on Prosecution’s Motion for Admission into Evidence of 485 Documents, Photographs and Witness Statements Relevant to Rafik Hariri’s Movements and to Political Events” of 30 December 2014’, 3 February 2015
Decision on clarification of Oneissi call sequence table decision	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3440, Decision on the Oneissi Defence's Application for Clarification of an Order Regarding Two Documents Marked for Identification, 30 November 2017
Decision on Defence appeals against reconsideration of trial in <i>absentia</i> decision	STL-11-01/PT/AC/AR126.1, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0012, Decision on Defence Appeals Against Trial Chamber’s Decision on Reconsideration of the Trial In Absentia Decision, 1 November 2012
Decision on demonstrative evidence (Mr Donaldson)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3125, Decision Denying Joint Defence Motion to Prevent the Prosecution Using Demonstrative Evidence (Powerpoint Slides) During Mr Andrew Donaldson’s Testimony, 5 May 2017
Decision on disclosure re Andrew Donaldson’s reports	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3171, Decision on Merhi Defence Request for Disclosure of Documents Concerning Witness PRH230, 2 June 2017
Decision on eight requests for protective measures	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0795, Decision on the Legal Representative of Victims’ Resubmission of Eight Requests for Protective Measures (Confidentiality), 14 March 2013
Decision on expert reports of 1 July 2014	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , Decision on the Admissibility of Expert Reports, T. 1 July 2014, pp 5-7

Decision on expert witnesses notices	STL-11-01/PT/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0812, Order on Rule 161 Notices Re Expert Witnesses, 19 March 2013
Decision on expertise (Dr Mansour)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , Decision on Expert Witness PRH508, Dr Mansour, T. 3 July 2014, pp 2-3
Decision on expertise (Mr Geyer and Mr Hoogeboom)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1616, Decision on Witness PRH348, Mr Gerhard Geyer, and Expert Witness PRH387, Mr Bart Hoogeboom, 11 July 2014
Decision on expertise (Mr Geyer)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , Decision on Expert Witness PRH348, Mr Geyer, T. 16 July 2014, pp 38-39
Decision on expertise (Mr Philips – GSM)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , Decision Qualifying Mr Philips (PRH435) as an Expert under Rule 161 in the Field of GSM, T. 18 August 2015, pp 38-39
Decision on expertise (Mr Philips – Telecommunications and cell site)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , Decision Qualifying Mr Philips (PRH435) as an Expert under Rule 161 in the Field of Telecommunications and Cell Site, T. 18 August 2015, p. 8
Decision on expertise (Mr Platt)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F2549, Decision Allowing Mr Gary Platt (Witness PRH147) to Give Expert Opinion Evidence, 13 April 2016
Decision on expertise (Mr Sommer)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , Decision Qualifying Mr Sommer (PRH542) as an Expert under Rule 161, T. 15 September 2015, p. 48
Decision on expertise (Professor Ayoub and Dr Mansour)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1610, Decision on Expert Witness PRH120, Professor Fouad Hussein Ayoub, and Expert Witness PRH508, Dr Issam Mansour, 7 July 2014

Decision on expertise (Witness PRH155)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1669, Decision on Expert Witness PRH155, 18 September 2014
Decision on expertise (Witness PRH620)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2653, Decision on Prosecution Motion to Declare Witness PRH620 as an Expert Witness and to Receive Her Report into Evidence, 15 July 2016
Decision on five Prosecution motions on call sequence tables and witness statements	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1937, Decision on Five Prosecution Motions on Call Sequence Tables and Eight Witness Statements and on the Legality of the Transfer of Call Data Records to UNHCR and STL's Prosecution, 6 May 2015
Decision on joinder	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Oneissi and Sabra & STL-13-04/PT/TC, Prosecutor v. Hassan Habib Merhi</i> , T. 11 February 2014, pp 92-96
Decision on languages in the <i>Merhi</i> case	STL-13-04/ITC, <i>Prosecutor v. Hassan Habib Merhi</i> , F0032, Interim Order on Working Language(s) for Filings, 17 December 2013
Decision on modalities of victim participation	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0256, Decision on the VPU's Access to Materials and the Modalities of Victims' Participation in Proceedings before the Pre-Trial Judge, 18 May 2012
Decision on mode of testimony for Ogero witnesses	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2932, Decision on Video-Conference Link Testimony and Protective Measures for Ogero Witnesses, 9 January 2017
Decision on Mr Hamade's testimony	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , Order delivered in court on the appearance of witness PRH038, T. 14 November 2014, p. 50

Decision on new arrest warrants following joinder	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1501, Decision Ordering the Arrest of Salim Jamil Ayyash, Mustafa Amine Badreddine, Hassan Habib Merhi, Hussein Hassan Oneissi, and Assad Hassan Sabra, 17 April 2014
Decision on non-compliance motion	STL-11-01/I/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0066, Decision on the Confidential and <i>Ex Parte</i> Prosecution's Request for a Judicial Finding that the Lebanese Authorities Have Failed to Comply with the Arrest Warrants Pursuant to Rule 20 (C), 2 November 2011
Decision on Oneissi Defence disqualification motion	STL-11-01/T/OTH/R25, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3645, Decision on Oneissi Defence Rule 25 Motion for the Disqualification and Withdrawal of Presiding Judge David Re, Judge Janet Nosworthy, and Judge Micheline Braidy, 4 May 2018
Decision on Oneissi Defence request for assistance re mobile 095	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3359, Corrected Version of the 'Decision on Oneissi Defence Urgent Motion for an Order to Compel Disclosure of Requests for Assistance Relevant to the Attribution of Mobile Number 3598095' of 13 October 2017, 24 October 2017
Decision on Oneissi Defence requests for assistance	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1739, Decision on the Oneissi Defence Motion for Disclosure of Requests for Assistance, 7 November 2014
Decision on opinion evidence (Mr Donaldson)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3172, Decision Allowing Prosecution Analyst Andrew Donaldson to Provide Opinion Evidence, 2 June 2017
Decision on opinion evidence (Mr Youssef)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , Decision on Dr Ghazi Ali Youssef's (PRH265) Opinion Evidence, T. 13 March 2015, pp 3-9

Decision on Participating Victims' attendance of proceedings	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , Decision Clarifying the Conditions under which Participating Victims May Attend Proceedings, T. 18 November 2014, pp 1-3
Decision on periodic in-court summaries	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , Decision Authorising Periodic In-Court Thematic Summaries of Evidence, T. 4 April 2016, pp 2-3
Decision on postponement of Mr Donaldson's testimony	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3173, Decision Dismissing Defence Motion to Postpone Mr Andrew Donaldson's Testimony, 2 June 2017
Decision on Professor Sporer's evidence	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3629, Decision Allowing Professor Siegfried Ludwig Sporer (Witness DHO-001) to Give Expert Opinion Evidence and Admitting, in Part, his Expert Report, 13 April 2018
Decision on Prosecution motion to add four documents to its exhibit list	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1852, Decision on Prosecution Motion to Add Four Items to the Exhibit List, 13 February 2015
Decision on Prosecution motion to admit the statements of witnesses PRH575 and PRH703	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F2282, Decision on Prosecution Motion to Admit the Statements of Witnesses PRH575 and PRH703, 21 October 2015
Decision on Prosecution motion to admit Witness PRH705's statements	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F2597, Written Reasons for the Trial Chamber's Decision on Prosecution Motion for the Admission of Statements by Witness PRH705, 13 May 2016
Decision on Prosecution's clarification request	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3487, Decision on the 'Prosecution Request for Clarification of the Decision of 6 December 2017', 15 December 2017

Decision on protective measures for 11 witnesses	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3297, Decision Granting the Legal Representatives of Victims' Request for Protective Measures for 11 Witnesses, 28 August 2017
Decision on reconsideration of trial <i>in absentia</i>	STL-11-01/PT/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0320, Decision on Reconsideration of the Trial In Absentia Decision, 11 July 2012
Decision on redactions to Mr Al-Hassan's interview	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3420, Decision on Redactions to the Prosecution Interview of Mr Wissam Al-Hassan (Witness PRH680), 21 November 2017
Decision on request to stay proceedings	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1901, Decision on Prosecution Motion to Amend Its Exhibit List and Oneissi Defence Request to Stay the Proceedings, 13 April 2015
Decision on request to strike portions of an expert report	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F2443, Decision on Ayyash Defence Request to Strike Portions of an Expert Report, 9 February 2016
Decision on Sabra Defence reconsideration and admission of a witness statement through Quentin Mugg	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3560, Decision Denying Sabra Defence Motions for Reconsideration and Admission of a Witness Statement into Evidence under Rule 154, and for Admission of a Witness Statement into Evidence Through Mr Quentin Mugg (Witness PRH55), 7 February 2018
Decision on scope of Mr Hamade's evidence	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1798, Decision on Application for Certification of Decision Regarding the Scope of Marwan Hamade's Evidence, 17 December 2014

Decision on simultaneous or concurrent testimony of expert witnesses of 23 March 2015	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1858, Corrected Version of ‘Decision on Simultaneous or Concurrent Testimony of Expert Witnesses’ of 17 February 2015, 23 March 2015
Decision on taking judicial notice	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2665, Decision on Sabra Defence Motion Seeking Judicial Notice of United Nations Fact-Finding Mission and UNHCR Reports, 26 July 2016
Decision on the admission of the consolidated OGERO Statement	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F2894, Decision on the Admission of the Consolidated OGERO Statement, 7 December 2016
Decision on the appeal of the first decision on the form of the amended indictment	STL-11-/1/PT/AC/AR90.2, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0007, Decision on Defence Appeals against Trial Chamber’s “Decision on Alleged Defects in the Form of the Amended Indictment”, 5 August 2013
Decision on the Defence Appeals against the Trial Chamber jurisdiction	STL-11-01/PT/AC/AR90.1, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0020, Decision on the Defence Appeals Against the Trial Chamber’s “Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal”, 24 October 2012
Decision on the Defence challenges to the jurisdiction and legality of the Tribunal	STL-11-01/PT/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0352, Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal, 27 July 2012
Decision on the form of the indictment against Mr Merhi	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1465, Decision on Alleged Defects in the Form of the Indictment against Hassan Habib Merhi, 28 March 2014

Decision on the Legal Representatives' application to call evidence	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3260, Decision on the Legal Representatives of Victims' Application to Call Evidence, Schedule the Presentation of Evidence and Directions on Disclosure Obligations, 31 July 2017
Decision on the Legal Representatives' application to withdraw one witness	STL-11-01/T/T, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3291, Decision on the Legal Representatives of Victims' Application to Withdraw One Witness from Their Witness List, 23 August 2017
Decision on three Prosecution motions for the admission into evidence of mobile telephone documents	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1876, Decision on Three Prosecution Motions for the Admission into Evidence of Mobile Telephone Documents, 6 March 2015
Decision on translating exculpatory material into Arabic	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2649, Decision Varying the Pre-Trial Judge's 'Decision on Languages in the Case of <i>Ayyash et al.</i> ' in Respect of Translating Exculpatory Material Into Arabic, 14 July 2016
Decision on twelve expert witnesses	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1646, Decision on Twelve Expert Witnesses, 21 August 2014
Decision on two Prosecution submissions to amend Rule 91 filings	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1029, Decision on Two Prosecution Submissions in Relation to Amending the Prosecution Rule 91 Filings, 5 August 2013
Decision on Witnesses PRH291 and PRH507	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1676, Decision on Expert and Witness Statements of Witnesses PRH291 and PRH507, 24 September 2014

Decision partly reconsidering Sabra Defence seventh bar table decision (Abu Adass and Mohammed)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3694, Decision Granting Sabra Defence Motion to Partially Reconsider ‘Decision Partly Granting Seventh Sabra Defence Motion for the Admission of Documents Relating to Ahmed Abu Adass - the ‘Mohammed Story’ and Admitting into Evidence a Call Sequence Table Related to the Abu Adass Household Landline, 21 June 2018
Decision permitting French simultaneous transcription	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3606, Decision Varying the ‘Decision on Languages’ to Permit French Language Simultaneous Transcription, 21 March 2018
Decision permitting Professor Letschert to provide opinion evidence	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3312, Decision Permitting Professor Doctor Rianne Letschert to Give Opinion Evidence and Admitting Her Report into Evidence, 7 September 2017
Decision reconsidering decision on Oneissi Defence requests for assistance	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1875, Decision Reconsidering ‘Decision on the Oneissi Defence Motion for Disclosure of Requests for Assistance’, 7 November 2014, 6 March 2015
Decision relating to the examination of the Indictment of 10 June 2011	STL-11-01/I/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0012, Decision Relating to the Examination of the Indictment of 10 June 2011 Issued against Mr Salim Jamil Ayyash, Mr Mustafa Amine Badreddine, Mr Hussein Hassan Oneissi & Mr Assad Hassan Sabra, 28 June 2011
Decision rescinding protective measures granted to Victims 54 and 55	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3815, Decision Rescinding the Protective Measures Granted to Participating Victims V054 and V055, 10 February 2020
Decision to add Witness PRH705 to the Prosecution’s witness list	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F2377, Decision Authorising the Prosecution to Add Witness PRH705 to Its Witness List, 15 December 2015

Decision to add Witness PRH707 to the Prosecution's witness list	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F2376, Decision on Prosecution Motion to Add Witness PRH707 to Its Witness List, 11 December 2015
Decision to hold trial <i>in absentia</i>	STL-11-01/PT, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0112, Decision to Hold Trial <i>In Absentia</i> , 01 February 2012
Decision to hold trial <i>in absentia</i> 20 December 2013	STL-13-04/ITC, <i>Prosecutor v. Hassan Habib Merhi</i> , F0037, Decision to Hold Trial <i>in Absentia</i> , 20 December 2013
Decision under Rule 155 (Sami Issa identifications)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2831, Decision under Rule 155 Admitting Statements of Witnesses PRH338, PRH369, PRH423, PRH470 and PRH605 Identifying Sami Issa, 11 November 2016
Decision under Rule 155 (Sami Issa)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2829, Decision on Rule 155 Statements of Witnesses PRH264, PRH306 and PRH416 Identifying Sami Issa as Mustafa Amine Badreddine, 11 November 2016
Decision under Rule 155 (statements of 13 witnesses)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F2037, Decision on Prosecution Motion to Admit under Rule 155 the Statement of 13 Witnesses in relation to Telephone Distribution and Subscription, 30 June 2015
Decision under Rule 155 (Witness PRH371)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , Decision on the Admissibility of Witness PRH371's Statement of 23 September 2016 Pursuant to Rule 155, T. 27 September 2016, pp 28-30
Decision under Rule 165	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3646, Decision Partly Granting Sabra Defence Application and Ordering the Attendance of a Former Prosecution Investigator to Testify under Rule 165, 13 April 2018

Decision withdrawing one participating victim	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3754, Decision on the Legal Representatives of Victims' Application to Withdraw One Participating Victim from the Proceedings, 27 November 2018
Decision withdrawing participating victim (2020)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3819, Decision granting the legal representatives of victims' application to withdraw one participation victim from the proceedings, 10 March 2020
Defence joinder to the Badreddine perfected request for certification to appeal the 1 June 2016 interim decision	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F2614, Defence Joinder to "Badreddine Defence Perfected Request for Certification to Appeal the Interim Decision of 1 June 2016", 8 June 2016
Designation decision for Legal Representatives of Victims	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0249, Designation of Victims' Legal Representatives, 16 May 2012
Direction shortening time to respond to requests to vary word or time limits	STL-11-01/PT/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0271, Direction Shortening the Time to Respond to Requests to Vary or Extend Word or Time Limits, 25 May 2012
Directions on the conduct of the proceedings	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1326, Direction on the Conduct of the Proceedings, 16 January 2014
Dissenting Opinion of Judge Baragwanath on the Appeals Chamber's decision on Badreddine Defence interlocutory appeal of the interim decision regarding Mr Badreddine's death and termination of proceedings	STL-11-01/T/AC/AR126.11, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F0020, Dissenting Opinion of Judge David Baragwanath on the Appeals Chamber's "Decision on Badreddine Defence Interlocutory Appeal of the 'Interim Decision on the Death of Mr Mustafa Amine Badreddine and Possible Termination of Proceedings,'" 13 July 2016

Dissenting opinion of Judge Braidy on the Trial Chamber's interim decision regarding the death of Mr Badreddine and termination of proceedings	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F2616, Dissenting Opinion of Judge Micheline Braidy on the Trial Chamber's Interim Decision Regarding the Death of Mr Mustafa Amine Badreddine and Possible Termination of Proceedings, 8 June 2016
Eighth decision on victim participation	STL-11-01/T/PTJ, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3226, Eighth Decision on Victims' Participation in the Proceedings, 13 July 2017
Fifth decision on victim participation	STL-11-01/T/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1621, Fifth Decision on Victims' Participation in the Proceedings, 18 July 2014
First decision on agreed facts	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1479, Decision on Agreed Facts under Rule 122, 2 April 2014
First decision on agreed facts in UNHCR reports (Sabra)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2722, Decision on Agreements as to Evidence Between Prosecution and Sabra Defence on United Nations Fact-Finding Mission and UNHCR Reports, 16 September 2016
First decision on the form of the amended indictment	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0952, Decision on Alleged Defects in the Form of the Amended Indictment, 12 June 2013
First interlocutory decision on applicable law	STL-11-01/I/AC/R176bis, F0936/COR, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging with corrected front page, 16 February 2011
First Rule 155 decision	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1280, First Decision on the Prosecution Motion for Admission of Written Statements under Rule 155, 20 December 2013

Fourth decision on victim participation	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0879, Fourth Decision on Victims' Participation in the Proceedings, 2 May 2013
Further order to cooperate with Tribunal	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1471, Further Decision on Motions Under Rule 20 (A) by Counsel for Assad Hassan Sabra and Four Orders to Lebanon to Cooperate with the Tribunal, 31 March 2014
Further order to Sabra Defence regarding cooperation request	STL-11-01/PT/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1244, Further Order to Counsel for Assad Hassan Sabra in Relation to Requests for State Cooperation, 29 November 2013
In-court summaries decision	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F2541, Decision on in-Court Summaries of Evidence, 7 April 2016
Instructions to Registrar on cooperation	STL-11-01/PT/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1217, Internal Memorandum - Instruction to the Registrar regarding "Requête de la Défense de M. Badreddine aux fins d'obtenir la coopération du Liban", 15 November 2013
Interim decision on exclusion of Mr Donaldson's evidence	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3126, Interim Decision on Joint Defence Motion <i>In Limine</i> to Exclude Evidence of Analyst Mr Andrew Donaldson, 5 May 2017
Interim decision on Sabra Defence request for finding of non-compliance	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , Interim Decision on the Sabra Defence Request (F1495) for a Finding on Non-Compliance Under Rule 20 (C), T. 12 May 2014, pp 3-7
Interim decision on the form of the indictment	STL-11-01/PT/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0410, Interim Decision on Alleged Defects in the Form of the Indictment, 12 September 2012

Interim Decision under Rule 106	STL-11-01/I/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0079, Interim Decision Under Rule 106 (Proceedings <i>In Absentia</i>), 23 November 2011
Interlocutory appeal decision on the death of Mr Badreddine and termination of proceedings	STL-11-01/T/AC/AR126.11, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F0019, Decision on Badreddine Defence Interlocutory Appeal of the “Interim Decision on the Death of Mr Mustafa Amine Badreddine and Possible Termination of Proceedings, 11 July 2016
Internal memorandum to Head of Defence Office on monitoring effective legal representation	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3759, Trial Chamber’s Internal Memorandum to the Head of Defence Office – Monitoring the Effective Legal Representation of Mr Hassan Habib Merhi’s Defence, 14 February 2019
Invitation to Lebanon for submissions on Sabra Defence non-compliance request	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F2327, Invitation to the Government of the Lebanese Republic to Make Submissions in Relation to the Sabra Defence Request for a Finding of Non-Compliance, 17 November 2015
Joinder referral decision	STL-13-04/PT/PTJ, <i>Prosecutor v. Hassan Habib Merhi</i> , F0050, Decision Referring the Matter of Joinder of Cases to the Trial Chamber, 2 January 2014
Legal Representatives of Victims final trial brief	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3712, The Legal Representatives of Victims Final Trial Brief, With Annexes A and B, 16 July 2018
Memorandum convening working meeting on 19 December 2012	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0591, Internal Memorandum – Convening a Working Meeting on 19 December 2012 at 14.30, 12 December 2012
Memorandum convening working meeting on 23 May 2013	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0888, Internal Memorandum – Convening of a Working Meeting on 23 May 2013 at 14:30 hrs, 9 May 2013

Memorandum convening working meeting on 30 October 2012	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0478, Internal Memorandum – Convening a Working Meeting on 30 October 2012 at 10:00, 17 October 2012
Memorandum convening working meeting on 5 March 2013	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0734, Mémorandum Interne – Convocation d’une réunion de travail le 5 mars 2013 à 14 h 30, 19 February 2013
Memorandum delaying status conference	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0941, Internal Memorandum – Delayed Status Conference, 5 June 2013
Memorandum organising periodic working meetings	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0309, Mémorandum Interne – Organisation de réunions de travail périodiques, 27 June 2012
Memorandum organising working meeting on 5 September 2012	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0388, Internal Memorandum – Organising a Second Working Meeting, 24 August 2012
Merhi Defence final trial brief	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3719, Corrected version of: Final Trial Brief of the Defence for Hassan Habib Merhi, 5 September 2018
Notification of proposed amendment to Rule 57	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3748, Notification of Proposed Amendment to Rule 57 ‘Functions of the Head of Defence Office’ to Provide a Mechanism to Deal with Conflicts of Interest in the Defence Office, 11 October 2018
Oneissi Defence final trial brief	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3721, Second Corrected Version of ‘Defence for Hussein Hassan Oneissi Final Trial Brief’, 27 November 2018

Oral decision on Mr Platt's expertise	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , Decision on Expert Witness Mr Gary Platt (PRH147) under Rule 161, T. 6 April 2016, pp 1-2
Order authorising the Defence to file preliminary motions challenging defects	STL-11-01/PT/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0861, Order Authorising the Defence to File Preliminary Motions Challenging Defects in the Form of the Amended Indictment of 6 February 2013, 18 April 2013
Order convening status conference on 12 April 2012	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0189, Order Convening a Status Conference, 11 April 2012
Order convening status conference on 10 April 2013	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0805, Order Convening a Status Conference, 18 March 2013
Order convening status conference on 11 September 2013	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1089, Order Convening a Status Conference, 3 September 2013
Order convening status conference on 12 June 2012	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0273, Order Convening a Status Conference, 4 June 2012
Order convening status conference on 26 July 2012	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0331, Order Convening a Status Conference, 20 July 2012
Order convening status conference on 28 September 2012	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0423, Order Convening a Status Conference, 20 September 2012
Order convening status conference on 27 November 2012	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0515, Order to Convene a Status Conference, 12 November 2012

Order convening status conference on 3 July 2013	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0970, Order Convening a Status Conference, 26 June 2013
Order convening status conference on 30 January 2013	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0639, Order Convening Status Conference, 11 January 2013
Order designating a panel under Rule 25 (C)	STL-11-01/T/PRES, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3630, Order Designating Panel Pursuant to Rule 25 (C), 13 April 2018
Order designating Judge Rapporteur for legal and factual disputes	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2714, Order Appointing Judge Rapporteur for Reaching Agreement Between the Parties on Matters in Dispute Including Trial Scheduling, 7 September 2016
Order for clarification from Defence Office	STL-11-01/I/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0059, Order for Clarification from the Defence Office, 27 October 2011
Order for submissions on request to set aside panel judges	STL-11-01/T/PRES, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3635, Order Seeking Submissions on the Application to Set Aside the Designation of Judges to a Panel Designated Pursuant to Rule 25 (C), 19 April 2018
Order for submissions on witness statement non-compliance with formal requirements	STL-11-01/PT/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0872, Scheduling Order Relating to the Impact of the Non-Compliance with the Formal Requirements for the Written Statements of Witnesses on their Admissibility, 29 April 2013
Order in relation to Witness PRH707	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F2546, Order Allowing Witness PRH707 to Obtain Information in Relation to Six Issues, 12 April 2016
Order inviting Judge's views	STL-11-01/T/PRES, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3632, Order Inviting Judges' Views Pursuant to Rule 25 (C), 16 April 2018

Order inviting Judge's views on disqualification request	STL-11-01/T/OTH/R25, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3640, Order Inviting Judges' Views on Motion for Disqualification, 26 April 2018
Order on a working plan and on the joint Defence motion regarding trial preparation	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0496, Order on a Working Plan and on the Joint Defence Motion Regarding Trial Preparation, 25 October 2012
Order on composition of the Trial Chamber 10 September 2013	STL-11-01/PT/PRES, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1099, Order on Composition of the Trial Chamber, 10 September 2013
Order on composition of the Trial Chamber 15 January 2014	STL-11-01/PT/PRES, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1325, Order on Composition of the Trial Chamber, 15 January 2014 STL-13-04/PT/PRES, <i>Prosecutor v. Hassan Habib Merhi</i> , F0057, Order on Composition of the Trial Chamber, 15 January 2014
Order on composition of the Trial Chamber 8 September 2011	STL-11-01/I/PRES, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0044, Order on Composition of the Trial Chamber, 8 September 2011
Order on filing replies	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , Order on Filing Replies to Responses to Motions, T. 2 December 2013, pp 25-26
Order on lifting the confidentiality of the Indictment	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0032, Order on Lifting the Confidentiality of the Indictment Against Messrs. Ayyash, Badreddine, Oneissi and Sabra and Other Documents, 16 August 2011
Order on modes of victim participation	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , Order on the Modes of Victim Participation, T. 29 October 2013, p. 31

Order on partial transfer of case file to Trial Chamber	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1051, Public Redacted Version of the “Order on the Transfer of Part of the Case File to the Trial Chamber Pursuant to Rule 95 of the Rules” Dated 12 August 2013, 25 February 2014
Order on partially lifting the confidentiality of the indictment against Mr Merhi	STL-13-04/I/PTJ, <i>Prosecutor v. Hassan Habib Merhi</i> , F0014, Order on Partially Lifting the Confidentiality of the Indictment Against Mr Hassan Habib Merhi, 10 October 2013
Order on preliminary questions concerning the crime of criminal association	STL-11-01/PT, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0137, Order on Preliminary Questions Concerning the Crime of Criminal Association Addressed to the Appeals Chamber Pursuant to Rules 68 (G) and 71 (A) (ii) of the Rules of Procedure and Evidence, 2 March 2012
Order on the composition of a Panel under Rule 25 (C)	STL-11-01/T/PRES, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3639, Order on the Composition of a Panel Designated Pursuant to Rule 25 (C), 25 April 2018
Order on the mode of questioning witnesses	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , Oral Order on the Mode of Questioning Witnesses, T. 29 October 2013, pp 4-5.
Order on the modes of victim participation	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , Oral Order on the Modes of Victim Participation, T. 29 October 2013, p. 31.
Order publicising Pre-Trial Judge decision on suspension of Prosecution disclosure obligations	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0568, Order to Make Public the Disposition of the Decision Regarding the Prosecution’s Application Relating to the Temporary Suspension of the Disclosure of Certain Information and Documents, 3 December 2012
Order pursuant to Rule 76 (E) 10 October 2013	STL-13-04/I/PRES, <i>Prosecutor v. Hassan Habib Merhi</i> , F0013, Order Pursuant to Rule 76 (E) with Confidential and <i>Ex Parte</i> Annexes, 10 October 2013

Order pursuant to Rule 76 (E) 18 August 2011	STL-11-01/I/PRES, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0038, Order Pursuant to Rule 76 (E), 18 August 2011
Order regarding Rule 53 meeting minutes	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3771, Order to the Registry Regarding Minutes of Meeting of 26 November 2013, 21 June 2019
Order regarding the detention of four Generals	STL-09-06/CH/PTJ, Order Regarding the Detention of Persons Detained in Lebanon in Connection with the Case of the Attack Against Prime Minister Rafiq Hariri and Others, 29 April 2009
Order relating to the lifting of the confidentiality of the international arrest warrants	STL-11-01/I/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0041, Order Relating to the Lifting of the Confidentiality of the International Arrest Warrants of 8 July 2011 Against Messrs. Ayyash, Badreddine, Oneissi and Sabra, 29 August 2011
Order requesting clarifications on cooperation requests	STL-11-01/PT/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1229, Corrected Version of Order Requesting Further Clarifications, 21 November 2013
Order rescheduling final trial briefs and closing submissions	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3687, Order Rescheduling Final Trial Briefs and Closing Arguments, 12 June 2018
Order scheduling a pre-defence conference and dismissing suspension requests	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3593, Order Scheduling Pre-Defence Conference on Thursday 8 March 2018 and Dismissing Oneissi and Sabra Applications to Suspend Orders under Rule 128 to File Witness and Exhibit Lists, 6 March 2018
Order scheduling final trial briefs and final submissions	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3623, Scheduling Order for Final Trial Briefs and Closing Arguments under Rule 147, 11 April 2018

Order seeking explanation of alternative supervision mechanism from Head of Defence Office	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3745, Order in Relation to Head of Defence Office's Observations of 1 October 2018, 5 October 2018
Order seeking submissions on Head of Defence Office potential conflict of interest	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , Order for Written Submissions Addressing the Potential Conflict of Interest Between the Head of Defence Office's Previous and Present Roles, T. 21 September 2018, pp 72-74
Order setting a date for filing the Prosecution's Pre-Trial Brief	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0391, Order Setting a Date for Filing the Prosecution's Pre-Trial Brief, 28 August 2012
Order setting a deadline for written Rule 167 submissions	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , Third Scheduling Order Regarding Submissions under Rule 167, T. 22 February 2018
Order setting a time limit for filing of preliminary motion	STL-11-01/I/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0279, Order Setting a Time Limit for Filing of Preliminary Motions Pursuant to Rule 90(A)(ii) and (iii), 6 June 2012
Order setting a time limit for filing requests for certification	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , Order Setting Time Limit for Requests for Certification to Appeal, and for Responses thereto, T. 2 June 2016, p. 57
Order setting timeframe for Merhi Defence to request recall of witnesses	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , Decision Setting a Timeframe for the Merhi Defence to Request the Recall of Witnesses, T. 4 March 2014, pp 33-41
Order terminating proceedings against Mr Badreddine without prejudice and ordering the filing of an amended consolidated indictment	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F2633, Order Terminating Proceedings Against Mustafa Amine Badreddine Without Prejudice and Ordering the Filing of an Amended Consolidated Indictment, 11 July 2016

Order to cooperate and provide information sought by Badreddine Defence	STL-11-01/PT/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1316, Decision on Motion Filed by Counsel for Mr. Badreddine and Order to Lebanon to Cooperate with the Special Tribunal, 13 January 2014
Order to Defence to provide a summary of facts	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3665, Order to the Oneissi Defence to Provide a Summary of Facts of Mr Jamil El-Sayyed's Expected Testimony, 16 May 2018
Order to file submissions and observations on Lebanese law	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3254, Order to Parties and Legal Representatives of Victims to File Submissions and Observations on Lebanese Law, 27 July 2017
Order to Prosecution to provide documents to Trial Chamber for review of internal work product categorisation and disclosure	STL-11-01/PT/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1256, Decision on Sabra Motion to Lift Redactions and Disclosure of United Nations Fact-Finding Mission Documents, 9 December 2013
Order to seize the Trial Chamber pursuant to Rule 105 <i>bis</i> (A)	STL-11-01/I, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0052, Order to Seize the Trial Chamber Pursuant to Rule 105 <i>bis</i> (A) of the Rules of Procedure and Evidence in Order to Determine Whether to Initiate Proceedings In Absentia, 17 October 2011
Orders on Sabra Defence motions for cooperation orders	STL-11-01/PT/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1268, Corrected Version of "Orders Relating to Five Defence Motions for Orders to Lebanon on State Cooperation" of 16 December 2013, 24 December 2013
Order to seize the Trial Chamber pursuant to Rule 105 <i>Bis</i> (A) to determine whether to initiate proceedings <i>in absentia</i>	STL-13-04/I/PTJ, <i>Prosecutor v. Hassan Habib Merhi</i> , F0021, Order to Seize the Trial Chamber Pursuant to Rule 105 <i>Bis</i> (A) of the Rules of Procedure and Evidence in Order to Determine Whether to Initiate Proceedings In Absentia, 25 November 2013

Order varying time limit for Lebanese Government response	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , Decision Varying Time Limit for the Government of the Lebanese Republic to Respond to Trial Chamber's "Invitation" (F2327), T. 9 December 2015, pp 57-61
Order varying time-limits for submissions on joinder	STL-13-04/PT/TC, <i>Prosecutor v. Hassan Habib Merhi</i> , F0056, Order Varying Time-Limits for Submissions on Joinder, 15 January 2014
Orders regarding declassification of exhibits	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3802, Orders Regarding Declassification of Exhibits, 12 December 2019
Pre-Trial Judge 21 January 2011 order on preliminary questions to the Appeals Chamber	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0927, Order on Preliminary Questions Addressed to the Judges of the Appeals Chamber Pursuant to Rule 68, Paragraph (G) of the Rules of Procedure and Evidence, 21 January 2011
Pre-Trial Judge decision authorising Prosecution to amend its exhibit list	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0809, Decision on Prosecution Notice of Disclosure and Request to File an Updated Exhibit List Dated 1 March 2013, 19 March 2013
Pre-Trial Judge decision authorising Prosecution to withdraw exhibits from its exhibit list	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1017, Public Redacted Version of the "Decision Authorising the Withdrawal of Two Internal Memoranda from the Prosecution Exhibit List" Dated 25 July 2013, 25 February 2014
Pre-Trial Judge decision denying certification of decisions on his access to disclosed materials and on the working plan	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0615, Decision Relating to the Requests for Certification of the Decisions of 25 October 2012 and 15 November 2012, 19 December 2012
Pre-Trial Judge decision denying Prosecution challenges to Defence pre-trial briefs	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1176, Decision on the Prosecution's Motion Regarding the Defence Updated Pre-Trial Briefs, 24 October 2013

Pre-Trial Judge decision denying Prosecution non-compliance motion	STL-11-01/I/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0099, Decision on Prosecution's Confidential and Ex Parte Request for a Judicial Finding that the Lebanese Authorities Have Failed to Comply with the Arrest Warrants Pursuant to Rule 20 (C) of the Rules, 22 December 2011
Pre-Trial Judge decision denying request to suspend transfer of case file to Trial Chamber	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1179, Decision on the Sabra Defence Request for Suspending the Transfer of the Case File to the Trial Chamber, 25 October 2013
Pre-Trial Judge decision denying Sabra Defence motion for disclosure of potentially exculpatory material	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1060, Decision on Sabra's Tenth and Eleventh Motions for Disclosure, 14 August 2013
Pre-Trial Judge decision extending deadlines for pre-trial briefs and witness and exhibit lists	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1063, Decision on Prosecution Requests (1) for Leave to File Amended Material Supporting the Indictment Confirmed on 31 July 2013 and (2) for an Extension of Time in which to File its Updated Pre-Trial Brief, 16 August 2013
Pre-Trial Judge decision extending disclosure timelines	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0628, Decision on Prosecution Applications for Extension of Time to Provide Inspection of Rule 110(B) Material, 21 December 2012
Pre-Trial Judge decision extending timelines for disclosure of expert reports	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0679, Decision on Prosecution Request for Extension of Time to Disclose Expert Reports, 25 January 2013
Pre-Trial Judge decision granting amendment of the indictment	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1022, Redacted Version of the Decision Relating to the Prosecution Request of 21 June 2013 for Leave to Amend the Indictment of 6 February 2013, Dated 31 July 2013, 2 August 2013

Pre-Trial Judge decision granting certification of decision denying Sabra Defence motion for disclosure of potentially exculpatory material	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1104, Decision on Sabra Defence Request for Certification to Appeal the Decision on Sabra's Tenth and Eleventh Disclosure Motions, 13 September 2013
Pre-Trial Judge decision granting in part Prosecution motion to amend its witness and exhibit lists	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1160, Decision on the Prosecution's Second Submission Pursuant to Rule 91(G)(ii) and (iii), 18 October 2013
Pre-Trial Judge decision granting in part Sabra Defence seventh disclosure motion	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0913, Decision on Sabra's Seventh Motion for Disclosure – Experts, 24 May 2013
Pre-Trial Judge decision granting 21 December 2012 Prosecution request to amend its witness and exhibit lists	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0746, Decision on Prosecution Request of 21 December 2012 to Amend the Witness and Exhibit Lists and for Authorisation for Further Disclosure, 27 February 2013
Pre-Trial Judge decision granting Sabra Defence cooperation motion	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0720, Decision on the Defence Request Seeking to Obtain the Cooperation of Lebanon, 11 February 2013
Pre-Trial Judge decision on the indictment of 5 June 2013	STL-13-04/I/PTJ, <i>Prosecutor v. Hassan Habib Merhi</i> , F0008, Public Redacted Version of the "Decision relating to the Examination of the Indictment of 5 June 2013 Issued Against Mr Hassan Habib Merhi" dated 31 July 2013, 11 October 2013
Pre-Trial Judge decision on Defence inspection of evidentiary material	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0956, Public Redacted Version of "Decision on Issues Related to the Inspection Room and Call Data Records" Dated 18 June 2013, 19 September 2013

Pre-Trial Judge decision on extending disclosure deadlines 8 February 2013	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0712, Decision on Prosecution Request for Extension of Time Dated 15 January 2013 – Disclosure of Exhibits, 8 February 2013
Pre-Trial Judge decision on extending working plan deadlines 19 December 2012	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0606, Public Redacted Version of the Decision on Prosecution's Request to Extend Working Plan Deadlines of 17 December 2012, 19 December 2012
Pre-Trial Judge decision on extension of deadlines for pre-trial briefs and witness and exhibit lists 7 August 2013	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1037, Order on the Defence Request for a Variance of the Deadline for Re-filing the Defence Pre-Trial Briefs, 7 August 2013
Pre-Trial Judge decision on his access to disclosed material	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0532, Decision on Urgent Motion for Injunctive Relief, 15 November 2012
Pre-Trial Judge decision on jurisdiction over connected cases	STL-11-02/CCS/PTJ, F0002, Decision on the Prosecutor's Connected Case Submission of 30 June 2011, 5 August 2011. Public redacted version filed 16 September 2019. Confidential Redacted Version filed 6 March 2020
Pre-Trial Judge decision on languages	STL-11-01/I/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0047, Decision on Languages in the Case of <i>Ayyash et al.</i> , 16 September 2011
Pre-Trial Judge decision on languages in the <i>Merhi</i> case	STL-13-04/PT/PTJ, <i>Prosecutor v. Hassan Habib Merhi</i> , F0080, Decision on the Defence Office Request to Determine the Working Languages in the Pre-Trial Phase of the <i>Merhi</i> Case, 10 February 2014
Pre-Trial Judge decision on Prosecution disclosure obligations	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1124, Public Redacted Version of "Decision on Sabra Motion for Effective Compliance with the Prosecution's Disclosure Obligations and Request for an Extension of the Page Limit" Dated 27 September 2013, 21 October 2013

Pre-Trial Judge decision on Prosecution motion regarding disclosure of statements	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0816, Decision on Prosecution's Notice of Disclosure, Application to Authorise Redactions and Request for Extension of Time, 21 March 2013
Pre-Trial Judge decision on Sabra Defence disclosure motions	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0510, Decision on the Sabra Defence's First, Second, Third, Fourth, Fifth and Sixth Motions for Disclosure, 8 November 2012
Pre-Trial Judge decision on Sabra Defence fourth disclosure motion	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0626, Public Redacted Version of "Decision on the Sabra Defence's Fifth Request of the Fourth Motion for Disclosure" Dated 21 December 2012, 28 May 2013
Pre-Trial Judge decision on Sabra Defence request for further particulars on charges in indictment	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0666, Decision Relating to the Sabra Defence Motion for Further Particulars, 22 January 2013
Pre-Trial Judge decision on victims' participation in the proceedings	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0236, Decision on Victims' Participation in the Proceedings, 8 May 2012
Pre-Trial Judge decision regarding implementation of partial transfer of case file to Trial Chamber	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1088, Decision Relating to the Registry Submission on the Implementation of the Pre-Trial Judge's Order of 12 August 2013 on the Transfer of Part of the Case File to the Trial Chamber Pursuant to Rule 95 of the Rules, 2 September 2013
Pre-Trial Judge order lifting confidentiality of indictment against Mr Ayyash in STL-18-10 case and other documents	STL-18-10/I/PTJ, <i>Prosecutor v. Ayyash</i> , F0030, Order Relating to the Lifting of the Confidentiality of the Indictment of 14 June 2019 and of Other Related Documents, 16 September 2019

Pre-Trial Judge order on deferral of case file regarding the attack on Mr Hamade	STL-11-02/D/PTJ, F0004, Order Directing the Lebanese Judicial Authority Seized with the Case Concerning the Attack Perpetrated Against Mr Marwan Hamadeh on 1 October 2004 to Defer to the Special Tribunal for Lebanon, 19 August 2011
Pre-Trial Judge decision granting Prosecution request to amend its witness and exhibit lists and late disclosure	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1109, Decision on the Prosecution Submission Pursuant to Rule 91(G)(ii) and (iii), 18 September 2013
Pre-Trial Judge order on links between exhibits and witnesses	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0946, Order on Joint Notice Regarding the Legal Workflow System and Witness Entities, 10 June 2013
Pre-Trial Judge order on narrowing contested issues	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0629, Order Regarding Narrowing Issues Contested at Trial, 24 December 2012
Pre-Trial Judge order on start of trial	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0329, Order Setting a Tentative Date for the Start of Trial Proceedings, 19 July 2012
Pre-Trial Judge order partly lifting the confidentiality of the indictment	STL-11-01/I/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi, and Sabra</i> , F0026, Order on the Prosecutor's Motion for Variation of the Order for Non-Disclosure of the Indictment, 28 July 2011
Pre-Trial Judge order setting tentative start date of trial proceedings	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1025, Order Setting a New Tentative Date for the Start of Trial Proceedings, 2 August 2013
Pre-Trial Judge postponement of start of trial	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0741, Decision Relating to the Defence Motion to Vacate the Date for the Start of Trial, 21 February 2013

Pre-Trial Judge referring Badreddine Defence challenges to Prosecution pre-trial brief to Trial Chamber	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0708, Decision on the Motion of the Defence for Mr Badreddine Seeking an Order to Strike Out Certain Sections of the Prosecutor's Pre-Trial Brief, 7 February 2013
Pre-Trial Judge referring Prosecution Rule 155 motion to Trial Chamber	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0854, Decision on the Prosecution's Motion to Refer to the Trial Chamber the Request to Admit the Written Statements of Witnesses Pursuant to Rule 89 (E) and 155 of the Rules of Procedure and Evidence, 15 April 2013
Pre-Trial Judge referring Sabra Defence request relating to expert witness notices to Trial Chamber	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0752, Decision in Relation to Rule 161 Notices on Expert Witnesses, 28 February 2013
Pre-Trial Judge Rule 95 (A) transfer of case file to Trial Chamber	STL-11-01/PT/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1182, Redacted Version of the Corrected Version of the Pre-Trial Judge's Report Prepared Pursuant to Rule 95 (A) of the Rules of Procedure and Evidence, 11 December 2013
Prosecution final trial brief	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3713, Corrected Version of the Prosecution Final Trial Brief, filed 16 July 2018, 27 July 2018
Public redacted indictment against Mr Ayyash in the STL-18-10 case	STL-18-10/I/PTJ, <i>Prosecutor v. Ayyash</i> , F0012, Public Redacted Indictment, 14 June 2019
Prosecution pre-trial submissions (Merhi case)	STL-13-04/I/PTJ, <i>Prosecutor v. Hassan Habib Merhi</i> , F0052, Prosecution's Submission Pursuant to the Pre-Trial Judge's Order of 24 December 2013, 8 January 2014
Prosecution's updated pre-trial brief (Ayyash, Badreddine, Oneissi and Sabra case)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1077, Public Redacted Version of Prosecution's Updated Pre-Trial brief, 23 August 2013

Publication of correspondence on Head of Defence Office potential conflict of interest	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3732, Publication of Correspondence with Head of Defence Office on Potential Conflict of Interest, 10 September 2018
Questions for closing submissions	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3731, Questions for Parties and Legal Representatives of Victims to Answer in Their Oral Closing Arguments Arising from Their Written Final Briefs, 7 September 2018
Reasons for admission of 22 Sabra Defence documents	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3571, Written Reasons for Admitting into Evidence Twenty Two Documents upon the Sabra Defence Application, 15 February 2018
Reasons for decision denying certification to appeal (Mr Platt's area of expertise)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2987, Written Reasons for Decision Denying Certification to Appeal the "Decision Clarifying Mr Gary Platt's Area of Expertise" Dated 25 January 2017, 14 February 2017
Reasons for decision denying reconsideration of video-link ruling	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F2179, Reasons for Decision Not to Reconsider the Trial Chamber's 'Decision on Prosecution Motion for Video-Conference Link Testimony for Witnesses PRH032, PRH067, PRH089, PRH090 and PRH553' of 27 August 2015, 8 September 2015
Reasons for decision on Badreddine Defence request for suspensive effect of it interlocutory appeal with the dissenting opinion of Judge Baragwaneth and Judge Nsereko	STL-11-01/T/AC/AR126.11, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F0011, Reasons for Decision on Badreddine Defence Request for Suspensive Effect of Its Interlocutory Appeal Against the Trial Chamber's Decision Regarding Mr Badreddine's Death, 23 June 2016
Reasons for interim decision on the death of Mr Badreddine and termination of proceedings	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F2612, Reasons for Interim Decision on the Death of Mr Mustafa Amine Badreddine and Possible Termination of Proceedings, 7 June 2016

Reconsideration decision on defects in the form of the consolidated indictment	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1608, Corrected Version of “Decision on Merhi Defence Motion for Reconsideration of Decision of 22 May 2014 on Alleged Defects in the Form of the Indictment” of 3 July 2014, 21 August 2014
Reconsideration decision regarding Rule 165	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3686, Decision Dismissing the Prosecution Motion for Reconsideration of the Trial Chamber Decision under Rule 165 to Call Mr Michael Taylor, 12 June 2018
Rule 106 scheduling order	STL-13-04/I/TC, <i>Prosecutor v. Hassan Habib Merhi</i> , F0024, Scheduling Order in Respect of Rule 106 of the Rules of Procedure and Evidence, 3 December 2013
Rule 128 scheduling order on presentation of a Defence case	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3583, Scheduling Order to the Defence under Rule 128, 23 February 2018
Rule 155 compliance decision	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0937, Decision on Compliance with the Practice Direction for the Admissibility of Witness Statements under Rule 155, 30 May 2013
Rule 158 decision Witness PRH028	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3473, Decision Admitting Witness PRH028’s Statement Pursuant to Rule 158 and Granting Provisional Protective Measures, 8 December 2017
Rule 158 decision Witness PRH103	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2901, Decision Admitting Statements of Witness PRH103 under Rule 158, 12 December 2016
Rule 158 decision Witness PRH437	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3017, Decision Admitting Witness PRH437’s Statements under Rule 158 and Granting Protective Measures, 28 February 2017

Rule 167 decision	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , Decision on the Oneissi Defence Application for a Judgment of Acquittal under Rule 167 (A), T. 7 March 2018, pp 3-52
Sabra Defence final trial brief	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3720, Sabra Defence Final Brief, 13 August 2018
Sabra Defence fourth bar table decision (Abu Adass recruitment)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3443, Decision Partly Granting Fourth Sabra Defence Motion for the Admission of Documents Relating to Mr Ahmed Abu Adass – the Successful Recruitment of Mr Ahmed Abu Adass, 30 November 2017
Sabra Defence pre-trial brief	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1092, Public Redacted Version of “Updated Sabra Pre-Trial Brief”, 29 October 2013
Sabra Defence second bar table decision (Abu Adass selection)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3439, Decision Partly Granting Second Sabra Defence Motion for the Admission of Documents Relating to Ahmed Abu Adass – the Selection of Ahmed Abu Adass, 30 November 2017
Sabra Defence seventh bar table decision (Abu Adass and Mohammed)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3614, Decision Partly Granting Seventh Sabra Defence Motion for the Admission of Documents Relating to Ahmed Abu Adass – the ‘Mohammed’ Story, 3 April 2018
Sabra Defence sixth bar table decision (Abu Adass fax)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3445, Decision Partly Granting Sixth Sabra Defence Motion for the Admission of Documents Relating to Ahmed Abu Adass – the Fax, 30 November 2017

Sabra Defence third bar table decision (Abu Adass recruitment failure)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3442, Decision Partly Granting Third Sabra Defence Motion for the Admission of Documents Relating to Mr Ahmed Abu Adass – the Failed Recruitment of Mr Ahmed Abu Adass, 30 November 2017
Scheduling order for pre-trial conference and Merhi Defence pre-trial brief	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , Scheduling Order for a Pre-Trial Conference Under Rule 127 and Deadline for the Filing of Merhi Defence's Pre-Trial Brief Under Rule 91 (I), T. 10 April 2014, p. 46
Scheduling order for recommencement of trial	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , Decision Scheduling the Date for the Recommencement of Trial, T. 21 May 2014, pp 61-74
Scheduling order in respect of Rule 106	STL-11-01/PT/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0054, Scheduling Order in Respect of Rule 106 of the Rules of Procedure and Evidence, 20 October 2011
Scheduling order on Rule 167 submissions	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3563, Further Scheduling Order Regarding Rule 167 Submissions, 8 February 2018
Scheduling order on the close of the Prosecution case and Rule 167 submissions	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3549, Scheduling Order Regarding Close of Prosecution Case and Defence Submissions under Rule 167, 2 February 2018
Second decision on agreed facts (Merhi)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1492, Second Decision on Agreed Facts under Rule 122, 11 April 2014
Second decision on agreed facts in UNHCR reports (Merhi)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F2760, Agreements as to Evidence Between the Prosecution and Defence of Hassan Habib Merhi and Correction to Tables of Decision of 16 September 2016, 6 October 2016

Second decision on languages in the <i>Merhi</i> case	STL-13-04/I/TC, <i>Prosecutor v. Hassan Habib Merhi</i> , F0073, Decision Re Interim Order on Working Language(s) and Application for Leave to Appeal, 30 January 2014
Second decision on the form of the amended indictment	STL-11-01/PT/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1105, Decision on Alleged Defects in the Form of the Amended Indictment of 21 June 2013, 13 September 2013
Second decision on victim participation	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0398, Second Decision on Victims' Participation in the Proceedings, 3 September 2012
Second interlocutory decision on applicable law	STL-17-07/I/AC/R176bis, F0021, Interlocutory Decision on the Applicable Law: Criminal Association and Review of the Indictment, 18 October 2017
Second order to cooperate and provide information sought by Badreddine Defence	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1552, Second Decision on Badreddine Defence Motion for Order to Lebanon to Cooperate with the Special Tribunal and Orders to Lebanon, 30 May 2014
Second Rule 155 decision	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1371, Second Decision on the Prosecution Motion for Admission of Written Statements under Rule 155, 30 January 2014
Seventh decision on victim participation	STL-11-01/T/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1936, Seventh Decision on Victims' Participation in the Proceedings, 5 May 2015
Sixth decision on victim participation	STL-11-01/T/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1737, Sixth Decision on Victims' Participation in the Proceedings, 6 November 2014

Summary dismissal of Sabra Defence application to admit 224 documents	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3418, Summary Dismissal of Sabra Defence Application for the Admission of 224 Documents, 21 November 2017
Third decision on victim participation	STL-11-01/PT/PTJ, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F0557, Third Decision on Victims' Participation in the Proceedings, 28 November 2012
Trial Chamber invitation to Sabra Defence on Pre-Trial Brief	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , Invitation to the Sabra Defence to File an Updated Pre-Trial Brief, T. 18 November 2015, pp 50-51
Trial Chamber reasons for admission of Touch subscriber notes (Mobile 590)	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Merhi, Oneissi and Sabra</i> , F3578, Written Reasons for Admitting into Evidence for the Sabra Defence Two MTC Subscriber Notes and Call Data Records for Mobile '590', 19 February 2018
Trial Chamber's trial commencement scheduling order	STL-11-01/PT/TC, <i>Prosecutor v. Ayyash, Badreddine, Oneissi and Sabra</i> , F1257, Scheduling Order, 10 December 2013
Trial management decision	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1424, Decision on Trial Management and Reasons for Decision on Joinder, 25 February 2014
Video-link decision	STL-11-01/T/TC, <i>Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra</i> , F1425, General Decision on Video-Conference Link Testimony and Reasons for Decision on Video-Conference Link Testimony of Witness PRH128, 25 February 2014

3. International Criminal Tribunal for the former Yugoslavia case law

<i>Aleksovski</i> admissibility appeal decision	ICTY, <i>Prosecutor v. Aleksovski</i> , IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999
<i>Aleksovski</i> Appeal Judgment	ICTY, <i>Prosecutor v. Aleksovski</i> , IT-95-14/1-A, Judgement, 24 March 2000
<i>Blagojević and Jokić</i> Appeal Judgment	ICTY, <i>Prosecutor v. Blagojević and Jokić</i> , IT-02-60-A, Judgement, 9 May 2007
<i>Blaškić</i> Appeal Judgment	ICTY, <i>Prosecutor v. Blaškić</i> , IT-95-14-A, Judgement, 29 July 2004
<i>Boškoski and Tarčulovski</i> Appeal Judgment	ICTY, <i>Prosecutor v. Boškoski and Tarčulovski</i> , IT-04-82-A, Judgement, 19 May 2010
<i>Boškoski and Tarčulovski</i> bar table exhibits admission decision	ICTY, <i>Prosecutor v. Boškoski and Tarčulovski</i> , IT-04-82-T, Decision on Prosecution's Motion for Admission of Exhibits from the Bar Table with Confidential Annexes A to E, 14 May 2007
<i>Boškoski and Tarčulovski</i> decision on expert evidence	ICTY, <i>Prosecutor v. Boškoski and Tarčulovski</i> , IT-04-82-T, Decision on Motion to Exclude Prosecution's Proposed Evidence of Expert Bezruchenko and his Report, 17 May 2007
<i>Brđanin and Talić</i> decision on form of indictment	ICTY, <i>Prosecutor v. Brđanin and Talić</i> , IT-99-36-PT, Decision on Objections by Momir Talić to the Form of the Amended Indictment, 20 February 2001
<i>Brđanin</i> decision on expert witness	ICTY, <i>Prosecutor v. Brđanin</i> , IT-99-36-T, Decision on Prosecution's Submission of Statement of Expert Witness Ewan Brown, 3 June 2003
<i>Brđanin</i> Indictment	ICTY, <i>Prosecutor v. Brđanin</i> , IT-99-36-T, Sixth Amended Indictment, 9 December 2003
<i>Brđanin</i> Trial Judgment	ICTY, <i>Prosecutor v. Brđanin</i> , IT-99-36-T, Judgement, 1 September 2004
<i>Delalić and others (Čelebići)</i> Appeal Judgment	ICTY, <i>Prosecutor v. Delalić, Mucić, Delić and Landžo ("Čelebići Case")</i> , IT-96-21-A, Judgement, 20 February 2001

<i>Delalić and others (Čelebići) Trial Judgment</i>	ICTY, <i>Prosecutor v. Delalić, Mucić, Delić and Landžo</i> , IT-96-21-T, Judgement, 16 November 1998
<i>Delić decision on the outcome of proceedings</i>	ICTY, <i>Prosecutor v. Rasim Delić</i> , IT-04-83-A, Decision on the Outcome of the Proceedings, 29 June 2010
<i>Delić Trial Judgment</i>	ICTY, <i>Prosecutor v. Rasim Delić</i> , IT-04-83-T, Judgement, 15 September 2008
<i>Deronjić Judgment on sentencing appeal</i>	ICTY, <i>Prosecutor v. Deronjić</i> , IT-02-61-A, Judgement on Sentencing Appeal, 20 July 2005
<i>Dorđević Appeal Judgment</i>	ICTY, <i>Prosecutor v. Dorđević</i> , IT-05-87/1-A, Judgement, 27 January 2014
<i>Dorđević decision on expert witnesses</i>	ICTY, <i>Prosecutor v. Dorđević</i> , IT-05-87/1-T, Decision on Defence Notice under Rule 94bis, 5 March 2009
<i>Dragomir Milošević Appeal Judgment</i>	ICTY, <i>Prosecutor v. Dragomir Milošević</i> , IT-98-29/1-A, Judgement, 12 November 2009
<i>Dragomir Milošević decision on Defence experts</i>	ICTY, <i>Prosecutor v. Dragomir Milošević</i> , IT-98-29/1-T, Decision on Defence Expert Witnesses, 21 August 2007
<i>Dragomir Milošević decision on expert evidence of Robert Donia</i>	ICTY, <i>Prosecutor v. Dragomir Milošević</i> , IT-98-29/1-T, Decision on Admission of Expert Report of Robert Donia, 15 February 2007
<i>Furundžija Appeal Judgment</i>	ICTY, <i>Prosecutor v. Furundžija</i> , IT-95-17/1-A, Judgement, 21 July 2000
<i>Furundžija Trial Judgment</i>	ICTY, <i>Prosecutor v. Furundžija</i> , IT-95-17/1-T, Judgment, 10 December 1998
<i>Galić appeal decision on admission of written statements</i>	ICTY, <i>Prosecutor v. Galić</i> , IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92bis(C), 7 June 2002
<i>Galić Appeal Judgment</i>	ICTY, <i>Prosecutor v. Galić</i> , IT-98-29-A, Judgement, 30 November 2006
<i>Galić decision on expert witnesses</i>	ICTY, <i>Prosecutor v. Galić</i> , IT-98-29-T, Decision Concerning the Expert Witnesses Ewa Tabeau and Richard Philipps, 3 July 2002

<i>Galić</i> Trial Judgment	ICTY, <i>Prosecutor v. Galić</i> , IT-98-29-T, Judgement and Opinion, 5 December 2003
<i>Hadžihasanović and Kubura</i> Appeal Judgment	ICTY, <i>Prosecutor v. Hadžihasanović and Kubura</i> , IT-01-47-A, Judgement, 22 April 2008
<i>Hadžihasanović and Kubura</i> Trial Judgment	ICTY, <i>Prosecutor v. Hadžihasanović and Kubura</i> , IT-01-47-T, Judgement, 15 March 2006
<i>Halilović</i> Appeal Judgment	ICTY, <i>Prosecutor v. Halilović</i> , IT-01-48-A, Judgement, 16 October 2007
<i>Haradinaj and others</i> (retrial) Indictment	ICTY, <i>Prosecutor v. Haradinaj, Balaj and Brahimaj</i> , IT-04-84bis-PT, Revised Fourth Amended Indictment, 21 January 2011
<i>Haradinaj and others</i> Appeal Judgment	ICTY, <i>Prosecutor v. Haradinaj, Balaj and Brahimaj</i> , IT-04-84-A, Judgement, 19 July 2010
<i>Jović</i> Appeal Judgment	ICTY, <i>Prosecutor v. Jović</i> , IT-95-14 & 14/2-R77-A, Judgement, 15 March 2007
<i>Karadžić</i> Indictment	ICTY, <i>Prosecutor v. Karadžić</i> , IT-95-5/18-PT, Third Amended Indictment, 27 February 2009
<i>Karadžić</i> Trial Judgment	ICTY, <i>Prosecutor v. Karadžić</i> , IT-95-5/18-T, Judgement, 24 March 2016
<i>Kordić and Čerkez</i> Appeal Judgment	ICTY, <i>Prosecutor v. Kordić and Čerkez</i> , IT-95-14/2-A, Judgement, 17 December 2004
<i>Krajišnik</i> Trial Judgment	ICTY, <i>Prosecutor v. Krajišnik</i> , IT-00-39-T, Judgement, 27 September 2006
<i>Krnojelac</i> Appeal Judgment	ICTY, <i>Prosecutor v. Krnojelac</i> , IT-97-25-A, Judgement, 17 September 2003
<i>Krnojelac</i> decision on form of second indictment	ICTY, <i>Prosecutor v. Krnojelac</i> , IT-97-25-PT, Decision on Form of Second Amended Indictment, 11 May 2000
<i>Krnojelac</i> decision on form of indictment	ICTY, <i>Prosecutor v. Krnojelac</i> , Case IT-97-25-PT, Decision on the Defence Preliminary Motion on the Form of the Indictment, 24 February 1999
<i>Krstić</i> Trial Judgment	ICTY, <i>Prosecutor v. Krstić</i> , IT-98-33-T, Judgement, 2 August 2001

<i>Kunarac and others</i> Trial Judgment	ICTY, <i>Prosecutor v. Kunarac, Kovač and Vuković</i> , Judgement, 22 February 2001
<i>Kupreškić and others</i> Appeal Judgment	ICTY, <i>Prosecutor v. Kupreškić, Kupreškić, Kupreškić, Josipović and Šantić</i> , IT-95-16-A, Appeal Judgement, 23 October 2001
<i>Kvočka and others</i> Appeal Judgment	ICTY, <i>Prosecutor v. Kvočka, Radić, Žigić and Prcać</i> , IT-98-30/1-A, Judgement, 28 February 2005
<i>Kvočka and others</i> decision on review of Registrar's withdrawal of legal aid	ICTY, <i>Prosecutor v. Kvočka, Radić, Žigić and Prcać</i> , IT-98-30/1-A, Decision on Review of Registrar's Decision to Withdraw Legal Aid from Zoran Žigić, 7 February 2003
<i>Limaj and others</i> Appeal Judgment	ICTY, <i>Prosecutor v. Limaj, Bala and Musliu</i> , IT-03-66-A, Judgement, 27 September 2007
<i>Limaj and others</i> Trial Judgment	ICTY, <i>Prosecutor v. Limaj, Bala and Musliu</i> , IT-03-66-T, Judgement, 30 November 2005
<i>Lukić and Lukić</i> Appeal Judgment	ICTY, <i>Prosecutor v. Lukić and Lukić</i> , IT-98-32/1-A, Judgement, 4 December 2012
<i>Marijačić and Rebić</i> Appeal Judgment	ICTY, <i>Prosecutor v. Marijačić and Rebić</i> , IT-95-14-R77.2-A, Judgement, 27 September 2006
<i>Martić</i> Appeal Judgment	ICTY, <i>Prosecutor v. Martić</i> , IT-95-11-A, Judgement, 8 October 2008
<i>Martić</i> decision on expert evidence of Reynaud Theunens	ICTY, <i>Prosecutor v. Martić</i> , IT-95-11-T, Decision on Defence's Motion to Exclude the Evidence of Reynaud Theunens and to Call an Independent Military Expert with Confidential Annexes A, B, C, D and E, 28 November 2006
<i>Martić</i> decision on expert report of Smilja Avramov	ICTY, <i>Prosecutor v. Martić</i> , IT-95-11-T, Decision on Defence's Submission of the Expert Report of Professor Smilja Avramov Pursuant to Rule 94 bis, 9 November 2006
<i>Martić</i> decision on transcripts and expert reports	ICTY, <i>Prosecutor v. Martić</i> , IT-95-11-T, Decision on Prosecution's Motions for Admission of Transcripts Pursuant to Rule 92 BIS (D) and of Expert Reports Pursuant to Rule 94 BIS, 13 January 2006

<i>Martić</i> Trial Judgment	ICTY, <i>Prosecutor v. Martić</i> , IT-95-11-T, Judgement, 12 June 2007
<i>Milošević</i> decision on expert evidence of Kosta Čavoški	ICTY, <i>Prosecutor v. Milošević</i> , IT-02-54-T, Decision on Admissibility of Expert Report of Kosta Čavoški, 1 March 2006
<i>Milošević</i> oral ruling on evidence of Philip Coö	ICTY, <i>Prosecutor v. Milošević</i> , IT-02-54-T, Ruling Delivered in Court, T. 9 September 2002, pp 9965-9970
<i>Milutinović and others</i> Appeal decision on challenging jurisdiction	ICTY, <i>Prosecutor v. Milutinović, Šainović and Ojdanić</i> , IT-99-37-AR72, Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction – Joint Criminal Enterprise, 21 May 2003
<i>Milutinović and others</i> decision denying certification of appeal on Philip Coö	ICTY, <i>Prosecutor v. Milutinović, Šainović, Ojdanić, Pavković, Lazarević and Lukić</i> , IT-05-87-T, Decision on Prosecution Request for Certification of Interlocutory Appeal of Decision on Admission of Witness Philip Coö's Expert Report, 30 August 2006
<i>Milutinović and others</i> oral decision on evidence of Philip Coö	ICTY, <i>Prosecutor v. Milutinović, Šainović, Ojdanić, Pavković, Lazarević and Lukić</i> , IT-05-87-T, Decision Regarding the Expert Witness Philip Coö, T. 13 July 2006, pp 839-844
<i>Milutinović and others</i> Trial Judgment	ICTY, <i>Prosecutor v. Milutinović, Šainović, Ojdanić, Pavković, Lazarević and Lukić</i> , IT-05-87-T, Judgement, 26 February 2009
<i>Mladić</i> Appeal decision regarding fair trial and presumption of innocence	ICTY, <i>Prosecutor v. Mladić</i> , IT-09-92-AR73.6, Decision on Interlocutory Appeal against Decision on Defence Motion for a Fair Trial and the Presumption of Innocence, 27 February 2017
<i>Mladić</i> decision on Richard Butler	ICTY, <i>Prosecutor v. Mladić</i> , IT-09-92-T, Decision on Defence Request to Disqualify Richard Butler as an Expert and Bar the Prosecution from Presenting his Reports, 19 October 2012
<i>Mladić</i> Indictment	ICTY, <i>Prosecutor v. Mladić</i> , IT-09-92-PT, Fourth Amended Indictment, 16 December 2011

<i>Mladić</i> Trial Judgment	ICTY, <i>Prosecutor v. Mladić</i> , IT-09-92-T, Judgment, 22 November 2017
<i>Mrkšić and Šljivančanin</i> Appeal Judgment	ICTY, <i>Prosecutor v. Mrkšić and Šljivančanin</i> , IT-95-13/1-A, Judgement, 5 May 2009
<i>Naletilić and Martinović</i> Appeal Judgment	ICTY, <i>Prosecutor v. Naletilić and Martinović</i> , IT-98-34-A, Judgement, 3 May 2006
<i>Orić</i> Appeal Judgment	ICTY, <i>Prosecutor v. Orić</i> , IT-03-68-A, Judgement, 3 July 2008
<i>Perišić</i> Appeal Judgment	ICTY, <i>Prosecutor v. Perišić</i> , IT-04-81-A, Judgement, 28 February 2013
<i>Perišić</i> decision (Mr Randall)	ICTY, <i>Prosecutor v. Perišić</i> , IT-04-81-T, Decision on Defence Motion In Limine for Prosecution Witness Bretton Randall, 11 February 2009
<i>Perišić</i> decision on expert evidence of Morten Torkildsen	ICTY, <i>Prosecutor v. Perišić</i> , IT-04-81-T, Decision on Defence Motion to Exclude the Expert Report of Morten Torkildsen, 30 October 2008
<i>Perišić</i> decision on expert reports of Richard Butler	ICTY, <i>Prosecutor v. Perišić</i> , IT-04-81-T, Decision on Expert Reports by Richard Butler, 4 March 2009
<i>Popović and others</i> Appeal decision denying request to terminate appellate proceedings	ICTY, <i>Prosecutor v. Popović, Beara, Nikolić, Miletić, Gvero and Pandurević</i> , IT-05-88-A, Public redacted version of 30 November 2012 Decision on Request to Terminate Appellate Proceedings in Relation to Milan Gvero, 16 January 2013
<i>Popović and others</i> Appeal decision on Mr Butler	ICTY, <i>Prosecutor v. Popović, Beara, Nikolić, Borovčanin, Miletić, Gvero and Pandurević</i> , IT-05-88-AR73.2, Decision on Joint Defence Interlocutory Appeal concerning the Status of Richard Butler as an Expert Witness, 30 January 2008
<i>Popović and others</i> Appeal decision terminating proceedings	ICTY, <i>Prosecutor v. Popović, Beara, Nikolić, Miletić, Gvero and Pandurević</i> , IT-05-88-A, Decision Terminating Appellate Proceedings in Relation to Milan Gvero, 7 March 2013
<i>Popović and others</i> Appeal Judgment	ICTY, <i>Prosecutor v. Popović, Beara, Nikolić, Miletić and Pandurević</i> , IT-05-88-A, Judgement, 30 January 2015

<i>Popović and others</i> decision on evidence of General Rupert Smith	ICTY, <i>Prosecutor v. Popović, Beara, Nikolić, Borovčanin, Miletić, Gvero and Pandurević</i> , IT-05-88-T, Second Decision Regarding the Evidence of General Rupert Smith, 11 October 2007
<i>Popović and others</i> decision on guidelines on use of statements and cross-examination	ICTY, <i>Prosecutor v. Popović, Beara, Nikolić, Borovčanin, Miletić, Gvero and Pandurević</i> , IT-05-88-T, Decision on Defence Request for Guidelines Concerning the Use of Statements Not in Evidence and the Admissibility of Evidence During Cross-Examination, 17 December 2008
<i>Popović and others</i> decision on Mr Butler	ICTY, <i>Prosecutor v. Popović, Beara, Nikolić, Borovčanin, Miletić, Gvero and Pandurević</i> , IT-05-88-T, Decision on Defence Rule 94 <i>bis</i> Notice Regarding Prosecution Expert Witness Richard Butler, 19 September 2007
<i>Popović and others</i> decision regarding admissibility of Mr Ruez's testimony	ICTY, <i>Prosecutor v. Popović, Beara, Nikolić, Borovčanin, Miletić, Gvero and Pandurević</i> , IT-05-88-T, Decision on Joint Defence Motion Requesting Determination as to the Admissibility of the Testimony of Jean-Rene Ruez, 6 September 2006
<i>Popović and others</i> Trial Judgment	ICTY, <i>Prosecutor v. Popović, Beara, Nikolić, Borovčanin, Miletić, Gvero and Pandurević</i> , IT-05-88-T, Judgement, 10 June 2010
<i>Prlić and others</i> appeal decision on Croatia's amicus curiae application	ICTY, <i>Prosecutor v. Prlić, Stojić, Praljak, Petković, Ćorić and Pušić</i> , IT-04-74-A, Decision on Application by the Republic of Croatia for Leave to Appear as Amicus Curiae and to Submit Amicus Curiae Brief, 18 July 2016
<i>Prlić and others</i> Appeal decision on document presentation in cross-examination	ICTY, <i>Prosecutor v. Prlić, Stojić, Praljak, Petković, Ćorić and Pušić</i> , IT-04-74-AR73.14, Decision on the Interlocutory Appeal Against the Trial Chamber's Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses, 26 February 2009

<i>Prlić and others</i> Appeal decision regarding admission of evidence	ICTY, <i>Prosecutor v. Prlić, Stojić, Praljak, Petković, Ćorić and Pušić</i> , IT-04-74-AR73.16, Decision on Jadranko Prlić's Interlocutory Appeal against the Decision on Prlić Defence Motion for Reconsideration of the Decision on Admission of Documentary Evidence, 3 November 2009
<i>Prlić and others</i> Appeal Judgment	ICTY, <i>Prosecutor v. Prlić, Stojić, Praljak, Petković, Ćorić and Pušić</i> , IT-04-74-A, Judgement, 29 November 2017
<i>Prlić and others</i> Indictment	ICTY, <i>Prosecutor v. Prlić, Stojić, Praljak, Petković, Ćorić and Pušić</i> , IT-04-74-T, Second Amended Indictment, 11 June 2008
<i>Prlić and others</i> Trial Judgment	ICTY, <i>Prosecutor v. Prlić, Stojić, Praljak, Petković, Ćorić and Pušić</i> , IT-04-74-T, Judgement, 29 May 2013
<i>Rajić</i> Confirmation of the Indictment	ICTY, <i>Prosecutor v. Rajić</i> , IT-95-12-I, Review on the Indictment, 29 August 1995
<i>Šainović and others</i> Appeal Judgment	ICTY, <i>Prosecutor v. Šainović, Pavković, Lazarević and Lukić</i> , IT-05-87-A, Judgement, 23 January 2014
<i>Šešelj</i> decision on Andraś Riedlmayer expert report	ICTY, <i>Prosecutor v. Šešelj</i> , IT-03-67-T, Decision on the Admission of Evidence Presented during the Testimony of András Riedlmayer, 14 April 2010
<i>Šešelj</i> decision on expert status of Reynaud Theunens	ICTY, <i>Prosecutor v. Šešelj</i> , IT-03-67-T, Decision on Expert Status of Reynaud Theunens, 12 February 2008
<i>Šešelj</i> Indictment	ICTY, <i>Prosecutor v. Šešelj</i> , IT-03-67-T, Third Amended Indictment, 7 December 2007
<i>Sikirica and others</i> Sentencing Judgment	ICTY, <i>Prosecutor v. Sikirica, Došen and Kolundžija</i> , IT-95-8-S, Sentencing Judgement, 13 November 2001
<i>Simić</i> Appeal Judgment	ICTY, <i>Prosecutor v. Blagoje Simić</i> , IT-95-9-A, Judgement, 28 November 2006
<i>Slobodan Milošević</i> Appeal decision on admissibility of evidence	ICTY, <i>Prosecutor v. Slobodan Milošević</i> , IT-02-54-AR73.2, Decision on Admissibility of Prosecution Investigator's Evidence, 30 September 2002

<i>Slobodan Milošević</i> decision varying protective measures	ICTY, <i>Prosecutor v. Slobodan Milošević</i> , IT-02-54-T, Decision on Application of the Prosecutor of the Tribunal for Variation of Protective Measures, 10 November 2009
<i>Stakić</i> Appeal Judgment	ICTY, <i>Prosecutor v. Stakić</i> , IT-97-24-A, Judgement, 22 March 2006
<i>Stakić</i> Trial Judgment	ICTY, <i>Prosecutor v. Stakić</i> , IT-97-24-T, Judgement, 31 July 2003
<i>Stanišić and Simatović</i> decision on expert report of Reynaud Theunens and related documents	ICTY, <i>Prosecutor v. Stanišić and Simatović</i> , IT-03-69-T, Decision on the Admission of the Proposed Expert Report by Reynaud Theunens and the Admission of the Theunens Related Documents, 1 April 2011
<i>Stanišić and Simatović</i> Appeal Judgment	ICTY, <i>Prosecutor v. Stanišić and Simatović</i> , IT-03-69-A, Judgement, 9 December 2015
<i>Stanišić and Simatović</i> decision on experts Tromp and Nielsen	ICTY, <i>Prosecutor v. Stanišić and Simatović</i> , IT-03-69-PT, Decision on Prosecution's Submission of the Expert Report of Nena Tromp and Christian Nielsen pursuant to Rule 94 <i>bis</i> , 18 March 2008
<i>Strugar</i> Appeal Judgment	ICTY, <i>Prosecutor v. Strugar</i> , IT-01-42-A, Judgement, 17 July 2008
<i>Strugar</i> decision dismissing Defence motion to terminate proceedings	ICTY, <i>Prosecutor v. Strugar</i> , IT-01-42-T, Decision re the Defence Motion to Terminate Proceedings, 26 May 2004
<i>Strugar</i> decision on expert status of Major General Milovan Zorc	ICTY, <i>Prosecutor v. Strugar</i> , IT-01-42-PT, Decision on the Defence Motions to Oppose Admission of Prosecution Expert Reports Pursuant to Rule 94 <i>bis</i> , 1 April 2004
<i>Tadić</i> appeal decision on additional evidence	ICTY, <i>Prosecutor v. Duško Tadić</i> , IT-94-1-A-R77, Decision on Appellant's Motion for the Extension of the Time Limit and Admission of Additional Evidence, 15 October 1998
<i>Tadić</i> Appeal Judgment	ICTY, <i>Prosecutor v. Duško Tadić</i> , IT-94-1-A, Judgement, 15 July 1999

<i>Tadić</i> Trial Judgment	ICTY, <i>Prosecutor v. Duško Tadić</i> , IT-94-1-T, Opinion and Judgement, 7 May 1997
<i>Todorović</i> Sentencing Judgment	ICTY, <i>Prosecutor v. Todorović</i> , IT-95-9/1-S, Sentencing Judgement, 31 July 2001
<i>Tolimir</i> Appeal Judgment	ICTY, <i>Prosecutor v. Tolimir</i> , IT-05-88/2-A, Judgement, 8 April 2015
<i>Tolimir</i> Trial Judgment	ICTY, <i>Prosecutor v. Tolimir</i> , IT-05-88/2-T, Judgement, 12 December 2012
<i>Vasiljević</i> Appeal Judgment	ICTY, <i>Prosecutor v. Vasiljević</i> , IT-98-32-A, Judgement, 25 February 2004
<i>Vasiljević</i> Trial Judgment	ICTY, <i>Prosecutor v. Vasiljević</i> , IT-98-32-T, Judgment, 29 November 2002
<i>Vujin</i> Appeals Chamber first instance judgment	ICTY, <i>Prosecutor v. Duško Tadić</i> , IT-94-1-A-R77, Judgment on Allegations of Contempt against Prior Counsel, Milan Vujin, 31 January 2000

4. International Criminal Tribunal for Rwanda case law

<i>Akayesu</i> Appeal Judgment	ICTR, <i>Prosecutor v. Akayesu</i> , ICTR-96-4-A, Judgement, 1 June 2001
<i>Akayesu</i> decision on calling co-accused as an expert	ICTR, <i>Prosecutor v. Akayesu</i> , ICTR-96-4-T, Decision on a Defence Motion for the Appearance of an Accused as an Expert Witness, 9 March 1998
<i>Akayesu</i> Trial Judgment	ICTR, <i>Prosecutor v. Akayesu</i> , ICTR-96-4-T, Judgement, 2 September 1998
<i>Bagosora and Nsengiyumva</i> Appeal Judgment	ICTR, <i>Bagosora and Nsengiyumva v. The Prosecutor</i> , ICTR-98-41-A, Judgement, 14 December 2011
<i>Bikindi</i> decision on temporal jurisdiction and on the form of the indictment	ICTR, <i>Prosecutor v. Bikindi</i> , ICTR- 2001-72-I, Decision on the Defence Motion Challenging the Temporal Jurisdiction of the Tribunal and Objecting to the Form of the Indictment and on the Prosecutor's Motion Seeking Leave to File an Amended Indictment, 22 September 2003

<i>Bizimungu</i> Appeal Judgment	ICTR, <i>Augustin Bizimungu v. The Prosecutor</i> , ICTR-00-56B-A, Judgement, 30 June 2014
<i>Bizimungu</i> decision on expert witness Dr Alison Des Forges	ICTR, <i>Prosecutor v. Bizimungu, Mugenzi, Bicamumpaka and Mugiraneza</i> , ICTR-99-50-T, Decision on Defence Motion for Exclusion of Portions of Testimony of Expert Witness Dr. Alison Des Forges, 2 September 2005
<i>Gacumbitsi</i> Appeal Judgment	ICTR, <i>Gacumbitsi v. The Prosecutor</i> , ICTR-2001-64-A, Judgement, 7 July 2006
<i>Gacumbitsi</i> decision on expert witnesses	ICTR, <i>Gacumbitsi v. The Prosecutor</i> , ICTR-2001-64-A, Decision on Expert Witnesses for the Defence Rule 54, 73, 89 and 94bis of the Rules of Procedure and Evidence, 11 November 2003
<i>Kajelijeli</i> Appeal Judgment	ICTR, <i>Juvénal Kajelijeli v. The Prosecutor</i> , ICTR-98-44A-A, Judgement, 23 May 2005
<i>Kalimanzira</i> Appeal Judgment	ICTR, <i>Kalimanzira v. The Prosecutor</i> , ICTR-05-88-A, Judgement, 20 October 2010
<i>Karemera and Ngirumpatse</i> appeal decision on indictment and evidence after co-accused's death	ICTR, <i>Karemera and Ngirumpatse v. The Prosecutor</i> , ICTR-98-44-AR50, Decision on Interlocutory Appeal of Edouard Karemera and Matthieu Ngirumpatse against Oral Decision of 23 August 2010, 24 September 2010
<i>Karemera and Ngirumpatse</i> Appeal Judgment	ICTR, <i>Karemera and Ngirumpatse v. The Prosecutor</i> , ICTR-98-44-A, Judgement, 29 September 2014
<i>Karemera and Ngirumpatse</i> trial decision on indictment and evidence after co-accused's death	ICTR, <i>Prosecutor v. Karemera and Ngirumpatse</i> , ICTR-98-44-T, Reasons for Oral Decision on 23 August 2010 and on Oral Applications for Certification to Appeal, 26 August 2010
<i>Karemera and Ngirumpatse</i> Trial Judgment	ICTR, <i>Prosecutor v. Karemera and Ngirumpatse</i> , ICTR-98-44-T, Judgement and Sentence, 2 February 2012
<i>Karera</i> Appeal Judgment	ICTR, <i>Karera v. The Prosecutor</i> , ICTR-01-74-A, Judgement, 2 February 2009

<i>Kayishema and Ruzindana</i> Appeal Judgment	ICTR, <i>Prosecutor v. Kayishema and Ruzindana</i> , ICTR-95-1-A, Judgment (Reasons), 1 June 2001
<i>Kayishema and Ruzindana</i> Trial Judgment	ICTR, <i>Prosecutor v. Kayishema and Ruzindana</i> , ICTR-95-1-T, Judgement, 21 May 1999
<i>Mpambara</i> Trial Judgment	ICTR, <i>Prosecutor v. Mpambara</i> , ICTR-01-65-T, Judgement, 11 September 2006
<i>Muhimana</i> Appeal Judgment	ICTR, <i>Muhimana v. The Prosecutor</i> , ICTR-95-1B-A, Judgement, 21 May 2007
<i>Muhimana</i> Trial Judgment	ICTR, <i>Prosecutor v. Muhimana</i> , ICTR-95-1B-T, Judgement and Sentence, 28 April 2005
<i>Musema</i> Appeal Judgment	ICTR, <i>Musema v. Prosecutor</i> , ICTR-96-13-A, Judgement, 16 November 2001
<i>Musema</i> Trial Judgment	ICTR, <i>Prosecutor v. Musema</i> , ICTR-96-13-T, Judgement and Sentence, 27 January 2000
<i>Muvunyi</i> Appeal decision dismissing interlocutory appeal against denying leave to amend the indictment	ICTR, <i>Prosecutor v. Muvunyi</i> , ICTR-00-55A-AR73, Decision on Prosecution Interlocutory Appeal against Trial Chamber II Decision of 23 February 2005, 12 May 2005
<i>Muvunyi</i> Appeal Judgment	ICTR, <i>Prosecutor v. Muvunyi</i> , ICTR-2000-55A-A, Judgement, 1 April 2011
<i>Muvunyi</i> Trial Judgment	ICTR, <i>Prosecutor v. Muvunyi</i> , ICTR-2000-55A-T, Judgement and Sentence, 12 September 2006
<i>Nahimana and others</i> Appeal Judgment	ICTR, <i>Nahimana, Barayagwiza and Ngeze v. Prosecutor</i> , ICTR-99-52-A, Judgement, 28 November 2007
<i>Nahimana and others</i> decision on Defence violations of Decisions and Rules	ICTR, <i>Prosecutor v. Nahimana</i> , ICTR-99-52-T, Decision on the Prosecutor's Urgent Motion for an Immediate Restraining Order against the Defence's Further Contact with Witness RM-10 and for Other Relief Based on the Ngeze Defence's Violations of Court Decisions and Rules, 17 January 2003

<i>Nahimana</i> decision ordering the amending of the indictment	ICTR, <i>Prosecutor v. Nahimana</i> , ICTR-96-11-T, Decision on the Prosecutor's Request for Leave to File an Amended Indictment, 5 November 1999
<i>Nchamihigo</i> Appeal Judgment	ICTR, <i>Nchamihigo v. Prosecutor</i> , ICTR-2001-63-A, Judgement, 18 March 2010
<i>Ndahimana</i> Appeal Judgment	ICTR, <i>Ndahimana v. Prosecutor</i> , ICTR-01-68-A, Judgement, 16 December 2013
<i>Ndindabahizi</i> Appeal Judgment	ICTR, <i>Ndindabahizi v. Prosecutor</i> , ICTR-01-71-A, Judgement, 16 January 2007
<i>Ndindabahizi</i> Trial Judgment	ICTR, <i>Prosecutor v. Ndindabahizi</i> , ICTR-2001-71-I, Judgement and Sentence, 15 July 2004
<i>Niyitegeka</i> Appeal Judgment	ICTR, <i>Niyitegeka v. Prosecutor</i> , ICTR-96-14-A, Judgement, 9 July 2004
<i>Nshogoza</i> Trial Judgment	ICTR, <i>Prosecutor v. Nshogoza</i> , ICTR-07-91-T, Judgement, 7 July 2009
<i>Ntabakuze</i> Appeal Judgment	ICTR, <i>Ntabakuze v. Prosecutor</i> , ICTR-98-41A-A, Judgement, 8 May 2012
<i>Ntagerura and others</i> Appeal Judgment	ICTR, <i>Prosecutor v. Ntagerura, Bagambiki and Imanishimwe</i> , ICTR-99-46-A, Judgement, 7 July 2006
<i>Ntahobali and Nyiramasuhuko</i> Appeal decision regarding admissibility of evidence	ICTR, <i>Ntahobali and Nyiramasuhuko v. Prosecutor</i> , ICTR-97-21-AR73, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible", 2 July 2004
<i>Ntakirutimana and Ntakirutimana</i> Appeal Judgment	ICTR, <i>Prosecutor v. Ntakirutimana and Ntakirutimana</i> , ICTR-96-10-A and ICTR-96-17-A, Judgement, 13 December 2004
<i>Ntakirutimana and Ntakirutimana</i> Trial Judgment	ICTR, <i>Prosecutor v. Ntakirutimana and Ntakirutimana</i> , ICTR-96-10 and ICTR-96-17-T, Judgement and Sentence, 21 February 2003
<i>Ntawukulilyayo</i> Appeal Judgment	ICTR, <i>Ntawukulilyayo v. Prosecutor</i> , ICTR-05-82-A, Judgement, 14 December 2011

<i>Nyiramasuhuko and others</i> Appeal Judgment	ICTR, <i>Prosecutor v. Nyiramasuhuko, Ntahobali, Nsabimana, Nteziryayo, Kanyabashi and Ndayambaje</i> , ICTR-98-42-A, Judgement, 14 December 2015
<i>Nyiramasuhuko and others</i> Trial Judgment	ICTR, <i>Prosecutor v. Nyiramasuhuko, Ntahobali, Nsabimana, Nteziryayo, Kanyabashi and Ndayambaje</i> , ICTR-98-42-T, Judgement and Sentence, 24 June 2011
<i>Nyiramasuhuko and others</i> Appeals Chamber decision of 17 May 2012	ICTR, <i>Prosecutor v. Nyiramasuhuko, Ntahobali, Nsabimana, Nteziryayo, Kanyabashi and Ndayambaje</i> , ICTR-98-42-A, Decision on Jacques Mungwarere's Motion for Access to Confidential Material, 17 May 2012
<i>Renzaho</i> Appeal Judgment	ICTR, <i>Renzaho v. Prosecutor</i> , ICTR-97-31-A, Judgement, 1 April 2011
<i>Renzaho</i> Trial Judgment	ICTR, <i>Prosecutor v. Renzaho</i> , ICTR-97-31-T, Judgement and Sentence, 14 July 2009
<i>Rukundo</i> Appeal Judgment	ICTR, <i>Rukundo v. Prosecutor</i> , ICTR-2001-70-A, Judgement, 20 October 2010
<i>Rutaganda</i> Appeal Judgment	ICTR, <i>Rutaganda v. Prosecutor</i> , ICTR-96-3-A, Judgement, 26 May 2003
<i>Semanza</i> Appeal Judgment	ICTR, <i>Semanza v. Prosecutor</i> , ICTR-97-20-A, Judgement, 20 May 2005
Separate opinion of Judge Shahabuddeen in <i>Gacumbitsi</i> Appeal Judgment	ICTR, <i>Gacumbitsi v. The Prosecutor</i> , ICTR-2001-64-A, Judgement, Separate Opinion of Judge Shahabuddeen, 7 July 2006
<i>Seromba</i> Appeal Judgment	ICTR, <i>Prosecutor v. Seromba</i> , ICTR-2001-66-A, Judgement, 12 March 2008

5. International Residual Mechanism for Criminal Tribunals case law

<i>Karadžić</i> Appeal Judgment	IRMCT, <i>Prosecutor v. Karadžić</i> , MICT-13-55-A, Judgement, 20 March 2019
<i>Ngirabatware</i> Appeal Judgment	IRMCT, <i>Ngirabatware v. Prosecutor</i> , MICT-12-29-A, Judgement, 18 December 2014
<i>Niyitegeka</i> Appeal Chamber decision dismissing a request for review	IRMCT, <i>Niyitegeka v. Prosecutor</i> , MICT-12-16-R, Decision Dismissing a Request, 13 April 2018
<i>Semanza</i> decision on access and review	IRMCT, <i>Semanza v. Prosecutor</i> , MICT-13-36-R, Decision on Request for Access and Review, 9 April 2018
<i>Šešelj</i> Appeal Judgment	IRMCT, <i>Prosecutor v. Šešelj</i> , MICT-16-99-A, Judgement, 11 April 2018
<i>Uwinkindi</i> Appeal decision dismissing request for revocation of referral	IRMCT, <i>Prosecutor v. Uwinkindi</i> , MICT-12-25-AR14.1, Decision on an Appeal Concerning a Request for Revocation of a Referral, 4 October 2016

6. International Criminal Court case law

<i>Al Mahdi</i> decision on victim participation	ICC, <i>Prosecutor v. Al Mahdi</i> , ICC-01/12-01/15, Public redacted version of ‘Decision on Victim Participation at Trial and on Common Legal Representation of Victims’, 8 June 2016
<i>Al Mahdi</i> reparations order	ICC, <i>Prosecutor v. Al Mahdi</i> , ICC-01/12-01/15, Reparations Order, 17 August 2017
<i>Banda</i> decision on victim participation	ICC, <i>Prosecutor v. Abdallah Banda Abakaer Nourain</i> , ICC-02/05-03/09, Decision on the Participation of Victims in the Trial Proceedings, 20 March 2014

<i>Bemba and others</i> Appeal Judgment	ICC, <i>Prosecutor v. Bemba, Kililo, Mangenda, Babala and Arido</i> , ICC-01/05-01/13 A A2 A3 A4 A5, Public Redacted Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled “Judgment pursuant to Article 74 of the Statute”, 8 March 2018
<i>Bemba</i> Appeal Judgment	ICC, <i>Prosecutor v. Bemba</i> , ICC-01/05-01/08 A, Judgment on the Appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's "Judgment pursuant to Article 74 of the Statute", 8 June 2018
<i>Bemba</i> confirmation decision	ICC, <i>Prosecutor v. Bemba</i> , ICC-01/05-01/08, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009
<i>Bemba and others</i> decision on scope of Witness P-433's testimony	ICC, <i>Prosecutor v. Bemba, Kililo, Mangenda, Babala and Arido</i> , ICC-01/05-01/13, Decision on the Joint Defence Request to Restrict the Scope of Witness P-433's Testimony, T. 30 September 2015, pp 5-6
<i>Bemba</i> decision on the Legal Representatives of Victims' application to present evidence and the views and concerns of victims	ICC, <i>Prosecutor v. Bemba</i> , ICC-01/05-01/08, Decision on the Supplemented Applications by the Legal Representatives of Victims to Present Evidence and the Views and Concerns of Victims, 22 February 2012
<i>Bemba</i> decision on reparations proceedings	ICC, <i>Prosecutor v. Bemba</i> , ICC-01/05-01/08, Final Decision on the Reparations Proceedings, 3 August 2018
<i>Bemba</i> Pre-Trial Chamber decision of 15 June 2009	ICC, <i>Prosecutor v. Bemba</i> , ICC-01/05-01/08, Decision Pursuant to Article 61 (7) (a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009
<i>Bemba</i> Trial Judgment	ICC, <i>Prosecutor v. Bemba</i> , ICC-01/05-01/08, Judgment pursuant to Article 74 of the Statute, 21 March 2016

Dissenting opinion of Judge Monageng and Judge Hofmański in <i>Bemba</i> Appeal Judgment	ICC, <i>Prosecutor v. Bemba</i> , ICC-01/05-01/08 A, Annex 1 to “Judgment on the Appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's “Judgment pursuant to Article 74 of the Statute””, Dissenting Opinion of Judge Sanji Mmasenono Monageng and Judge Piotr Hofmański, 8 June 2018
<i>Bemba</i> decision on joint instruction of expert witnesses	ICC, <i>Prosecutor v. Bemba</i> , ICC-01/05-01/08, Decision on the Defence Objection to Experts Receiving Joint Instructions and Testifying at Trial Dated 26 February 2010, T. 29 March 2010, pp 13-24
<i>Bemba</i> decision on procedures for instructing expert witnesses	ICC, <i>Prosecutor v. Bemba</i> , ICC-01/05-01/08, Decision on the Procedures to Be Adopted for Instructing Expert Witnesses, 12 February 2010
<i>Gaddafi and Al-Senussi</i> disqualification decision	ICC, <i>Prosecutor v. Gaddafi and Al-Senussi</i> , ICC-01/11-01/11 OA 3, Decision on the Request for Disqualification of the Prosecutor, 12 June 2012
<i>Gbagbo and Blé Goudé</i> decision of 31 July 2015	ICC, <i>Prosecutor v. Gbagbo and Blé Goudé</i> , ICC-02/11-01/15 OA6, Reasons for the “Decision on the ‘Request for the recognition of the right of victims authorized to participate in the case to automatically participate in any interlocutory appeal arising from the case and, in the alternative, application to participate in the interlocutory appeal against the ninth decision on Mr Gbagbo’s detention (ICC-02/11-01/15-134-Red3)”, 31 July 2015
<i>Gbagbo and Blé Goudé</i> Judge Henderson reasons for acquittal decision	ICC, <i>Prosecutor v. Gbagbo and Blé Goudé</i> , ICC-02/11-01/15, Annex B to “Reasons for oral decision of 15 January 2019 on the Requête de la Défense de Laurent Gbagbo afin qu'un jugement d'acquittement portant sur toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté immédiate soit ordonnée”, Reasons of Judge Geoffrey Henderson, 16 July 2019

<i>Gbagbo and Blé Goudé</i> Appeal Judgment on prior recorded testimony	ICC, <i>Prosecutor v. Gbagbo and Blé Goudé</i> , ICC-02/11-01/15 OA 8, Judgment on the Appeals of Mr Laurent Gbagbo and Mr Charles Blé Goudé against the Decision of Trial Chamber I of 9 June 2016 Entitled “Decision on the Prosecutor’s Application to Introduce prior Recorded Testimony under Rules 68(2)(b) and 68(3)”, 1 November 2016
<i>Gbagbo and Blé Goudé</i> dissenting opinion of Judge Herrera Carbuccion on acquittal decision	ICC, <i>Prosecutor v. Gbagbo and Blé Goudé</i> , ICC-02/11-01/15, Annex C to “Reasons for oral decision of 15 January 2019 on the Requête de la Défense de Laurent Gbagbo afin qu'un jugement d'acquittement portant sur toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté immédiate soit ordonnée”, Dissenting Opinion Judge Herrera Carbuccion, 16 July 2019
<i>Gbagbo and Blé Goudé</i> Judge Tarfusser opinion on acquittal decision	ICC, <i>Prosecutor v. Gbagbo and Blé Goudé</i> , ICC-02/11-01/15, Annex A to “Reasons for oral decision of 15 January 2019 on the Requête de la Défense de Laurent Gbagbo afin qu'un jugement d'acquittement portant sur toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté immédiate soit ordonnée, and on the Blé Goudé Defence no case to answer motion”, Opinion of Judge Cuno Tarfusser, 16 July 2019
Joint separate opinion of Judge Van den Wyngaert and Judge Morrison in <i>Bemba</i> Appeal Judgment	ICC, <i>Prosecutor v. Bemba</i> , ICC-01/05-01/08 A, Annex 2 to “Judgment on the Appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's “Judgment pursuant to Article 74 of the Statute””, Separate Opinion Judge Christine Van den Wyngaert and Judge Howard Morrison, 8 June 2018
<i>Katanga and Ngudjolo</i> decision dismissing Mr Katanga’s appeal regarding the modalities of victim participation at trial	ICC, <i>Prosecutor v. Katanga and Ngudjolo Chui</i> , ICC-01/04-01/07 OA 11, Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 22 January 2010 Entitled “Decision on the Modalities of Victim Participation at Trial”, 16 July 2010
<i>Katanga and Ngudjolo</i> decision on modalities of victim participation at trial	ICC, <i>Prosecutor v. Katanga and Ngudjolo Chui</i> , ICC-01/04-01/07-1788, Decision on the Modalities of Victim Participation at Trial, 22 January 2010

<i>Katanga and Ngudjolo</i> directions for the conduct of the proceedings	ICC, <i>Prosecutor v. Katanga and Ngudjolo Chui</i> , ICC-01/04-01/07, Directions for the Conduct of the Proceedings and Testimony in accordance with Rule 140, 20 November 2009
<i>Katanga</i> order for reparations	ICC, <i>Prosecutor v. Katanga</i> , ICC-01/04-01/07, Order for Reparations pursuant to Article 75 of the Statute, 24 March 2017
<i>Katanga</i> Trial Judgment	ICC, <i>Prosecutor v. Katanga</i> , ICC-01/04-01/07, Judgment pursuant to article 74 of the Statute, 7 March 2014
<i>Kony and others</i> Appeals Chamber decision on victims' participation	ICC, <i>Prosecutor v. Kony, Otti, Odhiambo, Ongwen</i> , ICC-02/04 OA and ICC-02/04-01/05 OA2, Judgment on the appeals of The Defence against the decisions entitled "Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06" of Pre-Trial Chamber II, 23 February 2009
<i>Kony and others</i> decision terminating proceedings	ICC, <i>Prosecutor v. Prosecutor v. Kony, Otti, Odhiambo, Lukwiya and Ongwen</i> , ICC-02/04-01/05, Decision to Terminate the Proceedings against Raska Lukwiya, 11 July 2007
<i>Lubanga</i> Appeal Judgment	ICC, <i>Prosecutor v. Lubanga</i> , ICC-01/04-01/06 A 5, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014
<i>Lubanga</i> Appeals Chamber decision on notice for changes to legal characterisation of facts	ICC, <i>Prosecutor v. Lubanga</i> , ICC-01/04-01/06 OA 15 OA 16, Judgment on the Appeals of Mr Lubanga Dyilo and the Prosecutor against the Decision of Trial Chamber I of 14 July 2009 Entitled "Decision giving Notice to the Parties and Participants that the Legal Characterisation of the Facts May be Subject to Change in Accordance with Regulation 55(2) of the Regulations of the Court", 8 December 2009

<i>Lubanga</i> decision on appeals regarding victims' participation	ICC, <i>Prosecutor v. Lubanga</i> , ICC-01/04-01/06 OA9 OA10, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, 11 July 2008
<i>Lubanga</i> Appeals Chamber decision on the principles and procedures to be applied to reparations	ICC, <i>Prosecutor v. Lubanga</i> , ICC-01/04-01/06 A A 2 A 3, Judgment on the appeals against the "Decision establishing the principles and procedures to be applied to reparations" of 7 August 2012 with Amended order for reparations (Annex A) and public annexes 1 and 2, 3 March 2015
<i>Lubanga</i> decision on the admission of documents related to Witness 297	ICC, <i>Prosecutor v. Lubanga</i> , ICC-01/04-01/06, Decision on the "Prosecution's Application for Admission of Documents related to Witness 297 Pursuant to Article 64(9)", 12 November 2010
<i>Lubanga</i> decision allowing victims to express their views and concerns and to present evidence at trial	ICC, <i>Prosecutor v. Lubanga</i> , ICC-01/04-01/06, Decision on the Request by Victims a/0225/06, a/0229/06 and a/0270/07 to Express Their Views and Concerns in Person and to Present Evidence During the Trial, 26 June 2009
<i>Lubanga</i> decision on sentence	ICC, <i>Prosecutor v. Lubanga</i> , ICC-01/04-01/06, Decision on Sentence pursuant to Article 76 of the Statute, 10 July 2012
<i>Lubanga</i> decision on the E-Court Protocol	ICC, <i>Prosecutor v. Lubanga</i> , Decision on the E-Court Protocol, ICC-01/04-01/06, 24 January 2008
<i>Lubanga</i> decision on the principles and procedures to be applied to reparations	ICC, <i>Prosecutor v. Lubanga</i> , ICC-01/04-01/06, Decision establishing the principles and procedures to be applied to reparations, 7 August 2012
<i>Lubanga</i> instructions to a court expert	ICC, <i>Prosecutor v. Lubanga</i> , ICC-01/04-01/06, Instructions to the Court's Expert on Names and Other Social Conventions in the Democratic Republic of Congo, 5 June 2009
<i>Lubanga</i> Trial Judgment	ICC, <i>Prosecutor v. Lubanga</i> , ICC-01/04-01/06, Judgment Pursuant to Article 74 of the Statute, 14 March 2012

<i>Lubanga</i> Trial Judgment, Separate and dissenting opinion of Judge Odio Benito	ICC, <i>Prosecutor v. Lubanga</i> , ICC-01/04-01/06, Judgment Pursuant to Article 74 of the Statute, Separate and dissenting opinion of Judge Odio Benito, 14 March 2012
<i>Lubanga</i> decision on procedures for instructing expert witnesses	ICC, <i>Prosecutor v. Lubanga</i> , ICC-01/04-01/06, Decision on the Procedures to be Adopted for Instructing Expert Witnesses, 10 December 2007
<i>Mathaura and others</i> decision on confirmation of charges	ICC, <i>Prosecutor v. Mathaura, Kenyatta and Ali</i> , ICC-01/09-02/11, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012
<i>Mbarushimana</i> decision on confirmation of charges	ICC, <i>Prosecutor v. Mbarushimana</i> , ICC-01/04-01/10, Decision on the confirmation of charges, 16 December 2011
<i>Ngudjolo</i> Appeal Judgment	ICC, <i>Prosecutor v. Ngudjolo Chui</i> , ICC-01/04-02/12 A, Judgment on the Prosecutor's Appeal against the Decision of Trial Chamber II Entitled "Judgment pursuant to article 74 of the Statute", 7 April 2015
<i>Ngudjolo</i> dissenting opinion of Judges Trendafilova and Tarfusser	ICC, <i>Prosecutor v. Ngudjolo Chui</i> , ICC-01/04-02/12 A, Annex A to "Judgment on the Prosecutor's Appeal against the Decision of Trial Chamber II Entitled "Judgment pursuant to Article 74 of the Statute"", Joint Dissenting Opinion of Judge Ekaterina Trendafilova and Judge Cuno Tarfusser, 27 February 2015
<i>Ngudjolo</i> Trial Judgment	ICC, <i>Prosecutor v. Ngudjolo Chui</i> , ICC-01/04-02/12, Judgement Pursuant to Article 74 of the Statute, 18 December 2012
<i>Ntaganda</i> decision on the conduct of the proceedings	ICC, <i>Prosecutor v. Ntaganda</i> , ICC-01/04-02/06, Decision on the Conduct of Proceedings, 2 June 2015
<i>Ntaganda</i> decision on the presentation of victims' evidence, views and concerns	ICC, <i>Prosecutor v. Ntaganda</i> , ICC-01/04-02/06, Public Redacted Version of 'Decision on the Request by the Legal Representative of the Victims of the Attacks for Leave to Present Evidence and Victims' Views and Concerns' (10 February 2017, ICC-01/04-02/06), 15 February 2017

<i>Ntaganda</i> decision on expert witnesses	ICC, <i>Prosecutor v. Ntaganda</i> , ICC-01/04-02/06, Decision on Defence Preliminary Challenges to Prosecution's Expert Witnesses, 9 February 2016
<i>Ongwen</i> confirmation decision	ICC, <i>Prosecutor v. Dominic Ongwen</i> , ICC-02/04-01/15, Decision on the Confirmation of Charges against Dominic Ongwen, 23 March 2016
<i>Ongwen</i> decision authorising the presentation of victims' evidence	ICC, <i>Prosecutor v. Dominic Ongwen</i> , ICC-02/04-01/15, Decision on the Legal Representatives for Victims Requests to Present Evidence and Views and Concerns and related requests, 6 March 2018
Partly Dissenting Opinion of Judge G.M. Pikis	ICC, <i>Prosecutor v. Lubanga</i> , ICC-01/04-01/06 OA9 OA10, Judgment on the Appeals of the Prosecutor and the Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, Partly Dissenting Opinion of Judge G. M. Pikis, 11 July 2008
Partly Dissenting Opinion of Judge Philippe Kirsch	ICC, <i>Prosecutor v. Lubanga</i> , ICC-01/04-01/06 OA9 OA10, Judgment on the Appeals of the Prosecutor and the Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, Partly Dissenting Opinion of Judge Philippe Kirsch, 23 July 2008
<i>Ruto and others</i> decision on confirmation of charges	ICC, <i>Prosecutor v. Ruto, Kosgey and Sang</i> , ICC-01/09-01/11, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012
<i>Ruto and Sang</i> decision on the conduct of the proceedings	ICC, <i>Prosecutor v. Ruto and Sang</i> , ICC-01/09-01/11, Decision No. 5 on the Conduct of Trial Proceedings (Principles and Procedure on 'No case to Answer' Motions), 3 June 2014

Separate opinion of Judge Geoffrey Henderson in <i>Bemba and others</i> Appeal Judgment	ICC, <i>Prosecutor v. Bemba, Kilolo, Mangenda, Babala and Arido</i> , ICC-01/05-01/13 A A2 A3 A4 A5, Annex to “Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled “Judgment pursuant to Article 74 of the Statute””, Separate Opinion of Judge Geoffrey Henderson, 8 March 2018
<i>Situation in the DRC</i> decision of 17 January 2006 on victims’ participation	ICC, <i>Situation in the Democratic Republic of Congo</i> , ICC-01/04, Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6, 17 January 2006

7. Permanent Court of International Justice case law

<i>Brazilian Loans</i> Judgment	PCIJ, <i>Payment in Gold of Brazilian Federal Loans Contracted in France</i> , PCIJ Series A, No. 21, 12 July 1929
---------------------------------	--

8. International Court of Justice case law

<i>North Sea Continental Shelf</i> Judgment	ICJ, <i>North Sea Continental Shelf</i> , Judgment, I.C.J. Reports 1969
---	---

9. Special Court for Sierra Leone case law

<i>Brima and others</i> Appeal Judgment	SCSL, <i>Prosecutor v. Brima, Kamara and Kanu</i> , SCSL-2004-16-A, Judgment, 22 February 2008
<i>Brima and others</i> Trial Judgment	SCSL, <i>Prosecutor v. Brima, Kamara and Kanu</i> , SCSL-04-16-T, Judgement, 20 June 2007
<i>Fofana and Kondewa</i> Appeal Judgment	SCSL, <i>Prosecutor v. Fofana and Kondewa</i> , SCSL-04-14-A, Judgment, 28 May 2008

<i>Fofana and Kondewa</i> Trial Judgment	SCSL, <i>Prosecutor v. Fofana and Kondewa</i> , SCSL-04-14-T, Judgement, 2 August 2007
<i>Fofana</i> bail appeal decision	SCSL, <i>Prosecutor v. Norman, Fofana and Kondewa</i> , SCSL-04-14-AR65, <i>Fofana – Appeal against Decision Refusing Bail</i> , 11 March 2005
<i>Norman and others</i> decision terminating proceedings	SCSL, <i>Prosecutor v. Norman, Fofana and Kondewa</i> , SCSL-04-14-T, Decision on Registrar's Submission of Evidence of Death of Accused Samuel Hinga Norman and Consequential Issues, 21 May 2007
<i>Sesay and others</i> Appeal Judgment	SCSL, <i>Prosecutor v. Sesay, Kallon and Gbao</i> , SCSL-04-15-A, Judgment, 26 October 2009
<i>Sesay and others</i> Trial Judgment	SCSL, <i>Prosecutor v. Sesay, Kallon and Gbao</i> , SCSL-04-15-T, Judgement, 2 March 2009
<i>Taylor</i> decision on proposed expert witness	SCSL, <i>Prosecutor v. Taylor</i> , SCSL-03-01-T, Decision on Defence Application to Exclude the Evidence of Proposed Prosecution Expert Witness Corinne Dufka or, in the Alternative, to Limit its Scope and on Urgent Prosecution Request for Decision, 19 June 2008
<i>Taylor</i> Appeal Judgment	SCSL, <i>Prosecutor v. Taylor</i> , SCSL-03-01-A, Judgment, 26 September 2013
<i>Taylor</i> Trial Judgment	SCSL, <i>Prosecutor v. Taylor</i> , SCSL-03-01-T, Judgement, 18 May 2012

10. Extraordinary Chambers in the Courts of Cambodia case law

<i>Duch</i> Appeal Judgment	ECCC, <i>Prosecutor v. Kaing Guek Eav alias 'Duch'</i> , 001/18-07-2007-ECCC/SC, Appeal Judgement, 3 February 2012
-----------------------------	--

<i>Ieng Sary</i> appeal decision on expert evidence of Ewa Tabeau and They Kheam	ECCC, <i>Prosecutor v. Ieng Sary</i> , 002/19-09-2007-ECCC/OCIJ, Decision on Ieng Sary's Appeal against the Co-Investigating Judges' Order Denying His Request for Appointment of an Additional [redacted] Expert to Re-examine the Subject Matter of the Expert Report Submitted by Ms. Ewa Tabeau and Mr. They Kheam, 28 June 2010
<i>Im Chaem</i> closing order	ECCC, <i>Prosecutor v. Im Chaem</i> , 004/1/07-09-2009-ECCC-OCIJ, Closing Order (Reasons), 10 July 2017
<i>Nuon Chea and Khieu Samphan</i> Case 002/01 Appeal Judgment	ECCC, <i>Co-Prosecutors v. Nuon Chea and Khieu Samphan</i> , 002/19-09-2007-ECCC/SC, Appeal Judgement, 23 November 2016
<i>Nuon Chea and Khieu Samphan</i> Case 002/01 Trial Judgment	ECCC, <i>Co-Prosecutors v. Nuon Chea and Khieu Samphan</i> , 002/19-09-2007/ECCC/TC, Case 002/01 Judgement, 7 August 2014
<i>Nuon Chea and Khieu Samphan</i> Case 002/02 Trial Judgment	ECCC, <i>Co-Prosecutors v. Nuon Chea and Khieu Samphan</i> , 002/19-09-2007-ECCC-TC, Case 002/02 Judgement, 16 November 2018
<i>Khieu Samphan</i> appeal decision on release	ECCC, <i>Co-Prosecutors v. Khieu Samphan</i> , 002/19-09-2007-ECCC—TC/SC(04), Decision on Immediate Appeal by Khieu Samphan on Application for Release, 6 June 2011

11. Lebanese case law

<i>Al-Halabi (Saoud)</i> Judgment	Lebanon, Lebanese Judicial Council, Decision No. 2, 27 July 2000 (extract)
<i>Al-Halabi</i> Judgment	Lebanon, Lebanese Judicial Council, <i>Homicide of Sheikh Nizar Al-Halabi</i> , Decision No. 1, 17 January 1997
<i>Al-Rifai and others</i> Judgment	Lebanon, Lebanese Judicial Council, Judgment No. 1, 15 April 1999 (extract)
<i>Al-Tal Bombing</i> Judgment	Lebanon, Lebanese Judicial Council, Al-Tal Bombing, Decision No. 1, 5 August 2013

Assize Court decision 250/2017	Lebanon, Mount Lebanon Assize Court, Decision No. 250, 3 March 2017 (extract)
Assize Court decision 400/2007	Lebanon, Mount Lebanon Assize Court, Decision No. 400, 28 June 2007 (extract)
<i>Balamand Monastery</i> Judgment	Lebanon, Lebanese Judicial Council, <i>Balamand Monastery Attempted Bombing</i> , Judgment No. 3, 26 October 1994
Beirut Court of Appeal decision 277/2007	Lebanon, Beirut Court of Appeal, Criminal Chamber, Decision No. 277, 18 December 2007
<i>Camille Chamoun</i> Judgment	Lebanon, Lebanese Judicial Council, <i>Attempted Assassination of ex-President Camille Chamoun</i> , Judgment No. 8, 31 May 1969
Cassation decision 102/2002	Lebanon, Court of Cassation, Chamber 7, Decision No. 102, 19 March 2002 (extract)
Cassation decision 106/2014	Lebanon, Court of Cassation, Criminal Chamber 6, Decision No. 106, 19 March 2014 (extract)
Cassation decision 106/2017	Lebanon, Court of Cassation, Criminal Chamber 6, Decision No. 106, 30 March 2017 (extract)
Cassation decision 112/1974	Lebanon, Court of Cassation, Chamber 5, Decision No. 112, 25 March 1974
Cassation decision 113/2014	Lebanon, Court of Cassation, Criminal Chamber 6, Decision No. 113, 20 March 2014 (extract)
Cassation decision 123/2004	Lebanon, Court of Cassation, Chamber 7, Decision No. 123, 21 June 2004
Cassation decision 127/1998	Lebanon, Court of Cassation, Chamber 6, Decision No. 127, 30 June 1998
Cassation decision 135/1995	Lebanon, Court of Cassation, Chamber 3, Decision No. 135, 28 June 1995 (extract)
Cassation decision 152/2018	Lebanon, Court of Cassation, Criminal Chamber 6, Decision 152, 15 March 2018 (extract)
Cassation decision 154/1998	Lebanon, Court of Cassation, Chamber 3, Decision No. 154, 15 April 1998 (extract)

Cassation decision 155/2007	Lebanon, Court of Cassation, Chamber 7, Judgment No. 155, 18 October 2007 (extract)
Cassation decision 161/2013	Lebanon, Court of Cassation, Criminal Chamber 6, Decision No. 161, 6 June 2013
Cassation decision 170/2000	Lebanon, Court of Cassation, Criminal Chamber 3, Decision No. 170, 24 May 2000 (extract)
Cassation decision 171/2003	Lebanon, Court of Cassation, Chamber 3, Decision No. 171, 2 July 2003 (extract)
Cassation decision 186/2018	Lebanon, Court of Cassation, Criminal Chamber 6, Decision No. 186, 3 April 2018 (extract)
Cassation decision 209/2013	Lebanon, Court of Cassation, Chamber 6, Decision No. 209, 13 August 2013
Cassation decision 211/2018	Lebanon, Court of Cassation, Criminal Chamber 6, Decision No. 211, 19 April 2018 (extract)
Cassation decision 221/2008	Lebanon, Court of Cassation, Chamber 6, Decision No. 221, 11 December 2008 (extract)
Cassation decision 224/2011	Lebanon, Court of Cassation, Criminal Chamber 7, Decision No. 224, 16 June 2011 (extract)
Cassation decision 237/2013	Lebanon, Court of Cassation, Criminal Chamber 6, Decision No. 237, 3 October 2013
Cassation decision 24/2004	Lebanon, Court of Cassation, Chamber 7, Decision No. 24, 26 February 2004 (extract)
Cassation decision 242/2011	Lebanon, Court of Cassation, Criminal Chamber 7, Decision No. 242, 28 June 2011 (extract)
Cassation decision 275/2004	Lebanon, Court of Cassation, Chamber 6, Decision No. 275, 19 October 2004
Cassation decision 278/2011	Lebanon, Court of Cassation, Criminal Chamber 6, Decision No. 278, 12 July 2011 (extract)
Cassation decision 283/2015	Lebanon, Court of Cassation, Criminal Chamber 7, Decision No. 283, 23 October 2015 (extract)
Cassation decision 296/2014	Lebanon, Court of Cassation, Criminal Chamber 3, Decision No. 296, 16 October 2014 (extract)

Cassation decision 30/2003	Lebanon, Court of Cassation, Chamber 3, Decision No. 30, 29 January 2003 (extract)
Cassation decision 317/2002	Lebanon, Court of Cassation, Chamber 3, Decision No. 317, 10 July 2002 (extract)
Cassation decision 342/2012	Lebanon, Court of Cassation, Criminal Chamber 7, Decision No. 342, 28 December 2012 (extract)
Cassation decision 37/1999	Lebanon, Court of Cassation, Chamber 6, Decision No. 37, 23 February 1999 (extract)
Cassation decision 38/1999	Lebanon, Court of Cassation, Chamber 6, Decision No. 38, 23 February 1999
Cassation decision 39/2014	Lebanon, Court of Cassation, Criminal Chamber 7, Decision No. 39, 27 February 2014 (extract)
Cassation decision 457/2002	Lebanon, Court of Cassation, Chamber 3, Decision No. 457, 27 November 2002 (extract)
Cassation decision 457/2011	Lebanon, Court of Cassation, Criminal Chamber 7, Decision No. 457, 27 September 2011 (extract)
Cassation decision 458/2002	Lebanon, Court of Cassation, Chamber 3, Decision No. 458, 27 November 2002
Cassation decision 47/1999	Lebanon, Court of Cassation, Chamber 6, Decision No. 47, 9 March 1999 (extract)
Cassation decision 54/2014	Lebanon, Court of Cassation, Criminal Chamber 6, Decision No. 54, 18 February 2014
Cassation decision 64/2013	Lebanon, Court of Cassation, Chamber 7, Decision No. 64, 28 February 2013 (extract)
Cassation decision 68/2015	Lebanon, Court of Cassation, Criminal Chamber 6, Decision No. 68, 24 February 2015
Cassation decision 75/2004	Lebanon, Court of Cassation, Chamber 1, Decision No. 75, 25 October 2004
Cassation decision 8/2000	Lebanon, Court of Cassation, Chamber 7, Decision No. 8, 11 January 2000 (extract)
Cassation decision 8/2004	Lebanon, Court of Cassation, Chamber 7, Decision No. 8, 22 January 2004

Cassation decision 84/2000	Lebanon, Court of Cassation, Chamber 6, Decision No. 84, 16 May 2000
Cassation decision 85/1998	Lebanon, Court of Cassation, Chamber 6, Decision No. 85, 16 April 1998
Cassation decision 90/2015	Lebanon, Court of Cassation, Criminal Chamber 6, Decision No. 90, 17 March 2015 (extract)
Cassation decision 92/2015	Lebanon, Court of Cassation, Criminal Chamber 7, Decision No. 92, 31 March 2015 (extract)
Cassation decision 92/2016	Lebanon, Court of Cassation, Criminal Chamber 7, Decision No. 92, 23 March 2016 (extract)
Court of Appeal of North Lebanon decision 1/1952	Lebanon, Court of Appeal of North Lebanon, Decision No. 1, 12 January 1952
<i>Dany Chamoun</i> Judgment	Lebanon, Lebanese Judicial Council, <i>Homicide of Engineer Dany Chamoun, his wife Ingrid Ilya Abdenour and their two sons, Tarek and Julian</i> , Decision No. 5, 24 June 1995
<i>Fatieh</i> cassation decision 334/1953	Lebanon, Court of Cassation, Decision No. 334, 16 November 1953 (extract)
Indictment Chamber decision 304/1993	Lebanon, Mount Lebanon Indictment Chamber, Decision No. 304, 21 October 1993
Indictment Chamber decision 37/1994	Lebanon, Mount Lebanon Indictment Chamber, Decision No. 37, 8 February 1994
<i>Journalist Kamel Mroue</i> Judgment	Lebanon, Lebanese Judicial Council, <i>Journalist Kamel Mroue</i> , Judgment No. 11, 15 March 1968 (extract)
Judicial Council judgment 241/1963	Lebanon, Lebanese Judicial Council, Judgment No. 241, 12 November 1963 (extract)
Judicial Council judgment 76/1959	Lebanon, Lebanese Judicial Council, Judgment No. 76, 18 January 1959 (extract)
Judicial Council judgment 79/1958	Lebanon, Lebanese Judicial Council, Judgment No. 79, 22 August 1958 (extract)
Judicial Council judgment 79/1959	Lebanon, Lebanese Judicial Council, Judgment No. 79, 29 December 1959 (extract)

<i>Karami</i> Judgment	Lebanon, Lebanese Judicial Council, Decision No. 2, 25 June 1999
Military cassation decision 125/1964	Lebanon, Lebanese Military Court of Cassation, Decision No. 125, 17 September 1964 (extract)
<i>Mohammed Chamas and others</i> Judgment	Lebanese Judicial Council, Judgment No. 1, 9 January 2015 (extract)
<i>Murr</i> Judgment	Lebanon, Lebanese Judicial Council, <i>Judgement in the case concerning the attempted assassination of Minister Michel Murr</i> , Judgment No. 2/97, 9 May 1997
Single judge decision 179/2015	Lebanon, Single Criminal Judge in Jibb Jinneen, Decision No. 179, 31 March 2015
Single judge decision 202/2016	Lebanon, Single Criminal Judge in Jibb Jinneen, Decision No. 202, 30 July 2016
Single judge decision 37/2016	Lebanon, Single Criminal Judge in Jibb Jinneen, Decision No. 37, 27 February 2016 (extract)
Single judge decision 420/2015	Lebanon, Single Criminal Judge in Jibb Jinneen, Decision No. 420, 30 May 2015 (extract)
Single judge decision 55/2017	Lebanon, Single Criminal Judge in Jibb Jinneen, Decision No. 55, 11 March 2017 (extract)
Single judge decision 67/2017	Lebanon, Single Criminal Judge in Jibb Jinneen, Decision No. 67, 30 March 2017 (extract)
<i>Zouk Mikayel Church</i> Judgment	Lebanon, Lebanese Judicial Council, <i>Bombing of the Church of Our Lady of Deliverance in Zouk Mikayel</i> , Judgment No. 4, 13 July 1996

12. Human rights courts case law

<i>Achour</i> Judgment	ECtHR, <i>Achour v. France</i> , No. 67335/01, Judgment (GC), 29 March 2006
<i>Barberà and others</i> Judgment	ECtHR, <i>Barberà, Messegue and Jabardo v. Spain</i> , No. 10590/83, Judgment (Plenary), 6 December 1988

<i>Bernard</i> Judgment	ECtHR, <i>Bernard v. France</i> , No. 159/1996/778/979, Judgment, 23 April 1998
<i>Boldea</i> Judgment	ECtHR, <i>Boldea v. Romania</i> , Appl. No. 19997/02, Judgment, 15 February 2007
<i>Cleve</i> Judgment	ECtHR, <i>Cleve v. Germany</i> , No. 48144/09, Judgment, 15 January 2015
<i>Del Rio Prada</i> Judgment	ECtHR, <i>Del Rio Prada v. Spain</i> , No. 42750/09, Judgment (GC), 21 October 2013
<i>Edwards</i> Judgment	ECtHR, <i>Edwards v. United Kingdom</i> , No. 46477/99, Judgment, 14 March 2002
<i>Hadjianastassiou</i> Judgment	ECtHR, <i>Hadjianastassiou v. Greece</i> , Appl. No. 12945/87, Judgment, 16 December 1992
<i>Lobzhanidze and Peradze</i> Judgment	ECtHR, <i>Lobzhanidze and Peradze v. Georgia</i> , Appl. Nos. 21447/11 and 35839/11, Judgment, 20 February 2020
<i>Moreira Ferreira</i> Judgment	ECtHR, <i>Moreira Ferreira v. Portugal (No.2)</i> , Appl. No. 19867/12, Judgment, 11 July 2017
<i>Murray</i> Judgment	ECtHR, <i>John Murray v. United Kingdom</i> , No. 18731/91, Judgment (GC), 8 February 1996
<i>Papon</i> Judgment	ECtHR, <i>Papon v. France</i> , Appl. No. 54210/00, Judgment, 25 July 2002
<i>Penev</i> Judgment	ECtHR <i>Penev v. Bulgaria</i> , Appl. 20494/04, Judgment, 7 January 2010
<i>Ruiz Torija</i> Judgment	ECtHR, <i>Ruiz Torija v. Spain</i> , Appl. No. 18390/91, Judgment, 9 December 1994
<i>Scoppola</i> Judgment	ECtHR, <i>Scoppola v. Italy (No. 2)</i> , No. 10249/03, Judgment (GC), 17 September 2009
<i>Sunday Times</i> Judgment	ECtHR, <i>Sunday Times v. United Kingdom (No.1)</i> , No. 6538/74, Judgment (Plenary), 26 April 1979
<i>Telfner</i> Judgment	ECtHR, <i>Telfner v. Austria</i> , No. 33501/96, Judgment, 20 March 2001
<i>Tendam</i> Judgment	ECtHR, <i>Tendam v. Spain</i> , No. 25720/05, Judgment, 13 July 2010

<i>Tsalkitzis</i> Judgment	ECtHR, <i>Tsalkitzis v. Greece</i> (No. 2), No. 72624/10, Judgment, 19 October 2017
<i>Van De Hurk</i> Judgment	ECtHR, <i>Van De Hurk v. the Netherlands</i> , Appl. No. 16034/90, Judgment, 19 April 1994
<i>Varela</i> Judgment	ECtHR <i>Varela Geis v. Spain</i> , No. 61005/09, Judgment, 5 March 2013
<i>Vassilios Stavropoulos</i> Judgment	ECtHR, <i>Vassilios Stavropoulos v. Greece</i> , No. 35522/04, Judgment (GC), 27 September 2007
<i>Cabrera García</i> Judgment	IACtHR, <i>Cabrera García and Montiel Flores v. Mexico</i> , Judgment, 26 November 2010
<i>Tibi</i> Judgment	IACtHR, <i>Tibi v. Ecuador</i> , Judgment, 7 September 2004

13. Lebanese instruments

Lebanese Code of Obligations and Contracts	Lebanon, Lebanese Code of Obligations and Contracts, Adopted on 9 March 1932
Lebanese Criminal Code	Lebanon, Criminal Code 1934
Lebanese law of 1958 or 1958 law	Lebanon, Law enacted on 11 January 1958, Amendment of Certain Articles of the Criminal Code
Lebanese Military Code	Lebanon, Code of Military Justice 1968
Lebanon, Constitution	Lebanon, Constitution of the Republic of Lebanon, Adopted 23 May 1926, as amended

14. International conventions

1945 London Charter for the International Military Tribunal	Charter of the International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis ("London Agreement"), 8 August 1945, 82 UNTS 279
1946 Tokyo Charter for the Far East International Military Tribunal	Charter of the International Military Tribunal for the Far East, 19 January 1946, amended 26 April 1946, TIAS, No. 1589

Additional Protocol I to the Geneva Conventions of 1949	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, Adopted 8 June 1977, 1125 UNTS 8
American Convention on Human Rights	Organization of American States, American Convention on Human Rights, Adopted 22 November 1969, 1144 UNTS 123
European Convention on Human Rights	Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, Adopted 4 November 1950, 213 UNTS 221
ICCPR	International Covenant on Civil and Political Rights, Adopted 16 December 1966, 999 UNTS 171
International Convention for the Suppression of Terrorist Bombings	International Convention for the Suppression of Terrorist Bombings, Adopted 15 December 1997, 2149 UNTS 256
Rome Statute	Rome Statute of the International Criminal Court, Adopted 17 July 1998, 2187 UNTS 3
SCSL Statute	Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Special Court for Sierra Leone, Annex, 'Statute of the Special Court for Sierra Leone', Adopted 16 January 2002, 2178 UNTS 137
Statute of the International Court of Justice	Statute of the International Court of Justice, Adopted 26 June 1945
United Nations Charter	Charter of the United Nations, 24 October 1945, 1 UNTS XVI
Vienna Convention on the Law of Treaties	Vienna Convention on the Law of Treaties, Adopted 23 May 1969, 1155 UNTS 331

15. Other sources

Alia 1987	Samir Alia, <i>Case law of the Judicial Council regarding crimes against the security of the state (1949-1977)</i> , 2nd ed. (Academic Foundation for Research, 1987)
-----------	---

Alia 1999	Samir Alia, <i>Al-wajiz fi chareh al-jara'im al-wakaa aala amen al-dawla - Dirassa moukarana</i> [Explanation of the crimes committed against State security—Comparative study], 1st ed. (Al-mou'assassa al-jami'ia lil dirassat wal nasher wal tawzi', 1999)
Alia 2002	Samir Alia, <i>Interpretation of the Criminal Code: General Section</i> (Majd University Institute for Studies, 2002)
Alia 1998	Samir Alia, <i>Shareh kanoun al-oukoubat, al-kism al-3am</i> [Explanation of the Criminal Code, General section] (Al-mou'assassa al-jami'ia lil dirassat wal nasher wal tawzi', 1998)
Alamuddin and Bonini 2014	Amal Alamuddin and Anna Bonini, 'The UN Investigation of the Hariri Assassination' in Amal Alamuddin, Nidal Nabil Jurdi and David Tolbert (eds), <i>The Special Tribunal for Lebanon: Law and Practice</i> (Oxford University Press, 2014)
Ambos 2013	Kai Ambos, <i>Treatise on International Criminal Law, Volume I: Foundations and General Part</i> (Oxford University Press, 2013)
Ambos <i>amicus curiae</i> brief 2011	Kai Ambos, 'Amicus Curiae Brief Submitted to the Appeals Chamber of the Special Tribunal for Lebanon on the Question of the Applicable Terrorism Offence With a Particular Focus on "Special" Special Intent and/or a Motive as Additional Subjective Requirements' [2011] Criminal Law Forum 22
Ambos LJIL 2011	Kai Ambos, 'Judicial Creativity at the Special Tribunal for Lebanon: Is There a Crime of Terrorism under International Law?' [2011] 24 <i>Leiden Journal of International Law</i> 655
American Declaration of the Rights and Duties of Man	Pan-American Union, American Declaration of the Rights and Duties of Man, Adopted April 1948
Black's Law Dictionary	<i>Black's Law Dictionary</i> (11th ed. 2019)

Brereton 2007	The Honourable Justice PLG Brereton RFD, <i>Evidence in Civil Proceedings: An Australian Perspective on Documentary and Electronic Evidence</i> , September 2007
Cassese 2009	Antonio Cassese, <i>The Oxford Companion to International Criminal Justice</i> (Oxford University Press, 2009)
Cassese's International Criminal Law	Antonio Cassese, Paola Gaeta, Laurel Baig, Mary Fan, Christopher Gosnell and Alex Whiting, <i>Cassese's International Criminal Law</i> , 3rd ed. (Oxford University Press, 2013)
Cryer and others 2014	Robert Cryer, Håkan Friman, Darryl Robinson and Elizabeth Wilmschurst, <i>An Introduction to International Criminal Law and Procedure</i> , 3rd ed. (Cambridge University Press, 2014)
DeFalco 2013	Randle DeFalco, 'Contextualizing <i>Actus Reus</i> under Article 25 (3) (d) of the ICC Statute: Thresholds of Contribution', [2013] 11 <i>Journal of International Criminal Justice</i> 715
ECCC Law	Cambodia, Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea 2004
Eleventh UNHCR report	<i>Eleventh report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005), 1644 (2005), 1686 (2006), 1748 (2007) and 1815 (2008)</i> , UN Doc. S/2008/752, 2 December 2008
El-Fadel 1963	Mohammed El-Fadel, <i>Jara'im amen al dawla</i> , [Crimes against State security], 2nd ed. (Damascus University Publishings, 1963)
El-Fadel 1965	Mohammed El-Fadel, <i>Jara'im amen al dawla</i> , [Crimes against State security], 2nd ed. (Damascus University Publishings, 1965)
El-Zoghbi 1995	Farid El-Zoghbi, <i>Al Mawsouaa Jaza'ia</i> [The Criminal Encyclopedia], 3rd ed. (Sader, 1995)

Fact-finding mission report	<i>Report of the Fact-Finding Mission to Lebanon inquiring into the causes, circumstances and consequences of the assassination of the former Prime Minister Rafik Hariri</i> , UN Doc. S/2005/203, 24 March 2005
First UNHCR report	<i>Report of the International Independent Investigation Commission established pursuant to Security Council resolution 1595 (2005)</i> , UN Doc. S/2005/662, 20 October 2005
<i>Forbes</i> Federal Court of Australia reasons for judgment	Australia, Federal Court of Australia, <i>Forbes Engineering (Asia) Pte Limited v. Forbes (No 4)</i> , [2009] FCA 675, 22 June 2009
Fourth UNHCR report	<i>Fourth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005) and 1644 (2005)</i> , UN Doc. S/2006/375, 10 June 2006
Gallant 2009	Kenneth S Gallant, <i>The Principle of Legality in International and Comparative Criminal Law</i> (Cambridge University Press, 2009)
Gillet and Schuster 2011	Matthew Gillet and Matthias Schuster, 'Fast-Track Justice: The Special Tribunal for Lebanon Defines Terrorism' [2011] 9 <i>Journal of International Criminal Justice</i> 989
Guide on Article 6 of the European Convention on Human Rights	Guide on Article 6 of the European Convention on Human Rights, Right to a Fair Trial (Criminal Limb), 30 April 2020
<i>Horncastle and others</i> UK Supreme Court judgment	United Kingdom, Supreme Court, <i>R v. Horncastle and others</i> , [2009] UKSC 14, 9 December 2009
Human Rights Committee General Comment No. 32	Human Rights Committee, General Comment No. 32: <i>Article 14: Right to equality before courts and tribunals and to a fair trial</i> , UN Doc. CCPR/C/GC/32, 23 August 2007
ICC Regulations of the Court	International Criminal Court, <i>Regulations of the Court</i> , ICC-BD/01-01-04

ICTR Rules	ICTR, <i>Rules of Procedure and Evidence</i> , (ICTR: 3, as amended), Adopted on 29 June 1995, as amended
ICTR Statute	SC Res. 955, UN Doc. S/RES/955 (1994), 8 November 1994, Annex, ‘Statute of the International Tribunal for Rwanda’, as amended
ICTY Rules	ICTY, <i>Rules of Procedure and Evidence</i> , IT/32/Rev.50, 8 July 2015
ICTY Statute	<i>Report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808 (1993)</i> , UN Doc. S/25704, 3 May 1993, Annex, ‘Statute of the International Tribunal’, Adopted by SC Res. 827, UN Doc. S/RES/827 (1993), 25 May 1993, as amended
IRMCT Rules	IRMCT, <i>Rules of Procedure and Evidence</i> , MICT/1/Rev.6, 18 December 2019
IRMCT Statute	SC Res. 1966, UN Doc. S/RES/1966 (2010), Annex 1, <i>Statute of the International Residual Mechanism for Criminal Tribunals</i> , 22 December 2010
Jaafar 2000	Dr Ali Mohammad Jaafar, <i>Criminal (Penal) Code and Crimes—Beirut</i> (Academic Foundation for Research, 2000)
Kirsch and Oehmichen 2011	Stefan Kirsch and Anna Oehmichen, ‘Judges Gone Astray: The Fabrication of Terrorism as an International Crime by the Special Tribunal for Lebanon’ [2011] 1 <i>Durham Law Review</i> 32
Letter from Lebanese Government dated 13 December 2005	<i>Letter dated 13 December 2005 from the Chargé d’affaires a.i. of the Permanent Mission of Lebanon to the United Nations addressed to the Secretary-General</i> , UN Doc. S/2005/783, 13 December 2005
<i>Mack and others</i> US District Court ruling	US, US District Court of Connecticut, <i>United States v. Mack and others</i> , Case No. 3:13-cr-00054 (MPS), Ruling on Motion to Exclude Expert Testimony, 19 November 2004

<i>McCree</i> US Court of Appeals opinion	US, State of Michigan Court of Appeals, <i>People v. McCree</i> , Case No. 215226, 5 August 2014 (unpublished opinion)
Michel 2014	Nicolas Michel, 'The Creation of the Tribunal in its Context' in Amal Alamuddin, Nidal Nabil Jurdi and David Tolbert (eds), <i>The Special Tribunal for Lebanon: Law and Practice</i> (Oxford University Press, 2014)
Nasr 2009	Dr Filumin Yuwakim Nasr, <i>Special Criminal Law—Crimes and Penalties</i> (Sader, 2009)
Ninth UNIIIC report	<i>Ninth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005), 1644 (2005), 1686 (2006) and 1748 (2007)</i> , UN Doc. S/2007/684, 28 November 2007
<i>Palazzo</i> US Court of Appeals opinion	US, US Court of Appeals Fifth Circuit, <i>United States v. Palazzo</i> , 372 Fed.Appx. 445, 23 March 2010
<i>Pan and others</i> Ontario Superior Court ruling	Canada, Ontario Superior Court of Justice, <i>R. v. Pan and others</i> , [2014] ONSC 6055, 16 October 2014
Raimondo 2008	Fabián Raimondo, <i>General Principles of Law in the Decisions of International Criminal Courts and Tribunals</i> (Martinus Nijhoff Publishers, 2008)
<i>Sanchez and others</i> US Court of Appeals opinion	US, US Court of Appeals Eleventh Circuit, <i>United States v. Sanchez and others</i> , 586 F.3d 918, 30 October 2009
Saul 2013	Ben Saul, 'The Special Tribunal for Lebanon and Terrorism as an International Crime: Reflections on the Judicial Function' in William A Schabas, Yvonne McDermott and Niamh Hayes (eds), <i>The Ashgate Research Companion to International Criminal Law</i> (Ashgate, 2013)
Second UNIIIC report	<i>Second report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005) and 1636 (2005)</i> , UN Doc. S/2005/775, 12 December 2005

Saul <i>amicus curiae</i> brief 2011	Ben Saul, ‘ <i>Amicus Curiae</i> Brief on the Notion of Terrorist Acts Submitted to the Appeals Chamber of the Special Tribunal for Lebanon Pursuant to Rule 131 of the Rules of Procedure and Evidence’ [2011] <i>Criminal Law Forum</i> 22
Saul LJIL 2011	Ben Saul, ‘Legislating from a Radical Hague: The United Nations Special Tribunal for Lebanon Invents an International Crime of Transnational Terrorism’ [2011] 24 <i>Leiden Journal of International Law</i> 677
Secretary-General’s report	<i>Report of the Secretary-General on the Establishment of a Special Tribunal for Lebanon</i> , UN Doc. S/2006/893, 15 November 2006
Seventh UNIIC report	<i>Seventh report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005), 1644 (2005) and 1686 (2006)</i> , UN Doc. S/2007/150, 15 March 2007
Sixth UNIIC report	<i>Sixth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005) and 1644 (2005)</i> , UN Doc. S/2006/962, 12 December 2006
Sluiter 2013	Goran Sluiter, Håkan Friman, Suzannah Linton, Sergey Vasiliev and Salvatore Zappala (eds), <i>International Criminal Procedure: Principles and Rules</i> , Oxford University Press (21 March 2013)
Tenth UNIIC report	<i>Tenth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005), 1644 (2005), 1686 (2006) and 1748 (2007)</i> , UN Doc. S/2008/210, 28 March 2008
Third UNIIC report	<i>Third report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005) and 1644 (2005)</i> , UN Doc. S/2006/161, 14 March 2006

UK protocol for the management of complex criminal cases 2005	UK Ministry of Justice, Protocol for the Control and Management of Heavy Fraud and other Complex Criminal Cases, 22 March 2005
UK Serious Fraud Office Operational Handbook 2019	UK Serious Fraud Office Operational Handbook, Electronic Presentation of Evidence, February 2019
UN Doc. A/RES/40/34/Annex (1985)	<i>Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power</i> , GA Res. 40/34, UN Doc. A/RES/40/34, 29 November 1985
UN Doc. A/RES/60/147/Annex	<i>Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law</i> , GA Res. 60/147, UN Doc. A/RES/60/147, 21 March 2006
Universal Declaration of Human Rights	<i>Universal Declaration of Human Rights</i> , GA Res. 217 (III) A, UN Doc. A/RES/217 (III) A, 10 December 1948
UNTAET Regulation 2000/15	<i>Regulation No. 2000/15 on the Establishment of Panels With Exclusive Jurisdiction Over Serious Criminal Offences</i> , UN Doc. UNTAET/REG/2000/15, 6 June 2000
Webb 2014	Philippa Webb, 'Individual Criminal Responsibility' in Amal Alamuddin, Nidal Nabil Jurdi and David Tolbert (eds), <i>The Special Tribunal for Lebanon: Law and Practice</i> (Oxford University Press, 2014)
<i>Wilcox and others</i> Nova Scotia Court of Appeal reasons for judgment	Canada, Nova Scotia Court of Appeal, <i>R. v. Wilcox and others</i> , [2001] NSCA 45, 28 February 2001
<i>Winn</i> US Court of Appeals opinion	US, US Court of Appeals Fifth Circuit, <i>United States v. Winn</i> , 948 F.2d 145, 20 November 1991

D. ANNEX D: List of victims injured as a result of the attack on 14 February 2005

1. The Trial Chamber has found that 226 people were injured as a result of the explosion on 14 February 2005. Further, it has been satisfied beyond reasonable doubt that an act likely to cause the death of each of these 226 people was committed, which was prevented solely by circumstances beyond the perpetrator's or perpetrators' control. It has found Salim Jamil Ayyash guilty of attempted intentional homicide with premeditation by using explosive materials of these 226 people.

2. The names of 217 victims are listed below. Nine victims were granted confidential status or protective measures by the Pre-Trial Judge or the Trial Chamber, therefore their names are omitted from the list.

- 1) Mariam Mohammed Abbadi
- 2) Nasser Abboud
- 3) Hussam Akram Abdallah
- 4) Souad Fouad Abdel-Al-Karim
- 5) Majdi Rafik Abou-Najem
- 6) Christine Abou-Abdo
- 7) Raymond Maroun Abou-Chaaya
- 8) Hussein Abou-Kharroub
- 9) Nour-El-Hoque Abou-Mouhieddine
- 10) Shukrallah Mikhael Abou-Naqoul
- 11) Majed Abou-Nasr
- 12) Nada Abou-Younes
- 13) Hanna Nakhle Abou-Zeid

- 14) Sharif Issa Absi
- 15) Amer Meteeb Ahmad
- 16) Lana Kamel Ali Ahmad
- 17) Rida Sayyed Ahmad
- 18) Rami John Ako
- 19) Ibrahim Alaaeddine
- 20) Mohammed Al-Lamna Haidar Al-Haidari
- 21) Jassem Fahd Al-Thani
- 22) Ahmad Hasan Alwan
- 23) Ali Amhaz
- 24) Jaafar Hussein Ammar
- 25) Nouredine Mahmoud Amrah
- 26) Elie Joseph Antabi
- 27) Joe Raymond Aoud
- 28) Khalil Ibrahim Arab
- 29) Camelia Ashi
- 30) Rana Ashkar
- 31) Ali Hassan Attar
- 32) Yahya Mustafa Atwi
- 33) Hassan Kamel Audi
- 34) Emile Louis Awais

- 35) Georgette Awwad
- 36) Imad Mohammed Bachkarchi
- 37) Carla Iskandar Bakhtiarian
- 38) Fadi Francois Barakat
- 39) Hikmat Turki Battan
- 40) Wajih Rachid Baz
- 41) Abdel-Aziz Ismail Bou-Melhem
- 42) Liliane Francis Bou-Raad
- 43) Penelope Burla
- 44) Talal Ahmad Chabaqji
- 45) Ali Ahmad Chakar
- 46) Ghadir Chehab
- 47) Walid Chehab
- 48) Zeina Walid Chehab
- 49) Amer Khaled Chehadeh
- 50) Mohammed Abdallah Chehadeh
- 51) Hani Ibrahim Dagher
- 52) Thuraya Dagher
- 53) Liliana Antoine Daher
- 54) Helen Davidian
- 55) Mohammed Jamal Mohammed Shafiq Dia

- 56) Bassam Bahaaeddine Diab
- 57) Hussein Diab
- 58) Mohammed Bassam Diab
- 59) Janette Anis Dib
- 60) Ali Khaled Doughan
- 61) Mazen Ziad Eid
- 62) Rizkallah Elias El-Akiki
- 63) Bernard Assia El-Alam
- 64) Fadi Joseph El-Asmar
- 65) Mohammed Fandi El-Balasseem
- 66) Ramzieh Abdel-Qader El-Barazi
- 67) Antoine Toufiq El-Bsousi
- 68) Sami Ibrahim El-Chaftari
- 69) Chawki Elias El-Chammai
- 70) Hanna Majid El-Chidiac
- 71) Issam Ahmad El-Choufi
- 72) Saeb Wajih Hamza El-Damerji
- 73) Laurene Samaan El-Geitani
- 74) Jacques Elias El-Gharbi
- 75) Nicolas Fawzi El-Haddad
- 76) Adnan Said El-Halabi

- 77) Haitham Othman El-Hallak
- 78) Abdel-Qader Zaki El-Houssami
- 79) Hassan Mukhtar El-Kara
- 80) Maria Saadeddine El-Kasti
- 81) Mohammed Khaled El-Kharsa
- 82) Ahmad Omar El-Khatib
- 83) Nasser El-Khatib
- 84) Fadi Abdallah El-Khoury
- 85) Sara Abd El-Marjough
- 86) Rachid Abdallah Malla El-Mulla
- 87) Lina George El-Murr
- 88) Hussein El-Oueini
- 89) Sobhi Abdallah El-Rashed
- 90) Rana Souheil El-Rawas
- 91) Shirin Shafik El-Sabaa-Aayoun
- 92) Bilal Mohammed El-Sheikh
- 93) Sanaa Mustafa El-Sheikh
- 94) Basima Ibrahim El-Tabach
- 95) Carole Antoine Farhat
- 96) Maria Fouad Farhat
- 97) Omar Mohammed Farhat

- 98) Omar Mohammed Salim, Fayumi
- 99) Maroun Nassif Fayyad
- 100) George Elias Fernaini
- 101) Sabine Francis
- 102) Simon John Francis
- 103) Anahid Arrdaches Ghalian
- 104) Naji Tanios Ghanimeh
- 105) Ali Ibrahim Gharib
- 106) Laurence Ghinawi
- 107) Ali Chehadeh Hachem
- 108) Ali Haidar Hachem
- 109) Ghassan Mahmoud Hamadeh
- 110) Mohammed Samir Hamdan
- 111) Anan Hammoud
- 112) Hussein Hammoud
- 113) Rachid Ali Hammoud
- 114) Youssef Abdallah Hammoud
- 115) Ghassan Hamza
- 116) Rima Richard Hanna
- 117) Joseph Hariqa
- 118) Abdel-Baqi Hussein Hasan

- 119) Bassam Joseph Hatem
- 120) Charbel Raymond Hatem
- 121) Lina Nabil Hawi
- 122) Mohammed Ali Hussein
- 123) Christine George Ibrahim
- 124) Maria Nadim Ibrahim
- 125) Omar Iskandarani
- 126) Faisal Issa
- 127) Mohammed Ibrahim Issa
- 128) Bilal Adnan Itani
- 129) Abir Rodolphe Jabbour
- 130) Rim Hussein Jaber
- 131) Hasan Jawad
- 132) Sandy Kamel
- 133) Yolla Omar Kanaan
- 134) Joumana Kantari
- 135) Nadia Aziz Karam
- 136) Ali Suleiman Khachfeh
- 137) Khaled Khalaf
- 138) Mohammed Ismail Khalil
- 139) Amine Iskandar Khoury

- 140) Nancy Kouk
- 141) Amer Nazih Maadad
- 142) Nasser Daoud Maho
- 143) Malek Tareq Majzoub
- 144) Armond John Manassian
- 145) Pamela Dawn Manassian
- 146) Mohammed Hussein Mansour
- 147) Ahmad Youssef Mayasi
- 148) Melecia Curioso Pedro Medinaceli
- 149) Ali Mohammed Jamil Mezhwe
- 150) Youssef Halim Mezher
- 151) Nabih Fouad Mhanna
- 152) Abdel-Karim Mneimneh
- 153) Mohammed Mahmoud Mohammed
- 154) Elie Boutros Milan Moussa
- 155) Dara Mraqadi
- 156) Sami Qaysar Mraqadi
- 157) Fouad Toufic Naddour
- 158) Maroun Hanna Nahel
- 159) Wissam Kaml Naji
- 160) Mohammed Ali Najmeddine

- 161) Fouad Nasrallah
- 162) Sylvie Nassar Nassar
- 163) Mazen Nehmen
- 164) Rabih, Fouad Nohra
- 165) Naji Khaled Oneissi
- 166) Saad Bassam Oneissi
- 167) Tony Oneissi
- 168) Abd Oussi
- 169) Naim Mohammed Qaidbey
- 170) Fatima Bilal Qdami
- 171) Shafik Ibrahim Qoleilat
- 172) Wassim Labib Qorban
- 173) Talal Adib Qubaisi
- 174) Farouq Ibrahim Rajab
- 175) Rim Fouad Ribaammo
- 176) Samer Mahmoud Rida
- 177) Ali Jamil Rizk
- 178) Boulos Shouqri Rizk
- 179) Elias Massaad Rizk
- 180) Ibrahim Boutros Rizallah
- 181) Saba Rizkallah

- 182) Hani Salim Saad
- 183) Myriam Rafiq Sabra
- 184) Ramzi Youssef Sabra
- 185) Hanan Sader
- 186) Ali Hussein Said
- 187) Charles Michel Sakha
- 188) Joseph Antoine Salameh
- 189) Nour Mohammed Saleh
- 190) Rabih Hachem Saleh
- 191) Serena Hussein Salim
- 192) Mariam Salloum
- 193) Riad Fouad Selman
- 194) Farouq Ibrahim Sheikh-Ali
- 195) Shawki Shuja'
- 196) Bruce Simmons
- 197) Mira Riad Slim
- 198) Brazilian Salan Slit
- 199) Alain Ramzi Snege
- 200) Wassim Sousani
- 201) Ziad Suleiman
- 202) Omar Nazem Taleb

- 203) Samer Marwan Taleb
- 204) Sami Taleb
- 205) George Alfred Tarazi
- 206) Imad Mohammed Tashqandi
- 207) Alain Bchara Tomb
- 208) Hasan Trad
- 209) Leila Emile Tyan
- 210) Leila Najib Wardan
- 211) Rania Raymond Wehbe
- 212) Nadine Yahya
- 213) Bilal Omar Yamout
- 214) Tony Said Yared
- 215) Farid Fayez Zbib
- 216) Toufiq Abdallah Zeineddine
- 217) Mohammed Oweiss Ziab Ahmad

E. ANNEX E: Agreements as to evidence and judicial notice of facts

1. Rule 122, ‘Agreements as to Evidence’, permits the Parties to agree that an alleged fact ‘is not contested, and, accordingly, a Chamber may consider such alleged fact as being proved, unless the Chamber is of the opinion that a more complete presentation of the alleged facts is required in the interests of justice, in particular the interests of the victims’. During the trial, the Trial Chamber accepted agreements as to evidence reached between the Prosecution and the Defence of some or all of the Accused. As detailed in the judgment, the Trial Chamber entered these as findings in the case, against one or more Accused persons, as applicable.

2. Under Rule 160 (A), the ‘Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof’. The Trial Chamber took judicial notice of a number of facts of common knowledge and, unless otherwise stated, treated them as unchallenged and noted them in the judgment. The agreements as to evidence and the facts the subject of judicial notice are listed below.

1. Agreements as to evidence between the Prosecution and the Ayyash, Badreddine, Merhi, Oneissi and Sabra Defence concerning nine general facts

3. The Prosecution and the Ayyash, Badreddine, Merhi, Oneissi and Sabra Defence reached agreements as to evidence regarding the following nine facts:¹

- 1) In addition to killing Mr Rafik Hariri, the explosion killed 21 other persons listed in Schedule A of the Indictment;²
- 2) The explosion injured 226 persons listed in Schedule B of the Indictment;³
- 3) The video of the claim of responsibility was later broadcast on television;⁴
- 4) Mr Rafik Hariri was born on 1 November 1944 in the city of Sidon, Lebanon;⁵

¹ Second decision on agreed facts (Merhi).

² Agreed facts, no. (i). *See also* para. 1452 where the Trial Chamber accepted this agreed fact.

³ Agreed facts, no. (ii). *See also* para. 6835 where the Trial Chamber accepted this agreed fact.

⁴ Agreed facts, no. (iii).

⁵ Agreed facts, no. (iv).

- 5) Mr Rafik Hariri served as Prime Minister of Lebanon in five governments from 31 October 1992 to 4 December 1998, and from 26 October 2000 until his resignation on 26 October 2004;⁶
- 6) Mr Rafik Hariri was a prominent political figure in Lebanon;⁷
- 7) After his resignation, Mr Rafik Hariri started preparing for parliamentary elections which were due to start in late May 2005;⁸
- 8) Parliament is located at *Place de l'Étoile*, Beirut;⁹ and
- 9) In his armoured vehicle, Mr Rafik Hariri was accompanied by the Member of Parliament, Mr Bassel Fuleihan.¹⁰

2. Agreements as to evidence between the Prosecution, the Sabra Defence and, in part, the Merhi Defence, pertaining to 18 extracts from the UN fact-finding mission (FitzGerald) report and six UNIIIC reports to the Security Council

4. The Prosecution and the Sabra Defence reached agreements as to evidence regarding the 18 sets of facts listed below.¹¹ The Prosecution and the Merhi Defence agreed to seven of these, as indicated.¹² These sets of facts have been extracted from the UN fact-finding mission (FitzGerald) report and six UNIIIC reports to the Security Council, namely, the first, third, fourth, ninth, tenth and eleventh reports:

- 1) During 2004, certain voices in Lebanon suggested amending the Constitution in order to extend the term of Mr Lahoud.¹³ The Merhi Defence also agreed to this fact.¹⁴

⁶ Agreed facts, no. (v). *See also* paras 433, 453, 479, 6380 where the Trial Chamber accepted this agreed fact.

⁷ Agreed facts, no. (vi). *See also* paras 433, 6380 where the Trial Chamber accepted this agreed fact.

⁸ Agreed facts, no. (vii). *See also* paras 633, 6380 where the Trial Chamber accepted this agreed fact.

⁹ Agreed facts, no. (viii).

¹⁰ Agreed facts, no. (ix).

¹¹ Second decision on agreed facts in UNIIIC reports (Merhi), disposition, table A; First decision on agreed facts in UNIIIC reports (Sabra), para. 5, disposition, table A.

¹² Second decision on agreed facts in UNIIIC reports (Merhi), para. 8, disposition, table B.

¹³ Sabra Defence – Prosecution agreements, no. (i); Fact-finding mission report, p. 5, para. 8.

¹⁴ Merhi Defence – Prosecution agreements, no. (i).

- 2) On 1 October 2004 former Minister Marwan Hamade narrowly escaped death when a bomb exploded next to his car. His guard was killed in the explosion.¹⁵
- 3) Mr Abu Adas, a male of Palestinian origin, was born in Jeddah (Saudi Arabia) on 29 August 1982 and came to Lebanon with his family in 1991. He is the son of Taysir Abu Adas and Nehad Moussa Nafeh.¹⁶ The Merhi Defence also agreed to this fact.¹⁷
- 4) The main lines of investigation of the Commission focused on the crime scene, technical aspects of the crime, analysis of telephone intercepts, the testimony of more than 500 witnesses and sources, as well as the institutional context in which the crime was committed.¹⁸ The Merhi Defence also agreed to this fact.¹⁹
- 5) Shortly after the signing of the memorandum of understanding, the Lebanese authorities transmitted to the Commission an 8,000-page case docket containing all the information and evidence collected since 14 February 2005.²⁰
- 6) The Commission established close links with the Lebanese security and judicial authorities. Regular discussions were held, particularly with the judicial authorities, to exchange updated information and files, share results and plan for the emerging phases of the investigation. Most of the witnesses interviewed by the Commission were summoned through the Lebanese judicial and security authorities.²¹
- 7) The file was handed over to the new Investigative Judge, Judge Abou Arraj. Judge Abou Arraj was Investigative Judge for the investigation from 22 February to 23 March 2005. He was appointed by First Judge Tanios Khoury, at the Supreme

¹⁵ Sabra Defence – Prosecution agreements, no. (ii) and correction in Second decision on agreed facts in UNIIIC reports (Merhi); Fact-finding mission report, p. 6, para. 13.

¹⁶ Sabra Defence – Prosecution agreements, no. (iii); Fact-finding mission report, p. 13, para. 40.

¹⁷ Merhi Defence – Prosecution agreements, no. (ii).

¹⁸ Sabra Defence – Prosecution agreements, no. (iv); First UNIIIC report, p. 5, summary.

¹⁹ Merhi Defence – Prosecution agreements, no. (iii).

²⁰ Sabra Defence – Prosecution agreements, no. (v); First UNIIIC report, p. 12, para. 7.

²¹ Sabra Defence – Prosecution agreements, no. (vi); First UNIIIC report, p.12, para. 8.

Council, and the file was registered at Abou Arraj's office on 22 February 2005.²²

The Merhi Defence also agreed to this fact.²³

- 8) On 23 March 2005, Judge Abou Arraj stepped down from the post of Investigative Judge.²⁴ The Merhi Defence also agreed to this fact.²⁵
- 9) As in any criminal inquiry of this nature, the investigation has sought a comprehensive understanding of all possible perpetrators, modus operandi and motives. To that end, the Commission is in the process of reviewing a substantial volume of material from Government agencies regarding their surveillance operations; interviewing witnesses to examine more thoroughly the relationships between Mr. Hariri and various significant individuals; continuing the investigation into Mr. Abu Adass; enhancing telephone analysis; and pursuing any leads regarding potential motives or perpetrators.²⁶
- 10) As noted in the previous report, the UNIIIC investigation confirmed that, during the period prior to the assassination, there was growing tension between Mr. Hariri and senior Syrian officials, including Syrian President Bashar Al-Assad.²⁷
- 11) Considerable progress has been made in building a solid organization capable of meeting the significant investigative, analytical, security, translation and interpretation, and other challenges associated with its mandate. Nonetheless, sustaining an undertaking of such complexity over an extended period of time remains a critical focus of the Commission's work. Certainty of mandate and predictability of financial, human and other resources are the backbone of any organizational growth. They constitute the underpinning of the systematic and methodological approach advocated in the Commission's previous report. The Commission thus welcomes the request of the Government of Lebanon to the Secretary-General dated 4 May 2006 to extend its mandate for a further period of

²² Sabra Defence – Prosecution agreements, no. (vii); First UNIIIC report, p. 21, para. 46.

²³ Merhi Defence – Prosecution agreements, no. (iv).

²⁴ Sabra Defence – Prosecution agreements, no. (viii); First UNIIIC report, p. 24, para. 48,

²⁵ Merhi Defence – Prosecution agreements, no. (v).

²⁶ Sabra Defence – Prosecution agreements, no. (ix); Second UNIIIC report, p. 11, para. 46.

²⁷ Sabra Defence – Prosecution agreements, no. (x); Second UNIIIC report, p. 13, para. 56.

up to one year. Such an extension would provide a sense of continuity and stability, guarantee steady operations and planning, and offer assurances to staff.²⁸

12) In order to assist the investigation, the full and unconditional cooperation of the Syrian Arab Republic with the Commission remains crucial. On the basis of information received, further requests will be formulated and addressed to the Syrian Arab Republic. In all its meetings with Syrian officials, the Commission received assurances of the intention of the Syria Arab Republic to comply fully with all its requests and to support the Commission's pursuit of those who killed former Prime Minister Hariri. Syrian officials have also offered to actively cooperate with and assist the Commission by making available information in their possession which may be relevant to the investigation. The Commission will continue to request full cooperation from Syrian authorities, including in collecting documents, seeking specific information and facilitating the interviews of Syrian citizens.²⁹

13) The internal working procedure sets out the standard operating procedures applicable to the different investigative and managerial aspects of the Commission's work. The investigative matters regulated include the modalities of interviews of witnesses and suspects; the treatment of sensitive sources; and the management of forensic exhibits and evidence. Managerial issues encompass a code of conduct and interpretation and translation standards. In addition, the internal procedure standardizes the relations of the Commission with Member States and their judicial authorities, in particular regarding requests for assistance.³⁰

14) The Commission also maintains a close working relationship with the Lebanese authorities which provide security to the Commission's staff and facilities. The Commission is grateful to the Lebanese Army and to the Internal Security Forces for their unfailing support.³¹

²⁸ Sabra Defence – Prosecution agreements, no. (xi); Fourth UNHIC report, p. 5, para. 9.

²⁹ Sabra Defence – Prosecution agreements, no. (xii); Fourth UNHIC report, p. 22, para. 104.

³⁰ Sabra Defence – Prosecution agreements, no. (xiii); Fourth UNHIC report, p. 23, para. 109.

³¹ Sabra Defence – Prosecution agreements, no. (xiv); Ninth UNHIC report, pp 16-17, para. 83.

- 15) Terrorist investigations are by definition complex and difficult. The Commission faces additional challenges, including the magnitude of the attacks, their continuing nature and the fact that the investigations are conducted in an environment dominated by ongoing security concerns. Despite these difficulties, the Commission has continued its methodical approach in assisting the Lebanese authorities to solve the cases, being guided exclusively by the facts and the evidence and exploring all investigative leads.³²
- 16) In the last four months, the Commission witnessed a deteriorating security environment. A number of attacks targeted members of the Lebanese security forces and the international community. The political and economic conditions in the country have also led to a number of street demonstrations that resulted in violent clashes and shootings.³³
- 17) The Commission has accelerated the pace of its operations. Since it last reported, it has more than doubled the number of requests for assistance sent to Lebanon and other States, from 123 to 256.³⁴ The Merhi Defence agreed to this fact.³⁵
- 18) First, the Commission has faced difficulties in obtaining potentially sensitive information for investigative purposes. The Commission also frequently sends formal requests for assistance for specific information to Member States. The Commission is mindful of the burden imposed on States in responding to such requests. While the vast majority of requests are responded to in a timely and comprehensive manner, the Commission notes that late or incomplete responses slow progress in the investigation.³⁶ The Merhi Defence also agreed to this fact.³⁷

³² Sabra Defence – Prosecution agreements, no. (xv); Tenth UNIIIC report, p. 3, para. 3.

³³ Sabra Defence – Prosecution agreements, no. (xvi); Tenth UNIIIC report, pp 3-4, para. 8.

³⁴ Sabra Defence – Prosecution agreements, no. (xvii); Tenth UNIIIC report, p. 4, para. 13.

³⁵ Merhi Defence – Prosecution agreements, no. (vi).

³⁶ Sabra Defence – Prosecution agreements, no. (xviii); Eleventh UNIIIC report, p. 5, paras 22-23.

³⁷ Merhi Defence – Prosecution agreements, no. (vii).

3. Agreements as to evidence between the Prosecution and the Ayyash and Sabra Defence pertaining to the participating victims

5. Below are the agreements as to evidence on 53 sets of facts pertaining mostly to the participating victims. The Prosecution and the Ayyash and Sabra Defence agreed to these facts:³⁸

- 1) V001 is Robert Aoun, born on 26 March 1967 in Thoun, Batroun District, Lebanon. V001 is the brother of the deceased Joseph Aoun. V001 identified his brother's body at the *Al Makassed* Hospital on 14 February 2005. Joseph Aoun was born on 12 November 1955. He died in the explosion of 14 February 2005. His body was crushed and disfigured due to the explosion.³⁹
- 2) V002 is Ghina Mneimneh Ghalayini, born on 25 February 1954 in Beirut, Lebanon. She is the widow of Abdul Hamid Ghalayini and mother of V003 and V004. Abdul Hamid Ghalayini was born on 4 November 1946 in Beirut, Lebanon. He died on 14 February 2005, due to the explosion.⁴⁰
- 3) V003 is Rana Ghalayini, born on 1 October 1980 in Beirut, Lebanon. She is the daughter of Abdul Hamid Ghalayini and V002.⁴¹
- 4) V004 is Lama Ghalayini, born on 5 May 1978 in Beirut, Lebanon. She is the daughter of Abdul Hamid Ghalayini and V002. V002-E008 is a press clipping titled 'A sit-in at the Crime Scene Urging Officials to Remove the rubble off of Ghalayini'. V003 and V004 are depicted in the press clipping. The body of Abdul Hamid Ghalayini was found on 2 March 2005. One of his feet was uncovered around 20-30 centimetres under the rubble and his body was discovered upon removal of the rubble. His left leg was totally decomposed, but his facial features were recognisable. A Nokia mobile was found near his body, it was charred. Abdul Hamid's body was taken to the American University of Beirut Medical Center. Abdul Hamid's head was charred and his body was inflated and decomposed. Some

³⁸ Decision on agreed facts (participating victims) (Ayyash and Sabra), para. 10, disposition, annex A (corrected version).

³⁹ Victims agreed facts, V001.

⁴⁰ Victims agreed facts, V002.

⁴¹ Victims agreed facts, V003.

of the bones were broken. V004 was diagnosed with and treated for depression and PTSD.⁴²

- 5) V008 is Raymond Abou-Chaaya, born on 12 June 1971 in Zahle, Lebanon. Due to the 14 February 2005 explosion, V008 sustained scratches, damage to his left eardrum and neck and lower back pain. V008-E014 is an orthopaedic and traumatological surgery report. It provides that Dr Nemeh Mallah examined V008 and noted that V008 suffered from pain in both ears and several bruises on his body due to a powerful explosion.⁴³
- 6) V009 is Maria Al-Kasti, born on 11 January 1966 in Beirut, Lebanon. V009-E002 is a discharge summary from the American University of Beirut Medical Centre. It shows that V009 was admitted on 14 February 2005. V009 was discharged on 17 February 2005. V009 underwent two CT scans of her brain on 15 February 2005. The final diagnosis was 1) head trauma; 2) right frontal concussion; and 3) right frontal small subdural and subarachnoid hematoma. V009-E004 is an American University of Beirut Medical Centre Neurosurgery Note which provided that V009 needs one month of rest at home, starting 17 February 2005. V009-E005 is an American University of Beirut Medical Centre sick leave note for V009, from 2 March to 3 April 2005, due to her head injury. V009-E006 is a forensic report. It provides that the proximity of the haemorrhage to the frontal lobe where the olfactory nerve is located has resulted in a lesion, which is often concurrent with the loss of the sense of taste. After almost one year since her injury, this lesion seems to have become definitive and permanent at a percentage of ten.⁴⁴
- 7) V010 is Sanaa El Sheikh, born on 18 May 1956 in Beirut, Lebanon. V010 was admitted to the emergency unit at the American University of Beirut Medical Centre on 14 February 2005. Due to the explosion, she suffered from laceration on her scalp, face bruises and hypotension. She received 25 sutures on the laceration.⁴⁵

⁴² Victims agreed facts, V004.

⁴³ Victims agreed facts, V008.

⁴⁴ Victims agreed facts, V009.

⁴⁵ Victims agreed facts, V010.

- 8) On 14 February 2005, V012 was a bodyguard to the former Prime Minister Rafik Hariri and was injured due to the explosion. He was admitted to a hospital on 14 February 2005 and was discharged the next day. He was diagnosed with head trauma, severe headache and loss of consciousness. V012-E002 is a neurology report. V012 was diagnosed with vertigo and headaches in 2005 and 2006, due to the explosion of 14 February 2005. V012-E003 is a neurology report dated 21 November 2011. It states that V012 had dystychiphobia and was treated with Lecital 20 mg and Concor 5. This was a permanent treatment and V012 suffers from PTSD due to the 14 February 2005 explosion.⁴⁶
- 9) On 14 February 2005, V013 was injured due to the explosion. 1V00003 is a medical centre discharge summary. V013 was admitted to hospital on 14 February 2005 due to the explosion. He underwent two CT scans and an X-ray scan. The X-ray scan showed that he suffered from a radial head fracture with scapholunate dissociation, shrapnel in his right forearm (at the distal interphalangeal joint of the fifth finger with a fracture of the distal aspect of the middle phalanx). He was prescribed Keflex 500 mg, Di-Antalvic, Fucidin and artificial tears. He was discharged a day later; V013-E002 is another discharge summary. V013 was admitted to hospital on 3 June 2005 and was discharged on the same day. He was treated for his inability to extend his left distal phalanx of his little finger. 1V00005 is a neurosurgeon report dated 21 November 2011. It shows that V013 was being treated for nervous system energy depletion, anxiety and depression. Since the 14 February 2005 explosion, he was permanently treated with Cipralext 10 mg. V013 suffers from PTSD due to the 14 February 2005 explosion.⁴⁷
- 10) V014 is Wissam Naji, born on 1 January 1971 in Zahle, Lebanon. Due to the explosion of 14 February 2005, V014 was injured and was admitted to the emergency unit at the American University of Beirut Medical Center at 15:34, where he received treatment. He was discharged at 16:30.⁴⁸

⁴⁶ Victims agreed facts, V012. There were some additional agreed facts that are confidential.

⁴⁷ Victims agreed facts, V013. There were some additional agreed facts that are confidential.

⁴⁸ Victims agreed facts, V014.

11) V016 was injured due to the 14 February 2005 explosion in Beirut. On 15 February 2005, V016 was medically examined. Due to the explosion, he suffered from severe headaches, stress, incoherence and severe bruises all over his body. On 10 April 2005, V016 was treated by a urologist. According to the report, since the 14 February 2005 explosion, V016 suffered from insomnia, became edgy and could not tolerate loud noises around him. He also suffered from urinary incontinence and sexual debility due to the explosion. On 25 July 2011, V016 was treated by a urologist. V016 suffered from a state of insomnia and has been hearing sounds of explosions while sleeping since the 14 February 2005 explosion. He also suffered from urinary incontinence and sexual debility due to the explosion. On 29 April 2005, V016 was examined and was diagnosed with spastic colon. He was treated. On 24 June 2005, V016 was examined at a neurophysiology clinic. He was diagnosed with a serious state of stress accompanied by depression and panic attacks for more than four months. Furthermore, he suffered from severe psychological disorder symptoms due to his presence at the explosion site on 14 February 2005. The doctor suggested a follow-up and antidepressant treatment for at least a year. On 25 July 2010, V016 was examined at a neurophysiology clinic. He was diagnosed with PTSD. The doctor advised that V016 needs medication and physiological treatment.⁴⁹

12) V018 is Rachid Hammoud, born on 23 July 1963 in El-Mghayrieh, Lebanon. On 14 February 2005, he was a paramedic for Mr Rafik Hariri and was travelling with the convoy and was injured due to the explosion. V018-E011 is a photo of V018 after the explosion. It shows V018's face, hands and shirt covered in blood. V018 was admitted to the American University of Beirut Medical Center on 14 February 2005 due to injuries sustained from the explosion. His attending physician was Dr Rachid Haidar. V018 lost consciousness and suffered from forearm burns and multiple lacerations over his cheek and left thigh. In addition, he had a fracture in his left leg, second degree burn on his right leg and the vision in his right eye was blurry. A CT scan of V018's brain and skull showed that there was a nasal septal

⁴⁹ Victims agreed facts, V016. There were some additional agreed facts that are confidential.

deviation to the right, foreign bodies noted at the level of soft tissue of the right external ear and in the subcutaneous tissues of the head. There was also diffuse subcutaneous soft tissue swelling, mainly in the right anterior aspect of the neck. V018 was discharged on 8 March 2005. V018 sought medical assistance at the American University of Beirut Medical Center on 9 March 2005. Dr Rachid Haidar reported that V018 was injured in the 14 February 2005 explosion and sustained fractures and burns. He also reported that V018 will need rest for at least two months from the explosion. V018 sought medical assistance at the American University of Beirut Medical Center on 4 April 2005. Dr Rachid Haidar reported that V018 continues to need rest from 18 April to 20 May 2005 because of his fractures and burns. V018 sought medical assistance at the American University of Beirut Medical Center on 20 May 2005. Dr Rachid Haidar reported that V018 continues to need rest for two weeks starting 23 May 2005 because of his fractures. V018 suffers from PTSD due to the 14 February 2005 explosion.⁵⁰

13) V019 is Nabih Mhanna, born on 28 February 1957 in El-Damour, Lebanon. V019 worked as a driver on 14 February 2005. At the time of the explosion, he was in front of the HSBC Bank (*Ain Al-Mreisseh* branch). V019 was admitted to the emergency unit at the American University of Beirut Medical Center on 14 February 2005, at 15:00. His attending physician was Dr Jamali Faek / Dr Karam Salim Karam. Due to the explosion, he suffered from lacerations on his right hand. He was discharged at 16:00. Due to the explosion, V019 was absent from work for around one week. During this period, his daily activities were affected.⁵¹

14) V023 is Saada Hachem Abu Rjeily, born in 1925 in Ain-El-Hor, Lebanon. She is the mother of the deceased Zahi Abou Rjeily and V024. Zahi Abou Rjeily was born on 1 October 1959 in Al Debbieh, Lebanon. He died on 15 February 2005, caused by the blockage of the respiratory tract as a result of the heavy accumulation of debris from the explosion of 14 February 2005.⁵²

⁵⁰ Victims agreed facts, V018.

⁵¹ Victims agreed facts, V019.

⁵² Victims agreed facts, V023.

- 15) V024 is Nazih Abu Rjeily, born on 5 November 1950 in Binwaiti, Lebanon. He is the brother of the deceased Zahi Abou Rjeily.⁵³
- 16) V029 is Mahmoud Wazzan, born 3 June 1962 in Beirut, Lebanon. V029 is the owner of Poly Service, a company that offers cleaning services. In February 2005, V029 was the tenant of no. 115, located on the first ground floor of the north block of the STARCO Complex in Beirut. V029 had to vacate the abovementioned premise due to damage caused as a result of the 14 February 2005 explosion.⁵⁴
- 17) V030-E020 contains two photographs of V030 and the injuries he sustained due to the 14 February 2005 explosion. V030-E035 contains four photographs of V030's office interior and exterior after the 14 February 2005 explosion. The following documents show the value of some of the items that were damaged at V030's office, due to the 14 February 2005 explosion: V030-E047 shows that on 27 February 1999, V030 purchased a machine that amounted to LBP 7,930,000.00. V030-E037 shows that on 5 April 1999, V030 purchased office equipment which amounted to EUR 1,963.54. V030-E042 and V030-E044 show that on 28 December 2001, V030 purchased office equipment (including a scanner) which amounted to USD 8,180.00. V030-E036 shows that on 1 February 2005, V030 purchased office equipment which amounted to USD 1,067.00. The following documents show some of the items and equipment that V030 had to purchase for his office due to the damage of the 14 February 2005 explosion: V030-E038 shows that V030 purchased an IBM laptop on 14 July 2005 which amounted to USD 4,970.00; V030-E040 shows an offer dated 27 April 2005, for a new plotter which amounted to USD 8,800.00; V030-E045 shows a quotation dated 16 May 2005, for a printer that amounted to USD 1,320.00; V030-E046 shows a quotation dated 16 May 2005, for a scanner that amounted to USD 7,700.00; and V030-E048 shows that V030 purchased a machine on 16 November 2005 which amounted to USD 6,000.00; V030-E039 contains photographs of computers that were damaged due to the 14 February 2005 explosion. V030-E043 contains one photograph of a damaged

⁵³ Victims agreed facts, V024.

⁵⁴ Victims agreed facts, V029.

scanner; V030-E049 contains two photographs of a damaged office machine; and V030-E052 contains photographs of damaged machines and equipment. Since the February 2005 explosion, V030 had marital problems with his wife. He consulted with a psychologist, in September 2010 and 2011. According to the psychologist, [t]he psychoanalytical sessions revealed several symptoms associated with post-traumatic stress; emotional block, with a sense of detachment from the family circle in general and the spouse in particular, avoidance of emotions, insomnia with disturbed sleep, hypervigilance, flashbacks of the bodies of his dead colleagues which he had to pick up himself, a sense of no future and a strong sense of insecurity. The psychologist reported that these symptoms stemmed from the feeling of being in a threatening situation as V030 lost his friends in the explosion, his savings and his security. V030 received a cheque from the Lebanese Higher Relief Commission.⁵⁵

18) V031 is Liliane Khallouf, born on 30 June 1967 in Chiah, Lebanon. Due to the explosion of 14 February 2005, V031 was admitted to the St Georges Hospital. She suffered from head, facial and nose trauma because she fell flat on her face. Her nasal bone was fractured. She underwent an operation at the hospital on 16 February 2005. The discharge summary stated that V031 will need further operations in the future. V031-E009 is a St Georges Hospital medical note which provided that V031 required sick leave for 12 days, starting from 17 February 2005. V031-E003 is an otorhinolaryngology note dated 7 February 2006. The note provided that V031 suffered from a septal deviation and must be operated in order to correct the nasal obstruction. These are some of the documents showing the amount V031 spent on hospital fees and medication due to the injuries suffered as a result of the 14 February 2005 explosion: V031-E005 is an invoice issued by *Pharmacie Suzanne* on 21 February 2005 which amounted to LBP 202,852; V031-E006 is a medical prescription for V031, issued on 21 February. This amount is included in V031-E005. V031-E008 is a receipt voucher issued by the St Georges

⁵⁵ Victims agreed facts, V030. There were some additional agreed facts that are confidential.

Hospital on 17 February 2005. It indicates that V031 had paid a total of LBP 82,000 to the hospital.⁵⁶

19) Due to the explosion, V033 was injured. V033-E002 is a report by an angiologist-cardiologist, dated 22 November 2011. V033 had been undergoing treatment for thrombosis and thrombophlebitis in both his legs since 21 February 2005. V033 suffers from PTSD due to the 14 February 2005 explosion.⁵⁷

20) V034 is Mehi Eldin Meneimneh, born on 19 April 1977 in Beirut, Lebanon. On 14 February 2005, V034 was an ISF officer and was part of the Hariri convoy. Due to the explosion, V034 was injured. V034 suffers from PTSD due to the 14 February 2005 explosion.⁵⁸

21) Due to the 14 February 2005 explosion, V035 was injured and admitted to a medical centre. He suffered from a head trauma as the ceiling fell on him at the Phoenicia Hotel as a result of the explosion. V035 was hallucinating and unresponsive to commands and to stimuli and was 'moving his neck in a crazy manner'. At the emergency room, he regained his normal consciousness and started moving his left upper extremity and then his right upper extremity distally and minimally. He was unable to move his lower extremities. Furthermore, V035 was complaining of severe pain in his lower extremities when minimal pressure was applied. V035 also suffered from neck pain. He was discharged on 15 February 2005.⁵⁹

22) V040 is Abdel-Qader Darwiche, born on 8 July 1987 in Beirut, Lebanon. He is the brother of the deceased Mohammed Darwiche and the son of V044 and V057. 1V00001 is a Rafik Hariri University Hospital medical report dated 24 October 2011. It provides that V040 had been suffering from chronic functional dyspepsia with epigastric pain and had been receiving treatment for five years. Mohammed Darwiche was born on 1 August 1981 in Beirut, Lebanon. Mohammed Darwiche

⁵⁶ Victims agreed facts, V031.

⁵⁷ Victims agreed facts, V033. There were some additional agreed facts that are confidential.

⁵⁸ Victims agreed facts, V034.

⁵⁹ Victims agreed facts, V035. There were some additional agreed facts that are confidential.

was Rafik Hariri's bodyguard and was part of the Hariri convoy on 14 February 2005 and died as a result of the explosion. His body was entirely charred.⁶⁰

23) V041 is Nivine Darwiche, born on 14 March 1978 in Beirut, Lebanon. She is the sister of the deceased Mohammed Darwiche and the daughter of V044 and V057.⁶¹

24) V043 is Hana Diab El-Arab, born on 10 August 1940 in Beirut, Lebanon. V043 is the widow of the deceased Yahya El-Arab. Since her husband's death, V043 suffers from severe depression. V043-E003 shows that V043 still suffered from and was being treated for depression as of 26 October 2011. Yahya El-Arab was born on 22 November 1943 in Beirut, Lebanon. On 14 February 2005, he was Rafik Hariri's personal bodyguard and was part of the Hariri convoy. Yahya El-Arab died due to the impact of the 14 February 2005 explosion.⁶²

25) V044 is Saadeddine Darwiche, born on 20 March 1951 in Beirut, Lebanon. He is the father of the deceased Mohammed Darwiche.⁶³

26) V045 is Clemence Tarraf, born on 10 December 1981 in Beirut. She is the sister of the deceased Ziad Tarraf and of V046. Ziad Tarraf was born on 11 June 1972 in Beirut, Lebanon. On 14 February 2005, he was Rafik Hariri's personal bodyguard and was part of the Hariri convoy. Ziad Tarraf died due to the impact of the 14 February 2005 explosion.⁶⁴

27) V046 is Mamdouh Tarraf, born on 15 April 1975 in Beirut. V046 is the brother of the deceased Ziad Tarraf and V045. V046 identified the body of the deceased at the American University of Beirut Medical Centre.⁶⁵

28) Bakiza Nasser was born on 25 May 1963 in Beirut. She was the sister of the deceased Talal Nasser and the daughter of V053. She passed away on 17 February 2017. She was participating victim V048. Talal Nasser was born on 2 July 1961 in

⁶⁰ Victims agreed facts, V040.

⁶¹ Victims agreed facts, V041.

⁶² Victims agreed facts, V043.

⁶³ Victims agreed facts, V044.

⁶⁴ Victims agreed facts, V045.

⁶⁵ Victims agreed facts, V046.

Beirut, Lebanon. On 14 February 2005, he was Rafik Hariri's personal bodyguard and was part of the Hariri convoy. Talal Nasser died due to the impact of the 14 February 2005 explosion.⁶⁶

29) V049 is Kamal Nasser, born on 27 September 1959 in Beirut, Lebanon. He is the brother of the deceased Talal Nasser and the son of V053.⁶⁷

30) V050 is Bilal Nasser, born on 21 January 1968 in Beirut, Lebanon. He is the brother of the deceased Talal Nasser and the son of V053.⁶⁸

31) V052 is Roula Nasser, born on 9 April 1966 in Beirut, Lebanon. She is the sister of the deceased Talal Nasser and the daughter of V053.⁶⁹

32) V053 is Siham Harb, born on 5 August 1941 in Beirut, Lebanon. She is the mother of the deceased Talal Nasser. V053-E002 is a medical document dated 27 October 2011, issued by neurologist Dr Abdul Rahman Shatila. The document provides that V053 suffered from and was being treated for chronic depression.⁷⁰

33) V054 is Sarah Nasser, born on 7 February 1998 in Beirut, Lebanon. She is the daughter of the deceased Talal Nasser and V056.⁷¹ V055 is Lynn Nasser, born on 20 April 2000 in Beirut, Lebanon. She is the daughter of the deceased Talal Nasser and V056. On 8 March 2005, V056 was appointed the legal guardian of V054 and V055.⁷²

34) V056 is Ihsan Fayed, born on 30 April 1975 in Beirut, Lebanon. She is the widow of the deceased Talal Nasser. V056-E004 is a medical document dated 27 October 2011, issued by neurologist Dr Abdul Rahman Shatila. The document provides that V056 suffered from and had been treated for chronic depression for several years.⁷³

⁶⁶ Victims agreed facts, V048.

⁶⁷ Victims agreed facts, V049.

⁶⁸ Victims agreed facts, V050.

⁶⁹ Victims agreed facts, V052.

⁷⁰ Victims agreed facts, V053.

⁷¹ Victims agreed facts, V054.

⁷² Victims agreed facts, V055.

⁷³ Victims agreed facts, V056.

- 35) V057 is Sahar Kalaoui, born on 1 September 1959 in Damascus, Syria. She is the mother of the deceased Mohammed Darwiche.⁷⁴
- 36) V058-E002 is a medical note issued by a cardiologist. It provides that V058 suffered from and received permanent treatment for high blood pressure.⁷⁵
- 37) V059 is Saadeddine Hariri, born on 18 April 1970 in Riyadh, Saudi Arabia. He is the son of Rafik Hariri. Rafik Hariri was born on 1 November 1944 in Sidon, Lebanon. Rafik Hariri died due to the impact of the 14 February 2005 explosion.⁷⁶
- 38) V062 is Yasma Fuleihan, born on 5 July 1966 in Kuwait. She is the widow of the deceased Basil Fuleihan. Basil Fuleihan was born on 10 September 1962 in Beirut, Lebanon. On 14 February 2005, Basil Fuleihan was seated next to Rafik Hariri when the explosion happened. He was admitted to the American University of Beirut Medical Center. Then, he was transferred and admitted to the Percy Hospital in Paris at 03:15 on 15 February. Basil suffered from deep and severe burns, including third degree burns to the face with disfigurement. His eyelids were everted and his tongue was protruding. There was no bleeding when incisions were made to both hands, and his urine was red. According to the medical report 60013544-60013560, Mr Fuleihan suffered serious burns on more than 95 per cent of his body, in addition to very deep injuries to the hands and face. He was hospitalised from 14 February to 18 April 2005. Despite various surgeries, treatments and constant care, Mr Fuleihan succumbed to his injuries on 18 April 2005.⁷⁷
- 39) V063 is Bassam Osman, born on 15 June 1983 in Majdala, Lebanon. V063, V066, V067, V068, V069, V070 are siblings of the deceased Haitham Osman. They are the children of V071 and V072. Haitham Osman was born on 28 September 1975 in Majdala, Lebanon. On 14 February 2005, Haitham was riding on his motorbike near the St Georges Hotel when the explosion took place. Haitham was admitted to

⁷⁴ Victims agreed facts, V057.

⁷⁵ Victims agreed facts, V058. Some additional agreed facts in relation to V058 remain confidential.

⁷⁶ Victims agreed facts, V059.

⁷⁷ Victims agreed facts, V062.

the American University of Beirut Medical Center, where he succumbed to the injuries suffered as a result of the explosion.⁷⁸

40) V066 is Abdo Osman, born on 14 March 1970 in Ablah, Lebanon.⁷⁹

41) V067 is Laura Osman, born on 7 January 1985 in Aayat, Lebanon.⁸⁰

42) V068 is Hicham Osman, born on 31 January 1978 in Machha, Lebanon.⁸¹

43) V069 is Mohammed Osman, born on 26 April 1972 in Ablah, Lebanon.⁸²

44) V070 is Kamal Osman, born on 2 July 1973 in Ablah, Lebanon.⁸³

45) V071 is Ghazia Hourri, born in 1946 in Baalbek, Lebanon.⁸⁴

46) V072 is Khaled Osman, born on 2 July 1942 in Majdala, Lebanon.⁸⁵

47) V073-E009 is a medical note dated 9 July 2007. It shows that V073 suffered from stable angina.⁸⁶

48) V080 is Rabih Nohra, born on 30 April 1977 in Tannourine El-Tahta, Lebanon. As the medical report dated 26 February 2014 provides, due to the 14 February 2005 explosion, V080 suffered from injuries on his face and around his eye. In addition, the explosion also left permanent scars on his face.⁸⁷

49) V081 is Rima Ghalayini, born on 14 March 1964 in Beirut, Lebanon. She is the sister of the deceased Mohammed Riad Ghalayini. Mohammed Riad Ghalayini was born on 1 January 1975 in Beirut, Lebanon. He died on 14 February 2005 due to the explosion that caused severe burns to his body.⁸⁸

⁷⁸ Victims agreed facts, V063.

⁷⁹ Victims agreed facts, V066.

⁸⁰ Victims agreed facts, V067.

⁸¹ Victims agreed facts, V068.

⁸² Victims agreed facts, V069.

⁸³ Victims agreed facts, V070.

⁸⁴ Victims agreed facts, V071.

⁸⁵ Victims agreed facts, V072.

⁸⁶ Victims agreed facts, V073. There were some additional agreed facts that are confidential.

⁸⁷ Victims agreed facts, V080.

⁸⁸ Victims agreed facts, V081.

50) V082 is Zeina Chehade Tarraf, born on 12 November 1983 in Beirut, Lebanon. She is the widow of the deceased Ziad Tarraf.⁸⁹

51) V084 is Omar Tarraf, born on 7 January 2001 in Bassum, Germany.⁹⁰

52) V085 is Fatme El Bahi, born in 1935 in Beirut, Lebanon. She is the mother of the deceased Mohammed Riad Ghalayini.⁹¹

53) V086 is Dina Ghalayini, born on 9 March 1961 in Beirut, Lebanon. She is the sister of the deceased Mohammed Riad Ghalayini.⁹²

6. There were also a number of agreements as to evidence on facts relating to victims who were granted protective measures under Rule 133 (A).

4. Facts of common knowledge the subject of judicial notice

7. During the trial, the Sabra Defence asked the Trial Chamber to take judicial notice of the entirety of Mr Peter FitzGerald's UN fact-finding report and eleven UNIIC reports to the UN Security Council.⁹³ In examining the application the Trial Chamber noted that:

Many of the "facts" proposed by the motion relate to matters highly contested between the Parties that are central to the Trial Chamber's determination of the charges against the individual Accused. These include the cause of the blast on 14 February 2005, the alleged role of Mr Ahmad Abu Adass in the attack, the content of UNIIC interviews with witnesses, the role of Syrian intelligence in Lebanon at the time and, possibly in Mr Hariri's death, the role of others the UNIIC suspected may have been involved in planning and carrying out the attack, and the general conclusions—between 2005 and 2008—of the two commissions as to the progress of their investigations, and responsibility for the explosion. The reports even reached conclusions as to culpability.

Taking judicial notice of such contested facts—or the entirety of the reports of these two fact-finding missions—would be absurd. The Trial Chamber is holding a trial to determine whether Accused persons are guilty as charged in the consolidated indictment; it is not

⁸⁹ Victims agreed facts, V082.

⁹⁰ Victims agreed facts, V084.

⁹¹ Victims agreed facts, V085.

⁹² Victims agreed facts, V086.

⁹³ Decision on taking judicial notice, para. 3.

reviewing fact-finding reports or conducting a general inquiry. The trial features numerous disputed issues, upon some of which the UNIIIC reached its own conclusions. The conclusions of these fact-finding reports cannot usurp the Trial Chamber's own judicial fact-finding function, which necessarily precedes its verdict of guilt or an acquittal. These sorts of matters are, indisputably, not capable of being "facts of common knowledge".⁹⁴

8. After carefully examining the twelve reports, the Trial Chamber took judicial notice of the following nine sets of facts of common knowledge, extracted the FitzGerald report and the first and seventh UNIIIC reports:

- 1) On 14 February 2005, an explosion in downtown Beirut killed a number of persons among them the former Prime Minister Rafik Hariri. The United Nations Secretary-General dispatched a fact-finding mission to Beirut to inquire into the causes, the circumstances and the consequences of this assassination. Following its arrival in Beirut on 25 February, the mission met with a large number of Lebanese officials and representatives of different political groups, performed a thorough review of the Lebanese investigation and legal proceedings, examined the crime scene and the evidence collected by the local police, collected and analysed samples from the crime scene, and interviewed some witnesses in relation to the crime.⁹⁵
- 2) The Syrian Arab Republic had maintained a military presence in Lebanon since May 1976 with the consent of the Lebanese Government. It also exerted political influence in Lebanese affairs, an influence that has significantly increased since 1990 and was sanctioned in 1991 by a treaty of 'Brotherhood, Cooperation and Coordination'.⁹⁶
- 3) Mr Lahoud's term in office should have ended in 2004, with no possibility of renewal according to the Constitution.⁹⁷

⁹⁴ Decision on taking judicial notice, paras 23-24.

⁹⁵ Decision on taking judicial notice, fact 1, para. 28, disposition, table A, Fact-finding mission report, p. 2, executive summary.

⁹⁶ Decision on taking judicial notice, fact 2, para. 28, disposition, table A; Fact-finding mission report, p. 5, para. 6, *see also* T. 17 November 2014, p. 34 (exhibit P306).

⁹⁷ Decision on taking judicial notice, fact 3, para. 28, disposition, table A; Fact-finding mission report, p. 5, para. 8, *see also* T. 17 November 2014, p. 33 (exhibit P305).

- 4) On 2 September 2004, the Security Council had adopted its resolution 1559 (2004), which, among other provisions, called upon ‘all remaining foreign forces to withdraw from Lebanon’ and declared ‘its support for a free and fair electoral process in Lebanon’s upcoming presidential elections conducted according to Lebanese constitutional rules devised without foreign interference or influence’.⁹⁸
- 5) The Security Council, by its resolution 1595 (2005) of 7 April 2005, decided to establish an International Independent Investigation Commission based in Lebanon to assist the Lebanese authorities in their investigation of all aspects of the terrorist attack which took place on 14 February 2005 in Beirut that killed former Lebanese Prime Minister Rafik Hariri and others, including to help identify its perpetrators, sponsors, organizers and accomplices. The Secretary-General notified the Council that the Commission began its full operations with effect from 16 June 2005. The Commission was granted an extension to the initial period of investigation mandated by the Council, until 26 October 2005. During the course of its investigation, the Commission received extensive support from the Government of Lebanon and benefited from expert inputs from a number of national and international entities.⁹⁹
- 6) The Syrian Arab Republic has long had a powerful influence in Lebanon. During the Ottoman Empire, the area that became Lebanon was part of an overall administrative territory governed from Damascus. When the countries were established in the aftermath of the First World War, Lebanon was created from what many Arab nationalists considered to be rightfully part of Syria. Indeed, since the countries became independent, they have never had formal diplomatic relations.¹⁰⁰
- 7) Syrian troops were invited into Lebanon by Lebanese President Suleiman Franjeh in May 1976 in the early stages of the latter’s civil war. In the Taif Agreement, reached among members of the Lebanese Parliament, that ended the civil war in

⁹⁸ Decision on taking judicial notice, fact 4, para. 28, disposition, table A; Fact-finding mission report, p. 6, para. 11, *see also* T. 19 November 2014, pp 45-47.

⁹⁹ Decision on taking judicial notice, fact 5, para. 28, disposition, table A, First UNIIIC report, p. 5, summary.

¹⁰⁰ Decision on taking judicial notice, fact 6, para. 28, disposition, table A, First UNIIIC report, p. 14, para. 23.

1989, *inter alia*, Lebanon thanked the Syrian Arab Republic for its assistance in deploying its forces in Lebanon. A provision of the agreement called for Lebanon and the Syrian Arab Republic to determine jointly the future redeployment of those forces. A later agreement reached between the two countries in May 1991 regarding cooperation restated that provision. Syrian forces withdrew in May 2005 in compliance with Security Council resolution 1559 (2004).¹⁰¹

- 8) On 14 February 2005, General Ali Al-Hajj was the Head of the Internal Security Forces (ISF). He was promoted to the post in November 2004.¹⁰²
- 9) Negotiations unfolded during that period between Hariri and other individuals, including potential candidates, and intense interest was focused upon the draft electoral law, including the drawing of electoral district boundaries in Lebanon and, in particular, in Beirut.¹⁰³

9. The Trial Chamber also took judicial notice of the following enactment of the United States Congress, namely:

- 10) The Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 is an enactment of the Congress of the United States of America.¹⁰⁴

¹⁰¹ Decision on taking judicial notice, fact 7, para. 28, disposition, table A, First UNIIIC report, pp 14-15, para. 24, *see also* T. 17 November 2014, p. 21 (exhibit P304).

¹⁰² Decision on taking judicial notice, fact 8, para. 28, disposition, table A, First UNIIIC report, p. 24, para. 51.

¹⁰³ Decision on taking judicial notice, fact 9, para. 28, disposition, table A, Seventh UNIIIC report, p. 12, para. 58.

¹⁰⁴ Decision on taking judicial notice (Syria Accountability and Lebanese Sovereignty Restoration Act of 2003), re exhibit P307. This fact was admitted for the limited purpose of showing the position taken by the United States towards Syria and to add context to the allegation that Mr Rafik Hariri had aligned himself with the United States of American in 2003, which may provide some background evidence.

F. ANNEX F: Analysis regarding Yellow 669

No.	Date	Start time	End time	Mobile	Call / SMS	Start cell	End cell	Overlap in calls?	Relevant pair of cell sectors	Shortest known time between cell sector use	Shortest distance between coverage areas (metres)	Longest distance between coverage areas (metres)	Average distance between coverage areas (metres)	Necessary speed of travel (km/h) for longest distance	Distance between cell towers
1	25/12/2003	11:34:23	11:35:16	165	Call	Shamaa_A	-	-	Shamaa_A – HAOUCH2	00:05:52	Overlapping				11,823
		11:40:06	11:40:15	669	Call	-	HAOUCH2								
2	27/12/2003	10:59:45	11:00:28	165	Call	Sfeir_A	-	Yes	Sfeir_A – MIKAEL2	00:00:03	Overlapping				934
		10:59:48	11:01:20	669	Call	MIKAEL2	MIKAEL2								
3	27/12/2003	10:59:48	11:01:20	669	Call	MIKAEL2	MIKAEL2	-	MIKAEL2 – BLF_B	00:05:24	224	3,724	1,974	21.93	2,019
		11:06:44	11:07:13	165	Call	BLF_B	-								
4	29/12/2003	11:02:07	11:02:28	165	Call	Sfeir_B	-	-	Sfeir_B – BRAJNE2	00:02:41	Overlapping				925
		11:04:48	11:06:28	669	Call	BRAJNE2	RADOUF1								
5	29/12/2003	11:04:48	11:06:28	669	Call	BRAJNE2	RADOUF1	-	RADOUF1 – Hai Kneisse_B	00:03:53	Overlapping				1,327
		11:10:21	11:10:59	165	Call	Hai Kneisse_B	-								
6	29/12/2003	11:10:21	11:10:59	165	Call	Hai Kneisse_B	-	-	Hai Kneisse_B – CBOURJ1	00:05:07	156	2,159	1,158	13.57	1,716
		11:14:37	11:15:28	669	Call	-	CBOURJ1								
7	30/12/2003	15:48:27	15:49:15	165	Call	Marjaoun_C	-	-	Marjaoun_C – DIB1	00:01:45	Overlapping				4,700
		15:49:20	15:50:12	669	Call	-	DIB1								
8	01/01/2004	13:47:19	13:48:30	165	Call	Saki Hadath-II_C	-	-	Saki Hadath-II_C – ROUEIS2	00:02:51	475	6,110	3,293	69.32	1,100
		13:49:49	13:50:10	669	Call	-	ROUEIS2								
9	06/01/2004	20:39:49	20:40:46	165	Call	Hazmiyeh-II_B	-	-	Hazmiyeh-II_B – SFEIR2	00:09:57	Overlapping				361
		20:49:46	20:50:52	669	Call	SFEIR2	SFEIR2								
10	08/01/2004	10:56:00	11:56:40	165	Call	Markaba_A	-	-	Markaba_A – MHAIBI1	00:04:17	Overlapping				8,330
		10:59:37	11:00:17	669	Call	-	MHAIBI1								
11	09/01/2004	09:21:58	09:22:25	165	Call	Sfeir_B	-	-	Sfeir_B – SFEIR2	00:02:46	Overlapping				552
		09:24:44	09:25:33	669	Call	SFEIR2	HADATH1								
12	09/01/2004	09:33:03	09:33:27	669	Call	-	SFEIR2	-	SFEIR2 – Hazmiyeh-II_B	00:00:08	Overlapping				361
		09:33:35	09:33:58	165	Call	Hazmiyeh-II_B	-								
13	09/01/2004	17:46:48	17:47:25	165	Call	Saki Hadath_C	-	-	Saki Hadath_C – SFEIR2	00:01:15	Overlapping				1,396
		17:48:03	17:48:16	669	Call	SFEIR2	MIKAEL2								
14	11/01/2004	22:57:50	23:00:41	165	Call	Hazmiyeh-II_B	-	-	Hazmiyeh-II_B – HADATH1	00:05:12	Overlapping				1,719
		23:03:02	23:03:05	669	Call	HADATH1	SFEIR2								
15	12/01/2004	12:36:19	12:37:12	165	Call	Saki Hadath_C	-	-	Saki Hadath_C – HARA2	00:03:33	565	1,981	1,273	21.52	1,853
		12:37:35	12:39:52	669	Call	-	HARA2								
16	12/01/2004	14:17:45	14:23:19	165	Call	Sfeir_A	-	Yes	Sfeir_A – SFEIR2	00:01:53	Overlapping				552
		14:19:38	14:19:46	669	Call	SFEIR2	SFEIR2								
17	12/01/2004	14:23:25	14:25:03	669	Call	-	SFEIR2	Yes	Sfeir_B – SFEIR2	00:01:12	Overlapping				552
		14:23:51	14:25:20	165	Call	Sfeir_B	-								
18	12/01/2004	14:23:51	14:25:20	165	Call	Sfeir_B	-	-	Sfeir_B – SFEIR3	00:03:31	Overlapping				552
		14:27:22	14:27:43	669	Call	SFEIR3	SFEIR2								
19	15/01/2004	10:11:51	10:12:12	669	Call	BIRABD2	BIRABD2	-	BIRABD2 – Bir Abed_A	00:00:44	Overlapping				508
		10:12:56	10:13:53	165	Call	Bir Abed_A	-								
20	16/01/2004	10:15:22	10:15:35	165	Call	Haret Hreik_C	-	-	Haret Hreik_C – OUZAI3	00:00:53	Overlapping				1,639
		10:16:15	10:17:17	669	Call	OUZAI3	OUZAI1								
21	26/01/2004	20:32:05	20:33:13	165	Call	Mraiجه_A	-	-	Mraiجه_A – SFEIR2	00:05:37	347	2,551	1,449	15.48	2,196
		20:35:39	20:37:42	669	Call	-	SFEIR2								
22	03/02/2004	16:59:52	17:00:16	669	Call	SFEIR3	SFEIR3	-	SFEIR3 – Sfeir_A	00:06:01	Overlapping				552
		17:06:17	17:06:56	165	Call	Sfeir_A	-								

No.	Date	Start time	End time	Mobile	Call / SMS	Start cell	End cell	Overlap in calls?	Relevant pair of cell sectors	Shortest known time between cell sector use	Shortest distance between coverage areas (metres)	Longest distance between coverage areas (metres)	Average distance between coverage areas (metres)	Necessary speed of travel (km/h) for longest distance	Distance between cell towers
23	08/02/2004	14:20:47	14:21:35	669	Call	-	NABATI1	-	NABATI1 – Nabatieh_C	00:06:41	Overlapping				922
		14:28:16	14:31:27	165	Call	Nabatieh_C	-								
24	13/02/2004	13:53:22	13:53:22	165	SMS	Barja_C	-	-	Barja_C – KHALDE3	00:04:53	6,734	16,985	11,860	145.71	16,477
		13:57:49	13:58:15	669	Call	-	KHALDE3								
25	17/02/2004	14:09:58	14:12:09	165	Call	Markaba_A	-	-	Markaba_A – MHAIBI1	00:04:08	Overlapping				8,330
		14:13:23	14:14:06	669	Call	-	MHAIBI1								
26	17/02/2004	16:43:00	16:43:28	165	Call	Naameh_B	-	-	Naameh_B – NAAMEH1	00:00:51	1,057	20,487	10,772	760.38	912
		16:43:51	16:49:29	669	Call	NAAMEH1	AIB3								
27	17/02/2004	22:38:07	22:38:49	669	Call	OZAIMB1	OZAIMB1	-	OZAIMB1 – Ouzai_B	00:03:10	Overlapping				532
		22:41:59	22:42:33	165	Call	Ouzai_B	-								
28	18/02/2004	16:15:16	16:18:10	165	Call	Karaknough_B	-	-	Karaknough_B – KSARA1	00:08:28	Insufficient cell sector coverage data for KSARA1				5,864
		16:23:31	16:23:44	669	Call	-	KSARA1								
29	20/02/2004	15:08:07	15:08:45	669	Call	-	BEITME2	-	BEITME2 – Louaize_C	00:06:18	318	13,786	7,052	67.16	3,537
		15:15:03	15:15:41	165	Call	Louaize_C	-								
30	24/02/2004	11:08:26	11:09:31	669	Call	-	SFEIR3	-	SFEIR3 – Sfeir_B	00:03:21	Overlapping				552
		11:12:52	11:15:06	165	Call	Sfeir_B	-								
31	25/02/2004	09:39:55	09:40:18	165	Call	Kfarsir_A	-	-	Kfarsir_A – JAWHAR3	00:01:52	Overlapping				4,674
		09:41:47	09:42:53	669	Call	JAWHAR3	JAWHAR3								
32	26/02/2004	10:42:59	10:43:24	669	Call	-	SFEIR2	-	SFEIR2 – Haret Hreik-II_C	00:08:00	1,332	4,932	3,132	23,49	2,024
		10:51:24	10:51:58	165	Call	Haret Hreik-II_C	-								
33	26/02/2004	14:48:19	14:48:40	669	Call	NABICH3	NABICH3	-	NABICH3 – Nabi Chiit_A	00:04:07	Overlapping				1,913
		14:52:47	14:52:47	165	SMS	Nabi Chiit_A	-								
34	26/02/2004	16:43:06	16:43:25	165	Call	Nabi Chiit_C	-	-	Nabi Chiit_C – NABICH3	00:02:28	Insufficient cell sector coverage data for Nabi Chiit_C				1,913
		16:45:34	16:46:06	669	Call	NABICH3	NABICH3								
35	26/02/2004	17:27:19	17:28:04	669	Call	NABICH3	NABICH3	-	NABICH3 – Nabi Chiit_A	00:04:10	Overlapping				1,913
		17:32:14	17:33:33	165	Call	Nabi Chiit_A	-								
36	26/02/2004	18:27:34	18:29:00	165	Call	Nabi Chiit_A	-	-	Nabi Chiit_A – NABICH3	00:04:33	Overlapping				1,913
		18:32:07	18:32:46	669	Call	NABICH3	NABICH3								
37	26/02/2004	19:32:02	19:32:21	165	Call	Zahle_A	-	-	Zahle_A – KARAK1	00:01:40	Overlapping				1,940
		19:33:42	19:34:08	669	Call	KARAK1	KARAK1								
38	27/02/2004	20:47:57	20:48:39	165	Call	Sfeir_A	-	-	Sfeir_A – SFEIR2	00:07:54	Overlapping				552
		20:55:37	20:55:51	669	Call	-	SFEIR2								
39	02/03/2004	14:50:57	14:51:50	165	Call	Sfeir_A	-	-	Sfeir_A – BRASIL2	00:02:08	158	5,764	2,961	83.28	1,454
		14:53:05	14:54:01	669	Call	BRASIL2	BRASIL2								
40	02/03/2004	19:51:41	19:53:09	165	Call	Saki Hadath_C	-	-	Saki Hadath_C – BRAJNE2	00:03:07	Overlapping				629
		19:54:48	19:56:04	669	Call	BRAJNE2	BRAJNE2								
41	03/03/2004	11:05:19	11:06:17	669	Call	-	KFARSI1	-	KFARSI1 – Khyam_C	00:04:27	Overlapping				20,232
		11:10:44	11:11:01	165	Call	Khyam_C	-								
42	03/03/2004	11:58:01	11:59:34	669	Call	-	MHAIBI1	Yes	Markaba_A – MHAIBI1	00:01:01	Overlapping				8,330
		11:58:33	11:59:10	165	Call	Markaba_A	-								
43	10/03/2004	07:41:16	07:41:59	669	Call	HARA2	HARA2	-	HARA2 – Hai Kneisse_B	00:06:36	39	1,357	698	6.35	594
		07:48:35	07:49:05	165	Call	Hai Kneisse_B	-								
44	11/03/2004	18:22:47	18:23:20	165	Call	Haret Hreik_B	-	-	Haret Hreik_B – ROUEIS3	00:01:23	Overlapping				781
		18:24:10	18:24:25	669	Call	ROUEIS3	ROUEIS3								
45	11/03/2004	20:46:58	20:47:51	165	Call	Hazmiyeh-II_B	-	Yes	Hazmiyeh-II_B – SFEIR2	00:00:48	Overlapping				361
		20:47:46	20:48:08	669	Call	SFEIR2	SFEIR2								
46	11/03/2004	20:47:46	20:48:08	669	Call	SFEIR2	SFEIR2	-	SFEIR2 – Hadath_C	00:06:11	Overlapping				1,188
		20:54:19	20:55:10	165	Call	Hadath_C	-								
47	11/03/2004	23:45:56	23:46:20	669	Call	CBOURJ3	CBOURJ3	-	CBOURJ3 – Airport_A	00:01:21	Overlapping				1,750

No.	Date	Start time	End time	Mobile	Call / SMS	Start cell	End cell	Overlap in calls?	Relevant pair of cell sectors	Shortest known time between cell sector use	Shortest distance between coverage areas (metres)	Longest distance between coverage areas (metres)	Average distance between coverage areas (metres)	Necessary speed of travel (km/h) for longest distance	Distance between cell towers
		23:47:41	23:48:54	165	Call	Airport_A	-								
48	11/03/2004	23:47:41	23:48:54	165	Call	Airport_A	-	-	Airport_A – GHADIR3	00:01:28	Overlapping				1,120
		23:49:09	23:49:27	669	Call	GHADIR3	GHADIR3								
49	12/03/2004	13:22:30	13:23:09	669	Call	HAROUF2	HAROUF2	-	HAROUF2 – Ansar_A	00:01:57	Overlapping				8,533
		13:25:06	13:27:55	165	Call	Ansar_A	-								
50	13/03/2004	11:09:23	11:10:25	669	Call	HARA2	HARA2	-	HARA2 – Haret Hreik_B	00:03:56	Overlapping				88
		11:14:21	11:14:22	165	Call	Haret Hreik_B	-								
51	13/03/2004	12:48:41	12:50:18	669	Call	SFEIR3	SFEIR3	-	SFEIR3 – Sfeir_B	00:06:50	Overlapping				552
		12:57:08	12:57:23	165	Call	Sfeir_B	-								
52	15/03/2004	13:22:38	13:23:03	165	Call	Sfeir_B	-	-	Sfeir_B – SFEIR2	00:01:57	Overlapping				552
		13:24:35	13:24:55	669	Call	SFEIR2	SFEIR2								
53	22/03/2004	16:21:15	16:22:21	669	Call	-	SFEIR3	-	SFEIR3 – Sfeir_A	00:01:49	Overlapping				552
		16:24:10	16:25:47	165	Call	Sfeir_A	-								
54	22/03/2004	16:24:10	16:25:47	165	Call	Sfeir_A	-	-	Sfeir_A – SFEIR2	00:01:48	Overlapping				552
		16:25:58	16:26:38	669	Call	SFEIR2	SFEIR2								
55	22/03/2004	16:25:58	16:26:38	669	Call	SFEIR2	SFEIR2	-	SFEIR2 – Sfeir_B	00:08:51	Overlapping				552
		16:35:29	16:38:17	165	Call	Sfeir_B	-								
56	23/03/2004	18:43:40	18:43:54	669	Call	ROUEIS3	ROUEIS3	-	ROUEIS3 – Mar Mikhael_C	00:09:37	69	3,123	1,596	9.96	424
		18:53:31	18:53:41	165	Call	Mar Mikhael_C	-								
57	26/03/2004	18:55:57	18:56:27	165	Call	Saki Hadath_C	-	-	Saki Hadath_C – SFEIR2	00:08:05	Overlapping				1,396
		19:04:02	19:05:43	669	Call	SFEIR2	SFEIR2								
58	27/03/2004	13:16:17	13:16:41	669	Call	MIKAEL2	MIKAEL2	-	MIKAEL2 – Hadath_C	00:06:10	256	2,452	1,354	13.17	2,108
		13:22:51	13:23:03	165	Call	Hadath_C	-								
59	27/03/2004	17:19:01	17:19:39	165	Call	Nabatieh_C	-	-	Nabatieh_C – HAROUF3	00:07:02	2,850	32,280	17,565	149.84	2,781
		17:26:03	17:27:15	669	Call	HAROUF3	HAROUF3								
60	30/03/2004	11:13:10	11:14:08	669	Call	MIKAEL3	MIKAEL3	-	MIKAEL3 – Haret Hreik_A	00:00:30	Overlapping				859
		11:14:38	11:15:31	165	Call	Haret Hreik_A	-								
61	30/03/2004	11:14:38	11:15:31	165	Call	Haret Hreik_A	-	-	Haret Hreik_A – HARA2	00:01:35	Overlapping				88
		11:16:13	11:16:46	669	Call	HARA2	HARA2								
62	30/03/2004	11:16:13	11:16:46	669	Call	HARA2	HARA2	-	HARA2 – Mar Mikhael_C	00:00:21	Overlapping				885
		11:17:07	11:17:31	165	Call	Mar Mikhael_C	-								
63	30/03/2004	13:04:03	13:05:30	165	Call	Saki Hadath_C	-	Yes	Saki Hadath_C – SFEIR2	00:00:55	Overlapping				1,396
		13:04:58	13:05:10	669	Call	SFEIR2	SFEIR2								
64	31/03/2004	21:17:46	21:19:09	165	Call	Haret Hreik-II_A	-	-	Haret Hreik-II_A – HARA3	00:09:18	Overlapping				692
		21:27:04	21:27:54	669	Call	HARA3	HARA3								
65	01/04/2004	18:34:33	18:35:04	165	Call	Mar Mikhael_C	-	-	Mar Mikhael_C – HARA2	00:05:30	Overlapping				885
		18:39:08	18:40:03	669	Call	-	HARA2								
66	02/04/2004	09:23:41	09:24:52	669	Call	MIKAEL2	MIKAEL2	-	MIKAEL2 –BorjBrajneh-II_A	00:04:18	1,065	4,411	2,738	38.20	1,900
		09:29:10	09:30:04	165	Call	BorjBrajneh-II_A	-								
67	02/04/2004	09:29:10	09:30:04	165	Call	BorjBrajneh-II_A	-	-	BorjBrajneh-II_A – MEA1	00:02:01	547	6,036	3,292	97.93	2,280
		09:31:11	09:31:33	669	Call	MEA1	MEA1								
68	02/04/2004	09:34:14	09:35:44	669	Call	MATAR6	KHALDE1	-	KHALDE1 – Barja_C	00:07:34	11,019	18,643	14.831	117.60	16,477
		09:43:18	09:43:45	165	Call	Barja_C	-								
69	03/04/2004	11:51:05	11:51:35	165	Call	Mar Mikhael_C	-	Yes	Mar Mikhael_C – MIKAEL3	00:00:04	Overlapping				156
		11:51:09	11:52:08	669	Call	MIKAEL3	MIKAEL3								
70	03/04/2004	13:01:47	13:02:07	165	Call	Borj Brajneh_A	-	-	Borj Brajneh_A – BIRABD3	00:00:41	98	1,291	695	60.98	1,110
		13:02:28	13:02:53	669	Call	BIRABD3	BIRABD3								

No.	Date	Start time	End time	Mobile	Call / SMS	Start cell	End cell	Overlap in calls?	Relevant pair of cell sectors	Shortest known time between cell sector use	Shortest distance between coverage areas (metres)	Longest distance between coverage areas (metres)	Average distance between coverage areas (metres)	Necessary speed of travel (km/h) for longest distance	Distance between cell towers
71	09/04/2004	10:56:39	10:56:56	669	Call	-	MEA1	-	MEA1 – Ain Sikkeh_B	00:03:57	31	8,314	4,173	63.38	1,542
		11:00:53	11:01:31	165	Call	Ain Sikkeh_B	-								
72	10/04/2004	11:56:32	11:56:52	669	Call	MIKAEL3	MIKAEL3	-	MIKAEL3 – Mar Mikhael_C	00:06:46	Overlapping				156
		12:03:38	12:05:02	165	Call	Mar Mikhael_C	-								
73	10/04/2004	12:03:38	12:05:02	165	Call	Mar Mikhael_C	-	-	Mar Mikhael_C – ROUEIS3	00:06:30	69	3,123	1,596	14.73	424
		12:09:23	12:10:08	669	Call	-	ROUEIS3								
74	10/04/2004	17:08:42	17:09:44	165	Call	Nabatieh_C	-	-	Nabatieh_C – HAROUF1	00:02:48	1,192	36,401	18,797	402.78	2,781
		17:11:30	17:11:45	669	Call	HAROUF1	HAROUF1								
75	10/04/2004	17:35:39	17:37:22	669	Call	-	HAROUF1	-	HAROUF1 – Nabatieh_C	00:04:01	1,192	36,401	18,797	280.78	2,781
		17:41:23	17:42:49	165	Call	Nabatieh_C	-								
76	10/04/2004	17:41:23	17:42:49	165	Call	Nabatieh_C	-	-	Nabatieh_C – NABATI1	00:05:38	Overlapping				922
		17:45:50	17:47:01	669	Call	-	NABATI1								
77	10/04/2004	18:27:40	18:28:12	669	Call	NABATI1	NABATI1	-	NABATI1 – Nabatieh_C	00:02:19	Overlapping				922
		18:30:31	18:30:56	165	Call	Nabatieh_C	-								
78	10/04/2004	20:23:17	20:23:36	165	Call	Nabatieh_C	-	-	Nabatieh_C – HAROUF1	00:04:26	1,192	36,401	18,797	254.39	2,781
		20:25:14	20:27:43	669	Call	-	HAROUF1								
79	13/04/2004	11:47:25	11:47:38	165	Call	Sfeir_B	-	-	Sfeir_B – SFEIR2	00:00:55	Overlapping				552
		11:48:20	11:49:52	669	Call	SFEIR2	SFEIR2								
80	14/04/2004	09:06:29	09:06:29	165	SMS	Tyre_C	-	-	Tyre_C – SOUR3	00:07:26	Overlapping				371
		09:13:55	09:14:43	669	Call	SOUR3	SOUR3								
81	14/04/2004	10:16:21	10:17:34	669	Call	MAAROB1	MAAROB1	-	MAAROB1 – Ansar_B	00:02:27	Overlapping				11,519
		10:20:01	10:20:55	165	Call	Ansar_B	-								
82	16/04/2004	12:36:21	12:36:31	669	Call	MIKAEL3	MIKAEL3	-	MIKAEL3 – Mar Mikhael_C	00:07:21	Overlapping				156
		12:43:52	12:45:10	165	Call	Mar Mikhael_C	-								
83	16/04/2004	20:51:21	20:51:44	669	Call	SFEIR2	SFEIR2	-	SFEIR2 – Hazmiyeh-II_B	00:06:56	Overlapping				361
		20:58:40	20:58:59	165	Call	Hazmiyeh-II_B	-								
84	17/04/2004	09:49:37	09:50:13	669	Call	SFEIR3	SFEIR3	-	SFEIR3 – Sfeir_B	00:02:15	Overlapping				552
		09:52:28	09:53:12	165	Call	Sfeir_B	-								
85	17/04/2004	09:52:28	09:53:12	165	Call	Sfeir_B	-	-	Sfeir_B – SFEIR3	00:01:20	Overlapping				552
		09:53:48	09:54:11	669	Call	SFEIR3	SFEIR3								

