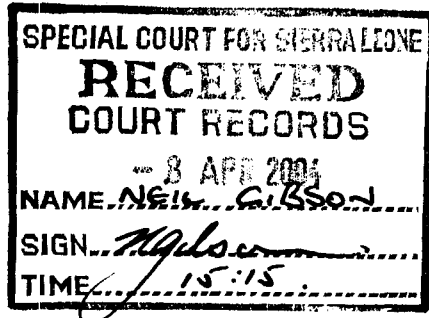


**SPECIAL COURT FOR SIERRA LEONE**  
OFFICE OF THE PROSECUTOR  
FREETOWN - SIERRA LEONE

Before: Judge Bankole Thompson, Designated Judge  
Registrar: Robin Vincent  
Date filed: 8 April 2004



THE PROSECUTOR

Against

SAM HINGA NORMAN  
MOININA FOFANA  
ALLIEU KONDEWA

CASE NO. SCSL - 2004 - 14 - PT

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**PROSECUTION REPLY TO THE DEFENCE RESPONSE TO INTERIM ORDER  
FREEZING BANK ACCOUNT OF ACCUSED AND SCHEDULING ORDER**

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Office of the Prosecutor  
Charles A. Caruso  
Kathryn Howarth

Defence Counsel for Sam Hinga Norman  
James Blyden Jenkins-Johnston  
Sulaiman B. Tejan-Sie

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BANK ACCOUNT OF ACCUSED SAM HINGA NORMAN AND SCHEDULING ORDER**

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**INTRODUCTION**

1. On 7 March 2003, Judge Bankole Thompson, The Designated Judge, in his Decision Confirming The Indictment and Order for Non-Disclosure in the case of this Accused, ordered *inter alia* that the relevant authorities of the Government of Sierra Leone “identify and locate assets owned by the Accused located within the territory of any State and adopt provisional measures to freeze such assets without prejudice to the rights of third parties”.<sup>1</sup>

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<sup>1</sup> Decision Confirming the Indictment and Order for Non-Disclosure, 7 March 2003 and Prosecutors Memorandum Accompanying the Indictment.

2. Pursuant to this Order on 1 April 2004 the Prosecution filed an *ex parte* motion requesting the Court freeze the accounts of the Accused Sam Hinga Norman, in particular the account held at Union Trust Bank (SL) Limited, Lightfoot Boston Street, PMB 1237, Freetown, Sierra Leone and numbered 210-006598-01.
3. On 2 April 2004, Judge Bankole Thompson, The Designated Judge, ordered the government of Sierra Leone to take measures insuring the freezing of the above mentioned account as an interim measure with immediate effect, until a decision on the motion could be rendered. Thereafter this Court scheduled an *in camera* and *inter-partes* hearing in relation to this motion.

### **THE DEFENSE POSITION**

4. On 6 April 2004, the Accused filed a response to the Interim Order and Scheduling Order, requesting that the Interim Order be rescinded or reversed. In particular, the Accused submitted that the Interim Order was prejudicial to the rights of the wife, children and extended family of the Accused whom, the Accused asserts are being maintained solely from the bank account at issue.

### **THE PROSECUTION POSITION**

5. Initially, while the Prosecution submits that no legally enforceable rights to this account exist with regard to anyone other than the Accused, the Prosecution nonetheless would not object to the Court ordering a monthly allotment of Le500,000 being made through this account solely for the maintenance of the wife and dependents of Sam Hinga Norman. The amount suggested is predicated on assertions made by Counsel for the Accused in correspondence with the bank.<sup>2</sup>
6. However, the Prosecution, consistent with its *ex parte* motion of 1 April 2004, maintains that, with the exception of permitting the payment in the aforementioned paragraph, the accounts of the Accused, including the account at issue, must be frozen in accordance with the original Order of Judge Bankole Thompson of 7 March 2003.

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<sup>2</sup> See annex 1, Correspondence between Counsel for the Accused Sam Hinga Norman and Union Trust Bank (SL) Limited.

**THE LAW**

7. Rule 47(H)(i) of the Rules of Procedure and Evidence (Rules) provides in relevant part that “Upon approval of the indictment... The Judge may, ... issue such orders ... as may be required for the proceedings in accordance with these Rules.”<sup>3</sup> Similarly, Rule 54 of the Rules permits that “At the request of either party or of its own motion, a Judge or a Trial Chamber may issue such orders... as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.”<sup>4</sup> The judicial prerogatives created by these rules allow for the efficacious employment thereafter of Rule 88(B) which in turn provides for an order of forfeiture being rendered upon a judicial finding that the frozen assets constitute “... property, proceeds and any assets acquired unlawfully or by criminal conduct...”<sup>5</sup> Following the eventuality of an appropriate finding at trial, transfer of the forfeit property is accorded to victims of the crimes through the mandates of Rules 104 and 105.<sup>6</sup> In short, the Court is empowered to freeze the assets of an individual prior to a finding of guilt in contemplation of a judicial forfeiture ordered after judgement at trial. Thereafter, and appropriately, the proceeds of such forfeitures may be used to compensate the victims of the Accused’s crimes. The rationale and propriety of these provisions is obvious considering that, were a freezing of assets not available, the accused would be in a position to frustrate the mission of the Court by depleting illicit assets prior to their forfeiture and equitable distribution.

**DISCUSSION**

8. In its original order concerning this matter dated 7 March 2003, the Court ordered that the appropriate authorities act to “identify and locate assets owned by the Accused located within the territory of any State and adopt provisional measures to freeze such assets without prejudice to the rights of third parties”.<sup>7</sup> In strict compliance with the letter and spirit of that Order, the Office of the Prosecutor has made general arrangements to locate and freeze all of the bank accounts of the Accused in Sierra Leone and in specific to

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<sup>3</sup> Rule 47(H)(i) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone, hereinafter “the Rules”.

<sup>4</sup> Rule 54 of the Rules.

<sup>5</sup> Rule 88(B) of the Rules.

<sup>6</sup> Rule 104 and 105 of the Rules.

<sup>7</sup> Decision Confirming the Indictment and Order for Non-Disclosure, 7 March 2003 and Prosecutors Memorandum Accompanying the Indictment.

freeze the Accused's account at Union Trust Bank Limited. As explained above, these actions have been taken in contemplation of seeking an order of forfeiture following trial. The Office of the Prosecutor, in seeking the order freezing the account at the Union Trust Limited has done no more than to attempt to make specific the general order of this Court issued on 7 March 2003. It has, pursuant to the Court's previous Order, identified a specific account of the Accused and taken statutorily authorized measures to preserve assets which may be subject to forfeiture.

9. While the Accused in his response claims a lack of cited authority authorizing either the Order rendered by this Court or the actions taken by the Office of the Prosecutor, it is patently clear, pursuant to the previously cited rules, that such authority does exist and has been appropriately applied. As importantly, in a decision rendered by the International Criminal Tribunal for the former Yugoslavia considering the general issue of the pretrial freezing of assets, the Court adopted a broad view of its powers in this regard by generally approving the argument of the Prosecutor.

The application was initially based solely upon Rule 54, which gives power to a judge (as well as to a Trial Chamber) to issue such orders as may be necessary for the preparation or conduct of the trial. ... Freezing the assets of the accused, the Prosecutor submitted, may be done for two distinct purposes- for the purpose of granting restitution of property or payment from its proceeds (which may be ordered by a Trial Chamber pursuant to rule 105 after conviction, subject to appropriate findings having been made in the judgment pursuant to Rule 98<sup>ter</sup>) and also for the purpose of preventing an accused...from taking steps to disguise his assets or putting them beyond the reach of the Tribunal.<sup>8</sup>

The Court then went on to issue an order much like that issued in this case pursuant to Rules 47(H)(i) and 54.

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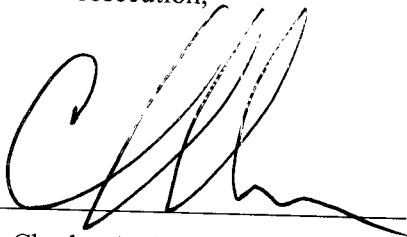
<sup>8</sup> Decision on Review of Indictment and Application for Consequential Orders, *Prosecutor v Milosevic, Milutinovic, Sainovic, Ojdanic & Stojiljkovic*, 24 May 1999, before Judge David Hunt, at para 27.

**CONCLUSION**

10. Based upon the foregoing recitation of fact and supporting authority, the Prosecution requests the Interim Order of Judge Bankole Thompson, dated 2 April 2004 be made permanent and that Section 2(F) of this Court's Decision Confirming the Indictment and Order for Non-Disclosure remain in effect.

Done in Freetown, on this 8<sup>th</sup> day of April 2004.

For the Prosecution,

A handwritten signature in black ink, appearing to read 'C. Caruso', written over a horizontal line.

Charles A. Caruso

Trial Attorney

**PROSECUTION INDEX OF AUTHORITIES:**

1. Correspondence between Counsel for the Accused Sam Hinga Norman and Union Trust Bank (SL) Limited.
2. Decision on Review of Indictment and Application for Consequential Orders, *Prosecutor v Milosevic, Milutinovic, Sainovic, Ojdanic & Stojiljkovic*, 24 May 1999, before Judge David Hunt, at para 27.

## ANNEX 1

Correspondence between Counsel for the Accused Sam Hinga Norman and Union Trust Bank (SL) Limited.



Cables: Jaybee, Freetown

Telex: 3561 JAYBEE S.L

Telephones:

Chambers: 223626/227283

(Res): 272305

Fax: 227283/227771

E-mail: ayotunde@sierratel.com  
jaybeeji@hotmail.com**J. B. JENKINS-JOHNSTON**B. A. (HONS)(DUNELM)  
BARRISTER-AT-LAW, SOLICITOR  
COMMISSIONER FOR OATHS,  
AND NOTARY PUBLIC**AYOTUNDE CHAMBERS**4 Percival Street,  
P. O. Box 1164  
Freetown,  
Sierra Leone.

My Ref: JBJJ/ZYS

Your Ref:

Date: 16<sup>th</sup> March 2004.The Managing Director,  
Union Trust Bank,  
Howe Street,  
Freetown.

Dear Sir,

*Margherita*  
 would you please research the  
 status of the order freezing Norman's  
 accounts. If this is an accurate account, I think  
 that there has to be some flexibility to allow  
 maintenance for family.

**Re: Ac/No. 210-0006598-01**  
**Samuel Hinga Norman.**

*AW 18/3/04.*

I act for and on behalf of Chief Samuel Hinga Norman, currently detained by the Special Court for Sierra Leone awaiting trial.

On the 12<sup>th</sup> March 2004 my client issued his personal cheque No. 316063 in the sum of Le500,000/00 (Five Hundred Thousand Leones) to his wife for the upkeep and maintenance of his family (including children under the age of 18.)

Upon presentation of the same at your Bank, the cheque was stamped with the Bank's stamp, marked "Account Frozen," and returned to her unpaid, to the shock and surprise of both my client and his family.

My instructions are to find out from you when his account was frozen, and by virtue of which Court Order as none such has been served on him.

Kindly let me have your urgent response as my client's wife and his children are now without any money for food and maintenance, thereby causing them to suffer unnecessarily.

Yours Faithfully,

*J. B. Jenkins-Johnston*  
 J. B. JENKINS-JOHNSTON ESQ.

C.C. (1) The Registrar,  
Special Court for Sierra Leone,  
Jomo Kenyatta Road, Freetown

(2) Defence Office,  
Special Court,  
Freetown.

(3) S. B. Tejan-Sie Esq.  
36 Bathurst Street, Freetown.

## ANNEX 2

Decision on Review of Indictment and Application for Consequential Orders, *Prosecutor v Milosevic, Milutinovic, Sainovic, Ojdanic & Stojiljkovic*, 24 May 1999, before Judge David Hunt.

UNITED  
NATIONS



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of  
Former Yugoslavia since 1991

Case No.: IT-99-37-I

Date: 24 May 1999

Original: English

**BEFORE A JUDGE OF A TRIAL CHAMBER**

Before: Judge David Hunt  
Registrar: Mrs Dorothee de Sampayo Garrido-Nijgh  
Decision of: 24 May 1999

PROSECUTOR

v

Slobodan MILOŠEVIĆ, Milan MILUTINOVIĆ, Nikola ŠAINOVIĆ,  
Dragoljub OJDANIĆ & Vljeko STOJILJKOVIĆ

**DECISION ON REVIEW OF INDICTMENT  
AND APPLICATION FOR CONSEQUENTIAL ORDERS**

**The Office of the Prosecutor:**

Louise Arbour, Prosecutor

## I Introduction

1. Pursuant to Article 19 of the International Tribunal's Statute and Rule 47 of the Rules of Procedure and Evidence, the Prosecutor has submitted for review an indictment naming Slobodan Milošević, Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić and Vljako Stojiljković. Each of the accused is charged with crimes against humanity, in accordance with Article 5 of the Statute, involving persecution, deportation and murder. Murder is also charged against each accused as a violation of the laws or customs of war, in accordance with Article 3 of the Statute, on the basis that it is recognised as such by common Article 3(1)(a) of the Geneva Conventions of 1949.

## II Review and Confirmation of the Indictment

2. The indictment comes before me as a judge of a Trial Chamber, in accordance with Articles 18 and 19 of the Statute. Article 19 provides that if, after such review of the indictment, I am satisfied that a *prima facie* case has been established by the Prosecutor, I am to confirm the indictment. Rule 47(E) requires me, for the purpose of confirming the indictment, to examine also any supporting material which the Prosecutor may forward pursuant to Rule 47(B). The purpose of Rule 47(E) is not to permit the supporting material to fill in any gaps which may exist in the material facts pleaded in the indictment.<sup>1</sup> It is to ensure that there is evidence to support the material facts so pleaded, so that the confirming judge is acting, in effect, as a grand jury (or a committing magistrate) in the common law system or as a *juge d'instruction* in some civil law systems.<sup>2</sup>

3. The joint operation of Article 19 and Rule 47(E) is, therefore, that I must be satisfied that the material facts pleaded in the indictment establish a *prima facie* case and that there is evidence available which supports those material facts. The structure of the Rules of Procedure and Evidence makes it clear that the confirming judge is concerned only with the substance of the indictment, and not with its form.<sup>3</sup>

<sup>1</sup> *Prosecutor v Krnojelac*, Case IT-97-25-PT, Decision on the Defence Preliminary Motion on the Form of the Indictment, 24 Feb 1999, at para 15.

<sup>2</sup> *Prosecutor v Kordić*, Case IT-95-14-I, Decision on the Review of the Indictment, 10 Nov 1995 (Judge Gabrielle Kirk McDonald), at p 3.

<sup>3</sup> *Prosecutor v Krnojelac*, Case IT-97-25-PT, Decision on Prosecutor's Response to Decision of 24 February 1999, 20 May 1999, at para 11 footnote 11. Rule 72(A) gives to the Trial Chamber the jurisdiction to deal with the form of the indictment.

4. A *prima facie* case on any particular charge exists in this situation where the material facts pleaded in the indictment constitute a credible case which would (if not contradicted by the accused) be a sufficient basis to convict him of that charge.<sup>4</sup>

5. The events upon which the indictment is based are alleged to have taken place in the Autonomous Province of Kosovo in the southern part of the Republic of Serbia, a constituent republic of the Federal Republic of Yugoslavia, between 1 January and late April 1999. At the commencement of that period, almost 90% of the population of that Province was Albanian, and the remainder were Serbs.

6. The military forces of the Federal Republic of Yugoslavia, the police force of Serbia, some police units from the Federal Republic of Yugoslavia and associated paramilitary units are alleged during that period to have engaged, in concert, in a widespread and systematic series of offensives against many predominately Kosovo Albanian towns and villages. The general pattern of the offensive was that Kosovo Albanian residents of these towns and villages were ordered to leave their homes, upon threats of death. After they left, the property they had left behind was stolen and their homes were destroyed or rendered uninhabitable by fire. They were forced to join convoys of similarly displaced Kosovo Albanians on route to the borders between Kosovo and neighbouring countries. They were physically mistreated. In many instances, the Kosovo Albanian men who had been displaced were separated from the women and children and they were killed. At the border, the property they had with them was stolen, including their identification papers and motor vehicles. In some cases, the villages were initially shelled and Kosovo Albanians were killed in the shelling.

7. These forces from the Federal Republic of Yugoslavia and Serbia are also alleged to have deliberately shot and killed unarmed Kosovo Albanians, including women and children, on a number of occasions during this period. This happened at the villages of Račak (where fortyfive Kosovo Albanians were killed), Velika Kruša (where 105 Kosovo Albanians were killed and their bodies burnt), Izbica (where 130 Kosovo Albanians were killed) and other villages. It is alleged that approximately 740,000 Kosovo Albanian civilians were forcibly deported from Kosovo, and that approximately 385 identified Kosovo Albanians were murdered.

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<sup>4</sup> *Prosecutor v Kordić*, Case IT-95-14-I, Decision on the Review of the Indictment, 10 Nov 1995 (Judge Gabrielle Kirk McDonald), at p 3, adopting the Report of the International Law Commission, UN Document A/49/10 (1994), at 95.

8. The indictment alleges that these operations targeting Kosovo Albanians were undertaken with the objective of removing a substantial portion of the Kosovo Albanian population from Kosovo, in an effort to ensure continued Serbian control over the Province. If these pleaded facts are accepted, they establish that the forces from the Federal Republic of Yugoslavia and Serbia persecuted the Kosovo Albanian civilian population on political, racial or religious grounds, and that there was both deportation and murder, constituting crimes against humanity and violations of the laws or customs of war.

9. The five accused are alleged to be criminally responsible for the actions of those forces upon two bases –

- (a) their individual responsibility, having planned, instigated, ordered or otherwise aided and abetted their planning, preparation or execution (Article 7.1), and
- (b) in relation to four of them (the accused Šainović being excepted), their superior authority, having known or had reason to know that their subordinates were about to commit such acts or had done so but having failed to take the necessary and reasonable measures to prevent such acts or to punish those subordinates who did those acts (Article 7.3).

The subordinates were the members of the military forces of the Federal Republic of Yugoslavia, the police force of Serbia, the police units from the Federal Republic of Yugoslavia and the associated paramilitary units. The case against each of the accused is built upon both their legal and their *de facto* relationship with those forces.

10. During the relevant period, the military forces of the Federal Republic of Yugoslavia were under the control of, *inter alia* –

- (1) The accused Milošević, as the President of the Federal Republic of Yugoslavia and the Supreme Commander of the Armed Forces of the Federal Republic of Yugoslavia (known as the VJ) with the power to implement the National Defence Plan decided by the Supreme Defence Council in compliance with the decisions of that Council (of which he was the President).
- (2) The accused Milutinović, as the President of Serbia and as such a member of the Supreme Defence Council, participating in the decisions concerning the activities of the VJ.
- (3) The accused Ojdanić, as Chief of the General Staff of the VJ, with the power to command the VJ as required.

11. During the relevant period (or a substantial part thereof), the police force of Serbia was under the control of, *inter alia* –

- (1) The accused Milošević, as President of the Federal Republic of Yugoslavia, having command authority of republic and federal police units subordinated to the VJ during a declared state of imminent threat of war or a declared state of war. (A declaration of a state of imminent threat of war was proclaimed on 23 March 1999, and of a state of war the next day.)
- (2) The accused Milutinović, as the President of Serbia with power, during a declared state of imminent threat of war or a declared state of war, to enact measures for the governance of the republic.
- (3) The accused Stojiljković, as Minister of Internal Affairs of Serbia, and responsible for the enforcement of the laws of the republic, including the activities of the police.

12. During the relevant period (or a substantial part thereof), the police units from the Federal Republic of Yugoslavia were under the control of, *inter alia*, the accused Milošević, for the reasons set out in the last paragraph. He also exercised an extensive *de facto* control over both federal and Serbian institutions (including the police) nominally within the competence of the respective Governments or Assemblies.

13. During the relevant period, the paramilitary units worked in association with, and in concert with, the other forces from the Federal Republic of Yugoslavia and Serbia, and at their direction.

14. In addition, during the relevant period the accused Milošević was the primary person on behalf of the Federal Republic of Yugoslavia and Serbia with whom the international community had negotiated in the continuing conflict in the Balkans, as he had been since 1989, including the negotiations with representatives of the North Atlantic Treaty Organisation (NATO) and the Organisation for Security and Co-operation in Europe (OSCE) conducted in October 1998, from which an "Agreement on OSCE Kosovo Verification Mission" was signed on 16 October 1998. The accused Milutinović was also a significant person with whom the international community had negotiated, as he had been since 1995, and he had been present at the international negotiations for peace in Kosovo held at Rambouillet, France, in February 1999.

15. Although the accused Šainović has not been charged with superior authority, it is significant that, as Deputy Prime Minister of the Federal Republic of Yugoslavia, he was designated by the accused Milošević as his representative in relation to the Kosovo situation. Diplomats and other international officials were directed to speak to him concerning that subject. He signed the "Clark-Naumann agreement" in October 1998, which provided for the partial withdrawal of forces of the

Federal Republic of Yugoslavia and Serbia from Kosovo, a limitation on the introduction of additional forces and equipment into the area, and the deployment of unarmed OSCE verifiers. He was a member of the Serbian delegation to the negotiations at Rambouillet. As with most cases where an accused is charged with both individual responsibility (not including the actual commission of the crimes himself) and superior authority, the relationship of the accused to those who did commit those crimes is directly relevant to the issue whether he did plan, instigate, order or otherwise aid and abet in the planning, preparation or execution of those crimes. The absence of any legal relationship between the accused Šainović and those persons in the present case no doubt explains why he has not been charged with superior authority, but it does not detract from the issue of his individual responsibility in the circumstances outlined in this paragraph.

16. This has been a very brief outline of what I understand to be the prosecution case. The supporting material is very much more detailed than may be suggested by that outline.

17. After reviewing and considering the indictment and the supporting material forwarded by the Prosecutor, and after hearing the Prosecutor in person, I am satisfied that the material facts pleaded establish a *prima facie* case in respect of each and every count of the indictment and that there is evidence available which supports those material facts. I am satisfied that the requirements of Article 19 and Rule 47 have been complied with. Accordingly, I confirm the indictment submitted for review.

### III Consequential orders

18. The Prosecutor seeks a number of consequential orders. Article 19 provides that, if requested by the Prosecutor to do so, I may issue such orders and warrants for the arrest, detention, surrender or transfer of persons, or such other orders, as may be required for the conduct of the trial.

#### (a) Execution of arrest warrants

19. Upon confirmation of an indictment, the judge confirming it may issue an arrest warrant,<sup>5</sup> and such warrant must include an order for the prompt transfer of the accused to the Tribunal upon his or their arrest.<sup>6</sup> A certified copy of the arrest warrant is then transmitted by the Registrar to,

<sup>5</sup> Rules of Procedure and Evidence, Rule 47(H).

<sup>6</sup> Rule 55(A).



*inter alia*, the national authorities of the State in whose territory or under whose jurisdiction resides, or was last known to be or is believed by the Registrar to be likely to be found.<sup>7</sup>

20. In the present case, the Prosecutor seeks an order that the warrants of arrest of the accused be transmitted by the Registrar to the Federal Republic of Yugoslavia, addressed to Mr Zoran Knežević, Federal Minister of Justice, Belgrade. As the accused Milošević is the Head of State of the Federal Republic of Yugoslavia, and as the other accused are senior government and military figures of the Federal Republic, the Prosecutor says, the Federal Minister of Justice is the most appropriate person in authority in the Federal Republic to execute those warrants. I agree. I accept that such an order should be made in this case.

21. In the light of the possibility that some or all of the accused may seek refuge outside the territory of the Federal Republic of Yugoslavia, the Prosecutor also seeks an order, pursuant to Rule 55(D), that certified copies of each of the warrants are to be transmitted by the Registrar to all States Members of the United Nations and to the Confederation of Switzerland.

22. Rule 61(D) permits the issue of *international* arrest warrants to be transmitted to all such States, but only where the arrest warrant issued pursuant to Rule 55 has not been executed within a reasonable time, and such international warrants may be issued only by a Trial Chamber. It is nevertheless argued that the power to transmit certified copies of the arrest warrant pursuant to Rule 55(D) is a wide one, and that it is expressly not limited to transmission only to those national authorities of the States or territories where the accused resides or is believed to reside. In any event, it is argued, the procedure permitted by Rule 55(D) of transmitting certified copies of the original arrest warrant is not the same as the issue of international arrest warrants pursuant to Rule 61(D). Rule 54 permits a judge of the Tribunal to issue such orders as may be necessary for the purposes of the preparation or conduct of the trial. There can be no trial until the accused is arrested. The orders sought would assist in ensuring the arrest of the accused.

23. I accept the Prosecutor's argument, and that the order sought pursuant to Rule 55(D) should be made in this case. States Members of the United Nations are bound to comply without undue delay with any order of the Tribunal for the arrest or detention of any person,<sup>8</sup> but it is not suggested that the Confederation of Switzerland is similarly bound. The transmission of the certified copy of

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<sup>7</sup> Rule 55(D).

<sup>8</sup> Statute, Article 29.2.

the warrants to be sent to the Confederation of Switzerland should therefore be expressed in terms of a request for assistance rather than an order.

24. For the same reason, the Prosecutor seeks a similar order that certified copies of the arrest warrant are to be transmitted by the Registrar to the Prosecutor herself so that she may use those certified copies to seek the assistance of the International Criminal Police Organisation (INTERPOL), pursuant to Rule 39, by circulating those certified copies under its "Red Notice" procedure. Again, I accept that such an order should be made in this case.

25. Because of the sheer bulk involved in transmitting the certified copies of the arrest warrants to all those nominated if, as Rule 55(C) would otherwise require, each arrest warrant must be accompanied by a certified copy of the indictment and the statement of the accused's rights translated into a language understood by the accused, I order pursuant to Rule 55(D) that the arrest warrants need not be so accompanied in this case.

**(b) Freezing the assets of the accused**

26. The Prosecutor seeks orders that each of the States Members of the United Nations –

- (i) make inquiries to discover whether any of the accused have assets located in their territory, and
- (ii) if any such assets are found, adopt provisional measures to freeze those assets, without prejudice to the rights of third parties, until the accused are taken into custody.

It is pointed out that the indictment alleges that property was unlawfully taken from the homes of victims and that many victims were robbed of money and other valuables.

27. The application was initially based solely upon Rule 54, which gives power to a judge (as well as to a Trial Chamber) to issue such orders as may be necessary for the preparation or conduct of the trial. As earlier stated, there can be no trial until the accused is arrested – so, the argument went, any order which assists in ensuring the arrest of the accused may be made by a judge pursuant to Rule 54. Freezing the assets of the accused, the Prosecutor submitted, may be done for two distinct purposes – for the purpose of granting restitution of property or payment from its proceeds (which may be ordered by a Trial Chamber pursuant to Rule 105 after conviction, subject to appropriate findings having been made in the judgment pursuant to Rule 98*ter*), and also for the purpose of preventing an accused who is still at large from using those assets to evade arrest and from taking steps to disguise his assets or putting them beyond the reach of the Tribunal.

28. The apparent width of the powers given to a judge by Rule 54, however, may perhaps be somewhat limited by the fact that Rule 61(D) gives power to a Trial Chamber (but not to a judge) to grant such relief for the same reasons at a slightly later stage, where the arrest warrant has not been executed within a reasonable time. But no such limitation can be placed upon the power given to the confirming judge by Article 19.2 of the Statute in much the same terms as Rule 54, and incorporated in Rule 47(H)(i). The application then proceeded upon the basis of Article 19.2.

29. In the situation where the Federal Republic of Yugoslavia has consistently, in breach of its legal obligations, ignored the Tribunal's orders to arrest persons who have been indicted to stand trial before the Tribunal, and who are living within its territory, and where the Tribunal has no police force of its own to execute its warrants, I accept that it is of the utmost importance that every permissible step be taken which will assist in effecting the arrest of those who shelter in the Federal Republic of Yugoslavia or who otherwise seek to evade arrest. I agree that the orders sought should be made in this case.

**(c) A non-disclosure order**

30. Lastly, the Prosecutor has sought orders –

- (i) pursuant to Rules 54 and 55(D), that the transmission of the warrants and certified copies thereof be delayed until 12 noon (The Hague time) on Thursday, 27 May 1999;
- (ii) pursuant to Rule 53, that there be no disclosure of the indictment, the accompanying material or the confirmation and orders made until the same time, subject to certain nominated exceptions; and
- (iii) also pursuant to Rule 53, that there be no disclosure of the supporting material forwarded by her pursuant to Rule 47(B) until the arrest of all the accused.

Rule 55(D) makes the transmission by the Registrar of certified copies of the arrest warrants for execution subject to any order of a judge of a Trial Chamber. Rule 54 gives power to a judge of Trial Chamber to make such orders as may be necessary for the preparation of the trial. Rule 53 limits the power of the Tribunal to make an order for non-disclosure to where there are exceptional circumstances and where it is in the interests of justice that the order be made. Such orders for non-disclosure are usually sought and made where the disclosure of the indictment would enable the accused named in it to take steps to evade arrest.

31. The Prosecutor has put forward a number of reasons which are said to justify the first and second orders being made. The availability of both orders may be considered together.

32. I accept that the various accused in this case hold the highest positions of power within the Federal Republic of Yugoslavia and the Republic of Serbia and that, together and individually, they wield enormous power over their territories and their resources, with all the apparatus of State at their disposal. I also accept that their reaction to the indictment is unpredictable. I accept too that a number of the Prosecutor's staff are active in the area over which the accused exert such enormous power and that they would be exposed to the serious risk of reprisals and intimidation if the indictment is disclosed immediately. I consider that the need to give an opportunity to the Office of the Prosecutor to minimise those risks is a legitimate consideration in determining whether it is in the interests of justice to make a non-disclosure order for the short period sought.

33. The same is true of the serious risk of reprisals and intimidation against many other persons within the Federal Republic of Yugoslavia or at or near to its borders – the United Nations Mission presently there on a fact-finding mission and the staffs there of other United Nations and Governmental agencies and of the humanitarian agencies from the international community dealing with refugees and displaced persons – as well as such risk against the personnel of various Governments presently engaged there and elsewhere in seeking a resolution of the current armed conflict. The disclosure of the indictment would have serious security implications for all of them which can be reduced, and hopefully minimised, if there is a short delay in the disclosure of the indictment to enable precautionary measures to be taken.

34. It is clearly in the interests of justice that there be a delay in the disclosure of the indictment and the other documents to enable steps to be taken to protect all of these people from the risk of such reprisals. There could be no doubt that all these circumstances are exceptional.

35. No submission has been made that the impact of such disclosure on the current attempts to resolve the armed conflict in the Kosovo Province is a relevant matter to be considered in determining whether it is in the interests of justice to order non-disclosure. The safety of those personnel involved in the attempts to resolve that armed conflict is a legitimate consideration in relation to the interests of justice, but the possible political and diplomatic consequences of the indictment are not the same thing. There is a clear and substantial distinction to be drawn between what may be relevant to the well known and accepted discretion of prosecuting authorities as to whether an indictment should be presented and what may be relevant to this Tribunal's discretion as to whether an order should be made for the non-disclosure of that indictment once it has been presented and confirmed. In view of the opinion which I have already expressed, that a non-disclosure order for a short period is justified to enable security measures to be taken in relation to

those at risk of intimidation or reprisals, it is unnecessary for me to determine whether the impact of the public disclosure of the indictment upon the peace process itself is also a consideration which is relevant to the exercise of my discretion to make a non-disclosure order pursuant to Rule 53. It is sufficient for me to say that such impact is not a matter which I have considered in determining the application made for non-disclosure in this case.

36. The Prosecutor has informed me that the United Nations Mission is presently scheduled to depart from the Federal Republic of Yugoslavia at 8.00 am on Thursday, 27 May. The limit on the public non-disclosure order until 12 noon on that day was suggested as an appropriate one in the light of that fact. I accept that an order for that period of time (just short of seventytwo hours) is reasonable in this case. I also accept that it is reasonable for the Prosecutor herself, in her discretion, to notify the Secretary-General of the United Nations and the Governments whose personnel or staff are at risk of reprisals or intimidation of the presentation and confirmation of the indictment and the issue of the arrest warrants, so that precautionary security measures may be taken for the safety of those so at risk (including the staff of the humanitarian agencies earlier referred to). I will make such orders accordingly.

37. As to the third order sought – that there be no disclosure of the accompanying material until the arrest of all the accused, the Prosecutor says that the enormous power which the accused, together and individually, wield over the territories in which many of the witnesses still live puts those witnesses in grave danger of physical harm if they are identified before all of the accused are arrested. I am prepared to make such an order at this stage. It may need to be varied if one or more but not all of the accused are arrested, when steps might be devised at that stage for the protection of the identity of the witnesses so that the accused who have been arrested can be made aware of the case against them.

#### **IV Disposition**

38. For the foregoing reasons,
1. I confirm each count of the indictment submitted by the Prosecutor against each accused.
  2. I make the following orders:
    - (1) That certified copies of the warrants of arrest for each accused be transmitted by the Registrar to –

- (a) the Federal Republic of Yugoslavia, addressed to Mr Zoran Knežević, Federal Minister of Justice, Belgrade;
- (b) all States Members of the United Nations;
- (c) the Confederation of Switzerland; and
- (d) the Prosecutor,

as soon as practicable after 12 noon (The Hague time) on Thursday, 27 May 1999, but not before, unless otherwise ordered.

- (2) That the Registrar is not required to have a copy of the indictment or a statement of the rights of the accused accompany the certified copies of the warrants transmitted in accordance with the previous order.
  - (3) That, with the exception that the Prosecutor may, in her discretion, notify the Secretary-General of the United Nations and the Governments whose personnel or staff are at risk of reprisals or intimidation, there be no disclosure of the indictment, the review and confirmation of the indictment, the arrest warrants or the Prosecutor's application dated 22 May 1999 during the period ending at 12 noon (The Hague time) on Thursday, 27 May 1999, unless otherwise ordered.
  - (4) That there be no disclosure of the supporting material forwarded by the Prosecutor pursuant to Rule 47(B) until the arrest of all of the accused.
  - (5) That all States Members of the United Nations make inquiries to discover whether the accused (or any of them) have assets located in their territory and, if so, adopt provisional measures to freeze such assets, without prejudice to the rights of third parties, until the accused are taken into custody.
3. I grant liberty to apply to me without further formal application for any variation of the orders made, at any time prior to 12 noon on Thursday, 27 May 1999.

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

Dated this 24<sup>th</sup> day of May 1999  
At The Hague  
The Netherlands

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Judge David Hunt

[Seal of the Tribunal]