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(1543-1548)

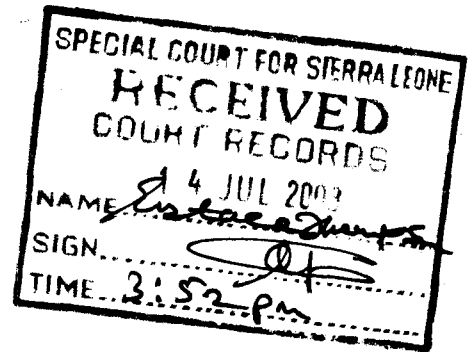
THE SPECIAL COURT FOR SIERRA LEONE

IN THE TRIAL CHAMBER

Before: Judge Bankole Thompson, Presiding Judge
Judge Pierre Boutet
Judge Benjamin Mutanga Itoe

Registrar: Mr. Robin Vincent

Date filed: 14th July 2003



THE PROSECUTOR

Against

SAM HINGA NORMAN

CASE NO SCSL-2003-08-PT

**REPLY - DEFENCE PRELIMINARY MOTION BASED ON LACK OF
JURISDICTION: COMMAND RESPONSIBILITY**

OFFICE OF THE PROSECUTOR:

Mr. Desmond de Silva, Chief of Prosecutions
Mr. Luc Cote, Chief of prosecutions
Mr. Walter Marcus-Jones, Senior Appellate Counsel
Mr. Abdul Tejan-Cole, Appellate Counsel
Mr. Tom Perriello, Appellate Advisor

Defence Counsel:

Mr. James Blyden Jenkins-Johntson
Mr. Sulaiman Banja Tejan-Sie II

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THE PROSECUTOR

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SAM HINGA NORMAN

CASE NO SCSL-2003-08-PT

REPLY- PRELIMINARY MOTION BASED ON LACK OF JURISDICTION:

COMMAND RESPONSIBILITY

I. INTRODUCTION

1. The Defence files this reply to the response to the Defence preliminary motion entitled "Preliminary Motion Based on lack of Jurisdiction: Command Responsibility" (the "**Second Preliminary Motion**"), filed on behalf of Sam Hinga Norman (the "**Accused**") on 26th June 2003.
2. The Second Preliminary Motion requests the Trial Chamber to declare that it lacks jurisdiction to try the Accused on the basis of command responsibility, on the ground that command responsibility is not a basis for liability in internal armed conflicts. For the reasons given below, the Response to the Second Preliminary Motion should be dismissed in its entirety.

II. ARGUMENT

- A.** Should the Appeals Chamber find in favour of the Defence in Hadzihasanovic then the Defence should be able to reserve the right to revisit this point notwithstanding the fact that the time set out for preliminary motion would have expired. The question is of such importance and whilst the court is not bound by decisions of the ICTY, they can serve as persuasive authority.

CUSTOMARY INTERNATIONAL LAW

B. The doctrine of command responsibility cannot be said to be part of customary international law. It is hereby submitted that its inclusion in Additional Protocol I and its exclusion from Additional Protocol II was nothing less than deliberate. The original parties to that agreement in their wisdom omitted command responsibility in the very agreement which deals with internal armed conflict in Additional Protocol II. Furthermore this issue has been the subject of only one judicial decision that is the Hadzihasanovic jurisdiction decision and the Prosecution contend that the decision at the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) is not binding on this Court. Using the Prosecution's own argument the Hadzihasanovic is not authority to support its assertion that command responsibility forms part of customary international law.

MISCELLANEOUS

C1. The defence relies on the reasons given in A above. The importance of the decision in international law is of such enormity that the pending decision of the appeals Chamber at the ICTY ought not to be side stepped and should be awaited.

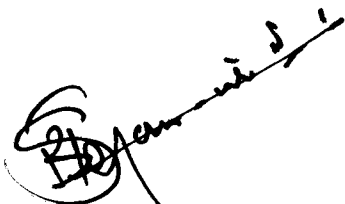
Were the ICTY and the Special Court to produce differing judgements on what is effectively the same issue and an issue that is likely to face further International Tribunals, the result would be disastrous both for international justice and the fast evolving new jurisprudence in international criminal law.

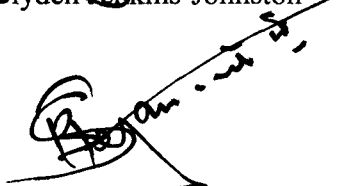
2. The defence refutes the insinuation that the four separate preliminary motions were an effort to circumvent the practice direction.

3. For the foregoing reasons the prosecution's response ought to be dismissed in its entirety.

Freetown, 14th July 2003

For the Defence


for James Blyden Jenkins-Johnston


Sulaiman Banja Tejan-Sie

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Court Management Support – Court Records

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Date:	14 July 2003	Case Name:	The Prosecutor v. Norman
		Case No:	SCSL-2003-08-PT
To:	<p>OTP Γ D. Crane, Prosecutor Γ D. De Silva, Deputy Prosecutor Γ Luc Cote, Chief of Prosecutions Γ Trial Attorney in charge of case: _____, received by _____ (signature)</p> <p>DEFENSE Γ Accused: _____ Γ Lead Counsel: __Jenkins-Johnson_____ (name) Γ In Freetown _____ (signature) Γ Fax Number: _____ Γ Co-Counsel: _Tejan-Sie II_____ (name) Γ In Freetown _____ (signature) Γ Fax Number: _____</p> <p>CHAMBERS: x Trial Chamber Γ Appeals Chambers</p>		
From:	Γ Listing Officer _____ Γ _____ Γ _____ Γ _____ Γ _____		
CC:	Γ _____ Γ _____ Γ _____ Γ _____ Γ _____ Γ _____ Γ _____		
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Document(s):

Dated: 14 July 2003

Defence Reply to Prosecution Response to the Second Preliminary Motion: Command Responsibility

Reason:

- Article 5: Mis-delivered to the Court Management Section
- Article 7 : Format of Motions and other processes
- Article 8 : Lengths and sizes of briefs and others
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- Article 11: Urgent measures must be marked URGENT
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