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27.11.1997  
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UNITED NATIONS  NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

ICTR  
CRIMINAL REGISTRY  
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CHAMBRE I - CHAMBER I

OR: FR

Before: Judge Laity Kama. Presiding Judge  
Judge Lennart Aspegren  
Judge Navanethem Pillay

Registry: Mr. Frederik Harhoff

Decision of: 19 November 1997

THE PROSECUTOR  
VERSUS  
JEAN-PAUL AKAYESU

Case No. ICTR-96-4-T

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DECISION ON THE MOTION TO SUBPOENA A WITNESS

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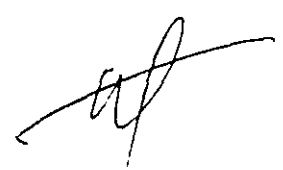
Office of the Prosecutor :

Mr. Pierre-Richard Prosper  
Ms. Sara Darehshori

Counsel for the Defence:

Mr. Nicolas Tiangaye  
Mr. Patrice Monthé

JM/Decision/Dallaire.eng/Eng  
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Case No. ICTR-96-4-T

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "TRIBUNAL")**

SITTING as Trial Chamber I, composed of Judge Laity Kama, Presiding Judge, Judge Lennart Aspegren and Judge Navanethem Pillay;

HAVING RECEIVED from the Defence a motion dated 11 November 1997 and filed the same day, requesting the Tribunal to subpoena Major-General Roméo Dallaire, a Canadian national and former Commander-in-Chief of the United Nations Assistance Mission in Rwanda (UNAMIR), as a witness for the defence in the case of the Prosecutor versus Jean-Paul AKAYESU;

HAVING TAKEN COGNIZANCE of a brief in reply filed by the Prosecutor on 12 November 1997 informing the Chamber that she had no objection to the motion by the Defence requesting the appearance of General Dallaire;

HAVING HEARD the parties during the hearing held on 19 November 1997;

**AFTER HAVING DELIBERATED,**

WHEREAS under the terms of Rule 54 of the Rules of Procedure and Evidence ("the Rules")  
*"At the request of either party or proprio motu, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial."* ;


WHEREAS the Defence filed a motion on 11 November 1997 for General Dallaire to be subpoenaed in the case of the Prosecutor versus Jean-Paul Akayesu;

WHEREAS in the said motion, the Defence explained that by its Resolution 872 of 5 October 1993, the United Nations Security Council created UNAMIR; that General Dallaire was appointed Commander-in-Chief of this multinational force; that the United Nations peacekeeping troops were in Rwanda when the massacres began following the attack that cost the lives of President Juvénal Habyarimana and his Burundian counterpart, Cyprien Ntaryamira; that hearing General Dallaire would serve to enlighten the Defence on the Rwandan tragedy;

WHEREAS in support of its motion, the Defence produced copies of two letters dated 9 April 1997, written by Mr. Paul Szasz (Acting Director and Deputy to the Under-Secretary-General, Office of the Legal Counsel) and addressed to the Defence, and by Mr. Hans Corell (Under-Secretary-General for Legal Affairs, The Legal Counsel) and addressed to Mr. Robert R. Fowler (Permanent Representative of Canada to the United Nations in New York) respectively;

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WHEREAS the said letters show that the Secretary-General of the United Nations would not object to General Dallaire testifying as a witness, subject to the immunity he enjoyed at the time of the events insofar as he was officially representing the United Nations; WHEREAS, however, the United Nations could waive the immunity if the Tribunal ordered General Dallaire to appear as a witness;

WHEREAS the Prosecutor, in response to the Defence motion, submitted a short brief informing the Chamber that she was not opposed to this request made by the Defence and confirmed this position during the hearing of 19 November 1997;

WHEREAS the Tribunal, seeking to ensure full respect of the rights of the accused to a proper defence, is of the opinion that the request submitted by the Defence is justified and that the said request should be granted:

**FOR THESE REASONS,**


**THE TRIBUNAL**

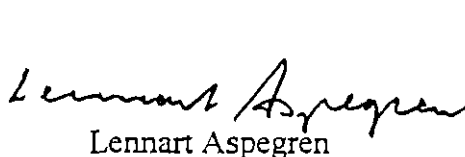
**DECLARES** the motion by the Defence to be admissible and well-founded;

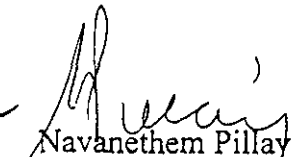
**SUMMONS** Major-General Roméo Dallaire to appear as a witness for the defence in the ongoing legal proceedings against Jean-Paul Akayesu;

**REQUESTS** the Secretary-General of the United Nations, consequently, to waive the immunity he enjoys by virtue of his position as former Commander-in-Chief of UNAMIR.

Arusha, 19 November 1997

  
Laiti Kama  
Presiding Judge

  
Lennart Aspegren  
Judge

  
Navanethem Pillay  
Judge

