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STATUTORY INSTRUMENTS

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**1997 No. 281**

**UNITED NATIONS**

**The United Nations (International Tribunals) (Former  
Yugoslavia and Rwanda) (Guernsey) Order 1997**

<i>Made</i>	- - - -	<i>12th February 1997</i>
<i>Laid before Parliament</i>		<i>13th February 1997</i>
<i>Coming into force</i>	- -	<i>12th March 1997</i>

At the Court at Buckingham Palace, the 12th day of February 1997

Present,

The Queen's Most Excellent Majesty in Council

Whereas under Article 41 of the Charter of the United Nations the Security Council of the United Nations has, by certain resolutions adopted on 25th May 1993 and 8th November 1994, called upon Her Majesty's Government in the United Kingdom and all other States to apply certain measures to give effect to decisions of that Council in relation to the former Yugoslavia and Rwanda:

Now, therefore, Her Majesty, in exercise of the powers conferred on Her by section 1 of the United Nations Act 1946(1), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

**Citation, commencement and extent**

1.—(1) This Order may be cited as the United Nations (International Tribunals) (Former Yugoslavia and Rwanda) (Guernsey) Order 1997 and shall come into force on 12 March 1997.

(2) This Order extends to Guernsey.

**Interpretation**

2.—(1) In this Order, unless the context otherwise requires—

“the Bailiff” means the Bailiff, the Deputy Bailiff, a lieutenant Bailiff or the Juge Délégué;

“competent court” means—

(a) in relation to the Island of Alderney, the Court of Alderney,

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(1) 1946 c. 45.

- (b) in relation to the Island of Sark, the Court of the Seneschal of Sark,
- (c) in relation to elsewhere in Guernsey, the Magistrate's Court set up under the Magistrate's Court (Guernsey) Law, 1954;

"the Court of Appeal" means the court established by the Court of Appeal (Guernsey) Law, 1961;

"delivery order" means—

- (a) an order for delivery up made under article 6 or under that article as applied by article 5, including one made following an application under article 7,
- (b) an order for delivery up made under article 8(4) or article 9(5);

"Guernsey" means the Bailiwick of Guernsey;

"Her Majesty's Procureur" includes Her Majesty's Comptroller;

"the International Tribunals" means—

- (a) the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 established by Resolution 827 (1993) of the Security Council of the United Nations including any of the organs of that Tribunal referred to in Article 11 of the Statute;
- (b) the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring states, between 1st January 1994 and 31st December 1994, established by Resolution 995 (1994) of the Security Council of the United Nations including any of the organs of that Tribunal referred to in Article 10 of the Statute;

"International Tribunal crime" means a crime in respect of which the International Tribunal specified in sub-paragraph (a) or, as the case may require, (b) of the definition of "the International Tribunals" above has jurisdiction under the Statute;

"items subject to legal professional privilege" means—

- (a) communications between a professional legal adviser and his client;
- (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings,

which would in legal proceedings be protected from disclosure by virtue of any rule of law relating to the confidentiality of communications;

"national court" means a court in Guernsey;

"officer of police" means—

- (a) a member of the salaried police force of the Island of Guernsey,
- (b) in relation to the Islands of Guernsey, Herm and Jethou, and within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,
- (c) in relation to the Island of Alderney, a member of any police force which may be established by the States of Alderney and, within the limits of his jurisdiction, a special constable appointed by the Court of Alderney under section 15 of the Government of Alderney Law, 1987, and
- (d) in relation to the Island of Sark, the Constable and the Vingtenier;

"premises" includes any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft;

- (b) any offshore installation; and
- (c) any tent or moveable structure;

“prisoner” means a person serving a sentence in a prison or other institution in Guernsey;

“the Prosecutor” means the Prosecutor responsible under the Statute for the investigation and prosecution of persons in accordance with the Statute and the Rules;

“the Registrar” means the Registrar appointed under the Statute by the Secretary-General of the United Nations;

“the Rules” means the rules of procedure and evidence of the Tribunal specified in sub-paragraph (a) or, as the case may require, (b) of the definition of “the International Tribunals” above;

“the Statute” means—

- (a) in relation to the International Tribunal specified in sub-paragraph (a) of the definition of “the International Tribunals” above, the Statute of that Tribunal adopted by the Security Council of the United Nations, the text of which is set out in the Schedule to the United Nations (International Tribunal) (Former Yugoslavia) Order 1996(2);
- (b) in relation to the International Tribunal specified in sub-paragraph (b) of that definition, the Statute of that Tribunal adopted by the Security Council of the United Nations, the text of which is set out in the Schedule to the United Nations (International Tribunal) (Rwanda) Order 1996(3);

“transfer warrant” means a warrant issued under article 9(2).

(2) Any reference in this Order to an Act of Parliament or to a provision of an Act of Parliament is a reference to that Act or provision as it has effect in Guernsey.

(3) A reference in this Order to arrangements by the Secretary of State with the Registrar or with another state is a reference to arrangements of a general nature or to arrangements relating to a particular case or group of cases.

(4) In this Order, unless the context otherwise requires, any reference to a numbered article is a reference to the article which bears that number in this Order, and any reference to a numbered paragraph in an article of this Order is a reference to the paragraph bearing that number in that article.

### **Purpose of this Order**

**3.—**(1) This Order has effect for the purpose of enabling Guernsey to co-operate with the International Tribunals in the investigation and prosecution of persons accused of committing International Tribunal crimes and the punishment of persons convicted of such crimes.

(2) In particular, but without prejudice to the generality of paragraph (1), this Order has effect—

- (a) to provide for the arrest and delivery to the International Tribunal concerned of persons accused or convicted of an International Tribunal crime and for the arrest in cases of urgency of persons suspected of having committed an International Tribunal crime,
- (b) to secure the attendance before the International Tribunals of persons as witnesses or to assist in investigations,
- (c) to give effect to requests by the International Tribunals for the discontinuance of certain proceedings in courts constituted under the law of Guernsey,
- (d) to provide the International Tribunals with other forms of assistance in the investigation and prosecution of International Tribunal crimes,

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(2) [S.I. 1996/716](#).  
(3) [S.I. 1996/1296](#).

- (e) to enforce orders of the International Tribunals for the preservation or restitution of property and to give effect to requests to determine the ownership of property,
- (f) to make provision for the immunities and privileges of the International Tribunals and persons connected therewith.

(3) Nothing in this Order shall be construed as preventing the provision of assistance to the International Tribunals otherwise than under this Order.

## PART I

### ARREST AND DELIVERY OF PERSONS TO THE INTERNATIONAL TRIBUNALS

#### **Endorsement of warrants of arrest**

4.—(1) Where the Secretary of State receives from either of the International Tribunals a warrant of arrest issued by that International Tribunal in respect of a person who is believed to be in or on his way to Guernsey (including such a warrant issued or received before the commencement of this Order), the Secretary of State shall transmit the warrant to the Bailiff who shall, subject to paragraph (2), endorse the warrant for execution in any part of Guernsey.

(2) A warrant for the arrest of a person convicted by one of the International Tribunals shall not be endorsed under this article unless the purpose of the arrest is to enable him—

- (a) to be brought before that International Tribunal, or
- (b) to be taken to a place where he is to undergo imprisonment under a sentence of that International Tribunal.

#### **Provisional warrants of arrest**

5.—(1) Where the Secretary of State—

- (a) receives a request from either of the International Tribunals for the arrest of a person who is believed to be in or on his way to Guernsey and who is suspected or accused of having committed an International Tribunal crime or who has been convicted by that International Tribunal, and
- (b) the request is not accompanied by a warrant but is made on the grounds of urgency,

the Secretary of State shall transmit the request to an officer of police and direct the officer of police to apply for a warrant for the arrest of that person.

(2) On an application by an officer of police stating on oath that he has reason to believe—

- (a) that a request has been made on grounds of urgency by one of the International Tribunals for the arrest of a person who is suspected or accused of having committed an International Tribunal crime or who has been convicted by that International Tribunal,
- (b) that the person concerned is in or on his way to Guernsey, and
- (c) that the purpose of the arrest is to enable the person concerned to be brought before that International Tribunal or, as the case may be, to be taken to a place where he is to undergo imprisonment under a sentence of that International Tribunal,

the Bailiff may issue a warrant (“a provisional warrant”) for the arrest of that person, and shall if he issues such a warrant notify the Secretary of State that he has done so.

(3) A person arrested under a provisional warrant shall be brought before a competent court as soon as is practicable, and—

- (a) if an endorsed warrant in respect of that person is produced to the court, the court shall proceed as if he had been arrested under that warrant, and article 6 shall apply accordingly,
- (b) if no such warrant is produced, the court may, pending the production of the warrant, remand him for not more than 18 days at a time, so however that the total period of remands does not exceed 40 days in all.

(4) If at any time an endorsed warrant relating to a person remanded under this article is produced to the court which remanded him, the court shall determine the period of remand and the person shall thereafter be treated as if arrested at that time under the endorsed warrant.

(5) If an endorsed warrant relating to a person remanded under this article is not produced within the period of the remand (including any extension of that period) to the court which remanded him, he shall be discharged by the court.

(6) In this article and in article 6 “endorsed warrant” means a warrant of arrest issued by the International Tribunal which made the request referred to in paragraph (1), endorsed in accordance with article 4.

#### **Proceedings before competent court after arrest**

6.—(1) So soon as is practicable after a person is arrested under an endorsed warrant, he shall be brought before a competent court; and the court shall, subject to the following provisions of this article, make the appropriate order and remand him until it is executed.

(2) Where the purpose of the arrest is to enable the person to be brought before the International Tribunal which issued the warrant, the appropriate order is that the person be delivered up into the custody of that International Tribunal in accordance with arrangements made by the Secretary of State with the Registrar.

(3) Where the purpose of the arrest is to enable the person to be taken to a place where he is to undergo imprisonment under a sentence of that International Tribunal, the appropriate order is that the person be delivered up into the custody of the state where that place is situated in accordance with arrangements made by the Secretary of State with that state.

(4) If it is shown to the satisfaction of the competent court that other criminal proceedings (not being proceedings under the Extradition Act 1989(4) or the Backing of Warrants (Republic of Ireland) Act 1965(5)) have been instituted in respect of the arrested person in a national court and that those proceedings—

- (a) have not been finally determined so far as they relate to conduct which would not constitute an International Tribunal crime, or
- (b) have not been discontinued (whether in pursuance of this Order or otherwise) so far as they relate to conduct which would constitute an International Tribunal crime,

the proceedings under this article shall be adjourned and the competent court may remand the arrested person until the other criminal proceedings have been finally determined or have been discontinued, as the case may be.

(5) An order shall not be made under paragraph (1) if it is shown to the satisfaction of the competent court—

- (a) that the document purporting to be a warrant issued by the International Tribunal concerned is not such a warrant or that it has not been endorsed in accordance with article 4, or
- (b) that the person brought before the court is not the person named or described in the warrant, or

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(4) 1989 c. 33.

(5) 1965 c. 45.

- (c) where the person has not been convicted by the International Tribunal concerned of the offence specified in the warrant or any accompanying document, that the offence is not an International Tribunal crime, or
  - (d) notwithstanding that the offence is an International Tribunal crime, that the person would if he were charged with it in Guernsey be entitled to be discharged under any rule of law relating to previous acquittal or conviction.
- (6) If the competent court refuses to make an order under paragraph (1), it shall make an order remanding the person arrested until the Secretary of State has been notified of its decision and of the grounds thereof; and—
- (a) if the Secretary of State on being so notified immediately informs the court that he intends to question the decision on the ground that it is wrong in law, the order remanding the person arrested shall continue to have effect, except as otherwise provided by this Order, so long as the case is pending,
  - (b) if the court is not so informed, the person arrested shall be discharged.
- (7) Nothing in this Order shall be construed as requiring a competent court to be satisfied that there is evidence sufficient to warrant the trial of an accused person by the International Tribunal concerned.
- (8) Where a competent court makes an order under paragraph (1) in respect of a person—
- (a) who has been committed under section 9 of or paragraph 7 of Schedule 1 to the Extradition Act 1989, or
  - (b) who has been ordered to be delivered up under section 2(1) of the Backing of Warrants (Republic of Ireland) Act 1965, or
  - (c) in respect of whom an order, other than a sentence of imprisonment or detention, has been made in criminal proceedings which have been finally determined,

it may make such other order as is necessary to give effect to the endorsed warrant; and such other order may suspend or revoke a warrant, sentence (not being a sentence of imprisonment or detention) or other order made by that or any other court or any magistrate or other judicial officer in respect of the person.

### **Appeal to the Royal Court**

7.—(1) If a competent court refuses to make a delivery order in relation to a person under article 6, the Secretary of State may appeal against the decision to the Royal Court on the ground that it is wrong in law.

(2) Notice of appeal shall be given in writing by the Secretary of State to Her Majesty's Greffier and to the person to whom the warrant relates or his Advocate within 14 days after the day on which the decision appealed against is given and state the general grounds of such appeal.

(3) On the termination of the hearing of an appeal under this article the Royal Court shall have power—

- (a) to reverse the decision of the competent court and make the appropriate order under article 6(2) or (3), as the case may be, or
- (b) to dismiss the application.

(4) If the Royal Court dismisses the application, the Secretary of State may, with the leave of the Court of Appeal, appeal to the Court of Appeal; and section 7 of the Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988 shall apply in relation to the appeal.

(5) An order for the remand of an arrested person which continues to have effect by virtue of article 6(6) shall cease to have effect if—

- (a) notice of appeal under paragraph (1) is not given within the period mentioned in paragraph (2);
- (b) the Royal Court dismisses the application and the Secretary of State does not immediately apply for leave to appeal to the Court of Appeal, or
- (c) the Court of Appeal refuses leave to appeal or dismisses the appeal.

### **Securing attendance of person as witness or to assist in investigations**

**8.—**(1) This article applies where the Secretary of State receives from either of the International Tribunals an order for the attendance before that International Tribunal of a person in Guernsey who—

- (a) has been served with a summons or other process under article 17 requiring him to appear before that International Tribunal for the purpose of giving evidence or assisting an investigation or for both purposes, and
- (b) has failed to comply with the process,

and the order is accompanied by a request for assistance in enforcing it.

(2) The Secretary of State shall transmit the order to the Bailiff, who shall issue a warrant for the arrest of the person named or described in the order.

(3) A person arrested in pursuance of a warrant issued under paragraph (2) shall be brought before a competent court as soon as practicable.

(4) If the competent court is satisfied that—

- (a) the person arrested is the person named or described in the warrant and in the order of the International Tribunal concerned, and
- (b) he has been served with a summons or other process under article 17 requiring him to appear before that International Tribunal, and
- (c) he has failed to comply with the process,

the court shall order him to be delivered up, in accordance with arrangements made by the Secretary of State with the Registrar, into the custody of that International Tribunal and shall remand him until the order has been executed.

(5) If the competent court does not make an order under paragraph (4) and the person arrested is not remanded, the court shall order his discharge.

### **Transfer of prisoner to give evidence or to assist in investigations**

**9.—**(1) This article applies where the Secretary of State receives a request from either of the International Tribunals for the transfer of a prisoner into the custody of that International Tribunal for the purpose of giving evidence or assisting an investigation or for both purposes.

(2) If the prisoner consents to the transfer, the Secretary of State shall issue a warrant (“a transfer warrant”) requiring the prisoner to be delivered up, in accordance with arrangements made by the Secretary of State with the Registrar, into the custody of the International Tribunal which made the request.

(3) The consent of a prisoner for the purposes of paragraph (2) may be given either—

- (a) by the prisoner himself, or
- (b) in circumstances in which it appears to the Secretary of State inappropriate, by reason of the prisoner’s physical or mental condition or his youth, for him to act for himself, by a person appearing to the Secretary of State to be an appropriate person to act on his behalf,

but a consent once given shall not be capable of being withdrawn after the issue of the transfer warrant.

(4) If the prisoner, or the person acting on his behalf, refuses consent to the transfer, the prisoner shall, as soon as is practicable, be brought before a competent court.

(5) If the competent court is satisfied that the prisoner is the person named or described in the request referred to in paragraph (1), the court shall order him to be delivered up, in accordance with arrangements made by the Secretary of State with the Registrar, into the custody of the International Tribunal which made the request.

(6) If an order is made under paragraph (5) the prisoner shall be remanded until it has been executed; and if no such order is made the prisoner shall be transferred in custody to the place where he is liable to be detained under the sentence to which he is subject.

(7) This article applies to a person in custody awaiting trial or sentence and a person committed to prison for default in paying a fine as it applies to a prisoner and a reference in this article to a sentence shall be construed accordingly.

### **Review of orders of competent court**

**10.**—(1) Where a delivery order is made by a competent court in respect of any person—

- (a) he shall not be delivered up under the order until the expiration of the period of 15 days beginning with the date on which the order is made, unless he gives notice in accordance with paragraph (3) that he consents to his earlier delivery up;
- (b) if within that period an application for review is made by him under paragraph (2), he shall not be so delivered up while proceedings on the application are pending;

and the competent court shall inform him that he will not be delivered up under the order during the said period of 15 days unless he gives notice as aforesaid, and that he has the right to make an application for review under paragraph (2).

(2) A delivery order made by the competent court may be reviewed by the Royal Court in the same manner as an appeal against a conviction before the competent court.

(3) Where notice is given by a person consenting to his earlier delivery up—

- (a) the notice shall be signed in the presence of a Jurat or, in Sark, of the Seneschal;
- (b) a notice given by a person in custody shall be delivered to the governor of the prison;
- (c) a notice given by a person on bail shall be delivered to the Chief Officer of Police;

and the delivery of a notice given by a person on bail shall be effective if the notice is sent by post in a registered letter or by recorded delivery service addressed to the Chief Officer of Police.

(4) It shall be the duty of the person receiving any such notice to ensure that the notice is attached to the order for the delivery up of the person concerned.

### **Remand and bail**

**11.** Where by virtue of this Order a court has power to remand a person, the court may order the person—

- (a) to be detained in custody; or
- (b) to be admitted to bail, that is to say, by taking from him a recognisance, with or without sureties, conditioned for his appearance; or
- (c) to be released on oath for his appearance;

but nothing in this article shall be taken as authorising the admission to bail of a person who is serving a term of imprisonment or detention to which he has been sentenced by a national court.



### **Discharge of persons not delivered up**

12.—(1) Where either of the International Tribunals informs the Secretary of State that a person arrested in pursuance of this Order is no longer required to be delivered up into its custody or, as the case may be, into the custody of a state for imprisonment there, the Secretary of State shall notify the Bailiff; and the Bailiff shall, on receipt of such notification, make an order for the discharge of the person arrested.

(2) If a person in respect of whom a delivery order has been made is not delivered up under the order within 40 days after it was made, the Royal Court, upon application by or on behalf of that person, may, unless reasonable cause is shown for the delay, order him to be discharged.

(3) The Secretary of State shall revoke a transfer warrant if he is informed, before it has been executed, that the International Tribunal concerned no longer requires the attendance of the prisoner to whom the warrant relates.

## **PART II**

### **DISCONTINUANCE OF PROCEEDINGS IN NATIONAL COURTS**

#### **Discontinuance of relevant proceedings**

13.—(1) This article applies where the Secretary of State receives from either of the International Tribunals a request in accordance with the Statute and the Rules that a national court should defer to the competence of that International Tribunal by discontinuing proceedings to which the request relates.

(2) The Secretary of State shall transmit the request to the court in which the proceedings are taking place by a notice addressed to the appropriate person; and for the purposes of this paragraph the appropriate person is—

- (a) in the case of a court in the Island of Guernsey, Her Majesty's Greffier,
- (b) in the case of the Court of Alderney, the Clerk of the Court of Alderney,
- (c) in the case of the Court of the Seneschal of Sark, the Greffier.

(3) If the court to which a request is transmitted is satisfied that—

- (a) the request relates to relevant proceedings within the meaning of this article, and
- (b) in the case of proceedings which are relevant proceedings by virtue of paragraph (5)
  - (a), those proceedings are in respect of conduct which would constitute an International Tribunal crime,

the court shall order the discontinuance of the proceedings and may make such other orders as are appropriate to give effect to the request, including the revocation of a warrant of arrest issued in connection with the proceedings.

(4) For the purpose of considering a request transmitted to it in pursuance of this article, the court may adjourn the proceedings for such period or periods, and on such conditions, as it deems fit; and if the court is not satisfied as to the matters specified in paragraph (3), it shall make no order for the discontinuance of the proceedings.

(5) Relevant proceedings within the meaning of this article are—

- (a) proceedings in a competent court or the Royal Court in connection with an indictable offence of which the accused has not yet been convicted,

- (b) proceedings under the Extradition Act 1989<sup>(6)</sup> relating to a person in respect of whom an arrest warrant has been issued pursuant to section 8 of or paragraph 5 of Schedule 1 to that Act or proceedings in connection with such proceedings, or
  - (c) proceedings under the Backing of Warrants (Republic of Ireland) Act 1965<sup>(7)</sup> relating to a person in respect of whom a warrant has been endorsed pursuant to section 1 of that Act or a provisional warrant has been issued pursuant to section 4 of that Act or proceedings in connection with such proceedings.
- (6) The discontinuance of any proceedings in pursuance of a request by either of the International Tribunals shall not of itself prevent—
- (a) the institution of fresh proceedings in a national court, or
  - (b) the issue under section 7 of the Extradition Act 1989 of a fresh authority to proceed or the making of a fresh order by the Secretary of State under paragraph 4 of Schedule 1 to that Act, or
  - (c) the endorsement of a fresh warrant or the issue of a fresh provisional warrant under the Backing of Warrants (Republic of Ireland) Act 1965,
- in respect of the same offence.

## PART III

### OTHER FORMS OF ASSISTANCE TO THE INTERNATIONAL TRIBUNALS

#### **Transmission of information and records**

**14.**—(1) This article applies where the Secretary of State receives from either of the International Tribunals—

- (a) a request for information relating to any relevant proceedings within the meaning of article 13 or to any investigation of conduct which would constitute an International Tribunal crime, or
- (b) as part of a request mentioned in article 13(1), a request for the forwarding of the results of any investigation of conduct relating to relevant proceedings within the meaning of article 13 and a copy of the court's record.

(2) The Secretary of State shall take such steps as appear to him to be appropriate to secure the production to him of the information or record requested and on its production to him shall transmit it to the International Tribunal which made the request.

#### **Search etc. for material relevant to International Tribunal investigation**

**15.**—(1) If, on an application made by an officer of police, the Bailiff is satisfied—

- (a) that proceedings have been instituted for the indictment of a person by either of the International Tribunals or that a person has been arrested in the course of an investigation by either of the International Tribunals, and
- (b) that the conduct constituting the International Tribunal crime which is the subject of the proceedings or investigation would constitute an offence punishable by imprisonment if it had occurred in any part of Guernsey, and

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(6) 1989 c. 33.

(7) 1965 c. 45.

- (c) that there are reasonable grounds for suspecting that there is on premises in Guernsey occupied or controlled by that person evidence relating to the International Tribunal crime other than items subject to legal professional privilege,

he may issue a warrant authorising an officer of police to enter and search those premises and to seize any such evidence found there.

(2) The power to search conferred by paragraph (1) is only a power to search to the extent that it is reasonably required for the purpose of discovering such evidence as is there mentioned.

(3) No application for a warrant shall be made by virtue of paragraph (1) except in pursuance of a direction given by the Secretary of State in response to a request received from one of the International Tribunals, and any evidence seized by an officer of police by virtue of this article shall be furnished by him to the Secretary of State for transmission to the International Tribunal which made the request.

(4) If in order to comply with the request it is necessary for any such evidence to be accompanied by any certificate, affidavit or other verifying document the officer of police shall also furnish for transmission such document of that nature as may be specified in the direction given by the Secretary of State.

(5) Where the evidence consists of a document the original or a copy shall be transmitted, and where it consists of any other article the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the request.

#### **Evidence for International Tribunal use**

**16.**—(1) This article applies where the Secretary of State receives from either of the International Tribunals a request for assistance in obtaining evidence in Guernsey in connection with proceedings that have been instituted before that International Tribunal or an investigation that is being carried on by it.

(2) If the Secretary of State is satisfied—

- (a) that an International Tribunal crime has been committed or that there are reasonable grounds for suspecting that such a crime has been committed, and
- (b) that proceedings in respect of that crime have been instituted before the International Tribunal or that an investigation is being carried on by it,

he may, if he thinks fit, institute proceedings before the Royal Court for the purpose of receiving such of the evidence to which the request relates as may appear to the court to be appropriate for the purpose of giving effect to the request.

(3) In this article “evidence” includes documents and other articles.

(4) The Schedule to this Order has effect for the purpose of proceedings before the Royal Court pursuant to this article.

(5) In proceedings before the Royal Court, it may, if it thinks it necessary in the interests of justice, direct that the public be excluded from the court.

(6) The Royal Court shall ensure that a register is kept of the proceedings which indicates in particular—

- (a) which persons with an interest in the proceedings were present,
- (b) which of those persons were represented and by whom, and
- (c) whether any of those persons were denied the opportunity of cross-examining a witness as to any part of his testimony,

but save as authorised by the Secretary of State or with the leave of the court, the register shall not be open to inspection.

(7) The evidence received by the Royal Court, together with a copy of the register of the proceedings, shall be furnished to the Secretary of State for transmission to the International Tribunal which made the request.

(8) If in order to comply with the request it is necessary for the evidence or deposition to be accompanied by any certificate, affidavit or other verifying document, the court shall also furnish for transmission such document of that nature as may be specified in the notice instituting the proceedings before the Royal Court pursuant to this article.

(9) Where evidence consists of a document the original or a copy shall be transmitted, and where it consists of any other article the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the request.

### **Service of process**

17.—(1) This article applies where the Secretary of State receives from either of the International Tribunals—

- (a) a summons or other process requiring a person (not being a prisoner) to appear before that International Tribunal for the purpose of giving evidence or assisting an investigation or for both purposes, or
- (b) a document notifying interested parties of a special hearing to determine the matter of restitution of specified property or the proceeds thereof and affording them the opportunity to justify a claim to the property or its proceeds,

together with a request for it to be served on a person in Guernsey.

(2) The Secretary of State may cause the process or document to be served by post or, if the request is for personal service, direct the Chief Officer of Police to cause it to be personally served on him.

(3) Service by virtue of this article of any process mentioned in paragraph (1)(a) imposes an obligation to comply with it; and any such process shall be accompanied by a notice stating the effect of this paragraph and of article 8 (securing attendance of person as witness or to assist in investigations).

(4) Any document mentioned in paragraph (1)(b) shall indicate that the person on whom it is served may wish to seek advice as to the possible consequences of failing to justify a claim.

(5) Where the Chief Officer of Police is directed under this article to cause any process or document to be served he shall after it has been served forthwith inform the Secretary of State when and how it was served and (if possible) furnish him with a receipt signed by the person on whom it was served; and if the Chief Officer of Police has been unable to cause the process or document to be served he shall forthwith inform the Secretary of State of that fact and of the reason.

### **Enforcement of orders for the preservation or restitution of property**

18.—(1) Where the Secretary of State receives from either of the International Tribunals—

- (a) an order for provisional measures for the preservation and protection of property or the proceeds of property, or
- (b) an order for the restitution of property or the proceeds of property,

and the property is, or, as the case may be, the proceeds are, believed to be in Guernsey, the Secretary of State shall append to the order a direction that it be registered for enforcement in Guernsey.

(2) The court shall register the order on the application of the person entitled to enforce it; but—

- (a) where it is shown that an order has been partly complied with at the date of application for its registration, the court shall register the order only so far as it has not been complied with at that date, and
  - (b) where, after the date of registration of an order, it is shown that the order had been partly or wholly complied with at that date, the court shall vary or cancel the registration of the order accordingly with effect from that date.
- (3) For the purposes of enforcement of an order registered under this article—
- (a) the order shall have the same force and effect,
  - (b) the court shall have in relation to its enforcement the same powers, and
  - (c) proceedings for or with respect to its enforcement may be taken,
- as if the court had originally made the order.
- (4) Where the International Tribunal concerned makes an order (a “suspending order”) that enforcement of a registered order be suspended, the suspending order shall, on its production to the court, be registered immediately; and—
- (a) the suspending order shall have effect as if it had been an order made by the court which stayed the execution of the original registered order for the same period and on the same conditions as are stated in the suspending order, and
  - (b) while the suspending order remains in force, no steps shall be taken to enforce the original registered order.
- (5) The reasonable costs and expenses of and incidental to the registration of an order under this article (including any variation or cancellation of the registration) shall be recoverable as if they were sums recoverable under the order.
- (6) In this article and article 19 “the court” means—
- (a) in the Island of Alderney, the Court of Alderney;
  - (b) in the Island of Sark, the Court of the Seneschal of Sark; and
  - (c) elsewhere in Guernsey, the Royal Court.

### **Proceedings to determine the ownership of property**

**19.** Where the Secretary of State receives a request from either of the International Tribunals to determine the ownership of property or the proceeds of property and the property is, or, as the case may be, the proceeds are, believed to be in Guernsey, he may make an application to the court for a decision as to the ownership of the property or proceeds.

### **Immunities and privileges**

**20.**—(1) The International Tribunals, the judges, the Prosecutor and his staff and the Registrar and his staff shall enjoy the like immunities and privileges (subject to any consequential modifications and adaptations) as are enjoyed by them in the United Kingdom as set out in the United Nations and International Court of Justice (Immunities and Privileges) Order 1974<sup>(8)</sup> (“the 1974 Order”) as follows—

- (a) the International Tribunals shall enjoy the immunities and privileges set out in articles 5 to 13 of the 1974 Order as they apply to the United Nations;
- (b) the judges, the Prosecutor and the Registrar shall enjoy the immunities and privileges set out in article 15(1) and (2) of the 1974 Order as they apply to high officers of the United Nations;

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<sup>(8)</sup> S.I. 1974/1261, amended by S.I. 1975/1209.

(c) staff of the Prosecutor and of the Registrar shall enjoy the immunities and privileges set out in article 16 of the 1974 Order as they apply to officers of the United Nations.

(2) Except in so far as in any particular case any immunity is waived by the International Tribunal concerned, counsel, advocates, solicitors and witnesses shall enjoy immunity from suit and legal process in respect of words spoken or written and documents or other evidence submitted by them before or to either of the International Tribunals.

## PART IV

### SUPPLEMENTARY PROVISIONS

#### Warrants of arrest

**21.**—(1) For the purposes of any enactment or rule of law relating to warrants of arrest but subject to any other provisions of this Order—

- (a) a warrant endorsed in accordance with article 4,
- (b) a provisional warrant issued under article 5, and
- (c) a warrant issued under article 8,

in Guernsey shall be treated as if it were a warrant for the arrest of a person charged with an offence committed in Guernsey.

(2) A warrant mentioned in paragraph (1) may be executed in any part of Guernsey and may be so executed by any officer of police.

(3) A person arrested under a warrant mentioned in paragraph (1) shall be deemed to continue in legal custody until, in accordance with this Order, he is brought before a competent court; and article 23 shall accordingly apply in relation to that person as it applies in relation to a person in respect of whom a delivery order or transfer warrant is in force.

#### Proceedings before a competent court under article 6, 8 or 9

**22.** For the purposes of proceedings under article 6, 8 or 9, a competent court shall have the like powers, including power to adjourn the case and meanwhile to remand the person arrested either in custody or on bail, as if the proceedings were summary proceedings in respect of an offence alleged to have been committed by that person.

#### Legal custody

**23.**—(1) A person in respect of whom a delivery order or transfer warrant is in force shall be deemed to be in legal custody at any time when, being in Guernsey or on board—

- (a) any vessel registered or required to be registered under any enactment for the time being in force in Guernsey,
- (b) any British-controlled aircraft or hovercraft (within the meaning of section 92 of the Civil Aviation Act 1982<sup>(9)</sup> or, as the case may be, that section as applied to hovercraft by virtue of provision made under the Hovercraft Act 1968<sup>(10)</sup>), or
- (c) any ship, aircraft or hovercraft belonging to, or exclusively employed in the service of, Her Majesty in right of the Government of the United Kingdom,

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<sup>(9)</sup> 1982 c. 16, as extended, and modified in its extension, to Guernsey by S.I. 1992/230.

<sup>(10)</sup> 1968 c. 59.

he is being taken under the order or warrant to or from any place or is being kept in custody under the order or warrant or, pending the execution of the order or warrant, on remand.

(2) A person authorised by or for the purposes of a delivery order or transfer warrant to take another person to or from any place or to keep that person in custody shall have all the powers, authority, protection and privileges—

- (a) of an officer of police in the part of Guernsey in which that person is for the time being, or
- (b) if he is outside Guernsey, of an officer of police in the part of Guernsey to or from which the other person is to be taken.

(3) If a prisoner or any person who is in custody by virtue of this Order escapes or is unlawfully at large, he may be arrested without warrant by an officer of police and taken to any place where or to which, by virtue of this Order, he is required to be or to be taken.

### **Custodial sentences under Guernsey law**

**24.**—(1) Where in pursuance of this Order a person who is a prisoner is delivered up into the custody of—

- (a) either of the International Tribunals, or
- (b) a state where he is to undergo imprisonment under a sentence of either of the International Tribunals,

the prisoner shall continue to be liable to complete any term of imprisonment or detention to which he has been sentenced by a national court; but there shall be counted towards the completion of that term any time during which he is in the custody of that International Tribunal or another state.

(2) Where in pursuance of this Order a court orders the discharge of a person who is a prisoner, the discharge is without prejudice to the liability of the prisoner to complete any term of imprisonment or detention to which he has been sentenced by a national court; and accordingly a prisoner to whom such an order relates and whose sentence has not expired shall be transferred in custody to the place where he is liable to be detained under the sentence to which he is subject.

(3) Where in pursuance of this Order a delivery order is made or transfer warrant is issued in respect of a person who is a prisoner, the order or warrant may include provision authorising the return of the prisoner into the custody of the Secretary of State—

- (a) in accordance with arrangements made by the Secretary of State with the Registrar, or
- (b) in the case of a prisoner taken to a place where he is to undergo imprisonment under a sentence of either of the International Tribunals, in accordance with arrangements made by the Secretary of State with the state where that place is situated,

and for his transfer in custody to the place where he is liable to be detained under the sentence to which he is subject.

### **Evidence**

**25.**—(1) For the purposes of this Order and any connected proceedings, an International Tribunal document may be taken to be such a document and to have been duly issued or made (and it shall accordingly be received in evidence without further proof) if—

- (a) it purports to have been issued or made in accordance with the Statute or the Rules or, in the case of a request to the Secretary of State, for the purposes of this Order, or
- (b) it is verified by a certificate purporting to be signed by the President of the International Tribunal concerned, the Registrar or the Prosecutor certifying that the document is an International Tribunal document or, as the case may be, a true copy of such a document.

(2) In this article “International Tribunal document” means—

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- (a) a warrant, order, summons or other process of either of the International Tribunals,
- (b) a copy of such warrant, order, summons or other process, or
- (c) a request to the Secretary of State by either of the International Tribunals,

and the reference to the President of the International Tribunal, the Registrar or the Prosecutor includes a reference to any person lawfully exercising the functions of the President, the Registrar or the Prosecutor, as the case may be.

(3) Judicial notice shall be taken of the Statute, the Rules and the seal of each of the International Tribunals.

*N. H. Nicholls*  
Clerk of the Privy Council



## SCHEDULE

Article 16(4)

### LOCAL EVIDENCE FOR INTERNATIONAL TRIBUNAL USE: PROCEEDINGS BEFORE THE ROYAL COURT

#### **Securing attendance of witnesses**

1. The Royal Court shall have the like powers for securing the attendance of witnesses for the purpose of the proceedings as it has for the purpose of other criminal proceedings before the Royal Court.

#### **Power to administer oaths**

2. The Royal Court may in the proceedings take evidence on oath.

#### **Privilege of witnesses**

3.—(1) A person shall not be compelled to give in the proceedings any evidence which he could not be compelled to give—

(a) in criminal proceedings before the Royal Court; or

(b) subject to sub-paragraph (2), in proceedings before the International Tribunal concerned.

(2) Sub-paragraph (1)(b) shall not apply unless the claim of the person questioned to be exempt from giving the evidence is conceded by the International Tribunal concerned.

(3) Without prejudice to sub-paragraph (1), a person shall not be compelled under this Schedule to give any evidence if his doing so would be prejudicial to the security of Guernsey; and a certificate signed by or on behalf of Her Majesty's Procureur to the effect that it would be so prejudicial for that person to do so shall be conclusive evidence of that fact.

(4) Without prejudice to sub-paragraph (1), a person shall not be compelled under this Schedule to give any evidence in his capacity as an officer or servant of the Crown.

(5) In this paragraph, references to giving evidence include references to answering any question and to producing any document or other article.

#### **Bankers' Books**

4. For the avoidance of doubt, it is hereby declared that the Bankers' Books Evidence (Guernsey) Law, 1954, as amended applies to the proceedings as it applies to other proceedings before the Royal Court.

#### **Costs**

5. No order for costs shall be made in the proceedings.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes provision as respects Guernsey to implement resolutions of the Security Council of the United Nations relating to the former Yugoslavia and Rwanda.

The Order has effect for the purpose of enabling Guernsey to co-operate with—

- (a) the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 established by Resolution 827 (1993) of the Security Council of the United Nations; and
- (b) the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring states, between 1st January 1994 and 31st December 1994, established by Resolution 995 (1994) of the Security Council of the United Nations,

(“International Tribunals”) in the investigation and prosecution of persons accused of committing International Tribunal crimes and the punishment of persons convicted of such crimes.