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Tribunal Pénal
International pour
l'ex-Yougoslavie

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PRESIDENT

PRESIDENT

The Hague, 8 September 2004
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PRESIDENT MERON APPOINTS A TRIAL CHAMBER TO CONSIDER
AN APPLICATION BY THE PROSECUTOR
TO REFER THE “ADEMI & NORAC” CASE TO CROATIA

On Tuesday 7 September, Judge Theodor Meron, President of the ICTY, appointed Judge Alfons Orije, Judge O-Gon Kwon and Judge Kevin Parker “*to constitute a Trial Chamber for the purpose of determining whether this case [The Prosecutor v. Rahim Ademi and Mirko Norac] shall be referred to the authorities of Croatia (...).*”

The President’s Order follows the filing by the Prosecutor late last week of a “Request Under Rule 11*bis*” requesting the referral of the indictment against Rahim Ademi and Mirko Norac “*to the authorities of Croatia for trial by an appropriate court, namely the County Court of Zagreb, within that State.*”

This represented the first time that the Prosecutor filed an application for “Referral of an Indictment to Another Court” under Rule 11*bis* of the Rules of Procedure and Evidence (see below for the full text of Rule 11*bis*).

Simultaneously, the Prosecutor also filed a Motions in which she applied “*to the President for the appointment of a Trial Chamber*” to review the Request. The President has now issued the appropriate Order.

A copy of the Prosecutor’s Request is accessible on the Tribunal website at www.un.org/icty. Hard-copy can also be obtained from Public Information Services.

BACKGROUND

Rule 11 *bis*
Referral of the Indictment to Another Court

(A) If an indictment has been confirmed, irrespective of whether or not the accused is in the custody of the Tribunal, the President may appoint a Trial Chamber for the purpose of referring a case to the authorities of a State:

(i) in whose territory the crime was committed; or

(ii) in which the accused was arrested; or

(iii) having jurisdiction and being willing and adequately prepared to accept such a case, so that those authorities should forthwith refer the case to the appropriate court for trial within that State.

... / ...

Internet address: <http://www.un.org/icty>

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(B) The Trial Chamber may order such referral *proprio motu* or at the request of the Prosecutor, after having given to the Prosecutor and, where applicable, the accused, the opportunity to be heard and after being satisfied that the accused will receive a fair trial and that the death penalty will not be imposed or carried out.

(C) In determining whether to refer the case in accordance with paragraph (A), the Trial Chamber shall, in accordance with Security Council resolution 1534 (2003) consider the gravity of the crimes charged and the level of responsibility of the accused.

(D) Where an order is issued pursuant to this Rule:

(i) the accused, if in the custody of the Tribunal, shall be handed over to the authorities of the State concerned;

(ii) the Chamber may order that protective measures for certain witnesses or victims remain in force;

(iii) the Prosecutor shall provide to the authorities of the State concerned all of the information relating to the case which the Prosecutor considers appropriate and, in particular, the material supporting the indictment;

(iv) the Prosecutor may send observers to monitor the proceedings in the national courts on her behalf.

(E) The Trial Chamber may issue a warrant for the arrest of the accused, which shall specify the State to which he is to be transferred to trial

(F) At any time after an order has been issued pursuant to this Rule and before the accused is found guilty or acquitted by a national court, the Trial Chamber may, at the request of the Prosecutor and upon having given to the State authorities concerned the opportunity to be heard, revoke the order and make a formal request for deferral within the terms of Rule 10.

(G) Where an order issued pursuant to this Rule is revoked by the Trial Chamber, the Chamber may make a formal request to the State concerned to transfer the accused to the seat of the Tribunal and the State shall accede to such a request without delay in keeping with Article 29 of the Statute. The Trial Chamber or a Judge may also issue a warrant for the arrest of the accused.
