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TRIAL CHAMBER
CHAMBRE DE 1ERE INSTANCE

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The Hague, 4 October 1996

International
Criminal Tribunal
for the Former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

BLAŠKIĆ TRIAL SET FOR 8 JANUARY 1997

The trial of General Tihofil BLAŠKIĆ, one of six accused in the Lašva River Valley indictment, will commence on **8 January 1997, at 10 a.m.**, Trial Chamber I ruled on 2 October 1996.

Blaškić, who is said to have been a Regional Commander of the Croatian Defence Council (HVO) prior to becoming its Chief of Staff, is charged with crimes against humanity, grave breaches of the Geneva Conventions and violations of the laws and customs of war. Along with some of his co-accused, he is alleged to have "*planned and executed a systematic campaign of bombarding, attacking and destroying towns, villages and hamlets in the Lašva Valley*" region of central Bosnia, directed against its predominantly Muslim population.

General Blaškić surrendered himself into the custody of the International Tribunal on 1 April 1996. In the interim, he applied for and was eventually granted modified conditions of detention.

Proceedings in his case have been delayed due to an ongoing legal dispute between the Prosecutor and General Blaškić's lead defence counsel, Zvonimir Hodak, regarding witness statements. The Prosecution team, led by Mr. Eric Ostberg, had sought to withhold from the Defence identifying information contained in 76 witness statements and to keep back ten witness statements in their entirety. They requested that the latter application be argued *in camera* and *ex parte*, that is, without the accused or his lawyer being present.

In its decision of 2 October, Trial Chamber I considered the various applications made by the Prosecutor: the request for an *ex parte* hearing; witness protection measures; and concerning the calendar of the proceedings.

The Application for an *ex parte* Hearing

In considering what it termed "*an extraordinary request from the perspective of the accused's right to be present at his trial*", the Trial Chamber rejected outright the Prosecutor's attempt to distinguish between the accused's right to be present at his trial and his right to be present at every aspect of his trial. It stated that "*[t]hat distinction is totally artificial, and this Trial Chamber has had no difficulty in setting it aside. The right of the accused to be present at his trial obviously includes every one of its stages, commences from the time the indictment is served, and must be respected both during the preliminary proceedings and the trial itself before the appropriate court.*

.../...

Witness Protection Measures

The Prosecutor had requested an extension of an earlier order requiring redaction of identifying data of witnesses until 1 September 1996, and the complete non-disclosure of those statements to the Defence. The justification offered was the dangerous and unstable situation on the ground and witness's resultant fears for their safety. The Defence countered that the accused had the right to a trial within a reasonable time, a trial which would not begin unless the accused had a reasonable time to prepare his defence. Such preparation, however, depended on the disclosure of Prosecution evidence.

In rejecting the Prosecutor's request, the Chamber ruled that "[a] balance must (. . .) be struck between security for the prosecution and fairness for the Defence". However, the onus is on the Prosecutor to prove that witness security is threatened. *"He cannot absolve himself of it simply by invoking a difficult situation as grounds for postponing indefinitely the solution to which the accused is entitled: to be tried without undue delay."* The Chamber added that although *"the Prosecutor did to some extent demonstrate that an "exceptional" situation does exist (. . .) [n]onetheless, [he] (. . .) was unable to recommend any protective measures to the Tribunal other than the extension of the status quo, which is the equivalent of the denial of justice to the Defence, and a mere suggestion of further investigations which threaten to postpone the start of the trial indefinitely."*

Trial Chamber II also professed to being *"astonished by the Prosecutor's total lack of mention, be it in his applications, his written briefs, or his oral argument, of possible support from the Victims and Witnesses Unit"*.

The Chamber therefore ordered the following relief:

- that, within 15 days of the decision, the Prosecutor shall make available to the Defence the full text of the 76 or 77 statements which have already been transmitted to them;
- that, by 1 December 1996, the Prosecutor make available to the Defence the full text of the 10 statements in respect of which the Prosecutor has requested complete non-disclosure;
- that the Prosecutor should, if he considers it necessary, obtain from the witnesses concerned their consent to their statements being thus handed over, failing which he may not call those witnesses, and that the Defence agree not to disclosure to the media or public any information which might identify witnesses or compromise their safety.

The Calendar of the Proceedings

The Chamber ruled that the 60-day period of the filing of preliminary motions commence on 17 October 1996 and, as noted above, set the trial date for 8 January 1997.