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International
Criminal Tribunal
for the Former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

BLAŠKIĆ CASE: **SUBPOENA PROCEEDINGS UPDATE**

In an Order dated 27 March 1997, Judge McDonald, presiding Judge of Trial Chamber II, denied the Prosecutor's request "to narrow" the scope of the issues to be briefed for the hearing on 16 April 1997.

The Prosecutor's request

In her request, the Prosecutor suggested that the briefs should specifically address the question of the issuance of subpoenas with respect to the Republic of Croatia and to Bosnia and Herzegovina, instead of discussing the issuance of subpoenas with respect to sovereign States in general. (see PR 172). Trial Chamber II rejected this opinion "considering the significance of the issues to be addressed".

The responses of Bosnia and Herzegovina and of Croatia to the Prosecutor's request

Mrs. Vidović, Minister-Counselor Representative of Bosnia and Herzegovina, presented the position of Bosnia and Herzegovina in a brief filed on 25 March 1997. She expressed the full support of Bosnia and Herzegovina to the Prosecutor's suggestion, that "the formulation of the issues [to be briefed] should be narrowed to focus on the facts at issue in the present litigation".

On 27 March 1997, the Republic of Croatia, in its response, strongly objected to the Prosecutor's request, considering it to be "unacceptable". It stated that "[t]o accept a hearing on the application of subpoenas duces tecum to selected States only, (...), would constitute a gross violation of international law", in particular to the principle of equality of States. Further, it said that "all the States which participated in the UN peacekeeping operations in Croatia and Bosnia and Herzegovina, as well as the UN itself, have information that might be of relevance to the Tribunal". The Republic of Croatia concluded that it would not participate in such a hearing, "nor shall [it] consider the hearing and its decision binding",

.../...

and that the adoption of the Prosecutor's suggestion "*would bring into question any future cooperation between the Republic of Croatia and the International Criminal Tribunal*".

The hearing on 16 April 1997

As a consequence of the Order of Trial Chamber II on the Prosecutor's request, the issues to be briefed for the hearing of 16 April 1997 at 10.00 remain those set out on 7 March. They are the following (see PR 168):

- the power of a Judge or Trial Chamber of the International Tribunal to issue a *subpoena duces tecum* to a sovereign State (emphasis added);
- the power of a Judge or Trial Chamber to make a request or issue a *subpoena duces tecum* to a high government official or State (emphasis added);
- the appropriate remedies to be taken if there is non-compliance with a *subpoena duces tecum* or request of a Judge or Trial Chamber.

In another Order dated 1 April 1997, Judge Odio-Benito also invited the Defence of the Accused General Blaškić to participate in the hearing on 16 April, as a result of the decision of Trial Chamber I to refer the Defence motion for issuance of a subpoena duces tecum to Trial Chamber II. (see PR 172). The Defence is requested to submit its briefs on the issues by 7 April.

The full texts of the Orders issued by Trial Chamber II as well as the Responses of Bosnia and Herzegovina and of the Republic of Croatia are available upon request from the Press and Information Office.