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Tribunal Pénal
International pour
l'ex-Yougoslavie

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REGISTRY

GREFFE

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The Hague, 7 December 1998

**"VUKOVAR HOSPITAL" CASE:
THE PROSECUTOR SEEKS THE DEFERRAL TO THE ICTY
OF PROCEEDINGS INSTITUTED IN SERBIA
AGAINST M. MRKŠIĆ, V. ŠLIJVANČANIN AND M. RADIĆ**

Deferral hearing to be held on Wednesday 9 December

On Wednesday 9 December 1998, Trial Chamber I, consisting of Judge Claude Jorda (presiding), Judge Riad and Judge Rodrigues, will hold a deferral hearing in the case of Mile Mrškić, Veselin Šlijančanin and Miroslav Radić.

Former JNA officers, the three accused were indicted on 7 November 1995 for their alleged involvement in the mass killing at Ovčara, near Vukovar, of approximately 260 captive non-Serb men who had been removed from the Vukovar Hospital on 20 November 1991.

In spite of the issuance of warrants of arrest, including international warrants (see Press releases 024 and 057), of orders for surrender (see Press release 283) and of reports by the President of the ICTY to the Security Council (see Press release 359 and 362), the three accused have never been arrested by the authorities of the Federal Republic of Yugoslavia.

The Prosecutor recently became aware that the Military Court in Belgrade conducted investigations and proceedings concerning war crimes committed at the Vukovar hospital in November 1991 and involving the three accused.

Pursuant to Article 9 of the Statute of the ICTY, the Prosecutor filed on 3 December a "*proposal to the Trial Chamber for a formal request to the Federal Republic of Yugoslavia for deferral to the competence of the ICTY of its investigation and court proceedings involving the three accused*".

The deferral hearing will be public and will take place in the late afternoon, following the closing of the trial hearing in the case of general Blaškić.

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

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BACKGROUND ON THE DEFERRAL PROCEDURE

Pursuant to Article 9 (2) of the Statute of the ICTY, *"the International Tribunal shall have primacy over national courts. At any stage of the procedure, the International Tribunal may formally request national courts to defer to the competence of the International Tribunal in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal"*.

Rules 9, 10 and 11 of the Rules of Procedure and Evidence specify the deferral procedure as follows:

Rule 9

Prosecutor's Request for Deferral

Where it appears to the Prosecutor that in any such investigations or criminal proceedings instituted in the courts of any State:

- i. the act being investigated or which is the subject of those proceedings is characterized as an ordinary crime;
- ii. there is a lack of impartiality or independence, or the investigations or proceedings are designed to shield the accused from international criminal responsibility, or the case is not diligently prosecuted; or
- iii. what is in issue is closely related to, or otherwise involves, significant factual or legal questions which may have implications for investigations or prosecutions before the Tribunal,

the Prosecutor may propose to the Trial Chamber designated by the President that a formal request be made that such court defer to the competence of the Tribunal.

Rule 10

Formal Request for Deferral

- A. If it appears to the Trial Chamber seized of a proposal for deferral that, on any of the grounds specified in Rule 9, deferral is appropriate, the Trial Chamber may issue a formal request to the State concerned that its court defer to the competence of the Tribunal.
- B. A request for deferral shall include a request that the results of the investigation and a copy of the court's records and the judgement, if already delivered, be forwarded to the Tribunal.
- C. Where deferral to the Tribunal has been requested by a Trial Chamber, any subsequent trial shall be held before the other Trial Chamber.

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Rule 11

Non-compliance with a Request for Deferral

If, within sixty days after a request for deferral has been notified by the Registrar to the State under whose jurisdiction the investigations or criminal proceedings have been instituted, the State fails to file a response which satisfies the Trial Chamber that the State has taken or is taking adequate steps to comply with the request, the Trial Chamber may request the President to report the matter to the Security Council.

To date, four deferral procedures were successfully initiated by the Office of the Prosecutor and Trial Chambers subsequently issued Requests for Deferrals to the authorities of Germany (8 November 1994, Tadić case), Bosnia and Herzegovina (Lašva River Valley investigation, 11 May 1995, and Bosnian Serb leadership investigation, 16 May 1995) and Federal Republic of Yugoslavia (Erdemović case, 29 May 1996).

THE PROSECUTOR'S PROPOSAL

The Prosecutor's proposal that the Military Court in Belgrade "*discontinues Šitić investigations and proceedings, including the hearing set down for 17 december 1998 in which the three accused Mile Mrkšić, Veselin Šlijanćanin and Miroslav Radić are scheduled to testify ...*" is made for a set of reasons.

The Prosecutor is "*ready to proceed to trial upon the surrender or transfer*" of the accused to the ICTY. To this end, the Prosecutor is "*actively taking all steps available...*". The Prosecutor "*believes that, since the trial of Slavko Dokmanović could not be brought to a conclusion..., it is all the more important for her to pursue the prosecution of the said*" accused.

It also appears to the Prosecutor, "*given the persistent refusal of the authorities of the Federal Republic of Yugoslavia to surrender the accused to the Tribunal for trial, that there is a lack of impartiality or independence and the said Šnationalć investigations or proceedings are designed to shield the accused from international criminal responsibility*".

Finally, the Prosecutor is "*mindful*" of various statements made by the President of the ICTY that the Federal Republic of Yugoslavia has continuously shown "*an utter disregard for the norms of the international community. Essentially it has become a rogue State, one that holds the international rule of law in contempt*".

INVITATION TO THE F.R.Y.

Following the filing of the Prosecutor's proposal, the Tribunal invited the authorities of the Federal Republic of Yugoslavia to file an *Amicus Curiae* brief.
