

**UNITED
NATIONS**



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
former Yugoslavia since 1991

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PRACTICE DIRECTION
ON THE PROCEDURE FOR THE INTERNATIONAL TRIBUNAL'S
DESIGNATION OF THE STATE IN WHICH A CONVICTED PERSON IS TO SERVE
HIS/HER SENTENCE OF IMPRISONMENT

(IT/137/Rev.1)

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ON THE PROCEDURE FOR THE INTERNATIONAL TRIBUNAL'S
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International
Criminal Tribunal
for the Former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yugoslavie

INTRODUCTION

1. In accordance with Rule 19(B) of the Rules of Procedure and Evidence; pursuant to Article 27 of the Statute and Rule 103(A) of the Rules of Procedure and Evidence; considering Article 2 paragraph 1 of the Model Agreement on the Enforcement of Sentences; and having consulted with the Bureau, the Registrar, and the Prosecutor, I hereby issue this Practice Direction in order to establish an internal procedure for the International Tribunal's designation of the State in which a convicted person is to serve his/her sentence of imprisonment:

PROCEDURE

2. Upon the issuance of the trial judgement and conviction of an accused at first instance, the Registrar of the International Tribunal shall make a preliminary inquiry of one of the States that, pursuant to Article 27 of the Statute, have declared their willingness to accept convicted persons and have signed an agreement with the International Tribunal to that effect. The Registrar will ask the Government concerned to give, before a certain date, a preliminary indication on its preparedness to carry out the sentence of the convicted person. The Registrar shall provide the following documents with the inquiry:

- a) a certified copy of the judgement;
- b) a statement indicating how much of the sentence has already been served, including information on pre-trial detention; and
- c) any other documents of relevance.

3. In deciding which Government to approach in relation to the foregoing paragraph, the Registrar shall take into consideration the following:

- a) the national law of the relevant State in relation to pardon and commutation of sentence, the maximum sentence enforceable by the State, and any other relevant consideration related to the ability of States to enforce a particular sentence;
- b) equitable distribution of convicted persons among all the States; and
- c) any other relevant considerations related to the case.

4. On the basis of the Government's indications on its willingness to accept the convicted person, the Registrar shall prepare a confidential memorandum for the President of the International Tribunal, indicating the State that has communicated its willingness to enforce the sentence of the convicted person and containing information concerning:

- a) the convicted person's marital status, his/her dependants and other family relations, their usual place of residence, and, when appropriate, the convicted person's indigency status;
- b) whether the convicted person is expected to serve as a witness in further proceedings of the International Tribunal;
- c) whether the convicted person is expected to be relocated as a witness and, in such case, which States have entered into relocation agreements with the International Tribunal;
- d) when appropriate, any medical or psychological reports on the convicted person;
- e) the linguistic skills of the convicted person;
- f) the general conditions of imprisonment and, if available, rules governing security and liberty in the State concerned;
- g) the national law of the relevant State in relation to pardon and commutation of sentence; and
- h) any other relevant considerations related to the case.

5. The President of the International Tribunal shall, on basis of the submitted information and on any other inquiries he/she chooses to make, determine whether the convicted person shall serve his/her sentence in the State listed in the confidential memorandum referred to in the foregoing paragraph. If the President determines that enforcement in that State is not appropriate, he/she shall instruct the Registrar to approach another State. Particular consideration shall be given to the proximity to the convicted person's relations. Before deciding the matter, the President may consult with the Sentencing Chamber or with its Presiding Judge. The President may, furthermore, request the opinion of the convicted person and/or of the International Tribunal's Office of the Prosecutor.

6. The President shall transmit the decision to the Registrar. The President may decide that the designation of the State shall not be made public.

REQUEST TO THE DESIGNATED STATE

7. The Registrar shall, in accordance with the relevant provisions of the agreement on the enforcement of sentences between the International Tribunal and the State that has been determined by the President, request the Government of that State to enforce the sentence of the convicted person. A formal request shall be made by the Registrar with the approval of the President.

NOTIFICATION OF THE ADOPTED DECISION

8. If the requested Government, after the request has been decided upon in accordance with national law, accepts the International Tribunal's request to receive the convicted person, the Registrar will notify the President and, when appropriate, the Sentencing Chamber or its Presiding Judge accordingly. The Registrar will furthermore inform the convicted person of the State that has been designated, the contents of the agreement on the enforcement of sentences between the International Tribunal and the State concerned, and any other issues of relevance to the matter.

REFERRAL TO THE PRESIDENT

9. If the requested Government, after the request has been decided upon in accordance with national law, rejects the International Tribunal's request to enforce the sentence of the convicted person, the Registrar shall refer the issue back to the President, who will designate another State in accordance with paragraph 5 of this Practice Direction.

Judge Patrick Robinson
President of the International Tribunal