

**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**

Case No: IT-00-41-PT  
Date: 12 April 2006  
Original: English

**IN THE REFERRAL BENCH**

**Before:** Judge Alphons Orie, Presiding  
Judge Kevin Parker  
Judge O-Gon Kwon

**Registrar:** Mr. Hans Holthuis

**Decision of:** 12 April 2006

**PROSECUTOR**  
**v.**  
**PAŠKO LJUBIČIĆ**

***WITH CONFIDENTIAL ANNEX***

---

**DECISION TO REFER THE CASE TO BOSNIA AND HERZEGOVINA  
PURSUANT TO RULE 11 *BIS***

---

**The Office of the Prosecutor:**

Ms. Carla Del Ponte  
Ms. Susan Somers  
Mr. Mark Harmon

**Counsel for the Accused:**

Mr. Tomislav Jonjić  
Ms. Nika Pinter

**The Government of  
Bosnia and Herzegovina:**

*per:* The Embassy of Bosnia and  
Herzegovina to the Netherlands,  
The Hague

## I. INTRODUCTION

1. This Referral Bench of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“Tribunal”) is seized of the Prosecution’s “Request under Rule 11*bis* for Referral of the Indictment to Another Court” filed on 19 July 2005 with an Annex attached under seal (“Referral Request”) in the case of Paško Ljubičić (“Accused”). In the Referral Request, the Prosecution seeks referral of the case to the authorities of Bosnia and Herzegovina for trial by an appropriate court within that State. The Referral Bench is also seized of the “Request by the Prosecutor for Order that Protective Measures Remain In Force” filed partly confidential and partly *ex parte* on 26 August 2005 and arising out of the Referral Request<sup>1</sup> (“Request of 26 August 2005”), in which the Prosecution seeks an order pursuant to Rule 11 *bis* (D) (ii) that protective measures, as specified in the confidential Annex A, remain in force.

2. Rule 11 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”), entitled Referral of the Indictment to Another Court, was adopted on 12 November 1997 and revised on 30 September 2002.<sup>2</sup> Revision was necessary in order to give effect to the broad strategy endorsed by the United Nations Security Council for the completion of all Tribunal trial activities at first instance by 2008.<sup>3</sup> This completion strategy was subsequently summarised in Security Council Resolution 1503 (2003) as one of “concentrating on the prosecution and trial of the most senior leaders suspected of being most responsible for crimes within the ICTY’s jurisdiction and transferring cases involving those who may not bear this level of responsibility to competent national jurisdictions, as appropriate [...]”<sup>4</sup>

3. Since the 30 September 2002 revision of Rule 11 *bis*, there have been three amendments, on 10 June 2004, 28 July 2004, and 11 February 2005. In its current form, the Rule provides that:<sup>5</sup>

(A) After an indictment has been confirmed and prior to the commencement of trial, irrespective of whether or not the accused is in the custody of the Tribunal, the President may appoint a bench of three Permanent

<sup>1</sup> Referral Request, para. 30.

<sup>2</sup> In its original form, Rule 11 *bis* provided for transfer of an accused from the Tribunal to the authorities of the State in which the accused was arrested. Transfer required an order from the Trial Chamber suspending the indictment pending the proceedings before the national courts. Such an order necessitated findings by the Trial Chamber that State authorities were prepared to prosecute the accused in their own courts and that it was appropriate in the circumstances for the courts of that State to exercise jurisdiction over the accused.

<sup>3</sup> S/PRST/2002/21; S/RES/1329 (2000).

<sup>4</sup> S/RES/1503 (2003). The Security Council further noted that referral of cases to the War Crimes Chamber of the Court of Bosnia and Herzegovina was an essential prerequisite to achieving the objectives of the completion strategy. *See also* S/RES/1534 (2004); S/PRST/2004/28.

<sup>5</sup> Rules of Procedure and Evidence, IT/32/Rev. 37, 6 April 2006.

Judges selected from the Trial Chambers (hereinafter referred to as the "Referral Bench"), which solely and exclusively shall determine whether the case should be referred 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.

(B) The Referral Bench 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 Referral Bench shall, in accordance with Security Council resolution 1534 (2004), 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 Referral Bench 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 Referral Bench 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 Referral Bench 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 Referral Bench, it 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 Referral Bench or a Judge may also issue a warrant for the arrest of the accused.

(H) A Referral Bench shall have the powers of, and insofar as applicable shall follow the procedures laid down for, a Trial Chamber under the Rules.

(I) An appeal by the accused or the Prosecutor shall lie as of right from a decision of the Referral Bench whether or not to refer a case. Notice of appeal shall be filed within fifteen days of the decision unless the accused was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the accused is notified of the decision.

## II. PROCEDURAL HISTORY

4. The original Indictment against the Accused was confirmed on 27 September 2000 but kept under seal along with an Arrest Warrant and an Order for Surrender issued on that same day. On 31 October 2001 the seal was lifted and on 9 November 2001 the Accused surrendered to the authorities of the Republic of Croatia ("Croatia"). He was transferred from Croatia to the Tribunal on 21 November 2001. His initial appearance before the Tribunal took place on 30 November 2001, at which he pleaded not guilty to all counts. On 16 January 2001, the Accused filed a preliminary motion challenging the form of the Indictment, which motion was partly granted by the Trial Chamber on 15 March 2002. A Corrected Amended Indictment was then filed on 8 April 2002 and

confirmed on 2 August 2002 (“Indictment”). At his further initial appearance on 26 September 2002, the Accused pleaded not guilty to all counts in the Indictment.

5. As noted above, the Prosecution’s Referral Request was filed on 19 July 2005. On 2 August 2005, the Accused filed a “Defence Position to the Prosecutor’s Request under Rule 11bis for Referral of the Indictment to Another Court” (“Defence Position”) in which he did not oppose referral as such but argued for referral to the authorities of Croatia. The Prosecution responded on 12 August 2005 (“Prosecution’s Response”) arguing, *inter alia*, that the Accused does not have *locus standi* to nominate the State to which the case should be referred.<sup>6</sup>
6. On 17 August 2005, the President of the Tribunal assigned the case to the Referral Bench. On 5 September 2005, the Referral Bench issued a decision to obtain further submissions from the Parties and the Government of Bosnia and Herzegovina, by 16 September 2005, on (1) whether the gravity of the crimes charged in the Indictment and the level of responsibility of the Accused renders the case inappropriate for referral, and (2) whether the national jurisdiction of the State to which the Prosecution seeks referral is compatible with the requirements of Rule 11 bis (B).<sup>7</sup> The Referral Bench ordered the Parties and invited the Government of Bosnia and Herzegovina to present oral submissions at a referral hearing, which was subsequently scheduled for 20 September 2005.
7. On 14 September 2005, the Prosecution filed its “Further Submissions pursuant to the Referral Bench’s Decision of 5 September 2005” (“Further Submissions”). On 16 September 2005, the Government of Bosnia and Herzegovina filed its further submissions.<sup>8</sup>
8. The Accused did not make any additional submission.

<sup>6</sup> Prosecution’s Response, para. 4.

<sup>7</sup> The Referral Bench added that submissions from the Parties and the Government on the issue of the compatibility of the legal system of Bosnia and Herzegovina, if any, should be limited to matters which the Parties and the Government may deem relevant to the proceedings in the present case and further directed the Parties and the Government to simply make reference to, rather than repeat, arguments previously discussed by the Referral Bench on this matter in its earlier Decisions.

<sup>8</sup> Response from the Government of Bosnia and Herzegovina to the Questions Posed by the Referral Bench in its Decision Dated 5 September 2005 Regarding Further Information in Context Prosecutor’s Motion under Rule 11bis, filed on 16 September 2005, referring to the Bosnia and Herzegovina Government’s Response in *Prosecutor v. Radovan Stanković* (IT-96-23/2-PT) (“*Stanković*”) and *Prosecutor v. Željko Mejakić, Momčilo Gruban, Dušan Fuštar, Duško Knežević* (IT 02-65-PT) (“*Mejakić et al.*”), both filed on 25 February 2005, and its Additional Response in both cases filed on 22 March 2005; and its Response filed on 27 April 2005 in *Prosecutor v. Mitar Rašević and Savo Todović* (IT-97-25/1-PT) (“*Rašević and Todović*”), and finally its Response filed on 10 May 2005 in *Prosecutor v. Gojko Janković* (IT-96-23/2-PT) (“*Janković*”).

### III. THE ACCUSED AND THE CHARGES

9. Paško Ljubičić was born on 15 November 1965 in the village of Nezirovići, Busovača Municipality in central Bosnia and Herzegovina. He obtained Croatian citizenship on 4 May 1993. He holds both Bosnian and Croatian nationality.<sup>9</sup> At the time when the first Indictment was confirmed in September 2000, the Accused was living under a false identity by the name of *Toni Raić*, which he gave up when he surrendered to the Croatian authorities on 9 November 2001. According to his own submission, he lived under a false identity, not to abscond from justice as alleged by the Prosecution, but to escape local persecution (“threats and psychological campaign against him”) in matters possibly unrelated to the Tribunal’s Indictment against him.<sup>10</sup>

10. The Indictment alleges that the Accused joined the Military Police in June 1992 as commander of the First Company of the Active Battalion of the Croatian Defence Council (“HVO”), which was stationed in central Bosnia and Herzegovina. A special HVO Military Police Battalion was subsequently created within the Central Bosnia Operative Zone (“CBOZ”), which included the municipalities of Vitez and Busovača. In January 1993, the First Company of the Active Battalion became part of the Fourth Military Police Battalion, and the Accused was appointed Commander of this Battalion, a position he held until 1 July 1993. In late January and early February 1993, a formation called the “Anti-Terrorist Group”, also known as the “Jokers”, was established within the Fourth Military Police Battalion. At the time relevant to the Indictment, this unit was based at the “bungalow” in the village of Nadioci in the municipality of Vitez.

11. It is further alleged in the Indictment that the Accused later became the Assistant Chief of the Military Police Administration for the CBOZ and was, in that capacity, in charge of combining military police activities and tasks of the light assault battalions and the Military Police battalions in the CBOZ. It is alleged that he held this position until November 1993 when he left central Bosnia and Herzegovina and was appointed the Deputy Chief of Military Police Administration in Mostar.

12. The crimes are alleged to have been committed against Bosnian Muslim civilians in the Lašva Valley of central Bosnia and Herzegovina between January and July 1993. The Indictment alleges that the Accused, together with members of the Fourth Military Police Battalion, including the “Jokers”, under his command and control, planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of these crimes during attacks on the

---

<sup>9</sup> Defence Position, para. 7 and Annex I. *See also* Provisional release hearing, 1 July 2002, statement by the Accused, T. 41.

<sup>10</sup> Defence Reply to the Prosecution’s Response to Second Application for Provisional Release, filed on 8 November 2004, para. 4.

town of Busovača in the early morning of 25 January 1993 and on the town of Vitez and the villages of Ahmići, Nadioci, Pirići Santići, Lončari and Donja Večeriska on the early morning hours of 16 April 1993. Similar attacks were launched, according to the Indictment, against the village of Očenići on 19 April 1993 and on the village of Gaciče on 20 April 1993. The planning of the attacks in April 1993 occurred on 15 and 16 April at the Hotel Vitez and at the “bungalow” in the village of Nadioci and elsewhere. The Accused is alleged to have been present in the “bungalow” on the evening of 15 April 1993 and to have taken part directly in the attack on the villages of Busovača, Ahmići, Nadioci, Pirići, Santići, Lončari on 16 April 1993 and in the attack on the village of Očenići on 19 April 1993.<sup>11</sup>

13. The Indictment alleges that during these attacks, over one hundred Bosnian Muslim civilians were killed, many more were detained and abused, livestock were killed and Muslim property destroyed, including the two Mosques in Ahmići.<sup>12</sup> Prior to these attacks, the Accused is alleged to have conveyed orders to his subordinates that all Bosnian Muslims of military age should be killed, the civilians expelled and Bosnian Muslim property destroyed.

14. The Indictment charges the Accused, under both Article 7(1) and Article 7(3) of the Statute, with six counts of Crimes Against Humanity (persecutions on political, racial or religious grounds, two counts of murder, and three counts of inhumane acts), and nine counts of Violations of the Laws or Customs of War (unlawful attack on civilians, two counts of murder, two counts of violence to life and person, devastation not justified by military necessity, destruction or wilful damage to institutions dedicated to religion or education, plunder of public or private property and cruel treatment).

#### **IV. REFERRAL OF THE CASE PURSUANT TO RULE 11 *BIS***

##### **A. Gravity of crimes charged and level of responsibility of the accused**

###### **1. Submissions of the Parties**

15. With regard to Rule 11 *bis* (C), the Prosecution submits that the gravity of the crimes charged against the Accused as well as his level of responsibility are compatible with referral of the

---

<sup>11</sup> Indictment, paras 24, 29-30, 34, 42, 48 and 50.

<sup>12</sup> Indictment, para. 22 alleges that 27 civilians were killed on 25 January 1993 when members of the Nikola Subić Zrinski Brigade and of the 4<sup>th</sup> Military Police Battalion attacked the Muslim part of Busovača and the surrounding areas. Schedule A to the Corrected Amended Indictment, filed under seal, lists names of 93 victims, who were killed when the village of Ahmići was allegedly attacked on 16 April 1993 by HVO units and members of the 4<sup>th</sup> Military Police Battalion.

case to the authorities of Bosnia and Herzegovina.<sup>13</sup> As for the gravity of the crimes charged, the Prosecution submits that while the crimes are indeed serious, they do not demand to be tried at the Tribunal.<sup>14</sup> In the Prosecution's opinion the crimes alleged are limited to the Lašva River Valley and are not so geographically widespread as to be inconsistent with referral. The Prosecution further submits that the crimes are temporarily limited to a 6-month period from January to July 1993 and that the number of victims is also not incompatible with referral.<sup>15</sup> As far as the level of responsibility of the Accused is concerned, the Prosecution submits that it "requires an assessment of two related factors: (a) the structural level of the Accused, in terms of his or her place in a particular governmental-military-political hierarchy, and also (b) the role of the accused him- or herself *vis-à-vis* the crimes charged."<sup>16</sup> The Prosecution asserts that "even if the case concerned a lower or middle ranking accused charged with direct perpetration/commission, as enumerated in Article 7(1) of the [...] Statute, this greater level of involvement would not necessarily be a bar to a referral of the case to a national authority."<sup>17</sup> Although the Accused was, in the Prosecution's submission, the highest ranking member of the HVO Military Police in the CBOZ during the commission of the crimes and thus had command authority over a considerable number of alleged perpetrators, it is submitted that he was not among the most senior military or political leaders in the CBOZ area; rather, the Accused was only implementing decisions and carrying out orders issued by his superior commanders. In other words, the Prosecution submits, the Accused did not "belong to that small group of 'military, civilian or paramilitary leaders' referred to by the Security Council Resolutions, who bear the main responsibility for the criminal events in the former Yugoslavia."<sup>18</sup>

16. As explained by Counsel for the Accused at the referral hearing, the Accused did not make any further submissions following the Referral Bench's decision for further information of 5 September 2005 because the Accused is not opposed to referral of his case as such. However, the

---

<sup>13</sup> Prosecution's Referral Request, paras 18-19, and Prosecution's Further Submissions, paras 2-13.

<sup>14</sup> Prosecution's Further Submissions, para. 4.

<sup>15</sup> Prosecution's Further Submissions, para. 5; and the Referral Bench's Decision on Referral of Case Under Rule 11*bis* of 17 May 2005 in *Stanković*; Decision on Referral of Case Under Rule 11*bis* of 8 July 2005 in *Rašević and Todović*; and Decision on Prosecutor's Motion for Referral of Case Pursuant to Rule 11*bis* of 20 July 2005 in *Mejakić et al.*

<sup>16</sup> Prosecution's Further Submissions, para. 7.

<sup>17</sup> *Ibid.*, para. 9.

<sup>18</sup> *Ibid.*, para. 12.

Accused suggests that the case be referred to Croatia, of which country he is a national, rather than to Bosnia and Herzegovina.<sup>19</sup>

17. The Government of Bosnia and Herzegovina submits that the crimes charged against the Accused, while grave, are suitable for referral because they are alleged to have been committed in a limited geographic area by an accused, who was not within the very highest military level compared to other accused before this Tribunal.<sup>20</sup> The Government therefore submits that the case is suitable for referral.

## 2. Discussion

18. In evaluating the gravity of the crimes charged and the level of responsibility of the Accused, the Referral Bench will consider only those facts alleged in the Indictment – they being the essential case raised by the Prosecution for trial – in arriving at a determination whether referral of the case is appropriate. The basis of the crimes alleged in the present Indictment is a series of attacks on Bosnian Muslim towns and villages located in the municipalities of Vitez and Busovača, which were carried out in January and April 1993 and resulted in the death of more than 100 civilians, detention and cruel treatment of a high number of men, destruction of villages, and religious institutions, plunder and forcible transfer of the population. While these acts are undoubtedly grave, they must be considered in the context of the jurisdiction of the Tribunal, which is limited to serious violations of international humanitarian law, and the other cases dealt with by the Tribunal. Serious as the charges are in the present case, nevertheless, they are limited in geographic scope and temporal frame. In the Referral Bench's view, having regard to the nature and circumstances of many offences charged in other cases before this Tribunal, these alleged crimes are not so serious as to preclude the possibility of trial before another court.

19. It is alleged in the Indictment that from January to July 1993 the Accused was the commander of the 4<sup>th</sup> Military Police Battalion of the CBOZ and as such he is alleged to have personally participated in the planning and execution of the attacks. It is also alleged that the Accused was responsible as a superior for the acts of his subordinates. In the view of the Referral Bench, while the Accused was a military commander and had a position of authority, in the context of other cases being tried before this Tribunal, it is not apparent that he was one of the most senior

---

<sup>19</sup> Referral Hearing, 20 September 2005, T. 223-224.

<sup>20</sup> Response by the Government of Bosnia and Herzegovina to Questions Posed by the Referral Bench in its Decision of 5 September 2005, filed 16 September 2005, p. 2.



leaders who were the most responsible for the crimes within the Tribunal's jurisdiction, as contemplated by Security Council Resolution 1534 (2004).

### 3. Conclusion

20. The Referral Bench is satisfied that neither the gravity of the crimes charged against the Accused, nor his level of responsibility are *ipso facto* incompatible with referral of the case to the authorities of a State meeting the requirements of Rule 11 *bis* (A).

#### **B. Application of Rule 11 bis in light of the laws of extradition**

##### 1. Submissions of the Parties

21. The Accused claims to have surrendered voluntarily to the Tribunal.<sup>21</sup> He submits that referral of the case to Bosnia and Herzegovina would violate Article 9 of the Constitution of Croatia, according to which a Croatian national may not "be extradited to another state".<sup>22</sup> He adds that "[e]xceptionally, a citizen of the Republic of Croatia may be extradited only to this International Tribunal" in accordance with the Croatian Constitutional Law on Cooperation with the Tribunal.<sup>23</sup> In the Accused's submission, this implies that extradition from the Tribunal to a third State would be in violation of Croatian law.<sup>24</sup>

22. The Prosecution contends that the Accused is a citizen of both Bosnia and Herzegovina and Croatia and, therefore, can be transferred lawfully to Bosnia and Herzegovina for trial regardless of any provision in Croatian law.<sup>25</sup> The Prosecution further submits that the Accused is not currently in Croatia and is not facing extradition from Croatia because referral under Rule 11 *bis* from the Tribunal to another State is inherently different from re-extradition from a requesting State to a third State. In the Prosecution's submission, referral is an exercise of the Tribunal's authority pursuant to its Statute and Chapter VII of the UN Charter.<sup>26</sup>

---

<sup>21</sup> Defence Position, para. 7.

<sup>22</sup> *Ibid.*, para. 9, fn 20, citing Article 9, para. 2 of the Croatian Constitution: "No citizen of the Republic of Croatia shall be exiled from the Republic of Croatia or be deprived of citizenship, and may not be extradited to another state."

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> Prosecution Response, paras 14-17.

<sup>26</sup> *Ibid.*, paras 16-17.

## 2. Discussion

23. The Referral Bench discussed the laws on extradition in its Referral Decision in *Mejakić et al.*<sup>27</sup> It found that:

[s]ignificantly, in the view of the Referral Bench, and leaving aside the way the Accused were originally transferred to The Hague, transfer pursuant to Rule 11 *bis* would not amount to an extradition *stricto sensu* for the following reasons. As in the original transfer of the Accused to the Tribunal, the transfer of the Accused to the State authorities pursuant to a referral under Rule 11 *bis* is not the result of an agreement between the State and the Tribunal: the States are under an obligation to ensure compliance with any order for surrender or transfer to the custody of the Tribunal pursuant to Article 29 of the Statute. Their obligation to cooperate with the Tribunal derives directly from Chapter VII of the United Nations Charter and the States are not in a position to impose any conditions on the transfer of an accused [...].<sup>28</sup>

The Accused further submits that his surrender was voluntary. While there may be some factual questions about this, for the present purposes the Referral Bench will accept that the Accused surrendered voluntarily to the custody of the Tribunal. It is further suggested that at the time of his surrender he could only have been tried in Croatia or before the Tribunal. This argument will be dealt with below. That being so, there is no argument upon which the Accused's voluntary surrender may preclude an order for referral and none is articulated in the submissions of the Accused.

## 3. Conclusion

24. For these reasons, the Referral Bench finds no reason to deviate from its previous finding that the laws governing extradition do not apply to prevent the referral of this case pursuant to Rule 11 *bis* of the Rules.

### C. Determination of the State for referral

#### 1. Submissions of the Parties

25. The Prosecution seeks referral of the case to Bosnia and Herzegovina. The Accused, however, suggests that the case rather be referred to Croatia. Responding to this suggestion, the Prosecution submits that the Accused has no legal standing to nominate the State to which the case should be referred. The Prosecution argues that, short of any provision in the Rules allowing the Accused to choose the State to which he wishes his case to be referred, "the right to request referral

<sup>27</sup> *Mejakić et al.*, Decision on Prosecution's motion for referral of case pursuant to Rule 11 *bis*, 20 July 2005, paras 28-31, with further references.

<sup>28</sup> *Ibid.*, para. 31 (footnotes omitted).

inherently carries with it the right to indicate the appropriate designation of venue for referral.”<sup>29</sup> The Prosecution further argues that the three options for referral venue in Rule 11 *bis* (A) reflect a hierarchy based on the established norms for determining the appropriate forum, implying that, according to the principle of territoriality, the State in which the crimes were committed shall take precedence over the State in which the Accused was arrested.<sup>30</sup> The Prosecution submits that the Accused must have been assisted by sympathizers within the former Croatian Government in order to have been able to hide under a false identity for more than a year, and, consequently, that the Accused may be subject to privileged treatment in a criminal trial in Croatia.<sup>31</sup> Finally, the Prosecution submits that the Accused was not a Croatian citizen at the time he committed his crimes.<sup>32</sup>

26. The Accused accepts that he has no legal standing to choose the State for referral but argues that he may nonetheless suggest an alternative venue.<sup>33</sup> In his submission, the Rules do not establish any hierarchy between the options for referral venue outlined in Rule 11 *bis* (A), and referral to Croatia is indeed warranted by the fact that he is currently a Croatian citizen and had applied for Croatian citizenship before the crimes were committed. He adds that he gave himself up to the authorities in Croatia and that criminal proceedings had been initiated against him in Croatia for these crimes by the time he surrendered but that these proceedings were suspended as a result of his transfer to the Tribunal.<sup>34</sup>

## 2. Discussion

27. The only formal request before the Referral Bench is the Prosecution’s request for referral to Bosnia and Herzegovina. While there is nothing to prevent an accused from opposing the Prosecution’s motion for referral and, in the course of that objection, to suggest referral to another State, an accused is not in a position under the Rules to file a formal request for referral to Croatia. The Referral Bench, nevertheless, may refer the case to yet another State *proprio motu*, but will do

---

<sup>29</sup> Prosecution’s Response, para. 4.

<sup>30</sup> Prosecution’s Referral Request, para. 8.

<sup>31</sup> *Ibid.*, para. 13.

<sup>32</sup> *Ibid.*, paras 14-17.

<sup>33</sup> Defence Response to the Prosecutor’s Motion under Rule 11*bis* for Referral of the Indictment, 20 July 2005, para. 2.

<sup>34</sup> Referral Hearing, 20 September 2005, T. 225 and T. 228. The Accused adds that more than 40 witnesses had already been heard in these proceedings by the time they were suspended.

so only if there are significant problems with referral of the case to the State requested by the Prosecution.<sup>35</sup>

28. In relation to the Prosecution's assertion of a hierarchy between the three optional venues for referral in Rule 11 *bis*, the Referral Bench refers to its findings in *Mejakić et al.* that Rule 11 *bis* is not intended to be construed so as to provide a hierarchy.<sup>36</sup> Moreover, as the Referral Bench found in that case, "it does not appear that citizenship has a significant relevance to the determination of the issue to which State should referral be ordered."<sup>37</sup> In the view of the Referral Bench, designation of the referral venue is to be governed in any case by considerations of the best possible conduct of the trial, including the proximity to victims, safety for witnesses, the availability of evidence and the prospects of a fair and expeditious trial for the Accused.

29. The crimes in the Indictment are alleged to have been committed by the Accused who, both at the time of the alleged crimes and still to this date, is a citizen of Bosnia and Herzegovina, where he was born and resided and held various positions of intermediate leadership at the time when the alleged crimes were committed. The crimes, furthermore, are alleged to have been committed against nationals of Bosnia and Herzegovina and in the territory of Bosnia and Herzegovina. By contrast, the only apparent nexus between the Accused and Croatia is that he has subsequently obtained Croatian citizenship,<sup>38</sup> that criminal proceedings are alleged to have been initiated against him in Croatia<sup>39</sup> and that he voluntarily surrendered to the Tribunal from that State.<sup>40</sup> In the Referral Bench's opinion, the nexus with Croatia appears to be weaker than the nexus to Bosnia and Herzegovina.

### 3. Conclusion

30. The Referral Bench concludes that the trial of the Accused has a stronger nexus with Bosnia and Herzegovina than with Croatia. The Referral Bench will therefore consider whether referral for trial of the case to the authorities of Bosnia and Herzegovina would be appropriate.

---

<sup>35</sup> *Janković*, Decision on referral of case under Rule 11 *bis*, 22 July 2005, para. 26.

<sup>36</sup> *Mejakić et al.*, Decision on Prosecution's motion for referral of case pursuant to Rule 11 *bis*, 20 July 2005, para. 40, with further references.

<sup>37</sup> *Ibid.*, para 38.

<sup>38</sup> Defence Position, para. 7.

<sup>39</sup> Referral Hearing, 20 September 2005, T. 225 and T. 228.

<sup>40</sup> Defence Position, para. 7.

## D. Applicable substantive law

### 1. Discussion

31. Neither Party has made submissions concerning the specific substantive law which would be applicable should the present case be referred for trial to the authorities of Bosnia and Herzegovina. However, as the Referral Bench held in *Mejakić et al.*, while it is for the State Court of Bosnia and Herzegovina (“State Court”) to decide which law is to be applied:

the Referral Bench must be satisfied [...] that if this case were to be referred to Bosnia and Herzegovina, there would exist an adequate legal framework which not only criminalizes the alleged conduct of the Accused so that the allegations can be duly tried and determined, but which also provides for appropriate punishment in the event that conduct is proven criminal.<sup>41</sup>

32. The Referral Bench notes in this context its discussion in *Mejakić et al.* on the issue of competing applicable substantive law in light of potential differences between the legislation in place at the time of the crimes alleged and the recent legislation in Bosnia and Herzegovina.<sup>42</sup> The Referral Bench reiterates its opinion that “[r]ather than attempting to [reach a decision on this matter] the Referral Bench will consider what will be the apparent position under each of the possibly applicable sets of legal provisions, in order to determine whether there is any significant deficiency which may impede or prevent the prosecution, trial and, if appropriate, the punishment of the Accused for the alleged criminal conduct which is the subject of charges in the present Indictment.”<sup>43</sup> The crimes are alleged to have been committed between January and July 1993. The Referral Bench refers, therefore, generally to its discussion *Mejakić et al.* on which law would apply to a case before the courts of Bosnia and Herzegovina, the 1977 Criminal Code of the Socialist Federal Republic of Yugoslavia (“SFRY CC”) or the 2003 Criminal Code of Bosnia and Herzegovina (“BiH CC”).<sup>44</sup>

33. The Referral Bench has found that Article 142(1) of the SFRY CC<sup>45</sup> criminalised the acts charged in the Indictment as murder, both as a violation of the laws and customs of war and as a crime against humanity, cruel treatment as a violation of the laws or customs of war, and inhumane acts, as a crime against humanity.<sup>46</sup> The Referral Bench has further found that the fact that the

<sup>41</sup> *Mejakić et al.*, Decision on Prosecution’s motion for referral of case pursuant to Rule 11 bis, 20 July 2005, para. 43.

<sup>42</sup> *Ibid.*, paras 47-48.

<sup>43</sup> *Ibid.*, para. 48.

<sup>44</sup> *Ibid.*, paras 47-62, see in particular paras 61-62.

<sup>45</sup> See *ibid.*, para. 49, for a full quote of this provision.

<sup>46</sup> *Ibid.*, para. 52.

SFRY CC did not specifically proscribe persecutions as a crime against humanity did not necessarily preclude referral “given the alleged circumstances of the charge of persecution and the nature and variety of the other offences also charged against the Accused.”<sup>47</sup> The Referral Bench finds that the same is the case with regard to the charge of persecutions against the Accused in Count 1 of the Indictment in the present case. The Referral Bench considers that the remaining charges of the Indictment would appear to be covered at least substantially by the provisions in Article 142(1) of “attack against the civilian population” (for unlawful attack on civilians); “killings”, “inhuman treatment” or “immense suffering or violation of bodily integrity or health” (for violence to life and person); “illegal and self-willed destruction [...] that is not justified by military needs” (for devastation not justified by military necessity and for destruction or wilful damage to institutions dedicated to religion or education); and “property confiscation” and “pillaging” (for plunder of public or private property).

34. In relation to the question whether the SFRY CC contained provisions which were sufficient to cover the modes of liability of Articles 7(1) and 7(3) of the Statute, the Referral Bench reiterates its findings in *Mejakić et al.* that Chapter 2 of the SFRY CC appears generally to address the modes of liability of these Articles.<sup>48</sup> Specifically with regard to Article 7(3), the Referral Bench noted in *Mejakić et al.* that “while there were provisions in the SFRY CC which appeared to address most of the field covered by Article 7(3), it was uncertain whether the SFRY CC would permit the imposition of liability where a commander did not know that a crime had been, or was about to be, committed, by persons under his command, but had ‘reason to know’, and yet failed to prevent the offence, or punish the offenders.”<sup>49</sup> The Referral Bench notes that the Accused is charged in the Indictment with individual criminal responsibility pursuant to both Article 7(1) and Article 7(3) for all counts. Given this, and also given the factual circumstances alleged in the present case, the Referral Bench does not consider the potential and limited difference in the law as an obstacle to referring the present case.

35. With regard to the BiH CC, the Referral Bench notes that it proscribes crimes against humanity under Article 172 and “war crimes against civilians” under Article 173, and that Article 180 contains a provision which is similar to that of Article 7(3) of the Statute. With reference to its discussion on this point in *Mejakić et al.*, the Referral Bench concludes that if the BiH CC were to apply it would appear to cover all counts of the Indictment.

---

<sup>47</sup> *Mejakić et al.*, Decision on Prosecution’s motion for referral of case pursuant to Rule 11 bis, 20 July 2005, para. 53.

<sup>48</sup> *Ibid.*, para. 56.

<sup>49</sup> *Ibid.*, para. 57.

## 2. Conclusion

36. Without pronouncing on which law would be applicable should the present case be referred to the authorities of Bosnia and Herzegovina, the Referral Bench concludes, as it did in *Mejakić et al.*, that “whichever of the possible alternatives is held by the State Court to apply, there are appropriate provisions to address most, if not all, of the criminal acts of the Accused alleged in the present Indictment and there is an adequate penalty structure.”<sup>50</sup> The applicable substantive law, therefore, would not appear to operate to prevent referral of the present case.

### **E. Non-imposition of the death penalty**

37. Rule 11 *bis* (B) requires that the death penalty will not be imposed or carried out if the case were referred for trial and the Accused were convicted. Neither party has submitted that this would be the case.

38. The Referral Bench notes that Article 37(1) of the SFRY CC authorised the death penalty only for the most serious criminal acts, including war crimes against the civilian population in violation of Article 142(1). However, on 7 July 2003, Bosnia and Herzegovina ratified Protocol 13 to the European Convention on Human Rights (“ECHR”), abolishing the death penalty in all circumstances. The Protocol entered into force for Bosnia and Herzegovina on 29 July 2003.

39. The Referral Bench is satisfied that if the law in effect at the time of the crimes is applicable, imposition of the death penalty would nonetheless be precluded as contrary to Protocol 13 to the ECHR.

### **F. Fair trial**

40. Rule 11 *bis* (B) requires that the Referral Bench be satisfied that an accused will receive a fair trial if a case is to be referred. The Referral Bench recalls its findings in this respect in its previous decisions pursuant to Rule 11 *bis*, to the extent relevant to the present case.<sup>51</sup> The discussion below is therefore limited to the issues, raised by the Defence in this case, of the right to a trial without undue delay and of the security conditions for certain prisoners in the Zenica Correctional Facility (“Zenica Prison”).

---

<sup>50</sup> *Mejakić et al.*, Decision on Prosecution’s motion for referral of case pursuant to Rule 11 *bis*, 20 July 2005, para. 63.

<sup>51</sup> See e.g. *Mejakić et al.*, Decision on Prosecution’s motion for referral of case pursuant to Rule 11 *bis*, 20 July 2005, paras 64-117.

1. Right to a trial without undue delay

(a) Submissions of the Parties

41. The Defence submits that the time and facilities for preparation of a defence, as envisaged by the current legislation in Bosnia and Herzegovina, may be inadequate and that his right to “an expeditious trial therefore might be jeopardised” if the Accused is not allowed to retain his chosen Defence Counsel, who represented him during the proceedings before the Tribunal.<sup>52</sup> The basis for the submission is that legislation of Bosnia and Herzegovina only permits counsel licensed to practise in the State to appear before the State Court, unless the State Court in the exercise of its discretion allows otherwise. In particular, it is submitted that a new defence counsel “would need much time to analyse the case, which is closely related to a number of other, very extensive Lašva Valley cases, which were tried before this Tribunal.”<sup>53</sup> The present Counsel of the Accused is licensed to practise in Croatia, but not in Bosnia and Herzegovina.

42. The Prosecution and the Government of Bosnia and Herzegovina submit that the decision as to whether Counsel presently retained may continue to represent the Accused if the case is referred rests within the discretion of the State Court. Although Article 12(1) of the Law on the Court of Bosnia and Herzegovina provides that Defence Counsel must be licensed to practise in Bosnia and Herzegovina, Article 12(2) does allow the State Court to specially admit attorneys who do not fulfil this requirement, in particular Counsel who have represented the accused before the Tribunal.

(b) Discussion

43. As the Referral Bench noted in *Mejakić et al.*, the Law on the Court of Bosnia and Herzegovina permits the special admission of attorneys to appear before the State Court even though not licensed to practise in Bosnia and Herzegovina. According to that law, this is a matter within the discretion of the State Court and it is not for the Referral Bench either to speculate on the likely outcome of the State Court’s exercise of its discretion, or to attempt to establish parameters on the lawful exercise thereof. The Referral Bench notes, however, that an avenue exists for the present Counsel to continue representation and does not expect that the State Court would be unaware of the legal and practical advantages of permitting the present Counsel to continue representation if this case were to be referred and should Counsel wish to continue to act for the Accused.<sup>54</sup> The Referral Bench considers that a positive outcome may be expected of an application

---

<sup>52</sup> Defence Position, paras 13-14.

<sup>53</sup> *Ibid.*, para. 14

<sup>54</sup> In addition, Article 3.4 of the State Court’s Rules of Procedure, adopted 30 June 2005 and which entered into force one week thereafter (Additional Rules of Procedure for Defence Advocates Appearing Before Section I and Section



by the Defence Counsel to continue representing the Accused before the State Court. For these reasons, and especially given the time limits which apply to each of the stages of the proceedings before the State Court which could make it difficult for fresh defence counsel to prepare, the Referral Bench does not agree with the Defence's submission.

(c) Conclusion

44. As explained above, the Referral Bench is satisfied that the laws and procedures applicable to proceedings against the Accused in Bosnia and Herzegovina provide an adequate basis to ensure compliance with the requirement for a fair trial. As to the specific area of concern raised by the Defence, the Referral Bench is not persuaded that any of the matters contained therein would result in denial of a fair trial to the Accused if this case were to be referred. The Bench also notes that provision is made in Rule 11 *bis* for a system to allow monitoring of the trial of a case which has been referred. By this means, it is possible to better ensure that the expectations of a fair trial are met. If not, a referral order may be revoked by this Tribunal at the Prosecution's request.

2. Detention

(a) Submissions of the Parties

45. At the referral hearing on 20 September 2005,<sup>55</sup> the Accused brought up the matter of the security conditions for certain prisoners in the Zenica Prison.<sup>56</sup> The Accused argued that the Commission for Human Rights of the Parliament of Bosnia and Herzegovina had been looking into allegations of violence and persecution committed in the Zenica Prison against Serb and Croat persons convicted of war crimes, and that the Commission had filed a report on such incidents. If

---

II of the Criminal Division and Section I and Section II of the Appellate Division of the Court of Bosnia and Herzegovina), entitled "Special Admission", provides that:

1. Pursuant to Article 12(2) of the Law on Court, Judges and Sections I and II may at any time specially admit an advocate who is not on the list to appear or practise before the Court. [...]

4. The Judge may take the following factors into account when considering applications under this Article: [...]

b. If the advocate has already appeared before the ICTY in a case that has been transferred to the Court under Rule 11 *bis* of the Rules of Procedure of the ICTY, whether any other advocate would have adequate time for the preparation of the defence.

<sup>55</sup> In parallel with the Referral Request, the Prosecution had sought referral in the case of *Prosecutor v. Ivica Rajić* (Case No. IT-95-12-PT), also to Bosnia and Herzegovina. After having obtained the consent by the Prosecution and both Accused, the Referral Bench decided to hold the referral hearing as a joint hearing for both cases. Further reference in this Decision to submissions at the hearing will only be made in respect of the Accused Paško Ljubičić (Ivica Rajić subsequently pleaded guilty to the charges in the Indictment against him, which suspended the referral proceedings in that case).

<sup>56</sup> Referral hearing, T. 231-32.

these allegations were found to be true, and if the Accused were convicted to imprisonment in Bosnia and Herzegovina and committed to the Zenica Prison, the Accused submitted that he could be in personal danger there.<sup>57</sup>

46. On 19 October 2005, the Minister of Justice of Bosnia and Herzegovina (“Minister of Justice”) responded to the Tribunal addressing the situation in the Zenica Prison and the prospects of building a new suitable prison in in Bosnia and Herzegovina.<sup>58</sup> The Minister of Justice explained that on 10 June 2005 the Minister of Justice of the Federation of Bosnia and Herzegovina had established a Commission charged with establishing the “facts regarding the lawful and due treatment of convicted persons, proposing measures and establishing possible responsibility of the perpetrators and the management of the [Zenica Prison]”.<sup>59</sup> The Commission filed its Report on 19 June 2005, confirming that in separate incidents on 4 and 5 June 2005, respectively, two prisoners who were serving sentences for war crimes, had been physically attacked by two other prisoners. Disciplinary sanctions had been imposed on the perpetrators.<sup>60</sup> As for the building of a new prison, the Minister of Justice advised that the need to have a special prison for persons convicted of war crimes had been recognised and a high-security prison, which meets the highest international standards, was under construction to be ready by mid-2007.<sup>61</sup>

(b) Discussion

47. The Referral Bench notes the Appeals Chamber’s finding in *Stanković* that “[t]he condition of detention units in a national jurisdiction, whether pre- or post-conviction, is a matter that touches upon the fairness of that jurisdiction’s criminal justice system. And that is an inquiry squarely within the Referral Bench’s mandate.”<sup>62</sup> The Referral Bench finds that the Commission’s report and the submissions of the Minister of Justice indicate that incidents have occurred where persons convicted of war crimes, who are serving their sentences in the Zenica Prison, have been exposed to violence. However, the Referral Bench notes that it appears that the authorities of Bosnia and

<sup>57</sup> Referral hearing, T. 232.

<sup>58</sup> Correspondence and Report of the Minister of Justice of Bosnia and Herzegovina, 19 October 2005, including the “Report of the Commission for Establishing Lawful and Due Treatment of the Convicted Persons in the Closed-Type Correctional Facility in Zenica”.

<sup>59</sup> Decision of the Minister of Justice of the Federation of Bosnia and Herzegovina on the Appointment of the Commission for Establishing Lawful and Due Treatment of the Convicted Persons in the Closed-Type Correctional Facility in Zenica, 10 June 2005, annexed to the Correspondence and Report of the Minister of Justice of Bosnia and Herzegovina, 19 October 2005.

<sup>60</sup> *Ibid.*

<sup>61</sup> Correspondence and Report of the Minister of Justice of Bosnia and Herzegovina, 19 October 2005.

<sup>62</sup> *Stanković*, Decision on Rule 11 *bis* referral, 1 Sep 2005, para. 34. See also *Janković*, Decision on Rule 11 *bis* referral, 15 Nov 2005, para. 72.

Herzegovina, under whose powers this matter rests, have taken appropriate steps to deal with these incidents and to seek to ensure there is not a recurrence of similar incidents. Moreover, the Referral Bench notes that the new Prison Project is specifically intended to address the need to provide appropriate incarceration of long-term prisoners. The Referral Bench also notes that pending the finalisation of the new high-security prison, “[i]n order to prevent tensions in prisons, the convicted will for the time being be sent to a prison within their respective entity.”<sup>63</sup>

(c) Conclusion

48. For the reasons given above, the Referral Bench concludes that the concerns raised by the Accused have been appropriately addressed by the authorities of Bosnia and Herzegovina and do not prevent a referral of the present case to the authorities of that State.

**G. Other matters raised**

1. Application of Rule 11 bis in light of Article 6 (D) of the Rules

(a) Submissions by the Parties

49. The Accused submits that at the time he surrendered to the Croatian authorities Rule 11 *bis* only provided for referral to the State in which he was arrested or to whose authorities he surrendered, and that it was only after he had been transferred to the Tribunal that Rule 11 *bis* was amended to include the possibility of referring a case to the State in which the crimes were committed.<sup>64</sup> In raising this point, the Accused implicitly relies on Rule 6 (D), according to which an amendment of the Rules “shall not operate to prejudice the rights of the accused or of a convicted or acquitted person in any pending case.” It is submitted that the significance of this amendment of Rule 11 *bis*, introduced after the surrender of the Accused, is that if he voluntarily surrenders to the authorities, knowing and indeed expecting that he will be extradited to another State or, for that matter, to an international tribunal for trial there, then he is entitled to rely on the anticipation that he will be tried before that other court or tribunal.<sup>65</sup> This argument suggests that if he is then referred for trial before the courts of a third State, his rights will be infringed because had the accused known of this possibility, he might not have given himself up because his decision to surrender was based on his anticipation.

<sup>63</sup> Correspondence and Report of the Minister of Justice of Bosnia and Herzegovina, 19 October 2005.

<sup>64</sup> Defence Position, paras 3-4.

<sup>65</sup> Defence Position, para. 7 (“The Accused surrendered to the authorities of the Republic of Croatia, and pursuant to the regulations in force at the time of surrender, except before the Tribunal, he could only be tried before Croatian courts. Moreover, the Accused decided to surrender in the Republic of Croatia, aware and because of Rule 11 *bis*”).

50. The Prosecution submits that trial before the War Crimes Chamber of the State Court of Bosnia and Herzegovina will not in any way prejudice the rights of the Accused or reduce the legal quality of the criminal trial against him as that court is designed specifically to accept cases from the Tribunal and is composed of national and international Judges.<sup>66</sup> The Prosecution also submits that there “can be no doubt that the War Crimes Chamber will apply the relevant law with full respect for the rights of the Accused.”<sup>67</sup>

(b) Discussion

51. The Referral Bench considered this issue extensively in its Decision in *Mejakić et al.* and found that:

The context of the Rule indicates that the “rights” contemplated are confined, at least, to those rights to which an accused, or a convicted or acquitted person, in a pending case has a legal entitlement, and do not extend to that wide variety of advantages or benefits which are frequently described as rights, particularly by those seeking to secure them, but to which there is no legal entitlement [...]. To the extent in which the Accused may claim prejudice to his “right” to be tried by the Courts of a particular State or by this Tribunal, the Referral Bench considers this claim to be mistaken and unjustified. An Accused who has come into the custody of the Tribunal, whether by arrest in a State or by voluntary surrender, is subject to the legal powers and jurisdiction of this Tribunal. There is no provision, however, by which an accused has a right to be tried by this Tribunal [...]. Both by virtue of the language and the subject matter of the original Rule 11 *bis*, and the amendments to it, in the view of the Referral Bench it is clear that the Rule is concerned to deal with the procedural powers of the Tribunal, rather than to confer rights on an accused.<sup>68</sup>

The Referral Bench continued:

It must be appreciated, therefore, that by virtue of the statutory resolutions of the Security Council, an accused who is charged before this Tribunal may be tried by this Tribunal, or may be referred to a competent national jurisdiction for trial. It is part of the jurisdiction and power of this Tribunal to determine whether or not an accused should be referred to a competent national jurisdiction for trial, and if so which jurisdiction. It cannot be said, therefore, that an accused has a “right” to be tried by this Tribunal and no other court, or that his surrender or arrest was only for the purpose of trial by this Tribunal. Rule 11 *bis*, under which the present Motion is brought, is consistent with those resolutions of the Security Council which are directed to the completion of the mission of the Tribunal.<sup>69</sup>

The Referral Bench considers that the relevant entitlement or right of an accused is to a fair trial and that dissatisfaction of an expectation of the Accused that he would be tried before the courts of a particular State or before this Tribunal is not in itself a violation of this right. It is considered elsewhere in this Decision whether referral of the present case to Bosnia and Herzegovina is consistent with the right of a fair trial of the Accused.

<sup>66</sup> Prosecution’s Response, paras 8-12.

<sup>67</sup> *Ibid.*, para. 11.

<sup>68</sup> *Mejakić et al.*, Decision on Prosecution’s motion for referral of case pursuant to Rule 11 *bis*, 20 July 2005, para. 125. *See further* para. 126.

<sup>69</sup> *Ibid.*, para. 127.

(c) Conclusion

52. For the above reasons given above, the Referral Bench is satisfied that Rule 6 (D) does not operate to prevent a referral of this case.

## V. CONCLUSION

53. Having considered the matters raised, in particular the gravity of the crimes alleged against the Accused in the Indictment and the level of responsibility of the Accused, and being satisfied on the information presently available that the Accused will receive a fair trial and that the death penalty will not be imposed or carried out, the Referral Bench concludes that the present case should be referred to the authorities of Bosnia and Herzegovina pursuant to Rule 11 *bis* of the Rules.

## VI. DISPOSITION

For the forgoing reasons, **THE REFERRAL BENCH**

**PURSUANT** to Rule 11 *bis* of the Rules;

**GRANTS** the Motion;

**ORDERS** the case of *Prosecutor v. Paško Ljubičić* to be referred to the authorities of the State of Bosnia and Herzegovina, so that those authorities should forthwith refer the case to the appropriate court for trial within Bosnia and Herzegovina;

**DECLARES** that the referral of this case shall not have the effect of revoking the previous Orders and Decisions of the Tribunal in the case. It will be for the State Court or the competent national authorities of Bosnia and Herzegovina to determine whether different provision should be made for the purposes of the trial of this case in Bosnia and Herzegovina;

**ORDERS** the Registrar to arrange for transport of the Accused and his personal belongings, within 30 days of this Decision becoming final, to Bosnia and Herzegovina in accordance with the procedures applicable to the transfer of convicted persons to States for service of sentence;

**ORDERS** the Prosecution to hand over to the Prosecutor of Bosnia and Herzegovina, as soon as possible and no later than 30 days after the Decision in the case has become final, the material supporting the Indictment against that Accused, and all other appropriate evidentiary material, in accordance with the agreement concluded on 23 September 2005 between the Prosecution of the

Tribunal, the Registry of the Tribunal, the State Prosecutor's Office of Bosnia and Herzegovina and the State Court Registry of Bosnia and Herzegovina;

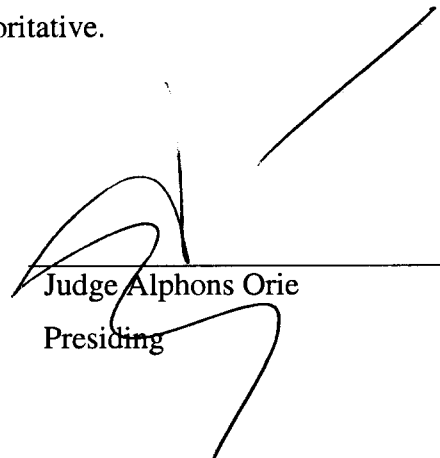
**ORDERS** the Prosecution to continue its efforts in cooperation with the Organization for Security and Cooperation in Europe, or another international organisation of notable standing, to ensure the monitoring and reporting on the proceedings of this case before the State Court of Bosnia and Herzegovina. If arrangements for monitoring and reporting should prove ineffective, the Prosecutor should seek further direction from the Referral Bench;

**FURTHER ORDERS** the Prosecution to file an initial report to the Referral Bench on the progress made by the Prosecutor of Bosnia and Herzegovina in the prosecution of the Accused six weeks after transfer of the evidentiary material and, thereafter, every three months, including information on the course of the proceedings of the State Court of Bosnia and Herzegovina after commencement of trial, such reports to comprise or to include any reports received by the Prosecution from any international organisation monitoring or reporting on the proceedings; and

**GRANTS**, pursuant to Rule 11 *bis* (D), the Request of 26 August 2005 for the existing protective measures to remain in force as detailed in the confidential Annex A attached to this Decision.

Done in English and French, the English text being authoritative.

Dated this twelfth day of April 2006,  
At The Hague,  
The Netherlands



Judge Alphons Orie  
Presiding

**[Seal of the Tribunal]**