



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

Case No.: IT-97-25/1-PT
Date: 4 November 2004
Original: English
French

BEFORE THE PRE-TRIAL JUDGE

Before: Judge Jean-Claude Antonetti

Registrar: Mr Hans Holthuis

Decision of: 4 November 2004

THE PROSECUTOR

v.

MITAR RAŠEVIĆ

**ORDER APPOINTING TRIAL CHAMBER II
FOR THE PURPOSE OF REFERRING A CASE**

The Office of the Prosecutor:

Mrs Hildegard Uertz-Retzlaff
Mr William Smith
Ms Christina Moeller

Defence Counsel:

Mr Vladimir Domazet

I, Jean-Claude Antonetti, Judge 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”),

NOTING my appointment as pre-trial Judge in this case pursuant to an order of 7 October 2003 by Trial Chamber II,

PURSUANT to Rules 11 *bis*, 62, 65 *ter* and 69 of the Rules of Procedure and Evidence of the Tribunal (“Rules”),

CONSIDERING that pursuant to Rule 11 *bis*(B) of the Rules, the Trial Chamber may order the referral of an indictment to another court *proprio motu* or at the request of the Prosecutor,

CONSIDERING that pursuant to Rule 11 *bis*(C) of the Rules, in determining whether to refer a case to the authorities of the State, the Trial Chamber shall, in accordance with Security Council resolution 1534 (2004), consider the gravity of the crimes charged and the level of responsibility of the accused,

CONSIDERING that the acts charged against the Accused are likely to come within the scope of Rule 11 *bis*(C) of the Rules,

CONSIDERING that Rule 11 *bis*(A) of the Rules provides that the President may appoint a Trial Chamber for the purpose of referring a case to the authorities of a State,

CONSIDERING that Rules 11 *bis*(A) of the Rules raises the possibility of appointing a Trial Chamber and not an obligation to do so; that in fact, according to the Robert and Collins dictionary, the English term “may” indicates possibility,

CONSIDERING that since Trial Chamber II has already been seised, the possibility set out in Rule 11 *bis*(A) of the Rules is redundant,

CONSIDERING that it is for Trial Chamber II which is currently seised of the case to raise the issue before the bench at a subsequent hearing by allowing the Prosecutor and the Accused to be heard and after ensuring that the Accused will receive a fair trial,

CONSIDERING that pursuant to Rule 65 *ter*(B), the pre-trial Judge shall, under the authority and supervision of the Trial Chamber seised of the case, ensure that the proceedings are not unduly delayed and shall take any measure necessary to prepare the case for a fair and expeditious trial,

CONSIDERING that the Accused has been in pre-trial detention since 4 September 2003,

CONSIDERING therefore that Trial Chamber II should be appointed for the purpose of considering the possibility of referring the case and the decisions to be taken to protect specific witnesses and victims in the event of referral,

FOR THE FOREGOING REASONS,

HEREBY ORDER

That Trial Chamber II be seised so that it may adjudicate on the referral of this case *proprio motu* pursuant to rule 11 *bis* of the Rules and on the measures to be taken to protect the witnesses and victims.

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

/signed/

Jean-Claude Antonetti

Done this fourth day of November 2004
At The Hague
The Netherlands