



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-02-65-PT

Date: 9 February 2005

Original: English

IN A SPECIALLY APPOINTED CHAMBER

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

Registrar: Mr. Hans Holthuis

Decision: 9 February 2005

PROSECUTOR

v.

**ŽELKO MEJAKIĆ
MOMČILO GRUBAN
DUŠAN FUŠTAR
DUŠKO KNEŽEVIĆ**

**SCHEDULING ORDER FOR A HEARING ON REFERRAL OF A CASE
UNDER RULE 11 *BIS***

The Office of the Prosecutor:

Ms. Carla del Ponte
Ms. Ann Sutherland

The Government of Bosnia and Herzegovina

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

Counsel for the Accused:

Mr. Jovan Simić and Mr. Zoran Zivanović,
for Želko Mejačić
Mr. Branko Lukić, for Momčilo Gruban
Mr. Theodore Scudder and Mr. Dragan Ivetić,
for Dušan Fuštar
Ms. Slobodanka Nedić, for Duško Knežević

The Government of Serbia and Montenegro

per: The Embassy of Serbia and Montenegro
to The Netherlands, The Hague

THIS SPECIALLY APPOINTED CHAMBER (“the Chamber”) 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 (“the Tribunal”);

BEING SEIZED OF the “Partly Confidential Request by the Prosecutor under Rule 11 *bis*”, filed on 2 September 2004 (the “Motion”), in which the Prosecution requests referral of the present case by a Trial Chamber under Rule 11 *bis* of the Rules of Procedure and Evidence of the International Tribunal (“the Rules”) to the State of Bosnia and Herzegovina, after having given, if it deems necessary, the opportunity to the authorities of Bosnia and Herzegovina to be heard on the Motion and the conditions for the referral of this case;

NOTING the “Confidential Joint Defence Response to the Prosecution’s Motion Under Rule 11 *bis*”, filed on 18 October 2004, in which the Defence Teams raise a number of objections relating to a possible referral of the case to the Government of Bosnia and Herzegovina;

NOTING “Serbia and Montenegro’s Submission in the Proceedings Under Rule 11 *bis*”, filed on 14 January 2005, in which the Government of Serbia and Montenegro proposes that the Trial Chamber refer the case against the Accused to Serbia and Montenegro under Rule 11 *bis*, and offers to provide additional information if the Chamber deems it “necessary for the assessment of Serbia and Montenegro’s capability to try war crimes cases”;

NOTING the Chamber’s “Partly Confidential Decision for Further Information in the Context of the Prosecutor’s Request under Rule 11 *bis*” dated 9 February 2005 ordering the Parties and inviting the Government of Bosnia and Herzegovina to submit their views on the gravity of the crimes and the level of responsibility of the Accused, as well as on the substantive and procedural law that would be applicable to the case should it be referred to the government of Bosnia and Herzegovina, and inviting the Government of Serbia and Montenegro to be prepared to make oral submissions on its proposal;

PURSUANT to Rules 11 *bis* and 74 of the Rules;

HEREBY SCHEDULES A HEARING to commence on 3 March 2005 at 14.15 and to continue, if need be, on 4 March 2005 at 14.15, in a courtroom designated by the Registry;

INVITES the Government of Bosnia and Herzegovina to attend the hearing and, should it wish, to present additional oral submissions;

INVITES the Government of Serbia and Montenegro to attend the hearing in order to address, by way of oral submission, its proposal that the case against the Accused be transferred to Serbia and

Montenegro, particularly in light of the Prosecution's Motion for referral to Bosnia and Herzegovina, and the Prosecution's assertion in the Motion that "[s]hould more than one State have an interest in the prosecution of a case, the Prosecution would interpret these provisions [of Rule 11 *bis* (A)] as ranking the possible States in descending order of priority."

REQUESTS the Registrar to transmit this order immediately to the Government of Bosnia and Herzegovina, and the Government of Serbia and Montenegro.

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



Judge Alphons Orie, Presiding Judge

Done on this ninth day of February 2005
At The Hague,
The Netherlands

[Seal of the Tribunal]