IT-04-76-I
D1080 - D1077
30 JUNE 2004

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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-04-76-I
Date: 30th June 2004
Original: English

**IN TRIAL CHAMBER I**

**Before:** **Judge Liu Daqun, Presiding**
**Judge Amin El Mahdi**
**Judge Alphons Orie**

**Registrar:** **Mr. Hans Holthuis**

**Decision:** **30th June 2004**

**PROSECUTOR**

**v.**

**MIRKO NORAC**

# DECISION ON THE PROSECUTOR's MOTION TO OPPOSE THE INITIAL APPEARANCE OF MIRKO NORAC

**The Office of the Prosecutor:**

Mr. Mark Ierace
Mr. Anura Meddegoda

**Counsel for the Accused:**

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**TRIAL CHAMBER I,** ("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");

**NOTING** that an indictment ("the Indictment") was filed by the Prosecutor on 11th May 2004 against Mr. Mirko NORAC ("the Accused");

**NOTING** the President's Order of 11th May 2004 to assign Judge Liu Daqun to review the Indictment against the Accused;

**NOTING** the decision on 20th May 2004 by the Bureau pursuant to Rule 28 of the Tribunal's Rules of Procedure and Evidence ("the Rules"), to admit the Indictment for review by a Judge;

**NOTING** the Decision of 22nd May 2004 by Judge Liu Daqun confirming the indictment pursuant to Rule 47 (E) and (F) of the Rules;

**NOTING** the President's Order of 23rd June 2004 to assign the case against the Accused ("*The Prosecutor vs. Mirko Norac*", IT-04-76-I) to Trial Chamber I as composed of Judge Liu Daqun, Judge Amin El Mahdi and Judge Alphons Orie;

**BEING SEIZED** of the Prosecutor's Motion filed on 24th June 2004 to oppose the Chamber's Decision for first appearance ("the Motion against Initial Appearance"), in which the Prosecution argues that an initial appearance is not necessary because the case against the Accused may, at the Prosecutor's subsequent request, be referred by the Chamber to the Courts of the Republic of Croatia pursuant to Rule 11*bis* of the Rules;

**CONSIDERING**, anyway, that the Motion against Initial Appearance is unfounded since no Scheduling Order has yet been issued by the Chamber or the Pre-Trial Judge to call for an initial appearance of the Accused;

**CONSIDERING** that a Motion for Joinder of Accused has been filed by the Prosecutor with a partially confidential Annex on 27th May 2004 ("the Motion for Joinder"), in which the Prosecutor seeks to join the case against the Accused with the case against general Rahim Ademi (IT-01-46-PT) pursuant to Rule 48 of the Rules;

**NOTING** that, in the Motion for Joinder, the Prosecutor does indicate her *intent* to seek referral of the joint case against the Accused and general Ademi to a Court of the Republic of Croatia in accordance with Rule 11*bis* of the Rules, if and when the Chamber will grant the Motion for Joinder;[1]

**CONSIDERING** the obligation of the Chamber under Article 20, paragraph 3 of the Statute to satisfy itself that the rights of the Accused are respected, to confirm that he understands the indictment, and to instruct him to enter a plea;

**CONSIDERING**, that the formal charges are brought against the accused during the initial appearance, and that it is only at this moment that the Chamber, in accordance with art. 20 (3) of the Statute can satisfy itself that the accused understands the Indictment and that his rights, including his right to counsel as explicitly expressed in Rule 62, are respected;

**CONSIDERING** that understanding the Indictment is an essential prerequisite for the accused to exercise his rights of defense, including the right to challenge the jurisdiction of the Tribunal under Rule 72 of the Rules;

**CONSIDERING**, that the Accused has to be given an opportunity to enter a plea before the Tribunal prior to any decision being taken on the Motion for Joinder since, if he pleads guilty, that Motion becomes redundant;

**CONSIDERING** that, as far as the Chamber has been informed, no counsel has yet been assigned to the Accused and that neither of the pending motions have been served on him as of this date;

**CONSIDERING**, furthermore, that it is completely speculative and premature for the Prosecutor to assume at this stage of the proceedings, before a motion for referral has even been filed and much less decided upon by the Chamber, that the case against the Accused will eventually be referred to a Court of the Republic of Croatia;

**FINDING**, for these reasons, that the Accused shall be called to enter a plea to the charges raised against him in the Indictment, in accordance with Article 20 of the Statute and Rule 62 of the Rules;

**PURSUANT** to Rule 54 of the Rules,

[1] See paragraph 10 of the Motion.

**HEREBY DISMISSES** the Prosecutor's Motion against Initial Appearance.

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

Done this thirtieth day of June 2004,
At The Hague,
The Netherlands

Judge Liu Daqun, Presiding Judge

**[Seal of the Tribunal]**