

PRESS RELEASE

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CASE No. IT-94-1-T / DEFENDANT: Mr. Dusko Tadic. UPDATE-7.

**APPEALS CHAMBER JUDGES UNANIMOUSLY
CONFIRM THE TRIBUNAL'S JURISDICTION**

The Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia issued today its decision on challenges to its jurisdiction brought by the Tribunal's first defendant, Dusko Tadic. The five judges of the appellate panel unanimously upheld the Tribunal's jurisdiction, clearing the way for the case to proceed toward trial later this fall.

In a motion filed with the Tribunal's Trial Chamber in June, Tadic challenged the authority of the Tribunal on three grounds:

- First, he claimed that the Tribunal, which was set up by the United Nations Security Council in 1993, had been unlawfully established.
- Second, he argued that the Tribunal had been improperly given primacy over national courts, enabling it to demand that national courts suspend proceedings against a defendant and turn him over to the Tribunal for prosecution. This right was exercised in the Tadic case when the German government suspended proceedings against Tadic and turned him over to the Tribunal last April.
- As a third basis for his challenge to the Tribunal's jurisdiction, Tadic argued that the Tribunal may only adjudicate war crimes committed in the context of interstate conflicts and that it lacks

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authority to adjudicate offences committed in the course of civil wars. Claiming that the conflict in Bosnia-Herzegovina where his alleged crimes occurred is nothing more than a civil war, Tadic maintained that the Tribunal could not proceed against him.

In August, the three-member Trial Chamber rejected all three of Tadic's challenges to the Tribunal's jurisdiction and the accused filed an immediate appeal.

In today's decision, the Appeals Chamber dismissed Tadic's appeal in all respects:

- On the first point, the Chamber concluded that the Tribunal was properly established by the Security Council. In reaching this conclusion, the Chamber determined that it could assess the lawfulness of Security Council actions when necessary to satisfy itself that it has the authority to proceed in a case. Upon conducting this kind of assessment, the Chamber found that the Security Council's decision to establish the Tribunal was a legitimate measure aimed at the restoration of peace and security authorized under the United Nations Charter, and that the Tribunal had been duly established according to the rule of law.

- The Appeals Chamber similarly dismissed Tadic's challenge to the Tribunal's assertion of primacy over national courts, concluding that, contrary to Tadic's submissions, the Tribunal's primacy does not constitute an improper intrusion on state sovereignty. The Chamber noted that such actions are authorized under Article 2.7 of the United Nations Charter and emphasized that state sovereignty must give way in the face of offences that "*do not affect the interests of one State alone but shock the conscience of mankind.*"

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- The Appeals Chamber also dismissed Tadic's third objection to the Tribunal's jurisdiction, rejecting his assertion that the Tribunal lacks jurisdiction because the Bosnian conflict is a civil war. Noting that the conflict raging in the former Yugoslavia since 1991 has had both internal and international aspects, the Chamber declined to determine the nature of the conflict at the time and place of Tadic's alleged crimes. Rather, the Chamber concluded that regardless of the type of conflict in which they were committed, it has the authority to adjudicate Tadic's alleged offences, which include murder, rape, and torture.

Attached to the decision of the Appeals Chamber are separate opinions by Judges Li, Abi-Saab, and Sidhwa, and a declaration by Judge Deschênes.

The Tadic case will now be returned to the Trial Chamber for further pre-trial and trial proceedings.
