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United Nations  
Nations Unies

CC/PIO/102-E  
The Hague, 7 August 1996

International  
Criminal Tribunal  
for the Former  
Yugoslavia

Tribunal Pénal  
International pour  
l'ex-Yougoslavie

## TADIC UPDATE 2: DEFENCE MOTION ON HEARSAY REJECTED

In a decision rendered on 5 August 1996, Trial Chamber II rejected a motion filed by counsel for Mr. Tadic seeking to exclude hearsay evidence during the trial as a general rule.

In its decision, the Trial Chamber noted that the Tribunal's Rules do not specifically exclude hearsay evidence, and that no rule to this effect had been adopted, despite several amendments to the Rules. Instead, the Trial Chamber may hear any evidence deemed to have probative value (Rule 89 (C)), although it may exclude evidence where *"its probative value is substantially outweighed by the need to ensure a fair trial"* (Rule 89 (D)). It also noted that the Tribunal is not bound by national rules of evidence.

The Tribunal is instead bound by its own Rules which *"implicitly require that reliability be a component of admissibility. That is, if evidence offered is unreliable, it certainly would not have probative value and would be excluded under Sub-rule 89 (C) (. . .) Thus, the focus in determining whether evidence is probative within the meaning of Sub-rule 89 (C) should be at a minimum that the evidence is reliable"*.

In determining whether evidence is reliable, the Trial Chamber must consider whether the statement is voluntary, truthful and trustworthy.

The Trial Chamber also observed that the Defence request that it rule on the admissibility of hearsay evidence without actually hearing its content, while perhaps appropriate in the context of a jury trial, is not warranted during bench trials, where the Judges are able *"by virtue of their training and experience, to hear the evidence in the context in which it was obtained and accord it appropriate weight. Thereafter, they may make a determination as to the relevancy and the probative value of the evidence"*. Furthermore, the Trial Chamber noted, evidence which it admits as relevant and of probative value may subsequently be excluded *"if it is substantially outweighed by the need to ensure a fair trial"*.

In summary, the Trial Chamber concluded that in determining whether or not hearsay evidence that has been objected to will be excluded, it *"will determine whether the proffered evidence is relevant and has probative value, focusing on its reliability. In doing so, the Trial Chamber will hear both the circumstances under which the evidence arose as well as the content of the statement. The Trial Chamber may be guided by, but not bound to, hearsay exceptions generally recognised by some national legal systems, as well as by the truthfulness, voluntariness, and trustworthiness of the evidence, as appropriate. In bench trials before the International Tribunal, this is the most efficient and fair method to determine the admissibility of out-of-court statements"*.

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