

IT-95-14/2-PT
01 MARCH 1999
04885 - 04883

4885
HG

**UNITED
NATIONS**



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-95-14/2-PT

Date: 1 March 1999

Original: English

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding
Judge Mohamed Bennouna
Judge Patrick Robinson

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of: 1 March 1999

PROSECUTOR

v.

**DARIO KORDIĆ
MARIO ČERKEZ**

**DECISION ON JOINT DEFENCE MOTION TO DISMISS THE AMENDED
INDICTMENT DUE TO THE ILLEGAL FOUNDATION OF THE TRIBUNAL**

The Office of the Prosecutor

Mr. Geoffrey Nice
Mr. Rodney Dixon

Counsel for the Accused

Mr. Mitko Naumovski, Mr. Leo Andreis, Mr. David F. Geneson, Mr. Turner T. Smith, Jr.,
and Ms. Ksenija Turković, for Dario Kordić

Mr. Božidar Kovačić, for Mario Čerkez

THIS TRIAL 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 International Tribunal”),

BEING SEISED OF the “Joint Defense Motion to Dismiss the Amended Indictment Due to the Illegal Foundation of the Tribunal” filed by counsel for the two accused, Dario Kordić and Mario Čerkez (together “the Defence”) on 22 January 1999 (“the Motion”), seeking to have the Amended Indictment dismissed in its entirety, have the case against the accused dropped, and the accused immediately released from custody,

NOTING the Prosecutor’s Response to the Motion filed by the Office of the Prosecutor (“Prosecution”) on 5 February 1999 (“the Response”),

CONSIDERING that the Appeals Chamber in its “Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction” in *Prosecutor v. Duško Tadić*¹ addressed all the arguments raised by the Defence in the Motion:

- (i) that the Security Council has no power under the Charter of the United Nations to establish the International Tribunal;
- (ii) that the plain language of Article 41 of the Charter of the United Nations precludes the establishment of an ad hoc criminal tribunal;
- (iii) that the Security Council is precluded from establishing a subsidiary organ with judicial power;
- (iv) that the Security Council lacks the authority to enact laws that purport to be binding on individual persons;
- (v) that the establishment, and continuing operation, of the International Tribunal cannot be considered an appropriate measure for the restoration and maintenance of international peace and security; and
- (vi) that the International Tribunal was not established by law,

and found that the International Tribunal was properly established by the Security Council under Article 41 of the Charter of the United Nations,

¹ Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-AR72, A.C., 2 Oct. 1995.
Case No. IT-95-14/2-PT

CONSIDERING that the International Criminal Tribunal for Rwanda² ("ICTR") in the *Prosecutor v. Kanyabashi*³ on a similar application also found that the ICTR had been legally established,

CONSIDERING therefore that the International Tribunal has been created by the Security Council pursuant to Article 41 of Chapter VII of the United Nations Charter, and that it has therefore been properly established by law,

PURSUANT TO Rule 72 of the Rules of Procedure and Evidence of the International Tribunal,

HEREBY DISMISSES THE MOTION.

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



Richard May
Presiding

Dated this first day of March 1999
At The Hague
The Netherlands

[Seal of the Tribunal]

² The International Criminal Tribunal for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January and 31 December 1994.

³ Decision on the Defence Motion on Jurisdiction, *Prosecutor v. Kanyabashi*, Case No. ICTR-96-1-I, 18 June 1997.