

**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-95-5/18-T
Date: 01 December 2009

IN TRIAL CHAMBER III

Before: Judge O-Gon Kwon, Presiding
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**PROSECUTION RESPONSE TO MOTION CHALLENGING
THE LEGAL VALIDITY AND LEGITIMACY OF THE
INTERNATIONAL CRIMINAL TRIBUNAL FOR THE
FORMER YUGOSLAVIA**

The Office of the Prosecutor:

Mr Alan Tieger
Ms Hildegard Uertz-Retzlaff

The Accused:

Mr Radovan Karadžić

Appointed Counsel:

Mr Richard Harvey

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

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**PROSECUTION RESPONSE TO MOTION CHALLENGING THE LEGAL
VALIDITY AND LEGITIMACY OF THE INTERNATIONAL CRIMINAL
TRIBUNAL FOR THE FORMER YUGOSLAVIA**

1. In his “Motion Challenging the Legal Validity and Legitimacy of the International Criminal Tribunal for the former Yugoslavia” (“Motion”) filed on 26 November 2009,¹ the Accused Karadžić claims that the UN Security Council lacked the power to establish the ICTY, violated agreements under international law in so doing, and delegated non-existent legislative powers to the ICTY.

2. The Appeals Chamber has already determined the validity of the Tribunal’s creation in previous decisions which constitute established precedent on this issue.² The Motion should therefore be dismissed.

Word Count: 244



Hildegard Uertz-Retzlaff
Senior Trial Attorney

Dated this 1st day of December 2009
At The Hague
The Netherlands

¹ The English translation was filed on this date.

² *Prosecutor v. Tadić*, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, paras.46-48 (referring to the adoption of Rules of Procedure and Evidence pursuant to the Tribunal’s Statute; concluding that the Tribunal has been established in accordance with the appropriate procedures under the UN Charter and provides all the necessary safeguards of a fair trial; it is “established by law”); *Prosecutor v. Milutinović et al.*, Case No. IT-99-37-AR72.2, Reasons for Decision Dismissing Interlocutory Appeal Concerning Jurisdiction over the Territory of Kosovo, 8 June 2004, p.4, third para.; *Prosecutor v. Krajišnik*, Case No. IT-00-39-AR73.2, Decision on Krajišnik’s Appeal Against the Trial Chamber’s Decision Dismissing the Defense Motion for a Ruling that Judge Canivell is Unable to Continue Sitting in this Case, 15 September 2006, para.15.