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l'ex-Yougoslavie

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TADIĆ CASE: THE JUDGEMENT OF THE APPEALS CHAMBER

HIS APPEAL AGAINST JUDGEMENT DENIED, DUŠKO TADIĆ IS FOUND GUILTY ON NINE ADDITIONAL COUNTS; DECISION ON SENTENCING TO BE RENDERED AT A LATER DATE

Today, Thursday 15 July 1999, the Appeals Chamber, composed of Judge Mohamed Shahabuddeen (Presiding), Judge Antonio Cassese, Judge Wang Tieya, Judge Rafael Nieto-Navia and Judge Florence Ndepele Mwachande Mumba, pronounced its Judgement on the appeal lodged by the accused Duško Tadić and the cross-appeal lodged by the Prosecution against the Judgement of Trial Chamber II of 7 May 1997.

The Appeals Chamber denied Duško Tadić's appeal on all grounds. However, allowing the Prosecution's cross-appeal, the Appeals Chamber reversed the Judgement of the Trial Chamber and found the accused guilty on counts 8, 9, 12, 15, 21, 29 and 32 of the indictment charging him with grave breaches of the 1949 Geneva Conventions (Article 2 of the Statute of the Tribunal), namely, wilful killing, torture or inhuman treatment, and wilfully causing great suffering or serious injury to body or health. The Appeals Chamber also reversed the Trial Chamber's Judgement in respect of count 30, alleging a violation of the laws or customs of war (Article 3 of the Statute), namely, murder, and in respect of count 31, charging a crime against humanity (Article 5 of the Statute), namely, murder.

The Appeals Chamber scheduled a hearing of oral arguments on sentencing for the additional counts on which the accused was found guilty on 30 August 1999, at 2.30 p.m. Only after a decision on the sentencing on those counts will the Appeals Chamber determine the accused's appeal against the Trial Chamber's Sentencing Judgement of 14 July 1997.

Procedural Background to the Case

The indictment alleged Duško Tadić's participation in the attack on, seizure, murder and maltreatment of Bosnian Muslims and Croats in the Prijedor municipality, Bosnia and Herzegovina, in 1992 and charged him on the basis of individual criminal responsibility (Article 7(1) of the Statute) with a total of 31 counts, comprised of:

1. Crimes against humanity, namely, persecution on political, racial and/or religious grounds, murder, and inhumane acts;
2. Grave breaches of the 1949 Geneva Conventions, namely, inhuman treatment, wilful killing, torture or inhuman treatment, wilfully causing great suffering or serious injury to body or health; and
3. Violations of the laws or customs of war, namely, cruel treatment, and murder.

The accused was arrested on 12 February 1994 in Munich, Germany. He pleaded not guilty to all counts during his initial appearance at the Tribunal on 26 April 1995 and his trial

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subsequently commenced on 7 May 1996 before Trial Chamber II, composed of Judge Gabrielle Kirk McDonald (Presiding), Judge Ninian Stephen and Judge Lal Chand Vohrah. On 7 May 1997, the Trial Chamber found the accused guilty on nine counts, and guilty in part on two counts, of:

1. Crimes against humanity, namely, persecution on political, racial and/or religious grounds, and inhumane acts; and
2. Violations of the laws or customs of war, namely, cruel treatment.

On 14 July 1997, the Trial Chamber imposed concurrent sentences of imprisonment, the highest being 20 years.

Both the accused and the Prosecution appealed the Trial Chamber's Judgement of 7 May 1997. The accused also appealed the Sentencing Judgement. A great deal of time was subsequently taken up by proceedings relating to requests by the accused for leave to admit additional evidence, in the course of which a substantial number of extensions of time were sought by both parties. The Appeals Chamber heard oral arguments on the three appeals from 19 to 21 April 1999.

The Appeals Chamber's Findings

The Appeal by the Accused

The Appeals Chamber's Judgement pronounces on two grounds for appeal submitted by the accused. Leave to include another ground of appeal concerning the conduct of former counsel was not granted by the Appeals Chamber and is not addressed in the Judgement. The Appeals Chamber holds that:

1. The accused's contention that his right to a fair trial was prejudiced as there was no "equality of arms" between the Prosecution and the Defence due to the prevailing circumstances in which the trial was conducted is rejected; and
2. The Trial Chamber did not err when it decided that it was satisfied beyond reasonable doubt that the accused was guilty of the murder of two Muslim policemen.

The Cross-appeal by the Prosecution

As to the five grounds for cross-appeal submitted by the Prosecution, the Appeals Chamber finds as follows:

1. There was an international armed conflict and in consequence the grave breaches regime of the 1949 Geneva Conventions applied. Furthermore, the victims were "protected persons" under the Fourth Geneva Convention;
2. The Trial Chamber erred when it decided that it could not, on the evidence before it, be satisfied beyond reasonable doubt that the accused had played any part in the killing of the five men from the village of Jaskići. The Trial Chamber also erred on the doctrine of common purpose;
3. An act carried out for purely personal motives can constitute a crime against humanity;
4. A discriminatory intent is not required for all crimes against humanity, but only for such crimes relating to persecution; and
5. A Trial Chamber may order, depending on the circumstances of the case before it, the disclosure of a defence witness statement after examination-in-chief of the witness.
