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APPEALS CHAMBER

CHAMBRE D'APPEL

The Hague, 26 January 2000

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SENTENCING APPEALS IN THE CASE OF DUSKO TADIC: SENTENCE REDUCED TO 20 YEARS' IMPRISONMENT

Today, Wednesday 26 January 2000, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY), consisting of Judges Shahabuddeen (Presiding), Mumba, Cassese, Wang and Nieto-Navia, issued its "Judgement in Sentencing Appeals" in the case of Dusko Tadic.

This Judgement relates to the appeals filed by Dusko Tadic against the sentences imposed upon him on 14 July 1997 (20 years) and on 11 November 1999 (sentence increased to 25 years, see Press Release 447).

The substance of the Judgement is that:

- **Dusko Tadic will serve a maximum of 20 years' imprisonment:**

In the summary of the Judgement read out in court by the Presiding Judge, the Appeals Chamber states that the main reason for the revision of the sentence is that:

"Although the criminal conduct underlying the charges of which the Appellant now stands convicted was incontestably heinous, his level in the command structure, when compared to that of his superiors, or the very architects of the strategy of ethnic cleansing, was low".

- **Dusko Tadic has already served 5 years 11 months, and 14 days:**

The Appeals Chamber considered that the time spent by the accused in detention in Germany and in the ICTY's Detention Unit since his transfer in April 1995 is to be deducted.

- **Dusko Tadic should serve a minimum of 10 years' imprisonment calculated from the date of the first sentencing judgement of 14 July 1997, thus ending no earlier than 14 July 2007.**

The Appeals Chamber upheld the Trial Chamber's finding that the accused should serve a minimum of 10 years and ordered that this term should run from the first Sentencing Judgement of 14 July 1997.

THE HOLDINGS OF THE APPEALS CHAMBER

The Appeals Chamber reviewed the Appellant's Grounds of Appeal as follows:

1) APPEAL AGAINST THE SENTENCING JUDGEMENT OF 14 JULY 1997

- **First Ground of Appeal:** According to the accused, the 20-year sentence was unfair. The Appeals Chamber dismissed this first ground of appeal, saying that it could not find an error in the Trial Chamber's exercise of its discretion in general or with regard to the weight given to the sentencing practice of the former Yugoslavia in particular. Nor could

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the Appeals Chamber find that the Trial Chamber failed to adequately consider Tadic's personal circumstances.

- **Second Ground of Appeal:** The accused's second ground related to two connected issues: when should the minimum sentence start to run, and whether the Appellant should be entitled to credit in respect of the minimum sentence. With regard to the first point, the Appeals Chamber found that the Trial Chamber erred insofar as it ordered that the recommended minimum term (10 years) take as its starting point the final determination of any appeal. Instead, the Appeals Chamber declared that the minimum term should start to run from the date of the Sentencing Judgement of 14 July 1997. With regard to the second issue, the Appeals Chamber found that the Trial Chamber did not err in ordering that the Appellant not be entitled to credit in respect of the minimum term.
- **Third Ground of Appeal:** Finally, the Appellant argued that the Trial Chamber erred in not giving him credit for the time spent in detention in Germany prior to the issuance of a request for deferral by the International Tribunal. The Appeals Chamber stated that, because the criminal proceedings against the Appellant in Germany emanated substantially from the same criminal conduct for which he now stands convicted by the International Tribunal, his credit for the time he served in Germany should start prior to the issuance of the Tribunal's formal request for deferral.

2) APPEAL AGAINST THE SENTENCING JUDGEMENT OF 11 NOVEMBER 1999

- **First Ground of Appeal:** The Appeals Chamber was not satisfied that the Trial Chamber gave undue weight to deterrence as a factor for determination of the appropriate sentence.
- **Second Ground of Appeal:** According to the Appeals Chamber, the Trial Chamber failed to adequately consider the need for sentences to reflect the relative significance of the role of the Appellant in the broader context of the conflict in the former Yugoslavia. Considering Tadic's relative low rank in the hierarchy, the Appeals Chamber declared that a sentence of more than 20 years' imprisonment for any count of the indictment for which the Appellant stands convicted is excessive.
- **Third Ground of Appeal:** The Appeals Chamber dismissed this ground of appeal which argued that the Trial Chamber had erred in its assessment of what constitutes "substantial co-operation" with the Office of the Prosecutor within the meaning of the Rules. The Appeals Chamber found no basis in law or in fact to support that claim.
- **Fourth Ground of Appeal:** The majority of the Appeals Chamber (Judge Cassese dissenting) held that no distinction could be made for the purpose of sentencing between the seriousness of crimes against humanity and war crimes.
- **Fifth Ground of Appeal:** The Appeals Chamber concluded that the Trial Chamber did not err with respect to the weight to be given to the sentencing practice of the courts of the former Yugoslavia.
- **Sixth Ground of Appeal:** The Appeals Chamber held that the interest of justice require that the Appellant should be granted credit for the entire time spent in detention in Germany.

SEPARATE OPINIONS

Judge Shahabuddeen and Judge Cassese attached to the Judgement two Separate Opinions. They both deal with the same issue namely, whether crimes against humanity are more serious than war crimes, but reach opposite conclusions.

1) SEPARATE OPINION OF JUDGE SHAHABUDDEEN:

According to Judge Shahabuddeen, there is no principle under international law that, all things being equal, a crime against humanity is a more serious offence than a war crime. For the purpose of sentencing, there should thus be no principled distinction between them. Judge Shahabuddeen thus agrees with the majority on that point.

2) SEPARATE OPINION OF JUDGE CASSESE:

Judge Cassese disagreed with the majority with regard to this issue. Underlining the rudimentary nature of international criminal law and the inapplicability of the *nulla poena sine praevia lege poenali* principle in international law, Judge Cassese concluded that one could not infer from international criminal provisions on penalties that a criminal offence is regarded as more serious than another or that a certain class of international crimes encompasses facts that are more serious than those prohibited under a different criminal provision. *In abstracto* all international crimes are serious offences and no hierarchy of gravity may *a priori* be established between them.

However, the issue here at hand was concerned with the question of whether the very same facts imputed to an accused could be regarded as more serious depending on how they were characterised. According to Judge Cassese, in the case of crimes against humanity, because of both the broader criminal context of such crimes (i.e. the widespread or systematic practice), and the knowledge of such context by the accused, the reaction of the international community to a crime against humanity “*must be more severe than in cases where the same conduct amounts to a war crime.*”

Judge Cassese concluded that whenever an offence committed by an accused is deemed to be a crime against humanity, “*it must be regarded as inherently of greater gravity, all else being equal (ceteris paribus), than if it is instead characterised as a war crime.*” Consequently, crimes against humanity should entail a heavier sentence.

The full text of the Summary read out in court by the Presiding Judge and the Judgement itself are available on the ICTY’s Internet website in English.

The Judgement is being translated in French and will be released in due time.

LAST MINUTE NEWS:

The Appeals Chamber will announce on MONDAY 31 JANUARY at 10 a.m. its decision in the contempt proceedings against Dusko Tadic’s former counsel, Mr. Milan Vujin.