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APPEALS CHAMBER

CHAMBRE D'APPEL

The Hague, 20 February 2001

JL/P.I.S./564-e

APPEAL JUDGEMENT IN THE ČELEBIĆI CASE

- **Acquittal of Zejnil Delalić affirmed**
- **Dismissal for cumulative convictions of all counts charging Zdravko Mucić, Hazim Delić and Esad Landžo with violations of the laws or customs of war**
- **Remaining sentences of the convicted accused to be reconsidered by a Trial Chamber for possible adjustment**

Please find below the full text of the summary of the conclusions of the Appeals Chamber, read out by presiding Judge David Hunt at today's Judgement hearing

"The Appeals Chamber is sitting today to deliver judgment in the appeal from a judgment of a Trial Chamber, given in a case which has been known as the Čelebići Case. The Trial Chamber was constituted by Judge Karibi-Whyte, who presided, Judge Odio Benito and Judge Jan.

The trial

The trial related to events which took place in 1992 in a prison camp near the town of Čelebići, in central Bosnia and Herzegovina. The four accused in this case, Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo, were charged with numerous counts of grave breaches of the Geneva Conventions of 1949 under Article 2 of the Tribunal's Statute and of violations of the laws or customs of war under Article 3. The victims were the Bosnian Serb detainees in the Čelebići camp.

Delalić was alleged to have co-ordinated the activities of the Bosnian Muslim and Bosnian Croat forces in the area and later to have been the Commander of the First Tactical Group of the Bosnian Army. He was alleged in that capacity to have had authority over the Čelebići camp. The Trial Chamber found him not guilty on all counts, on the basis that he did not have sufficient command and control over the Čelebići camp and its guards to found his criminal responsibility as a superior for the crimes which they committed in the camp.

Mucić was found by the Trial Chamber to be the Commander of the Čelebići camp, and he was found guilty under the principles of superior responsibility for crimes committed by his subordinates, including murder, torture and inhuman treatment. He was also found guilty of personal responsibility for the unlawful confinement of civilians. Mucić was given a total sentence of seven years.

Delić was found by the Trial Chamber to have acted as the Deputy Commander of the camp, and he was found guilty on the basis of personal responsibility for crimes including murder, torture and inhuman treatment. He was given a total sentence of twenty years.

Landžo was found by the Trial Chamber to have been a guard at the camp, and he was found guilty of committing offences including murder, torture and cruel treatment. He was given a total sentence of fifteen years imprisonment.

The appeal

The three convicted accused, Mucić, Delić and Landžo, filed appeals against the Trial Chamber's judgment. The prosecution also filed an appeal against the judgment on a number of grounds, including grounds of appeal relating to the acquittal of Delalić. The four appellants between them filed a total of forty-eight grounds of appeal. Certain of the grounds of appeal of the three convicted appellants related to the same subject matter, and they were therefore dealt with together in the hearing of oral submissions and in the written judgment delivered today.

For the purposes of this hearing, I propose to summarise briefly the conclusions of the Appeals Chamber on the various grounds of appeal, grouped in the same order as they are dealt with in the judgment. I emphasise that this is a *summary* only, and that it forms no part of the judgment which is delivered. The only authoritative account of the Appeals Chamber's conclusions, and of its reasons for those conclusions, is to be found in the written judgment, copies of which will be made available to the parties at the conclusion of this hearing.

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Article 2 of the Statute

The convicted appellants raised three issues in relation to the legal conditions for the application of Article 2 of the Statute, which gives to the Tribunal jurisdiction over grave breaches of the Geneva Conventions of 1949.

- It is established in the Tribunal's jurisprudence that the prosecution must prove the existence of an international armed conflict in relation to any offences charged under Article 2. The Trial Chamber found that the armed conflict in Bosnia and Herzegovina at the relevant time was international, as the Bosnian Serb forces fighting in Bosnia and Herzegovina were under the control of the Federal Republic of Yugoslavia. The Appeals Chamber has re-affirmed its *Tadić* Conviction Appeal Judgment, which had been followed in its *Aleksovski* Appeal Judgment, and which held that what must be established by the prosecution is that the foreign intervening party was in "overall control" of the local forces.

The Appeals Chamber has reiterated that it will follow the *ratio decidendi* of its previous decisions unless there are "cogent reasons in the interests of justice to depart from them." It considers that there is no reason to depart from the decision in its *Tadić* Conviction Appeal Judgment as to the relevant standard of control for this purpose. The Appeals Chamber has expressed additional reasons as to why that interpretation was correct, and it is satisfied that the Trial Chamber's factual determination on this issue was consistent with the overall control standard which had been stated.

- The appellants also challenged the Trial Chamber's finding that, for the purposes of Article 2 of the Statute, the victims were persons protected under the relevant Geneva Convention. In the *Tadić* Conviction Appeal Judgment, the Appeals Chamber held that "a person may be accorded protected person status, notwithstanding the fact that he is of the same nationality as his captors", a ruling subsequently endorsed by the Appeals Chamber in *Aleksovski*. The Appeals Chamber has concluded that there is no reason to depart from this interpretation, and it has confirmed that "the nationality of the victims for the purpose of the application of Geneva Convention IV should not be determined on the basis of formal national characterisations", but that the nationality should take into account the differing ethnicities of the victims and the perpetrators and their bonds with a foreign intervening State. The Appeals Chamber is satisfied that the Trial Chamber's findings were consistent with this interpretation.

- Delić also challenged the Tribunal's jurisdiction to prosecute grave breaches of the Geneva Conventions because, it was submitted, Bosnia and Herzegovina was not a party to the Conventions until after the relevant events, having acceded to them subsequently. The Appeals Chamber has held that Bosnia and Herzegovina succeeded to the Geneva Conventions, with the effect that it is considered to be a party to the treaty from the date of its succession or independence, which was prior to the relevant events. The Appeals Chamber has also stated that, even without a formal act of succession, Bosnia and Herzegovina would automatically have succeeded to the Geneva Conventions, as they are treaties of a universal multilateral character relating to fundamental human rights.

Common Article 3 and Article 3 of the Statute

The appellants also challenged the jurisdiction of the Tribunal to prosecute violations of Article 3 common to the Geneva Conventions under Article 3 of the Statute. The Appeals Chamber has concluded that there is no reason to depart from its *Tadić* Jurisdiction Decision, which held that the violations of the laws or customs of war which may fall within Article 3 of the Statute of the Tribunal include violations of common Article 3, that these violations give rise to individual criminal responsibility, and that they may be prosecuted whether committed in internal or international conflicts. It has expressed additional reasons as to why that decision was correct.

Command responsibility

- Mucić was convicted under Article 7.1 for his superior authority as commander of the Čelebići camp for the crimes committed there. He argued that command responsibility is limited to de jure commanders, or those superiors with control over subordinates equivalent to such de jure authority. The Appeals Chamber has rejected that argument, accepting that a position of de facto command may be sufficient to establish the necessary superior-subordinate relationship, as long as the relevant degree of control over subordinates is established. The relevant superior-subordinate relationship is established where the superior has effective control over the persons committing the underlying violations of international humanitarian law, in the sense of having the material ability to prevent or punish the commission of these offences.

- Mucić also challenged the sufficiency of the evidence to establish that he was a de facto commander. The Appeals Chamber has held that, on the evidence before the Trial Chamber, it was open to a reasonable tribunal of fact to find that Mucić exercised powers of control sufficient to constitute the exercise of de facto

authority over the camp, and therefore that no basis for reviewing the Trial Chamber's findings of fact had been made out.

- The prosecution appealed against the Trial Chamber's interpretation of the requirement, in Article 7.3, that a superior "knew or had reason to know" that a subordinate is about to commit crimes or had done so. The Appeals Chamber has concluded that the phrase "reason to know" in Article 7.3 means that a superior will be charged with knowledge of subordinates' offences if information of a general nature was available to him which would have put him on notice of those offences. The Appeals Chamber is satisfied that the Trial Chamber's conclusions on this issue were consistent with that interpretation.

- The prosecution also contended that the ability of an accused to exercise forms of influence should suffice to establish the relevant superior-subordinate relationship. The Appeals Chamber has concluded that, whilst indirect as well as direct relationships of subordination will suffice, the relevant standard of effective control over subordinates must be established, and that any forms of influence which fall short of such control would not suffice. The Appeals Chamber is satisfied that, on the evidence before the Trial Chamber, it was open to a reasonable tribunal of fact to acquit Delalić on the basis that he was not a superior in relation to the Čelebići camp and those working there.

Unlawful confinement of civilians

- Both Mucić and the prosecution filed grounds of appeal relating to the charges of unlawful confinement of civilians. Mucić challenged his conviction for that offence, and the prosecution challenged the acquittal of Delalić and Delić of those offences.

The Trial Chamber concluded that the offence of unlawful confinement of civilians is committed:

- first, when civilians are involuntarily confined in breach of Article 42 of Geneva Convention IV, which provides that civilians may only be detained where there are reasonable grounds to believe that the security of the Detaining Power makes it absolutely necessary, and
- secondly, when civilians are detained without compliance with Article 43 of the Geneva Convention, which provides that their detention must be reviewed by an appropriate court or administrative board.

The Appeals Chamber has confirmed the Trial Chamber's definition of the offence, and it has accepted that, on the evidence before the Trial Chamber, it was open to a reasonable tribunal of fact to find that the detainees in the Čelebići camp were unlawfully detained.

- The Appeals Chamber has also confirmed that the prosecution does not have to establish that a person is in a position of superior authority before he can be found guilty of direct responsibility for this offence under Article 7.1 of the Statute, but that a prison guard with no authority to release prisoners will not be guilty of the offence by virtue only of his failure to take unauthorised steps to release them.

- The Appeals Chamber has dismissed the prosecution appeal against the acquittal of Delalić and Delić on this charge, on the basis that the prosecution has failed to identify any evidence before the Trial Chamber which demonstrated that a finding of guilty was the only reasonable conclusion to be drawn. As to the appeal by Mucić against his conviction on this charge, the Appeals Chamber has held that, on the evidence before the Trial Chamber, it was open to a reasonable tribunal of fact to find that he had some authority to release prisoners, that he had failed to release those civilians whom he knew to be unlawfully detained because they had not received the necessary procedural review of their detention, and that he was therefore guilty of this offence.

Cumulative convictions

- Delić and Mucić challenged their convictions upon charges based upon the same conduct and alleging both grave breaches of the Geneva Conventions under Article 2 of the Statute and violations of the laws or customs of war under Article 3. This was the first time that the issue of cumulative convictions has arisen for the express consideration of the Appeals Chamber.

The Appeals Chamber has concluded that reasons of fairness to the accused, and the consideration that only distinct crimes justify cumulative convictions, require that cumulative convictions are permissible only if each statutory provision involved has a materially distinct element not contained in the other. The Appeals Chamber has concluded, by majority, that this assessment of the elements of the offences must take into account all of the elements of the offences, including the *chapeaux* (or legal pre-requisite elements) of each Article of the Statute.

Where this test is not met, a decision must be made in relation to which offence it will enter a conviction, on the basis that the conviction must be for the offence containing the more specific provision. Where, as in the present case, the evidence establishes the guilt of an accused based upon the same conduct under both Article 2 and Article 3 of the Statute, the conviction must be entered for the offence under Article 2.

The challenge by Delić and Mucić has therefore been upheld, and the charges against them under Article 3 have been dismissed. As Landžo similarly received cumulative convictions under Articles 2 and 3, the charges against him under Article 3 have also been dismissed, notwithstanding that he did not challenge them.

- In a separate and dissenting opinion, Judge Hunt and Judge Bennouna have agreed with the majority that cumulative convictions should be permissible only where each offence has a materially different element not contained in the other, but they have proposed different tests for determining whether this was so in the particular case and, where cumulative convictions are not permissible, for determining which offence should carry the conviction. These tests would in some cases have produced a different result.
- As the sentencing outcome in respect of each of the three convicted accused may have been different had the Trial Chamber not imposed multiple convictions, the issue of re-sentencing has been remitted to a new Trial Chamber to be designated by the President of the Tribunal.

Delić – factual issues

Delić challenged his convictions upon ten of the counts against him, involving five separate incidents, on the basis that the Trial Chamber had erred in its relevant factual findings.

In relation to the murder of Šćepo Gotovac, one of the detainees in the Čelebići camp, the Appeals Chamber has concluded that the Trial Chamber's conclusion that Delić participated in the beating which was responsible for Mr Gotovac's death was not open on the evidence before it. The convictions relating to this incident have been quashed, and verdicts of not guilty entered. In relation to the other four incidents, the Appeals Chamber has concluded that, on the evidence before the Trial Chamber, it was open to a reasonable tribunal of fact to find him guilty of the offences charged.

The prosecution interviews with Mucić

Mucić challenged the admission into evidence of interviews conducted with him by investigators from the Office of the Prosecutor following his arrest. He submitted that the Trial Chamber should have found that he had not voluntarily waived his right to counsel under the Tribunal's Statute and Rules, and that it should therefore have excluded the evidence obtained as a result of the interviews. Mucić also claimed that the Trial Chamber erred in refusing to issue a subpoena to the interpreter present at these interviews to give evidence of any conversation between the investigators and himself which took place before the interviews started and which may have led to the waiver.

The Appeals Chamber is not satisfied that any error has been demonstrated in the Trial Chamber's refusal to issue a subpoena to the interpreter to give evidence. It has stated that a *voir dire* procedure could be of assistance, in appropriate cases, in determining any factual issues relating to the admissibility of evidence such as these, but that the Trial Chamber committed no error in the exercise of its discretion in not adopting that procedure in the absence of any clear indication that the accused would give evidence in relation to those issues.

The Appeals Chamber is satisfied that, on the evidence before the Trial Chamber, it was open to a reasonable tribunal of fact to find that Mucić had expressed the wish to be interviewed without counsel, and that the Trial Chamber had accordingly not erred in the exercise of its discretion to allow the evidence to be tendered on that basis.

Diminished mental responsibility

Before the trial, Landžo gave notice under the Tribunal's Rules of Procedure and Evidence that he would be relying upon the "special defence" of diminished mental responsibility, and he submitted that such a defence amounted to a complete defence to the offences with which he had been charged, leading to an acquittal.

Landžo argued that the Trial Chamber erred by refusing to define the "special defence" in advance of evidence being given in support of it. The Appeals Chamber has held that it is no part of a Trial Chamber's obligation to define such issues in advance, and that in any event no prejudice had been established as resulting from that refusal.

Landžo also challenged the Trial Chamber's rejection of the "special defence" as having been "inconsistent with the great weight of the evidence". The Appeals Chamber has held that an accused's diminished mental responsibility is relevant to the sentence to be imposed, but it is not a defence to offences charged under the Tribunal's Statute. Rule 67(A)(ii)(b) must therefore be interpreted as referring to diminished mental responsibility where it is raised by the defendant as a matter in mitigation of sentence. The Appeals Chamber has also held that, in any event, on the evidence before the Trial Chamber it was open to a reasonable tribunal of fact to reject the evidence of Landžo as to his state of mind upon which his psychiatrist witnesses

relied, and therefore – as the Trial Chamber did – to reject their opinion that he had suffered from a diminished mental responsibility.

Selective prosecution

Landžo challenged his conviction upon the basis that he was the victim of selective prosecution based on discriminatory grounds.

In 1998, the Office of the Prosecutor withdrew indictments against a number of low ranking accused as a result of a changed prosecutorial strategy. Landžo alleged that the continued maintenance of the charges against him was discriminatory, as he was a young Muslim camp guard and the others against whom indictments had been withdrawn were all non-Muslims of Serb ethnicity. He contends that he was prosecuted as a “representative” of the Bosnian Muslims.

The Appeals Chamber has held that, whilst the Prosecutor has a wide discretion in relation to prosecutorial strategy, this discretion is not unlimited. However, Landžo has not discharged his burden of establishing any abuse of the prosecutorial discretion. He has not demonstrated that his prosecution was continued for any impermissible motive, or that other accused, similarly situated to himself, were not prosecuted. At the time of the dismissal of the indictments against other accused, none of whom was in the custody of the Tribunal, Landžo’s trial was well underway. The continuation of the proceedings against him was consistent with the policy of the Prosecutor to prosecute not only those holding higher levels of responsibility, but also those “personally responsible for exceptionally brutal or otherwise extremely serious offences”.

Judge Karibi-Whyte

Landžo challenged the fairness of his trial upon the basis that the Presiding Judge, Judge Karibi-Whyte, had been “asleep during substantial portions of the trial”. At a late stage of the appellate proceedings, Delić and Mucić adopted this ground of appeal. The burden of the argument, however, was left to Landžo. The parties agreed that the relevant principle was that proof that a judge slept through part of the proceedings, or was otherwise not completely attentive to them, is a matter which, if it causes actual prejudice to a party, may affect the fairness of the proceedings to such a degree as to give rise to a right to a new trial or other adequate remedy.

Both Landžo and the prosecution selected, from the audio-visual records of the trial produced by the courtroom cameras generally focussed on the judges’ bench, those portions of the records upon which they relied in support of this ground of appeal, and in opposition to it. The written submissions filed by Landžo contained extensive and detailed descriptions of what was said to be seen and heard on the videotapes. Before the oral hearing, the Appeals Chamber viewed those portions upon which the parties relied. The Appeals Chamber has concluded that the descriptions given were both highly coloured and gravely exaggerated, and that they appeared to have been given with a reckless indifference to the truth.

The Appeals Chamber has found that the appellants have manifestly failed to establish the allegation that Judge Karibi-Whyte was “asleep during substantial portions of the trial”, but that the portions of the videotapes relied upon by Landžo nevertheless demonstrated a recurring pattern of behaviour where the judge appears not to have been fully conscious of the proceedings for short periods of time. These periods were usually five to ten seconds long, and sometimes up to thirty seconds – but they were repeated over extended periods of ten to fifteen minutes. On one occasion only, the judge appeared to be asleep for approximately thirty minutes. The Appeals Chamber has proceeded to consider whether, notwithstanding their failure to establish the factual basis of these grounds of appeal, the appellants nevertheless have a valid cause for complaint as to the fairness of the trial.

The Appeals Chamber has stated, firmly, that Judge Karibi-Whyte’s conduct cannot be accepted as appropriate conduct for a judge. It has also said that, if a judge suffers from some condition which prevents him or her from giving full attention during the trial, then it is the duty of that judge to seek medical assistance and, if that does not help, to withdraw from the case. However, before a judgment will be quashed upon this basis, it must be established that some identifiable prejudice was caused by that conduct to the appellant, and the failure of counsel to object at the trial to the conduct in question is relevant to whether such prejudice has been established. The requirement that the issue be raised during the proceedings is not simply an application of a formal doctrine of waiver, but a matter indispensable to the grant of fair and appropriate relief.

The Appeals Chamber has not been satisfied that any specific prejudice was suffered by Landžo or the other appellants. In the absence of any actual prejudice, the Appeals Chamber has rejected the ground of appeal.

Judge Odio Benito and Vice-Presidency of Costa Rica

During the course of the trial, Judge Odio Benito was elected Vice-President of Costa Rica, and she took an oath of office as such. All three convicted accused challenged her qualifications to remain as a judge of

the Tribunal during the rest of the trial, and they alleged that, in any event, she should have disqualified herself as a judge by reason of those facts because she was no longer independent.

The Appeals Chamber has held that, because the judges of the Tribunal must necessarily come from a wide variety of legal systems, the requirement of Article 13 in the Tribunal's Statute (as it was at the relevant time) that the judges of the Tribunal "possess the qualifications required in their respective countries for appointment to the highest judicial offices" was intended to ensure that the *essential* qualifications did not differ from judge to judge, and that it was not intended to include within the required *legal* qualifications any constitutional disqualifications peculiar to a particular country. The Appeals Chamber has in any event rejected the argument that, by virtue of her election as Vice-President of Costa Rica, Judge Odio Benito was constitutionally disqualified for election as a magistrate of the Supreme Court of Justice under the constitution of that country.

The Appeals Chamber has also rejected the argument that Judge Odio Benito should nevertheless have disqualified herself as a judge because she was no longer independent. The Appeals Chamber has not accepted that the judge exercised any executive functions in Costa Rica during the time she was also a judge of the Tribunal. The appellants have failed to establish that the reaction of the hypothetical observer (with sufficient knowledge of the circumstances to make a reasonable judgment) would be that she might not bring an impartial and unprejudiced mind to the issues arising in the *Čelebići* case.

Judge Odio Benito and the Victims of Torture

All three convicted accused also alleged that Judge Odio Benito was automatically disqualified as a judge of the Tribunal because she was, at the time this case was heard, a member of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture. They contended that, since the indictment in this case included allegations of torture, there was a strong appearance of bias on the part of the judge against those accused who were the subject of those allegations.

The Appeals Chamber has held that the same hypothetical observer would be aware that the objects of this fund are solely focussed on fundraising to enable material assistance to be given to the victims of torture – through the receipt and redistribution of donations for humanitarian, legal and financial aid to victims of torture and their relatives – and would not expect judges to be morally neutral about torture. Rather, such an observer would expect judges to hold the view that persons *responsible* for torture should be punished. It has accepted the statement that "it is [...] important that judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of apparent bias, encourage parties to believe that, by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour".

Sentencing

All of the parties, with the exception of Delalić, filed grounds of appeal in relation to sentencing. The **Prosecution** challenged the sentences imposed on Mucić of seven years, to be served concurrently, as "manifestly inadequate". **Mucić** challenged his sentence as too long in all the circumstances.

The Appeals Chamber has concluded that the Trial Chamber failed to take adequate account of the gravity of offences for which Mucić was convicted and that, in a number of respects, it failed to take into account, or gave inadequate weight to, various matters in aggravation. The Appeals Chamber has rejected one complaint by the prosecution, that the Trial Chamber erred when it did not take into account criminal conduct which was not specifically alleged in the indictment and in relation to which the prosecution had not requested the Trial Chamber to make specific findings. The Appeals Chamber has accepted one complaint by Mucić, that the Trial Chamber erred in making an adverse reference in its sentencing considerations to the fact that Mucić had declined to give oral testimony at the trial, but it has otherwise rejected his complaints.

The Appeals Chamber has indicated that, taking into account the various considerations relating to the gravity of his offences, all the aggravating circumstances, the mitigating circumstances to which the Trial Chamber referred, and the "double jeopardy" element involved in re-sentencing, it would have imposed on Mucić a heavier sentence, of a total of around ten years' imprisonment. This is a figure to which the new Trial Chamber to consider sentencing issues may have regard in its own determination.

Delić challenged his sentence on the basis that the Trial Chamber contravened the principles of legality, by imposing sentences on him which were greater than the sentences which would have been permitted at the relevant time under the sentencing laws and practice of the former Yugoslavia. The Appeals Chamber has rejected that challenge. It has also stated that, whilst Trial Chambers must, as required by Article 24.1 of the Statute, have *recourse to* the general practice regarding sentencing in the courts of the former Yugoslavia, they are not *bound* by that practice. The Appeals Chamber has also concluded that the sentences imposed on Delić have not been shown to be excessive or in any way outside of the Trial Chamber's sentencing discretion.

Landžo challenged his sentence on the basis that it was manifestly excessive. He sought to show a disparity between his sentence and sentences imposed on persons convicted in other cases before the Tribunal. The Appeals Chamber has not accepted that the comparisons made by him are valid. It has also concluded that the Trial Chamber adequately considered the mitigating factors applicable to Landžo.

Disposition

The formal orders made by the Appeals Chamber in the Disposition section of the judgment are as follows:

1. In relation to Counts 1 and 2 of the Indictment, the Appeals Chamber **ALLOWS** the ninth and tenth grounds of appeal filed by Hazim Delić, it **QUASHES** the verdict of the Trial Chamber accordingly, and it enters a verdict that Hazim Delić is **NOT GUILTY** upon those counts.
2. In relation to the grounds of appeal relating to cumulative convictions, the Appeals Chamber **ALLOWS** the twenty-first ground of appeal filed by Hazim Delić and the seventh ground of appeal filed by Zdravko Mucić; it **DISMISSES** Counts 14, 34, 39, 45 and 47 against Zdravko Mucić; it **DISMISSES** Counts 4, 12, 19, 22, 43 and 47 against Hazim Delić, and it **DISMISSES** Counts 2, 6, 8, 12, 16, 25, 31, 37, and 47 against Esad Landžo. It **REMITTS** to a Trial Chamber to be nominated by the President of the Tribunal¹ the issue of what adjustment, if any, should be made to the sentences imposed on Hazim Delić, Zdravko Mucić, and Esad Landžo to take account of the dismissal of these counts.
3. In relation to the eleventh ground of appeal filed by Zdravko Mucić, the Appeals Chamber **FINDS** that the Trial Chamber erred in making adverse reference when imposing sentence to the fact that he had not given oral evidence in the trial, and it **DIRECTS** the Reconstituted Trial Chamber to consider the effect, if any, of that error on the sentence to be imposed on Mucić.
4. The Appeals Chamber **ALLOWS** the fourth ground of appeal filed by the Prosecution alleging that the sentence of seven years imposed on Zdravko Mucić was inadequate, and it **REMITTS** the matter of the imposition of an appropriate revised sentence for Zdravko Mucić to the Reconstituted Trial Chamber, with the indication that, had it not been necessary to take into account a possible adjustment in sentence because of the dismissal of the counts referred to, it would have imposed a sentence of around ten years.
5. *The Appeals Chamber DISMISSES each of the remaining grounds of appeal filed by each of the appellants.*

The Appeals Chamber's reasons for these orders are now published.

The accused are to remain in custody in the Detention Unit until further order".

¹ Hereafter, "Reconstituted Trial Chamber".