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TADIC SENTENCE INCREASED TO 25 YEARS IMPRISONMENT

For the additional counts of which Duško Tadić was found guilty by the Appeals Chamber on 15 July 1999, today the Trial Chamber handed down nine separate sentences ranging from six to 25 years imprisonment. These sentences are to be served concurrently, including each of the sentences imposed in the *Sentencing Judgement* of 14 July 1997.

The Presiding Judge of the Trial Chamber, Judge Gabrielle Kirk McDonald read out the following summary of the Sentencing Judgement in court:

On 7 May 1997, Trial Chamber II issued the Opinion and Judgement, in which it found Duško Tadić guilty on nine counts, guilty in part on two counts, and not guilty on 20 counts. With respect to 11 of those 20 counts, Trial Chamber II found, by majority, that Article 2 of the Statute of the International Tribunal was inapplicable since it had not been proved that the victims of the charges brought under this Article were protected persons within the meaning of the Geneva Conventions. With respect to the charges that formed the basis of Counts 29, 30 and 31, Trial Chamber II found that the evidence did not support a finding of guilt beyond reasonable doubt.

Pursuant to appeals by both the Office of the Prosecutor ("the Prosecution") and the Defence Counsel for Duško Tadić ("the Defence") against Trial Chamber II's Opinion and Judgment, the Appeals Chamber entered its Judgement on 15 July 1999. It found that the victims referred to in Counts 8, 9, 12, 15, 21, 29 and 32 of the Amended Indictment were protected persons, as required under the applicable provisions of the Geneva Convention. In addition, the Appeals Chamber concluded that the requisite elements of the underlying offences charged in Counts 29, 30 and 31 were satisfied beyond a reasonable doubt. Accordingly, the Appeals Chamber found Duško Tadić guilty of these nine counts.

The Appeals Chamber initially deferred sentencing on the additional counts to a later stage and subsequently remitted sentencing to a Trial Chamber to be designated by the President of the International Tribunal. By order of the President, this Trial Chamber, composed of myself, Judge Vohrah and Judge Robinson, became responsible for determining the appropriate sentences to be imposed on Duško Tadić in relation to Counts 8, 9, 12, 15, 21, 29, 30, 31 and 32.

The parties made oral submissions at a hearing on 15 October 1999. The parties have also tendered written submissions. In respect of Counts 29, 30 and 31, which charged Duško Tadić with the killing of five men in Jaskiči, the Prosecution recommended a sentence of an additional 15 years' imprisonment for each Count. The Prosecution left it for the Trial Chamber to determine whether the additional sentences of fifteen years should be served consecutively or concurrently inter se, but contended that they should be served in addition to the existing sentence of twenty years' imprisonment. The Defence submitted that the appropriate sentence for these counts was 15 years imprisonment, and recommended that the sentences be ordered to run concurrently.

In determining the appropriate sentence, the Trial Chamber has considered all the submissions made by the parties and the sentencing guidelines provided in Article 24 of the Statute and Rule 101 of the Rules of Procedure and Evidence.

The Trial Chamber initially notes that the unique mandate of the International Tribunal of putting an end to widespread violations of international humanitarian law and contributing to the restoration and maintenance of peace in the former Yugoslavia warrants particular consideration in respect of the purpose of sentencing. In the opinion of the Trial Chamber, retribution and deterrence serve as the primary purposes of sentence. Accordingly, the Trial Chamber has, in imposing the appropriate sentence, taken these purposes into account as one of the relevant factors.

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In respect of Article 24, paragraph 1, of the Statute and Sub-rule 101(B)(iii) of the Rules, the Trial Chamber notes that the general sentencing practice of the courts in the former Yugoslavia does not delimit the sources upon which the Trial Chamber may rely in reaching its determination of the appropriate sentence for a convicted person. Rather, the Trial Chamber is only required to have recourse to that sentencing practice and may properly consider other factors, such as those set out in Article 24 of the Statute and Rule 101, as well as factors pertaining to the special nature and purpose of the International Tribunal. The Trial Chamber takes the view that in respect of crimes which in the former Yugoslavia could have attracted the death penalty, it may, as the maximum, impose a sentence of imprisonment for the remainder of a convicted person's life.

The Trial Chamber has further taken note of certain circumstances relevant to sentencing for each of the crimes charged in the Counts for which Duško Tadić now stands to be sentenced. These circumstances are set out in the written Sentencing Judgement and will not be repeated here. The Trial Chamber, however, would like to emphasise that Duško Tadić in respect of Counts 29, 30 and 31 was convicted by the Appeals Chamber for his participation "in the killings of the five men in Jaskići, which were committed during an armed conflict as part of a widespread or systematic attack on a civilian population."

Sub-rule 101(B)(i) of the Rules provides that the Trial Chamber shall take into account any aggravating factors in determining the appropriate sentence. In this context, the Trial Chamber has considered, inter alia, Duško Tadić's awareness of, and support for, the attack on the non-Serb civilian population of opština Prijedor by Bosnian Serb forces and the Republika Srpska authorities operating in that area.

As to mitigating circumstances, which the Trial Chamber is required to take into account pursuant to Sub-rule 101(B)(ii), the Defence submits that Duško Tadić is entitled to credit in the form of reduction of sentence, as he has demonstrated substantial co-operation with the Prosecution by providing it with material relating to certain events in opština Prijedor. Having conducted an independent review of the relevant material, the Trial Chamber has found that the material does not amount to evidence of substantial co-operation within the meaning of Sub-rule 101(B)(ii). Therefore, the Trial Chamber has not taken this matter into account in the determination of the sentence. The Trial Chamber has, however, taken into account the report on Duško Tadić's conduct while in detention at the United Nations Detention Unit, according to which Duško Tadić "during the last eighteen months has behaved as a model detainee."

In assessing the impact of Duško Tadić's personal circumstances on the determination of the appropriate sentence, the Trial Chamber has focused on Duško Tadić's personality, character, family, and social background and taken into account the effect of the length of sentence on Duško Tadić's family.

Furthermore, in imposing sentence in respect of the offence charged as a crime against humanity, the Trial Chamber is bound by the pronouncement in the Erdemović Appeals Judgement that a prohibited act committed as part of a crime against humanity, that is with an awareness that the act formed part of a widespread or systematic attack on a civilian population, is, all else being equal, a more serious offence than an ordinary war crime and "should ordinarily entail a heavier penalty than if it were proceeded upon on the basis that it were a war crime".

Finally, the Trial Chamber notes that Count 8 of the Amended Indictment charged Duško Tadić alternatively with two distinct offences, namely torture or inhuman treatment, and that the Appeals Chamber, in convicting Duško Tadić on this Count, did not specify in respect of which of the two offences it found him guilty. As a consequence, an ambiguity undoubtedly exists. Under these circumstances, the Trial Chamber has applied the principle of in dubio pro reo (which states that any ambiguity must accrue to the defendant's advantage), and has imposed sentence in respect of the lesser offence of inhuman treatment.

I will now read the Disposition of the Trial Chamber in full.

Penalties

FOR THE FOREGOING REASONS THE TRIAL CHAMBER, having considered all of the evidence and the arguments in light of the Statute and the Rules, unanimously imposes on Duško Tadić the following penalties:

Counts 8 and 9

For inhuman treatment as a grave breach, the Trial Chamber sentences Duško Tadić to nine years' imprisonment;

For wilfully causing great suffering or serious injury to body or health as a grave breach, the Trial Chamber sentences Duško Tadić to nine years' imprisonment;

Count 12

For wilfully causing great suffering or serious injury to body or health as a grave breach, the Trial Chamber sentences Duško Tadić to six years' imprisonment;

Count 15

For wilfully causing great suffering or serious injury to body or health as a grave breach, the Trial Chamber sentences Duško Tadić to six years' imprisonment;

Count 21

For wilfully causing great suffering or serious injury to body or health as a grave breach, the Trial Chamber sentences Duško Tadić to six years' imprisonment;

Counts 29, 30 and 31

For wilful killing as a grave breach, the Trial Chamber sentences Duško Tadić to twenty-four years' imprisonment;

For murder as a violation of the laws or customs of war, the Trial Chamber sentences Duško Tadić to twenty-four years' imprisonment;

For murder as a crime against humanity, the Trial Chamber sentences Duško Tadić to twenty-five years' imprisonment;

Count 32

For wilfully causing great suffering or serious injury to body or health as a grave breach the Trial Chamber sentences Duško Tadić to nine years' imprisonment;

Concurrence of Sentences

Each of the sentences is to be served concurrently, both inter se and in relation to each of the sentences imposed in the Sentencing Judgement of 14 July 1997.

Credit for time served

In accordance with Sub-rule 101(D), Duško Tadić is entitled to credit for time for which he "was detained in custody pending surrender to the Tribunal or pending trial or appeal." Although he was arrested on 12 February 1994, his detention pending surrender to the International Tribunal did not commence until 8 November 1994 when Trial Chamber I issued a formal request to the Government of the Federal Republic of Germany to defer to the jurisdiction of the International Tribunal. Consequently, Duško Tadić is entitled to credit for five years and three days of time served in relation to the sentence imposed by the Trial Chamber, as at the date of this Sentencing Judgement, together with such additional time as he may serve pending the determination of any appeal.

Separate Opinion

Judge Patrick L. Robinson attached a separate opinion in which he comments on two issues. First, with regard to the relative gravity of crimes against humanity and war crimes, Judge Robinson is of the view that, as a matter of principle and all things being equal, they deserve the same sentence. Nevertheless, considering himself to be bound by the Erdemovic decision on that point, he concurred with those sections of the Judgement which reflect a more severe penalty for crimes against humanity than for war crimes.

Secondly, Judge Robinson does not find the killing of the five men in Jaskici (Counts 29, 30 and 31) to be more heinous than the murder of the two Muslim policemen (Count 1), thus the discrepancy between the respective sentences (24, 24 and 25 years in the first case and 20 in the latter) is not justified. In the circumstances of the case, Judge Robinson is of the view that a term of imprisonment of 25 years is the appropriate penalty for the killings covered by Counts 29, 30 and 31, and as such a similar sentence should have been imposed with regard to Count 1.

A copy of the full Sentencing Judgement is available on request and is being posted on the ICTY's website at www.un.org/icty