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APPEALS JUDGEMENT SUMMARY

(Exclusively for the use of the media. Not an official document)

APPEALS CHAMBER

The Hague, 12 November 2009

Summary of the Appeals Judgement Prosecutor v. Dragomir Milošević

Please find below the summary of the appeals judgement read out today by Judge Pocar:

1. INTRODUCTION

As indicated in the Scheduling Order issued on 15 October 2009 and pursuant to Rule 117(D) of the Rules of Procedure and Evidence of the Tribunal, today the Appeals Chamber will deliver its judgement in the case of the Prosecutor versus Dragomir Milošević. Following the practice of the Tribunal, I will not read out the text of the judgement, except for the disposition. Instead, after recalling the main issues raised on appeal, I will summarise the findings of the Appeals Chamber. I should emphasize that the following summary is not an integral part of the Judgement. The only authoritative account of the Appeals Chamber's conclusions and the related reasoning is to be found in the written judgement, copies of which shall be made available to the parties at the end of this hearing.

2. BACKGROUND OF THE CASE

The events giving rise to these appeals took place in the city of Sarajevo, Bosnia and Herzegovina, between August 1994 and November 1995. During the relevant period, Dragomir Milošević held the position of Commander of the Sarajevo Romanija Corps (SRK). The Trial Chamber found that the SRK troops under Milošević's command were responsible for continuously sniping and shelling the area of Sarajevo, resulting in the killing and serious injury of many civilians. It thus found Milošević guilty pursuant to Article 7(1) of the Statute for planning and ordering the crimes of terror, as a violation of the laws or customs of war (count 1), murder and inhumane acts, as crimes against humanity, committed through sniping (counts 2, 3) and shelling (counts 5 and 6). As a consequence of the conviction entered under count 1, the Trial Chamber dismissed the charges of unlawful attacks against civilians under counts 4 and 7, as impermissibly cumulative on the ground that the elements of the crime of unlawful attack against civilians are fully encompassed by the crime of terror. The Trial Chamber imposed a single sentence of 33 years of imprisonment.

3. THE APPEALS

Both parties appealed the Trial Judgement. Milošević sets forth 12 grounds of appeal against the Trial Judgement. He requests the Appeals Chamber to acquit him on all counts. The Prosecution puts forth a sole ground of appeal against the sentence and requests the Appeals Chamber to increase the sentence imposed on Milošević to life imprisonment.

I will start with the grounds of appeal raised by Milošević, followed by the Prosecution's appeal.

Under the first part of his first ground of appeal, Milošević argues that the Trial Chamber erroneously established that all the required elements of the crime of terror have been met.

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Regarding the actus reus of the crime, the Appeals Chamber finds that the Trial Chamber misinterpreted the Galić Appeal Judgement by stating that “actual infliction of death or serious harm to body or health is a required element of the crime of terror” and thus committed an error of law. Causing death or serious injury to body or health represents only one of the possible modes of commission of the crime of terror, and thus is not an element of the offence per se. What is required, however, in order for the offence to fall under the jurisdiction of this Tribunal, is that the victims suffered grave consequences resulting from the acts or threats of violence; such grave consequences include, but are not limited to death or serious injury to body or health. For reasons explained in its Judgement, the Appeals Chamber further rejects the Prosecution’s submission that the actus reus of the crime of terror is comprised of acts capable of spreading terror. That said, in view of the Trial Chamber’s findings in the present case that all the incidents imputed to the SRK constituted unlawful attacks against civilians and thus caused death or serious injury to body or health of civilians, the required threshold of gravity based on those incidents has been met. Moreover, the Trial Chamber established that the incidents had a strong psychological impact on the population of Sarajevo, which, in the circumstances of the case, also satisfies the threshold of gravity required for the crime to fall under the Tribunal’s jurisdiction.

Consequently, the Appeals Chamber finds that the Trial Chamber’s legal error regarding the actus reus of the crime of terror is without impact on its analysis of the evidence of the case and eventually on the findings of guilt. Nonetheless, in light of the Trial Chamber’s legal error, the Appeals Chamber finds it necessary to provide guidance with respect to the applicable law on cumulative convictions in relation to the crime of terror and unlawful attacks against civilians. It finds that contrary to the Trial Chamber’s conclusion, each of the offences in question has an element requiring proof of a fact not required by the other, thus allowing cumulative convictions to be entered. However, considering that the matter of cumulative convictions has not been appealed by the Prosecution, the Appeals Chamber has not considered the matter any further.

The Appeals Chamber rejects Milošević’s argument that the Trial Chamber could not take into account evidence of the actual terror experienced by the civilian population when establishing the mens rea of the crime. It finds that both the actual infliction of terror and the indiscriminate nature of the attacks were reasonable factors for the Trial Chamber to consider in determining Milošević’s specific intent. The Appeals Chamber recalls in this regard that while the actual terrorisation of the civilian population is not an element of the crime, evidence of such terrorisation may contribute to establishing other elements of the crime of terror. As regards the indicia mentioned in the Galić Appeal Judgement, the Appeals Chamber emphasizes that they do not represent an exhaustive list of mandatory considerations but an indication of some factors that may be taken into account according to the circumstances of the case. The Appeals Chamber finds that Milošević has failed to demonstrate any discernible error in the Trial Chamber’s reasoning in this regard.

This sub-ground is therefore dismissed, Judge Liu dissenting on the question of the Tribunal’s jurisdiction over the crime of terror and on the elements of the offence.

In the second prong of his first ground of appeal, Milošević alleges that the Trial Chamber failed to establish beyond reasonable doubt that the attacks carried out by the SRK were directed against civilians or that civilians were the victims of those attacks. At the outset, the Appeals Chamber finds no error in the definition of civilians and of civilian population expounded by the Trial Chamber and rejects Milošević’s argument that the Trial Chamber presumed the civilian status of the victims. As regards Milošević’s submission that the Trial Chamber erred in failing to consider entire areas of Sarajevo held by the Army of Bosnia and Herzegovina (ABiH) as military zones, the Appeals Chamber emphasizes that there is no requirement that particular areas, or zones, be designated as civilian or military in nature. Rather, a case-by-case distinction is to be made between the civilian population and combatants, or between civilian and military objectives, targeted in each attack. Accordingly, Milošević’s arguments in this regard are dismissed.

The Appeals Chamber further rejects Milošević's allegations that the Trial Chamber did not take into consideration the factors relevant to its assessment of whether the SRK attacks were directed against the civilian population. It further dismisses without detailed consideration Milošević's unsupported challenges with respect to the civilian status of the victims of a number of shelling and sniping incidents.

For reasons spelled out in the Judgement, Milošević's first ground of appeal is dismissed in its entirety.

Under his second ground of appeal, Milošević argues that the Trial Chamber erroneously established certain facts by relying on evidence it had not admitted during the proceedings. The Appeals Chamber dismisses Milošević's arguments concerning the Trial Chamber's reliance upon a NATO weather report and his unsubstantiated submission that the psychological state of the civilian population in Sarajevo could not have been established without having recourse to an expert in psychology. Milošević's arguments concerning the siege of Sarajevo are addressed under his fourth ground of appeal. Milošević's second ground of appeal is therefore dismissed.

Under his third ground of appeal, Milošević contends that the Trial Chamber failed to consider the evidence as a whole, and in particular, that it ignored the evidence showing the military activity of the ABiH. The Appeals Chamber finds that Milošević fails to meet the standard of review on appeal and therefore dismisses this ground of appeal.

Under his fourth ground of appeal, Milošević challenges the Trial Chamber's findings regarding the civilian status of the trams in Sarajevo. The Appeals Chamber notes that the Trial Chamber considered evidence showing that trams were not used for transportation of troops or military equipment. With the exception of the sniping incident on 27 February 1995, the Trial Chamber was satisfied that there was no military personnel present on the vehicles or in their vicinity at the time the incidents took place. With regard to the sniping incident on 27 February 1995, the Trial Chamber received conflicting evidence as to the presence of one soldier on the tram. The Appeals Chamber finds, however, that Milošević's assertion that the presence of one soldier converted the tram into a military target due to the fact that it was used for transportation of the military, is untenable.

With respect to Milošević's arguments regarding the "siege", the Appeals Chamber considers that the Trial Chamber only used the term "siege" as a means of describing the factual situation before it, referring to the conditions in which the population of Sarajevo was trapped throughout the Indictment period, and did not ascribe to it any legal qualification. Accordingly, the Appeals Chamber finds that Milošević fails to demonstrate that the Trial Chamber committed any error of law or of fact. The remainder of Milošević's arguments concerning this issue are also dismissed.

Milošević's submissions regarding his absence from Sarajevo are discussed under his 12th ground of appeal. His fourth ground of appeal is dismissed in all other respects.

Since Milošević's fifth ground of appeal relates to the sentence imposed by the Trial Chamber, it will be addressed at the end of this summary in the part relevant to sentencing.

Under his sixth ground of appeal, Milošević argues that the Trial Chamber erred in fact in finding that Vojničko Polje, Alipašino Polje, Dobrinja, Sedrenik, Hrasnica, and Marin Dvor were civilian areas within the city of Sarajevo. The Appeals Chamber has concluded that despite the somewhat confusing language used by the Trial Chamber, it correctly engaged in a case-by-case analysis of the targets and modalities of the attacks, and not that of status of "zones". The Appeals Chamber is satisfied that the Trial Chamber correctly established that the population of these neighbourhoods of Sarajevo had civilian status at the time of the attacks targeting it. Consequently, Milošević's sixth ground of appeal is dismissed in its entirety.

Under his seventh ground of appeal, Milošević alleges that the Trial Chamber erroneously found that SRK members were behind specific sniper fire. The Appeals Chamber finds that concerning the sniping of Jasmina Tabaković, Sanela Dedović, Dervića Selmanović, Tarik Žunić and Adnan Kasapović, Milošević fails to show any error in the Trial Chamber's reliance on the evidence on the record. Milošević also fails to show any error in the Trial Chamber's findings that trams were deliberately targeted by SRK snipers. Likewise, as regards Nermin Divović and Dženana Sokolović, the Appeals Chamber finds that the Trial Chamber fully considered and weighed all the relevant evidence and that Milošević has failed to demonstrate any discernable error in its reasoning. Milošević's seventh ground of appeal is therefore dismissed in its entirety.

Under his eighth ground of appeal, Milošević challenges the Trial Chamber's finding that the SRK was behind certain shelling incidents.

Concerning the shelling of the Livanjska street on 8 November 1994, the Appeals Chamber finds that Milošević fails to show that the Trial Chamber's conclusions were erroneous.

As to the shelling of the Bašćaršija flea market on 22 December 1994, the Appeals Chamber notes that regarding the direction of the fire, the evidence clearly shows that both shells that exploded on 22 December 1994 at the flea market were fired from south-east. However, concerning the origin of the fire, the record indicates that the testimony of witness W-12 was the only evidence identifying it with precision as being Vidicovac. However, witness W-12 based his conclusion solely on the sound of one shell being fired. Considering the location of the ABiH and SRK positions, both in the direction from which the shell was fired, the Appeals Chamber is of the view that an analysis of the charge, as explained in the Galić Appeal Judgement, could have determined the position where the shell was fired from, with greater precision. The Trial Chamber failed to address the deficiencies in the relevant evidence and to articulate its reasons for dismissing other possible conclusions with respect to the origin of fire. The Appeals Chamber therefore finds that whereas the evidence on the record could lead a reasonable Trial Chamber to conclude that it was most likely that the shells that hit the flea market on 22 December 1994 were fired from SRK-held territory, it was insufficient to support such a conclusion beyond reasonable doubt.

In light of the above, the Appeals Chamber grants Milošević's eighth ground of appeal in part and overturns his conviction for the shelling incident of 22 December 1994. The remainder of this ground of appeal is dismissed.

Under his ninth, tenth and eleventh grounds of appeal Milošević challenges various findings made by the Trial Chamber in relation to the possession and use of the so-called "modified air bombs".

The Appeals Chamber finds that Milošević's general claim that ABiH possessed modified air bombs simply reiterates his arguments rejected by the Trial Chamber without showing any specific error in its conclusions. Moreover, the Appeals Chamber notes that the Trial Chamber considered the allegation that the ABiH used this type of weapon during the conflict in examining each of the individual incidents. Consequently, even if Milošević's general allegation regarding the ABiH possession of the air bombs during the Indictment period were shown to be true, it would have been without bearing on the conclusions with respect to their use in the specific incidents which he was convicted of.

Concerning the Trial Chamber's findings with regard to the shelling incident on 28 June 1995, Milošević fails to show that no reasonable trier of fact could have found, on the basis of the evidence presented before the Trial Chamber, that the TV building was hit by a modified air bomb launched from the SRK-held territory. Similarly, in relation to the use of aerial bombs in explosions between 7 April and 23 August 1995, Milošević fails to

demonstrate that the relevant findings of the Trial Chamber were erroneous. In light of the above, Milošević's ninth, tenth and eleventh grounds of appeal are dismissed.

Under his twelfth ground of appeal, Milošević challenges the Trial Chamber's finding that he ordered the attacks against civilians.

The Appeals Chamber notes that the Trial Chamber did not analyze whether Milošević ordered every sniping or shelling incident, but rather concluded that those incidents could only take place if ordered by him in the framework of the campaign of terror.

At the outset, the Appeals Chamber notes that the Trial Chamber held in its discussion of the widespread or systematic attack "[a] campaign is a military strategy; it is not an ingredient of any of the charges in the Indictment, be that terror, murder or inhumane acts". The Appeals Chamber notes, however, that in other parts of the Trial Judgement, the Trial Chamber appears to hold Milošević responsible for planning and ordering a criminal campaign. The Appeals Chamber understands these references as illustrating that the crimes at stake formed a pattern comprised by the SRK military campaign in Sarajevo. Therefore, the expression "campaign" in the Appeal Judgement shall be understood as a descriptive term illustrating that the attacks against the civilian population in Sarajevo, in the form of sniping and shelling, were carried out as a pattern forming part of the military strategy in place.

The Appeals Chamber notes that the Trial Chamber did not rely on any evidence that would identify a specific order issued by Milošević with respect to the campaign of shelling and sniping in Sarajevo as such. Rather, it relied on the nature of the campaign carried out in the context of a tight command to conclude that it could only "have been carried out on [Milošević's] instructions and orders". However, the Appeals Chamber is not satisfied that the Trial Chamber established beyond reasonable doubt the existence of a positive act required for the actus reus of ordering showing that Milošević instructed his troops to perform a campaign of sniping and shelling of civilian population in Sarajevo as a whole.

The Appeals Chamber further notes that Milošević was convicted for both planning and ordering the campaign of shelling and sniping of civilians in Sarajevo during the Indictment period, subsequent to Galić's term in command. With respect to the actus reus of planning, the Trial Chamber held that, although Milošević did not devise a strategy for Sarajevo on his own and acted in furtherance of orders by the VRS Main Staff, he was able to implement the greater strategy in a manner he saw fit. It is unclear from these findings whether Milošević was found to have participated in the design of the military strategy concerning the ongoing campaign as such or whether he planned each and every incident for which he was held responsible by the Trial Chamber. The Appeals Chamber further finds that it is unclear what specific evidence was relied upon by the Trial Chamber to come to these conclusions. In light of these uncertainties, the Appeals Chamber finds that Milošević's responsibility for planning the campaign of sniping and shelling of civilians in Sarajevo as such could not be established beyond reasonable doubt.

The Appeals Chamber emphasizes that the findings above pertain strictly to Milošević's individual criminal responsibility. These findings do not affect the conclusions of the Trial Chamber as well as those of the Galić Trial and Appeal Chambers that a campaign of shelling and sniping the civilian population in Sarajevo took place during the relevant period.

The Appeals Chamber now turns to consider Milošević's responsibility under counts 1, 5 and 6 concerning the shelling incidents. On the basis of the evidence relied upon by the Trial Chamber, coupled with the established fact that Milošević was directly involved in the use and deployment of modified air bombs and issued orders regarding their use from as early as August 1994, the Appeals Chamber is of the opinion that it was not unreasonable for the Trial Chamber to conclude beyond reasonable doubt that all the shelling involving

modified air bombs and mortars fired by the SRK in Sarajevo during the Indictment period could only occur pursuant to Milošević's orders. However, the Appeals Chamber notes that the Trial Chamber's conclusions that Milošević planned the shelling incidents are based on essentially the same set of facts. In the circumstances of this case, the Appeals Chamber proprio motu finds that Milošević's responsibility for ordering the shelling incidents fully encompasses his criminal conduct and thus does not warrant a conviction for planning the same crimes.

Considering Milošević's responsibility under counts 1, 2 and 3 which concern the sniping incidents, the Appeals Chamber finds that the Trial Chamber abused its discretion by taking into account instances where Milošević acted towards preventing the sniping as proof of him planning and ordering the sniping of civilians. Second, the Trial Chamber's reference to "an order for combat readiness and to draw up a firing plan onto the Old Town" as an example of Milošević planning and ordering the sniping is not accompanied by any mention of an exhibit or witness testimony, and the Appeals Chamber is unable to discern what exactly the Trial Chamber was citing to. Furthermore, the Appeals Chamber finds that the evidence cited by the Trial Chamber in support of its finding that Milošević generally controlled the sniping activity and training does not allow for a conclusion that the inference by the Trial Judgement that Milošević ordered all sniping incidents attributed to the SRK snipers is the only reasonable one.

However, the Appeals Chamber notes that its findings above do not exclude Milošević being held responsible for the crimes committed through sniping under Article 7(3) of the Statute, considering that this mode of liability was pleaded in the Indictment and discussed in the Trial Judgement. The Appeals Chamber is satisfied that, although it did not convict Milošević under Article 7(3) of the Statute, the Trial Chamber made the findings necessary for the establishment of his command responsibility for the sniping incidents. Having applied the correct legal framework to the conclusions of the Trial Chamber, the Appeals Chamber is satisfied that Milošević's responsibility under Article 7(3) of the Statute for having failed to prevent and punish the said crimes committed by his subordinates is established beyond reasonable doubt.

The Appeals Chamber now turns to consider Milošević's arguments raised under his fourth ground of appeal claiming that he cannot be held responsible for planning and ordering the incidents that took place between 6 August and 10 September 1995, while he was receiving medical treatment in Belgrade, namely the shelling of the BITAS building on 22 August 1995 and of the Markale Market on 28 August 1995.

The Appeals Chamber recalls that while Milošević was hospitalized in Belgrade, the person in charge of the SRK command in Sarajevo was his Chief of Staff, Čedomir Sladoje, who issued orders in lieu of the commander. Therefore, the Appeals Chamber finds that, even though Milošević formally preserved his rank and duties, the position of authority on the ground belonged to the stand-in commander, albeit temporarily. The Prosecution suggests that it can be inferred from the totality of the evidence that prior to his departure, Milošević instructed Sladoje to continue the campaign in his absence. However, the Appeals Chamber observes that this argument was not part of the Prosecution's case at trial and was thus not considered by the Trial Chamber. In any case, the Appeals Chamber is not convinced that such an inference would be the only reasonable one from the evidence pointed to by the Prosecution.

The Appeals Chamber notes that the Trial Chamber did not establish the existence of the prior positive act required for the actus reus of ordering with respect to the two shelling incidents at stake. The Appeals Chamber further finds that it was unreasonable for the Trial Chamber to infer that Milošević ordered these two shelling incidents on the basis that the incidents in question were similar to the ones that took place in his presence and thus were part of the overall plan and general orders of Milošević. Consequently, the Appeals Chamber quashes the Trial Chamber's findings in this regard and acquits Milošević of the crimes

related to the shelling of the BITAS building on 22 August 1995 and that of the Markale Market on 28 August 1995.

In light of the foregoing, the Appeals Chamber grants Milošević's twelfth and fourth grounds of appeal in part and (i) upholds Milošević's convictions for ordering the shelling of the civilian population in Sarajevo during the Indictment period, except for the shelling of the Baščaršija Flea Market on 22 December 1994, of the BITAS building on 22 August 1995 and of the Markale Market on 28 August 1995; (ii) quashes his conviction for planning the same crimes; and (iii) replaces Milošević's convictions for planning and ordering the sniping of the civilian population by respective convictions under Article 7(3) of the Statute.

As shown in the reasoning of the Judgement, in light of the acquittals with respect to the shelling of the BITAS building on 22 August 1995 and of the Markale Market on 28 August 1995, the Appeals Chamber did not need to address Milošević's challenges in relation to the victims thereof and the SRK participation therein. In this sense, the Trial Chamber's relevant findings remain undisturbed on appeal.

I now turn to the grounds of appeal concerning the sentence imposed by the Trial Chamber.

With respect to Milošević's fifth ground of appeal, the Appeals Chamber finds that, read in its proper context, the Trial Chamber's reference to Milošević's planning and ordering of gross and systematic violations of humanitarian law through his orders simply exemplifies Milošević's abuse of position, which was the specific aggravating circumstance correctly considered by the Trial Chamber. The Appeals Chamber thus finds, Judge Liu dissenting, that the Trial Chamber correctly took this factor into consideration in determining the sentence to be imposed. Similarly, Milošević fails to show that the Trial Chamber erred with respect to the other factors it considered in aggravation. For the foregoing reasons, the Appeals Chamber dismisses Milošević's fifth ground of appeal.

However, the Appeals Chamber proprio motu finds that the Trial Chamber counted certain factors twice when considering the gravity of the crimes and the aggravating circumstances. In the Appeals Chamber's view, the following factors were impermissibly counted twice in the relevant sentencing considerations: abuse of position, the indiscriminate shelling of civilians and the terrorising effect of the shelling and sniping on the civilian population. Nonetheless, the Appeals Chamber finds that even when properly taken into account only once, these factors still warrant a sentence comparable to that imposed on Milošević by the Trial Chamber.

Under its sole ground of appeal, the Prosecution submits that the Trial Chamber erred in law in imposing a sentence of 33 years imprisonment, which it argues was manifestly inadequate in the circumstances. The Prosecution submits that "the only sentence which accurately reflects Milošević's responsibility is one of life imprisonment".

Concerning the circumstances considered in mitigation, the Appeals Chamber finds that the Prosecution does not identify any discernible error in the exercise of the Trial Chamber's sentencing discretion beyond disagreeing with its determination of the mitigating factors. Although another Trial Chamber could have reasonably decided not to consider the above-mentioned factors as mitigating Milošević's guilt, the Appeals Chamber finds that the Trial Chamber acted within the scope of its discretion in doing so.

With regard to the gravity of the crimes for which Milošević was convicted, including his role in the crimes, a reading of the relevant section of the Trial Judgement clearly shows that the Trial Chamber took into account all of the findings identified by the Prosecution.

As to the comparison with the sentence imposed on Stanislav Galić on appeal, the Appeals Chamber does not discount the assistance that may be drawn from previous

decisions. However, such assistance is often limited, as differences between cases are often more significant than similarities and different mitigating and aggravating circumstances might dictate different results. While another reasonable trier of fact might have convicted Milošević to a higher sentence, the Appeals Chamber does not consider that the sentence pronounced was unreasonable or plainly unjust so as to require the Appeals Chamber's intervention.

For the foregoing reasons, the Appeals Chamber dismisses the Prosecution's appeal in its entirety.

This concludes the Appeals Chamber's examination of the grounds of appeal raised by the parties, and I will now move to the analysis of how the Appeals Chamber's findings affect the sentence imposed by the Trial Chamber.

The Appeals Chamber first finds that the overturning of Milošević's convictions for planning the crimes of terror, murder and inhumane acts, does not warrant any reduction of the sentence taking into account Milošević's criminal conduct and the seriousness of the crimes that remain undisturbed. Similarly, Milošević's convictions under Article 7(3), replacing those under Article 7(1) for the crimes committed through sniping, do not, in the circumstances of the present case, diminish his active and central role in the commission of the crimes. Indeed, Milošević did more than merely tolerate the crimes as a commander. In maintaining and intensifying the campaign directed at the civilian population in Sarajevo throughout the Indictment period, he provided additional encouragement to his subordinates to commit the crimes against the civilians. Therefore, no reduction of sentence is warranted on this basis either.

Concerning the specific incidents, the Appeals Chamber has reversed Milošević's convictions for the shelling of the Baščaršija Flea Market on 22 December 1994, the BITAS building on 22 August 1995 and that of the Markale Market on 28 August 1995. Although these findings do not change the fact that the entire population of Sarajevo was the victim of the crime of terror committed under Milošević's command, they do involve fewer victims of the crimes of murder and other inhumane acts imputable to Milošević under counts 5 and 6 of the Indictment. The Appeals Chamber thus finds that these reversals have an impact, although limited, on Milošević's overall culpability.

I shall now read in full the Disposition of the Appeal Judgement. Mr. Milošević would you please rise.

For the foregoing reasons, THE APPEALS CHAMBER,

PURSUANT TO Article 25 of the Statute and Rules 117 and 118 of the Rules;

NOTING the respective written submissions of the parties and the arguments they presented at the hearing of 21 July 2009;

SITTING in open session;

ALLOWS IN PART Milošević's fourth ground of appeal, in so far as it concerns the crimes committed during his absence from Sarajevo, and SETS ASIDE the finding that Milošević was responsible for planning and ordering the shelling of the BITAS building on 22 August 1995, and of the Markale Market on 28 August 1995 (counts 1, in part; 5, in part; and 6, in part);

ALLOWS IN PART Milošević's eighth ground of appeal, and SETS ASIDE the finding that Milošević was responsible for the planning and ordering the shelling of the Baščaršija Flea Market on 22 December 1994 (counts 1, in part; 5, in part; and 6, in part);

ALLOWS IN PART Milošević's twelfth ground of appeal, SETS ASIDE Milošević's convictions for planning and ordering the crimes under count 1, in the part concerning the sniping of

civilian population, and under counts 2 and 3, and FINDS Milošević responsible for those crimes under Article 7(3) of the Statute;

SETS ASIDE Milošević's convictions for planning the crimes under count 1, in the part concerning the shelling of the civilian population, and under counts 5 and 6;

DISMISSES the Milošević's Appeal in all other respects;

AFFIRMS the remainder of Milošević's convictions under counts 1, Judge Liu dissenting, 5 and 6;

DISMISSES the Prosecution's Appeal;

REDUCES Milošević's sentence to 29 years of imprisonment, subject to credit being given under Rule 101(C) of the Rules;

ORDERS, in accordance with Rule 103(C) and Rule 107 of the Rules, that Milošević is to remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the State where his sentence will be served.

Judge Liu Daqun appends a partly dissenting opinion.
