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JUDGEMENT SUMMARY

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

APPEALS CHAMBER

The Hague, 28 November 2006

PROSECUTOR V. BLAGOJE SIMIĆ SUMMARY OF APPEALS JUDGEMENT

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

As the Registry has announced, today's hearing will deal with the case of *Prosecutor v. Blagoje Simić*. As indicated in the Scheduling Order of 2 November 2006, the Appeals Chamber is sitting today to pronounce its Judgement in this case. This hearing is organised pursuant to Rule 117 (D) of the Rules of Procedure and Evidence of the Tribunal.

In accordance with Tribunal practice, I will not read out the entire text of the Judgement, but only its disposition. After recalling the major issues raised within the framework of the Appellate Proceedings, I will give the findings of the Appeals Chamber.

I should like to point out that the following summary is not an integral part of the Judgement. The authoritative version of the findings and reasons given by the Appeals Chamber can be found only in the written text of the Judgement, copies of which will be made available to the Parties following this hearing.

Summary of the Judgement

This case concerns events that took place from around September 1991 and 31 December 1993 in the municipality of Bosanski Šamac, north-east of what was the Republic of Bosnia and Herzegovina at the time. On 17 April 1992, paramilitary forces and the Serbian police took over this municipality by force and set up the "Crisis Staff of the Serbian Municipality of Bosanski Šamac". The Crisis Staff was subsequently re-named the "War Presidency" and was established as the highest civilian authority in the municipality of Bosanski Šamac. In its Judgement, the Trial Chamber noted that non-Serb civilians were persecuted after the municipality had been taken over and that a joint criminal enterprise was responsible for the persecution of these civilians.

Mr. Blagoje Simić is a physician by profession. He was appointed President of the Crisis Staff on 17 April 1992. In the Trial Chamber's Judgement, it concluded that the joint criminal enterprise behind the persecution of non-Serb civilians could not have been carried out without the concerted action of the Serbian police, the paramilitary forces of the Yugoslav People's Army ("JNA") 17th Tactical Group and the Crisis Staff. The Trial Chamber also concluded that the Appellant, in his capacity as President of the Crisis Staff, was the highest ranking civilian authority in the Municipality of Bosanski Šamac and was at the head of the joint criminal enterprise at the municipal level.

The Trial Chamber found the Appellant guilty of count 1 under Article 7(1) of the Tribunal's Statute. This count corresponds to persecution as a crime against humanity for the following underlying acts: unlawful arrest and detention of civilian Bosnian Muslims and Bosnian Croats, cruel and inhumane treatment in the form of beatings, torture, forced labour and confinement under inhumane conditions, and deportation and forcible transfer. The Trial Chamber did not enter a conviction with regard to count 2, deportation as a crime against humanity, on the ground that cumulative findings of guilt could not be pronounced for counts 1 and 2. Count 3, unlawful deportation or transfer as a grave breach of the Geneva Conventions, was dismissed on the ground that there were defects in the form of the Fifth Amended Indictment. The Trial Chamber, by majority with Judge Lindholm dissenting, pronounced a sentence of seventeen years' imprisonment.

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On 17 November 2003, Mr Simić filed an appeal against the judgement of Trial Chamber II dated 29 October 2003. He appealed against both the conviction and the sentence he received. His Appeal initially consisted of eighteen grounds of appeal, but he later withdrew the fifteenth and seventeenth grounds of appeal. The Appeals Chamber has examined the sixteen remaining grounds of appeal.

I will now review the grounds of appeal submitted by Mr Simić. I will start with the first and second grounds of appeal dealing with defects in the form of the Indictment.

First and second grounds of appeal: defects in the Indictment

In the first and second grounds of appeal, the Appellant argues that the Trial Chamber erred in law by convicting him of participating in a joint criminal enterprise. He maintains that this form of responsibility was not provided for in the Indictment, and that this defect was prejudicial to the preparation and conduct of his defence. He submits that this rendered his trial unfair.

The Appeals Chamber recalls that the Indictment in this case was amended five times. Consequently, there were six versions of the Indictment, the last one being the Fifth Amended Indictment.

The Appeals Chamber first examined the issue of whether there were defects in the form of the Indictment, as the Appellant maintains. The Appeals Chamber considered in particular whether the different Indictments had sufficiently informed the Appellant that he was being accused of participating in a joint criminal enterprise.

The Appeals Chamber recalls that participation in a joint criminal enterprise must be specifically alleged in an indictment if the Prosecution intends to rely on this form of responsibility. The fact that the expression “joint criminal enterprise” does not appear in the Indictment does not necessarily mean that the Indictment is defective. Nevertheless, although a joint criminal enterprise is a means of “committing” a crime under Article 7(1) of the Statute, it is not sufficient for the Indictment to refer to this provision of the Statute in general terms. The reference to the form of responsibility stated in the Indictment must provide sufficient information to the defence and to the Trial Chamber that the Prosecution intends to rely on joint criminal enterprise.

The Appeals Chamber examined the six versions of the Indictment in this case. For reasons set out in the Judgement, the Appeals Chamber by majority of its members, with Judge Shahabuddeen and Judge Schomburg dissenting, found that none of the Amended Indictments had correctly informed the Appellant that he was being accused of participating in a joint criminal enterprise. The Appeals Chamber’s finding results in particular from the ambiguity of the terms used by the Prosecution and the circumstances surrounding the third and fourth amendments to the Indictment.

Having determined that the Indictment was defective, the Appeals Chamber then examined whether the defects in its form had impaired the Appellant’s ability to prepare and conduct his defence.

The Appeals Chambers recalls that vagueness in an indictment not remedied by information that is clear, consistent and provided in a timely fashion, causes prejudice to an accused. It can be concluded that a defective indictment did not prejudice the accused only if it is shown that the preparation of his defence was not seriously impaired.

In the present case, the Prosecution submitted that the Appellant had waived his right to raise the issue of defects in the Indictment on appeal. For reasons set out in the Judgement, the Appeals Chamber found by majority with, Judge Shahauddeen and Judge Schomburg dissenting, that the Appellant had not waived his right. It follows that the burden to prove that the Appellant was not prejudiced in the preparation of his defence fell on the Prosecution.

For reasons set out in the Judgement, the Appeals Chamber found that the Appellant was not put on notice that he was being accused of participating in a joint criminal enterprise until the Prosecution had finished presenting its case. The Appeals Chamber considers that the information provided by the Prosecution was clear, but was by no means provided in a timely fashion. The vagueness in the

Indictment at issue here is not a minor defect. It concerns an essential guarantee an indictment must satisfy, which is to put the accused on notice of the charges against him. In the present case, the Prosecution was unable to show that the preparation of the Appellant's defence was not seriously impaired. The Appeals Chamber, by majority with Judge Shahabuddeen and Judge Schomburg dissenting, considers that defects in the Indictment rendered the Appellant's trial unfair. The Appeals Chamber grants the first and second grounds of appeal and, consequently, reverses the Appellant's conviction for participating in a joint criminal enterprise.

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Having reversed the Appellant's conviction for participation in a joint criminal enterprise, the Appeals Chamber examined the question of whether his responsibility could be established for another form of responsibility. The Appeals Chamber recalls that it asked questions to this effect of the Parties during the appeals hearing of 2 June 2006. The Prosecution and the Appellant both submitted that the Appellant's responsibility could be considered from the viewpoint of aiding and abetting persecution. In the fourth ground of appeal, the Appellant nevertheless submits that the evidence presented in his trial did not make it possible to establish that he was criminally responsible for persecution. The Appeals Chamber first examined this general ground before considering the other grounds of appeal three to fourteen.

I will now present the findings of the Appeals Chamber regarding the fourth ground of appeal.

Third to fourteenth grounds of appeal: Appellant's criminal responsibility

Fourth ground of appeal

In the fourth ground of appeal, the Appellant submits that the Trial Chamber erred in law by elaborating a "hybrid theory" of responsibility that is incompatible with the provisions of 7(1) and 7(3) of the Statute. He maintains that he was found guilty under Article 7(1) of the Statute for acts of persecution committed by other persons and for having failed to prevent or punish these acts.

The Appeals Chamber examined the arguments of the Appellant and the findings of the Trial Chamber. For reasons set out in the Judgement, the Appeals Chamber finds that the analysis proposed by the Appellant is erroneous. Numerous findings establish that the Appellant himself took an active part in the crime of persecution. For this reason, the Appeals Chamber dismisses the fourth ground of appeal.

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Having dismissed the Appellant's general ground, the Appeals Chamber proceeded to examine the other grounds of appeal three to fourteen. The Appeals Chamber recalls that this examination was intended to determine whether the Appellant's responsibility could be established for aiding and abetting persecution. Upholding the Tribunal's jurisprudence, the *actus reus* of aiding and abetting stems from acts that directly assist, encourage or provide moral support for the commission of a crime and have a significant impact on its perpetration. The *mens rea* for aiding and abetting lies in the fact that the acts committed by the aider and abettor contribute to the commission of the crime by the principal perpetrator. For the crime of persecution, which entails a *dolus specialis*, the aider and abettor must not only have knowledge of the crime he is aiding and abetting, he must also be aware of the discriminatory intent of the perpetrators of the crime. The aider and abettor need not necessarily share this intent, but he must be aware of the discriminatory context in which the crime will be committed and know that his support or encouragement has a significant impact on its perpetration.

The Appeals Chamber recalls that the Trial Chamber found the Appellant guilty of persecution on the grounds of the following underlying acts: unlawful arrest and detention, cruel and inhumane treatment in the form of beatings, torture and confinement under inhumane conditions, forced labour, deportation and forcible transfer.

I will now present the findings of the Appeals Chamber for the grounds of appeal that refer to these findings of the Trial Chamber. The Appeals Chamber first examined the third, fifth, sixth and seventh grounds of appeal.

Third, fifth, sixth and seventh grounds of appeal

Third ground of appeal

In the third ground of appeal, the Appellant argues that the Trial Chamber erred in fact by finding that a common plan to persecute non-Serb civilians existed in the municipality of Bosanski Šamac. The Appeals Chamber finds that by granting the first and second grounds of appeal, the third ground of appeal has become moot. It is therefore dismissed.

The Appeals Chamber notes that the findings of the Trial Chamber regarding the existence of a joint criminal enterprise in Bosanski Šamac were not taken into consideration when determining the responsibility of the Appellant. Conversely, the Appeals Chamber relied on the factual findings underlying the Trial Chamber's determination that there was a joint criminal enterprise.

Fifth ground of appeal

In the fifth ground of appeal, the Appellant submits that the evidence considered by the Trial Chamber did not establish that he had actively participated in the crimes committed in the Municipality of Bosanski Šamac. The Appeals Chamber considers that this ground essentially repeats the arguments presented by the Appellant to support his third and fourth grounds of appeal. Since the Appeals Chamber has dismissed those grounds, the fifth ground of appeal is likewise dismissed.

Sixth ground of appeal

In the sixth ground of appeal, the Appellant submits that the Trial Chamber erred in law and in fact by finding that he had the discriminatory intent required for the underlying acts of persecution. For reasons set out in the Judgement, the Appeals Chamber finds that it was not necessary to consider this question in order to determine whether the Appellant had the requisite *mens rea* for aiding and abetting persecution. The sixth ground of appeal is therefore dismissed.

Seventh ground of appeal

In the seventh ground of appeal, the Appellant submits that the Trial Chamber erred in law and in fact by basing his responsibility on the fact that he was the highest ranking civilian authority in the Municipality of Bosanski Šamac, even though it found that he did not have the power to control the perpetrators of the crimes. Since the Appeals Chamber has reversed the Appellant's conviction for participating in a joint criminal enterprise, it considers it is unnecessary to deliberate whether the Trial Chamber erred in law by establishing his guilt based on his position of authority. Furthermore, the Appeals Chamber recalls that in order to assess the Appellant's responsibility as an aider and abettor to persecution, it is not necessary to establish whether he had the power to control the perpetrators of the crimes. For these reasons, the Appeals Chamber finds that the seventh ground of appeal has become moot.

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I will now present the findings of the Appeals Chamber for grounds of appeal eight to fourteen that deal with the underlying acts of persecution.

Eighth ground of appeal: unlawful arrests and detention

In the eighth ground of appeal, the Appellant submits that the Trial Chamber erred in law and in fact by finding him guilty of persecution in the form of unlawful arrests and detention. For reasons set

out in the Appeals Judgement, the Appeals Chamber finds that the Appellant failed to show that no reasonable trier of fact could infer from the evidence presented that he was connected to the unlawful arrests and detention. The Appeals Chamber also finds that the only possible inference in the circumstances was that the Appellant was aware of the discriminatory context in which these acts were perpetrated and that he knew that his support had a significant impact on their perpetration. For these reasons, the Appeals Chamber considers that the Appellant is responsible for aiding and abetting persecution in the form of the unlawful arrest and detention of non-Serb civilians. The eighth ground of appeal is therefore dismissed.

Ninth, tenth and twelfth grounds of appeal: cruel and inhumane treatment

In the ninth, tenth and twelfth grounds of appeal, the Appellant argues that the Trial Chamber erred in law and in fact by finding him guilty of persecution due to cruel and inhumane treatment in the form of beatings (ninth ground of appeal), torture (tenth ground of appeal) and confinement under inhumane conditions (twelfth ground of appeal). For each of these counts, the Appeals Chamber reached the following findings for each of these grounds:

- The Appeals Chamber, by majority with Judge Shahabuddeen and Judge Schomburg dissenting, finds that no reasonable trier of fact would be satisfied beyond a reasonable doubt that the Appellant provided significant support to the perpetration of persecution due to cruel and inhumane treatment in the form of beatings and torture, inflicted against detained persons in Bosanski Šamac. For this reason, the Appeals Chamber finds by majority that no reasonable trier of fact would be satisfied beyond a reasonable doubt that the Appellant was an aider and abettor of these acts. The ninth and tenth grounds of appeal are therefore partially granted.

- With regard to confinement under inhumane conditions, the Appeals Chamber concludes that the findings of the Trial Chamber establish that a reasonable trier of fact would be satisfied beyond a reasonable doubt that the Appellant's deliberate refusal to provide adequate medical care to detained persons in Bosanski Šamac constitutes substantial assistance to confinement under inhumane conditions. The Appeals Chamber also concludes that the findings of the Trial Chamber establish that a reasonable trier of fact would be satisfied beyond a reasonable doubt that the Appellant was aware that his assistance had a significant impact on the perpetration of this crime. These elements are sufficient to establish that a reasonable trier of fact would be satisfied beyond a reasonable doubt that the Appellant is responsible for aiding and abetting persecution in the form of the confinement of non-Serb prisoners under inhumane conditions. For this reason, the Appeals Chamber dismisses the twelfth ground of appeal.

Eleventh ground of appeal: forced labour

In the eleventh ground of appeal, the Appellant submits that the Trial Chamber erred in law and in fact by finding him guilty of persecution due to forced labour. The Appeals Chamber has reached the conclusion that a reasonable trier of fact would be satisfied beyond a reasonable doubt that the Appellant provided significant assistance to persecution in the form of forced labour by Bosnian Croats and Bosnian Muslims. The Appeals Chamber also finds that the only possible reasonable inference in view of the evidence is that the Appellant was aware of the discriminatory context in which the forced labour was perpetrated, and that he knew that his support had a significant impact on the perpetration of this crime. The Appeals Chamber considers that with regard to the findings of the Trial Chamber, a reasonable trier of fact would be satisfied beyond a reasonable doubt that the Appellant was responsible for aiding and abetting persecution in the form of forced labour. The eleventh ground of appeal is therefore dismissed.

Thirteenth and fourteenth grounds of appeal: deportation and forcible transfer

In the thirteenth and fourteenth grounds of appeal, the Appellant argues that the Trial Chamber erred in law and in fact by finding him guilty of deportation as a crime against humanity and of an underlying act of persecution, and also by finding him guilty of persecution in the form of forcible transfer. The Appeals Chamber notes that the Trial Chamber made a distinction between "forcible transfer" and "unlawful deportation" as underlying acts of persecution. The Appeals Chamber recalls that for a conviction of persecution, it is not necessary to make a distinction between these two types of acts; the criminal responsibility of the accused is sufficiently reflected in the concept of "forced

displacement". The Appeals Chamber uses this term in its judgement to designate acts of "forcible transfer" and "unlawful deportation" referred to by the Trial Chamber.

In the thirteenth ground of appeal, the Appellant raises arguments regarding deportation as a crime against humanity. The Appeals Chamber recalls that the Appellant was not found guilty under count 2 and thus dismisses this part of the thirteenth ground of appeal.

The Appeals Chamber also dismissed the Appellant's argument that forcible transfer and deportation do not have the same gravity as the crimes listed in Article 5 of the Statute. For reasons set out in the judgement, the Appeals Chamber finds that this condition has been satisfied in this case and therefore dismisses the fourteenth ground of appeal.

Finally, the Appeals Chamber has reached the conclusion that a reasonable trier of fact would be satisfied beyond a reasonable doubt that the Appellant provided significant support to the forced displacement of seventeen non-Serb civilians as an underlying act of persecution. The Appeals Chamber also finds that the only possible inference with regard to the evidence is that the Appellant was aware of the discriminatory context in which the crime was committed and knew that his support had a significant impact on the perpetration of the crime. The Appeals Chamber considers that a reasonable trier of fact would be satisfied beyond a reasonable doubt that the Appellant is responsible for aiding and abetting persecution due to the forced displacement of these seventeen non-Serb civilians and dismisses grounds of appeal thirteen and fourteen in their entirety.

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Bearing in mind the previous findings, the Appeals Chamber upholds the conviction of the Appellant for aiding and abetting persecution in the form of the unlawful arrests and detention of non-Serb civilians, confinement of non-Serb prisoners in inhumane conditions, forced labour by Bosnian Croats and Bosnian Muslims, and forced displacement of non-Serb civilians.

The Appeals Chamber, by majority with Judge Shahabuddeen and Judge Schomburg dissenting, has nonetheless reversed the Appellant's conviction of persecution due to cruel and inhumane treatment in the form of beatings and torture.

Later I will present the Appeals Chamber's findings on how these reversals and the re-characterisation of the Appellant's criminal responsibility impact the sentence.

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I will now present the findings of the Appeals Chamber regarding the sixteenth ground of appeal, which concerns an interlocutory decision rendered by the Trial Chamber.

Sixteenth ground of appeal: dismissal of the oral motion for disclosure of a confidential document

In the sixteenth ground of appeal, the Appellant argues that the Trial Chamber erred in law by dismissing his motion for the disclosure of Stevan Todorović's medical records. Mr Todorović was a co-accused of the Appellant until he pleaded guilty and was sentenced in separate proceedings. Mr Todorović testified as a Prosecution witness during the Appellant's trial. His medical records were filed confidentially by the Prosecution before the Trial Chamber and the Chamber refused to disclose them to the Appellant. The Appellant claims that this refusal rendered his trial unfair because he was deprived of his right to examine Todorović on matters affecting his credibility or to present evidence establishing that he was not a credible witness. The Appeals Chamber recalls that, acting *proprio motu*, it authorised the Appellant to obtain Todorović's medical records during the appellate proceedings.

The Appeals Chamber has considered the findings of the Trial Chamber and concludes that the Trial Chamber erred in law in interpreting the applicable law on the disclosure of Todorović's medical records. For reasons set out in the Judgement, the Appeals Chamber has nonetheless reached the conclusion that this error did not invalidate the trial judgement. The Appeals Chamber considers that the

Appellant's right to a fair trial, including his right to examine a witness against him or have him examined, was not violated by the Trial Chamber's refusal to grant him access to Todorović's medical records.

For the reasons set out in the judgement, the Appeals Chamber has dismissed the sixteenth ground of appeal. The Appeals Chamber furthermore reminds the Parties that the reasons for its Decision of 1 June 2006, rendered pursuant to Rules 115 and 94(A) of the Tribunal's Rules of Procedure and Evidence, are set out in the judgement.

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I will now present the findings of the Appeals Chamber regarding the appeal against the sentence. I will also present its findings on how the quashed convictions pronounced by the Appeals Chamber impact the sentence. I would recall that the Trial Chamber sentenced the Appellant to 17 years' imprisonment.

Eighteenth ground of appeal: sentencing

In the eighteenth ground of appeal, the Appellant submits that the sentence of 17 years is excessive and disproportionate, and resulted in a miscarriage of justice. He requests the Appeals Chamber to reverse this decision and impose a sentence of no longer than seven years, following the sentence recommended by Judge Lindholm in his partially dissenting opinion. In the alternative, the Appellant requests the Appeals Chamber to adjust his sentence to reflect the fact that he was responsible for aiding and abetting persecution, or remit the issue of sentencing back to the Trial Chamber.

The Appeals Chamber has considered the arguments of the Appellant and the findings of the Trial Chamber. For reasons set out in the Judgement, the Appeals Chamber finds that the Appellant failed to show that the Trial Chamber committed a discernable error in determining the sentence and that it abused its discretion. The Appeals Chamber thus dismisses the eighteenth ground of appeal.

Although the Appellant was unable to identify any discernable error, the Appeals Chamber recalls that by a majority it quashed the Appellant's conviction for participating in a joint criminal enterprise. The Appeals Chamber consequently re-characterised the Appellant's criminal conduct as aiding and abetting persecution. The Appeals Chamber by a majority also invalidated the Appellant's conviction for persecution due to cruel and inhumane treatment in the form of torture and beating. Due to these reversals, the question as to whether it was necessary to adjust the sentence was raised.

Pursuant to Article 24 of the Statute, the Appeals Chamber considered, *proprio motu*, the general practice regarding prison sentences in the courts of the former Yugoslavia, the gravity of the offences committed by the Appellant and the mitigating and aggravating circumstance with regard to his personal situation. The Appeals Chamber has reached the conclusion that the Trial Chamber's consideration of his position of authority and his professional experience as a physician as aggravating circumstances constituted discernable errors. The Appeals Chamber thus did not consider these elements in its examination. Nevertheless, considering that discriminatory intent is not an element of aiding and abetting persecution, the Appeals Chamber has examined whether the Appellant had this intent at the material time. The Appeals Chamber recalls that discriminatory intent may constitute an aggravating circumstance when this state of mind is not considered as an element or ingredient of the crime. In the present case, the question of whether the Appellant shared the discriminatory intent of the perpetrators of the crimes is relevant in determining his sentence.

The Appeals Chamber has examined the arguments of the Appellant according to which the Trial Chamber allegedly erred in considering that he had discriminatory intent. For reasons set out in the Judgement, the Appeals Chamber finds that it was possible for a reasonable trier of fact to conclude that the Appellant shared the discriminatory intent of the perpetrators of the confinement under inhumane conditions, forced labour and forced displacement. The Appeals Chamber has thus considered this element as an aggravating circumstance.

Having concluded its examination, the Appeals Chamber finds that the re-characterisation of the Appellant's criminal conduct and quashing of his conviction for acts of torture and beating require an adjustment of the sentence of seventeen years. Bearing in mind all the specific circumstances of this case, the Appeals Chamber finds that the sentence should be reduced. The Appeals Chamber, by majority with Judge Liu dissenting, finds that a sentence of fifteen years' imprisonment is appropriate in this case.

DISPOSITION

I will now read the Disposition of the Judgement rendered by the Appeals Chamber.

Mr Simić, please stand up.

Here is the disposition of the judgement:

For the foregoing reasons, THE APPEALS CHAMBER,

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

NOTING the written submissions of the parties and the arguments they presented at the hearing held on 2 June 2006;

SITTING in open session;

ALLOWS, Judge Mohamed Shahabuddeen and Judge Wolfgang Schomburg dissenting, the Appellant's first and second grounds appeal;

SETS ASIDE, Judge Mohamed Shahabuddeen and Judge Wolfgang Schomburg dissenting, the Appellant's conviction under Article 7(1) of the Statute for committing persecutions by way of his participation in a joint criminal enterprise under Count 1 of the Fifth Amended Indictment;

FINDS, Judge Mohamed Shahabuddeen and Judge Wolfgang Schomburg dissenting, the Appellant guilty under Article 7(1) of the Statute for aiding and abetting persecutions through the unlawful arrests and detention, the confinement under inhumane conditions, the forced labour and the forcible displacements of Bosnian Croat, Bosnian Muslim and non-Serb civilians, under Count 1 of the Fifth Amended Indictment;

ALLOWS in part, Judge Mohamed Shahabuddeen and Judge Wolfgang Schomburg dissenting, the Appellant's ninth and tenth grounds of appeal insofar as he suggests therein that the Trial Chamber's findings do not disclose a sufficient basis for convicting him as an aider and abettor of persecutions for the underlying acts of beatings and torture of non-Serb civilian detainees;

SETS ASIDE, Judge Mohamed Shahabuddeen and Judge Wolfgang Schomburg dissenting, the Appellant's conviction for persecutions under Count 1 of the Fifth Amended Indictment for the cruel and inhumane treatment of Bosnian Croat, Bosnian Muslim and non-Serb civilian detainees insofar as the conduct underlying this conviction encompasses the acts of beatings and torture;

DISMISSES entirely the Appellant's remaining grounds of appeal against conviction and sentence;

IMPOSES a sentence of fifteen years' imprisonment, subject to credit being given under Rule 101(C) of the Rules for the period the Appellant has already spent in detention, and

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