

CASE NOTE :
**PROSECUTOR V. DELALIC, MUCIC,
DELIC & LANDZO**
(Part I)

BY

Faiza PATEL KING (*) AND **Anne-Marie LA ROSA (*)**

SENIOR LEGAL OFFICER,
ORGANISATION FOR THE PROHIBITION
OF CHEMICAL WEAPONS,
MEMBER OF THE NEW YORK AND
WASHINGTON D.C. BARS

SENIOR LEGAL OFFICER,
INTERNATIONAL LABOUR OFFICE,
MEMBER OF THE QUEBEC BAR

INTRODUCTION

Prosecutor v. Delalic, Mucic, Delic and Landzo (« *Celebici* ») is one of the most complicated cases to be brought before the International Criminal Tribunal for the Former Yugoslavia (« Tribunal »). It involved the joint trial of four defendants (three Bosnian Muslims and one Bosnian Croat) who were charged with 49 counts covering grave breaches of the Geneva Conventions and/or violations of the laws and customs of war for killing, torturing and sexually assaulting detainees in a prison camp in central Bosnia, known as Celebici camp (1).

The Celebici case was a particularly difficult joint trial because the four accused occupied very different positions : Landzo was a camp guard, Mucic was the camp commander, Delic was the deputy commander (who took over from Mucic as commander) and Delalic was the co-ordinator of the Bosnian Muslim and Bosnian Croat forces in the area and later a commander in the Bosnian Army. Delalic, Mucic and Delic were charged with command responsibility and Delic and Landzo were also charged with individual responsibility. In light of their different positions and the charges

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(1) Indictment, *Prosecutor v. Delalic, Mucic, Delic and Landzo* (hereinafter *Celebici*), Case No. IT-96-21-I (21 March 1996). Four of the 49 counts (9, 10, 40 and 41) were subsequently withdrawn at the request of the Prosecution being allegedly based on false evidence : *Celebici*, Case No. IT-96-21-T, Order on Prosecution's Motion to Withdraw counts 9 and 10 of the Indictment (21 avril 1997) and, *Celebici*, Case No. IT-96-21-T, Order on Prosecution's motion to Dismiss Counts 40 and 41 (16 January 1998).

against them, it was foreseeable that problems relating to contradictory defence strategies and the protection of each defendant's right to a fair trial would be raised.

The accused were arrested and transferred to the Hague between March and June 1996 (2); they all pleaded not guilty to the charges against them. Their trial started on 10 March 1997 and came to a close on 15 October 1998. Over 1,500 exhibits were admitted into evidence during the trial and the transcript of the proceedings ran to more than 16,000 pages in the English version (3). The final Judgement was rendered on 16 November 1998. Mucic, the commander of the Celebici camp, was found guilty of command responsibility for, *inter alia*, murders, acts of torture and ill treatment. Delic and Landzo were found guilty of individual criminal responsibility for, among other things, wilful killings, torture and cruel treatment. One defendant, Delalic, was found not guilty on all counts because the Prosecutor failed to establish command responsibility. The case is under appeal.

Prior to and during the trial, the Trial Chamber issued a number of interlocutory decisions addressing significant issues. These decisions are the focus of Part I of this case note. A discussion of the substantive aspects of the Celebici Judgement will be reserved for Part II of the case note.

1. — DEFECTS IN THE FORM OF THE INDICTMENT AND REQUESTS FOR PARTICULARS

At the pre-trial stage, three of the accused filed preliminary motions based on defects in the form of the indictment, challenging, among other things, its allegedly vague and unfounded allegations. In addition, Mucic requested the Trial Chamber to order the Prosecution to provide full particulars of the charges in the indictment. The Trial Chamber denied all of these motions (4).

(2) Delalic was apprehended on 18 March 1996 by German police at the Tribunal's request. He was remanded into custody on 8 May 1996 and made his first appearance before Trial Chamber II on 9 May 1996. Mucic was arrested by Austrian authorities also on 18 March 1996 and surrendered to the custody of the Tribunal on 9 April 1996. He appeared for the first time before Trial Chamber II on 11 April 1996. Finally Delic and Landzo were both apprehended by Bosnia following a warrant of arrest issued by the Tribunal on 22 May 1996 and were transferred to the Hague where they made their first appearance before the Chamber on 18 June 1996.

(3) *Celebici*, Case No. IT-96-21-T, Judgement, reg. pg. n^o 10636-10146 (16 Nov. 1998) at § 33.

(4) *Celebici*, Case No. IT-96-21-T, Decision on Motion by the Accused Zejnil Delalic Based on the Form of the Indictment (2 Oct. 1996); *Celebici*, Case No. IT-96-21-T, Decision on Motion by the Accused Esad Landzo Based on Defects in the Form of the Indictment (15 Nov. 1996); *Celebici*, Case No. IT-96-21-T, Decision on Motion by the Accused Hazim Delic Based on Defects in the Form of the Indictment (15 Nov. 1996). For a full presentation and discussion of these motions, see Faiza PATEL KING and Anne-Marie LA ROSA, 'The Jurisprudence of the Yugoslavia Tribunal: 1994-1996', 8 *Eur. J. Int'l L.* 123 (1997) at pp. 163-164.

Relying on precedents established in other cases (5), the Trial Chamber rejected all challenges based on the vagueness of the indictment and decided that the indictment provided the defendants with sufficient warning of the nature of the crimes with which they were charged and specified the factual basis of the charges. The Trial Chamber stressed that, in deciding whether to grant a motion requiring the Prosecution to provide the accused with additional information at the pre-trial stage, it needed to assess the amount of pre-trial discovery available to the defence. Noting the extensive pre-trial discovery permitted by the Tribunal's Rules of Procedure and Evidence, the Trial Chamber considered that none of the requests justified further information. Leaves to appeal presented by Delalic and Delic were subsequently rejected (6).

2. — PROVISIONAL RELEASE

In contrast to the general principle of criminal law that detention on remand should be limited to exceptional cases, Rule 64 of the Tribunal's Rules of Procedure and Evidence provides that accused persons shall normally be detained for the duration of trial. Under Rule 65, release pending trial is authorised in exceptional circumstances and where the Trial Chamber is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person (7).

Soon after transfer to the Tribunal's detention facilities, three of the accused filed motions seeking their provisional release. As with all other motions for provisional release (except one case where the accused was extremely ill) (8), the motions were denied (9). In this provisional release

(5) *Prosecutor v. Tadic*, Case No. IT-94-1-T, Decision on the Defence Motion on the Form of the Indictment (14 Nov. 1995); *Prosecutor v. Djukic*, Case No. IT-96-20-T, Decision on Preliminary Motions of the Accused (26 April 1996).

(6) *Celebici*, Case No. IT-96-21-A, Decision on Application for Leave to Appeal (Form of the indictment) (15 Oct. 1996); *Celebici*, Case No. IT-96-21-T, Decision on Application for Leave to Appeal by Hazim Delic (Defects in the Form of the Indictment) (6 Dec. 1996). Both Delalic and Delic failed to show a serious cause that would permit an interlocutory appeal (Rule 73 of the Tribunal's Rules of Procedure and Evidence).

(7) Sub-Rule 65 (B) of the Tribunal's Rules of Procedure and Evidence. Sub-Rule 65 (C) adds that

[t]he Trial Chamber may impose such conditions upon the release of the accused as it may determine appropriate, including the execution of a bail bond and the observance of such conditions as are necessary to ensure the presence of the accused for trial and the protection of others.

(8) *Prosecutor v. Djukic*, Case No. IT-96-20-T, Decision Rejecting the Application to Withdraw the Indictment and Order for Provisional Release (24 April 1996).

(9) *Celebici*, Case No. IT-96-21-T, Decision on Motion for Provisional Release Filed by the Accused Hazim Delic (1 Oct. 1996); *Celebici*, Case No. IT-96-21-T, Decision on Motion for Provisional Release Filed by the Accused Zejnir Delalic (1 Oct. 1996); *Celebici*, Case No. IT-96-21-T, Decision on Motion for Provisional Release Filed by the Accused Esad Landzo (16 Jan. 1997). The Chamber first ruled on Delalic's motion. The other provisional release decisions essentially apply the test that was elaborated with respect to Delalic's application in this regard.

decision, the Trial Chamber set out a test for determining whether « exceptional circumstances » warranting provisional release existed (10). It identified three relevant factors : a reasonable suspicion that the accused committed the crime or crimes charged, his alleged role in the said crime or crimes and the length of his pre-trial detention. The reasonable suspicion requirement was evaluated according to the circumstances and facts as known at the time of the review. For the Chamber, none of the defendants' applications was sufficient to overcome the Prosecutor's showing that there existed a reasonable suspicion that the accused committed the offences charged. Also, the significant role allegedly played by the defendants in the numerous crimes specified in the indictment did not support a finding of 'exceptional circumstances'. Finally, the Chamber considered that the length of the defendants' detention did not extend beyond a reasonable period of time.

The defendants remained in custody for the entire duration of their trial. Delalic was released after the trial as he had been found not guilty; however, the other defendants will be detained until the appeal judgement is rendered. After the trial, Mucic and Delic filed motions for provisional release in order to attend the funerals of relatives; these motions were denied (11). Mucic, Delic and Delalic have therefore been detained for already more than 40 months and are likely to be kept in jail for an additional significant period before the appeal judgement is finally rendered.

3. — ASSIGNMENT OF DEFENCE COUNSEL

The Celebici Trial Chamber also had to address issues related to the assignment of defence counsel, a crucial component of the right to a fair trial. Article 21(4)(d) of the Statute of the Tribunal expressly provides that the accused has a right to defend himself in person or through legal assistance of his own choosing. Because the great majority of the defendants who appear before the Tribunal are indigent, they are assigned an attorney from a list maintained by the Tribunal's Registrar. There are circumstances, however, where this choice has given rise to difficulties with respect to : communication problems, the appropriate level of lawyers' fees, elaboration of defence strategy or simply lack of confidence or trust.

(10) *Celebici*, Case No. IT-96-21-T, Decision on motion for provisional release filed by the accused Zejnir Delalic (1 Oct. 1996).

(11) *Celebici*, Case No. IT-96-21-T, Order of the Appeals Chamber on the Request by Hazim Delic for Provisional Release (31 May 1999); *Celebici*, Case No. IT-96-21-T, Order of the Appeals Chamber on Hazim Delic's Emergency Motion to Reconsider Denial of Request for Provisional Release (1 June 1999); *Celebici*, Case No. IT-96-21-T, Order of the Appeals Chamber on the Motion of the Appellant for a Provisional and Temporary Release (19 Feb. 1999).

Landzo and Mucic, who were assigned attorneys by the Tribunal, submitted requests for the withdrawal of these attorneys. While recognising the accused's right to be represented by a lawyer of his own choosing, the Trial Chamber stressed that where an accused person was indigent and unable to fund his legal representation this right was not without qualification: the accused was required to show good cause to have his counsel withdrawn. Conflicts of interest or the loss of confidence would appear to be sufficient grounds in this regard.

Landzo's request for the withdrawal of his assigned attorney was denied by the Chamber because it did not meet this standard (12); Subsequently, however, his lead counsel himself requested that the Trial Chamber revoke his power of attorney and this was granted (13). Mucic also appealed the Registrar's decision denying his request to have his lead counsel replaced on the ground that he had lost confidence in the attorney. The Vice-President, acting in his capacity of President, granted the request (14).

4. — JOINT V. SEPARATE TRIALS

A critical issue in the Celebici case was whether the defendants should be tried together or separately. Delalic and Mucic were particularly anxious to be tried separately because the main accusations against them were for command responsibility, while the other two defendants were charged mainly with direct violations of the Tribunal's Statute. However, their motions for separate trials were denied by the Trial Chamber (15). The Chamber reasoned that the acts of which the defendants were accused were part of the same transaction so that the defendants could be jointly charged and tried in accordance with the Tribunal's Rules of Procedure and Evidence (16). Separate trials would be justified only if they were necessary to avoid a conflict of interests that might cause serious prejudice to an accused, or to protect the interests of justice. In the view of the Chamber, none of the defendants were able to demonstrate such a conflict of interest. With respect to the interests of justice criterion, the Chamber concluded that granting separate trials would be contrary to the interests of justice

(12) *Celebici*, Case No. IT-96-21-T, Order on the Request by the Accused, Esad Landzo, for the Withdrawal of Lead Counsel (21 April 1997).

(13) *Celebici*, Case No. IT-96-21-T, Order on request for Revocation of Power of Attorney (25 April 1997).

(14) *Celebici*, Case No. IT-96-21-T, Decision of the Vice-President (6 Aug. 1998).

(15) *Celebici*, Case No. IT-96-21-T, Decision on Motions for Separate Trial Filed by the Accused Zejnil Delalic and the Accused Zdravko Mucic (25 Sept. 1996).

(16) Rule 2 of the Rules of Procedure and Evidence defines transaction as « [a] number of acts or omissions whether occurring as one event or a number of events, at the same or different locations and being part of a common scheme, strategy or plan. »

because it would lead to three or more separate trials, greater delays in the proceedings and unnecessary repetition of evidence.

After the Prosecution presented its case and Delalic called his witnesses, Delalic requested that all the evidence and arguments concerning him be presented and that the Chamber make a final determination on the charges against him before moving on to considering the charges against the other defendants. Delalic argued that such a procedure would achieve an expeditious trial and would obviate any violation of the right of the accused to be tried without undue delay. The Trial Chamber denied the motion on the ground that it was an indirect way for obtaining a separate trial for which the necessary conditions had not been met (17).

5. — PRESENTATION OF EVIDENCE

The order of presentation of evidence, the order and scope of examination of witnesses and the number of witnesses who could be called to testify were issues of contention in the *Celebici* case.

Generally, in a joint trial all the evidence for the Prosecution is presented first and is followed by all the evidence for the defence of each accused. A defendant in a joint trial would make his opening statement before the presentation of evidence by either side and would present closing arguments after all the evidence had been heard. In the *Celebici* case, after the Prosecution and the four accused had presented their evidence a dispute arose regarding the type of the evidence that could be entered in rebuttal. The Trial Chamber specified that the Prosecution could not introduce evidence at this late stage so to fill gaps in the proof of guilt which were foreseeable at an earlier stage. Evidence in rebuttal was limited to the matters that arose directly and specifically out of defence evidence (18). The Prosecution could not re-open the case unless new evidence which was not previously available to it was presented. Evidence was considered as not previously available to the Prosecution if it was not in the possession of the Prosecution at the time of the conclusion of its case and if the Prosecution could not, by the exercise of due diligence, have obtained such evidence by that time. The Trial Chamber noted that the later the application to adduce further evidence was made, the less likely it was to accede to the request (19).

The Trial Chamber was also concerned that both the Prosecution and the defence were presenting duplicative witnesses and repetitive testimony. It therefore invited the parties in June 1997 to limit the number of witnesses

(17) *Celebici*, Case No. IT-96-21-T, Decision on the Motion by Defendant Delalic Requesting Procedures for Final Determination of the Charges Against Him (1 July 1998).

(18) *Celebici*, Case No. IT-96-21-T, Decision on the Prosecution's Alternative Request to Reopen the Prosecution's Case (19 Aug. 1998).

(19) *Id.*, at § 27.

they intended to call (20). Subsequent to filing its list of witnesses, the Prosecution sought leave to call several additional witnesses. The Trial Chamber was agreed to grant these motions as long as the Prosecution was able to show that : (a) the witnesses' names were disclosed to the defence as soon as the Prosecution had formed an intention to call them at trial; or (b) the Prosecution was able to establish that the proposed witnesses would testify on issues newly raised by a judgement rendered by another trial chamber of the Tribunal (21).

With respect to the defence, the Chamber limited the number of witnesses called on behalf of each accused. The basis of this limitation was the Chamber's inherent power to regulate proceedings. The Trial Chamber recalled that the right of the defence to call witnesses was subject to the Chamber's power to ensure a fair and expeditious trial. Because the Chamber considered repetitive evidence as being *per se* irrelevant, it felt at ease in limiting the number of witnesses to be heard on the account of each accused (22).

Finally, as regards the scope of examination, each witness called to the bar was subject to examination-in-chief, cross-examination and re-examination. The Trial Chamber ruled that, in general, a party had the last word with its own witnesses, absent any new matter raised during re-examination that would justify re-cross-examination (23). Each defence witness was heard in examination-in-chief and was cross-examined by the other co-accused before the Prosecution began its cross-examination (24). As regards Prosecution witnesses, the co-accused were permitted to cross-examine them in the order of their own choosing.

6. — WITNESS RELATED ISSUES

A plethora of witness protection measures were sought by both the Prosecution and the defence and implemented throughout the trial proceedings. In deciding on protective measures, the Trial Chamber applied the

(20) *Celebici*, Case No. IT-96-21-T, Order (9 June 1997).

(21) *Celebici*, Case No. IT-96-21-T, Order on the Motion by the Prosecution for Leave to Call Additional Witnesses (1 Aug. 1997); *Celebici*, Case No. IT-96-21-T, Decision on Confidential Motion to Seek Leave to Call Additional Witnesses (9 Sept. 1997); *Celebici*, Case No. IT-96-21-T, Order on the Prosecution's Motion for Leave to Call Witness « R » as a Witness (1 Oct. 1997); *Celebici*, Case No. IT-96-21-T, Order on the Prosecution's Motion for Leave to Call Additional Expert Witnesses (13 Nov. 1997).

(22) *Celebici*, Case No. IT-96-21-T, Decision on the Motion of the Joint Request of the Accused Persons Regarding the Presentation of Evidence (24 May 1998).

(23) *Celebici*, Case No. IT-96-21-T, Decision on the Motion on Presentation of Evidence by the Accused, Esad Landzo (1 May 1999).

(24) *Celebici*, Case No. IT-96-21-T, Order on the Prosecutor's Motion on the Order of Appearance of Defence Witnesses and the Order of Cross-examination by the Prosecution and Counsel for the Co-accused (3 April 1998).

test elaborated in previous cases (25); it nevertheless verified in all cases that the right balance was struck between the accused's right to a fair trial and the protection of the witnesses.

Although the Chamber did not exclude any protective measures, it only granted measures short of anonymity that ensured full protection against the public (26). In doing so, the Trial Chamber recognised that the public had a valid interest in information about the activities and events occurring at the Tribunal but found that such interest could not be elevated to the level of a right.

Relying on the *Tadic* Decision on the Giving of Evidence by Video-link (27), the Chamber allowed Prosecution and defence witnesses testify by means of video-link conference. It agreed with the conclusion of the *Tadic* Chamber that testimony by video-link would be allowed only if the testimony of the witness was shown to be sufficiently important to make it unfair to proceed without it, and the witness was unable or unwilling for good reasons to come to The Hague. It added the further condition that the accused should not to be prejudiced in the exercise of his right to confront the witness (28). In addition to allowing video-link testimony, the Tribunal also issued safe conduct orders to several defence witnesses (29).

(25) See for instance *Prosecutor v. Tadic*, Case No. IT-94-1-T, Decision on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses (10 Aug. 1995) and *Prosecutor v. Blaskic*, Case No. IT-95-14-T, Decision on the Application of the Prosecutor Dated 17 October 1996 Requesting Protective Measures for Victims and Witnesses (6 Nov. 1996).

(26) For the Prosecution, see *Celebici*, Case No. IT-96-21-T, Decision on the Motions by the Prosecution for Protective Measures for the Prosecution Witnesses Pseudonymed «B» Through «M» (28 April 1998); *Celebici*, Case No. IT-96-21-T, Decision on the Motion by the Prosecution for Protective Measures for the Witness Designated by the Pseudonym «N» (28 April 1998); *Celebici*, Case No. IT-96-21-T, Order on the Motion for Protective Measures for the Witness Designated by the Pseudonym «O» (3 June 1997); *Celebici*, Case No. IT-96-21-T, Order on the Motion by the Prosecution for Protective Measures for the Witness Designated by the Pseudonym «P» (18 July 1997); *Celebici*, Case No. IT-96-21-T, Order on the Motion for Protective Measures for Witness Risto Vukalo (25 Sept. 1997); *Celebici*, Case No. IT-96-21-T, Order on the Prosecution's Motion for Protective Measures for Witness «T» (23 Sept. 1997); *Celebici*, Case No. IT-96-21-T, Order on the Prosecution's Motion for Protective Measures for Witness «R» (1 Oct. 1997). For the Defence, see *Celebici*, Case No. IT-96-21-T, Order on the Motion for Protective Measures for the Witness Designated by the Pseudonym DB.1 (29 May 1998) (Delalic); Order on the Motion for Protective Measures for the Witness Designated by the Pseudonym DA.1 (29 May 1998) (Delalic); Order on the Motion for Protective Measures for the Witness Designated by the Pseudonym DA.2, DB.2, DC.2, DD.2, DE.2, DF.2, DG.2, DI.2 (29 May 1998) (Mucic); Order on the Motion for Protective Measures for the Witness Designated DA.4, DB.4 (29 June 1998) (Landzo). Protective measures were also granted to potential witnesses: *Celebici*, Case No. IT-96-21-T, Decision on Confidential Motion for Protective Measures for Defence Witnesses (25 Sept. 1997).

(27) *Tadic*, Case No. IT-94-1-T, Decision on the Defence Motions to Summon and Protect Defence Witnesses, and on the Giving of Evidence by Video-link (26 June 1996).

(28) *Celebici*, Case No. IT-96-21-T, Decision on the Motion to Allow Witnesses «K», «L» and «M» to Give Their Testimony by Means of Video-link Conference (28 May 1997).

(29) *Celebici*, Order Granting Safe Conduct to Defence Witnesses (25 June 1998) (Landzo).

7. — EVIDENTIARY ISSUES

Two important evidentiary issues considered by the Trial Chamber were : the extent and the scope of disclosure requirements (including witness identity) and the criteria for the admissibility of evidence.

A. — *Disclosure obligations*

In the course of the *Celebici* case, the Trial Chamber had occasion to discuss in detail the disclosure obligations of the Prosecution and the defence under the Tribunal's Rules of Procedure and Evidence. The Chamber distinguished sharply between obligations at the pre-trial stage and obligations at the start of the trial. It held that at the pre-trial stage the defence was under no obligation to notify the names of the witnesses it intended to call (30). The Prosecution, however, was required at the pre-trial stage to provide the defence with adequate notice of the witnesses whom it deemed essential to the proof of its case so that the defence could adequately conduct its own investigations. The Prosecution was obliged to provide substantial identifying information about the witnesses, such as the sex of each witness, his or her date of birth, the names of his or her parents, his or her place of origin and the town or village where he or she resided at the time relevant to the charges. The Prosecution was not, however, required to provide the addresses of witnesses (31).

The commencement of trial marked a change in the scope and extent of the disclosure obligations of the defence. In the Trial Chamber's view, the proper conduct of a trial at that stage and the effective cross-examination of defence witnesses required the defence to provide the Prosecution with its list of witnesses. The Chamber did not believe that this measure would shift the balance of advantage from the Defence nor violated the concept of equality of arms, rather, « it [would] ensure the observance and maintenance of the parity of opportunity safeguarded by the Statute. » (32)

As regards the Prosecution's obligation to provide exculpatory evidence, the Chamber noted that the defence must identify with specificity the

(30) *Celebici*, Case No. IT-96-21-T, Decision on Motion to Specify the Documents Disclosed by the Prosecutor that Delalic's Defence Intends to Use as Evidence (8 Sept. 1997).

(31) *Celebici*, Case No. IT-96-21-T, Decision on the Defence Motion to Compel the Discovery of Identity and Location of Witnesses (18 March 1997).

(32) *Celebici*, Case No. IT-96-21-T, Decision on the Prosecution's Motion for an Order Requiring Advance Disclosure of Witnesses by the Defence (4 Feb. 1998) at § 46. The application for leave to appeal was denied by the Appeals Chamber which reiterated that « the disclosure of the list of the names of the Defence witnesses in the absence of any protective measures having been granted, does not infringe such guarantees. If anything, it will make the trial more effective and expeditious » : *Celebici*, Case No. IT-96-21-T, Decision on Application of Defendant Delalic for Leave to Appeal Against the Oral Decision of the Trial Chamber of 12 January 1998 requiring advance disclosure of witnesses by the Defence (3 March 1998).

material it sought to have disclosed. A request for the production of all evidence in the Prosecution's possession pertaining to whether the persons detained in the Celebici camp were prisoners of war was not sufficiently specific (33).

B. — *Admissibility of evidence*

The Tribunal's Rules of Procedure and Evidence provide that a chamber may admit any relevant evidence which it deems to have probative value. In the course of the *Celebici* case, the Trial Chamber rendered a number of decisions on whether particular evidence was admissible under this standard.

On the general issue of what standards should be applied to determine relevancy and probative value, the Chamber agreed with the reasoning of the *Tadic* Chamber in the Hearsay Decision (34) that reliability was an inherent and implicit component of each element of admissibility (35). Thus, evidence could be relevant or probative only if it was reliable. The Chamber assessed reliability by looking at the consistency and pattern of events described in the evidence sought to be admitted. However, the Chamber warned that evidence could not be considered reliable if obtained under circumstances which cast doubt on its nature and character or when fundamental rights had been breached. Thus evidence could be considered unreliable if it was obtained by methods which were antithetical to and seriously damaged the integrity of the proceedings. Statements obtained from suspects that were not voluntary or were obtained by oppressive conduct would fall within this category. Furthermore, the fact that statements of suspects were taken in violation of rights guaranteed by the Tribunal's Rules of Procedure and Evidence cast substantial doubt on the reliability of such statements. In the opinion of the *Celebici* Chamber, such statements should also be excluded (36).

Once evidence was found to be relevant and probative, the Chamber would not inquire into how it had been obtained. Such evidence could only be excluded if it was obtained through methods which challenged its reliability or if its admission would seriously damage the integrity of the procee-

(33) *Celebici*, Case No. IT-96-21-T, Decision on the Request of the Accused Hazim Delic Pursuant to Rule 68 for Exculpatory Information (24 June 1997).

(34) *Prosecutor v. Tadic*, Case No. IT-94-1-T, Decision on the Defence Motion on Hearsay (5 Aug. 1996).

(35) *Celebici*, Case No. IT-96-21-T, Decision on the Motion of the Prosecution for the Admissibility of Evidence (19 Jan. 1998). See also *Celebici*, Case No. IT-96-21-T, Decision on the Prosecution's Oral Requests for the Admission of Exhibit 155 Into Evidence and for an Order to Compel Mucic to Provide a Handwriting Sample (19 Jan. 1998) (« reliability [is] the invisible golden thread which [ran] through all the components of admissibility »).

(36) *Celebici*, Case No. IT-96-21-T, Decision on Mucic's Motion on the Exclusion of Evidence (2 Sept. 1997).

dings (37). A minor breach of procedural rules would not, however, constitute sufficient grounds for the exclusion of evidence.

The Chamber emphasised that the mere admission of a document into evidence did not in and of itself signify that the statements contained therein would necessarily be deemed to be an accurate portrayal of the facts. Factors such as authenticity and proof of authorship would be considered as part of the Chamber's assessment of the weight to be attached to individual pieces of evidence (38).

The Celebici Trial Chamber also had occasion to consider the contours of the privilege against self-incrimination. The Prosecution had requested that one of the accused be required to provide a handwriting sample that would confirm that he was the author of a letter. Such authorship would have constituted an incriminating fact. The Chamber rejected the request because

[t]here is no duty in law or morals for the accused to fill a vacuum created by the investigative procedural gap of the Prosecution. Self-preservation is the first principle of life. It is an elementary principle of proof that he who alleges must prove the subject matter of his allegation (39).

In addition, the Chamber held that the accused could remain silent since this would be a legitimate exercise of his right against self-incrimination (40).

CONCLUSION

The above discussion demonstrates the variety and complexity of the procedural issues that had to be addressed by the Celebici Trial Chamber. In addition to the run of the mill procedural issues that have been or could be raised in practically every trial before the Tribunal (e.g., objections to the form of the indictment; requests for provisional release; difficulties with the assignment of defence counsel; requests for the protection of witnesses; disclosure obligations of the Prosecution and the defence; standards for the admissibility of evidence), the Chamber had to address many issues relating specifically to the joint trial of four defendants charged with varying levels of responsibility (requests for separate trials; the order of

(37) *Celebici*, Case No. IT-96-21-T, Decision on the Tendering of Prosecution Exhibits 104-108 (10 Feb. 1998).

(38) *Celebici*, Case No. IT-96-21-T, Decision on the Motion of the Prosecution for the Admissibility of Evidence (19 Jan. 1998) at § 20

(39) *Celebici*, Case No. IT-96-21-T, Decision on the Prosecution's Oral Requests for the Admission of Exhibit 155 Into Evidence and for an Order to Compel the Accused, Zdravko Mucic, to Provide a Handwriting Sample (19 Jan. 1998). See also *Celebici*, Case No. IT-96-21-T, Decision on the Motion of the Prosecution for the Admissibility of Evidence (19 Jan. 1998) at § 49.

(40) *Id.*, at § 50.

presentation of evidence in a joint trial; appropriate ways to limit duplicative testimony put on by different defendants).

The Trial Chamber's many decisions on procedural issues are complemented by its lengthy and substantial judgement on the merits of the case. The Celebici judgement, which will be discussed in Part II of this case note, made important contributions to the development of the law on determining the character of an armed conflict, the standards for the imposition of direct criminal liability for aiding and abetting in the commission of a crime, the criteria for the imposition of command responsibility, and the elements of several crimes within the Tribunal's jurisdiction.