

SEPARATE OPINION OF JUDGES MERON AND POCAR

1. We write separately to say that we think that much of the discussion in paragraphs 48 to 53 of the Judgement concerning the Appeals Chamber's authority to re-consider its judgements and the circumstances in which such authority should be exercised is unnecessary to resolve the case at hand. In this case, the Appeals Chamber's earlier judgement affirmed several of Delić's convictions, and Delić now asks the Appeals Chamber to reconsider those affirmances. He defends the propriety of reconsideration here on one basis and one basis alone: that there has been an intervening change in the standard established by the Appeals Chamber for appellate review of certain factual findings of the Trial Chambers. If there had in fact been an intervening shift in the governing law, then the Appeals Chamber would have to decide whether that sort of shift was the kind that warrants reconsideration of an earlier judgement. The Appeals Chamber might also then have to decide whether its earlier judgement in this case was final or not and whether its final or non-final character should affect the Appeals Chamber's competence to reconsider the portion of that earlier judgement now challenged by Delić. But, as the Judgement carefully explains in paragraphs 54-60, there has in fact been no change in the governing legal standard. Thus, there is simply no reason for the Appeals Chamber in this case to address the circumstances in which it may re-consider its judgements. We believe that judicial restraint requires the Appeals Chamber to address those questions only when, in some future case, it is necessary to do so. In this regard, we recall what Lord Atkin said in *The Cristina* [1938] AC 485, at 493:

In the present case I find it unnecessary to decide many of the interesting points raised in the argument for the appellants In matters of such grave importance as those involving questions of international law, it seems to me very expedient that Courts should refrain from expressing opinions which are beside the question actually to be decided.

We therefore reserve our position on the issue.

Done in English and French, the English text being authoritative.

Judge Theodor Meron, Presiding

Judge Fausto Pocar

Dated this 8th day of April 2003,
At the Hague,
The Netherlands.