

**Declassified to Public  
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**ANNEX A**

**AUTHORITY 32**

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**UNITED  
NATIONS**

International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of  
Former Yugoslavia since 1991

Case No. IT-01-48-T  
Date: 16 November 2005  
Original: English

**IN TRIAL CHAMBER I, SECTION A**

**Before:** Judge Liu Daqun, Presiding  
Judge Florence Ndepele Mwachande Mumba  
Judge Amin El Mahdi

**Registrar:** Mr. Hans Holthuis

**Judgement of:** 16 November 2005

**PROSECUTOR**

v.

**SEFER HALILOVIĆ**

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**JUDGEMENT**

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**The Office of the Prosecutor:**

Mr. Philip Weiner  
Ms. Sureta Chana  
Mr. David Re  
Mr. Manoj Sachdeva

**Counsel for the Accused:**

Mr. Peter Morrissey  
Mr. Guénaél Mettraux

(a) The Existence of an Armed Conflict and Nexus of the Alleged Crimes with the Armed Conflict

24. It is settled in the jurisprudence of the Tribunal that an armed conflict exists “whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised groups or between such groups within a State.”<sup>50</sup>

25. When an accused is charged with violation of Article 3 of the Statute, based on a violation of Common Article 3, it is immaterial whether the armed conflict was international or non-international in nature.<sup>51</sup> Common Article 3 requires the warring parties to abide by certain fundamental humanitarian standards by ensuring “the application of the rules of humanity which are recognized as essential by civilized nations.”<sup>52</sup> This was confirmed by the International Court of Justice in the *Nicaragua* case, where it held that:

Article 3 which is common to all four Geneva Conventions of 12 August 1949 defines certain rules to be applied in the armed conflicts of a non-international character. There is no doubt that, in the event of international armed conflicts, these rules also constitute a minimum yardstick, in addition to the more elaborate rules which are also to apply to international conflicts; and they are rules which, in the Court’s opinion, reflect what the Court in 1949 called “elementary considerations of humanity” (*Corfu Channel, Merits, I.C.J. Reports 1949, p. 22*).<sup>53</sup>

The provisions of Common Article 3 and the universal and regional human rights instruments share a common “core” of fundamental standards which are applicable at all times, in all circumstances and to all parties, and from which no derogation is permitted.<sup>54</sup> In light of this general applicability of the provisions of Common Article 3, there is no need for the Trial Chamber to define the nature of the conflict in the present case.<sup>55</sup>

26. The Appeals Chamber in the *Tadić* case held that until a general conclusion of peace or a peaceful settlement is reached, international humanitarian law continues to apply “in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, *whether or not actual combat takes place there*.”<sup>56</sup>

<sup>50</sup> *Tadić* Jurisdiction Decision, para. 70. The term “protracted” is significant in excluding mere cases of civil unrest or single acts of terrorism in cases of non-international conflicts, *see Kordić and Čerkez Appeal Judgement, para. 341*.

<sup>51</sup> *Tadić* Jurisdiction Decision, para. 137; *Čelebići Appeal Judgement, paras 140, 150*.

<sup>52</sup> ICRC Commentaries (GC IV), p. 34.

<sup>53</sup> *Nicaragua v. U.S., Merits, I.C.J. Reports 1986, para. 218*.

<sup>54</sup> *Čelebići Appeal Judgement, para. 149*.

<sup>55</sup> *Čelebići Appeal Judgement, paras 147-150 and 420*, where the Appeals Chamber held that the provisions of Common Article are applicable to international and non-international conflicts alike.

<sup>56</sup> *Tadić* Jurisdiction Decision, para. 70 (emphasis added). *See also Kunarac Appeal Judgement, paras 57, 64*. In para. 64, the Appeals Chamber held that: “the Prosecutor did not have to prove that there was an armed conflict in each and every square inch of the general area. The state of armed conflict is not limited to the areas of actual military combat but exists across the entire territory under the control of the warring parties.”

27. The Defence argued that for the alleged crimes it was not proven that the crimes were not isolated or random acts. The Defence submitted that a crime would be “isolated” or “random” when its occurrence “albeit possibly related to the armed conflict in some respect does not reveal a pattern of criminal conduct on the part of the party to the conflict or where the only relationship between the crime and the armed conflict appears to be a coincidence of time and location.”<sup>57</sup>
28. As regards the crimes in Grabovica,<sup>58</sup> the Defence submitted that the alleged crimes were “isolated and random crimes committed by a small number of mostly unidentified individuals”, and “were not ‘closely related to the armed conflict’”.<sup>59</sup> As regards the crimes in Uzdol,<sup>60</sup> the Defence submitted that “the Prosecution has failed to demonstrate that those crimes – if proved – were sufficiently connected to the hostilities to amount to war crimes, in the sense of having established a ‘direct conjunction’ between the acts of the accused and the armed conflict.”<sup>61</sup> The Trial Chamber notes that the Appeals Chamber considered this matter in *Tadić* and held that the required nexus should be established between the alleged crime and the armed conflict.<sup>62</sup>
29. As to the precise nature of the nexus, when the crime alleged has not occurred at a time and place in which fighting was actually taking place, the Appeals Chamber has held that “it would be sufficient [...] that the alleged crimes were closely related to hostilities occurring in other parts of the territories controlled by the parties to the conflict.”<sup>63</sup> The crime “need not have been planned or supported by some form of policy”<sup>64</sup> and the armed conflict “need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his

<sup>57</sup> Defence Final Brief, footnote 5, referring to the Statute of the International Criminal Court and the *Ministries* case. The Defence further argued that the Prosecution failed to plead the existence of a sufficient nexus between the conduct of the Accused and the armed conflict and failed to plead any material fact in the Indictment relevant to establishing that nexus. The Defence submitted that it has been prejudiced by the Prosecution failure to plead its case with any precision, which has resulted an unfairness in that the Defence has had to guess the Prosecution case on that point. *See* Defence Final Brief, para. 6. The Trial Chamber notes in this respect the Decision on Defence Motion for Particulars, 16 December 2003.

<sup>58</sup> *See infra* Section IV.D.

<sup>59</sup> Defence Final Brief, para. 8. The Defence argues that the crimes were contrary to the implementation of the overall policy of the ABiH, namely a multi-ethnic country. The Defence further argues that the victims in Grabovica were not limited to Bosnian Croat victims, but also included Bosnian Muslim refugees and a soldier of another ABiH unit, *ibid.*

<sup>60</sup> *See infra* Section IV.E.

<sup>61</sup> Defence Final Brief, para. 13, referring to *Kayishema* Trial Judgement, para. 623.

<sup>62</sup> *Tadić* Jurisdiction Decision, para. 70. The Trial Chamber notes that the Defence in its Final Brief argued that the required nexus should be established between the conduct of the Accused and the armed conflict. In this respect, the Trial Chamber notes that generally, in cases before the Tribunal where it has been found that the required nexus ought to be between the acts of the accused and the armed conflict, the accused was directly participating in the crimes, *see, e.g., Vasiljević* Appeal Judgement, para. 27; *Kunarac* Appeal Judgement, para. 58; *Furundžija* Trial Judgement, para. 65.

<sup>63</sup> *Kunarac* Appeal Judgement, para. 57; *Tadić* Jurisdiction Decision, para. 70.

<sup>64</sup> *Kunarac* Appeal Judgement, para. 58.

decision to commit it, the manner in which it was committed or the purpose for which it was committed.”<sup>65</sup>

(b) The Tadić Conditions

30. Article 3 of the Statute confers on the Tribunal jurisdiction over any serious offences against international humanitarian law not covered by Article 2, 4 and 5, provided that four conditions be fulfilled: (i) the violation must constitute an infringement of a rule of international humanitarian law; (ii) the rule must be customary in nature, or, if it belongs to treaty law, the required conditions must be met;<sup>66</sup> (iii) the violation must be “serious”, that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim; and (iv) the violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.<sup>67</sup>

31. The charge of murder as a violation of the laws and customs of war in the present case is based on Common Article 3. It is well established that Article 3 of the Statute encompasses violations of Common Article 3.<sup>68</sup> It is also well established that Common Article 3 is part of international customary law,<sup>69</sup> that murder is a serious violation of international humanitarian law, which has grave consequences for the victim<sup>70</sup> and it also entails individual criminal responsibility.<sup>71</sup>

<sup>65</sup> *Kunarac* Appeal Judgement, para. 58.

<sup>66</sup> These conditions are that the treaty (i) was unquestionable binding on the parties at the time of the alleged offence; and (ii) was not in conflict with or derogated from peremptory norms of international law, as are most customary rules of international humanitarian law. See *Tadić* Jurisdiction Decision, para. 143. The Appeals Chamber in *Kordić and Čerkez* upheld the approach of the Trial Chamber in that case, that when it is found that a provision of treaty law is applicable in a case, the question whether that provision reflects customary law at the relevant time is beside the point, *Kordić and Čerkez* Appeal Judgement, paras 41-46.

<sup>67</sup> *Tadić* Jurisdiction Decision, para. 94. See also *Kunarac* Appeal Judgement, para. 66.

<sup>68</sup> *Tadić* Jurisdiction Decision, para. 89; *Čelebići* Appeal Judgement, paras 133-136; *Kunarac* Appeal Judgement, para. 68.

<sup>69</sup> *Tadić* Jurisdiction Decision, para. 89; *Čelebići* Appeal Judgement, para. 143; *Kunarac* Appeal Judgement, para. 68.

<sup>70</sup> *Tadić* Trial Judgement, para. 612, referring to the *Nicaragua* case.

<sup>71</sup> *Tadić* Jurisdiction Decision, para. 129, confirmed by *Čelebići* Appeal Judgement, para 153-174, in particular para. 167; see also *Kordić and Čerkez*, IT-95-14/2-PT, Decision on the Joint Motion to Dismiss the Amended Indictment for Lack of Jurisdiction Based on the Limited Jurisdictional Reach of Articles 2 and 3, 2 March 1999, paras 32-33.

**V. DISPOSITON**

753. Having considered all of the evidence and the arguments of the Parties, the Statute and the Rules, and based upon the factual and legal findings of the Trial Chamber in this Judgement, the Trial Chamber decides as follows:

The Accused **SEFER HALILOVIĆ** is found **NOT GUILTY** and is therefore acquitted of Murder, a Violation of the Laws or Customs of War.

754. Pursuant to Rule 99(A) of the Rules, the Trial Chamber orders that Sefer Halilović be released immediately from the United Nations Detention Unit.

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

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Judge Liu Daqun  
Presiding

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Judge Florence Ndepele Mwachande Mumba

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Judge Amin El Mahdi

Dated this sixteenth day of November 2005  
At The Hague  
The Netherlands

**Seal of the Tribunal**