UNITED NATIONS

	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991	Case No.	IT-03-67-AR72.1
		Date:	15 June 2006
		Original:	English

IN THE APPEALS CHAMBER

Before: **Judge Fausto Pocar, Presiding**
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Liu Daqun
Judge Theodor Meron

Registrar: **Mr. Hans Holthuis**

Decision of: **15 June 2006**

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

DECISION ON MOTION FOR RECONSIDERATION OF THE "DECISION ON THE INTERLOCUTORY APPEAL CONCERNING JURISDICTION" DATED 31 AUGUST 2004"

The Office of the Prosecutor:

Ms. Hildegard Uertz-Retzlaff
Mr. Daniel Saxon
Mr. Ulrich Müssemeyer

Accused:
Mr. Vojislav Šešelj

Standby Counsel:
Mr. Tjarda Eduard van der Spoel

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1. The Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991 ("Tribunal") is seized of the "Interlocutory Appeal by Dr. Vojislav Šešelj Against the Appeals Chamber's 'Decision on the Interlocutory Appeal Concerning Jurisdiction' Dated 31 August 2004" ("Motion") filed by Vojislav Šešelj on 2 February 2006.

I. PROCEDURAL BACKGROUND

2. Mr. Šešelj is indicted before the Tribunal on charges of persecution on political, racial or religious grounds, extermination, murder, imprisonment, torture, inhumane acts and deportation as crimes against humanity (Counts 1-3, 5-7, 10-11), and of murder, torture and cruel treatment, wanton destruction of villages or devastation not justified by military necessity, destruction or wilful damage done to institutions dedicated to religion or education, and plunder of public or private property as violations of the laws or customs of war (Counts 4, 8, 9, 12-14). The crimes enumerated in the Indictment were allegedly committed on the territories of Bosnia and Herzegovina, Croatia and Vojvodina, Serbia.[1]

3. On 15 January 2004, Mr. Šešelj filed a motion before the Trial Chamber objecting to the form of the Indictment.[2] He argued, *inter alia*, that the crimes against humanity he allegedly committed in Vojvodina could not fall within the jurisdiction of the Tribunal pursuant to Article 5 of the Statute, as there was no armed conflict on the territory of Vojvodina at the time of the alleged crimes. As such, he requested that the parts of the Indictment related to crimes against humanity allegedly committed in Vojvodina be deleted.[3] In its Decision,[4] the Trial Chamber upheld Mr. Šešelj's objection, finding that the Prosecution failed to plead "whether a state of armed conflict existed in Vojvodina, Serbia"[5] and that "the applicability of the crimes alleged by the Prosecution to have occurred in Vojvodina under Article 5 is subject to whether, at the relevant time of the Indictment, an armed conflict existed in Vojvodina".[6] The Trial Chamber ordered the Prosecution "to clarify the ambiguity in the Indictment (and the allegations and the charges or parts

[1] Indictment, 15 January 2003; Modified Amended Indictment, 15 July 2005.
[2] *Prosecutor v. Vojislav Šešelj,* Case No. IT-03-67-PT, Objection to the Indictment, 15 January 2004.
[3] *Ibid.*, pp. 19 and 43-44.
[4] *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, Decision on Motion by Vojislav Šešelj Challenging Jurisdiction and Form of Indictment, 26 May 2004 ("Trial Chamber Decision").
[5] *Ibid.*, para. 38.
[6] *Ibid.*, para. 39.

of charges based thereon) in relation to Vojvodina and the issue of armed conflict."[7] If the Prosecution chose to allege that there was an armed conflict in Vojvodina, the Trial Chamber ordered it "to identify and show existing or new material to support the allegation that there was an armed conflict in Vojvodina".[8]

4. On 28 June 2004, the Prosecution filed an appeal[9] before the Appeals Chamber alleging that the Trial Chamber erred in its interpretation of the phrase "committed in armed conflict" found in Article 5 of the Statute.[10]

5. On 31 August 2004, the Appeals Chamber allowed the Prosecution's Appeal and reversed the Decision of the Trial Chamber, holding that the jurisdictional requirement in Article 5 of the Statute did not require the Prosecution to establish the existence of an armed conflict within the State of the former Yugoslavia where the crime allegedly occurred.[11]

6. On 2 February 2006, Mr. Šešelj filed the Motion at issue in this Decision requesting reconsideration of the Impugned Decision. The Prosecution filed its Response on 17 February 2006 and requested the Appeals Chamber to dismiss the Motion.[12] Mr. Šešelj has not filed a reply to the Prosecution's Response.

II. RELIEF SOUGHT

7. Mr. Šešelj seeks reconsideration of the Impugned Decision, in accordance with the *Čelebići* jurisprudence.[13] He considers that even though reconsideration is not explicitly provided for in the Statute, he is entitled to request reconsideration of the Impugned Decision in order to prevent injustice.[14]

8. In its Response, the Prosecution objects to the validity of Mr. Šešelj's Motion complaining that it exceeds the limit of 3,000 words set out in the Practice Direction on the Length of Briefs and

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[7] *Ibid.*, paras 40 and 62.
[8] *Ibid.*
[9] Prosecution's Appeal from the "Decision on Motion by Vojislav Šešelj Challenging Jurisdiction and Form of the Indictment", 28 June 2004 ("Prosecution's Appeal").
[10] Prosecution's Appeal, para. 45. In Response, Vojislav Šešelj filed Motion No. 38 to the Three-Member Appeals Chamber on 8 July 2004.
[11] Decision on the Interlocutory Appeal Concerning Jurisdiction, 31 August 2004, para. 14 ("Impugned Decision").
[12] Prosecution's Response to "Interlocutory Appeal by Dr. Vojislav Šešelj Against the Appeals Chamber's 'Decision on the Interlocutory Appeal Concerning Jurisdiction' Dated 31 August 2004", 17 February 2006 ("Prosecution's Response").
[13] Motion, p. 3.
[14] *Ibid.*

Motions[15] and that Mr. Šešelj has not sought authorization from the Appeals Chamber, or provided any explanation of the exceptional circumstances that justify the necessity of an oversized filing for it to be received as validly filed by the Appeals Chamber.[16] The Prosecution points out that Mr. Šešelj's filings typically exceed the word limit and argues that in the interests of procedural fairness, Mr. Šešelj should not be permitted to continue disregarding the requirements of the Practice Direction. It asks the Appeals Chamber to dismiss the Motion on this basis alone.[17]

9. The Appeals Chamber has confirmed in numerous cases its inherent power to reconsider its own interlocutory decisions in exceptional circumstances "if a clear error of reasoning has been demonstrated or if it is necessary to do so in order to prevent an injustice".[18] The Appeals Chamber also notes, however, that as alleged in the Prosecution's Response,[19] the Motion filed by Mr. Šešelj, being a motion for reconsideration rather than an interlocutory appeal, exceeds the 3,000 word limit applying to the category of "other motions, replies and responses", under the Practice Direction.

10. The Appeals Chamber shares the Prosecution's frustration with Mr. Šešelj's routine failure to observe the provisions of the Practice Direction. In this instance, however, for reasons of judicial economy, the Appeals Chamber will not give Mr. Šešelj the opportunity to refile his Motion in accordance with the requirements of the Practice Direction, but will examine the Motion on its merits. The Appeals Chamber warns Mr. Šešelj that a failure to abide by the relevant provisions of the Practice Direction in the future may lead to dismissals by the Appeals Chamber on that basis alone.

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[15] No. IT/184/Rev.2, 16 September 2005 ("Practice Direction").
[16] Prosecution's Response, paras 5-7.
[17] *Ibid.*, paras 8-9.
[18] *Ferdinand Nahimana et al v. Prosecutor*, Case No. ICTR-99-52-A, Decision on Jean-Bosco Barayagwiza's Request for Reconsideration of Appeals Chamber Decision, 4 February 2005, p. 2; *see* also *e.g. Barayagwiza v. The Prosecutor*, Case No. ICTR-97-19-AR72, Decision on Prosecutor's Request for Review or Reconsideration, 31 March 2000, paras 18 and 73; *Kanyabashi v. Prosecutor*, Case No. ICTR 96-15-AR72, Decision on Motion for Review or Reconsideration, 12 September 2000, p. 3; *Prosecutor v. Jean-Bosco Bagosora et al.*, Case No. ICTR-98-41-A, Decision on Interlocutory Appeal from Refusal to Reconsider Decisions Relating to Protective Measures and Application for a Declaration of Lack of Jurisdiction, 2 May 2002, paras 6 and 10; *Niyitegeka v. Prosecutor*, Case No. ICTR-96-14-A, Decision on Defence Extremely Urgent Motion for Reconsideration of Decision Dated 16 December 2003, 19 December 2003, p. 4; *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004, p. 2.
[19] Prosecution's Response, paras 5-7.

III. SUBMISSIONS OF THE PARTIES AND DISCUSSION

A. Erroneous Date of the Trial Chamber's Decision

11. The Appeals Chamber dismisses the preliminary argument presented by Mr. Šešelj as frivolous. He alleges that in the Impugned Decision, the Appeals Chamber reversed a decision which does not exist on the basis that the Appeals Chamber purported to be reversing a decision dated 3 June 2004, while the Trial Chamber's Decision is actually dated 26 May 2004. Mr. Šešelj concludes that the Decision of 3 June 2004 does not exist and the Appeals Chamber's error means that the Decision of 26 May 2004 is still in force.[20]

12. This allegation is based on a misunderstanding of the filing process. Mr. Šešelj's confusion stems from the fact that the Trial Chamber's Decision was signed on 26 May 2004 but was not filed until 3 June 2004. There is thus only one Decision, with different signature and filing dates. Indeed, Mr. Šešelj should be well aware that this disparity in dates arose from the practice adopted by the Registry not to file decisions issued by the Trial Chamber until they had a translation in BCS so that the translation could be served on Mr. Šešelj shortly after the Trial Chamber's decision was filed in order to fully protect Mr. Šešelj's rights.

B. Subject-Matter Jurisdiction under Article 5 of the Statute

13. In his Motion, Mr. Šešelj argues that the Impugned Decision left open the legal question as to whether the conditions for the jurisdiction of the Tribunal pursuant to Article 5 of the Statute had been met with regard to the allegations against him.[21] His claim is that the Appeals Chamber adopted an overbroad interpretation of the phrase "committed in armed conflict" in Article 5 of the Statute, as no direct armed conflict or hostile activity occurred in Vojvodina.[22] He objects to the Appeals Chamber's holding that "committed in armed conflict" can mean "committed during a period of hostilities on the territory of the former Yugoslavia" or that "the crimes were committed somewhere in the territory of a party to a conflict in the former Yugoslavia during the time the conflict was ongoing".[23] Mr. Šešelj also challenges the Appeals Chamber's reliance on the authentic will of the authors of the Statute and on statements from members of the Security Council at the time of the adoption of the Statute. He considers that no clear conclusion can be drawn regarding statutory interpretation on the basis of the Secretary General's Report.[24] Mr.

[20] Motion, p. 3.
[21] *Ibid.*, p. 4.
[22] *Ibid.*
[23] *Ibid.*, p. 7.
[24] Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), UN Doc. S/25704, 3 May 1993.

Šešelj argues therefore that the Appeals Chamber adopted an erroneous interpretation of the "armed conflict" requirement in Article 5 of the Statute and did not examine whether all its constitutive elements were present (*e.g.* territory, warring parties, time).[25]

14. Mr. Šešelj further claims that the Appeals Chamber's conclusion that "there can be situations where an armed conflict is ongoing in one state and ethnic civilians of one of the warring sides, resident in another state, become victims of a widespread and systematic attack in response to that armed conflict" was used as an excuse to grant the Prosecution's Appeal. He contends that the Appeals Chamber erroneously concluded that there was a widespread and systematic attack on the civilian population at the time relevant to the Indictment while the relevant paragraphs of the Indictment (paragraphs 12, 31 and 33) contain no such allegation.[26]

15. Mr. Šešelj also refers to the circumstances that led to the establishment of the Tribunal and in particular, the legal bases of the Security Council Resolution adopting the Statute of the Tribunal. He argues that the fact that Security Council Resolution 827 was based on Chapter VII and Article 29 of the United Nations Charter clearly indicates that the Tribunal's mandate was to end armed conflicts and to restore and maintain peace and that its jurisdiction is therefore circumscribed to those territories where there was armed conflict and unrest.[27] Mr. Šešelj argues that attacks or aggressions which do not constitute a "threat to peace" do not fall within the jurisdiction of the Tribunal.[28] Mr. Šešelj claims further that the basic intention of the Security Council in adopting the Statute was to provide protection pursuant to the Geneva Conventions, which primarily deal with armed conflict. Thus, for the requirements in Article 5 of the Statute to be fulfilled, the phrase "committed in armed conflict" must be interpreted as requiring the Prosecution to prove that there was an armed conflict in the territory of Vojvodina, Serbia from May to August 1992, with clearly identifiable warring parties, and identification of those individuals commanding these warring parties.[29]

16. Mr. Šešelj finally argues that the Appeals Chamber fell into error as it was misled by the Prosecution's reference to previous judgements of the Tribunal in the *Kunarac*, *Tadić* and *Stakić* cases. He claims that the Prosecution failed to indicate whether this case law was relevant to the requirements of Article 3 of the Statute or to those of Article 5 of the Statute and that the Prosecution's reasoning is that if the requirements in Article 3 of the Statute are fulfilled, then so are those of Article 5 of the Statute.[30] Moreover, he considers that the *Kunarac*, *Tadić* and *Stakić*

[25] Motion, pp. 5-6.
[26] *Ibid.*, p. 8.
[27] *Ibid.*, pp. 6-7.
[28] *Ibid.*, p. 7.
[29] *Ibid.*, p. 9.
[30] *Ibid.*, p. 5.

cases are not applicable to the crimes allegedly committed in Vojvodina, for these judgements dealt with crimes committed in Bosnia and Herzegovina, where the armed conflict requirement was obviously fulfilled. He concludes that the paragraph of the *Kunarac* case quoted by the Prosecution, which states that "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" shows the inapplicability of this jurisprudence to his case, as no warring party controlled Vojvodina.[31]

17. In Response, the Prosecution argues that the Motion is lacking in substance and should be entirely dismissed. It submits that Mr. Šešelj fails to demonstrate that any of the circumstances that have been recognized as warranting reconsideration exist in this case and fails to identify any other basis upon which the Appeals Chamber should reconsider the Impugned Decision.[32]

18. The Prosecution claims that the Motion repeats arguments already properly considered by the Appeals Chamber, regarding the absence of an armed conflict or widespread or systematic attack against a civilian population in Vojvodina and the absence of a nexus between the crimes committed in Vojvodina and an armed conflict elsewhere on the territory of the former Yugoslavia.[33] It argues that Mr. Šešelj fails to show how the Appeals Chamber erred when it characterized the arguments as factual and set them aside for adjudication at trial.[34]

19. The Prosecution concludes that part of the Motion is in fact a response to its Appeal, which explained at length how the expression "committed in armed conflict" within the meaning of Article 5 of the Statute should be interpreted. It submits that Mr. Šešelj could have disputed this interpretation in his Response to the Prosecution's Appeal, but declined to avail himself of this opportunity and focused instead on a discussion of factual issues, which were going to be adjudicated by the Trial Chamber as the finder of fact, rather than by the Appeals Chamber.[35] It stresses that reconsideration requests cannot be used as a means to rectify tactical errors made by one of the parties to the proceedings.[36]

Analysis

20. The Appeals Chamber is not persuaded by Mr. Šešelj's arguments that it left open the determination of the criteria for the Tribunal's jurisdiction under Article 5 of the Statute. In that respect, the Appeals Chamber recalls the following statement in its Impugned Decision:

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[31] *Ibid.*
[32] Prosecution's Response, paras 11-12.
[33] *Ibid.*, para. 13.
[34] *Ibid.*, para. 14.
[35] *Ibid.*, para. 15.
[36] *Ibid.*, para. 16.

> All that is required under Article 5 of the Statute is that the Prosecution establish that an armed conflict is sufficiently related to the Article 5 crime with which the accused is charged. While, as previous jurisprudence of this Tribunal has held, there is no need for the Prosecution to establish a material nexus between the acts of the accused and the armed conflict, the Prosecution must establish a connection between the Article 5 crime itself and the armed conflict. Consistently with the object of the purpose of the Tribunal's Statute, the jurisdictional requirement that Article 5 crimes be committed in armed conflict requires the Prosecution to establish that a widespread or systematic attack against the civilian population was carried out while an armed conflict in Croatia and/or Bosnia and Herzegovina was in progress. Whether the Prosecution can establish this connection in this case with respect to crimes against humanity in Vojvodina is a question of fact to be determined at trial.[37]

It is clear from the above that the Appeals Chamber resolved the legal question at hand while leaving the Trial Chamber with the factual determination of whether crimes against humanity allegedly committed in Vojvodina were connected to the armed conflict in Croatia and/or Bosnia and Herzegovina. Mr. Šešelj has not shown the existence of a clear error or injustice in the Appeals Chamber's reasoning.

21. The Appeals Chamber also notes that it is clearly established that the existence of an armed conflict is not a constitutive element of the definition of crimes against humanity, but only a jurisdictional prerequisite.[38] Further, contrary to Mr. Šešelj's allegations, at the time of the adoption of the Statute of this Tribunal, several members of the Security Council explicitly endorsed the interpretation adopted by the Appeals Chamber that crimes against humanity would fall within the jurisdiction of the Tribunal if committed "during a period of armed conflict on the territory of the former Yugoslavia".[39] As noted in the Impugned Decision, this interpretation also

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[37] Impugned Decision, para. 14.

[38] *See* Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), UN Doc. S/25704, 3 May 1993, para. 47; *Prosecutor v. Duško Tadić*, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 ("*Tadić* Jurisdictional Decision"), para. 70; *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgement, 15 July 1999 ("*Tadić* Appeal Judgement"), paras 249 and 251. *See* also *Prosecutor v. Furundžija*, Case No. IT-95-17/1-T, Judgement, 10 December 1998, para. 59; *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, Case No. IT-96-23 & IT-96-23/1-A, Judgement, 12 June 2002, paras 82-83 (explaining that "[a] crime listed in Article 5 of the Statute constitutes a crime against humanity only when 'committed in armed conflict'" and that this requirement is "a purely jurisdictional prerequisite that is satisfied by proof that there was an armed conflict and that objectively the acts of the accused are linked geographically as well as temporally with the armed conflict.")

[39] Impugned Decision, para. 12; *See* UN Doc. S/PV.3217, 25 May 1993, *spec.* statements by France, p. 184: "(...) with regard to Article 5, that Article applies to all the acts set out therein when committed in violation of the law during a period of armed conflict on the territory of the Former Yugoslavia (...)"; the United States of America p. 188: "Article 5 applies to all acts listed in that Article, when committed contrary to law during a period of armed conflict in the territory of the former Yugoslavia (...)"; Spain p. 204: "Its jurisdiction encompasses all of the territory of the former Yugoslavia and actions by all parties involved in the conflict or conflicts in that area"; Russia, p. 207: "Article 5 encompasses criminal acts committed on the territory of the former Yugoslavia during an armed conflict". In at least one previous case, the Appeals Chamber has stated that uncontested declarations by Security Council members provided "an authoritative interpretation" of the article at issue, *see Tadić* Jurisdictional Decision, para. 88.

conforms to the terms of Article 1 of the Statute.[40] Mr. Šešelj has not identified any clear error in the Appeals Chamber's interpretation of the Statute.

22. Mr. Šešelj's allegations regarding the Appeals Chamber's statement that "there can be situations where an armed conflict is ongoing in one state and ethnic civilians of one of the warring sides, resident in another state, become victims of a widespread or systematic attack in response to that armed conflict" and regarding the fact that paragraphs 12, 31 and 33 of the Indictment do not make specific reference to the existence of a systematic or widespread attack on civilians are frivolous. In particular, the Indictment against Mr. Šešelj for crimes against humanity makes it sufficiently clear that the Prosecution alleges that a widespread or systematic attack against the civilian population took place on the territory of Vojvodina at the time relevant to the Indictment.

23. The Appeals Chamber is also not satisfied that Mr. Šešelj's arguments concerning the circumstances that led to the establishment of this Tribunal demonstrate the existence of a clear error in the Impugned Decision.[41] While the Appeals Chamber does not dispute the allegation that one of the objectives of the Security Council was to provide protection pursuant to the Geneva Conventions, this does not mean that the crimes allegedly committed by Mr. Šešelj in Vojvodina fall outside the jurisdiction of the Tribunal.[42] Similarly, the Appeals Chamber rejects Mr. Šešelj's argument about the implications of the Security Council's use, in establishing the Tribunal, of the power conferred by Chapter VII of the United Nations Charter. The Security Council's use of its power to address a "threat to peace" in no way suggests that the Tribunal might lack jurisdiction over Article 5 crimes that, while committed in connection with an armed conflict, occurred in a place where no fighting is ongoing.

24. Mr. Šešelj has not demonstrated that, by citing previous jurisprudence, the Prosecution misled the Appeals Chamber and that this led to a clear error in the Impugned Decision. The Appeals Chamber notes that in its Appeal, the Prosecution made express reference to the distinction in the *Kunarac* Appeal Judgement between the armed conflict requirements in Articles 3 and 5 of the Statute.[43] The Prosecution specifically noted that unlike Article 5 of the Statute, "for Article 3 purposes, not only is it necessary to show that an armed conflict existed at the relevant time and place, but it is also necessary to take the additional step of proving that the acts of the

[40] Impugned Decision, para. 12.
[41] *Tadić* Jurisdictional Decision, paras 28-48.
[42] *Ibid.*, paras 68 and 70; *see* also *Prosecutor v. Delalić, et. al.*, Case No. IT-96-21-T, Judgement, 16 November 1998, paras 185, 193, where the Chamber, applying the test for determining the existence of an armed conflict established in the *Tadić* Jurisdictional Decision, also found that "whether or not the conflict is deemed to be international or internal, there does not have to be actual combat activities in a particular location for the norms of international humanitarian law to be applicable."
[43] Prosecution's Appeal, paras 16-18 and 33.

accused are 'closely related' to the armed conflict".[44] It also referred to the *Tadić* jurisprudence to conclude that if the geographical scope of the "armed conflict" requirement in Article 3 was interpreted as "the territories in which the provisions of international humanitarian law (or the law of armed conflict) can be said to apply",[45] then "there is no basis for according a more restrictive scope to the term 'armed conflict' in Article 5 than the one enunciated by the Appeals Chamber for Articles 2 and 3 (...). Consequently at a minimum, the 'geographical scope' of an armed conflict for Article 5 should be determined in the same way as for Articles 2 and 3."[46] Finally, the Prosecution's Appeal made reference to the *Stakić* case and argued that the erroneous conclusion in the Trial Chamber's Decision might have been the result of confusion between the more onerous standard for jurisdiction over violations of the laws or customs of war under Article 3 of the Statute and the broader standard applicable to crimes against humanity.[47] The distinction between Article 3 and Article 5 was therefore clearly exposed in the Prosecution's Appeal.

25. Finally, the Applicant's argument that the *Tadić, Stakić* and *Kunarac* jurisprudence is inapplicable to his case does not demonstrate any clear error on the part of the Appeals Chamber. These cases offer in-depth analyses of the definition of "armed conflict" in Article 5 of the Statute establishing, in particular, that a nexus between the armed conflict and the accused's acts is not required and that all that is required is that the Prosecution establish a connection between the Article 5 crime itself and the armed conflict.[48] The fact that these decisions specifically dealt with crimes committed in Bosnia and Herzegovina does not affect the general relevance of these rulings.

C. Prosecutorial strategy

26. The arguments made by Mr. Šešelj with respect to the Prosecutorial strategy[49] do not allege any clear error or injustice on the part of the Appeals Chamber in the Impugned Decision and will not be considered.

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[44] *Ibid.*, footnote 19.
[45] *Ibid.*, para. 31.
[46] *Ibid.*, para. 32.
[47] *Ibid.*, para. 39.
[48] *Prosecutor v. Dragoljub Kunarac, Radomice Kovac and Zoran Vukovic*, Case No. IT-96-23-T & IT-96-23/1-T, Judgement, 22 February 2001, para. 413; *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, Case No. IT-96-23 & IT-96-23/1-A, Judgement, 12 June 2002, paras 82-83 cited *supra*, note 38; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Judgement, 31 July 2003, para. 570.
[49] *See* Motion, pp. 4, 6.

IV. DISPOSITION

27. The Appeals Chamber finds that the Applicant has failed to show in his Motion any clear error or injustice in the Impugned Decision. Therefore, the Motion is **DISMISSED** in its entirety.

28. The Appeals Chamber reminds Mr. Šešelj that only a "clear error" or an "injustice" will prompt reconsideration of a decision. Motions presenting only arguments that were or could have been made before the previous decision was rendered are therefore generally frivolous. The Appeals Chamber cautions Mr. Šešelj to avoid burdening the chambers of the Tribunal with frivolous motions in the future.

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

Done this 15th day of June 2006,
At The Hague,
The Netherlands.

Fausto Pocar
Presiding Judge

[Seal of the Tribunal]